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The Honorable Dana Nessel
Attorney General
State of Michigan
525 W. Ottawa Street
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Lansing, Michigan 48909-0212
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Re: State Representative Sara Cambensy's July 28, 2022 Letter to Attorney General

Dear General Nessel:

INTRODUCTION

I am writing to you on behalf of my client The Northern Michigan University Foundation, a Michigan nonprofit corporation (the "Foundation"), which has retained our firm to respond to Representative Cambensy's recent letter requesting an investigation by your office involving the Foundation's efforts to align resources for demolition of the blighted 23-acre site of the former Marquette General Hospital located in the City of Marquette and the relationships required to prepare the site for redevelopment. Consistent with its mission to "establish and foster relationships to generate resources that benefit the strategic goals of Northern Michigan University," the Foundation has built a public-private coalition of institutional partners primarily focused on demolition and site preparation of the mostly vacant property directly adjacent to Northern Michigan University's ("NMU") campus. An optimal outcome of this work is to enable a mixed-use redevelopment of the blighted site to the benefit of NMU, the adjacent neighborhoods and the City as a whole.

In short, despite Representative Cambensy's assertions to the contrary, there was no conflict of interest or misconduct by anyone associated with the potential acquisition of the blighted former hospital site. The Foundation was not involved in any "scheme" to transfer the property to proposed developer Veridea Group, LLC ("Veridea"). There has been no "misuse" of

state funds. And all of the Foundation's actions were undertaken with consistent transparency and in strict compliance with applicable laws.

The spurious allegations of wrongdoing contained in Representative Cambensy's Request for Investigation are entirely without merit. The law was adhered to. Community trust was earned, not breached, and efforts to prepare the former hospital property for redevelopment were done in broad daylight, with on-going voluntary reports to local government officials and the public at large through in-person community meetings, online, and other public meetings. In fact, the Foundation briefed Representative Cambensy and other public officials on several occasions at key stages in its due diligence process and then invited her to join its growing coalition of partners, including the City of Marquette, the Marquette Brownfield Redevelopment Authority, and others, only to be rejected. Despite numerous opportunities to participate in public meetings, informational forums, and at the private invitation of the Foundation, Representative Cambensy never raised concerns or questions to the Foundation, to the City, or to any other entity involved in this process before sending her letter on July 28.

Please note that Representative Cambensy has already publicly retracted Question 14 of her Request for Investigation and admitted that the claims related to this question were based on misinformation or were just flat out wrong. Upon being confronted about her false statements, Representative Cambensy publicly admitted to rushing the letter due to media interest and having several collaborators in assisting her with drafting of her letter, which raises additional questions regarding her motive for sending it in the first place.

Along with other community members and key institutions, the Foundation is bewildered and dismayed by Representative Cambensy's misguided and reckless action. Her letter has caused a significant distraction in the critical stage of finalizing the Foundation's agreement with LifePoint along with nearly a year of diligent work with public partners, including the City of Marquette, Marquette Brownfield Redevelopment Authority, and Michigan Economic Development Corporation to advance what could be the largest community development project in the history of the Upper Peninsula. Notwithstanding this unfortunate distraction, The Foundation, together with its public partners remains committed to advancing an outcome that the Marquette and campus community deserves as well as availing itself to discuss this matter with your office as you see fit.

STATEMENT OF FACTS

Representative Cambensy's Request for Investigation makes several false claims of wrongdoing without any specific reference to facts or evidence of any kind. Since retracting her false assertions in Question 14, other institutions and individuals have written letters and issued statements to correct numerous additional inaccuracies and otherwise have expressed support for the transformational and historic nature of this project, which has been led by the Foundation and its coalition of partners. However, Representative Cambensy has yet to retract and publicly acknowledge the remaining inaccuracies in her letter before you. This correspondence will present you with additional factual information to correct other falsehoods in Representative Cambensy's letter.

Representative Cambensy's claims that there was a conflict of interest and misuse of state and local funds are false. All public funds authorized or proposed for blight elimination at the former hospital site have been – and are currently being -- reviewed and approved by public bodies and are subject to audits and reviews which have found no waste, fraud or “misuse” of public or private funds of any kind. Additionally, the Brownfield Redevelopment Plan authorized unanimously by the Marquette City Commission and Marquette Brownfield Redevelopment Authority to reimburse Brownfield Eligible Activities (Attachment A), has been thoroughly discussed and reviewed at numerous public meetings.

Representative Cambensy fundamentally misunderstands brownfield redevelopment. It is not a tax credit, but rather a well-known and effective economic development tool that exists to incentivize and reimburse *new* investments in activities such as site demolition and preparation, environmental remediation, and public infrastructure construction through Tax Increment Financing associated with the *increased taxable value* of any redevelopment within a specified district approved by state law. According to the City of Marquette, the proposed redevelopment of this site will generate roughly \$4.5 million in new annual revenue to taxing authorities, including approximately \$1.5 million to the City alone. The City's long proposed reconstruction of College Avenue through this plan will also save taxpayers an estimated total of \$6 million. Perhaps most importantly, Representative Cambensy's misunderstanding of these widely utilized programs misses the critical issue at hand: But for these efforts of the NMU Foundation and its partners, redevelopment of the former hospital site would not be likely to occur and the blighted and mostly abandoned former hospital site would continue to be a significant liability for NMU, the surrounding neighborhoods, and the Marquette community as a whole. As stated by a citizen at one of the public meetings of the City Commission, there are two futures for this site. One is the present path we are on, leveraging a variety of resources to facilitate demolition and prepare the site for development. The other is a 23-acre blight island with an uncertain future in the heart of Marquette and next to NMU's campus.

The July 28, 2022, Request for Investigation contains false allegations of conflict of interest related to a potential developer of the project, Veridea and its Chief Executive Officer – Robert Mahaney. Her claim was that shortly after terminating former University President Fritz Erickson, the NMU Board of Trustees changed the conflict-of-interest policy in NMU's bylaws. This is false as publicly stated by the Chair of the Northern Michigan University Board of Trustees (Attachment B). According to that statement, there have been no changes in the conflict-of-interest policy since July 2015. The changes made in 2015 are changes that former President Erickson himself made, reviewed and submitted to the board for approval. Because Representative Cambensy has failed to publicly retract this misstatement, Chairman Young sent a letter to her attention on August 11 (Attachment C) requesting that she correct this false allegation, take responsibility for her reckless error, and publicly correct the record with your office and the constituents whom she serves.

Mr. Mahaney has made full disclosure of his status and involvement in the project in a letter sent to your attention by his counsel on August 4, where he describes his compliance with the NMU Board of Trustees conflict-of-interest policy. Again, contrary to another falsehood in

Representative Cambensy's letter, it is important to note that no contract exists at this time between Veridea and the Foundation. As publicly disclosed, Veridea was the sole respondent to the national Request for Qualifications issued by the Foundation Board of Trustees. The Board has been open and transparent regarding its process for seeking a qualified master developer partner, including in regular public meetings with the City of Marquette and at public information sessions that the Foundation hosted in May (Attachment D). The Foundation has yet to enter into a development agreement or any other agreement with Veridea. It remains focused on the core task of aligning resources for demolition and site preparation: critical barriers to any redevelopment. If and when the Foundation finalizes its Contract for the Sale of Real Estate with LifePoint and seeks to enter into an agreement with a qualified Master Developer, Mr. Mahaney will be required to continue to disclose any potential action which may result in a perceived or actual conflict of interest.

The remaining issues raised in the Request for Investigation are a confusing hash of misstatements of the law, musings on theoretical tax questions, implied conflicts of interest and baseless allegations of wrongdoing on the part of the Foundation and others.

SPECIFIC RESPONSES TO QUESTIONS POSED

What follows are answers to the 14 questions and issues raised in the Request for Investigation as they pertain to the Foundation.

Questions 1 through 3: Is the NMU Foundation considered a public body? And if so, is the NMU Foundation subject to the provisions of the Freedom of Information Act and Open Meetings Act? Does the public have the right to review Foundation emails and text messages "related to sale of property and project."

Response to Questions 1 through 3: The NMU Foundation is a private, registered non-profit 501(c)(3) corporation organized under the laws of the State of Michigan. The Foundation was established in 1968.

Ms. Cambensy's reliance on the case of *Jackson v. Eastern Michigan University Foundation*, 215 Mich. App. 240 (1996) is entirely misplaced. Northern Michigan University does not control the decision making of the Foundation. The Foundation is a private, independent and autonomous organization with an independent board that is primarily funded by non-public entities.

As a private, independent, nonprofit corporation that is not primarily funded by or through any state or local government or Northern Michigan University, the Foundation is not a "public body" and accordingly is not subject to the Freedom of Information Act or the Open Meetings Act and therefore not required to turn over or publish text messages, emails and other correspondence exchanged by Foundation board members and its staff. Regardless, the Foundation has maintained a commitment to transparency since entering into the Contract for Sale of Real Estate with DLP Marquette General Hospital, LLC (d/b/a LifePoint), including a joint public release of the core terms of the original agreement (Attachment E), numerous presentations and briefings at public meetings of the City of Marquette and Marquette Brownfield Redevelopment Authority, hosting four public information sessions and community leadership

roundtable meetings, which sought feedback from community members, and publicly releasing the Foundation Board of Trustees RFQ (Attachment F) as well as the sole response received to the RFQ from Veridea (Attachment G). In addition to these public meetings and engagement opportunities, the Foundation has regularly scheduled briefings with public officials, including city and county officials and state legislators, including Representative Cambensy.

Question No. 4: Is it legal to exclude a Board member from a conflict of interest if only one bid occurs and given the timing of the NMU Board of Trustees policy change, “if this section of board policy was done knowing that the Foundation was going to limit the timeline for the RFP to the point where it would not be feasible for any other outside developer to bid properly on the project, does that constitute unlawful activity”?

Response to Question No. 4: This question is based on incorrect information and a faulty premise. Contrary to the premise of this question, there has been no change in the referenced conflict-of-interest policy. Further, there has never been a Request for Proposals or RFP. The Foundation issued a nationwide Request for Qualifications or RFQ, not an RFP. There is a significant difference in the two in terms of detail required and the time allotted to respond.

Neither Veridea nor Mr. Mahaney were involved in the drafting of the RFQ. Veridea first saw the RFQ when it became publicly available on the Foundation website on March 11, 2022. No one received any advance knowledge or special treatment related to the timing of the process or publication of the project requirements.

Question 5: Is the NMU Foundation “operating outside of its non-profit 501(c)(3) scope and purpose” by participating in the development of the 23-acre site of the former Marquette General Hospital located in the City of Marquette?

Response to Question 5: Per its Articles of Incorporation, the Foundation was established to foster relationships and to generate resources and partnerships that benefit Northern Michigan University. Sections I & II of the Foundation’s Articles of Incorporation expressly state that the foundation is set up to raise, receive and maintain funds for real or personal property, and to operate facilities on behalf of Northern Michigan University. The Foundation’s acquisition and proposed redevelopment at the 23-acre site of the former Marquette General Hospital located in the City of Marquette fits squarely within the scope and purpose of its formation. The Foundation has consistently shared the context of its mission and purpose throughout its due diligence process, which is squarely focused on (1) facilitating an outcome that results in beneficial use of the mostly abandoned 23-acre former hospital site adjacent to campus and (2) an investment in the ultimate redevelopment project that continues to serve the Foundation and its mission to NMU for years to come.

Question 6: Does the State of Michigan or the IRS or both have the power to determine whether a non-profit has violated its tax-exempt status?

Response to Question 6: Only the IRS can revoke the tax-exempt status of a 501(c)(3) organization. Representative Cambensy does not allege any violation of state or federal rules and regulations and the Foundation has done nothing inconsistent with its mission or contrary

to state or federal law. In fact, the activity complained of in Representative Cambensy's letter is precisely why the Foundation was created in the first place.

Question No. 7: Was the RFP process "fair and competitive, following the state procurement or bidding laws and how does the RFP timeline compare to other large University projects like building the Berry Events Center or the Northern Center on Campus"?

Response to Question No. 7: As a private, independent, nonprofit corporation that is not primarily funded by or through state or local authority or Northern Michigan University, the Foundation is not a "public body" and is not subject to state procurement or "bidding laws." Thus, the project being pursued by the Foundation is not comparable to, and is not subject to the requirements applicable to, other projects undertaken by Northern Michigan University (such as the Berry Events Center or the Northern Center on Campus).

Notwithstanding the above, the Foundation, employing best practices, conducted a public request for qualification (*not* a Request for Proposals or RFP) to identify potential master developer partners with the interest, skills and access to financing to develop and complete a significant multi-use development in Marquette, Michigan (the "RFQ"). Those responding to the RFQ were asked to provide, among other things, a description of background and experience in undertaking, completing and operating multi-use developments generally and in communities with characteristics like Marquette specifically. They were also asked to provide information displaying the financial capacity to take on a project of the size and scope that fits the highest and best use of the site, along with a commitment to completing the entire project.

The Northern Michigan University Foundation has conducted thorough due diligence and analysis with respect to the property and the proposed development. In connection with such due diligence and analysis, The Foundation engaged independent consultants with national expertise. The process was fair, equitable and did not violate any public laws, applicable rules or regulations. Additionally, a special committee of the Foundation Board was appointed to oversee its RFQ and the process for selecting a qualified Master Developer, including members with national real estate development experience and construction management of large-scale development projects.

Note that Representative Cambensy's letter does not include a Question 8 in the sequence of her questions.

Question 9: What are the federal gift tax incentives associated with the transfer of the property and how does this transfer "impact taxes paid to the State of Michigan and the City of Marquette"?

Response to Question 9: This question suggests no wrongdoing on the part of the Foundation and does not directly involve the operations of the Foundation. Contrary to what Representative Cambensy incorrectly asserts, the Foundation does not plan to sell the property to Veridea. As publicly stated throughout its process, the Foundation will proceed to finalize its

agreement with LifePoint once all of the critical conditions to closing are satisfied, including finalizing resources for demolition and site preparation, most recently updated to an estimate of \$20.5 million. If in fact the Foundation does take title to the property, it expects to conduct its ownership, operation and insuring of the property in a manner that reflects highest and best real estate development business practices, and is consistent with any applicable Brownfield development requirement requirements. As Foundation is a private, independent, nonprofit corporation, no public body is expected to be involved in the management, maintenance or operation of the property or the proposed development.

Question 10: If Apollo (Lifepoint and Veridea Group) receive considerable tax incentives for brokering the deal through the NMU Foundation, is the \$10M gift legal given the apparent requirement of the NMU Foundation to provide over \$7M in suitable office space”?

Response to Question No. 10: There is not and will not be any \$10,000,000 “gift.” We have no idea what Representative Cambensy and/or her collaborators are referencing here.

Question 11: Did the NMU Foundation do its own appraisal of the property and can that appraisal be shared with the public to make sure the taxable values are fair market value?

Response to Question No. 11: If the contemplated redevelopment of the blighted and mostly abandoned former hospital site proceeds, a part of its equity investment, the Foundation will obtain a suitable appraisal from an experienced and qualified appraiser to justify the Foundation’s equity interest in the project.

Question 12: In doing its [sic] due diligence, did the city of Marquette do an appraisal of the property between January 1, 2022 and May 31, 2022 when it approved the \$44.6M local Brownfield tax credit?

Response to Question No. 12: The first part of Representative Cambensy’s question does not pertain to the Foundation. However, as mentioned in the response to Question 11, the Foundation intends to obtain a suitable appraisal from an experienced and qualified appraiser at the appropriate time.

Additionally, it is once again important to correct Representative Cambensy’s fundamental misunderstanding of brownfield redevelopment. The Brownfield Redevelopment Plan unanimously approved by the Marquette City Commission and Marquette Brownfield Redevelopment Authority is *not* a tax credit. Act 381 of 1996 authorizes municipalities to establish brownfield redevelopment authorities and processes to incentivize redevelopment of otherwise challenging sites, such as the former hospital site in question. The City’s plan will reimburse *new* investments in eligible activities such as site demolition and preparation, environmental remediation, and public infrastructure construction through Tax Increment Financing associated with the increased taxable value of any redevelopment of the site within a specified district approved by state law. Contrary to Representative Cambensy’s false assertion, this is not a tax credit, but rather will reimburse the cost of certain Brownfield Eligible Activities that will facilitate an estimated \$4.5 million in new additional tax revenue, including an estimated approximately

\$1.5 million to the City alone. It will also support public infrastructure investments, such as the estimated \$6 million reconstruction of College Avenue at a significant savings to taxpayers.

Question No. 13: Does the public have a right to know the financial details of the \$1 gift since that announcement has been made public and should further questions regarding gift taxes and the \$1 gift to the NMU Foundation be addressed to the Office of Attorney General or the IRS?

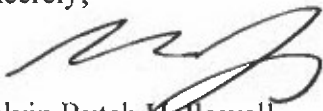
Response to Question No. 13: The nature of this question once again shows that Representative Cambensy has a fundamental misunderstanding of the Foundation's agreement framework with LifePoint, which was made public in a joint announcement on November 22, 2021. This is not a "gift" transaction. As publicly stated, then and throughout its public engagement process, the agreement contemplates that LifePoint (d/b/a UP Health System – Marquette) would transfer the former hospital property to the Foundation for the purchase price of \$1 and financial support that would help to offset the high costs associated with demolition and preparing the site for redevelopment.

Response to Question No. 14: Contrary to the false allegations contained in Question No. 14, Robert Mahaney's wife and Veridea's President, Mary D. Mahaney, never made any political contributions to Commissioner Hill. Representative Cambensy publicly and immediately retracted this false and incendiary claim.

CONCLUSION

For the reasons outlined above, we respectfully urge you to reject the many false and baseless claims made by Representative Cambensy. We are available to meet or to answer any questions you may hold. On behalf of the Foundation, I thank you for your consideration of this correspondence.

Sincerely,



Melvin Butch Hollowell