

**CITY OF MARQUETTE
CONSTRUCTION CONTRACT**

PROJECT NAME: Tourist Park Day-Use Playground

THIS AGREEMENT is made this ____ day of _____, 2024, between the City of Marquette, a Michigan Municipal Corporation ("City") of 300 W. Baraga Avenue, Marquette, MI 49855, and Sinclair Recreation, LLC, a Michigan limited liability company, of 176 E. Lakewood Blvd, Holland, MI 49424 ("Contractor") for and in consideration of the following payments and agreements:

**ARTICLE 1
CONTRACT DOCUMENTS**

The "Contract Documents" consist of, but are not necessarily limited to, this Agreement, the Invitation to Bid, Information for Bidders, Bidders Proposal, Addenda, Specifications, Supplemental Specifications, Special Provisions, Construction Drawings, Notice to Proceed, Allowances, Finish Schedules and any additional documentation issued prior to execution of this Agreement and all Change Orders as approved by the City. These Contract Documents represent the entire Agreement and understanding between the parties hereto.

**ARTICLE 2
SCOPE OF THE WORK**

Contractor will furnish all the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described in the Contract Documents.

**ARTICLE 3
MATERIALS, APPLIANCES, and EMPLOYEES**

Except as otherwise noted, the Contractor shall provide and pay for all materials, labor, tools and other items necessary to complete the work. Unless otherwise specified, all

materials shall be new, and both workmanship and materials shall be of good quality. All workmen shall be skilled in their trades.

ARTICLE 4
TIME OF COMPLETION

The completion date of this project is August 15, 2024. The Contractor shall be penalized in the amount of \$0.00 per day if the project is not completed by the contract completion date unless the period for completion is extended by change order.

ARTICLE 5
CONTRACT SUM

The Contractor agrees to perform all the work described in the Contract Documents and comply with the terms therein for a sum not to exceed \$184,900.00, subject to additions and deductions pursuant to authorized change orders and allowances.

ARTICLE 6
PAYMENTS

Contractor shall invoice for services rendered on a monthly basis. Each invoice shall be due and payable within sixty (60) days of the date of the invoice; except for a 10% contingency hold-back which will be retained from each invoice by City until the final invoice is paid. Invoices over sixty (60) days past due may be charged interest on the unpaid balance at the highest lawful rate as allowed under Michigan Law.

ARTICLE 7
CONTRACTOR'S OBLIGATIONS

- 7.1 All work shall be in accordance with the provisions of the Contract Documents.
All systems shall be in good working order.
- 7.2 All work shall be completed in a workmanlike manner and shall comply with all applicable laws.
- 7.3 Contractor shall obtain all necessary permits for the work to be completed.
- 7.4 Contractor shall remove all construction debris and leave the project in a "broom clean" condition.

7.5 Upon satisfactory payment being made for the work performed by Contractor, Contractor shall furnish a full and unconditional Release of Lien for the work for which payment has been made.

Safety and Fire Protection: The Contractor shall be responsible for safety at the construction site. The Contractor will further comply with all applicable laws, rules and regulations of the Michigan Department of State Police, Fire Marshall Division, the State Fire Safety Board, Michigan Occupational Safety and Health Administration, and Local Agencies. Precaution shall be exercised at all times for the protection of persons and of property. The safety provisions of applicable laws, rules, regulations, building and construction codes shall be followed. Safety Hazards shall be guarded in accordance with safety provisions of the Manual of Accident Prevention in Construction published by The Associated General Contractors of America to the extent that such provisions are not in conflict with applicable laws.

ARTICLE 8 **CONTRACTOR'S STATUS AS INDEPENDENT ENTITY**

The City shall not assume any liability for the Contractor in the performance of the construction project, methods, techniques, sequences or programs in connection with the project since these are solely the Contractor's responsibility.

ARTICLE 9 **CHANGE ORDERS AND PAYMENT**

A change order is any change to the original plans and/or specifications. All change orders must be agreed upon between the parties hereto, and address additional costs, time, consideration and dates when the work will begin and be completed. Change orders are not effective unless signed by both parties who shall not unreasonably withhold approval of the same. However, should the Contractor unreasonably refuse to approve a change order reasonably and in good faith submitted by the City, the Director of Facilities and Maintenance shall be empowered to make a final and fair determination

as to the necessity for the change order and the fair and equitable cost to the Contractor and shall further be empowered to issue a final payment to the Contractor. Should the Contractor refuse to accept said final payment, the funds may be deposited in an Escrow Account by the City for the benefit of the Contractor.

ARTICLE 10
INSURANCE

The Contractor shall purchase and maintain Workman's Compensation and Liability Insurance coverage as required by law and deemed necessary for its own protection. Said insurance shall be written by an insurance carrier having at least an "A, VII" rating. The Contractor shall further name the City as an additional named insured on all certificates of insurances covering the project. Said insurance shall be in minimum limits of at least \$5,000,000.00 for both general liability and automobile liability. The Contractor shall further maintain such insurance as will protect it from claims under worker's compensation acts and other employee benefits acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise both out of and from claims for damages to property which may arise both out of and during operations under this contract, whether such operations are by Contractor or by anyone directly or indirectly employed by the Contractor. This insurance shall be written for not less than any limits of liability specified as part of the Contract Documents. Certificates of such insurance shall be filed with the City.

ARTICLE 11
INDEMNIFICATION

To the extent allowed by MCL 691.991, the Contractor hereby agrees to save and indemnify and keep harmless the City against all liability claims and judgments or demands for damages arising from accidents to persons or property occasioned by the Contractor, its agents or employees, and against all claims or demands for damages

arising from accidents to the Contractor, its agents or employees, whether occasioned by said Contractor or its employees or by City or its employees or any other person or persons, and the said Contractor will defend any and all suits that may be brought against the City on account of any such accidents and will make good to, and reimburse, the City for any expenditures that said City may make by reason of such accidents; provided, however, that the Contractor shall not be responsible to the City on indemnity for damages caused by or resulting from the City's sole negligence.

ARTICLE 12
CITY'S RIGHT TO TERMINATE THE CONTRACT

Should the Contractor neglect to perform the work properly or fail to perform any provision of the Contract, the City, after seven (7) days' written notice to the Contractor, and its surety, if any, may, without prejudice to any other remedy the City may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option, may terminate the Contract and take possession of all materials, tools and appliances and finish the work by such means as it sees fit, and if the unpaid balance of the contract price exceeds the expense of finishing the work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the City.

ARTICLE 13
CONTRACTOR'S RIGHT TO TERMINATE CONTRACT

Should the work be stopped by any public authority for a period of ninety (90) days or more, through no fault of the Contractor, or should the work be stopped through act or neglect of the City for a period of ninety (90) days, then the Contractor, upon seven (7) days' written notice to the City, may stop work or terminate the Contract and recover from the City payment for all work executed and any loss sustained and reasonable profit and damages.

ARTICLE 14
ACCESS TO WORK

The Contractor shall permit and facilitate observation of the work by the City and its agents and public authorities at all times.

ARTICLE 15
ARBITRATION OF DISPUTES

Any disagreement arising out of this contract or from the breach thereof shall be submitted to arbitration, and judgment upon the award rendered may be entered in the court of the forum, state or federal, having jurisdiction. It is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right of legal action that either party may have against the other. The arbitration shall be held under the Rules of the American Arbitration Association.

ARTICLE 16
WARRANTY

At the completion of this project, Contractor shall execute an instrument to City warranting the project for two (2) years against defects in workmanship or materials utilized. The manufacturer's warranty shall prevail.

At the time of completion, the Contractor shall furnish to the City material containing complete operation and maintenance instructions for all equipment in the project. The Contractor shall also furnish to the City at the time of completion all documents, warranties and guarantees on all equipment and services provided.

The Contractor shall re-execute any work that fails to conform to the requirements of the Contract and that appears during the progress of the work and shall remedy any defects due to faulty workmanship, which appear within a period of two (2) years from the date of completion of the Contract or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents. All

equipment and materials will be warranted and guaranteed under the original equipment manufacturer's warranties and guarantees.

The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. After such repair or replacement has been satisfactorily completed, the Contractor's warranty with respect to such work repaired or replaced will be extended for an additional period of one (1) year beyond the warranty period described above. Contractor's obligations under this paragraph are in addition to any other obligation or warranty.

ARTICLE 17 **FEDERAL-AID CONTRACTS**

During the performance of every contract subject to Title VI of the Civil Rights Act of 1964 and Title 49, Code of Federal Regulations, Department of Federally-assisted programs of the Department of Transportation issued pursuant to the Act, the Contractor, for itself, its assignees and successors in interest agrees as follows:

- 17.1 **Compliance with Regulations**: The Contractor shall comply with Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 17.2 **Nondiscrimination**: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection, retention and treatment of Subcontractors, including procurements of materials in the discrimination prohibited by Section 21.5 of the Regulation, including employment practices when the Contractor covers a program set forth in Appendix B of the Regulations.

17.3 **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

17.4 **Information and Reports:** The Contractor shall provide all information and reports

required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department of the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State Highway Department or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

17.5 **Sanctions for Noncompliance:** In the event the Contractor's noncompliance with

the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancellation, termination or suspension of the contract, in whole or in part.

17.6 **Incorporation of Provisions:** The Contractor shall include provisions of paragraphs

(1) through (6) in every subcontract, including procurement of material and leases

of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State Highway Department to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 18
INTEGRATION

This Agreement represents the entire understanding between the parties hereto and may not be amended, except in writing that is signed by both parties hereto.

ARTICLE 19
BINDING AGREEMENT

This Agreement will bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

ARTICLE 20
PURCHASING AGENT DESIGNATION AND AUTHORITY

The Community Services Director is designated as Purchasing Agent of City and is authorized to order minor changes in the work not involving adjustment in the Contract Sum or Time of Completion and not inconsistent with the intent of the Contract Documents. Such changes will be effective upon written agreement executed by both parties.

The parties have made and executed this Agreement on the day and year first above written.

SINCLAIR RECREATION, LLC


By: Diane Sinclair
Its: President

THE CITY OF MARQUETTE

Sally Davis, Mayor

Kyle Whitney, City Clerk

APPROVED AS TO SUBSTANCE:

Karen M. Kovacs, City Manager

APPROVED AS TO FORM:

Suzanne C. Larsen, City Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/15/2024

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

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

PRODUCER Brown & Brown of Michigan, Inc. 5738 Foremost Drive SE Grand Rapids MI 49546	CONTACT NAME: Courtney Granzow PHONE (A/C, No, Ext): (616) 284-3017 E-MAIL ADDRESS: Courtney.Granzow@bbrown.com	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED Sinclair Recreation, LLC 176 E. Lakewood Blvd. Holland MI 49424	INSURER A: State Automobile Mutual Insurance Company NAIC #: 25135	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

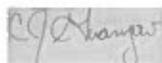
COVERAGES **CERTIFICATE NUMBER:** 23-24 Master **REVISION NUMBER:**

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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		PBP2911240	04/01/2023	04/01/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employment Practices \$ 100,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY			10169358CA	04/01/2023	04/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			PBP2911240	04/01/2023	04/01/2024	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000
A	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	WCP2304517	04/01/2023	04/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

City of Marquette is recognized as additional insured in regards to the general liability.

CERTIFICATE HOLDER City of Marquette 300 W Baraga Ave Marquette MI 49855	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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