

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____ 2022, by and between the **CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter (“Lessor” or “City”), and **SUPERIOR WATERSHED PARTNERSHIP**, a Michigan corporation, of 2 Peter White Drive, Marquette, Michigan 49855, hereinafter (collectively “Lessee”).

Recitals

- A. Lessor is the owner of the following described premises situated and being in the City of Marquette, County of Marquette and State of Michigan, to wit:

That portion of Government Lot Five (5), Township Forty-Eight North (T48N), Range Twenty-Five West (R25W), Section Two (2).

- B. Lessee desires to lease and Lessor is willing to lease to Lessee the area and building as outlined in red on Exhibit “A”, commonly known as the caretaker’s residence at Presque Isle, described above (“Premises”) in accordance with the terms and conditions contained herein.

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

1. Leased Premises

- 1.1 Lessor leases to Lessee the “Premises” as shown on Exhibit “A”.
- 1.2 Lessee shall be responsible for constructing all renovations as developed by Lessee and as may be necessary for Lessee’s use of the Premises, and Lessee shall obtain Lessor’s written approval of all such plans and specifications prior to beginning any construction activity.

2. Term of Lease

- 2.1 The term of this lease shall be August 20, 2022 through August 31, 2027. This lease may be renewed for an additional five (5) year term upon the mutual written agreement of Lessor and Lessee.

3. Rent

- 3.1 Lessor recognizes that Lessee has and continues to provide valuable benefit to the City of Marquette and its residents. Accordingly, as consideration for this Lease and in lieu of monetary rent, Lessee shall be required to provide to the City and/or its residents any combination of goods, services and funds in an amount not less than \$18,272 per year,

which has been deemed to be fair market rental value of the Premises. Lessee shall have sole discretion as to what combination shall be used in satisfaction of this rental amount. Lessee shall provide, to the City Manager or his or her designee (if so designated in writing by the City Manager) a written report of the services and funds provided by Lessee in satisfaction of the rental amount listed herein no later than 30 days following each annual anniversary of this agreement.

The rental amount due shall be increased 3% each year for the duration of this Lease.

This rental obligation is over and above Lessee's obligation to provide a report specifying how the funds contributed by the City to Lessee have been used. Lessee's use of the funds contributed by the City to Lessee may not, in any way, be used to satisfy the "rent" obligation required of Lessee herein.

3.2 Lessee shall be responsible for payment of all utilities, gas, electric, refuse, water and storm water fees for the Premises.

4. Use of Leasehold Premises

4.1 Lessee shall use the Premises only as office space, and not for any purpose that would:

- a) be deemed hazardous to the public or adjoining premises, including but not necessarily limited to fire, and environmental type hazards;
- b) constitute a violation of any public law or requirement;
- c) cause damage or injury to the Premises or any part of it (ordinary wear and tear excepted);
- d) constitute a public or private nuisance;
- e) permit noise or odors to be unreasonably dispelled from the Premises; or
- f) permit refuse to accumulate in or around Premises.

5. Maintenance and Repair

5.1 Lessee shall be responsible for all cleaning of the Premises and all repairs to the Premises of any nature.

5.2 Lessee shall be solely responsible for the maintenance and repair of all fixtures, furniture and equipment and keep them in a safe condition and good repair.

5.3 All signage used by Lessee shall be maintained in good condition and repair.

6. Insurance and Indemnity

- 6.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's fire, boiler, sprinkler, water damage, and extended coverage insurance policies covering the Premises and contents therein. Lessor will provide Lessee with a copy of any and all relevant insurance policies.
 - 6.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased without prior written permission from Lessor.
 - 6.3 Lessee at its sole expense shall be responsible for insuring its own tangible personal property, equipment, and fixtures from loss from fire and other casualty and shall at all times provide Lessor with a certificate evidencing such coverage.
 - 6.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises and any common area by Lessee, its employees, agents invitees, and licensees. The amount of the insurance shall be not less than One Million Dollars (\$1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage. Lessee shall also maintain fire and casualty insurance in an amount not less than the fair market value of the building located on the Premises. Lessee shall provide Lessor with a copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.
 - 6.5 Lessee will indemnify and hold Lessor harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's cost of defending against the foregoing; such cost to include attorneys' fees) resulting or occurring by reason of Lessee's construction on, use of, or occupancy of the Premises.
- 7. Damage by Fire or Other Causes**
- 7.1 If the Premises is partially damaged by fire or other peril, the damage shall be repaired by Lessee at Lessee's expense.
- 8. Assignment/Subletting**
- 8.1 Lessee shall not assign or sublet the Premises or any part thereof without the express prior written consent of the Lessor.
 - 8.2 In no event shall a sublease be allowed that would jeopardize the tax-exempt status of the City.

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

9. Covenant of Quiet Enjoyment

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

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

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

11. Default by Lessee

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

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

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

12. Surrender of Leasehold Upon Termination of Lease

- 12.1 All renovations and improvements shall be at Lessee's expense and shall be considered fixtures and owned by Lessor upon termination of lease. Upon the expiration or termination of the lease, Lessee shall surrender the Premises in good order and condition, ordinary wear and tear excepted, and shall remove all of its property, fixtures, and equipment from the Premises. In removing its equipment, Lessee shall be solely liable for repairing any and all damages to the Premises. In the event that the Lessee fails to remove its equipment, and Lessor is required to do so, all costs and expenses incurred by Lessor in removing same and restoring the leasehold to useable condition shall be the financial responsibility of the Lessee.
- 12.2 If upon termination of the lease, Lessee has failed to remove its furniture, equipment, and fixtures, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

13. Miscellaneous

- 13.1 The parties acknowledge that the City receives the electric bill for the Premises, and that the City passes the bill on to Lessee for payment. Lessee agrees that if Lessee's solar arrays generate more power than Lessee uses, on an annual basis, the City shall retain any credits resulting therefrom, and the right to use them any way City chooses to do so.
- 13.2 This agreement shall be binding on the parties and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.
- 13.3 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
- 13.4 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated herein.
- 13.5 Any modification of this agreement or additional obligations assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.
- 13.6 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.
- 13.7 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in

full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

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

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

SUPERIOR WATERSHED PARTNERSHIP

CITY OF MARQUETTE


By: CARL LINDQVIST
Its: SWP EXEC. DIRECTOR

Cody O. Mayer, Mayor

Kyle Whitney, Clerk

APPROVED AS TO CONTENT

Karen M. Kovacs, City Manager

APPROVED AS TO FORM

Suzanne C. Larsen, City Attorney

EXHIBIT A



