City of Marquette, MI

Meeting Agenda
City Commission

Monday, April 24, 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)

Kristine Shannon, Marquette Housing Commission, for an unexpired term ending 07-09-27
Andrew Tripp, Parks and Recreation Advisory Board, for an unexpired ending 01-29-26

2. Reappointment(s)

Judy Berglund, Elections Board, for a term ending 04-11-27
Steven Schmunk, Peter White Public Library Board of Trustees, for a term ending 05-01-28

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

Public Hearing(s)

3. Ordinance 720 - Land Development Code Amendments - Roll Call Vote

4. Consent Agenda

- **4.a.** Approve the minutes of the April 10, 2023 regular Commission meeting
- **4.b.** Approve the minutes of the April 12, 2023 Joint Work Session
- **4.c.** Approve the total bills payable in the amount of $834,090.93
- **4.d.** Biosolids Hauling Contract
- **4.e.** CDBG Certified Grant Administrator
- **4.f.** CDBG Development Agreement
- **4.g.** Carden Circus - Special Event Permit
- **4.h.** Commission Policy: Standards for City-appointed Boards, Committees and Authorities
- **4.i.** Fire Department SCBA Replacement

4.j. Founders Landing Pile Reuse Design and Construction Oversight Change Order

4.k. Fresh Coast Light Lab Use Agreement

4.l. Street Improvements, Paving and Sanitary Sewer Line Replacements Project

New Business

5. Vault Development Agreement

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.

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Public Hearing(s)

Ordinance 720 - Land Development Code Amendments - Roll Call Vote

BACKGROUND:

On March 21, 2023, the Planning Commission conducted a Public Hearing for the consideration of a comprehensive set of amendments to the Land Development Code that had been the subject of several months of work and refinement before this meeting. After considering the proposed amendments and conducting a Public Hearing, the Planning Commission approved the following motion:

> *It was moved by D. Fetter, and seconded by A. Andres, and carried 7-0 that after review of the draft Land Development Code (LDC) amendments presented as case 01-ZOA-03-2023, and after conducting a public hearing and careful consideration of the contents of the draft LDC amendments, the Planning Commission finds that the draft LDC amendments are consistent with the recommendations, goals, and policy objectives of the Community Master Plan, comply with section 54.1405 of the Land Development Code and therefore are justified and appropriate and therefore should be approved by the City Commission as presented.*

On April 12, 2023, the City Commission and Planning Commission held a joint work session to discuss the proposed amendments. The attached draft ordinance contains all of the proposed amendments that were recommended for approval by the Planning Commission.

FISCAL EFFECT:

None.

RECOMMENDATION:

Approve Ordinance 720 as recommended by the Planning Commission.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Ordinance #720 _ LDC Amendments-April 2023
- 03-21-23 Planning Commission Minutes

ORDINANCE #720

AN ORDINANCE TO AMEND SEVERAL SECTIONS OF MARQUETTE CITY CODE CHAPTER 54 – LAND DEVELOPMENT CODE:

ARTICLE 2 - DEFINITIONS

ARTICLE 3 – ZONING DISTRICTS AND MAP

ARTICLE 4 – SCHEDULE AND REGULATIONS

ARTICLE 5 – SUPPLEMENTAL ZONING DISTRICT STANDARDS

ARTICLE 6 – STANDARDS APPLICABLE TO SPECIFIC LAND USES

ARTICLE 7 – GENERAL PROVISIONS

ARTICLE 9 – PARKING, LOADING AND ACCESS MANAGEMENT

ARTICLE 10 – LANDSCAPING AND SCREENING

ARTICLE 11 – SIGNS

ARTICLE 12 – NONCONFORMITIES

ARTICLE 14 – ADMINISTRATIVE PROCEDURES

SUMMARY. This ordinance is intended to update the Land Development Code in several areas, where the need for improvements has been identified by staff and the City Planning Commission.

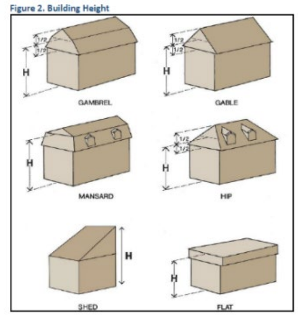
SECTION 1. Article 2- Definitions

Chapter 54 – LAND DEVELOPMENT CODE, Article 2 – Definitions is hereby amended as follows:

Article 2 Definitions

Section 54.202 Specific Terms

Figure 2. Building Height



(28) Building, Height: The vertical distance between the average grade (see definition of "Grade") and the highest point of the roof surface for flat roofs; to the deck line of Mansard roofs; the average height between eaves and ridge for gable, hip, and gambrel roofs~~; and the average height between the lowest point and the highest point on a shed roof~~ and the maximum height of the highest wall for a shed roof. (See *Figure 2. Building Height*)

(34) Carport: A carport is a covered structure consisting of a roof supported on posts used to offer limited protection to vehicles, primarily cars, from rain and snow. The structure can either be free standing or attached to a wall. Unlike most structures, a carport does not have four walls, and usually has one or two.

(3~~4~~5) Child Care or Day Care, Family Home: A private home in which ~~more than one (1) but less than six (6)~~ as many as seven (7) minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. A family day care home includes a home that gives care to an unrelated child for more than four (4) weeks during a calendar year. All family day care homes shall be registered with or licensed by the Michigan Department of Licensing and Regulatory Affairs or successor agency.
(3~~5~~6) Child Care or Day Care, Group Home: A private home in which ~~more than six (6) but not more than 12~~ as many as fourteen 14 minor children are given care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group day care home includes a home that gives care to an unrelated minor child for more than four (4) weeks during a calendar year. All group day care homes shall be registered with or licensed by the Michigan Department of Licensing and Regulatory Affairs or successor agency.

(4~~2~~3) Condominium: A condominium project established in conformance with the Michigan Condominium Act (Act 59 of 1978), except the subcategory of Site Condominiums as defined in this section.

(4~~3~~4) Condominium Act: Michigan Public Act 59, 1978, as amended.

(4~~5~~6) Condominium General Common Elements: Condominium General Common Elements may include, but is not limited to, the following, as defined by the condominium master deed and subdivision plan:

- **(a)** The land in the condominium project;
- **(b)** The foundations, main walls, exterior of the building, roofs, halls, lobbies, stairway entrances, exits or communication ways;
- **(c)** The ~~basements, flat roofs,~~ yards and gardens~~, except as otherwise provided or stipulated~~;
- ~~**(d)** The premises for the use of janitors or persons in charge of the condominium project, including lodging, except as otherwise provided or stipulated~~;
- **(~~e~~ d)** The compartments or installations of central services such as heating, power, light, gas, cold and hot water, refrigeration, air-conditioning, reservoirs, water tanks ~~and~~ ,pumps, and the like;
- **(~~f~~ e)** The elevators, incinerators and, in general, all devices or installations existing for common use; and;
- **(~~g~~ f)** All other elements of the condominium project owned in common and intended for the common use or necessary to the existence, upkeep and safety of the project.

(49) Condominium, Site: A condominium project established in conformance with the Condominium Act, and in which each condominium unit is for single-family use and the building or buildings (which could include a detached garage or shed) located on each condominium unit is completely detached from the building(s) located on other condominium units. Additionally, no part of any building located on a unit, land upon which the building sits, or airspace above the building may be defined as a common element of the condominium project.

(~~48~~50) Condominium Subdivision Plan: A plan meeting the requirements of Section 66 of the Condominium Act, which shall consist of: site, survey and utility plans; floor plans; and Sections, as appropriate showing the existing and proposed structures and improvements including the location thereof on the land. The condominium subdivision plan shall show the size, location, area, vertical boundaries and volume for each unit comprised of enclosed air space. A number shall be assigned to each condominium unit. The condominium subdivision plan shall include the nature, location and approximate size of common elements. The condominium subdivision plan shall also include the adopted site plan and/or Exhibit B as required by the Condominium Act ~~P.A. 59 of 1978, as amended~~.

(83) Footprint, Building: The enclosed area within the exterior walls of a building. For example, a building with exterior wall dimensions of 40 ft. x 100 ft. has a footprint of 4,000 square feet (40' x 100'). Roof eaves/projections are not included in the calculation for the building footprint. Also known as "floor-plate".

(106) Hostel – A lodging facility that has some dormitory-style sleeping and bathroom arrangements, communal gathering space and sometimes cooking/eating facilities. A hostel may offer meals and planned activities, but typically have few amenities. A hostel is not a home or a short-term rental, and has on-site management at all times when guests/patrons are present.

(116) Light Vehicle/Equipment Sales and Display. Includes indoor and outdoor display and storage of vehicles for sales or rental by a licensed car or motorcycle dealer, which may include a car wash facility. Also new or used equipment that has a small motor (such as lawn tractors and snowblowers), and related accessories such as trailers, plow gear, lawn and garden equipment.

(12~~7~~30) Manufacturing, Light: Light manufacturing refers to industrial or commercial activity that uses small or moderate amounts of raw, ~~or~~ partially processed, or processed materials to produce items of relatively high value per unit weight or of higher value. Light manufacture is most often associated with batches or discrete production runs. Normally absent from light manufacturing facilities are any type of heavy machinery, welding operations, cranes, or hazardous materials. The manufacturing of clothes, furniture, consumer electronics, household items, jewelry, pottery, food, and beverages for sale are some examples of light manufacturing. In determining whether a use is classified as light manufacturing or some other classification of use (e.g., heavy manufacturing, commercial, accessory use, home occupation, etc.), the Zoning Administrator shall consider the material, process, quantities, relation to any applicable laws such as the Michigan Cottage Food Law, revenue generated or forecast, and/or other similar factors. ~~For example purposes only, the food preparation use for a restaurant or caterer is classified as an accessory use to the principal use.~~

(132) Marihuana Educational Research: A marihuana educational research license means a person licensed to obtain marihuana from a marihuana establishment, produce marihuana products, perform research on marihuana and marihuana products, and dispose of marihuana and marihuana products.

(138) Marihuana Microbusiness - Class A: Marihuana Class A Microbusiness – means a person licensed to cultivate not more than 300 marihuana plants; package marihuana and marihuana products, purchase concentrate and other marihuana products from a licensed processor; and sell or otherwise transfer marihuana and marihuana products to individuals who are 21 years of age or older; and transfer marihuana to a marihuana safety compliance facility for testing.

(166) Off-site Parking Spot: An approved location for the provision of required off-street parking, other than the property upon which the development is proposed or built that triggered the related minimum vehicle parking requirement.

(2~~39~~45) Warehousing/Storage Facilities: A use engaged primarily in indoor storage (commercial or personal materials), wholesale, and distribution of goods, products, supplies, and equipment, excluding bulk storage of materials.

(2~~42~~48) Waterway. For the purposes of this Ordinance, waterways shall include lakes, rivers, stream channels, brooks, drains, and other riparian water bodies that are mapped in the City's Geographic Information System stream layer. ~~illustrated on the Official Zoning Map~~.

SECTION 2. **Article 3 – Zoning Districts and Map**

Chapter 54 – LAND DEVELOPMENT CODE, Article 3 – Zoning Districts and Map is hereby amended as follows:

Article 3 Zoning Districts and Map

Section 54.306 Permitted Uses by District

Figure 8. Table of Permitted Land Uses and Special Land Uses by Zoning District

Key: **P=Permitted** **S=Special Land Use** **[blank]=Use Not Permitted**

Land Use	LDR	MDR	MFR	MHP	MU	CBD	GC	RC	M	C	I-M	CR	BLP	Use Standards
Residential Uses														
Adult Foster Care, Family Home	P	P	P	P	P	P								
Adult Foster Care, Large Group Home			S											Section 54.602
Adult Foster Care, Small Group Home	P	P	P		P									Section 54.602
Child or Day Care, Family Home	P	P	P	P	P	P								
Child or Day Care, Group Home	S	S	S		S									Section 54.608
Dwelling, Accessory Unit	P	P	P		P	P								Section 54.612
Dwelling, Intentional Community	S	S	S		S	S								Section 54.614
Dwelling, Live/Work					P	P								Section 54.615
Dwelling, Multiple-Family			P		P	P								Section 54.616
Dwelling, Single-Family Attached			P		P	S								
Dwelling, Single-Family Detached	P	P	P		P	S								Section 54.617
Dwelling, Two-Family (Duplex)	S	S	P		P	P								Section 54.613
Foster Family Group Home	S	S	S		S	S								
Foster Family Home	P	P	P		P	P								
Home Occupation	P	P	P		P	P								Section 54.621
Home Office	P	P	P		P	P								Section 54.622
Mobile Home Park				P										Section 54.63~~0~~1
Nursing Home, Convalescent Home, Extended Care Facility, Assisted Living Facility			S		S	S								Section 54.63~~2~~3
Residential Limited Animal Keeping	P	P												Section 54.64~~2~~3
Lodging Uses														
Bed and Breakfast			S		S	S								Section 54.603
Bed and Breakfast Inn					S	S								Section 54.604
Domestic Violence Abuse Shelter			S		S	S								Section 54.610
Fraternity or Sorority House			S		S	S								
Halfway House			S		S									Section 54.620
Homeless Shelter					S	S								Section 54.623
Homestays and Vacation Home Rentals	P	P	P		P	P								Section 54.624
Hospital Hospitality House		S			S	S								Section 54.626
Hostel			S		S	S	S							Section 54.644
Hotel or Motel					S	S	P	P						

Land Use	LDR	MDR	MFR	MHP	MU	CBD	GC	RC	M	C	I-M	CR	BLP	Use Standards
Rooming House			S		S	S	S							Section 54.64~~3~~4
Supportive Housing Facility, Transitional and/or Permanent	S	S	P		S	S								Section 54.64~~6~~7
Medical Uses														
Emergency Services					P	P	P	P						
Health Services					P	P	P	P						
Hospice					P	P	P	P						
Hospital			S		S	S	S	S						Section 54.625
Medical Hospital Related Accessory Uses					P	P	P	P						
Medical Hospital - Related Office or Uses					P	P	P	P						Section 54.634
~~Medical Hospital Related Uses~~					~~P~~	~~P~~	~~P~~	~~P~~						
Office, Medical					P	P	P	P			P			Section 54.63~~3~~4
Veterinary Clinic (Domestic Animals Only)					P	P	P	P			P			
Public and Quasi-Public Uses														
Cemetery	S	S	S						P	P				Section 54.606
Public or Governmental Building	S	S	S		P	P	P	P	P	P	P	P	P	
Recreational Use, Land Intensive												S	S	Section 54.64~~0~~1
Recreational Use, Public	S	S	S		S	S	S	S	P	P		P	P	
Religious Institution	S	S	S		P	S	P	P			P			Section 54.64~~1~~2
School, Primary or Secondary	S	S	S		S	S			P	P				Section 54.64~~4~~5
School, University		S	S		S	S			P	P				Section 54.607
Commercial and Retail Uses														
Adult Entertainment Uses											S			Section 54.601
Bar					S	P	P	P						
Child Care Center or Day Care Center	S	S			P	S	P	P						Section 54.609
Drive-Through Uses					P	P	P	P						Section 54.611
Farmers' Markets					P	P	P	P	P	P				Section 54.618
Gasoline Service Stations						S	P	P			P			
Indoor Recreation					P	P	P	P	P	P	P			
Light Vehicle/Equipment Sales and Display						P	P	P						Section 54.628
Office, Professional					P	P	P	P	P	P	P			Section 54.63~~3~~4
Outdoor Entertainment and Community Events (Principal Use or Accessory Use)					S	P	S	S	P	P		P		Section 54.63~~5~~6 (C) or (D)
Outdoor Entertainment and Community Events (Temporary Use)	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 54.63~~5~~6 (B)
Outdoor Alcoholic Beverage Service					S	P	P	P				P		Section 54.63~~6~~7
Outdoor Food & Non-Alcoholic Beverage Service					P	P	P	P				P		Section 54.63~~7~~8
Outdoor Recreation			S		P	P	P	P	P	P		P	P	
Pet Boarding Facility							S	S			S			
Restaurant, Indoor Service					P	P	P	P						
Retail Business, Indoor					P	P	P	P			P			
Retail Business, Outdoor Permanent							S	S			S			
Retail Sales, Outdoor Temporary					P	P	P	P						Section 54.63~~8~~9
Service Establishment					P	P	P	P			P			
Shooting Range, Indoor							P	P			P			Section 54.64~~5~~6
Storage, Open							P	P	P	P	P	P	P	Section 54.63~~4~~5
Vehicle Repair and Service					S	S	S	P			P			Section 54.627

Key: **P=Permitted** **S=Special Land Use** **[blank]=Use Not Permitted**

Land Use	LDR	MDR	MFR	MHP	MU	CBD	GC	RC	M	C	I-M	CR	BLP	Use Standards
Industrial Uses														
Major Repair and Maintenance Operations											S		P	Section 54.627
Manufacturing, Heavy											S			Section 54.627
Manufacturing, Light					S	S	S	S			P			Section 54.627
Natural Resource Extraction Operations												S		Section 54.631
Port Facilities and Docks									S	S		S	S	Section 54.6~~39~~40
Railroad Facilities											P			
Storage, Bulk								S			S		P	Section 54.605
Utility Electrical Power Generation													P	
Warehousing/Storage Facilities								S			P		P	
Wholesale Trade Establishment							P	P			P			
Wholesaling Operations								S			P			
Other Uses														
Accessory Building or Structure	P	P	P		P	P	P	P	P	P	P	P	P	Section 54.705
Accessory Use, Non-Single Family Residential Lots	P	P	~~S~~ P		S	S	S	S	S	S	S	S	S	
Accessory Use, Single-Family Residential Lots	P	P	P		P	S								
Agriculture-Like Operation, including Forestry									P	P		P	P	
Food Production, Minor	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 54.619
Marihuana Designated Consumption Establishment						S	S							Section 54.62~~8~~9
Marihuana Grower – Class A						S	S	S			S			Section 54.62~~8~~9
Marihuana Grower – Class B							S	S			S			Section 54.62~~8~~9
Marihuana Grower – Class C							S	S			S			Section 54.62~~8~~9
Marihuana Grower – Excess							S	S			S			Section 54.62~~8~~9
Marihuana Microbusiness – Class A and Light Manufacturing						S	S	S			S			Section 54.62~~8~~9
Marihuana Microbusiness - Heavy Manufacturing											S			Section 54.62~~8~~9
Marihuana Processor- Light Manufacturing						S	S	S			S			Section 54.62~~8~~9
Marihuana Processor – Heavy Manufacturing											S			Section 54.62~~8~~9
Marihuana Retailer						S	S	S			S			Section 54.62~~8~~9
Marihuana Safety Compliance Facilities					S	S	S	S			S			Section 54.62~~8~~9
Marihuana Secure Transporters							S	S			S			Section 54.62~~8~~9
Marihuana Educational Research						S	S	S		S	S			Section 54.629
Recycling Collection and Transfer Stations									S					
Structures between the shoreline of Lake Superior and the pavement of the nearest public street or highway.									S	S		S		
Wireless Telecommunications Facilities						S	S	S	P	P	P	S	P	Section 54.64~~7~~8
Marquette Downtown Waterfront District Form-Based Code (see Section 54.321)														
Third Street Corridor Form-Based Code (see Section 54.322)														

Section 54.307 LDR, Low Density Residential District

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	8,100	*Front Yard (ft.)*	20 *(B)*
Min. Lot Width (ft.)	60	*Side Yard (one) (ft.)*	10 *(L)*
Max. Impervious Surface Coverage (%)	*(~~R~~ S)*	*Side Yard (total of 2) (ft.)*	20 *(L)*
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	31.5	*Rear Yard (ft.)*	30 *(L)*
Max. Building Height of Accessory Building	*(L)*		
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

Section 54.308 MDR, Medium Density Residential District

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	4,500 *(C)*	*Front Yard (ft.)*	15 *(A), (B)*
Min. Lot Width (ft.)	37.5 *(D)*	*Side Yard (one) (ft.)*	5 *(L)*
Max. Impervious Surface Coverage (%)	*(~~R~~ S)*	*Side Yard (total of 2) (ft.)*	13 *(L)*
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	31.5	*Rear Yard (ft.)*	20 *(L)*
Max. Building Height of Accessory Building	*(L)*		
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

Section 54.309 MFR, Multiple Family Residential District

(B) Permitted Principal Uses	(C) Special Land Uses
• Accessory Building or Structure • Accessory Use, Non-Single Family Residential Lots • Accessory Use, Single-Family Residential Lots • Adult Foster Care, Family Home • Adult Foster Care, Small Group Home • Child or Day Care, Family Home • Dwelling, Accessory Unit • Dwelling, Multiple-Family • Dwelling, Single-Family Attached • Dwelling, Single-Family Detached • Dwelling, Two-Family (Duplex) • Food Production, Minor • Foster Family Home • Home Occupation • Home Office • Homestays and Vacation Home • Outdoor Entertainment and Community Events (Temporary) • Supportive Housing Facility, Transitional and/or Permanent	• ~~Accessory Use, Non-Single Family Residential Lots~~ • Adult Foster Care, Large Group Home • Bed and Breakfast • Cemetery • Child or Day Care, Group Home • Domestic Violence Abuse Shelter • Dwelling, Intentional Community • Foster Family Group Home • Fraternity or Sorority House • Halfway House • Hospital • Hostel • Nursing Home, Convalescent Home, Extended Care Facility, Assisted Living Facility • Outdoor Recreation • Public or Governmental Building • Recreational Use, Public • Religious Institution • Rooming House • School, Primary or Secondary • School, University
Where there is a discrepancy between *Section 54.306* and this table, *Section 54.306* shall prevail.	

(D) Dimensional Regulations 5+ Multiple Family Units			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	15,000 ~~*(C)*~~	*Front Yard (ft.)*	15 *(A)*
Min. Lot Width (ft.)	100 ~~*(D)*~~	*Side Yard (one) (ft.)*	15 *(H)*, *(L)*, *(M)*
Max. Impervious Surface Coverage (%)	*(~~S~~ T)*	*Side Yard (total of 2) (ft.)*	30 *(H)*, *(L)*, *(M)*
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	~~44~~ 36.5 *(M)*, *(N)*	*Rear Yard (ft.)*	30 *(H)*, *(L)*, *(M)*
Max. Building Height of Accessory Building	~~*(L)*~~ *Sec 54.616(C)*	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		
Max. Lot Coverage/ Ground Coverage	0.20		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

(E) Dimensional Regulations for ~~1~~3-4 Dwelling Units and other uses identified in Section 54.309			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	9,000 *(E)*	*Front Yard (ft.)*	15 *(A)*
Min. Lot Width (ft.)	75 *(E)*	*Side Yard (one) (ft.)*	10 *(H)*, *(L)*, *(M)*
Max. Impervious Surface Coverage (%)	*(~~R~~ S or ~~S~~ T)*	*Side Yard (total of 2) (ft.)*	20 *(H)*, *(L)*, *(M)*
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	~~44~~ 36.5 *(M)*, *(N)*	*Rear Yard (ft.)*	30 *(H)*, *(L)*, *(M)*
Max. Building Height of Accessory Building	*(L) & Sec 64.616(C)*	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		
Max. Lot Coverage/ Ground Coverage	0.20		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

(F) Dimensional Regulations for 1-2 Dwelling Units			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	6,000 *(C)*	*Front Yard (ft.)*	15 *(A)*
Min. Lot Width (ft.)	50 *(D)*	*Side Yard (one) (ft.)*	10 *(L)*
Max. Impervious Surface Coverage (%)	*(S)*	*Side Yard (total of 2) (ft.)*	20 *(L)*
Max. Building Height of Primary Building (ft.) (Q)	31.5	*Rear Yard (ft.)*	30 *(L)*
Max. Building Height of Accessory Building	*(L)*	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		
Max. Lot Coverage/ Ground Coverage	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

Section 54.310 MHP, Mobile Home Park District

(D) Dimensional Regulations
See *Section 54.63~~0~~1*

Section 54.311 M-U, Mixed-Use District

(B) Permitted Principal Uses

- Accessory Building or Structure
- Accessory Use, Single-Family Residential Lots
- Adult Foster Care, Family Home
- Adult Foster Care, Small Group Home
- Child Care Center or Day Care Center
- Child or Day Care, Family Home
- Drive-Through Uses
- Dwelling, Accessory Unit
- Dwelling, Live/Work
- Dwelling, Multiple-Family
- Dwelling, Single-Family Attached
- Dwelling, Single-Family Detached
- Dwelling, Two-Family (Duplex)
- Emergency Services
- Farmers' Markets
- Food Production, Minor
- Foster Family Home
- Health Services
- Home Occupation
- Home Office
- Homestays and Vacation Home
- Hospice
- Indoor Recreation
- Medical Hospital Related Accessory Uses
- Medical Hospital Related Office or Uses
- ~~Medical Hospital Related Uses~~
- Office, Medical
- Office, Professional
- Outdoor Entertainment and Community Events (Temporary)
- Outdoor Food and Non-Alcoholic Beverage Service
- Outdoor Recreation
- Public or Governmental Building
- Religious Institution
- Restaurant, Indoor Service
- Retail Business, Indoor
- Retail Sales, Outdoor Temporary
- Service Establishment
- Veterinary Clinic (Domestic Animals Only)

(C) Special Land Uses

- Accessory Use, Non-Single Family Residential Lots
- Bar
- Bed and Breakfast
- Bed and Breakfast Inn
- Child or Day Care, Group Home
- Domestic Violence Abuse Shelter
- Dwelling, Intentional Community
- Foster Family Group Home
- Fraternity or Sorority House
- Halfway House
- Homeless Shelter
- Hospital
- Hospital Hospitality House
- Hostel
- Hotel or Motel
- Manufacturing, Light
- Marihuana Safety Compliance Facility
- Nursing Home, Convalescent Home, Extended Care Facility, Assisted Living Facility
- Outdoor Entertainment and Community Events (Principal or Accessory Use)
- Outdoor Alcoholic Beverage Service
- Recreational Use, Public
- Rooming House
- School, Primary or Secondary
- School, University
- Supportive Housing Facility, Transitional and/or Permanent
- Vehicle Repair and Service

Where there is a discrepancy between Section 54.306 and this table, Section 54.306 shall prevail.

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	4,800 *(C)*, *(E)*	*Front Yard (ft.)*	0 *(E)*, *(F)*, *(G)*
Min. Lot Width (ft.)	40 *(D)*, *(E)*	*Side Yard (one) (ft.)*	5 *(I)*, *(L)*, *(N)*
Max. Impervious Surface Coverage (%)	*(~~R~~ S or ~~S~~ T)*	*Side Yard (total of 2) (ft.)*	13 *(I)*, *(L)*, *(N)*
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	44 *(N)*	*Rear Yard (ft.)*	20 *(J)*, *(L)*, *(N)*
Max. Building Height of Accessory Building	*(L)*	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		

Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.

Section 54.312 CBD, Central Business District

(B) Permitted Principal Uses	(C) Special Land Uses
• Accessory Building or Structure	• Accessory Use, Non-Single Family Residential Lots
• Adult Foster Care, Family Home	• Accessory Use, Single-Family Residential Lots
• Bar	• Bed and Breakfast
• Child or Day Care, Family Home	• Bed and Breakfast Inn
• Drive-Through Uses	• Child Care Center or Day Care Center
• Dwelling, Live/Work	• Domestic Violence Abuse Shelter
• Dwelling, Accessory Unit	• Dwelling, Intentional Community
• Dwelling, Multiple Family	• Dwelling, Single-Family Attached
• Dwelling, Two-Family (Duplex)	• Dwelling, Single-Family Detached
• Emergency Services	• Foster Family Group Home
• Farmers' Markets	• Fraternity or Sorority House
• Food Production, Minor	• Gasoline Service Stations
• Foster Family Home	• Homeless Shelter
• Health Services	• Hospital
• Home Occupation	• Hospital Hospitality House
• Home Office	• Hostel
• Homestays and Vacation Home	• Hotel or Motel
• Hospice	• Manufacturing, Light
• Indoor Recreation	• Marihuana Designated Consumption Establishment
• Light Vehicle/Equipment Sales and Display	• Marihuana Educational Research
• Medical Hospital Related Accessory Uses	• Marihuana Grower – Class A
• Medical Hospital Related Office or Uses	• Marihuana Microbusiness – Light Manufacturing
• ~~Medical Hospital Related Uses~~	• Marihuana Processor – Light Manufacturing
• Office, Medical	• Marihuana Retailer
• Office, Professional	• Marihuana Safety Compliance Facility
• Outdoor Alcoholic Food and Beverage Service	• Nursing Home, Convalescent Home, Extended Care Facility, Assisted Living Facility
• Outdoor Entertainment and Community Events (Principal, Temporary, or Accessory Use)	• Recreational Use, Public
• Outdoor Food and Non-Alcoholic Beverage Service	• Religious Institution
• Outdoor Recreation	• Rooming House
• Public or Governmental Building	• School, Primary or Secondary
• Restaurant, Indoor Service	• School, University
• Retail Business, Indoor	• Supportive Housing Facility, Transitional and/or Permanent
• Retail Sales, Outdoor Temporary	• Vehicle Repair and Service
• Service Establishment	• Wireless Telecommunications Facilities
• Veterinary Clinic (Domestic Animals Only)	
Where there is a discrepancy between Section 54.306 and this table, Section 54.306 shall prevail.	

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	0
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	5 *(I)*
Max. Impervious Surface Coverage (%)	*(~~R~~ S or ~~S~~ T)*	*Side Yard (total of 2) (ft.)*	10 *(I)*
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	74	*Rear Yard (ft.)*	10 *(J)*
Max. Building Height of Accessory Building (L)	18	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		
Where there is a discrepancy between Article 4 and this table, Article 4 shall prevail.			

Section 54.313 GC, General Commercial District

(B) Permitted Principal Uses

- Accessory Building or Structure
- Bar
- Child Care Center or Day Care Center
- Drive-Through Uses
- Emergency Services
- Farmers' Markets
- Food Production, Minor
- Gasoline Service Stations
- Health Services
- Hospice
- Hotel or Motel
- Indoor Recreation
- Light Vehicle/Equipment Sales and Display
- Medical Hospital Related Accessory Uses
- Medical Hospital Related Office or Uses
- ~~Medical Hospital Related Uses~~
- Office, Medical
- Office, Professional
- Outdoor Alcoholic Beverage Service
- Outdoor Entertainment and Community Events (Temporary Use)
- Outdoor Food and Non-Alcoholic Beverage Service
- Outdoor Recreation
- Public or Governmental Building
- Religious Institution
- Restaurant, Indoor Service
- Retail Business, Indoor
- Retail Sales, Outdoor Temporary
- Service Establishment
- Shooting Range, Indoor
- Storage, Open
- Veterinary Clinic (Domestic Animals Only)
- Wholesale Trade Establishment

(C) Special Land Uses

- Accessory Use, Non-Single Family Residential Lots
- Hospital
- Hostel
- Manufacturing, Light
- Marihuana Designated Consumption Establishment
- Marihuana Educational Research
- Marihuana Grower – Class A
- Marihuana Grower – Class B
- Marihuana Grower – Class C
- Marihuana Grower – Excess
- Marihuana Microbusiness - Class A and Light Manufacturing
- Marihuana Processor – Light Manufacturing
- Marihuana Retailer
- Marihuana Safety Compliance Facility
- Marihuana Secure Transporters
- Outdoor Entertainment and Community Events (Principal & Accessory Use)
- Pet Boarding Facility
- Recreational Use, Public
- Retail Business, Outdoor Permanent
- Rooming House
- Vehicle Repair and Service
- Wireless Telecommunications Facilities

(D) Dimensional Regulations

Lot, Coverage, and Building Height Standards		*Minimum Setbacks*	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	0 *(F), (G)*
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	15 *(I)*
Max. Impervious Surface Coverage (%)	*(~~S~~ T)*	*Side Yard (total of 2) (ft.)*	30 *(I)*
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	40	*Rear Yard (ft.)*	20
Max. Building Height of Accessory Building (L)	~~18~~ 24	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		

Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.

Section 54.314 RC, Regional Commercial District

(B) Permitted Principal Uses	(C) Special Land Uses
• Accessory Building or Structure • Bar • Child Care Center or Day Care Center • Drive-Through Uses • Emergency Services • Farmers' Markets • Food Production, Minor • Gasoline Service Stations • Health Services • Hospice • Hotel or Motel • Indoor Recreation • Light Vehicle/Equipment Sales and Display • Medical Hospital Related Accessory Uses • Medical Hospital Related Office or Uses • ~~Medical Hospital Related Uses~~ • Office, Medical • Office, Professional • Outdoor Alcoholic Beverage Service • Outdoor Entertainment and Community Events (Temporary Use) • Outdoor Food and Non-Alcoholic Beverage Service • Outdoor Recreation • Public or Governmental Building • Religious Institution • Restaurant, Indoor Service • Retail Business, Indoor • Retail Sales, Outdoor Temporary • Service Establishment • Shooting Range, Indoor • Storage, Open • Vehicle Repair and Service • Veterinary Clinic (Domestic Animals Only) • Wholesale Trade Establishment	• Accessory Use, Non-Single Family Residential Lots • Hospital • Manufacturing, Light • Marihuana Educational Research • Marihuana Grower – Class A • Marihuana Grower – Class B • Marihuana Grower – Class C • Marihuana Grower – Excess • Marihuana Microbusiness – Class A and Light Manufacturing • Marihuana Processor – Light Manufacturing • Marihuana Retailer • Marihuana Safety Compliance Facility • Marihuana Secure Transporters • Outdoor Entertainment and Community Events (Principal & Accessory Use) • Pet Boarding Facility • Recreational Use, Public • Retail Business, Outdoor Permanent • Storage, Bulk • Warehousing/Storage Facilities • Wholesaling Operations • Wireless Telecommunications Facilities
Where there is a discrepancy between *Section 54.306* and this table, *Section 54.306* shall prevail.	

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	30
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	15
Max. Impervious Surface Coverage (%)	*(~~S~~ T)*	*Side Yard (total of 2) (ft.)*	30
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	40	*Rear Yard (ft.)*	20
Max. Building Height of Accessory Building (L)	~~18~~ 24	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

Section 54.315 M, Municipal District

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	None
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	None
Max. Impervious Surface Coverage (%)	*(~~S~~ T)*	*Side Yard (total of 2) (ft.)*	None
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	None	*Rear Yard (ft.)*	None
Max. Building Height of Accessory Building (L)	~~None~~ 24		
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

Section 54.316 C, Civic District

(B) Permitted Principal Uses	(C) Special Land Uses
• Accessory Building or Structure • Agriculture-Like Operation, including Forestry • Cemetery • Farmers' Markets • Food Production, Minor • Indoor Recreation • Office, Professional • Outdoor Entertainment and Community Events (Principal, Temporary, or Accessory Use) • Outdoor Recreation • Public or Governmental Building • Recreational Use, Public • School, Primary or Secondary • School, University • Storage, Open • Wireless Telecommunications Facilities	• Accessory Use, Non-Single Family Residential Lots • Marihuana Educational Research • Port Facilities and Docks • Structures between the shoreline of Lake Superior and the pavement of the nearest public street or highway.
Where there is a discrepancy between *Section 54.306* and this table, *Section 54.306* shall prevail.	

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	None
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	5
Max. Impervious Surface Coverage (%)	*(~~S~~ T)*	*Side Yard (total of 2) (ft.)*	10
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	60	*Rear Yard (ft.)*	20
Max. Building Height of Accessory Building (L)	24		
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

Section 54.317 IM, Industrial/Manufacturing District

(B) Permitted Principal Uses	(C) Special Land Uses
• Accessory Building or Structure • Food Production, Minor • Gasoline Service Stations • Indoor Recreation • Manufacturing, Light • Office, Medical • Office, Professional • Outdoor Entertainment and Community Events (Temporary) • Public or Governmental Building • Railroad Facilities • Religious Institution • Retail Business, Indoor • Service Establishment • Shooting Range, Indoor • Storage, Open • Vehicle Repair and Service • Veterinary Clinic (Domestic Animals Only) • Warehousing/Storage Facilities • Wholesale Trade Establishment • Wholesaling Operations • Wireless Telecommunications Facilities	• Accessory Use, Non-Single Family Residential Lots • Adult Entertainment Uses • Major Repair and Maintenance Operations • Marihuana Educational Research • Marihuana Grower – Class A • Marihuana Grower – Class B • Marihuana Grower – Class C • Marihuana Grower – Excess • Marihuana Microbusiness – Class A and Light Manufacturing • Marihuana Microbusiness – Heavy Manufacturing • Marihuana Processor – Light Manufacturing • Marihuana Processor – Heavy Manufacturing • Marihuana Retailer • Marihuana Safety Compliance Facility • Marihuana Secure Transporters • Manufacturing, Heavy • Pet Boarding Facility • Retail Business, Outdoor Permanent • Storage, Bulk
Where there is a discrepancy between Section 54.306 and this table, Section 54.306 shall prevail.	

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	40
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	20
Max. Impervious Surface Coverage (%)	(~~S~~ T)	*Side Yard (total of 2) (ft.)*	40
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	80 (~~O~~ P)	*Rear Yard (ft.)*	40
Max. Building Height of Accessory Building (L)	60 (~~O~~ P)	*Required Buffer & Greenbelt*	(U)
Max. Building Height (stories)	-		
Where there is a discrepancy between Article 4 and this table, Article 4 shall prevail.			

Section 54.318 CR, Conservation and Recreation District

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	15
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	50
Max. Impervious Surface Coverage (%)	(~~S~~ T)	*Side Yard (total of 2) (ft.)*	100
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	36.5	*Rear Yard (ft.)*	20 (~~Q~~ R)
Max. Building Height of Accessory Building (L)	18		
Max. Building Height (stories)	-		
Where there is a discrepancy between Article 4 and this table, Article 4 shall prevail.			

Section 54.319 BLP, Board of Light and Power District

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	40
Min. Lot Width (ft.)	~~None~~ 24	*Side Yard (one) (ft.)*	20
Max. Impervious Surface Coverage (%)	*(~~S~~ T)*	*Side Yard (total of 2) (ft.)*	40
Max. Building Height of Primary Building (ft.) (~~P~~ Q)	None	*Rear Yard (ft.)*	40
Max. Building Height of Accessory Building (L)	~~None~~ 24	*Required Buffer & Greenbelt*	*(U)*
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

Section 54.321 Marquette Downtown Waterfront District Form-Based Code

(B) The Downtown Waterfront District Regulating Plan.

(1) Understanding the Regulating Plan. The REGULATING PLAN is the controlling document and principal tool for implementing the MDW District Code. It identifies the BUILDING FORM STANDARD (BFS) for the building site, which provides standards for the disposition of each property or lot, and illustrates how each relates to the adjacent properties and the street-space.

(2) Rules for New Development. New development in the Downtown Waterfront District shall integrate street (roadway) design and land development to create a complementary and connected pattern for growth and development. The rules below will establish/create a compact, mixed-use district and provide flexible opportunities for residential, employment, commerce, and recreational uses.

(b) Buildings

(i) ~~The maximum building floor-plate is 25,000; beyond that limit a~~ Site Plan Review will be conducted in accordance with *Section 54.1402* of the City Land Development Code ~~is required~~.

(ix) For Accessory Structures standards see ***Section 54.705(D)(1)***, and Structural Amenities, see ***Section 54.702(G).***

Figure 10. Downtown Marquette Waterfront District Table of Permitted and Special Uses

Key: P=Permitted S= Special Land Use [blank]= Use not permitted

USE	G3	G5	NL	WWZ	WF	F5
A. RESIDENTIAL						
Dwelling Units (see *Article 6*)	P	P	P	P	P	P
Bed and Breakfasts (see *Section 54.603*)	P	P	P	P	P	P
Bed and Breakfast Inns (see *Section 54.604*)	P	P	P	P	P	P
Adult Foster Care Family Home	P	P	P	P	P	P
Family Day Care Homes	P	P	P	P	P	P
Foster Family Homes	P	P	P	P	P	P
Domestic Violence Shelter (see *Section 54.610*)	P	P	P	P	P	P
Homestays (see *Section 54.624*)	P	P	P	P	P	P
Vacation Home Rentals (see *Section 54.624*)	P	P	P	P	P	P
Home Office (see *Section 54.622*)	P	P	P	P	P	P
Home Occupation (see *Section 54.621*)	P	P	P	P	P	P
Group Day Care Home (*Section 54.608*)	S	S	S	S	S	S
Foster Family Group Home	S	S	S	S	S	S
Halfway House (*Section 54.620*)	S	S	S	S	S	S
Homeless Shelter (*Section 54.623*)	S	S	S	S	S	S
B. RETAIL						
Retail Service	P	P		P	P	P
Retail Specialty	P	P		P	P	P
Retail Trade	P	P		P	P	P
C. CIVIC						
Community uses open to the public including: meeting halls; libraries; schools; police and fire stations; post offices (retail operations only, no primary distribution facilities); places of worship; museums; cultural, visual and performing art centers; and government functions open to the public.	P	P		P	P	P
D. COMMERCE						
Executive, Administrative, and Professional Offices (See *Section 54.6~~3~~4*)	P	P		P	P	P
Medical and Dental Offices, and Clinics (See *Section 54.63~~3~~4*)	P	P		P	P	P
Day Care Centers (See *Section 54.609*)	P	P		P	P	P
On-premise Alcohol Sales	P	P		P	P	P
Outdoor Alcoholic Beverage Service (See *Section 54.63~~6~~7*)	P	P		P	P	P
Outdoor Food and Non-Alcoholic Beverage Service (See *Section 54.63~~7~~8*)	P	P		P	P	P
All of the Civic Use Categories Except Passenger Terminals	P	P		P	P	P
All of the Retail Use Categories	P	P		P	P	P
Parking Facilities and Structures, including a parking lot attendant shelter.	P	P		P	P	P
Outdoor Recreation.	P	P		P	P	P
E. LIGHT INDUSTRIAL						
Light Manufacturing (See *Section 54.627*)	P	P		P	P	P
Waterfront Related Repair and Maintenance	P	P		P	P	P
Mooring and Docking of Boats	P	P		P	P	P
Winter Storage of Watercraft Between the Dates of October 1st and May 30th	P	P		P	P	P
F. OTHER						
Wireless Telecommunications Facilities (See *Section 54.64~~7~~8*)	S	S		S	S	S
Outdoor Entertainment and Community Events (See *Section 54.63~~5~~6*)	P	P		S	S	S
Recreation Use, Public	S	S		S	S	S
Marihuana Microbusiness – Class A and Light Manufacturing (See *Section 54.62~~8~~9*)	S	S		S	S	S
Marihuana Educational Research (See *Section 54.629*)	S	S		S	S	S
Marihuana Retailer (See *Section 54.62~~8~~9*)	S	S		S	S	S
Marihuana Processor – Light Manufacturing (See *Section 54.62~~8~~9*)	S	S		S	S	S
Marihuana Safety Compliance Facility (See *Section 54.62~~8~~9*)	S	S		S	S	S
Marihuana Designated Consumption Establishment (See *Section 54.62~~8~~9*)	S	S				

(tt) USE, SPECIAL LAND: For the purpose of the Waterfront District, SPECIAL LAND USES ~~(see *Section 54.321(C)(3)(b)*)~~ may be considered for placement in the ~~RESIDENTIAL USE classification and SPECIAL LAND USES (See *Section 54.321(C)(3)(c)*) may be considered for placement in the COMMERCE USE classification~~ MDW District if *Figure 10* indicates it is an allowable Special Land Use and after review by the Planning Commission - in accordance with *Section 54.1403* of the City of Marquette Land Development Code.

(ww) USE, RETAIL: RETAIL uses shall be considered to encompass all of the following (see *Article 6* for applicable standards for specific uses):

(i) RETAIL SERVICE: Establishments providing services, as opposed to products, to the general public, including restaurants, hotels and motels, hostels, finance, real estate and insurance, travel agencies, health, and educational services, galleries, and temporary storage of recreational equipment, provided that the temporary storage is ancillary to the primary retail service.

(ii) RETAIL SPECIALTY: Include, but are not limited to the sale of gifts, antiques, flowers, books, jewelry, wearing apparel or craft shops making articles exclusively for sale at retail on the premises.

(iii) RETAIL TRADE: Establishments engaged in selling new goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Section 54.322 Third Street Corridor District Form-Based Code

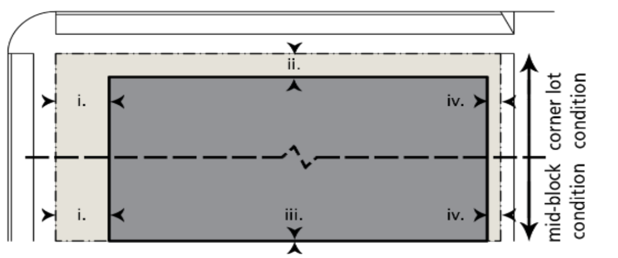
Figure 24. TSC Table of Permitted Land Uses and Special Land Uses in the TSC District

USE	T4	T5	USE	T4	T5
A. RESIDENTIAL			**E. INSTITUTIONAL**		
Mixed-use building	P	P	Conference center		P
Multi-family dwelling (*Section 54.616 & 54.403(E))*	P	P	Live theater	S	P
Live-work unit (*Section 54.615*)	P	P	Movie theater	S	P
Two-family dwelling (*Sections 54.613 & 54.403 (C & D)*)	P	P	Museum	P	P
Townhouse	P	P	Religious assembly (*Section 54.64~~1~~2*)	P	P
~~Mixed-use building~~	~~P~~	~~P~~	**F. AUTOMOTIVE**		
~~Multi-family dwelling (*Sections 54.616 & 54.403(E)*)~~	~~P~~	~~P~~	Gasoline	P	P
~~*Live-work* unit (*Section 54.615*)~~	~~P~~	~~P~~	Service	P	P
~~Two-family dwelling (*Section 54.613*)~~	~~P~~	~~P~~	Sales	P	P
~~Townhouse~~	~~P~~	~~P~~	Truck maintenance (*Section 54.627*)		
Single-family dwelling (*Section 54.617*)	P	P	Drive-through facility (*Section 54.611*)	P	P
Group day care home (*Section 54.608*)	S	S	**G. CIVIL SUPPORT**		
Foster family home	S	S	Funeral home	P	P
Halfway house (*Section 54.620*)	S	S	Hospital (*Section 54.625*)		S
Home occupation (*Section 54.621*)	P	P	Medical clinic	P	P
Home office (*Section 54.622*)	P	P	Veterinary clinic	P	P
Dwelling, Intentional Community (*Section 54.614*)	S	S	Pet boarding facility	S	S
Family Day Care Home	P	P	Cemetery (*Section 54.606*)	S	S
Adult Foster Care Family Home	P	P	Public or Governmental Building	P	P
Domestic Violence Shelter (*Section 54.610*)	S	S	Recreational Use, Public	S	S
B. LODGING			**H. EDUCATION**		
Hotel or Motel	S	P	High school	S	S
Bed & Breakfast Inn (up to 12 rooms) (*Section 54.604*)	P	P	Elementary school	P	P
Bed & Breakfast (up to 6 rooms) (*Section 54.603*)	P	P	Day care center	P	P
Rooming Houses and Hostels (*Section 54.64~~3~~4*)	S	S	**I. INDUSTRIAL**		
Hospital Hospitality Houses (*Section 54.626*)	S	S	Heavy industrial facility (*Section 54.627*)		
Homestays and Vacation Home Rentals (*Section 54.624*)	P	P	Light industrial facility (*Section 54.627*)	S	S
C. OFFICE			Laboratory facility	S	S
Office building (*Section 54.63~~3~~4*)	P	P	Warehouse	S	S
Mixed-use building	P	P	Mini-storage		S
Live-work unit (*Section 54.615*)	P	P	Marihuana Safety Compliance Facility (*Section 54.62~~8~~9*)	S	S
D. RETAIL			**J. OTHER USES**		
Outdoor Entertainment and Community Events (Temporary Use Use) (*Section 54.63~~5~~6(B)*)	P	P	Accessory Building or Structure (See *Figure 14*, *Figure 15*, and, as applicable, *Section 54.705*)	P	P
Outdoor Entertainment and Community Events (Accessory or Principal Use) (*Section 54.6356 (C) or (D))*	S	S	Accessory Use, Non-Single Family Residential Lots	S	S
Retail building	P	P	Accessory Use, Single-Family Residential Lots	P	P
Gallery	P	P	Commercial Service Establishment	P	P
Restaurant, Indoor Service and with or without Outdoor Food and Non-Alcoholic Beverage Service (*Section 54.63~~7~~8*)	P	P	Food Production, Minor	P	P
Restaurant, with Outdoor Alcoholic Beverage Service (*Section 54.63~~6~~7*)	S	S	Marihuana Education Research (*Section 54.629)*	S	S
Mixed-use building	P	P	Outdoor Recreation	S	S
Open/outdoor market building	P	P	Wireless Telecommunications Facilities (*Section 54.64~~7~~8*)	S	S
Retail Sales, Outdoor Temporary (*Section 54.63~~8~~9*)	P	P			
Indoor Recreation	P	P			
Farmers' Markets (*Section 54.618*)	P	P			
Kiosk	P	P			
Push cart	P	P		Permitted Use	P
Marihuana Retailer (*Section 54.62~~8~~9*)		S		Special Land Use	S

Figure 14. T4 Standards

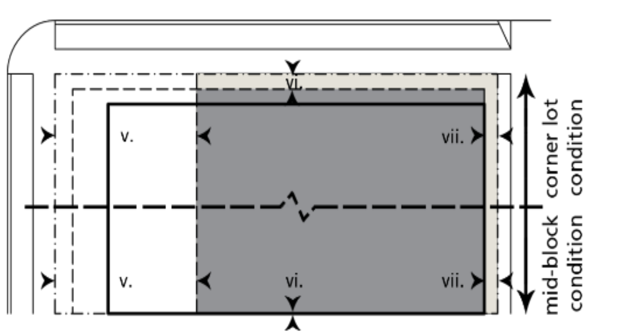
A. BUILDING PLACEMENT

PRINCIPAL BUILDING



i. Front Setback (Principal)	5 ft. – 18 ft.
ii. Front Setback (Secondary)	5-ft –10 ft. ~~max.~~
iii. Side Setback	0 ft. if attached to a neighboring structure; otherwise 3 ft.
iv. Rear Setback	3 ft. min.
Abutting MDR ~~Principal Bldg.~~ Zoning District property line	~~15 ft. min~~. 10-ft

OUTBUILDING



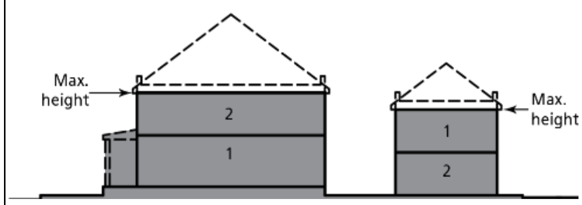
v. Front Setback (Principal)	20 ft. min.
vi. Side Setback	0 ft. if attached to a neighboring structure; otherwise 3 ft.
vii. Rear Setback	3 ft. min.
Abutting MDR Outbuilding	10 ft. min.

ENCROACHMENTS

i. Setback *encroachments*	
Open porch	May encroach to within no more than 5 feet of the front lot line
Balcony and/or bay window	80% max. (distance between façade and front lot line)
Stoop, Terrace	80% max. (distance between façade and front lot line)
ii. Sidewalk *encroachments*	
Awning	Determined by City process for use of right-of-way
Rooftop Patio	To the property line but not over a public sidewalk

B. BUILDING FORM

HEIGHT

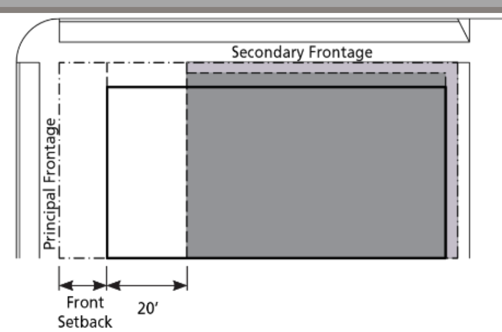


PRINCIPAL BUILDING	
Stories	2
To eave / parapet	30 ft. max.
OUTBUILDING	
Stories	2
To eave / parapet	30 ft. max.

MASS

Lot width	14 ft. min. (Sec 54.403(D) & (E))
Lot coverage	70% max.
Façade buildout at setback	60% min.

PARKING AND STORAGE LOCATION



PARKING

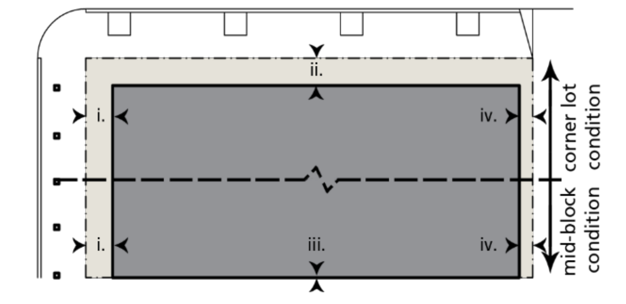
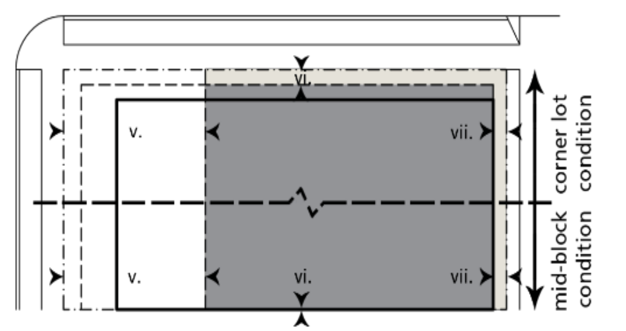
Principal Frontage setback	Not permitted
20 ft. behind front setback	Not permitted
Rear of lot	Permitted

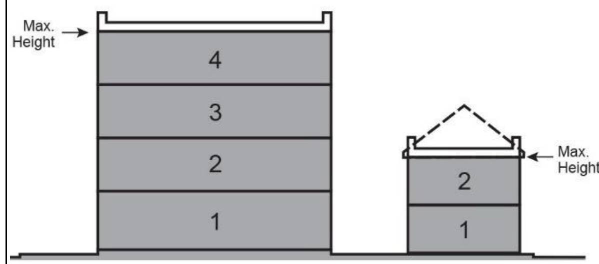
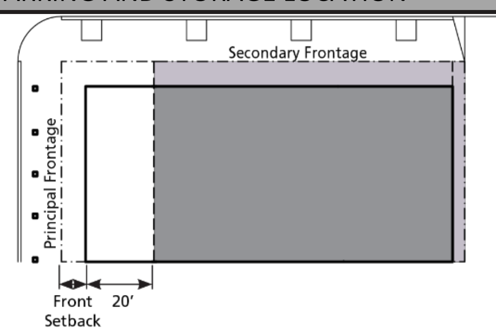
TRASH & STORAGE* LOCATION

Front setback	Not permitted
20 ft. behind front setback	Not permitted
Rear of lot	Permitted

* Storage includes boats and recreational vehicles.

Figure 15. T5 Standards

A. BUILDING PLACEMENT	
PRINCIPAL BUILDING	
	
i. Front Setback (Principal)	0 ft. – 18 ft.
ii. Front Setback (Secondary)	0-ft. –12 ft. ~~max.~~
iii. Side Setback	0-ft. –6 ft. ~~max.~~
iv. Rear Setback	3 ft. min.
Abutting MDR ~~Principal Bldg.~~ Zoning District property line	~~15 ft. min~~. 10-ft
OUTBUILDING	
	
v. Front Setback (Principal)	20 ft. min.
vi. Side Setback	0 ft. if attached to a neighboring structure; otherwise 3 ft.
vii. Rear Setback	3 ft. min.
Abutting MDR Outbuilding	10 ft. min.
ENCROACHMENTS	
i. Setback *encroachments*	
Balcony and/or bay window	80% max. (distance between façade and front lot line)
ii. Sidewalk *encroachments*	
Awning	Determined by City process for use of right-of-way
Rooftop Patio	To the property line but not over a public sidewalk.

B. BUILDING FORM	
HEIGHT	
	
PRINCIPAL BUILDING	
Stories	4 max.
To eave / parapet	48 ft. max.
OUTBUILDING	
Stories	2
To eave / parapet	30 ft. max.
MASS	
Lot width	20 ft. min Sec 54.403(D) & (E))
Lot coverage	90% max.
Façade buildout at setback	75% min.
PARKING AND STORAGE LOCATION	
	
PARKING	
Principal Frontage setback	Not permitted
20 ft. behind front setback	Not permitted
Rear of lot	Permitted
TRASH & STORAGE* LOCATION	
Front setback	Not permitted
20 ft. behind front setback	Not permitted
Rear of lot	Permitted
* Storage includes boats and recreational vehicles.	

SECTION 3. Article 4 Schedule of Regulations

Chapter 54 – LAND DEVELOPMENT CODE, Article 4 – Schedule of Regulations is hereby amended as follows:

Article 4 Schedule of Regulations

Section 54.402 Schedule of Regulations

Zoning District	Minimum Lot Dimensions		Minimum Setback Requirements (~~T~~ U)				Maximum Height of Structures (~~P~~ Q)		Maximum Impervious Surface Coverage of the Lot
	Size (sq. ft.)	Width (feet)	Front Yard (feet)	Side Yards (feet) Smallest Side	Side Yards (feet) Total of Two Sides	Rear Yard (feet)	Primary Building (feet)	Accessory Building (feet)	
LDR, Low Density Residential	8,100	60	20, (B)	10 (L)	20 (L)	30 (L)	31.5	(L)	(~~R~~ S)
MDR, Medium Density Residential	4,500 (C)	37.5 (D)	15 (A), (B)	5 (L)	13 (L)	20 (L)	31.5	(L)	(~~R~~ S)
MFR, Multi-Family Residential 1-2 Units	6,000 (C)	50 (D)	15	10 (L)	20 (L)	30 (L)	31.5	(L)	(S)
MFR, Multi-Family Residential 3-4 Units and other uses identified in 54.309(K)	9,000 (E)	75 (E)	15 (A)	10 (H), (L), (M)	20 (H), (L), (M)	30 (H), (L),(M)	36.5 (M), (N)	(L)	(S) or (T)
MFR, Multi-Family Residential 5+ Multiple Family Units (K) ~~MFR, 1-4 Units and other uses identified in 54.309 (K)~~	15,000 ~~I~~ ~~9,000 I~~	100 ~~(D)~~ ~~75 I~~	15 (A) ~~15 (A)~~	15 (H), (L), (M) ~~10 (H), (L), (M)~~	30 (H), (L,) (M) ~~20 (H), (L), (M)~~	30 (H), (L),(M) – ~~30 (H), (L),(M)~~	~~44~~ 36.5(M), (N)	(L)	~~(R) or~~ (~~S~~ T)
MHP, Mobile Home District	See Section 54.63~~0~~1								
M-U, Mixed-Use	4,800 I,I	40 (D),I	0I,(F) (G)	5 (I), (L),(N)	13 (I), (L), (N)	20 (I), (L),(N)	44 (N)	(L)	(~~R~~ S) or (~~S~~ T)
CBD, Central Business District	None	~~None~~ 24	0	5 (I)	10 (I)	10 (J)	74(0)	~~18~~ (L)	(~~R~~ S) or (~~S~~ T)
GC, General Commercial	None	~~None~~ 24	0 (F) (G)	15 (I)	30 (I)	20	40	~~18~~ (L)	(~~S~~ T)
RC, Regional Commercial	None	~~None~~ 24	30	15	30	20	40	~~18~~ (L)	(~~S~~ T)
M, Municipal	None	~~None~~ 24	None	None	None	None	None	~~None~~ (L)	(~~S~~ T)
C, Civic	None	~~None~~ 24	None	5	10	20	60	~~24~~ (L)	(~~S~~ T)
IM, Industrial/Manufacturing	None	~~None~~ 24	40	20	40	40	80 (~~O~~ P)	~~60~~ (L) (~~O~~ P)	(~~S~~ T)
CR, Conservation/Recreation	None	~~None~~ 24	15	50	100	20 (~~Q~~ R)	36.5	~~18~~ (L)	(~~S~~ T)
BLP, Board of Light and Power	None	~~None~~ 24	40	20	40	40	None	~~None~~ (L)	(~~S~~ T)
Marquette Downtown Waterfront District Form-Based Code (see Section 54.321)									
Third Street Corridor Form-Based Code (see Section 54.322)									

Section 54.403 Footnotes to Schedule of Regulations

(M) Height Exceptions and Increased Setbacks for Multiple-Family Dwelling Buildings in the MFR District. For multiple-family buildings in the MFR District, the height may be increased above 36.5 feet to a maximum of 44 feet provided that 1 foot shall be added to all of the minimum yard setbacks for each 1 foot that the building exceeds 36.5 feet in height.

(N) Height Exceptions and Increased Setbacks for Principal Buildings in the MFR and M-U Districts. If the subject lot is adjacent to a lot zoned LDR, MDR, C, or CR, any portion of the building higher than 36.5 feet must be setback at least 8 feet from a minimum front yard setback line and at least 10 feet from any other minimum yard setback line. The maximum height allowed is 44 feet.

(O) Height Bonus for Residential Use Inclusion in the Central Business District.
A building may exceed a building height of 74 feet to a maximum of 84 feet, only if it is designed to include at least four (4) residential dwelling units that are – in total square feet of area – at least equivalent to the extent of the footprint of the ground floor of the building in square feet.

(~~O~~ P) Modified Height and Setback Requirements in the IM District. The Planning Commission may permit via special land use approval a greater height than the maximum allowed in the schedule of regulations in the IM district, provided that the front, side, and rear yards specified in *Section 54.402* and *Article 6* are increased by one (1) foot for each foot of building height that exceeds the maximum allowed. However, in no case shall the height of any structure in the IM district exceed the horizontal setback distance from the structure to a lot line; where the property abuts a right-of-way, up to ½ width of said right-of-way may be used in calculation the required yard; in no instance may the yard be less than the minimum specified in *Section 54.402*, and for accessory structures as specified in *Section 705*.

(~~P~~ Q) Height Exemptions. There shall be no height restriction on chimneys, flagpoles, public monuments, and wireless telecommunications facilities except when they are part of a special land use. Items attached to a building such as chimneys, weather vanes, lightning arrestors, etc. may be exempt as well.

(~~Q~~ R) Increased Rear Yard Setbacks for ~~Lots in~~ the CR District. ~~Lots in~~ The CR district ~~must have~~ has a minimum rear yard setback of 50 feet from the ordinary high water mark of Lake Superior.

(~~R~~ S) Maximum Impervious Surface Coverage of a Lot in the LDR and MDR Districts, and single-family and two-family dwelling units in other zoning districts: The maximum impervious surface coverage of a lot in the LDR and MDR Districts, and single-family and two-family uses in all other zoning districts shall be based on the lot areas as follows:

Maximum Impervious Surface Coverage Based on Lot Area
60% of the lot area up to 8,712 sq. ft. (1/5 acre or less); plus
50% of the area of the lot between 8,713 sq. ft. and 21,780 sq. ft. (1/2 acre); plus
40% of the area of the lot between 21,781 sq. ft. and 43,560 sq. ft. (1 acre); plus
30% of the area of the lot over 1 acre

(~~S~~ T) Storm Water Management. For all uses except Single-family and Two-family dwelling units, please refer to Section 54.803 Storm Water Management. For Single-family and Two-family dwelling units, please refer to item Q above.

(~~T~~ U) Landscape Buffer and Greenbelt Requirements. The minimum setbacks may ~~be increased~~ vary in accordance with the landscape buffer and greenbelt standards of *Section 54.1003(D)*.

SECTION 4. Article 5 – Supplemental Zoning District Standards

Chapter 54 – LAND DEVELOPMENT CODE, Article 5 – Supplemental Zoning District Standards is hereby amended as follows:

Article 5 Supplemental Zoning District Standards

Section 54.503 Condominium Developments

(A) Intent and Application. The following regulations shall apply to all condominium and site condominium developments within the City of Marquette.

(B) Site Condominiums. Pursuant to authority conferred by Section 241 (Law, Ordinance, or Regulation of Local Unit of Government) of the Condominium Act ~~59 of 1978~~, as amended, all site condominiums ~~subdivision plans~~ must be approved by the City Commission following review and recommendation for approval by the Planning Commission. In determining whether to recommend a site condominium ~~subdivision plan~~ for approval to the City Commission, the Planning Commission shall consult with and receive a written response from the Planning Director, City Attorney, City Engineer, and Zoning Administrator regarding the adequacy of the master deed, deed restrictions, utility systems and street, development layout and design and compliance with all requirements of the Condominium Act and the Land Development Code.

(C) Condominiums. Pursuant to authority conferred by Section 241 (Law, Ordinance, or Regulation of Local Unit of Government) of the Condominium Act, as amended, all condominiums must be approved by City Staff through an administrative site plan review as outlined in this section. The Planning Director, City Attorney, and Zoning Administrator will review the condominium regarding the adequacy of the master deed, deed restrictions, interior development layout and design, and compliance with all requirements of this Condominium Act and the Land Development Code.

(~~C~~ D) Initial Information. Concurrently with notice required to be given to the City of Marquette pursuant to Section 171 (Notice of Proposed Action) of the Condominium Act ~~Public Act 59 of 1978~~, as amended ~~(the Condominium Act)~~, the condominium subdivision plan for each condominium and site condominium project shall be prepared by a licensed architect, licensed professional surveyor, or licensed professional engineer and shall bear the signature and seal of the licensed architect, licensed professional surveyor, or licensed professional engineer. In addition to any information required by the Condominium Act ~~Public Act 59 1978~~ or Department of Licensing and Regulatory Affairs (LARA) Administrative Rules 559.010-559-903, each condominium and site condominium subdivision plan must include the following information:

(1) The name, address, telephone number, and email address of:

(~~1~~ a) All persons, firms or corporation with an ownership interest in the land on which the condominium development will be located together with a description of the nature of each entity's interest (for example, fee owner, optionee, or land contract vendee).

(~~2~~ b) All engineers, attorneys, architects or registered land surveyors associated with the project.

(~~3~~ c) The developer or proprietor of the condominium development.

(2) A cover sheet. The cover sheet shall list all documents included in the condominium subdivision plan and contain a notice that reads substantially as follows: "This condominium subdivision plan is not required to contain detailed project design plans prepared by the appropriate licensed design professional. Such project design plans are filed, as part of the construction permit application, with the enforcing agency for the state construction code in the relevant governmental subdivision. The enforcing agency may be a local building department or the state department of licensing and regulatory affairs."

(3) A survey plan, including the legal description of the land on which the condominium project will be developed together with appropriate tax identification numbers. The survey plan shall be signed and sealed by the licensed professional surveyor preparing the boundary survey for the condominium project.

(4) A floodplain plan, if the condominium lies within or abuts a floodplain area.

(5) A site plan (See *Section 54.1402(C)*).

(6) A utility plan, including a description of the water and sewer service.

(7) Floor plans.

(8) The size, location, area, and horizontal boundaries of each condominium unit and the acreage content of the land on which the condominium development will be developed.

(9) A number assigned to each condominium unit.

(10) The vertical boundaries and volume for each unit comprised of enclosed air space.

(11) Building sections showing the existing and proposed structures and improvements including their location on the land. Any proposed structure or improvement shall be labeled either "must be built" or "need not be built". To the extent that a developer is contractually obligated to deliver utility conduits, buildings, sidewalks, driveways, landscaping, and an access road, the same shall be shown and designated as "must be built", but the obligation to deliver such items exists whether or not they are so shown and designated.

(12) The nature, location, and approximate size of the common elements.

(13) Other information deemed necessary by the ~~Planning Director~~ Zoning Administrator.

(~~D~~ E) Site Plans for New Projects. Prior to recording of the master deed required by Section 72 (Establishment of Condominium Project) of the Condominium Act ~~Public Act 59 of 1978~~, as amended, the condominium and site condominium development shall undergo site plan review and approval pursuant to the requirements of *Section 54.1402* of this Ordinance. In addition, the City shall require appropriate engineering plans and inspections prior to the issuance of any certificates of occupancy. All condominium and site condominium projects are subject to the zoning requirements of their respective zoning districts and this Ordinance.

(~~E~~ F) Plans for Expandable or Convertible Projects. Prior to expansion or conversion of a condominium or site condominium development to additional land, the new phase of the project shall undergo site plan review and approval pursuant to *Section 54.1402* of this Ordinance and this *Section 54.503*. The conversion of any development to condominium form of ownership shall require all standards and requirements of this Ordinance regarding condominiums to be met.

~~**(F) Master Deed, Restrictive Covenants, "As Built" Survey, and Association Bylaws to be Furnished.**~~

~~(1) The condominium project developer shall furnish the Planning Director with the following for review: one (1) copy of the recorded master deed, one (1) copy of all restrictive covenants, one (1) copy of the condominium owner's association bylaws, and two (2) copies of an "as built survey". The "as built survey" shall be reviewed by the City Engineer for compliance with City ordinances and standards. Fees for this review shall be will be established by resolution of the City Commission.~~

~~(2) The master deed and/or restrictive covenants of site condominiums approved subsequent to the adoption of this amendment shall include any required standards of this Ordinance. Copies of the master deed and/or restrictive covenants shall be provided for review by the City prior to final approval of the site condominium or as a condition of final approval and shall be recorded in the office of the Marquette County Register of Deeds.~~

(G) Design and Engineering Standards and Required Improvements for Site Condominium Developments. The design and engineering standards for site condominium developments, as well as required improvements for site condominium developments, shall be the same as those required for subdivisions in *Section 54.501(E)*.

(1) **Exception:** If there are no other public streets within 1,500 feet of the nearest site condominium parcel line, then the site condominium parcel can have private road frontage and any of the street development standards do not have to be met in Section 54.501I (1), (2), (6), (7), and (8) items. The standards in Section 54.501(E) (3), (4), (5), and (6) do have to be met, however any reference to "street" will be replaced with "private road".

(~~H) Approval Period.~~ ~~Approval of the condominium subdivision plan or phase thereof by the City Commission shall confer upon the proprietor for a period of one (1) year from the date of approval, approval of sizes, lot orientation, and street layout. The one-year period may be extended if applied for in writing by the proprietor prior to the expiration date and granted by the City Commission in writing. The City Commission shall seek the Planning Commission's recommendation on any such extension. If the extension is granted, the City Clerk shall notify the other approving authorities. In approving an extension, the City Commission may impose new standards (not necessarily related solely to lot size, lot orientation, and street layout) as a result of new standards, changing conditions on surrounding parcels, or other considerations, provided that the revised plat shall still be considered substantially conforming to the previously approved tentative preliminary plat.~~

(H) Approval and Submittal requirements for Master Deed, Restrictive Covenants, "As Built" Survey and Site Plan, and Association Bylaws to be Furnished.

(1) Approval of the condominium and site condominium by the City Commission or City Staff, shall confer upon the developer the right to proceed with preparation of a condominium master deed. The master deed and/or restrictive covenants of the condominium and site condominiums shall include any required standards of this Ordinance.

(2) Copies of the draft master deed and/or restrictive covenants shall be provided to the Zoning Administrator for review by the City to determine compliance with City ordinances and standards prior to final approval of the condominium or site condominium or as a condition of final approval. Once the review is complete and the City gives its final approval, the Master Deed shall be recorded in the office of the Marquette County Register of Deeds.

(3) Within 1 year of the final approval by the City, the developer shall furnish the Zoning Administrator with the following upon their completion: one (1) copy of the recorded master deed, one (1) copy of all restrictive covenants, and one (1) copy of the condominium owner's association bylaws. Within 1 year of the completion of development project the developer shall furnish the Zoning Administrator with two (2) copies of an "as built survey". The "as built survey" shall be reviewed by the City Engineer and/or the Zoning Administrator to verify compliance with City ordinances and standards Once the City verifies that the "as built survey" is in compliance with City ordinance and standards, the proprietor shall furnish to the City a copy of the site plan on 24 inch by 36 inch sheets and in a digital format acceptable to the City. As-built plans are required pursuant to *Section 54.1402(L)*.

(I) Monuments Required. All site condominium developments which consist in whole or in part of condominium units which are building sites, mobile home sites, or recreational sites shall be marked with monuments, which shall be set in accordance with Michigan Public Act 288 of 1967, as amended (the Land Division Act), and the rules of the State of Michigan. If any monument or ~~lot~~ unit marker is removed during construction the responsible party shall secure the services of a professional surveyor to replace the monument or ~~lot~~ unit marker.

(J) Compliance with Federal, State, and Local Law. All condominium and site condominium development shall comply with Federal and State statues and local ordinances, including the

Condominium Act ~~Public Act 59 of 1978~~ and the Department of Licensing and Regulatory Affairs (LARA) Administrative Rules 559.010-559-903.

(K) Subdivision of Site Condominium Units and Condominium Units ~~Lots~~. A site condominium unit or condominium unit shall not be subdivided unless the approved site plan and master deed expressly permit it. The subdivision of a site condominium unit or condominium unit must follow the procedures stated in the Condominium Act ~~Public Act 59 of 1978~~, as amended. If the approved site plan and master deed do not expressly permit a site condominium unit or condominium unit to be subdivided, a proposed subdivision of a site condominium unit or condominium unit shall undergo site plan review and approval pursuant to the requirements of *Section 54.1402* of this Ordinance. All subdivisions of individual site condominium units shall conform to the requirements of this Ordinance for minimum lot/unit width, lot/unit area, and building setback requirements, for the zoning district in which the site condominium project is located, and these requirements shall be made part of the bylaws and recorded as part of the master deed. All subdivisions of individual condominium units shall conform to the requirements of this Ordinance for allowable number of units in a structure for the zoning district in which the condominium project is located, and these requirements shall be made part of the bylaws and recorded as part of the master deed.

(L) Encroachment Prohibited. Encroachment of one site condominium ~~lot~~ unit upon another, as described in Section 40 of the Condominium Act, shall be prohibited by the condominium bylaws and recorded as part of the master deed.

(M) Relocation of Boundaries. The relocation of boundaries, as described in Section 48 of the Condominium Act, shall conform to all setback requirements of this Ordinance for the district in which the project is located, shall be approved by the Zoning Administrator, and this requirement shall be made part of the bylaws and recorded as part of the master deed.

(N) Performance Guarantee. The ~~Planning Director~~ Zoning Administrator may allow occupancy of the condominium and site condominium, development before all improvements required by this Ordinance are installed provided that cash, a certified check, or an irrevocable bank letter of credit is submitted sufficient in amount and type to provide for the installation of improvements before the expiration of the temporary occupancy permit without expense to the City. The expiration date of a temporary occupancy permit shall be as determined by the Planning Director upon issuance of the permit.

~~**(O) Final Documents to be Provided.** After submittal of the condominium plan and bylaws as part of the master deed, the proprietor shall furnish to the City a copy of the site plan on 24 inch by 36 inch sheets and in a digital format acceptable to the City. As-built plans are required pursuant to *Section 54.1402(L)*.~~

SECTION 5. Article 6 – Standards Applicable to Specific Land Uses

Chapter 54 – LAND DEVELOPMENT CODE, Article 6 – Standards Applicable to Specific Land Uses is hereby amended as follows:

Article 6 Standards Applicable to Specific Land Uses

Section 54.612 Dwelling, Accessory Unit

Accessory dwelling units (ADU) shall comply with all of the following standards:

(A) One ADU Per Lot. One ADU is permitted per lot containing an existing detached single-family dwelling unit, provided the ADU complies with all of the requirements of this Section and this Ordinance.

(B) Minimum Lot Area and Width. ADUs are only permitted on lots that meet the minimum lot area and lot width standards of the zoning district.

(C) Setbacks and Height. ADUs must meet all requirements of this Ordinance for minimum setbacks and maximum height. However, the height of an ADU shall not exceed two (2) stories or 20 feet.

(D) Maximum Occupancy. The occupancy of the accessory dwelling unit shall not exceed two (2) unrelated adults.

(E) Owner-Occupancy Required of the Principal Dwelling is as follows:

(1) Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the person who has a legal or equitable ownership interest with the property, and who bears all or part of the economic risk of decline in value of the property and who receives all or part of the payment, if any, derived from the lease or rental of the dwelling unit. The owner-occupant shall prove residency by means such as a voter registration, car registration, or other method acceptable to the City.

(2) Ownership of the ADU shall remain with the owner of the property. In no case may the owner of the property divide ownership rights between the principal and accessory dwelling units through condominium or other means.

(3) To ensure continued compliance by current and subsequent owners, the applicant shall provide and record in the Marquette County Register of Deeds a covenant in a form acceptable to the City Attorney that the existence of the ADU is predicated upon the occupancy of either the principal or accessory dwelling unit by a person who owns the property, and that the ADU shall remain in the ownership of the person who owns the property. The applicant shall provide the City with evidence of filing of the restrictive covenant with the Register of Deeds prior to and as a condition of the issuance of the Zoning Compliance Permit for development of the ADU. Any owner of the property must notify a prospective buyer of the limitations of this Section. Violations of the terms of this covenant shall result in the loss of the ~~special use~~ zoning compliance permit.

(F) ~~Yearly~~ Inspection Certification. Conformance with the occupancy conditions of the ADU ~~special use~~ zoning compliance permit shall be certified ~~yearly by the property owner~~ subject to inspection by the City. The City may adopt an ordinance or administrative standards for certification and inspection. Inspection shall be allowed by the owner after 48 hours' notice by certified mail from the City. ~~The certification process shall be subject to an appropriate fee as determined by the City Commission.~~

(G) Maximum Floor Area of ADU. The floor area of the ADU shall not exceed 750 square feet, or 50% of the gross floor area of the principal residence, whichever is less.

(H) Attachment Options. The ADU may be attached to the single-family dwelling or within the interior of the single-family dwelling, and constructed on any story of a conforming detached accessory building on the site, including the basement level. If the ADU is attached to the single-family dwelling, the ADU may be located within the existing footprint or added to the existing footprint, provided all of the requirements of this Ordinance are met.

(I) Architecture and Design.

(1) An ADU must be designed to maintain the architectural character and appearance of the principal building. If an ADU extends beyond the existing footprint of the main building, the addition must be consistent with the existing façade, roof pitch, siding, and windows.

(2) ~~Entrances to ADUs, including e~~ Exterior stairs leading to a second story entrance, are restricted to the side or rear façade of the building to which it is attached. ~~This provision does not apply if the ADU's primary entrance is the same as the entrance to the principal residence.~~

(J) Parking. One (1) off-street parking space shall be provided for the ADU in a driveway. ~~or in a rear or side yard on the lot~~. No parking space may be provided in the front yard except in paved driveways or hard surfaced parking spaces in accordance with this Ordinance (see definition of "Hard Parking Surface" in *Section 54.202(A)(91)*). Parking spaces are not subject to setback requirements. The Zoning Administrator may grant an exception to the parking space requirement if the property owner submits a signed and notarized affidavit to the City affirming that the ADU occupant will not have a motor vehicle on site.

(K) Duration of Lease or Rental. Leasing or rental of the ADU for less than 30 days is prohibited.

Section 54.613 Dwelling, Duplex

(A) Lot Area and Lot Width. The minimum lot area and lot width for lots with a duplex must meet the requirements of *Article 4*.

(B) Side Yard Setback. The minimum required side yard setback for a duplex is 10 feet on each side unless a larger side yard setback is required by the zoning district in *Article 4*.

(C) Parking. Two (2) parking spaces for each dwelling unit~~, located in the side or rear yard only,~~ shall be provided unless otherwise exempted by this Code.

(D) Outdoor Livability Space. On each lot containing a duplex, at least ~~40~~ 20 percent of the lot must be used for outdoor livability space such as lawns, gardens, and/or outdoor patios.

Section 54.616 Dwelling, Multiple Family and Apartments

(A) Separation Distances in the MFR District. Multiple Family Dwellings and Apartment Buildings in the MFR District must meet the separation distance requirements of *Section 54.403(G)*.

(B) Minimum Setbacks and Maximum Height in the MFR District. In addition to the setback and height requirements of *Section 54.402*, multiple-family buildings in the MFR District must also meet the setback and height requirements of *Section 54.403(L)*, if required.

(C) Accessory Structures and Uses in the MFR District: In the MFR District, the following requirements apply to multiple-family buildings and apartments:

(1) Detached Accessory Buildings. No detached accessory building may exceed ~~15~~ 20 feet in height. Detached accessory building shall be located at least ~~ten (10)~~ five (5) feet from the side and rear property lines and at least five (5) feet from a principal building. No detached accessory building shall be located in a front yard.

Section 54.621 Home Occupations

~~**(A) One Non-Resident Employee.** A Home Occupation shall not employ more than one (1) person who is not a member of the household.~~

~~**(B) Signs.** A Home Occupation shall not have signage unless permitted in *Article 11*.~~

~~**(C) Accessory Structure Use.** Activities related to the home occupation may take place in an accessory structure that is properly permitted by the City and the County Building Codes Department (if necessary) and if those activities do not create nuisance conditions for neighboring properties including loud noise, dust, smoke, bright light, etc. and are not activities that meet the definition of "manufacturing" (heavy or light) or "industrial" as defined in Article 2.~~

~~**(D) Limited Customer Traffic.** A Home Occupation shall not constitute a retail store, but limited customer traffic is permitted. No commodity other than that produced or processed on the premises shall be sold.~~

~~**(E) Commercial Vehicles.** Commercial vehicles used for the home occupation cannot be used primarily for commercial advertising.~~

~~**(F) Maximum Floor Area.** A Home Occupation shall not occupy more than 25% of the floor area of the dwelling unit and any accessory structures (combined floor area) utilized for the occupation, or a maximum of 500 square feet, whichever is smaller.~~

~~**(G) Non-Transferrable.** Approval of a Home Occupation shall vest only in the person making the application and is non-transferrable to another person.~~

~~**(H) Application and City Approval.** A Home Occupation requires an application and approval from the City of Marquette.~~

~~**(I) Revocation.** An approved permit for a Home Occupation will be revoked for producing nuisance violations or other violations of this section if the violation are not corrected.~~

(A) Intent and Application. It is the purpose and intent of this Section to provide for certain types of Home Occupations for residents on the resident's premises. Accordingly, minimum standards have been established in order to assure compatibility of Home Occupations with other uses permitted in the applicable district, and to preserve the character of residential neighborhoods. Home Occupations are different from Home Offices, such as they allow for Customer or Client Traffic, and one employee that is not a resident of the dwelling. The following regulations shall apply to all Home Occupations within the City of Marquette.

(B) Applicability

(1) Application and City Approval. The Zoning Administrator or their designee shall review and approve applications for all Home Occupation permits.

(2) Non-Transferrable. Approval of a Home Occupation is not transferable to a location other than that which was approved. The Home Occupation permit and use shall terminate automatically when the applicant no longer resides in the dwelling unit.

(3) Owner Signature. If the resident applicant is other than the owner of the property, the owner must authorize the application.

(C) Regulations Applicable to Home Occupations

(1) Maximum Floor Area. A Home Occupation shall not occupy more than 25% of the floor area of the dwelling unit and any accessory structures (combined floor area) utilized for the occupation, or a maximum of 500 square feet, whichever is smaller.

(2) Location. Activities related to the Home Occupation may take place in the primary dwelling or in an accessory structure that is properly permitted by the City and the County Building Codes Department (if necessary) and if those activities do not create nuisance conditions for neighboring properties including loud noise, dust, smoke, bright light, etc. and are not activities that meet the definition of "manufacturing" (heavy or light) or "industrial" as defined in Article 2.

(3) Exterior Appearance.

(a) No Outdoor Storage or Displays. No outdoor storage or display of products, equipment, or merchandise associated with the Home Occupation is permitted.

(b) No Evidence of Home Occupation. To protect the residential character of neighborhoods, there shall be no evidence of the home occupation when viewed from the street right-of-way or from an adjacent lot, and no change in exterior appearance of the dwelling or accessory building that houses a Home Occupation.

(c) Signs. A Home Occupation shall not have signage unless permitted in accordance with ***Article 11.***

(4) Operational Impacts.

(a) No equipment, process, or activity shall be used in a Home Occupation which creates glare, fumes, odor, vibration, noise, electrical interference, or fluctuation in voltage which is detectable to the normal senses from the street right-of-way or from an adjacent lot.

(b) To protect the integrity of the water supply and natural environment of the residential neighborhood, no Home Occupation shall involve the:

(i) generation of any hazardous waste as defined in Article II Chapter 3 Part 111 of Michigan P.A. 451 of 1994, as amended (being the Hazardous Waste Management part of the Natural Resources and Environmental Protection Act, MCL 324.11101 et. seq.); or

(ii) use of materials which are used in such quantity, or are otherwise required, to be registered pursuant to the Code of Federal Regulations, Title 29, Chapter XVII, part 1910(2), except this provision shall not apply to material purchased retail over the counter for household cleaning, lawn care, operation of a photocopy machine, painting, printing, art and craft supplies, or heating fuel.

(c) No hazardous materials produced in the Home Occupation operation shall be stored or disposed of on-site, and no Home Occupation shall discharge into any sewer, drainage way, water body, or the ground any materials which are radioactive, poisonous, detrimental to normal sewer plant operation, or corrosive to waste management installations.

(d) No traffic shall be generated by any Home Occupation in substantially greater volume than would normally be expected in a residential neighborhood. No vehicle or delivery truck shall block or interfere with normal traffic circulation.

(5) **One Non-Resident Employee.** A Home Occupation shall not employ more than one (1) person who is not a member of the household.

(6) **Limited Customer Traffic and not a Retail store.** A Home Occupation shall not constitute a retail store, but limited customer traffic is permitted. No commodity other than that produced or processed on the premises shall be sold.

(7) **Commercial Vehicles.** Commercial vehicles used for the Home Occupation cannot be used primarily for commercial advertising.

(8) **Examples of Home Occupations.** Examples of Home Occupations permitted by Home Occupation Permit include the following:

(a) Accountant or tax preparer
(b) Artist or small crafts maker, or toy maker
(c) Barber Shop or Beauty Shop (no more than two stylists and chairs)
(d) "Cottage Food operation" meeting the Michigan Cottage Food Law, PA 113 of 2010, as amended.
(e) Crafts or fine arts - where some clients come to the dwelling at different times for individual instruction
(f) Firearm Repair
(g) Operation of network marketing businesses like sales of cosmetics, household cleaning goods, and nutritional supplements on behalf of a third party, without any sales events at the home.
(h) Small appliance and bicycle repair
(i) Seamstress, tailor or weaver
(j) T-shirt maker
(k) Tutor or instructor of music
(l) Watch, clock or jewelry creation or repair

(D) **Uses Prohibited as Home Occupations.** The following are prohibited as Home Occupations:

(1) Auto Repair
(2) Auto Paint Shop
(3) Barber Shop or Beauty Shop (more than two stylists and chairs)
(4) Dental Clinic
(5) Firearm Sales
(6) Fireworks Sales
(7) Funeral Home
(8) Kennel
(9) Medical Clinic
(10) Restaurant/Commercial Kitchen
(11) Vet/Animal Hospital
(12) Vet/Animal Clinic

(E) Revocation. An approved permit for a Home Occupation will be revoked for producing nuisance violations or other violations of this section if the violations are not corrected.

Section 54.628 Light Vehicle/Equipment Sales and Display

(A) ***Minimum Lot Size.*** The site shall be a minimum of one-half acre when vehicles are displayed outdoors.

(B) ***Licensing***.

(1) For vehicle sales, the proprietor must be a licensed dealer in the State of Michigan.

(2) Vehicle licensing requirements of the State of Michigan shall be followed in the review and approval of vehicle sales requests.

(C) ***Open Drive Aisles***. Outdoor display and storage areas of vehicles shall maintain open drive aisles to allow free movement of vehicles.

(D) ***Parking.***

(1) All vehicles waiting to be picked up by the vehicle driver shall be kept in approved parking spaces on site.

(2) Vehicles being displayed cannot be parked in required parking spaces, however, they must only be parked in the excess parking spaces on the site.

(E) ***Flag or Pennant Displays***. One (1) flag or pennant may be displayed on each vehicle for sale or lease. The maximum size of each flag or pennant shall not exceed twelve (12) inches × eighteen (18) inches. All other signage for the site must comply with ***Article 11***.

(F) ***Power Equipment and Vehicle Accessories.*** Display areas may include those approved per Article 6, **Section 54.639** or must be in other areas on the private property (out of any right-of-way) that are not within a clear vision triangle or required side and rear yards and are outside of pedestrian paths or required parking spaces. The display of qualifying merchandise may encroach to within five (5) feet of the public sidewalk provided items are on a hard surface.

Section 54.62~~8~~9 Marihuana Establishments

(A) A marihuana grower, marihuana processor, marihuana retailer, marihuana safety compliance facility, marihuana secure transporter, marihuana microbusiness, Class A microbusiness, marihuana educational research facility, ~~and~~ or marihuana designated consumption establishment may be permitted through the issuance of a special land use permit in certain districts pursuant to Article 14, Section 54.1403 Special Land Use Review of the Code provided that:

(1) At the time of application for a special use permit the marihuana establishment must have a provisional license by the State of Michigan and then must be at all times in compliance with the laws of the State of Michigan including but not limited to the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et seq.; and all other applicable rules promulgated by the State of Michigan.

(2) The use or establishment must be at all times in compliance with Chapter 5 Marihuana and all other applicable laws and ordinances of the City of Marquette.

(3) A marihuana establishment, or activities associated with the licensed growing, processing, testing, transporting, or sales of marihuana, may not be permitted as a home business or accessory use nor may they include accessory uses except as otherwise provided in this ordinance.

(4) Marihuana Educational Research may be an accessory use to a commercial enterprise that is under contract with an educational institution for marijuana research.

(D) Marihuana Microbusiness – Light Manufacturing. Marihuana Microbusiness – Light Manufacturing shall be subject to the following standards:

(2) Odor. As used in this subsection, building means the building, or portion thereof, used for marihuana growing, retail, or marihuana processing operations.

(13) A drive-through use can be added that would be tied to the retail use. Must meet the Article 6 Standards, Section 54.611 Drive-Through Uses, and be a part of the project proposal.

(1~~3~~4) Additional Safeguards. The Planning Commission may require additional safeguards to meet the intent of the district and to assure opportunity for additional industrial uses and for growth within each area of the city which permits industrial uses

(E) Marihuana Microbusiness – Heavy Manufacturing. Marihuana Microbusiness – Heavy Manufacturing shall be subject to the following standards:

(2) Odor. As used in this subsection, building means the building, or portion thereof, used for marihuana growing , retail, or operations.

(13) A drive-through use can be added that would be tied to the retail use. Must meet the Article 6 Standards, Section 54.611 Drive-Through Uses, and be a part of the project proposal.

(F) Marihuana Class A Microbusiness. Marihuana Class A Microbusiness **–** shall be subject to the following standards:

(1) All local, county, state and federal laws, rules and regulations pertaining to the emission of odor, dust, smoke, gas, noise, vibration and the like, shall be met at all times during operation of any building related to the operation.

(2) Odor. As used in this subsection, building means the building, or portion thereof, used for marihuana growing and retail operations.

- **(a)** The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
- **(b)** The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
- **(c)** The filtration system shall be maintained in working order and shall be in use. The filters shall be changed upon manufacturer's recommendation, or a minimum of once every 365 days, whichever occurs first.
- **(d)** Negative air pressure shall be maintained inside the building.
- **(e)** Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
- **(f)** An alternative odor control system is permitted if the special use permit applicant submits and the municipality accepts a report by a mechanical engineer licensed in the State of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.

(3) All off-street parking shall be in compliance with *Article 9* of this Code.

(4) Landscaping and Screening shall be provided in accordance with *Article 10* of this Code.

(5) All signs shall be in compliance with the provisions of *Article 11* of this Ordinance.

(6) All exterior lighting shall be in accordance with *Section 54.802* hereof.

(7) No material shall be stored outdoors except within areas effectively screened from view from adjoining properties and rights-of-way.

(8) Patrons/customers/clients: No one under the age of 21 shall be permitted within the establishment/building(s)

(9) No use or consumption of marihuana or marihuana products may be conducted within the establishment/building or on the premises.

(10) Marihuana and marihuana products may only be sold within the establishment/building.

(11) All deliveries/transfer of Marihuana and Marihuana products must occur within the establishment/building.

(G) Marihuana Educational Research. A marihuana educational research facility shall be subject to the following Standards, where not pre-empted by the State of Michigan:

(1) All local, county, state and federal laws, rules and regulations pertaining to the emission of odor, dust, smoke, gas, noise, vibration and the like, shall be met at all times during operation of any building related to the operation.

(2) Odor. As used in this subsection, building means the building, or portion thereof, used for marihuana growing or marihuana processing.

(a) The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.

(b) The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

(c) The filtration system shall be maintained in working order and shall be in use. The filters shall be changed upon manufacturer's recommendation, or a minimum of once every 365 days, whichever occurs first.

(d) Negative air pressure shall be maintained inside the building.

(e) Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.

(f) An alternative odor control system is permitted if the special use permit applicant submits and the municipality accepts a report by a mechanical engineer licensed in the State of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.

(3) All off-street parking shall be in compliance with *Article 9* of this Code.

(4) Landscaping and Screening shall be provided in accordance with *Article 10* of this Code.

(5) All signs shall be in compliance with the provisions of *Article 11* of this Ordinance.

(6) All exterior lighting shall be in accordance with *Section 54.802* hereof.

(7) No material shall be stored outdoors except within areas effectively screened from view from adjoining properties and rights-of-way.

(9) Use or consumption of marihuana or marihuana products may be conducted within the establishment/building or on the premises if permitted by the State of Michigan.

(11) All deliveries/transfer of Marihuana and Marihuana products must occur within the establishment/building

(12) If any research activities involve processing marihuana/cannabis, the requirements of subsection H or I of this section, for Marihuana Processors, are applicable.

(~~F~~ H) Marihuana Processor – Light Manufacturing.

(~~G~~ I) Marihuana Processor – Heavy Manufacturing.

(~~H~~ J) Marihuana Retailer. Marihuana Retailers shall be subject to the following standards:

(11) A drive-through use can be added that would be tied to the retail use. Must meet the Article 6 Standards, Section 54.611 Drive-Through Uses, and be a part of the project proposal.

(~~I~~ K) Marihuana Safety Compliance Facility

(L) Marihuana Secure Transporter. A marihuana secure transporter shall be subject to the following standards:

- **(1)** All local, county, state and federal laws, rules and regulations pertaining to the emission of odor, dust, smoke, gas, noise, vibration and the like, shall be met at all times during operation of any building related to the operation.
- **(2)** Odor. As used in this subsection, building means any building, or portion thereof, used by a Marihuana Secure Transporter.
  - **(a)** The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
  - **(b)** The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
  - **(c)** The filtration system shall be maintained in working order and shall be in use. The filters shall be changed upon manufacturer's recommendation, or a minimum of once every 365 days, whichever occurs first.
  - **(d)** Negative air pressure shall be maintained inside the building.
  - **(e)** Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
  - **(f)** An alternative odor control system is permitted if the special use permit applicant submits and the municipality accepts a report by a mechanical engineer licensed in the State of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.
- **(3)** All exterior lighting shall be in accordance with *Section 54.802* hereof.
- **(4)** No processing or manufacturing shall take place within any structure/building related to the operation.
- **(5)** No material shall be stored outdoors except within areas effectively screened from view from adjoining properties and rights-of-way.
- **(6)** All signs shall be in compliance with the provisions of *Article 11* of this Ordinance.
- **(7)** All off-street parking shall be in compliance with *Article 9* of this Ordinance.
- **(8)** Landscaping and Screening shall be provided in accordance with *Article 10* of this Ordinance.

All Section numbers below this will change to the following:

Section 54.6~~29~~ 30 Reserved
Section 54.6~~30~~ 31 Mobile Home Parks
Section 54.6~~31~~ 32 Natural Resource Extraction
Section 54.6~~32~~ 33 Nursing Home, Convalescent Home, Extended Care Facility, Assisted Living Facility
Section 54.6~~33~~ 34 Office Uses
Section 54.6~~34~~ 35 Open Storage
Section 54.6~~35~~ 36 Outdoor Entertainment and Community Events
Section 54.6~~36~~ 37 Outdoor Alcoholic Beverage Service

Section 54.6~~37~~ 38 Outdoor Food and Non-Alcoholic Beverage Service
Section 54.6~~38~~ 39 Outdoor Temporary Retail Sales
Section 54.6~~39~~ 40 Port Facilities and Docks
Section 54.6~~40~~ 41 Recreational Uses, Land Intensive
Section 54.6~~41~~ 42 Religious Institutions and Places of Assembly
Section 54.6~~42~~ 43 Residential Limited Animal Keeping.

Section 54.6~~43~~ 44 Rooming Houses and Hostels

(A) On-Site Manager. Rooming Houses or Hostel must have a manager on the premises when occupants are residing in the Rooming House or Hostel.

(B) Setback Requirements. Rooming Houses and Hostels must comply with the yard requirements for duplexes (See *Section 54.613* and *Article 4*).

(C) Inspections. Rooming Houses and Hostels must be inspected and licensed on a yearly basis, in compliance with the Property Maintenance Code and the City Business license section of the City Code.

(D) Parking. At least three (3) off-street parking spaces must be provided on the site.

(E) Setback from Other Rooming Houses. No Rooming House or Hostel shall be located within 500 feet of another rooming house or hostel.

(F) Outdoor Livability Space. At least 25% of the lot must be used for outdoor livability space such as lawns, gardens, and/or outdoor patios.

(G) Pre-Application. Prior to application for zoning approval, the applicant must meet with the Planning Department and is encouraged to inform the neighbors of plans for the rooming house.

(H) Minimum Lot Area and Width. Rooming Houses must be located on sites having at least 9,000 square feet and 50 feet of frontage.

Section 54.6~~44~~ 45 Schools
Section 54.6~~45~~ 46 Shooting Range, Indoor
Section 54.6~~46~~ 47 Supportive Housing Facility, Permanent and Transitional
Section 54.6~~47~~ 48 Wireless Telecommunications Facilities

SECTION 6. Article 7 – General Provisions

Chapter 54 – LAND DEVELOPMENT CODE, Article 7 – General Provisions is hereby amended as follows:

Article 7 General Provisions

Section 54.702 Permitted Encroachments into Required Yard Setbacks

The following features may be located within required yard setbacks to the extent indicated. Unless explicitly permitted, under no circumstances shall any structure or attachment to a structure protrude to within five (5) feet of a right-of-way line and/or rear property line, or closer than three (3) feet to the side yard property line.

(A) Sidewalks and Landscaping. Sidewalks and landscaping may be located in any yard setback.

(B) Architectural Features. Cornices, canopies, eaves, or similar architectural features may project into required yard setback areas to a maximum of two and one-half (2.5) feet from the property line.

(C) Access Ways. Unenclosed stairs, steps, fire escapes, and access ramps may project into yard setbacks, provided that they are set back at least twelve (12) inches from the front lot line, five (5) feet from the rear lot line, and three (3) feet from the side lot lines with the following exceptions:

- **(1)** Front yard setbacks are not required for barrier-free access ramps if resident requires ramp access due to a disability and there is not adequate space to locate the ramp elsewhere on the property. When such ramp is no longer required it shall be considered a legal, non-conforming encroachment.
- **(2)** Window wells, egress windows, and basement escape ladders required by fire codes may project into required yard setbacks the minimum amount necessary to meet the fire code requirement.
- **(3)** Existing step or walls that are located between the front property line and 12 inches into the private property may be maintained but not rebuilt, per Section 54.1202 of the LDC. ~~If existing steps or walls protrude into the public right-of-way and are in disrepair, a Grant of License to use public property must be sought for approval to conduct rebuilding work to restore the structure to like-new condition.~~
- **(4)** New/Proposed steps must be set back at least 12 inches from the front property line, even if the Zoning District has a 0-ft front setback. If existing steps or walls protrude into the public right-of-way and are in disrepair, a Grant of License to use public property must be sought for approval to conduct rebuilding work to restore the structure to like-new condition.

(D) Unenclosed Balconies, Open Porches, Decks~~, and Patios~~. Unenclosed balconies, open porches, carports and decks~~, and patios~~ may project into a required yard setback by up to ten (10) feet provided they are at least five (5) feet from the rear lot lines, at least three (3) feet from the side lot lines, and at least five (5) feet from the front lot lines unless a different front yard setback for unenclosed balconies, open porches, and decks ~~patios~~ is permitted or required by *Article 4*.

(E) Patios and at grade decks. Patios and at grade decks may project into a required yard setback provided they are set back at least twelve (12) inches from the front lot line (even if the Zoning District has a 0-ft front setback), five (5) feet from the rear lot line, and three (3) feet from the side lot lines with the following conditions:

- **(1)** The patio cannot occupy more than 20% of the front yard area if the surface is impervious to water percolation. Patios that are made of pervious materials or designed to allow water percolation or are mitigated by storm water detention facilities (such as rain gardens), and that are not used for parking, may occupy up to 30% of the front yard.
  - **(a)** If the patio is also used for parking it must also meet *Sections 54.902(E)(1)(d)* and *54.902(E)(1)(e)*.

~~(E)~~ (F) Bay Windows, Basement Window Wells, and Chimneys. Bay windows, basement window wells, and chimneys may project into yard setbacks by up to two (2) feet, provided that such features do not occupy, in the aggregate, more than one-third (1/3) the length of the building wall on which they are located.

~~(F)~~ (G) **Accessory Structures.** Accessory structures may project as allowed in *Section 54.705*.

~~(G)~~ (H) **Structural Amenities.** A structural amenity, such as outdoor art, paintings, sculpture, fountains and similar water features, benches, arbors, doghouses, playsets, birdfeeders, clotheslines, air conditioners, detached open structures, and similar amenities as determined by the Zoning Administrator may be located a minimum of three (3) feet from a side lot line and a minimum of five (5) feet from a front or rear lot line, subject to the following requirements:

~~(H)~~ (I) **Food Production, Minor.** Where Minor Food Production is permitted, the permitted structure encroachments are regulated in *Section 54.619*.

Section 54.705 Accessory Buildings and Structures

(A) Accessory Buildings and Structures in the Low Density Residential (LDR) District, Medium Density Residential (MDR) District, and Mixed-Use (M-U) District.

(1) Attached Accessory Buildings and Structures. Where the accessory building or structure is structurally attached to a main building, it shall be subject to, and must conform to, all yard regulations of this Ordinance, applicable to main building.

(2) Location. Detached accessory buildings or structures shall not be located in any required yard setback except as permitted in *Section 54.705(A)(4)*.

(3) Maximum Lot Coverage. Detached accessory buildings or structures (such as concrete or asphalt structures) shall not occupy more than twenty-five percent (25%) of a rear yard area, provided that in no instance shall the total ground floor area of the detached accessory buildings exceed the ground floor area of the main building and provided the impervious surface coverage limits of the lot (see *Article 4*) are not exceeded, with the following exceptions:

- **(a)** If the main structure's footprint is less than 500 square feet at full build out, an accessory structure may exceed the ground floor area of the main structure (home) by up to 10 percent of the footprint area of the main structure. An accessory structure footprint may be increased to equal that of the main structure if the main structure is remodeled to more than 550 square feet.
- **(b)** Patio pavers that allow infiltration are not included in the 25% calculation.

(B) Accessory Buildings and Structures in the Multiple Family Residential (MFR) District. In the MFR District, accessory buildings and structures for multiple-family buildings and apartments must meet the requirements of *Section 54.616(C)*. For all other uses in the MFR District, the following requirements apply:

(1) Detached Accessory Buildings and Structures.

(a) Maximum Height. No detached accessory building or structure may exceed 16.5 feet in height.

(b) Minimum Side and Rear Yard Setbacks. Detached accessory buildings or structures for a duplex shall be located at least ~~ten (10)~~ six (6) feet from the side and rear property lines, and for a single-family home shall be located at least (3) feet from the side and rear property lines. For all other uses in the MFR District besides multiple-family buildings and apartments, detached accessory buildings or structures shall be located at least ten (10) feet from the side and rear property lines.

(c) **Front Yard Location Prohibited.** No detached accessory building or structure shall be located in a front yard.

(d) **Maximum Lot Coverage.** Detached accessory buildings or structures shall not occupy more than twenty-five percent (25%) of a rear yard area, provided that in no instance shall the total ground floor area of the detached accessory buildings exceed the ground floor area of the main building and provided the impervious surface coverage limits of the lot (see *Article 4*) are not exceeded.

(e) **Separation and Setback Distances.** No detached accessory building or structure shall be located closer than five (5) feet to any main building. Non-building accessory structures (e.g., fences and steps) or open buildings (i.e., a shelter without walls including an open lean-to or open carports) are not subject to the minimum separation distance requirements unless a minimum separation distance is required by the Building Official.

(C) Accessory Buildings and Structures in ~~Central Business District (CBD),~~ General Commercial (GC), Regional Commercial (RC), Municipal (M), Civic (C), ~~Industrial/Manufacturing (I-M),~~ ~~Conservation and Recreation (CR),~~ and Board of Light and Power (BLP) Districts.

~~**(1) Maximum Lot Coverage.** No detached accessory building or structure in the CBD, GC, RC, C, I-M, CR, and BLP district may exceed the lot coverage of the principal building.~~

(1) Detached Accessory Buildings and Structures.

(a) **Maximum Height.** No detached accessory building or structure may exceed 24 feet in height.

(b) **Minimum Side and Rear Yard Setbacks.** Detached accessory buildings or structures shall be located at least six (6) feet from the side and rear property lines.

(c) **Front Yard Location Prohibited.** No detached accessory building or structure shall be located in a front yard.

(d) **Maximum Lot Coverage.** Detached accessory buildings or structures shall not occupy more than twenty-five percent (25%) of a rear yard area, provided that in no instance shall the total ground floor area of the detached accessory buildings exceed the ground floor area of the main building and provided the impervious surface coverage limits of the lot (see *Article 4*) are not exceeded

(e) **Separation and Setback Distances.** No detached accessory building or structure shall be located closer than five (5) feet to any main building. Non-building accessory structures (e.g., fences and steps) or open buildings (i.e., a shelter without walls such as a pergola) are not subject to the minimum separation distance requirements unless a minimum separation distance is required by the Building Official.

(D) Accessory Buildings and Structures in the Central Business District (CBD) and Conservation and Recreation (CR) Districts.

(1) Detached Accessory Buildings and Structures.

- **(a)** **Maximum Height.** No detached accessory building or structure may exceed 18 feet in height.
- **(b)** **Minimum Side and Rear Yard Setbacks.** Detached accessory buildings or structures shall be located at least three (3) feet from the side and rear property lines.
- **(c)** **Front Yard Location Prohibited.** No detached accessory building or structure shall be located in a front yard.
- **(d)** **Maximum Lot Coverage.** Detached accessory buildings or structures shall not occupy more than twenty-five percent (25%) of a rear yard area, provided that in no instance shall the total ground floor area of the detached accessory buildings exceed the ground floor area of the main building and provided the impervious surface coverage limits of the lot (see *Article 4*) are not exceeded
- **(e)** **Separation and Setback Distances.** No detached accessory building or structure shall be located closer than five (5) feet to any main building. Non-building accessory structures (e.g., fences and steps) or open buildings (i.e., a shelter without walls such as a pergola) are not subject to the minimum separation distance requirements unless a minimum separation distance is required by the Building Official.

(E) Accessory Buildings and Structures in the Industrial/Manufacturing (I-M) District.

(1) Detached Accessory Buildings and Structures.

- **(a)** **Maximum Height.** No detached accessory building or structure may exceed 60 feet in height.
- **(b)** **Minimum Side and Rear Yard Setbacks.** Detached accessory buildings or structures shall be located at least ten (10) feet from the side and rear property lines. Please also refer to Section *54.403(P)* for additional setback standards.
- **(c)** **Front Yard Location Prohibited.** No detached accessory building or structure shall be located in a front yard. Exceptions may be granted for security or similar reasons.
- **(d)** **Maximum Lot Coverage.** Detached accessory buildings or structures shall not occupy more than twenty-five percent (25%) of a rear yard area, provided that in no instance shall the total ground floor area of the detached accessory buildings exceed the ground floor area of the main building and provided the impervious surface coverage limits of the lot (see *Article 4*) are not exceeded
- **(e)** **Separation and Setback Distances.** No detached accessory building or structure shall be located closer than five (5) feet to any main building. Non-building accessory structures (e.g. steps) or open buildings (i.e., a shelter without walls such as a pergola) are not subject to the minimum separation distance requirements unless a minimum separation distance is required by the Building Official.

The rest of the items would be changed

(~~D~~ F) Exemptions..

(~~E~~ G) Structures Accessory to Food Production, Minor.

(~~F~~ H) Temporary Structures in all Zoning Districts

(~~G~~ I) Rooftop Accessory Buildings and Structures

SECTION 7. Article 9 – Parking, Loading, and Access Management

Chapter 54 – LAND DEVELOPMENT CODE, Article 9 – Parking, Loading, and Access Management is hereby amended as follows:

Article 9 Parking, Loading, and Access Management

Section 54.902 Parking Regulations

(E) Parking Standards Applicable to Specific Zoning Districts.

(1) LDR and MDR Districts and single-family and two-family structures in other zoning districts.

(a) Definition of "Front Area." For the purposes of *Section 54.902(E)(1)* only, the "Front Area" is that area located between the edge of the physical street and the nearest point of the dwelling foundation (excluding open porch projections), projected parallel from the street.

(b) Off-Site Parking in the LDR and MDR Districts. In the LDR and MDR districts, off- street parking may be located on a site other than the site to which it pertains, and within the City limits or in an adjacent township.

(c) Maximum Rear Yard Paving. In the LDR and MDR districts, no more than 25% of the rear yard may be paved (including but not limited to asphalt or concrete, but with the exception of compacted gravel) for parking provided the impervious surface coverage limits of the lot (see *Article 4*) are not exceeded.

(d) "Front Area" Parking Limitations. Parking in the front area is permitted only on an approved hard surface parking space and/or driveway, or in a garage (see definition of "Hard Parking Surface" in *Section 54.202(A)(91)*). Parking spaces in the front yard area must be at least two (2) feet from the side lot line, at least two (2) feet from the inside edge of a sidewalk, and at least ten (10) feet from the edge of an established street. The encroaching driveways and parking spaces must be drained so as to dispose of all surface water accumulated in such a way as to preclude drainage of water onto adjacent property or toward adjacent buildings. New or expanded driveways must be separated from the side lot line by a minimum of 12 inches of pervious surface (including but not limited to uncompacted pea gravel, cobbles, grass, etc.) to ensure a pervious buffer between driveways and the adjacent lot line, with the exception of the presence of a retaining wall along the subject lot line or other such difficulty. The Zoning Administrator may permit parking in a front area during the winter parking ban period for single-family or duplex dwelling units upon request for a Front Yard Parking Waiver for a limited time when the site cannot be altered without causing a hardship on the property owner, or indefinitely in rare cases that the site cannot be reasonably altered to create one (1) additional parking space or a widened driveway. Self-created difficulties, such as adding renters and vehicles, are not applicable to the consideration for a Front Yard Parking Waiver.

~~**(e) Maximum Driveway Width and Paved Area.** The maximum width of a driveway is 18 feet wide on a lot up to and including 50 feet in width and 24 feet wide on a lot 100 or more feet in width. The width of driveways on lot widths between 50 and 100 feet are prorated accordingly. A driveway may be widened beginning at a point two (2) feet from the inside edge of a sidewalk or ten (10) feet from the edge of an established street without sidewalks, provided the hard parking surface areas of the driveway or driveways and parking spaces utilize no more than 30% of the front area. An application for the paving of more than 30% of the front area can only be accepted if a variance is first approved for the proposed paving pursuant to *Section 54.1404*. On corner lots, there shall be two (2) front areas. The overlapped area at the corner may be counted with either front area, but not both, at the discretion of the property owner. The two (2) front areas may not be combined for the purpose of exceeding the 30% maximum hard parking surface within either front area.~~

(e) Maximum Driveway Width and Paved Area.

(i) Single-family uses:

a. For lots with one driveway - The maximum width of a driveway on a single frontage is 18 feet wide on a lot up to and including 60 feet in width, and 24 feet wide on a lot of more than 60 feet in width.

b. For lots with two driveways - On a lot 100 feet or more in width, the maximum width of both driveways combined is 36 feet wide on the same frontage. Lots of more than 100 feet in width may have two driveways of up to 24 ft. in width on the same frontage or on separate frontages.

(ii) Duplex/two-family uses - The maximum width of a driveway is 24 feet wide.

(iii) A driveway may be widened beginning at a point two (2) feet from the inside edge of a sidewalk or ten (10) feet from the edge of an established street without sidewalks, provided the hard parking surface areas of the driveway or driveways and parking spaces utilize no more than 30% of the front area for single-family dwelling units and no more than 40% of the front area for duplex dwelling units.

(iv) An application for the paving of more than 30% of the front area can only be accepted if a variance is first approved for the proposed paving pursuant to *Section 54.1404*.

(v) On corner lots, there shall be two (2) front areas. For single-family dwelling units the overlapped area at the corner may be counted with either front area, but not both~~,~~ (at the discretion of the property owner) and the two (2) front areas may not be combined for the purpose of exceeding the 30% maximum hard parking surface within either front area. For duplex dwelling units, the overlapped area at the corner may overlap and be combined to utilize up to 40% of the front area for hard parking surfaces in either or both front areas.

(5) Non-LDR and Non-MDR Districts. In all districts except the LDR and MDR districts, the following requirements apply:

(a) Parking Lot Location and Off-Site Parking. Parking must be located within 2,000 feet of the lot on which the use is located measured from lot corner along a street or streets. If the use is located in a building the distance shall be measured along streets from the nearest point of the building to the nearest corner of the lot on which the parking is located.

(b) Site Plan Review of Off-Site Parking. In all districts, except residential, where off- street parking is located on a lot other than the lot occupied by the use which requires it (an Off-site Parking Spot) , site plan approval for both lots is required, unless the scope of the proposed alteration to the Off-site Parking Spot does not require Site Plan Review (per Figure 51) – in which case only a Zoning Compliance Permit would be required from the OPS property owner.

Section 54.903 Minimum/Maximum Number of Parking Spaces

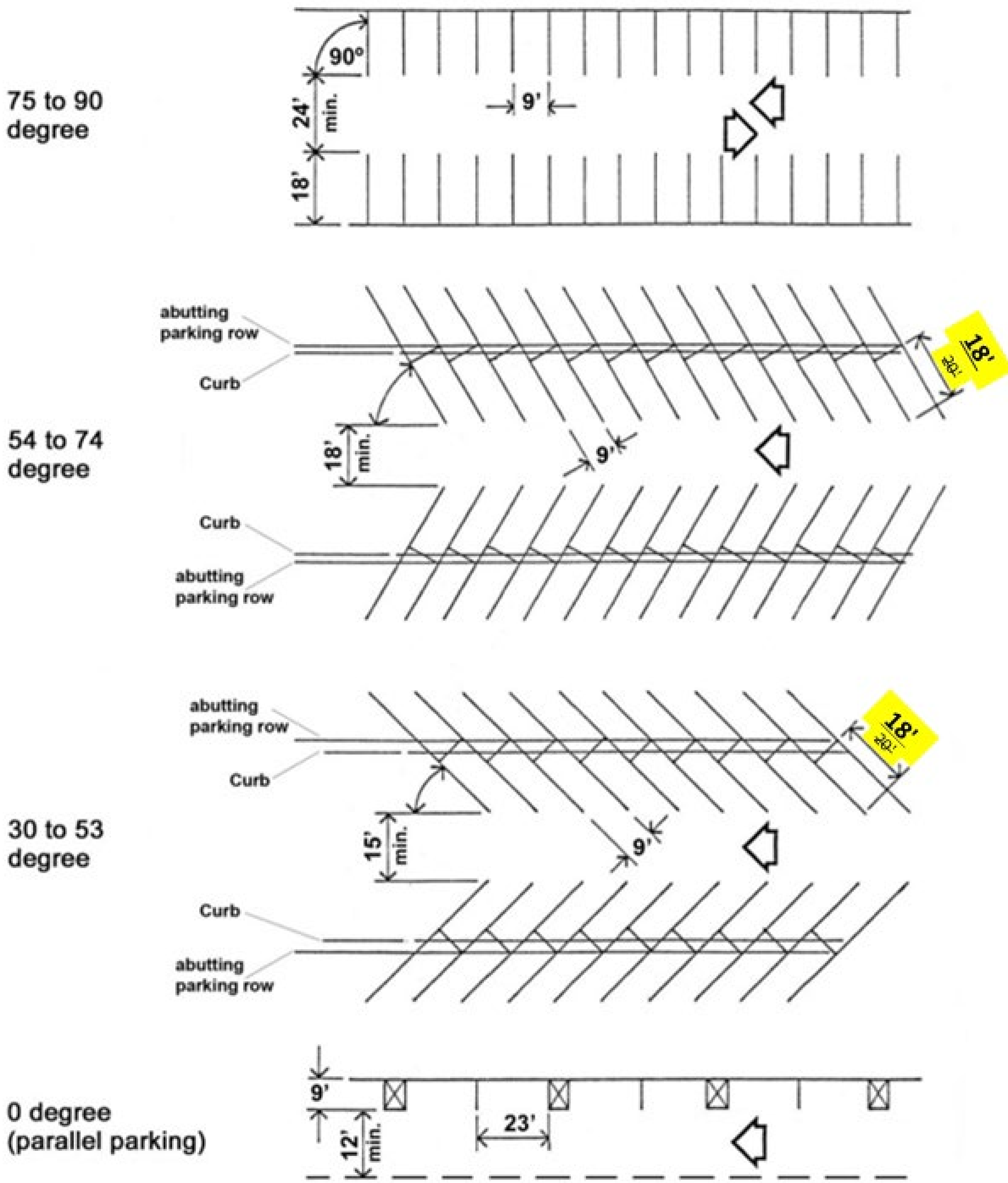
Figure 43. Parking Reduction Formula

Land Use	Minimum/Maximum Parking Requirement (standards show the parking minimums unless stated)
(A) Residential and Lodging	
(2) Multiple-Family units with 3 or 4 dwelling units	One and a half (1.5) spaces per dwelling unit, except the M-U and CBD zoning districts require 1.125 spaces per dwelling unit.
(3) Multiple-Family units with 5 -19 dwelling units, except subsidized (below market rate) and senior housing.	Two (2) spaces per each dwelling unit with more than one bedroom; one (1) parking space must be provided for each one-bedroom dwelling unit ~~1.125 spaces per dwelling unit~~, except the M-U and CBD zoning districts require 1.125 space per any dwelling unit. 2 motor vehicle parking spaces per dwelling unit is the maximum allowed.
(4) Multiple-Family units with 20 or more dwelling units, subsidized housing units (including Section 8 and other programs)	Two (2) spaces per each dwelling unit with more than one bedroom; one (1) parking space must be provided for each one-bedroom dwelling unit, except the M-U and CBD zoning districts require 1.125 space per any dwelling unit. 2 motor vehicle parking spaces per dwelling unit is the maximum allowed.
(8) Rooming Houses and Hostels	Three (3) spaces.

(I) Other	
(1) Marihuana Designated Consumption Establishment	1 space for every two (2) capacity occupants
(2) Marihuana Grower and Marihuana Microbusiness growing portion	Minimum of one (1) space per employee on maximum shift~~, maximum of two (2) spaces~~
(3) Marihuana Processor and Marihuana Microbusiness processing portion	One (1) space per 1,000 square feet of floor area plus one (1) space per 10,000 square feet of site area
(4) Marihuana Retailer and Marihuana Microbusiness retail portion	Maximum of one (1) space for every 150 square feet of floor area, minimum of two (2) spaces
(5) Marihuana Safety Compliance Facility, Marihuana Education Research, and Marihuana Secure Transporter	One (1) space per 1,000 square feet of floor area plus One (1) space per 10,000 square feet of site area
(6) Outdoor Recreation	One (1) space per 10,000 square feet of space dedicated to recreation activities (not to include offices, restrooms, landscaped areas, roads, etc.)

Section 54.905 Parking Layout, Design, Construction, and Maintenance

All off-street parking shall be laid out, constructed, and maintained according to the following standards and regulations:



SECTION 8. Article 10 – Landscaping and Screening

Chapter 54 – LAND DEVELOPMENT CODE, Article 10 – Landscaping and Screening is hereby amended as follows:

Article 10 Landscaping and Screening

Section 54.1002 Scope of Application

(A) Uses, Lots, Sites, and Parcels for Which Site Plan Review is Required. The requirements set forth in this Article shall apply to all uses, lots, sites, and parcels for which Site Plan Review is required and which are developed or expanded following the effective date of this Ordinance. No site plan shall be approved unless that site plan shows landscaping consistent with the provisions of this Article. Furthermore, where landscaping is required, a Zoning Compliance Permit shall not be issued until the required landscape plan is submitted and approved and a Certificate of Occupancy shall not be issued unless provisions set forth in this Article have been met or a performance guarantee has been posted in accordance with the provisions set forth in *Section 54.1402(H)*.

~~**(B) Existing Buildings.** In cases where the use of an existing building changes or an existing building is altered or re-occupied, all of the standards of this Article shall be met, where possible, without altering the layout of the buildings, structures, parking areas, and vehicle and pedestrian circulation systems.~~

(B) Existing Buildings. Meeting the requirements of this Article are optional, in cases where the use of an existing building changes or an existing building is re-occupied and for building and/or site alterations that do not require Site Plan Review.

Section 54.1004 Standards for Plant Materials

(A) Lawn Areas and Other Open Space Areas. Lawn areas and other open space areas that are to remain undeveloped shall be planted in species of grass or other perennials normally grown in the Upper Peninsula to provide suitable groundcover and prevent soil erosion. Lawn areas and other open space areas may be sodded or seeded and mulched, except that City may require solid sod or additional planting requirements in swales or other areas subject to erosion and periodic high-water volumes. Sod or seed shall be clean, free of weeds and noxious pests or disease.

SECTION 9. Article 11 – Signs

Chapter 54 – LAND DEVELOPMENT CODE, Article 11 – Signs is hereby amended as follows:

Article 11 Signs

Section 54.1105 Signs Permitted by Zoning District

(C) Sign Regulations Applicable to the Central Business District (CBD)

<table>
<tr><th>Sign Type</th><th colspan="4">CBD Districts</th></tr>
<tr><td rowspan="2">Freestanding Ground Sign and Freestanding Monument Sign (Section 54.1109(B))</td><td colspan="4">Maximum Number: 1 of either type of sign per lot.
Maximum Area: 75 sq. ft.</td></tr>
<tr><td colspan="4">A parcel with an approved drive-through lane may have 2 additional monument or ground signs per approved drive-through lane located within 6 ft. of the drive-through lane, not greater than 8 ft. high, not greater than 24 sq. ft. each, and not legible from the right-of-way or any lot line. The drive-through lane monument or ground signs may be Electronic Message Center (EMC) signs, provided they meet all of the requirements of Section 54.1109(I). The City may require screening pursuant to Article 10.</td></tr>
<tr><td rowspan="2">Freestanding Pole Signs (Section 54.1109(A))</td><td colspan="4">Permitted on W. Washington Street, only west of the Fifth Street intersection.
Max. Number: 1 Freestanding Monument/Ground Sign or 1 Freestanding Pole Sign per separate street frontage.
Max. Height and Max. Area: The maximum height and maximum area of a Freestanding Pole Sign and, if applicable, an additional Freestanding Pole Sign on a street frontage, shall be based on the speed limit of the adjacent street as follows:</td></tr>
<tr><td>Max. Area for First Freestanding Sign Per Frontage: 50 sq. ft.</td><td>Max. Height for First Freestanding Sign Per Frontage: 20 ft.</td><td>Max. Area for Additional Freestanding Sign Per Frontage: 30 sq. ft.</td><td>Max. Height for Additional Freestanding Sign Per Frontage: 12 ft.</td></tr>
</table>

Section 54.1109 General Sign Standards

(D) Blade Signs:

(1) Minimum Height. No portion of a blade sign shall be less than ~~ten (10)~~ eight (8) feet above grade.

(E) Awning, Canopy, and Marquee Signs:

(1) Minimum Height. Awnings, canopies, and marquees, shall not be placed less than eight (8) feet above a public sidewalk or right-of-way, with the exception of the replacement of legally non-conforming historic signs (per the definition of *historic sign* in *54.1103*.

(6) Signs Suspended Under Awnings, Canopies, and Marquees. Where signs are suspended under awnings, canopies, or marquees, the following conditions shall apply:

(c) Minimum Height. Signs shall be no less than ~~nine (9)~~ eight (8) feet above the sidewalk

SECTION 10. Article 12 – Nonconformities

Chapter 54 – LAND DEVELOPMENT CODE, Article 12 – Nonconformities is hereby amended as follows:

Section 54.1202 Nonconforming Uses and Structures

If a structure or the use of a structure or of the land is lawful at the time of enactment of this Ordinance or an amendment to this Ordinances, then that structure or use may be continued although the structure or use does not conform to the Ordinance or amendment. The following sub-sections contain provisions for: classifications of different nonconforming uses and structures; repairs; maintenance; discontinuance; substitutions; expansions; and reconstruction of nonconforming structures and uses:

(A) Classifications of Nonconforming Uses and Structures. Pursuant to Section 208 of the Michigan Zoning Enabling Act (Public Act 110 of 2006, as amended), the City of Marquette establishes different classifications of nonconforming uses and structures as defined and provided for in this article. Class A Nonconforming Uses and Structures are regulated in *Section 54.1202(B)*, and Class B Nonconforming Uses and Structures are regulated in *Section 54.1202(C)*:

(B) Regulations Pertaining to Class A Nonconforming Use or Structure Designation.

(1) Class A Nonconforming Uses and Structures. Class A Nonconforming Uses or Structures are:

(a) One- and Two-Family Uses and Structures. One- and two-family uses and structures that are nonconforming may be maintained, repaired, altered, or added to as long as they remain otherwise conforming or reduce the extent of the non-conforming portion of the structure. Additions or alterations to the exterior of the structure shall conform to all requirements of this Ordinance.

(i) Exception: Two single-family structures on one lot/parcel are considered Class B Nonconforming and would need to get approval from the BZA to be classified as Class A Nonconforming.

(b) Nonconforming Uses or Structures Designated by the Board of Zoning Appeals as Class A Nonconforming Uses or Structures. ~~Nonconforming uses or structures which have been so designated by the Board of Zoning Appeals as Class A Nonconforming Uses or Structures.~~ To qualify as a Class A Nonconforming Use or Structure, the Board of Zoning Appeals must make affirmative findings on all of the following:

(i) Continuance thereof would not be contrary to the public health, the safety, or welfare, or to the spirit of this Ordinance.

(ii) The use of structure does not and is not likely to significantly depress the value of nearby properties.

(iii) The use or structures was lawful at the time of its inception.

(iv) No useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use or structures does not conform. All nonconforming uses and structures not designated as Class A are Class B nonconforming uses or structures. Class A or Class B designations do not apply to nonconforming lots (*Section 54.1203*).

<u>SECTION 11.</u> Article 14 – Administrative Procedures

Chapter 54 – LAND DEVELOPMENT CODE, Article 14 – Administrative Procedures is hereby amended as follows:

Article 14 Administrative Procedures

Section 54.1401 Zoning Permits and Zoning Compliance Review

(A) Submission of Zoning Compliance Application Required. No person shall commence to erect, alter, or repair any structure or to replace or enlarge any of the uses listed in *Section 54.1401(B)*, without first obtaining Zoning Compliance and approval of plans. No use shall be carried on, nor construction undertaken, except as shown upon an approved Zoning Compliance application and plan. Plans shall be submitted to the Zoning Administrator or designated official.

(B) Permitted Uses and Development Subject to Zoning Compliance Review. The following uses and development are subject to Zoning Compliance Review:

(1) Residential dwellings (one-family, two family, multi-family) and associated accessory structures, including additions and structural alterations, and structural alterations to any other building or structure.

(a) structural alterations include, but are not limited to, replacement of structural members of decks, porches, or steps, alterations to the means of ingress and egress, and other changes regulated by this Ordinance, provided such alterations are not subject to Site Plan Review pursuant to *Section 54.1402(B)*. The Zoning Administrator reserves the right to require a Zoning Compliance Review for the replacement of a non-structural member of a deck, porch, or other structure if deemed necessary by the Zoning Administrator to determine compliance with this Ordinance.

(2) Interior remodeling of a non-residential use, provided such remodeling is not subject to Site Plan Review pursuant to *Section 54.1402(B)*.

(3) Re-paving of an off-street parking lot, provided there are no grading changes and no changes to the configuration of the parking lot layout.

(4) The establishment of a permitted use in the district, provided that the use must meet all requirements of this Ordinance including any special requirements listed for that zoning district. Any development requiring Site Plan Review must be reviewed in accordance with to *Section 54.1402(B)* and special land uses must be reviewed in accordance with *Section 54.1403*.

(C) Required Information for Zoning Compliance Review. The required form of, and information on, plans shall include:

(6) For non-residential interior remodeling, two (2) copies of plans sized 24 inches by 36 inches shall be drawn to a scale acceptable to the Zoning Administrator and shall be sealed by a professional engineer or architect. <u>One digital copy of the complete plan set must also be submitted.</u>

Section 54.1402 Site Plan Review

(B) Uses Subject to Site Plan Review, Minor Site Plan Review, and Exemptions. The required review process for uses and development is described in *Figure 51*. All uses and development, regardless of whether site plan review is required, are subject to the Zoning Compliance review requirements of *Section 54.1401*. The Zoning Administrator may approve or conditionally approve ~~minor~~ site plans that meet the standards herein, as described in *Figure 51* and *Section 54.1402(D)(1)*~~.~~ ~~All site plans must be reviewed by the Planning Commission. Three levels of Site Plan Review are conducted by the Planning Commission – Sketch Plan Review, Preliminary Site Plan Review (PSPR), and Final Site Plan Review (FSPR).~~
, with the exception of those for Special Land Uses, Planned Unit Developments, and those for any commercial development (incl. multi-family dwellings) that is:

(1) proposed to have either a footprint area of 16,000 square feet or greater, or a gross floor area of 40,000 sq. ft. or greater.

(2) proposed to have more than 20 dwelling units or lodging rooms.

(3) recommended by the Zoning Administrator or City Attorney for review by the Planning Commission.

Figure 51. Required Review Process Based on Development Activity

Development Activity	Site Plan Review Required by P.C.	Minor/Admin Site Plan Review	Exempt from Site Plan Review
Special land uses	●		
Planned Unit Developments	●		
~~New construction, additions, or alterations of any *non-residential* building or buildings, unless the activity is exempt or requires minor site plan review.~~	~~●~~		
New building construction totaling more than either 16,000 sq. ft. in footprint area or 40,000 sq. ft. in gross floor area.	●		
New construction for multi-family residential units that contain or will contain more than twenty (20) dwelling units.	●		
Filling a parcel of land to an elevation above the established grade of adjacent developed land.	~~●~~	●	
Site Condominium development – New, amendment, or expansion	●		
New construction, additions, alterations, or site improvements for multi-family residential units that contain or will contain five (5) to twenty (20) dwelling units, and for multi-family residential additions, alterations, or site improvements that are not otherwise exempt (as stated below), unless site plan review is required due to size criteria being met.		●	
Conversion of an existing building or part thereof from a residential use to a non-residential use, including site improvements that result from a change in the use of the building or part thereof from residential use to nonresidential use.		●	
Additions, alterations, and renovations that are less than 20% of the size of the original industrial, commercial, or multi-family residential building footprint or less than 2,500 square feet, unless otherwise exempt.		●	
Any expansion or change in an existing land use if more parking in addition to that already provided is required.		●	

Development Activity	Site Plan Review Required by P.C.	Minor/Admin Site Plan	Exempt From Site Plan Review
Any earthwork greater than 20,000 square feet in size for a non-residential use; or earthwork that is more than half the size of the parcel upon which commercial, industrial, mixed-use or multi-family land use is occurring or intended.		•	
Site improvements of more than 2,000 square feet that include landscaping, site access, and parking lot grading, layout, and new off-street parking, unless the activity is exempt.		•	
Commercial and non-residential buildings of less than ~~2,000~~ 16,000 square feet in total, unless the activity requires site plan review.		•	
Condominium development – New, amendment, or expansion		•	
If only adding a new driveway to an existing off-street parking lot and not affecting the parking lot.			•
Single-family dwellings and their accessory facilities on individual parcels.			•
Two-family dwellings and their accessory facilities on individual parcels.			•
Multi-family residential units that contain or will contain three (3) or four (4) dwelling units.			•
Additions, alterations, accessory structures, and renovations that are less than 10% of the size of the original industrial, commercial or multi-family residential building footprint or less than 500 square feet.			•
Interior remodeling or interior construction.			•
Landscaping that is less than 25% of the parcel size or ~~5~~ 2,000 square feet.			•
Site improvements that are less than 2,000 square feet, and site lighting, unless the activity requires site plan review or minor site plan review.			•
Alterations to exterior walls such as window openings, façade changes, etc., provided there is no change to the building footprint.			•
Re-paving of an off-street parking lot, provided there are no grading changes and no changes to the configuration of the parking lot layout.			•

(F) Validity of Approved Site Plans and Expiration.

(1) Approval, including Conditions, Attached to the Property. Approval of a site plan, including conditions made as part of the approval, is attached to the property described as part of the application and not to the owner of such property.

(2) Validity of Approved Site Plans.

(a) Expiration. Site plan approval shall expire one (1) year from the date of approval by the Planning Commission, or by the Zoning Administrator for minor site plans, except for phased projects that are required to follow a project timeline. If the site plan is approved with conditions that require revisions to the site plan, the applicant must make the required revisions and submit the revised plans to the City prior to the expiration date.

(b) Halt in Construction. The Planning Commission or Zoning Administrator, according to which entity approved the plan, may revoke the zoning approval if work on a project is halted for at least two (2) months, except during winter conditions, if the conditions warrant.

(c) Extension. The Planning Commission may grant two (2) one-time extensions to the expiration deadline, not to exceed one (1) year each, provided the request for an extension must be submitted at least ~~45~~ 26 days prior to the expiration of the site plan approval and must meet the following standards. The Zoning Administrator may similarly grant extensions of administratively approved site plans.

Section 54.1405 Zoning Ordinance Amendment Procedures

(H) Rezoning (Zoning Map Amendment) with Conditions. Pursuant to MCL 125.3405, the City Commission, following a public hearing and recommendation by the Planning Commission, may approve a petition for a rezoning with conditions requested by a property owner. The standards of this section shall grant a property owner the option of proposing conditions for the development and use of property in conjunction with an application for rezoning. Such conditions may be proposed at the time the application for rezoning is filed, or at a subsequent point in the process of ~~review of the proposed rezoning~~ of requesting approval for the proposed rezoning with conditions, not more than 90 days after a public hearing in which City Commission approval of a Conditional Rezoning request is granted, in the form of a Conditional Rezoning Agreement.

(1) Conditional Rezoning Agreement. The conditions attached to the rezoning shall be set forth by submitting a conditional rezoning agreement listing the proposed conditions. A Rezoning with Conditions is not considered to be fully approved until a Conditional Rezoning Agreement (CRA) is approved. Failure to present the CRA for approval within the 90-day period identified above will terminate the request process and require the applicant to begin the process again and submit a new rezoning application. A conditional rezoning agreement shall contain the following information:

(3) Period of Approval. Unless extended by the City Commission for good cause, the rezoning with conditions shall expire following a period of two (2) years from the ~~effective date of the rezoning~~ date on which the City Commission approves the Conditional Rezoning Agreement for the request, unless bona fide development of the property pursuant to approved building and other permits required by the City commences within the two (2) year period and proceeds diligently and in good faith as required by ordinance to completion.

OFFICIAL PROCEEDINGS OF THE
MARQUETTE CITY PLANNING COMMISSION
March 21, 2023

A regular meeting of the Marquette City Planning Commission was duly called and held at 6:00 p.m. on Tuesday, March 21, 2023, in the Commission Chambers at City Hall.

ROLL CALL
Present: W. Premeau, M. Rayner, S. Lawry, Chair S. Mittlefehldt, D. Fetter, A. Andres, and Vice-Chair N. Williams
Absent: K. Clegg and C. Gottlieb (excused).

AGENDA

It was moved by A. Andres, seconded by M. Rayner, and carried 7-0 to approve the agenda as presented.

MINUTES

The minutes of 03-07-23 were approved by consensus without amendments.

PUBLIC HEARINGS
01-SUP-03-23 – 136 W. Baraga Ave. (PIN: 0110580)

Zoning Official A. Landers stated staff has reviewed the Special Land Use permit for a Hotel Use to be located at 136 W. Baraga Ave. She also stated this property is zoned Central Business District (CBD) and a Hotel use is a special land use in this zoning district. She referenced the staff report and attachments, and visuals of the attachments were shown. She stated the only piece of correspondence received was in the agenda packet.

S. Mittlefehldt asked if anyone had questions for staff. Hearing none, she invited the applicants to comment on the proposal.

Mr. Charles Holsworth stated that he and Josh Paquette are owners of the property, and that the team from RG Design, Brian Salvolinen for civil engineering, and Jeff Goodney with Closner Construction are present to answer any questions.

S. Lawry stated - he had several questions and asked about the intent to use the neighbor business' dumpster and said that the Queen City Running store no longer has a dumpster enclosure and that they use rolling carts for trash now.

Mr. Holsworth stated - they will need to construct the dumpster enclosure which will meet zoning and they will have a legal easement with the neighboring property owner for this.

S. Lawry stated - there is a 2-inch water line, but that would not be adequate to fully sprinkle the building.

Mr. Dax Richer stated - they will need to meet the City Code by adding a line.

Mr. Brian Savolainen stated - they will be upgrading to a 6-inch line and that he will amend the utility plan to include that change.

S. Lawry stated - the Fire Department expressed concerns with the width of the alley and clear space in that area and asked if they would be removing any vents on the east side of the building to allow for the width of the driveway access.

Mr. Holsworth stated - yes, they will be removing that and cleaning all that up.

S. Lawry stated - that the analysis indicated that no new lighting was proposed, but the elevation drawings show six new lights on the south side of the building, and I presume there could be some more lighting around the ramp and stairs as well.

Mr. Holsworth stated - any entrance or exits that require lighting, downlighting, we'll meet the city zoning on downlighting. We know it's got to be downlight and not light up the sky so I think any of our sky lighting would be respectful of that. I think even on the side elevation, we might want to add a couple of downlights to light that driveway, but we would follow the city zoning requirements.

S. Lawry asked - if when spaces are rented from the DDA, what is the term of the rental, and could you lose the permits?

Mr. Paquette stated we pay for them quarterly and so we will continue to pay for them and then we'll be able to input the license plates based on guest arrival permits.

S. Lawry asked - so you have first option on them as long as you're current with your payments?

Mr. Paquette stated - yes, we plan to keep them. We currently own them now and we'll continue to pay them through the life of the operation.

Mr. Lawry asked - and those in the Spring Street lot, that is the total number of spaces that are available for rental?

Mr. Paquette stated - I'm not certain what the total number is available, but we have the requisite you inquired about.

S. Lawry stated - we did have correspondence from one of the other merchants indicating a concern over loss of spaces and I guess I'm just trying to find out - there was 13 spaces in that lot that they are proposing to lease, is that the total number of spaces that you commit to a long-term lease in that lot?

Ms. Lasse-McKinney stated - for the overnight, 24-hour parking permits that we have in that lot, they only have 13 of the 21 or 22 that we have available in that lot, so they don't have all of them and so there are several other businesses or residents in the area that have the rest of those. Otherwise, the permits that are parking there are just daytime permits.

S. Lawry asked - so this only reserves spaces for the hours from 7 p.m. until 7 a.m. or something of that nature?

Ms. Lasse-McKinney stated - for the 24-hour permits, it gives them access to that lot basically 24 hours per day and at night we prefer that they park only north into that lot. However, they are not required to, but for plowing purposes that is where we prefer they park. During the day they can park anywhere in that lot if for some reason there were not available spots. Sometimes people end up leaving their cars in the lot overnight and whatnot. As long as they are in that lot, they are permitted to be there.

S. Mittlefehldt stated to Ms. Lasse-McKinney - we spoke on the phone earlier, but I wonder just for the record if you could reiterate what we talked about, just your assessment, because I think you of all people really know the flow of parking in that area, just to address Ms. Wright-Getz's concerns about parking - so maybe you could just speak to that a little bit.

Ms. Lasse-McKinney stated - we do have those twenty or so permits that are 24-hours and those people come and go. Some stay there just for the night and are gone for the day and some are there are all day long. So, I think there's 93 to 95 total spots in that lot, so there's still ample parking for other people, whether they be hourly parkers or daytime permit use. Additionally, in that general area, there is plenty of on-street parking on the area streets, including Baraga Avenue, Spring Street, Front Street, plus there's four or five other public parking lots in the area as well, so there's ample parking in the area within just two to three blocks - I would say several hundred spots.

D. Fetter asked Ms. Lasse-McKinney how the parking is controlled.

Ms. Lasse-McKinney stated - all of our permits are digital, based on license plates. Daytime we have a parking enforcement person who physically looks at those things and regularly checks both in the lots and on the streets to make sure that if there are permits, they're in the proper place, and if they're already paid that they're current on the payments for that time period. Otherwise, at night, the police department has access to those digital permits and they can check on those whenever they feel the need to do that.

> *Chair S. Mittlefehldt opened the Public Hearing, no one wished to comment, she closed the Public Hearing.*
>
> It was moved by *M. Rayner, seconded by S. Lawry and carried 7-0 to suspend the rules for discussion.*

The Planning Commission discussed each of the fourteen Special Land Use Standards in Section 54.1403.

S. Middlefehldt stated - number one, is Intent of the Zoning District, "the intent of the zoning district is met and the proposed use is in harmony with appropriate and orderly development of the district." What do you all think about that? I don't think we need to vote on each of these. We just have to get a general consensus. This is in the downtown commercial district so it seems pretty consistent with the district. All right, I don't see anyone disagreeing, so to number two - Use of Adjacent Land, "the current use of adjacent land and neighborhood are compatible with proposed use." It sounds like they've already talked with the neighbor, the Queen City Running company.

M. Rayner stated - I assume that's the small park area between that building and the museum.

S. Middlefehldt asked - is that owned by the History Center?

Mr. Holsworth stated yes.

S. Middlefehldt stated - I'm sure they would appreciate the flow of visitors coming from the hotel. Any thoughts on that one? All right, number three is Physical Appearance and Structure. Does the physical appearance of existing or proposed structures meet the standards in the ordinance?

N. Williams stated, yes, it looks like they're just adding onto the back a little bit but otherwise not really changing the look of the building, which I think fits in with the neighborhood.

M. Rayner stated - and they're restoring an existing structure.

S. Lawry stated - the preservation of what I presume is quarry sandstone is an excellent goal.

S. Middlefehldt stated, agreed, it could add a lot to that neighborhood.

Mr. Holsworth said - we are taking down a little bit of the two, the old structure on the back. It's an old cinder block extension added on - it's not attractive. It's going to be torn off and used for parking.

S. Middlefehldt asked, any thoughts on the physical appearance? Everybody seems good about that. Number four is Landscaping, "the suitability of proposed landscaping in providing ground cover, screening, and decorations on the site."

M. Rayner stated – there's not a lot of property for landscaping - two flower boxes in front.

S. Middlefehldt stated, okay - number five is Operations of Use, "the nature and intensity of operations involved in or conducted in connection with the proposed use is appropriate for the site and not in conflict with surrounding properties and uses."

S. Lawry stated - I think the switch to having private vehicles there instead of delivery vans coming in and out is actually an improvement. There might be a little higher numbers and trips counts but more compatible vehicles for the site.

D. Fetter stated - agreed.

S. Middlefehldt stated - number six is the Time of Use, "the proposed or estimated times of use and the physical and economic relationship of one type of use to another are not in conflict with each other or with surrounding properties and uses." Good there. Number seven - Number of persons or Employees, "the proposed or estimated assembly of persons or employees shall not be hazardous to the neighborhood or incongruous or in conflict with normal traffic or activity in the vicinity."

N. Williams asked - how many total units is it?

Mr. Holsworth stated sixteen.

N. Williams asked - okay, so 16 units and one employee doesn't seem like a grossly large number of people to be there.

Mr. Richer stated - it's a good one to learn about, though. Their business is very online and they do have other hotels in the area and so they are able to bring in that resource as needed. And their rooms are operated online, so they don't need a lot of staff there and they had to pay attention to follow those things because of the size of the building and the property so there's a lot of things that are going into that decision-making to lessen the impact on the city. There are no keys, there's one cleaning person, there's no concierges, and it's a virtual check-in.

S. Middlefehldt asked, any other comments? Okay, number eight is Vehicular and Pedestrian Circulation – the "proposed or estimated vehicular and pedestrian traffic going into patterns, particularly children, as well as vehicular turning movements do not negatively impact traffic flows, intersections, site distances and safety."

M. Rayner stated I think that's applicable.

N. Williams stated I think by making that alley between the two buildings into a one-way, you're not going to have someone driving out from between those two buildings and hitting someone on the sidewalk.

M. Rayner stated - which is better than what it is now.

N. Williams stated - right, and then otherwise the public services and the fire department and the police department reviewed this and did not have concerns on those items listed.

S. Middlefehldt stated – okay, number nine is Physical Characteristics of the Site, any comments on the physical characteristics of the site?

S. Lawry stated just that it appears to be a very difficult site to work with, with the railroad right-of-way that's owned by the City is still taking off one corner of it, a big corner.

S. Middlefehldt stated okay, 10 is public services, the "proposed or estimated demands upon public services, such as electricity, sewer and water, police, fire protection, schools and refuse disposal shall not be overly burdensome based on our readily available information." We've covered that, but any comments? Okay, number 11, Environmental Factors, "the type and amount of litter, waste, noise, dust, traffic fumes and glare, vibration, which may be generated by such use shall be minimized or properly mitigated."

S. Lawry asked - do we know if there are any underground tanks on that property associated with the cleaning business?

Mr. Holsworth stated - we had a Phase 1 and a Phase 2 environmental done and they didn't turn anything up as far as underground tanks, but having that business out of there is a good thing. It has a lot of water in the basement, so they'll be cleaning all that up and capping it.

S. Middlefehldt stated – okay, number 12 is Site Area and Potential Future Expansion Areas, "that the planning commission determines that there is sufficient site area for the proposed use to prevent nuisances to neighboring uses, and if there is potential for reasonable anticipated expansion of use and about nuisances to neighboring use."

N. Williams stated - it would definitely be hard for any expansion. However, it does not seem particularly burdensome on neighboring uses as it is right now, but I'm not sure how we tackle that or how we have in the past, but there's definitely not, unless they're expanding upwards, there's no real potential for expansion. Do you have any comment on that?

D. Stensaas stated I like what you said about that not being a burden. That isn't really problematic in this case.

A. Landers stated and then for the staff report, any future expansion would require additional public hearings, and we would go into these standards again.

S. Middlefehldt stated – okay, number 13 is Additional Neighborhood Factors, "other factors shall be considered as necessary to maintain property values in the neighborhood and guarantee safety, light, parent privacy to principle uses in the district."

M. Rayner stated - I would think the Children's Museum and the History Center would find it beneficial to have people that close.

N. Williams stated - yeah, and I think all the businesses in this area are reliant on people coming to the area and staying in hotels, so it seems to be very appropriate to have a hotel of this type there.

M. Rayner stated too bad the bakery is closed.

S. Middlefehldt stated - all right number 14 is Master Plan, "conformance and harmony with the master plan." Yes, good? Okay, great, so we went through that, and I believe we also need to go through section 54.1403 as well, right Dave?

D. Stensaas stated - this is a little less important to go through, as far as specifically addressing each one, because some of these are redundant and we covered a lot of these in the Staff Review, but if you feel like there's any of these you want to talk about, certainly talk about it.

S. Middlefehldt asked the members - do you want to go through that other section code?

N. Williams asked - what's the number of the other section?

S. Middlefehldt stated - I believe it's 54.1402.

City Planner and Zoning Administrator D. Stensaas stated - I don't think staff made any recommendations in here calling anything out, concerns, but we said the pedestrian sidewalk proposed to be built around new parking spaces will be needed and a welcome addition there, and better landscaping would be nice. Really, there are no major concerns.

S. Middlefehldt stated we've covered it all. All right, any other discussion on this project? Comments? Questions? All right would anyone like to make a motion?

> *It was moved by N. Williams, and seconded by D. Fetter and carried 7-0 that after holding a public hearing and review of the site plan set dated February 21, 2023, with supplemental documentation and the Staff Report/Analysis for 01-SUP-03-23, the Planning Commission finds that the request meets the intent and requirements of the Land Development Code Special Land Use Standards in*

Section 54.1403 and the Site Plan Review Standards in Section 54.1402, and hereby approves 01-SUP-03-23 with the following conditions:

1. *That an amended plan is submitted to meet staff comments*
2. *That a license is obtained from the City Commission for the work in the right-of-way.*
3. *That a use or access easement or agreement is obtained for the proposed use and construction on the City property.*

01-ZOA-03-23 - Land Development Code Amendments

A. Landers stated - the proposed amendments are the product of several months of effort by staff and the Planning Commission and have been developed, discussed, and refined during several work sessions from late 2022 into early 2023. She stated the draft amendments to the LDC document were attached in the agenda packet which is posted on the city website to be available to the public.

D. Stensaas stated - I guess I'd just say that we left the meeting with some items, the last meeting on the work session on this to address a couple of items and we've definitely addressed everything, and Commissioner Lawry also provided us with an extensive list of corrections that we needed to make. A lot of them were clerical corrections but very helpful because some of us don't have great attention to detail with writing and so if there's anything you want to go over again, lets do that. Otherwise, as you know, we could spend hours talking about these things, so we won't go through the list from top to bottom, but if there's anything you see that would need to be changed or that's still problematic in any way let's discuss it.

W. Premeau stated - I'm still confused on that, you've got one row on driveways that says you can have 18 feet if it's a 50-foot driveway, but you're interpreting the fact that down below it says that if you have a duplex, you can have a 24 foot driveway, but it doesn't say you could have that on a 50 foot lot. I mean, I know how you're going to interpret it, but how is the next guy going to interpret it?

S. Middlefehldt asked - what section is that in again?

D. Stensaas stated - Article 9, so we have Section E - maximum driveway and paved area - that explains for lots up to 60 feet in width, the driveway is allowed to be 18 feet, and 24 feet wide on a lot more than 60 feet in width. And then under Duplex in Item 2, it says the maximum width of the driveway is 24 feet.

A. Landers stated - so it's separated by uses, before you even get into that A and B language, so look at the use of it. If it's single family, we look at A and B. If it's duplex, we look at Number 2. So that's not an interpretation, its just how you read the Code.

W. Premeau stated - well, it's in a single-family neighborhood.

A. Landers stated - it's the use, though.

D. Stensaas stated - the use, so if that single family home is legally converted to a duplex, they would be allowed to expand the driveway to 24 feet.

W. Premeau stated - but they could do that on a 39-foot lot, or 40-foot lot, also, correct?

D. Stensaas stated yep, that's what we're saying.

W. Premeau stated – okay, sorry I asked,

D. Stensaas stated - if there's actually room on a lot like that with a duplex.

M. Rayner stated - I don't know how you'd do that.

S. Lawry asked - just one more question on definitions under 35 and 36 of the daycare units, it talks about counting the children, except children related to an adult member of the family by blood, marriage or adoption. I'm wondering if it should state "an adult member of the resident family", because all kids are part of some family.

D. Stensaas stated - some of this language, for some of these things that we define in the code that are state requirements - and we do duplicate a lot of those with the childcare and the group homes, the foster care homes - we just take their language verbatim and use it in our definition, so that's my question, if that is derived from the state language.

A. Landers confirmed that the language was from the state of Michigan's definitions.

S. Mittlefehldt stated – we did go through this pretty extensively in at least a couple of meetings, so I'm good with what we have.

Chair S. Mittlefehldt opened the Public Hearing, no one wished to comment, she closed the Public Hearing.

S. Mittlefehldt stated – would people like to have any more discussion on this? There is sample language for a motion in the packet.

> *It was moved by D. Fetter, and seconded by A. Andres, and carried 7-0 that After review of the draft Land Development Code (LDC) amendments presented as case 01-ZOA-03-2023, and after conducting a public hearing and careful consideration of the contents of the draft LDC amendments, the Planning Commission finds that the draft LDC amendments are consistent with the recommendations, goals, and policy objectives of the Community Master Plan, comply with section 54.1405 of the Land Development Code and therefore are justified and appropriate and therefore should be approved by the City Commission as presented.*

NEW BUSINESS

01-SKT-03-23 - Sketch Plan Review – 1502 W. Ridge St, 1303 and 1400 Grant Ave (PIN: 0513670, 0513810, 0513811)

A. Landers stated - Staff has reviewed the sketch plan for the construction of two apartment buildings, shed, parking lot, landscaping, site improvements, monument sign, and playground/picnic area with table located at 1502 W. Ridge St, 1303 and 1400 Grant Ave. She referenced the staff report and attachments, and visuals of the attachments were shown.

D. Stensaas stated - and this was something we just added to the LDC in the last three or four years, at the request of our local development community, to provide a step where they could come and get some kind of proof from the Planning Commission that as long as the layout and the uses that they're looking at putting on a site are consistent with the Community Master Plan and the Land Development Code. And they can take that to a bank – that's the main purpose - to help them when seeking financing.

D. Stensaas stated - and so anybody coming with a sketch plan is definitely coming back with a site plan that has all the civil engineering worked out on it, and goes through the full staff review.

S. Mittlefehldt stated – okay, that was going to be my question, because Scott Cambensy wanted more of the proposed utilities. Are there any questions or are there any thoughts about this project?

N. Williams asked - who is the PCI Design Group? Are they the developer?

Craig Patterson, representing the owner, stated I'm sorry, I probably should have said something earlier. He stated - I represent the owner, who's going to finance once they get bank approval. PCI Design is an architectural firm that's based in Columbus, Ohio, with a satellite office in Grand Rapids. They are the ones who design, and the development will be called Black Rock Crossing and will be owned by the principals of Woda Cooper Companies, and I am the Senior Vice-President for that company, and I can answer any other questions. We appreciate staff support, and we submitted the site plan you see. It wasn't perfect. We got input. We answered questions and you can see some of the responses. We plan to go for funding on April 3rd and then we'll know sometime in July whether we are funded, and then we would start construction about nine months after, but after we do the preliminary site plan review, deep engineering and everything that goes through that, and that staff would have a chance to look at all that. It's about a $13.1 million investment and my hope it's not a solid rock site, if anybody had noticed that. We've got geos [geotechnical probing] and we're waiting on the engineering to come back.

S. Lawry stated – I have a question for staff - the owners or developers would have the opportunity to approach the city to request the vacation of Grant Ave. right-of-way through there if they so choose, is that correct?

D. Stensaas stated - well, from what I've seen, the part of Grant Ave. that does extend west of McClellan Avenue just dead-ends on that parcel that comes off of Grant Avenue in the subdivision, and then to the west of there, on this property, that's not platted property, so it seems like there's no concern with that. There's no record of it extending onto the un-platted property that this party owns.

Mr. Lawry stated - I was part of the City design team when the streets were put in, in 1978, and that the lots there were considered developable then and utilities were stubbed outside the main street to allow for that. I don't recall specifics on that portion shown as Grant Ave. beyond the three lots off of McClellan, but I do recall that the previous property owner requested the vacation of it back around the late '70s and at that time it was denied. I know the portion along those first three lots are still active right of way and the one on Hancock St. is routinely used by the City's Public Works department as a staging area for parking street equipment for street sweeping and things of that nature. The three lots in front of this are sort of in limbo, a special assessment was applied against them in 1978 or '79 and the owner at that time determined that the value of them didn't warrant paying the assessment, so instead he donated them to the City, but with the stipulation that they be used for park property, but the City has never felt the need to have a park there, so they just kind of sit fallow and restricted.

S. Mittlefehldt asked S. Lawry – just to clarify, are you talking about the area between McClellan and this property.

S. Lawry stated – yes, there's three platted lots north of Grant and three south of Grant that are part of the West End subdivision.

Mr. Patterson stated – it's our understanding that Grant Ave. was vacated.

D. Stensaas stated – whether it is vacated or not it won't be usable by anybody until the plat is amended, if it was vacated it can't be built on unless the plat has been vacated and we are not aware of any plats that had vacated streets that were subsequently amended, except for some of the property that NMU owns.

N. Williams asked – in the PCI Design Group letter there are questions and responses - whose questions and whose responses are they?

A. Landers stated – those were staff questions and responses by the PCI Group.

S. Mittlefehldt asked Mr. Patterson – you mentioned that the site might be rocky - are these conditions going to change your plans any? Are there things that are contingent on if it is solid bedrock under there or something?

Mr. Patterson stated - we did the geo work two weeks ago and they punched the holes, so we're waiting on the engineering and generally what happens is we look at where the trouble areas are…then we make an assessment as to whether or not the site work will still be affordable, and at this point in time we have no indication that they ran into trouble. Sometimes when they are on site they'll give you a call and say they're hitting it [rock] everywhere. We don't have any indication that we're in trouble, but we know back to the north there's a lot of rock, and so we're just waiting on that. We think we will have the results of by the end of next week, so that's how close we are.

S. Mittlefehldt stated – okay, thank you.

W. Premeau stated – I noticed that the topographical lines goes up and down like a yo-yo, it drops 13 feet, and asked where the utilities would be brought in.

Mr. Patterson stated – it is quite a hike up to the top, on the southeast corner. That's why the only access we are looking at is off Ridge St. because it's a gradual slope, even though Hancock and Grant could have been, because if you're coming off McClellan the slope is significant.

W. Premeau asked - so where the utilities would be brought in?

Mr. Patterson stated – off of Ridge St.

S. Lawry stated - there is a sanitary manhole north of the north curb line on Ridge St. and a 6-inch water main stubbed in there, probably with a fire hydrant on it, specifically to serve that property and that was assessed against that property as a tap.

Mr. Patterson stated – you know, it is a large site, 4.39 acres for 50 units. We'll maintain it, all that area. Our company has its own property management company, so we don't send that out to somebody else.

N. Williams asked Mr. Patterson – would the house on the site be demolished?

Mr. Patterson stated - we have no plans to maintain it, rent it or reuse it.

A. Andres asked - how many handicapped-accessible dwelling units there would be.

Mr. Patterson stated - that's a good question. First of all, we have 74 units and 74 parking spots. Six will be barrier-free. In the actual buildings, we'll have five barrier-free units. These are three story walk-ups, so your ground floors will be completely visible and even though we'll have more than six units on the ground floor, individuals who need accessibility can get into all of the units.

S. Middlefehldt stated - I also want to point out, in section 54.1402(D3), these sketch plans are kind of just getting a general acceptability of the project and the Planning Commission isn't bound by statements or indications of acceptance of the plan, so I think when make the motion - there's a potential motion there in the packet – it's do we approve of the general goal of this project, and we'll be seeing it later, but does anybody want to discuss more or maybe make a motion?

S. Lawry stated – one more question - the dumpster enclosure would be within a front yard area. I'm wondering, from staff, is there an area there that would not be considered a front yard?

A. Landers stated - yes, so they are right on the line and my comment was to make sure they don't move it to the north any if and when they make their changes, because the front yard area is right here [showing location on-screen] because of the Hancock right-of-way.

S. Lawry stated - but that right-of-way doesn't extend back that far.

A. Landers stated - so that's their front yard right here and the rest of it turns into a side yard. It's the 50 ft. adjacent to the lot line.

D. Stensaas stated – so once they're out of that right-of-way area they're no longer in the front yard area.

Mr. Patterson stated – I'm glad you pointed that out, I'll remove it.

D. Stensaas stated – that's something your design team will have to accommodate.

S. Lawry stated – the Fire Department sounded like they were asking for an even bigger turn there and rather than use that to push the dumpsters further north you'll probably have to go further south, if the rock will allow it.

S. Middlefehldt stated – would anyone like to make a motion.

> *It was moved by W. Premeau, and seconded by S. Lawry, and carried 7-0 that after review of the sketch plan 01-SKT-03-23, the Planning Commission finds that it is an acceptable Sketch Plan for preliminary planning work, and that the existing character of the property, the proposed use of the property, the mass and location of structures, the general site circulation, and the other required elements shown in Figure 52 of Article 14 of the Land Development Code (LDC) for Sketch Plans are generally in compliance with the LDC.*

COMMISSION AND STAFF COMMENTS

A. Andres welcomed S. Lawry back to the Planning Commission.

S. Mittlefehldt stated that it was good to have Mr. Lawry and his rich historical knowledge on the Planning Commission.

N. Williams asked questions about the Special Meeting on Thursday 3/23 that were answered by staff.

S. Lawry stated that the two projects presented tonight are promising and that he hopes the Ridge St. site works out for the applicant.

D. Stensaas stated that there is no business for the 4/04/23 scheduled meeting and that it could be cancelled to give the members a bit of a break.

ADJOURNMENT
The meeting was adjourned by Chair S. Mittlefehldt at 7:05 p.m.

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Prepared by: iMedat
Edited by: David Stensaas, City Planner and Zoning Administrator, Planning Commission Staff Liaison

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda

Approve the minutes of the April 10, 2023 regular Commission meeting

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

	Description
🗋	April 10 minutes

City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Minutes
City Commission

Monday, April 10, 2023
6:00 PM
Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

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

Approval of the Agenda

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

Announcements

Mayor Mayer had no announcements.

Boards and Committees

1. Appointment(s)

Richard Brebner-Derby, Arts and Culture Advisory Committee for an unexpired term ending 06-1-23 and a subsequent term ending 06-01-26

Mayor Pro Tem Sally Davis moved to Approve the appointment as listed, seconded by Commissioner Jessica Hanley and Carried Unanimously.

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

Margaret Brumm spoke about a plan to provide underwater solar lights for the viewing platform in the lower harbor pier, and spoke about the difficulty in finding a copy of the book Safe at Any Speed for a class she is teaching at NMU.
Iris Katers spoke about her experience on the CIty's sesquicentennial committee in the late 1990s. She presented the Commission with a copy of the group's final report and suggested the Commission consider a way to honor the City's upcoming 175th anniversary.
Barb Owdziej spoke about snow removal challenges along Fair Avenue.
Emilie Rake said that she recently noticed that a bench near the Janzen House had been removed. She said the bench was often used by homeless individuals who would rest in the area. She asked the City to replace the bench, or to provide another area for those people to use.

2. **Consent Agenda**

Commissioner Fred Stonehouse moved to Approve the Consent Agenda as written, seconded by Mayor Pro Tem Sally Davis and Carried Unanimously.

2.a. Approve the minutes of the March 27, 2023 regular Commission meeting

2.b. Approve the total bills payable in the amount of $502,731.64

2.c. Annual Wetland Mitigation Monitoring and Maintenance Services

2.d. Server Technology Replacement

2.e. Sidewalk Repair, Extension and Safety Improvements Project

2.f. Superior Hockey, LLC - Office and Storage Space Lease Agreement

2.g. Tourist Park Budget Adjustment

Unfinished Business

3. Ordinance 702 - Authorized Officials - Roll Call Vote

Commissioner Jessica Hanley moved to Approve the adoption of Ordinance 702, seconded by Commissioner Michael Larson and Carried Unanimously by Roll Call Vote.

New Business

4. Solids Handling Project Bid - Roll Call Vote

Commissioner Fred Stonehouse moved to Approve the bid from Miron Construction with the recommended alternatives in the amount of $12,758,234, as well as the grant funding in the amount of $5,857,500, authorize the remainder of the project funding through $1,380,000 from the facilities reserve fund and a CWSRF loan, and authorize the City Manager or her designee to sign the resolution, seconded by Commissioner Jermey Ottaway and Carried Unanimously.

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

Margaret Brumm said the City Commission made the right decision by approving the plans for the solids handling project this evening and she talked about the vital importance of wastewater handling systems to the community.

Comments from the Commission

Commissioner Hanley explained the recent relocation of the bench that was mentioned in public comment. She said she believed it was moved due to an impending construction project.
Commissioner Larson had no comments.

Commissioner Ottaway said the weather is beautiful, and reminded people that the Angry Bear festival is this weekend. He asked people to please heed the City signs that state dogs are not allowed in certain locations.

Mayor Pro Tem Davis thanked those that spoke during public comment tonight.

Commissioner Stonehouse stated that a 25-year-old time capsule doesn't seem that old and wondered if it might be better to wait to open it for a few more years.

Mayor Mayer said that 25 years doesn't seem long, but indicated that a lot can change in 25 years. He thanked staff for the work on the solids handling project approved tonight.

Comments from the City Manager

City Manager Karen Kovacs said her office hours are set for April 12 from 10 a.m. to noon.

Adjournment

Mayor Mayer adjourned the meeting at 6:35 p.m.

Cody O. Mayer, Mayor **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.

City of Marquette, MI
300 West Baraga Ave
Marquette, Michigan 49855

Meeting Agenda
City Commission

WORK SESSION

Wednesday, April 12, 2023
5:15 PM
Municipal Service Center, 1100 Wright Street

Joint Work Session - Marquette City Commission and Planning Commission

Call to Order, Pledge of Allegiance and Roll Call

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

Announcements

The Mayor had no announcements.

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

Margaret Brumm challenged the City Commission and Planning Commission to make LDC amendments that are functional and practical.

1. Draft Land Development Code Amendments and Future Community Planning Projects

Community Development Director, Dennis Stachewicz gave a brief overview, stating the proposed LDC amendments, which will be presented, address recommendations provided in the Ad-Hoc Housing Committee report. He then turned the meeting over to City Planner, Dave Stensaas.

Dave Stensaas presented to the Commission the proposed LDC amendments by highlighting a few main categories. He stated these amendments will better serve the needs of the community. The amendments would impact housing, allow new land uses which includes hostels, expands administrative oversite on site plan review, and removal of pole signs in the Central Business District.

Following the presentation discussion ensued. Questions were brought forth about the allowable zoning districts for hostels, with concerns surrounding residential areas. Other topics discussed were the increase in building heights in the Central Business District, accessory dwelling units, and the removal of pole signs to protect the historic heart of downtown.

Dennis Stachewicz closed the meeting with a brief summary of the next steps for the Community Master Planning process, which will involve gathering community opinion on three redevelopment sites. This would include an economic cost analysis on the community's desired redevelopments.

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

Margaret Brumm congratulated the two Commissions for digging into the topics presented. She suggested City Code address the need to maintain abandoned buildings to prevent them from becoming blighted.

Adjournment

The meeting was adjourned at 6:41 p.m.

Cody O. Mayer, Mayor	**Rachel Quayle, Deputy 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.

City of Marquette, MI
300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
Biosolids Hauling Contract

BACKGROUND:
All municipalities that generate biosolids are responsible for the management and end use of the material. M.J. VanDamme, Inc. has been the City's sole contractor for biosolids land application since 1995. The competitive bidding process was determined not to be in the City's best interest because of the limited number of vendors with specialized tools and expertise.

M.J. VanDamme, Inc. is currently under contract to provide seeding and mulching services with Cliffs Natural Resources. As part of the reclamation process, the addition of biosolids is a key component for a successful program. The contractor's familiarity with Cliffs Natural Resources properties, regulations and reclamation practices is a critical requirement for success.

In order to meet the Marquette Area Wastewater Treatment Facility's needs, biosolids disposal is a critical component of meeting all regulatory requirements.

FISCAL EFFECT:
The Marquette Area Wastewater Treatment Professional and Contractual Budget contains sufficient funds for this service.

RECOMMENDATION:
Approve the contract with M.J. VanDamme, Inc., and authorize the Mayor and City Clerk to sign.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description
- Quote
- Contract

M.J. VANDAMME, INC PROPOSAL

2023

March 28, 2023

ATTN: Mark O'Neill, Director of Municipal Utilities

RE: Biosolids hauling and application for the City of Marquette

Scope: Provide contractual services of transporting and application of Biosolids from the Marquette Area Wastewater Treatment Facility to approved sites for a contract term ending December 31, 2023.

Service to be provided:

- Biosolids loading on site at the Wastewater Facility.
- Applications per owner at approved agronomic sites and rates.
- Insurance limits per City requirements.

Proposal Cost:

- Distance (one way) application to Cliffs Natural Resources will be charged at the 16-30 mile per unit rate.

Distance	Liquid per gallon	Cake per cubic yard
31-60 miles	$.1428	$35.71
16-30 miles	$.1335	$29.79
15 miles or less	$.1157	$26.40

- Any Work not covered under this agreement will be invoiced on a time and material basis.
- A mobilization charge of $2,340.00 will apply to each haul out (totaling $4,680.00 for the year both cake & liquid).

Thank you for your consideration. Please let us know if there are any questions.

Sincerely,

Nick Doney
920-740-2137
Project Manager
M.J. VanDamme Trucking, Inc.

301 Avenue A, PO Box 1172, Gwinn, MI 49841

CITY OF MARQUETTE
CONSTRUCTION CONTRACT

PROJECT NAME: Biosolids Hauling/Application

THIS AGREEMENT made this 12 day of April, 2023, between the City of Marquette, a Michigan Municipal Corporation, hereinafter called the "City" of 300 W. Baraga Avenue, Marquette, MI 49855, and M.J. VanDamme Trucking Inc., 301 Avenue A, Gwinn, a Michigan Corporation, hereinafter called "Contractor". WITNESSETH: That for and in consideration of the payments and Agreements hereinafter mentioned, the parties hereby agree as follows:

ARTICLE 1

CONTRACT DOCUMENTS

The "Contract Documents" consist of, but are not necessarily limited to, this Agreement, the invitation to Bid, Information for Bidders, Bidders Proposal, Addenda, Specifications, Supplemental Specifications, Special Provisions, Construction Drawings, Notice to Proceed, Allowances, Finish Schedules and any additional documentation issued prior to execution of this Agreement and all Change Orders as approved by the City. These Contract Documents represent the entire Agreement and understanding between the parties hereto.

ARTICLE 2

SCOPE OF THE WORK

Contractor will furnish all the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described in the Contract Documents.

ARTICLE 3

MATERIALS, APPLIANCES, and EMPLOYEES

Except as otherwise noted, the Contractor shall provide and pay for all materials, labor, tools and other items necessary to complete the work. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. All workmen shall be skilled in their trades.

ARTICLE 4

TIME OF COMPLETION

The commencement date of this project is _____**May 1**_________, **2023**, and the completion date of this project is ___**December 31**_________, **2023**.

ARTICLE 5

CONTRACT SUM

The Contractor agrees to perform all of the work described in the Contract Documents and comply with the terms therein for the sum of **$ 210,000** .

ARTICLE 6

PAYMENTS

The City will pay to the Contractor in the manner and at such times as set forth in the Specifications such amounts as required by the Contract documents.

ARTICLE 7

CONTRACTOR'S OBLIGATIONS

All work shall be in accordance to the provisions of the Contract Documents. All systems shall be in good working order.

All work shall be completed in a workmanlike manner and shall comply with all applicable laws.

Contractor shall obtain all necessary permits for the work to be completed under emergency conditions.

Contractor shall remove all construction debris and leave the project in a "broom clean" condition.

Upon satisfactory payment being made for the work performed by Contractor, Contractor shall furnish a full and unconditional Release of Lien for the work for which payment has been made.

Safety and Fire Protection: The Contractor shall be responsible for safety at the construction site. The Contractor will further comply with all applicable laws, rules and regulations of the Michigan Department of State Police, Fire Marshall Division, the State Fire Safety Board, Michigan Occupational Safety and Health Administration, and Local Agencies. Precaution shall be exercised at all times for the protection of persons and of property. The safety provisions of applicable laws, rules, regulations, building and construction codes shall be followed. Safety Hazards shall be guarded in accordance with safety provisions of the Manual of Accident Prevention in Construction published by The Associated General Contractors of America to the extent that such provisions are not in conflict with applicable laws.

ARTICLE 8

CONTRACTOR'S STATUS AS INDEPENDENT ENTITY

The City shall not assume any liability for the Contractor in the performance of the construction project, methods, techniques, sequences or programs in connection with the project since these are solely the Contractor's responsibility.

ARTICLE 9

CHANGE ORDERS AND PAYMENT

A change order is any change to the original plans and/or specifications. All change orders need to be agreed upon between the parties hereto, and address additional costs, time, consideration and dates when the work will begin and be completed. Change orders are not effective unless signed by both parties who shall not unreasonably withhold approval of the same. However, should the Contractor unreasonably refuse to approve a change order reasonably and in good faith submitted by the City, the Director of Public Works shall be empowered to make a final and fair determination as to the necessity for the change order and the fair and equitable cost to the Contractor and shall further be empowered to issue a final payment to the Contractor. Should the Contractor refuse to accept said final payment, the funds may be deposited in an Escrow Account by the City for the benefit of the Contractor.

ARTICLE 10

INSURANCE

The Contractor shall purchase and maintain Workman's Compensation and Liability Insurance coverage as required by law and deemed necessary for its own protection. Said insurance shall be written by an insurance carrier having at least an "A, VII" rating. The Contractor shall further name the City as an additional named insured on all certificates of insurances covering the project. Said insurance shall be in minimum limits of at least $1,000,000.00 for both general liability and automobile liability. The Contractor shall further maintain such insurance as will protect it from claims under worker's compensation acts and other employee benefits acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise both out of and from claims for damages to property which may arise both out of and during operations under this contract, whether such operations are by Contractor or by anyone directly or indirectly employed by the Contractor. This insurance shall be written for not less than any limits of liability specified as part of the Contract Documents. Certificates of such insurance shall be filed with the City.

ARTICLE 11

INDEMNIFICATION

To the extent allowed by MCL 691.991, the Contractor hereby agrees to save and indemnify and keep harmless the City against all liability claims and judgments or demands for damages arising from accidents to persons or property occasioned by the Contractor, its agents or employees, and against all claims or demands for damages arising from accidents to the Contractor, its agents or employees, whether occasioned by said Contractor or its employees or by City or its employees or any other person or persons, and the said Contractor will defend any and all suits that may be brought against the City on account of any such accidents and will make good to, and reimburse, the City for any expenditures that said City may make by reason of such accidents; provided, however, that the Contractor shall not be responsible to the City on indemnity for damages caused by or resulting from the City's sole negligence.

ARTICLE 12

CITY'S RIGHT TO TERMINATE THE CONTRACT

Should the Contractor neglect to perform the work properly or fail to perform any provision of the Contract, the City, after seven (7) days' written notice to the

Contractor, and its surety, if any, may, without prejudice to any other remedy the City may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option, may terminate the Contract and take possession of all materials, tools and appliances and finish the work by such means as it sees fit, and if the unpaid balance of the contract price exceeds the expense of finishing the work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the City.

ARTICLE 13

CONTRACTOR'S RIGHT TO TERMINATE CONTRACT

Should the work be stopped by any public authority for a period of ninety (90) days or more, through no fault of the Contractor, or should the work be stopped through act or neglect of the City for a period of ninety (90) days, then the Contractor, upon seven (7) days' written notice to the City, may stop work or terminate the Contract and recover from the City payment for all work executed and any loss sustained and reasonable profit and damages.

ARTICLE 14

ACCESS TO WORK

The Contractor shall permit and facilitate observation of the work by the City and its agents and public authorities at all times.

ARTICLE 15

ARBITRATION OF DISPUTES

Any disagreement arising out of this contract or from the breach thereof shall be submitted to arbitration, and judgment upon the award rendered may be entered in the court of the forum, state or federal, having jurisdiction. It is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right of legal action that either party may have against the other. The arbitration shall be held under the Rules of the American Arbitration Association.

ARTICLE 16

WARRANTY

At the completion of this project, Contractor shall execute an instrument to City warranting the project for one (1) year against defects in workmanship or materials utilized. The manufacturer's warranty shall prevail.

At the time of completion, the Contractor shall furnish to the City material containing complete operation and maintenance instructions for all equipment in the project. The Contractor shall also furnish to the City at the time of completion all documents, warranties and guarantees on all equipment and services provided.

The Contractor shall re-execute any work that fails to conform to the requirements of the Contract and that appears during the progress of the work and shall remedy any defects due to faulty workmanship, which appear within a period of one (1) year from the date of completion of the Contract or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents. All equipment and materials will be warranted and guaranteed under the original equipment manufacturer's warranties and guarantees.

The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. After such repair or replacement has been satisfactorily completed, the

Contractor's warranty with respect to such work repaired or replaced will be extended for an additional period of one (1) year beyond the warranty period described above. Contractor's obligations under this paragraph are in addition to any other obligation or warranty.

ARTICLE 17

FEDERAL-AID CONTRACTS

During the performance of every contract subject to Title VI of the Civil Rights Act of 1964 and Title 49, Code of Federal Regulations, Department of Federally-assisted programs of the Department of Transportation issued pursuant to the Act, the Contractor, for itself, its assignees and successors in interest agrees as follows:

1. **Compliance with Regulations**: The Contractor shall comply with Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection, retention and treatment of Subcontractors, including procurements of materials in the discrimination prohibited by Section 21.5 of the Regulation, including employment practices when the Contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including

procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department of the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State Highway Department or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
   a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
   b. Cancellation, termination or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor shall include provisions of paragraphs (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations, or directives issued

pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State Highway Department to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 18

INTEGRATION

This Agreement represents the entire understanding between the parties hereto and may not be amended, except in writing that is signed by both parties hereto.

ARTICLE 19

BINDING AGREEMENT

This Agreement will bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

ARTICLE 20

PURCHASING AGENT DESIGNATION AND AUTHORITY

The Director of Public Works is designated as Purchasing Agent of City and is authorized to order minor changes in the work not involving adjustment in the Contract Sum or Time of Completion and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Purchasing Agent and shall be binding on the City and Contractor.

IN WITNESS WHEREOF, the parties have made and executed this Agreement, the day and year first above written.

Signed this 12 day of April, 20 23.

THE CITY OF MARQUETTE

_____________________ Witness	_____________________ Cody Mayer, Mayor City of Marquette
_____________________ Witness	_____________________ Kyle Whitney, City Clerk City of Marquette
_____________________ Witness	DocuSigned by: 5F46A65F383647C... Contractor Name
By: _____________________	By: Mike Hubbard
Its: _____________________	Its: Project Manager
Address: _____________________	Address: 301 Avenue A,Gwinn,MI 49841
Telephone#: _____________________	Telephone#: 906-346-2641

APPROVED AS TO FORM:	APPROVED AS TO SUBSTANCE:
_____________________ Suzanne C. Larsen City Attorney	_____________________ Karen M. Kovacs City Manager

City of Marquette, MI
300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
CDBG Certified Grant Administrator

BACKGROUND:

The City of Marquette has been awarded a Community Development Block Grant (CDBG) in the amount of $8 million for the demolition of a portion of the former Marquette General Hospital, owned by the Northern Michigan University Foundation. A component of the CDBG grant is a certified grant administrator (CGA) for management and administrative services for the implementation of the grant.

The City distributed a request for proposals (RFP) for a CGA to eligible parties through the process set by the MEDC and received three responses, detailed below. Due to the proximity of the organization, familiarity with Marquette, experience, cost per hour, and total time allotted in the bid, the City Manager's Office is recommending awarding the CGA contract to the Central Upper Peninsula Planning and Development Regional Commission (CUPPAD).

Organization	Bid Total
CUPPAD	$22,500
Northern Consultants	$15,875
Carter Consultants	$23,000

FISCAL EFFECT:

The cost of this service will be $22,500 and will be reimbursable from the Community Development Block Grant.

RECOMMENDATION:

Approve the contract for certified grant administrator services with the Central Upper Peninsula Planning and Development Regional Commission, and authorize the City Manager to sign.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- CUPPAD Proposal
- CGA Contract

CUPPAD

PROPOSAL FOR
CERTIFIED GRANT ADMINISTRATOR SERVICES
FOR THE
THE CITY OF MARQUETTE HOSPITAL DEMOLITION PROJECT

The CUPPAD Regional Commission is pleased to submit this proposal for CDBG grant administrative services to the City of Marquette for the complete demolition of the former Marquette General Hospital complex in the city of Marquette, MI.

Statement of Qualifications
The Commission was organized in 1968 under the provisions of Act 281, P.A. of 1945. The CUPPAD Regional Commission was designated an Economic Development District in 1970. The Commission's office is located in the Delta County Service Center in Escanaba. The Commission has provided technical assistance with CDBG projects to government units in the central region of the Upper Peninsula since the establishment of the CDBG Small Cities program in 1974.

Dotty LaJoye has successfully completed the Michigan Community Development Block Grant (CDBG) Certified Grant Administrator's (CGA) training program. Dotty LaJoye is directly responsible for the CGA responsibilities associated with the current CDBG projects listed below. A list of contacts for the projects below is included with this proposal.

CUPPAD's current CDBG experience:

- City of Escanaba Water Related Infrastructure (2021)
- City of Manistique Rental Rehabilitation 107 River Street (2021)
- City of Manistique Rental Rehabilitation 238 Cedar Street (2021)
- City of Iron Mountain Rental Rehabilitation 323 S. Stephenson Street (2020)
- City of Ishpeming Senior Center (2020)
- City of Negaunee Senior Center (2020)
- City of Manistique Sewer Lining (2020)
- Northern Initiatives CDBG revolving loan projects: environmental reviews and development of plans and policies (2015- current)

Fixed Sum Amount
The fixed sum amount for overall program administration costs associated with the "City of Marquette Hospital Demolition Project" is $22,500. The fixed sum amount is based on 300 hours for all identified tasks at $75.00 per hour. The rate includes all associated travel, materials, and personnel costs, including fringe benefits.

Scope of services to be provided are:

I. **General Tasks**

A. Establish project files for the City of Marquette office. These files must demonstrate compliance with all applicable state, local, and federal regulations. The project files must be monitored throughout the program to ensure that they are complete.
B. Assist city administration with conducting required public hearings and assist with public notices, presenting at hearings, securing hearing minutes and submitting documentation to the MEDC, etc.
C. Assist the City of Marquette in establishing and maintaining a Section 3 plan and appropriate reports to meet compliance standards.
D. Prepare, receive, and submit signed grant metric reports from the City of Marquette. These reports include but are not limited to: Progress Reports, Audit Reports, Section 3 Reports, any other reports necessary.
E. Prepare and submit HUD 2516 and HUD 4710 reports.
F. Prepare and submit for approval Community Development Block Grant Amendments as necessary and assist city administration with required public hearings information. If the project scope changes and the Environmental Review level is affected, review and assist in the preparation of Environmental Review amendment documents or administrative paperwork to SHPO.
G. Other general tasks as related to program compliance.

Total estimated hours for General Tasks: 60 hours

II. **Financial Management**

A. Work closely with city staff in the preparation of the CDBG Requests for Payment. Ensure the submissions of the CDBG payment requests are consistent with established City and CDBG program procedures. Submit payment requests to the MEDC.
B. Work closely with the City to ensure that the City of Marquette has an acceptable financial management system as it pertains to finances of the CDBG Program. An acceptable system includes, but is not limited to, cash receipts and disbursements journal and accompanying ledgers, and should conform to generally accepted principles of municipal accounting.
C. Make progress inspections.
D. Provide assistance as needed to the City during the annual audits of their CDBG project.

Total estimated hours for Financial Management: 80 hours

III. Procurement

A. Provide required procurement reports and assist the City of Marquette in obtaining approvals from MEDC as appropriate .
B. Collect and file procurement records including selection process, advertisements, reasons for selection, minutes from bid openings, etc.
C. Review and analyze proposals for qualifications, costs and other factors.
D. Collect and file contract agreements between the City of Marquette and the selected contractors. Collect and file insurance documentation related to the selected contractors.
E. Provide SAM and HUD Limited Deniability checks on selected contractors.
F. Provide annual Disadvantaged Business Enterprise reports and other related procurement reports.

Total estimated hours for Procurement: 60 hours

IV. Construction and Labor Compliance

A. Assist the project engineer and or city staff with the preparation of bid documents as needed, review documents and ensure the bidding process is consistent with state and federal regulations.
B. Check payroll documentations.
C. Review Contractor Payment Application materials and ensure the Supplies and Labor amounts are present on all categories for reimbursement.
D. File contractor certifications and clearances, specific to lead and asbestos abatement.
E. Monitor administrative paperwork and check weekly payrolls to ensure compliance with equal opportunity labor provisions and Section 3 requirements.
F. Participate with city staff and project engineer in the final inspection of the project.

Total estimated hours for Construction and Labor Compliance: 60 hours

V. Monitoring and Close Out

A. Attend and assist the City of Marquette during the MEDC's monitoring visit(s). Prepare the City of Marquette's response to all monitoring findings.
B. Prepare close-out documents.
C. Assist with notices of and document the Performance (close-out) Public Hearing.

Total estimated hours for Monitoring and Close Out: 40 hours

Submitted by Dotty LaJoye **Date: March 15, 2023**
Dotty LaJoye
Certified Grant Administrator

Dotty LaJoye
CUPPAD Regional Commission
2950 College Avenue
Escanaba, MI 49829
Phone: 906.786,9234 ext. 1376
Cell: 906.361.3084

CUPPAD's CDBG contracts during the past three calendar years with contact information:

- City of Escanaba Water Related Infrastructure (2021)
  Jeff Lampi, Director of Public Works, City of Escanaba:
  jlampi@escanaba.org
  (906) 786-1301

- City of Manistique Rental Rehabilitation 107 River Street (2021)
- City of Manistique Rental Rehabilitation 238 Cedar Street (2021)
- City of Manistique Sewer Lining (2020)
  Cory Barr, Interim City Manager, City of Manistique
  citymanager@cityofmanistique.net
  (906) 341-2290

- City of Iron Mountain Rental Rehabilitation 323 S. Stephenson Street (2020)
  Jordan Stanchina, City Manager, City of Iron Mountain
  citymanager@cityofironmountain.com
  (906) 774-8530

- City of Ishpeming Senior Center (2020)
  Craig Cugini, City Manager, City of Ishpeming
  citymanager@ishpemingcity.org
  (906) 485-1091, Ext. 203

- City of Negaunee Senior Center (2020)
  Nate Heffron, City Manager, City of Negaunee
  nheffron@cityofnegaunee.com
  (906) 475-7700

- Northern Initiatives CDBG revolving loan projects: environmental reviews and development of plans and policies (2015- current)
  Chuck Hurst, Vice President of Northern Initiatives, Commercial Lending
  churst@northerninitiatives.org
  (906) 228-5571

CONTRACT FOR CONSULTANT SERVICES

Between City of Marquette and CUPPAD Regional Commission

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONSULTANT SERVICES FOR
Demolition of the old Marquette General Hospital complex

PART I -- AGREEMENT

This Agreement for professional services is by and between **the City of Marquette**, State of Michigan (hereinafter called the "GRANTEE"), acting herein by **Karen Kovacs, City Manager**, hereunto duly authorized, and **the Central Upper Peninsula Planning and Development Regional Commission** organized under the laws of the State of Michigan (hereinafter called the "CONSULTANT"), acting herein by Dotty LaJoye, Executive Director, hereunto duly authorized;

WITNESSETH THAT:

WHEREAS, the GRANTEE has received funding under the State of Michigan, MEDC, CDBG Programs pursuant to Title I of the Housing and Community Development Act of 1974, as amended; and,

WHEREAS, the GRANTEE desires to engage the CONSULTANT to render certain technical assistance services in connection with its Community Development Program:

NOW, THEREFORE, the parties do mutually agree as follows:

1) Employment of CONSULTANT
The GRANTEE hereby agrees to engage the CONSULTANT, and the CONSULTANT hereby agrees to perform the Scope of Services set forth herein under the terms and conditions of this agreement.

2) Scope of Services
The CONSULTANT shall, in a satisfactory and proper manner, perform the services listed in Part III Scope of Services and Payment Schedule. Services in each of the work areas shall be performed under and at the direction of the City Manager or their designated representative.

3) Time of Performance
The services of the CONSULTANT shall commence on **April 24, 2023** and shall end on **March 31, 2025.** Such services shall be continued in such sequence as to assure their relevance to the purposes of this Agreement. All of the services required and performed hereunder shall not be completed until the GRANTEE has received notification of final close out from the MEDC.

4) Access to Information
It is agreed that all information, data, reports, records, and maps as are existing, available, and necessary for the carrying out of the work outlined above, shall be furnished to the CONSULTANT by the GRANTEE. No charge will be made to the CONSULTANT for such information, and the GRANTEE will cooperate with the CONSULTANT in every way possible to facilitate the performance of the work described in this contract.

5) Compensation and Method of Payment
CONSULTANT shall only be paid for services rendered under this agreement from funds allowed by the MEDC for administrative costs under the provisions of the grant awarded to the GRANTEE. Payment will be made only on approval of the GRANTEE. The total amount of reimbursable costs to be paid CONSULTANT under this contract for program administration shall not exceed **Twenty-Two Thousand, Five Hundred Dollars (*$22,500.00*)**. CONSULTANT may not incur any costs in excess of this amount

(except at its own risk) without the written approval of the GRANTEE. CONSULTANT will only be paid for the time and effort needed to complete the actual scope of services required for this program, which may be less than the total amount above.

The CONSULTANT shall submit invoices to the GRANTEE for payment. Each invoice submitted shall identify the specific contract task(s) or sub-task(s) listed in Part III, Scope of Services for payment according to the appropriate method listed below:

a) Cost Reimbursement: For tasks lacking a definable work product and/or the CONSULTANT will not assume the risk for incurring the costs for a definable work product: cost reimbursement of labor, material and service costs, and allowable overhead. Each invoice shall itemize the: Direct labor hours by job classification; hourly rate by job classification, fringe benefits as *either* a percent direct labor cost *or absolute dollar per hour amount*; mileage and per diem required per task, and overhead as *either* a percent of direct costs *or dollar amount per direct labor hour* in accordance with the schedule of reimbursable costs listed in Part III Payment Schedule. Reimbursement for contracted services or materials shall include the vendor invoice(s) that identifies items by quantities and cost per unit.

b) Lump Sum Price: For tasks with a definable work product where the quantity required is certain and the contractor assumes the risk for all costs: a lump sum price. Each invoice submitted shall identify the specific contract task(s) listed in Part III and the completed work product/deliverable for the agreed upon price and quantity listed in Part III Payment Schedule.

c) Unit Price: For tasks with a definable work product but the quantity is uncertain, and the contractor assumes the risk for all costs: a unit price times the number of units completed for each billing. Each invoice submitted shall identify the specific contract task(s) listed in Part III and the completed work product/deliverable for the agreed upon price listed in Part III Payment Schedule.

6) Ownership Documents

All documents, including original drawings, estimates, specifications, field notes, and data are the property of the GRANTEE. The CONSULTANT may retain reproducible copies of drawings and other documents.

7) Professional Liability

The CONSULTANT shall be responsible for the use of reasonable skills and care benefiting the profession in the implementation of the CDBG Program.

8) Indemnification

The CONSULTANT shall comply with the requirements of all applicable laws, rules and regulations in connection with the services of the CONSULTANT, and shall exonerate, indemnify, and hold harmless the GRANTEE, its officers, agents, and all employees from and against them, and local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax Laws. Further, the CONSULTANT shall exonerate, indemnify, and hold harmless the GRANTEE with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this contract by the CONSULTANT. This shall not be construed as a limitation of the CONSULTANT's liability under this Agreement or as otherwise provided by law.

9) Terms and Conditions

This Agreement is subject to the provisions titled, "Part II, Terms and Conditions" and “Part III Payment Schedule”, consisting of seven pages, attached hereto and incorporated by reference herein.

10) Address of Notices and Communications

Karen Kovacs	Dotty LaJoye
City Manager	Executive Director of CUPPAD
300 W. Baraga Avenue	2950 College Ave.
Marquette, MI 49855	Escanaba, MI 49829

11) Captions

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

ATTEST:

City of Marquette

________________________________ By:________________________________
Karen Kovacs, City Manager

________________________________ Date:________________________________

CUPPAD Regional Commission

________________________________ By: ________________________________
Dotty LaJoye, Executive Director

________________________________ Date:________________________________

PART II -- TERMS AND CONDITIONS

A. TERMINATION OF CONTRACT FOR CAUSE.

If, through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Contract, the GRANTEE shall thereupon have the right to terminate this Contract by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONSULTANT under this Contract shall, at the option of the GRANTEE, become its property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the GRANTEE for damages sustained by the GRANTEE by virtue of any breach of the Contract by the CONSULTANT, and the GRANTEE may withhold any payments to the CONSULTANT for the purpose of set-off until such time as the exact amount of damages due the GRANTEE from the CONSULTANT is determined.

This contract for overall program administration will be automatically terminated if the application(s) is not funded by the MEDC, in which case CONSULTANT will not be entitled to any reimbursement for program administration either from the GRANTEE or the MEDC.

B. TERMINATION FOR CONVENIENCE OF THE GRANTEE

The GRANTEE may terminate this contract at any time by giving at least 10 days' notice in writing to the CONSULTANT. If the Contract is terminated by the GRANTEE as provided herein, the CONSULTANT will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the CONSULTANT, paragraph A hereof relative to termination shall apply.

This contract for overall program administration will be automatically terminated if the application(s) is not funded by the MEDC, in which case CONSULTANT will not be entitled to any reimbursement for program administration either from the GRANTEE or the MEDC.

C. CHANGES

The GRANTEE may, from time to time, request changes in the scope of the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the GRANTEE and the CONSULTANT, shall be incorporated in written amendments to this Contract. No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

D. PERSONNEL

a) The CONSULTANT represents that it has, or will secure at its own expense, all personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the GRANTEE.
b) All of the services required hereunder will be performed by the CONSULTANT or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
c) None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the GRANTEE. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

E. ASSIGNABILITY

The CONSULTANT shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the GRANTEE thereto. Provided, however, that claims for money by the CONSULTANT from the GRANTEE under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the GRANTEE.

F. REPORTS AND INFORMATION

The CONSULTANT, at such times and in such forms as the Grantee may require, shall furnish the GRANTEE such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

G. RECORDS AND AUDITS

The CONSULTANT shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the GRANTEE to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit or other financial reporting purposes to the GRANTEE or any authorized representative and will be retained for five years after the MEDC has officially closed-out the CDBG Program unless permission to destroy them is granted by the GRANTEE.

H. FINDINGS CONFIDENTIAL

All of the reports, information, data, et cetera, prepared or assembled by the CONSULTANT under this Contract are confidential and the CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of the GRANTEE.

I. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to CONSULTANT for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the GRANTEE and all such rights shall belong to the GRANTEE, and the GRANTEE shall be sole and exclusive entity who may exercise such rights.

J. COMPLIANCE WITH LOCAL LAWS

The CONSULTANT shall comply with all applicable laws, ordinances and codes of the state and local government, and the CONSULTANT shall hold the GRANTEE harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

K. CIVIL RIGHTS ACT OF 1964/EQUAL EMPLOYMENT OPPORTUNITY

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. During the performance of this Contract, the CONSULTANT agrees as follows:

a) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, handicap or familial status. The CONSULTANT will take affirmative steps to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, national origin, handicap or familial status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms or compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GRANTEE setting forth the provisions of this non-discrimination clause.
b) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT; state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, national origin, handicap or familial status.
c) The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
d) The CONSULTANT will comply with all provisions of Presidential Executive Order 11246 (Executive Order 11246) of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
e) The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the GRANTEE and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
f) In the event of the CONSULTANT's non-compliance with the equal opportunity clauses of this Agreement or with any such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies

invoked as provided by Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g) The CONSULTANT will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the GRANTEE may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the GRANTEE, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

L. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

M. "SECTION 3" COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c) The CONSULTANT agrees to send to each labor organization or representative of workers with which the CONSULTANT has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the CONSULTANT's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

d) The CONSULTANT agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The CONSULTANT will not subcontract with any subcontractor where the CONSULTANT has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

e) The CONSULTANT will certify that any vacant employment positions, including training positions, that are filled (1) after the CONSULTANT is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the CONSULTANT's obligations under 24 CFR Part 135.

f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

N. INTEREST OF MEMBERS OF THE GRANTEE

No member of the governing body of the GRANTEE and no other officer, employee, or agent of the GRANTEE who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the CONSULTANT shall take appropriate steps to assure compliance.

O. INTEREST OF OTHER LOCAL PUBLIC OFFICIALS

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the CONSULTANT shall take appropriate steps to assure compliance.

P. INTEREST OF CONSULTANT AND EMPLOYEES

The CONSULTANT covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The CONSULTANT further covenants that in the performance of this Contract, no person having any such interest shall be employed.

Q. ACCESS TO RECORDS

The MEDC grantor agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this specific contract for the purpose of audits, examinations, and making excerpts and transcriptions.

All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of 5 years from the official date of close out of the grant by the MEDC.

R. INSURANCE

a) Insurance shall be placed with insurers with an A.M. Best's rating of no less than A-.
b) This rating requirement shall be waived for Worker's Compensation coverage only.
c) CONSULTANT's Insurance: The CONSULTANT shall not commence work under this contract until it has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Michigan State agency. The CONSULTANT shall not allow any sub-contractor to commence work on a subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the CONSULTANT shall also submit copies of insurance policies for inspection and approval of the GRANTEE before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days' notice in advance to the GRANTEE and consented to by the GRANTEE in writing and the policies shall so provide.
d) Compensation Insurance: Before any work is commenced, the CONSULTANT shall maintain during the life of the contract, Workers' Compensation Insurance for all of the CONSULTANT's employees working on the project. In case any work is sublet, the CONSULTANT shall require the subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the CONSULTANT. In case any class of employees engaged in work under the contract is not protected under the Workers' Compensation Statute, the CONSULTANT shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.
e) Commercial General Liability Insurance: The CONSULTANT shall maintain during the life of the contract such Commercial General Liability Insurance which shall protect it, the GRANTEE, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the contract, whether such operations be by CONSULTANT or by a subcontractor, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability to the GRANTEE. Such insurance shall name the GRANTEE as additional insured for claims arising from or as the result of the operations of the CONSULTANT or its subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of $1,000,000.

f) Insurance Covering Special Hazards: Special hazards as determined by the GRANTEE shall be covered by rider or riders in the Commercial General Liability Insurance Policy or policies herein elsewhere required to be furnished by the CONSULTANT, or by separate policies of insurance in the amounts as defined in any Special Conditions of the contract included therewith.

g) Licensed and Non-Licensed Motor Vehicles: The CONSULTANT shall maintain during the life of the contract, Automobile Liability Insurance in an amount not less than combined single limits of $1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the contract on the site of the work to be performed there under, unless such coverage is included in insurance elsewhere specified.

h) Subcontractor's Insurance: The CONSULTANT shall require that any and all subcontractors, which are not protected under the CONSULTANT's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the CONSULTANT.

S. <u>APPLICABLE LAW</u>

This contract shall be governed by and interpreted in accordance with the laws of the State of Michigan. Venue of any action brought with regard to this contract shall be in the County of Marquette, State of Michigan.

T. <u>CODE OF ETHICS</u>

The CONSULTANT acknowledges that a code of ethics applies to the Contracting Party in the performance of services called for in this contract. The CONSULTANT agrees to immediately notify the state if potential violations arise at any time during the term of this contract.

U. <u>SEVERABILITY</u>

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

V. <u>COMPLETE CONTRACT</u>

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final approval by the City Commission.

W. <u>ENTIRE AGREEMENT & ORDER OF PRECEDENCE</u>

This contract together with the Request For Proposal and CONSULTANT's proposal which are incorporated herein; shall, to the extent possible, be construed to give effect to all of its provisions; however, where provisions are in conflict, first priority shall be given to the provisions of the contract, excluding the Request for Proposals, its amendments and the Proposal; second priority shall be given to the provisions of the Request for Proposals and its amendments; and third priority shall be given to the provisions of the CONSULTANT's Proposal.

<u>NOTE TO GRANTEE ON SCOPE OF SERVICES AND PAYMENT SCHEDULE:</u>

1. *The list of the scope of services is just an example. The grant recipient should delete any services not needed for this particular contract; or add services that are needed.*
2. *The use of unit and lump sum prices are just an example. The grant recipient may require all tasks be performed on a cost reimbursement basis. The grant recipient should insure that the unit price and/or lump sum price payment requirements are deleted from Part I Section 5 of the contract if they are not used.*
3. *Any use of unit and lump sum prices assumes the grant recipient has conducted the required (24 CFR 85.36(f)) cost price analysis according to the steps outlined in HUD's Quick Guide to Cost Price Analysis, found in Exhibit 6-5, and maintains sufficient detail [Exhibit 6-4 Excel] to establish the basis of the price (24 CFR 85.36(b)(9)).*

PART III – SCOPE OF SERVICES AND PAYMENT SCHEDULE

Scope of services to be provided are:

I. General Tasks

- Establish project files for the City of Marquette office. These files must demonstrate compliance with all applicable state, local, and federal regulations. The project files must be monitored throughout the program to ensure that they are complete.
- Assist city administration with conducting required public hearings and assist with public notices, presenting at hearings, securing hearing minutes and submitting documentation to the MEDC, etc.
- Assist the City of Marquette in establishing and maintaining a Section 3 plan and appropriate reports to meet compliance standards.
- Prepare, receive, and submit signed grant metric reports from the City of Marquette. These reports include but are not limited to: Progress Reports, Audit Reports, Section 3 Reports, any other reports necessary.
- Prepare and submit HUD 2516 and HUD 4710 reports.
- Prepare and submit for approval Community Development Block Grant Amendments as necessary and assist city administration with required public hearings information. If the project scope changes and the Environmental Review level is affected, review and assist in the preparation of the Environmental Review amendment documents or administrative paperwork to SHPO.
- Other general tasks as related to program compliance.

Total estimated hours for General Tasks: 60 hours

II. Financial Management

A. Work closely with City staff with the preparation of the CDBG Requests for Payment. Ensure the submissions of the CDBG payment requests are consistent with established City and CDBG program procedures. Submit payment requests to the MEDC.
B. Work closely with the City to ensure that the City of Marquette has an acceptable financial management system as it pertains to finances of the CDBG Program. An acceptable system includes, but is not limited to, cash receipts and disbursements journal and accompanying ledgers, and should conform to generally accepted principles of municipal accounting.
C. Make progress inspections.
D. Provide assistance as needed to the city during the annual audits of their CDBG project.

Total estimated hours for Financial Management: 80 hours

III. Procurement

A. Provide required procurement reports and assist the City of Marquette in obtaining approvals from MEDC as appropriate.
B. Collect and file procurement records including selection process, advertisements, reasons for selection, minutes from bid openings, etc.
C. Review and analyze proposals for qualifications, costs and other factors.
D. Collect and file contract agreements between the City of Marquette and the selected contractors. Collect and file insurance documentation related to the selected contractors.
E. Provide SAM and HUD Limited Deniability checks on selected contractors.
F. Provide annual Disadvantaged Business Enterprise report and other related procurement reports.

Total estimated hours for Procurement: 60 hours

IV. Construction and Labor Compliance

A. Assist the project engineer and or city staff with the preparation of bid documents as needed, review documents and ensure the bidding process is consistent with state and federal regulations.
B. Check payroll documentations.
C. Review Contractor Payment Application materials and ensure the Supplies and Labor amounts are present on all categories for reimbursement.
D. File contractor certifications and clearances, specific to lead and asbestos abatement.
E. Monitor administrative paperwork and check weekly payrolls to ensure compliance with equal opportunity labor provisions and Section 3 requirements.
F. Participate with city staff and project engineer in the final inspection of project.

Total estimated hours for Construction and Labor Compliance: 60 hours

V. Monitoring and Close Out

A. Attend and assist the City of Marquette during the MEDC's monitoring visit(s). Prepare the City of Marquette's response to all monitoring findings.
B. Prepare close-out documents.
C. Assist with notices of and document the Performance (close-out) Public Hearing.

Total estimated hours for Monitoring and Close Out: 40 hours

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
CDBG Development Agreement

BACKGROUND:

The City of Marquette has been awarded a Community Development Block Grant (CDBG) in the amount of $8 million for the demolition of a portion of the former Marquette General Hospital, owned by the Northern Michigan University Foundation (NMUF). CDBG funds are carefully regulated and have a significant number of guidelines for use and administration. While the City is neither the owner nor the contracting entity for the demolition of the hospital, it is the primary grantee from the State of Michigan and is ultimately the responsible entity for the funds.

In addition to the procurement of a certified grant administrator for this project, the City has also negotiated a development agreement specifically related to the use of the CDBG funds in order to clearly stipulate the terms for the transfer of funds to the NMUF as a sub-recipient of the grant.

FISCAL EFFECT:

None by this action.

RECOMMENDATION:

Approve the development agreement with the Northern Michigan University Foundation, and authorize the Mayor and City Clerk to sign.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

	Description
🗋	Development Agreement

SUBRECIPIENT DEVELOPMENT AGREEMENT

SUBRECIPIENT DEVELOPMENT AGREEMENT

BETWEEN

CITY OF MARQUETTE, MICHIGAN and

THE NORTHERN MICHIGAN UNIVERSITY FOUNDATION

This Subrecipient Development Agreement (the "**Agreement**"), dated as April 24 2023 ("**Effective Date**"), is entered into between the CITY OF MARQUETTE, MICHIGAN, a Michigan municipal corporation ("**City**,") and THE NORTHERN MICHIGAN UNIVERSITY FOUNDATION a Michigan nonprofit corporation ("**Foundation**").

RECITALS

A. The Foundation has proposed its demolition of a collection of buildings ("**Obsolete Buildings**") located at the common address of 420 West Magnetic Street, Marquette, Michigan, which are part of what is colloquially known as the former Marquette General Hospital (all such real property, the "**Property**" and/or "**Project Site**"). The Obsolete Buildings are a part of a collection of 11 buildings spread over 17.05 acres that served as the regional hospital for the central Upper Peninsula until 2019. The specific project area in which the Obsolete Buildings are located encompasses a city block, bounded by N. Seventh St. to the west, W. College Ave. to the north, Hebard Ct. to the east, and W. Magnetic St. to the south. The following buildings, as depicted and identified in the map attached as *Schedule 1*, attached hereto, comprise the Obsolete Buildings: West, 1981, JCM, 1969, 1984, MRI, St. Luke's, Wallace, and the Boiler Plant. Demolition of the Obsolete Buildings is referred to in this Agreement as the "**Demolition Project**".

B. The Foundation also has plans for future development of the Property which includes development of residential and retail property (the Demolition Project and further development of the Property, the "**Long Term Redevelopment Project**"). Though the Foundation may engage in a partnership for the future development of the Property, it will not engage in any partnership in connection with the Demolition Project, and the Foundation will be the entity engaging and contracting with the general contractor to perform the Demolition Project (such general contractor engaged to perform the Demolition Project, "**Contractor**").

C. The City and the Fund Manager of the Michigan Strategic Fund ("**Grantor**"), in connection with the proposed Project, have entered into that certain State of Michigan Economic Development Grant Agreement Between the Michigan Strategic Fund and the Community Development Block Grant Program for GRANT NO. MSC 222028-ESB ("**CDBG Agreement**") which is attached hereto as *Schedule 2*. The CDBG Agreement obligates the Foundation to comply with all the provisions, requirements and obligations imposed on the City by the CDBG Agreement, and the Foundation has agreed to accept such requirements and obligations.

D. The CDBG Agreement is intended to facilitate and fund the Demolition Project by providing up to $8,000,000 in reimbursement of qualified costs for the Demolition Project (such funds, "**Designated CDBG Funds**"). If the Foundation complies with all the terms of this Agreement, the City will disburse to the Foundation, to the extent such funds are delivered to the City by the Grantor, the Designated CDBG Funds as a reimbursement for the Foundation's qualified costs.

E. The City and the Foundation now wish to enter into this Agreement to establish those obligations of the Foundation with respect to the Demolition Project and the terms pursuant to which any Grant Funds shall be provided to the Foundation by the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

1. DEFINITIONS

Those capitalized terms which are not defined within this Agreement shall be deemed to have the definitions provided in the CDBG Agreement.

2. CERTIFICATIONS

The Foundation certifies to the City that:

(a). There has been no known adverse material change in the business, property, financial or other conditions of the Foundation since the date of the grant application, unless expressly acknowledged by the Foundation in writing to the City and Grantor, and should there be an adverse material change in the business, property (taking into account the intended impact of the Property given this is a Demolition Project), financial or other conditions of the Foundation occurring on or after the date of this certification, the Foundation shall inform the City and Grantor immediately in writing of such material change.

(b). The Designated CBDG Funds will be used only as set forth in the Grant Agreement, including Section A(2) of the Grant Agreement and the attached Special and General Terms and Conditions, for the Demolition Project.

(c). The Foundation has provided to the City a copy of the complete and accurate **Environmental Review Record** (including the **Environmental Assessment**), as such terms are defined in the Grant Agreement.

(d). Any submission of a Request of Release of Funds and Certification is a representation and certification by the Foundation of the local completion of the environmental review procedures and requirements as set forth in 24 CFR Part 58, "Environmental Review Procedures for Title I Community Development Block Grant Program," issued by the U.S. Department of Housing and Urban Development.

(e). All contractors working on the Demolition Project will be CDBG eligible and properly licensed, bonded, and insured, as required by the Grant Agreement.

(f). Any consultant, supplier, or contractor engaged by the Foundation in connection with the Demolition Project or the Environmental Assessment shall comply with the procurement process required by 2 CFR 200.320, including any applicable requirements in Section B(2) of the Grant Agreement. Without limiting the provisions above, the Foundation represents and warrants to the City that its engagement (or proposed engagement if instead applicable) of the Adamo Group for the Demolition Project has and/or will comply with all processes and requirements established by federal and state statutes and regulations.

(g). Neither the Foundation nor any of its affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in the Foundation of twenty percent (20%) or more (i) has any criminal convictions incident to the application for or performance of a state contract or subcontract; and (ii) has any criminal convictions or has not been held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal anti-trust statutes.

(h). The Demolition Project will not include any of the following:

a. construction activities, either on or off private property;
b. installation of machinery and equipment or any other personal property;
c. acquisition, including donations, of real estate, permanent easements and/or right-of-ways, or the relocation of persons, families or farms;
d. demolition or conversion of an occupied dwelling unit or a vacant occupiable dwelling unit, or
e. any acquisition of real property.

3. ACKNOWLEDGEMENTS

(a). The Foundation acknowledges that the Grant is dependent upon the Grantor's continued receipt of Community Development Block Grant funds and the availability of adequate funds, and that the City is, and will be, in no way responsible to the Foundation if the Grant, or any portion thereof, is not delivered by Grantor to the City. The Grant Offer does not commit the Grantor or the City to approve requests for additional funds during or beyond the Grant.

(b). The Grant Offer executed between the City and Grantor does not commit the Grantor to approve requests for additional funds during or beyond this grant or City to make any request to the Grantor for any extensions or additional time or any additional funds.

(c). Pre-Agreement Costs must be authorized in writing by Grantor. Designated CBDG Funds will only be made available for the Foundation's eligible expenses incurred in connection with the Demolition Project which are incurred during the Term established in the Grant Agreement and in accordance with the Grant Agreement.

(d). The Grantor and/or the City shall have the right at any time to require the Foundation to provide additional documentation to ensure that the Scope of Work (as defined in the Agreement) can be met.

(e). The Grantor may, in its sole discretion, modify or reduce the total amount of grant assistance offered for the Demolition Project, or modify or termination the Grant Agreement, and the City shall in no way be liable or responsible to the Foundation for any such modification, reduction or termination.

(f). MCL 423.324, the State of Michigan may void any contract if, subsequent to the award of the contract (including the Grant Agreement), the name the Foundation as an employer, or the name of any subcontractor, manufacturer, or supplier of the Foundation appears in the register.

(g). In the event that federal laws, statutes, rules or regulations related to HUD or CDBG funding require a change to the Grant Agreement (and the City then requires a change to this Agreement), the Grant Agreement and this Agreement shall be immediately interpreted, modified, applied and enforced consistent with those changes as though they were in the original Grant Agreement and this Agreement. The Foundation will execute an amendment to this Agreement as soon as possible without unreasonable delay reflecting such changes.

4. INCORORATION OF OBLIGATIONS OF GRANTEE

(a). Article III of the Grant Agreement states "*Where the term "Grantee" appears in this Grant Agreement it shall be read to include any sub recipient or contractor of the Grantee*." Thus, as the sub recipient of the Designated CDBG Funds, the Foundation agrees that in each and every instance within the Grant Agreement creating an obligation, responsibility, warranty, and/or representation ("CDBG Obligation" and collectively, "CDBG Obligations") of the City, such shall be deemed a CDBG Obligation of the Foundation as applicable. Further, the Foundation agrees that it will be bound by such and shall satisfy all such CDBG Obligations, as applicable.

(b). Without in any way limiting the above, this Agreement establishes certain responsibilities, obligations, acknowledgements, representations and warranties of the Foundation ("Agreement Obligations"). In the event that any of the terms or provisions of this Agreement would conflict with, or cause any ambiguity between, the CDBG Obligations and the Agreement Obligations, the Agreement Obligations shall be deemed in addition to the CDBG Obligations to be performed and satisfied by the Foundation, and neither shall be deemed to limit the other.

5. RESPONSIBILITY FOR CONTRACTORS AND DEMOLITION PROJECT

The Foundation shall ensure that all of the following requirements are fully satisfied:

(a). All contractors and subcontractors or service providers working on the

Demolition Project shall be CDBG eligible and properly licensed, bonded, and insured, as required by the Grant Agreement;

(b). The Foundation, its contractor(s) and their subcontractors shall name the City as an Additional Insured for any work related to the Demolition Project;

(c). All contractors, and all subcontractors shall perform and complete any activities in compliance with all applicable state and local building codes, and shall secure all necessary permits and (if applicable) certificates from City and any other governmental entities with applicable jurisdiction, and

(d). Prior to a disbursement of the Grant, the Foundation shall provide for approval by the Grant Administrator;

i. Executed prime and subcontractor contracts; and

ii. Invoice verification of demolition costs being incurred by the prime contractor.

Without limiting the provisions of Section 4 above, The Foundation shall comply and ensure its contractors compliance with prohibitions of Article III, Section 11 and the compliance requirements of Article III, Section 2.

6. NON-DISCRIMINATION – UNFAIR LABOR PRACTICES

(a). In connection with this Agreement and the Demolition Project, the Foundation agrees not to discriminate against any employee or applicant for employment, with respect to its hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex (including sexual orientation and gender identity or expression as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, physical or mental disability, or genetic information (as defined in Executive Directive 2019-09) that is unrelated to the individual's ability to perform the duties of the particular job or position. The Foundation further agrees that every subcontract or sub-recipient agreement entered into for performance of this Agreement will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor. This covenant is required, as applicable under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and is consistent with Executive Directive 2019-09, and any breach thereof may be regarded as a material breach of this Agreement. The Foundation shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in the register (as updated) of employers failing to correct an unfair labor practice compiled under MCL 423.322. The United States Labor Relations Board compiles this information.

7. FOUNDATIONS OBLIGATIONS FOR REPORTS

(a). The Foundation shall provide Program Progress Reports beginning June 15, 2023 and every six (6) months thereafter

(b). The Foundation shall provide a final Payment Request within 90 days of the expiration of the Term. The Foundation acknowledges that Payment Requests received after this time will not be processed.

(c). The Foundation shall provide a final Program Progress Report and all other required close out documents specified by the MSF within 90 days of the expiration of the Term.

(d). During each of the Foundation's fiscal years in which a disbursement of the Grant is made under this Agreement, the Foundation shall file an Audit Report. This Audit Report must be prepared by an independent auditor, and be in compliance with the requirements of 2 CFR Part 200, or as required by the Grant Administrator. This Audit Report shall be provided to the City within 30 days after completion of the audit, but not later than eight months following the close of the Foundation's fiscal year. To the extent that the Audit Report applies solely to the City, the City shall satisfy and/or cooperate with such portion of the Audit Report.

(e). The Foundation shall maintain records which will allow assessment of the extent of the Foundation's performance of the Scope of Work and which allow for the comparison of actual outlays with budgeted amounts. The Foundation's overall financial management system must ensure effective control over, and accountability for, all funds received. Accounting records must be supported by source documentation such as time sheets and invoices. The Foundation shall retain all financial records, supporting documents, statistical records, and all other pertinent records until notified by the Grantor.

(f). The Foundation will cooperate with the Grantor to promote the Grant Activities through one or more of the placement of a sign, plaque, media coverage or other public presentation at the project or other location acceptable to the Grantor and the City.

8. INDEMNITY:

(a). The Foundation hereby release the City and its respective members, officers, directors, employees, agents, and attorneys (hereinafter collectively referred to as "**Indemnified Parties**") and agrees to indemnify, defend and hold harmless the City and the Indemnified Parties from any Claims arising out of or related to the Application, the Grant Agreement, the Grant, the Demolition Project, the Long Term Development Project and the Property and any act or omission of the Foundation in connection with, the performance of this Agreement, and for all losses arising from implementation of this Agreement.

"**Claims**" is defined as any and all foreseeable or unforeseeable claims, suits, proceedings, actions, liabilities, expenses, losses, costs, deficiencies, fines, penalties, judgments or damages (including consequential or punitive damages) of any kind or nature and out of pocket legal or other expenses including, without limitation reasonable attorneys' fees and expense ("**Release**

and Indemnification") The above Release and Indemnification shall include without limitation the following:

i. Grantor determines, in its sole discretion, whether or not accurately and whether or not disputed by the Foundation, that the Foundation has violated, failed, or refused to comply with, any term, condition, or provision of the Grant Agreement.

ii. The Grantor requires any repayment of the Grant.

iii. Any contractor, subcontractor, service or other person makes a Claim against the City in connection with the Demolition Project or the Long Term Development Project.

In the event that the Foundation defaults on any CDBG Obligations or Agreement Obligations, the City shall have the right, but not the obligation, to terminate this Agreement and the Grant Agreement and require the Foundation to repay to the Grantor all amounts disbursed under the Grant Agreement by the Grantor. The Foundation shall make all repayments required by the City or the Grantor within 10 days of notice of such repayment requirement.

9. PAYMENT TERMS:

(a). Prior to the Foundation receiving any tender of proceeds of the Grant, the Foundation must provide a current completed Form W-9.

(b). The Foundation must provide required documentation pursuant to state and federal guidelines for CDBG program funding.

(c). The City will use good faith efforts to tender any Grant proceeds to the Foundation within [30] days of its receipt of such funds from Grantor.

10. MISCELLANEOUS:

a. Amendments. Changes to this Agreement shall not be effective or binding unless in writing and signed by both parties to the Agreement.

b. Applicable Law. This Agreement shall be interpreted pursuant to the laws of the State of Michigan.

c. Divisibility. The invalidity of any one or more phrases, sentences, clauses, or paragraphs contained in this Agreement shall not affect the remaining portion of this Agreement, or any part thereof. Further, various headings included in this Agreement exist purely as an aid to locate particular wording, and do not in and of themselves in any way affect the substance of this Agreement.

d. Counterparts: This Agreement may be executed in counterparts, all of which taken together as a whole, shall constitute one original document. For purposes of facilitating the execution of this Agreement, an electronic copy (e.g. fax, pdf format or email) of a handwritten signature of either party hereto shall be deemed an original. Electronic copies of this Agreement may be delivered by way of email and Grantee and the Authority agree that electronic or digital signatures by way of digital signature programs such as Docusign or AdobeSign shall be acceptable and deemed an original signature.

e. Notices. Any communication required or permitted by this Agreement must be in writing. Any communication shall be either delivered overnight by a nationally recognized courier as follows:

If to the Foundation:

Brad Canale, Chief Executive Officer
NMU Foundation
607 Cohodas Hall
1401 Presque Isle Avenue
Marquette, Michigan 49855

If to City:

Karen Kovacs, City Manager
City of Marquette
300 W. Baraga Avenue
Marquette, NMI 49855

IN WITNESS WHEREOF, the parties hereto have executed this SUBRECIPIENT AGREEMENT effective as of the date above.

CITY OF MARQUETTE , MICHIGAN:

By: ______________________________

Title: ______________________________________

Date: ______________________________________

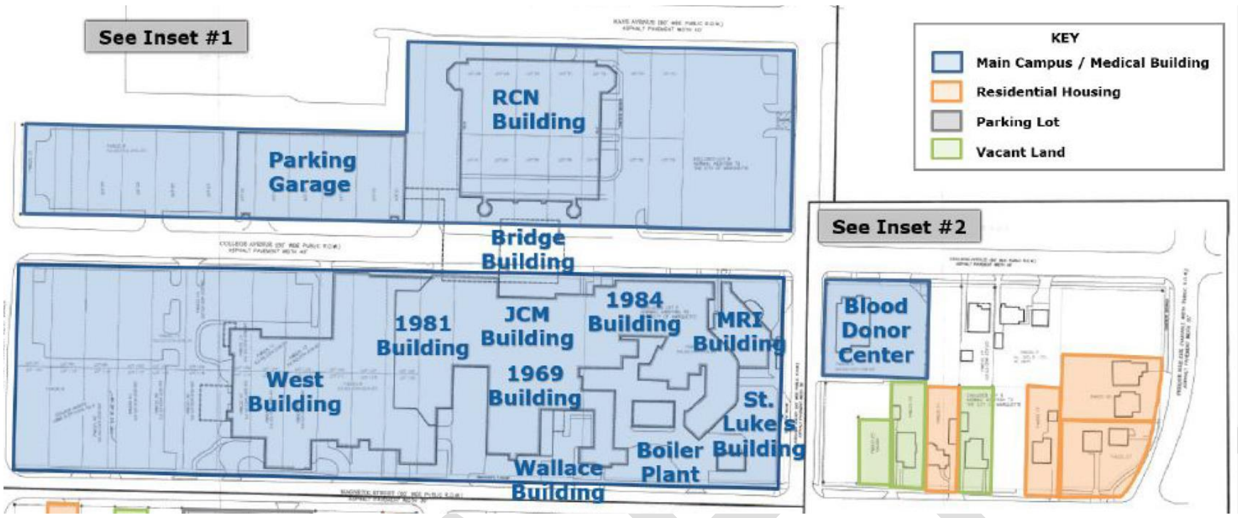
THE NORTHERN MICHIGAN UNIVERSITY FOUNDATION

By: ______________________________

Title: ______________________________

Date: ______________________________

SCHEDULE 1
Depiction of Project Site



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SCHEDULE 2
Grant Agreement

GRANT NO. MSC 222028-ESB

STATE OF MICHIGAN

COMMUNITY DEVELOPMENT GRANT AGREEMENT

BETWEEN THE

MICHIGAN STRATEGIC FUND

AND THE

CITY OF MARQUETTE

STATE OF MICHIGAN

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

TABLE OF CONTENTS

I. GRANT OFFER FOR MICHIGAN CDBG NO. MSC 222028-ESB

The Fund Manager of the Michigan Strategic Fund (the "Grantor"), acting pursuant to Resolution 2023-021 of the Michigan Strategic Fund Board, hereby offers to the City of Marquette (the "Grantee"), grant assistance subject to the Grant Agreement.

The maximum amount of grant assistance hereby offered for blight elimination and related activities, including environmental review, is $8,000,000 (the "Grant"). The maximum amount of grant assistance hereby offered for administration is $30,000. If the actual cost is less than shown in the Total Authorized Budget (See Section II(A)(1)), the amount of the Grant shall be reduced. The Grantee shall be responsible for any cost overruns.

The term of work performance shall be twenty-four (24) months from April 1, 2023 through March 31, 2025 (the "Term"), plus additional time to meet reporting or other procedural requirements.

If demolition will not start by July 1, 2023 (the "Commencement Period"), then the Grantee must seek and receive in writing an extension of the Commencement Period from the Grant Administrator prior to the expiration of the Commencement Period, otherwise this Grant Agreement shall terminate and no longer be in effect. In the event this Grant Agreement is terminated as set forth herein, the Grantee must request that the Grant be reapproved by the MSF Board before it may be reinstated.

The Grantee hereby certifies that there has been no known adverse material change in the business, property, financial or other conditions of the Northern Michigan University Foundation (the "Property Owner") since the date of the grant application, unless expressly acknowledged in writing to the Grantor. Should there be an adverse material change in the business, property, financial or other conditions of the Property Owner occurring on or after the date of this certification, the Grantee shall have an obligation to inform the Grantor immediately in writing of such material change.

The Grant is dependent upon the Grantor's continued receipt of Community Development Block Grant funds and the availability of adequate funds. This Grant Offer does not commit the Grantor to approve requests for additional funds during or beyond this grant.

The foregoing Grant Offer is hereby accepted, and it is agreed that the funds made available will be used only as set forth herein and in the attached Special and General Terms and Conditions. The signatories below warrant that they are empowered to enter into this Agreement.

Dated this _____ day of ___________, 2023	Dated this _____ day of __________, 20XX
________________________________	________________________________
Valerie Hoag Fund Manager Michigan Strategic Fund	Karen Kovacs City Manager City of Marquette

Counterparts; Facsimile, Electronic and PDF Signatures; Copies – This Agreement may be executed in any number of counterparts, each of which, when executed shall be deemed an original, and all of which together, shall constitute one and the same agreement. This agreement may be delivered by facsimile, or PDF or other electronic format and in such circumstances, may be relied upon to the same extent as though such copy was an original.

II. SPECIAL TERMS AND CONDITIONS

For Michigan CDBG under Title I of
the Housing and Community Development Act of 1974, as amended.
CFDA #: 14.228 Community Development Block Grants / State's Program & Non-Entitlement Grants in Hawaii

GRANT NO.:	MSC 222028-ESB
GRANTEE:	City of Marquette 300 W. Baraga Avenue Marquette, MI 49855 Karen Kovacs, City Manager, 906-225-8102
DUNS NUMBER:	DUNS #074776063
GRANT ADMINISTRATOR:	Michigan Economic Development Corporation 300 North Washington Square Lansing, Michigan 48913 Greg West: westg2@michigan.org
FFATA PROJECT DESC.:	Marquette site demolition and clearance.
TERM:	April 1, 2023 – March 31, 2025
GRANT FUNDING YEAR:	2021
FEDERAL AWARD:	FAIN: B-21-DC-26-0001 Date: 08/16/2021 Department of Housing & Urban Development Assistant Secretary of Community Planning & Development (202) 708-1112

A. TOTAL AUTHORIZED BUDGET

1. Sources of funds for the project under this Grant Agreement consist of:

Grantor (CDBG) Cash Contributions	$8,030,000
TOTAL	$8,030,000

2. Application of funds to the project supported under this Grant Agreement consists of:

   PLEASE REFER TO ATTACHMENT A FOR THE AUTHORIZED BUDGET FOR THIS PROJECT.

3. Pre-Agreement Costs must be authorized in writing. Unless previously authorized as indicated below, the Grant will only be made available for the Grantee's eligible expenses, which occur during the Term, in accordance with the Grant Agreement.

Date	Source	Activity	Amount
4/6/2023	Grantor (State)	Administration Costs	$22,500
9/22/2022	Grantor (State)	Environmental Review	$11,320

B. SCOPE OF WORK

The Scope of Work of the Grantee under this grant shall be to undertake and complete the following activities, as further detailed in the Grantee's Application received August 5, 2022, subject to the limitations set forth in the Grant Agreement and applicable federal and state laws, rules and regulations:

1. Prior to the commitment of any project funds, incurring any project costs, and Grantor disbursement of the Grant, the Grantee shall provide for approval by the Grant Administrator a copy of the complete Environmental Review Record (including the Environmental Assessment), and secure written approval by the Grant Administrator for the Request for Release of Funds and Certification. The Request for Release of Funds and Certification represents local completion of the environmental review procedures and requirements as set forth in 24 CFR Part 58, "Environmental Review Procedures for Title I Community Development Block Grant Program," issued by the U.S. Department of Housing and Urban Development. Project costs include costs to be paid by the Grant and other local, public and private funds.

2. If the Grantee will be engaging the consultant, supplier, or contractor then the Grantee shall comply with the procurement process required by 2 CFR 200.320. Among other things, this regulation applies to all CDBG funded engineering and consultant contracts as well as all CDBG funded construction contracts.

    a. For supplies and service contracts such as engineering and consulting less than or equal to $150,000, the Small Purchase Procedures as provided in 2 CFR 200.320(b) may be used. In accord with this regulation and prior to Grantor disbursement of the Grant, the Grantee shall provide for approval by the Grant Administrator documentation that price or rate quotations were obtained from an adequate number of qualified sources and a copy of the executed contract.

    b. For supplies and service contracts such as engineering and consulting greater than $150,000, Grantee must use competitive negotiation through a Request for Proposal (RFP) or Request for Qualifications (RFQ) process as provided in 2 CFR 200.320(d). In accord with this regulation and prior to Grantor disbursement of the Grant, the Grantee shall provide for approval by the Grant Administrator a copy of the locally published RFP / RFQ, a list of respondents to the RFP / RFQ, Grantee's evaluation and recommendation for the award of the contract(s), and the executed contract(s).

    c. For construction related contracts, Grantee must use the procurement by Sealed Bids Process as provided in 2 CFR 200.320(c). In accord with this regulation and prior to Grantor disbursement of the Grant, the Grantee shall provide for approval by the

Grant Administrator a copy of the locally published advertisement for bids and the bid tabulation.

3. If the Grantee will not be engaging any consultant, supplier, or contractor, then the procurement process required by 2 CFR 200.320 shall not apply. The Grantee shall ensure that payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials are furnished.

4. If the project uses the Grant for demolition to be followed by on-site construction activities, the Grantee shall provide for approval by the Grant Administrator a copy of all bidding documents or other evidence of compliance with federal labor standards for all construction activities financed in whole or in part with the Grant. Such approval must be secured prior to Grantor disbursement of the Grant for relevant construction activities.

5. If the project involves the installation of machinery and equipment and the installation cost is greater than 20% of the total cost of the machinery and equipment, the Grantee shall provide for approval by the Grant Administrator a copy of all bidding documents or other evidence of compliance with federal labor standards for all installation activities financed in whole or in part with CDBG funds. Such approval must be secured prior to Grantor disbursement of the Grant.

6. If the project uses the Grant for construction activities on private property, the Grantee shall provide for approval by the Grant Administrator a copy of all bidding documents or other evidence of compliance with federal labor standards for all construction activities financed with any other matching funds on said private property. Such approval must be secured prior to Grantor disbursement of the Grant.

7. If the project involves acquisition, including donations, of real estate, permanent easements and/or right-of-ways, or the relocation of persons, families or farms, the Grantee shall provide for approval by the Grant Administrator documentation of compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970. Such approval must be secured prior to Grantor disbursement of the Grant.

8. If the project involves the demolition or conversion of an occupied dwelling unit or a vacant occupiable dwelling unit, the Grantee shall provide for approval by the Grant Administrator documentation of compliance with Section 104(d) of the Housing and Community Development Act of 1974. Such approval must be secured prior to Grantor disbursement of the Grant.

9. If the Project involves acquiring real property in whole or in part using Grant funds in excess of $150,000, the Grantee shall provide for approval by the Grant Administrator a Real Property Management Report (RPMR) prior to Grantor disbursement of the Grant, annually, at close out, and when the property is no longer needed for its original purpose.

   If the real property acquired with the Grant is no longer needed for its original purpose at any time during the project and up to five years from close out, the Grantee shall request disposition instructions from the Grantor prior to disposing of the real property acquired or improved in whole or in part with the Grant. Depending on the disposition request, the Grantee may be required to return a portion of the Grant to the Grantor.

10. If the Project involves acquiring personal property in whole or in part using Grant funds in excess of $150,000, the Grantee shall provide for approval by the Grant Administrator a Personal Property Management Report (PPMR) prior to disbursement of the Grant, annually, at close out, and when the property is no longer needed for its original purpose.

    If the personal property acquired with the Grant is no longer needed for its original purpose at any time during the project and after project close out, the Grantee shall request disposition instructions from the Grantor prior to disposing of the personal property acquired in whole or in part with the Grant. Depending on the current per unit fair market value of the personal property, the Grantee may be required to return a portion of the Grant to the Grantor.

11. Grantee is responsible for ensuring that all contractors working on the project are CDBG eligible and properly licensed, bonded, and insured.

12. The Grantee, all contractors, and all subcontractors shall ensure that any construction or rehabilitation implemented pursuant to the terms and conditions of this Agreement shall meet all applicable state and local building codes.

13. The Grantee, all contractors, and all subcontractors shall secure in a timely manner all necessary certificates and permits from municipal or other public authorities as required in connection with the performance of this Agreement.

14. The Grant must be requested on a reimbursement basis or when there is an immediate cash need for the funds.

15. Vendor Registration. To receive payments under this Agreement, the Grantee must register as a vendor with the State. All required payments will be made via electronic funds transfer.

16. In the event of any adverse material change in the business, property, financial or other conditions of the Property Owner shall immediately notify in writing the Grantee and Grantor. The Grantor reserves the right at any time to request additional documentation to ensure that the Scope of Work can be met.

17. The Grantee shall expend up to $8,000,000 of the Grant for site demolition related activities. This structure is blighted as defined by Michigan Law, MCL 125.2652. The project activities are further described in Attachment B.

18. The Grantee shall expend up to $30,000 for administration, including 3rd Party Environmental contracts.

19. The national objective compliance for the acquisition of real property must be based on the use of the property after the acquisition takes place. The initial determination is based on the planned use of the property, but the final determination is based on the actual use.

20. When property is acquired for the purpose of clearance to remove specific conditions of blight or physical decay, the clearance is considered to be the actual use of the property. Any subsequent use made of the property following clearance must comply with Section II(B)(9).

21. Prior to incurring construction costs, the Grantee shall:

    a. Receive written release of funds for construction activities.

22. Prior to a disbursement of the Grant, the Grantee shall provide for approval by the Grant Administrator:

    a. Executed prime and subcontractor contracts; and

    b. Invoice verification of demolition costs being incurred by the prime contractor.

23. The Grantor may, in its sole discretion, after discussion with representatives of the Grantee, modify or reduce the total amount of grant assistance offered under this Agreement or terminate this Agreement and demand full repayment of disbursed grant proceeds if the Grantee violates, fails, or refuses to comply with any term, condition, or provision of this Agreement.

24. The Grantee shall provide Program Progress Reports beginning July 15, 2023 and every six (6) months thereafter.

25. The Grantee shall provide a final Payment Request within 60 days of the expiration of the Term. Payment Requests received after this time will not be processed.

26. The Grantee shall provide a final Program Progress Report and all other required close out documents specified by the MSF within 120 days of the expiration of the Term.

27. The Grantee shall provide documentation that at least one public hearing was held after grant award and prior to formal grant closeout. Such documentation shall be provided prior to formal grant closeout.

28. During each of the Grantee's fiscal years in which a disbursement of the Grant is made under this Agreement, the Grantee shall file an Audit Report. This Audit Report must be prepared by an independent auditor, and be in compliance with the requirements of 2 CFR Part 200, or as required by the Grant Administrator. This Audit Report shall be filed with the Grant Administrator within 30 days after completion of the audit, but not later than nine months after the close of the Grantee's fiscal year.

29. Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in 2 CFR Part 200, as applicable.

30. A risk assessment has been completed for this project. Based on the assessment, it has been determined that no additional grant terms are required./Based on the assessment, the following grant terms are required to minimize identified areas of potential risk:

    a. Execute a Development Agreement with the Property Owner; and

    b. Contract with a Certified Grant Administrator;

31. Non-Discrimination and Unfair Labor Practices. In connection with this Agreement, the Grantee and the Property Owner agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex (including sexual orientation and gender identity or expression as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, physical or mental disability, or genetic information (as defined in Executive Directive 2019-09) that is unrelated to the individual's ability to perform the duties of the particular job or position. The Grantee and the Property Owner further agrees that every subcontract or sub-recipient agreement entered into for performance of this Agreement will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor. This covenant is required, as applicable under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and is consistent with Executive Directive 2019-09, and any breach thereof may be regarded as a material breach of this Agreement.

    Under 1980 PA 278, MCL 423.321, *et seq*., the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. The United States Labor Relations Board compiles this information. The Company shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, subsequent to the award of the contract, the name of the Company as an employer, or the name of a subcontractor, manufacturer, or supplier of the Company appears in the register.

III. GENERAL TERMS AND CONDITIONS

1. Applicability to Sub Recipients and Contractors: Where performance of the grant project is carried out by any sub recipient or contractor of the Grantee, the provisions of the Grant Agreement shall be made binding on such sub recipient or contractor by the Grantee. This shall be accomplished by a written agreement or contract between the Grantee and sub recipient or contractor. Where the term "Grantee" appears in this Grant Agreement it shall be read to include any sub recipient or contractor of the Grantee.

   The ultimate legal responsibility for insuring compliance with requirements of the Grant Agreement is that of the Grantee designated in the Grant Offer.

2. Compliance by the Grantee: The Grantee shall comply with all applicable provisions of the following:
   a. "Statement of Assurances" as included in the Application.
   b. Compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended.
   c. Compliance with Title I of the Housing and Community Development Act of 1974, as amended (Fair Housing).

3. Maintenance of Records: The Grantee shall maintain records which will allow assessment of the extent of Grantee performance of the Scope of Work and which allow for the comparison of actual outlays with budgeted amounts. The Grantee's overall financial management system must ensure effective control over, and accountability for, all funds received. Accounting records must be supported by source documentation such as time sheets and invoices.

4. Retention of Records: The Grantee shall retain all financial records, supporting documents, statistical records, and all other pertinent records until notified by the MSF.

5. Publicity: At the request and expense of the Grantor, the Grantee will cooperate with the Grantor to promote the Grant Activities through one or more of the placement of a sign, plaque, media coverage or other public presentation at the project or other location acceptable to the Parties.

6. Applicability of Federal Regulations: In the event that federal laws, statutes, rules or regulations related to HUD or CDBG funding require a change to this Grant Agreement, this Grant Agreement shall be immediately interpreted, modified, applied and enforced consistent with those changes as though they were in the original Grant Agreement. Those changes shall be incorporated into this Grant Agreement in writing as soon as possible without unreasonable delay by any party.

7. Amendments. The Grantee must obtain prior written approval of the Grant Administrator for grant amendments as follows:

   a. changes of substance in the Scope of Work including new activities or alterations of existing approved activities;

b. extensions to the term of work performance for completion of project activities;

c. for Grants of less than $100,000, cumulative changes among approved CDBG funded budget items which exceed $5,000 or five (5) percent of the Grant, whichever is the lesser amount; and

d. for Grants of $100,000 or more, cumulative changes among approved CDBG funded budget items which exceed $10,000 or five (5) percent of the Grant, whichever is the lesser amount.

The amendment request must be submitted by an authorized local official of the Grantee.

8. Suspension of Grant: When the Grantee has failed to comply with the grant award stipulations, standards, or conditions, or in the event of an adverse material change as to the Property Owner as provided in Section II(B)(16), the Grantor may, on reasonable notice to the Grantee, suspend the grant and withhold further payments, or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate in accordance with these Terms and Conditions. The Grantor will allow all necessary and proper costs, which the Grantee could not reasonably avoid during the period of suspension, provided they meet the provisions of 2 CFR Part 200.

9. Termination for Cause: The Grantor may terminate this grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant or in the event of an adverse material change as to the Property Owner as provided in Section II(B)(16). The Grantor will promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients, or recoveries by the Grantor, will be in accordance with the legal rights and liabilities of the parties.

10. Termination for Convenience: The Grantor or the Grantee may terminate this grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of the Grant. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligation for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor will allow full credit to the Grantee for the Grantor's share of the noncancelable obligations that were properly incurred by the Grantee prior to termination.

11. The Grantee and political subdivisions, agencies, and instrumentalities thereof, when engaged in letting contracts or procuring products or services which involved funds obtained from the Grantor shall ensure that bid specifications, project agreements, other controlling documents, and any other local requirements do not:

a. require bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects;

b. discriminate against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations on the same or related construction projects; or

c. require any bidder, offeror, contractor, or subcontractor to enter into, adhere to or enforce any agreement that requires its employees as a condition of employment to:

    i. become members of or become affiliated with a labor organization; or

    ii. pay dues or fees to a labor organization, over an employee's objection, in excess of the employee's share of labor organization costs relating to collective bargaining, contract administration or grievance adjustment.

12. The MSF, the State of Michigan, its board and its employees shall not in any manner be liable for any loss or damage connected to or resulting from activities conducted under this Agreement; nor for any injury or damages to any person whether an employee of the Grantee or otherwise, or for damage to any materials, equipment, or other property that may be used or employed in connection herewith.

13. The parties hereby agree that the invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions thereof.

14. <u>Prohibit Use of Grant Disbursements</u>: The Grantee shall not use any Grant Disbursements for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce the Company, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the US, or to fund an entity incorporated in a tax haven country, as prohibited by the Act (see MCL 125.2088c(4)(c), (d), and (e)).

15. <u>Criminal or Civil Matters</u>: The Grantee affirms that to the best of its knowledge that it or its Affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in the Company of Twenty percent (20%) or more: (i) do not have any criminal convictions incident to the application for or performance of a state contract or subcontract; and (ii) do not have any criminal convictions or have not been held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes.

IV. ACKNOWLEDGEMENT AND CERTIFICATION BY PROPERTY OWNER

The Northern Michigan University Foundation (the "Property Owner) acknowledges receipt of a copy of the Grant Agreement MSC 222028-ESB, together with all attachments. It is understood that the CDBG financed portion of the project will provide funding for blight elimination through the complete demolition, including asbestos and environmental contaminant abatement, of the specific buildings identified in Attachment B of this agreement in the project area, that only demolition related costs incurred and invoiced via the prime contractor will be eligible for reimbursement, and only demolition activities identified in Attachment B of this agreement will be completed during the term of work of this agreement prior to written authorization by CDBG staff.

Therefore, the Property Owner agrees to abide by the terms of the Grant Agreement.

In the event of any adverse material change in the business, property, financial or other conditions of the Property Owner agrees to immediately notify in writing the Grantee and Grantor and to provide Grantee and Grantor with any additional documentation reasonably requested. The Property Owner further acknowledges that should the goals for this project not be met, the Grantor may require the repayment of the Grant up to the full amount.

The signatory below warrants that he is empowered to enter into this Agreement.

Dated this ________ day of _________, 2023

Property Owner

____
Name
Title

Counterparts; Facsimile, Electronic and PDF Signatures; Copies – This Agreement may be executed in any number of counterparts, each of which, when executed shall be deemed an original, and all of which together, shall constitute one and the same agreement. This agreement may be delivered by facsimile, or PDF or other electronic format and in such circumstances, may be relied upon to the same extent as though such copy was an original.

Attachment A

PROJECT BUDGET

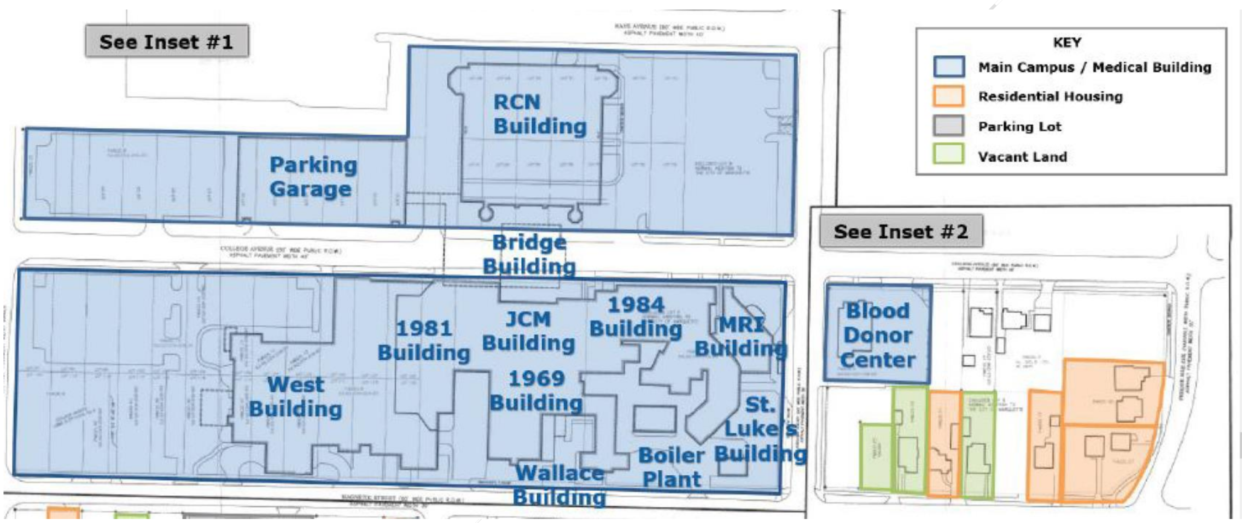
MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

MICHIGAN ECONOMIC DEVELOPMENT CORPORATION

1. Applicant: City of Marquette	(Grant No) MSC 222028-ESB		2. Project Title: Blight Clearance Project		
3. Project Cost Elements	4. Project Funding Sources		(Identify all other funding sources)		
Activities	CDBG				TOTAL
Administration	$ 30,000				$ 30,000
Site Demolition Prime Contract	$ 3,635,853				$ 3,635,853
Environmental Review	$ 14,265				$ 14,265
Additional Demolition Activities	$ 4,349,882				$ 4,349,882
TOTAL	$ 8,030,000	$ -			$ 8,030,000

The specific project area encompasses a city block and is bounded by N. Seventh St. to the west, W. College Ave. to the north, Hebard Ct. to the east, and W. Magnetic St. to the south. The following buildings, as seen in the below map, will be demolished utilizing CDBG funds: West, 1981, JCM, 1969, 1984, MRI, St. Luke's, Wallace, and the Boiler Plant. The project will also include environmental remediation activities related to the clearance project.

The CDBG funds will be wholly dedicated towards blight elimination through the complete demolition, including asbestos and environmental contaminant abatement, of the buildings in the project area.



City of Marquette, MI
300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
Carden Circus - Special Event Permit

BACKGROUND:

The Carden International Circus, Inc. is requesting the City Commission enter into a Special Event Permit for City Parks, Streets, Buildings and Grounds to use the Russell Arena within Lakeview Arena for the Carden Circus May 12, 2023 and May 13, 2023. Use details are included in the agreement. Staff has worked with the City Attorney and user group to develop the permit.

FISCAL EFFECT:

The Lakeview Arena fund will receive $3,600 plus miscellaneous reimbursements.

RECOMMENDATION:

Approve the Special Event Permit for City Parks, Streets, Buildings and Grounds with the Carden International Circus, and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Permit and Insurance

SPECIAL EVENTS PERMIT FOR CITY PARKS,
STREETS, BUILDINGS AND GROUNDS

THIS AGREEMENT, made this _________ day of ____________, 2023 between CITY OF MARQUETTE, a Municipal Corporation of 300 W. Baraga Avenue, Marquette, Michigan, 49855, hereinafter referred to as the "CITY", and CARDEN INTERNATIONAL CIRCUS, INC., a Missouri corporation of 3901 W. State Highway 0, Springfield, MO 65803, hereinafter referred to as "PERMITTEE".

INSTRUCTIONS - PERMITTEE shall comply with all sections of this permit with a darkened box (■) .

WITNESSETH:

■ (1) Description. The CITY in consideration of the terms, conditions, covenants and agreements to be performed by PERMITTEE, does hereby grant to PERMITTEE permission to use and occupy the following ["premises"]:

RUSSELL ARENA

■ (2) Term. The term of this Permit shall be for May 12, 2023 from 6:00 a.m. until May 13, 2023 at 11:00 p.m.

■ (3) Acceptance of Premises. PERMITTEE has examined and is satisfied with the physical condition of the premises, and accepts the premises in their "as is" condition.

■ (4) Use. PERMITTEE may use and occupy the premises for:

"CARDEN CIRCUS"

and for no other reason. The use and occupancy shall only be under PERMITTEE'S name or any assumed name of PERMITTEE. PERMITTEE shall not use or knowingly allow any part of the premises to be used for any unlawful purpose. In the event of any violation of this provision the CITY at its sole discretion may terminate this Permit and expel PERMITTEE from the premises. PERMITTEE waives, releases and relinquishes all claims of right or interest in the premises, other than as granted pursuant to this Permit.

■ (5) Fees. PERMITTEE shall be responsible for paying the following fees in connection with the use of the PREMISES:

Russell Arena	**$1,800.00/Day**
Staging/Stairs	**$25.00/Section**
Chairs	**$2.00/per chair User set up**
	$5.00/per chair Arena Staff set up
Tables	**$5.00/per table User set up**
	$10.00/per table Arena Staff set up

Pipe and Drape	**$12.50/section**
Genie Boom	**$80.00/hour (equipment only)**
Service Personnel (i.e. equipment operator, etc.)	**$45.00/hour w/ 2 hr minimum***

■ (6) Clean-up, Repairs, Maintenance and Damage. PERMITTEE shall be solely responsible for clean-up of the premises and the repair expense for any damage caused to the premises throughout the term of this Permit. PERMITTEE shall, at the direction of the CITY, provide a sufficient number of dumpsters and trash collection cans for the event. PERMITTEE will be responsible to reimburse the CITY for out-of-pocket costs (i.e. tipping fee) associated with trash removal and disposal. The CITY strongly encourages PERMITTEE to utilize volunteers for clean-up.

PERMITTEE shall take good care of and shall keep the premises, including its fixtures and furnishings, in a clean, safe, orderly and sanitary condition including, but not limited to, keeping all sidewalks, parking areas, alleys, roadways and facilities/areas which are a part of the premises, neat and clean; guarding all defects on the premises which may be a hazard to the general public and business invitees; and promptly removing all debris or any other material which may be a hazard to the general public and business invitees. PERMITTEE shall promptly make all repairs which are required to maintain the premises in the condition which existed upon the commencement of its actual use and occupancy. PERMITTEE shall not be required to repair plumbing and electrical components of the premises for damages which is not caused by the PERMITTEE, its guests or invitees. At the termination of this Permit, PERMITTEE shall yield and deliver up the premises in like condition, reasonable use and wear thereof and damage by the elements exempted.

■ (7) Clean-up and Damage Bond. PERMITTEE shall deposit with the Parks and Recreation Department a clean-up and damage bond in the form of cash or certified check payable to the CITY, in the amount of $250.00. This will correlate with the type of insurance required. The bond should be deposited with the Community Services Department - Parks and Recreation Division at the time the application is submitted, when possible, but is required prior to the permit being presented to the City Commission for approval. The bond shall be processed to be returned to PERMITTEE, without interest, within seven (7) days after all of the following have occurred:

(a) PERMITTEE has complied with all terms of this Permit, including completely vacating the premises by the required time period.

(b) the term of the Permit has expired;

(c) PERMITTEE has fully performed the restoration and clean-up of the premises to an "as-is" or better condition as prior to the event; and

(d) PERMITTEE has paid all fees set forth herein.

Should PERMITTEE fail to comply with any of these terms, the CITY may retain the clean-up and damage bond and if the amount thereof is insufficient, pursue all other remedies.

■ (8) Electrical Permits. For any event, carnival or fair connecting to or modifying an existing electrical source or service, PERMITTEE covenants and agrees to designate a licensed electrical contractor and secure an electrical permit in compliance under Article 525 of the current National Electric Code. An electrical permit shall be obtained two (2) weeks prior to the event and a copy shall be provided to the Community Services Department - Parks & Recreation Division office at least one (1) week prior to the event. Inspections shall be requested by the electrical contractor prior to the opening of the event, or use of the electrical service.

■ (9) All Utilities. The CITY agrees to allow PERMITTEE to use existing electrical and water services for food and beverage concessions, lighting and audio equipment. However, the CITY shall not be responsible for any damages whatsoever due to any interruption in electrical, water or other services.

There shall be no modification or alteration of the CITY's electrical supply boxes or other equipment, unless prior approval has been obtained from the CITY and any work is approved by the CITY's electrical inspector. All such work must be done by a licensed electrical contractor at PERMITTEE'S sole expense.

■ (10) Reimbursement of Utility Costs. PERMITTEE shall reimburse the CITY the sum of $500.00 for the costs of electric, water and other utility services utilized by the PERMITTEE, its vendees and concessionaires.

■ (11) Signs. PERMITTEE shall be entitled, at PERMITTEE'S own expense, to install signs and banners along the premises. Signs shall comply with the Zoning Chapter of the Marquette Code of Ordinances.

■ (12) Insurances. CERTIFICATES OR OTHER EVIDENCE OF ALL REQUIRED COVERAGES AND ENDORSEMENTS MUST BE FILED WITH THE COMMUNITY SERVICES DEPARTMENT - PARKS & RECREATION DIVISION NO LATER THAN THE DATES LISTED WITH EACH TYPE OF INSUARNCE. FAILURE TO ABIDE BY THE REQUIRED DATES WILL RESULT IN THE EVENT BEING CANCELLED OR RESTRICT THE TYPE OF ACTIVITY THAT MAY OCCUR AT THE EVENT.

■ General Liability

PERMITTEE shall carry comprehensive general liability insurance, including premises and all operations, through companies licensed and admitted to do business in Michigan, which shall provide protection from all claims of damage or injury, including death, to persons and property which may arise out of, result from or be caused by PERMITTEE'S use or occupancy of the premises or its operations conducted thereon, with occurrence and aggregate limits of not less $1,000,000, per occurrence.

THE CITY, ITS OFFICERS AND EMPLOYEES SHALL BE NAMED AN ADDITIONAL INSURED AND THIS COVERAGE SHALL BE ENDORSED ON THE CERTIFICATE AND POLICY "AS BEING PRIMARY TO THE CITY, AND NOT IN EXCESS OF ANY OTHER INSURANCE, SIMILAR PROTECTION (E.G. RISK MANAGEMENT ASSOCIATION) OR ANY OTHER VALID, APPLICABLE, OR COLLECTABLE INSURANCE OR SELF-INSURANCE WHICH IS OR MAY BE AVAILABLE TO OR CARRIED BY THE CITY."

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in cancellation of the event.

☐ Liquor Liability.

PERMITTEE or its designee (for example, a local service club) shall carry liquor liability insurance with combined limits of not less than $500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of alcoholic beverages on the premises.

PERMITTEE shall, no later than 7 days prior to the Event, provide the CITY with a certificate or other evidence of liquor liability insurance coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

☐ Motor Vehicle Liability

PERMITTEE shall also obtain and maintain vehicle liability coverage for all owned, non-owned and hired motor vehicles which may be operated, maintained or used on the premises. Minimum combined limits of $500,000 shall be maintained.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any motor vehicle at the event.

- Food

  PERMITTEE or its designee shall carry products and completed operations coverage insurance with combined limits of not less than $500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of food on the premises.

  PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of food at the event.

- Other insurance.

  If PERMITTEE employs any independent contractor or others for any purpose whatsoever in relation to its use or occupancy of the premises, or for any operations or maintenance connected therewith, PERMITTEE shall obtain and maintain, or cause said independent contractor to obtain and maintain, policies of workers compensation insurance and such other liability insurance of the types and in the amounts outlined above which will provide coverage to the CITY, its officer and employees for all claims which may arise out of, result from or be caused by that work.

  PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any independent contractor or other person or entity in connection with the event.

- (13) Indemnity. PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or suit for any loss, liability and damages that may be asserted or levied against the premises or the CITY, its officers or employees, in whole or in part by reason of PERMITTEE'S acts or omissions, or by its use or occupancy of or its operations on the premises or by reason of any other person on the premises by contract, invitation or license, including any expenses, costs and attorney fees incurred in connection with any such claim, action or suit. In the event of any incident occurring on the premises resulting in any personal injury, including death, to any person, PERMITTEE shall give notice to the CITY within twelve (12) hours after the occurrence thereof or after PERMITTEE learns of such occurrence.

The indemnity, defense and hold harmless requirements shall include and extend to bodily injury to any person or injury to any property of PERMITTEE, its employees and all persons on the premises by contract, invitation or consent.

All property kept, stored or maintained in the premises shall be so kept, stored or maintained at the risk of PERMITTEE only.

■ (14) Right of Inspection and Access. The CITY may enter the premises at any time to examine, inspect and to do whatever the CITY may deem necessary or desirable to determine compliance with or to enforce the terms of the permit. Marquette police, fire and other enforcement personnel shall have unrestricted access to the premises at all times.

■ (15) Compliance With Rules and Regulations. PERMITTEE shall abide by all laws, statutes, ordinances, governmental orders, rules and regulations which control or in any manner affect or relate to the use or occupancy of the premises, or operations conducted thereon.

☐ (16) Concessions. PERMITTEE or its designees shall be allowed to sell assorted food and beverage items and to run concession stands during the term of the Permit. PERMITTEE or its designee shall obtain all necessary licenses and/or permits from the appropriate state, county or city governmental authorities. All concessions will be closed by 10:00 p.m. each day. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 2 weeks prior to the event. PERMITTEE shall submit a list of all food concessionaires to the Fire Marshall's office one (1) week prior to the event. PERMITTEE shall notify and require the following of all food concessionaires:

(a) A fire extinguisher shall be provided in all tents and in all areas and enclosures used for cooking.

(i) The fire extinguisher shall be a 1A:20B: C type, a minimum of 5 pounds.

(ii) Proof that the fire extinguisher has been serviced within the last year is required.

(iii) The extinguisher shall be tagged with the date and service provider.

(iv) If the fire extinguisher was purchased within the last year, a sales slip must be provided.

(v) The unit shall be mounted on the center post of each tent, not more than five (5) feet of the ground and accessible for use in an emergency.

(b) All propane tanks used for cooking shall be secured so as to prevent tipping. The tanks shall be remote from congested areas.

(c) Only approved, heavy-duty extension cords shall be used and all electrical connections shall be protected.

If the vendor fails to comply with these requirements, they will not be permitted to participate in the event.

☐ (17) Alcoholic Beverages. PERMITTEE or its designee shall be allowed to sell and/or furnish beer and wine on the premises as follows:

from ______ a.m. / p.m. until ______ a.m. / p.m. on ________________ 20__;
from ______ a.m. / p.m. until ______ a.m. / p.m. on ________________ 20__;
from ______ a.m. / p.m. until ______ a.m. / p.m. on ________________ 20__;
from ______ a.m. / p.m. until ______ a.m. / p.m. on ________________ 20__;

PERMITTEE is solely responsible for obtaining all necessary licenses and permits in order to sell and/or furnish alcohol products. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 7 days prior to the event. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

If an additional day is needed for the event due to inclement weather, the time for selling and/or furnishing beer and wine on the premises shall be from ________ a.m. / p.m. until ___________ a.m. / p.m. on _____________, 20__. The sale, furnishing and consumption of alcoholic beverages is specifically conditioned upon PERMITTEE or its designee obtaining and maintaining the appropriate license or permit from the Michigan liquor control commission at all relevant times and on PERMITTEE or its designee obtaining and maintaining liquor liability insurance as required in this Permit.

■ (18) Exclusive Use. PERMITTEE shall have the exclusive use of the premises during the term of this permit.

■ (19) Admission. PERMITTEE may charge admission to the general public to enter premises. Entry shall not be denied to any individual based upon race, sex, age, creed, or national origin.

■ (20) Police and Fire Protection. PERMITTEE shall fully reimburse the CITY at overtime and fringe benefit rates for all additional police and/or fire department officers who are assigned to the premises, or the vicinity thereof, because of the use or occupancy thereof by PERMITTEE.

■ (21) Parking and Traffic. PERMITTEE shall prohibit all motor vehicles in or on the premises and shall cause all streets and alleys to be properly barricaded and signed. All motor vehicles shall be operated only on established roads and parked in designated areas. All fire lanes and no parking zones shall be maintained during the event.

☐ (22) Health and Sanitation Facilities. PERMITTEE shall furnish and maintain a sufficient number of portable bathrooms and washing facilities, at PERMITTEE'S expense. This number shall be determined by the Marquette County Health Department. Each bank or group of portable restrooms shall have a minimum of one (1) barrier free/ADA compliant restroom. A bank or group consists of ten (10) or less portable restrooms.

■ (23) Compliance with PERMITTEE'S Representations. PERMITTEE shall fully comply with all representations and promises set forth in its Application for Special Events Permit

☐ (24) Equipment and Services. The CITY agrees to have the following equipment and services available during the term of this Permit:

____

____

____.

■ (25) Security. It shall be PERMITTEE'S sole responsibility to provide security throughout the term of the event. The Chief of Police or designee shall establish the number of security personnel whom PERMITTEE shall be required to have on the premises. The security shall be provided by a licensed and certified security agency, whose members shall be in identifiable uniforms.

■ (26) Bleachers, Booths, Fencing and Tents. PERMITTEE shall be solely responsible for the construction and removal of any bleachers, booths, fencing, tents or structures used during the course of the event, except that CITY shall be responsible for booths located within the Arena.

■ (27) Reimbursement of Other Costs. PERMITTEE shall reimburse the CITY for all cost relating to the use of barricades, fencing, bleachers and other facilities and equipment provided by the CITY. PERMITTEE, on behalf of the organization, agrees to reimburse the City of Marquette for its "out-of-pocket" expenses which includes but is not limited to overtime of City employees and trash disposal tipping fees at landfills. City staff is readily accessible to discuss out-of-pocket cost estimates and ways to reduce these costs. All City of Marquette invoices sent to organizations for reimbursement of out-of-pocket costs are due within thirty (30) days.

☐ (28) Tents. All tents or air supported structures used during the term of the permit shall comply with Section 31 of the Michigan Building Code and Section 24 of the International Fire Code. Material of all tents shall be of non-combustible material or flame resistant material conforming to NFPA 701, treated in an approved manner to render the material flame resistant. Appropriate documentation must be presented to any Building Code Enforcement Officer, Fire Official or other Code Official upon request. A copy shall also be retained on the premises where the tent is located. The documentation must attest to the following information relative to the flame resistance of the fabric:

(a) Name and address of the owners of the tent or air supported structure.

(b) Date the fabric was last treated with flame resistant solution.

(c) Trade name of kind of chemical used in treatment.

(d) Name of person or firm treating the material.

(e) Name of testing agency and test standard by which the fabric was treated.

If more than one tent or air supported structure is located on the premises a copy of all required documentation for each tent or structure shall be kept at a central location on the premises. The use of gasoline, gas, charcoal or any other cooking devices or any unapproved flame inside or within 20 feet of a tent or other air supported structure is strictly prohibited.

■ (29) Fire.

(a) No open flames or explosives shall be permitted for decoration, display or use without permission from the Fire Department.

(b) The use of paper or fabric for coverings or decoration shall not be permitted unless proof is submitted to the Fire Department that such materials are flame proof.

(c) All seating capacity and room arrangements shall be approved by the Fire Department.

(d) An access lane, a minimum of eighteen (18) feet wide, shall be maintained leading into and out of the event so that emergency vehicles can enter in case of an emergency.

(e) Barricades or any type of obstruction which could impede or interfere with fire suppression forces shall not be erected.

■ (30) Music. PERMITTEE shall be solely responsible for obtaining the appropriate license to present any music covered by copyright, whether by live performance, recorded music or retransmission of radio and/or television broadcast. The PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, it officers and employees harmless from any claim, action or suit or for any loss, liability and damages that may be asserted or levied against the CITY, its officers or employees, based in whole or in part upon a claim of copyright infringement.

□ (31) Conditions/Requirements. Additional conditions and requirements of this permit are as follows:

____

____

____

■ (32) Cancellation or Modification. It is understood and agreed that ten (10) days advance written notice of any cancellation, reduction and/or material changes in the proposed agenda will be provided to the Community Services Director, City of Marquette, 401 East Fair Avenue, Marquette, Michigan, 49855.

■ (33) Duplicate Original Copies. This Permit is executed in triplicate original copies, two of which shall be retained by the CITY and one by PERMITTEE, each of which shall be deemed to be an original, but all of which shall be construed as one and the same document.

■ (34) Governing Law. This Permit and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Michigan.

■ (35) Paragraph Headings. The paragraph headings appearing in the Permit have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the paragraphs to which they appertain.

■ (36) Entire Agreement. This Permit represents the entire agreement of the parties and shall be deemed to be an integrated agreement containing all prior and contemporaneous oral and written agreement between the parties, and shall not be modified in any part, except in a writing signed by all parties.

IT SHALL BE THE RESPONSIBILITY OF THE PERMITTEE TO DESIGNATE A SPECIFIC LOCATION ON THE PREMISES AS ITS HEADQUARTERS AND TO HAVE AVAILABLE AT THAT LOCATION, AT ALL TIMES THE PREMISES ARE OPEN TO THE PUBLIC AND DURING SET UP OR CONSTRUCTION, AT LEAST ONE PERSON WHO HAS THE KNOWLEDGE AND AUTHORITY TO REPRESENT PERMITTEE CONCERING ALL

The parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF MARQUETTE

Cody O. Mayer, Mayor

Kyle Whitney, City Clerk

Approved as to Substance:

Karen M. Kovacs, City Manager

Approved as to Form:

Suzanne C. Larsen, City Attorney

CARDEN INTERNATIONAL CIRCUS, INC.

Brett Carden

By:

Its:

Lorna Fletcher

By:

Its:

CARDINT-01 SRYAN

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/5/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Johnson, Kendall & Johnson, Inc.
109 Pheasant Run
Newtown, PA 18940

CONTACT NAME:
PHONE (A/C, No, Ext): (215) 968-4741 FAX (A/C, No): (215) 968-0973
E-MAIL ADDRESS: info@jkj.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Everest National Insurance Company	10120
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Carden International Circus, Inc.
3901 W. State Highway 0
Springfield, MO 65803

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY; CLAIMS-MADE; X OCCUR; GEN'L AGGREGATE LIMIT APPLIES PER: POLICY; PRO-JECT; X LOC; OTHER:	X		SI8ML00149-221	6/12/2022	6/12/2023	EACH OCCURRENCE	$ 1,500,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 500,000
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$ 2,000,000
							GENERAL AGGREGATE	$ 5,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY; X ANY AUTO; OWNED AUTOS ONLY; SCHEDULED AUTOS; X HIRED AUTOS ONLY; X NON-OWNED AUTOS ONLY			SI8ML00149-221	6/12/2022	6/12/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB; X OCCUR; X EXCESS LIAB; CLAIMS-MADE; DED; X RETENTION $ 0	X		SI8EX01853-211	6/12/2022	6/12/2023	EACH OCCURRENCE	$ 1,000,000
							AGGREGATE	$ 1,000,000
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N; ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH); If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Elephant, Camel and Pony acts and rides. Moonbounces and Face painting, Circus acts and production. The following are named as additional insured: Lakeview Arena; and the City of Marquette
Dates: May 12th & 13th, 2023

CERTIFICATE HOLDER

City of Marquette
300 Baraga Avenue
Marquette, MI 49855

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
Commission Policy: Standards for City-appointed Boards, Committees and Authorities

BACKGROUND:

The Marquette City Commission, which acts as the legislative arm of city government, is assisted in this role by 20 various boards, committees and authorities. These bodies are composed entirely of volunteer members that have been appointed to their seats by the Commission.

Roughly two-thirds of these boards are established under the provisions of state law and have the ability to make binding decisions. By way of example, these statutory boards include, but are not limited to, the Downtown Development Authority, the Peter White Public Library Board, the Planning Commission and the Brownfield Redevelopment Authority.

The remainder of the boards are strictly advisory in nature and were formed in accordance with the Marquette City Charter, which gives the City Commission the authority to establish "boards, commissions, or committees to serve solely in an advisory capacity." These boards serve to generate discussion and ideas in specific areas of City operations, and they present a point of access for citizens hoping to raise concerns or share ideas with the City.

Staff has identified a need to establish clear expectations for the members of these advisory boards, many of whom make contact with local government for the first time when they are appointed, and to clearly communicate this information to incoming members.

Specifically, the attached policy serves as a framework for how the City Commission, City staff and the City's boards and commissions should work in concert most effectively, and it offers a clear process for advisory boards to formulate recommendations and share those with City administration.

Moving forward, this policy would be provided to incoming board and committee members. Additionally, staff plans to start offering regular orientation sessions for recently appointed members of the City's boards and committees, which would be used to answer questions and provide directions to new members.

This policy would replace the existing Commission policy establishing board and committee rules of procedure (2011-02).

FISCAL EFFECT:

None by this action.

RECOMMENDATION:
Adopt Commission Policy 2023-01 and repeal Commission Policy 2011-02.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description
- Policy 2023-01
- Policy 2011-02

CITY OF MARQUETTE, MICHIGAN
CITY COMMISSION POLICY

Policy Number: **2023-01**	Revision Date(s):
Date Approved: **April 24, 2023**	
Department: **Administrative**	Original Policy Number: N/A

SUBJECT: **STANDARDS FOR CITY-APPOINTED BOARDS, COMMITTEES AND AUTHORITIES**

PURPOSE: There are several boards and committees in the City of Marquette that serve to aid and advise in the general operation of the municipality, the members of which are appointed by the Marquette City Commission. As such, the Commission recognizes the need for these City-appointed groups to conduct productive meetings and to interact with the citizens, the media and the public in an efficient manner. Likewise, there is a need to establish clear expectations and an operating framework for communication among these groups, the City Commission and the staff of the City of Marquette.

SCOPE: This policy applies to all appointed Boards, Committees and Authorities of the City of Marquette and to all members of such bodies.

POLICY:

<u>Rules of Procedure</u>
When scheduling and conducting meetings, and when preparing minutes and agendas throughout the year, all boards, committees and authorities should use this policy as a framework. Except in the case of contradiction with this policy, all boards shall use all applicable portions of the City Commission's adopted Rules of Procedure (Commission Policy 2003-01) as a guideline when planning, organizing and conducting meetings.

In the case of conflict between a set of bylaws adopted by any board, committee or authority that has been established under state authority, the individual board bylaws shall be followed.

<u>Composition</u>
With few exceptions, each board, committee and authority of the City is composed of citizen volunteers appointed by the Marquette City Commission. These groups, which operate under the provisions detailed in the Michigan Open Meetings Act, meet regularly throughout the year to discuss topics relevant to their specific subject area. For each board, committee and authority in the City, the City Manager shall appoint a staff liaison to act as a conduit between the body and the City Manager's office and other City departments.

Relationships and Interactions

The primary role of a citizen appointed to a board or committee is to act as an approachable representative for City residents who have questions, concerns or ideas about specific areas of the community, while simultaneously leveraging their own individual expertise and experience to discuss topics and make official recommendations within the board's scope of responsibility.

As reflected in the attached organizational chart, the City's network of boards and committees is intended to serve as an accessible venue for community engagement and a clearinghouse for substantive topics.

The City Commission is the City of Marquette's official policy-making body. While most decisions made by boards, committees and authorities are advisory in nature, they can aid in this policy-making process and will serve to inform official City Commission action. The boards and committees – informed by public input and focused discussion in open meetings – may communicate ideas and requests to the City Manager through official memoranda. These memos may be drafted by the staff liaison, but the content must first be approved by majority vote of the body.

The actions of advisory boards and committees shall be advisory only and shall not be binding. Staff liaisons are tasked with overseeing the administrative processes related to each board, ensuring timely publication of minutes, calendars and meeting notices, and relaying memorandums to the City Manager as requested by the board, committee or authority. Additionally, liaisons serve as a professional support resource for the board, answering questions and seeking follow-up as he or she deems necessary, and he or she is the channel of communication between the body and City administration.

Unless specifically directed, boards and committees should not be involved in administrative or operational matters of the City, and members may not direct staff to initiate programs, conduct large studies or draft and implement policies or ordinances; items of this nature should be the subject of an official recommendation to the City Manager via memorandum.

If action is ultimately deemed necessary, the City Commission has the authority to direct the City Manager to act accordingly.

Additionally, the City Commission may take action to request an advisory board or committee provide a recommendation on a specific topic.

Citizens appointed to serve on boards and committees should understand that it is possible that, after evaluation, recommendations made by the City's boards and committees might not be accepted by the City Commission.

When discussing the actions and discussions of a board or committee, members should always take care to draw distinctions between their personal views and those of the body on which they serve.

Annual City Commission Presentation

Each board and committee will present annually to the City Commission to provide an overview of recent activities, obstacles and discussions, as well as a summary of current goals. This will be an opportunity for the City Commission to ask questions and provide feedback. Boards and committees are expected to follow the Commission Policy on Presentation Guidelines when planning and presenting their presentation.

General Public

Boards and Committees provide an accessible channel for citizens to interact directly with City government. It is important that members of the public understand the full scope of the City process laid out in this policy. As possible, it should be made clear that the role of an advisory board is to make recommendations and that decisions on the implementation of such recommendations can only be made by the City Commission.

All meetings shall be conducted in compliance with the provisions detailed in the Michigan Open Meetings Act. An annual meeting calendar is approved by each board, and staff liaisons are responsible for ensuring that the meeting schedule is made publicly available. All schedule changes and special meetings shall be made in compliance with the Open Meetings Act, with public notifications made under the City's PSA policy.

City boards, committees and authorities are public bodies and are subject to the Michigan Freedom of Information Act. Any communication involving a board/committee/authority member – including communication amongst members, with City staff, the City Manager, City Commissioners, members of the public, or any other person – regarding official business is subject to FOIA. This includes, but is not limited to, text messages, emails, letters, photos, and handwritten notes.

Statutory Boards

Statutory boards are those established not solely by action of the City Commission, but through another legal framework such as state statute. The members of these bodies are typically appointed by the City Commission, and their advice and expertise is likewise valued by the City Commission. While statutory boards don't have the ability to make binding decisions on behalf of the City Commission, they are often granted the ability to take independent jurisdictional action relevant to their topic area. Statutory boards in the City of Marquette include, but are not limited to, the Downtown Development Authority Board, the Planning Commission and the Marquette Housing Commission.

The Commission recognizes that statutory boards may routinely take action without approval from, or direct interaction with, the City Commission. However, beyond the scope of their statutory focus area, these bodies will follow the process previously laid out in this policy.

CITY OF MARQUETTE, MICHIGAN
CITY COMMISSION POLICY

Policy Number: **2011-02**	Revision Date: 01-01-13 10-14-14
Date Adopted: 04-25-11	
Department: Administrative	

SUBJECT: **CITY-APPOINTED AUTHORITIES, BOARDS AND COMMITTEES' RULES OF PROCEDURE**

PURPOSE: The City Commission Rules of Procedure for home rule cities and villages are generally authorized by City Charter. These Rules of Procedure help the Commission to run an efficient meeting and to deal with the public and the media in a positive manner. Similarly, the Commission recognizes the importance of all City-appointed groups to run efficient meetings and interact with the citizens, media and general public in a progressive fashion.

These Rules of Procedure, when not in conflict with the City Charter, may be revised by majority action of the City Commission.

POLICY:

I. REGULAR AND SPECIAL MEETINGS

All meetings will be held in compliance with state statutes, including the Open Meetings Act, 1976 PA 267 as amended, and with the following rules.

A. Regular Meetings

1. Each City-appointed authority, board and committee will adopt its meeting schedule no later than November 30 for the upcoming calendar year. The schedule will then be provided to the City Clerk for posting.

2. If a regularly-scheduled meeting falls on an official state holiday, it will be scheduled for the next day.

B. Special Meetings

1. Special meetings will be called by the City Clerk on the written request of the Chair, the Vice Chair, or any two members of the authority, board or committee, provided that at least twenty-four hours notice to each member of the group will be provided electronically or in writing.

2. No business will be transacted at any special meeting of any authority, board or committee unless the same has been stated in the notice of such meeting. However, any business

which may lawfully come before a regular meeting may be transacted at a special meeting if all the members of the authority, board or committee present consent thereto and all the members absent file their written consent.

C. Posting requirements for Regular and Special Meetings

1. No later than the first day of January each year the City Clerk will provide public notice stating the dates, times, and places of the regular meetings of each City-appointed authority, board and committee.

2. For a rescheduled regular or special meeting, a public notice stating the date, time, and place of the meeting will be posted in City Hall at least 18 hours before the meeting, and sent by fax or e-mail to the news media which have requested such notification, and all news media in Marquette County.

D. Minutes of Regular and Special Meetings

Each authority, board or committee will record all the proceedings and resolutions of the group in accordance with the Charter and Open Meetings Act. Approved minutes will be filed with the City Clerk and be available for public inspection not later than eight business days after the meeting at which the minutes are approved by the public body. Minutes will also be made available on the City's website, as well as posted in City Hall. A copy of the minutes of each regular or special meeting will be available for public inspection at the City Clerk's office during business hours.

II. CONDUCT OF MEETINGS

A. Meetings to be Public

1. All regular and special meetings will be open to the public, and all persons will have a reasonable opportunity to be heard in accordance with such rules and regulations as the group may determine, except that the meetings may be closed to the public and the media in accordance with the Open Meetings Act.

2. All official meetings and its committees will be open to the media, freely subject to recording by radio, television, and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings.

B. Agenda Preparation

1. An agenda for each regular meeting will be prepared by the group's Chair with the following order of business:
    a. Call to order and roll call
    b. Approval of Agenda
    c. Announcements by the Chair
    d. Public hearings on ordinances, resolutions or other matters requiring a public hearing.
    e. Presentations
    f. Public Comment. May not exceed three minutes per person. A person may reserve time to speak on agenda items. This may result in the item being moved up on the agenda, at the Chair's discretion.
    g. Consent Agenda
    h. Unfinished Business. Unfinished Business is intended for items that were on the last meeting agenda and further information was required before taking action.
    i. New Business. New business is intended to introduce a new topic and should be the

time when members ask questions or seek other clarifications. If need be, the item can be moved to "Unfinished Business" for the next meeting, by a majority vote.

j. Public Comment. May not exceed three minutes per person.
k. Comments from the Members
l. Adjournment

2. Any member will have the right to add items to the regular agenda, provided support from one additional member is obtained. Any member will have the right to remove items from the regular agenda by a majority vote.

C. Consent Agenda

A consent agenda may be used to allow the authority, board or committee to act on numerous administrative or non-controversial items at one time. Included on this agenda can be non- controversial matters such as approval of minutes or payment of bills. Upon request by any one (1) member, an item will be removed from the consent agenda and placed on the regular agenda for discussion.

D. Quorum

A majority of the members in office at the time will constitute a quorum for the transaction of business at all meetings. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date.

E. Attendance at meetings

1. Appointment to any City authority, board or committee is a privilege freely sought by the nominee. It carries with it the responsibility to participate in person at meetings. Attendance at meetings is critical to fulfilling this responsibility.

2. Any two or more members of the authority, board or committee may by vote either request or compel the attendance of its members and other officers of the group at any meeting. Any member of the authority, board or committee or other officer who, when notified of such request for their attendance, fails to attend such meeting for reasons other than confining illness or absence from Marquette County, will be deemed guilty of misconduct in office, unless excused by the authority, board or committee. The presiding officer will enforce orderly conduct at meetings and any member of the authority, board or committee or other officer who will fail to conduct himself/herself in an orderly manner at any meeting will be reported to the City Manager and Mayor.

F. Presiding Chairman

The presiding Chair will be responsible for enforcing these Rules of Procedure and for enforcing orderly conduct at meetings. The authority, board or committee will appoint one of its members Vice Chair who will preside in the absence of the Chair. In the event of absence or disability of both, the Chair may designate another of its members to serve as Acting Chair during such absence or disability.

G. Disorderly Conduct

1. The Chair may call to order any person who is being disorderly by speaking out of order or otherwise disrupting the proceedings such as walking about or whispering, failing to be germane, speaking longer than the allotted time or speaking vulgarities. Such person

will be seated until the Chair determines whether the person is in order.

2. If the person so engaged in presentation is called out of order, he or she will not be permitted to continue to speak at the same meeting except by special leave of the authority, board or committee. If the person will continue to be disorderly and disrupt the meeting, the Chair may order the person from the meeting. No person will be removed from a public meeting except for an actual breach of the peace committed at the meeting.

3. Any police officer will enforce the provision of this section.

III. DISCUSSION AND VOTING

A. Rules of Parliamentary Procedure

1. The rules of parliamentary practice as contained in the latest edition of *Robert's Rules of Order* will govern the group in all cases to which they are applicable, provided that they are not in conflict with these Rules, City ordinances, the City Charter, or applicable state statutes.

2. A vote upon all motions and resolutions will be taken by "Yes" and "No" vote and entered upon the records; except that where the vote is unanimous, it will only be necessary to so state.

3. The Chair will preserve order and decorum and may speak to points of order in preference to other members. The Chair will decide all questions arising under this parliamentary authority, subject to appeal and reversal by a majority of the members present.

4. Any member may appeal to the authority, board or committee a ruling of the Chair. If the appeal is seconded, the member making the appeal may briefly state the reason for the appeal and the Chair may briefly state the ruling. There will be no debate on the appeal and no other member will participate in the discussion. The question will be, "Will the decision of the Chair be sustained?" If the majority of the members present vote "Yes," the ruling of the Chair is sustained; otherwise it is overruled.

B. Conduct of Discussion

1. During discussion and debate, no person will speak until recognized for that purpose by the Chair. After such recognition, the member will confine discussion to the question at hand and to its merits and will not be interrupted except by a point of order or privilege raised by another member. Speakers should address their remarks to the Chair, maintain a courteous tone and avoid interjecting a personal note into debate.

2. No member will speak more than once on the same question unless every member desiring to speak to that question will have had the opportunity to do so.

3. The Chair, at his or her discretion and subject to the appeal process mentioned in A. 4. above, may permit any person to address the group during its deliberations.

C. Duty to Vote

Election to a deliberative body carries with it the obligation to vote. Authority, board or committee members present at the meeting will vote on every matter before the body, unless otherwise excused or prohibited from voting by law or Charter.

1. Conflict of interest, as defined by law, will be the sole reason for a member to abstain from voting. The opinion of the City Attorney will be binding with respect to the existence of a conflict of interest. A vote may be tabled, if necessary, to obtain the opinion of the City Attorney. No member will vote on any question concerning their own conduct.

2. On all other questions each member who is present will vote when their name is called unless excused by the unanimous consent of the remaining members present. Any member refusing to vote except when not so required by this paragraph will be guilty of misconduct in office.

3. The right to vote is limited to the members present at the time the vote is taken. Voting by proxy or by telephone is not permitted.

4. All votes must be held and determined in public; no secret ballots are permitted.

5. Prior to calling for a vote, the presiding Chair should state the question being voted upon.

D. Results of Voting

1. In all cases where a vote is taken, the Chair will declare the result.

2. It will be in order for any member voting in the majority to move for a reconsideration of the vote on any question at that meeting or at the next succeeding meeting of the authority, board or committee. When a motion to reconsider fails, it cannot be renewed.

IV. PUBLIC PARTICIPATION

A. General

1. Each regular meeting, the agenda will provide for reserved time for public comment. During public comment a member of the public may request permission to speak at the time an agenda item comes before the authority, board or committee.

2. If requested by a member of the authority, board or committee, the Chair will have discretion to allow a member of the audience to speak at times other than reserved time for audience participation.
    a. No person will speak until recognized for that purpose by the Chair. After such recognition, the person will confine discussion to the question at hand and to its merits, and will not be interrupted except by a point of order or privilege raised by a member of the authority, board or committee. Speakers should address their remarks to the Chair, maintain a courteous tone and avoid interjecting a personal note into debate.

B. Length of Presentation

Any person who addresses the group during the times set for public comment time, will be limited to three minutes in length for the first Public Comment time and three minutes in length for the second Public Comment time, per individual presentation. The Secretary will maintain the official time and notify the speakers when their time is up.

C. Addressing the Authority, Board or Committee

When a person addresses the authority, board or committee, he or she will state his or her name and home address. Remarks should be confined to the question at hand and addressed to the Chair in a courteous tone. No person will have the right to speak more than once on any particular subject until all other persons wishing to be heard on that subject have had the opportunity to speak.

V. MISCELLANEOUS

A. Adoption and Amendment of Rules of Procedure

1. A copy of the Rules adopted will be distributed to each authority, board or committee member.

2. The City Commission may alter or amend its rules at any time, when not in conflict with the City Charter, by a vote of a majority of its members, after notice has been given of the proposed alteration or amendment.

B. Suspension of Rules

These rules may be suspended for a specified portion of a meeting by an affirmative vote of two-thirds of the members present except that members' actions will conform to state statutes and to the Michigan and the United States Constitutions.

C. Committees

1. Standing and special committees
    a. There will be no standing committees
    b. The authority, board or committee may create a subcommittee of up to three members to examine a specific subject for a specific period of time.

2. Ad Hoc Committee
   Ad Hoc committees may be formed for a specific purpose and for a specific period of time as approved by the group. A broad diversity of experts and/or interests may be represented on an Ad Hoc committee. Only a majority of ad-hoc committee members need to be City residents.

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
Fire Department SCBA Replacement

BACKGROUND:

The Fire Department's current self-contained breathing apparatus (SCBA) are past their useful service life and are failing. The department has tried twice to attain federal grants for their replacement and has not been successful. The CFO has concurred with waiving the competitive bid process for this purchase because the manufacturer utilizes preferred pricing and there would be no financial benefit to obtaining bids. Jefferson Fire & Safety, Inc. has quoted $171,179.85 plus shipping for 20 SCBA packs, 40 air bottles, 27 face pieces, and 6 cascade cylinders.

FISCAL EFFECT:

This purchase is not included in the FY'23 budget. A budget amendment utilizing fund balance will be required.

RECOMMENDATION:

Waive the competitive bid process and approve the purchase of SCBAs and accessories from Jefferson Fire & Safety, Inc. in an amount not-to-exceed $171,179.85 plus shipping, and approve the appropriate amendment to the budget.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Jefferson Fire & Safety SCBA Quote

Jefferson Fire Safety, Inc.
7620 Donna Drive
Middleton WI 53562
800-697-3473
www.jeffersonfire.com

Date: 3/30/2023

Order	
Quotation	XXXXXXXX
Deliver	
Ship	
Ship Compl.	
FOB Dest.	
FOB Mfr.	
Return	
Inventory Adj.	

Sold to:

Ship to:
Marquette FD, City of
Attn: Chief Ian Davis
418 S. Third Street
Marquette, MI 49855

Salesperson	P.O. Number	Phone	Email
Rich Janke		906-225-8940	idavis@maruettemi.gov

Comments: SHIPPING NOT INCLUDED IN PRICE. Good till 9/30/2023

Qty	Part #	Description	Price	Amount
20	STC X891402300530 4	Scott X3 C5 Pro SCBA (2018 Edition) w/Snap-Change Cylinder Connection, 4.5 STD Harness w/Parachute Buckle, STD Belt, Flo C5 Regulator w/Continuous Hose,	6,398.10	127,962.00
		Pak-Tracker and Packaged 2 SCBA per Box.		0.00
20	200129-01	Scott Cylinder w/Valve Snap-Change 4500psi 45min	596.10	11,922.00
20	200129-01	Scott Cylinder w/Valve Snap-Change 4500psi 45min	596.10	11,922.00
3	FP1SK01000000	C5 4 strap Facepiece Small	371.35	1,114.05
16	FP1MK0100000 00000	C5 4 strap Facepiece Medium	371.35	5,941.60
8	FP1LK01000000 0000	C5 4 strap Facepiece Large	371.35	2,970.80
		Upgrade RIT Pak III to C5		0.00
2	201673-01	Scott EZ-Flow RIT-Pak Regulator Assembly C5	917.95	1,835.90
		above pricing includes changing regulator to C5		0.00
2	201825-01	Scott RIT-Pak Mask, Vision C5	274.85	549.70
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
			Subtotal	164,218.05

Jefferson Fire Safety, Inc.
7620 Donna Drive
Middleton WI 53562
800-697-3473
www.jeffersonfire.com

Date: 3/30/2023

Sold to:

Ship to:
Marquette FD, City of
Attn: Chief Ian Davis
418 S. Third Street
Marquette, MI 49855

Order	
Quotation	XXXXXXXX
Deliver	
Ship	
Ship Compl.	
FOB Dest.	
FOB Mfr.	
Return	
Inventory Adj.	

Salesperson	P.O. Number	Phone	Email
Rich Janke		906-225-8940	idavis@maruettemi.gov

Comments: SHIPPING NOT INCLUDED IN PRICE. **Quote Good for 30 days.**

Qty	Part #	Description	Price	Amount
4	SCB HC-6000	SCBAS 6000PSI ISO Cascade Cylinder, Complete	1,554.30	6,217.20
4	SCB 702-E	SCBAS CGA-702 Nut & Nipple x #4 JIC Male Elbow	45.90	183.60
80	SCB 96-001	SCBAS 7000PSI Breathing Air Hose, Per Foot	6.00	480.00
12	SCB 96-004	SCBAS Coupling #4 JIC Female, Swivel	6.75	81.00
		Note: Qty. 4 - 10' Hoses #4 JIC Female x #4 JIS Male		0.00
		and Qty. 4 - 20' Hoses #4 JIC Female x #4 JIS Male		0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
			Subtotal	6,961.80
			Tax	$0.00
			Total	6,961.80

City of Marquette, MI
300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
Founders Landing Pile Reuse Design and Construction Oversight Change Order

BACKGROUND:
At its March 11, 2019 regular meeting, the City Commission approved GEI Consultants for the preliminary design phase of the Founders Landing Piers.

At the July 8, 2019 meeting, the City Commission approved a change order to GEI's contract in the amount of $200,000 to cover final design, permitting and construction oversight in the form of RFI response, and potential revisions to the drawings and specifications.

The permitting process dictated several changes to the design resulting in a change order in 2022 for construction oversight and additional design in the amount of $46,400.

The project was anticipated to be completed last fall, however, supply constraints and weather has pushed the final electrical, landscaping and site reclamation items into this spring. GEI is requesting a $5,000 change order to cover this additional project oversight.

This change order will cover the additional costs and scope items for engineering and construction oversight of the project through completion.

FISCAL EFFECT:
The cost for this change order will not exceed $5,000 and adequate funding is available for reimbursement from the 2021 MBRA bonds that were issued for this project.

RECOMMENDATION:
Approve the change order from GEI Consultants for construction oversight of the Founders Landing pier project in an amount not-to-exceed $5,000, and authorize the City Manager or her designee to sign the change order.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

	Description
🗋	Change Order

Consulting Engineers and Scientists

April 19, 2023

Mr. Jon Swenson
Director of Parks and Recreation
City of Marquette
300 West Baraga Avenue
Marquette, Michigan 49855

RE: GEI Project No. 2103465: Change Order No.1 for Additional Construction Administration Services at the Spear Dock Project in Marquette, Michigan

Dear Mr. Swenson,

GEI Consultants of Michigan, P.C. (GEI) is pleased to provide this Change Order to GEI Project No. 2103465 with the City of Marquette (City) for above mentioned project.

Scope of Services

GEI and the City have been working together on a project to construct new dock structures near the extension of Baraga Avenue and south of the Hampton Inn. Construction has taken longer than anticipated extending GEI's efforts to support the project.

GEI will provide continued construction administration services including project closeout this spring. We anticipate the remainder of services to include; final punch list development, construction oversight, and project closeout.

Additional Project Costs

The additional anticipated, not-to-exceed, fee to provide these services is $5,000.00. These services will be invoiced on a Time and Expense basis per the current contract.

Terms of Engagement

Our services will be performed in accordance with the contract currently in place for this project. Please sign and return this Change Order in the acceptance block below which will serve as our approved change order.

We look forward to continuing to work with you on this project. If you have any questions regarding this Change Order, please contact George Meister at (906) 662-4747.

Sincerely,

GEI CONSULTANTS OF MICHIGAN, P.C.

Isaac N. Roberts, P.E.
Project Manager

George M. Meister, P.E.
Project Manager/Senior Engineer

ACCEPTANCE

Name ________________________

Signature ____________________

Title _________________________

Date _________________________

GMM/

C:\Users\lchevrette\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\YAZ85OFX\2103465 Spear Dock Construction Admin CO No.1.docx

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
Fresh Coast Light Lab Use Agreement

BACKGROUND:

The City was approached by Fresh Coast Light Lab, LLC (FCLL), with a request to project light shows, primarily utilizing lasers to begin with but with options to expand into other forms of light projection, on the north side of the Lower Harbor Ore Dock from the ticket building owned by the Frazier family. The terms of the agreement require content review from the Community Services Department as well as notification of show scheduling to ensure there is not incompatibility with the primary maritime function of Lower Harbor.

The term of this agreement is for five years, and the City will receive five percent of the gross revenue derived from contracts with FCLL from this location.

FISCAL EFFECT:

The City will receive 5% of the gross revenue derived from Ore Dock light show contracts.

RECOMMENDATION:

Approve the agreement with Fresh Coast Light Lab, LLC, and authorize the Mayor and Clerk to sign.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

	Description
🗋	Agreement

AGREEMENT FOR USE OF MARQUETTE LOWER HARBOR ORE DOCK

This Agreement, made and entered into this ______ day of ___________________, 2023, by and between the City of Marquette, a municipal corporation, of 300 W. Baraga Avenue, Marquette, MI 49855 (hereinafter referred to as the "City"), Fresh Coast Light Lab, LLC., (hereinafter referred to as the "FCLL") of 1317 N. Front Street.

WHEREAS, the City is the owner and operator of the Marquette Lower Harbor Ore Dock ("Ore Dock") at 245 S. Lakeshore Blvd., Marquette, Michigan; and

WHEREAS, the City is willing to allow FCLL use of the Ore Dock in accordance with the terms and conditions contained herein from May 1, 2023 through May 1, 2028.

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

1. FCLL will pay to City a monthly fee equal to 5% of FCLL's gross revenue derived from Ore Dock light show contracts. FCLL will make each payment no later than the 15 days following the end of each month. FCLL shall provide to City, with each payment, a financial statement verifying all revenue for shows for the month immediately proceeding, and shall provide back-up documentation to the City upon request.
2. City grants the right, privilege and permission to project light shows onto the Ore Dock from the location of the ticket booth owned by Peggy Frazier in Lower Harbor Mattson Park.
3. FCLL's use of the Ore Dock shall only be for the purposes of projecting light shows. FCLL shall limit shows to normal park hours (7:00 a.m. until 11:00 p.m.) unless express written approval, which can be in email form, from the Community

Services Director, or his/her designee, is obtained.

4. FCLL agrees that all shows are subject to approval and shall provide the Community Services Director, or his/her designee, with a copy of every show planned for the Ore Dock in advance as well as a schedule of planned shows.

5. FCLL agrees not to include content that is slanderous, libelous, threatening, pornographic, or obscene.

6. FCLL agrees that it shall not interfere with the use of the Lower Harbor as a marina and shall ensure that any light show does not interfere with boat usage or travel.

7. The City shall be notified in writing of any incident, damage, or injury resulting from a light show or related operations within twenty-four (24) hours after the incident occurs.

8. FCLL agrees to indemnify and hold harmless the City, its officials, employees, volunteers and others working on behalf of the City against any and all claims, demands, suits or loss, including all costs connected therewith and for any damages which may be asserted, claimed or recovered against or from the City, its officials, employees, volunteers and others working on behalf of the City by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement.

9. FCLL shall procure and maintain insurance for the duration of this Agreement against liability claims for injuries to persons or damages to property which may arise from or in connection with the use of the Ore Dock. All required insurance policies shall name the City as an additional insured. The insurance required by this Agreement shall be in amounts acceptable to the City and shall be endorsed to

state that coverage shall not be reduced or canceled except after thirty (30) days notice to the City by certified mail, return receipt requested.

10. The occurrence of any of the following shall constitute a default by the User Group:

a. Failure to perform any provision of this Agreement, if the failure to perform is not cured within thirty (30) days after the City provides written notice to FCLL.

b. Failure to maintain insurance as required by this Agreement, which shall be cause for immediate termination of this Agreement by the City.

c. FCLL files a petition in bankruptcy or insolvency or for reorganization, or involuntary proceedings are filed against the User Group under applicable bankruptcy laws.

d. FCLL modifies its corporate structure without providing notice to the City.

e. FCLL fails to uphold any obligation set forth herein.

11. In the event of default, the City shall provide FCLL written notice of default. FCLL shall have thirty (30) days after notice is provided to cure said default. FCLL may request a meeting to discuss the default notice with the City Manager and City staff, within the thirty (30) day period. No notice shall be deemed a forfeiture or termination of this Agreement unless the City specifies such in the notice. In the event FCLL does not cure the default within the allowed thirty (30) day time period, the City shall have the following remedies, which shall not be exclusive and shall be in addition to any other remedies now or later allowed by law:

a. The City may elect to continue this Agreement.

b. The City may terminate this Agreement, by providing specific written notice to this effect.

c. The City shall be entitled to recover all amounts, including any attorney fees incurred by the City in pursuit of the default.

12. Any notice required under this Agreement shall be in writing and served by prepaid, first class mail to the address listed on the first page of this Agreement, or any other address as either party may provide to the other in writing.

13. No delay or omission in the exercise of any right or remedy of the City on any default by FCLL shall impair such right or remedy or be construed as a waiver of the right to pursue such remedy.

14. Nothing in this agreement shall render the City in any way a partner, in joint ventureship with FCLL.

15. No later than May 1 following the expiration or termination of this Agreement, or any extensions or renewals of this Agreement, FCLL shall either renew this Agreement, enter into a new agreement, or terminate this agreement in writing.

16. This Agreement may be extended for future terms, subject to the outcome and objectives of the land use plan currently being performed by the City.

17. This Agreement contains the entire agreement of the parties with respect to its subject matter. This Agreement may not be modified except by a written document signed by the parties.

18. This Agreement shall bind and benefit the parties and their successors and permitted assigns.

19. This contract is executed in the City of Marquette, State of Michigan, and shall be construed under the laws of the State of Michigan, and the parties agree that any action relating to this contract shall be instituted and prosecuted in the courts of the County of Marquette, State of Michigan, and each party waives the right to change of venue.

20. FCLL's primary contact with the City shall be through the City of Marquette Community Services Director, or any person designated by him/her.

21. Either party may terminate the agreement by providing 30 days written notice to the other.

CITY OF MARQUETTE

____
Cody O. Mayer, Mayor

____
Kyle Whitney, City Clerk

FRESH COAST LIGHT LAB, LLC.

David Kronberg (Apr 19, 2023 16:09 EDT)
____
By: David Kronberg
Its: President and Founder

APPROVED AS TO SUBSTANCE:

____
Karen M. Kovacs, City Manager

APPROVED AS TO FORM:

____
Suzanne C. Larsen, City Attorney

City of Marquette, MI
300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

Consent Agenda
Street Improvements, Paving and Sanitary Sewer Line Replacements Project

BACKGROUND:

Plans have been developed for this project which includes resurfacing of various City streets, crack sealing and minor utility replacement work. These preventative maintenance and rehabilitation measures are intended to extend the useful service life of existing roads that are in fair condition. Also included in this project are short term road patching repairs on Division Street and Altamont Street. Both streets will require eventual reconstruction/utility replacement.

A bid alternate was included in this project to address pavement delamination at various locations along on Fourth Street and Third Street which was exacerbated by the extensive freeze thaw cycles this spring. Department of Public Works has addressed these areas with patching materials, but a more permanent solution is beyond the scope of current City owned equipment.

The project was advertised for bids and two contractors responded. The results are summarized below:

Contractor	Base - Bid	Bid Alternate	Total Bid
Smith Construction Inc.	$910,063.00	$103,256.00	$1,013,319.00
Oberstar Inc.	$1,067,180.00	$130,700.00	$1,197,880.00
Engineer's Estimate	$924,052.00	$56,670.00	$980,722.00

FISCAL EFFECT:

The approved FY'23 budget includes $950,000 for this project. Premiums from previous bond issues are available to fund the remaining balance of this project. Consequently, a budget amendment will be required to allocate these reserved premiums to this contract.

RECOMMENDATION:

Approve the contract with Smith Construction Inc. for the Street Improvements, Paving and Sanitary Sewer Service Line Replacements Project at a cost of $1,013,319.00, allow the City Manager to use a 10 percent contingency for any unknown circumstances, and authorize the Mayor and Clerk to sign the contract.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Construction Contract
- Certificate of Insurance
- Project Information/ Maps
- Bid Tabulations

CITY OF MARQUETTE
CHAPTER 3
CONSTRUCTION CONTRACT

PROJECT NAME: Street Improvements, Bituminous Paving, and Sanitary Lateral Replacements

PROJECT NUMBERS: MQ23-101 and MQ23-303

THIS AGREEMENT, made this _______________, between the City of Marquette, a Michigan Municipal Corporation, hereinafter called the "City" of 300 W. Baraga Avenue, Marquette, MI 49855, and Smith Construction, Inc. of Marquette Michigan, a Domestic Profit Corporation, holding license number 800021195, hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and Agreements hereinafter mentioned, the parties hereby agree as follows:

ARTICLE 1

CONTRACT DOCUMENTS

The "Contract Documents" consist of, but are not necessarily limited to, this Agreement, the invitation to Bid, Information for Bidders, Bidders Proposal, Addenda, Specifications, Supplemental Specifications, Special Provisions, Construction Drawings, Notice to Proceed, Allowances, Finish Schedules and any additional documentation issued prior to execution of this Agreement and all Change Orders as approved by the City. These Contract Documents represent the entire Agreement and understanding between the parties hereto.

ARTICLE 2

SCOPE OF WORK

Contractor will furnish all the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described in the Contract Documents.

ARTICLE 3

MATERIALS, APPLIANCES, and EMPLOYEES

Except as otherwise noted, the Contractor shall provide and pay for all materials, labor, tools and other items necessary to complete the work. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. All workmen shall be skilled in their trades.

ARTICLE 4

TIME OF COMPLETION

The commencement date of this project is April 24, 2023, and the completion date of this project is September 15, 2023. The Contractor shall be penalized in the amount of $1,300 per day if the project is not completed by the contract completion date unless the period for completion is extended by change order.

ARTICLE 5

CONTRACT SUM

The Contractor agrees to perform all of the work described in the Contract Documents and comply with the terms therein for the sum of $1,013,319.00, subject to additions and deductions pursuant to authorized change orders and allowances.

ARTICLE 6

PAYMENTS

The City will pay to the Contractor in the manner and at such times as set forth in the Specifications such amounts as required by the Contract documents.

ARTICLE 7

CONTRACTOR'S OBLIGATIONS

1. All work shall be in accordance to the provisions of the Contract Documents. All systems shall be in good working order.
2. All work shall be completed in a workmanlike manner and shall comply with all applicable laws.
3. Contractor shall obtain all necessary permits for the work to be completed.
4. Contractor shall remove all construction debris and leave the project in a "broom clean" condition.
5. Upon satisfactory payment being made for the work performed by Contractor, Contractor shall furnish a full and unconditional Release of Lien for the work of which payment has been made.
6. Safety and Fire Protection:
   The Contractor shall be responsible for safety at the construction site. The Contractor will further comply with all applicable laws, rules and regulations of the Michigan Department of State Police, Fire Marshall Division, the State Fire Safety Board, Michigan Occupational Safety and Health Administration, and Local Agencies. Precaution shall be exercised at all times for the protection of persons and of property. The safety provisions of applicable laws, rules, regulations, building and construction codes shall be followed. Safety Hazards shall be guarded in accordance with safety provisions of the Manual of Accident Prevention in Construction published by The Associated General Contractors of America to the extent that such provisions are not in conflict with applicable laws.

ARTICLE 8

CONTRACTOR'S STATUS AS INDEPENDENT ENTITY

The City shall not assume any liability for the Contractor in the performance of the construction project, methods, techniques, sequences or programs in connection with the project since these are solely the Contractor's responsibility.

ARTICLE 9

CHANGE ORDERS AND PAYMENT

A change order is any change to the original plans and/or specifications. All change orders need to be agreed upon between the parties hereto, and address additional costs, time, consideration and dates when the work will begin and be completed. Change orders are not effective unless signed by both parties who shall not unreasonably withhold approval of the same. However, should the Contractor unreasonably refuse to approve a change order reasonably and in good faith submitted by the City, the City Engineer shall be empowered to make a final and fair determination as to the necessity for the change order and the fair and equitable cost to the Contractor and shall further be empowered to issue a final payment to the Contractor. Should the Contractor refuse to accept said final payment, the funds may be deposited in an Escrow Account by the City for the benefit of the Contractor.

ARTICLE 10

INSURANCE

The Contractor shall purchase and maintain Workman's Compensation and Liability Insurance coverage as required by law and deemed necessary for its own protection. Said insurance shall be written by an insurance carrier having at least an "A, VII" rating. The Contractor shall further name the City as an additional insured on all applicable insurance policies covering the project. Said insurance shall be in minimum limits of at least $5,000,000.00 for both general liability and automobile liability. The Contractor shall further maintain such insurance as will protect it from claims under worker's compensation acts and other employee benefits acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise both out of and from claims for damages to property which may arise both out of and during operations under this contract, whether such operations are by Contractor or by anyone directly or indirectly employed by the Contractor. This insurance shall be written for not less than any limits of liability specified as part of the Contract Documents. Certificates of such insurance shall be filed with the City.

ARTICLE 11

INDEMNIFICATION

To the extent allowed by MCL 691.991, the Contractor shall indemnify and hold harmless the City, the City's officers, directors, members, partners, agents, and employees against all liability claims and judgments or demands for damages arising from accidents to persons or property occasioned by the Contractor, its agents or employees, and against all claims or demands for damages arising from accidents to the Contractor, its agents or employees, whether occasioned by said Contractor or its employees or by City or its employees or any other person or persons, and the said Contractor will defend any and all suits that may be brought against the City on account of any such accidents and will make good to, and reimburse, the City for any expenditures that said City may make by reason of such accidents; provided, however, that the Contractor shall not be responsible to the City on indemnity for damages caused by or resulting from the City's sole negligence.

ARTICLE 12

CITY'S RIGHT TO TERMINATE THE CONTRACT

Should the Contractor neglect to perform the work properly or fail to perform any provision of the Contract, the City, after seven (7) days' written notice to the Contractor, and its surety, if any, may, without prejudice to any other remedy the City may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option, may terminate the Contract and take possession of all materials, tools and appliances and finish the work by such means as it sees fit, and if the unpaid balance of the contract price exceeds the expense of finishing the work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the City.

ARTICLE 13

CONTRACTOR'S RIGHT TO TERMINATE CONTRACT

Should the work be stopped by any public authority for a period of ninety (90) days or more, through no fault of the Contractor, or should the work be stopped through act or neglect of the City for a period of ninety (90) days, then the Contractor, upon seven (7) days' written notice to the City, may stop work or terminate the Contract and recover from the City payment for all work executed and any loss sustained and reasonable profit and damages.

ARTICLE 14

ACCESS TO WORK

The Contractor shall permit and facilitate observation of the work by the City and its agents and public authorities at all times.

ARTICLE 15

ARBITRATION OF DISPUTES

Any disagreement arising out of this contract or from the breach thereof shall be submitted to arbitration, and judgment upon the award rendered may be entered in the court of the forum, state or federal, having jurisdiction. It is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right of legal action that either party may have against the other. The arbitration shall be held under the Rules of the American Arbitration Association.

ARTICLE 16

WARRANTY

At the completion of this project, Contractor shall execute an instrument to City warranting the project for two (2) years against defects in workmanship or materials utilized. In addition the warranty shall specifically include the replacement of concrete that spalls more than 30% per 10 foot section of curb and gutter, the replacement of concrete that spalls more than 30% per driveway apron square or sidewalk square, and the replacement of stamped concrete that spalls more than 30% of the area between each sidewalk square and the curb. The manufacturer's warranty shall prevail.

At the time of completion, the Contractor shall furnish to the City material containing complete operation and maintenance instructions for all equipment in the project. The Contractor shall also furnish to the City at the time of completion all documents, warranties and guarantees on all equipment and services provided.

The Contractor shall re-execute any work that fails to conform to the requirements of the Contract and that appears during the progress of the work and shall remedy any defects due to faulty workmanship, which appear within a period of two (2) years from the date of completion of the Contract or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents. All equipment and materials will be warranted and guaranteed under the original equipment manufacturer's warranties and guarantees.

The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. After such repair or replacement has been satisfactorily completed, the Contractor's warranty with respect to such work repaired or replaced will be extended for an additional period of one (1) year beyond the warranty period described above. Contractor's obligations under this paragraph are in addition to any other obligation or warranty.

The terms of the Local Pavement Warranty Program adopted by the City of Marquette are hereby incorporated by reference into this contract and made a part hereof.

ARTICLE 17

FEDERAL-AID CONTRACTS

During the performance of every contract subject to Title VI of the Civil Rights Act of 1964 and Title 49, Code of Federal Regulations, Department of Federally-assisted programs of the Department of Transportation issued pursuant to the Act, the Contractor, for itself, its assignees and successors in interest agrees as follows:

1. **Compliance with Regulations**: The Contractor shall comply with Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time (hereinafter refereed to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection, retention and treatment of Subcontractors, including procurements of materials in the discrimination prohibited by Section 21.5 of the Regulation, including employment practices when the Contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, including Procurements of Materials and Equipment**: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
4. **Information and Reports**:
The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department of the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State Highway Department or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:**
In the event the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    a) Withholding payments to the Contractor under the contract until the Contractor complies; and/or
    b) Cancellations, termination or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions**:
The Contractor shall include provisions of paragraphs (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State Highway Department to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 18

INTEGRATION

This Agreement represents the entire understanding between the parties hereto and may not be amended, except in writing that is signed by both parties hereto.

ARTICLE 19

BINDING AGREEMENT

This Agreement will bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

ARTICLE 20

PURCHASING AGENT DESIGNATION AND AUTHORITY

Mikael H. Kilpela is designated as Purchasing Agent of City and is authorized to order minor changes in the work not involving adjustment in the Contract Sum or Time of Completion and not inconsistent with the intent of the Contract Documents. Such changes will be affected by written order signed by the Purchasing Agent and shall be binding on the City and Contractor.

IN WITNESS WHEREOF, the parties have made and executed this Agreement, the day and year first above written.

Signed this ______ day of _____________, 20___.

THE CITY OF MARQUETTE

______________________	______________________
Witness	Cody O. Mayer, Mayor City of Marquette
______________________	______________________
Witness	Kyle L. Whitney, City Clerk City of Marquette

Smith Construction, Inc.

Marti Kilpela	Wyatt Smith
Witness	By: Wyatt Smith
Amanda Marker	Its: Vice President
Witness	Address: 4090 US 41 W Marquette MI 49855
	Telephone#: 906 869 7040

APPROVED AS TO FORM:

____
Suzanne C. Larsen
City Attorney

APPROVED AS TO SUBSTANCE:

____
Karen M. Kovacs
City Manager

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY) 04/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Holder Identifier :

PRODUCER
Aon Risk Services Central, Inc.
Green Bay WI Office
1175 Lombardi Avenue
Suite 350
Green Bay WI 54304 USA

CONTACT NAME:
PHONE (A/C. No. Ext): (920) 437-7123 FAX (A/C. No.): (920) 431-6345
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	ACUITY, A Mutual Insurance Company	14184
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Smith Construction, Inc.
4090 US 41 West
Marquette MI 49855-9491 USA

COVERAGES **CERTIFICATE NUMBER:** 570098987107 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			X07561	01/01/2023	01/01/2024	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$300,000
							MED EXP (Any one person)	$10,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$3,000,000
	POLICY X PRO-JECT X LOC						PRODUCTS - COMP/OP AGG	$3,000,000
	OTHER:							
A	AUTOMOBILE LIABILITY			X07561	01/01/2023	01/01/2024	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	
	OWNED AUTOS ONLY; SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	X HIRED AUTOS ONLY; X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	
A	X UMBRELLA LIAB X OCCUR			X07561	01/01/2023	01/01/2024	EACH OCCURRENCE	$5,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$5,000,000
	DED RETENTION							
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N; If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		X07561	01/01/2023	01/01/2024	X PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$1,000,000
							E.L. DISEASE-EA EMPLOYEE	$1,000,000
							E.L. DISEASE-POLICY LIMIT	$1,000,000

Certificate No : 570098987107

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: PROJECT NAME: STREET IMPROVEMENTS, BITUMINOUS PAVING, AND SANITARY LATERAL REPLACEMENTS, PROJECT NUMBERS: MQ23-101 AND MQ23-303. CITY OF MARQUETTE IS INCLUDED AS ADDITIONAL INSURED IN ACCORDANCE WITH THE POLICY PROVISIONS OF THE GENERAL LIABILITY, AUTO AND UMBRELLA POLICIES. IF WE CANCEL GENERAL LIABILITY, AUTOMOBILE LIABILITY AND UMBRELLA LIABILITY POLICIES FOR ANY REASON OTHER THAN NONPAYMENT OF PREMIUM, YOUR AUTHORIZED AGENT WILL MAIL 30-DAYS NOTICE OF CANCELLATION TO ANY PERSON(S) OR ORGANIZATION(S) FOR WHOM YOU HAVE AGREED IN WRITING IN A CONTRACT OR AGREEMENT THAT SUCH PERSON(S) OR ORGANIZATION(S) BE GIVEN ADVANCE NOTICE OF CANCELLATION PROVIDED YOU HAVE AUTHORIZED YOUR AGENT TO SEND NOTICE OF CANCELLATION AND YOU HAVE PROVIDED THE NAME AND ADDRESS OF SUCH PERSON(S) OR ORGANIZATION(S) TO YOUR AUTHORIZED AGENT.

CERTIFICATE HOLDER

CITY OF MARQUETTE
300 W BARAGA AVENUE
MARQUETTE MI 49855 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Central Inc.

2023 - PROPOSED SITE LOCATIONS

<u>Milling/ Pavement Resurfacing with minor utility replacements</u>

1. Magnetic Street – Seventh to Eighth
2. Lincoln Avenue – Bluff to Jefferson

<u>Milling/ Pavement Resurfacing</u>

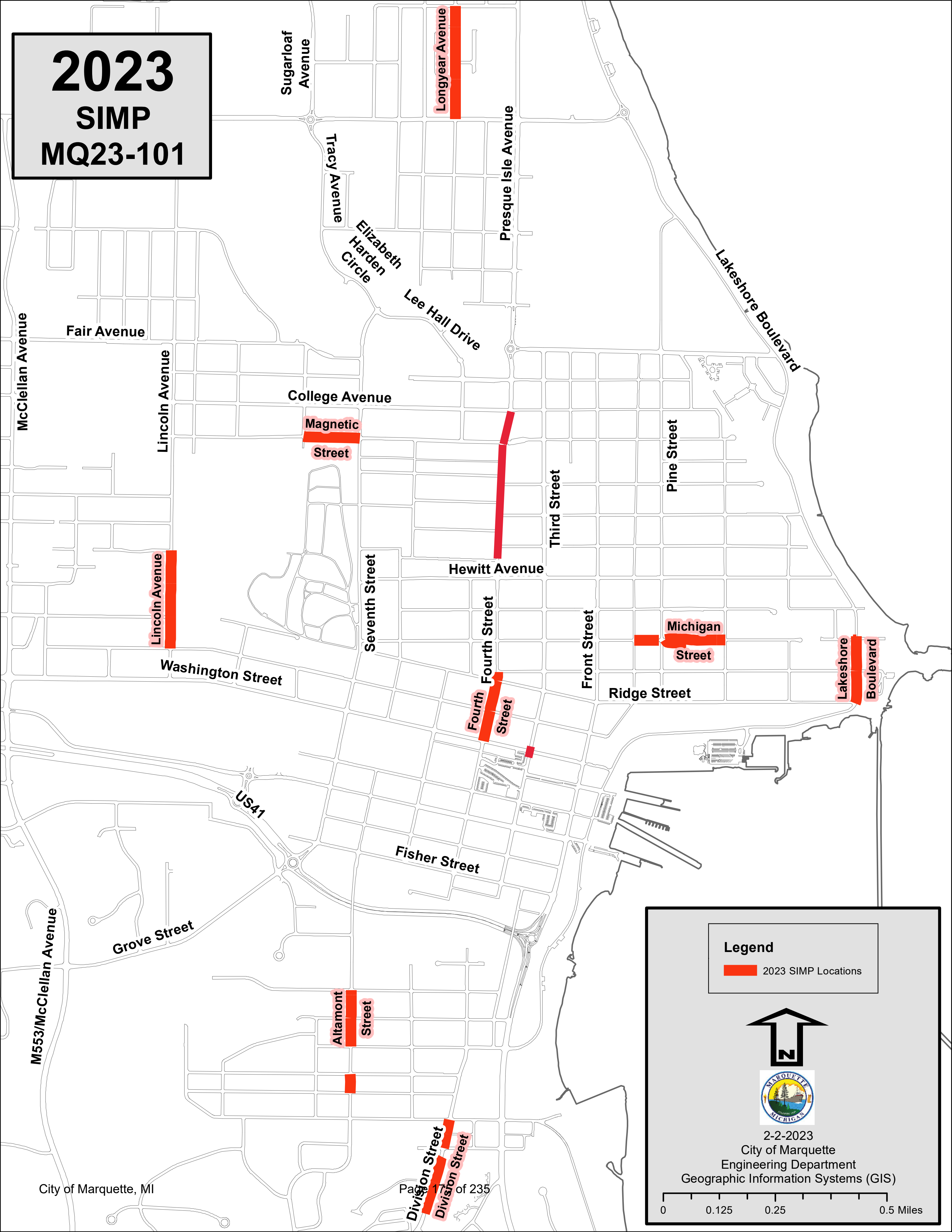
1. Lakeshore Boulevard – Ridge to Michigan
2. Michigan Street – High to Spruce
3. Longyear Avenue – Wright to Union
4. Fourth Street – Washington to Arch

<u>Road Patching</u>

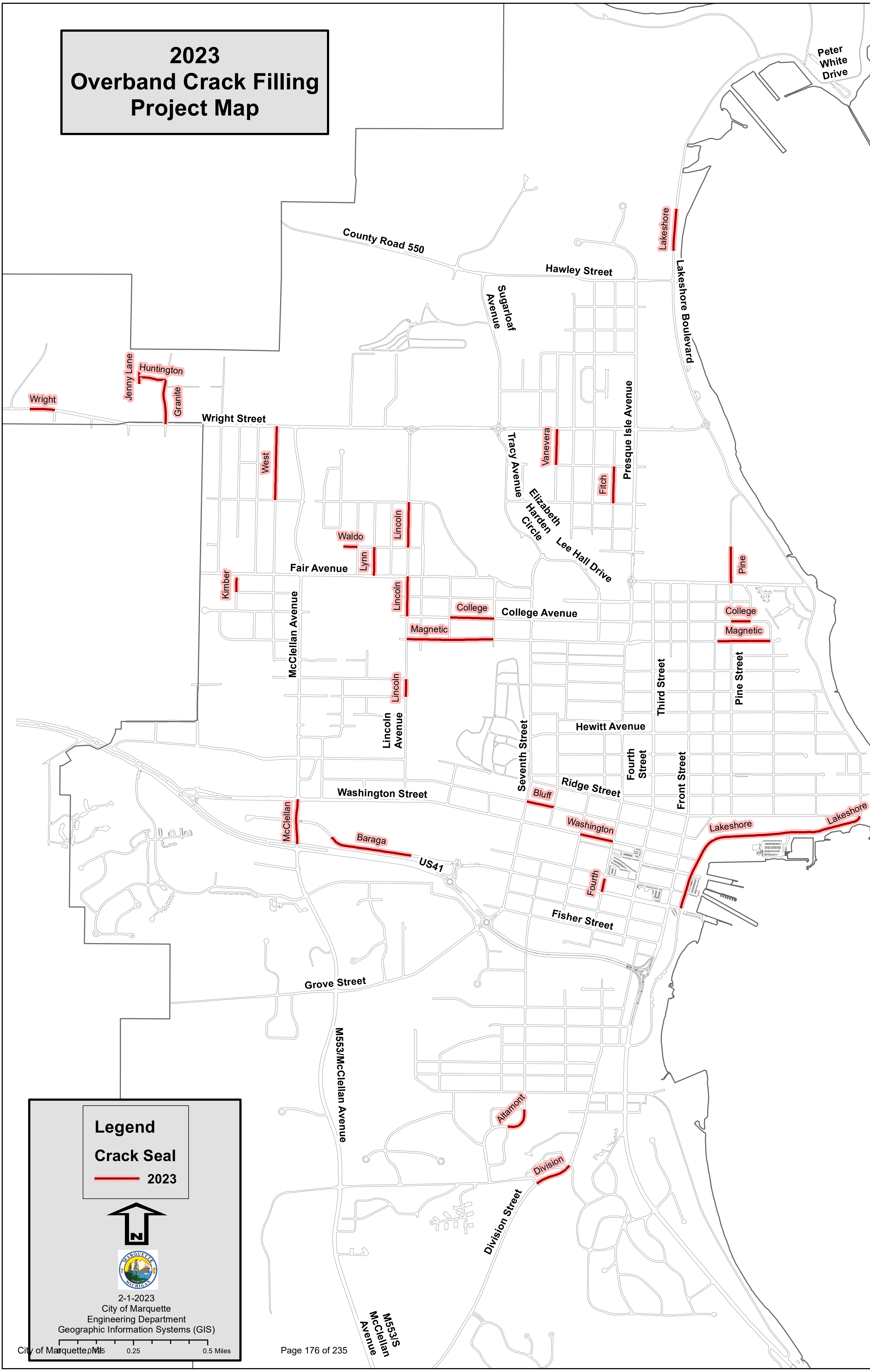
1. Division Street – Hampton to Joliet
2. Altamont Street – Mesnard to Craig
3. Altamont Street – Blemhuber to Genesee
4. Fourth Street – Hewitt to College
5. Third/ Washington Intersection

<u>Overband Crack Filling</u>

Various locations throughout the City of Marquette


2023
SIMP
MQ23-101
Sugarloaf Avenue
Longyear Avenue
Tracy Avenue
Presque Isle Avenue
Elizabeth Harden Circle
Lee Hall Drive
Lakeshore Boulevard
McClellan Avenue
Fair Avenue
Lincoln Avenue
College Avenue
Magnetic Street
Pine Street
Third Street
Hewitt Avenue
Seventh Street
Fourth Street
Front Street
Michigan Street
Lakeshore Boulevard
Lincoln Avenue
Washington Street
Ridge Street
Fourth Street
US41
Fisher Street
Grove Street
M553/McClellan Avenue
Altamont Street
Division Street
Division Street
Legend
2023 SIMP Locations
N
2-2-2023
City of Marquette
Engineering Department
Geographic Information Systems (GIS)
0
0.125
0.25
0.5 Miles

2023 Overband Crack Filling Project Map



City of Marquette

Bid Tabulation

MQ23-101

Description
MQ23-101 Street Improvements and Bituminous Paving
MQ23-303 Sanitary Lateral Replacements

Bid Summary

Engineer's Estimate		$980,722.00	Displayed
(1)	Smith Construction Inc.	$1,013,319.00	Displayed
(2)	Oberstar Inc.	$1,197,880.00	Displayed

Bid Tabulations

Line Number	Item ID	Unit	Quantity	Engineer's Estimate Unit Price	Engineer's Estimate Extension	(1) Smith Construction Inc. Unit Price	(1) Smith Construction Inc. Extension	(2) Oberstar Inc. Unit Price	(2) Oberstar Inc. Extension
Section: 1 - Description									
0010	1027051	LSUM	1.000	$8,000.000	$8,000.00	$10,000.000	$10,000.00	$7,500.000	$7,500.00
_ Pedestrian Traffic Maintenance									
0020	1100001	LSUM	1.000	$40,000.000	$40,000.00	$40,000.000	$40,000.00	$40,000.000	$40,000.00
Mobilization, Max $40,000									
0030	2040021	Ft	1,184.000	$25.000	$29,600.00	$35.000	$41,440.00	$19.000	$22,496.00
Curb, Rem									
0040	2040055	Syd	272.000	$12.000	$3,264.00	$20.000	$5,440.00	$13.000	$3,536.00
Sidewalk, Rem									
0050	2050016	Cyd	176.000	$22.000	$3,872.00	$25.000	$4,400.00	$25.000	$4,400.00
Excavation, Earth									
0060	2087051	LS	1.000	$10,000.000	$10,000.00	$10,000.000	$10,000.00	$10,000.000	$10,000.00
Soil Erosion And Sedimentation Control									
0070	2090001	LSUM	1.000	$10,000.000	$10,000.00	$10,000.000	$10,000.00	$10,000.000	$10,000.00
Project Cleanup									
0080	3010002	Cyd	103.000	$20.000	$2,060.00	$30.000	$3,090.00	$20.000	$2,060.00
Subbase, CIP									
0090	3020016	Syd	568.000	$11.000	$6,248.00	$16.000	$9,088.00	$14.000	$7,952.00
Aggregate Base, 6 inch									
0100	3020020	Syd	367.000	$13.000	$4,771.00	$20.000	$7,340.00	$16.000	$5,872.00
Aggregate Base, 8 inch									

Line Number	Item ID	Unit	Quantity	Engineer's Estimate Unit Price	Engineer's Estimate Extension	(1) Smith Construction Inc. Unit Price	(1) Smith Construction Inc. Extension	(2) Oberstar Inc. Unit Price	(2) Oberstar Inc. Extension
0110	4030005	Ea	27.000	$1,100.000	$29,700.00	$900.000	$24,300.00	$1,700.000	$45,900.00
Dr Structure Cover, Adj, Case 1									
0120	4030010	Ea	14.000	$2,100.000	$29,400.00	$1,500.000	$21,000.00	$2,500.000	$35,000.00
Dr Structure Cover, Type B modified									
0130	4030065	Ea	13.000	$2,100.000	$27,300.00	$1,500.000	$19,500.00	$2,500.000	$32,500.00
Dr Structure Cover, Type Q modified									
0140	5010002	Syd	19,696.000	$4.250	$83,708.00	$4.000	$78,784.00	$5.000	$98,480.00
Cold Milling HMA Surface 1-1/2 depth									
0150	5010025	Ton	255.000	$135.000	$34,425.00	$150.000	$38,250.00	$140.000	$35,700.00
Hand Patching road wedging only									
0160	5010033	Ton	4.000	$300.000	$1,200.00	$400.000	$1,600.00	$460.000	$1,840.00
HMA, 13A									
0170	5012025	Ton	195.000	$135.000	$26,325.00	$150.000	$29,250.00	$165.000	$32,175.00
HMA, 4EML 1 skim coat									
0180	5012025	Ton	83.000	$375.000	$31,125.00	$350.000	$29,050.00	$375.000	$31,125.00
HMA, 4EML curb/san lat patching									
0190	5012037	Ton	1,775.000	$120.000	$213,000.00	$125.000	$221,875.00	$125.000	$221,875.00
HMA, 5EML									
0200	5027003	Mi	4.040	$12,000.000	$48,480.00	$11,500.000	$46,460.00	$16,000.000	$64,640.00
_ Overband Crack Fill, Roadbed									
0210	5137018	lft	292.000	$75.000	$21,900.00	$80.000	$23,360.00	$92.000	$26,864.00
Lateral, Sanitary, 4 Inch									

Line Number	Item ID	Unit	Quantity	Engineer's Estimate Unit Price	Engineer's Estimate Extension	(1) Smith Construction Inc. Unit Price	(1) Smith Construction Inc. Extension	(2) Oberstar Inc. Unit Price	(2) Oberstar Inc. Extension
0220	5137052	Ea	10.000	$500.000	$5,000.00	$750.000	$7,500.00	$600.000	$6,000.00
Sanitary Saddle, 8 inch x 4 inch									
0230	5137059	ea	11.000	$775.000	$8,525.00	$500.000	$5,500.00	$900.000	$9,900.00
Connect to Existing Sanitary Lateral									
0240	6137054	LS	1.000	$50,000.000	$50,000.00	$30,000.000	$30,000.00	$80,000.000	$80,000.00
Traffic Control									
0250	6807131	Lft	40.000	$75.000	$3,000.00	$90.000	$3,600.00	$100.000	$4,000.00
Water Service, Type K, 1 inch									
0260	6807135	ea	2.000	$250.000	$500.00	$750.000	$1,500.00	$800.000	$1,600.00
Service Tap, 1 Inch									
0270	6807139	ea	2.000	$400.000	$800.00	$750.000	$1,500.00	$1,000.000	$2,000.00
Curb Stop & Box, 1 Inch									
0280	6807144	Ea	2.000	$250.000	$500.00	$500.000	$1,000.00	$650.000	$1,300.00
Connect to existing water lateral									
0290	6927008	Ea	7.000	$400.000	$2,800.00	$600.000	$4,200.00	$500.000	$3,500.00
Utility exploration									
0300	6927011	LS	1.000	$12,000.000	$12,000.00	$10,000.000	$10,000.00	$10,000.000	$10,000.00
Resident Notification									
0310	8007001	Ft	40.000	$50.000	$2,000.00	$60.000	$2,400.00	$100.000	$4,000.00
_ Water Service, Type K, 3/4									
0320	8010005	Syd	127.000	$125.000	$15,875.00	$125.000	$15,875.00	$143.000	$18,161.00
Driveway, Nonreinf Conc, 6 inch									

Line Number	Item ID	Unit	Quantity	Engineer's Estimate Unit Price	Engineer's Estimate Extension	(1) Smith Construction Inc. Unit Price	(1) Smith Construction Inc. Extension	(2) Oberstar Inc. Unit Price	(2) Oberstar Inc. Extension
0330	8020008	ft	816.000	$50.000	$40,800.00	$45.000	$36,720.00	$63.000	$51,408.00
Curb, Conc., City Standard									
0340	8020021	Ft	368.000	$45.000	$16,560.00	$45.000	$16,560.00	$64.000	$23,552.00
Curb and Gutter, Conc, Det C2									
0350	8030044	Sft	958.000	$13.000	$12,454.00	$12.000	$11,496.00	$15.000	$14,370.00
Sidewalk, Conc, 4 inch									
0360	8030046	Sft	345.000	$15.000	$5,175.00	$13.000	$4,485.00	$18.000	$6,210.00
Sidewalk, Conc, 6 inch									
0370	8110114	Ft	183.000	$17.000	$3,111.00	$16.000	$2,928.00	$17.000	$3,111.00
Pavt Mrkg, Polyurea, 24 inch, Stop Bar									
0380	8110231	Ft	1,152.000	$17.000	$19,584.00	$16.000	$18,432.00	$17.000	$19,584.00
Pavt Mrkg, Polyurea, 24 Inch, Crosswalk Ladder Pattern, White									
0390	8110405	Ea	1.000	$275.000	$275.00	$250.000	$250.00	$400.000	$400.00
Pavt Mrkg, Polyurea, Lt Turn Arrow Sym									
0400	8110410	Ea	1.000	$275.000	$275.00	$250.000	$250.00	$400.000	$400.00
Pavt Mrkg, Polyurea, Only									
0410	8112237	Ft	52.000	$3.500	$182.00	$2.000	$104.00	$6.000	$312.00
Pavt Mrkg, Modified Epoxy, 4 inch, White									
0420	8112241	Ft	3,220.000	$2.500	$8,050.00	$2.000	$6,440.00	$2.000	$6,440.00
Pavt Mrkg, Modified Epoxy, 4 inch, Yellow									
0430	8120170	LSUM	1.000	$12,000.000	$12,000.00	$7,500.000	$7,500.00	$10,000.000	$10,000.00
Minor Traf Devices									

Line Number	Item ID	Unit	Quantity	Engineer's Estimate Unit Price	Engineer's Estimate Extension	(1) Smith Construction Inc. Unit Price	(1) Smith Construction Inc. Extension	(2) Oberstar Inc. Unit Price	(2) Oberstar Inc. Extension
0440	8160055	Syd	479.000	$9.000	$4,311.00	$11.000	$5,269.00	$13.000	$6,227.00
Sodding									
0450	8160062	Syd	479.000	$8.000	$3,832.00	$13.000	$6,227.00	$10.000	$4,790.00
Topsoil Surface, Furn, 4 inch									
0460	8210001	Ea	14.000	$315.000	$4,410.00	$350.000	$4,900.00	$400.000	$5,600.00
Monument Box									
0470	8230431	Ea	18.000	$385.000	$6,930.00	$750.000	$13,500.00	$400.000	$7,200.00
Gate Box, Adj, Case 1 modified									
0480	8257050	Ea	7.000	$2,500.000	$17,500.00	$2,000.000	$14,000.00	$3,200.000	$22,400.00
_ Sanitary Sewer Cleanout, 4 (cleanout & reverse cleanout placement only)									
0490	8257050	Ea	4.000	$750.000	$3,000.00	$750.000	$3,000.00	$1,000.000	$4,000.00
_ Sanitary Sewer Cleanout, 4 (Full replacement w/ reverse cleanout)									
0500	8507050	Ea	1.000	$225.000	$225.00	$700.000	$700.00	$800.000	$800.00
_ Service Tap, 3/4 Inch									
0510	4030005	Ea	9.000	$1,100.000	$9,900.00	$1,200.000	$10,800.00	$1,850.000	$16,650.00
Dr Structure Cover, Adj, Case 1									
0520	5010002	Syd	967.000	$10.000	$9,670.00	$44.000	$42,548.00	$50.000	$48,350.00
Cold Milling HMA Surface 1.5 depth patching									
0530	5012037	Ton	88.000	$250.000	$22,000.00	$341.000	$30,008.00	$400.000	$35,200.00
HMA, 5EML 1.5 thick patching									
0540	8127051	LSUM	1.000	$3,000.000	$3,000.00	$10,000.000	$10,000.00	$25,000.000	$25,000.00
_ Traffic Control, Bid Alt									

Line Number	Item ID	Unit	Quantity	Engineer's Estimate Unit Price	Engineer's Estimate Extension	(1) Smith Construction Inc. Unit Price	(1) Smith Construction Inc. Extension	(2) Oberstar Inc. Unit Price	(2) Oberstar Inc. Extension
0550	8230431	Ea	11.000	$1,100.000	$12,100.00	$900.000	$9,900.00	$500.000	$5,500.00
Gate Box, Adj, Case 1 , Modified									
55 items			**Section Totals:**		**$980,722.00**		**$1,013,319.00**		**$1,197,880.00**
55 items			**Totals:**		**$980,722.00**		**$1,013,319.00**		**$1,197,880.00**

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 4/24/2023

New Business
Vault Development Agreement

BACKGROUND:

The Vault Marquette Brownfield Plan was approved by the City Commission at the July 21, 2021 regular meeting and an amended Reimbursement Agreement was approved at the May 9, 2022 regular meeting. The next item for consideration in relation to this plan is the Development Agreement between the Marquette Brownfield Redevelopment Authority (MBRA), City of Marquette, and Marquette Vault, LLC for the design, construction, and acquisition of the Public Parking Facility.

This Development Agreement outlines the requirements for the design, site plan, construction, plans and specifications, schedule, financing, operating budget, and other deliverables of the 212-space public parking facility and elements of the surrounding development by Marquette Vault, LLC, and the issuance of bonds to acquire the parking facility. Notably, this agreement requires the completion of the entire project within 40 months of the completion of all predevelopment activities. This timeline has been reviewed by both parties and is viewed as an expedient development period given the magnitude of the complete project.

The following are a summary of the basic terms and conditions:

- The Developer will secure and provide construction documentation, including but not limited to title, survey, environmental reports, organizational documents, financing, site plan, permits and approvals, construction contract, and preliminary Guaranteed Maximum Price (GMP). The Developer will also provide a budget for long-term capital expenditures and operating costs.
- The Pre-Development Site Plan will present descriptions of the points of ingress and egress from public streets, a plan for traffic management during construction, and estimates of traffic impacts on adjacent streets for approval by appropriate City staff.
- The Brownfield Authority has hired a parking consultant to provide technical expertise and advice in the development process and shall review all documentation in a timely fashion.
- Based on all the pre-development documentation and review, the Developer and the Authority will execute a Pre-Development Satisfaction Letter for the design, GMP, financing, and other conditions.
- The Developer will proceed with construction of the public parking facility with inspections by the MBRA representatives, as necessary.
- A Special Assessment District (SAD) will be established to ensure that the minimum bond payment can be met if there is a shortfall in Brownfield TIF.
- Upon completion of the public parking facility and acceptance by the MBRA, bonds will be issued to acquire the facility.

The Development Agreement has been reviewed by the City Attorney and was approved by the

MBRA on April 20, 2023, with a recommendation for approval by the City Commission.

The Operating Agreement for the Public Parking Facility between the MBRA, City, and Downtown Development Authority is under development.

FISCAL EFFECT:

The implementation of the Development Agreement will result in a significant bond issue by the MBRA, backed by the full faith and credit of the City, for the public acquisition of the parking facility using Brownfield Tax Increment Financing (TIF) revenues to repay the bond.

RECOMMENDATION:

Approve the Public Parking Facility Development Agreement with Marquette Vault, LLC as presented, and authorize the execution of the document.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

	Description
🗋	Development Agreement

PUBLIC PARKING FACILITY DEVELOPMENT AGREEMENT

VAULT MARQUETTE

This **PUBLIC PARKING FACILITY DEVELOPMENT AGREEMENT** is made as of July 1, 2023, (the "**Effective Date**") by and between **MARQUETTE VAULT, LLC**, a Michigan limited liability company (the "**Developer**"), the **CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY**, a public body corporate created pursuant to 1996 PA 381, as amended (the "**MBRA**") and the **CITY OF MARQUETTE**, a Michigan municipal corporation.

RECITALS

A. The Developer desires to design and construct a public parking facility (the "**Public Parking Facility**") with a residential and commercial building above the Public Parking Facility ("**Vault Marquette")**, and together with the Public Parking Facility (the "**Project**") at 101 S. Front Street and 119 S. Lakeshore Boulevard which consists of approximately 0.931 acres, legally described on the attached **Exhibit A** (the "**Property**").

B. The Developer intends to design and construct the Public Parking Facility and Vault Marquette in accordance with the plans and specifications required hereunder and in accordance with the renderings and detailed descriptions of each attached hereto as **Exhibit B** and **Exhibit C**, respectively. The Public Parking Facility will be located on a portion of the lower four (4) levels of Vault Marquette and will contain, when completed, at least 200 parking spaces that can accommodate passenger vehicles with a design clearance of seven feet six inches in height and at least 6 parking spaces that can accommodate ADA vans with a design clearance of eight feet six inches.

C. A Brownfield Plan was prepared and approved by the City of Marquette Brownfield Redevelopment Authority on June 17, 2021 and the Marquette City Commission on July 12, 2021, and a Michigan Strategic Fund ("**MSF**") Act 381 Work Plan was prepared and approved by the MBRA on June 17, 2021 and a Michigan Strategic Fund (MSF) Act 381 Work Plan for Non-Environmental Eligible Activities and a Michigan Department of Environment, Great Lakes and Energy ("**EGLE**") Act 381 Work Plan for Environmental Eligible Activities are anticipated to be prepared and approved by the MBRA and MSF and EGLE respectively for State tax capture which provides for 100% of the tax increment revenues authorized by law to be captured from the levies imposed by taxing jurisdictions, including the State of Michigan, upon taxable property for the Eligible Property (as defined herein) described in the Brownfield Plan, which includes the Property, consistent with Act 381, as amended, the Brownfield Plan, and the Act 381 Work Plan ("**Brownfield Tax Increment Revenues**").

D. The City of Marquette, MBRA, and the Developer have entered into a Reimbursement Agreement dated October 21, 2021 (the "**Reimbursement Agreement**") which provides for the reimbursement of costs associated with construction of the Public Parking Facility, as well as other approved Eligible Activities (as defined herein), in accordance with the Brownfield Plan and the Act 381 Work Plans.

E. Using the proceeds of the Bonds (as defined herein), the MBRA proposes to purchase the Public Parking Facility for an amount not to exceed the Actual Development Cost (as defined herein), subject to the Maximum Development Cost (as defined herein), upon completion of the Project by the Developer and satisfaction of certain conditions precedent specified herein. The Brownfield Tax Increment Revenues shall repay the Bonds and be further supported by a Special Assessment District ("SAD") (as defined herein) covering the SAD Property (as defined herein) that shall be created to repay the Bonds in the event the Brownfield Tax Increment Revenues are insufficient to do so.

F. The MBRA through an Operating Agreement with the City of Marquette Downtown Development Authority, at its sole cost and expense, shall operate and maintain the Public Parking Facility and the parking revenues shall be used by such operator as a source of funds for such operation and maintenance expenses.

In consideration of the premises and the mutual covenants contained in this Agreement, the Developer and MBRA hereby enter into this Agreement and covenant and agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions. The following capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

(a) "Act 381" means Act 381 of Michigan Public Acts of 1996, as amended.

(b) "Act 381 Work Plan" means the Act 381 Work Plan for Vault Marquette approved by the MBRA and, for Environmental Eligible Activities by the Michigan Department of Environment, Great Lakes and Energy and, for Non-Environmental Eligible Activities the Michigan Strategic Fund.

(c) "Actual Development Cost" means the total actual hard and soft costs of constructing the Public Parking Facility. The components and the calculation of the Actual Development Cost shall be confirmed by the MBRA, the City and the Developer in the Pre-Development Satisfaction Letter. Actual Development Costs may include the components outlined in Section 2.2(h), construction management fees, engineering fees, architecture fees, and accrued interest on the Construction Loan allocated to the Public Parking Facility (subject to an agreed upon cap) based upon the ratio of the hard costs for the Public Parking Facility compared to the hard costs for the Project.

(d) "Agreement" means this Public Parking Facility Development Agreement entered into between the MBRA, the City and the Developer.

(e) "Architect Cost Opinion" means the cost estimate of the Architect of record for the Project, including the Public Parking Facility, based on structural plans with assumed buildout and finishes.

(f) "Bonds" means the tax-exempt bonds, with a term to be determined, to be issued by the MBRA for the Public Parking Facility pursuant to the terms of this Agreement in a maximum principal amount that the MBRA determines can be issued, in its sole discretion, so that Brownfield Tax Increment Revenues will be capable of repaying the Bonds in full with appropriate debt service coverages taking into account Actual Development Cost (not to exceed the Maximum Development Cost), Issuance Costs, projected interest rates, the duration of any period in which interest is capitalized, the annual fees and expenses of the MBRA for the Project, and estimates of potential unpaid operating, maintenance and capital expenses with respect to the Public Parking Facility. The Bonds will only be issued if the same are backed by the full faith and credit of the City.

(g) "Brownfield Plan" means the Brownfield Plan, adopted by the MBRA and the City Commission in July 2021, and as amended pursuant to Act 381.

(h) "Brownfield Tax Increment Revenues" means the tax increment revenues, as defined by Act 381, from all taxable real and personal property located on the Eligible Property during the life of the Brownfield Plan, which are generated by property taxes levied against the Eligible Property, which amount results from the increase in taxable value of the Eligible Property multiplied by those millages the MBRA is legally permitted to capture for repayment of the Bonds and approved Eligible Activity costs.

(i) "City" means the City of Marquette.

(j) "City Commission" means the Marquette City Commission.

(k) "Closing" or "Closing Date" means a mutually acceptable date for the transfer of the Public Parking Facility from the Developer to the MBRA, to occur after the date on which the conditions set forth in Article 4 have been fully satisfied or waived with respect to the Project.

(l) "Construction Manager" means the qualified construction manager for the Project as is selected by the Developer with the prior written approval of the MBRA.

(m) "DDA" means the City of Marquette Downtown Development Authority.

(n) "Developer" means Marquette Vault, LLC.

(o) "Due Care Plan" shall mean a plan to meet the requirements of Section 7a Compliance Analysis for all remedial, removal, due care or other action necessary to monitor, clean up and remove all hazardous materials on or affecting the Property in accordance with Environmental Laws to the level required to meet due care obligations and for the use of the Property as the Project. The Due Care Plan shall be formulated by the Developer and its consultants and shall be subject to acceptance by MBRA pursuant to Act 381 of the Public Acts of 1996, as amended, and Part 201 of Act 451 of the Public Acts of 1994.

(p) "Eligible Activities" means the environmental and non-environmental activities identified in the Brownfield Plan which are eligible for reimbursement under Act 381, which includes the design and construction of the Public Parking Facility.

(q) "<u>Eligible Property</u>" means the parcels identified in the Brownfield Plan which qualify under Act 381 from which Brownfield Tax Increment Revenues will be captured to reimburse Eligible Activities.

(r) "<u>Environmental Law</u>" means any law, regulation or ordinance relating to environmental conditions, including without limitation the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Atomic Energy Act, the Michigan Natural Resources and Environmental Protection Act and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder.

(s) "<u>Force Majeure</u>" means unforeseeable events beyond a party's reasonable control and without such party's failure or negligence, including, but not limited to, acts of God, acts of a public enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby and promptly notifies the other party in writing of such delay.

(t) "<u>Guaranteed Maximum Price</u>" shall mean the not to exceed construction cost of each phase of the Project (including an allocated amount to the Public Parking Facility component) provided by the Construction Manager no later than completion of design development (but for the first phase and structural design for the Project balance with the Architect Cost Opinion at least 60 days prior to the expiration of the Pre-Development Period) and shall include the components outlined in <u>Section 2.2(h)</u>.

(u) "<u>GMP Construction Contract</u>" means the construction contract for the Project with a Guaranteed Maximum Price entered into by and between the Developer and the Construction Manager for each phase of the Project.

(v) "<u>Hazardous Materials</u>" means any substance, including without limitation perchloroethylene (**"PCE"**) or any substance containing PCE, deemed hazardous under any Environmental Law, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, medical waste, chemicals, pollutants, effluents, contaminants, emissions or related materials and items included in the definition of hazardous or toxic wastes, materials or substances under any Environmental Law.

(w) "<u>Indemnified Persons</u>" means the MBRA, the City and their respective members, officers, agents, employees and attorneys.

(x) "<u>Issuance Costs</u>" means items of expense incurred by the MBRA, the Developer and the City related to the authorization, sale and issuance of the Bonds, and authorization and execution of this Agreement, which items of expense shall include, but not be limited to, application fees and expenses, publication costs, printing costs, costs of reproducing documents, filing and recording fees, bond counsel and counsel fees, financial consultant fees, underwriter fees and expenses, including the fees and expenses of counsel to the underwriter, rating agency fees and the costs of obtaining a policy of municipal bond insurance, if any, fees and charges for execution, transportation and safekeeping of the Bonds and related documents, counsel fees incurred by the MBRA to document this Agreement, and other costs, charges and fees in connection with the foregoing. Issuance Costs shall be deducted from the proceeds of the Bonds and shall reduce the proceeds available to the Developer for the purchase of the Public Parking Facility, as provided in this Agreement.

(y) "Laws" means all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders and other governmental requirements applicable to the Project, including, without limitation, those relating to the Environmental Laws, health and safety, disabled or handicapped persons.

(z) "Master Deed" shall mean any master deed prepared and recorded by the Developer on a portion of the Property in accordance with the requirements of the Michigan Condominium Act.

(aa) "MBRA" means the City of Marquette Brownfield Redevelopment Authority, established by the City Commission.

(bb) "Maximum Development Cost" means the maximum amount to be paid for the Public Parking Facility, as established by the MBRA based upon the MBRA's analysis and underwriting of the Developer's deliveries during the Pre-Development Period, including its analysis of the maximum amount of Brownfield Tax Increment Revenues that can be generated by the Project, subject to the terms of the Brownfield Plan. The Maximum Development Cost shall not exceed $8,326,000.

(cc) "Permits" means all permits, licenses, approvals, entitlements, notifications, determinations and other governmental and quasi-governmental authorizations, including without limitation, zoning and land use approvals, required in connection with the ownership, planning, development, construction, use, operation or maintenance of the Project. As used herein, "quasi-governmental" shall include the providers of all utility services to the Project.

(dd) "Pre-Development Period" shall mean the period of time from the Effective Date through December 31, 2023, as such date may be extended in accordance with Section 2.5 below.

(ee) "Pre-Existing Contamination" means exceedances of Michigan Department of Environment, Great Lakes and Energy (EGLE) Generic Residential Cleanup Criteria on the Property for which the Developer on behalf of the MBRA has prepared and filed Baseline Environmental Assessments (BEAs) to provide an exemption from environmental liability, in accordance with Part 201, Act 451, P.A. 1994, as amended, Michigan's Natural Resources and Environmental Protection Act.

(ff) "Project" shall have the meaning ascribed to it in the Recitals hereto.

(gg) "Project Completion" means (i) all work described in the approved Project Plans (as defined herein) has been substantially completed, lien-free and in good, workmanlike condition and order, (ii) the Project and its components are each fully functional, operational, accessible (by stairwells, elevator, walkways and driveways described in the approved Project Plans) and capable of their intended use, (iii) all work on the Project requiring inspection or certification by any governmental agency has been substantially completed and all requisite certificates, approvals and other necessary authorizations have been obtained, (iv) the access drives approved on the Site Plan to be constructed by the Developer have been substantially completed to the satisfaction of all governmental agencies having jurisdiction over same and are otherwise fully operational and accessible, (v) off-site utilities and systems necessary for the access and operation of the Project have been substantially completed to the satisfaction of all governmental agencies having jurisdiction over same and are otherwise fully operational and functional, and (vi) such municipal approvals have in each instance been issued by the City or County, acting in accordance with its standard, generally applicable approval process, including all applicable certificates of occupancy or certificate of completion.

(hh) "Project Completion Date" shall mean forty (40) months after the full execution and delivery of the Pre-Development Satisfaction Letter, as such date may be extended in accordance with Section 4.2 below.

(ii) "Property" shall have the meaning ascribed to it in the Recitals hereto.

(jj) "Public Parking Facility" means space to provide parking as part of the Project containing at least 200 parking spaces.

(kk) "Special Assessment District" or "SAD" shall mean any special assessment district established by the City comprised of the SAD Property for the purposes of levying a special assessment against all taxable portions of such SAD Property while the Bonds are outstanding to pay the principal and interest payments due under the Bonds to the extent annual Brownfield Tax Increment Revenues are not available for those payments.

(ll) "SAD Property" means the Eligible Property as defined in the Brownfield Plan.

(mm) "Survey" means an ALTA survey of the Project, certified to ALTA requirements and complying with such of the minimum standard details, 2011 revisions, as the MBRA reasonably requires, prepared at Developer's expense by an engineer or surveyor who is licensed in the State of Michigan and acceptable to the Construction Lender, which survey shall: (i) include a proper legal description of the Project and Public Parking Facility (including a reference to lot(s) within the applicable recorded plat(s), if any), and a computation of the area comprising the Project and Public Parking Facility in both acre and gross square feet and net square feet (to the nearest one hundredth of said respective measurement); (ii) accurately show the location on the Project of all improvements (including the Public Parking Facility), building and set back lines, fences, evidence of abandoned fences, ponds, creeks, streams, rivers, officially designated 100 year flood plains and flood prone areas, canals, ditches, easements, roads, rights of way and encroachments; (iii) be certified at the time of the Closing to the Developer, the MBRA and the Title Company; (iv) legibly identify any and all recorded matters shown on the Title Commitment or on said survey by appropriate volume and page recording references; (v) show the location of all adjoining streets; and (vi) be satisfactory to the Title Company so as to permit it to amend the standard survey exception in the Title Policy to be issued to the MBRA in connection with the Closing.

(nn) "Title Commitment" means a current commitment of the Project issued by the Title Company to the MBRA showing insurable title to be in the Developer pursuant to the terms of which the Title Company shall commit to issue the Title Policy to the MBRA in accordance with the provisions of this Agreement, and initially reflecting all matters which would be listed as exceptions to coverage on the Title Policy.

(oo) "Title Company" shall mean the title company insuring the Public Parking Facility, as mutually approved by Developer, the Construction Lender and the MBRA.

(pp) "Title Policy" means an ALTA Policy of Title Insurance for the rights of the MBRA in the Public Parking Facility, issued by the Title Company and naming the MBRA as the insured party, together with the following endorsements: (i) comprehensive endorsement; (ii) access endorsement; (iii) survey endorsement; (iv) separate tax parcel endorsement; (v) zoning endorsement (with parking); and (vi) such other endorsements as are reasonably and customarily required by institutional purchasers of and lenders on real property similar to the Project. The face amount of the Title Policy will be the total amount of the Bonds. The Title Policy shall be issued at the Closing subject only to the exceptions accepted by the MBRA and with coverage over the standard printed exceptions.

(qq) "Vault Documents" means, collectively, the Brownfield Plan, Act 381 Work Plan, and Reimbursement Agreement, described herein, as each may be amended, modified or supplemented from time to time.

(rr) "Vault Marquette" shall have the meaning ascribed to it in the Recitals hereto.

Section 1.2 Recitals. The Recitals set forth above are hereby incorporated herein by reference as if the same were fully set forth herein.

Section 1.3 Number and Gender. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun should include the corresponding masculine, feminine, and neuter forms.

ARTICLE 2
CONDITIONS TO THE COMMENCEMENT OF CONSTRUCTION

Section 2.1 Conditions Precedent to the Commencement of Construction and Obligation to Issue Bonds. As a condition precedent to the MBRA's obligation to issue Bonds or purchase the Public Parking Facility, or the Developer's obligation to construct the Project, the Developer, MBRA and the City agree to perform their respective duties under Section 2.2, Section 2.3 and Section 2.4 of this Agreement.

Section 2.2 Deliveries of the Developer During the Pre-Development Period. The Developer covenants and agrees to make commercially reasonable efforts to complete all of the following actions with respect to the Project at least sixty (60) days prior to expiration of the Pre-Development Period unless a different timeframe is set forth herein. The Developer covenants and agrees to notify the MBRA in writing if and when it reasonably believes any of the following actions are unable to be completed or cannot be completed by the applicable deadline set forth in this Agreement. Except as expressly otherwise provided for herein, all of the deliveries required by Developer under this Section 2.2 shall be subject to the written approval of the MBRA, which approval shall not be unreasonably withheld, delayed or conditioned, pursuant to the terms and conditions of Section 2.5(b). Developer shall:

(a) Title, Survey, Property Condition. Within thirty (30) days after the Effective Date, deliver to the MBRA a Title Commitment, soil reports and environmental reports for the Public Parking Facility and the Project, and, as soon as weather permits, provide the Survey for the Public Parking Facility and the Project.

(b) Organizational and Authority Documents. Prior to the Effective Date, deliver to the MBRA complete entity information with respect to itself, its members and each of their affiliates to be involved in the Project, including without limitation:

(i) An organizational chart showing the relationships among Developer, its members and each of their affiliates involved in the Project.

(ii) A manager's certificate for the Developer and each of its affiliates involved in the Project, containing and certifying as true, correct and complete with respect to itself and its affiliates involved in the Project: (A) resolutions authorizing the execution of this Agreement and/or participation in the Project and (B) a certified copy of the entity operating agreement (or bylaws).

(iii) Certified articles of organization (or incorporation) from the jurisdiction of its organization (or incorporation) for the Developer and its affiliates involved in the Project, which the MBRA may reasonably require be updated after the Pre-Development Period to a date no earlier than thirty (30) days before the Closing Date.

(iv) Good Standing Certificate from the State of Michigan Department of Licensing and Regulatory Affairs for the Developer and, if applicable, its affiliates involved in the Project, which the MBRA may reasonably require be updated after the Pre-Development Period to a date no earlier than thirty (30) days before the Closing Date.

(v) If applicable, a Certificate of Authority to transact business in Michigan from the State of Michigan Department of Licensing and Regulatory Affairs for the affiliates of the Developer involved in the Project, which the MBRA may reasonably require be updated after the Pre-Development Period to a date no earlier than thirty (30) days before the Closing Date.

(vi) A Statement of litigation history for the last five years.

(vii) Such other entity information or documentation with respect to the Developer involved in the Project as may be reasonably required by the MBRA.

Any change in the entity structure or the ownership and control of the Developer after the Effective Date of this Agreement shall be subject to written approval by the MBRA, which approval shall not be unreasonably withheld, delayed or conditioned.

(c) Financial Statements. Deliver to the MBRA updated financial information on the Developer and its affiliates involved in the Project showing the Developer's ability to invest the minimum equity requirement to construct the Project, subject to the confidentiality conditions set forth in Section 2.5(c) of this Agreement.

(d) Site Plan.

(i) As soon as possible during the Pre-Development Period, but in no event later than one hundred twenty (120) days prior to the expiration of the Pre-Development Period, prepare and submit the site plan for the Project (the "**Site Plan**") to the City for approval, with a copy to the MBRA. The Site Plan shall provide details for both the Project as a whole and for the Public Parking Facility. The Site Plan shall meet the requirements of this Agreement. With respect to the Public Parking Facility, the Site Plan shall reflect, at a minimum, the number of proposed parking spaces, the points of ingress and egress from public streets, a plan for traffic management during construction, estimate of traffic impacts on adjacent streets, the elevation of each floor of the Public Parking Facility along with the width and length of each floor, and the location of all elevators and stairwells providing access to the Public Parking Facility from both Vault Marquette and the public right of way. DDA involvement and design.

(ii) During the Pre-Development Period, to the extent the Developer wishes to have the City create separate tax parcels or record a Master Deed, provide a Site Plan or survey showing the separate tax parcels sought by the Developer to be created within the Project.

(iii) Be solely responsible for all costs and expenses of preparing and filing applications for any submissions pursuant to this subsection, including survey drawings, engineering plans and consultants' costs.

(e) Zoning, Permits and Approvals. Obtain all Permits that are necessary in order for the Developer to construct and operate the Project, whether required by other City departments and/or agencies or otherwise.

(f) Governmental Approvals. Promptly following completion of the final approved Site Plan, but in no event later than sixty (60) days prior to the expiration of the Pre-Development Period, submit evidence to the MBRA that the Developer has obtained all necessary governmental approvals to start construction of the Project.

(g) Construction Contract. Upon the approval of the GMP Construction Contract for each phase of the Project pursuant to the conditions provided in the subsection below, but in no event later than ten (10) days prior to the expiration of the Pre-Development Period, obtain and deliver to the MBRA an executed copy of the GMP Construction Contract. The Construction Manager under the GMP Construction Contract shall not be changed without the written approval of the MBRA.

(h) Construction Costs. No later than upon completion of the design development of the Project, but in no event later than sixty (60) days prior to the expiration of the Pre-Development Period, submit to the MBRA the cost estimates and draft GMP Construction Contract for the first phase of the Project and cost estimates for the balance of the Project, based on the Architect Cost Opinion, which shall separately delineate the costs attributable to the Public Parking Facility and shall conform to the Project Plans, Project Budget and Project Schedule (as each is defined below). The MBRA's approval of the GMP Construction Contact shall be limited to its review of the total Guaranteed Maximum Price, the portion of the Guaranteed Maximum Price allocated to the Public Parking Facility, the Construction Manager, the execution of GMP Construction Contract, and the warranties provided by the Construction Manager within the GMP Construction Contract for each phase of the Project and the Architect Cost Opinion for the balance of the Project. The Guaranteed Maximum Price allocated to the Public Parking Facility shall be inclusive of the following items:

(i) Construction costs for the Public Parking Facility (excluding costs associated with structural elements necessary to support portions of the Project not required for the Public Parking Facility), which shall be based on the costs documented by a signed Schedule of Values (AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT or comparable schedule); and

(ii) Allocation of shared construction costs between the Public Parking Facility and the remainder of the Project (e.g. elevators and stairwells) based on the functional percentage of each component to each portion of the Project.

(iii) General conditions not to exceed 4% of the construction costs of the Public Parking Facility, construction management fees not to exceed 3.25% of the construction costs of the Public Parking Facility, and engineering fees not to exceed 5% of the construction costs of the Public Parking Facility;

(iv) Transaction costs as described in Section 5.1(b); and

(v) The estimated interest to be accrued on the Construction Loan during the estimated construction schedule. Interest shall not be allocated against the Maximum Development Cost.

To the extent not waived in writing by the MBRA pursuant to a written request by the Developer, the Construction Manager shall secure competitive bids for any element of the construction of the Public Parking Facility costing $20,000 or more. All bids shall be provided to the MBRA for review. The Construction Manager shall award the bids for construction of the Public Parking Facility to the best bids meeting specifications, taking into consideration which bids are lowest. No bid will be awarded to any subcontractor that is in arrears to or in litigation with the MBRA or the City.

(i) Architect Agreement. Have obtained and delivered to the MBRA an executed architect agreement.

(j) Plans and Specifications.

(i) Deliver plans and specifications for the Public Parking Facility and Vault Marquette, which plans and specifications for Vault Marquette shall not include tenant or purchaser buildout (the "**Project Plans**"), at the Schematic Design, Design Development and Construction Documents phases to the MBRA and DDA for their approval, such approval not to be unreasonably withheld, delayed or conditioned.

(ii) Design the Public Parking Facility with at least a fifty (50) year useful life as defined by a durability design software such as Life-365 to be submitted for review and approval by MBRA. Durability features shall comply, as a minimum, with the recommendations of ACI publication 362.1R Guide for the Design and Construction of Durable Concrete Parking Structures.

(k) Budgets.

(i) Deliver to the MBRA a budget and pro forma operating statement for the Project ("**Project Budget**") that demonstrates (1) minimum investment thresholds sufficient to enable the MBRA to calculate the projected Brownfield Tax Increment Revenues to be generated by the completed Project, and (2) the planned sources and uses of all of the Developer funds, both equity and debt, necessary to fund the Developer's obligations with respect to the Project.

(ii) Deliver a budget and pro forma operating statement for the Public Parking Facility (the "**Parking Structure Budget**") comprised solely of the hard costs of construction for the Public Parking Facility expected to be paid to the Construction Manager, subcontractors and suppliers for items that qualify as capital expenditures under applicable federal Laws and such soft costs for the Public Parking Facility as are expected to be incurred by the Developer, provided that expenses (1) for the construction of improvements or infrastructure located outside the Public Parking Facility and (2) that are otherwise not permitted to be funded or reimbursed from the Bonds by applicable Laws, shall not be included as items in the Parking Structure Budget.

(iii) After receiving approval from the MBRA, the Developer shall not change the approved Project Budget or the approved Parking Structure Budget during the term of this Agreement without the approval of the MBRA, provided, however, that changes in the approved Project Budget line items (other than with respect to items in the approved Parking Structure Budget) may be made so long as such changes do not (1) decrease the overall Project Budget or (2) increase the overall approved Project Budget (exclusive of the approved Parking Structure Budget) by more than fifteen percent (15%), and the approved Project Budget continues to support the anticipated Brownfield Tax Increment Revenues after any such adjustment.

(l) Construction Schedule.

(i) Deliver to the MBRA a construction schedule for the Project that provides a plan for the phasing and staging of construction and development of the elements of the Project (the "**Project Schedule**").

(ii) Not materially change the approved Project Schedule during the term of this Agreement without the written approval of the MBRA.

(m) Construction Financing.

(i) Deliver to the MBRA a commitment letter or similar undertaking from a licensed and regulated commercial financial institution (the "**Construction Lender**") lawfully permitted to do business in the State of Michigan evidencing its firm commitment (the "**Construction Loan Commitment**") to fund amounts necessary (the "**Construction Loan**"), together with Developer's equity, to complete the Project.

(ii) The Construction Loan Commitment may be subject only to (1) reasonable conditions with respect to the MBRA's commitments under this Agreement and (2) usual and customary lender conditions, which conditions shall not include the required disbursement or commitment of any bond funds by the MBRA on terms other than as set forth in this Agreement. Notwithstanding the foregoing, either the MBRA or the Construction Lender may request that a tri-party agreement be entered into by and among the Developer, the MBRA and the Construction Lender governing each party's rights and obligations with respect to the Project, which agreement shall allow for a collateral assignment of Developer's rights to the Brownfield Tax Increment Revenues to the Construction Lender in accordance with the Vault Documents, for payment of the Construction Loan if the Bonds are not issued.

(iii) Not later than ten (10) days prior to the expiration of the Pre-Development Period deliver to the MBRA copies of the final fully executed construction loan documents reasonably satisfactory to the MBRA.

(n) Master Deed. Deliver to the MBRA, the Master Deed Developer intends to record including the necessary provisions to protect the MBRA's interest in the Public Parking Facility, establish required insurance terms, and provide for transient public parking spaces pursuant to the terms of this Agreement. Once the Master Deed has been approved by the MBRA, it shall not be modified, changed or amended without the prior written consent of the MBRA.

(o) Insurance. Deliver to the MBRA evidence of the following insurance coverages for the Developer and any contractor(s) and subcontractor(s):

(i) Commercial general liability insurance for the Developer issued by an insurer authorized to do business in the State of Michigan, in a form reasonably acceptable to the MBRA and through insuring companies rated by the A.M. Best Insurance Guide as at least A:VII or better, naming the Developer as insured and the MBRA and the City as additional insureds, against any and all claims customarily covered by such insurance, including but not limited to personal injury, death, and property damage, relating to the Project, such insurance to be written with limits of not less than (1) $3,000,000 in respect of personal injury to or death of all persons arising out of any one occurrence, and (2) $3,000,000 per occurrence in respect of any instance of property damage.

(ii) Commercial General Liability Insurance on an "Occurrence Basis" for any contractor(s) and subcontractor**(s)** with limits of liability not less than $1,000,000 per occurrence and $2,000,000 aggregate combined single limit. Coverage shall include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C)

Independent Contractors Coverage; (D) Broad Form General Liability Endorsement or Equivalent.

(iii) Worker's Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.

(iv) Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than $1,000,000 per occurrence for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

(v) Contractor's Pollution Liability Insurance provided by Contractors, sub-contractors and site work contractors engaging in environmental response activities, covering any sudden and non-sudden pollution or environmental impairment, including cleanup costs and defense, with limits of liability of not less than $1,000,000 per occurrence (with first party and third-party coverage).

(vi) Builder's risk insurance carried (or arranged to be carried as of the start of construction) by the Developer or its contractor and issued by an insurer authorized to do business in the State of Michigan, in a form reasonably acceptable to the MBRA and through insuring companies rated by the A.M. Best Insurance Guide as at least A:VII or better, in an amount equal to 100% of the full replacement value of the Project.

(vii) Certificates of insurance evidencing such coverage shall be submitted to the MBRA in advance of the expiration of the Pre-Development Period, and at least thirty (30) days prior to the expiration dates of expiring policies. Any such insurance shall also contain a commitment from the insurer to (1) provide notice to the MBRA not less than ten (10) days in advance for any cancellation due to nonpayment of premium by the Developer and (2) endeavor to provide notice of any cancellation thirty (30) days in advance of any termination for reasons other than nonpayment. Developer shall notify MBRA in writing if the insurance coverage amounts carried by Developer are reduced below the coverage amounts set forth above or if it receives any notice of termination of such coverages.

(p) Notice of Commencement. Provide MBRA evidence that the Developer or its contractor(s) has complied with the requirement of the Michigan Construction Lien Act, Act No. 497 of the Public Acts of 1980, as amended, by recording with the Marquette County Register of Deeds and posting upon the Property a Notice of Commencement, together with at least ten (10) readily detachable Notices of Furnishing.

(q) Performance Bonds. If required by the Construction Lender, Developer shall cause the Construction Manager to obtain performance bonds from a surety or bonding company securing the Construction Manager's obligations to complete the Project, and evidence of any such bonds shall be provided to the MBRA.

(r) Capital Expense Report. Ensure that the MBRA has received from the Construction Manager and approved an initial estimate of the long term capital expenses for the Public Parking Facility based on industry maintenance standards (the "**CapEx Report**").

(s) Additional Items. Provide MBRA with such additional documents, agreements, consents, information, drawings and financial information as reasonably required by the MBRA in order for the MBRA to complete its analysis of all aspects of the Project, including, but not limited to, the Public Parking Facility, the Bonds and the Brownfield Tax Increment Revenues, and for the MBRA to satisfy its obligations relating to the Project.

(t) Updates to Deliveries. To the extent that some Developer deliveries required under Article 2 of this Agreement have been delivered to the MBRA prior to all required Developer deliveries, the MBRA shall have the right to request updates to or recertification of such previously delivered information as a result of a potential change in the factual circumstances created by the intervening time period so that the MBRA may perform a full and complete analysis of the Public Parking Structure, the Project and the Brownfield Tax Increment Revenues.

Section 2.3 Covenants of the MBRA During the Pre-Development Period. The MBRA covenants and agrees to make commercially reasonable efforts to complete all of the following actions with respect to the Project during the Pre-Development Period subject to receipt of such items by the Developer within the applicable timeframe provided for in this Agreement. The MBRA covenants and agrees to notify the Developer in writing if and when it reasonably believes any of the following actions are unable to be completed or cannot be completed by the expiration of the Pre-Development Period.

(a) Review of Developer Deliveries. The MBRA covenants and agrees to proceed diligently to review, approve or otherwise provide a response with respect to any Developer deliveries required under Article 2 of this Agreement pursuant to the terms and conditions of Section 2.5(b). The MBRA will promptly review the Site Plan, Project Plans, Project Budget and Project Schedule and either provide its approval or provide comments to such within forty-five (45) days of receipt from Developer. Developer shall review any comments provided by the MBRA and promptly resubmit such item to the MBRA for approval. Notwithstanding anything herein to the contrary:

(i) The MBRA may reasonably withhold approval of any Project Plans for the Public Parking Facility that (1) result in a Parking Structure Budget that exceeds the underwritten Brownfield Tax Increment Revenues to be generated by the taxable improvements in the Project sufficient to retire both the Bonds without adequate assurance from the Developer of a source of additional funds to complete the Project, or (2) otherwise does not meet the parking needs of the Project as stated in this Agreement.

(ii) The MBRA may reasonably withhold approval of any Project Budget that does not result in taxable improvements that are projected to generate Brownfield Tax Increment Revenues sufficient to cover a debt service coverage ratio of 1.20:1.00 for the repayment amount of the Bonds, or such other amount as reasonably determined by the MBRA in consultation with its underwriter.

(iii) The MBRA may reasonably withhold approval of any Project Schedule that does not result in the completion of the Project elements in a manner that generates, in a timely manner, sufficient Brownfield Tax Increment Revenues to commence retirement of both the Bonds.

(b) Brownfield Tax Increment Revenue Analysis. Based upon all of the required Developer deliveries required under Section 2.2 above, the MBRA shall determine whether the Project will create Brownfield Tax Increment Revenues capable of repaying the Bonds in full with appropriate debt service coverages taking into account Actual Development Costs (not to exceed the Maximum Development Cost), Issuance Costs, projected interest rates, the duration of any period in which interest is capitalized, the annual fees and expenses of the MBRA, estimates of potential unpaid operating, maintenance and capital expenses with respect to Public Parking Facility.

(c) Cash Deposit/Letter of Credit. The MBRA may require the Developer to provide to the MBRA, as a condition to the issuance of the Bonds, a cash deposit from Developer, or a letter of credit in favor of the MBRA from a financial institution acceptable to the MBRA, in an amount equal to one-half of the annual principal and interest payments due under the Bonds to cover the delays in the City's ability to promptly exercise its rights under the SAD as a result of the Developer's, or its permitted successor's, nonpayment of taxes, if the Brownfield Tax Increment Revenues are projected to be insufficient to cover the funding of the deposit under Section 6.1(g) for payment of the shortfall; provided, however, if the Developer or City funds such a deposit due to an anticipated Brownfield Tax Increment Revenue shortfall then the Developer shall be reimbursed the amount of the deposit from successive Brownfield Tax Increment Revenue in the priority position as shown in Section 2.2(a)(ii)3, which otherwise calls for such Revenue to fund a Bond reserve.

(d) Maximum Development Cost. The MBRA shall establish the Maximum Development Cost of the Public Parking Facility.

(e) Bond Amount. Following receipt and review of all of the required Developer deliveries required under Section 2.2 above, the MBRA shall underwrite the Bonds based on all available information, including its analysis of the Brownfield Tax Increment Revenues generated by the Project, Issuance Costs, current interest rates and the Project Schedule, and provide the Developer with the proposed maximum dollar amount of the Bond issuance with respect to the Public Parking Facility.

Section 2.4 Joint Covenants of the Developer and MBRA During the Pre-Development Period. The Developer and the MBRA shall make commercially reasonable efforts to complete all of the following actions with respect to the Project prior to the expiration of the Pre-Development Period.

(a) Special Assessment District. The MBRA and the Developer shall cooperate with the City to undertake the establishment of the Special Assessment District. The SAD shall be apportioned among the SAD Property in proportion to the taxable value of such property as determined by the City assessor. The SAD assessments shall be limited to that amount needed to pay the principal and interest payments due under the Bonds to the extent the annual Brownfield Tax Increment Revenues are insufficient to cover those payments, and the SAD shall terminate when the Brownfield Tax Increment Revenues for a calendar year reach the amount required to meet the maximum annual bond payment amount plus fifteen percent (15%).

(b) City Approval Coordination. While neither the MBRA nor the Developer can control the actions of the City, the MBRA and the Developer shall use their good faith efforts to cause the City to review, and if applicable, issue the relevant approvals required by the City or departments thereof with respect to the Project. The Developer acknowledges and agrees that the MBRA shall have no liability for any actions or omissions by the City in connection with any requested approvals or permits by the Developer in connection with the Project.

(c) City Resolution. The MBRA and the Developer shall use their good faith efforts to obtain from the City resolutions (collectively, the "**City Resolution**") that the City will pledge its full faith and credit to the Bonds prior to the issuance thereof by the MBRA.

(d) Act 381 Work Plan. The MBRA and the Developer shall work collaboratively to obtain Act 381 Work Plan approval for Non-Environmental Eligible Activities from the Michigan Strategic Fund (MSF).

Section 2.5 General Conditions. The following general conditions shall apply during the Pre-Development Period:

(a) Costs. Each party will bear its own costs during the Pre-Development Period, except to the extent a party incurs liability under a specific indemnification obligation set forth in this Agreement. If the Bonds are never issued, the MBRA and Developer shall have the right to recoup the legal fees and other costs it incurred in connection with the negotiation and documentation of this Agreement from any available Brownfield Tax Increment Revenues. Notwithstanding the foregoing, any and all Eligible Expenses of the Developer under this Agreement shall be subject to reimbursement from the Brownfield Tax Increment Revenues to the extent allowed by and in the priority provided by the Vault Documents, as amended by this Agreement.

(b) Approvals. Except as otherwise provided for herein, all consents or approvals requested by the Developer from the MBRA shall not be unreasonably withheld, delayed or conditioned by the MBRA if such consent or approval relates to third-party deliveries, provided, however, the MBRA's consent or approval with respect to the MBRA's analysis and underwriting of the Brownfield Tax Increment Revenues and the Bonds shall be in its sole and exclusive discretion. In no event shall any delay by the MBRA in responding to a request by the Developer for an approval of any delivery contemplated under Article 2 be deemed an approval of such delivery by the MBRA. Neither the MBRA nor the City shall be under any obligation to change its standard, generally applicable approval process for development projects in connection with any Developer submissions regarding the Project. The execution of this Agreement in no way constitutes the MBRA's approval of the Project or obligates the MBRA to support or approve the Project except as expressly set forth in this Agreement. The approval of an item required to be submitted by the Developer herein shall not be deemed to waive the rights of the MBRA or the City with respect to issuing building permits, compliance with fire, safety and other building codes, or other standard, generally applicable development and construction approvals necessary for the Project. In no event shall the MBRA be liable to the Developer or any other party for any items that the City fails to approve or that the City fails to timely approve.

(c) Confidentiality. To the extent that Developer desires to keep any information or documents that it is required to submit to the MBRA pursuant to this Agreement confidential, Developer and the MBRA agree that Developer and its counsel may submit such information to counsel for the MBRA provided that the Developer clearly labels such information as confidential. Developer acknowledges that counsel for the MBRA may share such confidential information with the MBRA provided that counsel for the MBRA first receives approval from counsel for the Developer, counsel for the MBRA retains all copies of such materials in its possession, and such information is labeled as confidential. Notwithstanding the foregoing, Developer acknowledges that any confidential information received by the MBRA may be subject to disclosure pursuant to all applicable Laws, including the Freedom of Information Act, except to the extent of any applicable exceptions or exclusions thereto, but the parties shall seek to handle such information in a manner that does not make it subject to disclosure under the Freedom of Information Act.

(d) Extension of Pre-Development Period.

(i) Mutual. The parties may, by mutual written consent, agree to extend the Pre-Development Period if the Pre-Development Period conditions have not been satisfied or waived by the parties prior to the expiration of the Pre-Development Period. In the event the Pre-Development Period conditions have not been satisfied solely as a result of the MBRA's delay in approving the Developer's submissions, except to the extent caused by the Developer's failure to timely provide all required items within the applicable timeframes provided for in this Agreement, the MBRA shall reasonably agree to provide the Developer with an extension of the Pre-Development Period for a period of time equivalent to the period of the MBRA's delay in approving the Developer's submissions.

(ii) By Developer. If the Developer has not completed a requirement or condition of the Pre-Development Period prior to the applicable timeframe provided for during the Pre-Development Period, it may extend the Pre-Development Period for a period of six (6) months by giving written notice to the MBRA on or before sixty (60) days prior to the expiration of the Pre-Development Period. The Developer may make up to three (3) such six month extensions if it finds it necessary to meet all of the Pre-Development Period conditions, and, after the third extension, the Developer may request a fourth (4^{th}) extension, if necessary, provided that such fourth (4^{th}) extension shall be subject to the approval of the board of the MBRA. If the Developer exercises its right to extend the Pre-Development Period, the MBRA shall have the right to request any additional information or updates to previously delivered information as a result of a potential change in the factual circumstances created by the intervening time period, and the MBRA shall have the right to re-perform its analysis of the Public Parking Structure, the Project and the Brownfield Tax Increment Revenues.

(iii) By MBRA. The MBRA shall have the right to extend the Pre-Development Period by up to sixty (60) days to accommodate the scheduling of meetings required to obtain the City Resolution and to complete any required review and underwriting of the Developer's deliveries hereunder.

(e) Termination Rights. If any of the items required to be delivered by the Developer or performed by the MBRA have not been completed or waived by the other party on or before the expiration date of the Pre-Development Period, as the same may have been extended in accordance with Section 2.5(d) above, such other party, as their sole remedy, shall give the non-fulfilling party written notice of the non-fulfilling party's failure. The non-fulfilling party may subsequently cure such failure within a sixty (60) day period or extend this Agreement under Section 2.5(d) above, and if neither is elected, the Agreement shall automatically terminate without any required action by either party. The MBRA shall have the right to terminate this Agreement, in its sole discretion upon thirty (30) days written notice to Developer if (i) the MBRA determines that the Brownfield Tax Increment Revenues from the Project are not sufficient to repay the Bonds in full, or (ii) the City Resolution is not issued; provided that upon such notice from the MBRA, the Developer may exercise its right to extend the Pre-Development Period under Section 2.5(d), for up to a cumulative number of three (3) extensions under this Section and Section 2.5(d), to extend the time to seek satisfactory performance of items (i) and (ii) above. Upon any termination of this Agreement pursuant to the provisions herein, the parties shall have no further obligations or liabilities under this Agreement, except to the extent any liability has accrued under the specific indemnification obligations set forth in this Agreement for a default hereunder.

Section 2.6 Confirmation of Satisfaction of Pre-Development Period Conditions. Within thirty (30) days after the expiration of the Pre-Development Period (as may be extended), the MBRA and the Developer shall confirm in a written acknowledgement in a form substantially similar to the form attached hereto as Exhibit D (the "**Pre-Development Satisfaction Letter**") between the parties (a) that all of conditions set forth in Article 2 have been either satisfied or waived, (b) that there are no defaults by either party under this Agreement, and (c) the irrevocable commitment of the parties to proceed pursuant to the terms and conditions of this Agreement, including the additional pre-Closing conditions set forth herein, or such other terms and conditions as may mutually be agreed upon by the MBRA and the Developer. The Pre-Development Satisfaction Letter shall set forth the parties agreement on the (i) Maximum Development Cost, (ii) maximum dollar amount of the Bond issuance, (iii) the components and calculation of the Actual Development Cost, (iv) the GMP Construction Contract for the first phase and Architect Cost Opinion for the balance of the Project, (v) the Project Plans, (vi) the Project Budget and Parking Structure Budget, (vii) the Project Schedule, (viii) the SAD threshold, (ix) minimum amount to be expended by Developer for the construction of the Project, (x) the minimum true cash value the appraisals for the Project are expected to show when the Project is completed, (xi) requirement of a letter of credit or cash deposit, (xii) the per annum interest rate for the Bonds that would cause a Market Event (as defined in Section 6.2), (xiii) the aggregate required amount of and the terms of the CapEx Reserve, and (xiv) all other items to be reviewed and/or approved by the MBRA during Pre-Development Period. If a Pre-Development Satisfaction Letter is not executed by both parties within thirty (30) days after the expiration of the Pre-Development Period (as may be extended), this Agreement shall automatically terminate without any required action by any party and the parties shall have no further obligations or liabilities under this Agreement, except to the extent any liability has accrued under the specific indemnification obligations set forth in this Agreement for a default hereunder.

Section 2.7 Bond Issuance. If the maximum dollar amount of the Bond issuance proposed by the MBRA during the Pre-Development Period is approved by the Developer in the Pre-Development Satisfaction Letter, simultaneously with the execution of the Pre-Development Satisfaction Letter by the MBRA, the MBRA shall adopt a resolution (the "**MBRA Resolution**") to issue the Bonds up to such approved maximum dollar amount upon the satisfaction of the conditions precedent specified in this Agreement.

ARTICLE 3
CONSTRUCTION OF THE PROJECT

Section 3.1 Developer's Construction Obligations for the Project. Following receipt of the fully executed Pre-Development Satisfaction Letter, the Developer shall do the following on or prior to the Project Completion Date:

(a) Project. Construct the Public Parking Facility and Vault Marquette in accordance with the approved Project Plans and applicable construction drawings and Permits and in accordance with the approved Project Schedule and Project Budget.

(b) Value of the Project. The Developer represents and covenants that not less than the amount set forth in the Pre-Development Satisfaction Letter will be paid for the construction of the Project. The Developer further represents that the appraisals for the Project when completed are expected to show a true cash value of not less than the amount set forth in the Pre-Development Letter. The Developer acknowledges that the MBRA will be dependent upon Brownfield Tax Increment Revenues to repay the Bonds in full and the generation of Brownfield Tax Increment Revenues depends upon the taxable value of the Project and the Property. Accordingly, to the extent permitted by law, as long as the Bonds remain outstanding, the Developer shall not contend, in any appeal of the taxable value of the Project and the Property, that the true cash value of the Project and the Property is less than the greater of the amounts previously stated pursuant to this subsection. This subsection does not preclude an appeal of the taxable value of the Project and the Property to the extent it is based on a true cash value exceeding the amounts provided herein.

(c) Environmental Liability and Responsibility. A Baseline Environmental Assessment shall be prepared and filed by the Developer on behalf of the MBRA for the issuance of the Bonds and acceptance of the Public Parking Facility so as to provide an exemption to the MBRA from environmental liability for pre-existing contamination at the sole cost of the Developer. The Developer shall prepare and implement a Due Care Plan on behalf of the Developer and MBRA to prevent exposure to or exacerbation of any pre-existing contamination. The MBRA shall not be responsible for the performance of any obligations or costs required under the Due Care Plan except to the extent the MBRA is required to provide reimbursement to the Developer for Eligible Activities from Brownfield Tax Increment Revenues pursuant to the Reimbursement Agreement, the Brownfield Plan and the Act 381 Work Plan, as may be modified, amended or supplemented from time to time.

(d) Due Care Activities. Notify the MBRA at reasonable intervals on the status of the Due Care Plan actions taken and completed by it. The Developer shall, promptly upon the MBRA's request, provide the MBRA with copies of the results of all such action and all related documents and information.

(e) Changes in the Project. Not materially change the approved Site Plan or Project Plans during the term of this Agreement without the further approval of the MBRA, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that

Developer may make minor changes to the Site Plan or Project Plans that require no approval from the City or may be approved administratively by the City or pursuant to standard, generally applicable City procedures governing minor changes to approved plans. After Project Completion, no structural alterations or capital repairs shall be made to the Public Parking Facility by Developer without prior written approval of the MBRA and/or their consultant, not to be unreasonably withheld, delayed or conditioned.

(f) Safety Standards. Assure that the Construction Manager and its subcontractor(s) shall be solely responsible for construction site safety. At a minimum, during the period of any construction on any portion of the Project, the Developer shall erect or cause to be erected a fence or other suitable construction barrier in accordance with the requirements of the applicable governmental agency and take, and cause all contractors, subcontractors, suppliers, laborers and all other parties engaged in the construction of the Project to take, safety measures reasonably designed to prevent injury to such parties and from the public, particularly children and pedestrians.

(g) Disruptions. Pursue the construction of the Project in a manner that will (i) reasonably minimize disruption to adjacent areas of the Project, (ii) be consistent with sound contracting practices, reasonably reducing disruption to residents and of vehicular and pedestrian traffic immediately around the Project site, and (iii) maintain a reasonably neat worksite.

(h) Sidewalks and Streetscape. In the event that any of the Developer's activities on the Property damage the surrounding sidewalks or streetscapes, the Developer shall, at its own cost, restore or replace such sidewalks and streetscapes according to the City's zoning ordinance, unless sidewalk or streetscape construction is anticipated within the Project or anticipated adjacent public improvements.

(i) Cost and Expenses. Except as otherwise provided in this Agreement, all costs and expenses relating to the design and construction of the Project shall be paid by the Developer.

(j) Project Construction. Commence construction of the components of the Project in accordance with the requirements of the approved Project Schedule and will proceed diligently to construct and develop the Project through Project Completion in accordance with the approved Site Plan for the Project and the approved Project Plans on or before the Project Completion Date, subject to Force Majeure and change orders, provided that such change orders which relate to the Public Parking Facility or decrease the value of the Project shall require the prior written approval of the MBRA, not to be unreasonably withheld, delayed or conditioned. The following terms and conditions shall also apply to the construction of the Project:

(i) Project Schedule. The Developer covenants and agrees to adhere to the approved Project Schedule, or any other schedule for the completion of construction of the Project as may be required by the Construction Lender, subject to Force Majeure and change orders, provided that such change orders which relate to the Public Parking Facility or decrease the value of the Project shall require the prior written approval of the MBRA, not to be unreasonably withheld, delayed or conditioned.

(ii) Labor. All of the obligations required to be performed under this Agreement by Developer will be performed by Developer or under its supervision, and all agents, contractors, subcontractors, consultants and personnel engaged in the work shall be fully qualified and, where so required, shall be authorized or permitted under State and local law to perform such services.

(iii) Construction and Materials Standards. All improvements to be constructed by the Developer pursuant to this Agreement will be performed with good workmanship and quality specified materials in accordance with the approved Project Plans.

(iv) Further Assurances. Developer covenants and agrees to provide notice to the MBRA of the occurrence or non-occurrence of any event having a material adverse effect on Developer's ability to complete the Project in a timely fashion or to fulfill its obligations under this Agreement.

(k) Inspections. Developer will allow the MBRA and its agents at reasonable times during construction hours to inspect all or any portion of the Public Parking Facility and the construction status of the Project during the course of construction and the right to examine or audit the books and records of the Developer. The MBRA is under no duty to supervise or inspect the construction but may do so solely for the purpose of protecting its security and preserving its rights under this Agreement. No default of Developer will be waived by any inspection by the MBRA, nor shall any such inspection impose upon the MBRA any obligation that the work has been or will be in compliance with the approved Project Plans and this Agreement or that the construction is free from defective materials or workmanship.

(l) Maintain Existence in Good Standing. Developer shall maintain its existence in good standing in the State of Michigan and its qualification and good standing in every other jurisdiction wherein the failure to do so would affect the validity or enforceability of this Agreement or would have a material adverse impact on the financial condition, business or operations of Developer.

(m) Payment of Taxes and Assessments. Developer shall pay and discharge prior to the date when a penalty would apply, as often as the same may become due and payable, all taxes of whatever nature that may be levied or assessed against it or any of its properties.

(n) Payment for Labor and Materials. Developer will promptly pay and discharge or bond over all claims and liens for labor, materials and services furnished in connection with the construction of the Project.

(o) No Liens or Encumbrances. Except for any liens in connection with the Construction Loan, the Developer shall keep the Project free from all liens, provided, however, to the extent acceptable by the Construction Lender, the Developer may contest any such liens so long as it provides adequate security therefor and Developer diligently proceeds with its contest of such lien. Developer shall fulfill the applicable requirements of construction lien law, including the filing of a Notice of Commencement and such other documents as may be reasonably required by the MBRA, the Construction Lender or the Title Company.

(p) Construction Liens. Prior to or concurrently with the Developer's commencement of construction of the Project, the Developer will submit to the MBRA evidence that it has complied with the requirements of the Michigan Construction Lien Act, Act No. 497 of the Public Acts of 1980, as amended, by recording with the Marquette County Register of Deeds and posting upon the Project site a Notice of Commencement, together with at least ten (10) readily detachable Notices of Furnishing.

(q) Progress Reports. Developer shall provide a monthly written report to the MBRA of its progress in the development of the Project until Project Completion or as otherwise agreed upon between Developer and the MBRA, including marketing reports and materials. Developer shall immediately provide written notice to the MBRA if the Construction Lender at any time elects to cease to provide funding or advances from the Construction Loan or delivers a default notice to the Developer with respect to the Construction Loan.

(r) Permits and Approvals. Developer shall maintain, at its sole cost and expense, all Permits that are necessary in order for the Developer to continue performance of the Developer's obligations with respect to the Project.

(s) Compliance with Laws. Developer shall comply with all Laws, including without limitation, all nondiscrimination and civil rights Laws applicable to the MBRA or to the use of any public funds.

(t) Fair Employment. In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity, and including, but not limited to, the Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 252) and in accordance with the Michigan Constitution and all state Laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicapped Civil Rights Act (P.A. 1976 No. 220), Developer agrees and will insert in the GMP Construction Contract and any subcontract, a covenant that it will not discriminate against any person, employee, consultant or applicant for employment with respect to his or her hire, tenure, terms, condition, or privileges of employment because of his or her religion, race, color, or national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(u) Required Notices. As soon as it has knowledge thereof, Developer will promptly notify MBRA of any of the following:

> (i) Any occurrence which constitutes a default under this Agreement or the loan from the Construction Lender, or which materially and adversely affects the Project, the Developer's financial condition or the Developer's ability to comply with its obligations under this Agreement.
>
> (ii) After Developer receives any notice of the commencement of (a) any proceeding or investigation by a federal or state environmental agency against it regarding its compliance with any Law, Environmental Law, rule or regulation, or (b) any other judicial or administrative proceeding or litigation by or against it.

ARTICLE 4
CONDITIONS PRECEDENT TO CLOSING

Section 4.1 Conditions of the MBRA's Obligation to Purchase the Public Parking Facility. The obligation of the MBRA under this Agreement to purchase the Public Parking Facility for the Project is subject to the following conditions precedent.

(a) The Bonds shall have been issued and the MBRA shall have received the proceeds of the sale of the Bonds, provided that the MBRA shall not be obligated to initiate the Bond issuance for the Public Parking Facility until after one hundred percent (100%) of the Public Parking Facility and one-hundred percent (100%) of Vault Marquette have been completed by Developer, excluding tenant and new owner improvements, and the conditions set forth in Article 6 have been satisfied.

(b) Project Completion of the entire Project shall have occurred in accordance with the approved Project Plans, Project Budget and Project Schedule as determined by a certification of completion by the architect of record and certificate of completion by the County of Marquette.

(c) A certificate of occupancy for Vault Marquette and the Public Parking Facility shall have been issued by the County of Marquette.

(d) The conveyance for the Public Parking Facility shall be ready to be recorded.

(e) The title insurance to the Public Parking Facility in favor of the MBRA shall be ready to be issued under the Title Policy to be issued to the MBRA.

(f) Motor vehicle and pedestrian access to the Public Parking Facility pursuant to the approved Project Plans contained in the Pre-Development Satisfaction Letter shall have been achieved.

(g) The MBRA shall have received from the Construction Manager, no later than sixty (60) days prior to the Closing Date, confirmation of or updates to the amount of the long term capital expenses for the Public Parking Facility set forth in the CapEx Report, and if the expenses are increased, acceptable to the MBRA.

(h) The Developer shall have provided lien waivers or evidence of payment from all contractors and subcontractors involved in the construction of the Project to date.

(i) The Developer shall have completed the applicable due care activities under the Due Care Plan, and if the Due Care Plan calls for ongoing monitoring or remediation activities, the Developer shall have completed construction of the remediation apparatus in accordance with such restrictions and shall have provided any information necessary to demonstrate how the Due Care Plan will be conducted on an ongoing basis.

(j) The Master Deed shall have been recorded, subject to the terms and conditions specified in this Agreement.

(k) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer, the MBRA or the City is a party, or threatened against the Developer, the MBRA or the City contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan, nor shall there be any current or threatened claims made by any party against the Developer or judgments entered against the Developer, which in either instance could result in:

(i) A material adverse effect upon the ability of the MBRA to collect and use Brownfield Tax Increment Revenues to repay the Bonds; or

(ii) A material adverse effect on the Developer's, the MBRA's or the City's ability to comply with the obligations and terms of this Agreement, the Vault Documents, Act 381, the Bonds.

(l) The Developer shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement, and there shall be no default by the Developer, and no action or inaction by the Developer, which eventually with the passage of time could become a default under this Agreement.

(m) All of the representations and warranties of the Developer set forth in this Agreement shall be true and correct in all material respects.

(n) Upon Closing, the Developer shall confirm in writing that the MBRA's and the City's obligations under the Reimbursement Agreement with respect to the Public Parking Facility have been fully satisfied.

(o) The following documents shall be duly executed by authorized persons and delivered to the MBRA in form and substance acceptable to MBRA:

(i) Certificate of Developer with respect to its authority to affect the Closing, including all of the items required by <u>Section 2.2(b)</u>.

(ii) Certificate executed by Developer, certifying to Developer's knowledge the (1) the non-existence of pending litigation against the Developer, (2) compliance by Developer with applicable Laws, and (3) non-existence of any defaults which could have a material adverse impact on the Developer's ability to comply with its obligations under this Agreement.

(iii) Certificate executed by Developer, certifying that all of the representations and warranties contained in this Agreement remain true and correct in all material respects.

(iv) As-built Survey and plans and specifications of the Public Parking Facility, certified to the MBRA and the Title Company.

(v) Title Policy in the form required by this Agreement.

(vi) Such other documents, certificates, instruments and information that may be reasonably requested by the MBRA.

Section 4.2 Extension Rights. The Developer shall have the right to extend the Project Completion Date event until the earlier of ninety (90) days after the original Project Completion Date by giving prior written notice to the MBRA. The Developer shall have a right to an additional ninety (90) day extension with approval of MBRA and another additional ninety (90) day extension with approval of MBRA and City Commission. If the Developer exercises its right to extend the Project Completion Date, the MBRA shall have the right to request any additional information or updates to previously delivered information as a result of a potential change in the factual circumstances created by the intervening time period.

ARTICLE 5
TRANSFER OF PUBLIC PARKING FACILITY

Section 5.1 Transfer of Public Parking Facility.

(a) Within forty-five (45) days after the date on which the conditions set forth in Section 4.1 have been fully satisfied or waived, the MBRA agrees to buy, and the Developer agrees to convey, the Public Parking Facility to the MBRA pursuant to the terms and conditions specified in this Agreement. The purchase price of the Public Parking Facility shall be equal to the lesser of the Actual Development Cost and the Maximum Development Cost, but in no event shall the purchase price of the Public Parking Facility be greater than the net available proceeds from the Bond issuance after deducting all Issuance Costs and capitalized interest.

(b) The conveyance of the Public Parking Facility shall be subject to all matters of record approved by the MBRA during the Pre-Development Period and shall be insured by the Title Policy issued by the Title Company upon the Closing Date. The Public Parking Facility shall not be subject to any liens, assessments or charges which may arise under the terms of the Master Deed, nor any construction mortgage with respect to the Project. The MBRA shall pay all fees to record the title to the Public Parking Facility, any title insurance costs and any and all transfer taxes imposed upon the conveyance of the Public Parking Facility to the MBRA, and any apportionment or proration of costs, fees or expenses with respect to the Public Parking Facility on the Closing Date.

(c) The condominium Master Deed shall specify that the Public Parking Facility shall not be subject to regular or special condominium association dues but instead shall be subject to certain fees and costs directly related to the Public Parking Facility, as defined in the Operating Agreement between the MBRA, City, DDA and the Developer.

(d) The MBRA, City, DDA, and the Developer intend to enter into an Operating Agreement for the DDA to operate the Public Parking Facility, with all parking revenues from the Public Parking Facility to cover operating and maintenance costs.

(e) Ownership of the Public Parking Facility shall be transferred to the City of Marquette upon fulfilment of the Bond Obligation.

ARTICLE 6
BOND FINANCING

Section 6.1 **Bond Financing**. The initiation of the marketing and sale of the tax-exempt Bonds by the MBRA (with a full faith and credit pledge by the City) for the Public Parking Facility shall occur within fifteen (15) days of confirmation that the Developer has completed one hundred percent (100%) of the Public Parking Facility and at least ninety five percent (95%) of Vault Marquette, as determined by a certification of completion by the architect of record. The MBRA shall have no obligation to commence the marketing and sale of the tax-exempt Bonds after the expiration of the Project Completion Date (as may be extended in accordance with Section 4.2 above). The obligation of the MBRA under this Agreement to issue the Bonds is subject to the following conditions precedent:

(a) The Developer shall have delivered a certificate executed by the Developer certifying the date of Project Completion of the entire Project in accordance with the approved Project Plans and Project Budget.

(b) Determination by the MBRA based on the City Assessor's opinion of value that the Brownfield Tax Increment Revenue generated by the Project is sufficient to repay the Bonds, and the other obligations of the Developer hereunder in full with appropriate debt service coverages.

(c) Both the MBRA Resolution and the City Resolution shall have been passed by their respective members.

(d) The Developer shall have provided lien waivers or evidence of payment from all contractors and subcontractors involved in the construction of the Project to date.

(e) To the extent required pursuant to the Pre-Development Satisfaction Letter, Developer shall post a cash deposit with, or provide a letter of credit in favor of the MBRA from a financial institution acceptable to the MBRA, in an amount equal to one year of principal and interest payments due under the Bonds to cover the delays in the MBRA's ability to promptly exercise its rights under the SAD as a result of the Developer's, or its permitted successor's, nonpayment of taxes.

(f) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer, the MBRA or the City is a party, or threatened against the Developer, the MBRA or the City contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan, nor shall there be any current or threatened claims made by any party against the Developer or judgments entered against the Developer, which in either instance could result in:

(i) A material adverse effect upon the ability of the MBRA to collect and use Brownfield Tax Increment Revenues to repay the Bonds;

(ii) A material adverse effect on the ability of the MBRA to market, issue or sell the Bonds; or

(iii) A material adverse effect on the Developer's, the MBRA's or the City's ability to comply with the obligations and terms of this Agreement, the Vault Documents, Act 381, the Bonds.

(g) The Developer shall have delivered a certificate executed by the Developer certifying its actual hard and soft costs of the design and construction of the Public Parking Facility along with Developer's calculation of the Actual Development Cost in accordance with the calculation confirmed in the Pre-Development Satisfaction Letter.

(h) The Developer shall have delivered a certificate executed by the Developer certifying that the Developer has performed all of the terms and conditions to be performed by it pursuant to this Agreement, there are no defaults by the Developer, and there has been no action or inaction by the Developer, which eventually with the passage of time could become a default under this Agreement.

(i) The Developer shall have delivered a certificate executed by the Developer certifying that all of the representations and warranties of the Developer set forth in this Agreement are true and correct in all material respects.

When the conditions set forth in Section 6.1 above have been satisfied, the MBRA shall finalize the amount of the Bonds to be issued by the MBRA, not to exceed the maximum amount previously established by the MBRA and the Developer in the Pre-Development Satisfaction Letter. The Developer shall be responsible for any shortfall between Maximum Development Cost and the total costs of the Public Parking Facility.

Section 6.2 Market Events. The Developer acknowledges and agrees that the MBRA does not have the power to guarantee that the Bonds will be purchased or to mandate an acceptable interest rate for the sale of the Bonds. Notwithstanding the foregoing, neither the MBRA nor the City shall have any liability to the Developer or any other party for a failure of the MBRA to sell the Bonds, or for a reduction in available bond proceeds if such failure or reduction is attributable to a Market Event. A "**Market Event**" means any of the following:

(a) The marketability of the Bonds or the contemplated offering price of such bonds, in the reasonable opinion of the MBRA's underwriter for such bonds (the "**Underwriter**"), has been materially adversely affected by an amendment to the Constitution of either the United States of America or the State of Michigan, or by any federal or Michigan legislation, or by any decision of any federal or Michigan court or by any announcement, order, ruling, or regulation (final temporary or proposed) of the Treasury Department of the United States of America, the Internal Revenue Service or other federal or Michigan authority or regulatory body, affecting the status of the Underwriter or the MBRA, their property, income, or securities (including the Bonds).

(b) Legislation has been enacted by the Congress of the United States of America, or a decision by a court of the United States of America has been rendered, to the effect that obligations of the general character of the Bonds are not exempt from registration or qualification under, or other similar requirements of, the federal securities laws.

(c) A stop order, ruling regulation or official statement by, or on behalf of, any governmental agency having jurisdiction shall have been issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds as contemplated by this Agreement and by the Official Statement, as defined below, is in violation or would be in violation of any provisions of federal or Michigan securities laws.

(d) An order, ruling, regulation or decision by any governmental agency or court having jurisdiction shall have been issued or made which calls into question the legality, validity or enforceability of the Bonds.

(e) Additional material restrictions not in force as of the date of this Agreement shall have been imposed upon the trading in securities generally by any governmental authority or by any national securities exchanges.

(f) Any event shall have occurred, or information become known, which in the reasonable opinion of the Underwriter makes untrue in any material respect any statement or information contained in the Official Statement with respect to such bonds (the "**Official Statement**") as originally circulated, or has the effect that the Official Statement as originally circulated contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(g) Any of the following events shall have occurred:

(i) The engagement by the United States of America in hostilities which have resulted in a declaration of war or national emergency, or the occurrence of any other outbreak of hostilities or national or international calamity or crisis, financial or otherwise, the effect of such outbreak, calamity or crisis on the financial markets of the United States of America being such as, in the reasonable opinion of the Underwriter, would adversely affect the ability of the Underwriter to market the Bonds at offering prices that do not differ significantly from the intended offering prices (it being agreed by the Underwriter that there is no outbreak, calamity or crisis of such a character as of the date of hereof);

(ii) A general suspension of trading on the New York Stock Exchange or the American Stock Exchange or other national securities exchanges;

(iii) The establishment of limited or minimum prices on such exchanges;

(iv) The declaration of a banking moratorium by federal or Michigan authorities;

(v) The New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of the Underwriter; or

(vi) An event which, in the reasonable opinion of the Underwriter, requires an amendment or supplement to the Official Statement, and in the reasonable opinion of the

Underwriter, adversely affects the marketability of the Bonds, or the contemplated offering price of such bonds; or

(h) Any rating or ratings with respect to the Bonds have been revoked or downgraded.

(i) Any event or circumstance shall arise negatively affecting the full faith and credit of the City.

(j) The per annum interest rate applicable to the Bonds exceeds the applicable interest rate set forth in the Pre-Development Satisfaction Letter.

If a Market Event may be cured or eliminated by action that is within the control of the MBRA or the Developer, the MBRA or Developer, respectively, shall exert commercially reasonable efforts to take such action, provided, however, the MBRA shall have no obligation to incur any cost or expense in connection with any such action. The MBRA shall promptly notify the Developer if the MBRA obtains actual knowledge of any Market Event.

Section 6.3 Defense of Municipal Action. If any person commences litigation or other proceeding (whether a civil proceeding, an administrative proceeding or otherwise) to contest the issuance of the Bonds (or the City's full faith and credit pledge with respect thereto), the MBRA agrees to:

(a) defend such litigation or proceeding vigorously and in good faith with counsel competent in such matters, seeking to uphold the applicable municipal action being contested;

(b) provide the Developer with prompt notice of any such actual or threatened litigation or proceedings; and

(c) stipulate that the Developer may, at the Developer's sole cost and expense, intervene in any such litigation or proceeding.

The Developer shall pay one-half of the MBRA's cost of defense as long as the Developer has reasonably approved the selection of counsel representing the MBRA, in which event the Developer shall have the right to coordinate the activities of the respective counsel representing the MBRA and the Developer. All such costs of the MBRA and Developer shall be subject to reimbursement as Eligible Activities from the Brownfield Tax Increment Revenues to the extent allowed by the Vault Documents and Act 381.

ARTICLE 7
DEVELOPER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

The Developer hereby makes the following representations, warranties, and covenants to the MBRA:

Section 7.1 **<u>Existence and Power</u>**. The Developer:

(a) is duly organized and validly existing as a limited liability company under the laws of the State of Michigan, with the power and authority to carry on its business as now being conducted;

(b) has the power and authority to own the Property and the construct Project; and

(c) has the power and authority to execute, deliver and perform this Agreement and any other documents required or contemplated by this Agreement.

Section 7.2 **<u>Authorization and Approvals</u>**. The execution, delivery and performance of this Agreement:

(a) has been duly authorized by all requisite company action of the Developer;

(b) does not require registration with or consent or approval of, or other action by, any federal, state or other governmental authority or regulatory body;

(c) will not, to the Developer's knowledge, materially violate any provision of Law, any order of any court or other agency of government;

(d) will not violate the Articles of Organization or Operating Agreement of the Developer, or any provision of any indenture, note, agreement or other instrument to which Developer is a party, or by which any of its properties or assets are bound; and

(e) will not be in conflict with, result in a breach of or constitute (with or without notice of passage of time) a default under any such indenture, note, agreement or other instrument, wherein such conflict, breach or default would materially and adversely affect any of the transactions contemplated by or the validity of this Agreement.

Section 7.3 **<u>Valid and Binding Agreement</u>**. Upon its execution and delivery by the MBRA and Developer, this Agreement shall constitute a valid and binding obligation upon the Developer, in accordance with its terms except to the extent enforceability thereof may be limited under applicable bankruptcy, moratorium, insolvency or similar laws and by equitable principles relating to enforceability, good faith and fair dealing.

Section 7.4 **<u>Litigation</u>**. As of the date of this Agreement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to Developer's knowledge, is any such litigation or proceeding presently threatened, against the Developer or any of its property, that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement.

Section 7.5 **<u>Evidence of Insurance</u>**. The Developer shall obtain, prior to construction, and maintain at its expense during construction, the insurance described in this Agreement. The Developer shall provide evidence of such insurance to the MBRA.

Section 7.6 **Real Estate Ownership**. Developer warrants that it has ownership in fee simple title of the Property, and the current right to construct, operate and convey the Public Parking Facility.

Section 7.7 **Hazardous Materials**. The following provisions shall apply to the Property:

(a) The Developer shall not use the Property for the purpose of storing Hazardous Materials, nor directly or indirectly use the Property in a manner which will cause or increase the likelihood of causing the release of Hazardous Materials onto the Property, other than those Hazardous Materials which are necessary and commercially reasonable for the development of the Property or to conduct the Developer's business operated on the Property and which Hazardous Materials shall be, handled and disposed of in compliance with all Environmental Laws and industry standards and in a commercially reasonable manner by the Developer.

(b) The Developer shall promptly notify the MBRA if it becomes aware of any claims or litigation or if it receives any communication from any person (including any governmental authority) concerning the presence or possible presence of Hazardous Materials at the Property or concerning any violation or alleged violation of Environmental Laws respecting the Property during the term of this Agreement and shall promptly furnish the MBRA with a copy of any such communication received by Developer.

(c) During the term of this Agreement, the Developer shall notify the MBRA promptly and in reasonable detail in the event that the Developer becomes aware of the presence of Hazardous Materials or a violation of Environmental Laws at the Property, other than Hazardous Materials or violations that the MBRA already knows with respect to the Property or any part thereof as a result of the Baseline Environmental Assessment or Due Care Plan.

(d) During the term of this Agreement, the Developer shall take appropriate measures to ensure that the Developer complies and continues to comply in all respects with Environmental Laws.

(e) During the term of this Agreement, if the Property is used or maintained so as to subject the Developer or the MBRA to a claim by appropriate regulatory authorities of a violation of Environmental Laws (unless contested in good faith by appropriate proceedings), the Developer shall immediately cease the activities causing violation and shall, as required by law, remedy and fully cure any conditions arising therefrom at its own cost and expense.

(f) The Developer shall comply with Environmental Laws resulting from the Developer's use, possession, or development of the Property, at its sole cost and expense.

(g) Developer shall keep the Property free of any lien imposed pursuant to Environmental Laws resulting directly or indirectly out of the Developer's use, possession, or development of the Property, at its sole cost and expense.

Section 7.8 **Indemnities; Survival**. Except as provided above, all of the representations, warranties and covenants contained in this Article shall survive the delivery of this Agreement and the purchase of the Public Parking Facility pursuant to this Agreement and shall remain in full force and effect for so long as the Bonds are outstanding or the MBRA holds a legal possessory right to the Public Parking Facility. The Developer shall indemnify and hold the MBRA and the City harmless from and against and shall be obligated to pay and reimburse the MBRA and the City for, any and all loss and damage (including reasonable attorneys' fees, whether of inside or outside counsel), which the MBRA or City may sustain or incur as a result of any misrepresentation or breach of any covenant contained herein on the part of the Developer. The indemnities contained in this Agreement shall survive the termination of this Agreement but shall not be transferred to or binding upon any condominium unit owner or transferee that is not an affiliate of the Developer or that is not under common control of any person who controls, directly or indirectly, the Developer, but specifically excluding the Construction Lender.

Section 7.9 **Breach of Representations, Warranties and Covenants**. In the event that the Developer fails to comply with the requirements of this Agreement after notice to the Developer and the expiration of any applicable cure period hereunder, or such earlier time for which the MBRA reasonably determines that life, person or property is in jeopardy, the MBRA may, but shall not be obligated to, exercise its rights to do one or more of the following:

(a) declare that such failure constitutes a default under this Agreement; or

(b) take any and all actions, at the Developer's expense, that the MBRA reasonably deems necessary or desirable to cure said failure of compliance.

ARTICLE 8
MBRA'S REPRESENTATIONS, WARRANTIES AND COVENANTS

The MBRA makes the following representations and warranties to the Developer:

Section 8.1 **Authorization and Approvals**. The execution, delivery and performance of this Agreement have been duly authorized by all requisite action of the MBRA. Further, the MBRA has the power to make, deliver and perform as required under this Agreement and has taken all necessary action to authorize the foregoing.

Section 8.2 **Valid and Binding Agreement**. Upon its execution and delivery by the MBRA and the Developer, this Agreement shall constitute a valid and binding obligation upon the MBRA in accordance with its terms, except to the extent enforceability thereof may be limited under applicable bankruptcy, moratorium, insolvency or similar laws and by equitable principles relating to enforceability, good faith and fair dealing.

Section 8.3 **Lack of Legal Impediments**. To the best of the MBRA's knowledge, the execution, delivery and performance of this Agreement will not violate any provision of any existing Law, regulation, order or decree of any court or governmental entity, and will not violate any provisions of, or constitute a default under, any agreement or contract to which the MBRA is a party.

Section 8.4 **Litigation**. As of the date of this Agreement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to its knowledge, is any such litigation or proceeding presently threatened, against either the MBRA's participation in the Project or that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement.

Section 8.5 Survival. All of the representations and warranties contained in this Article shall survive the delivery of the Agreement and shall remain in full force and effect until the MBRA purchases the Public Parking Facility.

ARTICLE 9
LENDER PROTECTIONS

Section 9.1 Lender Protections. The MBRA acknowledges that the Developer will have one or more Construction Lenders for the Project. If requested by Developer and such Construction Lender, the MBRA agrees to the following:

(a) Notice of Default Under Agreement. Upon a default by the Developer under this Agreement, the MBRA shall give written notice thereof to the Construction Lender, provided that Developer or the Construction Lender has provided the MBRA with prior written notice of the notice address to be used for sending notices to the Construction Lender.

(b) Lender's Right to Cure Defaults Under Agreement. The MBRA agrees that, upon a default by the Developer hereunder, then, in each and every case, the Construction Lender may (but shall not be obligated to) exercise any and all of the rights of the Developer under this Agreement in the name and on behalf of the Developer within thirty (30) days after receipt of written notice from the MBRA.

(c) Lender to be Recognized as Successor to Developer. In the event the Construction Lender shall become the owner of the rights and interest of the Public Parking Facility or any part thereof by reason of judicial foreclosure, or other judicial action brought by the Construction Lender to enforce its rights under its mortgage, or through any other means or manner in connection with its mortgage (including a transfer or assignment in lieu thereof), the MBRA agrees that the Construction Lender shall be deemed to be the Developer's successor and assignee under this Agreement (notwithstanding anything in this Agreement prohibiting or restricting assignment by the Developer or establishing conditions under which an assignment by the Developer would be permitted) provided that the Construction Lender assumes Developer's obligations hereunder and agrees to perform such obligations. In such instance, the Construction Lender shall then be entitled to all rights, benefits and privileges of the Developer under this Agreement, and the MBRA and the Construction Lender shall be bound to one another under all of the terms, covenants and conditions of this Agreement, all without the need to execute any further instruments on the part of the MBRA, the Developer or the Construction Lender to make such succession and assignment effective.

(d) Assignment to Lender. The MBRA agrees that this Agreement may be assigned to the Construction Lender, and that the Developer may grant a security interest in this Agreement to the Construction Lender, and such action is not default of this Agreement. If required by the MBRA or the Construction Lender, the MBRA and the Developer agree to enter into a Tri-Party Agreement and the Construction Lender to ratify and confirm the foregoing provisions of this Section and such other provisions as the Construction Lender may reasonably request, although in no event shall the MBRA be obligated to agree upon a term that materially affects its rights under this Agreement.

(e) Assignment of Brownfield Tax Increment Revenues. In the event that Bonds are not issued pursuant to this Agreement, the Developer's rights to the Brownfield Tax Increment Revenues shall be collaterally assigned to the Construction Lender in payment of Eligible Activities incurred by the Developer for the construction of Public Parking Facility in accordance with the Vault Documents until the Construction Loan is paid in full.

Section 9.2 MBRA Protections. The Developer agrees to cause the Construction Lender to provide written notice to the MBRA upon a default by the Developer under the Construction Loan. The Construction Loan documents shall provide that the MBRA may (but shall not be obligated to) exercise, within a reasonable period of time after receipt of written notice of such default by the Developer, any and all of the rights of the Developer under the Construction Loan documents in the name and on behalf of the Developer, if the Developer has failed to cure the default thereunder within the applicable cure period, if any.

ARTICLE 10
RESTRICTION ON THE PROPERTY

Section 10.1 Covenant Regarding the Transfers of the Property.

(a) Transfer to Tax-Exempt Entities. The Developer acknowledges that the MBRA has taken into consideration the anticipated Brownfield Tax Increment Revenues from the Eligible Property, and the MBRA's debt and obligations in entering into this Agreement. To ensure that the MBRA's expectations with regard to Brownfield Tax Increment Revenues are not defeated while the Bonds are outstanding, the Developer hereby covenants that neither the Developer, nor its successor and assigns and every successor in interest to the Property or any part thereof, including any successor condominium association or condominium unit owners, shall sell, gift, transfer, or otherwise convey the Property or any part thereof to a property tax-exempt entity (whether under State or Federal law) without first providing for a method to provide the funds to cover the existing Bond obligations, which method of coverage shall be approved by the MBRA, which approval shall not be unreasonably withheld, conditioned, denied or delayed.

(b) Transfers Generally. Except as provided in Section 10.1(c), unless the MBRA has provided its prior written consent to any transfer which may not be unreasonably withheld, the Developer shall not transfer, sell, gift or convey any interest in the Property or the Project while the Bonds are outstanding.

(c) Condominium. Notwithstanding the foregoing, the Developer may transfer and subject the entire Project to condominium ownership pursuant to a Master Deed and, after the Public Parking Facility has been purchased by the MBRA, the Developer may convey units in such condominium provided that the Master Deed shall:

(i) conform to this Agreement;

(ii) shall not be amended so as to impair the rights of the MBRA under this Agreement, without the prior written consent of the MBRA;

(iii) provide that the Developer (and later the condominium association) may amend the Master Deed to reconfigure condominium units or in all other respects permitted under the Michigan Condominium Act, Act 59 of the Public Acts of 1978, as amended (the "**Condominium Act**"), although no such amendment shall:

1. have a material adverse effect on the Public Parking Facility or on any other material rights of the MBRA contained herein; or

2. substantially change the initial configuration of the Public Parking Facility without the prior written consent of the MBRA.

(iv) require the owner of each condominium unit to maintain such insurance coverages as are determined by the Developer to be reasonable in light of the nature of the use of the condominium unit;

(v) contain typical casualty insurance and rebuilding requirements for mixed use, mixed ownership properties such as the Project, including party wall, common support and similar arrangements relative to the maintenance, repair and replacement of elements of the Project with percentages of value assigned in a manner consistent with the Condominium Act;

(vi) contain waivers and covenants on the part of residents not to sue relative to nuisance claims based on the design or general operation of the Public Parking Facility; and

(vii) the Developer agrees to put notice of this Agreement in any Master Deed for the Project.

Section 10.2 Covenants; Binding Upon Successors in Interest. The Developer agrees that the covenants set forth in this Agreement, including, but not limited to the prohibited uses, the transfer restrictions, the indemnity by Developer and the release of liability, shall apply to the period after the establishment of the condominium and shall be referenced in the Master Deed, so that any deeds, land contracts, subleases, or other instruments conveying an interest in any property within the Project, or any of the condominium units that comprise the Project, shall be subject to the agreement and covenants provided in this Agreement and shall, in any event, be binding on the Developer, it successors, successors in interest and assigns, to the fullest extent permitted by law and equity, for the benefit, in favor of, and enforceable by the MBRA and the City, and their successors in interest and assigns.

ARTICLE 11
NON-LIABILITY

Section 11.1 Non-Liability of the MBRA and City. Neither the MBRA nor the City shall be responsible or liable to the Developer, and the Developer hereby releases the MBRA and the City, from any liability for personal injury or property damage that may be occasioned by or through the acts, or omissions or persons occupying any part of the Property, unless the event is caused by the negligence or willful misconduct of the MBRA or the City.

Section 11.2 Satisfaction. The performance by the MBRA and the City under this Agreement shall constitute the complete satisfaction by the MBRA and the City of their obligations to

Developer with respect to the Public Parking Facility under the (i) Brownfield Plan, (ii) Act 381 Work Plan, and (iii) Reimbursement Agreement.

Section 11.3 Survival. The provision of this Article shall survive the termination of this Agreement.

ARTICLE 12
ADMINISTRATION

Section 12.1 MBRA – Developer Relationship.

(a) The Developer shall not be considered an agent or employee of the MBRA. No agent or employee of the Developer shall be considered an agent or employee of the MBRA. The Developer shall remain responsible for any claims arising out its own, or its employees, officers, directors, agents or contractors, acts or omissions during the performance of this Agreement. Additionally, the Developer and the MBRA shall not be considered engaged in a joint venture or partnership.

(b) Developer represents and warrants that, to its actual knowledge after due inquiry, neither the Chair nor any member of the MBRA and no other officer, employee or agent of the MBRA who exercises any function or responsibility in connection with the carrying out of this Agreement has any personal interest, direct, or indirect in the Developer or the Project. Developer agrees it will not knowingly engage any member of the MBRA or any other officer, employee or agent of the MBRA who exercises any function or responsibility in connection with the carrying out of this Agreement and the Project who has any personal interest, direct, or indirect in the Project except if such person shall disclose such personal interest and take no part in any proceeding or other action or decision relating to this Agreement, its implementation or enforcement or the Project.

(c) Developer covenants and agrees that no employee, agent, consultant, officer, or elected official or appointed official of the MBRA who exercises or has exercised any functions or responsibilities with respect to this Agreement or the Project, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or, until the Project Completion Date, without full disclosure to the MBRA, have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business, during or after their tenure. The foregoing restrictions shall apply to all activities that are part of the Project.

Section 12.2 Indemnification of Indemnified Persons.

(a) The Developer shall indemnify and hold the Indemnified Persons harmless from any loss, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property, or other actions including but not limited to disputes with governmental regulatory agencies, condominium owners, and others as a result of the ownership, operation, use or maintenance of the Project from and after the date hereof. If any suit, action or proceeding is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the

Developer and the Developer shall defend such Indemnified Person with counsel selected by the Developer, which counsel shall be reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Developer and the Developer shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Developer may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its prior written consent. The Developer shall not be liable for payment or settlement of any such claim or proceeding made without its prior written consent.

(b) The Developer shall not be obligated to indemnify any Indemnified Person under subsection (a) if the liability arises out of the Indemnified Person's negligence, willful misconduct or material breach of this Agreement or the negligence or willful misconduct of any person or entity acting by, through or under any Indemnified Person.

(c) The Developer also shall indemnify the Indemnified Persons for all reasonable costs and expenses the Indemnified Person incurs, including reasonable counsel fees, incurred in successfully enforcing any obligation of the Developer under this Agreement or any related agreement.

(d) The Developer shall use its reasonable best efforts to assure that to the extent an environmental consultant is successively hired to provide services for activities at the Property, the environment consultant shall provide to the MBRA and the City the indemnity provisions set forth in this Agreement.

ARTICLE 13
GENERAL PROVISIONS

Section 13.1 Priority of Documents. With regard to the subject matter of this Agreement, in the event and to the extent that there is any conflict between the terms and conditions of this Agreement and the terms and conditions of the Vault Documents, the provisions of this Agreement shall prevail.

Section 13.2 Brokerage Fees. The Developer and MBRA represent and warrant to the other that no real estate broker or finder has been engaged in connection with this Agreement. The Developer shall indemnify and hold the MBRA harmless from and against any and all liability (including reasonable attorneys' fees and costs) for real estate brokerage commissions or finders' fees in connection with this Agreement to the extent such liability or claim is based on any arrangement or agreement made or claimed to have been made by or on behalf of the Developer.

Section 13.3 Compliance with Law. The parties agree to comply with all federal, and state statutes and regulations, and local ordinances, now in effect or hereinafter enacted, provided, however, that each party reserves the right to challenge any of the foregoing.

Section 13.4 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the Laws of the State of Michigan.

Section 13.5 Amendment and Waiver. The parties may mutually agree to execute such documents and amendments to this Agreement or to any other related contract or agreement as might reasonably be required to carry out the purposes of this Agreement or as might reasonably be required by any federal, state, or local law, rule, regulation or authority. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

Section 13.6 Notices. All notices, certificates, deliveries or communications required by this Agreement to be given shall be in writing and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail (postage prepaid, return receipt requested) or by reputable overnight delivery service, addressed to the respective parties as follows:

If to the Developer:

Marquette Vault, LLC
47711 Gundlach Road
Houghton, Michigan 49931
Attn: Jon Julien

If to the MBRA:

Marquette Brownfield Redevelopment Authority
1100 Wright Street
Marquette, Michigan 49855
Attn: Sheri Davie, Executive Director

If to the City:

City of Marquette
300 W. Baraga Avenue
Marquette, Michigan 49855
Attn: Karen Kovacs, City Manager

or to such other address as such party may specify by written notice to the other party as provided for herein.

Section 13.7 Entire Agreement. This Agreement and the Vault Documents contain all the agreements relating to the Project between the parties. To the extent of any conflict between this Agreement and the Vault Documents, this Agreement shall control. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is expressly made thereto in this Agreement.

Section 13.8 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 13.9 **<u>Captions</u>**. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

Section 13.10 **<u>Mutual Cooperation</u>**. Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement and with any individual entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Project, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, permits, licenses, approvals and any other permissions necessary for the construction or operation thereof.

Section 13.11 **<u>No Third Party Beneficiary</u>**. The provisions of this Agreement shall bind and inure exclusively to the benefit of the MBRA and the Developer, and their permitted successors and assigns, and Developer's lenders and their successors and assigns. Such provisions are not for the benefit of any other person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person.

Section 13.12 **<u>Time of Performance; Force Majeure</u>**. Each of the parties shall perform the obligations to be performed by it set forth in this Agreement by the times specified in this Agreement, as applicable, except to the extent that Force Majeure causes a delay in performance, and in such event, the time for performance shall be extended by the period of Force Majeure.

Section 13.13 **<u>Reservation of Municipal Rights and Powers</u>**. Nothing in this Agreement will be deemed to constitute a waiver of the right and power of the City to enforce its Laws and ordinances with respect to the Project, including without limitation its zoning ordinance and applicable building, safety, fire and health codes and ordinances, it being recognized that the Developer will be responsible for causing the Project to comply with the same or to obtain variances there from in accordance with applicable requirements and procedures; provided, the City shall not enforce its Laws or ordinances in a manner that selectively discriminates against the Project or the Developer so that they are treated differently under such Laws or ordinances than other properties or persons. Wherever in this Agreement there is a requirement that the Developer or the Project comply with local Laws such requirements shall not be deemed to apply to any ordinance, ruling, administrative order, or other action by the City that is specific to the Project or that imposes on the Project requirements or restrictions that do not apply to other properties within the City.

Section 13.14 **<u>Binding Effect</u>**. This Agreement shall be binding upon the parties hereto and upon their respective permitted successors and assigns.

The MBRA, the City and Developer have caused this Agreement to be duly executed and delivered as of the date first written above.

DEVELOPER:

MARQUETTE VAULT, LLC, a Michigan limited liability company

____
By: Jon Julien
Its: Managing Member

STATE OF MICHIGAN)
COUNTY OF ______)

Acknowledged before me in _____________ County, Michigan, on _______________, 2023, by Jon Julien, Manager of Marquette Vault, LLC, on behalf of the corporation.

____

___________________________,
Notary Public
State of Michigan, County of ____________
My Commission Expires: _______________
Acting in the County of _________________

<u>MBRA</u>:

CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY, a public body corporate created pursuant to 1996 PA 381, as amended

____
By: Gerald L. Irby
Its: Chair

____
By: J. Matthew Tuccini
Its: Secretary

STATE OF MICHIGAN)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on _______________, 2023, by Gerald L. Irby, Chair, and J. Matthew Tuccini, Secretary, of the City of Marquette Brownfield Redevelopment Authority, a Michigan public body corporate

____

_________________________,
Notary Public
State of Michigan, County of Marquette
My Commission Expires: ______________
Acting in the County of Marquette

Approved as to substance:

____
Sheri Davie, Executive Director

<u>CITY</u>:

CITY OF MARQUETTE, a Michigan Municipal Corporation

____
By: Cody O. Mayer
Its: Mayor

____
By: Kyle Whitney
Its: Clerk

STATE OF MICHIGAN)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on _________________, 2023, by Cody O. Mayer, Mayor, and Kyle Whitney, Clerk of the City of Marquette, a Michigan municipal corporation.

____

_____________________________,
Notary Public
State of Michigan, County of Marquette
My Commission Expires: ________________
Acting in the County of Marquette

Approved as to substance:

____
Karen M. Kovacs, City Manager

Approved as to form:

____
Suzanne C. Larsen, City Attorney

LIST OF EXHIBITS

EXHIBIT A

101 S. FRONT STREET AND 119 S. LAKESHORE BOULEVARD LEGAL DESCRIPTION

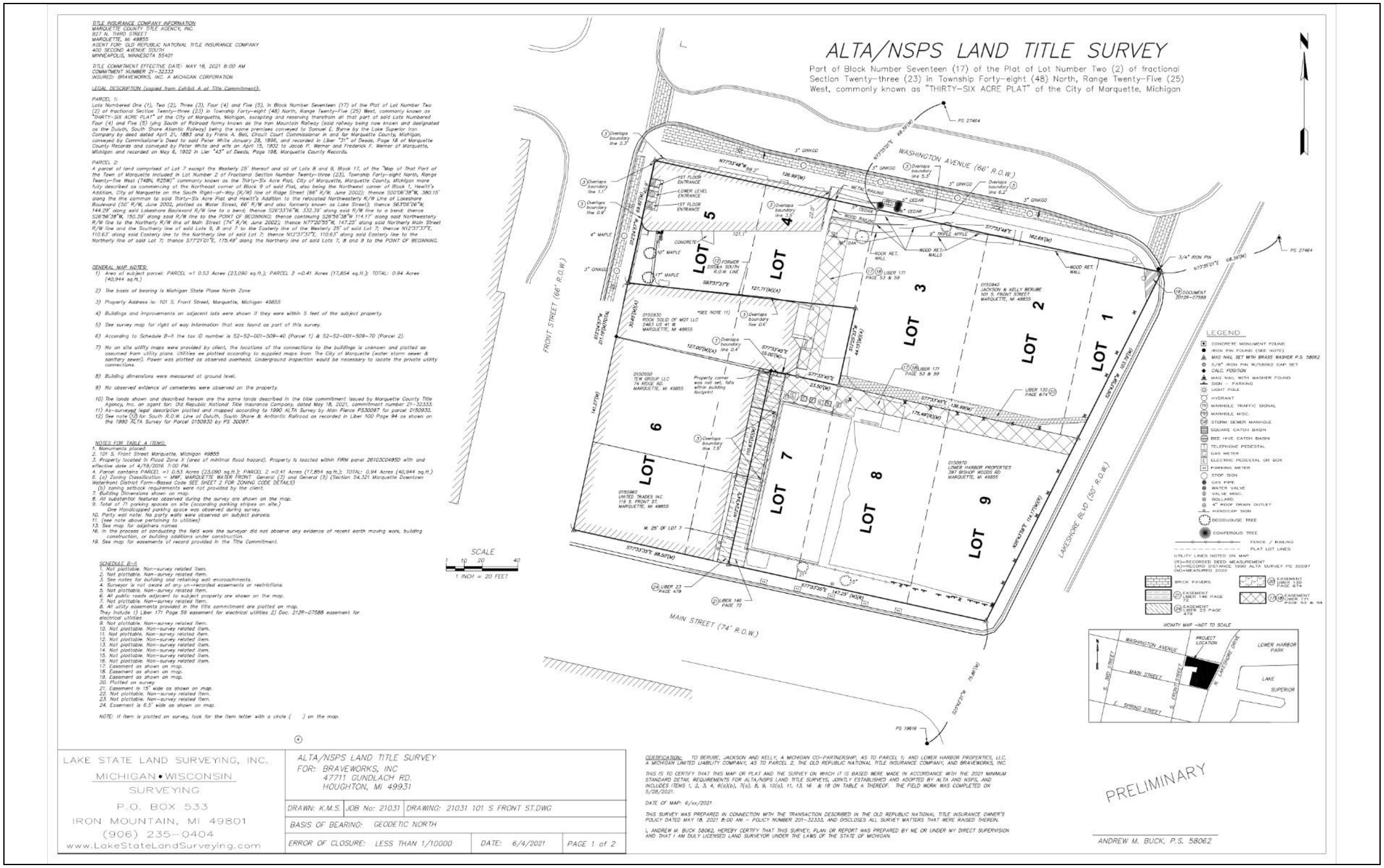


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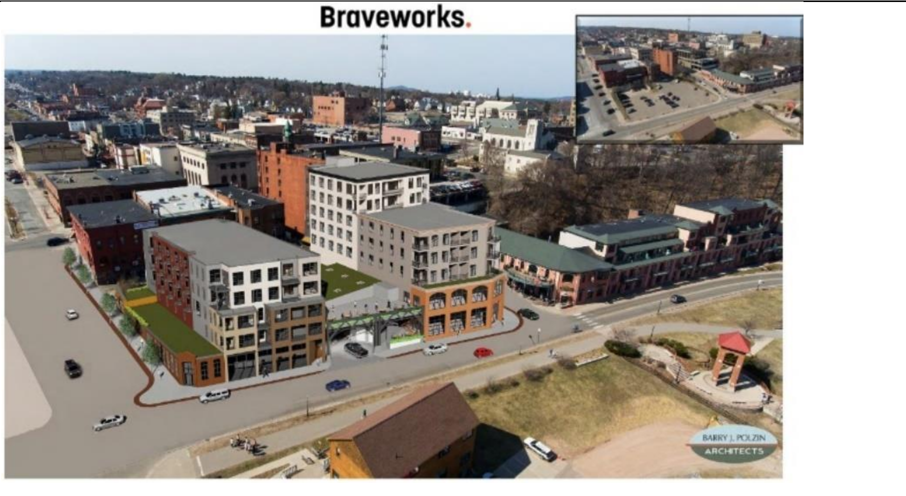
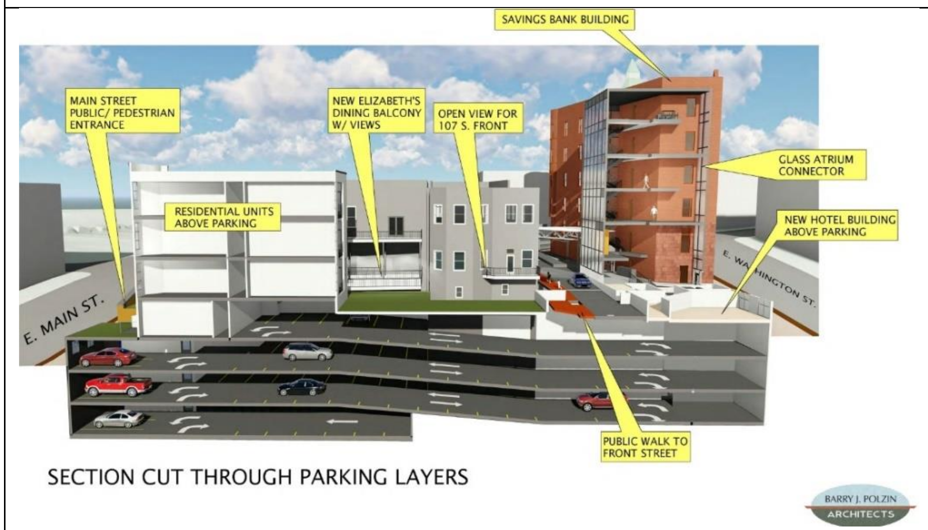
EXHIBIT B
RENDERING OF PUBLIC PARKING FACILITY AND PROJECT





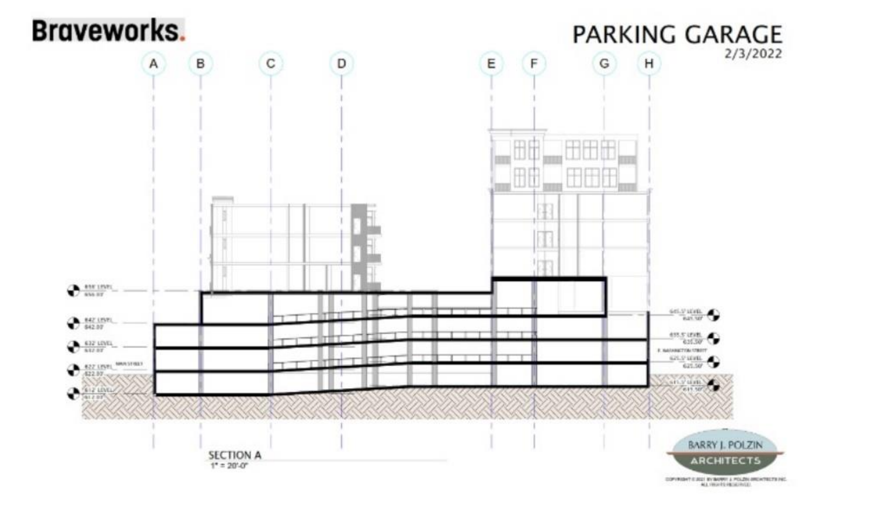


EXHIBIT C

DESCRIPTION OF PUBLIC PARKING FACILITY AND PROJECT

PROJECT: Marquette Vault, LLC, a wholly owned subsidiary of Braveworks, Inc., a Michigan corporation engaged in development based on Houghton, has acquired the former State Savings Bank building at 101 Front Street and associated property at 119 S. Lakeshore Boulevard. A $21 million project is proposed that will include a boutique hotel in the historic building and construction of new buildings that total an estimated 70,000 square feet with additional hotel rooms, commercial space and up to 40 residential units. As part of the development, Marquette Vault, LLC is proposing a collaborative arrangement for a 200 plus space public parking facility within the development that will help meet the need for downtown parking during the day and providing hotel parking overnight. The synergy of daytime community parking needs and overnight hotel parking needs provides an effective utilization of fixed parking spaces.

BROWNFIELD FINANCING STRUCTURE: Act 381, PA 1996 as amended, Michigan's Brownfield Redevelopment Financing Act, provides for the capture of increase incremental taxes generated by additional private investment on Brownfield Eligible Property to reimburse certain Brownfield Environmental and Non-Environmental Eligible Activities with approvals at the local and State level. Integrated parking facilities are a Brownfield Eligible Activity. A Brownfield Plan has been approved by the City of Marquette Brownfield Redevelopment Authority and the Marquette City Commission for capture of local taxes. An Act 381 Work Plan has been prepared for anticipated approval by the Michigan Economic Development Corporation and Michigan Strategic Fund for capture of State taxes. This collaborative arrangement will result in the ability to finance a 200 plus space parking deck in downtown Marquette with increased incremental taxes generated by the Vault project, almost half of which will be State revenues and without City General Funds.

In addition, the MBRA has secured a Michigan Department of Environment, Great Lakes and Energy (EGLE) Brownfield Grant of $495,000 and Brownfield Loan of up to $1 million for environmental response activities, asbestos abatement, and selective and site demolition.

PRIMARY ROLES AND RESPONSIBILITIES: There are four primary parties involved in the development and operation of the Vault Marquette Public Parking Facility.

City of Marquette Brownfield Redevelopment Authority (MBRA): The MBRA is leading the process for arrangements, agreements, design review, and financing, with the assistance of WGI, the MBRA Parking Consultant. The MBRA will issue bonds for the purchase of the Public Parking Facility, capture Brownfield revenues, and make the bond payments.

City of Marquette: The City Commission will approve all agreements and provide full faith and credit for the MBRA Public Parking Facility Bonds.

City of Marquette Downtown Development Authority (DDA): The DDA will operate the Public Parking Facility, including collecting parking fees and providing operational maintenance services.

Braveworks, LLC/Marquette Vault, LLC: Marquette Vault, LLC is the project developer and will finance and construct the new hotel and residential units with the integrated Public Parking Facility, as well as renovate the former State Savings Bank. At an agreed upon time, the MBRA will purchase the Public Parking Facility from Marquette Vault, LLC.

DESIGN, FINANCING AND DEVELOPMENT: Marquette Vault, LLC will have primary responsibility for design, financing and development of the Public Parking Facility, with review and oversight by the MBRA and DDA and their consultants.
The following are key components:

- ***Design***: The Marquette Vault, LLC team will lead the design process for both the overall development and the integrated public parking facility. The MBRA Parking consultant will work closely with the Braveworks team to provide input and represent the interests of the public entities, with the on-going input of the DDA Parking Committee. The MBRA Parking Consultant will sign off on the final design.
- ***Financing***: Beginning with the design process, the MBRA will coordinate with City staff, City bond counsel and financial consultant to initiate the financing process, which will include financial review, stipulations necessary for the Development Agreement, Resolution of Intent and other financing consideration that may inform design and development.
- ***Operations***: During the design process, the Marquette Parking Consultant will work with the Marquette Vault team, in conjunction with the DDA Parking Committee, on the operational considerations of the public parking facility that will also inform the terms and conditions of the Operating Agreement with the DDA.
- ***Development***: Once the design has been completed and approved by the Marquette Parking Consultant, Marquette Vault team will prepare all construction contract documents for review and approval by the Marquette Parking Consultant. Marquette Vault will oversee and manage construction of the overall development and the public parking facility. The Marquette Parking Consultant will provide periodic on-site review and review of construction and inspection reports and provide periodic reports to the DDA Parking Committee, MBRA and City.

EXHIBIT D

FORM OF PRE-DEVELOPMENT SATISFACTION LETTER

PRE-DEVELOPMENT SATISFACTION LETTER

THIS **PRE-DEVELOPMENT SATISFACTION LETTER** is made between **Marquette Vault, LLC**, a Michigan limited liability company ("Developer"), and the **City of Marquette Brownfield Redevelopment Authority**, a public body corporate ("MBRA"), pursuant to and in accordance with the terms of that certain Public Parking Facility Development Agreement entered into by and between Developer and MBRA dated July 1, 2023 (the "Agreement"). All capitalized terms used herein shall have the meanings prescribed them in the Agreement. By execution below, Developer and MBRA confirm to one another as follows:

1. All of the conditions set forth in Article 2 of the Agreement which must be satisfied and/or waived as a condition of the parties' election to proceed beyond the Pre-Development Period have either been satisfied or waived.

2. There are no defaults by either party under the Agreement known to the other or which would constitute a default following notice and the expiration of any applicable cure period.

3. Each party irrevocably commits to proceed pursuant to the terms and conditions of the Agreement beyond the Pre-Development Period as modified by the terms and conditions of this Pre-Development Satisfaction Letter. Specifically, the parties, by execution below, evidence their agreement to the following (Developer represents and warrants to MBRA that all attachments hereto are true, correct and complete copies of what they purport to represent and have not been modified, supplemented or amended in any manner except as attached hereto):

(a) That the Maximum Development Cost, based upon the MBRA's analysis and underwriting of the Developer's deliveries and including the analysis of the maximum amount of Brownfield Tax Increment Revenues that can be generated by the Project, is $______________.

(b) The maximum dollar amount of the Bonds to be issued by the MBRA shall be $_____________, the proceeds of which shall be applied in accordance with the provisions of the Agreement.

(c) The components and calculation of the Actual Development Cost shall be as reflected on the attached Exhibit ___.

(d) The interest rate for the Bonds is estimated for purposes of underwriting to be _______ percent (___%) per annum. To the extent that the interest rate actually charged on the Bonds exceeds the estimated interest rate, then same shall be a Market Event and, if MBRA nonetheless agrees to issue the Bonds, the face amount for the Bonds shall be proportionately reduced as determined by the MBRA.

(e) The MBRA has approved the GMP Construction Contract, the Project Plans, the Project Budget, the Parking Structure Budget, and the Project Schedule, all of which are attached hereto as Exhibits ____, ____, ____, ____ and ______ respectively.

(f) The SAD shall be levied against the property described on the attached Exhibit ___ and shall require a minimum payment of taxes sufficient to pay the principal and interest due on the Bonds in any one year equal to $__________.

(g) The Act 381 Work Plan for Non-Environmental Eligible Activities has been approved by the Michigan Strategic Fund.

(h) Developer commits to expend no less than $____________ for the construction of the Project and represents, warrants and covenants that the minimum true cash value for the Project when the Project is completed shall not be less than $_______________.

(i) The appraised true cash value has been provided, reviewed and approved by the City Assessor, and a calculation of Brownfield TIF revenues has been conducted demonstrating adequate revenues to meet annual Bond payments.

(j) The MBRA has [waived/not waived] its requirement for letters of credit or cash deposits as provided under Section 2.3(c) of the Agreement.

(k) The policy of title insurance insuring the Public Parking Facility to be issued at the time of closing of the purchase of same shall be in the standard form.

(l) The form of Master Deed which the Developer intends to record and which has been approved by the MBRA is attached hereto as Exhibit ___.

(m) The terms and conditions under which the City of Marquette has agreed to extend its full faith and credit in support of the Bonds has been reviewed and approved by the parties.

(n) The MBRA has approved the Construction Lender and the sources and uses submitted by the Developer.

(o) The Construction Loan Commitment is attached hereto as Exhibit ___.

(p) The CapEx Report is attached hereto as Exhibit ___.

(q) The fully executed Amended Reimbursement Agreement is attached hereto as Exhibit ___.

(r) The aggregate required amount of the CapEx Reserve is $____________.

Upon the execution and exchange by the MBRA and the Developer of the terms and conditions of this Pre-Development Satisfaction Letter, Developer agrees to undertake in good faith the performance of its obligations under the Agreement relating to the construction of the Project and the MBRA agrees, subject to the terms of the Agreement, to issue the Bonds in accordance with the terms of the Agreement and to use the proceeds to purchase the Public Parking Facility on completion of the Project, all as set forth in, and subject to the terms and conditions of, the Agreement. In the event of a conflict between the terms and conditions of this Pre-Development Satisfaction Letter (together with all exhibits attached hereto) and the Agreement, the terms of this Pre-Development Satisfaction Letter shall govern and control.

IN WITNESS WHEREOF, the undersigned have caused their signatures to be placed on the _____ day of ____________, 2023.

DEVELOPER:

MARQUETTE VAULT, LLC, a Michigan limited liability company

____
By: Jon Julien
Its: Managing Member

MBRA:

CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY, a public body corporate created pursuant to 1996 PA 381, as amended

____
By: Gerald L. Irby
Its: Chair

____
By: J. Matthew Tuccini
Its: Secretary