

City of Marquette, MI



Meeting Agenda City Commission

**Monday, May 9, 2022
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)

Bob Chapman, Presque Isle Park Advisory Committee, for an unexpired term ending 04-01-25

Daniel LaBar, Presque Isle Park Advisory Committee, for an unexpired term ending 04-01-25

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

Presentation(s)

2. Marquette Area Sister Cities Partnership Update, by Tristan Luoma

Public Hearing(s)

3. Ordinance #707 - Designation of Foot Traffic Paths - Roll Call Vote

4. Ordinance #708 - Wildlife Feeding Prohibition - Roll Call Vote

5. Consent Agenda - Roll Call Vote

5.a. Approve the total bills payable in the amount of \$476,526.96

5.b. Advanced Life Support Intercept Agreement with Marquette Township

5.c. Mobile Food Vending Resolution - Roll Call Vote

5.d. Schedule Public Hearing-Single Lot Special Assessment Roll #589

5.e. Street Improvements, Paving and Sanitary Sewer Service Line Replacements Project

Unfinished Business

6. SpinwayMQT, LLC – Lease Agreement

New Business

7. Amended Reimbursement Agreement/EGLE Brownfield Grant and Loan- Roll Call Vote

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: 5/9/2022

Public Hearing(s)

Ordinance #707 - Designation of Foot Traffic Paths - Roll Call Vote

BACKGROUND:

In recent months, the Presque Isle Park Advisory Committee (PIPAC) has held several discussions about how to best preserve the natural and recreational benefits of Presque Isle Park in perpetuity. These conversations led ultimately to a handful of recommended changes, which were detailed during a presentation at the City Commission's January 31 meeting.

In response to Commission direction at that meeting, staff is now recommending the adoption of Ordinance #707, which will allow for the designation of paths for foot traffic only.

Aside from Ordinance #708, also recommended for adoption tonight, staff has determined the other recommendations from the January 31 presentation can be addressed through enforcement of existing local and state regulations.

Per City Charter, an ordinance may not be enacted at the meeting in which it is introduced. The City Commission scheduled this public hearing at the April 25, 2022 regular meeting.

FISCAL EFFECT:

None by this action.

RECOMMENDATION:

Adopt Ordinance #707 in order to allow for the designation of paths for foot traffic only, and authorize the Mayor and City Clerk to sign.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Ord. 707 - Foot Paths

ORDINANCE #707
AN ORDINANCE TO AMEND MARQUETTE CITY CODE
CHAPTER 46 – TRAFFIC AND VEHICLES, IN ORDER TO
DESIGNATE PATHS FOR NON-MOTORIZED TRAFFIC

INTENT

The purpose of this ordinance is to allow for the designation of walking paths and non-motorized paths in the City and to clarify enforcement of these processes.

The City of Marquette Ordains:

SECTION 1. Repeal.

Chapter 46 – Traffic and Vehicles, Article IV. Bicycles and other Nonmotorized Vehicles, Secs. 46-93 and 46-95 are hereby repealed.

SECTION 2. Amendments.

Chapter 46 – Traffic and Vehicles, Article IV. Bicycles and other Nonmotorized Vehicles is hereby amended as follows:

- ***Article IV. Traffic and Vehicles is hereby titled Bicycles and other Nonmotorized Traffic.***
- ***Sec. 46-96 – Skateboarding and in-line skating is hereby titled Sec. 46-97 – Skateboarding and in-line skating.***
- ***Sec. 46-94A, subsection (2) is hereby repealed.***
- ***Sec. 46-94A – Motorcycles; moped; operator – Protective helmet required; violation as civil infraction is hereby titled Sec. 46-96 – Motorcycles; moped; operator – Protective helmet required.***

SECTION 3. Adoption.

New Chapter 46 – Traffic and Vehicles, Article IV. Bicycles and other Nonmotorized Traffic, Secs. 46-93, 46-95 and 46-98 are hereby adopted as follows:

Sec. 46-93. Designation of bicycle paths.

- (a) The city may designate, at the discretion of the Chief of Police and the Director of the Community Services Department, and by the erection of appropriate signs, certain areas as bicycle paths. All motorized vehicles, including, but not limited to, motorcycles, motor scooters, go-carts, automobiles and all other vehicles powered by other than muscular power, are prohibited from traveling on such designated non-motorized paths.

- (b) Class 1 electric bicycles, defined as “equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20 miles per hour”, as specified by MCL 257.13e(b)(i), are not considered motorized vehicles for the purpose of this Article.
- (c) All bicycles operated on designated bicycle paths shall comply with all regulations governing the operation of bicycles in the city as set forth in sections 46-21 and 46-94.

Sec. 46-95. Designation of paths for foot traffic.

The city may designate, at the discretion of the Chief of Police and the Director of the Community Services Department, certain areas as inappropriate for wheeled vehicular traffic. Such paths will be clearly marked by signs, and a current list of such paths shall be available for public inspection in the offices of the Community Services Department. All vehicles, including, but not limited to, bicycles, scooters, unicycles, carts, motorcycles, motor scooters, go-carts and automobiles, are prohibited from traveling on such designated foot paths.

Sec. 46-98. Penalty.

Any person who violates any portion of this article is responsible for a municipal civil infraction.

SECTION 4. Effective Date.

This ordinance shall take effect ten days after adoption but not before publication.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

Date Adopted: _____

Date Published: _____

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 5/9/2022

Public Hearing(s)

Ordinance #708 - Wildlife Feeding Prohibition - Roll Call Vote

BACKGROUND:

In recent months, the Presque Isle Park Advisory Committee (PIPAC) has held several discussions about how to best preserve the natural and recreational benefits of Presque Isle Park in perpetuity. These conversations led ultimately to a handful of recommended changes, which were detailed during a presentation at the City Commission's January 31 meeting.

In response to Commission direction at that meeting, staff is now recommending the adoption of Ordinance #708, which would prohibit the feeding of wildlife in the City.

Aside from Ordinance #707, also recommended for adoption tonight, staff has determined the other recommendations from the January 31 presentation can be addressed through enforcement of existing local and state regulations.

Per City Charter, an ordinance may not be enacted at the meeting in which it is introduced. The City Commission scheduled this public hearing at the April 25, 2022 regular meeting.

FISCAL EFFECT:

None by this action.

RECOMMENDATION:

Adopt Ordinance #708 to prohibit feeding wildlife, and authorize the Mayor and City Clerk to sign.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Ord. 708 - Wildlife Feeding Prohibition

ORDINANCE #708
AN ORDINANCE TO AMEND MARQUETTE CITY CODE
CHAPTER 8 – ANIMALS, IN ORDER TO PROHIBIT THE
FEEDING OF WILDLIFE

INTENT

The purpose of this ordinance is to prohibit the feeding of wild animals in the City, and to thus limit the consequences of such feeding.

The City of Marquette Ordains:

SECTION 2. Adoption.

New Chapter 8 – Animals, Sec. 8-16. – Feeding certain wild animals is hereby adopted as follows:

Sec. 8-16. – Feeding certain wild animals.

- (a) *Purpose.* The city shall control the feeding of certain wild animals within the city as the practice may cause unsustainable growth, intensify wild animal population densities, decrease the overall health of the animals, increase the probability and occurrence of transmission of diseases to humans within the area, and actively encourage the presence of an urban wild animal population that aggravates other property impacts.
- (b) *Feeding Prohibited.* Except as provided for in Chapter 54 of this Code, no person shall intentionally feed, cause to be fed, provide, or make available food or other substances intended for consumption to any animal other than a Domestic Pet as defined by Sec. 8-2 of this Code within the city, either on private or public property.
- (c) *Exceptions.* The prohibitions in this section shall not apply to:
 - (1) Naturally growing vegetation or its seed, planted vegetation growing in yards or flower beds for landscaping, or planted vegetation for human consumption in gardens.
 - (2) Straw, hay or similar materials used for erosion control, mulching, gardening or landscaping purposes.
 - (3) Bird seed, grain, or corn; if contained in an elevated bird feeder and not deposited in a manner that could be reasonably interpreted as a violation of the feeding prohibitions in this section.
 - (4) Public employees acting within the scope of their authority for purposes of public health or safety or wildlife management purposes.

SECTION 3. Effective Date.

This ordinance shall take effect ten days after adoption but not before publication.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

Date Adopted: _____

Date Published: _____

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 5/9/2022

Consent Agenda - Roll Call Vote

Advanced Life Support Intercept Agreement with Marquette Township

BACKGROUND:

This agreement is to provide Advanced Life Support (ALS) medical service to support the Marquette Township's basic life support ambulance service within the region. The Marquette City Fire Department will provide ALS intercept service by request and will received \$250 per incident or will split Medicaid billed incidents 50/50 with the Township.

FISCAL EFFECT:

The Fire Department will potentially realize a revenue increase of more than \$10,000 annually.

RECOMMENDATION:

Approve the ALS Intercept agreement between the City of Marquette and Marquette Township.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ 2022 Advanced Life Support Paramedic Intercept Agreement

ADVANCED LIFE SUPPORT PARAMEDIC INTERCEPT AGREEMENT

THIS AGREEMENT, is entered into effectiveness as of the ____ day of _____, 2022 (“Effective Date”) between the EMS Departments of the **Marquette City Fire Department (“MFD”)** at 418 South Third Street, Marquette, Michigan 49855, and the **Marquette Township Fire and Rescue (“MTFD”)**, a Michigan municipal corporation, located at 2801 Venture Drive, Marquette, Michigan 49855.

RECITALS

1. The MFD operates an Advanced Life Support (“ALS”) non-transport service licensed to serve primary emergency traffic in the Marquette County area. The MTFD owns and operates a Basic or Limited Life Support (“Specialist”) ambulance service in Marquette County, Michigan.
2. There is a need in the Upper Peninsula for ALS emergency medical services to support the MTFDs BLS/Specialist emergency medical service within the region. The MFD is willing to provide ALS services when requested by the MTFD as they desire to obtain such services on the terms and conditions set forth in this Agreement.
3. The sole purpose of this Agreement is to fulfill a critical community health care need and the obligation of the parties to the community to provide reasonably available quality emergency medical services. The parties expressly acknowledge that no payment or benefit accorded to any party under this Agreement is directly or indirectly in exchange for the referral of patients and that influencing referral of patients is not a purpose of this agreement.

TERMS

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties agree as follows:

1. ALS Services Provided by the MFD. Upon request of the MTFD, the MFD agrees to intercept the MTFD's vehicle and provide ALS care to the patient being transported in the MTFD's Basic or Specialist vehicle for the remainder of the transport to an appropriate acute care facility. Intercept coverage by the MFD under this Agreement may be limited to the availability of a staffed advance life support vehicle. The MFD shall at all times use its best efforts to respond to all requests for ALS intercepts through mutual aid agreements or otherwise.

2. Contract Payment. In instances where the MTFD bills and receives payment from the insurance payors (Medicare, Blue Cross Blue Shield, etc.) on intercept billing, the MTFD shall retain funds collected less the MFD's billed intercept fee of \$250.00.

3. Standards. The MFD and the MTFD shall perform their duties and responsibilities under this Agreement in accordance with all applicable standards of (i) third party payors with which they have a contractual relationship to obtain reimbursement for services rendered (including Blue Cross Blue Shield of Michigan, Medicare, Medicaid, and any other third party payors), (ii) federal, state and local government laws, rules and regulations, (iii) currently approved and generally accepted professional standards.

4. Term and Termination. The term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date noted above (the "Initial Term"). Thereafter this Agreement shall automatically renew for successive terms of one (1) year unless either party gives written notice to the other party at least thirty (30) days prior to the expiration of the current term ("the Term"). This Agreement may be terminated before the expiration of the Term on the occurrence of any of the following:

(a) By mutual written agreement of the parties,

(b) By either party, with or without cause upon sixty (60) days written notice to the other party,

(c) By either party upon a material breach of this Agreement by the other party if that breach is not cured within thirty (30) days after the receipt of written notice of the breach of the offending party. For the purpose of this section, a material breach shall be defined to mean the substantial failure of either party to fulfill its duties or obligations thereunder.

5. Supervening Law. The parties recognize that this Agreement at all times is subject to applicable state, local, and federal law. The parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation, such as new federal or state economic stabilization program or health insurance program. Any provision of law that invalidates, or is otherwise inconsistent with the terms of this Agreement, or that would cause one or more of the parties to be in violation of law, shall be deemed to have superseded the terms of this Agreement; provided, however, that the parties shall exercise their best efforts to modify the terms of this agreement consistent with the requirements of law in order to effectuate the purpose and intent of this Agreement.

6. Notices. Any notice or other communication by a party to the other party shall be in writing and shall be given, and be deemed to have been given, if either delivered by messenger or mailed, postage prepaid, registered or certified mail addressed as follows:

TO MFD:	Marquette Fire Department 418 S. Third St. Marquette, MI 49855
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TO MTFD:	Marquette Township Fire & Rescue 2801 Venture Dr Marquette, MI 49855
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or to such other address, and to the attention of such other person or officer as a party may designate in writing.

7. Modification and Changes. This Agreement may be changed or modified only by a written agreement executed by the parties here to.
8. Assignment. No party shall assign its rights, duties, or obligations under this Agreement without the prior written approval of the other parties.
9. Headings. The headings contained in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
10. Governing Law. This Agreement shall be governed by the laws of the State of Michigan.
11. Independent Contractor Status. In the performance of the services to be rendered pursuant to this Agreement, it is mutually understood and agreed that the parties shall be, and at all times are, acting and performing as independent contractors. As such, except as specifically provided herein, no party shall be deemed the agent, legal representative, joint venture, partner, employee, or servant of the other for any purpose whatsoever.
12. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and there is no intention, expressed or otherwise, to create rights or interest for any party or persons other than the parties to this Agreement. This Agreement shall be enforceable only by the parties hereto and their successors in interest by virtue of an assignment which is not prohibited under the terms of this Agreement, and no other person shall have the right to enforce any of the provisions contained herein.
13. Waiver of Breach. The failure of any party to strictly enforce any provisions of this Agreement shall not be constructed as a waiver thereof or as excusing the defaulting party from future performances.
14. Non-assumption of Liabilities. The MFD shall not, by entering into and performing this Agreement, become liable for any of the existing or future obligations, liabilities, or debts of the MTFD. The MTFD shall not, by entering into and performing

this Agreement, become liable for any existing or future obligations, liabilities, or debts of the MFD.

15. Access to Records. For the purposes of implementing Section 1861 (v)(1)(1) of the Social Security Act, as amended, and any other written regulations thereto, the parties agree to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement.

(a) Records may be provided for the purposes of treatment, payment, and operations including quality improvement efforts, collections, and ongoing care pursuant to the Health Insurance Portability and Accountability Act (HIPPA) and 45 C.F.R. Section 164.501.

(b) Until the expiration of three (3) years after the furnishing of such services pursuant to this Agreement, the parties shall make available, upon written request to the Department of Health and Human Services, (“Secretary”), or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the Agreement, and books, documents, and records of the parties that are necessary to certify the nature and extent of such costs; and,

(c) If the parties carry out any of the duties of this Agreement through a separate subcontract, with a value cost of \$10,000 or more over a twelve (12) month period, with a related organization, as that term is defined in 42 C.F.R. Section 405-427(b), as amended from time to time; such subcontractor shall contain a clause to the effect that until the expiration of three (3) years after the furnishings of such services pursuant to the subcontract, the related organization shall make available, upon request to the Department of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, and those books, documents, and records of such organization that are necessary to verify the extent of such costs.

(d) In the event access to books, documents and records is requested pursuant to this Section 16 by the Secretary, Comptroller General or any of their duly authorized representatives, the parties shall immediately notify each other, and the books, documents, and records shall also be available to the other parties.

16. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, if any term or condition of this Agreement to be performed or observed by the MFD is rendered impossible of performance or observance due to any cause beyond the MFD's control, including, without limitation, requests for emergency medical services beyond the coverage level provided in this Agreement, any act of God, war, civil disturbance, fire or casualty, labor dispute or governmental rule, the MFD, for so long as such condition exists, shall be excused from such performance or observance, provided it takes all appropriately reasonable steps as soon as reasonably practicable in order to terminate such condition.

17. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and no representations or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date opposite their names.

Dated: _____

By: _____
Chief Ian Davis
Marquette Fire Department

Dated: _____

By: _____
Chief Dan Shanahan
Marquette Township Fire & Rescue

Dated: _____

By: _____
Supervisor
Charter Township of Marquette

Dated: _____

By: _____
City Manager
City of Marquette

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 5/9/2022

Consent Agenda - Roll Call Vote **Mobile Food Vending Resolution - Roll Call Vote**

BACKGROUND:

The City Clerk's office recently received a request to extend the hours during which mobile food vending is permitted along the 100 block of West Spring Street. Presently vending operations can't begin in that area, or in the adjacent Spring Street parking lot, until 6 p.m.

The request, from representatives of the Ore Dock Brewing Company, indicates that they have perceived "a need for quick food options on the south side of downtown earlier in the day." They stated that local food trucks have expressed an interest in vending in this area during the lunch hour, and have said the brewery's neighbors have approved of the concept of expanding vending hours.

Marquette City Code Section 35-9 gives authority for the City Commission to identify permissible times and locations for mobile food vending in the City. Staff has prepared the attached resolution, which would allow for mobile food vending to occur between 7 a.m. and 2 a.m. on the 100 block of West Spring Street, as well as in the adjacent Spring Street parking lot.

FISCAL EFFECT:

None by this action.

RECOMMENDATION:

Approve the attached resolution to identify appropriate times and locations for mobile food vendors, and authorize the Mayor and City Clerk to sign it.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ MFV Resolution



Resolution

Establishing Operating Locations and Times for Mobile Food Vendors on City-Owned Property

WHEREAS, the City of Marquette desires to encourage mobile food vendors who add to the vibrancy and desirability of Marquette, while providing a framework under which such businesses operate; and,

WHEREAS, the City Commission may establish by resolution hours of operation and may identify City-controlled property for permissible Mobile Food Vending;

NOW THEREFORE BE IT RESOLVED, by the City Commission for the City of Marquette that Mobile Food Vending Units may only operate within the areas stipulated below.

Unless otherwise stated, units may operate in residentially zoned areas between the hours of 9 a.m. and 9 p.m. and in commercially zoned areas between the hours of 7 a.m. and 2 a.m.

In accordance with Chapter 35 of the Marquette City Code, mobile food vendors are authorized to operate at the following City-owned or controlled properties:

1. Lakeshore Parking Lot
2. Rock Street Parking Lot
3. Baraga Avenue Parking Lot
4. Spring Street Parking Lots
5. South Main Street Parking Lot
6. All City Parks during official park operating hours with the exception of Mattson Park and Presque Isle Park and spaces intended for camping.
7. Mattson Park in conjunction with a special event permit only
8. Presque Isle Park in conjunction with a special event permit or private rental of City facilities
9. Fair Avenue
10. Third Street - Between the hours of 6:00 p.m. and 2:00 a.m.
11. 100 Block West Main St. - South Side of the Street Only
12. 100 Block West Bluff St. - South Side of the Street Only
13. 100 Block West Baraga Ave. - North Side of the Street Only
14. 600 Block West Bluff St.
15. 100 through 300 Blocks of West Spring St.
16. 200 and 300 Blocks of South Front Street - Between the hours of 6:00 p.m. and 2:00 a.m. only
17. 100 through 600 Blocks of West Washington Street - Between the hours of 6:00 p.m. and 2:00 a.m. only

controlled property between the hours of 2:00 a.m. and 7:00 a.m. in commercial areas, 9:00 p.m. and 9:00 a.m. in residential areas and during the closed hours in City parks.

This resolution will take effect May 16, 2022 and will replace the City Commission resolution adopted May 24, 2021.

Duly adopted by the City Commission on May 9, 2022.

Jennifer A. Smith, Mayor

Certified to be a true copy on May 9, 2022

Kyle Whitney, City Clerk

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 5/9/2022

Consent Agenda - Roll Call Vote

Schedule Public Hearing-Single Lot Special Assessment Roll #589

BACKGROUND:

Chapter 40, Section 40-21 of the City Code requires that: "When an improvement shall have been made by the City upon or in respect to any single premises, the expense of which is chargeable against such premises and the owner thereof under the provisions of this chapter and is not of that class required to be prorated among several lots and parcels of land in a special assessment district, an account of the cost to be charged to the owner shall be reported to the City Treasurer who shall immediately bill the owner, if known."

The City Code further requires that, "When the City Treasurer determines that a number of properties have had outstanding bills for a sufficient time, the Treasurer shall notify the City Assessor who shall prepare a single lot assessment roll, and schedule a Public Hearing before the City Commission on that roll."

Impacted property owners will receive notification of the time and place of the hearing in accordance with Section 40-21 of the City Code.

FISCAL EFFECT:

\$1,811.33 plus accruing interest and penalties.

RECOMMENDATION:

Schedule a Public Hearing for May 31, 2022, to confirm Single Lot Special Assessment Roll #589.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Single Lot Special Assessment Roll #589

CITY OF MARQUETTE - SINGLE LOT SPECIAL ASSESSMENT ROLL #589

PROPERTY	LEGAL DESCRIPTION	SINGLE LOT SPECIAL ASSESSMENT	TOTAL	INVOICE #
#0230380 - 225 W Hewitt Ave Russell Davis PO Box 22 Arnold, MI 49819	HARLOW'S ADD. #4, THE E. 1/2 OF LOT-29 AND ADJ. VAC. PINE ST.	Unpaid charges for: Fire Rental Code Compliance Inspection plus interest, and special assessment fee	\$109.81	16769
#0480200 - 2206 Presque Isle Ave Josh Dewey 2206 Presque Isle Ave Marquette, MI 49855	NORTH MARQUETTE ADDITION LOTS 11,12, & THE N 1/2 OF LOT 13, BLOCK 2	Unpaid charges for: Fire Rental Code Compliance Inspection plus interest, and special assessment fee	\$111.13	16107
#0250061 - 415 Oak St Stephen Lajoice 415 Oak St Marquette, MI 49855	HARLOW'S ADDITION #6 THE S 62.5' OF LOT 4	Unpaid charges for: Mowing Charges plus interest, and special assessment fee	\$240.00	16318
#0181240 - 121 W Michigan St Charles & Sheila Leith 121 W Michigan St Marquette, MI 49855	JOHN BURT'S ADD LOT-9 & THE E. 1/2 OF LOT-12 BLOCK-8	Unpaid charges for: Mowing Charges plus interest, and special assessment fee	\$287.42	16140
#0310420 - 1001 N Fourth St Gregory Lipp 1001 N Fourth St Marquette, MI 49855	PALMER'S ADD. #2 THE E. 75' OF LOTS-142 & 143	Unpaid charges for: Mowing Charges plus interest, and special assessment fee	\$238.50	16513
#0351050 - 138 W Park St Mike McCormick 138 W Park #1 Marquette, MI 49855	MOORE & SANG'S ADDITION LOT 90	Unpaid charges for: Fire Rental Code Compliance Inspection plus interest, and special assessment fee	\$112.78	15277
#0240311 - 315 S Seventh St Peter Meldrum 266 Mt Vernon Grosse Pointe Farms, MI 48236	HARLOW'S ADD. #5 THE N. 48' OF LOT-29	Unpaid charges for: Fire Rental Code Compliance Inspection plus interest, and special assessment fee	\$99.41	15245
#0120150 - 519 W Baraga Ave City of Marquette, MI	BALDWIN'S ADD	Unpaid charges for:		

Peter Meldrum 266 Mt Vernon Grosse Pointe Farms, MI 48236	THE E. 25' OF LOT-20	Fire Rental Code Compliance Inspection plus interest, and special assessment fee	\$99.41	15245
#0360551 - 828 High St Peter Meldrum 266 Mt Vernon Grosse Pointe Farms, MI 48236	MOORE'S ADD. THE N. 87' OF LOT-73	Unpaid charges for: Fire Rental Code Compliance Inspection plus interest, and special assessment fee	\$99.40	15245
#0360460 - 315 E Crescent St Kristina O'Connor 315 E Crescent St Marquette, MI 49855	MOORE'S ADDITION LOT 65	Unpaid charges for: Fire Rental Code Compliance Inspection plus interest, and special assessment fee	\$110.47	16413
#1060140 - 498 Stone Quarry Dr Kimberly Sweeney 498 Stone Quarry Dr Marquette, MI 49855	THE MEADOWS SITE CONDOMINIUM DEVELOPMENT LOT-14	Unpaid charges for: Late Filing of Property Transfer Affidavit plus interest, and special assessment fee	\$303.00	15577
TOTAL SINGLE LOT ASSESSMENT			\$1,811.33	

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 5/9/2022

Consent Agenda - Roll Call Vote

Street Improvements, Paving and Sanitary Sewer Service Line Replacements Project

BACKGROUND:

Plans have been developed for this project which includes the resurfacing and crack sealing of various City streets, sanitary sewer service line replacements and minor storm sewer work. These preventative maintenance and rehabilitation measures are intended to extend the useful service life of these existing roads. The Engineer's estimate for this project was \$1,273,183. The project was advertised for bids and two contractors responded. The results are summarized below:

<u>Contractor</u>	<u>Bid</u>
Oberstar Inc.	\$1,257,992.50
Smith Construction Inc.	\$1,283,432.75

FISCAL EFFECT:

Sufficient funds are approved in the FY 2022 budget and will be part of the FY 2022 bond package.

RECOMMENDATION:

Approve a contract with Oberstar Inc. for the Street Improvements, Paving and Sanitary Sewer Service Line Replacements Project at a cost of \$1,257,992.50 based on the quantities and unit prices bid, 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

- ▣ Oberstar Construction Contract
- ▣ Oberstar Bid, Bond & Insurance
- ▣ Project Overview and Location Map

CITY OF MARQUETTE
CHAPTER 3
CONSTRUCTION CONTRACT

PROJECT NAME: Street Improvements and Maintenance and Sanitary Sewer Lateral Replacements Project

PROJECT NUMBERS: MQ22-101, 22-303

THIS AGREEMENT, made this May 9th, 2022 between the City of Marquette, a Michigan Municipal Corporation, hereinafter called the "City" of 300 W. Baraga Avenue, Marquette, MI 49855, and Oberstar Inc. of Marquette MI, a Michigan Corporation, holding license number 38-2204908, 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 May 9th, 2022 and the completion date of this project is September 30th, 2022. 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 \$1,257,992.50, 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 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) 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

Jennifer A. Smith, Mayor
City of Marquette

Witness

Kyle L. Whitney, City Clerk
City of Marquette

OBERSTAR INC.

William S. Melcher
Witness

Greg L. Beaudt
Witness

James Perry
By:

Its: VP - Construction Operations

Address: 1900 Industrial Parkway

Telephone#: 906 226 6799

Marquette, MI

APPROVED AS TO FORM:

Suzanne C. Larsen
City Attorney

APPROVED AS TO SUBSTANCE:

Karen M. Kovacs
City Manager

General Info

Total:

\$1,257,992.50

Number	Description
BP22-05	MQ22-101 - Street Improvements and Bituminous Paving
Deadline	MQ22-303 - Sanitary Lateral Replacements
04/28/2022 02:00 PM UTC	Allows zero unit prices and labor
Vendor	No
Oberstar, Inc.	Allows negative unit prices and labor
Submitted	No
04/28/2022 12:32 PM UTC	
Signed by	
James Perry Account Holder James Perry	
Opened	
04/28/2022 02:02 PM UTC By kwessels@marquettemi.gov	

Attachment List

BP22-05 Specifications.pdf (53.3 MB) Project Specifications
Addendum 1.pdf (97 KB) Addendum 1
Addendum 2.pdf (74.4 KB) Addendum 2
Addendum 3.pdf (253 KB) Addendum 3
Addendum 4.pdf (228 KB) Addendum 4
Addendum 5.pdf (4.38 MB) Addendum 5
Addendum 6.pdf (4.43 MB) Addendum 6

Schedule of Items

\$1,257,992.50

Pay Item Code	Description	Units	Quantity	Unit Price	Extension
1027051	_ Pedestrian Traffic Maintenance	LSUM	1.0	\$2,000.00	\$2,000.00
1100001	Mobilization, Max \$60,000	LSUM	1.0	\$60,000.00	\$60,000.00
2040021	Curb, Rem	Ft	1,659.0	\$16.00	\$26,544.00
2040055	Sidewalk, Rem	Syd	397.0	\$10.00	\$3,970.00
2050016	Excavation, Earth	Cyd	473.0	\$10.00	\$4,730.00
2087051	Soil Erosion And Sedimentation Control	LS	1.0	\$5,000.00	\$5,000.00
2090001	Project Cleanup	LSUM	1.0	\$8,000.00	\$8,000.00
3010002	Subbase, CIP	Cyd	326.0	\$16.00	\$5,216.00
3020002	Aggregate Base, LM	Cyd	220.0	\$22.00	\$4,840.00
3020016	Aggregate Base, 6 inch	Syd	1,596.0	\$10.00	\$15,960.00
3020020	Aggregate Base, 8 inch	Syd	234.0	\$12.00	\$2,808.00
3020050	Aggregate Base, Conditioning	Syd	134.0	\$8.00	\$1,072.00
3050002	HMA Base Crushing and Shaping	Syd	5,500.0	\$3.00	\$16,500.00
3050010	Material, Surplus and Unsuitable, Rem, LM	Cyd	280.0	\$10.00	\$2,800.00
3070105	Shld, CI I, 3 inch	Syd	22.0	\$10.00	\$220.00
4020987	Sewer, CI IV, 12 inch, Tr Det B	Ft	292.0	\$60.00	\$17,520.00
4021229	Sewer Bulkhead, 4 Inch	Ea	1.0	\$350.00	\$350.00
4030005	Dr Structure Cover, Adj, Case 1	Ea	34.0	\$1,000.00	\$34,000.00
4030010	Dr Structure Cover, Type B Modified	Ea	10.0	\$2,100.00	\$21,000.00
4030065	Dr Structure Cover, Type Q Modified	Ea	24.0	\$2,100.00	\$50,400.00
4030070	Dr Structure Cover, Type R	Ea	4.0	\$1,500.00	\$6,000.00
4030200	Dr Structure, 24 inch dia	Ea	3.0	\$3,000.00	\$9,000.00
					Total: \$1,257,992.50

Pay Item Code	Description	Units	Quantity	Unit Price	Extension
4030210	Dr Structure, 48 inch dia	Ea	1.0	\$5,000.00	\$5,000.00
4037050	_ Connect to Ex. Storm Main	Ea	2.0	\$800.00	\$1,600.00
5010002	Cold Milling HMA Surface 1-1/2 depth	Syd	21,996.0	\$4.00	\$87,984.00
5010002	Cold Milling HMA Surface Full depth	Syd	134.0	\$40.00	\$5,360.00
5010025	Hand Patching road wedging only	Ton	279.0	\$130.00	\$36,270.00
5010033	HMA, 13A	Ton	16.0	\$300.00	\$4,800.00
5012025	HMA, 4EML 2-1/2 lift	Ton	854.0	\$110.00	\$93,940.00
5012025	HMA, 4EML curb/san lat patching	Ton	105.0	\$350.00	\$36,750.00
5012037	HMA, 5EML	Ton	2,211.0	\$110.00	\$243,210.00
5020003	Overband Crack Fill, Lane	Lnmi	4.6	\$12,000.00	\$55,200.00
5137018	Lateral, Sanitary, 4 Inch	lft	867.0	\$75.00	\$65,025.00
5137052	Sanitary Saddle, 8 inch x 4 inch	Ea	26.0	\$500.00	\$13,000.00
5137059	Connect to Existing Sanitary Lateral	ea	26.0	\$750.00	\$19,500.00
6137054	Traffic Control	LS	1.0	\$38,000.00	\$38,000.00
6927008	Utility exploration	Ea	19.0	\$350.00	\$6,650.00
6927011	Resident Notification	LS	1.0	\$6,500.00	\$6,500.00
8010005	Driveway, Nonreinf Conc, 6 inch	Syd	183.0	\$115.00	\$21,045.00
8020008	Curb, Conc., City Standard	ft	596.0	\$43.00	\$25,628.00
8020021	Curb and Gutter, Conc, Det C2	Ft	1,063.0	\$43.00	\$45,709.00
8030010	Detectable Warning Surface	Ft	5.0	\$60.00	\$300.00
8030030	Curb Ramp Opening, Conc	Ft	6.0	\$43.00	\$258.00
8030044	Sidewalk, Conc, 4 inch	Sft	1,634.0	\$12.00	\$19,608.00
8030046	Sidewalk, Conc, 6 inch	Sft	133.0	\$13.00	\$1,729.00
8032002	Curb Ramp, Conc, 6 inch	Sft	36.0	\$14.00	\$504.00
					Total: \$1,257,992.50

Pay Item Code	Description	Units	Quantity	Unit Price	Extension
8050010	Curb Slp, HMA	Ft	3,800.0	\$2.50	\$9,500.00
8070095	Post, Mailbox	Ea	4.0	\$275.00	\$1,100.00
8110114	Pavt Mrkg, Polyurea, 24 inch, Stop Bar	Ft	168.0	\$15.00	\$2,520.00
8110231	Pavt Mrkg, Polyurea, 24 Inch, Crosswalk Ladder Pattern, White	Ft	170.0	\$15.00	\$2,550.00
8110405	Pavt Mrkg, Polyurea, Lt Turn Arrow Sym	Ea	1.0	\$250.00	\$250.00
8110410	Pavt Mrkg, Polyurea, Only	Ea	1.0	\$250.00	\$250.00
8112237	Pavt Mrkg, Modified Epoxy, 4 inch, White	Ft	170.0	\$4.00	\$680.00
8112238	Pavt Mrkg, Modified Epoxy, 6 inch, White	Ft	100.0	\$5.00	\$500.00
8112241	Pavt Mrkg, Modified Epoxy, 4 inch, Yellow	Ft	4,410.0	\$1.25	\$5,512.50
8120170	Minor Traf Devices	LSUM	1.0	\$10,000.00	\$10,000.00
8160027	Mulch Blanket	Syd	1,100.0	\$2.00	\$2,200.00
8160042	Seeding, Mixture TUF	Lb	51.0	\$30.00	\$1,530.00
8160055	Sodding	Syd	1,554.0	\$8.00	\$12,432.00
8160062	Topsoil Surface, Furn, 4 inch	Syd	2,654.0	\$7.00	\$18,578.00
8210001	Monument Box	Ea	14.0	\$310.00	\$4,340.00
8230431	Gate Box, Adj, Case 1 Modified	Ea	35.0	\$350.00	\$12,250.00
8257050	_ Sanitary Sewer Cleanout, 4 (cleanout & reverse cleanout placement only)	Ea	16.0	\$2,300.00	\$36,800.00
8257050	_ Sanitary Sewer Cleanout, 4 (Full replacement w/ reverse cleanout)	Ea	10.0	\$550.00	\$5,500.00
					Total: \$1,257,992.50

Bid Surety Upload

Name	Omission Terms	Submitted File
Bid Surety Upload a copy of your paper bid bond or cashier's check.	None	Bid Bond.pdf
1 Required Document		

Bidder Signature Page

1. In compliance with the City's Invitation to Bid, Bidder hereby proposes to perform all work in accordance with the Plans and Specifications at the unit prices, as submitted herein, for the several parts of this contract.
2. The undersigned, as bidder, hereby declares the Proposal is made in good faith, without fraud or collusion with any person or persons bidding on the same contract, that he has read and examined the Advertisement, Invitation to Bid, Information for Bidders, Proposal, General Requirements, Agreement, Forms of Bonds, and Plans and Specifications as prepared by the Engineer, and understands all of the same; that he or his representative has made personal investigation at the site and has informed himself fully with regard to conditions to be met in executing this Contract, and the undersigned agrees to furnish all labor, materials, power, transportation and equipment necessary for the construction of the Project.
3. If the proposal establishes a maximum price for any of the following work items, and if you bid a price higher than that maximum price, your bid will be considered to have quoted the maximum price and your bid total will be adjusted to reflect that maximum price. If your bid is the lowest accepted bid, and if you refuse to accept the award of the contract due to the change in what you quoted as a maximum or specified price, you will forfeit your proposal guaranty.
4. Bidder acknowledges receipt of the following Addenda:

Acknowledge any addenda which have been issued by listing their number at date of issue below. If multiple addenda have been issued use the (+) to add additional fields. If an addendum has not been issued enter "N/A".

Addenda acknowledgement *

Addendum 1 Dated 2-28-2022

Acknowledge any addenda which have been issued by listing their number at date of issue below. If multiple addenda have been issued use the (+) to add additional fields. If an addendum has not been issued enter "N/A".

1

Addenda acknowledgement *

Addendum 2 Dated 3-25-2022

Acknowledge any addenda which have been issued by listing their number at date of issue below. If multiple addenda have been issued use the (+) to add additional fields. If an addendum has not been issued enter "N/A".

2

Addenda acknowledgement *

Addendum 3 Dated 3-30-2022

Acknowledge any addenda which have been issued by listing their number at date of issue below. If multiple addenda have been issued use the (+) to add additional fields. If an addendum has not been issued enter "N/A".

3

Addenda acknowledgement *

Addendum 4 Dated 3-31-2022

Acknowledge any addenda which have been issued by listing their number at date of issue below. If multiple addenda have been issued use the (+) to add additional fields. If an addendum has not been issued enter "N/A".

Addenda acknowledgement *

Addendum 5 Dated 4-19-2022

Acknowledge any addenda which have been issued by listing their number at date of issue below. If multiple addenda have been issued use the (+) to add additional fields. If an addendum has not been issued enter "N/A".

Addenda acknowledgement *

Addendum 6 Dated 4-22-2022

Signature *

James Perry

Date *

4/27/2022

Title *

Vice President - Operations

Contractor: *

Oberstar, Inc.

Address *

1900 Industrial Parkway, Marquette, MI 49855

Phone Number *

(906) 226-6799

CITY OF MARQUETTE
CHAPTER 4
BONDS

4.01 BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, Oberstar, Inc.
as Principal, and Westfield Insurance Company as Surety are hereby held and firmly
bound unto the City of Marquette, Michigan, in the penal sum of
\$Five percent of amount bid (5%) for the payment of which, well and truly to be made, we
hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors
and assigns. Signed, this 28th day of April, 2022.

The condition of the above obligation is that the Principal has submitted to the City of
Marquette, Michigan, a certain bid attached hereto and made a part hereof to enter into a
contract in writing for the construction of:

NOW, THEREFORE,

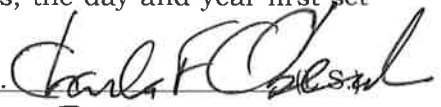
- a) If said Bid shall be rejected, or in the alternate,
- b) If said bid shall be accepted and the Principal shall execute and deliver a contract in
the Form of Contract attached hereto (properly completed in accordance with said
Bid) and shall furnish a bond for his faithful performance of said Contractor, and for
the payment of all persons performing labor or furnishing materials in connection
therewith, and shall in all other respects perform the agreement created by the
acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it
being expressly understood and agreed that the liability of the Surety for any and all claims
hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said
Surety and its bond shall be in no way impaired or affected by an extension of the time
within which the City may accept such Bid; and said Surety does hereby waive notice of any
such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and
seals, and such of them as are corporations have caused their corporate seals to be hereto
affixed and these presents to be signed by their proper officers, the day and year first set
forth above.

Oberstar, Inc.
Principal


PRESIDENT

Westfield Insurance Company
Surety

SEAL

BY


Alison L. Neumann, Attorney-in-fact

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 05/19/21, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 2144202 19

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint

JANE WANBERG, JAY M. HILLIER, ALISON L. NEUMANN, JAMES GWINN, CHRISTOPHER GRIGAS, SADIE OWEN, SCOTT KOSKI, JOINTLY OR SEVERALLY

of **MARQUETTE** and State of **MI** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship**

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be it Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact, may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader** and **Senior Executive** and their corporate seals to be hereto affixed this **19th** day of **MAY** A.D., **2021**.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this **19th** day of **MAY** A.D., **2021**, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Hartford, CT**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this **28th** day of **April** A.D., **2022**.



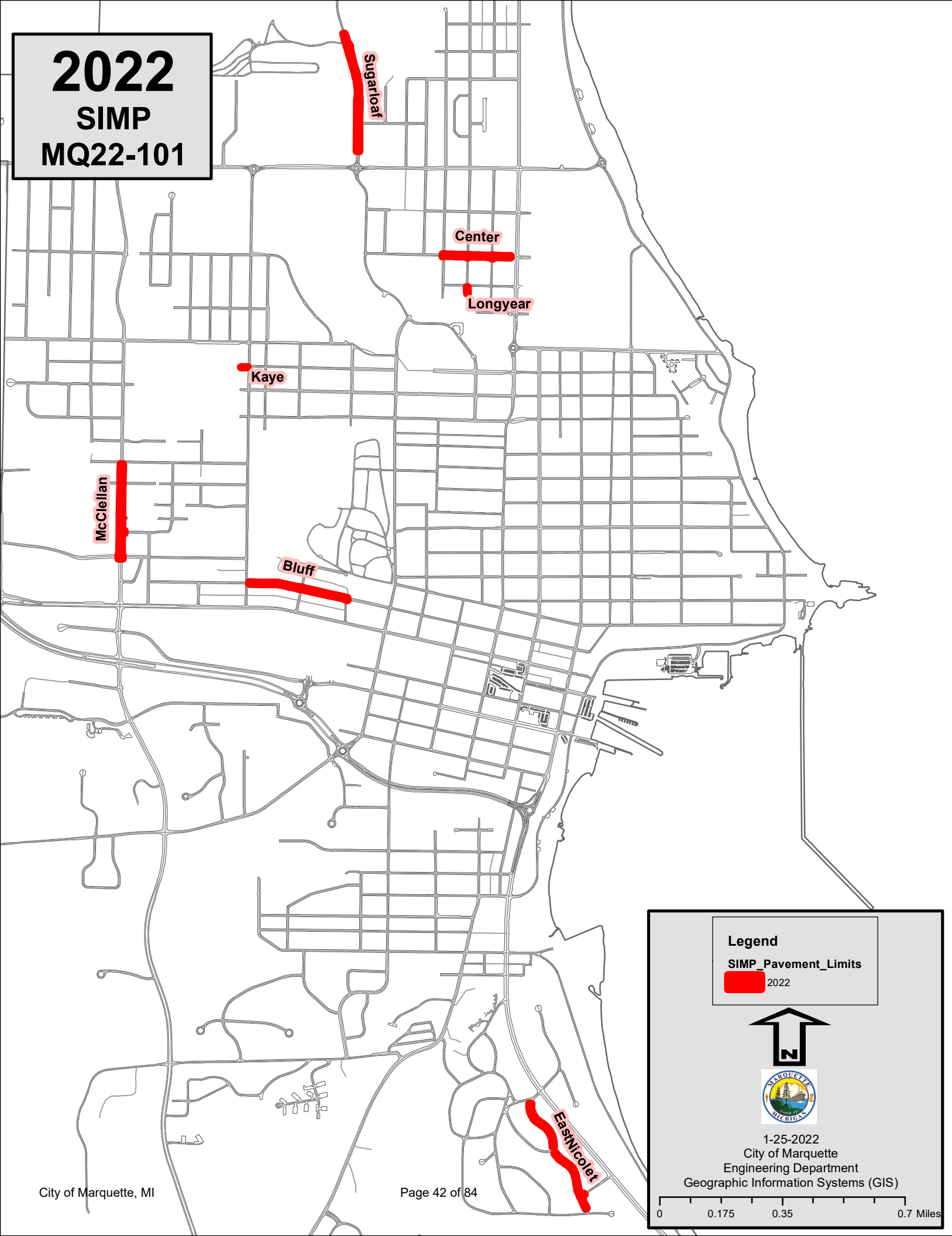
Frank A. Carrino, Secretary

BPOAC2 (combined) (06-02)

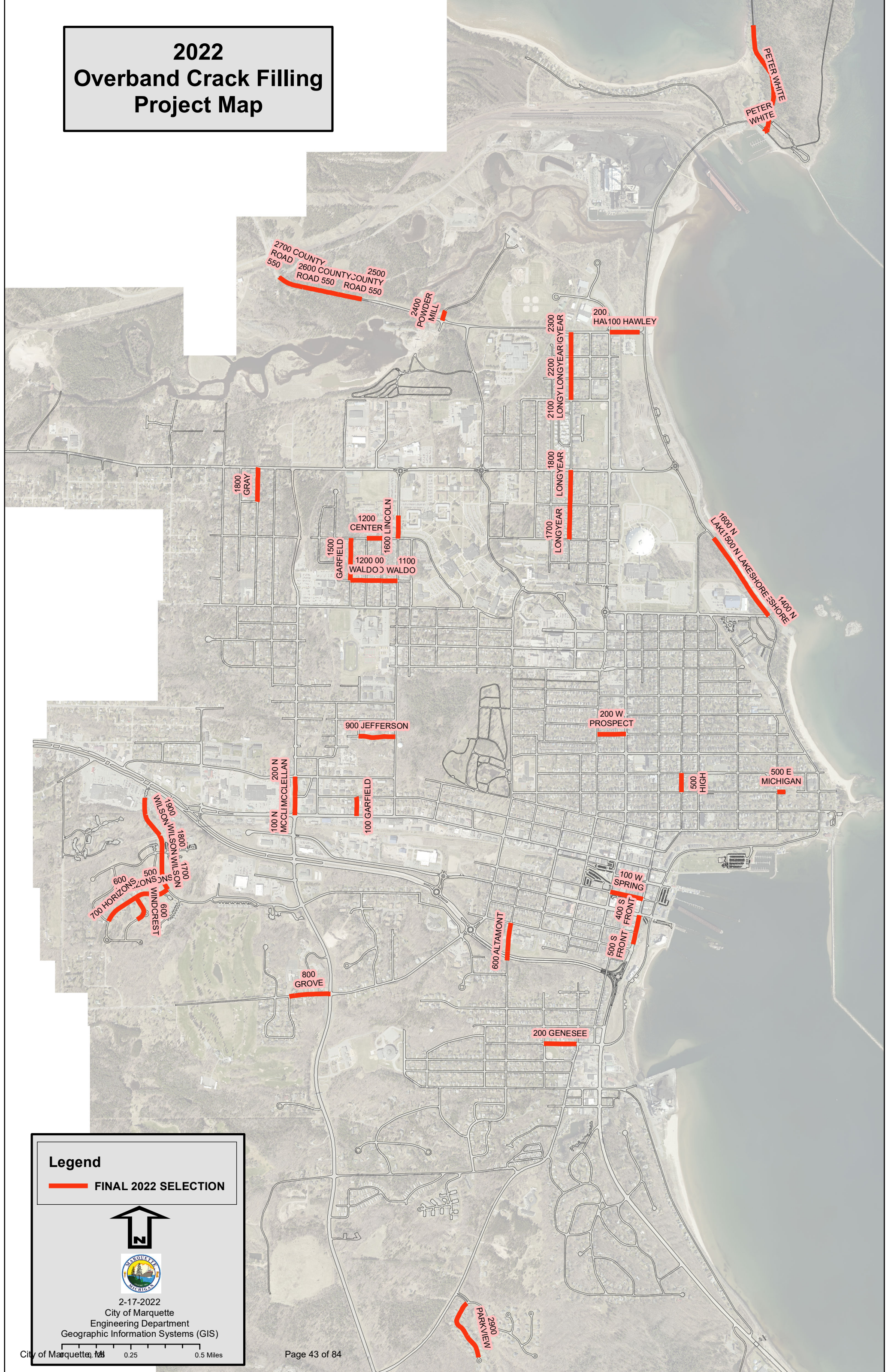
PROPOSED SITE LOCATIONS

- 1.** E Nicolet Boulevard – Nicolet Boulevard to Allouez Street
- 2.** McClellan Avenue – Ridge Street to Cleveland Avenue
- 3.** Sugarloaf Avenue – Wright Street to 160' north of Powder Mill Drive
- 4.** Bluff Street – Lincoln Avenue to Morgan Street
- 5.** Center Street – Wilkinson Avenue to Presque Isle
- 6.** Longyear Avenue – Dead End south of Summit
- 7.** West Kaye Avenue – West of Lincoln (Curb Patch)
- 8.** Overband Crack Filling – Various locations throughout the City of Marquette

2022 SIMP MQ22-101



2022 Overband Crack Filling Project Map



Legend

— FINAL 2022 SELECTION



2-17-2022
City of Marquette
Engineering Department
Geographic Information Systems (GIS)

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 5/9/2022

Unfinished Business

SpinwayMQT, LLC – Lease Agreement

BACKGROUND:

In May of 2021, the Downtown Development Authority Board of Directors and the City of Marquette entered into a one-year lease agreement with SpinwayMQT, LLC, a locally-owned limited liability company, to lease a 10' x 24' section of City-owned property adjacent to Lakeshore Boulevard to operate an 8-unit automated bicycle rental vending terminal. The lease terms specified that the installation, operation, maintenance, repair, and liability of the rental unit was the full responsibility of SpinwayMQT, LLC.

At this time, SpinwayMQT, LLC is seeking an extension of the lease agreement through April 30, 2025. All other terms remain consistent with the initial lease. This proposed lease provides the DDA and SpinwayMQT the right to terminate the agreement at any time and for any reason by providing written notice to the other 60 days prior to May 1 of each year of the agreement.

The rental rate was set at \$500 per year. This proposal and lease agreement was reviewed and approved by the DDA Board of Directors on April 14.

The proposed lease agreement was introduced at the Commission's April 25, 2022 meeting and approved as recommended to move the lease agreement forward to the May 9, 2022 meeting.

FISCAL EFFECT:

The Downtown Development Authority will receive \$500 annually during the term of the lease agreement.

RECOMMENDATION:

Approve the lease agreement with SpinwayMQT, LLC, and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Spinway Lease

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ 2022, by and between **THE MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY**, an authority of the City of Marquette, of 337 W. Washington Street, Marquette, Michigan 49855, hereinafter “LESSOR” and **SPINWAYMQT, LLC**, a Michigan limited liability company, with a mailing address of 1599 Altamont Street, Marquette, Michigan 49855, hereinafter “LESSEE”.

Recitals

- A. The City of Marquette, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855 is the owner of the real property located at 245 S. Lakeshore Boulevard in the City of Marquette. The Lessor manages the real property located at said address.
- B. Lessee desires to lease and Lessor is willing to lease to Lessee a 10 foot x 24 foot section of the property located in the greenspace between the Lakeshore Parking Lot and the Iron Ore Heritage Trail as shown in Exhibit “A” located on Lessor’s managed property in accordance with the terms and conditions contained herein.

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

1. Leased Premises

- 1.1 Lessor leases to Lessee space as shown in Exhibit “A”, hereinafter “PREMISES”.

2. Term of Lease

This lease shall run from May 1, 2022 through April 30, 2025.

3. Rent

The rent shall be \$500.00 annually for the lease term. Payment shall be made to Lessor by May 31, 2022 and May 31 annually thereafter for the duration of the term.

4. Use of Premises

- 4.1 Lessee shall use the premises only for installation and operation of an Automated Bicycle Rental Vending Terminal. Bicycles shall be non-motorized.
- 4.2 The Automated Bicycle Rental Vending Terminal shall only be installed and operational between May 1 and October 31 annually throughout the duration of the term.
- 4.3 Minor grading and installation of an aggregate base and sono-tube for rack anchorage are permitted at the Lessee’s sole expense and maintenance responsibility.

- 4.4 Prior to installation of the Automated Bicycle Rental Vending Terminal, Lessee will meet with MDDA employees to discuss logistics for the use of the Premises.
- 4.5 Lessee shall not use the Premises for any purpose that would:
- a) be deemed hazardous to the public or adjoining premises including, but not necessarily limited to, fire, and environment type hazards;
 - b) constitute a violation of any public law or requirement;
 - c) cause damage or injury to the Premises, or any part of it (ordinary wear and tear excepted);
 - d) constitute a public or private nuisance;
 - e) interfere with other uses of the Premises;
 - f) permit refuse to accumulate in or around leasehold; or
 - g) prohibit or restrict public access through the premises.
5. **Use of Public Areas by Lessee**
Lessee and its invitees shall have the right to use all public areas, subject however to all rules and regulations regarding these areas. Lessee and its invitees shall only use the designated area as shown on Exhibit A. Lessee is permitted to display the signage connected to the Bicycle Rental Vending Terminal, as shown in Exhibit B. This signage is considered as an exception to the sign standards for the parcel as stated within the City of Marquette Land Development Code because it is on the leased property as defined herein.
6. **Non-exclusive Use of Premises**
Lessee acknowledges that its use of the Premises is not exclusive, and that Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the Premises.
7. **Maintenance and Repair**
7.1 Lessee shall be solely responsible for the maintenance and repair of the Automated Bicycle Rental Vending Terminal and all of Lessee's tangible personal property located or used on the Premises and shall keep them in a safe condition and good repair.
8. **Insurance and Indemnity**
8.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's insurance policies covering the Premises.
- 8.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased.
- 8.3 Lessee, at its sole expense, shall be responsible for insuring its own tangible personal property, equipment, and fixtures from loss from fire and other casualty and shall at all times provide Lessor with a certificate evidencing such coverage.
- 8.4 Lessee, at its sole expense, shall maintain liability insurance protecting and insuring Lessee, Lessor, and the City of Marquette from all claims for injury or damage to persons

or property arising out of the use of the Premises by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall not be less than One million and 00/100 Dollars (\$1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for property damage. Lessee shall at all times provide Lessor with a current copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor and the City of Marquette shall be named as additional insured on all insurance policies required by this lease.

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

9. Assignment/Subletting

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

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

10. Use of Premises by Lessor

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

11. Covenant of Quiet Enjoyment

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

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

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

13. Default by Lessee

- 13.1 If the Lessee fails to perform any obligation under this agreement within 30 days after receiving written notice of the default from the Lessor, the Lessor may terminate this lease.
- 13.2 In addition to the Lessor's other rights and remedies as stated in this lease, and without waiving any of those rights, if the Lessor deems necessary any repairs that the Lessee is required to make or if the Lessee defaults in the performance of any of its obligations under this lease, the Lessor may make repairs or cure defaults and shall not be responsible to the Lessee for any loss or damage that is caused by that action. The Lessee shall immediately pay to the Lessor, on demand, the costs for curing any defaults, as additional rent under this lease.
- 13.3 The rights and remedies of Lessor shall be cumulative as more particularly provided by law or in equity pursuant to the laws of the State of Michigan.

14. Surrender of Leasehold Upon Termination of Lease

If upon termination of the lease, Lessee has failed to remove its Automated Bicycle Rental Vending Terminal and returned the property to its original condition, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same and returning the property to its original condition shall be the financial responsibility of Lessee.

15. Option to Renew

The Lessor and Lessee each have the right to terminate this agreement at any time and for any reason by providing written notice to the other at least 60 days prior to May 1 of each year of this agreement. Upon such notice of termination SPINWAYMQT, LLC will immediately cease to use the Premises.

16. Future Expansion

Any expansion of additional Automated Bicycle Rental Vending Terminals on real property owned by the City of Marquette shall require negotiation between the City of Marquette, the Lessee and the Lessor, if said property is located within the boundaries of the Downtown Development Authority District.

17. Miscellaneous

- 17.1 This agreement shall be binding on the parties and inure to the benefit of the Lessor, the Lessee, and the City of Marquette and their respective successors and assigns.
- 17.2 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
- 17.3 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon any party except to the extent incorporated herein.

- 17.4 Any modification of this agreement or additional obligations assumed by any party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.
- 17.5 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.
- 17.6 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
- 17.7 All notices to be given under this lease shall be in writing and mailed, postage prepaid, or by certified or registered mail, return receipt requested, or delivered personally or by courier delivery, or sent by telecopy (immediately followed by one of the preceding methods) to Lessor's address and Lessee's address as above stated or any other place that Lessor or Lessee may designate in a written notice given to the other parties. Notices shall be deemed served on the earlier of receipt or three (3) working days after the date of mailing.

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

OWNER
CITY OF MARQUETTE

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

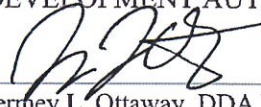
Approved as to Substance:

Karen Kovacs, City Manager

Approved as to Form:

Suzanne Larsen, City Attorney

LESSOR
MARQUETTE DOWNTOWN
DEVELOPMENT AUTHORITY



Jerney L. Ottaway, DDA Board Chairperson

LESSEE
SPINWAYMQT, LLC



Peter Duex

Its: LLC Member

EXHIBIT A



EXHIBIT B



City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 5/9/2022

New Business

Amended Reimbursement Agreement/EGLE Brownfield Grant and Loan- Roll Call Vote

BACKGROUND:

The City of Marquette Brownfield Redevelopment Authority has been invited to submit an application for a Michigan Department of Environment, Great Lakes, and Energy (EGLE) Brownfield Grant in the amount of \$495,000 and an EGLE Brownfield Loan for up to \$1,000,000.

The EGLE Grant will reduce the amount of Brownfield Tax Increment Financing (TIF) revenues required for Environmental Eligible Activities and the EGLE Loan provides favorable terms (no principal or interest for five years and an estimated 1.5% interest for the next 10 years) that will reduce interest costs and Brownfield TIF obligations.

As part of the EGLE Brownfield Grant and Loan Application, and to receive the grant and loan, EGLE requires the local municipality take two actions: A resolution approved by the governing body that accepts the loan and commits to repayment, and a development/reimbursement agreement that details the arrangements for performance, documentation, reimbursement and compliance with the EGLE Brownfield Grant and Loan Agreements. Importantly, the reimbursement agreement obligates the Developer to repay the Loan and requires Jonathan and Jennifer Julien provide a personal guarantee to repay the Loan if there are insufficient Brownfield TIF revenues.

Attached are the EGLE Brownfield Grant and Loan resolution and an amended Reimbursement Agreement. The Reimbursement Agreement was originally approved in October 2021 by the Brownfield Authority and the City Commission and has been revised to incorporate the following key elements necessary to obtain the funding:

- Section 2.4: Prioritizes Brownfield TIF to repay the EGLE Brownfield Loan right after any Brownfield Authority or City bond payments;
- Section 2.5: Obligates the Developer to repay the EGLE Brownfield Loan if future Brownfield TIF revenues are not adequate to meet the EGLE Loan payments, and incorporates a personal guarantee by Jonathan and Jennifer Julien; and
- Section 2.7: Details the process for conducting, documenting, and receiving reimbursement for Eligible Activities in accordance with the requirements of the EGLE Brownfield Grant and Loan Agreements

FISCAL EFFECT:

The EGLE Grant and Loan will reduce Brownfield TIF obligation for repayment of Eligible Activities.

RECOMMENDATION:

Approve the resolution authorizing the submittal of a Brownfield Grant and Loan Application by the City of Marquette Brownfield Redevelopment Authority to the Michigan Department of Environment, Great Lakes and Energy and authorize the Mayor and City Clerk to sign the amended Reimbursement Agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Amended Reimbursement Agreement
- ▣ Resolution

AMENDED REIMBURSEMENT AGREEMENT

The Reimbursement Agreement made as of October 21, 2021, is hereby amended as of _____, 2022, between Marquette Vault, LLC (the "Developer") and the City of Marquette Brownfield Redevelopment Authority (the "MBRA"), a Michigan public body corporate and the City of Marquette (the "City"), a Michigan municipal corporation.

PREMISES

- A. The Developer desires to redevelop the property at 101 S. Front Street and 119 S. Lakeshore Boulevard for a boutique hotel in a 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 well as a public parking facility of up to 220 spaces and certain appurtenant properties and improvements with an estimated investment of over \$30,200,000, (the "Development") on the Eligible Property described in Exhibit A.
- B. The City of Marquette (the "City") anticipates public infrastructure improvements directly related to the Eligible Property as described in Exhibit B, which have been included in the Brownfield Plan and Act 381 Work and for which the City anticipates reimbursement from Brownfield Tax Increment Revenues.
- C. The Michigan Department of Environment, Great Lakes, and Energy ("EGLE") has awarded a \$495,000 grant (the "Grant") and up to a \$1,000,000 loan (the "Loan") to the MBRA to conduct environmental response activities, lead and asbestos abatement, and demolition and EGLE and the MBRA have entered into a Brownfield Redevelopment Grant Agreement and Brownfield Redevelopment Loan Agreement, both attached hereto as Exhibit D.
- D. The Developer desires to conduct and be reimbursed for Eligible Activities under the approved Brownfield Plan and Act 381 Work Plan, as well as the EGLE Brownfield Grant and Loan.
- E. The MBRA anticipates issuing bonds for the acquisition of the public parking facility upon completion and acceptance by the MBRA in accordance with the terms and conditions of a Development Agreement and anticipates reimbursement from Brownfield Tax Increment Revenues.
- F. The MBRA has been formed pursuant to Act 381, Public Acts of Michigan, 1996, as amended ("Act 381") to promote the revitalization of contaminated, blighted, functionally obsolete or historic properties. The MBRA and the City Commission have approved the Brownfield Plan that includes the Development, the Eligible Property, and the Eligible Activities.
- G. The MBRA has determined in furtherance of its purposes and to accomplish its goals that it is in the best interest of the MBRA to reimburse the cost of certain Eligible Activities as defined by Sec. 2(o) of Act 381, MCL 125.2652(o) on Eligible Property and as described in the Brownfield Plan, as the same may be amended or supplemented and entered into the EGLE Grant and Loan Agreements attached as Exhibit D that include the Developer Project, the Eligible Property, and the Eligible Activities.
- H. The Developer agreed to conduct certain Eligible Activities as described in Exhibit C ("Eligible Activities"), as the same may be amended or supplemented, attributable to the Eligible Property, consistent with the provisions of the Brownfield Plan, as amended.

- I. Pursuant to the Brownfield Plan and the Act 381 Work Plan, the MBRA will capture and retain 100% of the tax increment revenues authorized by law to be captured from the levies imposed by taxing jurisdictions upon taxable property for the Eligible Property consistent with Act 381, as amended, the Brownfield Plan approved by the MBRA and the City Commission, and the Act 381 Work Plan approved by the MBRA and the Michigan Strategic Fund (MSF) for Non-Environmental Eligible Activities and EGLE for Environmental Eligible Activities (the "Brownfield Tax Increment Revenues"). Upon satisfaction of the conditions expressed in this Agreement, the MBRA will use the Brownfield Tax Increment Revenues to carry out the purposes described in Act 381 and this Agreement and to carry out certain other projects described in the Brownfield Plan.

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 as specified otherwise:

- (a) "Act 381" means the Brownfield Redevelopment Financing Act, Act 381 of Michigan Public Acts of 1996, as amended, MCL 125.2651 et seq.
- (b) "Act 381 Work Plan" means the Work Plan approved by the MBRA and by the MSF and/or EGLE for State tax capture.
- (c) "Agreement" means this Reimbursement Agreement entered into between the MBRA, the City and Developer.
- (d) "Brownfield Plan" means the Brownfield Plan, approved by the MBRA on June 17, 2021 and ratified on August 26, 2021, and approved by the City Commission on July 12, 2021, and as amended pursuant to Act 381.
- (e) "Brownfield Tax Increment Revenues" means 100% of the annual tax increment revenues, as defined by Act 381, authorized by law to be captured from the levies imposed by taxing jurisdictions from all taxable real and personal property located on the Eligible Property during the life of the Brownfield Plan until the Eligible Activity and other obligations are met.
- (f) "City" means the City of Marquette.
- (g) "City Commission" mean the Marquette City Commission.
- (h) "DDA" means the City of Marquette Downtown Development Authority, established by the City Commission.
- (i) "Developer" means Marquette Vault, LLC, and its successors and assigns.

- (j) "Development" means the renovation of a historic building and additional construction for a hotel and residences, along with the public parking facility and certain appurtenant properties and improvements as described in Exhibit A.
- (k) "Development Agreement" means the agreement between the Developer, MBRA and City that details the terms and conditions of the design, development, and acquisition of the public parking facility.
- (l) "EGLE" is the Michigan Department of Environment, Great Lakes and Energy.
- (m) "Eligible Activities" are those activities as defined by Sec. 2(o) of Act 381, Public Acts of 1996, as amended, MCL 125.2652(o), and included in the approved Brownfield Plan and applicable Act 381 Work Plan.
- (n) "Eligible Activity Obligation" is the cumulative amount of Eligible Activities expenses documented by the Developer, the MBRA and the City and reviewed and approved by the MBRA in accordance with its policies and procedures.
- (o) "Eligible Property" is the property as defined by Sec. 2(p) of Act 381, MCL 125.2652(p) as included in the Brownfield Plan upon which the Eligible Activities will be conducted and from which tax increment revenues will be captured to reimburse Eligible Activities and other costs, consistent with the Brownfield Plan and Act 381 as amended.
- (p) "Environmental Consultant" means the environmental consulting firm retained or hired by the Developer to fulfill certain obligations under this Agreement, including certain eligible activities set forth in the Brownfield Plan and Act 381 Work Plan, but limited to only those Eligible Activities performed by the Developer's Environmental Consultant, and specifically excludes all other activities performed by other Environmental Consultants, Contractors, or subcontractors not acting on behalf of Developer performing activities on the Property.
- (q) "Event of Default" means the failure by a party to carry out its obligations under this Agreement or, with respect to a party, if any representation or warranty of such party was materially not accurate when made, and such obligation has not been performed or such representation or warranty corrected within 45 days after notice thereof has been given by the other party.
- (r) "Grant Agreement" means the Brownfield Redevelopment Grant, a copy of which is attached hereto as Exhibit D.
- (s) "Grant and Loan Work Plan" means a work plan which describes the scope of work, cost estimates and schedule for Eligible Activities included in Schedule A to the Grant and Loan Agreements.
- (t) "Grant Funds" means \$495,000 to be provided pursuant to the Grant Agreement.
- (u) "Indemnified Persons" means the City and the MBRA and their members, officers, agents, and employees.

- (v) "Interest" means the amount of actual interest of up to 5 percent accrued on unreimbursed Eligible Activities. Interest is reimbursable with Brownfield Tax Increment Revenues. Interest is calculated annually, based on the unreimbursed Eligible Activities approved by the MBRA, and paid after all Eligible Activities are reimbursed, in accordance with Section 2.2.
- (w) "Loan Agreement" means the Brownfield Redevelopment Loan, a copy of which is attached hereto as Exhibit D.
- (x) "Loan Funds" means up to \$1,000,000 to be provided pursuant to the Loan Agreement.
- (y) "Maximum Cost of Eligible Activities" means the MBRA's maximum obligation to pay for the Eligible activities and not to exceed the amounts set forth in the approved Brownfield Plan, as amended or supplemented.
- (z) "MBRA" means the City of Marquette Brownfield Redevelopment Authority, established by the City Commission.
- (aa) "MSF" means the Michigan Strategic Fund.
- (bb) "Operating Agreement" means the agreement between the DDA and the MBRA for operations of the public parking facility.
- (cc) "Public Improvements" means the City's site work, utilities construction and equipment benefitting the Eligible Property and adjacent properties for which reimbursement is anticipated from Brownfield Tax Increment Revenues, as described in the Brownfield Plan.
- (dd) "Public Parking Facility" means the underground and multi-level parking facility that will be designed and constructed by the Developers with review and approval by the MBRA and purchased by the MBRA through a public bond upon completion and acceptance by the MBRA.
- (ee) "Parking Deck Debt Service Obligation" means payments due on the Developer's financing to cover the interest and principal on the Parking Deck as may be necessary prior to acquisition by the MBRA
- (ff) "Tax Increment Revenues" means increased incremental tax 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.
- (gg) "Transaction Costs" means the MBRA expenses, and liabilities related to the authorization, execution, administration, oversight, and fulfillment of the MBRA obligations under this Agreement, the Brownfield Plan, Act 381 Work Plan, the Development Agreement and the Operating Agreement which such items shall include, but not be limited to, direct or indirect fees and expenses incurred as a result of the application, approval and amendments to the Brownfield Plan and Act 381 Work Plan, approval and amendments to the agreements, approvals of the developments

contemplated herein, printing costs, costs of reproducing documents, filing and recording fees, attorney fees, financial expenses, insurance fees and expenses, administration and accounting for Brownfield Tax Increment Revenues, oversight and review, and all other costs, liabilities, or expenses, related to the preparation and carrying out or enforcing the Brownfield Plan, Act 381 Work Plan, and this Agreement, or other related agreements and any other costs, charges, expenses, and professional and attorney fees in connection with the foregoing.

Section 1.2 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 **COVENANTS OF THE DEVELOPER**

Section 2.1 Authorization of Borrowing. The parties recognize that neither the MBRA nor the City has the power to mandate cooperation by the City electors in the approval of the Borrowing. The MBRA will be asked to pass a resolution pledging tax increment revenue. The City Commission will be asked to pledge Full Faith and Credit. Based on the recommendation of the City's financial advisor and bond counsel, either the City or the MBRA will issue the Bonds.

Section 2.2 Public Improvement Borrowing

- (a) The Public Improvement Borrowing may finance the Public Eligible Activities included in the Brownfield Plan and Act 381 Work Plan and identified in Exhibit B, Public Improvements, and Exhibit C, Eligible Activities.
- (b) The parties recognize that neither the City nor the MBRA has the power to mandate an acceptable interest rate for the sale of the Bonds. The City Commission or the MBRA may decide in its sole discretion not to sell the Bonds. The Borrowing will be made if the City Commission and the MBRA in good faith determine that the Developer intends to complete the Project, that the Project is scheduled to be under construction, and that the Tax Increment Revenue and other needed revenue are assured from actual development, imminent development, contractual obligations to pay the equivalent taxes, and other designated sources other than general tax revenues to meet the debt or other financing obligations for Eligible Activities of the City and/or the MBRA included in the Brownfield Plan and Act 381 Work Plan. Subject to the conditions specified in Article 3 and in this Article, the City and/or the MBRA shall use their best efforts to issue the Bonds.
- (c) The Borrowing is anticipated to be in an aggregate amount not to exceed \$8,000,000, exclusive of capitalized interest and Issuance Costs, and having a final maturity no later than thirty (30) years from the Bond Issuance Date. The City Commission and/or the MBRA retains sole authority over all aspects of their respective Borrowing and the Bonds, including but not limited to, determination on issuance, the total amount, payment schedule, type, and acceptable interest.

- (d) If the estimated cost of Public Improvements exceeds the maximum costs of Public Improvements identified in the Brownfield Plan before the advertisement of the bids on the Borrowing, the City and/or the MBRA will not proceed with the Borrowing unless it either (a) amends the Maximum Cost of Public Improvements as provided for in the Agreement or (b) reduces the estimate to not exceed the Maximum Cost of Public Improvements.

Section 2.3 Construction of the Development. The Developer shall construct the Developer Project, including the Public Parking Facility, and the City shall construct the Public Improvements in accordance with proper construction standards and this Agreement. They shall proceed with due care and diligence and commence and complete Eligible Activities, the Development, the Public Parking Facility, and Public Improvements in accordance with this Agreement, the Brownfield Plan, the Act 381 Work Plan, the Development Agreement, the Operating Agreement and in accordance with any applicable law, regulation, code, and ordinance.

Section 2.4 Covenant to Pay Financial Obligations. The Developer will utilize its own funds for the Development, including the Public Parking Facility, and the City will use its own funds for the Public Improvements. The MBRA will acquire the Public Parking Facility upon completion and acceptance in accordance with the Development Agreement. The Developer, City, and the MBRA will receive reimbursement from the MBRA to the extent of available Brownfield Tax Increment Revenues are generated by the Development for payment of the Eligible Activities in accordance with the terms of this Agreement, the Brownfield Plan, Act 381, Development Agreement and Operating Agreement. Reimbursement for Eligible Activities shall be prioritized as follows:

- (a) First, Brownfield Tax Increment Revenues, as necessary, will reimburse the City and the MBRA for the annual obligation of the Borrowing for the Public Improvements pursuant to Exhibits B and C;
- (b) Second, to repay the annual obligation for the EGLE Brownfield Loan in Years 6 – 15, in accordance with the amortization table provided by EGLE at project closeout;
- (c) Third, local tax capture revenues will be applied to the administrative and operating costs and Transaction Costs of the MBRA, which, cumulatively, shall not exceed \$40,000.00 in any year. If insufficient revenue to cover bond and Parking Deck loan obligations occur in any year, the MBRA will reduce its capture for administrative and operating costs and Transaction Costs accordingly. The MBRA shall not be required by this Agreement to reduce capture for administrative and operation costs to less than \$20,000. The MBRA may reduce the capture for administrative and operating costs below \$20,000, at the sole discretion of the MBRA. Any shortfall under this provision may be reimbursed from Brownfield Tax Increment Revenues in subsequent years, at the sole discretion of the MBRA;
- (d) Fourth, Brownfield Tax Increment Revenues, as necessary, will reimburse the Developer for the annual Parking Deck Debt Service Obligation;

- (e) Fifth, Brownfield Tax Increment Revenues will be Capital Fund as described in Operating Agreement.
- (f) Sixth, the balance of annual Brownfield Tax Increment Revenues will be used to reimburse the Developer for approved Eligible Activities expenses pursuant to Section 5.1, the Brownfield Plan, Act 381 Work Plan, and Exhibit A until the Eligible Activity obligation is met; and

If the Developer Project does not result in sufficient revenues to repay Eligible Activity obligations, the Developer and the City agree and understand that Developer and the City will have no claim or further recourse of any kind or nature against the MBRA except from available captured tax revenues.

Section 2.5 Covenant to Secure EGLE Brownfield Grant and Loan.

The Developer shall comply with all terms and conditions of the Grant and Loan Agreements.

If there are not sufficient Brownfield Tax Increment Revenues to repay the Brownfield Redevelopment Loan annual payment, the Developer agrees to pay for the difference. Such payment may be reimbursed from future Brownfield Tax Increment Revenues, if available. Jonathan Julien and Jennifer Julien (the "Guarantors") agree to jointly and severally personally guarantee Developer's obligations under the Grant and Loan Contracts not met by Brownfield Tax Increment Revenues.

If construction does not proceed and an occupancy permit cannot be secured within five years of the date of this Agreement, the Developer shall be obligated to repay the full amount of Grant Funds and Loan Funds expended for Eligible Activities, if required by EGLE.

Section 2.6 Brownfield Tax Increment Revenue Reimbursement Conditions: It is expressly understood and agreed that the reimbursement of the MBRA is subject to the following conditions:

- (a) Approval of the Brownfield Plan by the MBRA and the City Commission and, as necessary, the Act 381 Work Plan approval by MSF for Non-Environmental Eligible Activities and EGLE for Environmental Eligible Activities.
- (b) For any Eligible Activities not approved for State tax capture, reimbursement to the Developer for those Eligible Activities will be limited to the proportionate ratio of Local to State capture, which is 53.5%.
- (c) The Developer shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement or other agreement with the MBRA, and all preconditions to the performance of the Developer have been satisfied.
- (d) The MBRA shall only be obligated to reimburse Eligible Activity Obligation that has been reviewed and approved by the MBRA. Approval of the application and subsequent approvals of Brownfield Plans, Act 381 Work Plans, or any other determination of eligibility in no way guarantees or establishes a right to reimbursement of expenditures

through Tax Increment Revenues prior to review or approval of invoices. Expenditures must be documented to be reasonable for Eligible Activities by submission of invoices, proof of payment, and other appropriate documentation. Reimbursement shall only occur pursuant to the terms and conditions of this Agreement, as well as the written policies and procedures of the MBRA for review and approval of invoices. All invoices for any Eligible Activities on the property must be submitted to the MBRA for its review within 180 days from the date of the invoice. While the MBRA may waive this requirement in its discretion for good cause shown, the MBRA shall be under no obligation to reimburse any invoice for an eligible activity that is not submitted in a timely fashion.

- (e) The Developer has adhered to the Brownfield Plan and Act 381 Work Plan.
- (f) There are adequate Brownfield Tax Increment Revenues.
- (g) The Developer shall provide sworn written waivers of liens by consultants, contractors, and subcontractors providing services for their respective Eligible Activities as described in this Agreement.
- (h) The Developer has paid the real and personal property taxes levied on any portion of the Development for which the Developer is responsible on or before the date the same are payable without interest or penalty. Any appeal to real and personal property tax assessment shall apply to the current tax year only.
- (i) To the extent captured revenues are available, the MBRA shall pay the Developer and the City annual simple interest on Eligible Activity expenses consistent with the Project Budget as follows:
 - (1) Actual Interest up to the maximum 5 percent shall be paid for the Developer's and City's Eligible Activity expenses that have been incurred, invoiced, and approved by the MBRA.
 - (2) Interest shall be accrued on the outstanding balance on Eligible Activity expenses after all of the following:
 - (i) Invoices for Eligible Activities and expenses are approved by the MBRA Board as provided herein;
 - (ii) Substantial completion of the Eligible Activity described in an approved Project Budget under Section 5.1(a); and
 - (iii) A Certificate of Occupancy has been secured for buildings and final approval for Public Improvements from the appropriate authority.

Section 2.7 Grant and Loan Reimbursement Conditions: Upon the Developer's satisfactory completion of the Eligible Activities described in Exhibit B, as amended or supplemented, pursuant to this Agreement and the Grant and Loan Agreements, and approved by EGLE, the MBRA shall reimburse the Developer subject to and in accordance with the terms set forth in this Agreement. The MBRA will contract with a qualified environmental consultant to assist the MBRA and Developer in contractor procurement, reporting and meeting Grant and Loan Agreement obligations. The Developer shall contract with a qualified environmental consultant to have responsibility for all environmental response and demolition activities. The Developer shall have sole responsibility to pay the Developer's Contractors for completion of

such Eligible Activities and provide proof of payment. If the Developer incurs any expenses or costs for any activities other than the Eligible Activities or if the costs exceed the maximum cost of Grant and Loan Eligible Activities as set forth in the Grant and Loan Agreements, or approval of EGLE or the MBRA, the Developer shall bear such excess costs without any obligation on the part of the MBRA. If the costs of Eligible Activities set forth in Exhibit B, as amended or supplemented, are less than such maximum cost, then the Developer shall have no further right of reimbursement beyond its actual costs.

The following is the process by which the MBRA will reimburse Grant and Loan Eligible Activity expenses to the Developer:

- (a) The MBRA Consultant shall work with the Developer and their environmental consultant to prepare and submit Grant and Loan Work Plans.
- (b) EGLE will review the Grant and Loan Work Plan and approve the Grant and Loan Work Plan or request revisions, which will be made by the MBRA Consultant and resubmitted to EGLE for approval.
- (c) Following EGLE approval of the Grant and Loan Work Plan, the Developer will proceed with the Eligible Activities. For contracts over \$20,000, except for professional services, the MBRA Consultant will assist the Developer and their environmental consultant in contractor procurement to comply with the requirements of the Grant and Loan Contracts for bid solicitation.
- (d) The Developer will submit documentation to the MBRA Consultant of Grant and Loan Eligible Activity expenses, including approved invoices or contractor schedules of value and documentation of payment, including cancelled checks or electronic funds transfer (EFT) statements.
- (e) Immediately upon receipt of the same by the MBRA Consultant, the MBRA Consultant shall forward the documentation to the EGLE Grant Coordinator for review and preliminary approval.
- (f) EGLE will review and provide preliminary approval or request additional information as may be required under the terms of the Grant and Loan Agreements, which will be provided by the Developer, as necessary.
- (g) Upon EGLE preliminary approval, the MBRA Consultant, the Developer and EGLE will cooperate in the preparation of any additional documentation as may be required under the terms of the Grant and Loan Agreements for EGLE final approval of Grant and Loan payment.
- (h) Upon EGLE final approval, Grant Funds and Loan Funds will be transferred by EFT to the MBRA.
- (i) Within 15 business days of receipt of Grant Funds and the Loan Funds by the MBRA from EGLE, the MBRA will provide the Grant Funds and the Loan Funds to the

Developer either by check or EFT transfer, as agreed to by the Developer and the MBRA.

- (j) Upon completion of Grant and Loan Eligible Activities, but no later than 60 days after the end date of the Grant and Loan Agreements, the MBRA Consultant shall provide a final report in the format prescribed in the Grant and Loan Agreements.

It is anticipated that there will be sufficient Grant Funds and Loan Funds to meet the obligations under this Agreement. However, if for any reason the Grant and the Loan do not provide sufficient funds to satisfy such obligations, the Developer agrees and understands that it will have no claim or further recourse of any kind or nature against the MBRA or City, and if for any reason the Grant Funds and the Loan Funds are insufficient or there are none, then Developer assumes full responsibility for any such loss or cost. The parties acknowledge and agree that nothing in the preceding shall limit or restrict the Developer's ability to request an amendment to the Grant and Loan Agreements, subject to the MBRA's review process and full discretion to approve, modify or deny any proposed amendment.

Brownfield Redevelopment Loan funds will only be released by the MBRA to the Developer when Tax Increment Revenue and other needed revenue, in the MBRA's sole judgment, are deemed sufficient based on actual development, imminent development, contractual obligations to pay the equivalent taxes, and other designated sources not including general tax revenues, to meet the repayment obligations of the EGLE Brownfield Loan.

Section 2.8 Indemnification of Indemnified Persons.

- (a) The Developer shall not be considered an agent or employee of the MBRA or the City under any circumstances. Nor shall any agent or employee of the Developer be considered an agent or employee of the MBRA or the City. The Developer shall remain responsible for any claims arising out of Developer's acts or omissions during the performance of this Agreement, as provided by law. Additionally, the Developer, City, and MBRA shall not be considered to be engaged in a joint venture or partnership.
- (b) The Developer shall indemnify, defend, and hold the Indemnified Persons harmless from any loss, expense (including actual attorney 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 as a result of the ownership or operation, use or maintenance of the Developer 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, so long as counsel is 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 consent. The Developer shall not be liable for payment or settlement of any such claim or proceeding made without its consent.

- (c) The Developer shall not be obligated to indemnify any Indemnified Person under subsection (b) if the liability arises out of the Indemnified Person's negligence, willful misconduct or breach of this Agreement or the negligence or willful misconduct of any person or entity acting by, through or under any Indemnified Person.
- (d) The Developer also shall indemnify the Indemnified Persons for all reasonable costs and expenses, including actual attorney fees, incurred in enforcing any obligation of the Developer under this Agreement or any related agreement.
- (e) The Developer shall use its reasonable best efforts to assure that, to the extent an Environmental Consultant provides services toward completion of Eligible Activities, at a minimum, the Environment Consultant shall indemnify, defend, and hold Indemnified Persons harmless from any loss, expense (including actual attorney 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 as a result of the actions or services of the Environmental Consultant.
- (f) Notwithstanding any other provision of this Agreement, the Developer shall obtain its Environmental Consultant's and other Contractor's written agreements to defend, indemnify and hold harmless the Indemnified Persons and their Board members, officers, agents and employees against and from all liabilities, losses, damages, costs, expenses (including attorney fees), causes of action, suits, claims and demands for judgment, to the same extent as the Developer's indemnification provisions under this Section. This indemnity shall only apply to the Environmental Consultant or Contractor's actions, and the Environmental Consultant or Contractor shall have no obligation to indemnify, defend or hold harmless the Indemnified Persons, the Road Commission, or the Township for any loss, liability, claim, damage, cost or expense arising out of, related to or resulting from any activities performed by other environmental consultants or contractors on or attributable to the Eligible Property.
- (g) The indemnity provisions shall survive the term of this Agreement.

Section 2.9 The Developer's and City's Repayment Obligation. In the event any monies received by the Developer or City under this Agreement are determined to be outside the scope of Eligible Activities for the Development or not approved in accordance with this Agreement by a third-party auditor of the City or State, or applicable court, the Developer or City shall not use and shall return such monies to the MBRA. If the monies have been already utilized for such improper purpose, the Developer or City shall repay such monies to the MBRA or agree to reductions in subsequent reimbursements equal to the disavowed amount. In addition to any other remedies, the MBRA shall have the right of set-off for return or repayment of such monies against its obligations under this Agreement.

Section 2.10 Deduction from Developer's or City's Right to Reimbursement. The Developer and City grants the MBRA the right to deduct or set off from any reimbursement obligation to the Developer and City the costs incurred by the MBRA in the successful enforcement of the terms of this Agreement or other claims in the event of a default of this Agreement by the Developer.

Section 2.11 Eligible Property Access. The Developer shall grant to the MBRA, or its designated agents, access to the Eligible Property to exercise the MBRA's right to administer or oversee Eligible Activities related to the purposes and pursuant to the terms of this Agreement. The MBRA shall give 24 hours written notice of its intent to access the Site whenever possible. If notice cannot be given due to an emergency or any other unforeseen circumstance, the MBRA shall give notice as is reasonable and practicable under the circumstances.

Section 2.12 Separate Covenants and Obligations. Except as expressly provided in Section 2.3, the Developer's covenants and obligations are separate covenants solely running to and enforceable by the MBRA as provided by law, and to no other party, person, or entity. Unless otherwise expressly provided in this Agreement, a breach or default by the Developer of its obligations to the MBRA shall not constitute a breach or default of this Agreement or bar enforcement or claims by the other parties. No third-party beneficiary rights, interests, or claims are created by implied contract, operation of law, or any other means.

ARTICLE 3 **CONDITIONS PRECEDENT TO OBLIGATIONS OF THE DEVELOPER**

Section 3.1 Conditions Precedent to Developer's Obligations to Acquire and Construct the Developer Project. Any obligation of Developer to acquire and construct the Developer Project, as contemplated herein, are subject to the following conditions precedent which must be satisfied by the MBRA, as required herein, or waived by the Developer, except as specifically provided herein:

- (a) No condition, event, action, suit, proceeding or investigation is occurring or threatened to occur, or shall be pending before any court, public board or body to which the Developer, City, or the MBRA is a party, or threatened against the Developer, City, or the MBRA contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan or Act 381 Work Plan or which could result in an adverse decision which would have one (1) or more of the following effects:
 - (1) A material adverse effect upon the ability of the MBRA to collect and use Brownfield Tax Increment Revenues to repay its obligations under this Agreement.
 - (2) A material adverse effect on the Developer's or the MBRA's ability to comply with the obligations and terms of this Agreement of the Brownfield Plan.
- (b) There shall have been no Event of Default by the MBRA or the City and no action or inaction by the MBRA or the City which eventually with the passage of time could become an Event of Default.
- (c) The MBRA shall have performed all the terms and conditions to be performed by the MBRA pursuant to this Agreement.

- (d) Brownfield Tax Increment Revenue and other needed revenue are assured, in the MBRA's sole reasonable judgment, from actual development, imminent development, contractual obligations to pay the equivalent taxes, and other designated sources other than general tax revenues to meet the obligations for Eligible Activities of the Developer, the City and/or the MBRA included in the Brownfield Plan.
- (e) Approval of the Brownfield Plan, and as necessary, approval of an Act 381 Work Plan by MSF for Non-Environmental Eligible Activities and EGLE for Environmental Eligible Activities.
- (f) The Developer has received the consent of any affected utility for relocation, burial, or other activity necessary to construct the Development.
- (g) There has been no change in statutes or other law that would negatively impact either party's ability to meet (a)-(f) above.

ARTICLE 4 **COVENANTS OF THE MBRA**

Section 4.1 Adoption of Brownfield Plan and Act 381 Work Plan and Approval of the Brownfield Redevelopment Grant and Loan. The MBRA and City Commission have approved the Brownfield Plan which provides for the payment of MBRA Administrative and Transaction Costs, the preparation and approval of the Brownfield Plan and Act 381 Work Plan, and reimbursement for the Developer, the City and the MBRA for the Eligible Activities expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement, the Brownfield Plan, Act 381 Work Plan, Development Agreement and Operating Agreement, and the Grant and Loan Agreements as approved by the MBRA pursuant to its policies and procedures.

Section 4.2 Completion of Eligible Activities. Upon the satisfactory completion of any Eligible Activities by the Developer, City, and/or the MBRA as described in the Brownfield Plan, the Act 381 Work Plan and Grant and Loan Agreements, as amended or supplemented, pursuant to this Agreement, and approved by EGLE and/or MSF and where applicable approved by the MBRA, the MBRA shall, to the extent Brownfield Tax Increment Revenues are available and Grant and Loan funds are authorized, reimburse the Developer, the City, and the MBRA in accordance with the terms set forth in this Agreement. The Developer and the City shall have sole responsibility to pay the Environmental Consultant or other contractors or subcontractors for completion of such Eligible Activities and provide written waiver of any liens. If the Developer or the City incurs any expenses or costs for any activities other than the Eligible Activities or the Eligible Activity costs exceed the Maximum Costs of Eligible Activities as set forth in Brownfield Plan or the Grant and Loan Agreements, as amended or supplemented, the Developer or the City shall bear such costs without any obligation on the part of the MBRA. If the costs of Eligible Activities set forth in the Brownfield Plan or the Grant and Loan Agreements, as amended or supplemented, are less than Maximum Costs of Eligible Activities, then the Developer and the City shall have no further right of reimbursement beyond its actual costs.

Section 4.3 MBRA or Contract Manager Oversight. The MBRA may retain the services of a qualified contract manager to exercise oversight of the Developer and City and their environmental consultant, contractors, or subcontractors, for the purposes of assuring that the activities, invoices, and accounting by the Developer and City are fair, reasonable, and constitute Eligible Activities within the meaning and scope of this Agreement, the Brownfield Plan, the Act 381 Work Plan, Development Agreement, Operating Agreement, Act 381, and the Grant and Loan Agreements. The Developer and the City shall provide to the MBRA and its Contract Manager access to data, reports, sampling results, invoices, and related documents reasonably necessary to fulfill the exercise of such oversight. It is expressly understood that the MBRA has no right to control or to exercise any control over the actual services or performance by the Developer or the City of the Eligible Activities, except as to assurance that the Developer and the City have met the conditions and requirements of this Agreement.

Section 4.4 Limitation of Obligations and Liabilities to Third Persons or Parties. The MBRA and City shall have no liability to the Developer under this Agreement except to reimburse the Developer for the Eligible Activities in accordance with the Brownfield Plan and Act 381 Work Plan that have been approved by EGLE, MSF and the MBRA as provided by law and under the terms of this Agreement. No other obligation or liability of the MBRA or the City to the Developer or any third person or party is created by this Agreement, except as stated herein.

ARTICLE 5

CONDITIONS PRECEDENT TO MBRA OBLIGATIONS

Section 5.1 Conditions Precedent to MBRA's Reimbursement Obligation for Eligible Activities. The obligations of the MBRA for reimbursements of costs to the Developer or City for completion of Eligible Activities expenses as contemplated herein shall be subject to the following conditions precedent which must be satisfied by the Developer or City as required herein, except as expressly provided in this Agreement or otherwise waived in writing by the MBRA. It is expressly agreed that the MBRA makes or gives no assurance of payment to the Developer or City by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Brownfield Plan, Act 381 Work Plan, and/or the Grant and Loan Agreements, or as hereafter supplemented or amended, and that it shall have the right to review and approve all written summaries of and invoices for Eligible Activities for the reasonableness of services performed by any consultant, contractor, or subcontractor under this Agreement. However, so long as an Eligible Activity by the Developer or City has been approved and is authorized by Act 381 and/or the Grant and Loan Agreements and has been completed and approved in accordance with the following procedure and this Agreement and to the extent Brownfield Tax Increment Revenues or Grant and Loan Funds are available, the Developer and the City shall be entitled to reimbursement for its Eligible Activities expenses. The approval of the Brownfield Plan, Act 381 Work Plan, Grant and Loan Agreements or the project budget described below is not a guarantee that there will be sufficient Brownfield Tax Increment Revenues or Grant and Loan Funds to reimburse the Eligible Activities, and if for any reason, the revenues are insufficient or there are none, the Developer or the City assumes full responsibility for any such loss or cost of any Eligible Activity conducted.

- (a) Before commencing work on each stage of Eligible Activities and pursuant to the policies and procedures adopted by the MBRA, the Developer or City will present a project budget for each stage to the MBRA Director at least two weeks prior to commencing work. The project budget will be submitted at each stage of the Eligible Activities line items or phases as provided in the Brownfield Plan and will provide detailed cost estimates or contractor quotes or bids.
- (b) The Developer and City shall submit invoices of its Eligible Activities expenses and a written statement demonstrating a factual basis that it has completed the Eligible Activities to the MBRA Director for preliminary review and approval within 180 days of completion of the Eligible Activity in a form as required by the MBRA. Documentation of the costs incurred shall be provided including proof of payment, lien waivers, and detailed invoices for the costs incurred in sufficient detail to determine whether the costs incurred were for Eligible Activities. The Authority shall not be required to reimburse any request that is not submitted within 180 days after the expense is incurred.
- (c) Within 60 days after submittal of an invoice or invoices under (b) above, the MBRA Director or contract manager shall review and approve or reject the reasonableness of the invoice(s) and activity as ineligible and, if recommended, shall present the invoice(s) to the MBRA for approval. In the event of an objection, the MBRA Director or contract manager will notify the Developer or City within the 60-day time period, and the Developer or City shall meet to resolve or cure the objection. If the objection is not resolved or cured within 45 days, there is no obligation to pay the portion of the invoice(s) objected to until the parties have mutually agreed in writing through an alternative dispute mediation or there is a final judgment or order of a court of competent jurisdiction directing payment. It is expressly agreed that the Authority does not make or give any assurance of payment to the Developer or City by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Brownfield Plan or Act 381 Work Plan and that the Authority shall have the right to review and approve or deny reimbursement for any invoices for Eligible Activities based on the reasonableness of services performed by any consultant or contractor under this Agreement.
- (d) Payment for approved invoices from Brownfield Tax Increment Revenues from the Development will be made by July 31 each year.
- (e) No condition, event, action, suit, proceeding or investigation is occurring or threatened to occur, or shall be pending before any court, public board or body to which the Developer, City, or MBRA is a party, or threatened against the Developer, City, or MBRA contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan or which could result in an adverse decision which would have one (1) or more of the following effects:
 - (1) A material adverse effect upon the ability of the MBRA to collect and use Brownfield Tax Increment Revenues to repay its obligations under this Agreement.

- (2) A material adverse effect on the Developer's or MBRA's ability to comply with the obligations and terms of this Agreement, the Brownfield Plan, or the Act 381 Work Plan.
- (3) There shall have been no Event of Default by the MBRA and no action or inaction by the MBRA which eventually with the passage of time could become an Event of Default.
- (f) The Developer, City and MBRA shall have performed all of the terms and conditions to be performed by them pursuant to this Agreement.
- (g) Brownfield Tax Increment Revenue and other needed revenue are assured, in the MBRA's sole reasonable judgment for actual development, imminent development, contractual obligations to pay the equivalent taxes, and other designated sources other than general tax revenues to meet the obligations for Eligible Activities of the City and/or MBRA included in the Brownfield Plan and Act 381 Work Plan.
- (h) Approval of the Brownfield Plan, and as necessary the Act 381 Work Plan by MSF for Non-Environmental Eligible Activities and EGLE for Non-Environmental Eligible Activities.
- (i) Proper approvals required under applicable federal and state laws or regulations, and local ordinances, codes or regulations for land use and the Development have been secured.
- (j) There has been no change in statutes or other law that would have one or more of the effects described in (e) above.
- (k) The Developer or City has received the consent of any affected utility for relocation, burial, or other activity necessary to construct the Development.
- (l) The Developer or City shall have performed all of the terms and conditions to be performed by the Developer or City.
- (m) During the term reimbursement, the Developer shall provide to the MBRA an annual report of investment made, number of residential units, the amount, by square foot of new or rehabilitated residential, retail, commercial, or industrial space, and the number of new jobs created. Report shall be delivered to the MBRA Director no later than July 15 of each year.

ARTICLE 6.

DEVELOPER'S ENVIRONMENTAL CONSULTANT, CONTRACTOR, OR SUBCONTRACTOR RESPONSIBILITIES

Section 6.1 Eligible Activities and Due Care Obligation. The Developer will contract with a competent and qualified Environmental Consultant ("Consultant" or "Environmental Consultant")

or other competent and qualified contractors or subcontractors (“Contractors”) as necessary to conduct and complete certain Eligible Activities set forth in this Agreement and as set forth in the Brownfield Plan and Act 381 Work Plan, as amended or supplemented, but limited to only those Eligible Activities performed by Developer’s Environmental Consultant or Contractors and specifically excludes all other activities performed by other environmental consultants, contractors, or subcontractors performing activities retained by the City, MBRA or another third party.

Section 6.2 Permits. The Environmental Consultant or Contractors shall examine all permits and licenses pertaining to certain Eligible Activities on the Property to determine whether all permits and licenses required to be issued by any governmental authority on account of certain Eligible Activities on the Property for the Development have been obtained or issued and are in full force and effect, and whether the Eligible Activities are in compliance with the terms and conditions of such permits and licenses, but is limited to only those Eligible Activities performed by Developer’s Environmental Consultant or Contractors, and specifically excludes all other activities performed by other environmental consultants, contractors, or subcontractors performing activities on the site.

Section 6.3 ASTM and Industry Standards. The Environmental Consultant or Contractors shall perform all services and Eligible Activities under this Agreement in accordance with any applicable ASTM or other industry standards.

Section 6.4 Other Services Performed for Developer or City. The parties expressly understand that the MBRA is not responsible for payment or reimbursement of any services or expenses incurred by the Consultant, Contractors, Developer and/or the City that are not within the scope of or in accordance with all of the terms, conditions and provisions of this Agreement. This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in the Consultant, Contractors, or any third parties; specifically, this Agreement shall not be construed to create any third-party beneficiary contract or claim.

Section 6.5 Regulatory Liaison and Data and Reports. If applicable, the Developer’s or City’s Environmental Consultant will provide communication services and attend meetings with EGLE relating to those Eligible Activities performed by Developer’s or City’s Environmental Consultant, and specifically excludes all other activities performed by other Environmental Consultants, Contractors, or Subcontractors performing activities. Consultant or Contractors shall:

- (a) Submit reports and test results first to the Developer or City and shall submit documents to the MBRA Director within 5 business days thereafter.
- (b) Make known the provisions of this subparagraph to all contractors and subcontractors, who shall be bound by the confidentiality provisions of this Agreement.
- (c) Submit any such written reports marked “DRAFT FOR DISCUSSION PURPOSES ONLY.” To the extent the MBRA or its designated agent reviews or

receives a document marked “confidential,” it shall be kept confidential except as prohibited by the Freedom of Information Act or other law or regulation.

- (d) Disclose on request to the MBRA Director all data, reports and test results generated by the Consultant within the scope of this Agreement.

Section 6.6 Other Agreements. The Developer covenants that it will obtain a warranty from the Consultant and Contractors that it is not a party to any other existing or previous agreement which would adversely affect the Consultant’s or the Contractor’s ability to perform the services with respect to the Eligible Activities.

Section 6.7 Contractors. If the Developer hires any Environmental Consultant or Contractor, or retains any person, firm or corporation to perform services related to Eligible Activities under this Agreement, the Developer shall first secure the written acknowledgment from such party that such party is not and shall not be or act as an agent or employee of the MBRA nor assume or create any duty, commitment or obligation on behalf of nor bind the MBRA in any respect whatsoever. A copy of such written acknowledgment shall be provided to the MBRA.

Section 6.8 Non-Discrimination Clause. Neither the Developer, Consultant, nor any Contractors shall discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of this Agreement.

Section 6.9 Independent Contractor. The Consultant and any Contractors shall perform its services under this Agreement entirely as an independent contractor, and shall not be deemed an agent, employee, or legal representative of the MBRA or City. The MBRA, City, Developer and the Consultant and any Contractor shall each have and maintain complete control over all its employees, agents, and operators. Facts or knowledge of which the Consultant or Contractor becomes aware shall not be imputed to the MBRA or City without communication to and receipt by managerial officials or employees of the MBRA or City. The Consultant or any Contractor has no authority to assume or create and will not assume or create any commitment or obligation on behalf of the MBRA or City in any respect whatsoever. Further, the Consultant or any Contractor shall exercise its independent judgment for the services provided in this Agreement.

Section 6.10 Disposal of Hazardous Waste. In the event that samples or other materials contain substances classified as “hazardous waste” under state or federal law (“Hazardous Waste”), the Developer or its agent shall, under a manifest signed by the Developer, its agent, or a third party as the generator, have such samples transported for final disposal to a facility licensed to accept Hazardous Waste. It is expressly understood that the MBRA does not have any oversight or other control or authority over disposal of Hazardous Waste under the terms of this paragraph.

Section 6.11 Compliance with Laws. While on the Property, the Developer, the City and their respective Consultant, and any Contractor shall impose work orders on its employees, agents

and subcontractors which are designed to assure that they comply with all applicable federal, state and local laws and regulations (including occupational safety and environmental protection statutes and regulations) in performing services under this Agreement, and shall comply with any directions of governmental agencies relating to site safety, security, traffic or other like matters, but limited to only those Eligible Activities performed by Developer's or City's Environmental Consultant or Contractors, and specifically excludes all other activities performed by other environmental consultants, contractors, or subcontractor performing activities.

Section 6.12 Environmental Consultant or Contractor Insurance. The Developer shall assure that the Consultant and any Contractors performing any part of the Eligible Activities covered by this Agreement shall obtain and maintain the policies of insurance in the types and amounts provided in Section 8.1

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

Section 7.1 Representations and Warranties of the MBRA. The MBRA represents and warrants to the Developer and the City that:

- (a) The MBRA is a public body corporate, established pursuant to Act 381, with all necessary corporate powers pursuant to that Act to enter into and perform this Agreement.
- (b) The execution and delivery of this Agreement has been duly authorized by all requisite action on the part of the MBRA, and this Agreement constitutes a valid and binding agreement of the MBRA enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.
- (c) Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, or any agreement to which the MBRA is a party or by which the MBRA is bound.

Section 7.2 Representations and Warranties of the City. The City represents and warrants to the Developer and the MBRA that:

- (a) The City is a Michigan municipal corporation with all necessary corporate powers pursuant to that Act to enter into and perform this Agreement.
- (b) The execution and delivery of this Agreement has been duly authorized by all requisite action on the part of the City, and this Agreement constitutes a valid and binding agreement of the City enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting

creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

- (c) Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, or any agreement to which the City is a party or by which the City is bound.

Section 7.3 Representations and Warranties of the Developer. The Developer represents and warrants to the MBRA and the City that:

- (a) The Developer (i) is duly organized and validly existing as a Michigan limited liability corporation in good standing under the laws of the State of Michigan, with power under the laws of such state to carry on its business as now being conducted; (ii) is duly qualified to do business in the State of Michigan, and (iii) has the power and authority to consummate the transactions contemplated under this Agreement by the Developer.
- (b) There is no violation or default by the Developer of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject, and compliance with the terms, conditions and provisions of this Agreement does not conflict with and will not result in or constitute a breach of or default under any of the foregoing, wherein default, breach or violation would materially and adversely affect any of the transactions contemplated by, or the validity of, this Agreement.
- (c) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Developer and this Agreement constitutes a valid and binding agreement of the Developer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.
- (d) Except as a part of the performance and completion of Eligible Activities under the terms of this Agreement, the Developer and its contractors or subcontractors shall not use the Development site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees and orders in connection with any use of the site, and shall obtain all necessary permits in connection therewith.
- (e) The Developer warrants that it will comply with all obligations, covenants and conditions required of it or its agents or contractors under the terms of this Agreement.

ARTICLE 8 **INSURANCE**

Section 8.1 Insurance. The Developer and any contractor(s) or subcontractor(s) shall purchase and maintain insurance not less than the limits set forth below as applicable and necessary. The Developer and any contractor(s) and subcontractor(s) shall maintain such other insurances as it deems appropriate for its own protection.

- (a) Worker's Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.
- (b) Commercial General Liability Insurance on an "Occurrence Basis" 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.
- (c) 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.
- (d) 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 clean up costs and defense, with limits of liability of not less than \$1,000,000 per occurrence (with first party and third-party coverage).

Section 8.2 Cancellation Notice. The Developer understands and agrees that thirty (30) days advanced written notice of cancellation, non-renewal, reduction and/or material change to any insurance policy specified above shall be sent to the MBRA.

Section 8.3 Additional Insured. The Commercial General Liability Insurance, Motor Vehicle Liability Insurance, Professional Liability Insurance, and Auto Pollution Liability Insurance, as described above, held by the Developer and its Environmental Consultant, contractors, and subcontractors, shall have an endorsement including the City of Marquette and the City of Marquette Brownfield Redevelopment Authority as additional insured.

Section 8.4 Proof of Insurance. The Developer or any contractor or subcontractor shall make available copies of certificates of insurance for each of the policies mentioned above to the Authority upon request. If so requested, certified copies of all policies will be furnished.

ARTICLE 9 **REMEDIES AND TERMINATION**

Section 9.1 Alternative Dispute Mediation. If a dispute arises between the parties to this Agreement, the parties shall seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions:

- (a) The party bringing in a claim shall give notice to the other party and, in writing, propose a meeting in which to discuss and attempt to resolve the claim within fourteen (14) days after the claim arises, which may be extended with the mutual agreement of all parties.
- (b) In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said fourteen (14) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of twenty-one (21) days after the initial meeting between the parties. The mediator shall render his/her decision within ten (10) days of meeting with the parties. In the event that the mediator does not render a decision within said time-period, the party bringing the claim shall have the right to proceed with litigation.
- (c) The purpose of the mediator is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.
- (d) During the pendency of this alternative dispute resolution process, the parties agree that any statute of limitations applicable to all claims that are the subject of this mediation process shall be tolled.

Section 9.2 Remedies for Default. The MBRA or the non-defaulting party will provide notice to the defaulting party of the nature and extent of the default. The defaulting party will have 45 days to remedy the default.

Section 9.3 Remedies upon Default. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to terminate this Agreement with the defaulting party or, at the election of such non-defaulting party, may obtain any form of relief permitted under the applicable laws and court rules of the State of Michigan, including the right to seek and obtain a decree of specific performance of a court of competent jurisdiction.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Term. The term of this Agreement shall commence on the date first written above and shall expire upon payment in full of the MBRA's obligations under this Agreement, or pursuant to the terms of the Brownfield Plan or Act 381 Work Plan and Act 381.

Section 10.2 Sale or Transfer of Eligible Property or Site within the Plan: The Developer waives the right to reimbursement for outstanding Eligible Activity expense obligations, or any other reimbursement obligation of the MBRA, to be paid through Brownfield Tax Increment Revenue captured from the portion of the Eligible Property that is sold, conveyed, transferred, or assigned unless the Developer complies with the following:

- (a) The Developer provides the prospective transferee with written notice of the Brownfield Plan, the nature and extent of Eligible Activities performed by the Developer pursuant to

the Plan, and the extent of any outstanding obligation for reimbursement for Eligible Activity expenses from taxes to be captured from the property.

- (b) The Developer and the transferee enter into an allocation agreement covering how the Brownfield Tax Increment Revenues collected on the property shall be distributed between the Developer and the prospective purchaser or transferee for any outstanding obligations or future obligations for Eligible Activities on the property.
- (c) The Developer provides the MBRA with copies of the written notice and the allocation agreement between the Developer and the transferee of the property prior to transfer of the property, and the MBRA approves the agreement, which shall not be unreasonably denied.

Section 10.3 Assignment of this Agreement. No party to this Agreement may transfer, assign, or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of all other parties hereto, which consent will not be unreasonably withheld. This provision does not limit the transfer of membership interest within Marquette Vault, LLC.

Section 10.4 Notices. All notices, certificates 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, addressed to the respective parties as follows:

If to the MBRA: Sheri Davie, Executive Director
Marquette Brownfield Redevelopment Authority
1100 Wright Street
Marquette, Michigan 49855

If to the City: Karen Kovacs, City Manager
City of Marquette
300 W. Baraga Avenue
Marquette, Michigan 49855

If to the Developer: Jon Julien
Marquette Vault, LLC
47711 Gundlach Road
Houghton, Michigan 49931

or to such other address and/or representative as such party may specify by appropriate notice.

Section 10.5 Amendment and Waiver. 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 10.6 Entire Agreement. This Agreement contains all agreements between the parties. There are no other representations, warranties, promises, agreements, or understandings, oral, written, or implied, among the parties, except to the extent reference is made thereto in this Agreement.

Section 10.7 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 10.8 Captions. 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 10.9 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 10.10 Mutual Cooperation. 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 Developer 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. Each party to this Agreement shall execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement including, but not limited to, such documents or agreements as may be required by the Developer's lenders with respect to the Project to secure the Developer financing from such lenders. Each party to this Agreement also shall use its best efforts to assist the other parties to this Agreement in the discharge of their respective obligations hereunder and to assure that all conditions precedent to and the completion of the Developer Project are timely satisfied.

Section 10.11 Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

Section 10.12 Brokerage Fees. The MBRA and Developer represent and warrant to the others that no broker or finder has been engaged in connection with this Agreement. The MBRA, without waiving any governmental immunity and to the extent allowed by law, and Developer shall indemnify each other and hold each other harmless from and of any and all liability (including reasonable attorneys' fees and costs) for 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 indemnifying party.

Section 10.13 Condominium Documents. The Developer agrees to put notice of this Agreement in any condominium Master Deed if a condominium project is developed on this land.

Amended Reimbursement Agreement
Vault Marquette

Amended: May 2022
City of Marquette Brownfield
Redevelopment Authority

The MBRA, the City, the Developer and the Guarantors have caused this Agreement to be duly executed and delivered as of the date first written above.

MARQUETTE VAULT, LLC

By: Jon Julien
Its: Managing Director

Jonathan Julien, Guarantor

Jennifer Julien, Guarantor

Approved as to Content:

CITY OF MARQUETTE BROWNFIELD
REDEVELOPMENT AUTHORITY

By: Sheri Davie
Its: Executive Director

By: P. David Allen
Its: Chair

Approved as to Content:

CITY OF MARQUETTE

By: Karen M. Kovacs
Its: Manager

By: Jennifer A. Smith
Its: Mayor

Approved as to Form:

By: Suzanne C. Larsen
Its: Attorney

By: Kyle Whitney
Its: Clerk

EXHIBIT A: DEVELOPMENT

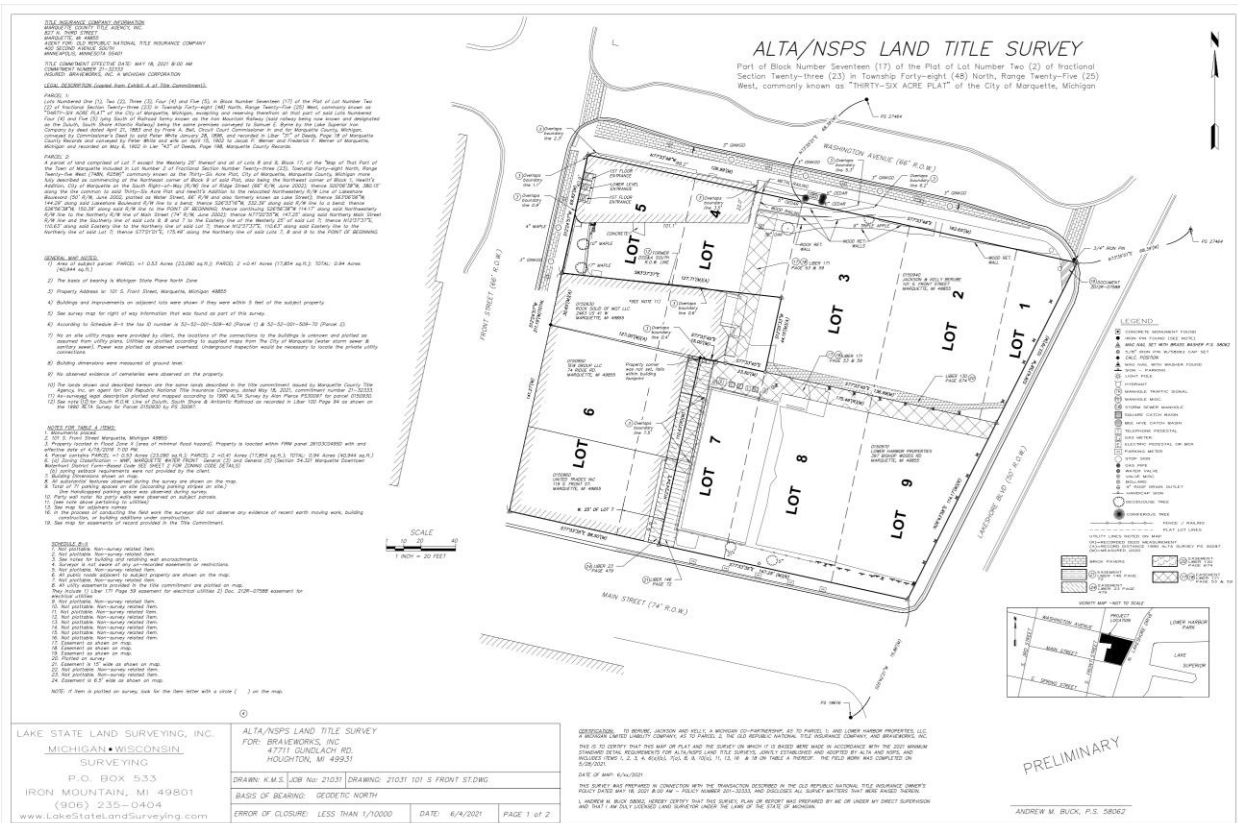
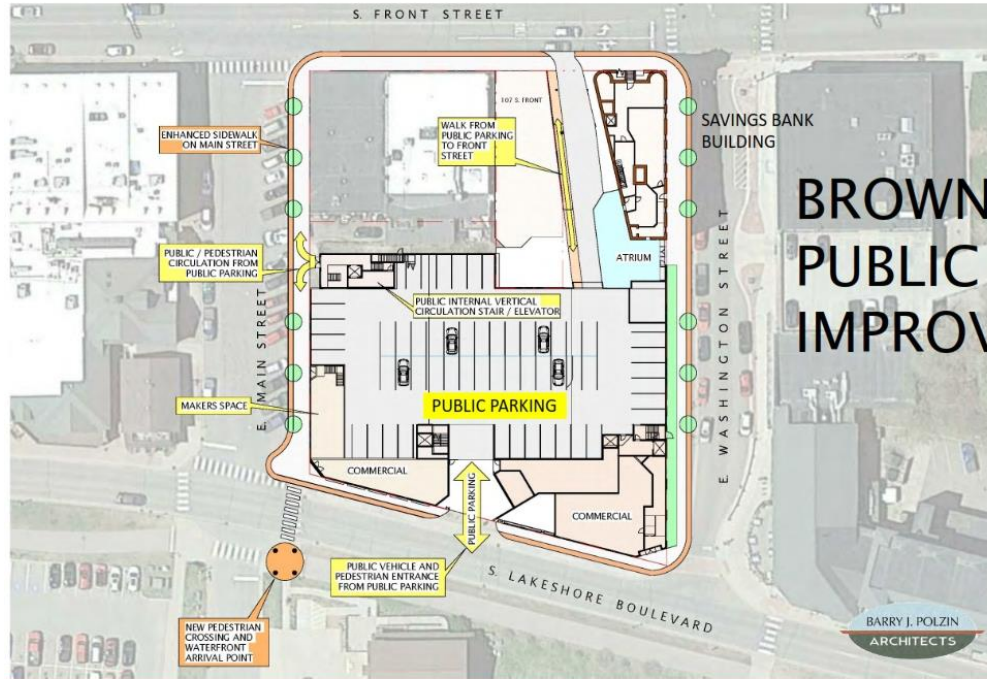


EXHIBIT B: PUBLIC IMPROVEMENTS

Braveworks.



BROWNFIELD PUBLIC IMPROVEMENTS

EXHIBIT C: ELIGIBLE ACTIVITIES

BROWNFIELD ELIGIBLE ACTIVITIES VAULT MARQUETTE

DEVELOPER ENVIRONMENTAL ELIGIBLE ACTIVITIES	
Baseline Environmental Assessment	\$27,000
Due Care Activities	<u>\$764,000</u>
Subtotal	\$791,000
Contingency	\$118,650
Brownfield Plan Preparation	<u>\$20,000</u>
ENVIRONMENTAL ELIGIBLE ACTIVITIES	\$929,650
DEVELOPER NON-ENVIRONMENTAL ELIGIBLE ACTIVITIES	
Lead Asbestos Abatement	\$87,000
Demolition	\$130,000
Site Preparation	\$1,353,000
Private Infrastructure	<u>\$157,680</u>
Subtotal	\$1,727,680
Contingency	\$237,250
Brownfield Plan Preparation	<u>\$20,000</u>
NON-ENVIRONMENTAL ELIGIBLE ACTIVITIES	\$1,984,930
TOTAL DEVELOPER ELIGIBLE ACTIVITIES	<u>\$2,914,580</u>
CITY NON-ENVIRONMENTAL ELIGIBLE ACTIVITIES	
Public Parking Facility	\$7,240,000
Public Improvements	\$802,300
Contingency	\$1,206,345
Brownfield Plan Implementation	\$90,000
TOTAL CITY ELIGIBLE ACTIVITIES	<u>\$9,338,645</u>
TOTAL ELIGIBLE ACTIVITIES	\$12,253,225

EXHIBIT D



RESOLUTION
EGLÉ Brownfield Grant and Loan Application
Vault Marquette
101 S. Front Street and 119 S. Lakeshore Boulevard

At a regular meeting of the Marquette City Commission held at Marquette City Hall, 300 W. Baraga Avenue, Marquette, Michigan on May 9, 2022, at 6:00 p.m., the following resolution was offered by

Commissioner _____ and supported by

Commissioner _____.

WHEREAS the Michigan Department of Environment, Great Lakes and Energy (EGLE) provides grants and loans to communities through its Brownfield Redevelopment Grant and Loan program to encourage reuse of brownfield properties by funding environmental response activities, lead and asbestos abatement, and demolition; and

WHEREAS, the redevelopment of property at 101 S. Front Street and 119 S. Lakeshore Boulevard in Marquette for a boutique hotel in the State Savings Bank 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 well as a public parking facility of up to 220 spaces is a partnership between the State of Michigan, the City of Marquette Brownfield Redevelopment Authority, the City of Marquette, the City of Marquette Downtown Development Authority and Marquette Vault, LLC and environmental activities and lead/asbestos abatement and selective demolition are required as part of the redevelopment; and

WHEREAS, the project effectively meets the EGLE Brownfield program criteria of need for financial assistance, local financial commitment, site reuse, and economic development and job creation; and

WHEREAS, the proposed development is consistent with local development plans and City of Marquette master plan and zoning ordinance; and

WHEREAS, the site for which EGLE Brownfield Grant and Loan funds are being requested is designated as a "Facility" under Part 201, 1994 Act 451 and neither the City of Marquette Brownfield Redevelopment Authority, the City of Marquette, nor Marquette Vault, LLC are liable parties; and

WHEREAS, the proposed project will be undertaken if a Grant and Loan are awarded;

WHEREAS, a portion of the EGLE financial support may include a Brownfield Loan and, if so, EGLE requires that the City of Marquette accepts and commits to repay the loan, based on the terms and conditions of the loan agreement and provide financial assurance; and

WHEREAS, the obligation to repay the Brownfield Loan will be transferred to Marquette Vault, LLC and guaranteed by Jonathon and Jennifer Julien through an Amended Development and Reimbursement Agreement;

NOW, THEREFORE, the City Commission of the City of Marquette, Marquette County, Michigan, resolves as follows:

1. The City of Marquette authorizes the submittal of a Brownfield Grant and Loan application by the City of Marquette Brownfield Redevelopment Authority to the Michigan Department of Environment, Great Lakes and Energy for environmental response activities, lead/asbestos abatement and selective demolition for the redevelopment of the State Savings Bank and adjacent property for the development of a downtown hotel, residential housing, and a public parking deck; and

2. The City of Marquette accepts and commits to repay the Brownfield Loan up to \$1,000,000, based on the terms and conditions of the Loan Agreement, with revenues for loan repayment derived from the capture of increased incremental revenues generated by additional private investment through the approval of a Brownfield Plan and Act 381 Work Plan or if adequate Brownfield tax increment revenues are not available, first through contractual obligation of Marquette Vault, LLC, second through personal guarantees given by Jonathan and Jennifer Julien, and lastly, from the City's General Fund, or other City funding sources as appropriate, including but not limited to revenue sharing; and,

Be it Further Resolved that should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid; and,

Be it Further Resolved that any prior resolutions, or any part thereof, in conflict with any of the provisions of this Resolution are hereby repealed.

Yes: _____

No: _____

Resolution duly adopted

Jennifer A. Smith, Mayor
City of Marquette

Certified to be a true copy,

Date

Kyle Whitney, City Clerk