

City of Marquette, MI



Meeting Agenda City Commission

**Monday, December 20, 2021
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

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

Presentation(s)

1. Local Officers Compensation Commission, by Chair Susan Tollefson
2. Johnson Controls Update, by Ron Stimac
3. **Consent Agenda**
 - 3.a. Approve the minutes of the December 13, 2021 Commission work session
 - 3.b. Approve the minutes of the December 13, 2021 regular Commission meeting
 - 3.c. Approve the total bills payable in the amount of \$792,497.01
 - 3.d. Attorney Consulting Agreement
 - 3.e. Equipment Replacement Lease - Switches
 - 3.f. National Opioids Settlement
 - 3.g. Noquemanon Ski Marathon Trail Access Permit
 - 3.h. Senior Services - Master Agreement to Purchase Services
 - 3.i. Water Filtration Membrane Purchase
 - 3.j. WE Energies Ash Haul Road Relocation Agreement

New Business

4. Climate Action Resolution - Roll Call Vote
5. Local Development Agreement - MDM Hemlock, L.L.C.

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

Comments from the Commission

Comments from the City Manager

Adjournment

Kyle Whitney, City Clerk

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

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda

Approve the minutes of the December 13, 2021 Commission work session

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Dec. 13 WS Minutes



City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Agenda City Commission

WORK SESSION

Monday, December 13, 2021

4:30 PM

Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

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

Announcements

Mayor Smith had no announcements.

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

Margaret Brumm offered suggestions on how to better share information related to work sessions.

Sarah Lucas, director of the Lake Superior Community Partnership, spoke about local housing issues, including the cost of construction, limited supply and the concept of filtering.

Geraldine Nault thanked the Commission for hosting informational sessions like this one. Colleen Roberts commented on the proposed development and said she has no problems with the proposal as she sees it.

Cary Gottlieb, from the Noquemanon Trail Network, said he has worked with Bob Mahaney over the years and knows he is dedicated to the NTN. He said he supports the development.

1. Discussion: Hemlock, L.L.C. - Housing Development

City Manager Karen Kovacs offered a brief overview of the proposal, which could include a City commitment to build infrastructure.

Community Development Director Dennis Stachewicz offered a brief history of the site and of the possible funding mechanisms that were considered. Ultimately, he said, staff was looking to pursue a plan wherein taxes from generated by the increased value on the property will be used immediately to reimburse the infrastructure costs - he compared this to a very similar plan in place at Veridea's Harbor Vista property.

Veridea Group President Bob Mahaney then offered a brief presentation to the City Commission. He said the plan involved modular housing, and would include 60-70

units located on a 29-acre site. Construcion, he said, may start in the summer of 2022, and the early estimate was for a \$20 million Veridea investment, with \$2 million of City infrastructure. The aim is to make the neighborhood very walkable and to tie it directly to the NTN trail network.

Commissioners asked for specifics on the size and cost of the units, with Mr. Mahaney stating that the goal was for the cheapest units to begin at \$279,000, though some will start at a higher price point and optional upgrades will be possible. Several commissioners raised the idea of creating deed restrictions or using other mechanisms to limit the homes to being utilized as primary residences, prohibiting the use of the properties as rentals and guaranteeing the long-term affordability of resale value.

In response to questions about the possible City investment tied to this project, staff highlighted data showing from the Harbor Vista development, where an initial City investment of about \$350,000 was being reimbursed through regular tax payments from the parcel. Total taxes paid to the City there were about \$2,500 in 2017, and had increased to more than \$52,000 paid in 2021.

Commissioners generally approved of the plan and the clear presentation of facts and agreed that the City should do whatever it can to attempt to increase housing supply at this point in time.

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

Geraldine Nault said she was happy with tonight's presentation and was thankful to be able to attend. She said the presentation was informative and that this looked like a good project.

Margaret Brumm said the Commission discussion tonight was very productive and that the group asked several vital questions.

Adjournment

Mayor Smith adjourned the meeting at 5:52 p.m.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

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City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda

Approve the minutes of the December 13, 2021 regular Commission meeting

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Dec. 13 Minutes



City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Minutes City Commission

Monday, December 13, 2021
6:00 PM
Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

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

Approval of the Agenda

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

Announcements

Mayor Smith had no announcements.

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

Colleen Roberts spoke about panhandlers in the City of Marquette and about options for dealing with this issue.

Darlene Allen, president of the local chapter of the League of Women Voters, spoke about the importance of voting rights and ballot access and about the possible impacts of legislative proposals.

Priscilla Burnham, representing the LWV, echoed the comments of Darlene Allen and praised the proposed recommendations from the Michigan Secretary of State. She said the LWV had discussed these recommendations with local clerks, and highlighted the topics these clerks most solidly supported.

Robert Kulisheck spoke in support of the resolution on tonight's agenda. He said the LWV is a nonpartisan group and that free and fair elections benefit everyone.

Presentation(s)

1. Charter Spectrum - Police K9 Unit, by Police Chief Blake Rieboldt

Representatives from Charter Spectrum were on-hand to present a donation to the Marquette Police Department's Police K9 Unit. Those present discussed the impacts of the good work being done by the City Police Department and highlighted the continuing partnership with Charter Spectrum.

Police Chief Blake Rieboldt then received a \$2,500 check from the company.

2. Public Art Commission, by Emily Lanctot

Emily Lanctot gave an update on the efforts of the City's Public Art Commission. Recent activities focused on signage and branding, including a planned rollout of Marquette Compass, an online art directory debuting in the coming months.

Projects - completed, in-process and planned - include Words to Live and Bike By, Queen City Courts, Creative Parks, Prismatica and the Cultural Trail and Indigenous Art.

Commissioners thanked Ms. Lanctot and praised some of the recent work, highlighting ways that public art can have broader beneficial impacts on a community.

Commissioner Stonehouse said that he hoped to soon see movement toward completing the cultural trail project, which is important.

3. Consent Agenda - Roll Call Vote

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

3.a. Approve the minutes of the November 29, 2021 regular Commission meeting

3.b. Approve the minutes of the November 29, 2021 Commission work session

3.c. Approve the total bills payable in the amount of \$651,870.77

3.d. Request for License to Use City Property Adjacent to 903 W. Ridge Street

3.e. Service Credit Purchase - Roll Call Vote

3.f. Technology Services Fee Schedule Adjustment

New Business

4. Protecting Democracy and Promoting Ballot Access Resolution - Roll Call Vote

Commissioner Sally Davis moved to Approve the Protecting Democracy and Promoting Ballot Access Resolution, seconded by Commissioner Jessica Hanley and Carried Unanimously by Roll Call Vote.

5. Public Works and Utilities Labor Agreement

Commissioner Fred Stonehouse moved to Approve the Public Works and Utilities Employees' Labor Agreement effective October 1, 2021 through September 30, 2024, and authorize the Mayor and City Clerk to sign the agreement, seconded by Mayor Pro Tem Cody Mayer and Carried Unanimously.

Public Comments - Comments may not exceed three minutes per person. Please

state your name and physical address when making public comments.

Darlene Allen thanked the Commission for approving the resolution, and for the positive comments.

Susan Holliday spoke about panhandlers, highlighting programs that she has seen in place in other cities, including Durham, North Carolina.

Comments from the Commission

Mayor Pro Tem Mayer said this had been a productive meeting, and he thanked everyone for attending.

Commissioner Hill said she is grateful to be able to have these public conversations and that she is looking forward to being involved in some major city planning discussions over the coming year.

Commissioner Stonehouse said this was a beneficial meeting and some good things had been accomplished.

Commissioner Bonsall reiterated his support for the voting resolution adopted tonight and thanked everyone for coming out. He discussed the challenge of snow removal, as well as issues with the current waste collection and recycling system. He said he doesn't understand why the issues still persist.

Commissioner Davis talked about the recent snowfall, which presented challenges for the public and for City staff handling the cleanup. She discussed plowing priorities.

Commissioner Hanley said this has been a good meeting, and she said she thought the Hemlock project, discussed in tonight's previous work session, was promising.

Mayor Smith reminded viewers that the Commission's next meeting (and the final meeting of the year) is on December 20, just one week from tonight.

Comments from the City Manager

City Manager Karen Kovacs explained that the City's glass recycling program would be changing as we move into 2022. Moving forward, glass recycling will be available via drop-off containers at the Waste Management transfer station and at the City's Municipal Service Center - there will no longer be curbside glass collection. Ms. Kovacs also gave a brief overview of how the City handles snowplowing decisions. In summary, the plow schedule is ultimately impacted by the timing and type of snowfall, as well as a need to clear main city thoroughfares prior to moving to less-traveled roads. Finally, she said that the City's Finance Department has new hours, and will no longer be open to walk-in traffic after 11:30 a.m. on Fridays.

Adjournment

Mayor Smith adjourned the meeting at 7:25 p.m.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

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City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda
Attorney Consulting Agreement

BACKGROUND:

The City Attorney's employment contract requires that Suzanne Larsen obtain the consent of the City Commission prior to performing work outside of her City employment. As Suzanne has been making the transition to the in-house City Attorney, her soon-to-be former law firm, Kendricks Bordeaux, et al., has asked that she provide limited consulting services to attorneys at the firm in non-municipal matters, outside of working hours for the City.

A copy of the proposed agreement is attached.

FISCAL EFFECT:

None by this action.

RECOMMENDATION:

Approve the City Attorney's request to provide limited consulting work for Kendricks Bordeaux, et al. during non-work hours pursuant to the attached agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Agreement

KENDRICKS BORDEAU

KEEFE SEAVOY & LARSEN, PC

ATTORNEYS AT LAW

KENNETH J. SEAVOY*
SUZANNE CURRY LARSEN
LAURA KATERS REILLY**
NELS A. CHRISTOPHERSON
BRANDON J. EVANS**

128 WEST SPRING STREET • MARQUETTE, MICHIGAN 49855
TELEPHONE (906) 226-2543 • FAX (906) 226-2819
www.kendricksllaw.com

ERICA N. PAYNE
PATRICIA E. DAVIS**‡
PATRICK C. GREELEY**
TAMI M. SEAVOY

Of Counsel
RONALD D. KEEFE
STEPHEN F. ADAMINI
WILLIAM R. SMITH
RONALD E. GREENLEE

HOUGHTON COUNTY OFFICE
CORNER OF QUINCY & RESERVATION
HANCOCK, MICHIGAN 49930
TELEPHONE (906) 482-4288

*Also Certified Public Accountant
**Also Licensed in Wisconsin

‡ Also Licensed in Minnesota

December 15, 2021

SCL Legal Consulting, PLLC
Suzanne C. Larsen

RE: Consulting Questions

Dear Mrs. Larsen:

We are pleased to memorialize the arrangement with SCL Legal Consulting, PLLC in connection with Medicaid planning, condominium developments, liquor license issues, and other various legal issues. We anticipate that you will offer advice to us with respect to questions concerning the foregoing issues. You will not (1) represent the client, (2) have any direct contact with our clients, or (3) have access to identifying information for our clients. All information provided to you will be of a general nature. No client names or identifying information will be provided. Your services will be that of an independent contractor. All work will be done outside of normal business hours and shall not interfere with your role as the city attorney for the City of Marquette.

The agreed upon rate for your services is \$150.00 per hour, with fractions of hours computed in periods of not less than one-quarter of an hour.

You can elect to bill us either monthly or upon completion of each consulting meeting. Payment for the fees and costs shall be paid within 30 days after receipt of said invoice.

Please signify your acceptance of the terms of this agreement by signing the enclosed extra copy of this letter and returning it to me. This agreement shall be effective on the latter of January 1, 2022, or upon approval by the Marquette City Commission. We appreciate your willingness to assist us. If you have questions or comments, please contact me.

Very truly yours,

KENDRICKS, BORDEAU, KEEFE,
SEAVOY & LARSEN, P.C.

Patricia E. Davis

Agreed and Accepted:
SCL Legal Consulting, PLLC

By: Suzanne C. Larsen
Its: Sole Member

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda **Equipment Replacement Lease - Switches**

BACKGROUND:

In 2016, the City entered into a lease agreement with CCA Financial for switches to be installed at the newly built Municipal Service Center. The lease included eight fiber ring and edge switches, two firewalls and a server management KVM switch. As equipment reaches the end of its life cycle, a new lease has been proposed to replace the fiber ring and edge switches and one firewall. The City received a quote from SHI International, a preferred vendor and partner in the National Intergovernmental Purchasing Alliance, for the necessary replacement equipment. The City will be using CCA Financial to lease the switches for five years (60 months), at a monthly cost of \$761, representing a total lease cost of \$45,660.

FISCAL EFFECT:

The cost of the switch replacement is included in the current budget. The 60-month switch lease will cost \$761 monthly and \$45,660 total.

RECOMMENDATION:

Authorize the City Manager or her designee to sign a multi-year lease agreement with CCA Financial for switch equipment in an amount not to exceed \$45,660.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ SHI Quote
- ▣ CCA Financial Lease Proposal



Pricing Proposal
Quotation #: 21361739
Created On: 12/9/2021
Valid Until: 12/31/2021

City of Marquette

Todd Carruth

M
United States
Phone: (906) 228-0418
Fax:
Email: tcarruth@marquettetemi.gov

Inside Account Executive

James Ernst

290 Davidson Ave,
Somerset, NJ 08873
Phone: 732-652-3056
Fax: 732-507-1538
Email: james_ernst@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 FortiGate-200F Hardware plus 3 Year 24x7 FortiCare and FortiGuard Unified Threat Protection (UTP) Fortinet - Part#: FG-200F-BDL-950-36	1	\$7,625.00	\$7,625.00
2 FortiGate-200F 1 Year FortiConverter Service for one time configuration conversion service Fortinet - Part#: FC-10-F200F-189-02-12	1	\$165.00	\$165.00
3 Catalyst 9200L 48-port PoE+, 4 x 10G, Network Essentials Cisco Systems - Part#: C9200L-48P-4X-E	4	\$2,582.00	\$10,328.00
4 SNTC-8X5XNBD Catalyst 9200L 48-port PoE+, 4 x 10G, Ne Cisco Systems - Part#: CON-SNT-C9200L4X	4	\$461.00	\$1,844.00
5 C9200L Cisco DNA Essentials, 48-port, 3 Year Term license Cisco Systems - Part#: C9200L-DNA-E-48-3Y	4	\$482.00	\$1,928.00
6 C9200L 48-p 12xmGig, 36x1G, 4x10G PoE+, Network Essentials Cisco Systems - Part#: C9200L-48PXG-4X-E	1	\$4,465.00	\$4,465.00
7 SNTC-8X5XNBD C9200L 48-p 12xmGig, 36x1G, 4x10G PoE+, Cisco Systems - Part#: CON-SNT-C20L94XG	1	\$658.00	\$658.00
8 C9200L Cisco DNA Essentials, 48-port, 3 Year Term license Cisco Systems - Part#: C9200L-DNA-E-48-3Y	1	\$482.00	\$482.00
9 Catalyst 9200L 24-port PoE+, 4 x 10G, Network Essentials Cisco Systems - Part#: C9200L-24P-4X-E	2	\$1,496.00	\$2,992.00
10 SNTC-8X5XNBD Catalyst 9200L 24-port PoE+, 4 x 10G, Ne Cisco Systems - Part#: CON-SNT-C920024X	2	\$267.00	\$534.00
11 C9200L Cisco DNA Essentials, 24-port, 3 Year Term license Cisco Systems - Part#: C9200L-DNA-E-24-3Y	2	\$263.00	\$526.00

12	Catalyst 9300 48-port PoE+, Network Essentials Cisco Systems - Part#: C9300-48P-E	1	\$4,344.00	\$4,344.00
13	SNTC-8X5XNBD Catalyst 9300 48-port PoE+, Network Esse Cisco Systems - Part#: CON-SNT-C93004PE	1	\$634.00	\$634.00
14	715W AC 80+ platinum Config 1 SecondaryPower Supply Cisco Systems - Part#: PWR-C1-715WAC-P/2	1	\$538.00	\$538.00
15	C9300 DNA Essentials, 48-port - 3 Year Term License Cisco Systems - Part#: C9300-DNA-E-48-3Y	1	\$482.00	\$482.00
16	Cisco Catalyst 9200L Stack Module Cisco Systems - Part#: C9200L-STACK-KIT=	4	\$565.00	\$2,260.00
			Total	\$39,805.00

Additional Comments

SHI SPIN: #143012572

SHI-GS SPIN (For Texas customers ONLY): #143028315

For E-rate SPI orders, applicant shall be responsible for payment of any outstanding or ineligible costs if USAC rejects reimbursement claim in whole or in part.

Please note, if Emergency Connectivity Funds (ECF) will be used to pay for all or part of this quote, please let us know as we will need to ensure compliance with the funding program.

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Thank you for choosing SHI International Corp! The pricing offered on this quote proposal is valid through the expiration date set above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order.

SHI International Corp. is 100% Minority Owned, Woman Owned Business.
TAX ID# 22-3009648; DUNS# 61-1429481; CCR# 61-243957G; CAGE 1HTF0

The Products offered under this proposal are resold in accordance with the [SHI Online Customer Resale Terms and Conditions](#), unless a separate resale agreement exists between SHI and the Customer.



Date: 12/13/21
To: Todd Carruth
From: Nick Hogan
Subject: Lease Proposal – Switch Refresh

Thank you for allowing CCA the opportunity to offer our leasing services to your company. CCA is committed to providing superior customer service and flexible lease options designed to meet your requirements. Based on the information that CCA has been provided for your transaction, we are proposing the following:

Lessee: City of Marquette, MI

Lessor: CCA Financial, LLC

Equipment Descriptions: SHI Quote #21361739

Equipment Cost: \$39,805

Lease Term & Rate: 60 months @ \$761/mo
Implicit Annual Interest Rate – 5.73%

Installation Period: Installation and Acceptance must be completed by June 2022. Prior to Acceptance, CCA shall have the right to withdraw this proposal at its sole and absolute discretion based on material adverse change in the financial position of Lessee.

Rent Commencement: Rent will begin upon the acceptance date and the lease term will start on the first day of the month following the acceptance date (the “Commencement Date”). The rent during this period is calculated as one-thirtieth of the monthly rental.

End of Lease Options: Options include returning the equipment, purchasing the equipment, or extending the lease. All buyout and extension pricing is based on fair market value.

Equipment Upgrades: CCA will permit mid-term equipment upgrades and rework lease terms to facilitate Lessee’s requirements under terms and conditions acceptable to both parties.

Customer Responsibilities: Lessee is responsible for all associated expenses such as transportation in/out, installation, deinstallation, insurance and all applicable taxes including personal property taxes and sales taxes.

Documentation: CCA standard documentation will be used and all terms of the Master Lease Agreement shall apply.

Proposal Expiration: This proposal expires at 5:00pm on 1/15/22.

Note: CCA Financial does not charge documentation fees.

Agreed to and Accepted by: Signature below constitutes your agreement to proceed with this proposal as stated.

Authorized Representative of City of Marquette, MI

Date: _____

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda **National Opioids Settlement**

BACKGROUND:

After years of negotiations, two proposed nationwide settlement agreements ("Settlements") have been reached that would resolve all opioid litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors, McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson (collectively, "Janssen").

The proposed Settlements require the Distributors and Janssen to pay billions of dollars to abate the opioid epidemic. Specifically, the Settlements require the Distributors to pay up to \$21 billion over 18 years and Janssen to pay up to \$5 billion over no more than 9 years, for a total of \$26 billion (the "Settlement Amount"). Of the Settlement Amount, approximately \$22.7 billion is earmarked for use by participating states and subdivisions to remediate and abate the impacts of the opioid crisis.

The Settlements also contain injunctive relief provisions governing the opioid marketing, sale and distribution practices at the heart of the states' and subdivisions' lawsuits and further require the Distributors to implement additional safeguards to prevent diversion of prescription opioids.

Each of the proposed Settlements has two key participation steps. First, each state decides whether to participate in the Settlements. Michigan has joined both settlements. Second, the subdivisions within each participating state must then decide whether to participate in the Settlements. Generally, the more subdivisions that participate, the greater the amount of funds that flow to that state and its participating subdivisions. Any subdivision that does not participate cannot directly share in any of the settlement funds, even if the subdivision's state is settling and other participating subdivisions are sharing in settlement funds.

In order to participate in the settlements, a municipality must "opt in" by January 2, 2022.

FISCAL EFFECT:

Funds will be allocated by the State of Michigan and the allocation will depend on the determined impact of opioids on the community.

RECOMMENDATION:

Authorize the City of Marquette to opt in to the National Opioids Settlement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda

Noquemanon Ski Marathon Trail Access Permit

BACKGROUND:

The Noquemanon Trail Network (NTN) Council is requesting the City Commission consider a permit to access City property for preparation and maintenance of a non-motorized recreational trail for the specific purpose of holding the Noquemanon Ski Marathon on January 22, 2022. Staff worked with the City Attorney and NTN to develop the proposed permit.

FISCAL EFFECT:

The NTN will reimburse the City for any damages to City property caused by the NTN's entry on the property for the purposes of the permit.

RECOMMENDATION:

Approve the request from the Noquemanon Trail Network Council, and authorize the Mayor and Clerk to sign the permit.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Permit
- ▣ Insurance

PERMIT

The City of Marquette (City), a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, MI 49855, and the Noquemanon Trails Network Council (NTN), a Michigan non-profit organization, of P.O. Box 864, Marquette, MI 49855, enter into this agreement on December _____, 2021, subject to the following conditions:

Background. The City grants permission to the NTN to access its properties, as shown on the attached Exhibit A, to prepare and maintain a non-motorized recreational trail subject to the following terms and conditions as outlined in this permit.

1. Grant of Permit. Permission is granted by the City to access the property for trail preparation and maintenance of a non-motorized recreational trail ONLY for the specific purpose of holding the Noquemanon Ski Marathon. The City makes no warranty as to the condition of the property. The NTN specifically agrees to assume all risks associated with the trail preparation and maintenance of a non-motorized recreational trail. This trail is for non-motorized recreational use only, to include residents of the City and other members of the public. The NTN will use signage and other aids as appropriate to help prevent unauthorized use. The NTN may use motorized equipment to perform trail grooming and maintenance, as needed. Access is granted only to the City property noted on the attached map.

Permission is granted to develop trails up to sixteen feet (16') in width as shown on the attached map. Any materials removed for the preparation of the trail, including timber, are to be left adjacent to the trail for habitat restoration in accordance with local ordinances and as directed by the City and NTN at their cost. Any merchantable timber removed, as determined by a City representative, will remain the possession of the City. The NTN is to leave the condition of the properties in the same or better condition as it was before entering the property for trail preparation and maintenance of a non-motorized recreational trail. There will be no interference by the NTN and/or the NTN's contractors or agents with any City operations on its property. It is further agreed that access by the City to its land shall be maintained at all times. The NTN agrees that there shall be no impairment of natural or installed drainage facilities occasioned by the aforementioned use of City property. The NTN must repair drainage aids and bridges or restore areas to their historic condition.

The permission herein granted shall expire at 11:59 p.m. on January 22, 2022. The City reserves the right to cancel and terminate this permit at any time. Upon written notice of such cancellation or termination, the NTN will immediately cease to use the property of the City.

2. Reimbursement of Damages. The NTN shall reimburse the City for any damages to the City's property caused by the NTN's entry on the property for the purpose of this license.
3. Liability. The NTN hereby releases, waives, discharges, and covenants not to sue the City, its departments, officers, employees, and agents from any and all liability to NTN, its officers, employees, and agents for all losses, injury, death or damage, and any claims or demands therefore, on account of injury to person or property, or resulting in death of

NTN's officers, employees, agents, guests, or participants whether caused by the City, its departments, officers, employees, or agents.

4. Indemnification. The NTN hereby covenants and agrees to indemnify and save harmless, the City, its departments, officers, employees, and agents from any and all claims and demands for all loss, injury, death or damage that any person or entity may have or make, in any manner, arising out of any occurrence related to (1) this permit; (2) the activities authorized by this permit; and (3) the use or occupancy of the property which are the subject of this permit, as well as any other City property. This indemnification and save harmless agreement shall extend to all loss, injury, death or damage proximately caused or arising out of the negligence of the City, its departments, officers, employees, and agents.

The NTN shall provide the City with a certificate of insurance naming the City as an additional insured with insurance coverage as noted below, stating that coverage afforded on their policies will not be canceled, limited or allowed to expire until after thirty (30) days written notice has been given to the City. The NTN shall maintain this coverage at all times during the performance of this agreement.

- Comprehensive General Liability including contractual coverage with limits of at least \$1,000,000 per occurrence, \$1,000,000 aggregate bodily injury and \$1,000,000 aggregate property damage, or \$1,000,000 Combined Single Limit.
- If applicable, Workers Compensation coverage according to statute, including employers liability coverage with \$1,000,000 limit per accident.
- If applicable, Comprehensive Automobile Liability coverage, including owned, hired and non-owned vehicles with limits of \$1,000,000 per person, \$1,000,000 per accident bodily injury and \$1,000,000 property damage, or \$1,000,000 Combined Single Limit.

Each sub-contractor, if any, shall be a named insured in the NTN's policies. The City shall be named an additional insured and loss payee on all NTN's insurance policies (except workmen's compensation insurance, in which the City will not be listed as additional insured or loss payees) and NTN's policies will be on an "occurrence" and not on a "claims made" basis. The NTN will file with the City, on or before the commencement of work and at least ten (10) days before the expiration date of expiring policies, such copies of either current policies or certificates or other proofs, as may reasonably be required to establish the NTN's insurance coverage in effect from time to time.

5. Compliance. The NTN shall, in the use and occupancy of City property, comply with all laws, ordinances, rules and regulations of the City and any other governmental bodies having jurisdiction over the operations of the NTN, or City business or occupation of City property.
6. Publicity. The NTN shall submit for review any publication referencing the City and the City's property as it pertains to the listed property. The NTN shall make all reasonable efforts to give favorable publicity to the City and its role in the listed trail as approved by the City.

7. Organized Events. The NTN will notify the City no less than sixty (60) days prior to the scheduled event date to confirm its route and schedule. These events are organized and administered by the NTN.

IN WITNESS WHEREOF, the parties to this Permit have signed the document as the day and year first written above.

Witnessed by:

CITY OF MARQUETTE

By: _____
Jennifer A. Smith, Mayor

By: _____
Kyle Whitney, City Clerk

APPROVED AS TO SUBSTANCE

APPROVED AS TO FORM

Karen M. Kovacs
City Manager

Suzanne C. Larsen
City Attorney

I have read this permit and instructions and agree to the terms and conditions as stated.

Witnessed by:

Noquemanon Trails Network Council

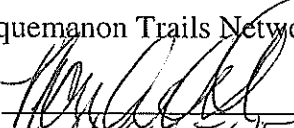
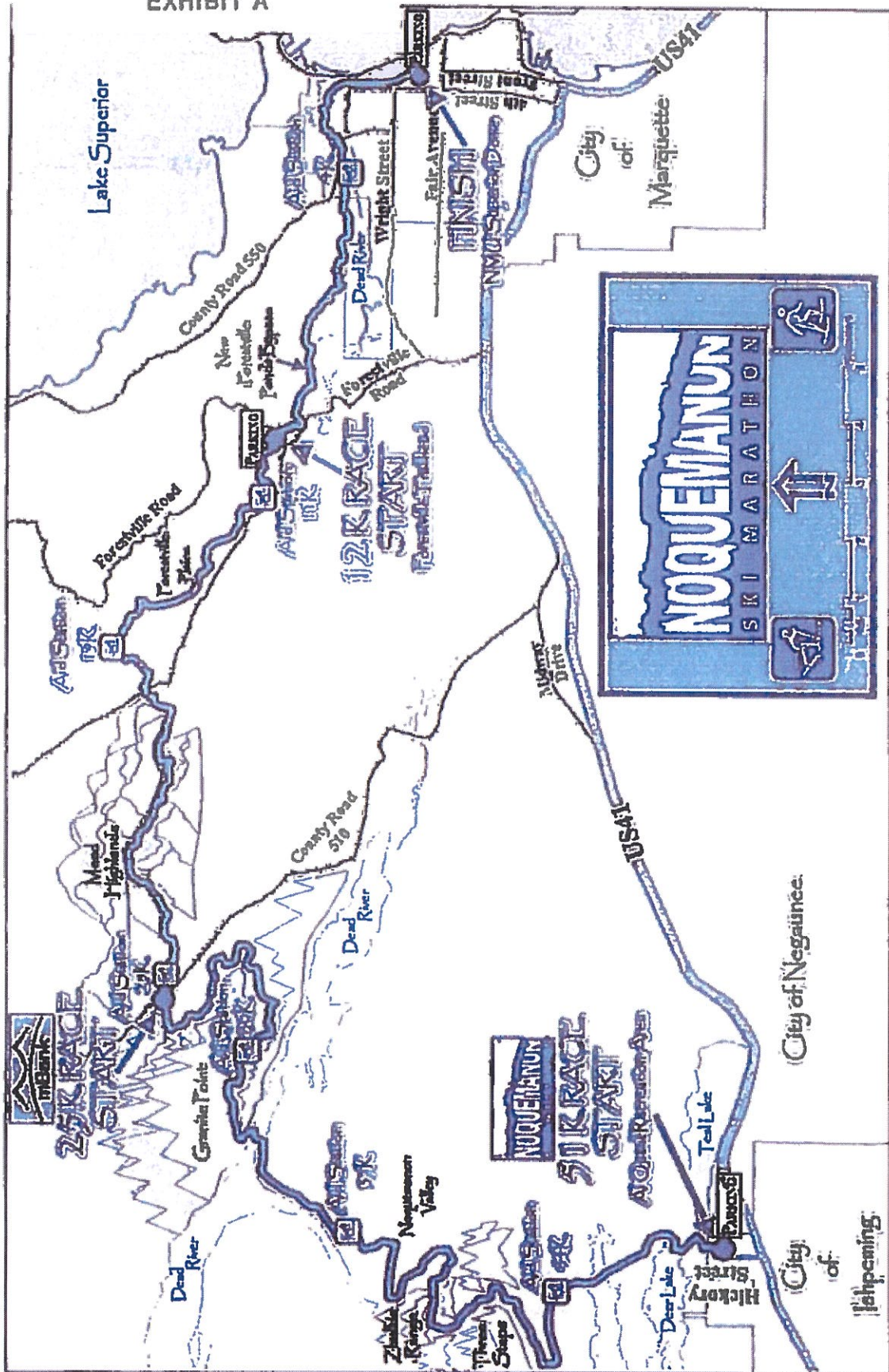
By: 
Name: NICOLE DEFURIA
Title: RISE COORDINATOR

EXHIBIT A





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/12/2021

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 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 Marsh & McLennan Agency LLC 15561 Railroad Street Suite 201 Hayward WI 54843		CONTACT NAME: Theresa Terry PHONE (A/C, No, Ext): E-MAIL: theresa.terry@MarshMMA.com ADDRESS:		
INSURED Noquemanon Trails Network Council PO Box 746 Marquette MI 49855		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Everest National Insurance Company		10120
		INSURER B :		
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

COVERAGES

CERTIFICATE NUMBER: 1585668323

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 ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:	Y		SI8GL01714211	11/1/2021	11/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
	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) \$ \$
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$			SI8EX01455211	11/1/2021	11/1/2022	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE ☐ OTH-ER ☐ E.I. EACH ACCIDENT \$ E.I. DISEASE - EA EMPLOYEE \$ E.I. DISEASE - POLICY LIMIT \$

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

The City of Marquette, its officers and employees are Additional Insured on a primary and non-contributory basis as required by written contract or agreement limited to the General Liability coverage.

CERTIFICATE HOLDER**CANCELLATION**

City of Marquette 300 W. Baraga Ave. 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 <i>Scott Chapin</i>

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City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda

Senior Services - Master Agreement to Purchase Services

BACKGROUND:

Presented for consideration is the Master Agreement to purchase services for senior service programs for older residents in the City of Marquette and Chocolay, Marquette, and Powell townships. Under this agreement, the County of Marquette agrees to expend millage funds to purchase senior services from the City.

In a given year, approximately half of the Marquette Senior Center revenue comes through similar agreements, under which municipalities purchase services from the Center. This agreement represents a significant part of the Senior Center's operational revenues.

It should be noted that the 2022 calendar year millage allocation is \$408,791. This represents an increase of \$8,016, or 2 percent, from the previous year's agreement. It should also be noted that the reimbursement will be paid in a lump sum to be allocated monthly.

FISCAL EFFECT:

The Community Services Senior Service fund will realize revenues of \$408,791.

RECOMMENDATION:

Approve the Master Agreement to Purchase Services for calendar year 2022, and authorize the Mayor and Clerk to sign the Agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Agreement

MASTER AGREEMENT TO PURCHASE SERVICES CALENDAR YEAR 2022

This Agreement is effective January 1, 2022 through December 31, 2022, by and between the **County of Marquette**, 234 W. Baraga Avenue, Marquette, Michigan 49855 (hereinafter referred to as the "County") and the **CITY OF MARQUETTE**, 300 W. Baraga Avenue, Marquette, Michigan 49855 (hereinafter referred to as the "Contractor").

WHEREAS, the County has allocated millage dollars to Senior Centers for the delivery of services to older residents of the County; and

WHEREAS, the County seeks to purchase services listed on the menu of millage priority services from the Contractor for elders residing within the City of Marquette, and the townships of Chocoley, Marquette and Powell;

NOW, THEREFORE, the parties agree as follows:

1. The Contractor will deliver service as need is determined, from the following menu of services:

Outreach
Case Coordination & Support
Homemaking
Financial Management
Chore
Information & Assistance
Health Promotion

2. The Contractor shall adhere to the service definitions, record keeping requirements and client eligibility guidelines for these services as defined in the Marquette County Services to Senior Citizens Millage Priority Services (**Attachment A**).
3. Recordkeeping and Reporting. Service reports will be provided to the Aging Services office on a quarterly basis. Service reports shall be due on the 10th day of the month following the reporting period. Technical assistance is available from the Aging Services office for all aspects of service provision, reporting, budgeting, etc.
 - a. Accounting. The Contractor shall adhere to Generally Accepted Accounting Principles and shall maintain records which allow, at a minimum, for the comparison of actual outlays with budgeted amounts. The Contractor'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.

- b. **Records Maintenance, Inspection, Examination, and Audit.** The County or its designee may audit Contractor to verify compliance with this Agreement. Contractor must retain and provide to the County or its designee upon request, all financial and accounting records related to the Agreement through the term of the Agreement and for 7 years after the latter of termination, expiration, or final payment under this Agreement or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.
 - c. Within 10 calendar days of providing notice, the County and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where services funded by this Agreement are being performed, and examine, copy, and audit all records related to this Agreement. Contractor must cooperate and provide reasonable assistance.
 - d. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Activities in connection with this Agreement.
4. Following receipt of the signed Agreement and proof of insurance, the County shall provide funds up to the amount stated:

ALLOCATION FOR SENIOR SERVICES

\$408,791.00

No match is required from the Contractor for this Agreement.

5. The Contractor will be paid a quarterly advance of funds prior to providing services.
6. The funds for Allocation Senior Services are to offset costs borne by the Contractor for providing services from the menu of priority services to seniors residing in the Townships of Forsyth, Ewing, Sands, Skandia, Turin, Wells, and West Branch.

- a. The allocation is divided into two components:

Priority Services – 70%	\$286,153.70
General Purpose Programming/Administration – 30%	\$122,637.30

- b. The Contractor shall expend at least 70% of this allocation for services from the menu of priority services based on an assessment of the client's needs.
- c. The Contractor may expend up to 30% of this allocation for general purpose programming and administration. On each report, the Contractor shall state how the money was expended including number of clients served and units of service provided when applicable.

7. Services are to benefit seniors residing within the City of Marquette, and the townships of Chocolay, Marquette and Powell. Providers will meet with representatives from their service areas as needed.
8. The annual allocation is the maximum reimbursement for services under this Agreement.
9. The Contractor will identify and account for funds received and expended under this Agreement through the use of separate program or activity account numbers. Service reports shall include the number of seniors served, the services provided, and the cost to provide the service. Reports shall also include the services provided by geographic location. Collaboration between millage funded service providers is encouraged to promote uniform service delivery and reporting.
10. Program income received as a result of providing priority services funded by this allocation may be used for general purpose programming by the Contractor. Services to a client are not related to or denied for lack of a confidential donation.
11. In the event that millage dollars to the County are reduced, withdrawn or terminated, the County may equally reduce, withdraw or terminate the contract upon seven days written notice to the Contractor. In the event that millage dollars are increased, the County may at its sole discretion allocate additional funds depending on the ability of the Contractor to provide additional services.
12. Any amendments to this Agreement must be reduced to writing and be signed by both parties with 30 days' notice. Marquette County may terminate this Agreement for any or no reason upon seven days written notice to the Contractor. The Contractor may appeal to the County Board.
13. Insurance: The Contractor will supply proof of and adhere to the provisions contained in the insurance addendum (**Attachment B**) which is incorporated in, and made part of, this Agreement as though fully set forth herein.
14. Indemnification: Each party to this agreement agrees to be responsible for the liabilities arising out of its own conduct and the conduct of its officers, agents and employees. Nothing in this agreement shall be constructed as, or is intended to serve as, a waiver of governmental immunity by either party.
15. No Joint Venture: Contractor shall serve as an independent contractor and no liability or benefits such as worker's compensation, pension rights, or other liabilities to one another's employees shall arise or accrue to either party or either party's agent, subcontractor or employee as a result of the performance of the Agreement. No relationship, other than that of independent contractor, shall be implied between the parties, or either party's agent, employee, or subcontractor.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

COUNTY OF MARQUETTE

By: Gerald O. Corkin
Gerald O. Corkin, Chairperson

Date: December 7, 2021

City of Marquette

By: _____
Jenna Smith, Mayor

By: _____
Kyle Whitney, Clerk

Date: _____

Attachments: 2

**MARQUETTE COUNTY
SERVICES TO SENIOR CITIZENS MILLAGE
PRIORITY SERVICES**

VISION STATEMENT

That all Marquette County seniors have access to services and volunteer opportunities to service which enhances and promotes the highest quality of life.

MISSION STATEMENT

It shall be the mission of Marquette County to use the Services to Senior Citizens Millage to secure and insure the independence and dignity of the county's older population. Said mission to be accomplished through the assessment of needs, resource development, centralized planning, advocacy, and assistance to local service providers in the development and support of necessary programs. The County Aging Services department shall act as a focal point for the provision of information and training on programs and issues related to older adults.

OVERSIGHT/ACCOUNTABILITY/REPORTING REQUIREMENTS

Marquette County is responsible for the oversight and proper use of millage dollars. Millage-funded services are to be provided to seniors throughout Marquette County. Programs receiving millage dollars will be required to report the number of seniors citizens served, the services provided, the areas served and the amount of millage dollars spent on approved services.

ELIGIBILITY

Services shall be provided only to persons 60 years of age and older who reside in Marquette County.

- Substantial emphasis must be given to serving eligible persons with greatest social and/or economic need with particular attention to low-income minority individuals. "Substantial emphasis" is regarded as an effort to serve a greater percentage of older persons with economic and/or social needs than their relative percentage to the total elderly population within the geographic service area.
- Participants shall not be denied or limited services because of their income or financial resources. Where program resources are insufficient to meet the demand for services, each service program shall establish and utilize written procedures for prioritizing clients waiting to receive services, based on social, functional and economic needs.

INDICATING FACTORS

- Social Need – isolation, living alone, age 75 or over, minority group member, non-English speaking, etc.
- Functional Need – handicaps (as defined by the Rehabilitation Act of 1973 or the

Americans with Disabilities Act), limitations in activities of daily living, mental or physical inability to perform specific tasks, acute and/or chronic health conditions, etc.

- **Economic Need** - eligibility for income assistance programs, self-declared income at or below 125% of the poverty threshold, etc.

PRIORITY SERVICES

- **Outreach** - Efforts to identify and contact isolated older persons and/or older persons in greatest social and economic need, who may have service needs, and assisting them in gaining access to appropriate services. Outreach does not include comprehensive assessment of need, development of service plan, or arranging for service provision.
- **Case Coordination & Support** - The provision of a comprehensive assessment of persons aged 60 and over with a complementing role of brokering existing community services and enhancing informal support systems when feasible. Case Coordination and Support (CCS) includes the assessment and reassessment of individual needs, development and monitoring of a service plan, identification of and communication with appropriate community agencies to arrange for services, evaluation of the effectiveness and benefit of services provided, and assignment of a single individual as the caseworker for each client.
- **Homemaking** - Performance of routine household tasks to maintain an adequate living environment for older individuals with functional limitations. Homemaking does not include provision of chore or personal care tasks. Allowable homemaking tasks are limited to one or more of the following:
 - Laundry
 - Ironing
 - Meal Preparation
 - Shopping for Necessities
 - Light Housekeeping Tasks
- **Home Delivered Meals** - Also known as "Meals on Wheels", assists homebound seniors throughout Marquette County in meeting their nutritional needs. "Meals on Wheels" does more than provide hot meals. The meal deliverer also provides an important service by checking on the welfare of the person.
- **Financial Management** - This service assists older persons to expand, conserve or make better use of their personal financial resources. This assistance is to be delivered on a one-to-one basis between the service provider and the individual and may include assistance with such items as budgeting, state tax credit preparation, income tax preparation, bill paying, and general financial planning.

Assisting Seniors with preparing and filing tax credit forms, reviewing and submitting insurance forms/claims, completing applications for assistance programs

such as Medicaid, food stamps, etc.

- **Chore** - Non-continuous household maintenance tasks intended to increase the safety of the individual(s) living at the residence. Allowable tasks are limited to the following:
 - Replacing fuses, light bulbs, electrical plugs, and frayed cords
 - Replacing door locks and window catches
 - Replacing/repairing pipes
 - Replacing faucet washers or faucets
 - Installing safety equipment
 - Installing screens and storm windows
 - Installing weather stripping around doors
 - Caulking windows
 - Repairing furniture
 - Installing window shades and curtain rods
 - Cleaning appliances
 - Cleaning and securing carpets and rugs
 - Washing walls and windows, scrubbing floors
 - Cleaning attics and basements to remove fire and health hazards
 - Pest control
 - Grass cutting leaf raking
 - Clearing walkways of ice, snow and leaves
 - Trimming overhanging tree branches
- **Information and Assistance** - Assistance to individuals in finding and working with appropriate human service providers that can meet their needs which may include: information giving (e.g., listing the providers of a particular service category so an individual may make their own contact directly); group presentations; referral (making contact with a particular provider on behalf of an individual); advocacy intervention (negotiating with a service provider on behalf of a client); and, follow-up contacts with clients to ensure services have been provided and have met the respective service need.
- **Transportation** – The RSVP Medical Transportation Program provides frail and/or isolated seniors living in Marquette County with a ride to their non emergency medical appointments. Occasionally this may also include a stop at the pharmacy to pick up needed prescriptions.
- **Health Promotion** - May include some or all of the following: provision of information concerning diagnosis, prevention, treatment, and rehabilitation of age-related disease and chronic disabling conditions; education programs on the availability, benefits and appropriate use of preventive health services; routine health screenings; programs related to prevention and reduction of effects of chronic disabling conditions; reduction of alcohol and substance abuse; smoking cessation; weight loss and control and stress management; nutritional counseling; programs regarding physical fitness and exercise; and recreational activities.

ATTACHMENT B

INSURANCE ADDENDUM LIABILITY INSURANCE

The Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, volunteers, or subcontractors.

INSURANCE REQUIREMENTS

The insurance coverage required shall be at least as broad as:

1. Commercial General Liability ("occurrence" form).
2. Automobile Liability, "any auto".
3. Workers' Compensation insurance as required by the laws of the state of Michigan and Employer's Liability insurance.

LIMITS OF INSURANCE

The Contractor shall maintain limits on said policy of no less than:

1. General Liability: \$1,000,000 combined single limit per accident for bodily injury, personal injury, and property damage.
2. Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage.
3. Worker's Compensation and Employer's Liability: Shall be those limits as required by the Worker's Disability Compensation Act for the state of Michigan and Employer's Liability limits of \$500,000 per occurrence.

DEDUCTIBLES

Any deductibles or self-insured retentions must be declared to and approved by Marquette County.

OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage:
The County of Marquette ("County"), its officers, agents, employees, elected and appointed officials, and volunteers shall be covered as additional insured's as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officers, agents, employees, elected and appointed officials, and volunteers.

The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, agents, employees, elected and appointed officials, and volunteers. Any insurance or self-insurance maintained by the County, its officers, agents, employees, elected and appointed officials, and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officers, agents, employees, elected and appointed officials, and volunteers.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

Contractor hereby releases the County from any claim for recovery for any loss or damage, which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance. It is further agreed that this waiver shall apply only when permitted by the applicable policy of insurance.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to Marquette County.

ACCEPTABILITY OF INSURERS

Unless otherwise approved by the County, the Michigan Insurance Bureau must identify insurers as authorized and eligible. In addition, insurance is to be placed with insurers with a Best's rating of A or better.

CERTIFICATES/ENDORSEMENTS OF INSURANCE

Contractor shall furnish the County with certificates of insurance and with any and all original endorsements affecting coverage required by the contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies, at any time.

Contractor shall include all subcontractors as insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

A copy of said certificates and endorsements should be forwarded with a signed copy of the Master Agreement to the Marquette County Aging Services office.

ACCEPTANCE OF CERTIFICATE

Acceptance of any certificate(s) and/or endorsement(s) of insurance by the County do not waive the insurance requirements provided in the foregoing paragraphs. Should the County sustain any loss or be required to pay any claim as a result of the Contractor's failure to obtain or maintain insurance as is required by this contract, the Contractor shall be responsible for any such loss, regardless of whether or not Marquette County has accepted any certificate(s) and/or endorsement(s) of insurance provided by the Contractor or its carrier.

ADDITIONAL INSURED ENDORSEMENT

It is understood and agreed that the County shall be Additional Insured's, which shall include all elected and appointed officials, all employees, agents and volunteers, all boards, commissions, and/or authorities and their board members, employees, and volunteers. This coverage shall be primary to the Additional Insured's, and not contributing with any other insurance or similar protection available to the Additional Insured's, whether said other available coverage be primary, contributing or excess.

11/30/21

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda **Water Filtration Membrane Purchase**

BACKGROUND:

The Marquette Water Filtration Plant utilizes membrane technology to meet safe drinking water regulatory requirements. All 720 membranes were last changed in 2015 and have a life expectancy of seven years. The price per membrane in 2015 was \$1,050. The membranes are in the 2023 City Capital Improvement Plan and are scheduled to be replaced in the fall of 2022 or the spring of 2023.

The membranes being replaced are proprietary, with only one manufacturer able to provide the membranes. During discussions with the manufacture, they offered us 2021 pricing of \$900 per membrane if we commit to buying them before January 2022. After January, the price is expected to increase 10%. Approving the purchase now rather than in October will potentially save the City \$64,800. Ordering the membranes early also reduces shipping costs by \$19,000. The membranes would be shipped in the summer and installed in the fall of 2022. The price quote includes the membranes, seal kits, shipping, and a manufacturer service tech on site to guide staff with the changeout.

FISCAL EFFECT:

This purchase will require a budget amendment.

RECOMMENDATION:

For the reasons stated above, determine that there is no advantage to competitive bidding and authorize the City to enter into an agreement with Filmtec Corporation in an amount not to exceed \$692,420 for the purchase and installation of replacement membranes.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Quote
- ▣ Warranty
- ▣ Professional Services Contract

FILMTEC CORPORATION 5400 DEWEY HILL RD EDINA MN 55439-2085 UNITED STATES FilmTec Corporation	Document Date 12/15/2021	Order Number 41158910
	Customer P.O. number GEC-10-29-21-1	10/29/2021

STANDARD CONDITIONS OF SALE

1. Seller warrants only that (a) any products or services provided hereunder meet Seller's standard specifications for the same or such other specifications as may have been expressly agreed to herein; (b) the sale of any products or services provided hereunder will not infringe the claims of any validly issued United States patent covering such product or service itself, but does not warrant against infringement by reason of (i) the use of any information provided, (ii) the use of any product or service in combination with other products, services, or information or in the operation of any process, or (iii) the compliance by Seller with any specifications provided to Seller by Buyer; and (c) all products provided hereunder were produced in compliance with the requirements of the Fair Labor standards Act of 1938, as amended. WITH RESPECT TO ANY PRODUCTS, SERVICES, OR INFORMATION PROVIDED TO BUYER, SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY. Buyer assumes all risk and liability resulting from use of the products, services, or information delivered hereunder, whether used singly or in combination with other products, services, or information.
2. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY TO BUYER FOR ALL DAMAGES ARISING FROM ANY AND ALL CLAIMS RELATED TO THE BREACH OF THIS AGREEMENT, NONDELIVERY, OR THE PROVISION OF ANY PRODUCT, SERVICE, OR INFORMATION COVERED BY THIS AGREEMENT, REGARDLESS OF WHETHER THE FORM OF ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID BY BUYER TO SELLER FOR THE PRODUCTS, SERVICES, OR INFORMATION IN RESPECT OF WHICH DAMAGES ARE CLAIMED. NO CLAIM SHALL BE ALLOWED FOR PRODUCT THAT HAS BEEN PROCESSED IN ANY MANNER. FAILURE TO GIVE NOTICE OF A CLAIM WITHIN NINETY (90) DAYS FROM DATE OF DELIVERY, OR THE DATE FIXED FOR DELIVERY (IN CASE OF NONDELIVERY) SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS IN RESPECT OF SUCH PRODUCTS, SERVICES, OR INFORMATION. PRODUCTS SHALL NOT BE RETURNED TO SELLER WITHOUT SELLER'S PRIOR WRITTEN PERMISSION. NO CHARGE OR EXPENSE INCIDENT TO ANY CLAIMS WILL BE ALLOWED UNLESS APPROVED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. IN ADDITION, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ANY CLAIM TO INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROVISION OF ANY PRODUCT, SERVICE, OR INFORMATION, TO THE EXTENT PERMITTED BY APPLICABLE LAW. THE PARTIES WAIVE AND AGREE NOT TO ASSERT NON-CONTRACTUAL CLAIMS ARISING UNDER STATE LAW RELATING TO THIS AGREEMENT OR THE PROVISION OF ANY PRODUCT, SERVICE, OR INFORMATION COVERED BY THIS AGREEMENT, AND THIS AGREEMENT SHALL BE DEEMED TO INCLUDE SUCH LANGUAGE AS MAY BE REQUIRED TO EFFECT SUCH WAIVER. WAIVER BY EITHER PARTY OF ANY DEFAULT BY THE OTHER HEREUNDER SHALL NOT BE DEEMED A WAIVER BY SUCH PARTY OF ANY DEFAULT BY THE OTHER WHICH MAY THEREAFTER OCCUR.
3. No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the party affected, including, but not limited to, act of God, fire, explosion, flood, war, act of or authorized by any Government, accident, labor trouble or shortage, pandemic, inability to obtain material, equipment or transportation, failure to obtain or hardship in obtaining reasonably priced supplies of materials, or failure of usual transportation mode. Quantities so affected may be eliminated from the agreement without liability, but the agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of the product specified herein to enable it to perform this Agreement.
4. If for any reason including but not limited to Force Majeure Seller is unable to supply the total demand for products specified herein, Seller may distribute its available supply among any or all purchasers, as well as departments and divisions of Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.
5. Seller may furnish such technical assistance and information as it has available with respect to the use of the products or services covered by this agreement. Unless otherwise agreed in writing, all such information will be provided gratis. Buyer agrees to evaluate such information, to make an independent decision regarding the suitability of such information, products and services for Buyer's application, and only use such products, services and information pursuant to then current good product stewardship principles and all regulatory requirements applicable to Buyer's business.
6. Buyer acknowledges that it has received and is familiar with Seller's labeling and literature concerning the products and its properties. Buyer will forward such information to its employees, contractors and customers who may distribute, handle, process, sell or use such products, and advise such parties to familiarize themselves with such information. Buyer agrees that products sold hereunder will not knowingly be resold or given in sample form to persons using or proposing to use the products for purposes contrary to recommendations given by Seller or prohibited by law, but will be sold or given as samples only to persons who can handle, use and dispose of the products safely. Unless agreed to by Seller in a written agreement covering such use, in no event shall Buyer use products or resell products for use in the manufacture of any implanted medical device. Buyer agrees that export of any product, service or information provided hereunder shall be in accordance with applicable Export Administration Regulations.
7. Except as may be contained in a separate trademark license, the sale of product (even if accompanied by documents using a trademark or trade name of Seller) does not convey a license, express or implied, to use any trademark or trade name of Seller, and Buyer shall not use any trademark or trade name of Seller in the conduct of its business without Seller's prior written consent.
8. The Buyer shall reimburse the Seller for all taxes, (excluding income taxes) excises or other charges which the Seller may be required to pay to any Government (National, State or Local) upon the sale, production or transportation of the products, services, or information sold hereunder.
9. In the event Buyer fails to fulfill Seller's terms of payment, or in case Seller shall have any doubt any time as to Buyer's financial responsibility, Seller may decline to make further deliveries except upon receipt of cash or satisfactory security.
10. This agreement is not assignable or transferable by Buyer, in whole or in part, except with the prior written consent of Seller. Seller reserves the right to sell, assign, or otherwise transfer its right to receive payment under this agreement.
11. Dispute Resolution and Arbitration - Buyer and Seller agree to arbitrate all disputes, claims or controversies whether based on contract, tort, statute, or any other legal or equitable theory, arising out of or relating to (a) this Agreement or the relationship which results from this Agreement, (b) the breach, termination or validity of this Agreement, (c) the purchase or supply of any product, service, or information provided by Seller, (d) events leading up to the formation of Buyer's and Seller's relationship, and (e) any issue related to the creation of this Agreement or its scope, including the scope and validity of this paragraph. The parties shall before and as a condition to proceeding to arbitration attempt in good faith to resolve any such claim or controversy by mediation under the International Institute for Conflict Prevention & Resolution ("CPR") Mediation Procedure then currently in effect. Unless the parties agree otherwise, the mediator will be selected from the CPR Panels of Distinguished Neutrals. Any such claim or controversy which remains unresolved 60 days after the appointment of a mediator or 60 days after good faith efforts by either party to proceed to mediation shall be finally resolved by binding arbitration in accordance with the CPR Rules for Non-Administered Arbitration then currently in effect by three independent and impartial arbitrators, none of whom shall be appointed by either party. This Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of any state laws inconsistent therewith. Such arbitration shall be conducted in a city to be chosen by the arbitrators which is not the principal place of business of either party, and the arbitrators and the parties shall conduct such arbitration in accordance with such procedures as may be necessary to permit use of the then current CPR Arbitration Appeal Procedure. Any judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. In the event that either party wishes to appeal an award, the parties shall follow the then current CPR Arbitration Appeal Procedure. Buyer and Seller agree not to file or join any class action or class arbitration, seek or consent to class relief, or seek or consent to the consolidation or joinder of its claims with those of any third party. If any clause within this Arbitration Provision (other than the agreement regarding the conduct of the arbitration in the preceding sentence) is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of the Arbitration Provision will be given full force and effect. If such agreement regarding the conduct of the arbitration is found to be illegal or unenforceable and if the arbitrators permit a class arbitration or consolidated or joined matter to proceed, this entire Arbitration Provision will be unenforceable, and the dispute may be decided by a court. The obligations set forth in this paragraph shall survive the termination or expiration of this Agreement.
12. In addition to these Standard Conditions of Sale, any Special Conditions of Sale set forth on this invoice or in the current price list for the products or services sold hereunder shall apply and are incorporated by reference. Unless otherwise specified therein, title, liability for and risk of loss to Product sold hereunder passes to Buyer upon loading for shipment at Seller's producing location.
13. This Agreement shall be construed and governed by Delaware law, without regard to any applicable conflicts of law provisions, and the terms of the UCC, rather than the United Nations Convention on Contracts for the International Sale of Goods, shall apply.
14. Except as expressly provided in any other term or condition of this Agreement, any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
15. As part of the sale of goods hereunder, Seller may collect, use and disclose Personal Information about Buyer including company name, address, banking and credit information as well as name, phone number, email address and other contact details of natural persons within Buyer's organization and Buyer's contractors. Seller may share Personal Information with its affiliates and selected third parties around the world in order to complete the sale of goods, as described in Seller's privacy statement. <https://www.dupont.com/privacy.html>
16. This Agreement supersedes all prior agreements, representations and understandings between the parties (whether written or oral) with respect to its subject matter and constitutes (along with the exhibits and schedules attached hereto) a complete and exclusive statement of the terms of the agreement between the parties with respect to the provision of products or services hereunder. Not by way of limitation of the unqualified nature of the foregoing, Buyer acknowledges, agrees and represents that it is not relying upon, and it has not been induced by, any representation, warranty, statement made by, or other information provided by Seller in connection with its decision to purchase or use any product, service, information or technology, other than the representations and warranties Seller as and only to the extent expressly provided in this Agreement. No modification of this Agreement shall be binding upon Seller unless separately contracted in writing and executed by a duly authorized representative of Seller. No modification shall be effected by the acknowledgment or acceptance of purchase order forms stipulating different conditions. Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt of this invoice by Buyer, Buyer shall be deemed to have accepted the terms and conditions hereof and, in the absence of such notification, Buyer's acceptance or use of the products, services, information or technology shall be equivalent to Buyer's assent to the terms and conditions hereof.

Ver. 3/5/07



STANDARD TERMS AND CONDITIONS

1. Applicable Terms. These terms govern the purchase and sale of equipment, products, related services, leased products, and media goods if any (collectively herein "Work"), referred to in Seller's proposal ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is expressly conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.

2. Payment. Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs and penalties arising out of same. All payments are due within 30 days after receipt of invoice. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted.

3. Delivery. Delivery of the Work shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are Ex Works Seller's factory (Incoterms 2010). Title to all Work shall pass upon receipt of payment for the Work under the respective invoice. Unless otherwise agreed to in writing by Seller, shipping dates are approximate only and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customer if Seller fails to meet the specified delivery schedule.

4. Ownership of Materials and Licenses. All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the Work. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer grants Seller a non-exclusive, non-transferable license to use Buyer's name and logo for marketing purposes, including but not limited to, press releases, marketing and promotional materials, and web site content.

5. Changes. Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance.

6. Force Majeure Event. Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall have the right to terminate the Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed prior to the date of termination. "Force Majeure Event" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Seller or its sub-suppliers, natural catastrophes or (with respect to on-site work), unusual weather conditions.

7. Warranty. Subject to the following sentence, Seller warrants to Buyer that the (i) Work shall materially conform to the description in Seller's Documentation and shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Buyer shall be the sole and exclusive responsibility of Buyer. The foregoing warranty shall not apply to any Work that is specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. The Seller warrants the Work, or any components thereof, through the earlier of (i) eighteen (18) months from delivery of the Work or (ii) twelve (12) months from initial operation of the Work or ninety (90) days from the performance of services (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Seller, (i) Buyer shall be responsible for any labor required to gain access to the Work so that Seller can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Work. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. Seller's warranty is conditioned on Buyer's (a) operating and maintaining the Work in accordance with Seller's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Seller) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media)



once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. Indemnity. Seller shall indemnify, defend and hold Buyer harmless from any claim, cause of action or liability incurred by Buyer as a result of third-party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.

9. Assignment. Neither party may assign this Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Seller's business and Seller may grant a security interest in the Agreement and/or assign proceeds of the agreement without Buyer's consent.

10. Termination. Either party may terminate this agreement, upon issuance of a written notice of breach and a thirty (30) day cure period, for a material breach (including but not limited to, filing of bankruptcy, or failure to fulfill the material obligations of this agreement). If Buyer suspends an order without a change order for ninety (90) or more days, Seller may thereafter terminate this Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.

11. Dispute Resolution. Seller and Buyer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to this Agreement or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Pittsburgh, Pennsylvania before three arbitrators who are lawyers experienced in the discipline that is the subject of the dispute and shall be jointly selected by Seller and Buyer. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Arbitrators shall issue a reasoned decision of a majority of the arbitrators, which shall be the decision of the panel. Judgment may be entered upon the arbitrators' decision in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrators shall be reimbursed by the other party for all costs, expenses and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration. For any order shipped outside of the United States, any dispute shall be referred to and finally determined by the International Center for Dispute Resolution in accordance with the provisions of its International Arbitration Rules, enforceable under the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the governing language shall be English.

12. Export Compliance. Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Work provided under this Agreement, including any export license requirements. Buyer agrees that such Work shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

13. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

14. Rental Equipment / Services. Any leased or rented equipment ("Leased Equipment") provided by Seller shall at all times be the property of Seller with the exception of certain miscellaneous installation materials purchased by the Buyer, and no right or property interest is transferred to the Buyer, except the right to use any such Leased Equipment as provided herein. Buyer agrees that it shall not pledge, lend, or create a security interest in, part with possession of, or relocate the Leased Equipment. Buyer shall be responsible to maintain the Leased Equipment in good and efficient working order. At the end of the initial term specified in the order, the terms shall automatically renew for the identical period unless canceled in writing by Buyer or Seller not sooner than three (3) months nor later than one (1) month from termination of the initial order or any renewal terms. Upon any renewal, Seller shall have the right to



issue notice of increased pricing which shall be effective for any renewed terms unless Buyer objects in writing within fifteen (15) days of issuance of said notice. If Buyer timely cancels service in writing prior to the end of the initial or any renewal term this shall not relieve Buyer of its obligations under the order for the monthly rental service charge which shall continue to be due and owing. Upon the expiration or termination of this Agreement, Buyer shall promptly make any Leased Equipment available to Seller for removal. Buyer hereby agrees that it shall grant Seller access to the Leased Equipment location and shall permit Seller to take possession of and remove the Leased Equipment without resort to legal process and hereby releases Seller from any claim or right of action for trespass or damages caused by reason of such entry and removal.

15. Miscellaneous. These terms, together with any Contract Documents issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "#Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. To the extent the Agreement is considered a subcontract under Buyer's prime contract with an agency of the United States government, in case of Federal Acquisition Regulations (FARs) flow down terms, Seller will be in compliance with Section 44.403 of the FAR relating to commercial items and those additional clauses as specifically listed in 52.244-6, Subcontracts for Commercial Items (OCT 2014). If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions. Both Buyer and Seller reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.



Extended Low Pressure Membrane Module Warranty

1. Term of the Low Pressure Membrane Module Warranty
 - a. This Warranty shall commence ("Commencement Date") on the earlier of:
 - i) wet startup of the equipment, or
 - ii) 6 months after the delivery of the final low pressure membrane skid/rack to the Buyer.
 - b. This Warranty shall continue for a period of 5 years from the Commencement Date (the "Module Warranty Period").
2. Repair and Replacement Conditions
 - a. In the event an individual low pressure membrane module exhibits defects in material or workmanship, as defined in Paragraph 2.b. below, the Seller shall, at its sole option and as the Buyer's sole remedy, conduct either of the following:
 - i) Repair the low pressure membrane module at no cost to Buyer; or
 - ii) Provide replacement low pressure membrane modules per the warranty replacement schedule listed in Paragraph 5 below.
 - b. Low pressure membrane modules shall be deemed to be exhibiting defects in material or workmanship under the following conditions:
 - i) If the low pressure membrane module fails Seller's standard integrity test and cannot be repaired by the Buyer; or
 - ii) If a low pressure membrane module fails Seller's standard integrity test and requires pin repair by Buyer on more than three occasions in any three month period or more than six occasions in any twelve month period after commencement of the Module Warranty Period, it may be repaired or replaced by Seller under the terms of low pressure membrane module warranty.
 - c. Buyer will return to Seller the end of each low pressure membrane module with the serial number to qualify for a replacement module.
3. Low Pressure Membrane Module Warranty Exclusions: The Buyer recognizes that damage resulting from any of the following shall be excluded from coverage under the low pressure membrane module warranty:
 - a. Alteration or faulty installation of membrane system equipment, components or low pressure membrane modules by any person other than an employee or representative of Seller without the Seller's prior written consent.
 - b. Buyer causing or permitting any low pressure membrane modules to dry or to have a moisture content below that specified in the operating instructions.
 - c. Chemical or physical conditions such as (but not limited to) pH, temperature or climatic factors outside recommended operating parameters in the appropriate section of the Operating and Maintenance Manual even where Seller is aware of the existence of these conditions.
 - d. Supply of influent water exhibiting parameters inconsistent with the parameters determined or specified at the time of bid and/or pilot testing. Deviance from any specified influent parameters may diminish or, in certain cases, void this warranty.
 - e. Exposure of the low pressure membrane modules to oil, organic solvents and other substances not normally present in water. In particular, waste water from oil filters and/or compressors shall not



be permitted to come in contact with the low pressure membrane modules at any time.

- f. Permanent or temporary exposure of the low pressure membrane modules to sand, grit or other particulate that may result in fiber damage or abrasion.
 - g. Improper maintenance of the equipment (including failure to perform general pinning maintenance) as defined in Seller supplied Operating and Maintenance Manual.
 - h. Use of water treatment chemicals or cleaning procedures other than chemicals, cleaning solutions and procedures approved by the Seller.
 - i. Use of cationic polymer in the Buyer's water treatment process without the prior written consent of Seller.
4. Warranty Conditions: This warranty is conditioned upon Buyer:
- a. Not being in default of any payment obligations to Seller; and
 - b. Maintaining hand-written or electronic operational logs and providing such logs to Seller in the event of a warranty claim.
5. Warranty Replacement Schedule
- a. **First 12 Months:** If a low pressure membrane module shall require replacement under the repair and replacement conditions described in section 2 above during the first twelve (12) months of the "Module Warranty Period", a replacement will be supplied by Seller at no charge.
 - b. **Next 48 Months:** If a low pressure membrane module shall require replacement under the repair and replacement conditions described in section 2 above during the next forty eight (48) months of the Module Warranty Period, a replacement will be supplied by Seller and invoiced based upon a pro-rata value of a total of sixty (60) months. The pro-rata value shall be determined using a replacement price of US\$1,000.00 per module adjusted by the increase in the North American Consumer Price Index (CPI) All Urban Consumers (US City Average), and reducing this price by 1/60th for each month remaining in the 60-month period.
 - c. Replacement modules supplied by the Seller to Buyer under warranty shall assume the balance of the low pressure membrane module warranty that remained on the defective low pressure membrane module that was replaced under warranty.
 - d. Freight costs associated with the furnishing of replacement modules provided under the low pressure membrane module warranty is not included in the warranty replacement price. Accordingly, the shipping/delivery terms for replacement modules supplied under the low pressure membrane module warranty shall be "Ex Works Seller's Facility" and Seller shall arrange, and Buyer shall pay for, transportation of replacement membrane modules to Buyer's facility.
6. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER DAMAGES AND SELLER'S TOTAL LIABILITY UNDER THIS EXTENDED LOW PRESSURE MEMBRANE MODULE WARRANTY, WHEN ADDED TO ALL LIABILITY OF SELLER TO THE BUYER AND ANY END USER OF THE SYSTEM, IF DIFFERENT FROM THE BUYER, UNDER THE SYSTEM SALE CONTRACT, SHALL NOT EXCEED THE LIMITATION ON LIABILITY SET FORTH IN THE SYSTEM SALE CONTRACT. THE FOREGOING LIMITATIONS APPLY REGARDLESS OF WHETHER THE LIABILITIES OR DAMAGES ARISE OR ARE ALLEGED TO ARISE UNDER CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT, made this 20th day December, 2021, between the City of Marquette, hereinafter called the “City” and FilmTec Corporation., a Delaware Corporation of 974 Centre Rd., Wilmington, DE, hereinafter called “Contractor”.

In consideration of the terms and conditions contained in this Agreement, the parties agree as follows:

1. PROJECT NAME:

The name of the Project shall be Water Filtration Membrane Purchase.

2. SCOPE OF WORK:

Provide and ship the membranes, seal kits, and two weeks of on-site service support detailed in the Contractor’s proposal dated December 15, 2021. Except to the extent provided herein, the terms and conditions, including warranties, will be governed by those included in the proposal. If there is a conflict between the proposal and this Agreement, the terms of this Agreement shall control.

3. TIME:

Contractor shall perform all work as specified in Paragraph 2 between September 15, 2022 and October 30, 2022.

4. ACCESS TO SITE:

City will arrange and provide access to the site upon which it will be necessary for Contractor to perform its. In the event work is required on any site not owned by the City, City represents and warrants to Contractor that City has obtained all necessary permission and authority, in writing, for Contractor to enter upon the site and conduct its work. City shall, upon request, provide Contractor 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 Contractor, which Contractor also agrees to abide by. Any work performed by Contractor with respect to obtaining permission to enter upon and do work on the lands of others, as well as any work performed by Contractor pursuant to this Agreement, shall be deemed as being done on behalf of City. Contractor 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.

5. FEE:

The fee for services shall not exceed the sum of \$692,420.00.

6. BILLINGS/PAYMENTS:

Contractor shall invoice for services rendered and shall be due and payable within forty-five (45) days of the date of the invoice. Invoices over forty-five (45) days past due may be charged interest on the unpaid balance at the highest lawful rate as allowed under Michigan Law.

Contractor may, after ten (10) days' written notice to the City, suspend performance of services until all past due amounts are paid.

7. INDEPENDENT CONTRACTOR:

The relationship between the City and Contractor 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 Contractor authorized representative.

8. TERMINATION OF SERVICES:

This Agreement may be terminated by the City or Contractor should the other fail to perform its obligations hereunder. In the event the Agreement is terminated by Contractor for the failure of the City to perform its obligations, the City shall pay Contractor for services rendered to the date of termination. Notwithstanding anything else contained herein, the City may terminate this Agreement without cause upon providing six (6) months written notice to Contractor.

9. 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 Contractor shall survive the completion of services and the termination of this Agreement. No waiver, discharge, or renunciation of any claim or right of Contractor arising out of breach of this Agreement by City shall be effective unless in writing signed by Contractor and supported by separate consideration.

10. APPLICABLE LAWS:

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

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

FILMTEC CORPORATION

CITY OF MARQUETTE

Matthew Dee

Matthew Dee, Customer Care Manager

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

APPROVED AS TO FORM:

Suzanne C. Larsen, City Attorney

APPROVED AS TO SUBSTANCE:

Karen M. Kovacs, City Manager

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

Consent Agenda

WE Energies Ash Haul Road Relocation Agreement

BACKGROUND:

WE Energies is looking to relocate an access roadway across an easement granted by the Marquette Board of Light and Power and license previously granted by the City Commission in the area around the Presque Isle Power Plant property.

Staff has reviewed the proposed relocation and finds no conflicts.

WE Energies prepared the attached Consent Agreement, which was reviewed by the City Attorney. It is now being presented for consideration.

FISCAL EFFECT:

None.

RECOMMENDATION:

Approve the Consent Agreement as presented, and direct the execution of the document.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ Consent Agreement

CONSENT AGREEMENT

Document Number

Document Title

THIS CONSENT AGREEMENT (this "Agreement") is made this ____ day of _____, 2022, by and among Wisconsin Electric Power Company, a Wisconsin corporation doing business as We Energies, 231 West Michigan Street, Milwaukee, WI 53203 (hereinafter "We Energies"), the City of Marquette, Michigan, a Michigan municipal corporation, of 300 W. Baraga Ave., Marquette, Michigan 49855 (the "City"), the Board of Light and Power of the City of Marquette, a duly authorized agency of a Michigan municipal corporation, of 2200 Wrights Street, Marquette, Michigan 49855 ("MBLP"), and American Transmission Company LLC, a Wisconsin limited liability company, N16 W23217 Stone Ridge Drive, Waukesha, WI 53187 (hereinafter "ATC"). Each of We Energies, the City, MBLP and ATC are sometimes herein referred to as a "Party" and collectively as the "Parties".

WHEREAS, pursuant to a License Agreement dated October 30, 1967 (the "License"), the City granted a license to Upper Peninsula Generating Company ("GENCO") to occupy and use a 20' right-of-way across certain real property in the City of Marquette, Michigan, as was further described in the License (the "License Property") and

WHEREAS, pursuant to an Easement dated November 4, 1983, and recorded with the Marquette County, Michigan Register of Deeds on November 20, 1983 in Liber 110, at Pages 759-766 (the "1983 Easement"), MBLP granted an easement to GENCO to maintain a roadway over certain real property in the City of Marquette, Michigan, as was further described in the 1983 Easement (the "Easement Property"); and

WHEREAS, pursuant to a Limited Warranty Assignment of Ash Haul Road Easement and License dated December 28, 1987, and recorded with the Marquette County, Michigan Register of Deeds on December 31, 1987 in Liber 122, of Miscellaneous Records, at Pages 260-274 (the "1987 Assignment"), GENCO assigned all of its right, title and interest in and to the License and the Easement to We Energies; and

WHEREAS, pursuant to a Construction Road Agreement dated December 28, 1987, recorded with the Marquette County, Michigan Register of Deeds on December 31, 1987 in Liber 122, of Miscellaneous Records, at Pages 287-303 (the "Construction Road Agreement"), We Energies granted non-exclusive rights to use portions of the License Property and Easement Property to Marquette Range Coal Service Company ("MRCSC"); and

Recording Area

Name and Return Address

Wisconsin Electric Power Company
231 West Michigan Street
Milwaukee, WI 53202
Attn: Manager of Property Management

See Exhibit A attached hereto

Parcel Identification Number (PIN)

WHEREAS, pursuant to a Grant of Substation, Transmission Line and Access Easements dated as of January 1, 2001, and recorded with the Marquette County, Michigan Register of Deeds on January 17, 2001 in Liber 165, of Miscellaneous Records, at Pages 251-270 (the "2001 Easement"), We Energies granted to ATC: (i) a substation easement over the "Substation Easement Area" (as defined in the 2001 Easement and as described on Exhibit A attached hereto), (ii) an access easement over the "Access Easement Area" (as defined in the 2001 Easement), and (iii) certain other easement rights; and

WHEREAS, Section 7 of the 2001 Easement provides a mechanism for We Energies to relocate the Access Easement Area from time to time; and

WHEREAS, We Energies now wishes to relocate the Access Easement Area under the 2001 Easement to coincide with the Easement Property and the License Property, as is further described on Exhibit B attached hereto and is referred to herein as the "New Access Easement Area"; and

WHEREAS, the Parties now wish to confirm that the New Access Easement Area will also provide access to the property further described on Exhibit C attached hereto that is owned by We Energies and is referred to herein as the "Power Plant Property"; and

WHEREAS, subject to the terms and conditions of this Agreement, the City and MBLP each hereby consents to the relocation of the Access Easement Area to the New Access Easement Area and to the other matters set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. Relocation of Access Easement Area to New Access Easement Area. Pursuant to Section 7 of the 2001 Easement, We Energies hereby relocates the Access Easement Area to the New Access Easement Area, and ATC hereby consents to such relocation.

2. Consent of the City and MBLP. The City and MBLP each hereby consents to the relocation of the Access Easement Area to the New Access Easement Area, and ratifies and consents to the transactions pertaining to the License Property and Easement Property described in the recitals set forth above. Accordingly: (i) We Energies is the licensee under the License over the License Property; (ii) We Energies is the grantee of the 1983 Easement over the Easement Property; (iii) the License and the Easement provide We Energies with a right of access over the License Property and the Easement Property for the benefit of We Energies and the Power Plant Property; (iv) MRCSC holds a non-exclusive right of access over the License Property and Easement Property under the Construction Road Agreement; and (v) ATC holds a non-exclusive easement for access to the Substation Easement Area over the New Access Easement Area under the 2001 Easement (as modified by this Agreement).

3. Modification of License. The License is hereby modified to provide that notwithstanding anything to the contrary contained in the License, the New Access Easement Area shall constitute the "premises" under the License, and such premises may be occupied and used by We Energies and ATC, and the agents, contractors and designees of each of them, for pedestrian and vehicular ingress to and egress from the Power Plant Property and the Substation

Easement Area (i.e., without any requirement to use the premises for the transportation of fly ash from the Power Plant Property to a disposal site).

4. No Other Modifications to Existing Agreements. Except as is expressly set forth herein, none of the covenants, terms or conditions of the License Agreement, 1983 Easement, 1987 Assignment, Construction Road Agreement or 2001 Easement is amended, modified or affected in any way by this Agreement, and such agreements and instruments remain unmodified and in full force and effect.

5. Binding Effect. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns, and it shall run with the land and burden and benefit (as applicable) the License Property, Easement Property, the Substation Easement Area and the Power Plant Property.

6. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Michigan.

7. Amendment. This Agreement may not be changed except by a written document executed and acknowledged by the Parties hereto (or their successors or assigns, as applicable).

8. Severability. If any term, covenant, or condition of this Agreement or the application thereof to any Party or circumstance shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

9. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one original instrument.

NOTE: This Agreement is exempt from real estate taxation pursuant to MCL 207.505(a) and MCL 207.526(a) because there is no separate consideration for this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date and year first above written.

[Signatures appear on the following pages.]

WISCONSIN ELECTRIC POWER COMPANY

By: WEC Business Services LLC, its Affiliate and
Agent

By: _____
Tonya M. Peters
Manager of Property Management

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 2020, the above-named
Tonya M. Peters, to me known to be the Manager of Property Management of Wisconsin
Electric Power Company, who executed the foregoing instrument by its authority and on its
behalf and acknowledged the same.

Print Name: _____
Notary Public, State of Wisconsin
My Commission: _____

CITY OF MARQUETTE, MICHIGAN

By: _____

Print name: Jennifer A. Smith

Title: Mayor

By: _____

Print name: Kyle Whitney

Title: Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF MARQUETTE)

Personally came before me this ____ day of _____, 2021, the above-named Jennifer A. Smith, and Kyle Whitney, to me known to be the Mayor and Clerk of the City of Marquette, Michigan, a Michigan municipal corporation, who executed the foregoing instrument by its authority and on its behalf and acknowledged the same.

Print Name: _____

Notary Public, State of Michigan

My Commission: _____

Approved as to Content:

Approved as to Form:

Karen M. Kovacs, City Manager

Suzanne C. Larsen, City Attorney

**MARQUETTE BOARD OF LIGHT AND
POWER**

By: _____
Print name: _____
Title: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF _____)

Personally came before me this ____ day of _____, 2020, the above-named _____, to me known to be the _____ of the Marquette Board of Light and Power, who executed the foregoing instrument by its authority and on its behalf and acknowledged the same.

Print Name: _____
Notary Public, State of Michigan
My Commission: _____

EXHIBIT A

SUBSTATION EASEMENT AREA

NEW ACCESS EASEMENT AREA

ACCESS EASEMENT - EXHIBIT B

PART OF GOVERNMENT LOTS 7 AND 8 OF SECTION 2, PART OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 10, AND PART OF GOVERNMENT LOT 4 OF SECTION 11, CITY OF MARQUETTE, PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 3, MARQUETTE TOWNSHIP, T48N-R25W, MARQUETTE COUNTY, MICHIGAN

LS&I RR CO.

AMERICAN TRANSMISSION COMPANY

MARQUETTE BOARD OF LIGHT & POWER

DEAD RIVER SUBSTATION

COUNTY ROAD 550 (VAR.)

EXISTING PAVED ROADS

POB

NORTH LINE, SECTION 10

SOUTH LINE, SECTION 3

MATCH LINE - SEE SHEET 3 OF 5

MATCH LINE - SEE SHEET 3 OF 5

LENGTH=314.48'
RADIUS=2295.41'
DELTA=7°51'00"
CHORD=N57°31'43"E
314.24'

LENGTH=262.14'
RADIUS=2294.39'
DELTA=6°32'46"
CHORD=N50°19'28"E
261.99'

N48°12'38"W
378.54'

LENGTH=342.58'
RADIUS=315.33'
DELTA=61°39'35"
CHORD=N17°22'49"W
326.28'

N13°27'06"E
548.39'

N81°13'54"E
257.37'

N64°33'32"E
348.39'

N70°59'01"E
292.57'

N21°51'29"E
380.58'

LENGTH=294.99'
RADIUS=249.36'
DELTA=67°46'52"
CHORD=N47°20'30"E
278.09'

N89°14'42"W, 2059.50'

2117.86'

551.63'

N00°45'48"E, 2669.23'

EAST 1/4 CORNER
SECTION 10, T48N-R25W
R1, P131

NORTHEAST CORNER
SECTION 10, T48N-R25W
R1, P132

0 300
1" = 300'

CENTERLINE OF
VARIABLE WIDTH
ACCESS ROAD
EASEMENT

EXHIBIT C

DESCRIPTION OF POWER PLANT PROPERTY

POWER PLANT PROPERTY

Parcel "A" of Power Plant - Revised 2013:

A parcel of land being a part of Government Lots 6, 7 and 8, Section 2 and part of Government Lot 4, Section 11, Town 48 North, Range 25 West, City of Marquette, Marquette County, Michigan, described as: Commencing at the Southwest corner of Section 2; thence North 00 degrees 04 minutes 52 seconds East 669.87 feet along the West line of Section 2 to the Northerly Bank of the Dead River which is the point of beginning; thence continuing North 00 degrees 04 minutes 52 seconds East 398.83 feet along the West Section line, thence North 71 degrees 37 minutes 53 seconds East, 485.29 feet; thence South 02 degrees 02 minutes 31 seconds West, 139.99 feet; thence South 38 degrees 04 minutes 41 seconds East, 547.76 feet; thence North 85 degrees 43 minutes 01 seconds East, 990.15 feet; thence North 88 degrees 38 minutes 56 seconds East, 268.27 feet; thence South 77 degrees 46 minutes 53 seconds East, 227.54 feet; thence South 87 degrees 54 minutes 17 seconds East, 363.86 feet; thence North 37 degrees 38 minutes 55 seconds East, 510.18 feet; thence South 87 degrees 58 minutes 15 seconds East, 415.02 feet; thence South 22 degrees 57 minutes 46 seconds East, 446.25 feet; thence North 58 degrees 49 minutes 18 seconds East, 406.74 feet to a curve on the Westerly right of way line of Lakeshore Boulevard; thence 353.10 feet along the Westerly right of way line of Lakeshore Boulevard to a concrete monument on a curve to the left having a radius of 2235.12 feet and a chord bearing South 38 degrees 03 minutes 35 seconds West, 352.72 feet; thence South 30 degrees 18 minutes 59 seconds West, 220.84 feet along the Westerly right of way line to a concrete monument; thence South 30 degrees 41 minutes 59 seconds West, 83.50 feet along the Westerly right of way line to a concrete monument; thence South 30 degrees 54 minutes 44 seconds West, 390.42 feet along the Westerly right of way line; thence North 62 degrees 26 minutes 11 seconds West, 10.00 feet along the Westerly right of way line; thence South 27 degrees 33 minutes 49 seconds West, 100.00 feet along the Westerly right of way line to a curve; thence 212.81 feet along the Westerly right of way line on a curve to the left having a radius of 619.06 feet and a chord bearing South 17 degrees 42 minutes 56 seconds West, 211.76 feet; thence South 07 degrees 52 minutes 03 seconds West, 279.31 feet along the Westerly right of way line to a traverse line on the Northerly Bank of the Dead River; thence North 58 degrees 33 minutes 24 seconds West, 126.14 feet along the traverse line to the Southeast corner of the sheet piling cap; thence North 14 degrees 18 minutes 34 seconds West, 31.75 feet along the Southerly line of the sheet piling cap; thence South 89 degrees 21 minutes 42 seconds West, 56.17 feet along the Southerly line of the sheet piling cap; thence North 46 degrees 28 minutes 38 seconds West, 4.50 feet along the Southerly line of the sheet piling cap to the Southerly line of the original binwall; thence South 89 degrees 21 minutes 42 seconds West, 89.08 feet along the Southerly line of the original binwall to the Southerly line of the sheet piling cap; thence South 10 degrees 26 minutes 28 seconds West, 3.19 feet along Southerly line of the sheet piling cap; thence South 89 degrees 21 minutes 42 seconds West, 679.80 feet along the Southerly line of the sheet piling cap; thence South 01 degrees 24 minutes 49 seconds East, 1.55 feet along the Southerly line of the sheet piling cap; thence South 89 degrees 21 minutes 42 seconds West, 64.42 feet along the Southerly line of the sheet piling cap to the Southwest corner of the sheet piling cap; thence North 01 degrees 04 minutes 36 seconds West, 84.74 feet along the Westerly line of the sheet piling cap; thence North 89 degrees 13 minutes 34 seconds East, 2.00 feet along the Westerly line of the sheet piling cap; thence North 00 degrees 36 minutes 33 seconds West, 189.06 feet along the Westerly line of the sheet piling cap; thence South 88 degrees 58 minutes 45 seconds East, 2.38 feet along the westerly line of the sheet piling cap to the original traverse line; thence North 00 degrees 31 minutes 41 seconds West, 141.77 feet along the original traverse line; thence North 26 degrees 05 minutes 03 seconds East, 81.52 feet along the traverse line; thence North 05 degrees 33 minutes 38 seconds West, 233.15 feet along the traverse line; thence North 71 degrees 09 minutes 29 seconds West, 248.40 feet along the traverse line; thence North 60 degrees 10 minutes 13 seconds West, 301.50 feet along the traverse line; thence North 85 degrees 52 minutes 29 seconds West, 217.81 feet along the traverse line; thence South 78 degrees 33 minutes 15 seconds West, 184.12 feet along the traverse line; thence South 62 degrees 12 minutes 08 seconds West, 102.65 feet along the traverse line; thence South 50 degrees 35 minutes 19 seconds West, 205.01 feet along the traverse line; thence North 56 degrees 23 minutes 20 seconds West, 317.56 feet along the traverse line; thence North 42 degrees 42 minutes 39 seconds West, 86.05 feet along the traverse line; thence North 27 degrees 36 minutes 00 seconds West, 316.23 feet along the traverse line; thence South 88 degrees 23 minutes 15 seconds West, 188.19 feet along the traverse line; thence South 52 degrees 48 minutes 33 seconds West, 174.92 feet along the traverse line to the point of beginning.

Parcel 30 - Maintenance Building:

A parcel of land being part of Government Lot 7, Section 2, Town 48 North, Range 25 West, City of Marquette, Marquette County, Michigan, described as: Commencing at the Southwest corner of Section 2; thence North 00 degrees 04 minutes 52 seconds East, 1068.70 feet along the West line of Section 2; thence North 71 degrees 37 minutes 53 seconds East, 485.29 feet; thence South 02 degrees 02 minutes 31 seconds West, 139.99 feet; thence South 38 degrees 04 minutes 41 seconds East, 547.76 feet; thence North 85 degrees 43 minutes 01 seconds East, 990.15 feet; thence North 88 degrees 38 minutes 56 seconds East, 187.18 feet to the Point of Beginning; thence North 12 degrees 13 minutes 07 seconds East, 109.07 feet; thence South 77 degrees 46 minutes 53 seconds East, 165.00 feet; thence South 12 degrees 13 minutes 07 seconds West, 90.00 feet; thence North 77 degrees 46 minutes 53 seconds West, 68.18 feet; thence South 88 degrees 38 minutes 56 seconds West 81.10 feet to the Point of Beginning.

NOTE: BEARINGS BASED UPON THE MICHIGAN STATE PLANE COORDINATE SYSTEM NAD 83/94, NORTH ZONE.



TRIMEDIA
ENVIRONMENTAL & ENGINEERING

WE Energies
Presque Isle Power Plant
231 West Michigan Street, A252
Milwaukee, WI 53203

PROJECT:	2019-004	CHKD:	SOK
DGN:	SJB	APPD:	SOK
DWN:	SJB	DATE:	08/22/2019

Power Plant Property

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

New Business

Climate Action Resolution - Roll Call Vote

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

▣ Resolution



Resolution Climate Action

WHEREAS, in April 2016 world leaders from 175 countries, including the United States, recognized the threat of climate change and the urgent need to combat it by signing the Paris Agreement, agreeing to "pursue efforts to limit the global temperature increase to 1.5 degrees Celsius"; and,

WHEREAS, a transition to a clean energy economy, if not carefully planned, would have a disruptive impact on the livelihoods of many in our community while a well-planned transition may provide expanded job opportunities for local residents; and,

WHEREAS, Lake Superior's surface temperature has risen 3°C in the past four decades, three times faster than the global freshwater average, resulting in 79% decreased ice coverage and therefore less protection from recent powerful storms which have damaged Marquette infrastructure, caused private property damage, increased cost of living for residents, and raised public infrastructure maintenance costs; and,

WHEREAS, the City has adopted a climate adaptation plan as an appendix to the Community Master Plan to identify and prioritize climate concerns; and,

WHEREAS, the City has undertaken significant efforts to increase energy efficiency and reduce carbon impact through the Johnson Controls International (JCI) energy optimization project and has already reduced carbon output 36% annually from 8073 to 5176 metric tons of CO₂ as a result of the project; and,

WHEREAS, coal-fired electricity generation accounted for 40% of global CO₂ emissions in 2020 and the Marquette Board of Light and Power (MBLP) decommissioned the coal-fired Shiras Steam Plant in 2018 and WE Energies decommissioned the coal-fired Presque Isle Power Plant in 2019, significantly reducing the carbon output within the City of Marquette; and,

WHEREAS, the MBLP replaced the Shiras Steam Plant with the Marquette Energy Center consisting of three efficient 17 megawatt Wartsila reciprocating internal combustion natural gas engines that adhere to the Tier II NO_x emission standards as set by the International Maritime Organization, a United Nations agency; and,

NOW, THEREFORE, be it resolved that the City of Marquette declares that a climate emergency threatens our city, region, state, nation, humanity and the natural world; and

- that the City of Marquette commits to a citywide effort to eliminate the City's greenhouse gas emissions by 2050, and to implement additional projects to decrease carbon levels in the atmosphere; and,
- that the City of Marquette, through its ongoing partnership with JCI, will continue to seek energy saving programs and measures that reduce energy usage and resulting carbon emissions; and,
- that the upcoming Master Plan process will include an update to the current climate adaptation plan; and,
- that the City of Marquette will begin work on a Climate Action Work Plan that identifies targeted strategies for decreasing greenhouse gas emissions (climate mitigation) and for becoming more resilient in preparation for a changing climate (climate adaptation), for both city government operations and in the wider community; and,
- that the City of Marquette will seek available state, federal, philanthropic, and private funding for the above efforts; and,
- that the City of Marquette calls upon the residents and business within the City, the State of Michigan, the United States Congress, the President of the United States, and all governments and people worldwide to join us and declare a climate emergency, initiate a climate mobilization to reverse global warming and the ecological crisis, and provide maximum protection for all people and species of the world.

Dated this 20th day of December, 2021.

Jennifer A. Smith
Mayor

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 12/20/2021

New Business

Local Development Agreement - MDM Hemlock, L.L.C.

BACKGROUND:

The City Commission sold Parcel 12 of the Heartwood Forestland in late 2018 to Veridea Group as part of a land sale process intended to sell surplus property and foster economic development.

In the interest of developing middle income housing in Marquette, Veridea has consulted with InnovalaB Development Group and created a venture (MDM Hemlock, L.L.C.) to develop such housing on the site.

In order to facilitate the cost structure needed to provide a middle income project, they initially had discussed the option of utilizing an Act 381 Brownfield Plan to provide reimbursement for the eligible costs. The Community Development Director presented the idea of a Local Development Agreement, similar to the previous one done for the Harbor Vista development, as a means to direct the tax capture to the City to cover what would be eligible costs in a Brownfield Plan, thus reducing the loss of tax capture.

The result is the draft Local Development Agreement being presented here, wherein the City would be responsible for the up-front costs of the mutually agreeable infrastructure items found in Exhibit B of the Agreement, at a cost to the City of an estimated \$1.8 million. In return, MDM Hemlock, L.L.C. agrees to a three-phase development of middle income housing with an initial investment of \$5 million. The City return on investment for supporting the infrastructure up front is approximately 10 years.

In addition, the completion of this project will permit the City to complete the infrastructure preparation needed to facilitate the future extension of utilities needed at the Marquette Ski Hill.

FISCAL EFFECT:

This project was not included in the FY 2022 Budget however, with the pending removal of the College Avenue reconstruction from the 2022 Capital Improvement Plan due to the potential construction at the former hospital site, there will be an equivalent amount of funds available. This will require a budget adjustment.

RECOMMENDATION:

Approve the Local Development Agreement as presented, direct the Mayor and City Clerk to sign the Agreement, and amend the budget and Capital Improvement Plan to reflect the inclusion of this project in FY 2022.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Draft Local Development Agreement

AGREEMENT FOR DEVELOPMENT

This Agreement for Development (the “Agreement”) is entered into by and between MDM Hemlock, L.L.C., a Michigan limited liability company (“MDM Hemlock”), whose mailing address is 857 W. Washington Street, Suite 301, Marquette, Michigan 49855, and the City of Marquette, Michigan, a Municipal Corporation (“City”), whose mailing address is 300 West Baraga Avenue, Marquette, Michigan 49855, effective as of the later of the dates set forth after the Parties’ signatures below. MDM Hemlock and City are referred to herein, collectively, as the “Parties.”

RECITALS

WHEREAS, MDM Hemlock intends to construct a multi-phased residential development on certain real property located at 3102 S. McClellan Ave., 3120 S. McClellan Ave., 3131 S. McClellan Ave., 3140 S. McClellan Ave., 3151 S. McClellan Ave., 3161 S. McClellan Ave., and 3170 S. McClellan Ave., City of Marquette, County of Marquette, Michigan (collectively, “Heartwood Forest Property,” as generally outlined on Exhibit A); and

WHEREAS, the City finds that development of the Heartwood Forest Property will benefit the community by building up to 70 units of middle income housing, raising property values in the surrounding area, and creating a new taxable development (the “Project”); and

WHEREAS, MDM Hemlock intends to develop the Project in three phases, with the minimum investment into Phase 1 being \$5,000,000 and expects to make similar investments in subsequent stages; and

WHEREAS, in consideration of the development by MDM Hemlock, the City is willing to install the necessary public infrastructure to the Heartwood Forest Property or the Project up to the maximum cost of \$2,000,000.00; and

WHEREAS, it is agreed by the Parties that the City will install the necessary public infrastructure congruent with the development timeline as defined by MDM Hemlock, therefore phasing the investment made by the City.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are restated and incorporated herein by this reference.
2. Installation of Public Infrastructure. The City, at its sole expense, shall install all public roads, curbs, street lighting, electricity, sidewalks, water, sewer, stormwater, to and within the Heartwood Forest Property up to a maximum cost of \$2,000,000.00. Any additional needed or desired public infrastructure shall be installed by MDM Hemlock, at its sole expense. Attached within Exhibit B are scopes of work for each public infrastructure component to be installed by the City. The specific locations of all public infrastructure shall be mutually determined by the parties in conjunction with the development of the final site plan for the Project. Attached in Exhibit A is a preliminary site plan of the Project.
3. Development of Heartwood Forest Property. MDM Hemlock agrees to develop the Project as a multi-phased residential development with the first phase of the Project commencing no later than

180 days following satisfaction of both the following conditions: (1) receipt of written notice from the City stating that the improvements described at paragraph 2 above are complete and (2) receipt of approval of all necessary permits. MDM Hemlock agrees to expend minimum of \$5 million on Phase 1 of the Project no later than 30 months after the Project is commenced.

4. Force Majeure. In discharging its duties as set forth in this Agreement, MDM Hemlock shall be held to a standard of reasonableness and shall not be liable to City for matters outside its control, including, without limitation, labor disputes, civil commotion, war, riots, fires, floods, earthquakes, inclement weather, governmental regulations or controls, pandemics, epidemics, local disease outbreaks, public health emergencies, quarantines, casualty, strikes, the unavailability of labor or materials to the extent beyond the control of the party affected, embargoes, civil strife, acts of terrorism, or acts of God, in addition to any and all other events, regardless of their dissimilarity to the foregoing, deemed to render performance of the Agreement impracticable or impossible under the law, in which event the non-performing party shall be excused from its obligations for the period of the delay.
5. Payment of Taxes. MDM Hemlock agrees to pay all real property and other taxes due and owing by MDM Hemlock with respect to the Heartwood Forest Property, as and when the same become due. MDM Hemlock recognizes and agrees that its failure to pay said taxes is an Event of Default and breach of this Agreement.
6. Event of Default. An Event of Default shall consist of any misrepresentation by either party or the failure of either party to comply with any term or conditions of this Agreement.
7. Remedies. Upon any Event of Default, the non-defaulting party shall be entitled to seek all remedies available at law or inequity. In the event a lawsuit is required by the non-defaulting party to enforce its remedies against the defaulting party, the non-defaulting party, if prevailing, shall be entitled to recover its costs and attorney's fees.
8. Assignment. Except as provided in this paragraph, no party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior consent of all other parties hereto. Consent may be given or withheld in the sole and absolute discretion of the party from whom consent is sought. Notwithstanding the foregoing, the parties agree that MDM Hemlock may assign any and all rights and obligations of this Agreement to an entity in which Robert E. Mahaney and/or Mary D. Mahaney and any trust in their name has a majority ownership and controlling interest.
9. Notices. All written notices, certificates or communications required by this Agreement to be given shall be sufficiently given and shall be deemed delivered when personally served or when mailed postage prepaid and addressed to the other party at the address listed in this Agreement, or any other address as provided in writing.
10. Amendment. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by both parties.

11. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of Michigan.
12. Permits and Approvals. MDM Hemlock shall be responsible for obtaining, at its sole cost and expenses, all easements, rights-of-way, licenses, permits, approvals and any other permissions necessary for the construction of the Project. Except as to the public infrastructure specified herein, MDM Hemlock, at its sole cost and expense shall be responsible for the development and construction of the Project. The City at its sole cost and expense shall be responsible for installation and completion of all public infrastructure as described in paragraph 2 of this Agreement as well as any other obligations imposed upon the City as provided herein.
13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
14. Counterparts, Facsimile/Electronic Copies and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic signatures, which shall be deemed original signatures. The parties further agree that facsimiles and/or emailed/electronic copies of signatures (such as .pdf) shall serve as originals.
15. Entire Agreement. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transaction contemplated herein, and all prior or contemporaneous negotiations, communications, conversations and understandings of the Parties, written or oral, are merged into this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth after their signatures below.

MDM Hemlock, L.L.C.

Robert E. Mahaney, Manager

Date

City of Marquette, Michigan

Jennifer A. Smith, Mayor

Date

Kyle Whitney, City Clerk

Date

Approved as to Substance:

Karen M. Kovacs, City Manager

Date

Approved as to Form:

Suzanne C. Larsen, City Attorney

Date

PRELIMINARY SITE PLAN

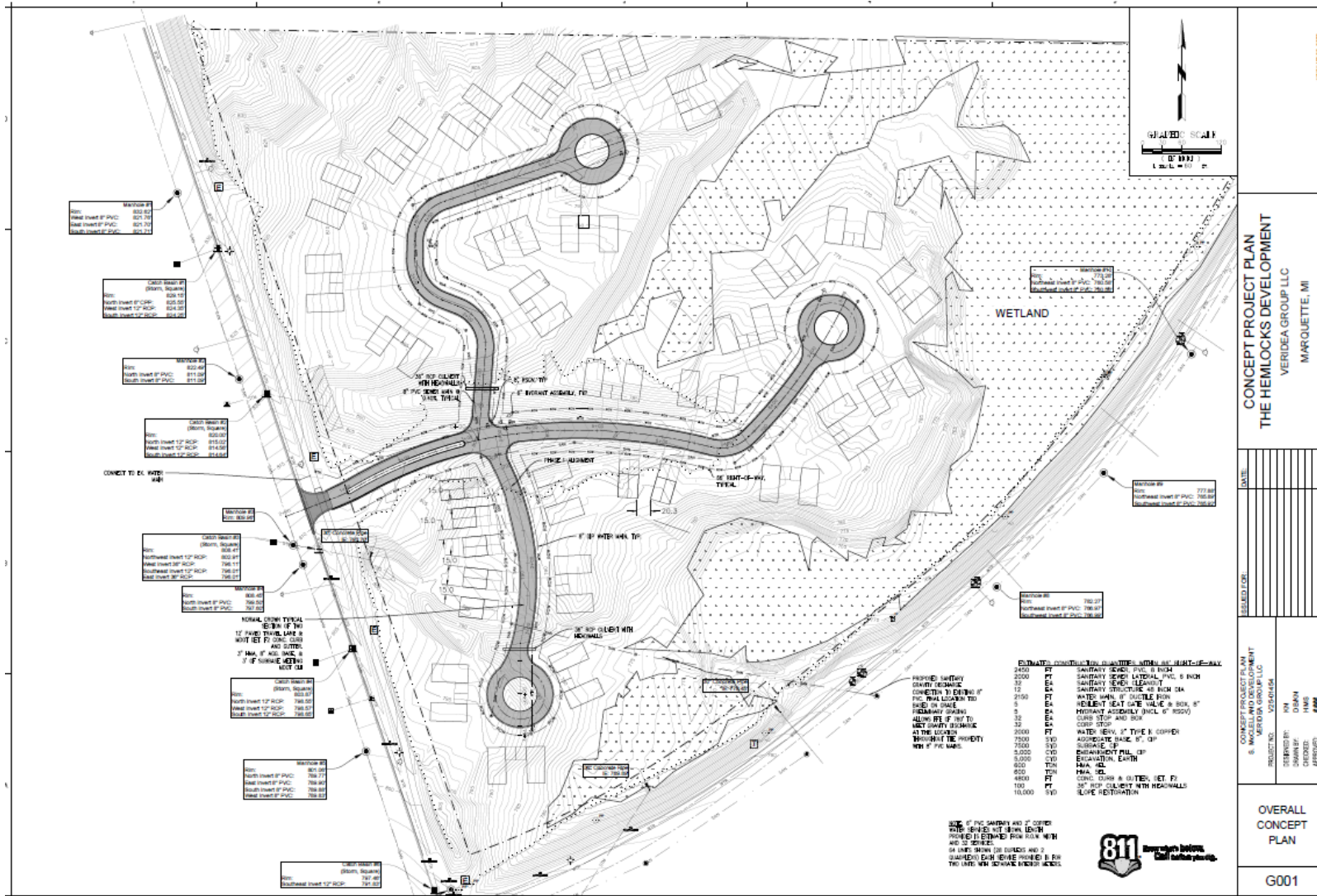


EXHIBIT B

PUBLIC INFRASTRUCTURE SCOPE OF WORK TO BE COMPLETED BY CITY OF MARQUETTE

***All scopes of work include the necessary permitting and entitlements**

1. Roadwork

- All public roads that will be maintained by the City of Marquette.
 - Includes excavating, grading, fill, dumping fees, etc.

2. Curbs

- Any concrete curbing that is required on public roads.

3. Street Lighting

- All lighting that is required along public roads.

4. Electricity

- Bring electricity into the development and install it along public roads to provide hook up for future phases of the development.

5. Sidewalks

- All sidewalks that are sited along public roads.

6. Water

- Run the water main along public roads.

7. Sewer

- Run the sewer main along public roads.

8. Stormwater

- Any stormwater retention work that is required.