

Agreement regarding Black Rock Crossing Environmental Reviews
Between the City of Marquette and the Marquette Housing Commission

THIS AGREEMENT is made on this _____ day of _____, 2024 by and between the City of Marquette, a Michigan municipal corporation of 300 W. Baraga Avenue, Marquette, Michigan 49855, acting as the Responsible Entity (“RE”) and the Marquette Housing Commission, of 316 Pine Street, Marquette, Michigan 49855 (“MHC”).

WHEREAS, the MHC maintains public housing under Section 9 of the United States Housing Act of 1937, and may elect to pursue housing projects and/or activities with federal financial assistance subject to environmental reviews pursuant to the National Environmental Policy Act of 1969 (NEPA) and implementing regulations of the Council on Environmental Quality, including but not limited to the regulations at 40 CFR Parts 1500-1508, and implementing regulations of the U.S. Department of Housing and Urban Development (“HUD”), including but not limited to HUD’s regulations at 24 CFR Part 58; and

WHEREAS, as the recipient of federal financial assistance, the MHC may secure assistance for completing environmental reviews by the unit of general local government where the project is located as the RE authorized to assume environmental review obligations pursuant to 24 CFR 58.2(a)(7)(ii)(B); and

WHEREAS, the RE certifies it is authorized to: (1) assume responsibility for environmental review, decision making and action under NEPA and each provision of law designated in 24 CFR 58.5 applicable to any and all of the HUD financial assistance awarded to the MHC; (2) accept jurisdiction of the Federal courts for enforcement of these environmental responsibilities; and (3) execute the certification portion of HUD’s Request for Release of Funds (“RROF”) and certifications as set forth in 24 CFR 58.4, 58.13, and 58.71; and

WHEREAS, the MHC requested the RE to complete the environmental review record with respect to the MHC’s Black Rock Crossing project (“Project”) pursuant to the conditions and provisions set forth in this Agreement and the RE accepts responsibility to act as the responsible Federal agency under NEPA and the laws and authorities in 24 CFR 58.5 with respect to said Project.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth below, the MHC and RE hereby agree as follows:

1. **Incorporation of recitals:** The recitals set forth above are incorporated by reference as if fully set forth herein and made a part hereof.
2. **Duties and Responsibilities of RE:**
 - a. RE will perform and/or manage all environmental reviews and prepare all necessary documentation in support of the environmental review record for all activities pursuant to the Project and any accompanying documents necessary to be submitted to HUD, in full compliance with:
 - i. HUD’s “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities” (24 CFR Part 58);
 - ii. Section 102 of NEPA;

- iii. Related provisions of the Council on Environment Quality regulations contained in 40 CFR Parts 1500 through 1508; and
- iv. All other applicable Federal and State regulations.
- b. Where appropriate and necessary in the environmental review process, RE will issue findings of no significant impact (FONSIs) or findings of significant impact, determine whether to hold public hearings, prepare environmental impact statements and records of decision, issue notices of FONSIs and notices of intent to request release of funds, and prepare requests for release of funds.
- c. RE may retain consultants and experts for special reviews or investigations and obtain other outside services deemed necessary by RE to its functions hereunder. Prior to retaining any such experts, consultants or outside services, RE shall discuss the need for and scope of such work or services with the MHC. The MHC shall pay the cost of any such experts, consultants or outside services as eligible Capital Fund activities.

3. Duties and Responsibilities of the MHC

- a. MCH will procure at the MHC's expense and will provide RE with all available project and environmental information needed by RE in connection with activities pursuant to this Agreement, including, without limitation, existing relevant information and any reports of investigation or study required to conduct an environmental review consistent with law and regulations.
- b. MHC will provide RE with documentation that adequately describes the full scope, purpose, and interrelationships of the subject HUD-assisted Project, which may include privately financed or non-federally assisted MHC financing, and any other documents and/or information requested by RE that RE reasonably believes is necessary to perform services required under this Agreement and that are within MHC's possession or control.
- c. MHC will serve as liaison with local community groups and residents regarding all aspects of RE services under this Agreement, including, but not limited to, scheduling meetings and participating in public meetings. The MHC will provide the RE with prior written notice of all meetings related to Agreement-related services in order to allow the RE the opportunity to participate in such meetings.
- d. MHC will reimburse RE for expenses incurred for performing services under this Agreement, including, but not limited to:
 - i. costs of publishing notices;
 - ii. necessary travel expenses;
 - iii. postage and express package delivery charges;
 - iv. fees and expenses of experts, consultants and outside services retained by RE;
 - v. RE's staff time devoted to performance of Agreement-related services; and
 - vi. actual costs incurred associated with any surveys or investigations.
- e. MHC will monitor environmental mitigation or procure such services to ensure compliance with environmental conditions specified in the authorization to use HUD funds or HUD approvals.
- f. MHC will provide the Five Year and Annual Plans to the RE.
- g. MHC will communicate to stakeholders the requirements for environmental reviews before any partner or stakeholder in the development makes a choice-limiting action upon submission of an application for HUD financial assistance.

4. Agreement terms

- a. This Agreement is effective for a period of ___ years from the date of execution, or until terminated as set forth below.
- b. The MHC may terminate this Agreement at any time by giving 30 days written notice to RE.
- c. RE may terminate this Agreement for cause upon 30 days written notice to the MHC, including a statement of the reason(s) therefore. As used herein, cause shall include any failure of the MHC to promptly reimburse RE for costs, any other non-performance by the MHC under this Agreement or any material failure by the MHC to comply with any term of this Agreement.

5. Conditions

- a. No official, employee or agent of either party shall be charged personally by the other or by an assignee or subcontractor with any liability or expenses of defense or be held personally liable under any term or provision of this Agreement, because of such party's execution or attempted execution of this Agreement, or because of any breach thereof.
- b. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein.
- c. No changes to or modifications of this Agreement are binding unless made in writing and executed by the duly authorized officers of both the MHC and the RE.
- d. The MHC and RE shall at all times observe and comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government now existing or hereinafter in effect, which may in any manner affect the performance of this Agreement.
- e. Whenever under this Agreement either party, by a proper authority, waives either party's performance in any respect or waives a requirement or condition of either party's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the Agreement regardless of the number of times either party may have waived the performance, requirement or condition.

6. Authority and notice

- a. Each person signing this Agreement represents and warrants that such person has the requisite power and authority to enter into, execute, and deliver this Agreement and that this Agreement is a valid and legally binding and enforceable obligation in accordance with its terms.
- b. All verbal and written communication, including required reports and submissions, shall be transmitted between RE and the MHC as noted below.
 - i. Any notices sent to the RE shall be transmitted to:

Karen M. Kovacs, City Manager
City of Marquette
300 W. Baraga Avenue
Marquette, Michigan 49855

ii. Any notices sent to the MHC shall be transmitted to:

Sharon Maki, Executive Director
Marquette Housing Commission
316 Pine Street
Marquette, Michigan 49855

The City of Marquette and the Marquette Housing Commission have executed this Agreement as of the date first written above and under the laws of the State of Michigan.

MARQUETTE HOUSING COMMISSION

Dated: _____

By:
Its:

Dated: _____

By:
Its:

CITY OF MARQUETTE

Dated: _____

Sally Davis, Mayor

Dated: _____

Kyle Whitney, City Clerk

APPROVED AS TO SUBSTANCE:

Karen M. Kovacs, City Manager

APPROVED AS TO FORM:

Suzanne C. Larsen, City Attorney