

AGREEMENT FOR USE OF MARQUETTE LOWER HARBOR ORE DOCK

This Agreement, made and entered into this _____ day of _____, 2023, by and between the City of Marquette, a municipal corporation, of 300 W. Baraga Avenue, Marquette, MI 49855 (hereinafter referred to as the “City”), Fresh Coast Light Lab, LLC., (hereinafter referred to as the “FCLL”) of 1317 N. Front Street.

WHEREAS, the City is the owner and operator of the Marquette Lower Harbor Ore Dock (“Ore Dock”) at 245 S. Lakeshore Blvd., Marquette, Michigan; and

WHEREAS, the City is willing to allow FCLL use of the Ore Dock in accordance with the terms and conditions contained herein from May 1, 2023 through May 1, 2028.

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

1. FCLL will pay to City a monthly fee equal to 5% of FCLL’s gross revenue derived from Ore Dock light show contracts. FCLL will make each payment no later than the 15 days following the end of each month. FCLL shall provide to City, with each payment, a financial statement verifying all revenue for shows for the month immediately proceeding, and shall provide back-up documentation to the City upon request.
2. City grants the right, privilege and permission to project light shows onto the Ore Dock from the location of the ticket booth owned by Peggy Frazier in Lower Harbor Mattson Park.
3. FCLL’s use of the Ore Dock shall only be for the purposes of projecting light shows. FCLL shall limit shows to normal park hours (7:00 a.m. until 11:00 p.m.) unless express written approval, which can be in email form, from the Community

Services Director, or his/her designee, is obtained.

4. FCLL agrees that all shows are subject to approval and shall provide the Community Services Director, or his/her designee, with a copy of every show planned for the Ore Dock in advance as well as a schedule of planned shows.
5. FCLL agrees not to include content that is slanderous, libelous, threatening, pornographic, or obscene.
6. FCLL agrees that it shall not interfere with the use of the Lower Harbor as a marina and shall ensure that any light show does not interfere with boat usage or travel.
7. The City shall be notified in writing of any incident, damage, or injury resulting from a light show or related operations within twenty-four (24) hours after the incident occurs.
8. FCLL agrees to indemnify and hold harmless the City, its officials, employees, volunteers and others working on behalf of the City against any and all claims, demands, suits or loss, including all costs connected therewith and for any damages which may be asserted, claimed or recovered against or from the City, its officials, employees, volunteers and others working on behalf of the City by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement.
9. FCLL shall procure and maintain insurance for the duration of this Agreement against liability claims for injuries to persons or damages to property which may arise from or in connection with the use of the Ore Dock. All required insurance policies shall name the City as an additional insured. The insurance required by this Agreement shall be in amounts acceptable to the City and shall be endorsed to

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

10. The occurrence of any of the following shall constitute a default by the User Group:
 - a. Failure to perform any provision of this Agreement, if the failure to perform is not cured within thirty (30) days after the City provides written notice to FCLL.
 - b. Failure to maintain insurance as required by this Agreement, which shall be cause for immediate termination of this Agreement by the City.
 - c. FCLL files a petition in bankruptcy or insolvency or for reorganization, or involuntary proceedings are filed against the User Group under applicable bankruptcy laws.
 - d. FCLL modifies its corporate structure without providing notice to the City.
 - e. FCLL fails to uphold any obligation set forth herein.
11. In the event of default, the City shall provide FCLL written notice of default. FCLL shall have thirty (30) days after notice is provided to cure said default. FCLL may request a meeting to discuss the default notice with the City Manager and City staff, within the thirty (30) day period. No notice shall be deemed a forfeiture or termination of this Agreement unless the City specifies such in the notice. In the event FCLL does not cure the default within the allowed thirty (30) day time period, the City shall have the following remedies, which shall not be exclusive and shall be in addition to any other remedies now or later allowed by law:
 - a. The City may elect to continue this Agreement.
 - b. The City may terminate this Agreement, by providing specific written notice to this effect.
 - c. The City shall be entitled to recover all amounts, including any attorney fees

incurred by the City in pursuit of the default.


12. Any notice required under this Agreement shall be in writing and served by prepaid, first class mail to the address listed on the first page of this Agreement, or any other address as either party may provide to the other in writing.
13. No delay or omission in the exercise of any right or remedy of the City on any default by FCLL shall impair such right or remedy or be construed as a waiver of the right to pursue such remedy.
14. Nothing in this agreement shall render the City in any way a partner, in joint ventureship with FCLL.
15. No later than May 1 following the expiration or termination of this Agreement, or any extensions or renewals of this Agreement, FCLL shall either renew this Agreement, enter into a new agreement, or terminate this agreement in writing.
16. This Agreement may be extended for future terms, subject to the outcome and objectives of the land use plan currently being performed by the City.
17. This Agreement contains the entire agreement of the parties with respect to its subject matter. This Agreement may not be modified except by a written document signed by the parties.
18. This Agreement shall bind and benefit the parties and their successors and permitted assigns.
19. This contract is executed in the City of Marquette, State of Michigan, and shall be construed under the laws of the State of Michigan, and the parties agree that any action relating to this contract shall be instituted and prosecuted in the courts of the County of Marquette, State of Michigan, and each party waives the right to change of venue.

20. FCLL's primary contact with the City shall be through the City of Marquette Community Services Director, or any person designated by him/her.
21. Either party may terminate the agreement by providing 30 days written notice to the other.

CITY OF MARQUETTE

FRESH COAST LIGHT LAB, LLC.

Cody O. Mayer, Mayor



David Kronberg (Apr 19, 2023 16:09 EDT)

By: David Kronberg
Its: President and Founder

Kyle Whitney, City Clerk

APPROVED AS TO SUBSTANCE:

Karen M. Kovacs, City Manager

APPROVED AS TO FORM:

Suzanne C. Larsen, City Attorney