

City of Marquette, MI



Meeting Agenda City Commission

Monday, July 11, 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. Appointments

John Taylor, Marquette Housing Commission, for an unexpired term ending 07-09-27

Amanda Gobert, Parks and Recreation Advisory Board, for an unexpired term ending 01-29-25

Jodi Lanciani, Traffic-Parking Advisory Committee, for an unexpired term ending 05-30-25

Barbara Owdziej, Traffic-Parking Advisory Committee, for an unexpired term ending 05-30-25

Angela Rayhorn, Traffic-Parking Advisory Committee, for an unexpired term ending 05-30-25

Orville Dishno, Traffic-Parking Advisory Committee, for an unexpired term ending 05-30-24

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

Presentation(s)

2. Police-Fire Pension Board, by Chair Mike Archocosky

3. Consent Agenda - Roll Call Vote

3.a. Approve the minutes of the June 27, 2022 regular Commission meeting

3.b. Approve the total bills payable in the amount of \$727,986.69

3.c. Art on the Rocks - Special Event Permit

3.d. Outback Art Fair - Special Event Permit

3.e. Kurt Lahtinen - Guts Frisbee Tournament - Special Event Permit

3.f. MERS Annual Meeting - Officer Delegate Appointment

3.g. Request for Use of Right of Way Adjacent to 901 W. Magnetic St.

3.h. Self-Funded Dental Contract

3.i. State Highway Maintenance Agreement - Roll Call Vote

New Business

4. Residential Curbside Recycling Cart Purchase

5. Resolution Authorizing 2022 Capital Improvement Bonds - 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: 7/11/2022

Consent Agenda - Roll Call Vote

Approve the minutes of the June 27, 2022 regular Commission meeting

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ 06-27-22 Meeting Minutes



City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Minutes City Commission

Monday, June 27, 2022

6:00 PM

Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

Present: Bonsall, Davis, Hanley, Hill, Mayer, Smith, Stonehouse

Approval of the Agenda

Commissioner Sally Davis moved to Approve the agenda as presented, seconded by Commissioner Evan Bonsall and Carried Unanimously.

Announcements

Mayor Smith spoke on the coming Fourth of July weekend festivities.

Boards and Committees

1. Appointment

Madeline Arquette, Arts and Culture Advisory Committee, for an unexpired term ending 06-01-25

Amy Manning, Marquette County Solid Waste Management Authority, for a term ending 07-01-25

Mayor Pro Tem Cody Mayer moved to Approve the appointment of Madeline Arquette, Arts and Culture Advisory Committee, for an unexpired term ending 06-01-25 and Amy Manning, Marquette County Solid Waste Management Authority, for a term ending 07-01-25, seconded by Commissioner Evan Bonsall and Carried Unanimously.

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

Logan Stauber, Camp Cannabis event organizer, thanked the Commission for their consideration of his event, and said he is in the audience if the Commission has any questions on that specific item.

Jay Clancey, owner of Cognition Brewery also said he would be available to address any questions regarding the new brewery on Third Street.

Jacob Soter, Dhruv Patel, Brad Groves, Brian Kaulbieda spoke on their experiences being involved with Innovate Marquette SmartZone and their support of the organization.

Valerie Olson and Brian Miller voiced concerns over municipal water fluoridation.

Presentation(s)

2. Innovation Marquette SmartZone's Digital Economy Initiative Update, by Leslie Hartman and Chief Executive Officer Joe Thiel

Joe Thiel with Innovate Marquette gave the Commission an update on the organization and its progress over the past year. He highlighted funding sources, such as grants and angel investments, and detailed specific client success stories, naming a number of businesses which Innovate Marquette has assisted in their start up. He continued by highlighting projects the organization is currently involved with, and provided a review of the financials of the organization.

Commission discussion ensued, with a focus on funding sources, including tax dollars and grants. Commissioners indicated that they would like to see a full year of financial reports from the organization and also emphasized housing and childcare as critical to maintaining businesses in the area and attracting and retaining workers to our community.

Public Hearing(s)

3. Conditional Rezoning of Parcel 0510156 on Forestville Basin Trail - Roll Call Vote

The public hearing was opened by Mayor Smith and the public had the opportunity speak on the proposed rezoning of the parcel.

Adrienne Wolfe, attorney for the applicant, said the conditional rezoning agreement limits the parcel to single family residential homes and the intention is for 8 single-family homes to be located on the 27+ acres.

Bruce Pesola identified himself as the applicant of the project, on behalf of Cedar Point Family Trust.

Mayor Smith then closed public comment.

Commissioner Fred Stonehouse moved to adopt Ordinance 711, rezoning parcel 0510156 from Conservation and Recreation to Low-Density Residential with Conditional Rezoning, approve the Conditional Rezoning Agreement and direct the Mayor and City Clerk to sign both. The motion was seconded by Commissioner Sally Davis.

The Mayor invited City Planning Commission Chair Joy Cardillo to the podium to explain the rezoning process. The Commission then discussed the proposal.

Discussion included a list of reasons for support of the rezoning - it meets the requirements established by the Planning Commission, the development will add a number of single family homes, and the development will increase the City's tax roll

immediately without the use of Brownfield or infrastructure funding.

Staff answered questions about the road leading to the parcel, about accessory dwelling units and about fire and wetland concerns.

Mayor Smith stated her biggest concern was taking land out of Conservation easement when the trade off is a small number of homes. Mr. Pesola then stated he would be putting 40 acres into conservation while only building 8 homes. He voiced support for the trail network which runs through the area and said he will have continual conversations with the NTN throughout the development.

Following discussion, the Commission voted on the motion, to adopt Ordinance 711 and approve the conditional rezoning request. The motion carried 6-1 by roll call vote, with Mayor Smith voting no.

4. Rezoning of Property at 595 Forestville Basin Trail - Roll Call Vote

The public hearing was opened by Mayor Smith and the public had the opportunity speak on the proposed rezoning of the parcel.

There was no public comment, and the Mayor closed the public hearing.

Commissioner Jenn Hill moved to adopt Ordinance 712, rezoning parcel 1170101 from Conservation and Recreation to Low Density Residential as recommended by the Planning Commission, and direct the Mayor and City Clerk to sign the ordinance, seconded by Commissioner Fred Stonehouse. Discussion ensued.

Staff clarified the connection between the two Forestville Basin Trail parcels being discussed tonight, and Mayor Smith acknowledged her support of this rezoning, as it was expressly recommended by the Planning Commission.

Commissioner Hill asked for clarification on the number of houses being built on this specific parcel. Mr. Pesola, the developer, said there will be one house built.

Adrianne Wolfe stated that this parcel is already part of the Blue Heron Bluff Condominium Association which has restrictive covenants in place requiring the property to be used for single family use.

Following discussion, the Commission voted to adopt ordinance 712. This motion carried unanimously by Roll Call Vote.

5. Consent Agenda - Roll Call Vote

Commissioner Jessica Hanley moved to Approve the Consent Agenda as presented, seconded by Commissioner Evan Bonsall and Carried Unanimously by Roll Call Vote.

5.a. Approve the minutes of the June 21, 2022 special Commission meeting

5.b. Approve the total bills payable in the amount of \$1,489,656.23

- 5.c.** Hiawatha Music Non-Profit Corporation - Special Event Permit
- 5.d.** International Food Fest - Special Event Permit
- 5.e.** Microsoft 365 Annual Renewal
- 5.f.** New Liquor License Application - Roll Call Vote
- 5.g.** Ore to Shore - Special Event Permit
- 5.h.** Iron Ore Heritage Trail License Request for Use of Municipal Property at 301 S. Lakeshore Blvd.
- 5.i.** License Request for Use of Municipal Property at 1095 S. Lake Street for Little Free Library
- 5.j.** Presque Isle Marina - Professional Services
- 5.k.** Schedule Public Hearing - Land Development Code Amendments
- 5.l.** Wastewater Plant Fire Alarm System

New Business

6. Camp Cannabis - Special Event Permit

Commissioner Jessica Hanley moved to approve the Special Event Permit for City Parks, Streets, Buildings and Grounds with TFS Events, LLC, contingent upon the applicant submitting proof of adequate insurance no later than September 7, 2022, and authorized the Mayor and Clerk to sign the agreement following receipt of proof of adequate insurance. Seconded by Mayor Pro Tem Mayer.

Commissioner Hanley and Mayor Pro Tem Mayer both indicated excitement for this event as it's the first of its kind.

Mayor Pro Tem Mayer also said that when the Temporary Marijuana Event Policy was initially created, the Commission asked for it to be reviewed in November of 2022. Because Camp Cannabis is being held in October, it will give City staff and the Commission the ability to review the policy and evaluate the event.

Mayor Smith requested an explanation of the insurance issue, and staff said the insurance standard for this event is similar to the requirements for liquor liability insurance, and that the goal is to protect attendees, the applicant, and the City. Staff indicated they are working directly with TFS Events, LLC and the insurance company.

Logan Stauber, owner and event organizer, stated that the insurance request was sent out to different brokerages and noted that nothing in the Cannabis industry is simple. He said quotes for insurance will be provided to TFS Events, LLC 90 days from the event.

Commissioner Bonsall asked about the safety measures being put into place for the event, and Mr. Stauber explained they have contracted with a security company that has worked at many musical festivals. He said the company will provide more than 30 trained security guards on site, along with security vehicles located at all entrances and exits. He explained they will be doing routine checks along the perimeter and he detailed other aspects of the security and medical preparations.

Commissioner Hill thanked TFS Events for all the care and concern they were showing in planning this event.

Mayor Smith thanked Assistant City Manager Sean Hobbins for the work that went into creating the Temporary Marijuana Event Policy as it is groundbreaking. She said she hopes this is a success for the City, the community, and TFS Events.

Following discussion the Commission took a vote on the original motion. The motion carried unanimously.

Following discussion the Commission took a vote on the original motion. The motion passed 7-0.

7. Purchase of Used Fire Truck

Commissioner Fred Stonehouse moved to approve the purchase of used 1999 Pierce Sabre from Pittsville Fire Department, Inc. of Pittsville, Wisconsin in an amount not to exceed \$39,000 and to officially name the truck in honor as Mayor Smith. Seconded by Commissioner Evan Bonsall.

Commissioner Stonehouse opened the discussion by saying, it has been a tradition of the Fire Department that a fire truck acquired during a mayor's tenure be named in honor of that Mayor.

Commissioner Bonsall recognized the financial deal the City was getting by purchasing a used fire truck in comparison to a new one. He acknowledged the City's recent purchase of a new fire truck using ARPA funding. He also stated by purchasing a used truck with low mileage this will get the fire trucks out of the same purchasing/useful life cycle. This will help alleviate the financial burden of needing to purchase two very expensive vehicles at the same time in the future.

Commissioner Hanley spoke on future fire truck purchases, questioning whether it is beneficial to purchase trucks used rather than brand new, as they are typically significantly cheaper. Staff said used trucks are always considered but that technological changes, safety standards and other modifications must be taken into account.

Commissioner Hill shared the same sentiment as Commissioner Hanley and commented on the increased use of electric vehicles.

Mayor Pro Tem Mayer asked about the reuse of parts from the old vehicle. Staff confirmed parts will be salvaged where possible, explained modifications that need

to be made and highlighted the rarity of finding a used vehicle in such good condition.

At the close of discussion the Commission took a vote on the original motion, which carried unanimously.

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

Barb Owdziej wanted the public to know the League of Women Voters would be hosting a Community Forum for the 109th House district.

Jacob Soter spoke on the national life guard shortage and his business's beach safety systems.

Dave Campana expressed support of the use of fluoride in the public water system.

Silas Talley gave his personal testimony of Innovate Marquette SmartZone.

Comments from the Commission

Commissioner Hill addressed the lack of financial reporting by Innovate Marquette and requested to see a more detail report.

Commissioner Stonehouse spoke on the origin of the SmartZone, which is aimed at providing high-tech jobs in our community and echoed Commissioner Hill. He also reminded the public of the City's fireworks ordinance with the upcoming holiday.

Commissioner Bonsall reiterated the desire to receive full financial reports from Innovate Marquette. He praised the positive work the organization is doing by bringing jobs and investments to the community and highlighted the importance of not only bringing people to the community, but also addressing how to retain those people.

Commissioner Davis congratulated Arts and Culture for another successful Art Week. She acknowledged the personal stories that were brought forth to the Commission regarding Innovate Marquette. Lastly, she thanked those volunteers who clean up the beaches after the Fourth of July holiday.

Commissioner Hanley had no comment.

Mayor Pro Tem Mayer thanked Innovate Marquette for their presentation and those who gave personal testimonials. He also indicated his excitement for the Camp Cannabis event.

Mayor Smith acknowledged the public comments regarding fluoride and expressed her confidence in the City continuing to use fluoride in the community water system.

Comments from the City Manager

City Manager Karen Kovacs applauded Assistant City Manager, Sean Hobbins for his efforts that went into creating the Temporary Marijuana Event policy.

Adjournment

The meeting was adjourned at 8:29 p.m.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

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City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

Consent Agenda - Roll Call Vote
Art on the Rocks - Special Event Permit

BACKGROUND:

The Lake Superior Art Association, Inc. (LSAA) is requesting a three-year Special Event Permit for City Parks, Streets, Buildings and Grounds to use Mattson Lower Harbor Park for the purpose of the Art on the Rocks event on the dates specified in the agreement. Staff worked with the City Attorney and the LSAA to develop the permit.

FISCAL EFFECT:

The event has been approved for Promotional Funds totaling \$1,500 for the current fiscal year.

RECOMMENDATION:

Approve the Special Event Permit for City Parks, Streets, Buildings and Grounds with Lake Superior Art Association, Inc., and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

▣ Permit

**SPECIAL EVENTS PERMIT FOR CITY PARKS,
STREETS, BUILDINGS AND GROUNDS**

THIS AGREEMENT, made this _____ day of _____, 2017 between CITY OF MARQUETTE, a Municipal Corporation, of 300 W. Baraga Avenue, Marquette, Michigan, 49855, hereinafter referred to as the "CITY", and L.S.A.A., INC. of P.O. Box 9, Marquette, Michigan 49855, hereinafter referred to as "PERMITTEE".

INSTRUCTIONS - PERMITTEE shall comply with all sections of this permit with a darkened box (■) .

WITNESSETH:

- (1) Description. The CITY in consideration of the terms, conditions, covenants and agreements to be performed by PERMITTEE, does hereby grant to PERMITTEE permission to use and occupy the following ["premises"]:

MATTSON PARK

- (2) Term. The term of this Permit shall be for:

July 30, 2022 from 8:00 a.m. until July 31, 2022 at 5:00 p.m.;
July 29, 2023 from 8:00 a.m. until July 30, 2023 at 5:00 p.m.; and
July 27, 2024 from 8:00 am until July 28, 2024 at 5:00 pm.

- (3) Acceptance of Premises. PERMITTEE has examined and is satisfied with the physical condition of the premises, and accepts the premises in their "as is" condition.

- (4) Use. PERMITTEE may use and occupy the premises for:

"ART ON THE ROCKS"

and for no other reason. The use and occupancy shall only be under PERMITTEE'S name or any assumed name of PERMITTEE. PERMITTEE shall not use or knowingly allow any part of the premises to be used for any unlawful purpose. In the event of any violation of this provision the CITY at its sole discretion may terminate this Permit and expel PERMITTEE from the premises. PERMITTEE waives, releases and relinquishes all claims of right or interest in the premises, other than as granted pursuant to this Permit.

- (5) Fees. PERMITTEE shall be responsible for paying the following fees in connection with the use of the PREMISES, each year:

Mattson Park

\$775first day

\$665 second day

Tables

\$5.00 each (x12 tables = \$60.00)

Chairs

**\$2.00 each PERMITTEE set up
(x20 chairs = \$40.00)**

**Barricades, garbage cans,
trash drums, or other items**

**per Public Works, billed separately
\$ _____**

Trash drum liners (@ current cost)

All user fees may be increased to annually based on CITY's standard increases. CITY shall provide notification to PERMITTEE of any increase in fees at least 45 days prior to the event each year.

- (6) **Clean-up, Repairs, Maintenance and Damage.** PERMITTEE shall be solely responsible for clean-up of the premises and the repair expense for any damage caused to the premises throughout the term of this Permit. PERMITTEE shall, at the direction of the CITY, provide a sufficient number of dumpsters and trash collection cans for the event. PERMITTEE will be responsible to reimburse the CITY for out-of-pocket costs (i.e. tipping fee) associated with trash removal and disposal. The CITY strongly encourages PERMITTEE to utilize volunteers for clean-up.

PERMITTEE shall take good care of and shall keep the premises, including its fixtures and furnishings, in a clean, safe, orderly and sanitary condition including, but not limited to, keeping all sidewalks, parking areas, alleys, roadways and facilities/areas which are a part of the premises, neat and clean; guarding all defects on the premises which may be a hazard to the general public and business invitees; and promptly removing all debris or any other material which may be a hazard to the general public and business invitees. PERMITTEE shall promptly make all repairs which are required to maintain the premises in the condition which existed upon the commencement of its actual use and occupancy. PERMITTEE shall not be required to repair plumbing and electrical components of the premises for damages which is not caused by the PERMITTEE, its guests or invitees. At the termination of this Permit, PERMITTEE shall yield and deliver up the premises in like condition, reasonable use and wear thereof and damage by the elements exempted.

- (7) **Clean-up and Damage Bond.** PERMITTEE shall deposit with the Parks and Recreation Department a clean-up and damage bond in the form of cash or certified check payable to the CITY, in the amount of \$250.00. This will correlate with the type of insurance required. The bond should be deposited with the Community Services Department - Parks and Recreation Division at the time the application is submitted, when possible, but is required prior to the permit being presented to the City Commission for approval. The bond shall be processed to be returned to PERMITTEE, without interest, within seven (7) days after all of the following have occurred:

- (a) PERMITTEE has complied with all terms of this Permit, including completely vacating the premises by the required time period.

- (b) the term of the Permit has expired;
- (c) PERMITTEE has fully performed the restoration and clean-up of the premises to an "as-is" or better condition as prior to the event; and
- (d) PERMITTEE has paid all fees set forth herein.

Should PERMITTEE fail to comply with any of these terms, the CITY may retain the clean-up and damage bond and if the amount thereof is insufficient, pursue all other remedies.

- (8) **Electrical Permits.** For any event, carnival or fair connecting to or modifying an existing electrical source or service, PERMITTEE covenants and agrees to designate a licensed electrical contractor and secure an electrical permit in compliance under Article 525 of the current National Electric Code. An electrical permit shall be obtained two (2) weeks prior to the event and a copy shall be provided to the Community Services Department - Parks & Recreation Division office at least one (1) week prior to the event. Inspections shall be requested by the electrical contractor prior to the opening of the event, or use of the electrical service.
- (9) **All Utilities.** The CITY agrees to allow PERMITTEE to use existing electrical and water services for food and beverage concessions, lighting and audio equipment. However, the CITY shall not be responsible for any damages whatsoever due to any interruption in electrical, water or other services.

There shall be no modification or alteration of the CITY's electrical supply boxes or other equipment, unless prior approval has been obtained from the CITY and any work is approved by the CITY's electrical inspector. All such work must be done by a licensed electrical contractor at PERMITTEE'S sole expense.

- (10) **Reimbursement of Utility Costs.** PERMITTEE shall reimburse the CITY the sum of \$300.00 for the costs of electric, water and other utility services utilized by the PERMITTEE, its vendees and concessionaires.
- (11) **Signs.** PERMITTEE shall be entitled, at PERMITTEE'S own expense, to install signs and banners along the premises. Signs shall comply with the City of Marquette Land Development Code.
- (12) **Insurances.** CERTIFICATES OR OTHER EVIDENCE OF ALL REQUIRED COVERAGES AND ENDORSEMENTS MUST BE FILED WITH THE COMMUNITY SERVICES DEPARTMENT - PARKS & RECREATION DIVISION NO LATER THAN THE DATES LISTED WITH EACH TYPE OF INSUARANCE. FAILURE TO ABIDE BY THE REQUIRED DATES WILL RESULT IN THE EVENT BEING CANCELLED OR RESTRICT THE TYPE OF ACTIVITY THAT MAY OCCUR AT THE EVENT.

■ **General Liability**

PERMITTEE shall carry comprehensive general liability insurance, including premises and all operations, through companies licensed and admitted to do business in Michigan, which shall provide protection from all claims of damage or injury, including death, to persons and property which may arise out of, result from or be caused by PERMITTEE'S use or occupancy of the premises or its operations conducted thereon, with occurrence and aggregate limits of not less \$1,000,000, per occurrence.

THE CITY, ITS OFFICERS AND EMPLOYEES SHALL BE NAMED AN ADDITIONAL INSURED AND THIS COVERAGE SHALL BE ENDORSED ON THE CERTIFICATE AND POLICY "AS BEING PRIMARY TO THE CITY, AND NOT IN EXCESS OF ANY OTHER INSURANCE, SIMILAR PROTECTION (E.G. RISK MANAGEMENT ASSOCIATION) OR ANY OTHER VALID, APPLICABLE, OR COLLECTABLE INSURANCE OR SELF-INSURANCE WHICH IS OR MAY BE AVAILABLE TO OR CARRIED BY THE CITY."

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in cancellation of the event.

☐ **Liquor Liability.**

PERMITTEE or its designee (for example, a local service club) shall carry liquor liability insurance with combined limits of not less than \$500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of alcoholic beverages on the premises.

PERMITTEE shall, no later than 7 days prior to the Event, provide the CITY with a certificate or other evidence of liquor liability insurance coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

☒ **Motor Vehicle Liability**

PERMITTEE shall also obtain and maintain vehicle liability coverage for all owned, non-owned and hired motor vehicles which may be operated, maintained or used on the premises. Minimum combined limits of \$500,000 shall be maintained.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any motor vehicle at the event.

■ Food

PERMITTEE or its designee shall carry products and completed operations coverage insurance with combined limits of not less than \$500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of food on the premises.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of food at the event.

■ Other insurance.

If PERMITTEE employs any independent contractor or others for any purpose whatsoever in relation to its use or occupancy of the premises, or for any operations or maintenance connected therewith, PERMITTEE shall obtain and maintain, or cause said independent contractor to obtain and maintain, policies of workers compensation insurance and such other liability insurance of the types and in the amounts outlined above which will provide coverage to the CITY, its officer and employees for all claims which may arise out of, result from or be caused by that work.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any independent contractor or other person or entity in connection with the event.

- (13) Indemnity. PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or suit for any loss, liability and damages that may be asserted or levied against the premises or the CITY, its officers or employees, in whole or in part by

reason of PERMITTEE'S acts or omissions, or by its use or occupancy of or its operations on the premises or by reason of any other person on the premises by contract, invitation or license, including any expenses, costs and attorney fees incurred in connection with any such claim, action or suit. In the event of any incident occurring on the premises resulting in any personal injury, including death, to any person, PERMITTEE shall give notice to the CITY within twelve (12) hours after the occurrence thereof or after PERMITTEE learns of such occurrence.

The indemnity, defense and hold harmless requirements shall include and extend to bodily injury to any person or injury to any property of PERMITTEE, its employees and all persons on the premises by contract, invitation or consent.

All property kept, stored or maintained in the premises shall be so kept, stored or maintained at the risk of PERMITTEE only.

- (14) **Right of Inspection and Access.** The CITY may enter the premises at any time to examine, inspect and to do whatever the CITY may deem necessary or desirable to determine compliance with or to enforce the terms of the permit. Marquette police, fire and other enforcement personnel shall have unrestricted access to the premises at all times.
- (15) **Compliance With Rules and Regulations.** PERMITTEE shall abide by all laws, statutes, ordinances, governmental orders, rules and regulations which control or in any manner affect or relate to the use or occupancy of the premises, or operations conducted thereon.
- (16) **Concessions.** PERMITTEE or its designees shall be allowed to sell assorted food and beverage items and to run concession stands during the term of the Permit. PERMITTEE or its designee shall obtain all necessary licenses and/or permits from the appropriate state, county or city governmental authorities. All concessions will be closed by 10:00 p.m. each day. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 2 weeks prior to the event. PERMITTEE shall submit a list of all food concessionaires to the Fire Marshall's office one (1) week prior to the event. PERMITTEE shall notify and require the following of all food concessionaires:
 - (a) A fire extinguisher shall be provided in all tents and in all areas and enclosures used for cooking.
 - (i) The fire extinguisher shall be a 1A:20B: C type, a minimum of 5 pounds.
 - (ii) Proof that the fire extinguisher has been serviced within the last year is required.
 - (iii) The extinguisher shall be tagged with the date and service provider.

(iv) If the fire extinguisher was purchased within the last year, a sales slip must be provided.

(v) The unit shall be mounted on the center post of each tent, not more than five (5) feet of the ground and accessible for use in an emergency.

(b) All propane tanks used for cooking shall be secured so as to prevent tipping. The tanks shall be remote from congested areas.

(c) Only approved, heavy-duty extension cords shall be used and all electrical connections shall be protected.

If the vendor fails to comply with these requirements, they will not be permitted to participate in the event.

- ☐ (17) Alcoholic Beverages. PERMITTEE or its designee shall be allowed to sell and/or furnish beer and wine on the premises as follows:

from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;

PERMITTEE is solely responsible for obtaining all necessary licenses and permits in order to sell and/or furnish alcohol products. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 7 days prior to the event. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

If an additional day is needed for the event due to inclement weather, the time for selling and/or furnishing beer and wine on the premises shall be from _____ a.m. / p.m. until _____ a.m. / p.m. on _____, 20__. The sale, furnishing and consumption of alcoholic beverages is specifically conditioned upon PERMITTEE or its designee obtaining and maintaining the appropriate license or permit from the Michigan liquor control commission at all relevant times and on PERMITTEE or its designee obtaining and maintaining liquor liability insurance as required in this Permit.

- (18) Exclusive Use. PERMITTEE shall have the exclusive use of the premises during the term of this permit.
- ☐ (19) Admission. PERMITTEE may charge admission to the general public to enter premises. Entry shall not be denied to any individual based upon race, sex, age, creed, or national origin.

- (20) **Police and Fire Protection.** PERMITTEE shall fully reimburse the CITY at overtime and fringe benefit rates for all additional police and/or fire department officers who are assigned to the premises, or the vicinity thereof, because of the use or occupancy thereof by PERMITTEE.
- (21) **Parking and Traffic.** PERMITTEE shall prohibit all motor vehicles in or on the premises and shall cause all streets and alleys to be properly barricaded and signed. All motor vehicles shall be operated only on established roads and parked in designated areas, except as allowed by any separate permit obtained by PERMITTEE from the City's Engineering Department. All fire lanes and no parking zones shall be maintained during the event.
- (22) **Health and Sanitation Facilities.** PERMITTEE shall furnish and maintain a sufficient number of portable bathrooms and washing facilities, at PERMITTEE'S expense. This number shall be determined by the Marquette County Health Department. Each bank or group of portable restrooms shall have a minimum of one (1) barrier free/ADA compliant restroom. A bank or group consists of ten (10) or less portable restrooms.
- (23) **Compliance with PERMITTEE'S Representations.** PERMITTEE shall fully comply with all representations and promises set forth in its Application for Special Events Permit
- ☐ (24) **Equipment and Services.** The CITY agrees to have the following equipment and services available during the term of this Permit:

_____.
- (25) **Security.** It shall be PERMITTEE'S sole responsibility to provide security throughout the term of the event. The Chief of Police or designee shall establish the number of security personnel whom PERMITTEE shall be required to have on the premises. The security shall be provided by a licensed and certified security agency, whose members shall be in identifiable uniforms.
- (26) **Bleachers, Booths, Fencing and Tents.** PERMITTEE shall be solely responsible for the construction and removal of any bleachers, booths, fencing, tents or structures used during the course of the event.
- (27) **Reimbursement of Other Costs.** PERMITTEE shall reimburse the CITY for all cost relating to the use of barricades, fencing, bleachers and other facilities and equipment provided by the CITY. PERMITTEE, on behalf of the organization, agrees to reimburse the City of Marquette for its "out-of-pocket" expenses which includes but is not limited to overtime of City employees and trash disposal tipping

fees at landfills. City staff is readily accessible to discuss out-of-pocket cost estimates and ways to reduce these costs. All City of Marquette invoices sent to organizations for reimbursement of out-of-pocket costs are due within thirty (30) days.

- (28) Tents. All tents or air supported structures used during the term of the permit shall comply with Section 31 of the Michigan Building Code and Section 24 of the International Fire Code. Material of all tents shall be of non-combustible material or flame resistant material conforming to NFPA 701, treated in an approved manner to render the material flame resistant. Appropriate documentation must be presented to any Building Code Enforcement Officer, Fire Official or other Code Official upon request. A copy shall also be retained on the premises where the tent is located. The documentation must attest to the following information relative to the flame resistance of the fabric:

- (a) Name and address of the owners of the tent or air supported structure.
- (b) Date the fabric was last treated with flame resistant solution.
- (c) Trade name of kind of chemical used in treatment.
- (d) Name of person or firm treating the material.
- (e) Name of testing agency and test standard by which the fabric was treated.

If more than one tent or air supported structure is located on the premises a copy of all required documentation for each tent or structure shall be kept at a central location on the premises. The use of gasoline, gas, charcoal or any other cooking devices or any unapproved flame inside or within 20 feet of a tent or other air supported structure is strictly prohibited.

- (29) Fire.
 - (a) No open flames or explosives shall be permitted for decoration, display or use without permission from the Fire Department.
 - (b) The use of paper or fabric for coverings or decoration shall not be permitted unless proof is submitted to the Fire Department that such materials are flame proof.
 - (c) All seating capacity and room arrangements shall be approved by the Fire Department.

(d) An access lane, a minimum of eighteen (18) feet wide, shall be maintained leading into and out of the event so that emergency vehicles can enter in case of an emergency.

(e) Barricades or any type of obstruction which could impede or interfere with fire suppression forces shall not be erected.

- (30) Music. PERMITTEE shall be solely responsible for obtaining the appropriate license to present any music covered by copyright, whether by live performance, recorded music or retransmission of radio and/or television broadcast. The PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or suit or for any loss, liability and damages that may be asserted or levied against the CITY, its officers or employees, based in whole or in part upon a claim of copyright infringement.

- (31) Conditions/Requirements. Additional conditions and requirements of this permit are as follows:

PERMITTEE and its vendors may be in the park, each year, beginning at 8:00 a.m. on the Thursday prior to the event and must remove all items from the park no later than 8:00 pm on the Monday following the event.

- (32) Cancellation or Modification. It is understood and agreed that ten (10) days advance written notice of any cancellation, reduction and/or material changes in the proposed agenda will be provided to the Community Services Director, City of Marquette, 401 East Fair Avenue, Marquette, Michigan, 49855. PERMITTEE may terminate this Permit and all rights and obligations of the parties, without recourse by providing written notice no later than 30 days prior to the first day of the term each year to the Community Services Director, City of Marquette, 401 East Fair Avenue, Marquette, Michigan 49855. CITY may terminate this Agreement at any point prior to the first day of the event each year, by providing at least 24 hours written notice. CITY may only cancel this Permit pursuant to this paragraph if CITY is unable to provide the premises to PERMITTEE due to health, safety, legal, unforeseen weather or similar conditions that have either destroyed the premises or made the premises unusable for PERMITTEE's event. If this Permit is terminated pursuant to this paragraph, CITY agrees to use its best efforts to provide as much advance notice to PERMITTEE as possible.

- (33) Duplicate Original Copies. This Permit is executed in triplicate original copies, two of which shall be retained by the CITY and one by PERMITTEE, each of which shall be deemed to be an original, but all of which shall be construed as one and the same document.

- (34) Governing Law. This Permit and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Michigan.

- (35) Paragraph Headings. The paragraph headings appearing in the Permit have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the paragraphs to which they appertain.
- (36) Entire Agreement. This Permit represents the entire agreement of the parties and shall be deemed to be an integrated agreement containing all prior and contemporaneous oral and written agreement between the parties, and shall not be modified in any part, except in a writing signed by all parties.

IT SHALL BE THE RESPONSIBILITY OF THE PERMITTEE TO DESIGNATE A SPECIFIC LOCATION ON THE PREMISES AS ITS HEADQUARTERS AND TO HAVE AVAILABLE AT THAT LOCATION, AT ALL TIMES THE PREMISES ARE OPEN TO THE PUBLIC AND DURING SET UP OR CONSTRUCTION, AT LEAST ONE PERSON WHO HAS THE KNOWLEDGE AND AUTHORITY TO REPRESENT PERMITTEE CONCERNING ALL ACTIVITIES CONDUCTED UNDER THE TERMS OF THE PERMIT. FAILURE TO COMPLY WITH THIS SECTION OR ANY OTHER TERM OF THE PERMIT SHALL BE CAUSE FOR THE CITY MANAGER, CHIEF OF POLICE, FIRE CHIEF, OR DESIGNEE TO IMMEDIATELY REVOKE THIS SPECIAL EVENTS PERMIT AND TO REQUIRE PERMITTEE TO VACATE THE PREMISES.

The parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF MARQUETTE

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

Approved as to Substance:

Karen M. Kovacs, City Manager

LSAA, INC.



By: Tristan Louma
Its: Event Coordinator

Approved as to Form:

Suzanne C. Larsen, City Attorney

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

Consent Agenda - Roll Call Vote
Outback Art Fair - Special Event Permit

BACKGROUND:

Cynthia Engle d/b/a Outback Art Fair is a Special Event Permit for City Parks, Streets, Buildings and Grounds to use Shiras Park for the purpose of the Outback Art Fair on July 30, 2022 and July 31, 2022. Staff worked with the City Attorney and Ms. Engle to develop the permit.

FISCAL EFFECT:

The general fund will receive \$1,940 plus miscellaneous reimbursements if approved.

RECOMMENDATION:

Approve the Special Event Permit for City Parks, Streets, Buildings and Grounds with Ms. Cynthia Engle d/b/a Outback Art Fair, and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

▣ Permit

SPECIAL EVENTS PERMIT FOR CITY PARKS,
STREETS, BUILDINGS AND GROUNDS

THIS AGREEMENT, made this June 29 day of June, 2022 between CITY OF MARQUETTE, a Municipal Corporation, of 300 W. Baraga Avenue, Marquette, Michigan, 49855, hereinafter referred to as the "CITY", and Cynthia Engle d/b/a Outback Art Fair of 380 Karen Road, Marquette, Michigan 49855, hereinafter referred to as "PERMITTEE".

INSTRUCTIONS - PERMITTEE shall comply with all sections of this permit with a darkened box (■) .

WITNESSETH:

- (1) Description. The CITY in consideration of the terms, conditions, covenants and agreements to be performed by PERMITTEE, does hereby grant to PERMITTEE permission to use and occupy the following ["premises"]:

SHIRAS PARK

- (2) Term. The term of this Permit shall be for July 30, 2022 from 10:00 a.m. until July 31, 2022 at 6:00 p.m.
- (3) Acceptance of Premises. PERMITTEE has examined and is satisfied with the physical condition of the premises, and accepts the premises in their "as is" condition.
- (4) Use. PERMITTEE may use and occupy the premises for:

OUTBACK ART FAIR

and for no other reason. The use and occupancy shall only be under PERMITTEE'S name or any assumed name of PERMITTEE. PERMITTEE shall not use or knowingly allow any part of the premises to be used for any unlawful purpose. In the event of any violation of this provision the CITY at its sole discretion may terminate this Permit and expel PERMITTEE from the premises. PERMITTEE waives, releases and relinquishes all claims of right or interest in the premises, other than as granted pursuant to this Permit.

- (5) Fees. PERMITTEE shall be responsible for paying the following fees in connection with the use of the PREMISES:

Exclusive Park Use	\$1,045.00 (first day)
	\$895.00 (second day)
55-gallon trash drums	*
Trash drum liners	at current cost

*PERMITTEE must submit a "Request to Borrow" form to the City Department of Public Works for any garbage cans, barricades, etc. needed. All items

requested must be transported to and from the CITY for use during the event and must return the drums to the City no later than 5:00 p.m. the Monday immediately after the event ends.

- (6) Clean-up, Repairs, Maintenance and Damage. PERMITTEE shall be solely responsible for clean-up of the premises and the repair expense for any damage caused to the premises throughout the term of this Permit. PERMITTEE shall, at the direction of the CITY, provide a sufficient number of dumpsters and trash collection cans for the event. PERMITTEE will be responsible to reimburse the CITY for out-of-pocket costs (i.e. tipping fee) associated with trash removal and disposal. The CITY strongly encourages PERMITTEE to utilize volunteers for clean-up.

PERMITTEE shall take good care of and shall keep the premises, including its fixtures and furnishings, in a clean, safe, orderly and sanitary condition including, but not limited to, keeping all sidewalks, parking areas, alleys, roadways and facilities/areas which are a part of the premises, neat and clean; guarding all defects on the premises which may be a hazard to the general public and business invitees; and promptly removing all debris or any other material which may be a hazard to the general public and business invitees. PERMITTEE shall promptly make all repairs which are required to maintain the premises in the condition which existed upon the commencement of its actual use and occupancy. PERMITTEE shall not be required to repair plumbing and electrical components of the premises for damages which is not caused by the PERMITTEE, its guests or invitees. At the termination of this Permit, PERMITTEE shall yield and deliver up the premises in like condition, reasonable use and wear thereof and damage by the elements exempted.

- (7) Clean-up and Damage Bond. PERMITTEE shall deposit with the Parks and Recreation Department a clean-up and damage bond in the form of cash or certified check payable to the CITY, in the amount of \$250.00. This will correlate with the type of insurance required. The bond should be deposited with the Community Services Department - Parks and Recreation Division at the time the application is submitted, when possible, but is required prior to the permit being presented to the City Commission for approval. The bond shall be processed to be returned to PERMITTEE, without interest, within seven (7) days after all of the following have occurred:

- (a) PERMITTEE has complied with all terms of this Permit, including completely vacating the premises by the required time period.
- (b) the term of the Permit has expired;
- (c) PERMITTEE has fully performed the restoration and clean-up of the premises to an "as-is" or better condition as prior to the event; and
- (d) PERMITTEE has paid all fees set forth herein.

Should PERMITTEE fail to comply with any of these terms, the CITY may retain the clean-up and damage bond and if the amount thereof is insufficient, pursue all other remedies.

- (8) **Electrical Permits.** For any event, carnival or fair connecting to or modifying an existing electrical source or service, PERMITTEE covenants and agrees to designate a licensed electrical contractor and secure an electrical permit in compliance under Article 525 of the current National Electric Code. An electrical permit shall be obtained two (2) weeks prior to the event and a copy shall be provided to the Community Services Department - Parks & Recreation Division office at least one (1) week prior to the event. Inspections shall be requested by the electrical contractor prior to the opening of the event, or use of the electrical service.

- (9) **All Utilities.** The CITY agrees to allow PERMITTEE to use existing electrical and water services for food and beverage concessions, lighting and audio equipment. However, the CITY shall not be responsible for any damages whatsoever due to any interruption in electrical, water or other services.

There shall be no modification or alteration of the CITY's electrical supply boxes or other equipment, unless prior approval has been obtained from the CITY and any work is approved by the CITY's electrical inspector. All such work must be done by a licensed electrical contractor at PERMITTEE'S sole expense.

- (10) **Reimbursement of Utility Costs.** PERMITTEE shall reimburse the CITY the sum of \$300.00 for the costs of electric, water and other utility services utilized by the PERMITTEE, its vendees and concessionaires.
- (11) **Signs.** PERMITTEE shall be entitled, at PERMITTEE'S own expense, to install signs and banners along the premises. Signs shall comply with the City of Marquette Land Development Code.
- (12) **Insurances.** CERTIFICATES OR OTHER EVIDENCE OF ALL REQUIRED COVERAGES AND ENDORSEMENTS MUST BE FILED WITH THE COMMUNITY SERVICES DEPARTMENT - PARKS & RECREATION DIVISION NO LATER THAN THE DATES LISTED WITH EACH TYPE OF INSUARANCE. •FAILURE TO ABIDE BY THE REQUIRED DATES WILL RESULT IN THE EVENT BEING CANCELLED OR RESTRICT THE TYPE OF ACTIVITY THAT MAY OCCUR AT THE EVENT.

- **General Liability**

PERMITTEE shall carry comprehensive general liability insurance, including premises and all operations, through companies licensed and admitted to do business in Michigan, which shall provide protection from all claims of damage or injury, including death, to persons and property which may arise out of, result from or be caused by PERMITTEE'S use or

occupancy of the premises or its operations conducted thereon, with occurrence and aggregate limits of not less \$1,000,000, per occurrence.

THE CITY, ITS OFFICERS AND EMPLOYEES SHALL BE NAMED AN ADDITIONAL INSURED AND THIS COVERAGE SHALL BE ENDORSED ON THE CERTIFICATE AND POLICY "AS BEING PRIMARY TO THE CITY, AND NOT IN EXCESS OF ANY OTHER INSURANCE, SIMILAR PROTECTION (E.G. RISK MANAGEMENT ASSOCIATION) OR ANY OTHER VALID, APPLICABLE, OR COLLECTABLE INSURANCE OR SELF-INSURANCE WHICH IS OR MAY BE AVAILABLE TO OR CARRIED BY THE CITY."

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in cancellation of the event.

☐ Liquor Liability.

PERMITTEE or its designee (for example, a local service club) shall carry liquor liability insurance with combined limits of not less than \$500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of alcoholic beverages on the premises.

PERMITTEE shall, no later than 7 days prior to the Event, provide the CITY with a certificate or other evidence of liquor liability insurance coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

☐ Motor Vehicle Liability

PERMITTEE shall also obtain and maintain vehicle liability coverage for all owned, non-owned and hired motor vehicles which may be operated, maintained or used on the premises. Minimum combined limits of \$500,000 shall be maintained.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any motor vehicle at the event.

■ Food

PERMITTEE or its designee shall carry products and completed operations coverage insurance with combined limits of not less than \$500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of food on the premises.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of food at the event.

■ Other insurance.

If PERMITTEE employs any independent contractor or others for any purpose whatsoever in relation to its use or occupancy of the premises, or for any operations or maintenance connected therewith, PERMITTEE shall obtain and maintain, or cause said independent contractor to obtain and maintain, policies of workers compensation insurance and such other liability insurance of the types and in the amounts outlined above which will provide coverage to the CITY, its officer and employees for all claims which may arise out of, result from or be caused by that work.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any independent contractor or other person or entity in connection with the event.

- (13) Indemnity. PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or suit for any loss, liability and damages that may be asserted or levied against the premises or the CITY, its officers or employees, in whole or in part by reason of PERMITTEE'S acts or omissions, or by its use or occupancy of or its operations on the premises or by reason of any other person on the premises by contract, invitation or license, including any expenses, costs and attorney fees incurred in connection with any such claim, action or suit. In the event of any incident occurring on the premises resulting in any personal injury, including death, to any person, PERMITTEE shall give notice to the CITY within twelve (12) hours after the occurrence thereof or after PERMITTEE learns of such occurrence.

The indemnity, defense and hold harmless requirements shall include and extend to bodily injury to any person or injury to any property of PERMITTEE, its employees and all persons on the premises by contract, invitation or consent.

All property kept, stored or maintained in the premises shall be so kept, stored or maintained at the risk of PERMITTEE only.

- (14) Right of Inspection and Access. The CITY may enter the premises at any time to examine, inspect and to do whatever the CITY may deem necessary or desirable to determine compliance with or to enforce the terms of the permit. Marquette police, fire and other enforcement personnel shall have unrestricted access to the premises at all times.
- (15) Compliance With Rules and Regulations. PERMITTEE shall abide by all laws, statutes, ordinances, governmental orders, rules and regulations which control or in any manner affect or relate to the use or occupancy of the premises, or operations conducted thereon.
- (16) Concessions. PERMITTEE or its designees shall be allowed to sell assorted food and beverage items and to run concession stands during the term of the Permit. PERMITTEE or its designee shall obtain all necessary licenses and/or permits from the appropriate state, county or city governmental authorities. All concessions will be closed by 10:00 p.m. each day. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 2 weeks prior to the event. PERMITTEE shall submit a list of all food concessionaires to the Fire Marshall's office one (1) week prior to the event. PERMITTEE shall notify and require the following of all food concessionaires:
 - (a) A fire extinguisher shall be provided in all tents and in all areas and enclosures used for cooking.
 - (i) The fire extinguisher shall be a 1A:20B: C type, a minimum of 5 pounds.
 - (ii) Proof that the fire extinguisher has been serviced within the last year is required.
 - (iii) The extinguisher shall be tagged with the date and service provider.
 - (iv) If the fire extinguisher was purchased within the last year, a sales slip must be provided.
 - (v) The unit shall be mounted on the center post of each tent, not more than five (5) feet of the ground and accessible for use in an emergency.

(b) All propane tanks used for cooking shall be secured so as to prevent tipping. The tanks shall be remote from congested areas.

(c) Only approved, heavy-duty extension cords shall be used and all electrical connections shall be protected.

If the vendor fails to comply with these requirements, they will not be permitted to participate in the event.

- ☐ (17) Alcoholic Beverages. PERMITTEE or its designee shall be allowed to sell and/or furnish beer and wine on the premises as follows:

from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__ ;

PERMITTEE is solely responsible for obtaining all necessary licenses and permits in order to sell and/or furnish alcohol products. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 7 days prior to the event. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

If an additional day is needed for the event due to inclement weather, the time for selling and/or furnishing beer and wine on the premises shall be from _____ a.m. / p.m. until _____ a.m. / p.m. on _____, 20__. The sale, furnishing and consumption of alcoholic beverages is specifically conditioned upon PERMITTEE or its designee obtaining and maintaining the appropriate license or permit from the Michigan liquor control commission at all relevant times and on PERMITTEE or its designee obtaining and maintaining liquor liability insurance as required in this Permit.

- (18) Exclusive Use. PERMITTEE shall have the exclusive use of the premises during the term of this permit.
- ☐ (19) Admission. PERMITTEE may charge admission to the general public to enter premises. Entry shall not be denied to any individual based upon race, sex, age, creed, or national origin.
- (20) Police and Fire Protection. PERMITTEE shall fully reimburse the CITY at overtime and fringe benefit rates for all additional police and/or fire department officers who are assigned to the premises, or the vicinity thereof, because of the use or occupancy thereof by PERMITTEE.
- (21) Parking and Traffic. PERMITTEE shall prohibit all motor vehicles in or on the premises and shall cause all streets and alleys to be properly barricaded and signed. All motor vehicles shall be operated only on established roads and parked

in designated areas. All fire lanes and no parking zones shall be maintained during the event.

- (22) Health and Sanitation Facilities. PERMITTEE shall furnish and maintain a sufficient number of portable bathrooms and washing facilities, at PERMITTEE'S expense. This number shall be determined by the Marquette County Health Department. Each bank or group of portable restrooms shall have a minimum of one (1) barrier free/ADA compliant restroom. A bank or group consists of ten (10) or less portable restrooms.
- (23) Compliance with PERMITTEE'S Representations. PERMITTEE shall fully comply with all representations and promises set forth in its Application for Special Events Permit
- (24) Equipment and Services. The CITY agrees to have the following equipment and services available during the term of this Permit:

- (25) Security. It shall be PERMITTEE'S sole responsibility to provide security throughout the term of the event. The Chief of Police or designee shall establish the number of security personnel whom PERMITTEE shall be required to have on the premises. The security shall be provided by a licensed and certified security agency, whose members shall be in identifiable uniforms.
- (26) Bleachers, Booths, Fencing and Tents. PERMITTEE shall be solely responsible for the construction and removal of any bleachers, booths, fencing, tents or structures used during the course of the event, except that CITY shall be responsible for booths located within the Arena.
- (27) Reimbursement of Other Costs. PERMITTEE shall reimburse the CITY for all cost relating to the use of barricades, fencing, bleachers and other facilities and equipment provided by the CITY. PERMITTEE, on behalf of the organization, agrees to reimburse the City of Marquette for its "out-of-pocket" expenses which includes but is not limited to overtime of City employees and trash disposal tipping fees at landfills. City staff is readily accessible to discuss out-of-pocket cost estimates and ways to reduce these costs. All City of Marquette invoices sent to organizations for reimbursement of out-of-pocket costs are due within thirty (30) days.
- (28) Tents. All tents or air supported structures used during the term of the permit shall comply with Section 31 of the Michigan Building Code and Section 24 of the International Fire Code. Material of all tents shall be of non-combustible material or flame resistant material conforming to NFPA 701, treated

in an approved manner to render the material flame resistant. Appropriate documentation must be presented to any Building Code Enforcement Officer, Fire Official or other Code Official upon request. A copy shall also be retained on the premises where the tent is located. The documentation must attest to the following information relative to the flame resistance of the fabric:

- (a) Name and address of the owners of the tent or air supported structure.
- (b) Date the fabric was last treated with flame resistant solution.
- (c) Trade name of kind of chemical used in treatment.
- (d) Name of person or firm treating the material.
- (e) Name of testing agency and test standard by which the fabric was treated.

If more than one tent or air supported structure is located on the premises a copy of all required documentation for each tent or structure shall be kept at a central location on the premises. The use of gasoline, gas, charcoal or any other cooking devices or any unapproved flame inside or within 20 feet of a tent or other air supported structure is strictly prohibited.

■ (29) Fire.

- (a) No open flames or explosives shall be permitted for decoration, display or use without permission from the Fire Department.
- (b) The use of paper or fabric for coverings or decoration shall not be permitted unless proof is submitted to the Fire Department that such materials are flame proof.
- (c) All seating capacity and room arrangements shall be approved by the Fire Department.
- (d) An access lane, a minimum of eighteen (18) feet wide, shall be maintained leading into and out of the event so that emergency vehicles can enter in case of an emergency.
- (e) Barricades or any type of obstruction which could impede or interfere with fire suppression forces shall not be erected.

■ (30) Music. PERMITTEE shall be solely responsible for obtaining the appropriate license to present any music covered by copyright, whether by live performance, recorded music or retransmission of radio and/or television broadcast. The PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or

suit or for any loss, liability and damages that may be asserted or levied against the CITY, its officers or employees, based in whole or in part upon a claim of copyright infringement.

- (31) **Conditions/Requirements.** Additional conditions and requirements of this permit are as follows:

PERMITTEE has permission to begin setting up on July 29, 2022 at 3:00 p.m. and must have all items removed from the park by 8:00 p.m. on August 1, 2022.

- (32) **Cancellation or Modification.** It is understood and agreed that ten (10) days advance written notice of any cancellation, reduction and/or material changes in the proposed agenda will be provided to the Community Services Director, City of Marquette, 401 East Fair Avenue, Marquette, Michigan, 49855.
- (33) **Duplicate Original Copies.** This Permit is executed in triplicate original copies, two of which shall be retained by the CITY and one by PERMITTEE, each of which shall be deemed to be an original, but all of which shall be construed as one and the same document.
- (34) **Governing Law.** This Permit and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Michigan.
- (35) **Paragraph Headings.** The paragraph headings appearing in the Permit have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the paragraphs to which they appertain.
- (36) **Entire Agreement.** This Permit represents the entire agreement of the parties and shall be deemed to be an integrated agreement containing all prior and contemporaneous oral and written agreement between the parties, and shall not be modified in any part, except in a writing signed by all parties.

IT SHALL BE THE RESPONSIBILITY OF THE PERMITTEE TO DESIGNATE A SPECIFIC LOCATION ON THE PREMISES AS ITS HEADQUARTERS AND TO HAVE AVAILABLE AT THAT LOCATION, AT ALL TIMES THE PREMISES ARE OPEN TO THE PUBLIC AND DURING SET UP OR CONSTRUCTION, AT LEAST ONE PERSON WHO HAS THE KNOWLEDGE AND AUTHORITY TO REPRESENT PERMITTEE CONCERNING ALL ACTIVITIES CONDUCTED UNDER THE TERMS OF THE PERMIT. FAILURE TO COMPLY WITH THIS SECTION OR ANY OTHER TERM OF THE PERMIT SHALL BE CAUSE FOR THE CITY MANAGER, CHIEF OF POLICE, FIRE CHIEF, OR DESIGNEE TO IMMEDIATELY REVOKE THIS SPECIAL EVENTS PERMIT AND TO REQUIRE PERMITTEE TO VACATE THE PREMISES.

The parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF MARQUETTE

Jennifer A. Smith, Mayor


Cynthia Engle d/b/a Outback Art Fair

Kyle Whitney, City Clerk

Approved as to Substance:

Karen M. Kovacs, City Manager

Approved as to Form:

Suzanne C. Larsen, City Attorney

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

Consent Agenda - Roll Call Vote

Kurt Lahtinen - Guts Frisbee Tournament - Special Event Permit

BACKGROUND:

Kurt Lahtinen is requesting a three-year Special Events Permit for City Parks, Streets, Buildings and Grounds to use the Tourist Park Day Use Area for the U.S. National Guts Frisbee Tournament on the following dates: August 6-7, 2022; August 5-6, 2023; and August 3-4, 2024. Staff has worked with the City Attorney and Kurt Lahtinen to develop the permit.

FISCAL EFFECT:

The Guts Frisbee Tournament was approved for Promotional Funds credit totaling \$1,410 effectively covering the cost of the park use fees.

RECOMMENDATION:

Approve the Special Event Permit for City Parks, Streets, Buildings and Grounds with Kurt Lahtinen, and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

▣ Permit

**SPECIAL EVENTS PERMIT FOR CITY PARKS,
STREETS, BUILDINGS AND GROUNDS**

THIS AGREEMENT, made this _____ day of _____, 2022 between CITY OF MARQUETTE, a Municipal Corporation, of 300 W. Baraga Avenue, Marquette, Michigan, 49855, hereinafter referred to as the "CITY", and KURT LAHTINEN of 1905 Mildred Avenue, Marquette, Michigan 49855, hereinafter referred to as "PERMITTEE".

INSTRUCTIONS - PERMITTEE shall comply with all sections of this permit with a darkened box (■) .

WITNESSETH:

- (1) Description. The CITY in consideration of the terms, conditions, covenants and agreements to be performed by PERMITTEE, does hereby grant to PERMITTEE permission to use and occupy the following ["premises"]:

TOURIST PARK DAY USE AREA

- (2) Term. The term of this Permit shall be for the periods:

August 6, 2022 from 8:00 a.m. until August 7, 2022 at 10:00 p.m.;
August 5, 2023 from 8:00 a.m. until August 6, 2023 at 10:00 p.m.; and
August 3, 2024 from 8:00 a.m. until August 4, 2024 at 10:00 p.m.

- (3) Acceptance of Premises. PERMITTEE has examined and is satisfied with the physical condition of the premises, and accepts the premises in their "as is" condition.
- (4) Use. PERMITTEE may use and occupy the premises for:

"US NATIONAL GUTS FRISBEE TOURNAMENT"

and for no other reason. The use and occupancy shall only be under PERMITTEE'S name or any assumed name of PERMITTEE. PERMITTEE shall not use or knowingly allow any part of the premises to be used for any unlawful purpose. In the event of any violation of this provision the CITY at its sole discretion may terminate this Permit and expel PERMITTEE from the premises. PERMITTEE waives, releases and relinquishes all claims of right or interest in the premises, other than as granted pursuant to this Permit.

- (5) Fees. PERMITTEE shall be responsible for paying the following fees in connection with the use of the PREMISES:

Tourist Park Day Use Area
Tourist Park Day Use Area

1 day Exclusive Use \$775
2nd day Exclusive Use \$665

Trash drum liners (@ current cost) \$ _____ **

All user fees may be increased to annually based on CITY's standard increases. CITY shall provide notification to PERMITTEE of any increase in fees at least 45 days prior to the event each year.

****PERMITTEE may pickup thirty (30) or more 55 gallon trash drums from the CITY for use during the event and must return the drums to the City no later than 5:00 p.m. the Monday immediately after the event ends.**

- (6) **Clean-up, Repairs, Maintenance and Damage.** PERMITTEE shall be solely responsible for clean-up of the premises and the repair expense for any damage caused to the premises throughout the term of this Permit. PERMITTEE shall, at the direction of the CITY, provide a sufficient number of dumpsters and trash collection cans for the event. PERMITTEE will be responsible to reimburse the CITY for out-of-pocket costs (i.e. tipping fee) associated with trash removal and disposal. The CITY strongly encourages PERMITTEE to utilize volunteers for clean-up.

PERMITTEE shall take good care of and shall keep the premises, including its fixtures and furnishings, in a clean, safe, orderly and sanitary condition including, but not limited to, keeping all sidewalks, parking areas, alleys, roadways and facilities/areas which are a part of the premises, neat and clean; guarding all defects on the premises which may be a hazard to the general public and business invitees; and promptly removing all debris or any other material which may be a hazard to the general public and business invitees. PERMITTEE shall promptly make all repairs which are required to maintain the premises in the condition which existed upon the commencement of its actual use and occupancy. PERMITTEE shall not be required to repair plumbing and electrical components of the premises for damages which is not caused by the PERMITTEE, its guests or invitees. At the termination of this Permit, PERMITTEE shall yield and deliver up the premises in like condition, reasonable use and wear thereof and damage by the elements exempted.

- (7) **Clean-up and Damage Bond.** PERMITTEE shall deposit with the Parks and Recreation Department a clean-up and damage bond in the form of cash or certified check payable to the CITY, in the amount of \$250.00. This will correlate with the type of insurance required. The bond should be deposited with the Community Services Department - Parks and Recreation Division at the time the application is submitted, when possible, but is required prior to the permit being presented to the City Commission for approval. The bond shall be processed to be returned to PERMITTEE, without interest, within seven (7) days after all of the following have occurred:

- (a) PERMITTEE has complied with all terms of this Permit, including completely vacating the premises by the required time period.

- (b) the term of the Permit has expired;
- (c) PERMITTEE has fully performed the restoration and clean-up of the premises to an "as-is" or better condition as prior to the event; and
- (d) PERMITTEE has paid all fees set forth herein.

Should PERMITTEE fail to comply with any of these terms, the CITY may retain the clean-up and damage bond and if the amount thereof is insufficient, pursue all other remedies.

- ☐ (8) **Electrical Permits.** For any event, carnival or fair connecting to or modifying an existing electrical source or service, PERMITTEE covenants and agrees to designate a licensed electrical contractor and secure an electrical permit in compliance under Article 525 of the current National Electric Code. An electrical permit shall be obtained two (2) weeks prior to the event and a copy shall be provided to the Community Services Department - Parks & Recreation Division office at least one (1) week prior to the event. Inspections shall be requested by the electrical contractor prior to the opening of the event, or use of the electrical service.
- ☐ (9) **All Utilities.** The CITY agrees to allow PERMITTEE to use existing electrical and water services for food and beverage concessions, lighting and audio equipment. However, the CITY shall not be responsible for any damages whatsoever due to any interruption in electrical, water or other services.

There shall be no modification or alteration of the CITY's electrical supply boxes or other equipment, unless prior approval has been obtained from the CITY and any work is approved by the CITY's electrical inspector. All such work must be done by a licensed electrical contractor at PERMITTEE'S sole expense.

- (10) **Reimbursement of Utility Costs.** PERMITTEE shall reimburse the CITY the sum of \$300.00 for the costs of electric, water and other utility services utilized by the PERMITTEE, its vendees and concessionaires.
- (11) **Signs.** PERMITTEE shall be entitled, at PERMITTEE'S own expense, to install signs and banners along the premises. Signs shall comply with the City of Marquette Land Development Code.
- (12) **Insurances.** CERTIFICATES OR OTHER EVIDENCE OF ALL REQUIRED COVERAGES AND ENDORSEMENTS MUST BE FILED WITH THE COMMUNITY SERVICES DEPARTMENT - PARKS & RECREATION DIVISION NO LATER THAN THE DATES LISTED WITH EACH TYPE OF INSUARNCE. FAILURE TO ABIDE BY THE REQUIRED DATES WILL RESULT IN THE EVENT BEING CANCELLED OR RESTRICT THE TYPE OF ACTIVITY THAT MAY OCCUR AT THE EVENT.

■ **General Liability**

PERMITTEE shall carry comprehensive general liability insurance, including premises and all operations, through companies licensed and admitted to do business in Michigan, which shall provide protection from all claims of damage or injury, including death, to persons and property which may arise out of, result from or be caused by PERMITTEE'S use or occupancy of the premises or its operations conducted thereon, with occurrence and aggregate limits of not less \$1,000,000, per occurrence.

THE CITY, ITS OFFICERS AND EMPLOYEES SHALL BE NAMED AN ADDITIONAL INSURED AND THIS COVERAGE SHALL BE ENDORSED ON THE CERTIFICATE AND POLICY "AS BEING PRIMARY TO THE CITY, AND NOT IN EXCESS OF ANY OTHER INSURANCE, SIMILAR PROTECTION (E.G. RISK MANAGEMENT ASSOCIATION) OR ANY OTHER VALID, APPLICABLE, OR COLLECTABLE INSURANCE OR SELF-INSURANCE WHICH IS OR MAY BE AVAILABLE TO OR CARRIED BY THE CITY."

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in cancellation of the event.

☐ **Liquor Liability.**

PERMITTEE or its designee (for example, a local service club) shall carry liquor liability insurance with combined limits of not less than \$500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of alcoholic beverages on the premises.

PERMITTEE shall, no later than 7 days prior to the Event, provide the CITY with a certificate or other evidence of liquor liability insurance coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

☐ **Motor Vehicle Liability**

PERMITTEE shall also obtain and maintain vehicle liability coverage for all owned, non-owned and hired motor vehicles which may be operated, maintained or used on the premises. Minimum combined limits of \$500,000 shall be maintained.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any motor vehicle at the event.

■ Food

PERMITTEE or its designee shall carry products and completed operations coverage insurance with combined limits of not less than \$500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of food on the premises.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of food at the event.

■ Other insurance.

If PERMITTEE employs any independent contractor or others for any purpose whatsoever in relation to its use or occupancy of the premises, or for any operations or maintenance connected therewith, PERMITTEE shall obtain and maintain, or cause said independent contractor to obtain and maintain, policies of workers compensation insurance and such other liability insurance of the types and in the amounts outlined above which will provide coverage to the CITY, its officer and employees for all claims which may arise out of, result from or be caused by that work.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any independent contractor or other person or entity in connection with the event.

- (13) Indemnity. PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or suit for any loss, liability and damages that may be asserted or levied against the premises or the CITY, its officers or employees, in whole or in part by

reason of PERMITTEE'S acts or omissions, or by its use or occupancy of or its operations on the premises or by reason of any other person on the premises by contract, invitation or license, including any expenses, costs and attorney fees incurred in connection with any such claim, action or suit. In the event of any incident occurring on the premises resulting in any personal injury, including death, to any person, PERMITTEE shall give notice to the CITY within twelve (12) hours after the occurrence thereof or after PERMITTEE learns of such occurrence.

The indemnity, defense and hold harmless requirements shall include and extend to bodily injury to any person or injury to any property of PERMITTEE, its employees and all persons on the premises by contract, invitation or consent.

All property kept, stored or maintained in the premises shall be so kept, stored or maintained at the risk of PERMITTEE only.

- (14) Right of Inspection and Access. The CITY may enter the premises at any time to examine, inspect and to do whatever the CITY may deem necessary or desirable to determine compliance with or to enforce the terms of the permit. Marquette police, fire and other enforcement personnel shall have unrestricted access to the premises at all times.
- (15) Compliance With Rules and Regulations. PERMITTEE shall abide by all laws, statutes, ordinances, governmental orders, rules and regulations which control or in any manner affect or relate to the use or occupancy of the premises, or operations conducted thereon.
- (16) Concessions. PERMITTEE or its designees shall be allowed to sell assorted food and beverage items and to run concession stands during the term of the Permit. PERMITTEE or its designee shall obtain all necessary licenses and/or permits from the appropriate state, county or city governmental authorities. All concessions will be closed by 10:00 p.m. each day. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 2 weeks prior to the event. PERMITTEE shall submit a list of all food concessionaires to the Fire Marshall's office one (1) week prior to the event. PERMITTEE shall notify and require the following of all food concessionaires:

(a) A fire extinguisher shall be provided in all tents and in all areas and enclosures used for cooking.

(i) The fire extinguisher shall be a 1A:20B: C type, a minimum of 5 pounds.

(ii) Proof that the fire extinguisher has been serviced within the last year is required.

(iii) The extinguisher shall be tagged with the date and service provider.

(iv) If the fire extinguisher was purchased within the last year, a sales slip must be provided.

(v) The unit shall be mounted on the center post of each tent, not more than five (5) feet of the ground and accessible for use in an emergency.

(b) All propane tanks used for cooking shall be secured so as to prevent tipping. The tanks shall be remote from congested areas.

(c) Only approved, heavy-duty extension cords shall be used and all electrical connections shall be protected.

If the vendor fails to comply with these requirements, they will not be permitted to participate in the event.

- ☐ (17) Alcoholic Beverages. PERMITTEE or its designee shall be allowed to sell and/or furnish beer and wine on the premises as follows:

from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;

PERMITTEE is solely responsible for obtaining all necessary licenses and permits in order to sell and/or furnish alcohol products. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 7 days prior to the event. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

If an additional day is needed for the event due to inclement weather, the time for selling and/or furnishing beer and wine on the premises shall be from _____ a.m. / p.m. until _____ a.m. / p.m. on _____, 20__. The sale, furnishing and consumption of alcoholic beverages is specifically conditioned upon PERMITTEE or its designee obtaining and maintaining the appropriate license or permit from the Michigan liquor control commission at all relevant times and on PERMITTEE or its designee obtaining and maintaining liquor liability insurance as required in this Permit.

- (18) Exclusive Use. PERMITTEE shall have the exclusive use of the premises during the term of this permit.

- ☐ (19) Admission. PERMITTEE may charge admission to the general public to enter premises. Entry shall not be denied to any individual based upon race, sex, age, creed, or national origin.

- (20) Police and Fire Protection. PERMITTEE shall fully reimburse the CITY at overtime and fringe benefit rates for all additional police and/or fire department officers who are assigned to the premises, or the vicinity thereof, because of the use or occupancy thereof by PERMITTEE.
- (21) Parking and Traffic. PERMITTEE shall prohibit all motor vehicles in or on the premises and shall cause all streets and alleys to be properly barricaded and signed. All motor vehicles shall be operated only on established roads and parked in designated areas. All fire lanes and no parking zones shall be maintained during the event.
- (22) Health and Sanitation Facilities. PERMITTEE shall furnish and maintain a sufficient number of portable bathrooms and washing facilities, at PERMITTEE'S expense. This number shall be determined by the Marquette County Health Department. Each bank or group of portable restrooms shall have a minimum of one (1) barrier free/ADA compliant restroom. A bank or group consists of ten (10) or less portable restrooms.
- (23) Compliance with PERMITTEE'S Representations. PERMITTEE shall fully comply with all representations and promises set forth in its Application for Special Events Permit
- ☐ (24) Equipment and Services. The CITY agrees to have the following equipment and services available during the term of this Permit:

- (25) Security. It shall be PERMITTEE'S sole responsibility to provide security throughout the term of the event. The Chief of Police or designee shall establish the number of security personnel whom PERMITTEE shall be required to have on the premises. The security shall be provided by a licensed and certified security agency, whose members shall be in identifiable uniforms.
- (26) Bleachers, Booths, Fencing and Tents. PERMITTEE shall be solely responsible for the construction and removal of any bleachers, booths, fencing, tents or structures used during the course of the event, except that CITY shall be responsible for booths located within the Arena.
- (27) Reimbursement of Other Costs. PERMITTEE shall reimburse the CITY for all cost relating to the use of barricades, fencing, bleachers and other facilities and equipment provided by the CITY. PERMITTEE, on behalf of the organization, agrees to reimburse the City of Marquette for its "out-of-pocket" expenses which includes but is not limited to overtime of City employees and trash disposal tipping

fees at landfills. City staff is readily accessible to discuss out-of-pocket cost estimates and ways to reduce these costs. All City of Marquette invoices sent to organizations for reimbursement of out-of-pocket costs are due within thirty (30) days.

- (28) Tents. All tents or air supported structures used during the term of the permit shall comply with Section 31 of the Michigan Building Code and Section 24 of the International Fire Code. Material of all tents shall be of non-combustible material or flame resistant material conforming to NFPA 701, treated in an approved manner to render the material flame resistant. Appropriate documentation must be presented to any Building Code Enforcement Officer, Fire Official or other Code Official upon request. A copy shall also be retained on the premises where the tent is located. The documentation must attest to the following information relative to the flame resistance of the fabric:

- (a) Name and address of the owners of the tent or air supported structure.
- (b) Date the fabric was last treated with flame resistant solution.
- (c) Trade name of kind of chemical used in treatment.
- (d) Name of person or firm treating the material.
- (e) Name of testing agency and test standard by which the fabric was treated.

If more than one tent or air supported structure is located on the premises a copy of all required documentation for each tent or structure shall be kept at a central location on the premises. The use of gasoline, gas, charcoal or any other cooking devices or any unapproved flame inside or within 20 feet of a tent or other air supported structure is strictly prohibited.

- (29) Fire.
 - (a) No open flames or explosives shall be permitted for decoration, display or use without permission from the Fire Department.
 - (b) The use of paper or fabric for coverings or decoration shall not be permitted unless proof is submitted to the Fire Department that such materials are flame proof.
 - (c) All seating capacity and room arrangements shall be approved by the Fire Department.

(d) An access lane, a minimum of eighteen (18) feet wide, shall be maintained leading into and out of the event so that emergency vehicles can enter in case of an emergency.

(e) Barricades or any type of obstruction which could impede or interfere with fire suppression forces shall not be erected.

- (30) Music. PERMITTEE shall be solely responsible for obtaining the appropriate license to present any music covered by copyright, whether by live performance, recorded music or retransmission of radio and/or television broadcast. The PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or suit or for any loss, liability and damages that may be asserted or levied against the CITY, its officers or employees, based in whole or in part upon a claim of copyright infringement.

- (31) Conditions/Requirements. Additional conditions and requirements of this permit are as follows:

PERMITTEE must have all items removed from the park by 5:00 p.m. on August 8, 2022, August 7, 2023 and August 5, 2024 respectively. PERMITTEE will be charged \$265.00 for each day after 5:00 p.m. on required date that any equipment, trailer, vehicle, tent or other item remains in the Tourist Park.

PERMITTEE is required to comply with Tourist Park camp ground rules and accordingly shall ensure that all music and noise from all participants at the event is quieted by 10:00 p.m.

- (32) Cancellation or Modification. It is understood and agreed that ten (10) days advance written notice of any cancellation, reduction and/or material changes in the proposed agenda will be provided to the Community Services Director, City of Marquette, 401 East Fair Avenue, Marquette, Michigan, 49855.
- (33) Duplicate Original Copies. This Permit is executed in triplicate original copies, two of which shall be retained by the CITY and one by PERMITTEE, each of which shall be deemed to be an original, but all of which shall be construed as one and the same document.
- (34) Governing Law. This Permit and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Michigan.
- (35) Paragraph Headings. The paragraph headings appearing in the Permit have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the paragraphs to which they appertain.

- (36) Entire Agreement. This Permit represents the entire agreement of the parties and shall be deemed to be an integrated agreement containing all prior and contemporaneous oral and written agreement between the parties, and shall not be modified in any part, except in a writing signed by all parties.

IT SHALL BE THE RESPONSIBILITY OF THE PERMITTEE TO DESIGNATE A SPECIFIC LOCATION ON THE PREMISES AS ITS HEADQUARTERS AND TO HAVE AVAILABLE AT THAT LOCATION, AT ALL TIMES THE PREMISES ARE OPEN TO THE PUBLIC AND DURING SET UP OR CONSTRUCTION, AT LEAST ONE PERSON WHO HAS THE KNOWLEDGE AND AUTHORITY TO REPRESENT PERMITTEE CONCERNING ALL ACTIVITIES CONDUCTED UNDER THE TERMS OF THE PERMIT. FAILURE TO COMPLY WITH THIS SECTION OR ANY OTHER TERM OF THE PERMIT SHALL BE CAUSE FOR THE CITY MANAGER, CHIEF OF POLICE, FIRE CHIEF, OR DESIGNEE TO IMMEDIATELY REVOKE THIS SPECIAL EVENTS PERMIT AND TO REQUIRE PERMITTEE TO VACATE THE PREMISES.

The parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF MARQUETTE

Jennifer A. Smith, Mayor


Kurt Lahtinen

Kyle Whitney, City Clerk

Approved as to Substance:

Karen M. Kovacs, City Manager

Approved as to Form:

Suzanne C. Larsen, City Attorney

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

Consent Agenda - Roll Call Vote **MERS Annual Meeting - Officer Delegate Appointment**

BACKGROUND:

The Municipal Employees' Retirement System (MERS) is holding its 2022 annual conference in Traverse City on September 26-27, 2022. Per the MERS plan document, the governing body of each participating municipality shall certify the names of two delegates to the annual meeting. One delegate shall be a member who is an officer of the participating municipality, selected by the governing body of the participating municipality. The other delegate shall be a member who is not an officer of the participating municipality, elected by the member employees of the participating municipality. The election shall be by secret ballot and shall be conducted by an officer of the participating municipality. The election shall be conducted in a manner that affords each member employee an opportunity to vote.

The City Manager recommends that the City Commission appoint the Director of Administrative Services, Jennifer LePage, as the Officer Delegate and the Chief Financial Officer, Mary Schlicht, as the Alternate Delegate. The Alternate Delegate will attend the meeting in the event the appointed Officer Delegate is unable to attend.

The member employees were given an opportunity to nominate any potential employee delegates to be put on a ballot for an election. This year we only had one interested employee and therefore did not hold an election. The employee delegate to attend the MERS annual conference will be Tim Raich, Payroll Clerk.

FISCAL EFFECT:

Adequate funding to cover travel and conference fees are included in the budget.

RECOMMENDATION:

Appoint the Director of Administrative Services as the Officer Delegate and the Chief Financial Officer as the Alternate to attend the 2022 MERS Annual Meeting and confirm the Employee delegate Tim Raich, Payroll Clerk.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▢ MERS Delegate Form
- ▢ Letter - No Employee Delegate Election

2022 Officer and Employee Delegate Certification Form

MERS Annual Business Meeting | September 2022

Please print clearly • **Scan and attach this file when you register online** • Retain a copy for your records

IMPORTANT: If you are not electing/appointing delegates to vote during the MERS Annual Business Meeting, please **DO NOT** submit this form. A **delegate** is **NOT** confirmed to have voting rights until this form has been uploaded with their online registration.

The voting delegate representative must be a MERS member, defined as an **active employee on payroll** who is enrolled in either a MERS Defined Benefit Plan, Defined Contribution Plan or Hybrid Plan.

1. Officer (and alternate) delegate information

The officer delegate (or alternate) shall be a MERS member who holds a department head position or above, exercises management responsibilities, and is directly responsible to the legislative, executive, or judicial branch of government.

Officer Delegate name

Jennifer LePage, Director of Administrative Services

Officer Alternate name

Mary Schlicht, Chief Financial Officer

Officer delegate and alternate listed above were appointed to serve during the 2022 MERS Annual Business Meeting by official action of the governing body (or chief judge for a participating court) on July 11, 2022.

2. Employee (and alternate) delegate information

The employee delegate (or alternate) shall be an employee member who is not responsible for management decisions, receives direction from management and, in general, is not directly responsible to the legislative, executive, or judicial branch of government.

Employee Delegate name

Tim Raich, Payroll Clerk

Employee Alternate name

Employee delegate and alternate listed above were elected to serve during the 2022 MERS Annual Business Meeting by secret ballot election conducted by an authorized officer on See letter attached., 2022.

3. Certification

NOTE: Certification should be signed by a member of the governing body or chief administrative officer, or the chief judge for a participating court. **An electronic signature is permissible.**

I certify that the officer delegate and alternate selections are true and correct, and the secret ballot election results for the employee delegate and alternate are true and correct.

Employer/municipality name*

City of Marquette

Municipality number*

5201

Email address

manager@marquettemi.gov

Employer address

300 W. Baraga Ave.

Employer city

Marquette

Employer state

MI

Employer zip code

49855

Printed name

Karen M. Kovacs

Title of authorized authority*

City Manager

Authorized signature*

Date

* Required field

2

ways to
complete

1. You may complete it electronically (an electronic authorized signature is permissible), then save it and upload it when registering your delegate(s) – OR –
2. You may print it off and complete it, then scan and upload it to your computer for uploading when you register your delegate(s).



June 29, 2022

Municipal Employees Retirement System
1134 Municipal Way
Lansing, MI 48917

RE: Officer and Employee Delegate Certification

To Whom It May Concern:

This letter is to inform MERS that the City of Marquette has only one candidate for employee delegate for the MERS annual meeting. Therefore, we did not conduct an election to determine this year's delegate and alternate.

If you have any questions, please feel free to contact this office.

Respectfully,

Rachel Quayle, Deputy City Clerk
City of Marquette

c: file

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

Consent Agenda - Roll Call Vote

Request for Use of Right of Way Adjacent to 901 W. Magnetic St.

BACKGROUND:

Timothy and Amanda Johnson have submitted a request for the use of municipal property adjacent to their property (parcel 0660110). The municipal property in question is the "stub-street" terminus of Northrop Street that terminates at the northern boundary of the Fit Strip, approximately at the rear yard of the homes on the south side of Magnetic Street.

There has been a curb cut and gravel driveway to the home and attached garage at 901 W. Magnetic St. for many years prior to the applicants purchase of the property. The applicants would like to apply to pave the driveway but must first acquire a license to use the property.

FISCAL EFFECT:

The fee for a license to use municipal property is a one-time fee of \$255 and has been paid.

RECOMMENDATION:

Approve the License, and direct the Mayor and Clerk to sign the Grant of License.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ 04-PRU-07-22 Application-Exhibit-Staff Comments
- ▣ GOL Agreement 04-PRU-07-22

CITY OF MARQUETTE
APPLICATION FOR LICENSE/EASEMENT
OF CITY OWNED PROPERTY



FEE \$255

CITY STAFF USE

Date Submitted: 6-15-22 Parcel ID#: 0660110 File #: 04-PRU-07-2022
Property Address/Location: south end of Northrop St. adjacent to 901 W. Magnetic St.
Adequate Legal Description Submitted: ☒ Y / N Anticipated Hearing Date: 7-11-22

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED, ALL OF THE INFORMATION REQUIRED IS PRESENT AT THE TIME OF THE APPLICATION - NO EXCEPTIONS!

APPLICANT CONTACT INFORMATION

APPLICANT

Name: Tim and Amanda Johnson
Address: 901 W. Magnetic St.
City, State, Zip: Marquette, MI 49855
Phone #: 989-737-6253
Fax #: _____
Email: _____

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

APPLICANT'S REPRESENTATIVE

Name: N/A
Address: _____
City, State, Zip: _____
Phone #: _____
Fax #: _____
Email: _____

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

What is the street address, or nearest street address, to the location of the requested license/easement?

901 W. Magnetic Street

Please describe the reason or necessity for the requested license/easement for use of the City property:

There is an existing curb cut and unpaved driveway in the Northrop St. "stub" that is used to access the driveway to the home, as well as landscaping/garden boxes and retaining walls adjacent to the home but in the right-of-way. As new homeowners we think it would be an improvement to pave the driveway, but that cannot be approved without a license to use the property.

You may attach sketches, maps, photos, or other items that may help to illustrate/visualize your request. Community Development staff will attach a photo-map of the area.

Attachments: Exhibit showing the area of the requested license.

LEGAL DESCRIPTION

Legal description of the license/easement area:

See Exhibit A attachment

SIGNATURE

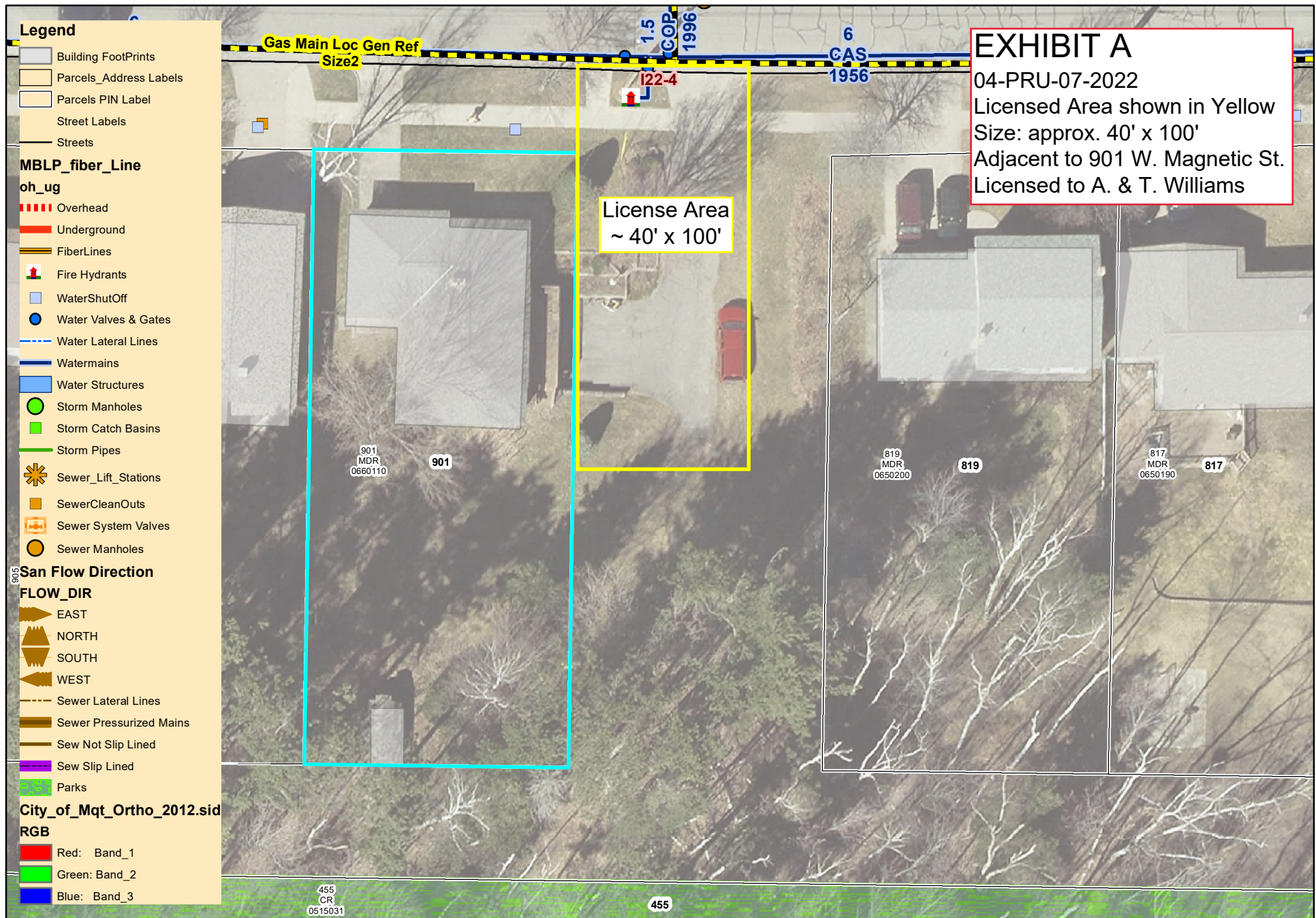
I understand that this application itself is not considered an approval and only the Marquette City Commission has the authority to grant an approval for a license/easement for use of property owned by the City of Marquette.

Signature:



Date:

6/15/22



STAFF REVIEW

- For a sign/object/structure/project encroaching into a public right-of-way or on City property -

Please fill out the form within 48 hours of receiving it.

<u>Reviewing Department</u>	<u>Recommend Approval</u>	<u>Comments</u>
Planning & Zoning-Community Development		
Date Received: 06-15-2022	Yes	The applicants bought their property with a curb cut and driveway in the Magnetic St. right-of-way adjacent to and serving their house. They wish to pave the driveway.
Treasurer		
Date Received: 06/20/2022	Yes	Applicant has no outstanding payments due to the City at this time.
Police		N/A
Date Received: --	N/A	
Engineering- Community Development		No issues with current use.
Date Received: 6/20/22	Yes	
DPW		No comment.
Date Received: 6/21/22	Yes	
Fire		N/A
Date Received: --	N/A	
Community Services (Parks & Rec.)		N/A
Date Received: --	N/A	

GRANT OF LICENSE

THE CITY OF MARQUETTE, a municipal corporation of 300 W. Baraga Ave., Marquette, MI 49855, ("City"), and TIMOTHY AND AMANDA JOHNSON of 901 W. Magnetic Street, Marquette, Michigan 49855, "Johnson," enter into this agreement on _____, 2022, subject to the following conditions:

1. Background. The City owns the Magnetic Street right of way, in the City of Marquette, and State of Michigan.
Johnson desires to construct a driveway ("Driveway"), on the real estate and to the specifications set forth in Exhibit A.
2. Grant of the license. In consideration of \$255.00, the City grants to Johnson the right to construct and maintain the Driveway on the real estate and to the specifications set forth in Exhibit A.
3. Construction and Maintenance. Johnson shall construct, and at all times while this License is in effect, maintain the Driveway in good repair. Johnson shall be responsible for all fees and expenses related to the construction and maintenance of the Driveway and real estate described in Exhibit A.
4. Use. The right to use the real estate described in Exhibit A is not exclusive, however as long as this License is in effect, the City shall not permit any use contrary to the Driveway except as may be necessary to install, repair, remove or replace utilities. In the event the City repairs, removes or replaces utilities, Johnson shall be responsible for any removal of, repair to or replacement of the Driveway in connection with utility work. Johnson shall not use the real estate for any purpose except as specifically allowed within this agreement, and shall not alter, injure or damage the City's real estate.
5. Reimbursement for damages. Johnson shall reimburse the City for any physical damages to the City's real estate caused by Johnson's use on the real estate. Johnson shall indemnify, defend and hold harmless the City from and against any demand, claim, action or cause of action, assessment, loss, damage, liability cost and/or expense, including but not limited to, interest, penalties, consultants fees and expenses, and attorneys' fees and expenses, asserted against, imposed upon or incurred by the City due solely to Johnson's use. Johnson's obligations under this provision shall not extend to claims, losses, expenses or damages arising out of or in any way attributable to the negligence of the City or its agents, consultants, or employees. Johnson reserves the right to control the defense and settlement of any claim for which Johnson has an obligation to indemnify hereunder.
6. Revocation. This License may be revoked by either party at any time by providing at least 180 days' written notice of termination to the other party. On the termination date, all rights and obligations of the parties shall cease and on or before the termination date, Johnson shall remove the Driveway from the real estate, at its own expense. Johnson shall not be entitled to a reimbursement for any portion of the fee previously paid to the City.
7. Entire Agreement. This Grant of License constitutes the entire agreement between the parties.

The said parties have caused this document to be executed the day and year first written above.

CITY OF MARQUETTE

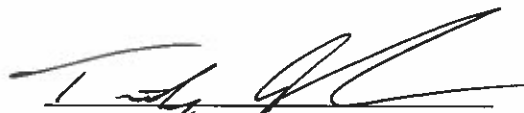
By: Jennifer A. Smith
Its: Mayor

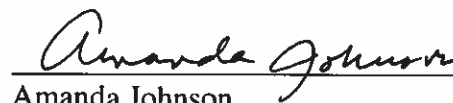
By: Kyle Whitney
Its: Clerk

STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on _____, 2022,
by Jennifer A. Smith, Mayor and Kyle Whitney, Clerk, of the City of Marquette, a Michigan
municipal corporation.

_____, Notary Public
State of Michigan, County of Marquette
My Commission Expires: _____
Acting in the County of Marquette

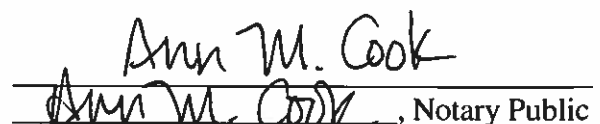

Timothy Johnson


Amanda Johnson

STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on June 30, 2022,
by Timothy Johnson and Amanda Johnson.

ANN M. COOK
Notary public, Marquette County, Michigan
My commission expires November 22, 2024.


_____, Notary Public
State of Michigan, County of Marquette
My Commission Expires: 11-22-24
Acting in the County of Marquette



City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

Consent Agenda - Roll Call Vote **Self-Funded Dental Contract**

BACKGROUND:

As part of the July 1, 2022 health insurance renewal, 44North recommended the City move to a self-funded arrangement for dental insurance coverage in order to save money and hopefully avoid future increases in premium costs. The coverage is still through Blue Cross Blue Shield of Michigan and includes all of the same benefit levels, it is simply funded by the City directly in a self-funded arrangement. Because of this change in our arrangement, another contract must be executed.

FISCAL EFFECT:

The attached contract is standard and references a per-contract, per-month fee of \$5.69, which is already included in our overall renewal rates with 44North. By electing the self-funded arrangement through BCBSM, the City will save 3.09% or \$5,552 with this renewal year.

RECOMMENDATION:

Approve the attached 2022 Dental ASC Contractual Package and authorize the City Manager or her designee to sign the contract.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ 2022 Dental ASC Contractual Package



Blue Cross
Blue Shield
of Michigan

A nonprofit corporation and independent licensee
of the Blue Cross and Blue Shield Association

**ADMINISTRATIVE SERVICES CONTRACT
WEEKLY INVOICE PROGRAM**

Group Name: CITY OF MARQUETTE

Address: 300 W Baraga Ave Marquette, MI 49855

Customer ID: 115177

Effective Date: 7/1/2022

This Contract commences on the above effective date ("Effective Date") and is made between Blue Cross Blue Shield of Michigan, a Michigan non-profit mutual insurance corporation ("BCBSM") and the group customer named above ("Group"), as the plan sponsor and administrator of its group health care plan ("Plan").

This Contract sets forth the administrative responsibilities of BCBSM and Group's financial and other obligations with respect to BCBSM's role as a service provider to the Plan.

By entering into this Contract, Group and BCBSM hereby agree that, to the extent the Plan is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), their relationship is that of Group as "Plan Fiduciary" and BCBSM as "Service Provider" as those terms are used in Department of Labor guidance including 29 C.F.R. §2550.408b-2.

BCBSM and Group agree as follows:

ARTICLE I
DEFINITIONS

- A. "BCBS Plan"** means a company that has been licensed by BCBSA other than BCBSM.
- B. "BCBSA"** means the Blue Cross and Blue Shield Association.
- C. "BlueCard Program"** means the national program established by BCBSA under which Claims are processed by BCBS Plans when Enrollees receive health care services outside of Michigan. BCBSA mandates the policies, procedures and disclosures of the BlueCard Program and amends them from time to time. Schedule B sets forth BCBSA's required disclosures for the BlueCard Program and is incorporated into this Contract. If BCBSA amends the disclosures, such amendments shall automatically become a part of this Contract upon BCBSM giving sixty (60) days prior written notice to Group.
- D. "Claim"** means, for the lines of business set forth in Schedule A, a payment request from a health care provider or an Enrollee for a health care service, product, or prescription drug provided to an Enrollee, with an incurred date during the term of this Contract. Claims billed to Group are negotiated rates paid to health care providers pursuant to BCBSM or a BCBS Plan's provider agreements, which may include both service-based and value-based reimbursement. Service-based reimbursement means a BCBSM or BCBS Plan fee for a health care service. Value-based reimbursement means a fee for Quality Programs, as more fully described in Exhibit 1 to Schedule A.

BCBSM and BCBS Plans negotiate provider reimbursement rates on their own behalf, and not Group, and may set rates for health care services to cover any obligations to health care providers. Through this Contract, Group receives the benefit of provider rates, but it has no entitlement to a particular rate or to unbundle the service-based or value-based components of Claims. Except as set forth in Schedule A, BCBSM does not retain any portion of Claims as compensation and all amounts collected from Group in Claims are used to satisfy provider obligations.

- E. **“Contract”** means this administrative services contract and any schedules, parts, exhibits and addenda attached hereto and incorporated herein by reference as amended from time to time.
- F. **“Contract Year”** means the period from the Effective Date to the first Renewal Date, or the period from one Renewal Date to the next Renewal Date. If termination occurs other than at the end of a Contract Year, Contract Year means that period from the Effective Date or the most recent Renewal Date to the termination date.
- G. **“Coverages”** means the health care benefits set forth in the benefit design document or Part C of the Group Enrollment and Coverage Agreement and BCBSM’s medical policies, which are incorporated into this Contract.
- H. **“Employee”** means the following which are eligible and enrolled for Coverage under the terms of the Plan or as required by law: (i) employees as designated by Group; (ii) retirees and their surviving spouses as designated by the Group; and (iii) COBRA beneficiaries.
- I. **“Enrollee”** means an individual that Group enrolled as an Employee, spouse or dependent in the Plan pursuant to *Article II.B*.
- J. **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, 29 USC 1101, *et seq*, and regulations promulgated thereunder.
- K. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended, Public Law 104-191 of 1996, *et seq*, and regulations promulgated thereunder.
- L. **“PPACA”** means the Patient Protection and Affordable Care Act, as amended, Public Law 111-148 of 2010, *et seq*, and regulations promulgated thereunder.
- M. **“Quality Programs”** refer to BCBSM or BCBS Plan programs funded with value-based provider reimbursement. Quality Programs are governed by separate agreements with health care providers and are designed to improve health care outcomes and control health care costs.
- N. **“Rebates”** means retrospective payments collected from drug manufacturers and paid to BCBSM that are attributable to Enrollee drug utilization.
- O. **“Renewal Date”** means the date one (1) year after the Effective Date, and the same date of every subsequent year. The Renewal Date may be changed by mutual agreement of BCBSM and Group.
- P. **“Transition Assistance Period” or “TAP”** means the period that begins on the Termination Date and concludes twenty-four (24) months thereafter, during which BCBSM shall provide those services, and Group shall perform those obligations, set forth in *Article IV.B*.

ARTICLE II
GENERAL RESPONSIBILITIES

- A. Claims Administrator Status.** Group delegates to BCBSM the responsibility and discretionary authority as claims administrator to make Plan interpretations and final benefit determinations. BCBSM's claims administrator responsibilities extend only to the full and fair review of claims and administrative appeals as set forth in ERISA §503. By assuming these specifically delegated responsibilities as claims administrator, BCBSM does not thereby assume any other duty of the Group as Plan administrator or any other fiduciary function Group performs on behalf of its Plan. Any determination or interpretation made by BCBSM pursuant to its claim determination authority is binding on the Enrollee, Group, and BCBSM unless it is demonstrated that the determination or interpretation was arbitrary and capricious. Group retains all other fiduciary responsibilities and duties under ERISA not specifically delegated to BCBSM in this Contract. BCBSM shall not be responsible for Group's failure to meet any of its financial obligations or Plan administrator responsibilities with respect to the Plan.
- B. Eligibility and Enrollment.** Prior to the Effective Date, Group shall notify BCBSM of all Enrollees that will be covered by the Plan. During the term of this Contract, following agreed upon procedures, Group shall notify BCBSM of all changes in Plan enrollment. Until BCBSM has been properly notified of changes to Group's Plan enrollment, BCBSM shall continue to process Claims for Enrollees as listed on BCBSM's computer membership programs. Group represents and warrants that any eligibility and status changes it requests are compliant with and permissible under applicable state and federal law, including PPACA.
- C. Claims Processing.** During the term of this Contract, Claims will be directly submitted to BCBSM and will be processed according to the Coverages and BCBSM's standard operating procedures for Claims. Notwithstanding the foregoing, Claims from out-of-state providers may, depending on the type of payment request, be directly submitted to the applicable out-of-state BCBS Plan and are processed and paid under the BlueCard Program as set forth in Schedule B. Claims from out-of-state providers are reported and billed to Group as they are received by BCBSM from a BCBS Plan and may include a BlueCard Access Fee for processing the Claim.
- D. Disputed Claims.** Group shall notify BCBSM in writing of any Claim that Group disputes within sixty (60) days of Group's access to a paid Claims listing. BCBSM shall investigate such Claim and respond to Group within a reasonable time period. Upon BCBSM's request, Group shall execute any reasonably necessary documents that will allow BCBSM to recover any amounts that may be owed by a third party with respect to such disputed Claim. If BCBSM recovers any amount from a third party or if BCBSM determines that the disputed Claim is not Group's financial responsibility or is incorrect, then BCBSM shall give Group a credit for the recovered or corrected amount (reduced by any stop loss credits given by BCBSM relating to such disputed Claim).
- E. Recoveries.**
1. Subrogation. BCBSM shall be subrogated to all of Group's, the Plan's, or an Enrollee's rights with respect to any Claim. BCBSM will use reasonable efforts to evaluate information provided by the Enrollee and other sources to identify Claims in which the Plan may have a subrogation or reimbursement interest. However, BCBSM is not obligated to pursue any subrogation or reimbursement claim, including commencing, becoming a party to, or intervening in any litigation. BCBSM will remit to Group the funds recovered from third parties less (a) any attorney fees resulting from recovery litigation undertaken by BCBSM, (b) any negotiated lien reduction, and (c) the percentage set forth on Schedule A. Group will reasonably assist in any BCBSM recovery efforts, including providing BCBSM with requested Plan documents.

2. Class Actions and Similar Litigation. Group and the Plan authorize BCBSM to act on their behalf in any health care class action or other similar litigation of which BCBSM has knowledge, e.g., a drug manufacturer or product liability lawsuit ("Class Action"). Group and the Plan further authorize BCBSM to submit Claims, agree to any Class Action settlement, and collect and remit to Group any funds recovered less any reasonable expenses incurred by BCBSM. If Group notifies BCBSM that it desires to independently pursue a Class Action, BCBSM will provide Group with applicable Claims and other necessary information.

F. Benefit Litigation Defense. If a third party initiates a claim, suit, or proceeding against the Plan, Group, or BCBSM relating to benefits payable under the Plan or any of the administrative services subject to this Contract ("Litigation"):

1. Each party shall provide prompt written notice of the Litigation to the other party if served with such Litigation.
2. Group may request that BCBSM select counsel and defend litigation. BCBSM retains the right to deny this request and require Group to defend the Litigation.
3. Whenever Group or BCBSM is a party in any Litigation, regardless of who defends the litigation, Group and BCBSM each reserve the right, at their own cost and expense, to retain counsel to protect their own interests.
4. Regardless of who defends the litigation, Group and BCBSM shall reasonably cooperate with each other to provide all relevant information and documents within their respective control that are not subject to a privilege or confidentiality obligation; and to reasonably assist each other to defend, settle, compromise, or otherwise resolve the Litigation. Whenever either party is served with any Litigation, the party served shall take all steps necessary to prevent a default in the Litigation prior to determining which party will defend such Litigation.
5. BCBSM shall have full authority to settle or compromise such Litigation, without Group's specific consent, unless:
 - a. \$50,000 or more is at issue in the Litigation;
 - b. State tax issues or mandated benefit issues are part of the Litigation and Group has requested BCBSM to defend the Litigation; or
 - c. Settlement of the Litigation could have a material adverse impact on Plan costs or administration.

If Group's consent to settle or compromise Litigation is required, such consent shall not be unreasonably withheld. If Group withholds consent for any reason and the final resolution of the Litigation is equal to or greater than a settlement or compromise proposed by BCBSM, Group shall pay BCBSM the additional cost of any subsequent settlement, compromise or judgment including all of BCBSM's reasonable attorney fees and costs for proceeding with the Litigation.

6. When Group defends the Litigation, Group shall have full authority to settle or compromise such Litigation without BCBSM's consent, unless BCBSM has notified Group that the Litigation may have a material adverse impact on BCBSM.

If BCBSM's consent to settle or compromise Litigation is required, such consent shall not be unreasonably withheld. If BCBSM withholds consent for any reason and the final resolution of the Litigation is equal to or greater than a settlement or compromise proposed by Group, BCBSM shall pay the additional cost of any subsequent settlement, compromise or judgment including all of Group's reasonable attorney fees and costs for proceeding with the Litigation.

7. When BCBSM defends the Litigation, the cost and expenses of such defense shall be paid by BCBSM. However, Group shall pay for any judgment, award, settlement or payment of amounts due with respect to the underlying Litigation.
8. Subject to *paragraph 6* above, when the Group defends the Litigation, Group shall pay the cost and expenses of such defense, reasonable attorney fees and any judgment, award, settlement or payment of amounts due with respect to the underlying Litigation.

G. Group Audits.

1. Group, at its own expense, shall have the right to audit Claims incurred under this Contract; however, audits shall not occur more frequently than once every twelve months and shall not include Claims from previously audited periods or Claims paid prior to the last twenty-four (24) months.
2. Prior to any audit, Group and BCBSM must mutually agree upon any independent third-party auditor that Group wishes to perform the audit. BCBSM shall not unreasonably withhold its consent. Additionally, prior to audit, Group and any third-party auditor shall sign BCBSM's audit agreement.
3. All audits shall be conducted pursuant to BCBSM corporate policy and other requirements at the time of the audit. The parties acknowledge staffing constraints may exist in servicing concurrent Group initiated audits. Therefore, after notice from Group requesting an audit, BCBSM will have up to ninety (90) days to begin gathering requested documentation and to schedule the on-site phase of the audit.
4. Sample sizes shall not exceed two hundred (200) Claims and shall be selected to meet standard statistical requirements (i.e., 95% Confidence Level; precision of +/- 3%). If BCBSM agrees to any additional Claims above the 200, Group shall reimburse BCBSM for Claims documentation in excess of 200 Claims at fifty dollars (\$50.00) per Claim.
5. Following the on-site activity and prior to disclosing the audit findings to Group, the auditor shall meet with BCBSM management and present the audit findings.
6. BCBSM shall have no obligation to make any payments or reimbursements in connection with audit findings to Group unless there has been a recovery from the provider, Enrollee, or third-party carrier, as applicable. No adjustments or refunds shall be made based on the auditor's statistical projections of sampled dollar errors. An audit error will not be assessed if the Claim payment is consistent with BCBSM policies and procedures, or consistent with specific provisions contained in this Contract or other written Group instructions agreed to by BCBSM.

H. Disclosures. Group shall disclose the following to Enrollees in writing:

1. BCBSM services being provided.
2. BCBSM does not insure any Enrollees.
3. Group is responsible for the payment of Claims.
4. Group is responsible for Plan benefits and any changes thereto.
5. Group is responsible for eligibility and enrollment.

I. Health Care Provider Interest. Group acknowledges that various states including Michigan have enacted prompt payment legislation with respect to the payment of Claims that may require the payment of interest to providers under circumstances dictated by statute. BCBSM will invoice the Group for any interest required by statute and Group shall pay such interest. Additionally, out-of-state Claims may be inclusive of any interest owed by statute or required by the terms of provider contracts with the out-of-state BCBS Plan. Out-of-state Claims are reported and billed to Group as submitted to BCBSM by the out-of-state BCBS Plan.

- J. Confidentiality.** The terms of this Contract and the items set forth below are confidential and shall not be disclosed or released to a third party without the prior written consent of BCBSM, unless required by law.
1. Provider Proprietary Information. Health care provider names, addresses, tax identification numbers, and financial amounts paid to such providers.
 2. BCBSM and Other BCBS Plan Proprietary Information. BCBSM's or any other BCBS Plan's methods of reimbursement, amounts of payments, discounts and access fees; BCBSM's administrative fees and, if applicable, stop loss fees; those processes, methods, and systems developed for collecting, organizing, maintaining, relating, processing and transacting comprehensive membership, provider reimbursement and health care utilization data.
- K. Coordination with Medicare.** Group shall timely notify BCBSM whether Medicare is the primary payer for Claims of any Enrollee. BCBSM shall change such Enrollee's eligibility record within fifteen (15) business days of BCBSM's receipt of Group's notice.
- L. Prescription Drug Benefits.** To the extent Group has engaged BCBSM to administer prescription drug claims for its Plan, BCBSM or its subcontractor shall process all prescription drug claims according to the Coverages, participating pharmacy contracts, and fees set forth on Schedule A. Payments to participating pharmacies may include prescription drug costs, dispensing fees, and incentive fees for dispensing a generic drug or compounding a prescription drug.

BCBSM may contract with rebate administrators ("Rebate Administrators") to submit drug claims for Rebates. Group, directly or indirectly, will not submit any claims for Rebates. Rebate Administrators may retain a portion of the gross Rebates as a claims processing and rebate administration fee ("Rebate Administrator Fee"). BCBSM may retain a portion of the Rebates as administrative compensation ("BCBSM Rebate Service Fee"). The Rebate Administrator Fee and BCBSM Rebate Service Fee are set forth in Schedule A. Any change to the Rebate Administrator Fee during a Contract Year shall be effective and automatically incorporated in Schedule A following thirty (30) days notice by BCBSM to Group. BCBSM will distribute Rebates net of any fees set forth in the Schedule A to Group. If BCBSM receives rebate adjustments or de minimis amounts of unidentifiable Rebates that cannot practicably be tied to particular claims, BCBSM will proportionally allocate those Rebate amounts to BCBSM customers with prescription drug benefits.

ARTICLE III **FINANCIAL RESPONSIBILITIES**

- A. Group Responsibilities.** Group shall be responsible and liable for:
1. Claims;
 2. Fees set forth in Schedules A, B, and C, including administrative fees, additional administrative compensation, and any other fees identified therein;
 3. Health Care Provider Interest;
 4. Taxes and surcharges imposed by state and federal governments on Claims or number of Enrollees;
 5. Statutory court costs and attorney fees awarded by a court of competent jurisdiction to an Enrollee as a result of Litigation; and
 6. All other risks, financial obligations, and liabilities which BCBSM may assume or which might otherwise attach with respect to the administration of Coverages.

- B. Group's Weekly Wire and Other Payments.** Group shall make weekly payments of all amounts due to BCBSM within one (1) business day of the invoice issue date. In addition, Group shall pay to BCBSM any separately invoiced amounts within fifteen (15) days of invoice or settlement issue date. If Group's payment for any amount payable under this Contract is more than one (1) business day late, Group shall pay a late fee equal to two percent (2%) of any outstanding amount due or the maximum percentage permitted by law, whichever is less. BCBSM may cease processing Claims retroactive to the last date for which full payment was made.
- C. Interest and Float.** Group shall make payments of amounts due and owing to a designated BCBSM bank account, which funds other BCBSM accounts. To the extent any of those bank accounts are interest bearing, BCBSM retains any interest earned and will not pay or credit any interest to Group. Additionally, banks holding BCBSM accounts may retain float interest earned on transactions with the funds in those accounts.
- D. Schedule A Renewals.** At least thirty (30) days prior to each Renewal Date, BCBSM shall send Group a Schedule A for the new Contract Year with all pricing terms for a single or multiple Contract Year(s). Any renewal Schedule A shall be deemed fully executed and effective as of the Renewal Date if Group fails to sign it and makes any payment according to its terms.
- E. Settlements.**

1. Annual Settlements. Group shall receive its Annual Settlement approximately one hundred twenty (120) days after the end of each Contract Year, which may include a reconciliation of any administrative fees based on BCBSM's enrollment records for the Contract Year at the time the reconciliation is performed.

If the Group has an arrangement whereby it pays additional administrative compensation ("AAC"), the total AAC reported to Group with the annual settlement equals the total amount of AAC collected from Group during the year less any AAC that was refunded to Group pursuant to a stop-loss insurance policy with BCBSM. If the total AAC exceeds the maximum AAC set forth in Schedule A, BCBSM shall return the excess AAC to Group. If the total AAC is less than the minimum AAC set forth in Schedule A, Group shall pay BCBSM the shortfall. Neither Group nor BCBSM shall pay any interest on these payments / refunds.

2. Customer Savings Refund. Customer Savings Refund ("CSR") is the annual report reconciling Claims during the twelve (12) month period 7/1 – 6/30 with any of the following items settled during the same period: (1) retroactive adjustments made in the Michigan Hospital Settlement (MHS), explained below, (2) Class Action recoveries, and (3) any other settlements from litigation and provider audits for which claim readjudication is not practicable.

If a refund is due, Group will receive a CSR payment in the year following the close of the CSR period. In the case of a liability resulting from the MHS, the liability will be reported to Group in the year following the close of the CSR period. A liability will accumulate with interest and may be offset against future CSR payments or Rebates.

MHS liabilities will continue to accumulate from year to year unless Group elects to pay the liability or CSR payments in subsequent years exceed the amount of Group's outstanding MHS liability. BCBSM may in its sole discretion invoice Group for some or all of Group's CSR liability, which invoice shall be paid within thirty (30) days of receipt by Group.

The MHS is designed to reconcile amounts BCBSM paid to a hospital during a year with the total amount of reimbursement due to the hospital. Pursuant to separate agreements between BCBSM and Michigan hospitals, BCBSM makes periodic estimated payments to each hospital based on expected claims for all BCBSM customers. At the end of the contract year with the hospital, BCBSM settles the amount the hospital received in payments with actual claims experience, hospital reward and incentive payments under Quality

Programs, and hospital obligations to Quality Programs. The MHS will result in a gain or loss applied to Group's CSR.

Group will not receive a CSR or incur adjusted liability attributable to a particular hospital until after the finalization of the MHS for a particular hospital. Group's refund or liability attributable to a particular hospital gain or loss, respectively, is proportionate to Group's utilization for that hospital.

- F. Changes in Enrollment or Coverages – Effect on Pricing Terms.** If there is more than a 10 percent (10%) change in the number of Employees from the number stated in Schedule A during any month of the Contract Year or a change in Coverages, BCBSM may revise any affected pricing terms in the Schedule A to reflect such changes in Enrollment and/or Coverages. Any revisions will be effective beginning on the first day of the first full month following thirty (30) day notification by BCBSM to the Group.

ARTICLE IV

TERMINATION AND TERMINATION ASSISTANCE

A. Termination & Notice.

1. With or Without Cause. Either party may, with or without cause, terminate this Contract by providing the other party with at least ninety (90) days prior written notice of the termination date ("Termination Date").
2. Nonpayment, Partial Payment, Insolvency, or Bankruptcy. Notwithstanding any other Contract provisions, if Group fails to timely pay any amounts owed or becomes insolvent or files for bankruptcy protection, BCBSM may terminate this Contract by providing Group with at least five (5) days prior written notice of the Termination Date.
3. Termination within the First Contract Year. If Group gives notice of termination before the end of the first Contract Year or if BCBSM terminates under *subsection 2* above before the end of the first Contract Year, Group shall pay BCBSM twelve (12) months of the administrative fees as set forth in Schedule A multiplied by the average monthly Employee count (less the administrative fees paid prior to the Termination Date) to compensate BCBSM for its implementation costs.

B. Post-Termination Assistance. BCBSM will assist Group during the TAP and each party's obligations will continue to be governed by the terms of this Contract, except as set forth below.

1. End of Coverage. Notwithstanding any other provisions contained herein, neither BCBSM nor any BCBS Plan shall have any obligation for payment for any health care services which are incurred on or after the Termination Date.
2. Obligation to Pay. Notwithstanding any other provisions contained herein, Group is obligated to timely pay all amounts incurred under the Contract during the TAP.
3. Claims Processing. All Claims incurred, but not paid, prior to the Termination Date shall be processed by BCBSM or other BCBS Plans pursuant to the terms and conditions in this Contract. BCBSM may cease processing Claims if Group fails to timely pay BCBSM for amounts due and owing, is insolvent, or files for bankruptcy. Group represents and warrants that it will be solely liable for any Claims BCBSM does not pay as a result of Group's failure to make timely payment. Group will indemnify, defend, and hold BCBSM harmless for any Litigation or other adversary proceeding brought by an Enrollee whose claim was not paid as a result of Group's failure to timely pay BCBSM. This paragraph is independent of BCBSM's rights under *Article IV.A.2* above.

4. Administrative Fee and Claim Payments. For the first three (3) months of the TAP, Group shall pay the fixed administrative fees and shall continue to make Claim payments in the same manner as prior to the Termination Date. For the next twenty-one (21) months of the TAP, BCBSM will invoice Group for Claims each month. AAC, if any, will continue to be paid for the duration of the TAP.
5. Settlement – Last Contract Year. Within one-hundred eighty (180) days following the Termination Date, BCBSM shall prepare a settlement statement for the last Contract Year.
6. Final Settlement. Within ninety (90) days after the expiration of the TAP, BCBSM will prepare a final settlement and will refund any positive balance or invoice Group for any negative balance. Any negative balance will be due within ten (10) days of the date of invoice. The payment to Group or to BCBSM as provided in the immediately preceding sentence shall fully and finally settle, release, and discharge each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported, adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other sums of money due and owing between the parties and arising under this Contract.
7. Group Duty to Notify / Indemnity. Group shall notify BCBSM if, as a result of its insolvency or other status, another party is required by law to receive any refunds, payments, or returned funds from BCBSM under this *Article IV*. Group shall indemnify, defend, and hold BCBSM harmless for any liability, including attorney fees, resulting from Group's failure to notify BCBSM under this paragraph.

- C. Conversion to Underwritten Group.** If Group converts from a self-funded group to a BCBSM underwritten group, Group shall continue to be obligated for any balance due and Group shall timely pay the amounts due and owing under this Contract in addition to any premium payments as a BCBSM underwritten group.

ARTICLE V

GENERAL PROVISIONS

- A. Entire Agreement.** This Contract represents the entire understanding and agreement of the parties regarding matters contained herein. This Contract supersedes any prior verbal or written agreements and understandings between the parties and shall be binding upon the parties, their successors or assigns. Neither party has executed this Contract in reliance on any representations, warranties, or statements other than those expressly set forth herein.
- B. Indemnity.** Group agrees to indemnify, defend and hold BCBSM harmless from any claims resulting from Group's breach of any term of this Contract or breach of any obligation or duty not expressly delegated to BCBSM in this Contract, including, but not limited to, Group's obligation to manage eligibility and enrollment, benefit design, disclose Plan information to Enrollees, respond to requests for Plan documents, and to read and understand the terms of this Contract. The indemnity and hold harmless provisions of this Contract shall survive the termination of the Contract.
- C. Service Mark Licensee Status.** BCBSM is an independent licensee of BCBSA and is licensed to use the "Blue Cross" and "Blue Shield" names and service marks in Michigan. BCBSM is not an agent of BCBSA and, by entering into this Contract, Group agrees that it made this Contract based solely on its relationship with BCBSM or its agents. Group agrees that BCBSA is not a party to this Contract, has no obligations under this Contract, and that no BCBSA obligations are created or implied under this Contract.

- D. Notices.** Any notice required under this Contract shall be given in writing and sent to the other party by hand-delivery, overnight carrier, email to the other party's representative, or US first class mail at the following address or such other address as a party may designate from time to time.

If to Group:

Address set forth above

If to BCBSM:

Blue Cross Blue Shield of Michigan
600 Lafayette East, Mail Code B612
Detroit, Michigan 48226-2998

- E. Amendment.** This Contract may be amended only by a written agreement duly executed by authorized representatives of each party provided, however that this Contract may be amended by BCBSM upon written notice to Group in order to facilitate compliance with applicable law including changes in regulations, reporting requirements or data disclosure as long as such amendment is applicable to all BCBSM groups that would be similarly affected by the legal change in question. BCBSM will provide thirty (30) calendar days notice of any such amendment and regulatory provision, unless a shorter notice is necessary in order to accomplish regulatory compliance. Upon Group's request, BCBSM will consult with Group regarding the regulatory basis for any amendment to this Contract as a result of regulatory requirements.
- F. Severability.** The invalidity or nonenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.
- G. Waiver.** The waiver by a party of any breach of this Contract by the other party shall not constitute a waiver as to any subsequent breach.
- H. Law.** This Contract is entered into in the State of Michigan and, unless preempted by federal law, shall be construed according to the laws of Michigan. Group agrees to abide by all applicable state and federal law. Group agrees that, where applicable, the federal common law applied to interpret this Contract shall adopt as the federal rule of decision Michigan law on the interpretation of contracts.
- I. HIPAA.** The parties have entered into a business associate agreement that governs the access, use, and disclosure of protected health information. Group certifies that it is the Plan Sponsor and Plan Administrator, performs Plan administration functions, needs access to Enrollee protected health information to carry out such administration functions, and has amended the Plan documents to comply with the requirements of 45 CFR 164.504(f)(2). BCBSM is therefore authorized to provide Group with the minimum necessary Enrollee protected health information for Group to perform its plan administration functions.
- J. Force Majeure.** Neither BCBSM nor Group shall be deemed to have breached this Contract or be held liable for any failure or delay in the performance of all or any portion of its obligations under this Contract if prevented from doing so by acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, boycotts, lock-outs, epidemics, pandemics, wars and war-operations, restraints of government, power or communication line failure, judgment, ruling, order of any federal or state court or agency of competent jurisdiction, change in federal or state law or regulation subsequent to the execution of this Contract, or other circumstances beyond the party's reasonable control for so long as such "force majeure" event reasonably prevents performance.
- K. Enrollee Out-of-Pocket Maximum Compliance.** Group is solely responsible to ensure an Enrollee's maximum out-of-pocket amount complies with PPACA. If a third party provides any essential health benefit(s) to Enrollees, Group shall disclose to BCBSM the name of such third party or parties, the benefits provided, the participants receiving such benefits, applicable claim information, and the cost sharing arrangements for such benefits.

- L. Record Retention.** Group will maintain relevant books, records, policies, procedures, internal practices, and / or data logs relating to this Contract in a manner that permits review for a period of seven (7) years (or ten (10) years in the case of Medicare / Medicaid transactions) after the expiration of this Contract.

If Group conducts, or contracts to have conducted, an internal audit or review of the services performed under any agreement with BCBSM, Group shall provide BCBSM with a copy of such audit or review within thirty (30) days of BCBSM's written request. Group shall also provide a copy of any findings or reports issued by or to any federal or state regulatory agency related to the Plan.

The provisions of this Section shall survive the termination of this Contract.

- M. Summary of Benefits and Coverage.** Group is solely responsible for the creation and distribution of the summary of benefits and coverage form.
- N. Plan Year.** Group's plan year is the one-year period beginning on the Effective Date and each Renewal Date thereafter unless Group notifies BCBSM at least six months in advance of a change thereto.
- O. Knowing Assent.** Group acknowledges that it has had a full opportunity to consult with such legal and financial advisors as it has deemed necessary or advisable in connection with its decision to knowingly enter into this Contract. Group acknowledges that it has an obligation, as Plan Fiduciary, to determine whether the financial arrangements set forth in this Contract and Schedules are an appropriate Plan expense and for the exclusive benefit of the Plan. Group acknowledges that it has had any questions about this Contract posed to BCBSM fully answered to Group's satisfaction.



A nonprofit corporation and independent licensee
of the Blue Cross and Blue Shield Association

**BUSINESS ASSOCIATE AGREEMENT
FOR ADMINISTRATIVE SERVICES CONTRACT**

Group Name: CITY OF MARQUETTE

Customer ID: 115177

This Business Associate Agreement ("BA Agreement") is effective upon execution, and amends and is made a part of the Administrative Services Contract ("ASC") between Blue Cross Blue Shield of Michigan ("BCBSM") and the group customer named above ("Group"), on behalf of itself and as plan sponsor of its group health plan ("GHP").

WITNESSETH AS FOLLOWS:

WHEREAS, Group has established and maintains GHP as an employee welfare benefit plan, as defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA") that is **(1) subject to ERISA pursuant to ERISA section 4(a), (2) is a governmental plan as defined by ERISA section 3(32) that is exempt from ERISA pursuant to ERISA section 4(b)(1), or (3) is a church plan as defined in ERISA section 3(33) that is exempt from ERISA pursuant to ERISA section 4(b)(2)** and is therefore subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations codified as 45 CFR Parts 160-164 (collectively, "HIPAA") as a Covered Entity performing the Covered Functions of a Health Plan.

WHEREAS, Group and GHP represent and warrant GHP has written documentation ("Plan Document") that informs Enrollees of the benefits to which they are entitled from GHP and describes the procedures for:

- (I) establishing and carrying out funding of the benefits to which Enrollees are entitled under GHP's plan document
- (II) allocating and delegating responsibility for GHP's operation and administration under the Plan Document, and
- (III) amending the Plan Document.

WHEREAS, Group, GHP and BCBSM mutually agree to modify the ASC to incorporate the provisions of this BA Agreement to comply with applicable requirements of HIPAA that are applicable to business associates. This BA Agreement further includes additional provisions Group, GHP, and BCBSM desire to have as part of the ASC.

WHEREAS, the Office for Civil Rights, Department of Health and Human Services, recently published final regulations fully implementing the Health Information Technology for Economic and Clinical Health (HITECH) Act ("HITECH Act") (42 U.S.C. §17934 et. seq.), and also making various technical, conforming and other amendments to the HIPAA rules, being entitled "Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Non-Discrimination Act; Other Modifications to the HIPAA Rules" (the "Final Rule") (published at 78 F.R. 5566 (January 25, 2013)), this BA Agreement incorporating those changes as described more fully in the Final Rule.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, Group, GHP, and BCBSM hereby agree as follows:

I. SERVICES BCBSM PROVIDES

BCBSM will manage, operate and administer Coverage(s) (as defined in the ASC) and perform the services set forth in attached Exhibit 1 with respect to benefits provided to Enrollees under GHP.

II. PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

A. Definitions

All capitalized terms in this BA Agreement that are not defined by this BA Agreement will have the meaning ascribed to them by 45 C.F.R. Parts 160-164. The following terms have the following meanings:

1. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended.
2. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subparts A and C, as amended.
3. "Standard Transaction Rule" shall mean the Standards for Electronic Transactions at 45 C.F.R. Parts 160 and 162, as amended.

B. Confidentiality of PHI

BCBSM will maintain the confidentiality of all Protected Health Information (PHI) BCBSM creates or receives for, on behalf of, or from GHP (or another business associate of GHP) in the performance of its duties under the ASC and this BA Agreement. BCBSM will neither use nor disclose PHI except (1) as this BA Agreement permits or requires, (2) as GHP permits or requires in writing, (3) as an Enrollee authorizes, or (4) as Required by Law.

C. Security of PHI

As required by the Security Rule, BCBSM maintains reasonable and appropriate administrative, physical, and technical safeguards, to protect against reasonably anticipated threats or hazards to, and to ensure the security and integrity of, PHI; to protect against reasonably anticipated unauthorized use or disclosure of PHI; and to reasonably safeguard PHI from any intentional or unintentional use or disclosure in violation of this BA Agreement.

D. Permitted Uses and Disclosures

BCBSM may use or disclose PHI only as follows:

1. Functions and Activities

BCBSM may use and disclose PHI as permitted by HIPAA for (a) management, operation, and administration of Enrollee benefits, (b) the services set forth in the ASC and the attached Exhibit 1, and (c) Treatment, Payment, Health Care Operations, and Data Aggregation.

2. Management and Administration

a. Protected Health Information Use

BCBSM may use PHI for BCBSM's proper management and administration or to carry out BCBSM's legal responsibilities.

b. Protected Health Information Disclosure

BCBSM may disclose PHI for BCBSM's proper management and administration or to carry out BCBSM's legal responsibilities only:

(i) if the disclosure is Required by Law, or

(ii) if before the disclosure, BCBSM obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written contract, that the entity will hold PHI in confidence, use or further disclose PHI only for the purposes for which BCBSM disclosed it to the entity or as the entity is Required by Law; and notify BCBSM of any instance of which the entity becomes aware that confidentiality of any PHI was breached.

3. Creation of Limited Data Sets and De-Identified Health Information

In conformance with the provisions and requirements set forth in HIPAA, BCBSM may use PHI to:

- a. create De-Identified Health Information, and
- b. create Limited Data Sets containing the minimum necessary amount of PHI reasonably needed for Research, Public Health or Health Care Operations activities.

4. De-Identified Health Information Use and Disclosure

BCBSM may use and disclose De-Identified Health Information for any purpose, including after any cancellation, termination, expiration, or other conclusion of the ASC.

5. Limited Data Set Use and Disclosure (Data Use Agreement)

BCBSM may use and disclose a Limited Data Set for Research, Public Health or Health Care Operations purposes. BCBSM may make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of the ASC.

a. DUA - Prohibition on Unauthorized Use and Disclosure

BCBSM will neither use nor disclose the Limited Data Set for any purpose other than as this section permits, as GHP otherwise permits in writing, or as Required by Law. BCBSM will never use or disclose the Limited Data Set in a manner that would violate the HIPAA Privacy Rule, if done by GHP.

b. DUA - No Identification

When using or disclosing a Limited Data Set, BCBSM will not attempt to identify the information contained in the Limited Data Set or contact any individual who may be the subject of information contained in the Limited Data Set.

c. DUA - Information Safeguards

BCBSM will adopt and use appropriate administrative, physical, and technical safeguards to preserve the integrity and confidentiality of the Limited Data Set and to prevent its use or disclosure other than as permitted by this Section or as Required by Law.

d. DUA - Reporting Non-Permitted Use or Disclosure

BCBSM will report to GHP any non-permitted use or disclosures of the Limited Data Set. BCBSM will make the report to GHP not more than fifteen (15) business days after BCBSM learns of such non-permitted use or disclosure.

e. DUA - Permitted Recipients

BCBSM and the following entities may receive and use a Limited Data Set, provided they agree to the same restrictions and conditions applicable to BCBSM's use and disclosure of the Limited Data Set:

- (i) BCBSM affiliates,
- (ii) BCBSM Business Associates,

- (iii) BCBSM subcontractors and agents,
- (iv) other GHP Business Associates,
- (v) and other recipients when those recipients enter into a Data Use Agreement with BCBSM.

E. Minimum Necessary and Limited Data Set

BCBSM's use, disclosure or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, unless excepted by HIPAA, any uses or disclosures of PHI shall be limited to the Minimum Necessary.

F. Disclosure to BCBSM's Subcontractors and Agents

BCBSM may disclose PHI to subcontractors and agents when those subcontractors and agents provide reasonable assurance, as evidenced by a written contract and in accordance with 45 C.F.R. §164.502(e)(1)(ii), that the subcontractors or agents will comply with the same privacy and security obligations with respect to PHI as applies to BCBSM in this BA Agreement, including reasonable and appropriate safeguards to protect such PHI.

G. Disclosures to Group and Group's Business Associates

BCBSM will not disclose any PHI to Group or Group's business associates, except as this BA Agreement permits.

H. Reporting Non-Permitted Use or Disclosure, Security Incidents & Breaches

1. BCBSM will report to GHP any use or disclosure of PHI not permitted by this BA Agreement or in writing by GHP except BCBSM will not report incidental uses and disclosures that occur as a result of a use or disclosure otherwise permitted by this BA Agreement. BCBSM will make the report to GHP not more than fifteen (15) business days after BCBSM learns of such non-permitted use or disclosure.
2. BCBSM will report to GHP any security incident of which it becomes aware. BCBSM will make the report to GHP not more than fifteen (15) business days after BCBSM learns of such security incident.
3. In addition, BCBSM will report, following discovery and without unreasonable delay, but in no event later than fifteen (15) business days following discovery, any Breach of Unsecured PHI as those terms are defined by HIPAA. Any such report shall include the identification (if known) of each Enrollee whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such Breach, along with any other information required to be reported under the HIPAA.
4. In the event notification to individuals is required under HIPAA, BCBSM will prepare and deliver such notification to individuals on GHP's behalf. Such notifications to individuals will be consistent with the notification content requirements established in HIPAA.

I. Termination for Breach of Privacy Obligations

1. GHP may terminate this BA Agreement and the ASC if BCBSM has engaged in a pattern of activity or practice that constitutes a material breach or violation of BCBSM's obligations regarding PHI as set forth in this BA Agreement and, on notice of such material breach or violation from GHP, BCBSM fails to take reasonable steps to cure the breach or end the violation. If BCBSM fails to cure the material breach or end the violation within twenty (20) business days after receipt of GHP's notice, GHP may terminate the ASC by providing BCBSM written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Termination of the ASC will immediately terminate this BA Agreement.
2. BCBSM may terminate the ASC if GHP has engaged in a pattern of activity or practice that constitutes a material breach or violation of GHP's obligations regarding PHI and, on notice of such material breach or violation from BCBSM, fails to take reasonable steps to cure the breach or end the violation. If GHP fails to cure the material breach or end the violation within twenty (20) business days after receipt of BCBSM's notice, BCBSM may terminate the ASC by providing GHP written notice of termination, stating the uncured material breach or violation that provides the basis for the termination

and specifying the effective date of the termination. Termination of the ASC will immediately terminate this BA Agreement.

J. Disposition of Protected Health Information

1. Return or Destruction After ASC Termination

BCBSM will, if feasible upon cancellation, termination, expiration, or other conclusion of the ASC return to GHP or destroy all PHI in whatever form or medium in BCBSM's custody or control (or in the custody or control of any subcontractor or agent to which BCBSM disclosed PHI), including all copies of and any data or compilations derived from PHI that allow identification of any present or past Enrollee who is a subject of the PHI, except BCBSM may continue to use and disclose De-Identified and Limited Data Set information as permitted by Sections D4 and D5 of this BA Agreement.

2. Disposition When Return or Destruction Not Feasible

To the extent return or destruction of PHI is not feasible, BCBSM's duties, rights, and obligations with respect to Enrollee PHI will continue in full force and effect after the date of the ASC or BA Agreement termination.

III. PHI ACCESS, AMENDMENT, AND DISCLOSURE ACCOUNTING

A. Access

BCBSM will make available to GHP or to the Enrollee for inspection and copying any PHI about the Enrollee that qualifies as part of a Designated Record Set, is not exempted from access, and which BCBSM has in its custody or control, so GHP can meet its access obligations under HIPAA. Any requests for access must be submitted on BCBSM's request form. When required by HIPAA and requested by the Enrollee or GHP, BCBSM shall make such information available in an electronic format such that GHP can meet its obligations under 45 C.F.R. §164.524(c)(2)(ii).

B. Amendment

After BCBSM's receipt of an Enrollee's or GHP's written request on BCBSM's form, or other Business Associate's or Covered Entity's written request, BCBSM will amend the appropriate Designated Record Set PHI BCBSM has in its custody or control, unless, in its sole discretion, BCBSM determines, as HIPAA permits, an amendment is not appropriate. If BCBSM accepts a request to amend PHI, it will make reasonable efforts to inform others, including individuals or entities that received the Enrollee's PHI, of the amendment.

C. Disclosure Accounting

BCBSM will make available to GHP or to the Enrollee the disclosure information regarding the Enrollee, so GHP can meet its disclosure accounting obligations. Further, BCBSM will do the following:

1. Disclosure Tracking

As required by HIPAA, record each disclosure of PHI, unless such disclosure is excepted from accounting by HIPAA, ("Accountable Disclosures"). For each Accountable Disclosure BCBSM will record:

- (a) the disclosure date,
- (b) the name and (if known) address of the entity to whom BCBSM made the disclosure,
- (c) a brief description of PHI disclosed,
- (d) a brief statement of the purpose of the disclosure, and
- (e) any additional information to the extent required by HIPAA and any accompanying regulations.

2. Disclosure Tracking Time Periods

Unless otherwise provided by HIPAA, BCBSM will maintain disclosure information about Accountable Disclosures for six (6) years. Any requests for a report of disclosure accounting must be submitted on BCBSM's request forms.

D. Restriction Requests

GHP will consult with BCBSM before GHP agrees to an Enrollee's request to restrict the use or disclosure of PHI related to the Enrollee that may affect BCBSM. BCBSM will respond to all requests submitted directly by Enrollees to restrict the use or disclosure of Enrollee PHI. GHP will promptly notify BCBSM in writing of any request for restriction on the use or disclosure of PHI. Any restriction requests must be submitted on BCBSM's request forms.

E. Confidential Communications

BCBSM will accommodate an Enrollee's request for confidential communications (the use of reasonable alternative means or alternative locations when communicating PHI to them) if the Enrollee provides a clear statement that disclosure of all or part of the PHI could endanger the Enrollee.

IV. COMPLIANCE WITH STANDARD TRANSACTIONS

A. BCBSM, SUBCONTRACTORS, AND AGENTS

BCBSM will comply, and require any of its subcontractors or agents to comply, with each applicable requirement for the Standard Transaction Rule when conducting all or any part of a Standard Transaction electronically for, on behalf of, or with GHP.

B. TRADING PARTNER AGREEMENTS

BCBSM will not enter into, or permit its subcontractors or agents to enter into, any Trading Partner Agreement in connection with the conduct of Standard Transactions on behalf of BCBSM that:

1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
2. Adds any data element or segment to the maximum defined data set;
3. Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
4. Changes the meaning or intent of the Standard Transaction's implementation specification.

V. INSPECTION OF BOOKS AND RECORDS

BCBSM will make its internal practices, books, and records relating to its use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services to determine GHP's compliance with HIPAA.

VI. DATA EXCHANGE BETWEEN GROUP AND BCBSM

BCBSM may disclose to Group the minimum necessary information regarding whether an individual is an Enrollee participating in, enrolled in, or disenrolled from GHP.

If Group electronically exchanges data with BCBSM regarding the enrollment and disenrollment of Enrollees in GHP, health plan premium payments, and other matters governed by HIPAA, then Group is required to meet the requirements of HIPAA and BCBSM's payer-specific instructions.

VII. SUMMARY HEALTH INFORMATION

Upon Group's written request to either (a) obtain premium bids for providing health insurance coverage for GHP, or (b) modify, amend, or terminate GHP; BCBSM will provide Summary Health Information regarding Enrollees participating in GHP to Group.

VIII. PLAN SPONSOR CERTIFICATION

As Plan Sponsor, Group performs plan administration functions for GHP and needs access to PHI to carry out those plan administration functions. Group, as GHP's Plan Sponsor, has amended GHP's Plan Document to incorporate the provisions 45 CFR 164.504(f)(2) requires.

Group certifies that it has amended GHP's Plan Document to incorporate the provisions 45 CFR 164.504(f)(2) requires and Group agrees to comply with GHP's Plan Document as amended. GHP authorizes BCBSM to disclose the information Group has requested and certifies to BCBSM that such information is the Minimum Necessary PHI for Group to perform the plan administration functions required as described in GHP's Plan Document.

BCBSM may rely on Group's certification and shall have no obligation to verify (1) that GHP's Plan Document has been amended or (2) that Group is complying with GHP's Plan Document as amended.

IX. COMPENSATION TO BCBSM

For the services to Group, GHP, and Enrollees under this BA Agreement; BCBSM reserves the right to charge Group (a) a reasonable Designated Record Set Request Fee consistent with the allowed fees described in 45 C.F.R. §164.524(c)(4) for each request for access to PHI BCBSM fulfills, plus any postage expense BCBSM incurs in delivering such PHI, and (b) a reasonable PHI Disclosure Accounting Fee for each request from GHP for Disclosure Information BCBSM fulfills. BCBSM will provide Group with a fee schedule should BCBSM exercise its right to charge such fees.

X. ENTIRE AGREEMENT

This BA Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XI. AUTOMATIC AMENDMENT TO CONFORM TO APPLICABLE LAW

Upon the compliance date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of electronic PHI, or other aspects of HIPAA applicable to this BA Agreement or to the ASC, this BA Agreement will automatically amend such that the obligations imposed on Group, GHP, and BCBSM remain in compliance with such regulations, unless BCBSM elects to terminate the ASC by providing Group and GHP notice of termination in accordance with the ASC.

XII. CONFLICTS

The provisions of this BA Agreement will override and control any conflicting provision of the ASC. All non-conflicting provisions of the ASC will remain in full force and effect.

XIII. SURVIVAL OF PRIVACY AND SECURITY OBLIGATIONS

BCBSM's obligations to preserve the privacy and security of PHI, as specified in this BA Agreement, will survive termination or other conclusion of the ASC and this BA Agreement.

EXHIBIT I

BCBSM ADMINISTRATIVE SERVICES

A. ACTUARIAL AND STATISTICAL

Determining claims projections, pricing administrative services, and stop-loss coverage.

B. BUSINESS PLANNING AND DEVELOPMENT

Business planning and development such as conducting cost-management and planning-related analysis related to managing and operating BCBSM.

C. CLAIMS ADJUDICATION

Examining claims and determining payment levels; including data entry of claims, maintenance of claims experience files, use of medical consultants, review of utilization and reasonable and customary charges, coordination of benefits, and subrogation.

D. CLAIMS/MEMBERSHIP INQUIRIES

Handling inquiries—written, phone, or in-person—related to membership, benefits, claims payment, and claims payment denial.

E. DATA AGGREGATION

Conducting data analyses for Health Care Operations using data BCBSM created or received for, on behalf of, or from GHP and for, on behalf of, or from other Covered Entities for whom BCBSM acts as a Business Associate.

F. ENROLLMENT

Preparing proposals and registering, coding, and preparing new applications; and contacting Group and Enrollees regarding adding, changing, or renewing coverage.

G. FINANCIAL

Performing financial functions, such as cash receipts, cash disbursements, payroll and general ledger processing, general accounting, preparation of financial statements, billing, group settlements, and wire transfers.

H. HEALTH CARE OPERATIONS

Conducting activities on behalf of GHP that relate to the functions of GHP that make it a Health Plan; group servicing, including the provision of data analysis for policyholders, plan sponsors, or other customers.

I. MEMBERSHIP FILE UPDATES

Maintaining membership status files and processing inter-plan transfers and contract conversions and changes, subject to conversion fees.

J. MEMBERSHIP VALIDATION

Verifying membership by wire, listing, electronic query, or other methods before or during adjudication.

K. PAYMENT ACTIVITIES

Conducting activities relating to claims payment and management, coverage determination, benefits provision and eligibility, risk adjustment, utilization review, medical necessity determination, and all related functions affecting obligations and amounts payable for health benefits coverage.

L. PHARMACY BENEFITS MANAGEMENT

Providing or arranging (if Group elects to include pharmacy benefits in GHP) the provision of prescription drug management services, such as mail-order and network pharmacy dispensing, and disease and drug utilization management; formulary development and administration, development and improvement of methods of payment or coverage policies.

M. PROVIDER NETWORKS

Establishing, arranging, and maintaining provider networks, including managed care point-of-service, preferred provider, and traditional networks through contractual arrangements with preferred participating hospitals, physicians, incentive programs, quality improvement programs, and other health care providers and with other Health Plans within designated service areas.

N. PUBLIC HEALTH

Approaching medicine as a concern to the health of the community as a whole. Public health includes but is not limited to the following functions: 1) the assessment and monitoring of the health of communities and populations at risk to identify health problems and priorities; 2) the formulation of public policies designed to solve identified local and national health problems and priorities; and 3) the assurance that all populations have access to appropriate and cost-effective care, including health promotion and disease prevention and evaluation of the effectiveness of that care.

O. RESEARCH

Systematically investigating, including research development, testing, and evaluation, in order to develop or contribute to generalizable knowledge.

P. STANDARD REPORTS

Generating monthly statements and claim listings.

Q. STANDARD TRANSACTIONS AND OTHER ELECTRONIC DATA INTERCHANGE

Conducting health care administrative and financial transactions for standards established in 45 CFR Part 162 as Standard Transactions, and engaging in such other electronic data interchange as necessary or appropriate to BCBSM's activities.

Blue Cross Blue Shield of Michigan
SCHEDULE A – Renewal Term (Effective 07/01/2022 thru 06/30/2023)
Administrative Services Contract (ASC)

1. **Group Name** CITY OF MARQUETTE
2. **Customer ID** 115177
3. **ASC Funding Arrangement** Weekly Invoice
4. **Line(s) of Business and Services**

Line of Business	Applicable
Facility	
Professional	
Prescription Drugs	
Dental	X
Vision	
Hearing	

5. Administrative Fees

The below administrative fees cover the Lines of Business and Services checked in Section 4 above, unless otherwise indicated.

A. Fixed Administrative Fees	Amount Per Contract Per Month	Estimated Monthly Contracts	Estimated Monthly Admin Fee	Effective Start Date	Effective End Date
i. 2022 Base Admin Fee	\$5.69	204	\$1,160.76	07/01/2022	06/30/2023

B. Variable Administrative Fees – Not Applicable

6. **Data Feeds – Not Applicable**
7. **Advance Deposit – Not Applicable**
8. **Advance Deposit Monthly Cap / Level Payment Amount – Not Applicable**
9. **BCBSM Account**

1840-09397-3

Wire Number

Comerica

Bank

0720-00096

American Bank Association

10. Late Payment / Interest Charges

Late Payment Charge	2.00%
Health Care Provider Interest Charge	12.00%

11. **Buy-Ups – Not Applicable**
12. **Shared Savings Programs – Not Applicable**
13. **Pharmacy Pricing Arrangement – Not Applicable**

14. Additional Pharmacy Services and/or Programs

A. 3rd Party Rx Vendor Fee

If Group's prescription drug benefits are administered by a third-party vendor, BCBSM will charge Group an administrative fee of \$5.00 per contract per month due to the additional costs and resources necessary for BCBSM to effectively manage and administer the medical benefit without administering the prescription drug benefit.

B. High-Cost Drug Discount Optimization Program – *Not Applicable*

15. 3rd Party Stop-Loss Vendor Fee – *Not Applicable*

16. Agent Fees

This Schedule A does not include any fees payable by Group to an Agent. If Group has an Agent Fee Processing Agreement on file with BCBSM, please refer to that agreement for fees and details.

17. Medicare Contracts

If Group has Medicare contracts that are being separated from the current funding arrangement, all figures within the current funding arrangement will be adjusted.

18. Compensation Agreement with Providers

The Group acknowledges that BCBSM or a Host Blue may have compensation arrangements with providers in which the provider is subject to performance or risk-based compensation, including but not limited to withholds, bonuses, incentive payments, provider credits and member management fees. Often the compensation amount is determined after the medical service has been performed and after the Group has been invoiced. The Claims billed to Group include both service-based and value-based reimbursement to health care providers. Group acknowledges that BCBSM's negotiated reimbursement rates include all reimbursement obligations to providers including provider obligations and entitlements under BCBSM Quality Programs. Service-based reimbursement means the portion of the negotiated rate attributed to a health care service. Value-based reimbursement is the portion of the negotiated reimbursement rate attributable to BCBSM Quality Programs, as described in Exhibit 1 to Schedule A. BCBSM negotiates provider reimbursement rates and settles provider obligations on its own behalf, not Group. Group receives the benefit of BCBSM provider rates, but it has no entitlement to a particular rate or to unbundle the service-based or value-based components of Claims.

See Schedule B to ASC and Exhibit 1 to Schedule A for additional information.

19. Out-of-State Claims

Amounts billed for out-of-state claims may include BlueCard access fees and any value-based provider reimbursement negotiated by a Host Blue with out-of-state providers. See Schedule B to ASC and Exhibit 1 to Schedule A for additional information.

Exhibit 1 to the Schedule A: Value-Based Provider Reimbursement

As in prior years, the Claims billed to Group include amounts that BCBSM reimburses health care providers including reimbursement tied to value. BCBSM has adopted a provider payment model that includes both fee-based and value-based reimbursement. BCBSM does not unbundle Claims and does not retain any portion of Claims as compensation. Provider reimbursement is governed by separate agreements with providers, BCBSM standard operating procedures, and BCBSM Quality Programs, which are subject to change at BCBSM's discretion. BCBSM shall provide Group with at least sixty (60) days' advance written notice of any additions, modifications or changes to BCBSM Quality Programs describing the change and the effective date thereof.

BCBSM negotiates provider reimbursement rates on its own behalf and makes those rates available to customers through its products and networks. The reimbursement rates can, and often do, vary from provider to provider. Providers may qualify for higher reimbursement rates for satisfying requirements of certain BCBSM Quality Programs, including, for example, Pay-for-Performance (PFP) rates and Value Based Contracting (VBK) rates earned by hospitals, Per Attributed Per Member Per Month ("PaMPM") Provider Delivered Care Management, and Patient Centered Medical Home (PCMH) rates earned by physicians. Provider reimbursement rates also capture provider commitments to BCBSM Quality Program, such as for participation and performance in Collaborative Quality Initiatives ("CQIs"). CQIs address many of the most common and costly areas of surgical and medical care in Michigan. In each CQI, hospitals and physicians across the state collect, share and analyze data on patient risk factors, processes of care and outcomes of care, then design and implement changes to improve patient care.

Providers may also receive reward and incentive payments from BCBSM Quality Programs funded through an allocation from provider reimbursement or collected from Group's Customer Savings Refund. Such allocations may be to a pooled fund from which value-based payments to providers are made. For example, pursuant to the Physician Group Incentive Program (PGIP), physicians agree to allocate a percentage of each Claim to a PGIP fund. The PGIP fund, makes reward payments to eligible physician organizations demonstrating particular quality, and physician organizations for participation in collaborative initiatives, and funds CQIs. An additional portion of a provider's contractual reimbursement (the "Risk Allocation") of most claims may be allocated to a Risk Pool for payments to organized systems of care based on cost/quality performance.

As explained in the Blue Card Program disclosure (Schedule B to ASC), an out-of-state Blue Cross Blue Shield Plan ("Host Blue") may also negotiate fee-based and/or value-based reimbursement for their providers. A Host Blue may include all provider reimbursement obligations in Claims or may, at its election, collect some or all of its value-based provider (VBP) reimbursement obligations through a PaMPM benefit expense, as in, for example, the Total Care Program. All Host Blue PaMPM benefit expenses for VBP reimbursement will be consolidated on your monthly invoice and appear as "Out-of-State VBP Provider Reimbursement." The supporting detail for the consolidated amount will be available on e-Bookshelf as reported by each Host Blue Plan. Host Blues determine which members are attributed to eligible providers and calculate the PaMPM VBP reimbursement obligation based only on these attributed members. Host Blue have exclusive control over the calculation of PaMPM VBP reimbursement.

Value-based reimbursement includes other obligations and entitlements pursuant to other BCBSM Quality Programs funded in a similar manner to those described in this Exhibit. Additional information is available at www.valuepartnerships.com and www.bcbs.com/totalcare. Questions regarding provider reimbursement and BCBSM Quality Programs or Host Blue VBP reimbursement should be directed to your BCBSM account representative.

Intellectual property may be developed through BCBSM Quality Programs for subsequent license and use by BCBSM or a third party. Group specifically understands, acknowledges, and agrees that it has no rights to any intellectual property, or derivatives thereof, including, but not limited to, copyrights, patents, or licenses, developed thru BCBSM Quality Programs.

**Schedule B
BlueCard Disclosures
Inter-Plan Arrangements**

Out-of-Area Services

Overview

BCBSM has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as “Inter-Plan Arrangements.” These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association (“Association”). Whenever Enrollees access healthcare services outside the geographic area BCBSM serves, the Claim for those services may be processed through one of these Inter-Plan Programs and presented to BCBSM for payment in accordance with the rules of the Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically, when accessing care outside the geographic area BCBSM serves, Enrollees obtain care from Providers that have a contractual agreement (“Participating Providers”) with the local Blue Cross and/or Blue Shield Licensee in that other geographic area (“Host Blue”). In some instances, Enrollees may obtain care from Providers in the Host Blue geographical area that do not have a contractual agreement (“Nonparticipating Providers”) with the Host Blue. BCBSM remains responsible for fulfilling its contractual obligations to you. BCBSM’s payment practices in both instances are described below.

This disclosure describes how Claims are administered for Inter-Plan Arrangements and the fees that are charged in connection with Inter-Plan Arrangements. Note that Dental Care Benefits, except when paid as medical claims / benefits, and those Prescription Drug Benefits or Vision Care Benefits that may be administered by a third party contracted by BCBSM to provide the specific service or services, are not processed through Inter-Plan Arrangements.

A. BlueCard® Program

The BlueCard® Program is an Inter-Plan Arrangement. Under this Arrangement, when Enrollees access covered healthcare services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its Participating Providers. The financial terms of the BlueCard Program are described generally below.

1. Liability Calculation Method Per Claim – In General

a. Enrollee Liability Calculation

The calculation of the Enrollee liability on Claims for covered healthcare services processed through the BlueCard Program will be based on the lower of the Participating Provider’s billed covered charges or the negotiated price made available to BCBSM by the Host Blue.

Under certain circumstances, if BCBSM pays the Healthcare Provider amounts that are the responsibility of the Enrollee, BCBSM may collect such amounts from the Enrollee.

Where Group agrees to use reference-based benefits, which are service-specific benefit dollar limits for specific procedures, based on a Host Blue’s local market rates, Enrollees will be responsible for the amount that the healthcare Provider bills for a specified procedure above the reference benefit limit for that procedure. For a Participating Provider, that amount will be the difference between the negotiated price and the reference benefit limit. For a Nonparticipating Provider, that amount will be the difference between the Nonparticipating Provider’s billed charge and the reference

benefit limit. Where a reference benefit limit exceeds either a negotiated price or a Provider's billed charge, the Enrollee will incur no liability, other than any applicable Enrollee cost sharing.

b. Group Liability Calculation

The calculation of Group liability on Claims for covered healthcare services processed through the BlueCard Program will be based on the negotiated price made available to BCBSM by the Host Blue under contract between the Host Blue and the Provider. Sometimes, this negotiated price may be greater for a given service or services than the billed charge in accordance with how the Host Blue has negotiated with its Participating Provider(s) for specific healthcare services. In cases where the negotiated price exceeds the billed charge, Group may be liable for the excess amount even when the Enrollee's deductible has not been satisfied. This excess amount reflects an amount that may be necessary to secure (a) the Provider's participation in the network and/or (b) the overall discount negotiated by the Host Blue. In such a case, the entire contracted price is paid to the Provider, even when the contracted price is greater than the billed charge.

In situations where participating agreements allow for bulk settlement reconciliations for Episode-Based Payment/Bundled Payments, BCBSM may include a factor for such settlement or reconciliations as part of the fees BCBSM charges to Group.

2. Claims Pricing

The Host Blue determines a negotiated price, which is reflected in the terms of each Host Blue's healthcare Provider contracts. The negotiated price made available to BCBSM by the Host Blue may be represented by one of the following:

- (i) an actual price. An actual price is a negotiated payment in effect at the time a Claim is processed without any other increases or decreases, or
- (ii) an estimated price. An estimated price is a negotiated payment in effect at the time a Claim is processed, reduced or increased by a percentage to take into account certain payments negotiated with the Provider and other Claim- and non-Claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, Provider refunds not applied on a Claim-specific basis, retrospective settlements, and performance-related bonuses or incentives, or
- (iii) an average price. An average price is a percentage of billed charges for covered services in effect at the time a Claim is processed representing the aggregate payments negotiated by the Host Blue with all of its healthcare Providers or a similar classification of its Providers and other Claim- and non-Claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

The Host Blue determines whether it will use an actual, estimated or an average price in its respective Provider agreements. The use of estimated or average pricing may result in a difference (positive or negative) between the price Group pays on a specific Claim and the actual amount the Host Blue pays to the Provider. However, the BlueCard Program requires that the amount paid by the Enrollee and Group is a final price; no future price adjustment will result in increases or decreases to the pricing of past Claims.

Any positive or negative differences in estimated or average pricing are accounted for through variance accounts maintained by the Host Blue and are incorporated into future Claim prices. As a result, the amounts charged to Group will be adjusted in a following year, as necessary, to account for over- or underestimation of the past years' prices. The Host Blue will not receive compensation from how the estimated price or average price methods, described above, are calculated. Because all amounts paid are final, neither positive variance account amounts (funds available to be paid in the following year), nor negative variance amounts (the funds needed to be received in the following year), are due to or from Group. If Group terminates, Group will not receive a refund or charge from the variance account.

Variance account balances are small amounts relative to the overall paid Claims amounts and will be liquidated/drawn down over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume / number of Claims processed and variance account balance. Variance account balances may earn interest at the federal funds or similar rate. The Host Blue may retain interest earned on funds held in variance accounts.

3. BlueCard Program Fees and Compensation

Group understands and agrees to reimburse BCBSM for certain fees and compensation which BCBSM is obligated under the BlueCard Program to pay to the Host Blue, to the Blue Cross and Blue Shield Association (BCBSA), and/or to vendors of BlueCard Program related services. The specific Blue Card Program fees and compensation that are charged to Group and which Group is responsible related to the foregoing are set forth in Exhibit 1 to this Schedule B. BlueCard Program Fees and compensation may be revised annually from time to time as described in H below.

B. Negotiated Arrangements

With respect to one or more Host Blue, instead of using the BlueCard Program, BCBSM may process your Enrollee claims for covered healthcare services through Negotiated Arrangements.

In addition, if BCBSM and Group have agreed that (a) Host Blue(s) shall make available (a) custom healthcare Provider network(s) in connection with this Agreement, then the terms and conditions set forth in BCBSM's Negotiated Arrangement(s) for National Accounts with such Host Blue(s) shall apply. These include the provisions governing the processing and payment of Claims when Enrollees access such network(s). In negotiating such arrangement(s), BCBSM is not acting on behalf of or as an agent for Group, the Group's health care plan or Group Enrollees.

1. Enrollee Liability Calculation

Enrollee liability calculation for covered healthcare services will be based on the lower of either billed covered charges for covered services or negotiated price that the Host Blue makes available to BCBSM that allows Group's Enrollees access to negotiated participation agreement networks of specified Participating Providers outside of BCBSM's service area.

Under certain circumstances, if BCBSM pays the Healthcare Provider amounts that are the responsibility of the Enrollee, BCBSM may collect such amounts from the Enrollee.

In situations where participating agreements allow for bulk settlement reconciliations for Episode-Based Payment/Bundled Payments, BCBSM may include a factor for such settlement or reconciliations as part of the fees BCBSM charges to Group.

Where Group agrees to use reference-based benefits, which are service-specific benefit dollar limits for specific procedures, based on a Host Blue's local market rates, Enrollees will be responsible for the amount that the healthcare Provider bills for a specified procedure above the reference benefit limit for that procedure. For a Participating Provider, that amount will be the difference between the negotiated price and the reference benefit limit. For a Nonparticipating Provider, that amount will be the difference between the Nonparticipating Provider's billed charge and the reference benefit limit. Where a reference benefit limit exceeds either a negotiated price or a Provider's billed charge, the Enrollee will incur no liability, other than any applicable Enrollee cost sharing.

2. Group Liability Calculation

The calculation of Group liability on Claims for covered healthcare services processed through the BlueCard Program will be based on the negotiated price made available to BCBSM by the Host Blue under the contract between the Host Blue and the Provider. Sometimes, this negotiated price may be greater for a given service or services than the billed charge in accordance with how the Host Blue has negotiated with its Participating Provider(s) for specific healthcare services. In cases where the negotiated price exceeds the billed charge, Group may be liable for the excess amount even when the Enrollee's deductible has not been satisfied. This excess amount reflects an amount that may be necessary to secure (a) the Provider's participation in the network and/or (b) the overall discount negotiated by the Host Blue. In such a case, the entire contracted price is paid to the Provider, even when the contracted price is greater than the billed charge.

3. Claims Pricing

Same as in the BlueCard Program above.

4. Fees and Compensation

Group understands and agrees to reimburse BCBSM for certain fees and compensation which we are obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blue, to the Blue Cross and Blue Shield Association, and/or to vendors of Inter-Plan Arrangement-related services. Fees and compensation under applicable Inter-Plan Arrangement may be revised annually as described in section H below. In addition, the participation agreement with the Host Blue may provide that BCBSM must pay an administrative and/or a network access fee to the Host Blue, and Group further agrees to reimburse BCBSM for any such applicable administrative and/or network access fees. The specific fees and compensation that are charged to Group under the Negotiated Arrangements are set forth in Exhibit 1 to this Schedule B.

C. Special Cases: Value-Based Programs

Value-Based Programs Overview

Group Enrollees may access covered healthcare services from Providers that participate in a Host Blue's Value-Based Program. Value-Based Programs may be delivered either through the BlueCard Program or a Negotiated Arrangement. These Value-Based Programs may include, but are not limited to, Accountable Care Organizations, Global Payment/Total Cost of Care arrangements, Patient Centered Medical Homes and Shared Savings arrangements.

Value-Based Programs under the BlueCard Program

Value-Based Programs Administration

Under Value-Based Programs, a Host Blue may pay Providers for reaching agreed-upon cost/quality goals in the following ways, including but not limited to retrospective settlements, Provider Incentives, share of target savings, Care Coordinator Fees and/or other allowed amounts.

The Host Blue may pass these Provider payments to BCBSM, which BCBSM will pass directly on to Group as either an amount included in the price of the Claim or an amount charged separately in addition to the Claim.

When such amounts are included in the price of the Claim, the Claim may be billed using one of the following pricing methods, as determined by the Host Blue:

- (i) Actual Pricing: The charge to accounts for Value-Based Programs incentives/Shared Savings settlements is part of the Claim. These charges are passed to Group via an enhanced Provider fee schedule.
- (ii) Supplemental Factor: The charge to accounts for Value-Based Programs incentives/Shared Savings settlements is a supplemental amount that is included in the Claim as an amount based on a specified supplemental factor (e.g., a small percentage increase in the Claim amount). The supplemental factor may be adjusted from time to time.

When such amounts are billed separately from the price of the Claim, they may be billed as a Per Attributed Member Per Month (PaMPM) amount for Value-Based Programs incentives/Shared Savings settlements to Group outside of the Claim system. BCBSM will pass these Host Blue charges directly through to Group as a separately identified amount on the Group's invoices.

The amounts used to calculate either the supplemental factors for estimated pricing or PaMPM billings are fixed amounts that are estimated to be necessary to finance the cost of a particular Value-Based Program. Because amounts are estimates, there may be positive or negative differences based on actual experience, and such differences will be accounted for in a variance account maintained by the Host Blue (in the same manner as described in the BlueCard Claim pricing section above) until the end of the applicable Value-Based Program payment and/or reconciliation measurement period. The amounts needed to fund a Value-Based Program may be changed before the end of the measurement period if it is determined that amounts being collected are projected to exceed the amount necessary to fund the program or if they are projected to be insufficient to fund the program.

At the end of the Value-Based Program payment and/or reconciliation measurement period for these arrangements, the Host Blue will take one of the following actions:

- Use any surplus in funds in the variance account to fund Value-Based Program payments or reconciliation amounts in the next measurement period.
- Address any deficit in funds in the variance account through an adjustment to the PaMPM billing amount or the reconciliation billing amount for the next measurement period.

The Host Blue will not receive compensation resulting from how estimated, average or PaMPM price methods, described above, are calculated. If Group terminates, you will not receive a refund or charge from the variance account. This is because any resulting surpluses or deficits would be eventually exhausted through prospective adjustment to the settlement billings in the case of Value-Based Programs. The measurement period for determining these surpluses or deficits may differ from the term of the administrative services contract.

Variance account balances are small amounts relative to the overall paid Claims amounts and will be liquidated / drawn down over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume / number of Claims processed and variance account balance. Variance account balances may earn interest, and interest is earned at the federal funds or similar rate. The Host Blue may retain interest earned on funds held in variance accounts.

Note: Enrollees will not bear any portion of the cost of Value-Based Programs except when the Host Blue uses either average pricing or actual pricing to pay Providers under Value-Based Programs.

Care Coordinator Fees

The Host Blue may also bill BCBSM for Care Coordinator Fees for Covered Services which BCBSM will pass on to Group as follows:

1. PaMPM billings; or
2. Individual Claim billings through applicable care coordination codes from the most current editions of either Current Procedural Terminology (CPT) published by the American Medical Association (AMA) or Healthcare Common Procedure Coding System (HCPCS) published by the U.S. Centers for Medicare and Medicaid Services (CMS).

As part of this agreement / contract, BCBSM and Group will not impose Enrollee cost sharing for Care Coordinator Fees.

Value-Based Programs under Negotiated Arrangements

If BCBSM has entered into a Negotiated National Account Arrangement with a Host Blue to provide Value-Based Programs to Enrollees, BCBSM will follow the same procedures for Value-Based Programs administration and Care Coordination Fees as noted in the BlueCard Program section.

D. Return of Overpayments

Recoveries of overpayments from a Host Blue or its Participating Providers and Nonparticipating Providers can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, healthcare Provider bill audits, credit balance audits, utilization review refunds, and unsolicited refunds. Recovery amounts determined in the ways noted above will be applied so that corrections will be made, in general, on either a Claim-by-Claim or prospective basis. If recovery amounts are passed on a Claim-by-Claim basis from the Host Blue to BCBSM they will be credited to the Group account. In some cases, the Host Blue will engage a third party to assist in identification or collection of overpayments or recovery amounts. The fees of such a third party may be charged to Group as a percentage of the recovery.

Unless the Host Blue agrees to a longer period of time for retroactive cancellations of membership, the Host Blue will provide BCBSM the full refunds from Participating Providers for a period of only one year after the date of the Inter-Plan financial settlement process for the original Claim. For Care Coordinator Fees associated with Value-Based Programs, BCBSM will request such refunds for a period of up to ninety (90) days from the termination notice transaction on the payment innovations delivery platform. In some cases, recovery of Claim payments associated with a retroactive cancellation may not be possible if, as an example, the recovery (a) conflicts with the Host Blue's state law or healthcare Provider contracts, (b) would result from Shared Savings and/or Provider Incentive arrangements, or (c) would jeopardize the Host Blue's relationship with its Participating Providers, notwithstanding to the contrary any other provision of this agreement / contract.

E. Inter-Plan Programs: Federal / State Taxes / Surcharges / Fees

In some instances, federal or state laws or regulations may impose a surcharge, tax or other fee that applies to self-funded accounts. If applicable, BCBSM will provide prior written notice of any such surcharge, tax or other fee to Group, which will be Group liability.

F. Nonparticipating Healthcare Providers Outside BCBSM's Service Area

1. Enrollee Liability Calculation

a. In General

When covered healthcare services are provided outside of BCBSM's service area by Nonparticipating Providers, the amount an Enrollee pays for such services will generally be based on either the Host Blue's Nonparticipating Provider local payment or the pricing arrangements required by applicable state law. In these situations, the Enrollee may be responsible for the difference between the amount that the Nonparticipating Provider bills and the payment BCBSM will make for the covered services as set forth in this paragraph. Payments for out-of-network emergency services will be governed by applicable federal and state law.

b. Exceptions

In some exception cases, BCBSM may pay Claims from Nonparticipating Providers outside of BCBSM's service area based on the Provider's billed charge, such as in situations where an Enrollee did not have reasonable access to a Participating Provider, as determined by BCBSM in BCBSM's sole and absolute discretion or by applicable state law. In other exception cases, BCBSM may pay such Claims based on the payment BCBSM would make if BCBSM were paying a Nonparticipating Provider inside of its service area where the Host Blue's corresponding payment would be more than BCBSM's in-service area Nonparticipating Provider payment. BCBSM may choose to negotiate a payment with such a Provider on an exception basis.

Unless otherwise stated, in any of these exception situations, the Enrollee may be responsible for the difference between the amount that the Nonparticipating Provider bills and the payment BCBSM will make for the covered services as set forth in this paragraph.

2. Fees and Compensation

Group understands and agrees to reimburse BCBSM for certain fees and compensation which we are obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blue, to the Blue Cross and Blue Shield Association, and/or to vendors of Inter-Plan Arrangement-related services. The specific fees and compensation that are charged to Group and that Group will be responsible for in connection with the foregoing are set forth in Exhibit 1 to this Schedule B. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in H below.

G. Blue Cross Blue Shield Global Core (Formerly known as BlueCard Worldwide® Program)

1. General Information

If Enrollees are outside the United States, the Commonwealth of Puerto Rico and the U.S. Virgin Islands (hereinafter: "BlueCard service area"), they may be able to take advantage of the Blue Cross Blue Shield Global Core Program when accessing covered healthcare services. The Blue Cross Blue Shield Global Core Program is unlike the BlueCard Program available in the BlueCard service area in certain ways. For instance, although the Blue Cross Blue Shield Global Core Program assists Enrollees with accessing a network of inpatient, outpatient and professional providers, the network is not served by a Host Blue. As such, when Enrollees receive care from Providers outside the BlueCard service area, the Enrollees will typically have to pay the Providers and submit the Claims themselves to obtain reimbursement for these services.

- **Inpatient Services**

In most cases, if Enrollees contact the Blue Cross Blue Shield Global Core Service Center for assistance, hospitals will not require Enrollees to pay for covered inpatient services, except for their cost-share amounts/deductibles, coinsurance, etc. In such cases, the hospital will submit Enrollee Claims to the Blue Cross Blue Shield Global Core Service Center to initiate Claims processing. However, if the Enrollee paid in full at the time of service, the Enrollee must submit a Claim to obtain reimbursement for covered healthcare services. Enrollees must contact BCBSM to obtain precertification for non-emergency inpatient services.

- **Outpatient Services**

Physicians, urgent care centers and other outpatient Providers located outside the BlueCard service area will typically require Enrollees to pay in full at the time of service. Enrollees must submit a Claim to obtain reimbursement for covered healthcare services.

- **Submitting a Blue Cross Blue Shield Global Core Claim**

When Enrollees pay for covered healthcare services outside the BlueCard service area, they must submit a Claim to obtain reimbursement. For institutional and professional claims, Enrollees should complete a Blue Cross Blue Shield Global Core International claim form and send the claim form with the Provider's itemized bill(s) to the Blue Cross Blue Shield Global Core Service Center address on the form to initiate claims processing. The claim form is available from BCBSM, the Blue Cross Blue Shield Global Core Service Center, or online at www.bcbsglobal.com. If Enrollees need assistance with their claim submissions, they should call the Blue Cross Blue Shield Global Core Service Center at 1.800.810.BLUE (2583) or call collect at 1.804.673.1177, 24 hours a day, seven days a week.

2. Blue Cross Blue Shield Global Core Program-Related Fees

Group understands and agrees to reimburse BCBSM for certain fees and compensation which we are obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blue, to the Association and/or to vendors of Inter-Plan Arrangement-related services. The specific fees and compensation that are charged to Group under the Blue Cross Blue Shield Global Core Program and that Group is responsible for relating to the foregoing are set forth in Exhibit 1 to this Schedule B. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in section H below.

H. Modifications or Changes to Inter-Plan Arrangement Fees or Compensation

Modifications or changes to Inter-Plan Arrangement fees are generally made effective Jan. 1 of the calendar year, but they may occur at any time during the year. In the case of any such modifications or changes, BCBSM shall provide Group with at least sixty (60) days' advance written notice of any modification or change to such Inter-Plan Arrangement fees or compensation describing the change and the effective date thereof and Group right to terminate the ASC without penalty by giving written notice of termination before the effective date of the change. If Group fails to respond to the notice and does not terminate the ASC during the notice period, Group will be deemed to have approved the proposed changes, and BCBSM will then allow such modifications to become part of the ASC.

Exhibit 1

BlueCard Program Access Fees may be charged separately each time a claim is processed through the BlueCard Program. All other BlueCard Program-related fees are included in BCBSM's administrative fee, unless otherwise agreed to by Group. The BlueCard Access Fee is charged by the Host Blue to BCBSM for making its applicable Provider network available to Group's Enrollees. The BlueCard Access Fee will not apply to Nonparticipating Provider Claims. The BlueCard Access Fee is charged on a per-Claim basis and is charged as a percentage of the discount / differential BCBSM receives from the applicable Host Blue and is capped at \$2,000.00 per Claim. The percentages for 2022 are:

1. 3.79% for fewer than 1,000 PPO or traditional enrolled Blue contracts;
2. 2.11% for 1,000–9,999 Blue PPO or traditional enrolled Blue contracts;
3. 1.96% for 10,000–49,999 Blue PPO or traditional enrolled Blue contracts;

For Groups with 50,000 or more Blue PPO or Traditional enrolled contracts, Blue Card Access Fees are waived and not charged to the Group. If Group's enrollment falls below 50,000 PPO enrolled contracts, BCBSM passes the BlueCard Access Fee, when charged, directly on to the Group.

Instances may occur in which the Claim payment is zero or BCBSM pays only a small amount because the amounts eligible for payment were applied to patient cost sharing (such as a deductible or coinsurance). In these instances, BCBSM will pay the Host Blue's Access Fee and passes it directly on to the Group as stated above even though the Group paid little or had no Claim liability.

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

Consent Agenda - Roll Call Vote **State Highway Maintenance Agreement - Roll Call Vote**

BACKGROUND:

In October of 2005, the City of Marquette entered into a memorandum of understanding with the Michigan Department of Transportation for the purpose of transferring jurisdiction of two segments of road. The City assumed responsibility for US 41 BR (West Washington Street and South Front Street) and MDOT assumed responsibility for South McClellan Avenue from M-554 (Division Street) to the US 41 bypass.

Subsequently, MDOT requested the City enter into a maintenance agreement to maintain the 1.95 miles of South McClellan Avenue from Division Street/M-554 to the US 41 bypass. The agreement is a standard form used statewide by MDOT to deal with contracted services from municipalities. The City accepted and entered into a maintenance contract through 2009. The contract was renewed on five-year terms through 2019. Though the contract was not renewed in 2019, the parties have continued under the terms of the prior agreement since that time.

MDOT has requested that the City execute a contract for the five-year term of 2019 to 2024. The contract reimburses the City for approximately \$50,000 worth of road maintenance services annually. The MDOT policy also requires the City to authorize the Mayor and Clerk to sign the document by resolution.

RECOMMENDATION:

Approve the Resolution authorizing the Mayor and City Clerk to execute the Michigan Department of Transportation Highway Maintenance Agreement, which is effective through September 30, 2024.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Maintenance Contract
- ▣ Insurance Certificate
- ▣ MDOT Resolution

MICHIGAN DEPARTMENT OF TRANSPORTATION
STATE TRUNKLINE MAINTENANCE CONTRACT
CITY OF MARQUETTE

This Contract, made and entered into this date of _____, by and between the Michigan Department of Transportation (MDOT), and the Michigan municipal corporation (Municipality) of the

City of Marquette.

RECITALS:

MDOT is authorized by 1925 PA 17 Section 2, MCL 250.62 to contract with the Municipality for the construction, improvement, or maintenance of state trunkline highways. MDOT, subject to the approval of the State Administrative Board; and

MDOT has so advised the State Transportation Commission and the Appropriations Committees of the Senate and House of Representatives in accordance with 1951 PA 51 Section 11c, MCL 247.661c; and

MDOT has affirmatively found that contracting with this Municipality for the maintenance of state trunkline highways and bridges within its contract area, is in the best public interest.

The parties agree as follows:

Section 1. ORGANIZATION, EQUIPMENT, AND FACILITIES

The Municipality will provide personnel, equipment, materials, and facilities to maintain the state trunkline highways and provide agreed upon services under the terms of this Contract. MDOT will review the Municipality's operation and organizational plan, annually, relative to the work to be completed under this Contract. MDOT will approve the plan if it meets MDOT's goals for the state trunkline system. The Municipality will furnish an organizational chart showing garage locations, all facilities including salt sheds, the names of supervisory personnel, and any other information incidental to the performance of this maintenance contract as required by the Region Engineer.

Section 2. SCOPE OF WORK

- A. The Municipality will perform maintenance work under the direction of the Region Engineer of MDOT or a designee of the Region Engineer, acting under the general direction of the Engineer of Transportation Systems Management Operations of MDOT. Maintenance and other work will be performed under the terms of this Contract and as covered by the Field Activity Budget, subsequent work plans, and Transportation Work Authorizations (TWAs), for each fiscal year, which are incorporated herein by reference. Work performed under this Contract will be performed in accordance with accepted maintenance practices and/or specifications provided by MDOT as identified in a written Letter of Understanding.
1. A written Letter of Understanding shall be drafted by MDOT and signed by both MDOT and the designated representative of the Municipality. The letter shall remain in effect until either replaced or modified by the Region Engineer and approved by the Municipality. The letter will outline the number and type of maintenance activities to be performed under this Contract (A sample Letter of Understanding is attached as Appendix F). The Letter of Understanding shall provide sufficient detail of the work activities to be performed, expectations or outcomes from the performance of this work, and identification of budget line items for budgeting and billing purposes.
 2. The executed Letter of Understanding and all subsequent approved revisions thereto, are incorporated herein by reference as if the same were repeated in full herein.
 3. If the Municipality is unable to perform any of the services outlined in the Letter of Understanding on a twenty-four (24) hour, seven (7) day-a-week basis, the Municipality will immediately notify MDOT. MDOT will work with the Municipality to ensure that the services defined in the Letter of Understanding are performed.
- B. When the Municipality inspects permits on MDOT's behalf or assists MDOT with a permit:
1. MDOT will require all Permit Applicants to "save harmless" the State of Michigan, Transportation Commission, MDOT, and all officers, agents, and employees thereof, and the Municipality, their officials, agents and employees, against any and all claims for damages arising from operations covered by the permit as a condition of all permits issued by MDOT.

2. MDOT will further require Permit Applicants to provide comprehensive general liability insurance, including coverage for contractual liability, completed operations, and/or product liability, X (Explosion), C (Collapse), & U (Underground), and a contractor's protective liability with a blasting endorsement when blasting is involved, or commercial general liability insurance which includes all the above, naming as additional parties insured on all such policies, the State of Michigan, Transportation Commission, MDOT, and all officers, agents, and employees thereof, the Municipality their officials, agents, and employees. The Permit Applicant will provide written proof of the insurance to MDOT. MDOT may waive this requirement for permits issued to governmental entities and public utilities or when specifically waived by the Municipality in writing.
3. The amounts of such insurance will be no less than:

Comprehensive General Liability:

Bodily Injury	--	\$500,000 each occurrence
	--	\$500,000 each aggregate
Property Damage	--	\$250,000 each occurrence
	--	\$250,000 each aggregate

Commercial General Liability Insurance:

\$500,000 each occurrence and aggregate

- C. TWAs may be issued by the Region Engineer for special maintenance work (work not covered by the Line Item Budget) and non-maintenance work. This work may be performed by the Municipality or a subcontractor as set forth in Section 9 of this Contract. TWAs will be performed in accordance with MDOT's accepted maintenance practices and specifications as specified on the TWA. The Municipality will provide the necessary supervision or inspection to assure that the work is performed in accordance with the TWA.

The Municipality and MDOT may agree to include additional maintenance items to be covered under this Contract. Such items may include, but are not limited to, maintenance of traffic control devices (signals), freeway lighting and intelligent traffic system (ITS). All such work will be listed in the Letter of Understanding, included in the line item budget and defined in a supplemental scope which will become an attachment to this Contract.

The Municipality shall be responsible for providing all traffic control necessary to complete the work as outlined in this Contract unless otherwise agreed to by MDOT.

The Municipality and MDOT may enter into separate agreements for the shared payment of installation, maintenance, and energy costs for traffic control devices.

- D. The Region Engineer is authorized to issue written orders, as necessary, for the performance of maintenance work under the provisions of this Contract.

Section 3. INTEGRATION OF STATE AND MUNICIPAL WORK

The Municipality will furnish qualified personnel and adequate equipment and may furnish materials, as set forth in this Contract, as needed to perform maintenance on state trunkline highways, consistent with MDOT's established core level of service for winter and non-winter maintenance activities, an approved annual budget, work plan, and work schedule. Personnel and equipment may be used on the local road system and state trunkline highways as conditions warrant.

Section 4. HIGHWAY MAINTENANCE CONTRACT ADMINISTRATOR

The Municipality hereby designates _____ as Contract Administrator on state trunkline highways, who will be responsible for budget and the administration of the Contract. In the event the Municipality desires to replace the Contract Administrator, the Municipality will notify MDOT within (30) days of the change in writing.

Section 5. SUPERVISION

The Municipality hereby designates, where applicable, the following:

Maintenance Superintendent (Streets): _____

Signal/Electrical Superintendent: _____

Storm Sewer Superintendent: _____

Other (Specify): _____

who will supervise all work covered by this Contract. In the event the Municipality desires to replace the designated contacts, the Municipality will notify MDOT within (30) days of the change in writing.

Section 6. WAGE SCHEDULE

Wages paid by the Municipality for work on state trunkline highways will be the same as on street work for the Municipality.

Premium Pay and Overtime Pay (specify under what conditions and percentage of regular rate paid if not specified in the attached labor agreement).

Pay for “show-up time” (Specify under what conditions and number of hours, if a minimum number is used and is not specified in the attached labor agreement).

No “stand by at home” pay will be included in charges for work on state trunkline highways.

MDOT will reimburse the Municipality for Direct Labor Overhead costs on all labor costs properly chargeable to MDOT, including but not limited to, vacation, sick leave, holiday pay, workers’ compensation, retirement, social security, group life insurance, hospitalization, longevity, unemployment insurance, and military leave, hereinafter referred to as “EMPLOYEE BENEFITS,” in accordance with Section 16.

Section 7. MATERIALS TO BE ACQUIRED AND SPECIFICATIONS

Material necessary for the performance under this Contract, may, at the option of the Municipality, be purchased by the Municipality unless otherwise directed by the Region Engineer. The Municipality will advertise and receive competitive bids when such purchases exceed Ten Thousand Dollars (\$10,000.00) or if required by federal or state law.

The Municipality will retain documentation that such bids were taken. Failure to retain documentation that such bids were taken may result in denial of reimbursement of the costs of such materials.

The following materials: bituminous pre-mixed materials, bituminous materials, aggregates (except ice control sand), bulk salt and traffic control devices used on state trunkline highways by the Municipality will conform to current or supplemental specifications of MDOT, unless otherwise approved in advance by the Region Engineer. The Region Engineer may require approval by MDOT'S Construction Field Services Division or by a laboratory approved by the Construction Field Services Division. Copies of approvals will be placed on file in the offices of the Municipality and the Region Engineer. If MDOT-owned materials are stored jointly with Municipality-owned materials, proper and adequate inventory records must be maintained by the Municipality, clearly indicating the portion that is MDOT-owned.

Section 8. PRICE SCHEDULE OF MATERIALS AND SERVICES

Materials produced and/or supplied by the Municipality including aggregates and bituminous materials, may be furnished at a firm unit price subject to approval of source and price by the Region Engineer. Firm unit prices are not subject to unit price adjustment by review.

The Municipality may change, add, or delete firm unit prices when requested in writing and approved by the Region Engineer at least sixty (60) days prior to the effective date of the change, addition, or deletion.

FIRM UNIT PRICES

<u>ITEM KIND</u>	<u>ITEM LOCATION</u>	<u>PRICE UNIT</u>	<u>PRICE INCLUDES*</u>	<u>PER UNIT</u>

Insert above, the following applicable number(s):

*Firm Unit Price Includes:

<u>Item Kind</u>	<u>Item Locations</u>
1. Processing/or Mixing Costs	1. Pit Site
2. Stockpiling/or Hauling to Stockpile Costs	2. Yard
3. Royalty Costs	3. Other (Describe)
4. Municipal Supplied Salt or Calcium Chloride (when used in a winter salt/sand mixture)	
5. Winter Sand	
6. Bituminous Costs	
7. Other (Describe)	

MDOT may review all records necessary to confirm the accuracy of the material quantities for all materials on the Firm Unit Price List shown above for which the Municipality requests reimbursement.

Items purchased from a vendor source or vendor stockpile for direct use on the state trunkline highways, are not eligible for firm unit price consideration and should be billed at vendor pricing.

Reimbursement for all materials supplied by the Municipality which are not included in the firm unit price schedule will be reimbursed in accordance with Section 16(D). MDOT may review all records for materials purchased from a vendor source or vendor stockpile for direct use on state trunkline highways.

Section 9. SUBCONTRACTS

The Municipality may subcontract any portion of the work to be performed under this Contract. Bid/price solicitation and subcontracts will be in conformance with the Municipality's contracting process, and applicable state laws, except as modified herein. All subcontracted work will require the Municipality to submit a Quotation Request for Services or Equipment (Form 426) along with relevant bid and contract documents and bid or quote tabulation.

All subcontracted work will be performed in accordance with the established Scope of Work outlined on Form 426 and any specifications developed by the Municipality and/or MDOT for said subcontracted work. The scope of work and specifications (if any) must be approved by the Region Engineer. The Municipality will provide the necessary supervision or inspection to assure the subcontracted work is performed in accordance with the scope of work and specifications. At no time will the Municipality pay for subcontracted work until the work has been inspected and approved for compliance with the scope of work and specifications.

Emergency work will be subcontracted based on a verbal approval given by the Region Engineer. The work must be supported by the subsequent submission of Form 426 upon completion of work. State Administrative Board approval is required within thirty (30) days of completion of emergency work for contracts of \$250,000 or greater.

It is the intent of the parties to extend the terms of the Contract if the subcontract work is in progress at the conclusion of the Contract term. This provision shall not apply if this Contract is terminated by the Municipality or MDOT.

Failure to obtain the necessary approvals or to retain the documentation that the bids, prices, or rate quotations were solicited as required under this Section, may result in a denial of the reimbursement of the costs.

For subcontracts involving the items of CLEANING DRAINAGE STRUCTURES, SWEEPING AND FLUSHING or GRASS AND WEED CONTROL, the Municipality will include a cancellation clause that will allow the Municipality to cancel the subcontract if funds are not made available by MDOT.

County and/or Municipality-based advantage programs (CBA Process) or any type of preference program that awards contracts based on criteria other than low bid through the competitive bidding process, will not be used for MDOT-funded projects.

The term of the subcontract will not exceed five (5) years; said term will include any time extensions.

The subcontract solicitation and approval process will be as follows:

- A. Subcontracts \$24,999 or less:** The Municipality will solicit either a bid price, or rate quotation from three or more qualified sources. Documentation of solicitation from all qualified sources must be retained for at least three (3) years following final payment made for each subcontract. Region Engineer approval of Form 426 is required.
- B. Subcontracts \$25,000 or greater:** The Municipality will advertise and award by competitive bid. Advertisements must clearly define contract term and location of work. Documentation of the solicitation from all qualified sources must be retained for at least three (3) years following final payment made for each subcontract. Region Engineer approval of Form 426 is required.

State Administrative Board approval is required prior to the execution of contracts that are \$500,000 or greater.

State Administrative Board requirements for Amendments (previously referred to as overruns, extra work and adjustments), are outlined in Appendix E, attached hereto and made a part hereof.

Section 10. NON-DISCRIMINATION

In connection with the performance of maintenance work under this Contract, the Municipality (hereinafter in Appendix C referred to as the “contractor”) agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts,” as set forth in Appendix C, attached hereto and made a part hereof. The Municipality further covenants that it will comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this Contract.

Section 11. ANTI-KICKBACK

No official or employee of the Municipality or of the State of Michigan will receive remuneration (directly or indirectly) for the purchase of materials, supplies, equipment, or subcontracts in connection with the performance of this Contract.

Section 12. SCOPE OF CONTRACT

It is declared that the work performed under this Contract is a governmental function which the Municipality performs for MDOT. This Contract does not confer jurisdiction upon the Municipality over the state trunkline highways encompassed by this Contract or over any other state trunkline highways. This Contract may not be construed to confer temporary or concurrent jurisdiction upon the Municipality over a state trunkline highway. Nothing inconsistent with the underlying statutory jurisdiction, duties, prerogatives, and obligations of MDOT is herein intended. The parties hereto further declare that this Contract is not made for the benefit of any third party.

Section 13. INSURANCE

- A. The Municipality will furnish MDOT with a certificate of automobile liability insurance, which complies with the No-Fault Automobile Insurance laws of the State of Michigan, MCL 500.3101, *et seq.* The Insurance coverage will include vehicles owned, leased or rented by the Municipality. Such insurance will not be less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) for bodily

injury or death of any one person. Coverage for public liability, property damage, and combined single limit will also comply with the No-Fault Automobile Insurance laws of the State of Michigan. The Municipality will provide thirty (30) days notice to MDOT prior to cancellation, termination, or material change of the policy. The certificate of said insurance, on MDOT Form shall be submitted to MDOT on DEPARTMENT Form 428 (Certificate of Insurance for State Highway Maintenance Contract) covering public liability and property damage, indicating thereon the policy number, and the aforesaid thirty (30) days notice provisions and the limits of liability. The Municipality agrees to review its insurance programs with its statewide association in an attempt to obtain cost savings and efficiency for MDOT.

If the Municipality is self-insured, a copy of the Secretary of State's Certificate of Self-insurance will be submitted to MDOT.

- B. In the event the Municipality receives a Notice of Intent to File Claim and/or any complaint filed by a person seeking to recover damages from the Municipality for its alleged acts or omissions on a state trunkline highway, the Municipality will provide a copy of such notice to the Assistant Attorney General, within fifteen (15) days of receipt of said notice or complaint. The Notice of Intent to File Claim and/or any complaint filed by a person seeking to recover damages from the Municipality will be sent to:

Assistant Attorney General
Division Chief
Transportation Division
Van Wagoner Building - 4th Floor
425 West Ottawa Street
P.O. BOX 30050
Lansing, Michigan 48909

Thereafter, the Municipality will provide copies of pleadings and other information regarding the claim or lawsuit when requested by an Assistant Attorney General

SECTION 14. WORKERS' DISABILITY COMPENSATION

The Municipality will comply with the Michigan Workers' Disability Compensation Law for all employees performing work under this Contract, MCL 500.3400, *et seq.*

SECTION 15. BUDGET GUARANTEE

Each MDOT fiscal year, a winter and non-winter maintenance budget will be prepared separately. These budgets will be established by the Region Engineer within guidelines established by MDOT. Prior to the development of an annual budget by the Region Engineer, the Municipality and MDOT will meet and develop a proposed work plan including a schedule for routine maintenance and the associated cost of the work plan for the coming year. This proposed work plan will be broken down by month and form the basis of the non-winter maintenance budget for the Municipality for the next fiscal year. The non-winter budget will be balanced over all twelve months of the fiscal year. The budget will be adjusted each month to address budget overruns and under-runs to ensure that total Municipality budget is not exceeded. MDOT will work with the Municipality to reach agreement on the components of this annual work plan, taking into consideration the features and conditions of the state trunkline system within the Municipality's contract area, as well as the size of the Municipality's staff that is available for state trunkline Highway maintenance. MDOT and the Municipality will identify maintenance activities that can be performed in the winter months when not performing winter maintenance.

The Municipality will work with MDOT to develop an annual priority plan for scheduling work over the term of this Contract consistent with MDOT'S road preservation objectives.

MDOT will establish the winter maintenance budget based on a five (5)-year average of winter expenditures which includes the costs for labor, fringe benefits, equipment, MDOT Salt Stores, Municipality supplied road salt, winter sand, other de-icing chemicals and overhead.

The Region Engineer and the Municipality will review the non-winter maintenance budget together at least every other month. This review will cover work planned and conducted, work planned and not conducted, and the current status of the non-winter maintenance budget. Any adjustments to the proposed work plan to curtail or expand operations to meet budget limitations will be covered in this budget review. During winter operations, the winter budget will be reviewed monthly by the Region Engineer and the Municipality.

MDOT and the Municipality will meet between March 1 and May 15 of each budget year to discuss a supplemental summer program. The supplemental summer program will be funded by the remainder of the winter budget. During this meeting, participants will estimate the remainder of the winter budget, review the status of current and future bills for winter maintenance and propose a supplemental summer. The proposed work activities will be prioritized to support MDOT'S preservation strategy as indicted in Appendix G.

SECTION 16: REIMBURSEMENT SCHEDULE REQUEST FOR REIMBURSEMENT

MDOT will reimburse the Municipality for the following costs incurred in the performance of routine maintenance, non-maintenance, and all other work covered by this Contract, except as set forth in Sections 18, 19, 20, and 21. To be eligible for reimbursement under this Section, costs must be submitted to MDOT prior to the start of the review for each respective year of the Contract period.

- A. MDOT will reimburse the Municipality for the cost of all labor employed in the performance of this Contract. The reimbursement will include the expense of permit inspections, field and office engineering, and reviewing expenses in connection with force account work by subcontractors.
- B. MDOT'S share of the cost of EMPLOYEE BENEFITS as referred to in Section 6 as a percentage of payroll. The percentage shall be developed using MDOT Form 455M (Report of Employee Benefit Costs for the Municipality) and shall conform with the general accounts of the Municipality on the Municipality's previous fiscal years' experience. These charges are subject to review in accordance with Section 25.
- C. MDOT'S share of the actual cost of Municipality owned or purchased energy.
- D. MDOT will reimburse the Municipality for the cost of purchased bulk (measured by volume or weight) materials and Non-Bulk (measured by area or count) material used in the performance of this Contract. The Municipality shall deduct all discounts or rebates in excess of two percent (2%), to establish the reimbursed cost.
- E. MDOT will reimburse the Municipality for the cost of handling materials furnished by the Municipality and materials furnished by MDOT as follows:
 - 1. **Bulk Items (measured by volume or weight):**
The direct expenses of handling, such as unloading, processing, stockpiling, heating or loading of materials measured by volume or weight in bulk, bags or drums such as aggregates, bituminous materials and chemicals, on condition that reimbursement of such expenses is not provided elsewhere herein, provided that these costs can be identified within the records of the Municipality. When bulk items paid for by MDOT are co-mingled with the Municipality's materials, MDOT will only reimburse the Municipality for the cost of handling the portion expected to be used on the state trunkline highways. The Municipality will establish a rate of use annually, based on the previous year's use to

identify MDOT's share of handling cost. The Municipality's established rate is subject to adjustment by review.

2. Non-Bulk Items (measured by area or count):

A five percent (5%) handling and storage charge may be added to the purchase price of all materials measured by area or count provided such materials are stocked in and distributed from approved storage facilities. When reported by the Municipality, charges for handling and storage in excess of five percent (5%) will be reimbursed to the Municipality upon review, provided that these charges can be identified and supported within the records of the Municipality.

- F. Equipment owned by the Municipality will be reimbursed at the established rental rates found in Schedule C, Report 375 Equipment Rental Rates, issued annually by MDOT. Rented equipment will be reimbursed at actual cost for the equipment rental.
- G. MDOT will reimburse the Municipality for the amounts paid by the Municipality to a subcontractor as set forth in Section 9.
- H. MDOT will reimburse the Municipality for the cost of labor, materials, and equipment rental incurred in connection with engineering, supervision, and inspection of subcontract work.
- I. Overhead in Accordance with Attached Overhead Schedule.

MDOT will reimburse the Municipality for overhead costs at the appropriate percentage rate as indicated in Appendix B. The overhead rate shall be based upon the original annual budget established for the Municipality and shall not change.

The overhead amount payable under Section 16(I) is reimbursement to the Municipality for all costs and expenses arising out of the performance of this Contract not specifically described in other sections of this Contract. This reimbursement includes salary and expenses (including transportation) of the Maintenance Superintendent (except as noted in Section 16(K)), salaries of clerical assistants, including radio communication staff, office expense, storage rentals on Municipality owned property, and the cost of small road tools. Work tools without a power assist and used in a road or a bridge maintenance activity, are considered small road tools. Small road tools do not have an equipment rental rate listed in Schedule C, Report 375, Equipment Rental Rates. Small road tools are reimbursed as an overhead cost.

- J. MDOT will reimburse the Municipality for MDOT'S pro-rata share of the cost to maintain chemical storage facilities as provided for in the chemical storage facility contracts between the Municipality and MDOT.

- J. MDOT will reimburse the Municipality for MDOT'S pro-rata share of the cost to maintain chemical storage facilities as provided for in the chemical storage facility contracts between the Municipality and MDOT.
- K. Requests for reimbursement to be made at least bi-monthly (every other month) on the basis of certified statement of charges prepared and submitted by the Municipality within thirty (30) days from the end of each bi-monthly period on forms furnished by MDOT or using an equivalent approved alternative format. Costs submitted beyond sixty (60) days from the end of each bi-monthly period will include written justification for the delay and will be paid only upon approval of the Region Engineer. Upon written request to the Region Engineer, payment may be made to the Municipality on a monthly basis, after submission to MDOT of certified statements of costs for each monthly payment period. Municipalities with a line item budget contract of \$100,000 or greater **shall** submit request for reimbursement on a **monthly** basis through MDOT'S Local Agency Payment System (LAPS).
- L. The Municipality will be reimbursed as a direct cost for work performed by the Maintenance Superintendent making regular inspections of state trunkline highways in accordance with written instructions from the Region Engineer. This time shall be specifically recorded on daily time sheets and reported as a direct labor charge.
- It is further agreed that in smaller municipalities, the Maintenance Superintendent designated above may at times be engaged in tasks other than those of a strictly supervisory nature, such as operator of a truck or other highway equipment. The Municipality may be reimbursed for this time worked on state trunklines, provided that all such time for non-supervisory work is specifically recorded on the daily time sheet and reported on the Maintenance Payroll Report Form 410A. The exact dates on which the Maintenance Superintendent so worked, the number of hours worked, and the number of hours worked under each classification shall be indicated on the Maintenance Payroll Report Form 410A.

SECTION 17: ELECTRONIC FUNDS TRANSFER

Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). The Municipality is required to register to receive payments by EFT at the SIGMA Vendor Self Service (VSS) website (www.michigan.gov/SIGMAVSS).

SECTION 18: SNOW HAULING

MDOT will share in the cost of snow hauling if each snow hauling effort is approved by the Region Engineer. MDOT'S share of snow hauling will be determined based on the ratio of area designated for traffic movement to the total area of the state trunkline highway right-of-way within the agreed upon area of snowhaul. MDOT will subtract the area of parking lanes and sidewalks from the total area of the state trunkline highway right-of-way to determine the area designated for traffic movement. MDOT'S reimbursement for snow hauling from state trunkline highways, based upon this calculation, is paid at the rate of _____ percent (%) of actual charges supported by proper documentation. The frequency (annually, each storm, etc.) will be at the discretion of the Region Engineer. The Municipality should denote snow hauling charges as Activity 149, Other Winter Maintenance, on Trunk Line Maintenance Reports. A prior written authorization for each snow haul event from the Region Engineer shall be required and kept on file for review purposes.

The Municipality agrees that it will prohibit additional snow from being deposited on the highway right-of-way from side streets.

SECTION 19: PAVEMENT MARKING

Compensation for the item of PAVEMENT MARKING will be made on the basis of actual expenditure only, except in no case will the Municipality be compensated for a total expenditure in excess of the amount designated for PAVEMENT MARKING in the Line Item Budget for the appropriate MDOT fiscal year. Compensation for PAVEMENT MARKING is limited to only painting authorized by the Region Engineer. The Municipality shall not include charges for curb painting in the routine maintenance cost for state trunkline maintenance.

SECTION 20: COMPENSATION FOR AESTHETIC WORK ITEMS

Compensation for the items of SWEEPING AND FLUSHING, GRASS AND WEED CONTROL and ROADSIDE CLEAN UP will be made on the basis of actual expenditures only, except that in no case will the Municipality be compensated for a total expenditure in excess of the budget amount designated each of these three work activities on the Summary of the Field Activity Budget for the appropriate MDOT fiscal year.

The number of work operations for each of these three activities will be agreed upon between the Municipality and Region Engineer; and reflected in each line activity budget amount.

SECTION 21: TREES AND SHRUBS

Except for emergency work, the Municipality must request MDOT'S written approval to remove dead trees and/or trim trees prior to the start of work. MDOT will pay all costs to remove dead trees. MDOT and Municipality shall equally share costs when state and local forces combine efforts to trim trees within the trunkline right-of-way as approved by the Region Engineer.

SECTION 22: EQUIPMENT LIST

The Municipality will furnish MDOT a list of the equipment it uses during performance under this Contract, on MDOT form 471 (Equipment Specifications and Rentals.) This form shall be furnished to MDOT no later than February 28 of each year.

SECTION 23: RECORDS TO BE KEPT

The Municipality will:

- A. Establish and maintain accurate records, in accordance with generally accepted accounting principals, of all expenses incurred for which payment is sought or made under this Contract, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under the state trunkline maintenance contract. The Municipality will retain the following RECORDS, and others, in accordance with generally accepted accounting principles:
 - 1. Retain daily timecards or electronic timekeeping files for employees and equipment indicating the distribution of time to route sections and work items. Daily timecards must be signed by the employee, the immediate supervisor and by the timekeeper when the timekeeper is employed. If the Municipality uses crew-day cards, it will retain crew-day cards backed by a time record for the pay period signed as above, in lieu of daily individual timecards detailing the time distribution. If the Municipality uses electronic timekeeping, it will retain data files detailing time distribution and assigned supervisor approval.
 - 2. Retain properly signed material requisitions (daily distribution slips) which indicate type of material, quantity, units of measure, the date of distribution and the distribution to route sections and work items.

3. Retain additional cost records to support and develop unit cost charges and percentages as applied to invoice costs. No such cost records are necessary in support of the overhead percentage or the five percent (5%) handling charge.
- B. The Municipality will maintain the RECORDS for at least three (3) years from the date of MDOT'S receipt of the statement of charges for the quarter ending September 30 of each year of this Contract period. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the Municipality will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals for that decision has expired.

Representatives of MDOT may inspect, copy or review the RECORDS at any mutually acceptable time. However, the Municipality cannot unreasonably delay the timely performance of the review.

SECTION 24: COST CERTIFICATION, REIMBURSEMENT AND ADJUSTMENT

The Municipality hereby certifies that, to the best of the Municipality's knowledge, the costs reported to MDOT under this Contract will represent only those items which are properly chargeable in accordance with the Contract. The Municipality also hereby certifies that it has read the Contract terms and is aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

SECTION 25: CONTRACT REVIEW AND RESPONSE

The Municipality's records will be subject to review/audit within the statute of limitations, and the review/audit period will coincide with the Municipality's fiscal year, unless the Contract is terminated or not renewed. The term "review/audit" hereafter will be referred to as "review".

Charges by the Municipality for maintenance of state trunkline highways and authorized non-maintenance work performed under this Contract will not be adjusted (increased or decreased) by review after twenty-four (24) months subsequent to the date of MDOT'S receipt of certified statement of charges for the quarter ending September 30 of each year of this Contract period. This limitation will not apply in case of fraud or misrepresentation of material fact or if mutually agreed to in writing.

The firm unit prices for aggregates and bituminous materials that are processed and furnished by the Municipality will not be subject to adjustment.

If any adjustments are to be made, the Municipality will be notified of the tentative exceptions and adjustments within the above twenty-four (24) month period. The twenty-four (24) month period is intended only as a limitation of time for making adjustments and does not limit the time for payment of such amounts. In the event that a review performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, MDOT will promptly submit to the Municipality a Notice of Review Results and a copy of the Review Report, which may supplement or modify any tentative findings communicated to the Municipality at the completion of a review.

Within sixty (60) days after the date of the Notice of Review Results, the Municipality will:

1. Respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the Review Report;
2. Clearly explain the nature and basis for any disagreement as to a disallowed item of expense; and
3. Include a written explanation as to any questioned item of expense. Hereinafter, the "RESPONSE" will be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned item of expense. Where the documentation is voluminous, the Municipality may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract.
4. The Municipality agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to make a final decision to either allow or disallow any items of questioned cost.

MDOT will review submitted RESPONSE and attached documentation from the Municipality. MDOT will reply in writing acknowledging receipt of the Municipality RESPONSE. The submitted RESPONSE and attached documentation from the Municipality will be referred to the MDOT Appeal Panel. See Section 26, "Dispute Resolution Process".

SECTION 26: DISPUTE RESOLUTION PROCESS

A. Contract Disputes

For review disputes refer to Section 26 (B) below, all other disputes between the parties shall be resolved under the terms of this section. It is the intent that each party may communicate concerns relative to the contract and resolve any issues as they arise. After a contract issue has been resolved, a summary of the agreed upon resolution shall be jointly drafted and distributed. Some issues may require ongoing communication to resolve and may become an item for negotiation during the next review and renegotiation of the contract.

If the parties are unable to resolve any dispute, the parties must meet with the Engineer of Operations, Operations Field Services Division or designee. The following are steps to resolve the dispute without the need for formal legal proceedings:

- 1) The representative of the Municipality and MDOT must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with the dispute. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any legal proceeding.
- 2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract shall be honored in order that each of the parties may be fully advised of the other's position.
- 3) The specific format for the discussions shall be left to the discretion of the designated Municipality and MDOT representatives but may include the preparation of agreed upon statement of fact or written statements of position.
- 4) Statements made by the Municipality or MDOT during Dispute Resolution may not be introduced as evidence by either party in any judicial action related to or under this Contract.
- 5) In cases where disputes have not been resolved, any remaining issues will be referred to the MDOT Appeal Panel which consists of four Bureau Directors, three of which will constitute a quorum.
- 6) Every effort will be made to complete this process within 90 calendar days by both parties.

B. Review Disputes

For Review Disputes the submitted RESPONSE and attached documentation from the Municipality will be referred to the MDOT Appeal Panel. The Appeal Panel consists of four Bureau Directors, three of which will constitute a quorum.

- 1) MDOT will provide the Municipality with an opportunity to appear before the Appeal Panel to explain and support their RESPONSE.
- 2) If, after an Appeal Panel written decision, the Municipality will either accept the decision or file a lawsuit in a court of proper jurisdiction to contest MDOT's decision. The filing of a lawsuit must be initiated by the Municipality within thirty (30) days of the receipt of the Appeal Panel's written decision. MDOT will not withhold or offset the funds in dispute if the Municipality files a lawsuit in a court of proper jurisdiction.
- 3) If the Municipality fails to repay an overpayment or reach an agreement with MDOT on a repayment schedule within the thirty (30) day period, the Municipality agrees that MDOT will deduct all or a portion of an overpayment from any funds due the Municipality by MDOT under the terms of this Contract.
- 4) Every effort will be made to complete this process within 60 calendar days by both parties.

This section shall not be construed to prevent either party from initiating, and a party is authorized to initiate, an action for breach of this Contract or for any other relief allowed by law earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to the other party, or under Injunctive Relief below. In the event that a dispute is not resolved through the Dispute Resolution Process, either party may initiate an action for breach of this Contract, or any other relief allowed by law in a court of proper jurisdiction. Time periods may be extended if mutually agreed upon by both parties.

Injunctive Relief

The only circumstance in which disputes between MDOT and the Municipality shall not be subject to the provisions of this Dispute Resolution Process is when a party makes a good faith determination that it will suffer irreparable harm due to a breach of the terms of the Contract by the other party and that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in Section 28.

SECTION 27: TERM OF CONTRACT

This Contract will be in effect from October 1, 2019 through September 30, 2024.

SECTION 28: BUDGET REDUCTION, TERMINATION OR NON-RENEWAL OF CONTRACT

- A. For convenience and without cause, MDOT may reduce the budget, terminate, or choose not to renew this Contract, if written notice is given to the Municipality at least one (1) year prior to the beginning of the Contract year to which the budget reduction, termination, or expiration applies. One year from the date of such notice shall be deemed the termination date of the Contract.

The Municipality may reduce the budget, terminate, or choose not to renew this Contract if one (1) year's written notice, prior to the effective date of budget reduction, termination, or expiration is given to MDOT. One year from the date of such notice shall be deemed the termination date of the Contract.

- B. Upon termination of this Contract "for cause" or any reason, the Municipality must, for a period of time specified by MDOT (not to exceed 90 calendar days), provide all reasonable transition assistance requested by MDOT, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to MDOT or its designees. This Contract will automatically be extended through the end of the transition period.

SECTION 29: STATE OF MICHIGAN ADMINISTRATIVE BOARD RESOLUTION

The provisions of the State Administrative Board Resolution 2017-2, April 25, 2017, as set forth in Appendix D, attached hereto and made a part hereof.

SECTION 30: CONTRACTUAL INTERPRETATION

All capitalized words and phrases used in this agreement have the meaning set forth in Appendix A.

All words and phrases not specifically defined in Appendix A shall be construed and understood according to the ordinary meaning of the words used, but technical words and phrases shall have the meanings set forth in MDOT's publications, manuals, advisories, or guides, as applicable. If no MDOT publication, manual, advisory or guide is applicable, such technical words shall be construed and understood according to the usual and accepted meaning used in the industry or field to which they relate. In case of any discrepancies between the body of this Contract and any appendices attached hereto, the body of this Contract will govern.

SECTION 31: AUTHORIZED SIGNATURE(S)

This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized official(s) of the Municipality and of MDOT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective official(s) of the Municipality, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

CITY OF MARQUETTE

BY: _____
TITLE:

BY: _____
TITLE:



MICHIGAN DEPARTMENT OF TRANSPORTATION

BY: _____
TITLE: MDOT Director

APPENDIX A
MICHIGAN DEPARTMENT OF TRANSPORTATION
MUNICIPALITY CONTRACT
DEFINITIONS

ANNUAL WORK PLAN: A schedule developed by the Municipality, and a Region Engineer designee, of the routine maintenance work to be performed annually on state trunklines by the Municipality.

BUDGET/FIELD ACTIVITY BUDGET: Both items are defined as the budgeted amount distributed to the Municipality at the beginning of the fiscal year (October 1).

CHEMICAL STORAGE FACILITIES: Bulk salt storage buildings.

COMPONENTS OF AN ANNUAL WORK PLAN: An outline of agreed upon maintenance activities to be performed to meet the needs of the trunkline. The components of this plan shall be a list of prioritized maintenance needs and a general break-down of how the Municipality's budget will be applied to the standard maintenance activity groups to facilitate work on the maintenance needs.

DEPARTMENT: Means the Michigan Department of Transportation.

MDOT APPEAL PANEL: A panel comprised of four Bureau Directors responsible for deciding Contract disputes, three of which will constitute a quorum.

EQUIPMENT SPECIFICATIONS AND RENTALS: An annual list of equipment proposed to be used on the state trunkline system by the Municipality forwarded to the Department with the hourly rates of each piece of equipment.

MICHIGAN STATE TRANSPORTATION COMMISSION: The policy-making body for all state transportation programs. The Commission establishes policy for the Michigan Department of Transportation in relation to transportation programs and facilities and other such works as related to transportation development as provided by law. Responsibilities of the Commission include the development and implementation of comprehensive transportation plans for the entire state, including aeronautics, bus and rail transit, providing professional and technical assistance, and overseeing the administration of state and federal funds allocated for these programs.

OFFICE OF COMMISSION AUDIT (OCA): The Office of Commission Audit reports directly to the Michigan State Transportation Commission. The Office of Commission Audits is

charged with the overall responsibility to supervise and conduct review activities for the Department of Transportation. The auditor submits to the Commission reports of financial and operational audits and investigations performed by staff for acceptance.

REGION ENGINEER: The Department's designated chief engineer (or designee) responsible for the oversight of each MDOT region.

RESPONSE: A written explanation as to any questioned item of expense

SCHEDULE C EQUIPMENT RENTAL RATES: The Department's annual list of statewide hourly equipment rental rates that shall be charged for the use of road equipment.

SMALL HAND TOOLS: Hand tools which do not have power assist (non-powered) used for general road and bridge maintenance such as rakes, shovels, brooms, etc.

STATE ADMINISTRATIVE BOARD: The State Administrative Board consists of the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, and the Superintendent of Public Instruction. The State Administrative Board has general supervisory control over the administrative activities of all state departments and agencies, including but not limited to, the approval of contracts and leases, oversight of the state capitol outlay process, and the settlement of small claims against the state.

STATE TRUNKLINE HIGHWAY: A road, highway, or freeway under the jurisdiction of the Department, and usually designated with an M, US, or I, preceding the route number.

WINTER MAINTENANCE: Maintenance operations centered on the process to remove snow and ice from the trunkline to provide a reasonably clear and safe driving surface under winter conditions. The activity codes that define the budget line items for winter maintenance are:

1410: Winter maintenance

1440: Winter road patrol (*See winter maintenance patrol above*)

1490: Other winter maintenance (*Shall include maintenance items resulting from winter maintenance, but not actual winter maintenance, i.e. sweeping and flushing immediately after winter ends*)

This work includes all material costs required to conduct work under the above activity codes.

APPENDIX B
MICHIGAN DEPARTMENT OF TRANSPORTATION
MUNICIPALITY CONTRACT
OVERHEAD SCHEDULE

Effective October 1, 2019, through September 30, 2024

Original Annual Budget Amount	Percent Allowed for Overhead	Percent Allowed for Small Tools	Total Percent Allowed
Up to \$25,000_____	11.00_____	.50_____	11.50
\$25,001 to \$50,000 _____	10.25_____	.50_____	10.75
\$50,001 to \$75,000 _____	9.50_____	.50_____	10.00
\$75,001 to \$100,000 _____	8.75_____	.50_____	9.25
\$100,001 and over _____	8.00_____	.50_____	8.50

APPENDIX C

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any 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 a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

APPENDIX D

STATE ADMINISTRATIVE BOARD RESOLUTION 2017-2 PROCEDURES APPLICABLE TO MDOT CONTRACTS AND GRANTS AND RECISSION OF RESOLUTION 2011-2

WHEREAS, the State Administrative Board (“Board”) exercises general supervisory control over the functions and activities of all administrative departments, boards, commissioners, and officers of this State, and of all State institutions pursuant to Section 3 of 1921 PA 2, MCL 17.3;

WHEREAS, the Board may adopt rules governing its procedures and providing for the general conduct of its business and affairs pursuant to Section 2, of 1921 PA 2, MCL 17.2;

WHEREAS, exercising its power to adopt rules, the Board adopted Resolution 2011-2 on August 30, 2011, establishing a \$500,000 or more threshold for Board approval of the Michigan Department of Transportation (“MDOT”) Professional Engineering Consultant Contracts and Construction Contracts and increasing the threshold for Board approval for Service Contracts to \$250,000 or more for initial contracts and \$125,000 or more for an amendment to a Service Contract;

WHEREAS, the Board has adopted Resolution 2017-1, raising the threshold for Board approval of contracts for materials and services to \$500,000 or more for the initial contract and \$500,000 or more for contract amendments, and rescinding Resolution 2011-1;

WHEREAS, MDOT is a party to a considerable number of contracts, the majority of which are funded via grants administered by federal agencies including the U.S. Department of Transportation’s Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, and Federal Aviation Administration, which oversee MDOT’s administration of such contracts and amendments thereto;

WHEREAS, MDOT has implemented internal procedures to assure the proper expenditure of state and federal funds and is subject to financial and performance audits by the Office of Commission Audits pursuant to 1982 PA 438, MCL 247.667a;

WHEREAS, MDOT is a party to a significant number of contracts which by their nature involve substantial consideration and often require amendments

arising out of changes in scope, differing field conditions and design errors and omissions;

WHEREAS, delays in the approval of amendments to contracts can result in postponement of payments to subcontractors and suppliers; work slowdowns and stoppages; delays in the completion of projects; exposure to additional costs; and exposure to litigation arising out of contractor claims; and

WHEREAS, recognizing the Board's duty to promote the efficiency of State Government, the Board resolves as follows:

1. Resolution 2011-2 is rescinded.
2. A contract for professional design, engineering or consulting services requiring MDOT prequalification in connection with the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Professional Engineering Consultant Contract") or a contract for the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Construction Contract") must be approved by the Board prior to execution by MDOT if the amount of the contract is \$500,000 or more. MDOT may obtain approval of the solicitation of a Professional Engineering Consultant Contract or a Construction Contract which, based on the estimate prepared by an engineer employed by the State of Michigan, is estimated to be \$500,000 or more. A contract arising out of such solicitation must be approved by the Board prior to execution by MDOT if the amount of the contract exceeds 110% of the State engineer's estimate.
3. An amendment to a Professional Engineering Consultant Contract or a Construction Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments exceed 10% of the original contract, except that an amendment to a Professional Engineering Consultant Contract or a Construction Contract need not be approved by the Board if: a) approved in accordance with applicable federal law or procedure by a representative of a federal agency contributing funds to the project that is the subject of the contract; or b) approved in accordance with MDOT's internal procedures provided the procedures include approval by at least one MDOT employee who has managerial responsibility and is neither the project manager nor directly involved in the administration of the project.
4. A contract for services not requiring MDOT prequalification ("Service Contract") in the amount of \$500,000 or more must be approved by the Board prior to execution by MDOT. A Service Contract does not include a Professional Engineering Consultant Contract or a Construction Contract.

5. An amendment to a Service Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments total \$500,000 or more. Thereafter, an amendment to a Service Contract must be approved by the Board if the amount of the amendment and the sum of all amendments executed after the most recent Board approval total \$500,000 or more.

6. A contract involving the conveyance of any real property interest under the jurisdiction of MDOT must be approved by the Board prior to execution by MDOT if the fair market value of the interest is \$500,000 or more. Fair market value must be determined in accordance with procedures approved by the State Transportation Commission.

7. MDOT may enter into a contract with a sub-recipient without approval of the Board if: a) the purpose of the contract is to provide federal or state matching funds for a project; b) MDOT has been authorized by an agency administering any federal funds to award them to the sub-recipient; and c) the sub-recipient has agreed to fully reimburse the State in the event the sub-recipient does not use the funds in accordance with the purpose of the funding. A sub-recipient includes, but is not limited to, a local unit of government, a governmental authority, a private non-profit entity, and a railroad or rail service provider.

8. MDOT may enter into a cost participation contract with a local unit of government without approval of the Board if: a) the contract involves the construction or physical improvement of a street, road, highway, bridge or other structure congruous with transportation; b) the construction or improvement is funded by federal, state or local funds; and c) the contract is approved by each entity providing funds or in accordance with applicable law.

9. MDOT may enter into a contract in connection with the award of a grant including state matching funds, to a local unit of government, a governmental authority, a private non-profit entity, a railroad or a rail service provider, without approval of the Board if the contract provides that the recipient will fully reimburse the State in the event grant funds are not used in accordance with the terms of the grant.

10. MDOT may enter into a contract with an airport sponsor without approval of the Board if the contract has been approved by the Michigan Aeronautics Commission.

11. MDOT may enter into a contract or award a grant without approval of the Board in situations where emergency action is required. For all emergency contracts or grants of \$250,000 or more, MDOT must transmit to the Board a

written report setting forth the nature of the emergency and the key terms of the contract or grant within 30 days of executing the contract or awarding the grant.

12. Notwithstanding any provisions of this resolution, the Board may require MDOT to report the status of any project and may require MDOT to obtain Board approval of any contract, grant or any amendment to a contract.

This Resolution is effective April 25, 2017.



APPENDIX E

SUBCONTRACT REQUIREMENTS

SUMMARY OF STATE ADMINISTRATIVE BOARD REQUIREMENTS FOR AMENDMENTS (PREVIOUSLY REFERRED TO AS OVERRUNS, EXTRA'S AND ADJUSTMENTS)

Administrative Board Resolution (2017-2, April 25, 2017)

Amendments

Subcontract Requirements:	Amendment Amount	State Administrative Board (SAB) Approval Requirements:
• Region Engineer approval required prior to start of work. • Form 426 must be signed by the Region Engineer.	\$499,999 or less	Not required Note: Emergency contracts \$250,000 or greater require SAB approval.
• Documentation of amendment is required by the Municipality. • Send revised Form 426 to the Operations Field Services Division Contract Administrator for review and approval prior to the start of work.	\$500,000 or greater	Required prior to the start of work Note: When the sum of the contract and all amendments total \$500,000 or greater, SAB approval is required.

Definition of Term: Amendment includes situations where the original contract quantity or contract cost is exceeded. It also includes situations where quantities or work are added to the original contract as extra's or adjustments.

April 25, 2017



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

PAUL C. AJEGBA
DIRECTOR

APPENDIX F

SAMPLE: Letter of Understanding

Date

Contract Agency Name
Address
Contact Person, Title

**RE: Clarification of State Trunkline Maintenance Contract between Michigan
Department of Transportation (MDOT) and the (insert name of contract agency)**

Dear _____:

This Letter of Understanding is in follow up to our recent meeting held on _____ and will serve as a reference to clarify the Scope of Work set forth in Section 2, of the State Trunkline Maintenance Contract.

The Scope of Work will be limited to (insert type of work activities and frequency of work to be performed) on the state trunkline (indicate routes) in the City of _____. The work activities are to be conducted by the City as a part of the Contract with MDOT.

The Scope of Work shall include traffic control to perform the work.

Request for reimbursement of the Scope of Work activities identified herein shall be in accordance with Section 16 of the Contract.

Subcontracting of any work activities shall be in accordance to Section 9 of the Contract.

Please sign each of the two original letters enclosed. Please keep one copy for your records and return the other copy to my attention.

Sincerely,

Name
Maintenance Engineer
MDOT ____TSC

APPROVED BY:

City of _____ agrees to the terms and conditions stated in this agreement.

Dated this _____ day of _____, 2014

Name, Title

APPROVED BY:

Region Engineer
Michigan Department of Transportation

Date _____

APPENDIX G

Non-Winter Maintenance Activity & Level of Service Priority

For the purposes of defining priority levels, the following guidance is suggested:

"Critical" work activities are those which address conditions in the infrastructure that pose an imminent threat to public health and safety. This would include instances in which defects or damage currently exist and must be repaired to restore the infrastructure to a safe operating condition. Examples may include filling existing potholes, repairing significantly damaged guardrail, grading shoulders with an edge drop in excess of 1 ½ inches or replacing a collapsed culvert.

"High Priority" work activities are those which address serious deficiencies in the condition of the infrastructure which, in the professional judgment of the Region and TSC management, could lead to defects or damage in the near future that would seriously impact public health and safety if they are not addressed now. Examples may include repairing significantly deteriorated pavement joints and cracks or repairing culverts with section loss.

"Routine/Preventive" work activities are those which address the condition of the infrastructure in such a way as to maintain or prevent the condition from deteriorating to serious condition. Examples may include sealing pavement cracks, grading shoulders, cleaning culverts and ditches, and brushing.

Priority Group 1:

Traffic Signal Energy
Facility Utilities
Freeway Lighting Energy
Operation of Pump Houses
Operation of Movable Bridges
Auto Liability Insurance (county contracts)
Supervision (county contracts)
Roadway Inspection (minimum acceptable level- county contracts)
Billable Construction Permits
Equipment Repair and Servicing
Fuel
Critical Surface Maintenance
Critical Guardrail Repair
Critical Sign Replacement
Critical Drainage Repair
Critical Traffic Signal Repair
Critical Freeway Lighting Repair
Critical Response to Traffic Incidents (to assist in traffic control, facility restoration)
Critical Drainage Area Sweeping (to prevent roadway flooding)

Critical Structural Maintenance on Bridges
Critical Pump House Maintenance
Critical Shoulder Maintenance (to address shoulder drops greater than 1 ½")
Critical Impact Attenuator Repair
Clear Vision Area Mowing
Removal of Large Debris and Dead Animals (from the traveled portion of the roadway)
Rest Area and Roadside Park Maintenance

Priority Group 2:

High Priority Surface Maintenance
High Priority Guardrail Repair
High Priority Sign Replacement
High Priority Drainage Repair
High Priority ROW Fence Repair
High Priority Shoulder Maintenance
High Priority Structural Maintenance
Adopt-A-Highway
Youth Corps in designated urban areas
Mowing (First Cycle)
Freeway Slope Mowing in designated urban areas
Litter Pickup in designated urban areas
Graffiti Removal in designated urban areas
Freeway Lighting Maintenance & Repair

Priority Group 3:

Mowing (Additional Cycles)
Brushing
Sweeping, beyond critical drainage areas
Litter Pickup, outside designated urban areas
Graffiti Removal, outside designated urban areas
Routine/Preventive Surface Maintenance
Routine/Preventive Guardrail Repair
Routine/Preventive Sign Replacement
Routine/Preventive Drainage Repair
Routine/Preventive Shoulder Maintenance
Routine/Preventive Structural Maintenance
Routine/Preventive Pump House Maintenance
Routine/Preventive Traffic Signal Maintenance
Youth Corps outside of designate urban areas
Non-motorized path maintenance

**CERTIFICATE OF INSURANCE
FOR STATE HIGHWAY MAINTENANCE CONTRACT**

Information required by MDOT to report insurance coverage.

DISTRIBUTION:

Original - Maintenance Div.
Copy - Insured Party
Copy - Insurance Agency
Copy - Insurance Company

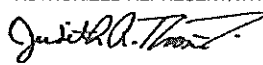
TO MICHIGAN DEPARTMENT OF TRANSPORTATION: The subscribing insurance company certifies that the motor vehicle insurance for limits of liability as indicated, herein, has been procured by and furnished in behalf of the named insured.

NAME OF INSURED	ADDRESS
City of Marquette	300 W. Baraga Ave., , Marquette, MI 49855-4763

TYPE OF INSURANCE							
INSURANCE	POLICY NO.	EFFECTIVE DATE	EXPIRATION DATE	COVER-AGE	* LIMITS OF LIABILITY		
					EACH PERSON	EACH ACCIDENT	AGGREGATE
Automobile Liability Insurance with respect to owned, hired and non-owned automobiles.	MML001404125	7/1/2022	7/1/2023	B. 1.	\$10,000,000	CSL	
				P. D.			

The subscribing company agrees that the policy referred to herein shall not be changed or cancelled until thirty (30) days written notice has been given to the MICHIGAN DEPARTMENT OF TRANSPORTATION, Lansing, Michigan.

INSURANCE COMPANY	ADDRESS
Michigan Municipal League	Liability and Property Pool P.O. Box 2054, Southfield, MI 48037-2054

AUTHORIZED REPRESENTATIVE SIGNATURE <u>(Do not stamp.)</u>	DATE
	5/24/2022

* This limits of liability shall be no less than \$250,000 each person and \$500,000 each accident for Bodily Injury.



Resolution
Authorization for State Trunkline
Maintenance Contract 2019-0728

WHEREAS, the City of Marquette and the Michigan Department of Transportation are mutually agreeable to entering into a contract to extend the term of the state trunkline maintenance contract; and,

WHEREAS, the term of the contract is October 1, 2019 through September 30, 2024;

NOW, THEREFORE, BE IT RESOLVED, that the Marquette City Commission does hereby approve entering into the maintenance agreement and does authorize the Mayor and City Clerk to sign the contracts.

Duly adopted by the City Commission on July 11, 2022.

Jennifer A. Smith, Mayor

Certified to be a true copy on July 11, 2022

Kyle Whitney, City Clerk

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

New Business

Residential Curbside Recycling Cart Purchase

BACKGROUND:

The City has been awarded two complementary grants: the Michigan Department of Environment, Great Lakes and Energy (EGLE) Recycling Infrastructure Grant and the Recycling Partnership Residential Curbside Recycling Cart Grant. These grants provide the opportunity to enhance curbside collection of recyclables through the implementation of recycling carts at no cost to City residents. The project includes universal/automatic distribution of carts, which will provide a recycling cart to every residential household that is eligible for garbage service. For the City to receive the maximum grant amount, each house will need to utilize carts for recycling.

The total budget for the project is \$355,200 which includes \$344,000 for the acquisition, assembly, and distribution of RFID-enabled carts and \$11,200 for education and outreach. The EGLE Recycling Infrastructure Grant and the Recycling Partnership Residential Recycling Cart Grant will provide \$251,000 and \$93,000 for the carts, respectively. The Recycling Partnership Residential Recycling Cart Grant will also provide \$6,200 for education and outreach and the remaining \$5,000 in the education budget will come from the existing City Solid Waste Fund budget. Grant proceeds are paid on a reimbursement basis, meaning that grantees must make the initial purchases. The grant stipulates that the carts must be provided at no cost to residents other than the standard solid waste or recycling service taxes or fees.

The City solid waste collection program has over 50% of residents utilizing the cart system. The carts that are being supplied by the hauler are from Cascade Cart Solutions of Grand Rapids, Michigan. Staff recommends waiving the competitive bidding process for this project. Purchasing the carts from Cascade will allow parts for repairs to be interchangeable. Competitive bidding is not required by the grant and Cascade is a Michigan product that staff is already familiar with.

FISCAL EFFECT:

None. The recycling carts will be reimbursed by grant proceeds.

RECOMMENDATION:

Waive the competitive bidding process and issue a purchase order for up to 6,200 64-gallon recycling carts from Cascade Cart Solutions of Grand Rapids, Michigan in an amount not to exceed \$344,000 for the acquisition, assembly, and distribution of the carts.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 7/11/2022

New Business

Resolution Authorizing 2022 Capital Improvement Bonds - Roll Call Vote

BACKGROUND:

In order to continue the process of issuing Capital Improvement Bonds for FY 2022 projects, a resolution must be approved that the City will authorize the sale of bonds. A Notice of Intent Resolution was approved on May 31, 2022.

FISCAL EFFECT:

A Debt Service schedule will be produced upon close, which is currently scheduled for August 24, 2022.

RECOMMENDATION:

Approve the Resolution authorizing 2022 Limited Tax General Obligation Bonds, and authorize the Mayor and Clerk to sign the Resolution.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Authorizing Resolution - FY22 Bonds
- ▣ Project to Bond - FY'22

**RESOLUTION AUTHORIZING ISSUANCE OF
2022 CAPITAL IMPROVEMENT BONDS
(LIMITED TAX GENERAL OBLIGATION)**

**CITY OF MARQUETTE
COUNTY OF MARQUETTE
STATE OF MICHIGAN**

Minutes of a regular meeting of the City Commission of the City of Marquette, County of Marquette, State of Michigan, held on the 11th day of July, 2022, at 6:00 p.m., prevailing Eastern Time.

PRESENT: Members: _____

ABSENT: Members: _____

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, the City of Marquette, County of Marquette, State of Michigan (the “City”) does hereby determine that it is necessary to pay all or part of the cost of capital improvement items in the City including but not limited to constructing a living revetment along the Lake Superior waterfront; constructing habitat restoration in the uplands area; installation of outlet improvements for existing stormwater outfalls; making major and/or local street improvements, including related water, sewer and storm water infrastructure improvements; construction and installation of sanitary sewer lateral replacements and sewer pipe; infrastructure improvements for the Hemlock Park development; together with all appurtenances and attachments thereto (collectively, the “Projects”); and

WHEREAS, to finance the cost of the Projects, the City Commission deems it necessary to borrow the principal amount of not to exceed Six Million Dollars (\$6,000,000) and issue capital improvement bonds pursuant to Act 34, Public Acts of Michigan, 2001, as amended (“Act 34”), to pay the cost of the Projects; and

WHEREAS, a notice of intent for bonds was published in accordance with Act 34 which provides that the capital improvement bonds may be issued without a vote of the electors of the City unless a proper petition for an election on the question of the issuance of the bonds is filed with the City Clerk within a period of forty-five (45) days from the date of publication and no petition was filed with the Clerk within the 45-day period.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization of Bonds; Bond Terms. Bonds of the City designated **2022 CAPITAL IMPROVEMENT BONDS (LIMITED TAX GENERAL OBLIGATION)** (the “Bonds”) are hereby authorized to be issued in the aggregate principal sum of not to exceed Six

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Million Dollars (\$6,000,000), or such lesser amount as shall be determined by the City Manager and Chief Financial Officer (each, an “Authorized Officer”), upon sale of the Bonds, for the purpose of paying the costs of the Projects, including the costs incidental to the issuance, sale and delivery of the Bonds. The issue shall consist of bonds in fully-registered form of the denomination of \$5,000, or multiples thereof not exceeding for each maturity the maximum principal amount of that maturity, numbered as determined by the Transfer Agent (defined below). The Bonds shall be dated the date of delivery and shall bear interest, mature and be payable at the times and in the manner set forth in Sections 6 and 7 hereof.

The Bonds shall be sold at public sale at a price not less than 98.5% of the par value thereof. The Bonds may be issued as serial or term bonds or both and shall be subject to redemption prior to maturity in the manner and at the times and prices set forth in Sections 6 and 7 hereof, and if term bonds are selected by the original purchaser of the Bonds, then the Bonds will be subject to mandatory redemption in accordance with the maturity schedule as provided in the form of notice of sale provided in Section 7 hereof.

Interest shall be payable to the registered owner of record as of the 15th day of the month prior to the payment date for each interest payment. The record date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the City to conform to market practice in the future. The principal of the Bonds shall be payable at a bank or trust company as registrar and transfer agent for the Bonds (the “Transfer Agent”), to be selected by an Authorized Officer at the time of sale of the Bonds, provided that in the event that the Bonds are purchased by a single institutional investor the City Treasurer may act as the Transfer Agent.

The Bonds may be issued in book-entry-only form through The Depository Trust Company in New York, New York (“DTC”) and either Authorized Officer is authorized to execute such custodial or other agreements with DTC as may be necessary to accomplish the issuance of the Bonds in book-entry-only form and to make such changes in the bond form within the parameters of this resolution as may be required to accomplish the foregoing.

2. Execution of Bonds. The Bonds of this issue shall be executed in the name of the City with the manual or facsimile signatures of the Mayor and the City Clerk and shall have the seal of the City, or a facsimile thereof, printed or impressed on the Bonds. No Bond executed by facsimile signature shall be valid until authenticated by an authorized officer or representative of the Transfer Agent. The Bonds shall be delivered to the Transfer Agent for authentication and be delivered by the Transfer Agent to the purchaser or other person in accordance with instructions from an Authorized Officer upon payment of the purchase price for the Bonds in accordance with the bid therefor when accepted.

3. Transfer of Bonds. The Transfer Agent shall keep the books of registration for this issue on behalf of the City. Any Bond may be transferred upon such registration books by the registered owner of record, in person or by the registered owner’s duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Transfer Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The Transfer Agent shall

require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer.

Unless waived by any registered owner of Bonds to be redeemed, official notice of redemption shall be given by the Transfer Agent on behalf of the City. Such notice shall be dated and shall contain at a minimum the following information: original issue date; maturity dates; interest rates; CUSIP numbers, if any; certificate numbers (and in the case of partial redemption) the called amounts of each certificate; the place where the Bonds called for redemption are to be surrendered for payment; and that interest on the Bonds or portions thereof called for redemption shall cease to accrue from and after the redemption date.

In addition, further notice shall be given by the Transfer Agent in such manner as may be required or suggested by regulations or market practice at the applicable time, but no defect in such further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed herein.

4. Limited Tax Pledge; Debt Retirement Fund; Defeasance of Bonds. The City hereby pledges its limited tax full faith and credit for the prompt payment of the Bonds. The City shall, each year budget the amount of the debt service coming due in the next fiscal year on the principal of and interest on the Bonds and shall advance as a first budget obligation from its general funds available therefor, or, if necessary, levy taxes upon all taxable property in the City subject to applicable constitutional, statutory and charter tax rate limitations, such sums as may be necessary to pay such debt service in said fiscal year.

The City Treasurer is authorized and directed to open a depository account with a bank or trust company designated by the City Commission, to be designated **2022 CAPITAL IMPROVEMENT BONDS DEBT RETIREMENT FUND** (the “Debt Retirement Fund”), the moneys to be deposited into the Debt Retirement Fund to be specifically earmarked and used solely for the purpose of paying principal of and interest on the Bonds as they mature.

In the event cash or direct obligations of the United States or obligations the principal of and interest on which are guaranteed by the United States, or a combination thereof, the principal of and interest on which, without reinvestment, come due at times and in amounts sufficient to pay at maturity or irrevocable call for earlier optional redemption, the principal of, premium, if any, and interest on the Bonds, shall be deposited in trust, this resolution shall be defeased and the owners of the Bonds shall have no further rights under this resolution except to receive payment of the principal of, premium, if any, and interest on the Bonds from the cash or securities deposited in trust and the interest and gains thereon and to transfer and exchange Bonds as provided herein.

5. Construction Fund; Proceeds of Bond Sale. The City Treasurer is authorized and directed to open a separate depository account with a bank or trust company designated by the City Commission, to be designated **2022 CAPITAL IMPROVEMENT BONDS CONSTRUCTION FUND** (the “Construction Fund”), and deposit into said Construction Fund the proceeds of the Bonds less accrued interest, if any, which shall be deposited into the Debt Retirement Fund. The amounts specified by an Authorized Officer at the time of sale of the

Bonds from the net proceeds of sale of the Bonds (including proceeds of the good faith deposit received at the time of sale) shall be deposited to the appropriate account in the Construction Fund to be used to pay for the Projects and the costs of issuance of the Bonds. Except for investment pending disbursement and as herein provided, the moneys in each account in the Construction Fund shall be used solely to pay the costs of the Projects, the costs of issuance of the Bonds, as such costs become due and payable and, as may be necessary, to rebate arbitrage earnings, if any, to the United States Department of Treasury as required by the Internal Revenue Code of 1986, as amended (the "Code").

6. Bond Form. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MARQUETTE

CITY OF MARQUETTE

2022 CAPITAL IMPROVEMENT BOND
(LIMITED TAX GENERAL OBLIGATION)

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
____%	May 1, 20__	_____, 2022	

Registered Owner:

Principal Amount: _____ Dollars

The City of Marquette, County of Marquette, State of Michigan (the “City”), acknowledges itself to owe and for value received hereby promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above, in lawful money of the United States of America, on the Maturity Date specified above, unless prepaid prior thereto as hereinafter provided, with interest thereon (computed on the basis of a 360-day year consisting of twelve 30-day months) from the Date of Original Issue specified above or such later date to which interest has been paid, until paid, at the Interest Rate per annum specified above, first payable on May 1, 2023 and semiannually thereafter. Principal of this bond is payable at the corporate trust office of _____, _____, Michigan, or such other transfer agent as the City may hereafter designate by notice mailed to the registered owner not less than sixty (60) days prior to any interest payment date (the “Transfer Agent”). Interest on this bond is payable to the registered owner of record as of the fifteenth (15th) day of the month preceding the interest payment date as shown on the registration books of the City kept by the Transfer Agent by check or draft mailed to the registered owner of record at the registered address. For prompt payment of this bond, both principal and interest, the full faith, credit and resources of the City are hereby irrevocably pledged.

This bond is one of a series of bonds of even Date of Original Issue aggregating the principal sum of \$_____, issued pursuant to Act 34, Public Acts of Michigan, 2001, as amended (“Act 34”), and a resolution duly adopted by the City Commission of the City for the purpose of paying the cost of various capital improvements in the City.

This bond, including the interest hereon, is payable as a first budget obligation from the general funds of the City, and the City is required, if necessary, to levy ad valorem taxes on all taxable property in the City for the payment thereof, subject to applicable constitutional, statutory and charter tax rate limitations.

Bonds of this issue maturing in the years 2023 through 2032, inclusive, shall not be subject to redemption prior to maturity. Bonds or portions of bonds of this issue in multiples of \$5,000 maturing in the year 2033 and thereafter shall be subject to redemption prior to maturity, at the option of the City, in any order of maturity and by lot within any maturity, on any date on or after May 1, 2032, at par and accrued interest to the date fixed for redemption.

[Insert term bond language, if any.]

In case less than the full amount of an outstanding bond is called for redemption, the Transfer Agent, upon presentation of the bond called in part for redemption, shall register, authenticate and deliver to the registered owner of record a new bond in the principal amount of the portion of the original bond not called for redemption.

Notice of redemption shall be given to the registered owner of any bond or portion thereof called for redemption by mailing of such notice not less than thirty (30) days prior to the date fixed for redemption to the registered address of the registered owner of record. A bond or portion thereof so called for redemption shall not bear interest after the date fixed for redemption, whether or not presented for redemption, provided funds are on hand with the Transfer Agent to redeem said bond or portion thereof.

This bond is transferable only upon the registration books of the City kept by the Transfer Agent by the registered owner of record in person, or by the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new registered bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the resolution authorizing this bond and upon the payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done, precedent to and in the issuance of this bond and the series of bonds of which this is one, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the City, including this bond and the series of bonds of which this is one, does not exceed any constitutional, statutory or charter debt limitation.

This bond is not valid or obligatory for any purpose until the Transfer Agent's Certificate of Authentication on this bond has been executed by the Transfer Agent.

IN WITNESS WHEREOF, the City, by its City Commission, has caused this bond to be signed in its name with the facsimile signatures of its Mayor and its City Clerk and a facsimile of its corporate seal to be printed hereon, all as of the Date of Original Issue.

CITY OF MARQUETTE

County of Marquette

State of Michigan

By: _____
Its Mayor

(SEAL)

By: _____
Its City Clerk

(Form of Transfer Agent's Certificate of Authentication)

DATE OF AUTHENTICATION:

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned resolution.

_____, Michigan
Transfer Agent

By: _____
Authorized Signatory

[Bond printer to insert form of assignment]

7. Notice of Sale. The City Clerk is authorized to fix a date of sale for the Bonds and to arrange to publish a notice of sale of the Bonds in ***The Bond Buyer***, New York, New York, which notice of sale shall be in substantially the following form:

OFFICIAL NOTICE OF SALE

\$6,000,000*

CITY OF MARQUETTE
COUNTY OF MARQUETTE, STATE OF MICHIGAN
2022 CAPITAL IMPROVEMENT BONDS
(LIMITED TAX GENERAL OBLIGATION)

**Subject to adjustment as provided in this Notice of Sale*

Bids for the purchase of the above bonds will be received in the manner described in this Official Notice of Sale on _____, _____, 2022 until ____:00 a/p.m., prevailing Eastern Time, at which time and place said bids will be opened and read. The award or rejection of bids will occur on the same date.

ELECTRONIC BIDS: Bidders may submit bids for the purchase of the above bonds as follows:

Electronic bids may be submitted to the Municipal Advisory Council of Michigan at munibids@macmi.com; provided that electronic bids must arrive before the time of sale and the bidder bears all risks of transmission failure.

Electronic bids will also be received on the same date and until the same time by Bidcomp/Parity as agent of the undersigned. Further information about Bidcomp/Parity, including any fee charged, may be obtained from Bidcomp/Parity, Anthony Leyden or CLIENT SERVICES, 1359 Broadway, Second Floor, New York, New York 10010, (212) 849-5021. IF ANY PROVISION OF THIS NOTICE OF SALE SHALL CONFLICT WITH INFORMATION PROVIDED BY BIDCOMP/PARITY, AS THE APPROVED PROVIDER OF ELECTRONIC BIDDING SERVICES, THIS NOTICE SHALL CONTROL.

Bidders may choose any means or location to present bids but a bidder may not present a bid in more than one location or by more than one means.

BOND DETAILS: The bonds will be registered bonds of the denomination of \$5,000 or multiples thereof not exceeding for each maturity the maximum principal amount of that maturity, originally dated as of the date of delivery, numbered in order of registration, and will bear interest from their date payable on May 1, 2023, and semiannually thereafter.

The bonds will mature on the 1st day of May in each of the years as follows:

<u>May 1</u>	<u>Amount*</u>	<u>May 1</u>	<u>Amount*</u>
2023	\$380,000	2031	\$400,000
2024	325,000	2032	415,000
2025	335,000	2033	430,000
2026	345,000	2034	445,000
2027	355,000	2035	460,000
2028	365,000	2036	480,000
2029	375,000	2037	500,000
2030	390,000		

***ADJUSTMENT OF TOTAL PAR AMOUNT OF BONDS AND PRINCIPAL MATURITIES:** The City reserves the right to increase or decrease the aggregate principal amount of the bonds after receipt of the bids and prior to final award, if necessary, so that the purchase price of the bonds will provide an amount determined by the City to be sufficient to construct the Projects and to pay costs of issuance of the bonds. The adjustments, if necessary, will be in increments of \$5,000. The purchase price will be adjusted proportionately to the increase or decrease in issue size, but the interest rates specified by the successful bidder for all maturities will not change. The successful bidder may not withdraw its bid as a result of any changes made within these limits.

***ADJUSTMENT TO PURCHASE PRICE:** Should any adjustment to the aggregate principal amount of the bonds be made by the City, the purchase price of the bonds will be adjusted by the City proportionally to the adjustment in principal amount of the bonds. The adjusted purchase price will reflect changes in the dollar amount of the underwriter's discount and original issue discount/premium, if any, but will not change the per-bond underwriter's discount as calculated from the bid and initial reoffering prices.

PRIOR REDEMPTION OF BONDS: Bonds maturing in the years 2023 to 2032, inclusive, shall not be subject to redemption prior to maturity. Bonds or portions of bonds in multiples of \$5,000 maturing in the year 2033 and thereafter shall be subject to redemption prior to maturity, at the option of the City, in any order of maturity and by lot within any maturity, on any date on or after May 1, 2032, at par and accrued interest to the date fixed for redemption.

In case less than the full amount of an outstanding bond is called for redemption, the transfer agent, upon presentation of the bond called for redemption, shall register, authenticate and deliver to the registered owner of record a new bond in the principal amount of the portion of the original bond not called for redemption.

Notice of redemption shall be given to the registered owner of any bond or portion thereof called for redemption by mailing of such notice not less than thirty (30) days prior to the date fixed for redemption to the registered address of the registered owner of record. A bond or portion thereof so called for redemption shall not bear interest after the date fixed for redemption, whether or not presented for redemption, provided funds are on hand with the transfer agent to redeem said bond or portion thereof.

TERM BOND OPTION: The initial purchaser of the bonds may designate any one or more maturities from May 1, 2023 through the final maturity as term bonds and the consecutive maturities on or after the year 2023 which shall be aggregated in the term bonds. The amounts of the maturities which are aggregated in a designated term bond shall be subject to mandatory redemption on May 1 of the years and in the amounts set forth in the above maturity schedule at a redemption price of par, plus accrued interest to the date of mandatory redemption. Term bonds or portions thereof mandatorily redeemed shall be selected by lot. Any such designation must be made within 24 hours of the sale.

INTEREST RATE AND BIDDING DETAILS: The bonds shall bear interest at a rate or rates not exceeding six (6%) per annum, to be fixed by the bids therefor, expressed in multiples of 1/8 or 1/100 of 1%, or both. The interest on any one bond shall be at one rate only and all bonds maturing in any one year must carry the same interest rate. No proposal for the purchase of less than all of the bonds or at a price less than 98.5% of their par value will be considered.

BOOK-ENTRY OPTION: Upon the request of the successful bidder, the bonds will be issued in book-entry-only form as one fully registered bond per maturity and will be registered in the name of Cede & Co., as bondholder and nominee for The Depository Trust Company (“DTC”), New York, New York. DTC will act as securities depository for the bonds. In the event of registration with DTC, the purchaser will not receive certificates representing their interest in bonds purchased. It will be the responsibility of the purchaser to obtain DTC eligibility. Failure of the purchaser to obtain DTC eligibility shall not constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the bonds. In the alternative, the successful bidder may request bond certificates to be delivered to the purchaser as one fully registered bond per maturity.

TRANSFER AGENT AND REGISTRATION: Principal shall be payable at the principal corporate trust office of _____, _____, Michigan, or such other transfer agent as the City may hereafter designate by notice mailed to the registered owner of record not less than 60 days prior to an interest payment date. Interest shall be paid by check mailed to the registered owner of record as shown on the registration books of the City as of the 15th day of the month prior to an interest payment date. The bonds will be transferred only upon the registration books of the City kept by the transfer agent.

PURPOSE AND SECURITY: The bonds are authorized for the purpose of paying the cost of acquiring and constructing certain capital improvements for the City. The bonds will be a first budget obligation of the City, payable from the general funds of the City including the collection of ad valorem taxes on all taxable property in the City subject to applicable constitutional, statutory and charter tax rate limitations. The rights or remedies of bondholders may be affected 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.

GOOD FAITH: A good faith deposit in the form of a certified or cashier’s check drawn upon an incorporated bank or trust company, or wire transfer, in the amount of one percent (1%) of the final aggregate principal amount of the bonds, payable to the order of the City will be required of the successful bidder. The successful bidder is required to submit its good faith deposit to the City as instructed by the City not later than Noon, prevailing Eastern Time, on the next business day following the sale. The good faith deposit will be applied to the purchase price of the bonds. In the event the purchaser fails to honor its accepted bid, the good faith deposit will be retained by the City. No interest shall be allowed on the good faith check. The good faith check of the successful bidder will be cashed and payment for the balance of the purchase price of the bonds shall be made at the closing.

AWARD OF BONDS: The bonds will be awarded to the bidder whose bid produces the lowest true interest cost determined in the following manner: the lowest true interest cost will be the single interest rate (compounded on May 1, 2023 and semi-annually thereafter) necessary to discount the debt service payments from their respective payment date to _____, 2022 (the anticipated delivery date), in an amount equal to the price bid, excluding accrued interest, if any. Each bidder shall state in its bid the true interest cost to the City, computed in the manner specified above.

TAX MATTERS: In the opinion of Miller, Canfield, Paddock and Stone, P.L.C., bond counsel, under existing law, assuming compliance with certain covenants, interest on the bonds is excludable from gross income for federal income tax purposes as described in the opinion, and the bonds and interest thereon are exempt from all taxation by the State of Michigan or by any taxing

authority within the State of Michigan except estate taxes and taxes on gains realized from the sale, payment or other disposition thereof.

ISSUE PRICE: The winning bidder shall assist the City in establishing the issue price of the bonds and shall execute and deliver to the City at closing an “issue price” or similar certificate setting forth the reasonably expected initial offering price to the public or the sales price or prices of the bonds, together with the supporting pricing wires or equivalent communications, substantially in the form attached either as Appendix G-1 or Appendix G-2 of the preliminary official statement, with such modifications as may be appropriate or necessary, in the reasonable judgment of the winning bidder, the City and Bond Counsel.

The City intends that the provisions of Treasury Regulation Section 1.148-1(f)(3)(i) (defining “competitive sale” for purposes of establishing the issue price of the bonds) will apply to the initial sale of the bonds (the “Competitive Sale Requirements”) because:

- a. the City is disseminating this Notice of Sale to potential underwriters in a manner that is reasonably designed to reach potential underwriters;
- b. all bidders shall have an equal opportunity to bid;
- c. the City anticipates receiving bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and
- d. the City anticipates awarding the sale of the bonds to the bidder who submits a firm offer to purchase the bonds at the lowest true interest cost, as set forth in this Notice of Sale.

Any bid submitted pursuant to this Notice of Sale shall be considered a firm offer for the purchase of the bonds, as specified in the bid.

In the event that all of the Competitive Sale Requirements are not satisfied, the City shall so advise the winning bidder. The City will not require bidders to comply with the “hold-the-offering price rule” (as described below), and therefore does not intend to use the initial offering price to the public as of the sale date of any maturity of the bonds as the issue price of that maturity, though the winning bidder, in consultation with the City, may elect to apply the “hold-the-offering price rule” (as described below). Bids will not be subject to cancellation in the event the Competitive Sale Requirements are not satisfied. Unless a bidder intends to apply the “hold-the-offering price rule” (as described below), bidders should prepare their bids on the assumption that all of the maturities of the bonds will be subject to the 10% Test (as described below). The winning bidder must notify the City of its intention to apply either the “hold-the-offering price rule” or the 10% Test at or prior to the time the bonds are awarded.

If the winning bidder does not request that the “hold-the-offering price rule” apply to determine the issue price of the bonds, the following two paragraphs shall apply:

- a. The City shall treat the first price at which 10% of a maturity of the bonds (the “10% Test”) is sold to the public as the issue price of that maturity, applied on a maturity-

by-maturity basis. The winning bidder shall advise the City if any maturity of the bonds satisfies the 10% Test as of the date and time of the award of the bonds; and

- b. Until the 10% Test has been satisfied as to each maturity of the bonds, the winning bidder agrees to promptly report to the City the prices at which the unsold bonds of that maturity have been sold to the public. That reporting obligation shall continue, whether or not the closing date has occurred, until either (i) all bonds of that maturity have been sold or (ii) the 10% Test has been satisfied as to the bonds of that maturity, provided that, the winning bidder's reporting obligation after the closing date may be at reasonable periodic intervals or otherwise upon request of the City or bond counsel.

If the winning bidder does request that the "hold-the-offering price rule" apply to determine the issue price of the bonds, then the following three paragraphs shall apply:

- a. The winning bidder, in consultation with the City, may determine to treat (i) pursuant to the 10% Test, the first price at which 10% of a maturity of the bonds is sold to the public as the issue price of that maturity and/or (ii) the initial offering price to the public as of the sale date of any maturity of the bonds as the issue price of that maturity (the "hold-the-offering price rule"), in each case applied on a maturity-by-maturity basis. The winning bidder shall advise the City if any maturity of the bonds satisfies the 10% Test as of the date and time of the award of the bonds. The winning bidder shall promptly advise the City, at or before the time of award of the bonds, which maturities of the bonds shall be subject to the 10% Test or shall be subject to the hold-the-offering price rule or both.
- b. By submitting a bid, the winning bidder shall (i) confirm that the underwriters have offered or will offer the bonds to the public on or before the date of the award at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in the bid submitted by the winning bidder, and (ii) if the hold-the-offering price rule applies, agree, on behalf of the underwriters participating in the purchase of the bonds, that the underwriters will neither offer nor sell unsold bonds of any maturity to which the hold-the-offering price rule shall apply to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:
 - i. the close of the fifth (5th) business day after the sale date; or
 - ii. the date on which the underwriters have sold at least 10% of that maturity of the bonds to the public at a price that is no higher than the initial offering price to the public;

The winning bidder shall promptly advise the City when the underwriters have sold 10% of that maturity of the bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

- c. The City acknowledges that, in making the representation set forth above, the winning bidder will rely on (i) the agreement of each underwriter to comply with the

requirements for establishing issue price of the bonds, including, but not limited to, its agreement to comply with the hold-the-offering price rule, if applicable to the bonds, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the bonds, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an underwriter or dealer who is a member of the selling group is a party to a third-party distribution agreement that was employed in connection with the initial sale of the bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the bonds, including, but not limited to, its agreement to comply with the hold-the-offering price rule, if applicable to the bonds, as set forth in the third-party distribution agreement and the related pricing wires. The City further acknowledges that each underwriter shall be solely liable for its failure to comply with its agreement regarding the requirements for establishing issue price of the bonds, including, but not limited to, its agreement to comply with the hold-the-offering price rule, if applicable to the bonds, and that no underwriter shall be liable for the failure of any other underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement to comply with its corresponding agreement to comply with the requirements for establishing issue price of the bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the bonds.

By submitting a bid, each bidder confirms that:

- a. any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which the bidder is a party) relating to the initial sale of the bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such third-party distribution agreement, as applicable, (A)(i) to report the prices at which it sells to the public the unsold bonds of each maturity allocated to it, whether or not the closing date has occurred, until either all bonds of that maturity allocated to it have been sold or it is notified by the winning bidder that the 10% Test has been satisfied as to the bonds of that maturity, provided that, the reporting obligation after the closing date may be at reasonable periodic intervals or otherwise upon request of the winning bidder, and (ii) to comply with the hold-the-offering price rule, if applicable, if and for so long as directed by the winning bidder and as set forth in the related pricing wires, (B) to promptly notify the winning bidder of any sales of bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the bonds to the public (each such term being used as defined below), and (C) to acknowledge that, unless otherwise advised by the underwriter, dealer or broker-dealer, the winning bidder shall assume that each order submitted by the underwriter, dealer or broker-dealer is a sale to the public.

- b. any agreement among underwriters or selling group agreement relating to the initial sale of the bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter or dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (i) report the prices at which it sells to the public the unsold bonds of each maturity allocated to it, whether or not the closing date has occurred, until either all bonds of that maturity allocated to it have been sold or it is notified by the winning bidder or such underwriter that the 10% Test has been satisfied as to the bonds of that maturity, provided that, the reporting obligation after the closing date may be at reasonable periodic intervals or otherwise upon request of the winning bidder or such underwriter, and (ii) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the winning bidder or the underwriter and as set forth in the related pricing wires.

Sales of any bonds to any person that is a related party to an underwriter shall not constitute sales to the public for purposes of this Notice of Sale.

Further, for purposes of this Notice of Sale:

- a. “public” means any person other than an underwriter or a related party,
- b. “underwriter” means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the bonds to the public);
- c. a purchaser of any of the bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and
- d. “sale date” means the date that the bonds are awarded by the City to the winning bidder.

QUALIFIED TAX EXEMPT OBLIGATIONS: The City has designated the bonds as “qualified tax-exempt obligations” for purposes of the deduction of interest expense by financial institutions pursuant to the Code.

LEGAL OPINION: Bids shall be conditioned upon the approving opinion of Miller, Canfield, Paddock and Stone, P.L.C., attorneys of Detroit, Michigan, a copy of which opinion will be furnished without expense to the purchaser of the bonds at the delivery thereof. The fees of Miller, Canfield, Paddock and Stone, P.L.C. for services rendered in connection with such approving opinion are expected to be paid from bond proceeds. Except to the extent necessary to issue its approving opinion as to validity of the above bonds, Miller, Canfield, Paddock and Stone, P.L.C. has not been requested to examine or review and has not examined or reviewed any financial documents, statements or materials that have been or may be furnished in connection with the authorization, issuance or marketing of the bonds, and accordingly will not express any opinion with respect to the accuracy or completeness of any such financial documents, statements or materials. In submitting a bid for the bonds, the bidder agrees to the representation of the City by Miller, Canfield, Paddock and Stone, P.L.C., as bond counsel.

DELIVERY OF BONDS: The City will furnish bonds ready for execution at its expense. Bonds will be delivered without expense to the purchaser through DTC in New York, New York, or such other place to be agreed upon. The usual closing documents, including a certificate that no litigation is pending affecting the issuance of the bonds, will be delivered at the time of delivery of the bonds. If the bonds are not tendered for delivery by twelve o'clock noon, prevailing Eastern Time, on the 45th day following the date of sale, or the first business day thereafter if said 45th day is not a business day, the successful bidder may on that day, or any time thereafter until delivery of the bonds, withdraw its proposal by serving notice of cancellation, in writing, on the undersigned. Payment for the bonds shall be made in Federal Reserve Funds. Accrued interest to the date of delivery of the bonds shall be paid by the purchaser at the time of delivery.

CUSIP NUMBERS: Upon the request of the successful bidder, CUSIP identification numbers will be printed on the bonds, but neither the failure to print such numbers on any bonds nor any error with respect thereto shall constitute cause for a failure or refusal by the purchaser thereof to accept delivery of and pay for the bonds in accordance with terms of the purchase contract. Application for CUSIP identification numbers will be made by MFCI, LLC, registered municipal advisor to the City. The CUSIP Service Bureau's charge for the assignment of CUSIP identification numbers shall be paid by the purchaser.

OFFICIAL STATEMENT: A preliminary Official Statement that the City deems to be final as of its date, except for the omission of information permitted to be omitted by Rule 15c2-12 of the Securities and Exchange Commission, has been prepared and may be obtained from MFCI, LLC, municipal advisor to the City, at the address and telephone listed under MUNICIPAL ADVISOR below. The City will provide the winning bidder with an electronic version of the final Official Statement within 7 business days from the date of sale to permit the purchaser to comply with Securities and Exchange Commission Rule 15c2-12. Copies of the Official Statement will be supplied by MFCI, LLC, upon request and agreement by the purchaser to pay the cost of the copies. Requests for copies should be made to MFCI, LLC within 24 hours of the time of sale.

BOND INSURANCE AT PURCHASER'S OPTION: If the bonds qualify for issuance of any policy of municipal bond insurance or commitment therefor at the option of the bidder/purchaser, the purchase of any such insurance policy or the issuance of any such commitment shall be at the option and expense of the purchaser of the bonds. Any and all increased costs of issuance of the bonds resulting from such purchase of insurance shall be paid by the purchaser, except that if the City has requested and received a rating on the bonds from a rating agency, the City shall pay the fee for the requested rating. Any other rating agency fees shall be the responsibility of the purchaser.

FAILURE OF THE MUNICIPAL BOND INSURER TO ISSUE THE POLICY AFTER THE BONDS HAVE BEEN AWARDED TO THE PURCHASER SHALL NOT CONSTITUTE CAUSE FOR FAILURE OR REFUSAL BY THE PURCHASER TO ACCEPT DELIVERY OF THE BONDS FROM THE CITY.

CONTINUING DISCLOSURE: As described more fully in the Official Statement, the City has agreed to provide or cause to be provided, in accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission, on or prior to the last day of the sixth month after the end of each fiscal year, commencing with the fiscal year ending June 30, 2022, (i) certain annual financial information and operating data, including audited financial statements for the preceding fiscal year, generally consistent with the information contained or cross-referenced in the Official Statement relating to the bonds, (ii) timely notice of the occurrence of certain material events with respect to the bonds and (iii) timely notice of a failure by the City to provide the required annual financial information on or before the date specified in (i) above.

BIDDER CERTIFICATION: NOT “IRAN-LINKED BUSINESS” By submitting a bid, the bidder shall be deemed to have certified that it is not an “Iran-Linked Business” as defined in Act 517, Public Acts of Michigan, 2012, as amended, being MCL 129.311 et. seq.

MUNICIPAL ADVISOR: Further information relating to the bonds may be obtained from MFCI, LLC, 3150 Livernois Road, Suite 175, Troy, Michigan, 48083. Telephone: (313) 782-3011, Facsimile: (313) 782-3011.

THE RIGHT IS RESERVED TO REJECT ANY OR ALL BIDS.

Kyle Whitney
City Clerk
City of Marquette

[End Notice of Sale Form]

8. Useful Life of Projects. The estimated period of usefulness of the Projects is hereby declared to be not less than thirty (30) years.

9. Award of Sale of Bonds. Either Authorized Officer is hereby individually authorized on behalf of the City to award the sale of the Bonds to the bidder whose bid meets the requirements of law and which produces the lowest true interest cost to the City computed in accordance with the terms of the Official Notice of Sale as published.

10. Tax Covenant; Qualified Tax-Exempt Obligations. The City shall, to the extent permitted by law, take all actions within its control necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes under the Code including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Bond proceeds and moneys deemed to be Bond proceeds. The City hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of deduction of interest expense by financial institutions pursuant to the Code.

11. Official Statement; Qualification for Insurance; Ratings. Either of the Authorized Officers is hereby authorized and directed to (a) approve the circulation of a preliminary official statement describing the Bonds and to deem the preliminary official statement “final” for purposes of Rule 15c2-12 (the “Rule”) of the Securities and Exchange Commission (the “SEC”); (b) solicit bids for and approve the purchase of a municipal bond insurance policy for the Bonds, if deemed economically advantageous to the City; (c) apply for ratings on the Bonds; and, (d) do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Bonds.

12. Continuing Disclosure. The City agrees to enter into a continuing disclosure undertaking for the benefit of the holders and beneficial owners of the Bonds in accordance with the requirements of the Rule, and either Authorized Officer is hereby individually authorized to execute such undertaking prior to delivery of the Bonds.

13. Authorization of Other Actions. Either Authorized Officer is hereby individually authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing is authorized to exercise the authority and make the determinations authorized pursuant to Section 315(1)(d) of Act 34, including but not limited to, determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, designation of series, and other matters; *provided that* the principal amount of Bonds issued shall not exceed the principal amount authorized in this resolution, the purchase price for the Bonds shall not be less than 98.5% of the par value of the Bonds, and the true interest cost of the Bonds shall not exceed six percent (6.00%). Either Authorized Officer is hereby individually authorized and directed to take all other actions necessary or advisable, and to make such other filings with any parties, including the Michigan Department of Treasury, to enable the sale and delivery of the Bonds as contemplated herein.

14. Retention of Bond Counsel. The representation of the City by Miller, Canfield, Paddock and Stone, P.L.C. as bond counsel is hereby confirmed, notwithstanding Miller Canfield’s periodic representation in unrelated matters of other potential parties to the 2022 Capital Improvement Bonds transaction.

15. Retention of Municipal Advisor. The City hereby appoints MFCI, LLC to act as municipal advisor with respect to the Bonds.

16. Rescission. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: _____

NAYS: _____

RESOLUTION DECLARED ADOPTED.

Kyle Whitney, City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Marquette, County of Marquette, State of Michigan, at a regular meeting held on July 11, 2022, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Kyle Whitney, City Clerk

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2022 Community Development Capital Outlay

		Total	Street	Street	Sanitary	Water	Storm	Sidewalk	Other Funding
			202-458-972 Major	203-459-972 Local	592-598-974	591-598-974	555-459-972	203-444-972	
bonding	Lakeshore Boulevard Relocation - Phase 2	20-33	\$10,307,000	\$1,912,631			\$4,682,649		\$3,711,720 *
	Utility Replacments - MDOT Project US41 (Jackson to Furnace)	22-35	\$250,000			\$125,000	\$125,000		
	Sidewalk Repair, Replacement, and Extension	22-13	\$150,000					\$150,000	
bonding	SIMP and Sanitary Sewer Lateral Replacements 22101, 22301, 22303	22-10	\$900,000	\$350,000	\$440,000	\$330,000	\$20,000	\$90,000	
	Curbing Repair, Replacement, and Extension	22-35	\$100,000				\$100,000		
	College Avenue Reconstruction (Presque Isle. to 7th) Hemlock	18-2	\$1,841,640	\$76,130	\$484,100	\$537,660	\$399,180	\$19,570	\$325,000
	Unanticipated Water Construction	Annual	\$75,000			\$75,000			
	Unanticipated Drainage Improvements & Rehab-City Wide	Annual	\$75,000				\$75,000		
xxx-xxx-972	Lidar, Orthophotography and Elevation Contours Aerial Map	19-8	\$50,000	\$5,000	\$10,000	\$10,000	\$10,000	\$10,000	
	***Presque Isle Harbor Dredging Project (PIPD Grant)	22-98	\$2,367,750				\$1,617,750		\$750,000 **
bonding	Hemlock Park Development	22-99	\$2,000,000		\$400,000	\$600,000	\$600,000	\$400,000	
			\$2,267,631	\$845,000	\$610,000	\$830,000	\$7,100,399	\$160,000	

555-459-801 Annual Wetland Mitigation Costs \$25,000, Annual Maintenance by USGS \$7,000 (reimbursed by Brownfield)
555-459-985 Storm Water Piping Televising \$31,000
555-561-801 Professional and Contractural for Bridge Load Analysis \$25,000

592-598-985 Unanticipated Citywide Sanitary Sewer Construction \$75,000
592-598-985-301 Sanitary Sewer Televising \$53,000
592-598-985-303 Sanitary Sewer Lateral \$330,000 (Ref#22-10) - SIMP

*Lakeshore "Other funding" includes grant funds and previously bonded funds
**Presque Isle Dredging Grant Includes \$750,000 of funding from Cleveland Cliffs Inc.. Remainder of funds are reimbursed after expenses are incurred. Project is 100% "Storm Fund" related

Postponed Project	
New Project	

2022 Bonding Request per budget:	
Lakeshore Streets -	1,912,631
Lakeshore Storm -	4,682,649
SIMP Streets -	350,000
SIMP Streets -	440,000
SIMP Sewer -	330,000
SIMP Water -	20,000
SIMP Storm -	90,000
Hemlock Streets -	400,000
Hemlock Sewer -	600,000
Hemlock Water -	600,000
Hemlock Storm -	400,000

2022 Bonding Budgeted TOTAL	9,825,280
=====	

2022 Bonding per Bid Returns:	
Lakeshore CZM package -	226,388
Lakeshore Phase 2 -	4,312,878
SIMP -	1,257,993
SIMP 10% -	125,799
Hemlock (TBD) -	2,000,000

2022 Potential Bond Need -	7,923,058
apply unspent proceeds py's	<2,567,550>

2022 Bonding Request TOTAL	5,355,508
=====	

\$5,355,508
potential bond
needs