City of Marquette, MI

Meeting Agenda
City Commission

Monday, September 30, 2024
6:00 PM
Commission Chambers

300 West Baraga Ave
Marquette, Michigan 49855

Call to Order, Pledge of Allegiance and Roll Call

Approval of the Agenda

Announcements

Boards and Committees

1. Appointment(s)

Paul Schumacher, to the Marquette Housing Commission for an unexpired term ending 06-9-2029;
Kent Wilkinson, to the Planning Commission for an unexpired term ending 02-15-2027;
Mateo McNeely, as a Student/Ex-officio member of the Arts and Culture Advisory Committee for a term ending with the end of the Marquette Area Public Schools' year.

2. Reappointment(s)

Bruce Heikkila, to the Local Development Finance Authority for a term ending 08-01-28

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

Presentation(s)

3. Certificate of Appreciation - Battalion Chief Brian Phillips

4. Certificate of Appreciation - Hydrology Engineer Jim Compton

5. Arts and Culture Advisory Committee, by Walker Derby

6. Consent Agenda

6.a. Approve the minutes of the September 9, 2024 regular Commission meeting

6.b. Approve the total bills payable in the amount of $14,194,248.49 which excludes $924.74 in City Commission travel reimbursement, this reimbursement will be New Business items 10-13.

6.c. 2024 Fire Prevention Week Proclamation

6.d. Co-Generation Maintenance Services

6.e. Department of Labor and Economic Opportunity Turnout Gear Grant

6.f. ESRI Contract Renewal

6.g. EV Charging Station Lease

6.h. ITRON Software as a Service/Managed Services Agreement - Amendment #2

6.i. Kids Cove Inclusive Playground - Professional Services Contract Change Order

6.j. Marquette Figure Skating Club - Ice Contract

6.k. Marquette Junior Hockey Corporation - Concession Lease Agreement

6.l. Marquette Junior Hockey Corporation - Ice Contract

6.m. Purchase of Belt Press Polymer

6.n. Sale of Surplus Equipment

6.o. Superior Watershed Partnership Improvement Projects

6.p. Upper Peninsula Community Rowing Club - Facility Lease

6.q. Water and Wastewater Treatment Chemicals BP24-09

New Business

7. Budget Adjustment - Fiscal Year End 2024

8. Resolution Accepting LWCF Tourist Park Day-Use Road Grant Agreement - Roll Call Vote

9. City Attorney Evaluation

10. City Manager Evaluation

11. Mayor Davis and Mayor Pro-tem Hanley Travel Reimbursement

12. Commissioner Larson Travel Reimbursement

13. Commissioner Ottaway Travel Reimbursement

14. Commissioner Schloegel Travel Reimbursement

15. Naming - Kids Cove II, A Playground For ALL

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

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Kyle Whitney, City Clerk

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

Agenda Date: 9/30/2024

Consent Agenda
Approve the minutes of the September 9, 2024 regular Commission meeting

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description
- 9/9/24 minutes

City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Minutes
City Commission

Monday, September 9, 2024
6:00 PM
Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

Present: Davis, Hanley, Larson, Mayer, Ottaway, Schloegel, Smith

Approval of the Agenda

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

Announcements

Mayor Davis had no announcements.

Boards and Committees

1. Appointment(s)

Travis Gerhart, Arts and Culture Advisory Committee for an unexpired term ending 06-1-27.
Athena Stanley, Arts and Culture Advisory Committee for an unexpired term ending 06-1-26.

Mayor Pro Tem Jessica Hanley moved to Approve the appointments as listed, seconded by Commissioner Jermey Ottaway and Carried Unanimously.

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

Margaret Brumm indicated that several students from her university class were present at tonight's meeting and would be introducing themselves during public comment.
Steve Reed read a statement from Dick Constance, the president of the Brookstone Condominium Association. The statement expressed an interest in the city developing a multi-use pathway along Wilson Street, from McClellan to U.S. 41.

NMU students Andrew Karston, Maribel Zamora, Piper Morrison, Morgan Blazei and Justin Love said they were attending the meeting for their MG221 course.

Presentation(s)

2. Planning Commission, by Chair Sarah Mittlefehldt

City Planning Commission Chair Sarah Mittlefehldt offered an annual update from her board, providing an overview of the Planning Commission's activities, with a focus on the board's topics of interest
Commissioners praised the important work of the Planning Commission, with several saying that they had experience serving on the Planning Commission and noting how much work it truly is.

Public Hearing(s)

3. Budget and General Appropriations Act - Fiscal Year 2025 - Roll Call Vote

City Manager Karen Kovacs offered a high-level presentation about the proposed budget.
She said that, for the first time since she began working in the City, the proposed budget is balanced without the use of fund balance. Looking to the coming year and beyond, she focused on future plans and on the City's progress on paying down debt. She spoke about the pros and cons of municipal debt.
She also touched on plans for utility rates, discussing the City's utility rate study, which indicates that future rate increases will be significantly smaller. Finally, she highlighted the plans for the City's capital improvements this year, which are scaled down significantly from some previous years.

Mayor Davis opened the public hearing.
Margaret Brumm congratulated the City Manager on balancing the budget without using fund balance. She advocated for exploring a process whereby the City could consolidate public art and basic maintenance/repair projects, suggesting that public art funds could be used to repair the stairs on Presque Isle or to purchase new lights for the piers.
Geraldine Nault thanked the CC and staff for the balanced budget.
Barb Owdziej said she agreed with Ms. Brumm's concept, and would like public art money to be used for road crossings.

Commissioner Michael Larson moved to Adopt the Fiscal Year 2025 Budget and General Appropriations Act, seconded by Commissioner Paul Schloegel and Carried Unanimously by Roll Call Vote.

4. Consent Agenda

Commissioner Jennifer Smith moved to Approve the Consent Agenda as written, seconded by Mayor Pro Tem Jessica Hanley and Carried Unanimously.

4.a. Approve the minutes of the August 26, 2024 regular Commission meeting

4.b. Approve the total bills payable in the amount of $ 1,803,767.28

4.c. Axon Body Camera Replacement

4.d. KBIC Funding for the YMCA

4.e. Sault Ste. Marie Tribe of Chippewa Indians Funding for the YMCA

4.f. Proclamation - Alzheimer's Awareness

4.g. UPSET Lease Agreement

New Business

5. Audit Contract for Fiscal Years 2024 through 2026

Mayor Pro Tem Jessica Hanley moved to Approve a three-year contract for annual audit services with Anderson, Tackman & Company, PLC in the amounts of $62,850 for FY 2024; $66,685 for FY 2025; and $70,700 for FY 2026; and authorize the Chief Financial Officer to sign the contract, seconded by Commissioner Jermey Ottaway and Carried Unanimously.

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

Steve Reed finished reading Dick Constance's statement about the multi-use path. Margaret Brumm spoke about the various ways (absentee voting, early voting, Election Day voting) that citizens can choose to cast a ballot in Michigan elections and the upcoming school board election.

Comments from the Commission

Commissioner Smith talked about last Friday's unveiling of the Seven Grandfathers sculpture, and urged people to check it out.
Commissioner Larson echoed that sentiment and said the sculpture is great and that the bust tour ahead of the unveiling was also interesting.
Commissioner Mayer said he was happy to be in town Friday with tribal leaders from three nations.
Commissioner Ottaway said the sculpture ceremony was touching and he was happy to simply be able to witness it.
Mayor Pro Tem Hanley thanked the students for coming, said it's great for people to be involved in their community, and urged them to become involved with the City's advisory boards and committees.
Commissioner Schloegel also praised the events around the unveiling of the Seven Grandfathers sculpture. He also encouraged the students present to go chat with the City Manager during one of her open office hours sessions.
Mayor Davis praised the budget and thanked the students for coming.

Comments from the City Manager

City Manager Karen Kovacs provided a brief history of the pathway conversation.

Adjournment

Mayor Davis adjourned the meeting at 7:16 p.m.

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Sally Davis, Mayor **Kyle Whitney, City Clerk**

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

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

Agenda Date: 9/30/2024

Consent Agenda
2024 Fire Prevention Week Proclamation

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

- 2024 Fire Prevention Week Proclamation

Proclamation
Fire Prevention Week – October 6-12, 2024

WHEREAS, the City of Marquette, Michigan is committed to ensuring the safety and security of all those living in and visiting our state; and,

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and,

WHEREAS, home fires killed more than 2,700 people in the United States in 2022, according to the National Fire Protection Association® (NFPA®), and fire departments in the United States responded to 360,000 home fires; and,

WHEREAS, roughly three out of five fire deaths happen in homes with either no smoke alarms or with no working smoke alarms; and,

WHEREAS, working smoke alarms cut the risk of dying in reported home fires almost in half; and,

WHEREAS, smoke alarms sense smoke well before you can, alerting you to danger in the event of fire in which you may have as little as two minutes to escape safely; and,

WHEREAS, Marquette residents should install smoke alarms in every sleeping room, outside each separate sleeping area, and on every level of the home; and,

WHEREAS, Marquette residents will make sure their smoke alarms meet the needs of all their family members, including those with sensory or physical disabilities; and,

WHEREAS, Marquette residents should test smoke alarms at least once a month; and,

WHEREAS, residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and,

WHEREAS, Marquette's first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and,

WHEREAS, Marquette's residents are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes; and,

WHEREAS, the 2024 Fire Prevention Week™ theme, "Smoke alarms: Make them work for you.™," serves to remind us the importance of having working smoke alarms in the home.

THEREFORE, I Sally Davis, Mayor of Marquette, do hereby proclaim October 6–12, 2024, as Fire Prevention Week throughout this city, and I urge all the people of Marquette to make sure their homes have working smoke alarms and to support the many public safety activities and efforts of Marquette's fire and emergency services.

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Sally Davis, Mayor

Agenda Date: 9/30/2024

Consent Agenda
Co-Generation Maintenance Services

BACKGROUND:
The Wastewater Treatment Plant has biogas co-generation units that provide heat and electricity. The units are designed to run 24/7 and require specialized annual maintenance. Because Kraft Power is the manufacturer of the units and has specialized expertise in servicing the units, seeking competitive bids for these services provides no advantage to the city. The company has a service center in Gaylord, Michigan. The Commission approved up to $55,000 for repair and maintenance of the units at the October 3, 2023, meeting. Due to a repair being more extensive than anticipated, we will need approval for an extra $8,000, for a not-to-exceed amount of $63,000.

FISCAL EFFECT:
There are sufficient funds in the Wastewater FY 2023/24 budget.

RECOMMENDATION:
Waive competitive bidding and approve an added $8,000 to $55,000 already approved by the Commission to Kraft Power for repair and maintenance on the co-generation units.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

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

Agenda Date: 9/30/2024

Consent Agenda
Department of Labor and Economic Opportunity Turnout Gear Grant

BACKGROUND:
The Fire Department has been awarded grant funding through the State of Michigan for the purchase of twenty-four sets of turnout gear. The City has been granted a waiver to sole source purchase the equipment and the City Commission approved the purchase from Jefferson Fire & Safety at the August 12, 2024 meeting.

FISCAL EFFECT:
A budget amendment will be required to increase departmental expenditures in the Fire Department, however an equal increase in budgeted grant revenues for the Fire Department results in a neutral impact the budget.

RECOMMENDATION:
Approve the grant contract between the City and the State of Michigan, and authorize the City Manager to sign the contract.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

- FireFighter TurnOut Gear-Grant Contract.pdf
- Jefferson Fire & Safety Turnout Gear Quote

GRANT NO E20240189

Grantee's Unique Entity Identifier: NJTGBUGAVBF9

GRANT BETWEEN

THE STATE OF MICHIGAN

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

AND

City of Marquette

PART I

GRANTEE/ADDRESS:

Name:	Karen Kovacs
Title:	Chief Executive Officer
Address:	300 W. Baraga Ave., Marquette, MI 49855
Phone:	(906) 228-0435

GRANT ADMINISTRATOR/ADDRESS:

Contact Name:	Amber Covington
Organizational Unit:	Department of Labor and Economic Opportunity, State of Michigan
Address:	105 West Allegan Street, Lansing, MI 48933
Telephone Number:	(517) 284-4007

GRANT PERIOD:

From: 08/01/2024 to 09/30/2027

RECIPIENT RELATIONSHIP IN GRANT AGREEMENT:

☐ Sub-recipient ☐ Vendor ☑ Recipient

TOTAL AUTHORIZED BUDGET: $79,992.00

State Contribution:	$79,992.00
Match Contribution:	$0.00

SIGMA Vendor ID:	CV0047620
SIGMA Payment Address Code:	001
ACCOUNTING DETAIL:	Accounting Template No.: 186FIREGQUIP
	Assistance Listing # (ALN).:

This is Grant # E20240189 between the Michigan Department of Labor and Economic Opportunity (Grantor), and City of Marquette (Grantee), subject to terms and conditions of this grant agreement (Agreement).

General Provisions: The Grantee agrees to comply with the General Provisions and Progress Reporting as described in Part I, Part II and Attachment E, which are part of this Agreement.

Agreement Amount: The total amount of this Agreement is $79,992.00. Under the terms of this Agreement, the Department will provide funding not to exceed $79,992.00.

1.0 Statement of Purpose

The purpose of the program is to assist full-time fire departments with purchasing a second set of turnout gear for firefighters.

1.1 Statement of Work

The Grantee agrees to undertake, perform, and complete the following project:

These services are more specifically described in the Grantee's Proposal, Attachment A.

1.2 Detailed Budget

A. This Agreement does not commit the State of Michigan (State) or the Department of Labor and Economic Opportunity to approve requests for additional funds at any time.

B. If applicable, travel expenses will not be reimbursed at rates greater than the State Travel Rates, Attachment C, without the prior written consent of the Grant Administrator.

C. Attachment B is the Budget. The Grantee agrees that all funds shown in the Budget are to be spent as detailed in the Budget.

Changes in the Budget of less than 5% of the total line item amount do not require prior written approval, but Grantee must provide notice to the Grant Administrator.

Changes in the Budget equal to or greater than 5% of the total line item amount will be allowed only upon prior review and written approval by the Grant Administrator. A formal grant amendment must be signed by both the Grantor and Grantee.

1.3 Payment Schedule

The maximum amount of grant funding is $79,992.00 (Seventy Nine Thousand Nine Hundred Ninety Two and 00/100)

A. Payments may be made upon submission of Grantee Financial Reimbursement requests in EGrAMS http://egrams-mi.com/leo indicating grant funds received to date, project expenditures to date (supported with computer printouts of accounts, general ledger sheets, balance sheets, etc.), and objectives completed to date. Backup documentation such as computer printouts of accounts, ledger sheets, check copies, etc. shall be maintained for audit purposes for the full length of the state of Michigan's retention schedule, in order to comply with this Agreement.

B. The payment of the final grant amount shall be made after completion of the project and after the Grant Administrator has received and approved a final report, if applicable. The final payment is also contingent upon the submission of a final invoice that includes expenditures of grant funds reported by line item and compared to the approved Budget.

C. Financial Status Report(FSR) must be submitted on a monthly basis, no later than 30 days after the close of each calendar month. The monthly FSRs must reflect total actual program expenditures, up to the total agreement amount. Failure to meet financial reporting responsibilities as identified in this Agreement may result in withholding future payments

D. The Grantee representative who submits the FSR is certifying to the best of their knowledge and belief that the report is true, complete and accurate and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of this Agreement. The individual submitting the FSR should be aware that any false, fictitious or fraudulent information, or the omission of any material facts, may subject them to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.

Public Act 279 of 1984 states that the state shall take all steps necessary to assure that payment for goods or services, is mailed within 45 days after receipt of the goods or services, a complete invoice for goods or services, or a complete contract for goods or services, whichever is later.

E. **Reimbursement Mechanism**

All Grantees must register using the on-line vendor self-service site to receive all state of Michigan payments as Electronic Funds Transfers (EFT)/Direct Deposits, as mandated by MCL 18.1283a. Vendor registration information is available through the Department of Technology, Management and Budget's web site: https://www.michigan.gov/sigmavss.

F. **Unobligated Funds**

Any unobligated balance of funds held by the Grantee at the end of the Agreement period will be returned to the Department within 30 days of the end of the Agreement or treated in accordance with instructions provided by the Department.

G. **Indirect Costs**

The Grantee may use an approved federal or state indirect rate in their budget calculations and financial status reporting. If the Grantee does not have an existing approved federal or state indirect rate, they may use a 10% de minimis rate in accordance with 2 CFR 200 to recover their indirect costs. Governmental Grantees with an existing cost allocation plan may budget accordingly in lieu of an indirect cost rate. Non-governmental Grantees may use a cost allocation plan only if the plan was in place prior to December 26, 2014.

1.4 Monitoring and Reporting Program Performance

A. Monitoring. The Grantee shall monitor performance to assure that time schedules are being met and projected work by time period is being accomplished.

B. A Final Report is required. The Grantee will do the following:

1. Submit one draft copy of the final report via EGrAMS no later than 30 days after the end of the Project Period for review by the Grant Administrator.
2. After the Grant Administrator has determined the completeness and factual accuracy of the report, the Grantee shall submit one final copy of the report to the Grant Administrator.
3. The final report will include the following information:

   a A summary of the project implementation plan and any deviations from the original project as proposed.

   b Accomplishments and problems experienced while carrying out the project activities.

   c Coordinated efforts with other organizations to complete the project.

   d Impacts, anticipated and unanticipated, experienced as a result of the project implementation.

   e Financial expenditures of grant money and other contributions to the project, in-kind and/or direct funding.

   f Any experience in applying the project products and anticipated “next steps”.

   g Actual Budget expenditures compared to the Budget in this Agreement. Include the basis or reason for any discrepancies.

PART II - GENERAL PROVISIONS

2.1 Project Changes

Grantee must obtain prior written approval for project changes from the Grant Administrator. During the project period, the grantee shall obtain prior written authorization from the Grantor before adding, deleting, or making a significant change to any eligible uses of funding as identified. Approval of changes is solely at the discretion of the Grantor. **See Section 1.2, Detailed Budget.**

2.2 Delegation

Grantee may not delegate any of its obligations under the Grant without the prior written approval of the State. Grantee must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Grantee must: (a) be the sole point of contact regarding all contractual project matters, including payment and charges for all Grant Activities; (b) make all payments to the subgrantee; and (c) incorporate the terms and conditions contained in this Grant in any subgrant with a subgrantee. Grantee remains responsible for the completion of the Grant Activities, compliance with the terms of this Grant, and the acts and omissions of the subgrantee. The State, in its sole discretion, may require the replacement of any subgrantee.

2.3 Project Income

To the extent that it can be determined that interest was earned on advances of funds, such interest shall be remitted to the Grantor. All other program income shall either be added to the project budget and used to further eligible program objectives or deducted from the total program budget for the purpose of determining the amount of reimbursable costs. The final determination shall be made by the Grant Administrator.

2.4 Share-in-savings

The Grantor expects to share in any cost savings realized by the Grantee. Therefore, final Grantee reimbursement will be based on actual expenditures. Exceptions to this requirement must be approved in writing by the Grant Administrator.

2.5 Order of Spending

Unless otherwise required, Grantee shall expend funds in the following order: (1) private or local funds, (2) federal funds, and (3) state funds. Grantee is responsible for securing any required matching funds from sources other than the State.

2.6 Purchase of Equipment

The purchase of equipment not specifically listed in the Budget, Attachment B, must have prior written approval of the Grant Administrator. Equipment is defined as non-expendable personal property having a useful life of more than one year. Such equipment shall be retained by the Grantee unless otherwise specified at the time of approval.

2.7 Accounting

The Grantee shall adhere to the Generally Accepted Accounting Principles and shall maintain records which will allow, at a minimum, for the comparison of actual outlays with budgeted amounts. The Grantee's overall financial management system must ensure effective control over and accountability for all funds received. Accounting records must be supported by source documentation including, but not limited to, balance sheets, general ledgers, time sheets and invoices. The expenditure of state funds shall be reported by line item and compared to the Budget.

2.8 Records Maintenance, Inspection, Examination, and Audit

The State or its designee may audit Grantee to verify compliance with this Grant. Grantee must retain, and provide to the State or its designee upon request, all financial and accounting records related to the Grant through the term of the Grant and for 7 years after the latter of termination, expiration, or final payment under this Grant or any extension, or through December 31, 2031, whichever is later ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Grantee must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Grantee's premises or any other places where Grant Activities are being performed, and examine, copy, and audit all records related to this Grant. Grantee must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Grant must be paid or refunded within 45 calendar days.

This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant Activities in connection with this Grant.

If the Grantee is a governmental or non-profit organization and expends the minimum level specified in OMB Uniform Guidance ($750,000 as of December 26, 2013) or more in total federal funds in its fiscal year, then Grantee is required to submit an Audit Report to the Federal Audit Clearinghouse (FAC) as required in 200.36.

2.9 Competitive Bidding

The Grantee agrees that all procurement transactions involving the use of state funds shall be conducted in a manner that provides maximum open and free competition. When competitive selection is not feasible or practical, the Grantee agrees to obtain the written approval of the Grant Administrator before making a sole source selection. Sole source contracts should be negotiated to the extent that such negotiation is possible.

3.0 Liability

The State is not liable for any costs incurred by the Grantee before the start date or after the end date of this Agreement. Liability of the State is limited to the terms and conditions of this Agreement and the grant amount.

3.1 Intellectual Property

Ownership by Grantee

Unless otherwise required by law, all intellectual property developed using funds from this Agreement, including copyright, patent, trademark and trade secret, shall belong to the Grantee.

3.2 Safety

The Grantee, and all subgrantees are responsible for insuring that all precautions are exercised at all times for the protection of persons and property. Safety provisions of all Applicable Laws and building and construction codes shall be observed. The Grantee, and every subgrantee are responsible for compliance with all federal, state and local laws and regulations in any manner affecting the work or performance of this Agreement and shall at all times carefully observe and comply with all rules, ordinances, and regulations. The Grantee, and all subgrantees shall secure all necessary certificates and permits from municipal or other public authorities as may be required in connection with the performance of this Agreement.

3.3 General Indemnification

Inasmuch as each party to this grant is a governmental entity of the State of Michigan, each party to this grant must seek its own legal representation and bear its own costs; including judgments, in any litigation which may arise from the performance of this grant. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

3.4 Termination

A. Termination for Cause

The State may terminate this Grant for cause, in whole or in part, if Grantee, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Grant will not be construed to mean that other breaches are not material.

If the State terminates this Grant under this Section, the State will issue a termination notice specifying whether Grantee must: (a) cease performance immediately, or (b) continue to perform for a specified period. The State will provide written notice 30 days prior to the termination of the agreement as referenced for part (b) of subsection A. If it is later determined that Grantee was not in breach of the Grant, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Subsection B, Termination for Convenience.

The State will only pay for amounts due to Grantee for Grant Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Grantee for the State's reasonable costs in terminating this Grant. The Grantee must pay all reasonable costs incurred by the State in terminating this Grant for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Grant Activities from other sources.

B. Termination for Convenience

The State may immediately terminate this Grant in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. If the State terminates this Grant for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Grant Responsibilities.

C. Mutual Termination

Mutual termination may be made by either party by giving 30 days written notice to the other party stating the reasons for termination and the effective date.

D. The Department may suspend any or all activities under this Agreement at any time. The Department will provide the Grantee with a written stop work order detailing the suspension. Grantee must comply with the stop work order upon receipt. The Department will not pay for activities, Grantee's incurred expenses or financial losses, or any additional compensation during a stop work period.

3.5 Conflicts and Ethics

Grantee will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Grant; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Grant; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Grantee, any consideration contingent upon the award of the Grant. Grantee must immediately notify the State of any violation or potential violation of these standards. This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant Activities in connection with this Grant.

3.6 Non-Discrimination

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Grantee and its subgrantees agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Grant.

3.7 Unfair Labor Practices

Under MCL 423.324, the State may void any Grant with a Grantee or subgrantee who appears on the Unfair Labor Practice register compiled under MCL 423.322.

3.8 Force Majeure

Neither party will be in breach of this Grant because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Grantee will not be relieved of a breach or delay caused by its subgrantees. If immediate performance is necessary to ensure public health and safety, the State may immediately Grant with a third party.

3.9 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the Grant or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

4.0 Website Incorporation

The State is not bound by any content on Grantee's website unless expressly incorporated directly into this Grant.

4.1 Certification Regarding Debarment

The Grantee certifies, by signature to this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal or State department or agency. If the Grantee is unable to certify to any portion of this statement, the Grantee shall attach an explanation to this Agreement.

4.2 Illegal Influence

The Grantee certifies, to the best of his or her knowledge and belief that:

A. No federal appropriated funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this grant, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The Grantee shall require that the language of this certification be included in the award documents for all grants or subcontracts and that all subrecipients shall certify and disclose accordingly.

The State has relied upon this certification as a material representation. Submission of this certification is a prerequisite for entering into this Agreement imposed by 31 USC § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Grantee certifies, to the best of his or her knowledge and belief that no state funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any State agency, a member of the Legislature, or an employee of a member of the Legislature in connection with the awarding of any state contract, the making of any state grant, the making of any state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state contract, grant, loan or cooperative agreement.

4.3 Governing Law

This Grant is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Grant are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Grant must be resolved in Michigan Court of Claims. Grantee consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Grantee must appoint agents in Michigan to receive service of process.

4.4 Compliance with Laws

Grantee must comply with all federal, state and local laws, rules and regulations.

4.5 Disclosure of Litigation, or Other Proceeding

Grantee must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, “Proceeding”) involving Grantee, a subgrantee, or an officer or director of Grantee or subgrantee, that arises during the term of the Grant, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Grantee’s viability or financial stability; or (2) a governmental or public entity’s claim or written allegation of fraud; or (e) a Proceeding involving any license that Grantee is required to possess in order to perform under this Grant.

4.6 Assignment

Grantee may not assign this Grant to any other party without the prior approval of the State. Upon notice to Grantee, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Grant to any other party. If the State determines that a novation of the Grant to a third party is necessary, Grantee will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Grant.

4.7 Entire Grant and Modification

This Grant is the entire agreement and replaces all previous agreements between the parties for the Grant Activities. This Grant may not be amended except by signed agreement between the parties.

4.8 Grantee Relationship

Grantee assumes all rights, obligations and liabilities set forth in this Grant. Grantee, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Grant. Grantee, and not the State, is responsible for the payment of wages, benefits and taxes of Grantee’s employees and any subgrantees. Prior performance does not modify Grantee’s status as an independent Grantee.

4.9 Dispute Resolution

The parties will endeavor to resolve any Grant dispute in accordance with this provision. The dispute will be referred to the parties' respective Grant Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Grant.

5.0 Severability

If any part of this Grant is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Grant and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Grant will continue in full force and effect.

5.1 Waiver

Failure to enforce any provision of this Grant will not constitute a waiver.

5.2 Signatories

The signatories warrant that they are empowered to enter into this Agreement and agree to be bound by it.

Signature: *Gregory Rivet* Date: 08/29/2024

Gregory Rivet, Director

Executive Office

Department of Labor and Economic Opportunity

State of Michigan

Signature:

(Name of Person Authorized to Accept Grant)

City of Marquette

GRANT NO. E20240189

Federal Provisions Addendum

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Federally Assisted Construction Contracts

If this contract is a "federally assisted construction contract" as defined in 41 CRF Part 60-1.3, and except as otherwise may be provided under 41 CRF Part 60, then during performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, 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, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Copeland “Anti-Kickback” Act

If applicable, the Contractor must comply with the Copeland “Anti-Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

3. **Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of $100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with 40 USC 3702 and3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable.

4. **Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. **Clean Air Act**

If this Contract is **in excess of $150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.

6. **Debarment and Suspension**

A "contract award" (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7. **Byrd Anti-Lobbying Amendment**

If this Contract **exceeds $100,000**, bidders and the Contractor must file the certification required under 31 USC 1352.

8. **Procurement of Recovered Materials**

Under 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and **its contractors** must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Byrd Anti-Lobbying Certification

The following certification and disclosure regarding payments to influence certain federal transactions are made under FAR 52.203-11 and 52.203-12 and 31 USC 1352, the "Byrd Anti-Lobbying Amendment." Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions" is hereby incorporated by reference into this certification.

2. The bidder, by submitting its proposal hereby certifies to the best of his or her knowledge and belief that:

a. No federal **appropriated** funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;

b. If any funds **other than federal appropriated funds** (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf **in connection with this solicitation**, the bidder must complete and submit, with its proposal, OMB standard form LLL, Disclosure of Lobbying Activities, to the Solicitation Manager; and

c. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $150,000 must certify and disclose accordingly.

3. This certification is a material representation of fact upon which reliance is placed at the time of Contract award. Submission of this certification and disclosure is a prerequisite for making or entering into this Contract under 31 USC 1352. Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision is subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

Signature:

____

(Name of Person Authorized to Accept Grant)

City of Marquette

ATTACHMENT A

Objective :	To acquire second sets of new firefighter turnout gear for fire suppression personnel
Activity :	Complete a list of fire suppression personnel who need second sets of turnout gear
Responsible Staff :	Fire Chief, Battalion Chiefs, Fire Marshal
Date Range :	08/01/2024 - 09/30/2027
Expected Outcome :	All fire suppression personnel will have second sets of new firefighter turnout gear in service
Measurement :	Physical inspection and count of personnel's turnout gear
Activity :	Order turnout gear
Responsible Staff :	Fire Chief, Fire Marshal
Date Range :	08/01/2024 - 09/30/2027
Expected Outcome :	Every member has new firefighter turnout gear in service
Measurement :	Determine by inspection that every member has a new set of firefighter turnout gear in service

ATTACHMENT B

PROGRAM Firefighter Turnour Gear - 2024			**DATE PREPARED** 8/29/2024
CONTRACTOR NAME City of Marquette			**BUDGET PERIOD** From : 8/1/2024 To : 9/30/2027
MAILING ADDRESS (Number and Street) 300 W. Baraga Ave.			**BUDGET AGREEMENT** ☑ Original ☐ Amendment / **AMENDMENT #** 0
CITY Marquette	**STATE** MI	**ZIP CODE** 49855	**FEDERAL ID NUMBER** 386004521

	Category	Total	Amount	Cash
1	Salaries/Personnel	0.00	0.00	0.00
2	Fringe Benefits	0.00	0.00	0.00
3	Travel	0.00	0.00	0.00
4	Supplies and Materials	0.00	0.00	0.00
5	Contractual Services	0.00	0.00	0.00
6	Other	79,992.00	79,992.00	0.00
7	Indirect Costs	0.00	0.00	0.00
TOTAL EXPENDITURES		**79,992.00**	**79,992.00**	**0.00**

Attachment C - State Travel Rates

[Attachment C - State Travel Rates]

Attachment E - Program Specific Requirements

[Attachment E - Program Specific Requirements]

Date: 8/7/2024

Sold to:

Ship to:
Marquette City of FD
Attn: Jeffrey Fossitt
418 S. 3rd Street
Marquette, MI 49855

Jefferson Fire Safety, Inc.
7620 Donna Drive
Middleton, WI 53562
800-697-3473
www.jeffersonfire.com

Order	
Quotation	XXXXXXXX
Deliver	
Ship	
Ship Compl.	
FOB Dest.	
FOB Mfr.	
Return	
Inventory Adj.	

Salesperson	P.O. Number	Phone	E-mail
Rich Janke		906-440-5725	jfossitt@marquettemi.gov

Comments: SHIPPING INCLUDED IN PRICE. **Quote #P24125MIMARQ**

Qty	Part #	Description	Price	Amount
24	MIMARQ00040	Morning Pride LTO-17IG Tails Black (Chicago Closer)	2,033.25	48,798.00
24	MIMARQ00044	Morning Pride LTO-17IG Pants Black	1,299.75	31,194.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
			Subtotal	79,992.00
			Tax	$0.00
			Total	79,992.00

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

Agenda Date: 9/30/2024

Consent Agenda
ESRI Contract Renewal

BACKGROUND:
The City utilizes ESRI ArcGIS software for mapping City assets. The City renews this software contract with ESRI every three years. The new contract will cost an average of $32,000 annually, or $96,000 for the contract. The three-year contract is set to renew in January 2025.

FISCAL EFFECT:
The cost of the contract is included in the FY25 budget.

RECOMMENDATION:
Approve the three-year contract with ESRI, and authorize the City Manager or her designee to sign the contract for the ArcGIS software.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

- ESRI Quote 2024

September 3, 2024

Mik Kilpela
City of Marquette
300 W Baraga Ave
Marquette, MI 49855-4712

Dear Mik,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.

- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.

- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.

- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.

- The organization will provide an annual report of installed Esri software to Esri.

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.

- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

   "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

   Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.

3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.

4. Send the purchase order and agreement to the address, email or fax noted below:

   Esri
   Attn: Customer Service SG-EA
   380 New York Street
   Redlands, CA 92373-8100

   e-mail: service@esri.com
   fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Angie Bramer

Quotation # Q-516517

Date: September 3, 2024

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175   CAGE Code: 0AMS3

Customer # 342567   Contract #

City of Marquette
Engineering Dept
300 W Baraga Ave
Marquette, MI 49855-4712

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 9/3/2024 To: 12/2/2024

ATTENTION: Mik Kilpela
PHONE: (906) 225-8995
EMAIL: mkilpela@marquettemi.gov

Material	Qty	Term	Unit Price	Total
168177	1	Year 1	$30,200.00	$30,200.00
Populations of 0 to 25,000 Small Government Enterprise Agreement Annual Subscription				
168177	1	Year 2	$30,200.00	$30,200.00
Populations of 0 to 25,000 Small Government Enterprise Agreement Annual Subscription				
168177	1	Year 3	$30,200.00	$30,200.00
Populations of 0 to 25,000 Small Government Enterprise Agreement Annual Subscription				

Subtotal:	$90,600.00
Sales Tax:	$0.00
Estimated Shipping and Handling (2 Day Delivery):	$0.00
Contract Price Adjust:	$0.00
Total:	$90,600.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:	**Email:**	**Phone:**
Angie Bramer	abramer@esri.com	(909) 793-2853 x8378

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAPS apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

BRAMERA   **This offer is limited to the terms and conditions incorporated and attached herein.**

Esri Use Only:
Cust. Name ______________
Cust. # ______________
PO # ______________
Esri Agreement # ___________

SMALL ENTERPRISE AGREEMENT
COUNTY AND MUNICIPALITY GOVERNMENT
(E214-1)

This Agreement is by and between the organization identified in the Quotation (**"Customer"**) and **Environmental Systems Research Institute, Inc.** (**"Esri"**).

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

Table A
List of Products

Uncapped Quantities

Desktop Software and Extensions (Single Use)
ArcGIS Desktop Advanced
ArcGIS Desktop Standard
ArcGIS Desktop Basic
ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions
ArcGIS Enterprise (Advanced and Standard)
ArcGIS Monitor
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Additional Capability Servers
ArcGIS Image Server

Developer Tools
ArcGIS Runtime Standard
ArcGIS Runtime Analysis Extension

Limited Quantities
One (1) Professional subscription to ArcGIS Developer
Two (2) ArcGIS CityEngine Single Use Licenses
50 ArcGIS Online Viewers
50 ArcGIS Online Creators
10,000 ArcGIS Online Service Credits
50 ArcGIS Enterprise Creators
2 ArcGIS Insights in ArcGIS Enterprise
2 ArcGIS Insights in ArcGIS Online
5 ArcGIS Location Sharing User Type Extension (Enterprise)
5 ArcGIS Location Sharing User Type Extension (Online)
6 ArcGIS Advanced Editing User Type Extension (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	**2**
Number of Tier 1 Help Desk individuals authorized to call Esri	**2**
Maximum number of sets of backup media, if requested*	**2**
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

____
(Customer)

By: ______________________________
Authorized Signature

Printed Name: ______________________________

Title: ______________________________

Date: ______________________________

CUSTOMER CONTACT INFORMATION

Contact: ______________________________

Address: ______________________________

City, State, Postal Code: ______________________________

Country: ______________________________

Quotation Number (if applicable): ______________________________

Telephone: ______________________________

Fax: ______________________________

E-mail: ______________________________

1.0—Additional Definitions

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at https://www.esri.com/en-us/legal/terms/full-master-agreement and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—Additional Grant of License

2.1 **Grant of License.** Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 **Consultant Access.** Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—Term, Termination, and Expiration

3.1 **Term.** This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 **No Use upon Agreement Expiration or Termination.** All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 **Termination for a Material Breach.** Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 **Termination for Lack of Funds.** For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—Product Updates

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at https://support.esri.com/en/other-resources/product-life-cycle. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—Maintenance

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at https://www.esri.com/en-us/legal/terms/maintenance). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.

2. The Tier 1 Help Desk will be fully trained in the Products.

3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.

4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.

5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.

6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.

2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.

3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—Endorsement and Publicity

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—Administrative Requirements

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—Ordering, Administrative Procedures, Delivery, and Deployment

8.1 Orders, Delivery, and Deployment

a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

c. Esri's federal ID number is 95-2775-732.

d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

b. The following information will be included in each Ordering Document:

   (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
   (2) Order number
   (3) Applicable annual payment due

9.0—Mergers, Acquisitions, or Divestitures

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.

9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.

9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

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

Agenda Date: 9/30/2024

Consent Agenda
EV Charging Station Lease

BACKGROUND:
The Superior Watershed Partnership (SWP) originally requested the use of City property for the installation of electric vehicle charging stations at the Lakeshore Public Parking Lot, Commons Public Parking Lot, and Father Jacques Marquette Parking Lot. However, the requirements for the chargers cannot be met at these locations. As a result, the lease needs to be modified to change the installation sites to Mattson Park and the Presque Isle Marina.

This is the first read of this lease.

FISCAL EFFECT:
The City of Marquette will receive $31.25 per month ($375 annually) per charging station during the term of the lease agreement.

RECOMMENDATION:
Move the lease agreement with the Superior Watershed Partnership to unfinished business at the next regular meeting.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description
- Lease Agreement

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _________ 2024, by and between THE CITY OF MARQUETTE, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter "Lessor", and THE SUPERIOR WATERSHED PARTNERSHIP, a Michigan 501c3 nonprofit, of 9 Peter White Drive Marquette, Michigan 49855, hereinafter "Lessee".

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

Recitals

A. Lessor is the owner of the real property and improvements commonly known as Mattson Lower Harbor Park and the Presque Isle Marina, located at 200 Lakeshore Boulevard and 1 Peter White Drive, respectively (the "Premises").

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

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

1. Leased Premises

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

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

2. Term of Lease

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

3. Rent

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

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

4. Use of Premises

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

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

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

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

d) constitute a public or private nuisance;

e) interfere with other uses of the Premises; or

t) permit refuse to accumulate in or around Premises.

5. Exclusive Use of Premises

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

6. Maintenance and Repair

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

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

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

7. Insurance and Indemnity

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

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

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

7.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Five Hundred Thousand and 00/100 Dollars ($500,000.00} for property damage. Lessee shall at all times provide Lessor with a current copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.

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

8. Assignment/Subletting

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

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

9. Use of Premises by Lessor

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

10. Covenant of Quiet Enjoyment

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

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

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

12. Default by Lessee

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

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

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

13. Surrender of Leasehold upon Termination of Lease

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

14. Miscellaneous

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

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

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

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

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

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

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

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

LESSOR	LESSEE
CITY OF MARQUETTE	SUPERIOR WATERSHED PARTNERSHIP
______________________	______________________

Approved as to Substance:

____

Karen Kovacs, City Manager

Approved as to Form:

____

Suzanne Larsen, City Attorney

Exhibit A

LEGAL DESCRIPTION

Mattson Lower Harbor Park Public Parking Lot: 200 Lakeshore Blvd

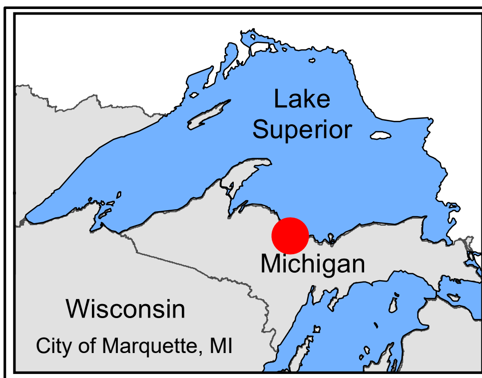
THAT PART OF THE N.E. 1/4 OF SECTION 23 T48N R25W LYING S. AND E. OF LAKESHORE BLVD. AND W. OF A PT. 1,605' W. OF THE W. FACE OF THE U.S. CORPS OF ENGINEERS BREAKWATER. (CONTAINING 600,000 SQ. FT. / 13.77 ACRES (CITY ACCT. # 101-445-920.1555)

Presque Isle Marina: 1 Peter White Drive

THAT PART OF GOV'T LOT-5 SEC. 2 T48N R25W LYING S. & E. OF LAKESHORE BLVD. AND W. OF A LINE PAR. WITH & 700' E. OF THE W. LINE OF GOV'T LOT-5 (CONT. 62,400 SQ. FT. / 1.4325 AC.)

Exhibit B

Marquette EV Charging Station Location: Mattson Park



Proposed EV Fast Charger Location

0 50 100 200 Feet

N

SUPERIOR WATERSHED PARTNERSHIP

Marquette EV Charging Station Location: Presque Isle Marina

Proposed EV Fast Charger Location

0 50 100 200 Feet

N

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

Agenda Date: 9/30/2024

Consent Agenda
ITRON Software as a Service/Managed Services Agreement - Amendment #2

BACKGROUND:
At the July 31, 2017 meeting, the City Commission entered into a performance contract agreement with Johnson Controls, Inc. to provide a City-wide energy-based performance contract solution. Part of the project scope included full implementation of a water advanced metering infrastructure (AMI) system. The software required to operate the AMI system is sold by Itron, Inc. and requires a separate software agreement outside of the Johnson Controls performance contract which was entered into on December 11, 2017.

At the July 8, 2024 meeting, the City Commission approved the first amendment to the software agreement which added Managed Services to the original Software as a Service (SaaS) agreement and decreased the annual contract escalation rate for the agreement. Subsequently Itron, Inc. updated some of the terminology and added language that better describes the services provided by Itron, Inc. While the agreement modifications add clarity, they do not change the term of the agreement, fiscal impact of the agreement, or the scope of services provided.

FISCAL EFFECT:
There is no fiscal effect by this Commission action.

RECOMMENDATION:
Approve the second amendment to the original software agreement with Itron, Inc. for the water AMI software to clarify terminology and better define the services provided, and authorize the Mayor and City Clerk to sign the second amendment to the agreement.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

- Second Amendment

00056571.0

Second Amendment

This Second Amendment (this "***Amendment***") is effective as of the last date of execution below the ("***Amendment Effective Date***").

RECITALS

WHEREAS, Itron, Inc. ("Itron") and City of Marquette, MI ("***Customer***") entered into that certain Indirect Sales Agreement dated December 11, 2017 (the "***Agreement***");

WHEREAS, the Parties wish to amend the Agreement for the purpose of adding a new Software-as-a-Service Addendum, Maintenance and Support Services Addendum, and

NOW, THEREFORE, in consideration of the mutual promises and obligations below, Itron and *Customer* agree to the foregoing recitals and as follows:

1. Capitalized terms used herein that are not otherwise defined in this Amendment shall have their meanings specified in the Agreement.

2. The current Software-as-a-Service Addendum is hereby deleted in its entirety and replaced with the new Software-as-a-Service Addendum attached herein.

3. The current Maintenance and Support Services Addendum is hereby deleted in its entirety and replaced with the new Maintenance and Support Services Addendum attached herein.

4. Except as provided in this Amendment, all terms and conditions of the Agreement remain unchanged and in full force and effect. In the event of a conflict or ambiguity between this Amendment and the Agreement, this Amendment shall control.

5. This Amendment may be executed in counterparts, which may be delivered by email, facsimile transmission or similar means.

INTENDING TO BE LEGALLY BOUND, each party represents and warrants that it has all necessary power and authority to enter into this Amendment to the Agreement.

[signature page to follow]

AGREED:

Itron, Inc.	**City of Marquette, MI**
Signature	Signature
Printed Name	Printed Name
Title	Title
Date	Date

Software-AS-A-Service ADDENDUM

General SaaS Terms and Conditions

1 Relationship to General Terms and Conditions.
This Software-as-a-Service Addendum (this "**Addendum**") is governed by the General Terms and Conditions of this Agreement and applicable Order Documents.

2 Entire Addendum.
This Addendum consists of these General SaaS Terms and Conditions, which generally apply to all Service Offerings, and any attached Special Terms and Conditions, which apply to specific Service Offerings. Unless otherwise provided, references to this Addendum shall be deemed to encompass these General SaaS Terms and Conditions and any attached Special Terms and Conditions.

3 Order of Precedence.
In the event of any inconsistencies, ambiguities or conflicts between these General SaaS Terms and Conditions and the Special Terms and Conditions, the Special Terms and Conditions shall prevail, but only with respect to the applicable Service Offering.

4 Definitions.
The following defined terms are in addition to those defined in the General Terms and Conditions of this Agreement:

Annual Adjustment means Itron's annual price increase.

Endpoint means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device that Itron has agreed to monitor as part of a Service Offering which Endpoints are identified in the Order Document or Pricing Summary.

General SaaS Terms and Conditions means the terms and conditions set forth in the main body of this Addendum comprised of Sections 1 ("Relationship to General Terms and Conditions") through 19 ("Roles and Responsibilities").

Maintenance Services means services provided under the Maintenance and Support Services Addendum.

Minimum Subscription Term means the minimum number of SaaS Billing Cycles during which Customer is required to subscribe for each Service Offering, which shall be three (3) SaaS Billing Cycles following the applicable Service Offering Commencement Date, unless otherwise stated in the applicable Order Document or Pricing Summary.

One-Time Setup Fee means the one-time setup fee for each Service Offering identified in the applicable Order Document or Pricing Summary.

Recovery Point Objective or **RPO** means the maximum tolerable time period which data might be lost from production Software due to a service interruption event.

Recovery Time Objective or **RTO** means the duration of time allowing for the execution of all failover processes required to return access, connectivity, functionality, and operation of production Software to Customer following declaration of a disaster event.

SaaS means software-as-a-service whereby Itron or its designated provider hosts and provides Customer with access to Software on Servers via the internet.

SaaS Billing Cycle means a period of one year beginning on the Service Offering Commencement Date for the initial Service Offering or any anniversary thereof. For clarity, there is only one SaaS Billing Cycle for all Service Offerings, unless otherwise provided in the applicable Special Terms and Conditions.

SaaS Application Availability means the total number of minutes in a calendar month that the applicable Software is available via (a) a web browser client, (b) web services interface and (c) thin client. Scheduled downtime is excluded from this calculation. A determination of availability will be based on 24x7 accessibility, less any exclusions set forth in this Addendum.

Servers means the physical computer hardware owned by Itron or its designated provider on which Software will be installed, operated, and maintained.

Service Offering means SaaS, plus any services that are additional or supplemental to SaaS, as described in the applicable Special Terms and Conditions.

Service Offering Commencement Date means, with respect to each Service Offering, the earlier of (a) validation of such Service Offering implementation by Itron pursuant to the applicable Statement of Work, or (b) seven (7) days after completing application system setup and the Customer has been provided valid access credentials for such Service Offering.

Software means each machine readable (object code) versions of computer program identified on the applicable Order Document or Pricing Summary for which Customer has purchased a Service Offering.

Special Terms and Conditions means Service Offering-specific terms and conditions set forth on Attachment A to this Addendum.

Subscription Fees means annual fees identified in the applicable Order Document or Pricing Summary for each Service Offering, plus the Annual Adjustment, if any. Where Customer has purchased an object code license to Software pursuant to the terms of the Software Addendum and wishes to purchase a Service Offering for such Software ("**Hybrid SaaS**"), license fees and fees for applicable Maintenance Services are not included within the Subscription Fees and must be paid separately. Where Customer is not purchasing Hybrid SaaS, fees for applicable Maintenance Services are included within the Subscription Fees.

Subscription Term means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

5 Access Rights and Restrictions.

5.1 Access Rights.

SaaS is only available for Itron Software identified in the table set forth in this Section 5.1 below for which Customer has purchased a Service Offering and paid all applicable fees. Subject to Customer's compliance with the Agreement (including payment of all applicable fees which, in the case of Hybrid SaaS, shall include Software licensing fees and Maintenance Services support fees), Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offerings, with respect to Endpoints owned or otherwise controlled by Customer, for its internal business purposes in the Territory (as defined in the General Terms and Conditions of the Agreement).

Itron Software Eligible to Receive SaaS	
Cisco IoT FND	Itron Mobile
Distributed Intelligence (Riva system)	Itron Security Manager
FCS	OpenWay Collection Manager (CM)
FDM Tools	Operations Optimizer – AMI Operations
FDM Workorders	Operations Optimizer – Grid Operations

Itron Software Eligible to Receive SaaS	
Field Tools Advanced	Operations Optimizer – Network Operations
Field Tools Basic	Operations Optimizer – Revenue Assurance

5.2 Restrictions on Use.
Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related Documentation to provide services to third parties, or otherwise use any Service Offering on a "service bureau" or "timesharing" or subscription basis including, in connection with devices or equipment not owned or otherwise controlled by Customer; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron's or its providers' Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron's or its providers' Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron's or its providers' systems or networks; (m) merge any Service Offering with any other product or service without Itron's prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

5.3 Content Restrictions.
Customer may not distribute, download, or place on any Itron or its providers' website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as "**Prohibited Content**"). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys' fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers' website or Server or used with any Service Offering by Customer.

5.4 Breach of Restrictions.
Customer's breach of the restrictions set forth in Section 5.2 ("Restrictions on Use") or Section 5.3 ("Content Restrictions) shall constitute a material breach of the Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Addendum with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer's breach of these restrictions.

6 Invoicing and Payment.
Customer shall pay Subscription Fees in advance for each SaaS Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees for the Service Offering with the first Service Offering Commencement Date shall be based on a full SaaS Billing Cycle. Initial Subscription Fees for each Service

Offering with a subsequent Service Offering Commencement Date shall be prorated based on the number of months remaining in the current SaaS Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a SaaS Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each SaaS Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of non-renewal no less than 90 days prior to the commencement of a SaaS Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each SaaS Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming SaaS Billing Cycle. If Customer discontinues a Service Offering prior to expiration of the Minimum Subscription Term for that Service Offering, Itron will invoice Customer, and Customer will pay, for any unpaid Subscription Fees for the respective Service Offering through the end of the applicable Minimum Subscription Term. Maintenance Services fees and license fees relating to Hybrid SaaS will be invoiced in accordance with the Maintenance and Support Services Addendum and Software Addendum, as applicable. Itron has the right to adjust Subscription Fees at any time if Customer's use of a Service Offering exceeds the applicable tier set forth in the respective Order Document or Pricing Summary. Subscription Fees adjusted as a result of Customer exceeding the applicable tier are typically invoiced within thirty (30) to sixty (60) days after provisioning of each respective Endpoint occurs.

7 Monthly Application Availability Service Level.

7.1 Service Level.

Provided Customer has paid all applicable fees (including all Subscription Fees and, in the case of Hybrid SaaS, all maintenance and license fees) SaaS Application Availability with respect to each production environment Service Offering will be at least 99.5%, measured and reported monthly beginning in the first full calendar month following the respective Service Offering Commencement Date ("**Monthly SaaS Application Availability Service Level**"). The Monthly SaaS Application Availability Service Level will be measured and calculated separately for each Service Offering. Itron records and data will be the sole basis for all SaaS Application Availability Service Level measurements and calculations.

7.2 Service Level Credits.

As Customer's sole and exclusive remedy for Itron's failure to meet the foregoing Monthly SaaS Application Availability Service Level, subject to the service level exclusions in Section 8.1 (Service Level Exclusions) below, Customer will be entitled to credits as follows:

SaaS Application Availability (production environments only)	
Monthly SaaS Application Availability performance	Credit (% of monthly Subscription Fee for applicable SaaS Application)
≥99.0% and <99.5%	2%
≥98.0% and <99.0%	4%
≥96.5% and <98.0%	10%
≥95.0% and <96.5%	12.5%
<95.0%	20%

8 Service Level Exclusions; Disclaimers.

8.1 Service Level Exclusions.

Itron shall not be liable for failing to meet any service level commitment set forth in this Addendum (including any Special Terms and Conditions) or any Order Document to the extent such failure is attributable to any one or more of the following: (a) planned maintenance, unplanned maintenance, or scheduled upgrades; (b) an event triggering a disaster recovery and for a twenty-four (24) hour period after the resumption of service following such an event to allow the system to return to normal operating ranges; (c) suspension or restriction of service under Section 11 ("Suspension or Restriction of Service") of this Addendum; and (d) conditions beyond Itron's reasonable control, including but not limited to (i) unavailability of Customer or third party wireless services between the Service Offering and the Endpoints ; (iii) failures in external Internet or VPN configurations not managed by Itron; (iv) a Force Majeure event; (v) false reports of unavailability as a result of outages or errors of any Itron measurement system; (vi) an act or omission of Customer or third parties (other than Itron's contractors, subcontractors or suppliers), including security incidents caused by such act or omission; (vii) incident investigation or computer failures that could not reasonable have been prevented by Itron; (viii) failures of third-party equipment, hardware, software, or services not provided by Itron; and (ix) Customer's delay in performing maintenance or other tasks designated as its responsibility in this Agreement.

8.2 Disclaimers.

(a) Third-Party Content Disclaimer. Itron does not maintain third-party Software or third-party Service Offerings that Customer purchases through Itron (collectively "**Third-Party Content**") and makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of any Third-Party Content. Third-Party Content shall be subject solely to any service levels or warranties provided by the third-party provider. Itron will pass through to Customer or make commercially reasonable efforts to enforce on Customer's behalf, any service levels, warranties and remedies received from such third-party provider.

(b) Use of SaaS with Third-Party Devices. Customer may use a Service Offering to collect data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("**Third-Party Radio Device**"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. In particular, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

9 Sizing of Software-as-a-Service.

Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a Change Order and may result in a change in Subscription Fees.

10 Conditions on Use of Service.

Customer will use the Service Offerings only in accordance with Itron user guides, the Agreement (including, this Addendum, the General Terms and Conditions, applicable Order Documents), and laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

11 Suspension or Restriction of Service.

Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 5.2 ("Restrictions on Use"), Section 5.3 ("Content Restrictions") or Section 10 ("Conditions on Use of Service"), until such breach is cured.

12 Incident Management.

Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers, in accordance with the Maintenance and Support Services Addendum.

13 Customer Technical Responsibilities.

Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense. For the avoidance of doubt, unless otherwise specified in an Order Document or, Statement of Work, or any Special Terms and Conditions attached hereto, Customer is responsible for providing WAN connectivity.

14 User IDs and Passwords.
Itron shall provide Customer with user identifications and passwords ("User IDs") to access the Service Offerings. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to Customer. User IDs may not be shared or used by more than one user.

15 Planned Maintenance.
Planned maintenance, whenever reasonably practicable, will be performed during off-business hours between 6:00 p.m. to 12:00 a.m. Customer's local time, with as little disruption to Customer's use of the Service Offerings as possible. Unplanned maintenance, whenever reasonably practicable, shall also be performed during off-business hours between 6:00 p.m. and 12:00 a.m., Customer's local time.

16 Unplanned Maintenance.
Itron will provide Customer with notice of unplanned maintenance as soon as reasonably practical. Itron will minimize Service Offering disruptions to the extent reasonably practical.

17 Business Continuity.

17.1
Itron has architected and operates a high availability and scalable infrastructure to facilitate virtualized customer environments with various fault tolerant components. Fault tolerance and failover methodologies allow Itron to maximize system availability and confidently uphold the Monthly SaaS Application Availability Service Level and Monthly File Delivery Percentage Service Level. Itron will conduct daily backups of back office application configuration files and associated data. These backups are for operational purposes only and are not a disaster recovery solution or a solution to be used by the Customer for testing or analysis purposes. Itron will periodically test the restore capability of its business continuity solution. System and database backups are performed via a schedule to provide for a full weekly backup and daily differential backups. System backups and snapshots are also taken prior to any system change that has been approved via the Itron Global Managed Services Change Control Board. The system can be recovered from the backup in an event of a failure. Business continuity is designed to provide recovery for component failures within a datacenter, this does not provide coverage for the loss or connectivity to a data center. If a more robust mitigation solution is required by Customer, geo-diverse disaster recovery options can be discussed and priced as a more fault tolerant solution.

17.2
All incidents requiring system recovery will be required to adhere to Itron's incident management policy and related standard operating procedures. BUSINESS CONTINUITY: RPO = 72 hours; RTO = 5 business days.

18 Disaster Recovery.

18.1
Disaster Recovery ("**DR**") is an optional service that is offered by Itron to hosted customers who purchase DR for an additional fee. Upon Customer's purchase of DR services and payment of applicable fees as set forth in the Order Document or Pricing Summary, Itron will maintain DR services at a dedicated facility that is equipped to facilitate hosted operations, meter reading and interrogations, and Field Area Network ("**FAN**") communications in the event DR is needed. Upon mutual agreement, separate SOW and for identified cost, Itron can exercise the DR capabilities once per calendar year on Customer's production environments and provide the results of each such test to the Customer.

18.2
In the event of a Severity Level 1 Error (as defined in the Maintenance and Support Services Addendum), Itron will evaluate the scale of the incident, readily available mitigation plans, and the estimated time to recover. If it is apparent to Itron that an incident meeting the standards of a disaster as set forth in Itron's Disaster Recovery plan has occurred

with no possibility of mitigation, Itron will declare a disaster and begin the notification process. Itron will notify the Customer of an any such event that will result in service interruption in excess of twelve (12) hours. Once a disaster has been declared, Itron's responsibilities for SLAs will be temporarily suspended until the time at which Customer's environment has been failed over and is operating in the secondary DR datacenter. The Recovery Point Objective (RPO) for DR is four (4) hours. The Recovery Time Objective (RTO) for DR is twelve (12) hours.

19 Roles and Responsibilities.

The table below lists the respective responsibilities of Customer and Itron to ensure reliable operation of the Software-as-a-Service.

P=Primary responsibility
S=Support responsibility

Description of service or deliverable	Itron	Customer
Submit user access requests for new users and deletion notifications for users no longer involved with the SaaS.		P
Provide immediate notification in the event of a Customer employee termination for those with access to the SaaS.		P
Provide immediate notification in the event of an Itron employee termination for those with access to the SaaS.	P	
Maintain skill sets necessary to properly support the SaaS.	P	
Administer and monitor Servers including but not limited to utilization of CPU, memory, IOPs, and disk space.	P	
Manage and troubleshoot the secure SaaS components and processes (if applicable).	P	
Administer associated Linux, Unix, and Windows operating systems.	P	
Apply operating system and other third-party security patches and critical updates as appropriate.	P	
Maintain and troubleshoot third-party software issues required for SaaS operations pursuant to this Addendum; work with third party to troubleshoot as required.	P	
Maintain anti-virus on all windows-based Servers if applicable to the SaaS platform.	P	
Monitor communications and support communications troubleshooting activities for the SaaS.	P	
Perform software upgrade activities.	P	
Maintain and administer the SaaS Server databases.	P	
Manage upload and submission of meter data files; work with Itron when problems are identified.		P
Provide and maintain a Secure FTP or equivalent if included in the SOW.	P	

Description of service or deliverable	Itron	Customer
Perform regular system, database, and custom component backups in accordance with selected service level.	P	
Maintain the applicable standard operating procedures and run books to maintain, monitor and operate the hosted environment.	P	

END

Attachment A

SPECIAL TERMS AND CONDITIONS

Special Terms and Conditions – Managed Services.

The Special Terms and Conditions contained within this Section apply to Itron's Managed Services Service Offering.

1 Managed Services – Descriptive Overview.

1.1
When Customer subscribes to Managed Services, as part of the overall Service Offering Itron will provide SaaS for the applicable Software, plus Itron will also assume some of Customer's SaaS-related operational responsibilities, including management of reads from monitored and Available Endpoints or Provisioned and Optimized Endpoints (as applicable), collecting data, and delivering data files to Customer at agreed-upon intervals in agreed upon data formats. Itron will attempt to remotely diagnose and resolve Endpoint exceptions detected by Itron or reported by Customer. If the exception cannot be resolved remotely, or it is determined to impact an individual or small number of Endpoints, Itron will notify Customer that Customer must perform in-field investigation.

1.2
Managed Services are only available for Itron Software identified in the table set forth in this Section 1.2 below for which Customer has purchased such Managed Services and paid all applicable fees.

Itron Software Eligible to Receive Managed Services	
OpenWay Collection Manager (CM)	

1.3 Managed Services – Definitions.
The following defined terms are applicable to these Special Terms and Conditions for Managed Services:

Anchor Read means the "register value" stored once daily in a register in the Communication Module as installed in the Endpoint (usually at midnight).

Available Endpoint is an OpenWay CE or OpenWay CM term defined as an Endpoint which meets the following criteria: (a) the Endpoint, if installed by Customer, has been properly installed, (b) Customer has provided all necessary and correct information for Itron to properly provision the Endpoint in Itron's data collection platform (c) the Endpoint is communicating with Itron's data collection platform and a register read has been received from the Endpoint for three (3) consecutive days. An Endpoint will not be considered an Available Endpoint if any of these conditions have not been met; or (a) if an exception is detected by Itron or reported by Customer, but the exception cannot be resolved remotely, (b) the Endpoint if it is under field investigation, or (c) cellular carrier outages.

Communications Module or **NIC** means Itron's network interface card that may be installed in Equipment.

Cumulative File Delivery Delay Hours means – for the purpose of determining Monthly File Delivery Performance % -- the sum of all Daily File Delivery Delay Hours in the Measurement Month.

Daily File Delivery Delay Hours means – for the purpose of determining Monthly File Delivery Performance % -- the number of hours that file delivery is delayed in a given day during the Measurement Month.

Endpoint has the meaning set forth in the General SaaS Terms and Conditions.

Equipment has the meaning set forth in the Equipment Addendum.

Managed Services means SaaS, plus the additional services to be provided by Itron as set forth in these Special Terms and Conditions for Managed Services.

Optimization is a UIQ term which means the procedure by which the layout of the network Equipment configuration and implementation have been validated ("**Optimized**") by performing active and passive tests to confirm that performance and redundancy meet the design specifications and other requirements of the Agreement. Optimization is to be executed on an area-by-area basis (or specified portion thereof), after all network Equipment is installed and a minimum of 98% of the metering Endpoints have been deployed to achieve the required level of saturation of the area.

Provisioned means an Endpoint that is located in an area of the NAN and which is in any of the following operational states within the UIQ System: "active," "inactive," or "disconnected," and which has been Optimized, but which is not: (i) in a "new," "discovered," "installed," "initializing," "unreachable" or "init failed" state; or (ii) considered to be in the process of being deployed or being repaired under warranty. Endpoint operational states are defined in the Meter Lifecycle Reference document.

Service Level Trigger means satisfaction of the particular condition(s) noted in these Special Terms and Conditions below upon which the applicable service level will start to be enforceable and reported on.

2 Managed Services - Daily Operational Roles & Responsibilities.

Daily operations, Endpoint data collection activities, delivery of daily data export files, and event exception notification require that activities be performed by both Itron and Customer to ensure effective delivery of Managed Services. The table below lists the respective responsibilities of Customer and Itron for such daily activities. Itron's obligation to provide Managed Services are expressly contingent upon Customer's full performance of all responsibilities assigned to Customer.

P=Primary responsibility
S=Support responsibility

Description of Service or Deliverable	Itron	Customer
Create, monitor, and manage interrogation schedules.	P	
Ensure any input files are received and processed and output files are delivered to Customer by posting to a SFTP folder, or equivalent, where it can be retrieved by Customer as needed.	P	
Manage files on the SFTP server where any export files are delivered. If the SFTP server is Itron's, files should be downloaded nightly and files that have been successfully downloaded and processed are to be removed from the SFTP location within 7 days.	P	S
Perform read rate monitoring and reporting.	P	
Perform remote investigation for specific groups of non-communicating Endpoints affected by a common network issue and coordinate field order with Customer as needed.	P	S
Perform scheduling of Endpoint interrogations including file delivery and delivery of Data Collection Platform standard reports.	P	
Notify Itron in advance when additional devices are planned to be installed. Perform Meter field maintenance; close work orders with Itron.		P

Description of Service or Deliverable	Itron	Customer
Perform Network Device and Endpoint repair, replacement, or relocation as required.		P
Perform RMA, Processing, Tracking and Performance Reporting for Endpoints and Network devices.	S	P
Administration of the Managed Services platform applications to Service Levels.	P	

3 Managed Services - Environmental Management Roles & Responsibilities

In addition to the daily operational tasks, Customer and Itron each have responsibilities for monitoring and managing the operating environment of the Managed Services platform and applications. The table below lists the respective responsibilities of Customer and Itron for such activities. Itron's obligation to provide Managed Services are expressly contingent upon Customer's full performance of all responsibilities assigned to Customer.

P=Primary responsibility
S=Support responsibility

Description of Service or Deliverable	Itron	Customer
Submit user access requests for new users and deletion notifications for users no longer involved with the managed system.		P
Provide immediate notification in the event of a Customer employee termination for those with access to the managed system.		P
Provide immediate notification in the event of an Itron employee termination for those with access to the SaaS.	P	
Maintain skill sets necessary to properly support the require Managed Services platform technologies.	P	
Maintain skill sets necessary to properly support the required Managed Services platform Field operations.		P
Administer and monitor servers including but not limited to utilization of CPU, memory, IOPs, and disk space.	P	
Manage and troubleshoot the secure network infrastructure components and processes (if applicable).	P	
Administer associated Linux, Unix, and Windows operating systems.	P	
Apply Operating System and other 3rd party security patches and critical updates as appropriate.	P	
Update security appliances (if applicable) with new Endpoint related security files.	P	
Maintain and troubleshoot third party software issues required for Managed Services platform operations, work with third party to troubleshoot as required.	P	
Maintain anti-virus on all windows-based servers.	P	

Description of Service or Deliverable	Itron	Customer
Perform the initial Network Devices configuration.	P	
Monitor Network and Endpoint communications and support metering and communications troubleshooting activities for the Managed Services platform.	P	
Support solution upgrade activities.	P	
Maintain and administer the Managed Services platform server databases.	P	
Establish and manage the wireless backhaul contracts and accounts if applicable.	P	
Support Customer's technical operations department to handle Endpoint and Network field exceptions.	P	
Manage upload and submission of meter data files; work with Itron when problems are identified.		P
Provide and maintain a Secure FTP.	P	
Perform regular system, database, and custom component backups in accordance with selected service level.	P	
Develop and maintain related standard operating procedures.	P	
Manage Endpoint firmware revisions, including coordination and scheduling of firmware downloads as necessary (for Itron manufactured devices only with Itron provided firmware).	P	
Monitor Endpoint communications, reporting, and troubleshoot Managed Services platform issues as necessary.	P	
Manage Endpoint manufacturing and security files for all necessary solution components, troubleshoot and coordinate with manufacturing as needed.	P	
Develop, maintain and utilize system operations clock, standard operations procedures, and daily checklists for Itron operators and administrators.	P	

4 Service Levels - Managed Services.

This Section 4 of the Special Terms and Conditions for Managed Services sets forth the service levels for Managed Services. Such service levels are only available for Itron Software identified in the tables set forth below for which Customer has purchased Managed Services and paid all applicable fees.

4.1 Monthly File Delivery Service Level.

4.1.1 Service Level Applicability.

The Monthly File Delivery Service Level for Available Endpoints set forth in this Section 4.1 apply to the Itron Software identified in the following table for which Customer has purchased Managed Services and paid all applicable fees:

Itron Software Eligible to Monthly File Delivery Service Level	
OpenWay Collection Manager (CM)	

4.1.2 Service Level Trigger.
The Service Level Trigger for the Monthly File Delivery Service Level occurs upon system acceptance as defined in the applicable Statement of Work.

4.1.3 Service Level.
"**File Delivery**" for the purposes of this Section 4.1, is a measure of the performance of Itron's or its provider's systems to deliver register read and interval read consumption data collected from Available Endpoints to Customer in agreed-upon formats, at an agreed-upon intervals for Software that collects and delivers data. The monthly File Delivery percentage service level with respect to Itron SaaS Applications ("**Monthly File Delivery Service Level**") will meet or exceed 99% each month (for ease of understanding, this means the file is successfully delivered every day of the month). Itron records and the data contained in the file is measured to the agreed to Itron hosted location and will be the sole basis for all File Delivery performance measurements and calculations with respect to the Monthly File Delivery Service Level for Available Endpoints.

4.1.4 Service Level Credits.
Subject to the service level exclusions set forth in Section 8.1 (Service Level Exclusions) of the General SaaS Terms and Conditions, Customer will be entitled to the following credits as its sole and exclusive remedy for Itron's failure to meet the foregoing Monthly File Delivery Service Level for Available Endpoints:

Monthly File Delivery Service Level Credits (production environments only)	
File Delivery performance	Credit (% of monthly Subscription Fee for applicable SaaS Application)
≥99.0% and <99.5%	2%
≥98.0% and <99.0%	4%
≥96.5% and <98.0%	10%
≥95.0% and <96.5%	12.5%
<95.0%	20%

4.2 Read Rate Service Levels.

4.2.1 Service Level Applicability.
The Read Rate Service Level set forth in this Section 4.2 apply to the Itron Software identified in the following table for which Customer has purchased Managed Services and paid all applicable fees:

Itron Software Eligible to Receive Read Rate Service Level
OpenWay Collection Manager (CM)

4.2.2 Service Level Trigger.
The Service Level Trigger for the Read Rate Service Level occurs upon system acceptance as defined in the applicable Statement of Work.

4.2.3 Service Level.
The average monthly Read Rate will meet or exceed 99% each calendar month ("**Read Rate Service Level**"). Itron records and data will be the sole basis for all Read Rate measurements and calculations. **"Read Rate"** means the percentage of Available Endpoints from which register read data has been collected over a rolling 3-day period, measured for each calendar day.

4.2.4 Service Level Credits.

Subject to the service level exclusions set forth in Section 8.1 (Service Level Exclusions) of the General SaaS Terms and Conditions, Customer will be entitled to the following credits as its sole and exclusive remedy for Itron's failure to meet the foregoing Read Rate Service Level:

Read Rate Service Level Credits (production environments only)	
Number of Daily Failures in the Applicable Month	Credit (% of monthly Subscription Fee with respect to the applicable Managed Services Service Offering)
≥99.0% and <99.5%	2%
≥98.0% and <99.0%	4%
≥96.5% and <98.0%	10%
≥95.0% and <96.5%	12.5%
<95.0%	20%

END

Special Terms and Conditions – Field Tools Advanced

The following Special Terms and Conditions contained within this attachment apply to Itron's SaaS Service Offering for Field Tools Advanced:

1 Compatible Mobile Devices.
Field Tools Advanced is designed to work in connection with mobile devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Field Tools Advanced work with any other mobile devices.

2 Customer's Obligation to Protect Customer Information on Mobile Devices.
Customer must take steps to protect Customer information stored on mobile devices. User identification codes, passwords, and any information provided to Customer as part of Itron's security procedures must be treated by Customer as confidential and must not be disclosed in violation of the Agreement. Customer is at all times responsible for its employees and subcontractors' use of Field Tools Advanced. Itron has the right to disable any user identification codes or passwords if Customer or its employees and contractors have failed to comply with any of the provisions of this Agreement.

3 Internet Connectivity.
Field Tools Advanced requires internet connectivity. Customer is solely responsible for obtaining, maintaining and paying for such internet connectivity.

4 Disclaimer of Liability.
Itron accepts no responsibility for any internet services failure, mobile device failure, or for any loss or damage of any kind caused by such failure.

END

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Special Terms and Conditions – Operations Optimizer

The following Special Terms and Conditions contained within this attachment apply to Itron's SaaS Service Offering for Operations Optimizer:

1 User IDs ad Passwords.
The following shall replace Section 14 ("User IDs and Passwords") of the General SaaS Terms and Conditions in its entirety:

Itron shall provide Customer with an integration with Azure Active Directory for managing their user identifications and passwords ("User IDs") to access Itron's Operations Optimizer. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to Customer. User IDs may not be shared or used by more than one user.

2 Roles and Responsibilities.
The table in Section 19 ("Roles and Responsibilities") of the General SaaS Terms and Conditions shall be replaced in its entirety with the following:

Description of service or deliverable	Itron	Customer
Manage user access according using Azure Active Directory to add new users and promptly remove users no longer involved with the Software as a Service.		P
Maintain skill sets necessary to properly support the SaaS.	P	
Administer and monitor Servers including but not limited to utilization of CPU, memory, IOPs, and disk space.	P	
Manage and troubleshoot the secure SaaS components and processes (if applicable).	P	
Administer associated Linux, Unix, and Windows operating systems.	P	
Apply operating system and other third-party security patches and critical updates as appropriate.	P	
Maintain and troubleshoot third-party software issues required for SaaS operations pursuant to this Addendum; work with third party to troubleshoot as required.	P	
Maintain anti-virus on all windows-based Servers if applicable to the SaaS platform.	P	
Monitor communications and support communications troubleshooting activities for the SaaS.	P	
Perform software upgrade activities if required.	P	
Maintain and administer the SaaS Server databases.	P	
Manage upload and submission of meter data files; work with Itron when problems are identified.		P

Provide and maintain a Secure FTP or equivalent if included in the SOW.	P	
Perform regular system, database, and custom component backups in accordance with selected service level.	P	
Maintain the applicable standard operating procedures and run books to maintain, monitor and operate the hosted environment.	P	

END

Special Terms and Conditions – Itron Mobile

The following Special Terms and Conditions contained within this attachment apply to Itron's SaaS Service Offering for Itron Mobile:

1 Relationship to Licensed FCS Software and Maintenance & Support.
Customer may be required to update or upgrade its licensed FCS Software from time to time in order to ensure full functionality of Itron Mobile. Customer's subscription and right to use Itron Mobile will terminate if Customer's FCS Software license is terminated.

2 Compatible Mobile Devices.
Itron Mobile is designed to work in connection with mobile devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Itron Mobile work with any other mobile devices.

3 Customer's Obligation to Protect Customer Information on Mobile Devices.
Customer must take steps to protect Customer information stored on mobile devices. User identification codes, passwords, and any information provided to Customer as part of Itron's security procedures must be treated by Customer as confidential and must not be disclosed in violation of the Agreement. Customer is at all times responsible for its employees and subcontractors' use of Itron Mobile. Itron has the right to disable any user identification codes or passwords if Customer or its employees and contractors have failed to comply with any of the provisions of this Agreement.

4 Internet Connectivity.
Itron Mobile requires internet connectivity. Customer is solely responsible for obtaining, maintaining and paying for such internet connectivity.

5 Disclaimer of Liability.
Itron accepts no responsibility for any internet services failure, mobile device failure, or for any loss or damage of any kind caused by such failure.

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MAINTENANCE AND SUPPORT SERVICES ADDENDUM

1 Relationship to General Terms and Conditions.
This Addendum is governed by the General Terms and Conditions and applicable Order Documents. If there is any inconsistency between the General Terms and Conditions and this Addendum, this Addendum shall control, but only to the extent of such inconsistency.

2 Additional Definitions.
The following defined terms are in addition to those defined in the General Terms and Conditions:

Annual Adjustment means Itron's annual price increase.

Annual Fees means the annual fees identified in an Order Document for each category of Covered Product, plus the Annual Adjustment, if any.

Client Services Guidelines Documents means the following documents as they may be updated by Itron from time to time: "Itron Equipment Repair Center Locations", and "Working Effectively with Itron Global Customer Support Services". Copies of the Client Services Guidelines Documents may be obtained by calling Itron Global Customer Support Service at (877) 487-6602 or such other number or process provided by Itron to Customer.

Covered Equipment means Itron equipment identified in an Order Document for which Customer has purchased Maintenance Services.

Covered Firmware means Itron's network and application firmware embedded within a communicating device identified in an Order Document (e.g., network interface cards, meters, endpoints, network equipment, etc.) for which Customer has purchased firmware Maintenance Services.

Covered Products mean Covered Firmware, Covered Software, Covered Equipment and Third Party Covered Products.

Covered Software means Itron software identified in an Order Document for which Customer has purchased Maintenance Services.

Error means a material failure of Covered Firmware or Covered Software to comply with applicable published Itron specifications.

Fix means a correction or workaround for an Error.

Global Support Services means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

Improvement means an update, modification, enhancement and/or extension to Covered Software functionality that is included in a Release.

M&S Commencement Date means the date upon and after which a Covered Product will be entitled to receive Maintenance Services, which unless otherwise provided in the applicable Order Document, will be as follows:

Covered Product	M&S Commencement Date
On premise Covered Software	Itron DI Applications: Date Itron DI Application is initially allocated in the DI Platform for Customer endpoint

Covered Product	M&S Commencement Date
	download following receipt of an accepted purchase order. Other Itron Software: First day of month following date Covered Software is made available to Customer
Covered Firmware	Date of shipment of the applicable communicating device
Covered Software provided as Software-as-a-Service or Hybrid SaaS subscription	The earlier of (a) validation of such Service Offering implementation by Itron pursuant to the applicable Statement of Work, or (b) seven (7) days after completing application system setup and the Customer has been provided valid access credentials for such Service Offering
Covered Equipment	End of warranty period
Third Party Covered Products	Per applicable third-party service provider terms and conditions

Maintenance Billing Cycle means a period of one year beginning on the Effective Date or any anniversary thereof.

Maintenance Services means services provided under this Addendum.

Operating Condition means performance in accordance with applicable published Itron specifications.

Primary Services Contacts means Customer's primary support staff who provides internal support to Customer's operations personnel and who are key interface to Itron for all Maintenance Services.

Release means a collection of Fixes and / or Improvements made available by Itron to Customer.

Service Levels means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A-1 to this Addendum.

Service Offering has the meaning set forth in the Software-as-a-Service Addendum.

Service Request means an Itron tracked Customer request for Global Support Services.

Third Party Covered Products means third-party equipment and third-party software identified in an Order Document for which Customer has purchased Maintenance Services.

3 Principal Services Contacts.

3.1 Designation by Customer.

Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

3.2 Training of Principal Services Contacts.
Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer-proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section.

4 Global Support Services & Service Requests.

4.1 Global Support Services.
Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

4.2 Service Request Process.
Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. When Customer submits a Service Request, Customer will reasonably assess its business urgency according to the appropriate Severity Level in Attachment 1 to this Addendum. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels.

4.3 Field Support.
At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be due to an error in the Itron product or service.

5 Itron Firmware and Software Maintenance.

5.1 Scope.
Firmware Maintenance Services covers its associated Covered Firmware embedded within the applicable communicating device. Software Maintenance Services covers its associated Covered Software sold as: (i) on premise software license, and (ii) Software-as-a-Service or SaaS Hybrid subscription.

5.2 Modifications.
Itron may modify or replace Covered Firmware and Covered Software so long as such modifications or replacements do not eliminate key, documented functionality provided by the most current System Release.

5.3 Fixes.

Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the necessary resource effort required to support of Itron restoring the system and remediating the Error, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

5.4 Improvements.
Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements released as new add-on modules/features and not part of the products original specifications, may require additional licensing and support fees and will be made available at Itron's then current rates.

5.5 Software Releases.

5.5.1 Release Numbering Convention. Upgrades, Fixes and/or Improvements are made available to customers through periodic Software Releases. For informational purposes, Itron's current practice (which may vary and be changed by product, at any time in Itron's discretion) is to provide Software Releases using the numbering guideline, "X.X.X.X"

5.5.2 The first place, "X.X.X.X", in Itron's numbering convention refers to a "Major Release", or "System Release", which consists of a new version of Covered Software. A Major Release may include architectural changes, Improvements, Fixes and / or interfaces to new functional modules or platforms. A Major release may require infrastructure or component updates which affect compatibility with previous release versions.

5.5.3 The second place, "X.**X**.X.X", in Itron's numbering convention refers to a "Minor Release, which is an update to a current Major Release. A Minor Release may include consolidation of previous Service Packs, Improvements, Fixes, platform / 3rd party updates. Minor Release are provided to Itron customers on a regularly scheduled basis.

5.5.4 The third place, "X.X.**X**.X", in Itron's numbering convention refers to a "Service Pack, which is an update to specific modules found in a current Major Release. A Service Pack may include Fixes to Severity 1 - Severity 4 issues for a specified Minor or Major Release.

5.5.5 The fourth place,"X.X.X.**X**", in Itron's numbering convention refers to a "Hot Fix," which is an un-scheduled release provided to one or more customers as a short-term, temporary fix to a critical Severity Level 1 Error. While not utilized by all Itron software product lines, Hot Fix releases are not made available to Itron customers generally but may be included in the next scheduled Minor Release or Service Pack for general release.

5.6 Support for Covered Firmware.
Itron will only provide Maintenance Services for Covered Firmware if Customer: (i) is current on all applicable fees for such Maintenance Services, (ii) tests and installs the latest Covered Firmware Fix within twelve (12) months of it being made available to Customer, and (ii) tests and installs the latest Covered Firmware Improvement within twenty-four (24) months of being made available by Itron.

5.7 Support for On Premise Itron Enterprise Edition, OpenWay and GenX Software.
Itron will only provide Maintenance Services for on premise Itron Enterprise Edition and OpenWay software if Customer: (i) pays the applicable fees for such Maintenance Services, (ii) tests and installs Service Pack Releases associated with the Major or Minor Release in use by Customer within twelve (12) months of such Service Pack Releases being made available to Customer, and (iii) tests and installs the latest Major or Minor Releases within twenty-four (24) months to thirty-six (36) months of such Software Release being made available by Itron.

5.8 Support for Other On Premise Covered Software.
Itron will only provide Maintenance Services for other on premise Covered Software if Customer: (i) pays the applicable fees for such Maintenance Services, and (ii) tests and installs Major, Minor and Service Pack Releases within twelve (12) months of such Software Releases being made available by Itron.

5.9 Support for SaaS or IaaS.
Itron will only provide Maintenance Services for Covered Software sold as a Software-as-a-Service or Hybrid SaaS subscription if Customer: (i) is current on all applicable fees for such Software-as-a-Service or SaaS Hybrid subscription and related Maintenance Services, and (ii) tests a Release as installed by Itron either in Customer's production Software-as-a-Service or Hybrid SaaS environment, or in Customer's funded non-production Software-as-a-Service or Hybrid SaaS environment, prior to Customer's full production use of the Release.

5.10 Support for Unsupported Itron Software and Firmware.
At Customer's request, Itron may elect to provide Maintenance Services for an unsupported Release at Itron's then-current rates.

5.11 Mandatory Revisions.
Customer must install all software and firmware updates, patches, and service packages provided by, or as directed by, Itron from time to time and which may be required to correct errors, vulnerabilities, third-party concerns, or as otherwise necessary to ensure proper functioning of the Covered Software or to protect the interests of the Parties ("**Mandatory Revisions**"). ITRON IS NOT LIABILE FOR ANY CUSTOMER OR THIRD-PARTY DAMAGES RESULTING FROM CUSTOMER'S FAILURE TO INSTALL ANY MANDATORY REVISION IN A TIMELY MANNER.

5.12 Installation Services for On Premise Releases.
Maintenance Services for on premise Covered Software and Covered Firmware includes the following Release installation services: limited, remote consulting support, during standard business hours, for Covered Software and Covered Firmware on Itron-approved server configurations for one production server and one non-production server (test, training, or back-up – for example) owned / operated by Customer. At Customer's request, Itron may provide on premise Software Release installation services for System Releases or Service Packs on current certified production servers, additional production servers or nonproduction servers, at its then-current rates. Itron will install Releases to Covered Software sold as a Software-as-a-Service or Infrastructure-as-Service subscription in accordance with the applicable terms and conditions for such services.

5.13 Restoring Firmware or Software to Maintenance Services.
If Customer declines or discontinues Maintenance Services for Covered Firmware or Covered Software and thereafter wishes to resume such Maintenance Services for the most recent Release of that Covered Firmware or Covered Software, Customer shall, prior to receiving Maintenance Services, notify Itron in writing of its request for Maintenance Services and pay Itron's then-current re-initiation fee, which shall not exceed an amount equal to all Annual Fees that would have been invoiced for the applicable Covered Firmware or Covered Software if Customer had not elected to decline or discontinue Maintenance Services for that Covered Firmware or Covered Software, plus a five percent (5%) markup, in addition to prorated Annual Fees for the then-current Maintenance Billing Cycle.

5.14 Exclusions.
Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Covered Software adversely affected by (i) use of Covered Firmware or Covered Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Covered Firmware or Covered Software; (ii) modification or recompiling of Covered Firmware or Covered Software or Covered Software installation instructions / installation scripts or database schema scripts, or improper installation of a Release, by anyone other than Itron, (iii) failure to perform customer responsibilities describe in this Addendum, (iv) use of an unsupported version of Covered Firmware or Covered Software by anyone other than Itron; (v) Customer's failure to implement a Mandatory Revision; (vi) maintenance and/or support of Covered Firmware or Covered Products other than by Itron; (vii) viruses introduced through no fault of Itron; or (viii) network or communication link failures.

5.15 Documentation and Backup.
Itron will make an electronic copy of the Documentation available to Customer at no additional charge via physical media or download access. Itron will also maintain a copy of its most recent supported version of executable Covered Firmware and on premise Covered Software to be made available to Customer or installed by Itron as necessary in the event of corrupted or inoperative Covered Firmware or on premise Covered Software. Said copy of executable Covered Firmware or on premise Covered Software or Third-Party software does not relieve Customer of its responsibility to backup and manage its Covered Firmware or on-premise software installation as part of ongoing system operation.

5.16 Customer Responsibilities.
The provision of Maintenance Services for Covered Firmware or Covered Software by Itron assumes that Customer will facilitate such services as follows:

5.16.1 Service Requests.
Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

5.16.2 Data Review.
If Itron determines that it is necessary to evaluate Customer data to reproduce error conditions not reproducible with Itron's standard test data sets, Customer will provide Itron with reasonable access to such data. Itron shall not be liable for any delay or failure to resolve the problem if access to such Customer data is denied to Itron.

5.16.3 Installation and Upgrades.
Customer will engage Itron Global Support Services or their Itron account team for any Covered Firmware or on premise Covered Software installations and upgrades which require support beyond that provided herein.

5.16.4 Remote Access.
Customer is responsible for supporting necessary remote access to Covered Firmware or on premise Covered Software by Itron support personnel assigned to provide Maintenance Services for purposes of remote diagnosis and troubleshooting of Covered Firmware or on premise Covered Software. Itron shall not be liable for any delay or failure to resolve a problem if remote access to Covered Firmware or on premise Covered Software is denied to Itron.

5.16.5 System Configuration, Operation and Maintenance.
Customer is responsible for the configuration, operation, and maintenance of equipment, system peripherals, operating system, and data communications environment associated with on premise Covered Software. These activities include but are not limited to checking audit logs, clearing discovered exceptions, and performing daily, weekly, and monthly operational tasks and systems responsibilities. Customer is responsible for any change made to Customer's software system, operating system, database or network configuration or any change to installation procedures, scripts, or any other provisions that materially affect the usability or operation of on premise Covered Software. Customer will obtain Itron's written consent prior to making any material changes that may affect the installation or operation of on premise Covered Software.

5.16.6 Network Administration.
Customer is responsible to monitor and maintain, repair, replace and upgrade its local, and wide area network components (if any)—including network servers, network clients, network hubs, routers, modems, and other software components necessary for efficient and reliable network operations associated with Covered Firmware or on premise Covered Software—to ensure continued conformance with the applicable published Itron specifications. In addition, Customer is responsible to administer related host names, Internet Protocol addresses, network interfaces, access, security, communications, and equipment and software version control.

5.16.7 Database Administration.
Customer is responsible to administer the agreed upon database(s) associated with on premise Covered Software, including hardware and software components, in accordance with the Documentation, which administration shall include, monitoring the database server, backing up electrical power sources, and configuring and administering of database schema, application interfaces, networking operating system, communications, and file transfer software. Customer is responsible to maintain database files (e.g., truncate, cleanup, and delete files consistent with industry standard practices) and perform regular data backup and data archiving.

6 Itron Equipment Maintenance.

6.1 Maintenance Procedures.

Customer shall initiate a request for Maintenance Services for Covered Equipment by delivering the Covered Equipment to the applicable Itron Certified Repair Center identified on the Itron Equipment Repair Location Table. Customer will return Covered Equipment at Customer's expense and in accordance with Itron's then-current Return Material Authorization ("RMA") procedures. Upon receipt of Covered Equipment (with the required information) under Itron's RMA procedures, Itron shall assess the item to determine (a) whether it is in fact Covered Equipment and (b) whether the maintenance requested is included within the Maintenance Services ordered by Customer and not otherwise excluded from coverage. If the returned equipment is determined to be Covered Equipment and the maintenance requested is included in the Maintenance Services ordered by Customer, Itron shall (i) perform preventative Maintenance Services necessary to maintain the Covered Equipment in Operating Condition, and (ii) diagnose and correct any failure in the Covered Equipment as necessary to meet Operating Condition, excluding minor cosmetic deficiencies such as blemishes, dents or scratches, and (iii) return the item of Covered Itron Equipment to Customer at Itron's expense within the applicable turnaround time identified on the Itron Equipment Repair Table. If Itron determines that returned equipment is not Covered Equipment or is excluded from the Maintenance Services ordered by Customer, then Itron will proceed in accordance with the estimation fees section below.

6.2 Exclusions.
Itron is under no obligation to perform Covered Equipment Maintenance Services in circumstances where the failure or damage is due to: (i) accident, abuse, misuse, inadequate maintenance, problems caused by electrical power surges or acts of God outside of the tolerances set forth in the applicable published Itron specifications; (ii) service or repair processes (including installation or de-installation of equipment, parts, or firmware/software) not performed or authorized by Itron; (iii) use of parts, configurations or repair depots not certified or authorized by Itron; or (iv) Customer's failure to perform material Customer responsibilities in accordance with this Addendum, including caring for Covered Equipment in accordance with applicable Documentation.

6.3 Estimated Fees.
Itron will provide Customer with a price quote for the estimated cost (including current inspection fees), including labor, materials and shipping, for any repairs to equipment that are requested, which Itron determines are excluded from or not included within the Maintenance Services ordered by Customer. If Customer elects not to proceed with the requested repair, Itron will return the item of equipment at Customer's expense and Itron may charge Customer its then-current inspection fee.

6.4 Adding/Restoring Equipment to Maintenance Services.
Following the Effective Date, additional Covered Equipment purchased by Customer, of a similar type and model already covered under this Addendum, shall automatically be deemed to be Covered Equipment following the M&S Commencement Date. If Customer declines or discontinues Maintenance Services for any Covered Equipment and thereafter wishes to add or restore such equipment as Covered Equipment, Itron may, prior to such equipment being included as Covered Equipment, inspect such equipment at Itron's then current rates to determine whether it is in Operating Condition and/or charge Itron's then current re-certification fee, in addition to prorated Annual Fees for the then-current Maintenance Billing Cycle (the "Re-initiation Costs"). At Customer's request, Itron will provide Customer with a quote for estimated Re-initiation Costs for equipment that Customer wishes to add or restore as Covered Equipment under this section.

6.5 Equipment Responsibilities.
Itron shall make available, and Customer shall obtain, a copy of the Documentation for Covered Equipment and Customer will be responsible to perform preventive maintenance for each such item in accordance with such Documentation. Customer shall also keep accurate records of Covered Equipment serial numbers and locations to assist Itron with performing Maintenance Services.

7 Fees and Invoicing.

7.1 Annual Fees.
Customer shall pay Annual Fees in advance of each Maintenance Billing Cycle in which it will receive Maintenance Services. Itron may also pass through price increases for Maintenance Services on Third Party Covered Products that Itron receives from the third party service provider on behalf of the Customer.

7.2 Invoicing.
Itron will invoice Customer for the first Maintenance Billing Cycle on or after the Effective Date. Itron may invoice Customer for Maintenance Services for a Covered Product that is added during any Maintenance Billing Cycle at a prorated amount. Otherwise, Itron will invoice Customer for each subsequent Maintenance Billing Cycle approximately twenty (20) days prior to the commencement of such Maintenance Billing Cycle.

7.3 Renewal Notice.
Itron will provide Customer a renewal notice for Itron Covered Products at least one hundred twenty (120) days prior to the commencement of each Maintenance Billing Cycle. Customer may discontinue Maintenance Services for any Covered Product(s) by providing Itron with written notice of non-renewal no less than ninety (90) days prior to the commencement of a Maintenance Billing Cycle. Itron will provide Customer a renewal notice for Third Party Covered Products as soon as reasonably practical following Itron's receipt of such notice from the third party service provider.

7.4 Purchase Order.
Itron requires and Customer shall submit a Purchase Order to Itron for the quoted amount of Itron Covered Products prior to the commencement of each Maintenance Billing Cycle. Itron requires and Customer shall submit a purchase order to Itron for the quoted amount of Third Party Covered Products thirty (30) days prior to the commencement of each Maintenance Billing Cycle. Itron will not renew Third Party Covered Product maintenance for which a Purchase Order has not been provided by Customer.

8 Support for Third Party Products.
Itron shall provide first tier Global Support Services for Third Party Covered Products by handling all Customer inquiries, attempting to identify the component involved in the problem and obtaining appropriate documentation of such inquiry or problem. In addition, Itron shall make commercially reasonable efforts to facilitate Customer's receipt of maintenance and support for such Third-Party Covered Products consistent with the third-party maintenance terms identified on the applicable Order Document. Notwithstanding anything else to the contrary, Itron's sole obligation under this Addendum with respect to Third Party Covered Products shall be as set forth in this section.

9 End of Support.
Itron may discontinue Maintenance Services for any Covered Equipment, Covered Firmware or Covered Software, effective as of the end of the applicable Maintenance Billing Cycle, by giving Customer written notice of such discontinuance no less than one hundred eighty (180) days prior to the end of such Maintenance Billing Cycle. The end of support date for a Third Party Covered Product shall be the date specified by the applicable third-party service provider, which date will be promptly communicated by Itron to Customer following the date of receipt.

If the end of support date is scheduled within a subsequent Maintenance Billing Cycle, Annual Fees for that subsequent Maintenance Billing Cycle will be pro-rated through the end of support date. At Customer's request, or as defined in a related SaaS addendum / Order Document, Itron may elect to provide custom support for products for which Maintenance Services have been discontinued at Itron's then-current rates.

Periodically, Itron will make available product plan publications, including product information letters (PIL), product newsletters or written technology roadmaps which outline Itron's general plans for continued support and end of support of applicable Covered Products. Product publications are used as general guidelines for Customer communications and planning, which may be updated from time to time.

10 Survival.
The following sections of this Addendum shall survive termination or expiration of this Agreement or any Order Document or Statement of Work: Section 5.14 (Exclusions), 6.2 (Exclusions), Section 7 (Fees and Invoicing), 9 (End of Support), and 10 (Survival).

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Attachment 1 to Maintenance & Support Services Addendum

– Software Maintenance & Support Service Levels –

Severity Level	Response Times	Effort Level and Restoration	Escalation
Severity Level 1* **Business Impact: Critical Impact / System Down.** A Production System Error for which there is no work-around, which causes Covered Firmware or Covered Software Product or a critical business function / process of said product to be unavailable such that system operation cannot continue. **Example:** a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down	During regular business-hours Itron will begin the Service Request process during Customer's initial call. During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process. Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response. Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties. Customer will respond to an Itron inquiry or request within three (3) hours.	Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to: i) restore Covered Firmware or Covered Software with a change to eliminate root cause, ii) provide a workaround which restores Covered Firmware or Covered Software and downgrades the Severity Level to S2, S3, S4. Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.	An unresolved Service Request shall be escalated to Itron management as follows: **After 30 minutes:** Technical Customer Support Team Lead **After 8 hours**: Manager, Technical Client Services **After 16 hours**: Director, Global Support Services **After 48 hours**: Service Request. Vice President, Services and Delivery **After 72 hours**: President, Itron

Severity Level	Response Times	Effort Level and Restoration	Escalation
Severity Level 2* **Business Impact: Major impact, degraded Operation**. An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Covered Firmware or Covered Software to miss required business interface or deadlines. Covered Firmware or Covered Software remains available for operation but in a highly restricted fashion. **Example:** a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Covered Firmware or Covered Software operating slow, missing data, data delivery, daily mission.	During regular business-hours Itron will respond to Customer regarding Service Request within one (1) business day. While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties. Customer will respond to an Itron inquiry or request within one (1) business day.	Itron will make diligent efforts during normal business hours to: i) restore Covered Firmware or Covered Software with a change to eliminate root cause, ii) a workaround which restores Covered Firmware or Covered Software and downgrade the Severity Level to S3, S4.	An unresolved Service Request shall be escalated to Itron management as follows: **After 1 hours:** Technical Customer Support Team Lead **After 8 hours**: Manager, Technical Client Services **After 24 hours**: Director, Global Support Services **After 30 Days**: Vice President, Services and Delivery

Severity Level	Response Times	Effort Level and Restoration	Escalation
Severity Level 3** **Business Impact: Minor Business Impact, compromised operations.** An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities. Example: The Service Request affects use by Covered Firmware or Covered Software users, allowing Customer's functions to continue to meet daily business needs.	During regular business-hours Itron will respond to Customer regarding Service Request within two (2) business days. While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties. Customer will respond to an Itron inquiry or request within two (2) business days.	Itron will work during normal business hours to: i) restore Covered Firmware or Covered Software with a change to eliminate root cause, ii) a workaround which restores Covered Firmware or Covered Software and downgrades the Severity Level to S4.	
Severity Level 4 **Business Impact: Standard Operations intact**. A low or no-impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality Example: Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.	During regular business-hours Itron will respond to Customer regarding Service Request within three (3) business days.	Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.	

* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

** Service Request opened on Non-production servers / environments are entered as a Severity Level 3.

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/30/2024

Consent Agenda
Kids Cove Inclusive Playground - Professional Services Contract Change Order

BACKGROUND:
At its March 29, 2021 meeting, the City Commission approved Sanders & Czapski Associates' proposal for design and construction oversight of the Kids Cove Inclusive Playground project in the not-to-exceed amount of $77,000.

Since that time the Marquette Playgrounds For All requested 3D renderings for fundraising purposes and design of an inclusive restroom was added to the project. Services for these scope items total $6,400.

This change order of $6,400 brings the total contract to $83,400.

FISCAL EFFECT:
The project is budgeted for and is within the allowable cost for professional services.

RECOMMENDATION:
Approve Sanders & Czapski Associates' change order to add 3D renderings and restroom design to their contract for design and construction oversight of the Kids Cove Inclusive Playground project in the not-to-exceed amount of $83,400.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description
- Change Order 1
- Contract

SANDERS & CZAPSKI ASSOCIATES, PLLC

ARCHITECTURE / LANDSCAPE ARCHITECTURE / HISTORIC PRESERVATION

March 18, 2022

Mr. Jon Swenson
Director of Community Services
401 East Fair Avenue
Marquette, MI 94855

Re: Kids Cove Inclusive Playground
Design Contract Adjustment #1

Dear Jon,

The following is intended to serve as an amendment to our contract to include the development of a 3 dimensional electronic model of the playground as requested by the Playgrounds for All Committee and for additional design effort needed to include the family bathroom in the construction documents. If this meets with your approval, please sign and return one copy for our files.

The fee adjustment is as follows:

Additional Services for 3-D Rendering	$ 2,600.00
Additional Design Services for Family Bathroom	$ 3,800.00
Total Additional Fee	$ 6,400.00
Original Contract amount for design services	$ 71,000.00
Change order (per above)	$ 6,400.00
Adjusted Total Fee for Services	$ 77,400.00

Thank you very much for selecting Sanders & Czapski Associates for this project.

Sincerely,
Bill Sanders

Bill Sanders, ASLA
Landscape Architect / Principal

Accepted by: ______________________ Date: ________

Printed Name and Title

109 South Front Street / Suite 210 / Marquette, MI 49855
Phone: 906 - 273 - 1207

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT, made this sixth day of April 2021 between the City of Marquette, hereinafter called the "City" and Sanders & Czapski Associates, PLLC, a Michigan professional limited liability company, of 109 South Front Street Suite 210, Marquette, MI 49855, hereinafter called "Consultant".

WITNESSETH: That for and in consideration of the payments and Agreements hereinafter mentioned the parties hereby agree as follows:

Article 1
Project Name

The name of the Project shall be Kids Cove Inclusive Playground Engineering Services.

Article 2
Scope of the Work

Consultant shall furnish all the material, services, supplies, tools, equipment, labor and other engineering services necessary to perform work as described in the Consultant's proposal to the City of Marquette dated March 3, 2021 (attached as Exhibit A).

Article 3
Time of Completion

The completion date of this project is August 31, 2022.

Article 4
Terms and Conditions

Consultant shall perform the services outlined in this Agreement for the stated fee arrangement.

ACCESS TO SITE:
City will arrange and provide access to each site upon which it will be necessary for Consultant to perform its work unless otherwise stated in the proposal. In the event work is required on any site not owned by the City, City represents and warrants to Consultant that City has obtained all necessary permission and authority, in writing, for Consultant to enter upon the site and conduct its work. City shall, upon request, provide Consultant with evidence of such permission as well as acceptance of the other terms and conditions set forth herein by the owner(s) and tenant(s), if applicable, of such site(s) in a form acceptable to Consultant, which Consultant also agrees to abide by. Any work performed by Consultant with respect to obtaining permission to enter upon and do work on the lands of others, as well as any work performed by Consultant pursuant to this Agreement, shall be deemed as being done on behalf of City. Consultant shall take reasonable measures and precautions to minimize damage to each site and any improvements located thereon as the result of its work and the use of its equipment and shall reasonably restore the site to its prior condition.

FEE:
Services and reimbursable costs will be billed on a monthly basis as per the proposal requirements, but the total amount to be paid by City for such services and costs shall not exceed $71,000.00, plus expenses estimated at $5,400.00 (see Consultants Proposal dated March 3, 2021 (Exhibit A).   .

BILLINGS/PAYMENTS:
Consultant shall invoice for services rendered and reimbursable costs incurred on a monthly basis. Each invoice shall be due and payable within sixty (60) days of the date of the invoice. Invoices over sixty (60) days past due may be charged interest on the unpaid balance at the highest lawful rate as allowed under Michigan Law. Consultant may, after ten (10) days' written notice to the City, suspend performance of services until all past due amounts are paid.

The City will retain Ten (10%) of the fee related to services on monthly invoices to be released within 30 days of final plan approval.

INDEMNITY:
Consultant agrees, to the fullest extent permitted by law, to indemnify and hold the City harmless from any damage, liability or cost (including reasonable attorney fees and costs of defense) to the extent caused, in whole or in part, by Consultant's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of consultants, sub-consultants, contractors, sub-contractors, agents, employees or others that contract with the Consultant regarding this contract or anyone for whom Consultant is legally liable.

INSURANCE:
Without limiting any of its obligations and liabilities, Consultant, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Michigan, and with forms reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

A. General Clauses

1. **Additional Insured.** The insurance coverage, except Workers' Compensation and Professional Liability, required by this Contract, shall name the City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded the Consultant shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the City or its employees shall be excess coverage, and not contributory coverage to that provided by the Consultant.

2. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until Services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of the City.

3. **Primary Coverage.** The Consultant's insurance shall be primary insurance as respects City and any insurance or self insurance maintained by City shall be excess of the Consultant's insurance and shall not contribute to it.

4. **Claim Reporting.** Consultant shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect City.

5. **Waiver.** The policies for Workers' Compensation and General Liability, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the Consultant.

6. **Deductible/Retention.** The policies may provide coverage which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. The Consultant shall be solely responsible for deductible or self-insured retentions and the City may require the Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

7. **Policies and Endorsements.** City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.

8. **Certificates of Insurance.** Prior to commencing services under this Contract, Consultant shall furnish City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificate shall identify this Contract by referencing the project name and/or project number and shall provide for not less than thirty (30) days advance written notice by Certified Mail of Cancellation or Termination.

9. **Sub-Consultants/Contractors.** Consultant shall include all sub-consultants and sub-contractors as insured under its policies or shall furnish separate certificates and endorsements for each sub-consultant and sub-contractor.

B. Workers' Compensation

The Consultant shall carry Workers' Compensation and Employer's Liability insurance coverage as required by law and deemed necessary for its own protection.

In case services are subcontracted, the Consultant will require the sub-consultant to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by Consultant.

C. Automobile Liability

Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than $1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Consultant services.

D. Commercial General Liability

Commercial General Liability insurance with a combined single limit of not less than $1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract.

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the Services as evidenced by annual Certificates of Insurance.

E. Professional Liability

The Consultant retained by the City, to provide the engineering services required by the Contract will maintain Professional Liability insurance covering errors and omissions arising out of the services performed by the Consultant or any person employed by him, with an unimpaired limit of not less than $1,000,000 each claim. In the event the insurance policy is written on a "Claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Services as evidence by annual Certificates of Insurance.

F. Property Coverage - Valuable Papers

Property coverage on all-risk, replacement cost, agreed amount form with Valuable Papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Consultant used in the completion of this Contract.

INDEPENDENT CONSULTANT:

The relationship between the City and Consultant created under this Agreement is that of principal and independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity not a party hereto and/or such person or entity is not intended to be or shall be construed as being a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by a Consultant authorized representative.

SEVERABILITY/SECTION HEADINGS/SURVIVAL/WAIVER:

In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions shall remain in full force and effect, and binding upon the parties hereto. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the City and Consultant shall survive the completion of services and the termination of this Agreement. No waiver, discharge, or renunciation of any claim or right of Consultant arising out of breach of this Agreement by City shall be effective unless in writing signed by Consultant and supported by separate consideration.

OWNERSHIP OF DOCUMENTS:

All documents produced by the Consultant under this Agreement shall remain the property of the City and may be used by the City for any other endeavor without the written consent of the Consultant.

APPLICABLE LAWS:

Unless otherwise specified, the Agreement shall be governed by the laws of the State of Michigan.

PURCHASING AGENT DESIGNATION AND AUTHORITY:

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

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

Signed this sixth day of April, 2021.

THE CITY OF MARQUETTE, MICHIGAN, OWNER

____
Witness

____
Jennifer A. Smith, Mayor

____
Witness

____
Kyle Whitney, Clerk

SANDERS & CZAPSKI ASSOCIATES, PLLC, CONSULTANT

Ken Czapski
____
Witness

William T. Sanders
By: William T. Sanders

Its: Partner

Address: 109 South Front Street, Marquette

Telephone #: 906-273-1207

APPROVED AS TO SUBSTANCE:

____
L. Michael Angeli
City Manager

APPROVED AS TO FORM:

____
Suzanne C. Larsen
City Attorney

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/06/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rod Lizak State Farm Insurance Companies 1104 W Washington St, Suite B Marquette, MI 49855	CONTACT NAME: Rod Lizak Agent PHONE (A/C, No, Ext): 906-228-9000 FAX (A/C, No): 906-228-4487 E-MAIL ADDRESS: rod@rodlizak.com
	INSURER(S) AFFORDING COVERAGE — **NAIC #**
	INSURER A : State Farm Fire and Casualty Company — 25143
INSURED SANDERS & CZAPSKI ASSOCIATES PPLC 109 S Front St., Suite B Marquette, MI 49855	INSURER B : State Farm Indemnity Insurance Company — 43796
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC			**92-BY-L393-3 F**	**12/23/2013**	**12/23/2021**	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? Y/N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		**No Hired Employees**			WC STATU-TORY LIMITS / OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
	Perfessional Liability			**PS0000004208608**	**12/23/2013**	**12/23/2021**	1,000,000-event 3,000,000-aggreate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Kids Cove Inclusive Playground ~ Marquette, MI
Addtional Insured: City of Marquette

CERTIFICATE HOLDER	CANCELLATION
City of Marquette	**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.** AUTHORIZED REPRESENTATIVE Darren Lambert

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ACORD 25 (2010/05)

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1001486 132849.7 03-01-2012

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CMP-4881 ADDITIONAL INSURED — OWNERS, LESSEES, OR CONTRACTORS (Scheduled)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Policy Number: F 92 BYL393 3

Named Insured:
SANDERS & CZAPSKI ASSOCIATES,
PLLC
109 S FRONT ST STE 210
MARQUETTE MI

49855-4645

Name And Address Of Additional Insured Person Or Organization:
CITY OF MARQUETTE
300 W BARAGA AVE
MARQUETTE MI 49855 4712

1. **SECTION II — WHO IS AN INSURED** of **SECTION II — LIABILITY** is amended to include, as an additional insured, any person or organization shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by:

   a. Ongoing Operations

   (1) Your acts or omissions; or

   (2) The acts or omissions of those acting on your behalf;

   in the performance of your ongoing operations for that additional insured; or

   b. Products-Completed Operations

   "Your work" performed for that additional insured and included in the "products-completed operations hazard".

2. Any insurance provided to the additional insured shall only apply with respect to a claim made or a "suit" brought for damages for which you are provided coverage.

3. Primary Insurance. The insurance afforded the additional insured shall be primary insurance. Any insurance carried by the additional insured shall be noncontributory with respect to coverage provided by you.

All other policy provisions apply.

State Farm Fire and Casualty Company
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Proposal for Professional Services for

Kids Cove – All Inclusive Playground

Mattson Park

Marquette, Michigan

SANDERS & CZAPSKI ASSOCIATES, PLLC

ARCHITECTURE / LANDSCAPE ARCHITECTURE / HISTORIC PRESERVATION

109 South Front Street ; Suite 210, Marquette, MI 49855 – Phone 906-273-1207 – Bill@Sanders-Czapski.com

March 3, 2021

Table of Contents

Business / Team Organization

Sanders and Czapski Associates, PLLC is the respondent firm to this Request for Proposal. We are the primary contact and are responsible for all matters related to the provision of professional services for this project. Sanders & Czapski Associates, PLLC is a professional design firm founded in the fall of 2011, offering services in the areas of architecture, landscape architecture and historic preservation. The firm operates as a Partnership registered in the State of Michigan. Both partners are licensed to practice in the State of Michigan. Ken Czapski, AIA is a licensed architect (Michigan #1301027017) and Bill Sanders, ASLA is a licensed landscape architect (Michigan #3901001373). Bill will serve as our team leader and project manager and will be the primary contact for the City of Marquette.

The work of this project will be coordinated from our office at the above address with the assistance of experienced sub-consultants, Progressive A/E of Grand Rapids, Michigan and Mara Kaplan with Let Kids Play of Pittsburg, Pennsylvania. Members of our team have worked together on past projects and all have been immersed in universal design as part of their everyday design philosophy. Our most recent collaboration was Progressive A/E and Sanders & Czapski Associates work on the universal access improvements at Father Marquette Park. Other recent local inclusive projects include the Clark Lambros Beach Park and the Iron Ore Heritage Trail – Carp River Kiln plaza. As a nimble specialty firm, Sanders & Czapski Associates has the luxury of bringing the most appropriate and experienced team together for our clients. The sub-consultants proposed for this project fit that role. We are confident that our team will assure your project of success. Each sub-consultant and their role in the project is listed below.

Sanders & Czapski Associates, PLLC
109 South Front Street; Suite 210
Marquette, MI 49855
P. 906-273-1207

Progressive A/E is a full-service professional design firm headquartered in Grand Rapids, Michigan. Chris Markham, Landscape Architect will be their primary designer on the Kids Cove project. He will be joined by Pete Lazdins, also a landscape architect and Senior Land Planner. Chris and Pete will also have the full support of their 225 person staff for production work on the plans and specifications. Chris' primary responsibility will be in preparing the preliminary drawings, based on the outcome of the community planning process, and the final bid set of plans and specifications. In order to accomplish that he will also participate in the public planning process along with Mara Kaplan, our inclusive playground expert and local project manager, Bill Sanders. Chris will also have key involvement in the design of the overall site elements and the preparation of final bidding documents. Chris has a wealth of direct playground experience both from the perspective of the manufacturer as well as the designer representing public clients. Progressive A/E is also a leader in inclusive design in the general built environment. A brief profile of their history in accessible and inclusive design is included near the end of this proposal.

Progressive A/E
1811 4 Mile Rd. NE
Grand Rapids, MI 49525
(616) 361-2664

Mara Kaplan is the founder of Let Kids Play, working with manufacturers, communities and parents to ensure that playgrounds provide the most inclusive play environment possible. Along with other parents of disabled children, Mara also cofounded the Center for Creative Play in Pittsburgh where she was the executive director for seven years before founding Let Kids Play. She is a nationally recognized expert in inclusive playgrounds and has consulted with a number of manufacturers in helping them develop play structures that focus on inclusive design. Mara is the co-author of the Inclusive Play Design Guide (https://www.accessibleplayground.net/wp-content/uploads/2016/05/Inclusive-Play-Design-Guide-LowRes-2.pdf). Mara's experience helps her clients meet not only the goal of universal access but ultimately inclusion for all. Mara is keenly aware of the additional attention to detail that is required to achieve these goals.

Let Kids Play
Mara Kaplan - Principal
1463 Greystone Dr.
Pittsburgh, PA 15206
(412) 334-2652

Statement of Understanding

Sanders & Czapski Associates understanding of this project is based on Request for Proposals #21-03, a response to several written questions, a conversation with Mr. Jon Swenson, personal experience with children at play at Kids Cove and experience with the construction of a universally accessible built environment. With the exception of physical experience at the Kids Cove site, all members of our project team have long experience with the design and construction of universally accessible and inclusive public spaces.

The Kids Cove Inclusive Playground will occupy the current location of Kids Cove in the northeast corner of Ellwood A. Mattson Lower Harbor Park. The current playground was constructed as a Robert Leathers community built playground in 1996. This is the largest and arguably the most popular playground in Marquette and the surrounding communities. Its proximity to the Mattson Park festival site also adds to its visibility and increases its draw well beyond the population of the City and nearby towns and rural area. Additionally, Kids Cove is virtually surrounded by the Marquette Pathway System, the Iron Belle Trail and the North Country National Scenic Trail; America's longest scenic trail. Supporting public infrastructure includes nearby access to sewer/water/electricity, accessible parking and vital infrastructure of accessible toilets and an ice cream store.

This playground has served Marquette well for 25 years and counting with a second generation of children now enjoying the playground. The march of time and the accumulation of normal wear and tear has taken a toll on the original construction. A negative impact of time has resulted in a number of sections aging to the point that they can no longer be safely used and have been taken out of service. On the positive side, over the 25 years since Kids Cove was originally built, (and having the benefit of 31 years of the Americans with Disabilities Act) the population as a whole has become much more aware of the benefits of accessibility especially as they relate to play and plays vital role in child development. The concept of Inclusion is the natural progression of building public spaces in a way that embraces users as a community of one and all.

The City of Marquette was recently awarded a Michigan Natural Resources Trust Fund (MNRTF) grant for partial funding of the design and construction of the Kids Cove Inclusive Playground. The City's grant application received critical support from the Marquette Rotary Club and Marquette Playgrounds for All (MPFA), an organization that has pledged themselves to the realization of the vision of an inclusive Kids Cove. This project also has the support of the Superior Alliance for Independent Living, the Marquette Parks and Recreation Board and the City's elected leadership.

Specific project elements include play structures as well as individual play elements with the number of elements accessible without transfer exceeding the minimum number as recognized by the MNRTF. Access to and within the playground will be insured through the exclusive use of accessible safety surfacing such as poured-in-place surfacing (accessible wood fiber surfacing will not be allowed). Other typical amenities such as benches and tables will also be selected based on their universal accessibility.

Our project team also understands the procedures and requirements for successfully designing, bidding and constructing a project within the requirements of the MNRTF as well as the requirements of the City of Marquette. Our team together and individually has provided professional design services for many recreation projects where accessibility and inclusion are key components. Several examples of this work are included near the end of this proposal.

All design elements will be in accordance with the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended by the State of Michigan, the Americans with Disabilities Act of 1990, the requirements of the Michigan Natural Resources Trust Fund program and best practices of Inclusive Design.

Project Approach / Overview

Our project team understands that in a perfect world we would all be able to meet face to face and share project experience, ideas and goals on a more personal level. That is not the world we live in right now and, like you, we have learned to adapt to meeting virtually so that the vital work of improving our communities can continue. All members of our team have experience with virtual meeting platforms such as GoTo Meeting, Zoom, etc.; we are confident that in spite of the pandemic denying us the benefits of meeting personally we can communicate effectively with the tools available and properly interpret the desires, goals and even to an extent the dreams of the community. This process begins with a virtual kick-off meeting with our design team, City Staff, MPFA and any other stakeholders that the City wishes to include. The purpose of this meeting is to begin to build the relationship that will help us all lean into the task of building the Kids Cove Inclusive Playground. We will dissect the project scope with you. This is typically a relatively short exercise, but is critically important to our understanding. We will also review all design team members roles in the project and the tasks described below that will result in a smoothly executed and technically sound playground that is all inclusive. We will review the construction budget for its fit to expectations and will also review the bid build and the community build methods of construction and their unique characteristics. Finally, the methods for the community planning sessions will be discussed in detail and a tentative schedule will be established. Sanders & Czapski Associates will record minutes of this meeting for distribution to the entire project team. Immediately following the kick-off meeting, our design team will conduct a site reconnaissance and will also review available plans and site data in the City archive. We have also included as a reimbursable expense the services of Van Neste Surveying to document the site topography and utilities. This an effort that could also be performed by the City Surveyor if so desired, in which case that effort could be recorded as force account effort and be counted towards the city's project match.

The community planning sessions will largely be led by Mara Kaplan with support by Progressive A/E and Sanders & Czapski Associates. Each of these three sessions will build on the last, working towards a uniformity of not so much design but rather on the needs of families who are raising children with disabilities and what equipment will provide the best inclusive experience. Mara's experience with how certain playground elements satisfy particular developmental aspects of play and enhance a child's play experience and level of fun will ultimately be resolved into a comprehensive list of equipment by type and specific manufacture and the skills that the equipment will foster in the child. As the City and MPFA well know, inclusive play is as much about the family as it is about the child. The inclusive play experience is a family experience. This is a rather subtle distinction but a necessary one for a successful inclusive playground. Mara's, experience in this important thought process is a hallmark of our team. This 'list', as it were, will be used to prepare the criteria used in the selection of an equipment manufacturer. By providing this criteria, the manufacturer can focus not on what equipment they think the community should have but rather on the most appropriate layout for the equipment that the community has identified as best serving all visitors to Kids Cove. A broad conceptual estimate of probable cost will also be prepared by our design team.

Once the equipment manufacturer is selected, our design team will work directly with them to ensure that the layout meets fall zones and specific elevation requirements. Our design team will embed the equipment plan within the larger Kids Cove plan addressing available utilities, access routes, fencing, and access to parking and toilets, the ice cream store and to the Mattson Park festival site as a whole. We will also pay specific attention to the site and play features as they relate to accessibility and inclusion of care givers of the children visiting Kids Cove.

The above described community planning sessions are keystone events in the design process. However, our team understands that a significant amount of time will elapse between the kick-off meeting and the culmination of the project. Our team is committed to maintaining communication throughout the course of the project and will facilitate monthly virtual meetings with the City / MPFA throughout the project period as shown on the attached schedule.

Our team along, with the manufacturer, will present this preliminary plan and estimate of probable cost to the City / MPFA for review and comment. With the detail provided in this plan, we will be able to address more directly the delivery method for construction. We will present the costs and benefits of traditional bid/build construction and community build construction to help the City / MPFA make decisions on which approach they prefer. The volunteer efforts typically associated with community build projects will be specifically addressed as they relate to the requirements of the MNRTF grant program requirements. This will be a virtual meeting and will be facilitated by our design team. Minutes will be recorded and distributed to the entire project team. The comments and recommendations will be addressed in the development of a final plan. This plan will illustrate the layout and type of each piece of play equipment as well as any natural landscape features and surrounding site improvements. We will also provide a design narrative with drawings in poster format that can be used as a fundraising illustration and to better inform the community of the proposed rebirth of Kids Cove. We will participate in the presentation of the final plan to the Parks and Recreation Advisory Board and the City Commission as a project update.

The approval of this final plan will initiate the preparation for the plans, specifications and bidding documents. Where appropriate, plans and specifications will follow City of Marquette Standards. As the bid documents approach the 50% and 90% completion phase, an estimate of probable cost will also be submitted along with the bid documents as a progress update to the City / MPFA for review. Prior to the 90% submittal, we will work with the City / MPFA to finalize a decision for the construction method for the project (i.e. bid/build or community build). The approved method will be incorporated into the final plans and specifications. The final bid documents will be completed including plans, specifications and a final estimate of probable cost as well as a final project schedule for bidding and construction. We understand that a series of final approvals are required and we will prepare the applications and submittals on the City's behalf. The final plans and specifications will be uploaded to the MNRTF MiRecGrants portal as a PSB submittal. Once approved by the DNR the PSB will be advertised for bidding. The final documents will also be submitted to the City Parks & Recreation Advisory Board and the Planning Commission for approval.

Our design team will hold a pre-bid meeting to review the project with potential bidders. Questions will be addressed and where necessary an addendum addressing questions will be issued. Our design team will review bid results and make a recommendation for award to the City for approval. Our award recommendation will be submitted to the City along with the required submittals uploaded to MiRecGrants for MNRTF approval.

With the approval of the award by the City and the MNRTF we will coordinate a pre-construction meeting with the Contractor and the City / MPFA to coordinate the schedule of the physical construction of the project. We estimate the duration of construction as 9 weeks. Formal inspections of the work will be conducted at two week intervals to verify that the work is conducted in compliance with the plans and specifications and in accordance with the requirements of the MNRTF. Our regular site visits during the construction process will be recorded and shared with the City / MPFA. Informally we will visit the project site approximately twice per week and share photos and notes via informal emails send the project team. Once the project is complete, we will prepare a final inspection / punch list and final approval of the project. Also and of critical importance, we will coordinate impact attenuation testing of the safety surfacing within all fall zones. This is an important final task to ensure the safety of the playground and to document the conditions for the City's risk manager. We will also assist the City / MPFA in coordinating the opening of the project for the inclusion of all.

An inclusive playground has a role in the community like no other. The Parks and Recreation Department will soon find that families and children visiting Kids Cove can benefit greatly by preparing for their visit ahead of time. Mara has a great deal of insight into effective ways the family of a child with disability can use resources easily provided via the City's web site to help them prepare effectively for their visit. Mara will be happy to share her suggesting with the City's web manager.

Following final completion, our team will prepare and submit closeout documentation to the MNRTF MiRecGrants portal for closure for the grant and final reimbursement of grant funding.

Project / Team Management Plan

Sanders & Czapski Associates Principal and Landscape Architect, Bill Sanders, will serve as the design team's project manager. He will coordinate the efforts of all of the team members and maintain communication with the City / MPFA. Bill will represent the design team as the primary contact for the City/MPFA and regulatory agencies collaborating on the project. Our design team will be represented at the virtual kick-off meeting, including Chris Markham and Mara Kaplan. Where possible within COVID-19 safeguards Mara, Chris and Bill will plan to attend the kick-off meeting personally. The benefits of this first vital contact amongst the entire project team can have long lasting benefit. We have included this in our schedule and fee should conditions allow. Otherwise, Mara, Chris and Bill will facilitate this meeting remotely. Where possible within Covid-19 safeguards our project team will also be available for a physical site visit.

Bill has recent team leadership experience with the design and construction of recreation projects funded by the Michigan DNR recreation grant programs. Bill will maintain communication with all members of the project team over the course of the project including through the design, construction and closeout of the project.

With much of the physical meeting of the project team occurring virtually, we can efficiently maintain direct communication between our design team and the City/MPFA. Both Chris and Mara have committed to participating in virtual events as the project progresses through the design, construction and the opening of Kids Cove to the public. Sanders and Czapski Associates will remain directly available to the project team and will ensure that minutes of meetings and communications are promptly distributed and that timely project decisions are made to keep the project on schedule.

The activities of our sub-consultants, including Progressive A/E and Let Kids Play, will also be directly coordinated by Bill. The support of our sub-consultants is vital to the success of the project, and we are also committed to them to maintain virtual communication as directly and efficiently as possible. The preparation of the physical drawings and written specifications will be shared by Bill and Chris within the parameters established by Mara Kaplan and as informed by the participation of the selected equipment manufacturer. The monthly communication of the project team will be a critical element in ensuring that the final design accurately addresses the goals of the City/MPFA and the creativity of our project team.

Project Budget / Fee

Sanders & Czapski Associates proposes to provide all of the services listed above resulting in final construction drawings and specifications and submission of all relevant documents to the MNRTF and Bidding and Construction Administration Services and coordination of the public opening of Kids Cove for a lump sum fee of $71,000.00 (including sub-consultant services) plus estimated expenses noted below. Expenses noted below are estimated and will be charged at cost.

Copies	$ 1,200.00
Postage	$ 200.00
Topographic Survey	$ 2,000.00
Travel Expenses	$ 2,000.00
Total Estimated Expenses	$ 5,400.00

The combined lump sum cost for professional services plus estimated expenses falls within the MNRTF maximum 15% fee limit for reimbursement.

Project Timeline / Schedule

The following timeline/schedule is presented as only a draft for general evaluation as part of the selection process. We understand there may constraints we are unaware of that will impact the schedule and expect to revise the schedule following the kick-off meeting to meet the needs of the City and the MPFA. Following the kick-off meeting we will conduct our site investigation and coordinate the topographic survey. This will form the basis of the sketches that will grow from the early community planning efforts and coordination with the equipment manufacturer selected by the City.

Our expectation is that the final plans and specifications will be completed for approval by the City Commission in October of 2021. Following City Commission and DNR Grant Agency approval, a bid advertisement will be prepared and issued for bidding late fall of 2021 so that construction can begin in the spring of 2022.

PROJECT SCHEDULE
Kids Cove Inclusive Playground
Marquette, Michigan

TASKS	2021																																																			
	JAN				FEB				MAR					APR				MAY					JUN				JUL				AUG					SEP				OCT				NOV					DEC			
Week Beginning	4	11	18	25	1	8	15	22	1	8	15	22	29	5	12	19	26	3	10	17	24	31	7	14	21	28	5	12	19	26	2	9	16	23	30	6	13	20	27	4	11	18	25	1	8	15	22	29	6	13	20	27
Proposals Due									*																																											
PSC Selection / Commission Approval													*																																							
Playgrounds for All Monthly Updates															*				*					*				*				*					*				*				*					*		
Project Kick-Off Meeting																																																				
Site Reconnaissance / Survey																																																				
Public Planning Sessions (3) City/MPFA/Stakeholders/Community																		*		*		*																														
Develop Equipment Manufacturer selection criteria																																																				
Assist City in Equipment Manufacturer Selection Process																																																				
Prepare Preliminary Plan and Estimate of Probable Cost																																																				
Review Preliminary Plan with City/MPFA and Stakeholders																												*	*																							
Prepare Final Design Plan and Estimate of Probable Cost																																																				
Present Final Plan to City/ MPFA PRAB and Commission																																*	*																			
Prepare Plans, Specifications and Bidding Documents (PSB)																																		* 50%		* 90%																
PSB Review by Grant Agency																																																				
City Commission / Zoning / Building Code Approval																																																				
Advertise / Bidding																																															*		*			
Award Construction Contract																																																				

	2022																																																		
	JAN					FEB				MAR				APR				MAY					JUN				JUL				AUG					SEP				OCT					NOV				DEC			
Week Beginning	3	10	17	24	31	7	14	21	28	7	14	21	28	4	11	18	25	2	9	16	23	30	6	13	20	27	4	11	18	25	1	8	15	22	29	5	12	19	26	3	10	17	24	31	7	14	21	28	5	12	19	26
Playgrounds for All Monthly Updates															*				*					*				*				*																				
Preconstruction Meeting															*																																					
Construction																																																				
Substantial Completion Inspection																							*																													
Final Inspection / Safety Inspection																									*																											
Ribbon Cutting																										*																										
Grant Closeout / Final Reimbursement																																																				

Sanders & Czapski Associates, PLLC

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

Agenda Date: 9/30/2024

Consent Agenda
Marquette Figure Skating Club - Ice Contract

BACKGROUND:

The Marquette Figure Skating Club has requested an Agreement for Use of Lakeview Arena for ice use. Staff has worked with the City Attorney and Marquette Figure Skating Club to draft a standard use agreement which provides for terms and conditions of the request. The agreement allows for six equal payments of $8,433.33. A total of 220 hours were requested for a total cost of $50,599.98 during the 2025 ice season.

FISCAL EFFECT:

The Lakeview Arena fund will receive $50,599.98 in revenue for FY 2025.

RECOMMENDATION:

Approve the Agreement for Use of Lakeview Arena with the Marquette Figure Skating Club for ice use, and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Agreement and Exhibit A
- Insurance

AGREEMENT FOR USE OF LAKEVIEW ARENA

This Agreement, made and entered into this ______ day of __________________, 2024, by and between the City of Marquette, a municipal corporation, of 300 W. Baraga Avenue, Marquette, MI 49855 (hereinafter referred to as the "City"), and The Marquette Figure Skating Club, of 401 E. Fair Avenue, Marquette, MI 49855 (hereinafter referred to as the "User Group").

WHEREAS, the City is the owner and operator of Lakeview Arena at 401 E. Fair Avenue, Marquette, Michigan; and

WHEREAS, the City is willing to lease to User Group space as shown in Exhibit "A" in Lakeview Arena in accordance with the terms and conditions contained herein from October 1, 2024, through March 31, 2025.

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

1. In consideration of six (6) equal monthly payments of $8,433.33, the User Group shall be entitled to exclusive use of the Lakeview Arena ice sheet for 220 hours. The parties will agree upon the Customer Schedule, listing the dates and times of User Group's use, no later than October 15, 2024. Once the Customer Schedule has been agreed to in writing by the parties, it will be incorporated into and become part of this Agreement. The City will invoice the User Group on the fifteenth (15th) day of each month beginning in October of 2024 and payment shall be due no later than the last day of the following month. The sixth monthly payment will be adjusted, as needed, to reflect actual hours of ice usage by User Group.

2. Should the User Group wish to lease its ice time to another responsible group, at the same rate, during the contract period, it may do so upon forty-eight (48) hours minimum notice to the

City. Such sub-lease of User Group ice time shall be made and transacted between the parties and not involve the City. The City retains the right to deny such use for cause which shall not be unreasonably withheld.

3. This Agreement will entitle User Group space in the facility as selected by the Arena Management for providing complimentary food and beverage to U.S.F.S.A. judges and officials for special events as host club. Food and beverage service operated by the City, or by those persons contracting with the City to provide said services, will be available to others during advertised special events. The City will work with the User Group to coordinate food service.

4. Arena facilities to hold club meetings, award presentations, and other limited approved events will be made at no additional cost to the User Group, in locations determined by the Arena management and subject to availability.

5. The User Group recognizes that use of Arena facilities must be properly planned. User Group will provide a minimum of forty-eight (48) hours notice to the City in the event of any facility use changes, including cancellation, change of time, or additional use, and will maintain the facilities as they were found prior to their use.

6. The User Group agrees to indemnify and hold harmless the City, its officials, employees, volunteers and others working on behalf of the City against any and all claims, demands, suits or loss, including all costs connected therewith and for any damages which may be asserted, claimed or recovered against or from the City, its officials, employees, volunteers and others working on behalf of the City by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement.

7. The User Group shall procure and maintain insurance for the duration of this

Agreement against liability claims for injuries to persons or damages to property which may arise from or in connection with the use of Lakeview Arena and naming the City as an additional insured. The insurance required by this Agreement shall be in amounts acceptable to the City and shall be endorsed to state that coverage shall not be reduced or canceled except after thirty (30) days notice to the City by certified mail, return receipt requested.

8. The occurrence of any of the following shall constitute a default by the User Group:

a. Abandonment and vacation of Lakeview Arena during the Agreement.

b. Failure to perform any provision of this Agreement, if the failure to perform is not cured within thirty (30) days after the City provides written notice to the User Group.

c. Failure to maintain insurance as required by this Agreement, which shall be cause for immediate termination of this Agreement by the City.

d. The User Group files a petition in bankruptcy or insolvency or for reorganization, or involuntary proceedings are filed against the User Group under applicable bankruptcy laws.

e. The User Group fails to make any payment when due.

9. In the event of default, the City shall provide the User Group written notice of default. The User Group shall have thirty (30) days after notice is provided to cure said default. No notice shall be deemed a forfeiture or termination of this Agreement unless the City specifies such in the notice. In the event the User Group does not cure the default within the allowed thirty (30) day time period, the City shall have the following remedies, which shall not be exclusive and shall be in addition to any other remedies now or later allowed by law:

a. The City may elect to continue this Agreement.

b. The City may terminate the User Group's right to possession of Lakeview

Arena at any time, by providing specific written notice to this effect.

c. The City shall be entitled to recover all amounts, including any attorney fees incurred by the City in pursuit of the default.

10. Any notice required under this Agreement shall be in writing and served by prepaid, first class mail to the address listed on the first page of this Agreement, or any other address as either party may provide to the other in writing.

11. No delay or omission in the exercise of any right or remedy of the City on any default by the User Group shall impair such right or remedy or be construed as a waiver of the right to pursue such remedy.

12. Nothing in this lease shall render the City in any way a partner, in joint ventureship with the User Group.

13. Upon the expiration or termination of this Agreement, the User Group shall at its sole expense:

a. Remove all of its goods, effects, and equipment.

b. Surrender the premises to the City.

Any goods, effects or equipment owned by the User Group that is not removed shall be deemed to have been abandoned and shall become the property of the City.

14. By executing this Agreement and taking possession pursuant to the terms contained herein, the User Group acknowledges that Lakeview Arena is in the condition called for by this Agreement.

15. This Agreement contains the entire agreement of the parties with respect to its subject matter. This Agreement may not be modified except by a written document signed by the parties.

16. This Agreement shall bind and benefit the parties and their successors and permitted assigns.

17. This contract is executed in the City of Marquette, State of Michigan, and shall be construed under the laws of the State of Michigan, and the parties agree that any action relating to this contract shall be instituted and prosecuted in the courts of the County of Marquette, State of Michigan, and each party waives the right to change of venue.

18. In the event the Arena is required to temporarily close pursuant to any law or government order, User Group will be prohibited from entering the Arena. In such event, User Group will be billed, and agrees to pay, for actual usage during such time.

CITY OF MARQUETTE

____
Sally Davis, Mayor

____
Kyle Whitney, City Clerk

APPROVED AS TO SUBSTANCE:

____
Karen M. Kovacs, City Manager

APPROVED AS TO FORM:

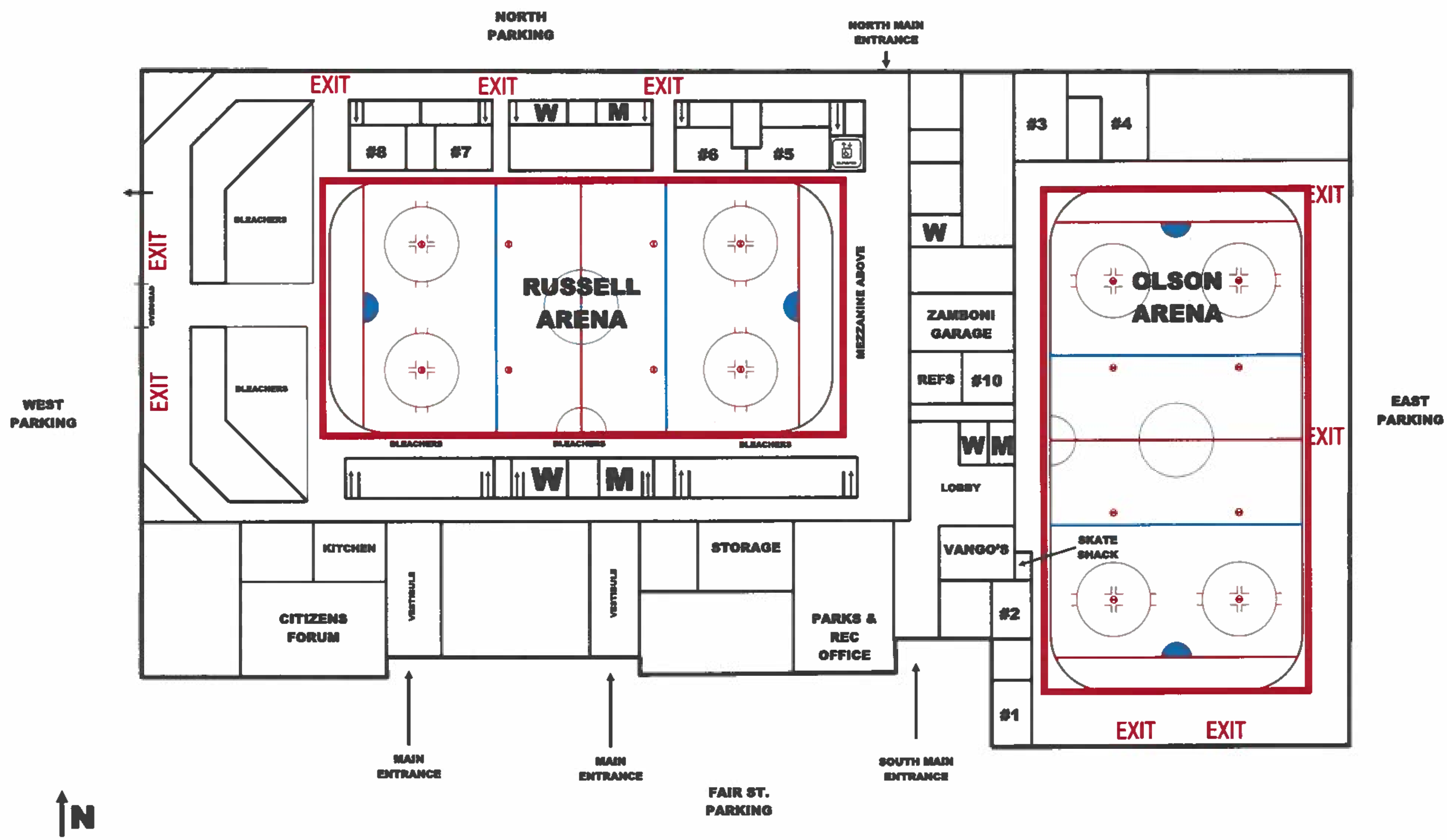
____
Suzanne C. Larsen, City Attorney

THE MARQUETTE FIGURE SKATING CLUB

Erica H. Noe
By: Erica Noe
Its: Treasurer

LAKEVIEW ARENA

EXHIBIT A



ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/24/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
USI Insurance Services NW
601 Union Street, Suite 1000
Seattle, WA 98101

CONTACT NAME: Certificate Request
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS: co2.certificates@usi.com

INSURED
United States Figure Skating Association
20 First Street
Colorado Springs CO 80906

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : HDI Global Insurance Company	41343
INSURER B : Lloyd's Syndicate 3623	AA1120055
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 82040648 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	✓ COMMERCIAL GENERAL LIABILITY	✓	✓	HDGL003701376	7/1/2024	7/1/2025	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE ✓ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ Excluded
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 5,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 3,000,000
	✓ OTHER: CLUB							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB ✓ OCCUR			HDEX003701102	7/1/2024	7/1/2025	EACH OCCURRENCE	$ 3,000,000
	✓ EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 3,000,000
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						PER STATUTE / OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
B	Sexual Abuse & Molestation			W37A1A240101	7/1/2024	7/1/2025	$1,000,000 Occurrence $2,000,000 Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

-Coverage only applies to losses arising from the operations of
Marquette FSC - 491 , Marquette ,MI 49855-2951
The policy(s) includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder.
-The General Liability policy includes Form 00 SGL0100 00 Exclusion - Designated Activity, Service or Work, with the following Designated Activity, Service or Work scheduled: Ownership and / or operations of skating rinks

CERTIFICATE HOLDER

491

City Of Marquette
300 W Baraga Avenue
Marquette MI 49855

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John Flocco

John Flocco

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ACORD®

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY	NAMED INSURED
USI Insurance Services NW	United States Figure Skating Association 20 First Street Colorado Springs CO 80906
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability (03/16)

HOLDER: City Of Marquette
ADDRESS: 300 W Baraga Avenue Marquette MI 49855

-Named Insured (continued): United States Figure Skating Association dba Learn to Skate USA
United States Figure Skating Association member clubs (including their individual members), but only with respect to skating and off-ice activities conducted and supervised by them, for their participation in United States Figure Skating Association sanctioned events, and non-sanctioned events, including, but not limited to, fund-raising events, banquets, award ceremonies
United States Figure Skating Association Learn to Skate Member organizations, but only with respect to Learn to Skate operations
Officials, but only while acting in their capacity as such at United States Figure Skating Association sanctioned events
United States Figure Skating Foundation
USFSA Theatre on Ice/Ensemble/Team Members/Synchronized Skating Teams
USFSA Affiliated High School Teams
20 First Street Properties
World Figure Skating Museum and Hall of Fame
United States Figure Skating Association Aspire Program Member

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

Agenda Date: 9/30/2024

Consent Agenda
Marquette Junior Hockey Corporation - Concession Lease Agreement

BACKGROUND:
Marquette Junior Hockey Corporation (MJHC) requested a lease for the concession area of Lakeview Arena. MJHC operated the concession area during the 2024/25 ice season. Staff has worked with the City Attorney and MJHC to draft the lease agreement. The agreement term is six (6) months, September 15, 2024 through March 31, 2025. The monthly payment during operation is $849.33.

City Charter requires lease agreements be presented for two reads. This is the first read of this lease agreement.

FISCAL EFFECT:
The Lakeview Arena fund will receive $5,095.98 in revenue for FY 2025.

RECOMMENDATION:
Move the lease agreement with Marquette Junior Hockey Corporation for concession space at Lakeview Arena to the next regularly scheduled Commission Meeting.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

	Description
🗋	Lease, Exhibit A and Insurance

LEASE AGREEMENT

THIS AGREEMENT, made this ______ day of ____________, 2024, by and between **THE CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter "LESSOR", and **MARQUETTE JUNIOR HOCKEY CORP.**, a Michigan corporation, of 401 E. Fair Avenue, Marquette Michigan 49855, hereinafter "LESSEE".

Recitals

A. Lessor is the owner and operator of Lakeview Arena, located at 401 E. Fair Avenue, Marquette, Michigan.

B. Lessee desires to lease and Lessor is willing to lease to Lessee the concessions space shown in Exhibit "A" located in Lakeview Arena's lobby in accordance with the terms and conditions contained herein.

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

1. Leased Premises

1.1 Lessor leases to Lessee the space ("Premises") as shown in Exhibit "A".

1.2 Lessee agrees to develop architectural and engineering plans for any and all renovations/remodeling required to meet the specific needs of Lessee for Lessee's intended uses. Lessee shall be responsible for constructing all renovations at Lessee's cost, and Lessee shall obtain Lessor's written approval of all such plans and specifications prior to beginning any construction activity.

2. Term of Lease.

2.1 The term of this Agreement shall be for six (6) months, from September 15, 2024 through March 31, 2025.

3. Rent

3.1 The monthly rental amount shall be $849.33 due in advance on the first day of each month. September rent shall be prorated and paid on the date this Lease is executed.

3.2 Lessee shall be entitled to the use of common wash rooms.

Lessee shall be responsible for its own telephone and internet service as needed and desired by Lessee.

4. Use of Leasehold Premises

4.1 Lessee shall use the Premises only as a concession area, and not for any purpose that would:

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

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

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

d) interfere with normal operations of the Arena's heating, air conditioning, ventilating, plumbing, or other mechanical or electrical systems;

e) constitute a public or private nuisance;

f) interfere with other Arena uses;

g) alter the appearance of the Arena exterior or any portion of the interior other than in the Premises, except as provided herein, without prior written approval of the Lessor;

h) place merchandise, materials, supplies, signs, or other thing of any kind on the sidewalks or other common areas without written approval;

i) permit refuse to accumulate in or around Premises; and,

j) obstruct entry ways.

4.2 Lessee is solely responsible for obtaining all necessary licenses and permits and otherwise complying with all laws while providing the concessions contemplated by this Agreement.

4.3 Lessee is solely responsible for development of menu items and pricing, for obtaining all supplies and products and for all costs related to its sale of food and beverages.

5. Alcohol Beverage Concessions:

5.1 Lessee has the right to obtain a Michigan Liquor Control Commission ("MLCC") license and related permits for the sale of alcohol for use in the performance of this Lease. Obtaining the MLCC license and all fees related to obtaining, maintaining and using the MLCC license shall be the sole responsibility of Lessee. No alcohol shall be sold on the Premises until Lessee has obtained all required MLCC licenses and permits, required liquor liability insurance and otherwise complied with all legal requirements pertaining to the sale of alcohol.

5.2 Alcohol concessions shall only provided by Lessee at the following location: __________ ________________________________. Lessee shall provide all employees to be used to prepare, charge for and collect alcohol beverage concession fees. Lessee shall retain all alcohol beverage concession fees collected; and the Lessor shall not be entitled to any portion of said alcohol beverage concession fees.

Lessor shall cooperate, as necessary, in Lessee's attempt to obtain a MLCC license; however, this Agreement shall remain in full force and effect even in the event Lessee is unable to obtain a MLCC license or Lessee's MLCC license is revoked by the MLCC/State of Michigan.

Lessee agrees, at all times, to comply with all local, MLCC, state and federal laws, rules, and regulations regarding the sale of alcohol products.

5.3 Lessee shall be responsible for obtaining all required permits and licenses from local and/or state governmental entities to operate all concessions and shall provide copies of said licenses and permits to Lessor upon request.

With respect to the MLCC license and related permits, Lessee shall:

a) Only sell alcoholic beverages during regular concessions hours as permitted in this Lease, and as permitted by all statutes, ordinances and other laws pertaining to the sale of alcohol.

b) Designate a secured area in the Premises, where persons of legal age may purchase and consume alcoholic beverages without underage persons being present. Such area will be secured by Lessee at all times that alcohol may be sold.

c) Provide adequate security personnel during all times that alcohol may be sold or consumed in the secured area to ensure that the activities of those purchasing and consuming alcohol comply with all local, state, and federal laws and all MLCC rules and standards. If any person's actions are deemed detrimental to the safe and peaceful enjoyment of the Premises, he or she will immediately be removed from the Premises.

d) Make all sales of alcoholic beverages in full compliance will all MLCC laws and rules. Such sales, if in compliance with MLCC laws and rules, may be conducted at designated concession areas and person-to-person in the secured area for sales of alcohol. No sale of an alcoholic beverage shall be made to any person who appears intoxicated or is disruptive to others on the Premises.

e) In the event Lessee does not comply with these guidelines, Lessor has the right to suspend all alcoholic beverage sales for any length of time Lessor deems appropriate, which may include the permanent suspension of alcoholic beverage sales.

6. Use of Common Areas by Lessee

6.1 Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the hallways, public restrooms, entrance ways, public parking, sidewalks, and surrounding area, subject, however, to rules and regulations of Lessor regulating the use of same and displays, rules providing for safety and maintenance, and changes in the layout of common areas.

7. Maintenance and Repair

7.1 Lessee shall be responsible for all ordinary janitorial and cleaning of the Premises from the counter to the back of the kitchen area. Lessee shall bus all tables and eating areas. Lessor shall provide trash receptacles for Premises. All refuse collection shall be the responsibility of the Lessee. Any refuse generated from preparation of goods or services shall be the sole responsibility of Lessee.

7.2 Lessee shall be solely responsible for the maintenance and repair of all equipment located on the Premises, as more specifically listed in Exhibit "B".

7.3 Lessee must obtain written consent of Lessor for all signage used by Lessee on the Premises and adjoining premises. All signage approved by Lessor shall be maintained in good condition and repair.

7.4 Lessor reserves the right to make any repairs or alterations that it deems necessary and desirable to the common areas. Lessee will be notified of any repairs or alterations to the Premises at least 7 days in advance except in emergency situations.

8. Insurance and Indemnity

8.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's fire, boiler, sprinkler, water damage, and extended coverage insurance policies covering the Arena and contents therein.

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

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

8.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises or the common areas of the Arena by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence for accident, bodily injury, or death; not less than Five Hundred Thousand and 00/100 Dollars ($500,000.00) for property damage; and not less than Five Hundred Thousand and 00/100 Dollars $500,000.00) for liquor liability insurance 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. Lessee shall at all times provide Lessor with a copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.

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

9. Damage by Fire or Other Causes

9.1 If the Premises is partially damaged by fire or other peril without the fault or neglect of Lessee or of its servants, employees, agents, visitors, invitees or licenses, the damage shall be repaired by Lessor and at Lessor's expense. If the Premises or the Arena is substantially damaged (herein defined as fifty (50%) per cent or more of the cost of replacement), Lessor may elect either to repair or rebuild the Premises or the Arena, as the case may be, or to terminate this lease upon giving notice of such election in writing to Lessee within ninety (90) days after the event causing the damage. If Lessor elects to rebuild, Lessee in a timely manner shall repair or replace its fixtures, furniture, equipment and improvements to at least the condition of same prior to the damage.

10. Assignment/Subletting

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

10.2 In no event shall a sublease be allowed that would jeopardize the tax-exempt status of the City.

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

11. Use of Premises by Lessor

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

11.2 Lessor may close the building which is the subject of this Lease Agreement, in whole or in part, at any time during the leasehold period. In such event, the parties understand and agree that the Lessor is not responsible to reimburse the Lessee for any construction costs paid by Lessee to improve the leasehold space.

12. Covenant of Quiet Enjoyment

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

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

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

14. Default by Lessee

14.1 If the Lessee fails to pay rent when due; if the Lessee fails to perform any other obligations under this agreement within 30 days after receiving written notice of the default from the Lessor; if the Lessee makes any assignment for the benefit of creditors or a receiver is appointed for the Lessee or its property; or if any proceedings are instituted by or against the Lessee for bankruptcy (including reorganization) or under any insolvency laws, the Lessor may terminate this lease, reenter the Premises, and seek to relet the Premises on whatever terms the Lessor thinks advisable. Notwithstanding reentry by the Lessor, the Lessee shall continue to be liable to the Lessor for rent owed under this lease and for any rent deficiency that results from reletting the premises during the term of this lease. Notwithstanding any reletting without termination, the Lessor may at any time elect to terminate this lease for any default by the Lessee by giving the Lessee written notice of the termination.

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

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

15. Surrender of Leasehold Upon Termination of Lease

15.1 All renovations and improvements shall be at Lessee's expense and shall be considered fixtures and owned by Lessor upon termination of lease. Upon the expiration or termination of the lease, Lessee shall surrender the Premises in good order and condition, ordinary wear and tear excepted, and shall remove all of its property, fixtures, and equipment from the Premises. In removing its equipment, Lessee shall be solely liable for repairing any and all damages to the Premises. In the event that the Lessee fails to remove its equipment, and Lessor is required to do so, all costs and expenses incurred by Lessor in removing same and restoring the leasehold to useable condition shall be the financial responsibility of the Lessee.

15.2 If upon termination of the lease, Lessee has failed to remove its furniture, equipment, and fixtures, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

16. Miscellaneous

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

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

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

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

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

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

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

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

LESSOR
CITY OF MARQUETTE

____
Sally Davis, Mayor

____
Kyle Whitney, Clerk

LESSEE
MARQUETTE JR. HOCKEY CORP.

____
By: RYAN MCBIE
Its: MJH BOARD PRESIDENT

APPROVED AS TO SUBSTANCE:

____
Karen M. Kovacs, City Manager

APPROVED AS TO FORM:

____
Suzanne C. Larsen, City Attorney

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 09/05/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Willis Towers Watson Southeast, Inc.
c/o 26 Century Blvd
P.O. Box 305191
Nashville, TN 372305191 USA

CONTACT NAME: Contact your USA Hockey Assigned Risk Manager
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Pennsylvania Manufacturers' Association In	12262
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
USA Hockey, Inc. and its Member Leagues, Teams & Organizations and USA Hockey Affiliates
1775 Bob Johnson Drive
Colorado Springs, CO 80906

COVERAGES

CERTIFICATE NUMBER: W34642084 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY; [ ] CLAIMS-MADE [X] OCCUR; GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC; OTHER:	Y		302401-13-12-76-8	09/01/2024	09/01/2025	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 5,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
							Part Legal Liability	$ Included
	AUTOMOBILE LIABILITY: [ ] ANY AUTO; [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS; [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	[ ] UMBRELLA LIAB [ ] OCCUR; [ ] EXCESS LIAB [ ] CLAIMS-MADE; DED RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N; ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) [ ]; If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

MIH8005-Marquette Junior Hockey-Concession Lease, and ice for hockey practices, games, meetings

Additional Insured status is in favor of the certificate holder, but only as respects to liability claims arising out of the negligence of the named insured, and is subject to the full policy terms and conditions.

CERTIFICATE HOLDER

City of Marquette
300 West Baraga Avenue
Marquette, MI 49885

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John Bean

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ACORD 25 (2016/03)

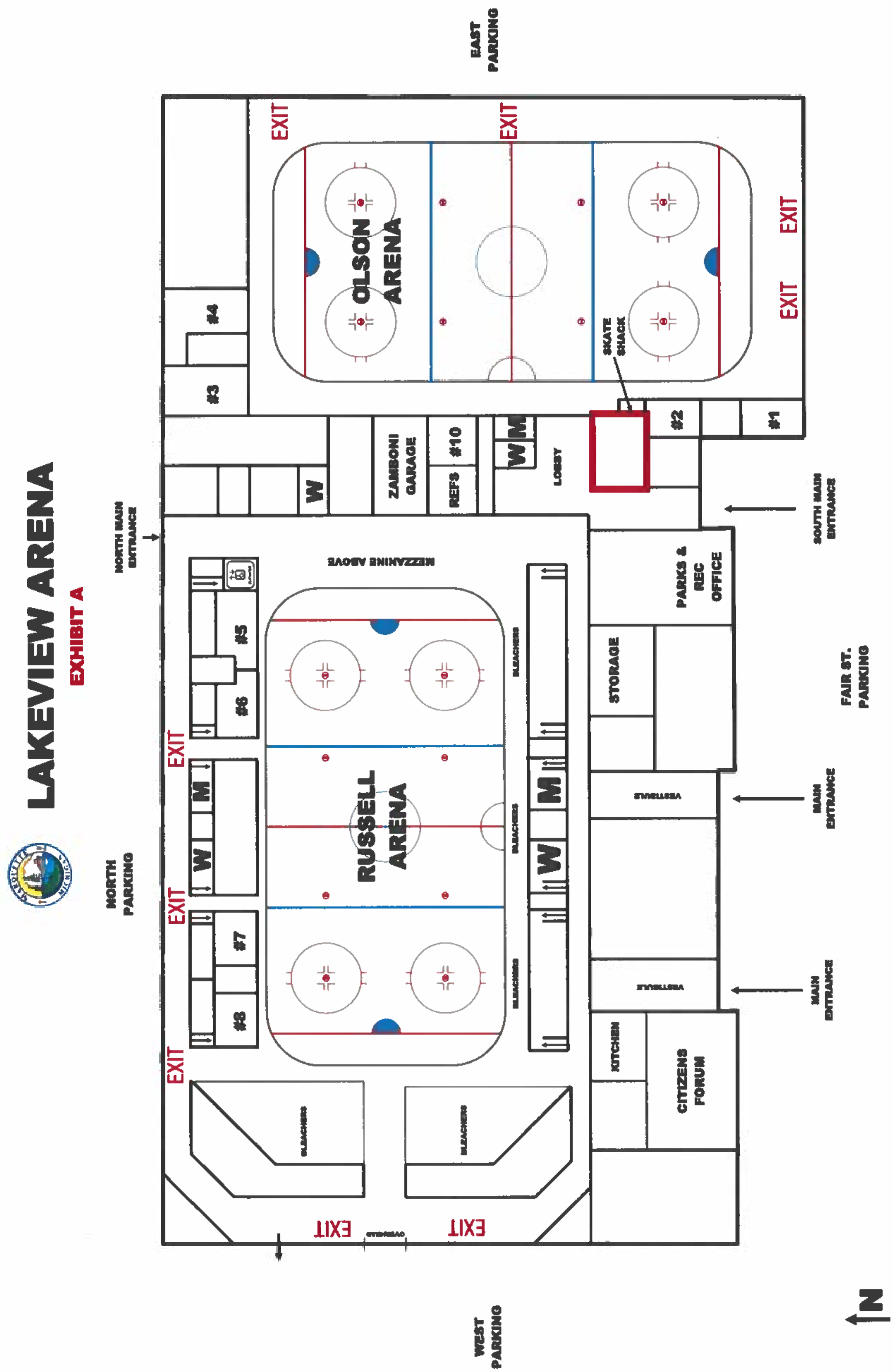
The ACORD name and logo are registered marks of ACORD

SR ID: 26398587 BATCH: 3608856

EXHIBIT B

Concession Equipment Inventory

Equipment	Qty	Notes
Lg. dual front door freezer	1	City
Lg. dual front door refrigerator	1	City
Beverage Refrigerator	1	3rd party
Range/flattop/dual oven unit	1	City
Microwaves	2	Lessee Owned
Hot dog cooker	1	Lessee Owned
Countertop Warmer	1	
Point of sale machines	1	
Soda dispenser	1	3rd Party
Prep tables	3	
Popcorn machine	1	Lessee Owned
Coffee Machine	1	3rd Party
Cappuccino Machine	1	3rd Party
Cookie Machine	1	Lessee Owned
Cheese Dispenser	1	Lessee Owned


LAKEVIEW ARENA
EXHIBIT A
NORTH PARKING
NORTH MAIN ENTRANCE
EAST PARKING
WEST PARKING
SOUTH MAIN ENTRANCE
FAIR ST. PARKING
MAIN ENTRANCE
MAIN ENTRANCE
OLSON ARENA
RUSSELL ARENA
EXIT
EXIT
EXIT
EXIT
EXIT
EXIT
EXIT
EXIT
EXIT
#1
#2
#3
#4
#5
#6
#7
#8
#10
REFS
ZAMBONI GARAGE
LOBBY
SKATE SHACK
W
M
MEZZANINE ABOVE
BLEACHERS
PARKS & REC OFFICE
STORAGE
VESTIBULE
KITCHEN
CITIZENS FORUM
N

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

Agenda Date: 9/30/2024

Consent Agenda
Marquette Junior Hockey Corporation - Ice Contract

BACKGROUND:

The Marquette Junior Hockey Corporation requested an Agreement for Use of Lakeview Arena ice use. Staff has worked with the City Attorney and Marquette Junior Hockey Corporation to draft a standard use agreement which provides for the terms and conditions of the request. The agreement allows for six payments monthly based on actual usage, with 950 hours requested for a total of $218,500 for the FY 2025 ice season.

FISCAL EFFECT:

Lakeview Arena fund will receive $218,500 in revenue for FY 2025.

RECOMMENDATION:

Approve the Agreement for Use of Lakeview Arena with the Marquette Junior Hockey Corporation for ice use, and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

	Description
🗋	Agreement, Insurance and Exhibit A

AGREEMENT FOR USE OF LAKEVIEW ARENA

This Agreement, made and entered into this ______day of ___________2024, by and between the **CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, MI 49885 (hereinafter referred to as the "City") and the **MARQUETTE JUNIOR HOCKEY CORP.**, a Michigan corporation, of 401 East Fair Avenue, Marquette, MI 49885 (hereinafter referred to as the "User Group").

WHEREAS, the City is the owner and operator of Lakeview Arena at 401 E. Fair Avenue, Marquette, Michigan; and

WHEREAS, the City is willing to lease to User Group space as shown in Exhibit "A" in Lakeview Arena in accordance with the terms and conditions contained herein from October 1, 2024, through March 31, 2025.

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

1. In consideration of six (6) equal monthly payments of $36,416.66, the User Group shall be entitled to exclusive use of the Lakeview Arena ice sheet for 950 hours. The parties will agree upon the Customer Schedule, listing the dates and times of User Group's use, no later than October 15, 2024. Once the Customer Schedule has been agreed to in writing by the parties, it will be incorporated into and become part of this Agreement. The City will invoice the User Group on the fifteenth (15^{th}) day of each month beginning in October of 2024 and payment shall be due no later than the last day of the following month. The sixth monthly payment will be adjusted, as needed, to reflect actual hours of ice usage by User Group.

2. Should the User Group wish to lease its ice time to another responsible group, at the same rate, during the contract period, it may do so upon forty-eight (48) hours minimum notice

to the City. Such sub-lease of User Group ice time shall be made and transacted between the parties and not involve the City. The City retains the right to deny such use for cause which shall not be unreasonably withheld.

3. Arena facilities to hold board meetings, work sessions, planning sessions, award presentations, judiciary hearings, and other limited approved events will be made at no additional cost to the User Group, in locations determined by the Arena Management and subject to availability.

4. The User Group recognizes that use of Arena facilities must be properly planned. User Group will provide a minimum of forty-eight (48) hours notice to the City in the event of any facility use changes, including cancellation, change of time, or additional use, and will maintain the facilities as they were found prior to their use.

5. The User Group understands and agrees that there is inherent danger and risk of injury to those individuals participating in and observing the User's Group's activities. The User Group expressly agrees to assume the full risk of and responsibility for any and all injuries, accidents, illness or damages (including death) that may occur as a result of participating in or observing the User's Group's activities except to the extent caused by the City's gross negligence or intentional misconduct, and the User Group releases the City, its officers, directors, agents, representatives, contractors and employees from such liability.

6. The User Group shall procure and maintain insurance for the duration of this Agreement against liability claims, including attorney fees and costs, for injuries to persons or damages to property which may arise from or in connection with the use of Lakeview Arena, including but not limited to bodily injury, property damage or other injury or damage that may occur in connection with User Group's activities, and naming the City as an additional insured. The insurance required by this Agreement shall be in amounts acceptable to the City and shall be

endorsed to state that coverage shall not be reduced or canceled except after thirty (30) days notice to the City by certified mail, return receipt requested.

8. The occurrence of any of the following shall constitute a default by the User Group:

a. Abandonment and vacation of Lakeview Arena during the Agreement.

b. Failure to perform any provision of this Agreement, if the failure to perform is not cured within thirty (30) days after the City provides written notice to the User Group.

c. Failure to maintain insurance as required by this Agreement, which shall be cause for immediate termination of this Agreement by the City.

d. Failure to comply with any law or government order.

e. The User Group files a petition in bankruptcy or insolvency or for reorganization, or involuntary proceedings are filed against the User Group under applicable bankruptcy laws.

f. The User Group fails to make any payment when due.

9. In the event of default, the City shall provide the User Group written notice of default. The User Group shall have thirty (30) days after notice is provided to cure said default. No notice shall be deemed a forfeiture or termination of this Agreement unless the City specifies such in the notice. In the event the User Group does not cure the default within the allowed thirty (30) day time period, the City shall have the following remedies, which shall not be exclusive and shall be in addition to any other remedies now or later allowed by law:

a. The City may elect to continue this Agreement.

b. The City may terminate the User Group's right to possession of Lakeview Arena at any time, by providing specific written notice to this effect.

c. The City shall be entitled to recover all amounts, including any attorney fees incurred by the City in pursuit of the default.

If User Group's default creates a public health hazard, or is a violation of a public health law or government order, which may result in illness, injury or death City, in its sole discretion, may provide written notice of immediate termination or suspension of this agreement. If User Group remedies such default, City may, in its discretion, reinstate this agreement.

10. Any notice required under this Agreement shall be in writing and served by prepaid, first class mail to the address listed on the first page of this Agreement, or any other address as either party may provide to the other in writing.

11. No delay or omission in the exercise of any right or remedy of the City on any default by the User Group shall impair such right or remedy or be construed as a waiver of the right to pursue such remedy.

12. Nothing in this lease shall render the City in any way a partner, in joint ventureship with the User Group.

13. Upon the expiration or termination of this Agreement, the User Group shall at its sole expense:

a. Remove all of its goods, effects, and equipment.

b. Surrender the premises to the City.

Any goods, effects or equipment owned by the User Group that is not removed shall be deemed to have been abandoned and shall become the property of the City.

14. By executing this Agreement and taking possession pursuant to the terms contained herein, the User Group acknowledges that Lakeview Arena is in the condition called for by this Agreement.

15. This Agreement contains the entire agreement of the parties with respect to its subject

matter. This Agreement may not be modified except by a written document signed by the parties.

16. This Agreement shall bind and benefit the parties and their successors and permitted assigns.

17. This contract is executed in the City of Marquette, State of Michigan, and shall be construed under the laws of the State of Michigan, and the parties agree that any action relating to this contract shall be instituted and prosecuted in the courts of the County of Marquette, State of Michigan, and each party waives the right to change of venue.

18. In the event the Arena is required to temporarily close pursuant to any law or government order, User Group will be prohibited from entering the Arena. In such event, User Group will be billed, and agrees to pay, for actual usage during such time.

CITY OF MARQUETTE

____
Sally Davis, Mayor

____
Kyle Whitney, City Clerk

MARQUETTE JUNIOR HOCKEY CORP.

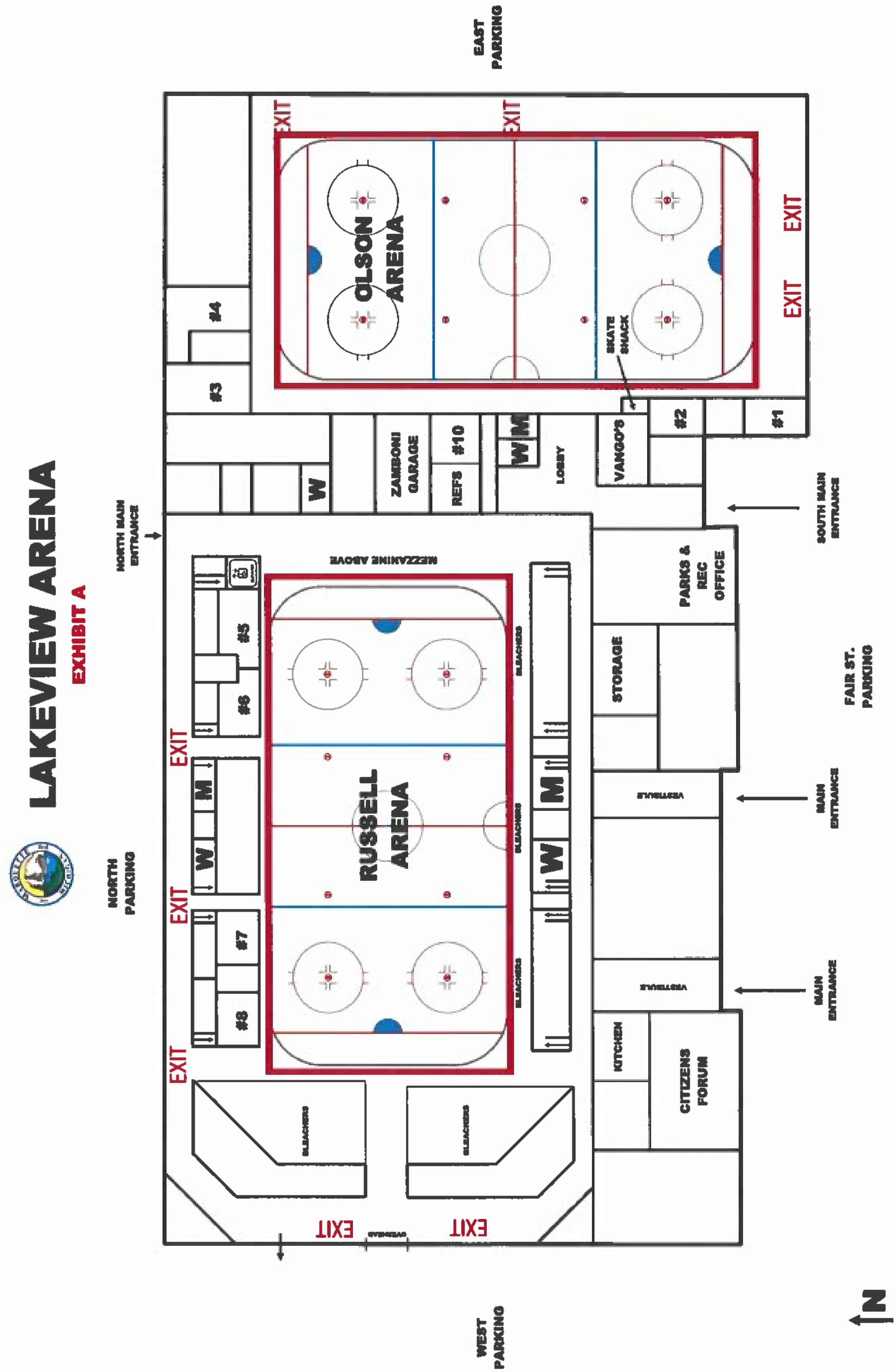
____
By: RYAN HIGBIE
Its: MJH BOARD PRESIDENT

APPROVED AS TO SUBSTANCE:

____
Karen M. Kovacs, City Manager

APPROVED AS TO FORM

____
Suzanne C. Larsen, City Attorney


LAKEVIEW ARENA
EXHIBIT A
NORTH PARKING
NORTH MAIN ENTRANCE
EAST PARKING
OLSON ARENA
EXIT
EXIT
EXIT
EXIT
SKATE SHACK
#4
#3
#2
#1
W
ZAMBONI GARAGE
#10
REFS
W M
LOBBY
VANGO'S
SOUTH MAIN ENTRANCE
MEZZANINE ABOVE
PARKS & REC OFFICE
STORAGE
FAIR ST. PARKING
#5
#6
EXIT
M
W
RUSSELL ARENA
BLEACHERS
M
W
VESTIBULE
MAIN ENTRANCE
EXIT
#7
#8
VESTIBULE
MAIN ENTRANCE
EXIT
KITCHEN
CITIZENS FORUM
BLEACHERS
BLEACHERS
EXIT
EXIT
OVERHEAD
WEST PARKING
N

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 09/05/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Willis Towers Watson Southeast, Inc.
c/o 26 Century Blvd
P.O. Box 305191
Nashville, TN 372305191 USA

CONTACT NAME: Contact your USA Hockey Assigned Risk Manager
PHONE (A/C, No, Ext): FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Pennsylvania Manufacturers' Association In	12262
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
USA Hockey, Inc. and its Member Leagues, Teams & Organizations and USA Hockey Affiliates
1775 Bob Johnson Drive
Colorado Springs, CO 80906

COVERAGES CERTIFICATE NUMBER: W34642084 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC OTHER:	Y		302401-13-12-76-8	09/01/2024	09/01/2025	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 5,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
							Part Legal Liability	$ Included
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	[ ] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBEREXCLUDED? [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
MIH8005-Marquette Junior Hockey-Concession Lease, and ice for hockey practices, games, meetings

Additional Insured status is in favor of the certificate holder, but only as respects to liability claims arising out of the negligence of the named insured, and is subject to the full policy terms and conditions.

CERTIFICATE HOLDER

City of Marquette
300 West Baraga Avenue
Marquette, MI 49885

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John Bean

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SR ID: 26398587 BATCH: 3608856

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

Agenda Date: 9/30/2024

Consent Agenda
Purchase of Belt Press Polymer

BACKGROUND:

The Marquette Water and Wastewater facilities annually bid out process control chemicals except for belt press polymer. The supplier of belt press polymer is selected through a performance-based evaluation. Belt press polymer is utilized in the solids handling process for dewatering and thickening of treatment sludge prior to digestion and disposal. Polymers are unique in that each of the polymers on the market have different chemical make-up and require field testing to determine which polymer offers the best performance to meet the needs of the Wastewater Treatment Plant solids handling process. Because of this, competitive bidding provides no advantage to the city.

FISCAL EFFECT:

$60,000 is budgeted annually for the purchase of belt press polymer.

RECOMMENDATION:

Approve Midwest Chemical & Equipment of De Pere, Wisconsin as the preferred supplier of belt press polymer for an amount not-to-exceed $60,000.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/30/2024

Consent Agenda
Sale of Surplus Equipment

BACKGROUND:

City staff routinely evaluates the motor pool fleet for obsolete and high mileage equipment. The following light duty vehicles have been recommended for sale due to high maintenance issues.

1. 626: 1994 Ford F150 2WD pickup (Body bad, electrical issues)
2. 585: 1992 Chevy C1500 2WD pickup (Body bad, high mileage)
3. 697: 2000 Chevy ¾ ton van (Body bad, engine noise)
4. 713: 2002 Dodge 2500 2WD pickup (Body bad)
5. 728: 2003 GMC Savana Cutaway (Body bad, electrical, low use)
6. 823: 2012 GMC K1500 4x4 pickup (Body bad)
7. 573: 1991 GMC C1500 2WD pickup (Body bad, high mileage)
8. 713: 2002 Dodge ¾ ton 2WD pickup (Body bad, electrical)
9. 865: 2017 Dodge Charger (engine/transmission noise, high mileage)
10. 888: 2019 Dodge Charger (engine/transmission noise, high mileage)

FISCAL EFFECT:

Proceeds from the sale of these vehicles will be credited to the City's Motor Pool Fund - Sale of Fixed Assets.

RECOMMENDATION:

Declare multiple light duty vehicles as surplus, and authorize City staff to prepare the vehicle for auction

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

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

Agenda Date: 9/30/2024

Consent Agenda
Superior Watershed Partnership Improvement Projects

BACKGROUND:

The City of Marquette budgets $30,000 per year for the Superior Watershed Partnership (SWP) to assist the city with stormwater improvement projects and pursue grant funding that improve water quality, reduce stormwater impacts to public beaches, and increase the resiliency of the Lake Superior shoreline. In addition, these important projects reduce costs related to infrastructure maintenance and damage and provide numerous benefits to the city. With the SWP assistance, the city has recently received over $4.4 million dollars to improve stormwater runoff, lakeshore restoration and improvements to the Presque Isle harbor.

FISCAL EFFECT:

The stormwater fund has sufficient funds in the FY 2025 budget.

RECOMMENDATION:

Approve the expenditure of up to $30,000 to Superior Watershed Partnership to assist the city with stormwater improvement projects and funding.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

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

Agenda Date: 9/30/2024

Consent Agenda
Upper Peninsula Community Rowing Club - Facility Lease

BACKGROUND:
The Upper Peninsula Community Rowing Club has requested the City Commission renew their lease for space in the Founders Landing Observation Deck. Staff has worked with the City Attorney and representatives of the Upper Peninsula Community Rowing Club to develop the agreement. The agreement has a term of June 1, 2024 to April 30, 2026. Rent shall consist of $6.00 per square foot for a total rental amount of $2,660.00 per year.

Leases require two reads before approval by the City Commission. This is the first read.

FISCAL EFFECT:
The City will realize $2,660.00 annual revenue with this action.

RECOMMENDATION:
Move the Lease Agreement with Upper Peninsula Community Rowing Club for leasing space at the observation deck of Founders Landing to the next regular meeting agenda.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

	Description
🗋	Lease, Exhibit A and Insurance

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ______ day of ______________ 2024, by and between **THE CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter "LESSOR", and **UPPER PENINSULA COMMUNITY ROWING CLUB, INC.,** a Michigan corporation, of 3114 Lakeshore Boulevard, Marquette, Michigan 49855, hereinafter "LESSEE".

Recitals

A. Lessor is the owner of the real property located at 655 S. Lakeshore Blvd in the City of Marquette.

B. Lessee desires to lease and Lessor is willing to lease to Lessee space as shown in Exhibit "A" located on Lessor's real property in accordance with the terms and conditions contained herein.

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

1 Leased Premises

1.1 Lessor leases to Lessee space known as the retail space of the observation deck located at 655 S. Lakeshore Blvd, Marquette, Michigan 49855, as shown in Exhibit "A", hereinafter "PREMISES".

1.2 Lessee shall be solely responsible for the development and construction of any and all renovations/remodeling required to meet the specific needs of Lessee for Lessee's intended uses. Lessee shall obtain Lessor's written approval of all such plans and specifications prior to beginning any construction activity.

2. Term of Lease

This lease shall run from June 1, 2024 through April 30, 2026.

3. Rent

The rent shall consist of Seven and 00/100 Dollars ($7.00) per square foot, for a total rental amount of $2660 per year for the term of the lease. Payment shall be made on a monthly basis, in advance, in the amount of $221.66. The value of actual material and labor for Lease-hold improvement made by Lessee will be applied as a credit (offset) against the rent due. All materials and labor invoices shall be provided to Lessor with appropriate documentation prior to any credit being made toward rent.

The rental amount contained herein may be increased by the Lessor on an annual basis in an amount not to exceed three percent (3%) of the then current rental amount. The Lessor shall provide written notice to Lessee of the increase in rental amount no later than September 1, and the increased rent shall become effective October 1, each year this lease is in effect.

4. Use of Premises

Lessee shall use the Premises for a club house in support of the rowing and human-powered water sport community and for related purposes only.

Lessee shall not use the Premises for any purpose that would:

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

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

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

d) constitute a public or private nuisance;

e) interfere with other uses of the Premises; or

f) permit refuse to accumulate in or around leasehold.

5. Use of Common Areas by Lessee

Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the public restrooms, public parking, sidewalks, and surrounding area, subject, however, to all rules and regulations regarding the use of those areas.

6. Maintenance and Repair

6.1 Lessee shall be responsible for all cleaning of the Premises and all repairs to the Premises of any nature.

6.2 Lessee shall be solely responsible for the maintenance and repair of all of Lessee's fixtures, furniture and equipment and keep them in a safe condition and good repair.

6.3 Any signage used by Lessee shall be maintained in good condition and repair.

7. Insurance and Indemnity

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

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

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

7.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Five Hundred Thousand and 00/100 Dollars ($500,000.00) for property damage. Lessee shall at all times provide Lessor with a current copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.

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

8. Assignment/Subletting

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

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

9. Use of Premises by Lessor

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

10. Covenant of Quiet Enjoyment

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

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

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

12. Default by Lessee

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

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

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

13. Surrender of Leasehold Upon Termination of Lease

13.1 All renovations and improvements shall be at Lessee's expense and shall be considered fixtures and owned by Lessor upon termination of lease. Upon the expiration or termination of the lease, Lessee shall surrender the Premises in good order and condition, ordinary wear and tear excepted, and shall remove all of its property, fixtures, and equipment from the Premises. In removing its equipment, Lessee shall be solely liable for repairing any and all damages to the Premises. In the event that the Lessee fails to remove its equipment, and Lessor is required to do so, all costs and expenses incurred by Lessor in removing same and restoring the leasehold to useable condition shall be the financial responsibility of the Lessee.

13.2 If upon termination of the lease, Lessee has failed to remove its furniture, equipment, and fixtures, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

14. Miscellaneous

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

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

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

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

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

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

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

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

CITY OF MARQUETTE	UPPER PENINSULA COMMUNITY ROWING CLUB, INC.
________________________ Sally Davis, Mayor	________________________ By: Its: President
________________________ Kyle Whitney, City Clerk	________________________ By: Its: Secretary
Approved as to Substance:	Approved as to Form:
________________________ Karen M. Kovacs, City Manager	________________________ Suzanne C. Larsen, City Attorney


Exhibit A
Rowing
Clubhouse
Front Street
Multi Use Path
Rowing
Clubhouse
Lake Superior
Lakeshore Boulevard
1 inch = 100 feet
City of Marquette
Engineering Department
Geographic Information Systems (GIS)
Lease Premises Defined
as Space within Structure

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 04/04/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Acrisure, LLC dba VAST 300 S FRONT ST STE 24 MARQUETTE, MI 49855-4643	CONTACT NAME: PHONE (A/C, No, Ext): 9063157212 FAX (A/C, No): 9062285385 E-MAIL ADDRESS: kerryh@vastsolution.com
	INSURER(S) AFFORDING COVERAGE — NAIC #
	INSURER A : Great American Insurance Company — 16691
INSURED SPORTS AND RECREATION PROVIDERS ASSOCIATION (PURCHASING GROUP) AND ITS PARTICIPATING MEMBERS: Upper Peninsula Community Rowing Club 530 E ARCH ST MARQUETTE, MI 49855-3810	INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** GAP125227 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X HOST LIQUOR LIABILITY INCLUDED X INCLUDES ATHLETIC PARTICIPANTS GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	X		PAC 4725036	04/03/2024 12:00 AM	04/03/2025 12:01 AM	EACH OCCURRENCE	$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$300,000
							MED EXP (Any one person)	$10,000
							PERSONAL & ADV INJURY	$1,000,000
							GENERAL AGGREGATE	$4,000,000
							PRODUCTS - COMP/OP AGG	$4,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTO X NON-OWNED AUTOS	X		PAC 4725036	04/03/2024 12:00 AM	04/03/2025 12:01 AM	COMBINED SINGLE LIMIT (Ea accident)	$250,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	
							AGGREGATE	
A	Professional Liability	X		PAC 4725036	04/03/2024 12:00 AM	04/03/2025 12:01 AM	EACH OCCURRENCE AGGREGATE LIMIT	$1,000,000 $1,000,000
A	Abuse and Molestation	X		PAC 4725036	04/03/2024 12:00 AM	04/03/2025 12:01 AM	EACH OCCURRENCE GENERAL AGGREGATE	$100,000 $300,000
A	Accident/Medical Coverage			BSR-F162649-00	04/03/2024 12:00 AM	04/03/2025 12:01 AM	AD&D MAXIMUM MEDICAL DEDUCTIBLE	$10,000 $25,000 $250

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Covered Activities: Rowing Club
The Certificate Holder is added as an additional insured but only with respect to liability arising out of the named insured during the policy period. Primary & Non-Contributory coverage applies.
Scheduled Activities Exclusion Applies-Please Refer to Named Insured Member Certificate of Coverage

CERTIFICATE HOLDER	CANCELLATION
City of Marquette 300 W. Baraga Marquette, MI 49855	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE VAST

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

Policy Number: PAC 4725036 / GAP125227
Insured: Upper Peninsula Community Rowing Club

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
City of Marquette 300 W. Baraga Marquette, MI 49855
Information required to complete this Schedule, if not shown above will be shown in the Declarations.

Section II - WHO IS AN INSURED is amended to include as an insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions of the acts or omissions of those acting on your behalf:

A. In the performance of your ongoing operations; or

B. In connection with your premises owned by or rented to you.

To the extent that any of the additional insureds named herein are liable for occurrences arising out of the named insured's negligent acts or omissions, the insurance afforded to the additional insureds under this endorsement is primary insurance over any other valid or collectible insurance which the additional insureds may have with respect to loss under any of the listed policies. Other insurance of any additional insured applicable to loss is non-contributory and excess over the coverage provided by this endorsement, and the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.

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

Agenda Date: 9/30/2024

Consent Agenda
Water and Wastewater Treatment Chemicals BP24-09

BACKGROUND:
The Marquette Area Wastewater Treatment Facility and Water Filtration Plant annually solicit bids for water treatment chemicals. Eleven suppliers responded this year. The attached bid tabulation includes delivered prices for chemicals meeting specifications.

Univar – Cincinnati, OH
Hydrofluosilicic Acid 23.0% to 26.0% - $0.320 /lb.

Hydrite Chemical Co. – Brookfield, WI
Sodium Bisulfite, 38% minimum, Bulk Delivery - $0.260 /lb.

Wandels' Water Care – Negaunee, MI
Water Softener Salt, 99.5% pellets, Bulk Delivery - $0.175/lb.

Hydrite Chemical Co. – Brookfield, WI
Sodium Hydroxide, 50%, Bulk Delivery - $3.190 /gallon

Thatcher – Salt Lake City, UT
Sodium Aluminate, Technical Grade 38% - $770.00 /wet ton

Hydrite Chemical Co. – Brookfield, WI
Sodium Hypochlorite, - $2.55 /gallon

Brenntag Great Lakes – Reading, PA
Liquid Ferric Chloride, - $4.88/gallon

FISCAL EFFECT:
Funds are included in the FY 2025 Water and Wastewater budgets.

RECOMMENDATION:
Award the chemical bids for FY 2025 to the successful bidders meeting specifications.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

- Bid Tabulation

BID TABULATION
BP 24-09 "Water and Wastewater Treatment Chemicals"
10:00 a.m., September 10, 2024

COMPANY NAME	I. Hydrofluosilicic Acid Bulk / lb.	II. Sodium Bisulfite Bulk / lb.	III. Water Softener Salt Per lb.	IV. Sodium Hydroxide 50% Bulk / gal.	V. Sodium Aluminate Wet ton	VI. Liquid Ferric Chloride 275 gal. Totes	VII. Sodium Hypochlorite Bulk / gal.
Alexander Chemical Corp.	$0.335	$0.265		$3.770			$2.650
Brenntag Great Lakes				$3.35*		**$4.880**	
Hawkins							
Hydrite Chemical Co.		**$0.260**		**$3.190**			**$2.550**
Pencco	$0.323						
PVS Chemical Solutions		$0.277					
Rowell Chemical Corp.				$3.830			
Thatcher					**$770.000**		
Univar	**$0.320**						
USALCO					$790.000		
Wandels' Water Care			**$0.175**				

*Brenntag - Sodium Hydroxide Full loads @ 45,000 lbs only

Chemical Cost Tracking							
Chemical	Application*	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24
Hydrofluosilicic Acid, $/lb	W	$0.19	$0.21	$0.21	$0.25	$0.33	$0.39
Sodium Bisulfite, $/lb	WW	$0.13	$0.14	$0.13	$0.20	$0.23	$0.28
Water Softener Salt, $/lb	W	$0.17	$0.17	$0.13			$0.16
Sodium Hydroxide, $/gal	W	$2.54	$2.35	$2.04	$3.05	$4.00	$3.41
Sodium Aluminate, $/wet ton	WW	$477.00	$477.00	$478.00	$538.60	$750.26	$780.50
Liquid Ferric Acid, 275 gal. totes	WW						
Sodium Hypochlorite, $/gal	WW	$1.20	$1.20	$1.05	$1.75	$3.05	$2.73

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

Agenda Date: 9/30/2024

New Business
Budget Adjustment - Fiscal Year End 2024

BACKGROUND:
In order to stay in compliance with State and Local laws and regulations, the City should complete each fiscal year with a budget in which actual expenditure amounts do not exceed budget amounts. The attached schedule illustrates funds with projected fiscal year end activities that exceed current budgeted amounts.

FISCAL EFFECT:
Approval of the adjustments will help ensure the City stays in compliance with budgetary rules and regulations.

RECOMMENDATION:
Approve the budget adjustments for Fiscal Year 2024, and authorize the Chief Financial Officer to make the necessary adjustments to balance the budgets.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

	Description
🗋	FY'24 FYE Budget Adjustment

General Fund	Amended Budget	Activity as of 8/30/2024	Projected Need	Amendment Requested	Amended Budget After Adjust.
Revenues:					
Taxes	$ 16,493,390	$ 16,245,110			
Licenses and Permits	77,760	100,620			
Revenue Sharing	3,567,540	2,529,380			
State and Federal Grants	42,000	110,280			
Contributions from Local Units	100,000	14,980			
Charges for Services	2,826,250	2,774,260		74,000	2,900,250
Fines and Forfeits	103,700	70,820			
Interest and rents	118,590	478,720		210,000	328,590
Other Revenue	166,500	497,910			
Other Financing Sources	1,519,730	10,020			
Total General Fund Revenues	$ 25,015,460	$ 22,832,100		$ 284,000	25,299,460
Expenditures:					
General Government:					
City commission	$ 100,590	$ 144,310	158,741	$ 74,000	174,590
City manager	599,180	455,160	500,676		
Finance department	484,040	417,330	459,063		
City clerk	391,880	345,640	380,204		
Treasurer	321,280	270,900	297,990		
Assessing department	424,070	352,620	387,882		
Elections	157,150	123,670	136,037		
Building and grounds	299,360	208,670	229,537		
City attorney	315,860	168,870	185,757		
Human resources	473,510	430,330	473,363		
Other general government	102,120	100,720	110,792	15,000	117,120
Public Safety:					
Police	6,031,250	5,317,950	5,849,745		
Fire	4,322,530	3,931,470	4,324,617	5,000	4,327,530
Rental inspector	110,450	75,400	82,940		
Waterfront safety	95,050	142,250	156,475	65,000	160,050
Public Works:					
Department of public works	4,222,310	3,414,640	3,756,104		
Engineering	1,461,770	1,379,450	1,517,395	60,000	1,521,770
Cemetery	236,320	238,230	262,053	30,000	266,320
Community and Economic Development:					
Planning and zoning	812,790	659,840	725,824		
Recreation and Culture:					
Parks and recreation department	456,490	380,880	418,968		
Arts and culture	312,220	312,580	343,838	35,000	347,220
Transfers Out:	3,285,240	1,224,430	2,504,030		
Total General Fund Expenditures:	$ 25,015,460	$ 20,095,340	$ 23,262,031	$ 284,000	25,299,460
Local Street Fund					
Revenues:	$ 2,813,040	855,220		80,000	2,893,040
Expenditures:	$ 2,813,040	2,627,240	2,889,964	80,000	2,893,040
Sanitation Fund					
Revenues:	$ 2,512,380	3,839,290		1,570,000	4,082,380
Expenditures:	$ 2,512,380	3,709,470	4,080,417	1,570,000	4,082,380
Local Development Finance Authority Fund					
Revenues:	$ 1,818,420	1,929,750		95,000	1,913,420
Expenditures:	$ 1,818,420	1,911,670	2,102,837	95,000	1,913,420
Senior Services Fund					
Revenues:	$ 937,260	733,390		55,000	992,260
Expenditures:	$ 937,260	899,670	989,637	55,000	992,260
Lighthouse Park Fund					
Revenues:	$ 106,800	60,250		35,000	141,800
Expenditures:	$ 106,800	125,940	138,534	35,000	141,800
Water Utility Fund					
Revenues:	$ 6,874,830	4,824,340		285,000	7,159,830
Expenditures:	$ 6,874,830	6,504,720	7,155,192	285,000	7,159,830
Energy Enhancements Fund					
Revenues:	$ 1,982,290	1,567,020		273,950	2,256,240
Expenditures:	$ 1,982,290	2,038,350	2,312,300	273,950	2,256,240

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

Agenda Date: 9/30/2024

New Business
Resolution Accepting LWCF Tourist Park Day-Use Road Grant Agreement - Roll Call Vote

BACKGROUND:

At their March 28, 2022 regular meeting, the City Commission approved the submission of a Michigan Land and Water Conservation Fund (LWCF) grant application for the construction of parking and an entrance road from County Road 550 into the day-use side of Tourist Park. That application was successful and the Michigan Department of Natural Resources (MDNR) has issued the City a grant agreement.

The agreement outlines the timetable for completion of August 29, 2024 through March 30, 2027. It also outlines scope of the project and the procedures and processes City staff follow through the completion of the project.

The City Engineering Department will be designing and overseeing the construction of the project.

The Parks and Recreation Master Plan outlines this project as a priority for the park.

FISCAL EFFECT:

The City will realize $250,000 in revenue toward the project expenses, reimbursable after project completion. The grant requires a 50% match. Expenses of $500,000 are included in the current budget.

RECOMMENDATION:

Approve the resolution of acceptance for the Michigan Land and Water Conservation Fund grant agreement, LW26-01888, authorize Mayor and Clerk to sign the resolution, and authorize the City Manager or her designee to sign the Grant Agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Resolution
- Grant Agreement and Exhibit A
- Tourist Park Land Use Plan Map

RESOLUTION ACCEPTING TERMS MICHIGAN LAND and WATER CONSERVATION FUND GRANT AGREEMENT

TOURIST PARK DAY-USE ACESS ROAD AND PARKING AREA LW26-01888

Whereas, the City Commission authorized the submission of a MLWCF grant application at the March 28, 2022 regular meeting; and,

Whereas, the City of Marquette sought and received a MLWCF grant agreement for improvements to Tourist Park; and,

Whereas, the project budget totals $500,000, 50% of which the City of Marquette has committed to match, and 50% of which was sought through MLWCF grant assistance; and,

Whereas, the City has committed to appropriate all funds necessary to complete the project and the project has been included in the current budget in the amount of $500,000; and,

Whereas, the City agrees to maintain satisfactory financial accounts, documents and records and make them available to the MLWCF for auditing; and,

Whereas, the City agrees to regulate the use of the facility to assure the use thereof by the public on equal and reasonable terms; and,

Whereas, the City agrees to comply with all terms of the Agreement, including terms not specifically set forth in this resolution;

Now, Therefore, Be It Resolved that the Marquette City Commission does hereby accept the terms of the Project Agreement for Tourist Park Day-Use Access Road and Parking Area, LW26-01888, as received from the Michigan Department of Natural Resources.

This resolution was offered by _____________ and supported by ____________.

The following votes were recorded:

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

CITY OF MARQUETTE

Sally Davis, Mayor

I, Kyle Whitney, City Clerk of Marquette, Michigan, do hereby certify that the above is a true copy of the Resolution relative to the Project Agreement with the Michigan Department of Natural Resources , which Resolution was adopted by the City Commission, at their September 30, 2024 meeting.

Kyle Whitney, City Clerk

LAND AND WATER CONSERVATION FUND
DEVELOPMENT PROJECT AGREEMENT

This information is required by authority of Part 5 of Act 451, P.A. 1994 as amended, to receive funds.
CFDA 15.916, Outdoor Recreation, Acquisition, Development & Planning

This Agreement is between **City of Marquette** in the county of **Marquette County**, hereinafter referred to as the "GRANTEE," and the MICHIGAN DEPARTMENT OF NATURAL RESOURCES, an agency of the State of Michigan, hereinafter referred to as the "DEPARTMENT." The DEPARTMENT has authority to issue grants to local units of government for the development of public outdoor recreation facilities under Part 703 of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended. The GRANTEE has been approved by the DEPARTMENT and the United States Department of the Interior, National Park Service ("SERVICE") to receive a grant. In Public Act **166** of **2022**, the Legislature appropriated funds to the DEPARTMENT for a Land and Water Conservation Fund (LWCF) grant to the GRANTEE. The Federal Award Date is **08/29/2024** and the Federal Award ID Number for these funds is **P24AP01433.**

The purpose of this Agreement is to provide funding in exchange for completion of the project named below. This Agreement is subject to the terms and conditions specified herein.

Project Title: Tourist Park Day-Use Access **Project Number:** 26-01888

Amount of grant: $250,000.00 50% **PROJECT TOTAL:** $500,000.00

Amount of match: $250,000.00 50%

Start Date: Date of Execution by DEPARTMENT **End Date:** 03/30/2027

As a precondition to the effectiveness of the Agreement, the GRANTEE is required to sign the Agreement and return it to the DEPARTMENT with the required attachments by **10/28/2024**, or the Agreement may be cancelled by the DEPARTMENT. **This Agreement is not effective until the GRANTEE has signed it, returned it, and the DEPARTMENT has signed it.** The Agreement is considered executed when signed by the DEPARTMENT.

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies, and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

GRANTEE

SIGNED ______________________

By [Print Name]: ______________________

Title: ______________________

Organization: ______________________

NJTGBUGAVBF9
Unique Entity Identifier

CV0047620
SIGMA Vendor Number

____
SIGMA Address ID

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

SIGNED

By: ______________________
Grants Section Manager

____
Date of Execution by DEPARTMENT

Phone: 517-284-7268
Email: dnr-grants@michigan.gov

1. This Agreement shall be administered on behalf of the DEPARTMENT by the Grants Management Section within the Finance and Operations Division. All notices, reports, documents, requests, actions or other communications required between the DEPARTMENT and the GRANTEE shall be submitted through the department's online grant management system, MiGrants, which is accessed through www.michigan.gov/dnr-grants, unless otherwise instructed by the DEPARTMENT. Primary points of contact pertaining to this agreement shall be:

GRANTEE CONTACT	**DEPARTMENT CONTACT**
Name/Title:	LWCF Grant Program Manager (Name/Title)
Organization:	Grants Management/DNR Finance & Operations (Organization)
Address:	525 W. Allegan Street, Lansing, MI 48933 (Address)
Address:	P.O. Box 30425, Lansing, MI 48909 (Address)
Telephone Number:	517-284-7268 (Telephone Number)
E-mail Address:	DNR-Grants@michigan.gov (E-mail Address)

2. The legal description of the project area, boundary map of the project area, the development grant application bearing the number **LW22-0049** uploaded to MiGrants. The Agreement together with the referenced documents in MiGrants and Appendices constitute the entire Agreement between the parties and may be modified only in writing and executed in the same manner as the Agreement is executed.

3. Grant funds are made available to the GRANTEE through a grant by the SERVICE to the DEPARTMENT.

4. The budget period of performance allowed for project completion is from **08/29/2024** through **03/30/2027**, hereinafter referred to as the "project period." Requests by the GRANTEE to extend the project period shall be submitted in MiGrants before the expiration of the project period. Extensions to the project period are at the discretion of the DEPARTMENT and may only be extended by an amendment to this Agreement.

5. The words "project area" shall mean the land and area described in the uploaded legal description and boundary map already referenced as being a part of the project file.

6. The words "project facilities" shall mean the following individual components, as further described in the application.

   Access Pathway 6' wide or more
   Access Road
   Bench(es)
   Paved Parking Lot
   Picnic Table(s)
   Rain Garden with Native Plants
   Signage
   Permit Fees

7. The award is not for Research and Development.

8. The DEPARTMENT will:

   a. grant to the GRANTEE a sum of money equal to **Fifty Percent (50%)** of **Five Hundred Thousand dollars ($500,000.00)**, which is the total eligible cost of construction of the project facilities including engineering costs, but in any event not to exceed **Two Hundred and Fifty Thousand dollars ($250,000.00)** which is the total amount obligated by this action.
   b. grant these funds in the form of reimbursements to the GRANTEE for eligible costs and expenses incurred as follows:

      i. Payments will be made on a reimbursement basis at **Fifty Percent (50%)** of the eligible expenses incurred by the GRANTEE up to 90% of the maximum reimbursement allowable under the grant.
      ii. Reimbursement will be made only upon DEPARTMENT review and approval of a complete reimbursement request submitted by the GRANTEE through the MiGrants website which includes an expenditure list supported by documentation as required by the DEPARTMENT, including but not limited to copies of invoices, cancelled checks, EFTs and/or list of volunteer labor and/or force account time and attendance records.
      iii. The DEPARTMENT shall conduct an audit of the project's financial records upon approval of the final reimbursement request by DEPARTMENT staff. The DEPARTMENT may issue an audit report with no deductions or may find some costs ineligible for reimbursement.
      iv. Final payment will be released pending satisfactory project completion as determined by the DEPARTMENT and completion of a satisfactory audit.

9. The GRANTEE will:

   a. immediately make available all funds required to complete the project and to **Two Hundred and Fifty Thousand dollars ($250,000.00)** in local match. This sum represents **Fifty Percent (50%)** of the total eligible cost of construction including engineering costs. Any cost overruns incurred to complete the project facilities called for by this Agreement shall be the sole responsibility of the GRANTEE. The indirect rate for this award is zero because it has been waived by the GRANTEE.
   b. Follow the requirements of 2 CFR 200.92 Subaward; 200.101 Applicability; 200.332 Requirements for pass through entities; and 2 CFR 200.318 - 200.327 Procurement Standards.
   c. For infrastructure projects, comply with the Build America, Buy America (BABA) Act. All of the iron, steel, manufactured products, and construction materials used in the project must be produced in the United States. For further information, refer to the Development Procedures Booklet.
   d. with the exception of section 106 consultation and engineering costs as provided for in Section 9 incur no costs toward completion of the project facilities before execution of this Agreement and before DEPARTMENT approval of plans, specifications, and bid documents.
   e. complete construction of the project facilities to the satisfaction of the DEPARTMENT and to comply with the development project procedures set forth by the DEPARTMENT in completion of the project, including but not limited to the following:

      i. Retain the services of a professional architect, landscape architect, or engineer, registered in the State of Michigan to serve as the GRANTEE'S Prime Professional. The Prime Professional shall prepare the plans, specifications and bid documents for the project and oversee project construction, which must include reference of the BABA Act for infrastructure project, as noted in our Development Procedure's Booklet..
      ii. Within 180 days of execution of this Agreement and before soliciting bids or quotes or incurring costs other than costs associated with the development of plans, specifications, or bid documents, provide the DEPARTMENT with plans, specifications, and bid documents for the project facilities, sealed by the GRANTEE'S Prime Professional.
      iii. Upon DEPARTMENT approval of plans, specifications and bid documents, openly advertise and seek written bids for contracts for purchases or services with a value equal to or greater than $50,000 and accept the lowest qualified bid as determined by the GRANTEE'S Prime Professional.
      iv. Upon DEPARTMENT approval of plans, specifications and bid documents, solicit three (3) written quotes for contracts for purchases or services between $5,000 and $50,000 and accept the lowest qualified bid as determined by the GRANTEE'S Prime Professional.
      v. Maintain detailed written records of the contracting processes used and to submit these records to the

DEPARTMENT upon request.

vi. Complete construction to all applicable local, state and federal codes, as amended; including but not limited to the federal Americans with Disabilities Act (ADA) of 2010, as amended; the Persons with Disabilities Civil Rights Act, Act 220 of 1976, as amended; the Playground Equipment Safety Act, P.A. 16 of 1997, as amended; the Utilization of Public Facilities by Physically Limited Act, P.A. 1 of 1966, as amended; the Elliott-Larsen Civil Rights Act, Act 453 of 1976, as amended; and the 2013 Access Board's Final Guidelines for Outdoor Developed Areas.

vii. Bury all overhead utility lines.

viii. Correct any deficiencies discovered at the final inspection within 90 days of written notification by the DEPARTMENT. These corrections shall be made at the GRANTEE'S expense and are eligible for reimbursement at the discretion of the DEPARTMENT and only to the degree that the GRANTEE'S prior expenditures made toward completion of the project are less than the grant amount allowed under this Agreement.

f. operate the project facilities for a minimum of their useful life as determined by the DEPARTMENT, and as appropriate the SERVICE, to regulate the use thereof to the satisfaction of the DEPARTMENT, and as appropriate the SERVICE, and to appropriate such monies and/or provide such services as shall be necessary to provide such adequate maintenance.

g. provide to the DEPARTMENT for approval, a complete tariff schedule containing all charges to be assessed against the public utilizing the project area and/or any of the facilities constructed thereon, and to provide to the DEPARTMENT for approval, all amendments thereto before the effective date of such amendments. Membership or annual permit systems are prohibited, except to the extent that differences in admission and other fees may be instituted based on residence. Nonresident fees shall not exceed twice that charged residents. If no resident fees are charged, nonresident fees may not exceed the rate charged residents at other comparable state and local public recreation facilities

h. adopt ordinances and/or resolutions necessary to effectuate the provisions of this Agreement; certify copies of all ordinances and/or resolutions adopted for these purposes shall be forwarded to the DEPARTMENT before the effective date thereof.

i. separately account for any revenues received from the project area which exceed the demonstrated operating costs and to reserve such surplus revenues for the future maintenance and/or expansion of the GRANTEE'S park and outdoor recreation program.

j. furnish the DEPARTMENT, upon request, detailed statements covering the annual operation of the project area and/or project facilities, including income and expenses and such other information the DEPARTMENT may reasonably require.

k. maintain the premises in such condition as to comply with all federal, state, and local laws which may be applicable and to make any and all payments required for all taxes, fees, or assessments legally imposed against the project area.

l. erect and maintain a sign on the park entry sign of the property which designates this project as one having been constructed with assistance from the Land and Water Conservation Fund. The size, color, and design of this sign shall be in accordance with DEPARTMENT and SERVICE specifications.

m. conduct a dedication/ribbon-cutting ceremony as soon as possible after the project is completed and the LWCF signs erected within the project area. At least 30 days prior to the dedication/ribbon-cutting ceremony, the DEPARTMENT must be notified in writing of the date, time, and location of the dedication/ribbon-cutting ceremony. GRANTEE shall provide notice of ceremony in the local media. Use of the grant program logo and a brief description of the program are strongly encouraged in public recreation brochures produced by the GRANTEE. At the discretion of the DEPARTMENT, the requirement to conduct a dedication/ribbon-cutting ceremony may be waived.

10. Only eligible costs and expenses incurred toward completion of the project facilities during the project period shall be considered for reimbursement under the terms of this Agreement. Eligible section 106 consultation expenses incurred prior to the issue of this agreement and eligible engineering costs incurred toward completion of the project facilities in the six months preceding the project period are also eligible for reimbursement. Any costs and expenses incurred after the project period shall be the sole responsibility of the GRANTEE.

11. To be eligible for reimbursement, the GRANTEE shall comply with DEPARTMENT requirements. At a minimum, the GRANTEE shall:

a. Submit a progress report every 180 days during the project period.

b. Submit complete requests for partial reimbursement when the GRANTEE is eligible to request at least 25 percent of the grant amount and construction contracts have been executed or construction by force account labor has begun.

c. Submit a complete request for final reimbursement within **90 days of project completion and no later than 6/30/2027**. If the GRANTEE fails to submit a complete final request for reimbursement by this date, the DEPARTMENT may audit the project costs and expenses and make final payment based on documentation on file as of that date or may terminate this Agreement and require full repayment of grant funds by the GRANTEE.

12. During the project period, the GRANTEE shall obtain prior written authorization from the DEPARTMENT before adding, deleting or making a significant change to any of the project facilities as proposed. Approval of changes is solely at the discretion of the DEPARTMENT. Furthermore, following project completion, the GRANTEE shall obtain prior written authorization from the DEPARTMENT before implementing a change that significantly alters the project facilities as constructed and/or the project area, including but not limited to discontinuing use of a project facility or making a significant change in the recreational use of the project area. Changes pursuant to this Section may also require prior approval of the SERVICE.

13. All project facilities constructed or purchased by the GRANTEE under this Agreement shall be placed and used at the project area and solely for the purposes specified in the application and this Agreement.

14. The project area and all facilities provided thereon and the land and water access ways to the project facilities shall be open to the general public at all times on equal and reasonable terms. No individual shall be denied ingress or egress thereto or the use thereof on the basis of sex, race, color, religion, national origin, residence, age, or disability.

15. Unless an exemption has been authorized by the DEPARTMENT, and as appropriate the SERVICE, pursuant to this Section, the GRANTEE hereby represents that it possesses fee simple title, free of all liens and encumbrances, to the project area. The fee simple title acquired shall not be subject to: (a) any possibility of reversion or right of entry for condition broken or any other executory limitation which may result in defeasance of title or (b) to any reservation or prior conveyance of coal, oil, gas, sand, gravel or other mineral interests.

16. The GRANTEE shall not allow any encumbrance, lien, security interest, mortgage or any evidence of indebtedness to attach to or be perfected against the project area or project facilities included in this Agreement.

17. None of the project area nor any of the project facilities constructed under this Agreement shall be wholly or partially conveyed during the life of the project, either in fee or otherwise or leased for a term of years or for any other period, nor shall there be any whole or partial transfer of the lease title, ownership, or right of maintenance or control by the GRANTEE except with the written approval and consent of the DEPARTMENT and the SERVICE.

18. The assistance provided to the GRANTEE as a result of this Agreement is intended to have a lasting effect on the supply of outdoor recreation, scenic beauty sites, and recreation facilities beyond the financial contribution alone and permanently commits the project area to Michigan's outdoor recreation estate, therefore:

    a. The GRANTEE agrees that the project area or any portion thereof will not be converted to other than public outdoor recreation use without prior written approval by the DEPARTMENT and the SERVICE and implementation of mitigation approved by the DEPARTMENT and the SERVICE, including, but not limited to, replacement with land of equal of greater recreational usefulness and market value.
    b. Approval of a conversion shall be at the sole discretion of the DEPARTMENT and the SERVICE.
    c. Before completion of the project, the GRANTEE, the DEPARTMENT and the SERVICE may mutually agree to alter the project area through an amendment to this Agreement to provide the most satisfactory public outdoor recreation area.

19. Should title to the project area or any portion thereof be acquired from the GRANTEE by any other entity through exercise of the power of eminent domain, the GRANTEE agrees that the proceeds awarded to the GRANTEE shall be used to replace the lands and project facilities affected with outdoor recreation lands and project facilities of at least equal or greater market value, and of equal of greater usefulness and locality. The DEPARTMENT and the SERVICE shall approve such replacement only upon such conditions as it deems necessary to assure the substitution of GRANTEE of other outdoor recreation properties and project facilities of at least equal or greater market value and of equal or greater usefulness and location. Such replacement shall be subject to all the provisions of this Agreement.

20. The GRANTEE acknowledges that:

a. The GRANTEE has examined the project area and that it has found the property to be safe for public use or that action will be taken by the GRANTEE before beginning the project to assure safe use of the property by the public, and

b. The GRANTEE is solely responsible for development, operation, and maintenance of the project area and project facilities, and that responsibility for actions taken to develop, operate, or maintain the property is solely that of the GRANTEE, and

c. The DEPARTMENT'S involvement in the premises is limited solely to the making of a grant to assist the GRANTEE in developing the project site.

21. The GRANTEE assures the DEPARTMENT that the proposed State-assisted action will not have a negative effect on the environment and, therefore, an Environmental Impact Statement is not required.

22. The GRANTEE hereby acknowledges that this Agreement does not require the State of Michigan or the federal government to issue any permit required by law to construct the outdoor recreational project that is the subject of this Agreement. Such permits include, but are not limited to, permits to fill or otherwise occupy a floodplain, and permits required under Parts 301 and 303 of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended. It is the sole responsibility of the GRANTEE to determine what permits are required for the project, secure the needed permits and remain in compliance with such permits.

23. Before the DEPARTMENT will approve plans, specifications, or bid documents; or give approval to the GRANTEE to advertise, seek quotes, or incur costs for this project, the GRANTEE must provide documentation to the DEPARTMENT that indicates either:

a. It is reasonable for the GRANTEE to conclude, based on the advice of an environmental consultant, as appropriate, that no portion of the project area is a facility as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended; or

b. If any portion of the project area is a facility, documentation that Department of Environment, Great Lakes and Energy-approved response actions have been or will be taken to make the site safe for its intended use within the project period, and that implementation and long-term maintenance of response actions will not hinder public outdoor recreation use and/or the resource protection values of the project area.

24. If the DEPARTMENT determines that, based on contamination, the project area will not be made safe for the planned recreation use within the project period, or another date established by the DEPARTMENT in writing, or if the DEPARTMENT determines that the presence of contamination will reduce the overall usefulness of the property for public recreation and resource protection, the grant may be cancelled by the DEPARTMENT with no reimbursement made to the GRANTEE.

25. The GRANTEE shall acquire and maintain, or cause to be acquired or maintained, insurance which will protect the GRANTEE from claims which may arise out of or result from the GRANTEE'S operations under this Agreement, whether performed by the GRANTEE, a subcontractor or anyone directly or indirectly employed by the GRANTEE, or anyone for whose acts any of them may be liable. Such insurance shall be with companies authorized to do business in the State of Michigan in such amounts and against such risks as are ordinarily carried by similar entities, including but not limited to public liability insurance, worker's compensation insurance or a program of self-insurance complying with the requirements of Michigan law. The GRANTEE shall provide evidence of such insurance to the DEPARTMENT at its request.

26. Nothing in this Agreement shall be construed to impose any obligation upon the DEPARTMENT or the SERVICE to operate, maintain or provide funding for the operation and/or maintenance of any recreational facilities in the project area.

27. The GRANTEE hereby represents that it will defend any suit brought against either party which involves title, ownership, or specific rights, including appurtenant riparian rights, of any lands connected with or affected by this project.

28. The GRANTEE is responsible for the use and occupancy of the premises, the project area and the facilities thereon. The GRANTEE is responsible for the safety of all individuals who are invitees or licensees of the premises. The GRANTEE will defend all claims resulting from the use and occupancy of the premises, the project area and the facilities thereon. The DEPARTMENT is not responsible for the use and occupancy of the premises, the project area and the facilities thereon.

29. Failure by the GRANTEE to comply any of the provisions of this Agreement shall constitute a material breach of this Agreement.

30. Upon breach of the Agreement by the GRANTEE, the DEPARTMENT, in addition to any other remedy provided by law, may:

   a. Terminate this Agreement; and/or
   b. Withhold and/or cancel future payments to the GRANTEE on any or all current recreation grant projects until the violation is resolved to the satisfaction of the DEPARTMENT; and/or
   c. Withhold action on all pending and future grant applications submitted by the GRANTEE under the Land and Water Conservation Fund, the Michigan Natural Resources Trust Fund and the Recreation Passport Grant Program; and/or
   d. Require the GRANTEE to pay penalties or perform other acts of mitigation or compensation as directed by the DEPARTMENT or the SERVICE; and/or
   e. Require repayment of grant funds paid to GRANTEE; and/or
   f. Require specific performance of the Agreement.

31. This Agreement may be canceled by the DEPARTMENT, upon 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the GRANTEE, or upon mutual agreement by the DEPARTMENT and GRANTEE. The DEPARTMENT may honor requests for just and equitable compensation to the GRANTEE for all satisfactory and eligible work completed under this Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the DEPARTMENT and the DEPARTMENT will no longer be liable to pay the GRANTEE for any further charges to the grant.

32. The GRANTEE agrees that the benefit to be derived by the State of Michigan from the full compliance by the GRANTEE with the terms of this Agreement is the preservation, protection and net increase in the quality of public recreation facilities and resources which are available to the people of the State and of the United States and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State of Michigan by way of assistance under the terms of this Agreement. The GRANTEE agrees that after final reimbursement has been made to the GRANTEE, repayment by the GRANTEE of grant funds received would be inadequate compensation to the State for any breach of this Agreement. The GRANTEE further agrees therefore, that the appropriate remedy in the event of a breach by the GRANTEE of this Agreement after final reimbursement has been made shall be the specific performance of this Agreement

33. The GRANTEE shall return all grant money if the project area or project facilities are not constructed, operated or used in accordance with this Agreement.

34. The GRANTEE agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. The GRANTEE further agrees that any subcontract shall contain non-discrimination provisions which are not less stringent than this provision and binding upon any and all subcontractors. A breach of this covenant shall be regarded as a material breach of this Agreement.

35. The DEPARTMENT shall terminate this Agreement and recover grant funds paid if the GRANTEE or any subcontractor, manufacturer, or supplier of the GRANTEE appears in the register compiled by the Michigan Department of Licensing and Regulatory Affairs pursuant to Public Act No. 278 of 1980.

36. The GRANTEE may not assign or transfer any interest in this Agreement without prior written authorization of the DEPARTMENT, and as appropriate, the SERVICE.

SAMPLE RESOLUTION
(Development)

Upon motion made by ______________________________, seconded by ________________________, the following Resolution was adopted:

"RESOLVED, that ____________________________, Michigan, does hereby accept the terms of the Agreement as received from the Michigan Department of Natural Resources, and that the ______________________________ does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate all funds necessary to complete the project during the project period and to provide ___________________________($______________) dollars to match the grant authorized by the DEPARTMENT.

2. To maintain satisfactory financial accounts, documents, and records to make them available to the DEPARTMENT for auditing at reasonable times in perpetuity.

3. To construct the project and provide such funds, services, and materials as may be necessary to satisfy the terms of said Agreement.

4. To regulate the use of the facility constructed and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms.

5. To comply with any and all terms of said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution."

The following aye votes were recorded: ________________
The following nay votes were recorded: ________________

STATE OF MICHIGAN)
) ss
COUNTY OF ____________)

I, ________________________________, Clerk of the ___________________________, Michigan, do hereby certify that the above is a true and correct copy of the Resolution relative to the Agreement with the Michigan Department of Natural Resources , which Resolution was adopted by the ______________________________ at a meeting held ________________________.

____
Signature

____
Title

CITY OF MARQUETTE
TOURIST PARK ACCESS ROAD AND PARKING AREA GRANT
GRANT NO. LW22-0049
LEGAL DESCRIPTION

Part of the East Half (E1/2) of Section Ten (10), City of Marquette, Township 48 North, Range 25 West, Marquette County, Michigan, being more particularly described as:

Commencing at the Quarter Corner common to Sections 10 and 11; thence S00°32'43"W along the section line common to said sections 401.97 feet; thence N89°26'05"W 338.94 feet to the Westerly Right of Way (R.O.W.) of Sugar Loaf Avenue/ County Road 550 and the Point of Beginning;

Thence N16°56'46"W along said R.O.W. a distance of 382.52 feet; thence northwesterly along said R.O.W. and a curve to the left 142.42 feet, said curve having a radius of 799.25 feet and a delta of 10°12'36", the chord of which bears N41°19'39"W a distance of 142.24 feet to the Southerly easement line of County Road 550; thence westerly along said easement line and a curve to the right 315.04 feet, said curve having a radius of 3879.72 feet and a delta of 04°39'09", the chord of which bears N76°29'51"W a distance of 314.95 feet; thence S20°46'27"W 403.30 feet; thence S69°35'37"W 316.59 feet; thence S41°42'00"W 65.59 feet to the north line of the south 925 feet of the North Half of the Southeast Quarter; thence S89°26'05"E along said north line 995.12 feet to the Point of Beginning.

And,

The South 925' of the North half of the Southeast Quarter of said Section 10, lying west of the westerly Right of Way of Sugar Loaf Avenue and southeasterly of the water's edge of the dead river backwater.

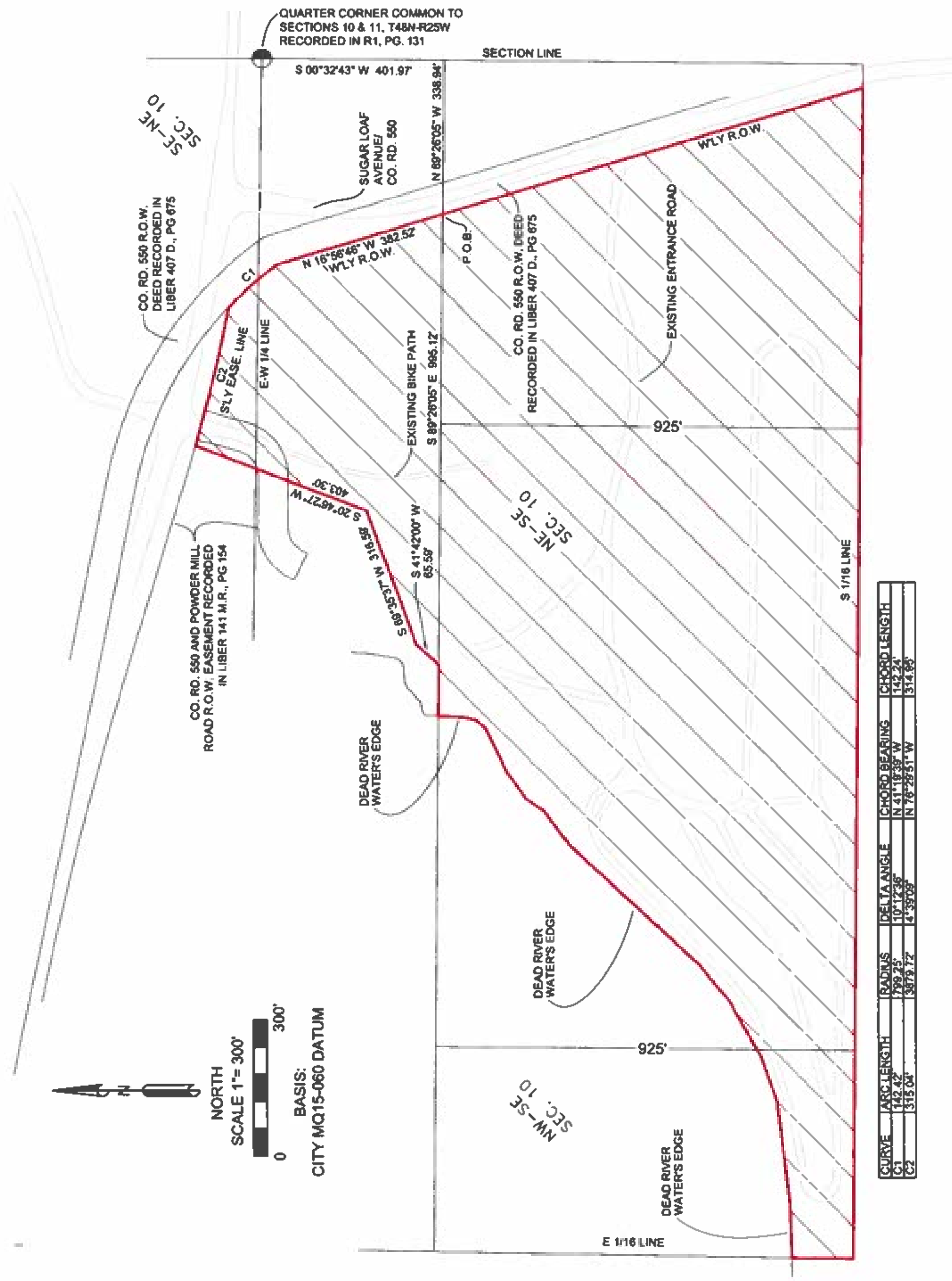
The above described grant area contains 44.07 total acres, more or less, and is shown on the 6(F)(3) Boundary Map attached hereto as Exhibit "A", and is hereby made part of this description and is subject to all mineral rights, mineral reservations, mineral exceptions, easements and building and use restrictions of record, and all other conditions, reservations, exceptions and restrictions as may be contained in any conveyance constituting the recorded chain of title to said premises, and further subject to all applicable zoning laws, ordinances and visible easements, if any.

Prepared by: S. Holmquist
Date: May 3, 2022
Prepared for: City of Marquette
City of Marquette Engineering Department Job No: MQ50-276
J:\Projects\MQ50-276 Tourist Park - Land Use Plan\Field Construction Related\All Survey\Legal Descriptions\MQ50-276 - Tourist Park - Grant No. LW22-0049 Legal Description (220503).doc

Sheet 1 of 2

EXHIBIT "A"
6(F)(3) BOUNDARY MAP
TOURIST PARK ACCESS ROAD AND PARKING AREA
GRANT NO. LW22-0049

PART OF THE EAST HALF OF THE SECTION 10, CITY OF MARQUETTE, TOWNSHIP 48 NORTH, RANGE 25 WEST, MARQUETTE COUNTY, MICHIGAN



CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	142.42'	799.25'	10°12'36"	N 41°19'39" W	142.24'
C2	315.04'	3879.72'	4°39'09"	N 76°29'51" W	314.95'

PREPARED BY:
CITY OF MARQUETTE
ENGINEERING DEPARTMENT
1100 WRIGHT STREET
MARQUETTE, MI 49855
S. HOLMQUIST
MAY 3, 2022
SHEET 2 OF 2
JOB NO.: MQ50-276

NOTES:
1. THIS SKETCH IS INTENDED TO BE USED AS A VISUAL REFERENCE FOR THE TOURIST PARK ACCESS ROAD AND PARKING AREA GRANT.
2. THIS SKETCH DOES NOT REPRESENT, AND IS NOT INTENDED TO REPRESENT, A LAND SURVEY UNDER THE PROVISIONS OF ACT 132, MICHIGAN P.A. 1970, AS AMENDED. THIS SKETCH AND/OR DESCRIPTION WAS PREPARED AT THE REQUEST OF, AND FOR THE SOLE USE BY THE CITY OF MARQUETTE.
3. TOTAL GRANT AREA IS ±44.07 ACRES.


City of Marquette
Tourist Park
Legend
Land Use Action Plan For
TOURIST PARK
Marquette, Michigan
SANDERS + CZAPSKI ASSOCIATES, PLLC

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

Agenda Date: 9/30/2024

New Business
City Attorney Evaluation

BACKGROUND:
The City Charter requires an annual performance evaluation of the City Attorney. In January, the City Commission authorized the Mayor to appoint a subcommittee to perform this evaluation and make recommendations for changes to the contract. The Mayor subsequently appointed Commissioner Smith, Mayor Pro-Tem Hanley, and Mayor Davis to the evaluation subcommittee for calendar year 2024.

The subcommittee met earlier this month and the overall evaluation was very positive. The City Attorney has successfully met all the City Charter requirements for her position and has met with a representative of the subcommittee to discuss feedback on the review.

Following the review, the subcommittee has recommended extending the terms of the contract by one year to September 30, 2027 and increasing the salary 3%.

FISCAL EFFECT:
The City Attorney salary will be increased by 3%.

RECOMMENDATION:
Approve the City Attorney's annual performance evaluation and amend the contract to reflect a 3% salary increase and term extension to September 30, 2027.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/30/2024

New Business
City Manager Evaluation

BACKGROUND:

The City Charter requires an annual performance evaluation of the City Manager. In January, the City Commission authorized the Mayor to appoint a subcommittee to perform this evaluation and make recommendations for changes to the contract. The Mayor subsequently appointed Commissioner Smith, Mayor Pro-Tem Hanley, and Mayor Davis to the evaluation subcommittee for calendar year 2024.

The subcommittee met earlier this month and the overall evaluation was very positive. The Manager has successfully met all the City Charter requirements for her position and the majority of City Commissioners awarded her the highest rating in all other performance categories. The Manager has met with a representative of the subcommittee to discuss feedback on the review.

The subcommittee has recommended extending the terms of the contract by one year to September 30, 2027 and increasing the salary 3%. Additionally, the subcommittee has recommended the inclusion of a tuition reimbursement clause to allow the City Manager to pursue continuing education through a credentialed program.

FISCAL EFFECT:

The City Manager salary will be increased by 3% and will be eligible for tuition reimbursement moving forward.

RECOMMENDATION:

Approve the City Manager's annual performance evaluation and amend the contract to reflect a 3% salary increase, term extension to September 30, 2027, and a tuition reimbursement clause.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

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

Agenda Date: 9/30/2024

New Business
Mayor Davis and Mayor Pro-tem Hanley Travel Reimbursement

BACKGROUND:

Mayor Davis and Mayor Pro-tem Hanley attended the annual Michigan Municipal League Convention held on Mackinac Island September 11-13, 2024. The following checks will be issued for travel expenses incurred:

Mayor Sally Davis, Check #6801, $14.10
Mayor Pro-tem Jessica Hanley, Check #1010728, $26.00

FISCAL EFFECT:

Total travel costs are $40.10. Adequate funds are available within the Fiscal Year 2024 City Commission travel budget.

RECOMMENDATION:

Approve travel reimbursement for Mayor Davis in the amount of $14.10 and Mayor Pro-tem Hanley in the amount of $26.00 for the Michigan Municipal League Convention.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

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

Agenda Date: 9/30/2024

New Business
Commissioner Larson Travel Reimbursement

BACKGROUND:

Commissioners Larson attended the annual Michigan Municipal League Convention held on Mackinac Island September 11-13, 2024. The following check will be issued for travel expenses incurred:

Commissioner Michael Larson, Check #1010741, $229.44

FISCAL EFFECT:

Total travel cost is $229.44. Adequate funds are available within the Fiscal Year 2024 City Commission travel budget.

RECOMMENDATION:

Approve travel reimbursement for Commissioner Larson in the amount of $229.44 for the Michigan Municipal League Convention.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

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

Agenda Date: 9/30/2024

New Business
Commissioner Ottaway Travel Reimbursement

BACKGROUND:
Commissioner Ottaway attended the annual Michigan Municipal League Convention held on Mackinac Island September 11-13, 2024. The following check will be issued for travel expenses incurred:

Commissioner Jermey Ottaway, Check #1010727, $328.10

FISCAL EFFECT:
Total travel cost is $328.10. Adequate funds are available within the Fiscal Year 2024 City Commission travel budget.

RECOMMENDATION:
Approve travel reimbursement for Commissioner Ottaway in the amount of $328.10 for the Michigan Municipal League Convention.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/30/2024

New Business
Commissioner Schloegel Travel Reimbursement

BACKGROUND:

Commissioner Schloegel attended the annual Michigan Municipal League Convention held on Mackinac Island September 11-13, 2024. The following check will be issued for travel expenses incurred:

Commissioner Paul Schloegel, Check #1010750, $327.10

FISCAL EFFECT:

Total travel cost is $327.10. Adequate funds are available within the Fiscal Year 2024 City Commission travel budget.

RECOMMENDATION:

Approve travel reimbursement for Commissioner Schloegel in the amount of $327.10 for the Michigan Municipal League Convention.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

Agenda Date: 9/30/2024

New Business
Naming - Kids Cove II, A Playground For ALL

BACKGROUND:
The Marquette Playgrounds For All (MPFA) committee has spearheaded the incredible fundraising effort to fund the new Kids Cove playground at Mattson Park, raising over $1,400,000 toward the project. MPFA has nominated the name of the new playground at Mattson Park to be "Kids Cove II, A Playground For ALL".

This naming was proposed by Barb Coleman. Barb and her late husband, Bob Chapman, were the largest donors to the facility other than the Michigan DNR Trust Fund Grant. Barb and Bob also volunteered for years to make this facility a reality.

The name pays homage to the previous playground and defines the inclusive nature of the design with "A Playground For ALL".

The Parks and Recreation Advisory Board voted unanimously to support this naming effort at their September 16, 2024 meeting. This, along with the attached letters of support, fulfill the requirements of Commission Policy 2005-01 Naming Parks and Recreation Facilities.

FISCAL EFFECT:
None with this action.

RECOMMENDATION:
Approve the request from the Marquette Playgrounds For All to name the new playground at Mattson Park "Kids Cove II, A Playground For ALL" in accordance with Commission Policy 2005-01 Naming Parks and Recreation Facilities.

ALTERNATIVES:
As determined by the Commission.

ATTACHMENTS:

Description
- Naming Policy
- Naming Proposal
- Letter of Support
- Letter of Support

CITY OF MARQUETTE, MICHIGAN

CITY COMMISSION POLICY

Policy Number: **2005-01**	Revision Date:
Date Adopted: 03-28-05	
Department: Parks & Recreation	

SUBJECT: **NAMING PARKS & RECREATION FACILITIES**

PURPOSE: To provide a formal process for the City of Marquette to name or rename Parks & Recreational facilities

POLICY:

It is the intent of the Parks and Recreation Advisory Board to review all requests for naming or renaming facilities, evaluate each request in accordance with the following guidelines, and provide insight and recommendations to the City Commission for consideration. The City Commission shall make all final decisions naming or renaming facilities. The Parks and Recreation Advisory Board shall follow the naming guidelines adopted by the City Commission.

I. Process

To request a name for a specific park, facility, or a major feature within a park such as a street, lake, building or athletic field, an applicant shall submit a written request to the Parks and Recreation Advisory Board via the Parks and Recreation Department staff.

The applicant may obtain a copy of the Park Naming Guidelines from the Office of the Director of the Parks and Recreation Department. The request shall clearly state the name of the requesting organization along with the name, address and phone number of a contact person. The request must include all information as stated in the guidelines below. Verification of the facts in the request by Parks and Recreation Department staff shall be required.

Upon receipt of all information, the Parks and Recreation Advisory Board will review the application and request any clarification as needed. The Board will have no more than 60 days to review and evaluate any and all naming requests from applicants once all information has been received. Upon completion of review by the Parks and Recreation Advisory Board, the Board chair will place the request with a recommendation on the City Commission agenda for presentation to the City Commission. The City Commission will then have no less than one month to reflect and consider the naming request before the item will be placed on the commission agenda for voting purposes and public comment. The Parks and Recreation Advisory Board and the City Commission reserve the right not to endorse a request.

II. Guidelines for Naming or Renaming

Proposed naming of a Park or facility shall identify all of the following which apply:

1. An adjacent street to the park or facility;
2. Predominant physical features (such as lakes, rivers, creeks, etc.) in or adjacent to the park;
3. The subdivision in which the park property or facility is located;
4. A significant historic feature or event;
5. An individual or group who has made exceptional contributions to the City of Marquette with preference being given for contributions to parks and recreation services. Exceptional contributions include, but are not limited to;
    i. Donating or contributing a significant amount of money for the acquisition and/or development of the park facility;
    ii. Providing direct and significant volunteer services benefiting the public as a local or community leader;

Persons currently serving on the City Commission or holding a local elected office or serving on the Parks and Recreation Advisory Board may not be considered for naming, but may be considered for naming when said person no longer serves in such capacity.

III. Procedures for Naming or Renaming

A. Individuals or organizations shall submit a written nomination for naming city parks and facilities along with justification to the Park and Recreation Advisory Board. The request shall include:

    1. Reasons for the proposed name;
    2. Proposed name;
    3. Evidence of community support for the proposed name;
    4. All of the above must be submitted to the Parks and Recreation Advisory Board for review;

    The applicant may submit petitions, which state the intent and include printed names, signatures, addresses, zip codes and telephone numbers of each signer as proof of residency;

B. The Parks and Recreation Advisory Board shall:

1. Review the nomination in accordance with Section III of the guidelines;
2. Research, review and study the supporting documentation;
3. Forward recommendations to the City Commission for review;
4. The City Commission shall make the final decisions;

VI. Responsibilities of the Parks and Recreation Advisory Board

Once the appropriate nomination material for naming a city park or facility is submitted to the Parks and Recreation Advisory Board for review, the Park and Recreation Advisory Board will:

1. Review the nomination in accordance with Section III of the guidelines;
2. Research, review and study the supporting documentation;
3. Forward recommendations to the City Commission for review.

KIDS COVE

a playground for all

Vision: to bring the community together to design a playground for all, utilizing universal design to create a place that our community will treasure and where everyone can play together.

PLAYGROUNDS FOR ALL COMMITTEE

Nheena Weyer Ittner
Chairperson

Luanne Peterson
Vice Chairperson

Barb Coleman
Treasurer

Theresa King
Secretary

Christine Zenti Emmendorfer
Ad Hoc Ex. Bd. Member

Committee Members:
Susan Anderson
Leah Nygard
Karen Ogle
Richard Orr
Alice Reynolds

Partners:
Jon Swenson
City of Marquette
Zosia Eppensteiner
Community Foundation of Mqt Co

Consultants:
Bill Sanders
Sanders and Czapski Associates
John Bennett
Bennett Media

September 16, 2024

Dear Members of the City of Marquette Parks and Recreation Advisory Board,

The Marquette Playground for ALL Committee would like to nominate the name of the playground located in Mattson Park to:

Kids Cove II
A Playground for ALL

The naming of the playground was proposed by Barb Coleman and Bob Chapman for the following reasons:

- Barb Coleman and the late Bob Chapman's generosity was not only financial. They have made the largest monetary donation toward the playground of any other donor. But the time and effort put forth by Barb and Bob is incredible in making this playground a reality. They have been proponents of this project since its inception and have continued to lead with the amount of joint volunteer hours dedicated to this project over any of the other committee members.
- The name, Kids Cove II, would pay homage to the previous playground, Kids Cove. Adding the message on the playground logo of "A Playground for ALL" adds the inclusivity element to the name of this very unique playground.
- The proposed name is simple and in keeping with Barb and Bob's intention that their names were not important because the playground is for the kids and their caregivers. They do not want the recognition of their name on the playground. Instead, they want to boost the mission of this ALL-Inclusive Playground.

For these reasons and upon the joint wishes of Barb Coleman and Bob Chapman, the Marquette Playground for All Committee would like to nominate the name of the playground:

Kids Cove II
A Playground for ALL

Respectfully submitted,

Nheena Weyer Ittner
Chairperson Playgrounds for ALL

MARQUETTE WEST ROTARY CLUB
P.O. Box 383, Marquette, MI 49855-0383

Rotary ROTARY INTERNATIONAL

September 11, 2024

Jon Swenson
City of Marquette Parks and Recreation Department
300 W. Baraga Avenue
Marquette, MI 49855

Dear Jon,

In the late 1990s, Maquette West Rotary Club spearheaded an effort to build a community designed playground at Ellwood Mattson Lower Harbor Park. This playground was completed in 1997 and named Kids Cove. Marquette West Rotary Club has supported the playground with maintenance funding and volunteer labor over the ensuing years.

As Kids Cove reached the end of its lifespan, Marquette West Rotary Club supported the work of the Playgrounds for All Committee for all phases of the new playground. Our club endorsed the concept of a universally designed playground that would be accessible to people of all ages and abilities. We have written grants, letters of support, donated club funds and volunteered to help make the new playground a reality.

As the new playground takes shape, Marquette West Rotary Club has been asked to give our opinion on a new name for the replacement for the much-loved Kids Cove. The Committee led by Barb Coleman has done an admirable job in bringing this dream to fruition. They have suggested Kids Cove II which honors the playground of the past and signifies a new era for a community asset that will entertain, delight and inspire children, adults and families for many years.

The Board of Directors and membership of Marquette West Rotary endorse the name Kids Cove II for the new playground and encourage the Marquette City Commission to approve this new name for what will become a beloved part of our community thanks to the vision, dedication and contributions of the Playground for All Committee, City of Marquette, Michigan DNR and donors who have transformed Kids Cove into a new Kids Cove-Kids Cove II.

Sincerely,

Andrew LaCombe

Andrew LaCombe
President,
Marquette West Rotary Club

THE FOUR-WAY TEST OF THE THINGS WE THINK, SAY OR DO

1. Is it the TRUTH? 2. Is it FAIR to all concerned? 3.Will it build GOODWILL and BETTER FRIENDSHIPS? 4.Will it be BENEFICIAL to all concerned?

Dear Parks and Recreation Advisory Board,

Although the word "all" is a simple three letter word, the weight of its meaning is much more complex. To some, the word "all" has never applied to them. For adults and children with disabilities of any kind, the world can often feel like "us" versus "them" but never "all". This playground represents an opportunity for "all". As a caregiver for a disabled child, I am eager to have a space that was intentionally created to include "all". Ramps, accessible bathrooms, and wheelchair friendly play equipment benefit "all". Not "them" or "us". "All." People of all abilities, all ages, and all development levels will now have the opportunity to truly experience the power of "all". I support the new version of the Kid's Cove playground name because I believe it encapsulates the intention and goal of this entire project.

Arica Altobello M.A., CCC-SLP

Preschool Speech-Language Pathologist

Negaunee Public Schools