MARSHALL TOWNSHIP SPECIAL BOARD MEETING

March 28, 2024 7:00 p.m.

Proposed Agenda

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ROLL CALL

NOTICE OF MEETING AND APPROVAL OF AGENDA (Board Rule 5.3 requires "...At a special meeting of the Board, the matters to be considered shall be stated in the notice of the meeting under Rule 2.2. No other matters shall be considered except when all members are present and a majority of the Board concurs.)(The Meeting Notice, as posted in accordance with law is attached.)

AUDIENCE COMMENTS (Board rules permit up to 5 minutes per person)

SPECIAL ORDER OF BUSINESS

- 1. Tabled items from 1-16-24 meeting to remain tabled until 3-18-24 Meeting:
- 1) A. Tabled items from 1-16-24 meeting to remain tabled until 3-18-24 Meeting:
 - a. Approve Development Agreement for relocation of Station1 Fire Station as recommended by Township Attorney.
 - b. Approve designating Township Clerk as Board representative for all purposes of the Development Agreement. The Clerk will report all items approved to the Board and review any proposed changes with the Fire Chief and Supervisor as appropriate.

NOTE: The above items were attached to the January Board meeting agenda and minutes. The Township Attorney has recommended an updated proposed agreement which is attached.

NEW BUSINESS

1. Such other matters as may comply with Rule 2.2

AUDIENCE COMMENTS

BOARD MEMBER COMMENTS

ADJOURNMENT

Next regular meeting is currently scheduled for April 15, 2024, at 7 p.m.

PROPERTY TRANSFER AND CONSTRUCTION AGREEMENT

This Property Transfer and Construction Agreement (the "<u>Agreement</u>") is entered into on March ____, 2024 (the "<u>Effective Date</u>"), by and between **Marshall Township**, a Michigan governmental unit, of 13551 Myron Avery Drive, Marshall, Michigan 49068, ("<u>Township</u>") and the **Marshall Area Economic Development Alliance**, of 323 West Michigan Avenue, Marshall, Michigan 49068 ("<u>MAEDA</u>"), on the terms and conditions set forth below.

RECITALS:

- A. Township Property. Township is the owner of a parcel of real property located in Marshall Township, Calhoun County, Michigan, commonly known as 13661 15 Mile Road, Marshall, Michigan 49068 and as depicted on Sheet 1 of Exhibit A (the "Township Old Property"). To support the realignment of M-96 and the location of sewer and other infrastructure to support the BlueOval Battery Park Project and the adjoining Marshall Area Jobs, Opportunity, and Recreation ("MAJOR") campus, MAEDA wishes to purchase a portion of the Township Old Property, depicted as the "New MAEDA Parcel .65 acres", on Sheet 2 of Exhibit A, together with all improvements, easements, rights, hereditaments and appurtenances (collectively, the "MAEDA New Premises").
- B. MAEDA's Property. MAEDA is the owner of a parcel of real property located in Marshall Township, Calhoun County, Michigan, commonly known as 13550 15 Mile Road, Marshall, Michigan 49068 and as depicted on Sheet 1 on Exhibit B (the "MAEDA Old Property"). To support the realignment of M-96 and the location of sewer and other infrastructure to support the BlueOval Batter Park Project and the adjoining MAJOR campus, MAEDA wishes to sell a portion of the MAEDA Old Property to Township as depicted as "Proposed Parcel 1.75 acres" on Sheet 2 of Exhibit B, together with all improvements, easements, rights, hereditaments and appurtenances and excluding any personal property (the "New Fire Station Premises").

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Township and MAEDA agree as follows:

- 1. Purchase and Sale of MAEDA New Premises. Township agrees to sell to MAEDA, and MAEDA agrees to purchase from Township, the MAEDA New Premises, upon the terms and conditions set forth in this Agreement.
- 2. **Purchase Price of MAEDA New Premises.** The purchase price for the MAEDA New Premises shall be Three Million and 00/100 Dollars (\$3,000,000.00) (the "MAEDA New Premises Purchase Price").

3. Diligence of New MAEDA Premises.

a. Title and Survey Review.

- (i) Within ten (10) business days after the Effective Date, MAEDA will, at MAEDA's cost and expense, obtain a commitment for an owner's policy of title insurance (the "MAEDA New Premises Title Commitment") issued by Chicago Title (the "Title Company") with respect to the MAEDA New Premises, together with copies of all instruments described in Schedule B of the MAEDA New Premises Title Commitment, in the amount of the MAEDA New Premises Purchase Price and bearing a date later than the date of this Agreement. At the Closing, MAEDA shall cause the Title Company to issue a marked-up MAEDA New Premises Title Commitment or proforma for an ALTA Owner's Policy of Title Insurance without the standard exceptions (except for the survey exception), provided, however, that MAEDA may provide the Title Company with a current ALTA survey certified to the Title Company and otherwise acceptable to the Title Company for removal of the survey exception. Any endorsements requested by MAEDA to the owner's policy of title insurance will be paid by MAEDA at its sole cost and expense.
- (ii) Prior to expiration of the Due Diligence Period (as defined herein), MAEDA will review and may make written objections ("MAEDA Objections") to the form and contents of the MAEDA New Premises Title Commitment and the ALTA survey. MAEDA's failure to make MAEDA Objections within such time period will constitute a waiver of all title and survey matters. Any matter shown on such MAEDA New Premises Title Commitment or ALTA survey and not objected to by MAEDA or waived by MAEDA shall be deemed to be a MAEDA Permitted Exception. Township will have fourteen (14) business days after receipt of the MAEDA Objections (the "Township Cure Period") to cure such MAEDA Objections. If the MAEDA Objections are not cured within such period, MAEDA will have the option to do any of the following:
 - 1. Immediately terminate this Agreement; or
 - 2. Waive the objection and proceed to Closing.
- b. MAEDA shall notify Township of its election with respect to Section 3.a.(ii)1 or 3.a.(ii)2 above no later than five (5) business days following the expiration of the Township Cure Period. MAEDA's failure to notify Township of such election within the foregoing five (5) business day period shall be deemed MAEDA's election to waive the MAEDA Objections pursuant to Section 3.a.(ii).2 above and proceed to Closing.
- c. The MAEDA New Premises shall be sold and conveyed by Township to MAEDA, subject to the following matters (collectively hereinafter referred to as the "MAEDA Permitted Exceptions"): those liens, encumbrances, easements and other matters which are not objected to by MAEDA or are waived by MAEDA in accordance with

Section 3 above or any additional exceptions added by the Title Company after the delivery of the MAEDA New Premises Title Commitment to MAEDA that are approved by MAEDA in its reasonable discretion.

- Environmental Review and Diligence. MAEDA will have until 5:00 p.m. Eastern Time on the date that is forty-five (45) days after the Effective Date (the "Due <u>Diligence Period</u>") to complete its due diligence inspection of the MAEDA New Premises, to enter upon the MAEDA New Premises to undertake, at MAEDA's cost and expense, structural and engineering inspections of the MAEDA New Premises to satisfy itself that it wishes to proceed with the purchase of the MAEDA New Premises, subject to and upon the terms and conditions set forth in this Agreement. MAEDA and its agents and representatives shall be permitted to make a complete investigation and physical inspection of the MAEDA New Premises, including without limitation, (i) obtaining an appraisal, (ii) soil testing, (iii) testing for any material defined as a hazardous substance under the Comprehensive and Recovery Act, or any laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental authorities regulating the storage, dumping or other disposition of hazardous material, as any of those laws may have been amended to the date hereof, and the administrative regulations promulgated thereunder prior to the date hereof, (iv) determining whether existing sewer lines and other utilities are of sufficient size for the operation of MAEDA's business, and (v) conducting engineering studies, building inspections, and such other investigations as MAEDA desires. MAEDA agrees to repair any damages to the MAEDA New Premises caused by the testing and inspection and to indemnify and hold Township harmless from any claim, cost or expense arising from any such entry by MAEDA on the MAEDA New Premises. MAEDA shall have the option, in its sole discretion, to extend the Due Diligence Period an additional thirty (30) business days to complete a Phase II investigation upon written notice to Township.
- Access. As of the Effective Date and until the Closing or the earlier termination of this Agreement, MAEDA and its respective employees, agents, contractors, and invitees, along with representatives of MDOT shall have reasonable access, with prior written notice to Township, to the MAEDA New Premises for the purpose of inspecting and evaluating the MAEDA New Premises and performing any activities related to future road or utility planning, including access to directionally bore under the existing fire barn structure on the MAEDA New Premises for placement of sewer and other infrastructure. While MAEDA or its employees, agents, contractors, or invitees are on the MAEDA New Premises, (a) they shall not unreasonably interfere with any use of the MAEDA New Premises or the Township Old Property by Township; (b) Township shall not be liable for any damage, loss, or injury caused by MAEDA, its employees, agents, contractors or invitees; and (c) MAEDA shall indemnify, defend, protect and hold Township harmless from any and all claims, suits, damages, loss, or injury to person or property, including, without limitation, costs and expenses of investigating, defending, and settling or litigating any claim, including reasonable attorney fees, arising out of the presence or activities of MAEDA, its employees, agents, contractors or invitees on the MAEDA New Premises or the Township Old Property before the date of Closing. On completion of all such

inspections and evaluations, MAEDA shall return the MAEDA New Premises to its prior condition, not including any directional boring under the MAEDA New Premises.

- f. **Termination Right.** If MAEDA determines that MAEDA does not desire to proceed with the purchase of the MAEDA New Premises for any reason or no reason at all, then MAEDA will have the right to cancel and terminate this Agreement by notifying Township in writing on or before expiration of the Due Diligence Period in which event, the Title Company will promptly deliver the Deposit to MAEDA and neither party to this Agreement will thereafter have any further liability, obligation or responsibility to the other under this Agreement, except as otherwise provided under this Agreement.
- 4. Purchase and Sale of New Fire Station Premises. MAEDA agrees to sell to Township, and Township agrees to purchase from MAEDA, the New Fire Station Premises, upon the terms and conditions set forth in this Agreement.
- 5. **Purchase Price of New Fire Station Premises.** The purchase price for the New Fire Station Premises shall be One and 00/100 Dollar (\$1.00) (the "New Fire Station Premises Purchase Price").
 - 6. Diligence of New Fire Station Premises.

a. Title and Survey Review.

- (i) Within ten (10) business days after the Effective Date, MAEDA will, at MAEDA's cost and expense, obtain and deliver to Township a commitment for an owner's policy of title insurance (the "New Fire Station Premises Title Commitment") issued by the Title Company with respect to the New Fire Station Premises, together with copies of all instruments described in Schedule B of the New Fire Station Premises Title Commitment, in the amount of the MAEDA New Premises Purchase Price and bearing a date later than the date of this Agreement. At the Closing, MAEDA shall cause the Title Company to issue a marked-up New Fire Station Premises Title Commitment or proforma for an ALTA Owner's Policy of Title Insurance without the standard exceptions (except for the survey exception), provided, however, that MAEDA or Township may provide the Title Company with a current ALTA survey certified to the Title Company and otherwise acceptable to the Title Company for removal of the survey exception. Any endorsements requested by Township to the owner's policy of title insurance will be paid by MAEDA at its sole cost and expense.
- (ii) Prior to expiration of the Due Diligence Period, Township will review and may make written objections ("Township Objections") to the form and contents of the New Fire Station Title Commitment and the ALTA survey. Township's failure to make Township Objections within such time period will constitute a waiver of all title and survey matters. Any matter shown on such New Fire Station Title Commitment or ALTA survey and not objected to by Township or waived by Township shall be deemed to be a Township Permitted Exception.

MAEDA will have fourteen (14) business days after receipt of the Township Objections (the "MAEDA Cure Period") to cure such Township Objections. If the Township Objections are not cured within such period, Township will have the option to do any of the following:

- 1. Immediately terminate this Agreement; or
- 2. Waive the objection and proceed to Closing.
- b. Township shall notify MAEDA of its election with respect to Section 6.a.(ii)1 or 6.a.(ii)2 above no later than five (5) business days following the expiration of the MAEDA Cure Period. Township's failure to notify MAEDA of such election within the foregoing five (5) business day period shall be deemed Township's election to waive the Township Objections pursuant to Section 6.a.(ii).2 above and proceed to Closing.
- c. The New Fire Station Premises shall be sold and conveyed by MAEDA to Township, subject to the following matters (collectively hereinafter referred to as the "Township Permitted Exceptions"): those liens, encumbrances, easements and other matters which are not objected to by Township or are waived by Township in accordance with Section 6 above or any additional exceptions added by the Title Company after the delivery of the New Fire Station Premises Title Commitment to Township that are approved by Township in its reasonable discretion.
- Environmental Review and Diligence. Township will have until expiration of the Due Diligence Period to complete its due diligence inspection of the New Fire Station Premises, to enter upon the New Fire Station Premises to undertake, at MAEDA's cost and expense, structural and engineering inspections of the New Fire Station Premises to satisfy itself that it wishes to proceed with the purchase of the New Fire Station Premises, subject to and upon the terms and conditions set forth in this Agreement. Township and its agents and representatives shall be permitted to make a complete investigation and physical inspection of the New Fire Station Premises, including without limitation, (i) obtaining an appraisal, (ii) soil testing, (iii) testing for any material defined as a hazardous substance under the Comprehensive and Recovery Act, or any laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental authorities regulating the storage, dumping or other disposition of hazardous material, as any of those laws may have been amended to the date hereof, and the administrative regulations promulgated thereunder prior to the date hereof, (iv) determining whether existing sewer lines and other utilities are of sufficient size for the operation of Township's business, and (v) conducting engineering studies, building inspections, and such other investigations as Township desires. Township agrees to repair any damages to the New Fire Station Premises caused by the testing and inspection and to indemnify and hold MAEDA harmless from any claim, cost or expense arising from any such entry by Township on the New Fire Station Premises. Township shall have the option, in its sole discretion, to extend the Due Diligence Period an additional thirty (30) business days to complete a Phase II investigation upon written notice to MAEDA.

- Access. As of the Effective Date and until the Closing or the earlier termination of this Agreement, Township and its respective employees, agents, contractors, and invitees, along with representatives of Township shall have reasonable access, with prior written notice to MAEDA, to the New Fire Station Premises for the purpose of inspecting and evaluating the New Fire Station Premises. While Township or its employees, agents, contractors, or invitees are on the New Fire Station Premises, (a) they shall not unreasonably interfere with any use of the New Fire Station Premises or the MAEDA Old Property by MAEDA; (b) MAEDA shall not be liable for any damage, loss, or injury caused by Township, its employees, agents, contractors or invitees; and (c) Township shall indemnify, defend, protect and hold MAEDA harmless from any and all claims, suits, damages, loss, or injury to person or property, including, without limitation, costs and expenses of investigating, defending, and settling or litigating any claim, including reasonable attorney fees, arising out of the presence or activities of Township, its employees, agents, contractors or invitees on the New Fire Station Premises or the MAEDA Old Property before the date of Closing. On completion of all such inspections and evaluations, Township shall return the New Fire Station Premises to its prior condition.
- f. Termination Right. If Township determines that Township does not desire to proceed with the purchase of the New Fire Station Premises for any reason or no reason at all, then Township will have the right to cancel and terminate this Agreement by notifying MAEDA in writing on or before expiration of the Due Diligence Period in which event, the Title Company will promptly deliver the Deposit to MAEDA and neither party to this Agreement will thereafter have any further liability, obligation or responsibility to the other under this Agreement, except as otherwise provided under this Agreement.
- 7. Funding Contingency. The Closing and obligations of MAEDA contained herein are contingent upon the availability of funding from the Michigan Economic Development Corporation/Michigan Strategic Fund/State of Michigan to fund the MAEDA New Premises Price along with all Closing Costs.
- 8. MAEDA Representations and Warranties. MAEDA makes the following representations and warranties to Township:
 - a. MAEDA has reviewed the location of the MAEDA New Premises and the location of the New Fire Station Premises with an authorized representative of the Michigan Department of Transportation ("MDOT"), and pursuant to an email dated December 12, 2023 and attached hereto as Exhibit C, that representative has approved the location of the MADEDA New Premises to be acquired and the New Fire Station Premises to be sold as consistent with the proposed realignment of M-96.
 - b. MAEDA has the full power and authority to execute and deliver this Agreement and all other documents or instruments that this Agreement obligates MAEDA to execute or deliver (collectively, the "MAEDA Documents") and to perform and carry out all covenants and obligations arising under this Agreement and the MAEDA Documents.

- c. This Agreement and the MAEDA Documents do not and will not conflict with or contravene any provision of any present judgment, order, decree, writ, or injunction, or any provision of any currently applicable law or regulation affecting MAEDA. The conveyance of the New Fire Station Premises and the execution, delivery and performance of this Agreement and the MAEDA Documents by MAEDA will not result in a breach of, constitute a default under, interfere with, or require consent pursuant to any credit agreement, lease, indenture, mortgage, deed of trust, purchase agreement, guaranty, security agreement, or other instrument to which MAEDA is presently a party or by which MAEDA or MAEDA's assets are bound or affected.
- d. MAEDA has good and marketable title to the New Fire Station Premises, free and clear of all mortgages, liens, pledges, charges or encumbrances other than as shown on the New Fire Station Premises Title Commitment or identified as Township Permitted Exceptions.
- e. MAEDA has not received any written notice of any proposed or pending condemnation proceedings.
- f. Except as otherwise provided in this Agreement, from and after the Effective Date, MAEDA shall:
 - (i) Refrain from transferring any part of the New Fire Station Premises or creating on the New Fire Station Premises any easements, liens, mortgages, encumbrances or other interests which would adversely affect the New Fire Station Premises or MAEDA's ability to comply with the terms of this Agreement;
 - (ii) Refrain from entering into any contracts or other commitments regarding the New Fire Station Premises not terminable upon thirty (30) days' notice;
 - (iii) Refrain from entering into any lease, option, right of first refusal or agreement of sale regarding the New Fire Station Premises that is not subject to this Agreement;
 - (iv) Keep in effect MAEDA's existing policies of public liability and hazard extended coverage insurance insuring the New Fire Station Premises; and
 - (v) Refrain from committing any action that materially damages the New Fire Station Premises or constitutes waste of the New Fire Station Premises.

The foregoing representations and warranties made by MAEDA will be true and correct (i) on the Effective Date, and (ii) on the date of Closing as though made at and as of the date of Closing. MAEDA's representations, warranties and covenants made in this Agreement, including, but not limited to, in this Section 8 and in any of the Closing Documents, as applicable, will survive the Closing for a period of six (6) months after the Closing (the "Limitation Period").

- 9. Township Representations and Warranties. Township makes the following representations and warranties to MAEDA:
 - a. Township has the full power and authority to execute and deliver this Agreement and all other documents or instruments that this Agreement obligates Township to execute or deliver (collectively, the "Township Documents") and to perform and carry out all covenants and obligations arising under this Agreement and the Township Documents.
 - b. This Agreement and the Township Documents do not and will not conflict with or contravene any provision of any present judgment, order, decree, writ, or injunction, or any provision of any currently applicable law or regulation affecting Township. The conveyance of the MAEDA New Premises and the execution, delivery and performance of this Agreement and the Township Documents by Township will not result in a breach of, constitute a default under, interfere with, or require consent pursuant to any credit agreement, lease, indenture, mortgage, deed of trust, purchase agreement, guaranty, security agreement, or other instrument to which Township is presently a party or by which Township or Township's assets are bound or affected.
 - c. Township has good and marketable title to the MAEDA New Premises, free and clear of all mortgages, liens, pledges, charges or encumbrances other than as shown on the MAEDA New Premises Title Commitment or identified as MAEDA Permitted Exceptions.
 - d. Township has not received any written notice of any proposed or pending condemnation proceedings.
 - e. Except as otherwise provided in this Agreement, from and after the Effective Date, Township shall:
 - (i) Refrain from transferring any part of the MAEDA New Premises or creating on the MAEDA New Premises any easements, liens, mortgages, encumbrances or other interests which would adversely affect the MAEDA New Premises or Township's ability to comply with the terms of this Agreement;
 - (ii) Refrain from entering into any contracts or other commitments regarding the MAEDA New Premises not terminable upon thirty (30) days' notice;
 - (iii) Refrain from entering into any lease, option, right of first refusal or agreement of sale regarding the MAEDA New Premises that is not subject to this Agreement;
 - (iv) Keep in effect Township's existing policies of public liability and hazard extended coverage insurance insuring the MAEDA New Premises; and

(v) Refrain from committing any action that materially damages the MAEDA New Premises or constitutes waste of the MAEDA New Premises.

The foregoing representations and warranties made by Township will be true and correct (i) on the Effective Date, and (ii) on the date of Closing as though made at and as of the date of Closing. Township's representations, warranties and covenants made in this Agreement, including, but not limited to, in this Section 9 and in any of the Closing Documents, as applicable, will survive the Closing for the Limitation Period.

- 10. Closing. The closing on the sale of the MAEDA New Premises and the New Fire Station Premises (the "Closing") will occur within fifteen (15) business days after expiration of the Due Diligence Period. The Closing will take place at the offices of the Title Company or through an escrow arrangement with the Title Company acting as escrow agent, or at such other mutually acceptable location to MAEDA and Township, at a date and time to be mutually agreed upon by MAEDA and Township.
 - a. Prorations; Costs. MAEDA shall pay the following at Closing:
 - (i) The MAEDA New Premises Purchase Price;
 - (ii) Township's attorney fees incurred in negotiating and reviewing the Agreement and the documents related to Closing;
 - (iii) The expenses associated with Township having its engineer review the construction plans and site plan; obtaining an ALTA survey; and conducting environmental testing;
 - (iv) Any expense associated with third party review of the environmental reports provided by MAEDA to Township and any expense associated with Township obtaining a baseline environmental assessment relative to the New Fire Station Premises before Township takes possession of said Premises;
 - (v) Fees required by Chicago Title to disburse the construction payments as set forth herein;
 - (vi) Any required closing fees;
 - (vii) Title insurance for both the New Fire Station Premises and the MAEDA New Premises;
 - (viii) Any required county or state transfer tax; and
 - (ix) Any recording fees.

- b. Taxes and assessments. Current real estate taxes shall be prorated as of the date of Closing between Township and MAEDA based on the due date of the respective taxing authority. However, for purposes of this proration, taxes shall be deemed paid in advance. Township and MAEDA understand and acknowledge that the amount of any past due real estate taxes on the applicable premises not paid by the date of Closing may be deducted from the applicable purchase price paid at Closing and be paid to the respective taxing authority at Closing.
- 11. Closing Deliveries. At the Closing, MAEDA will execute and deliver to Township (as required) and Township will execute and deliver to MAEDA (as required) the following (collectively, the "Closing Documents"):
 - a. The MAEDA New Premises Purchase Price will be held by the Title Company pursuant to a Construction Document Review and Disbursing Agreement in the form set forth on Exhibit G. The MAEDA New Premises Purchase Price shall be held by the Title Company in an interest bearing account. All interest shall be applied to the costs of the project as set forth herein.
 - b. MAEDA will execute and deliver to Township a warranty deed in a form acceptable to Township, subject only to the Township Permitted Encumbrances (the "<u>Township Deed</u>"), conveying to Township title to the New Fire Station Premises, together with a Real Estate Transfer Tax Valuation Affidavit executed on behalf of MAEDA;
 - c. Township will execute and deliver to MAEDA a warranty deed in a form acceptable to MAEDA, subject only to the MAEDA Permitted Encumbrances (the "MAEDA Deed"), conveying to MAEDA title to the MAEDA New Premises, together with a Real Estate Transfer Tax Valuation Affidavit executed on behalf of Township;
 - d. MAEDA and Township will execute and deliver to each other a closing statement setting forth the purchase prices and reflecting all prorations, credits, adjustments and other disbursements and payments (the "Closing Statement");
 - e. MAEDA will furnish Township with an affidavit stating that MAEDA is not a "*Foreign Person*" within the meaning of Internal Revenue Code Section 1445(f)(3) or Township will be entitled to withhold appropriate amounts as required by the Internal Revenue Code;
 - f. Township will furnish MAEDA with an affidavit stating that Township is not a "Foreign Person" within the meaning of Internal Revenue Code Section 1445(f)(3) or MAEDA will be entitled to withhold appropriate amounts as required by the Internal Revenue Code;
 - g. MAEDA will execute and deliver an affidavit(s) which is required by the Title Company to remove the standard exceptions from the New Fire Station Premises Title Commitment;

- h. Township will execute and deliver an affidavit(s) which is required by the Title Company to remove the standard exceptions from the MAEDA New Premises Title Commitment;
- i. MAEDA and Township will execute and deliver to each other a lease for the MAEDA New Premises from MAEDA to Township (the "<u>Lease</u>") for the rental price One and 00/100 (\$1.00) Dollars and which term shall expire upon completion of the new fire station as set forth in Section 12.
- j. MAEDA shall deliver an executed copy of the Proposal to Develop a Project Delivery System as set forth on Exhibit F.
- k. MAEDA and Township agree to execute and deliver to the other any additional documents and instruments (provided such documents and instruments will not create any obligations, liabilities or expense in addition to those otherwise created or provided for under this Agreement), which may be reasonably requested by the other party or the Title Company in order to effectuate the purposes of this Agreement and the consummation of the transaction contemplated hereby;
- l. MAEDA shall deliver possession of the New Fire Station Premises to Township at the Closing; and
- m. Township shall deliver possession of the MAEDA New Premises to MAEDA at the Closing subject to the Lease.

12. Post-Closing Covenants.

Construction of New Fire Station. MAEDA will construct a new five (5) stall fire station on the New Fire Station Premises as set forth in plans attached as Exhibit D (the "Site Plan") and Exhibit E (the "Preliminary Construction Drawings", and together with the Site Plan, the "Plans") for the benefit of Township. The Plans were submitted to and approved by the Marshall Township Fire Board on January 9, 2024. The Site Plan will be submitted by MAEDA to the Township Planning Commission for review and consideration at the May 2024 meeting or as soon thereafter as can be scheduled. The Plans shall include any revisions or updates required by the Township Planning Commission for its approval of such Plans. MAEDA will, prior to the date of Closing, execute the Proposal to Develop a Project Delivery System with Morton Building attached as Exhibit F. MAEDA will be the signatory to the construction agreement with Morton Buildings, Inc. which will be created as a result of the process set forth in Exhibit F. MAEDA will promptly begin and diligently complete the construction of the fire station as set forth in the Plans to be constructed on the New Fire Station Premises. Upon issuance of a certificate of occupancy, and final inspection by Township, the new fire station will be transferred to Township. If a certificate of occupancy cannot be issued, MAEDA shall comply with the requirements for such issuance of a certificate of occupancy, at MAEDA's sole cost and expense, in order to deliver the new fire station to the Township in compliance with the Plans and this Agreement.

- b. Construction Draws. During construction of the new fire station pursuant to the Plans, the MAEDA New Premises Purchase Price, held by the Title Company pursuant to a Construction Document Review and Disbursing Agreement in the form set forth on Exhibit G, shall be used to pay for the construction of the fire station and associated site work and shall be released upon written approval of the Township Representative and the Chief Executive Officer of MAEDA, pursuant to the draw schedule to be created by Morton Buildings, Inc.
- c. Project Costs in Excess of MAEDA New Premises Purchase Price. Any constructions costs for the fire station and site work, to be constructed pursuant to the Plans, in excess of the MAEDA New Premises Purchase Price of \$3,000,000, plus any accrued interest, shall be paid by MAEDA.
- d. Township Representative. Township appoints David Bosserd to be the "Township Representative" to review the status of the construction on an as-needed basis. The final design will be subject to the approval in writing of the Township Representative in consultation with the Township Fire Chief. Any changes to the Plans that require a change order of Five Thousand Dollars (\$5,000.00) or less can be executed by the Township Representative who will report any such change orders to the Township Board at the next regular township board meeting.
- e. Septic and Water. The parties anticipate that Township will enter into an Interlocal Agreement with the City of Marshall to provide sewer and water to the new fire station and the existing township hall. The parties acknowledge that based on the timing of the construction of the sewer and water, the fire station may be completed before the sewer and water services are available. If the services are unavailable, the fire station construction shall include the installation of a septic tank and well sufficient to support the new fire station, in compliance with environmental expert recommendations and all required permits and approvals from the Michigan Department of Environment, Great Lakes and Energy and the Calhoun County health department. MAEDA shall pay to connect Township to sewer and/or water infrastructure if sewer and/or water infrastructure is available by January 1, 2027. Notwithstanding the foregoing, if the new fire station and the existing township hall must be connected to city water infrastructure in order for a certificate of occupancy to be issued for the new fire station, MAEDA shall pay to connect Township to said water infrastructure within four (4) months of the Closing.
- f. Warranties. MAEDA shall transfer and assign any warranties relative to the construction of the fire station to Township upon completion of the construction and the transfer of the fire station to Township. MAEDA excludes any other warranties relative to the construction of the fire station and Township agrees to accept the fire station upon completion in as is, where is, condition.
- g. **Demolition of Existing Fire Barn**. Upon issuance of a certificate of occupancy for the new fire station, Township shall at its cost remove all existing equipment from the existing fire barn and transfer it to the new fire station. MAEDA, at its sole cost,

will demolish and remove the existing fire barn and take other necessary actions to prepare the MAEDA New Premises for the relocation and realignment of M-96 and sewer, water and other utilities for the BlueOval Battery Park project and the MAJOR campus.

13. Defaults.

- a. **Township's Default.** In the event of any default by Township that continues without cure for ten (10) days after delivery by MAEDA of written notice to Township, MAEDA shall have the right (but not the obligation) to terminate this Agreement by notice to Township within fifteen (15) days after the end of the cure period allowed to Township. MAEDA may enforce this agreement as provided for by applicable law.
- b. **MAEDA's Default.** In the event of any default by MAEDA that continues without cure for ten (10) days after the delivery by Township of written notice to MAEDA, Township shall have the right (but not the obligation) to terminate this Agreement by notice to MAEDA within fifteen (15) days after the end of the cure period allowed to MAEDA. Township may enforce this agreement as provided by applicable law.
- 14. **Notices.** Except as otherwise provided, all notices required under this Agreement shall be effective only if in writing and shall be deemed to be given (i) when personally served; (ii) one (1) day after delivery to Federal Express or similar, reputable national overnight delivery service; (iii) three (3) days after being sent via certified mail; or (iv) on the day of transmission when sent via email if such transmission is immediately followed by any of the other methods for giving notice to the appropriate party at its address as set forth in the introductory paragraph of this Agreement.

15. Miscellaneous.

- a. Real estate broker. Township and MAEDA represent and warrant to each other that no real estate broker is entitled to a commission as a result of the transactions contemplated by this Agreement. To the extent a commission or fee is claimed by any individual or entity as a result of its contacts with either Township or MAEDA, the party against and through whom the commission or fee is claimed will indemnify the other party and be responsible for the payment of all costs of defending that claim and, to the extent it is to be paid, the liability for the payment of that commission or fee.
- b. **Entire agreement.** This Agreement and its exhibits constitute the entire agreement between the parties regarding the subject matter of this Agreement, and all prior agreements regarding these transactions between the parties, whether written or oral, shall be of no further force and effect. This Agreement may not be modified except by a written document signed by Township and MAEDA.
- c. Applicable law. This Agreement shall be applied, construed, and enforced in accordance with the laws of the state of Michigan, without giving effect to conflicts of

law principles. Venue for any disputes under this Agreement shall lie in Calhoun, Michigan.

- d. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns. Township and MAEDA are permitted to assign this Agreement to affiliated business entities that are owned in total by either Township or MAEDA; but neither party may assign or otherwise transfer its interest under this Agreement to any other third party without the prior approval of the other party to this Agreement, which approval shall not be unreasonably withheld.
- e. Modifications; counterparts; electronic signatures. No modification, alteration, or amendment to this Agreement shall be binding unless in writing and signed by both MAEDA and Township. This Agreement may be executed electronically in pdf form and/or in counterparts, and all counterparts together shall constitute one integrated agreement and be deemed an original document.
 - f. **Exhibits.** The following are exhibits to this Agreement:
 - (i) Exhibit A Survey of Old Township Property and MAEDA New Premises
 - (ii) Exhibit B Survey of Old MAEDA Property and New Fire Station Premises
 - (iii) Exhibit C MDOT Email
 - (iv) Exhibit D Site Plan for new Fire Station to be constructed
 - (v) Exhibit E Construction Plans for Fire Station to be constructed
 - (vi) Exhibit F Proposal to Develop a Project Delivery System
 - (vii) Exhibit G Construction Document Review and Disbursement Agreement

[Signatures on next page.]

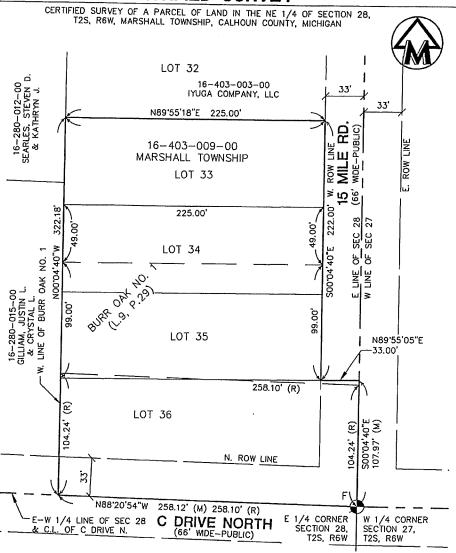
This Agreement has been executed as of the Effective Date.

TOW	David Bosserd												
Marshall Township													
By:													
	David Bosserd												
Its:	Supervisor												
MAE	DA:												
Mars	hall Area Economic Development Alliance												
Ву:													
	Jim Durian												
Its:	Chief Executive Officer												

EXHIBIT A

(see attached Survey of Old Township Property and MAEDA New Premises)

CERTIFIED SURVEY



LEGEND



SECTION CORNER

- όs SET IRON ROD
- FOUND IRON PIPE O F FOUND IRON ROD

FOUND MONUMENT

BASIS OF **BEARINGS**

MICHIGAN STATE PLANE COORDINATE SOUTH ZONE

I HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE ABOVE PARCEL HEREON DESCRIBED ON DEC. 11, 2023 AND THAT THE RELATIVE POSITIONAL PRECISION OF EACH CORNER IS WITHIN THE LIMITS ACCEPTED BY THE PRACTICE OF PROFESSIONAL SURVEYING AND THAT ALL REQUIREMENTS OF P.A. 132 1970, AS AMENDED, HAVE BEEN COMPLIED WITH.

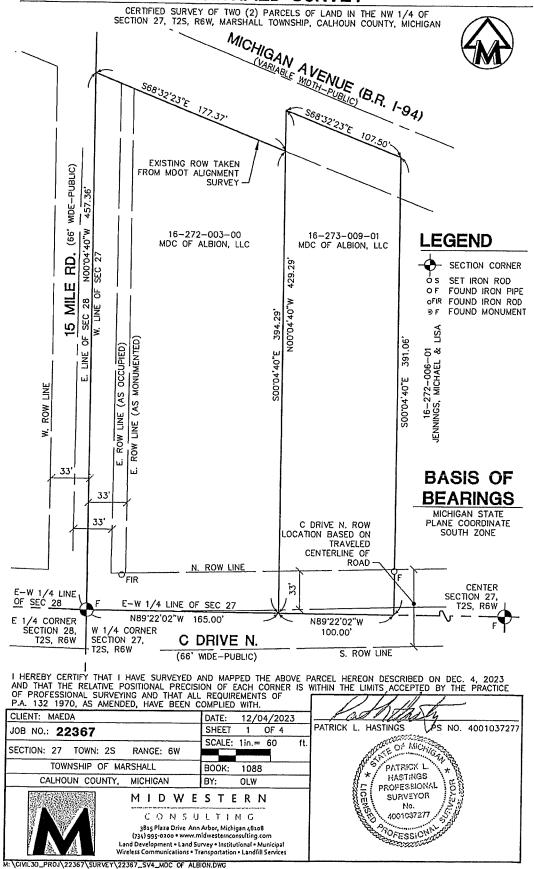
CLIENT: MAEDA DATE: 12/11/2023 PATRICK L. HASTINGS V JOB NO.: 22367 PS NO. 4001037277 SHEET 1 OF 4 SCALE: 1in.= 60 SECTION: 28 TOWN: 25 RANGE: 6W TE OF MICH TOWNSHIP OF MARSHALL BOOK: 1088 PATRICK L CALHOUN COUNTY. MICHIGAN BY: OLW HASTINGS MIDWESTERN PROFESSIONAL SURVEYOR CONSULTING No. 3815 Plaza Drive Ann Arbor, Michigan 48108 (734) 995-0100 • www.midwesternconsulting.com 400103727 POFESSION Land Development • Land Survey • Institutional • Municipal Wireless Communications • Transportation • Landfill Services

CIVILID_PROJ\22367\SURVEY\22367_SV2 MARSHALL TWP.DWG

EXHIBIT B

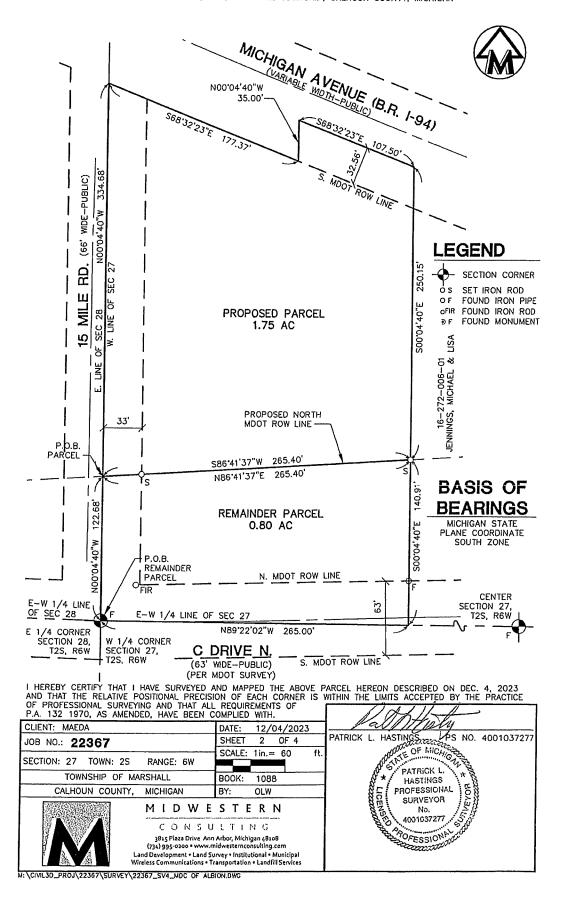
(see attached Survey of Old MAEDA Property and New Fire Station Premises)

CERTIFIED SURVEY



PROPOSED PARCEL

CERTIFIED SURVEY OF TWO (2) PARCELS OF LAND IN THE NW 1/4 OF SECTION 27, T2S, R6W, MARSHALL TOWNSHIP, CALHOUN COUNTY, MICHIGAN



LEGAL DESCRIPTION - EXISTING

(Per Chicago Title Insurance Company, Commitment No. 131204111CML, Dated April 28, 2023 at 8:00 am)

PARCEL 1:

The West 165 feet of the Southwest 1/4 of the Northwest 1/4 of Section 27, Town 2 South, Range 6 West, lying South of Old U.S. 12, except the North 35 feet.

13-16-272-003-00

PARCEL 2:

The East 100 feet of the West 265 feet of the Southwest 1/4 of the Northwest 1/4, Section 27, Town 2 South, Range 6 West, lying South of Old US-12 Northwesterly.

13-16-273-009-01

WITNESSES

(G-9) NORTHWEST CORNER, SECTION 27, T2S, R6W, MARSHALL TOWNSHIP (Found Monument Per L. 1893, P. 304)

NW corner Township Building S 85° E 32.44 SW corner Township Building S 60° F 43.09 Nail & Tag in 22" Maple N 40° E 34.13' Nail & Tag in 18" Maple S 45° W 37.19

(G-10) WEST 1/4 CORNER, SECTION 27, T2S, R6W, MARSHALL TOWNSHIP (Found Monument Per L. 1893, P. 301)

SE corner of house N 45° W 111.65 Nail & Tag in Power Pole N 20° E 47.62 Nail & Tag in Power Pole S 65° W 50.20 Nail & Tag in 48" Maple South 26.34

(G-11) SOUTHWEST CORNER, SECTION 27, T2S, R6W, MARSHALL TOWNSHIP

(Found Monument Per L. 1893, P. 303) Nail & Tag in 18" Cherry S 60° W 24.60 Nail & Tag in 10" Elm N 80° W 44.35 Railroad Rail Post South 14.25 South edge South South rail MCRR North 87.56

I HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE ABOVE PARCEL HEREON DESCRIBED ON DEC. 4, 2023 AND THAT THE RELATIVE POSITIONAL PRECISION OF EACH CORNER IS WITHIN THE LIMITS ACCEPTED BY THE PRACTICE OF PROFESSIONAL SURVEYING AND THAT ALL REQUIREMENTS OF

P.A. 132 1970, AS AMENDED, HAVE BEEN COMPLIED WITH. CLIENT: MAEDA 12/04/2023 SHEET OF 4 JOB NO.: 22367 3 SCALE: 1in.= N/A SECTION: 27 TOWN: 2S RANGE: 6W TOWNSHIP OF MARSHALL BOOK: 1088 CALHOUN COUNTY, MICHIGAN BY: MIDWESTERN



3815 Plaza Drive Ann Arbor, Michigan 48108 (734) 995-0200 • www.midwesternconsulting.com Land Development • Land Survey • Institutional • Municipal Wireless Communications • Transportation • Landfill Services

CONSULTING M: \CIVIL3D_PROJ\22367\SURVEY\22367_SV4_MDC OF ALBION.DWG

PATRICK L. HASTÍNGS , PS NO. 4001037277 OF MICHIG PATRICK L HASTINGS PROFESSIONAL SURVEYOR No. 4001037277 POFESSION

LEGAL DESCRIPTION - PROPOSED

PROPOSED PARCEL

Commencing at the West 1/4 corner of Section 27, T2S, R6W, Marshall Township, Calhoun County, Michigan; thence N00°04'40"W 122.68 feet along the West line of said Section 27 and the centerline of 15 Mile Rd, as monumented, to the POINT OF BEGINNING;

thence continuing N00°04'40"W 334.68 feet along said West line of Section 27 and said centerline of 15 Mile Rd, as monumented;

thence S68°32'23"E 177.37 feet along the Southerly right-of-way line of Michigan Avenue (Variable Width);

thence N00°04'40"W 35.00 feet;

thence S68°32'23"E 107.50 feet;

thence S00°04'40"E 250.15 feet;

thence S86°41'37"W 265.40 feet to the POINT OF BEGINNING. Being a part of the NW 1/4 of said Section 27, containing 1.75 acres of land, more or less. Being subject to the rights of the public over the Northerly 32.56 feet of the Easterly 100.00 feet thereof, as occupied by Michigan Avenue. Also being subject to any easements and restrictions of record, if any.

Part of Tax ID 16-272-003-00 and 16-273-009-01

REMAINDER PARCEL

BEGINNING at the West 1/4 corner of Section 27, T2S, R6W, Marshall Township, Calhoun County, Michigan;

thence N00°04'40"W 122.68 feet along the West line of said Section 27 and the centerline of 15 Mile Rd, as monumented;

thence N86°41'37"E 265.40 feet;

thence S00°04'40"E 140.91 feet;

thence N89°22'02"W 265.00 feet along the E-W 1/4 line of said Section 27 to the POINT OF BEGINNING. Being a part of the NW 1/4 of said Section 27, containing 0.80 acres of land, more or less. Being subject to the rights of the public over the Westerly 33.00 feet thereof, as occupied by 15 Mile Rd. and the Southerly variable width thereof, as occupied by C Drive N.. Also being subject to any easements and restrictions of record, if any.

Part of Tax ID 16-272-003-00 and 16-273-009-01

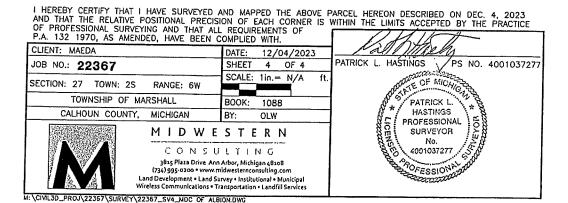


EXHIBIT C

(see attached MDOT Email)

RE: Marshall Township

Neubauer, David (MDOT) < Neubauer D1@michigan.gov>

Tue 12/12/2023 1:11 PM

To:Richard Lindsey, Jr <rlindsey@atbplclaw.com>
Cc:Aaron Reed <Aaron.Reed@sme-usa.com>;Matt Davis <biggfoot18@gmail.com>;James Durian <james@choosemarshall.com>

0 2 attachments (746 KB)

Canon-121123-New Parcel to Be transferred to MAEDA and Remaining Parcel 12-12-23.pdf; Canon-120423-233241- New Township Fire Station Survey.pdf;

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon Richard,

I have reviewed the attached Surveys. MDOT concurs this is consistent with our discussions concerning the proposed road alignment of the new Michigan Ave.

Please let me know if you need anything else.

Thanks, Dave

David A. Neubauer, P.E.

Projects & Contracts Admin Engineer – MDOT - Marshall TSC Email: Neubauerd1@Michigan.gov / Phone: (269) 789-0592

From: Richard Lindsey, Jr <rlindsey@atbplclaw.com>

Sent: Tuesday, December 12, 2023 11:54 AM

To: Neubauer, David (MDOT) < Neubauer D1@michigan.gov>

Cc: Aaron Reed <Aaron.Reed@sme-usa.com>; Matt Davis <biggfoot18@gmail.com>; James Durian

<james@choosemarshall.com>
Subject: Marshall Township

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Good morning Dave -

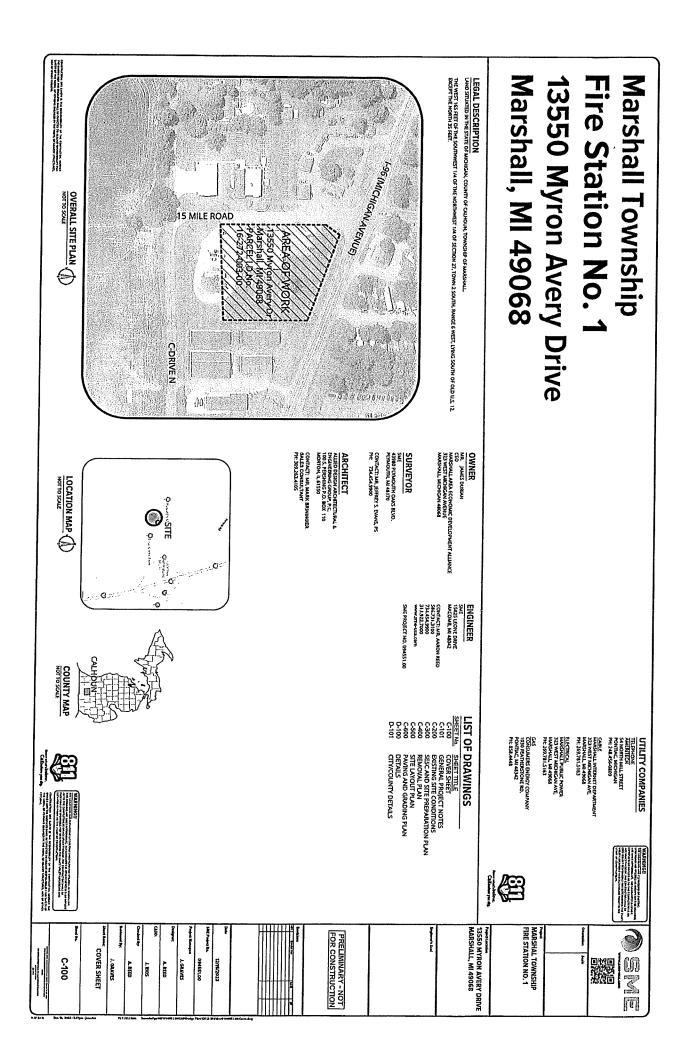
Can you please take a look at these and make sure they are consistent with what we have been discussing?

Thanks,

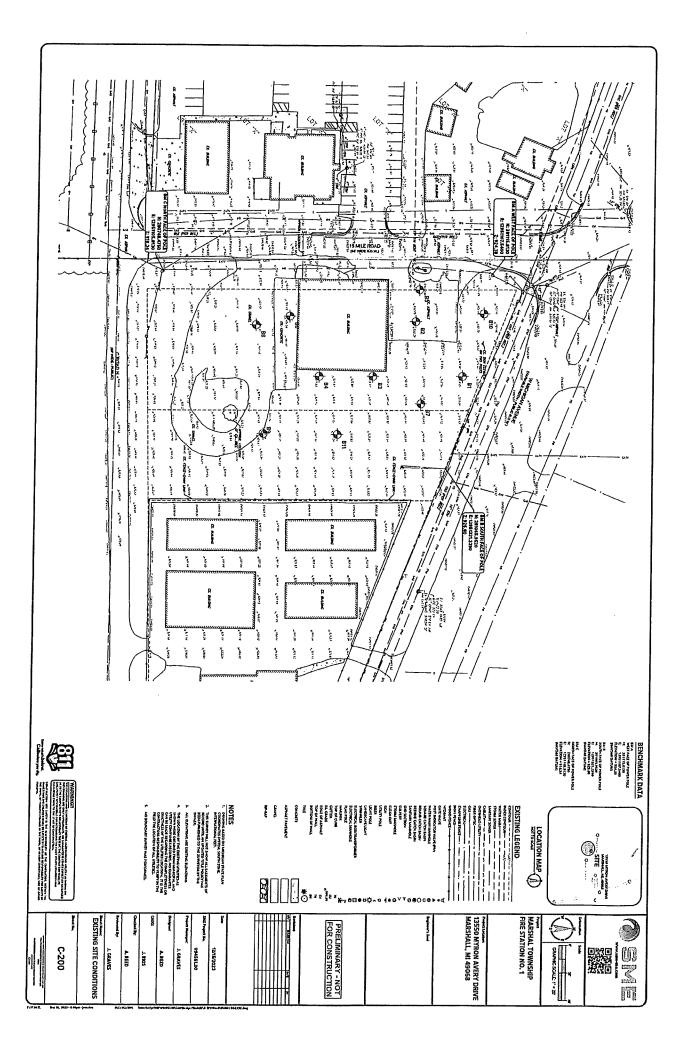
Richard

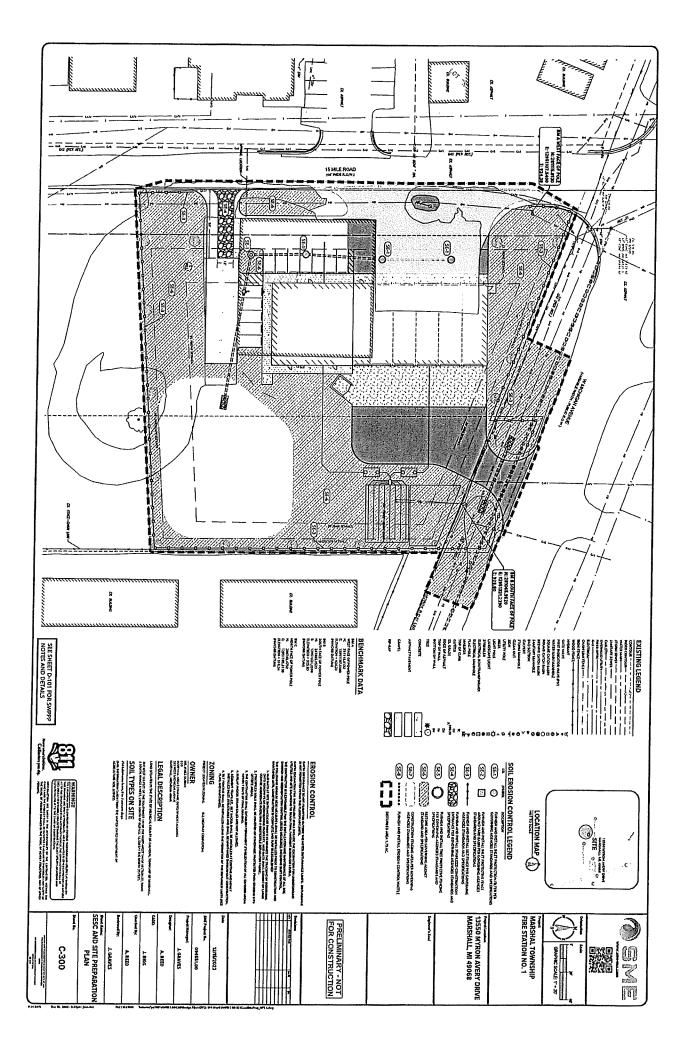
EXHIBIT D

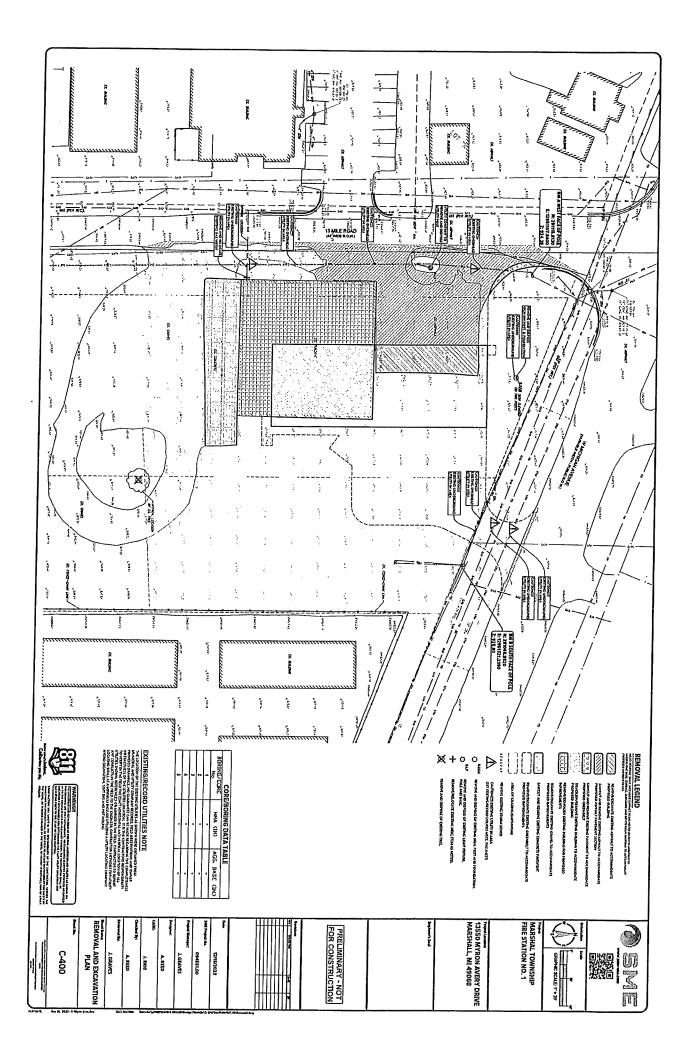
(see attached Site Plan for new Fire Station to be constructed)

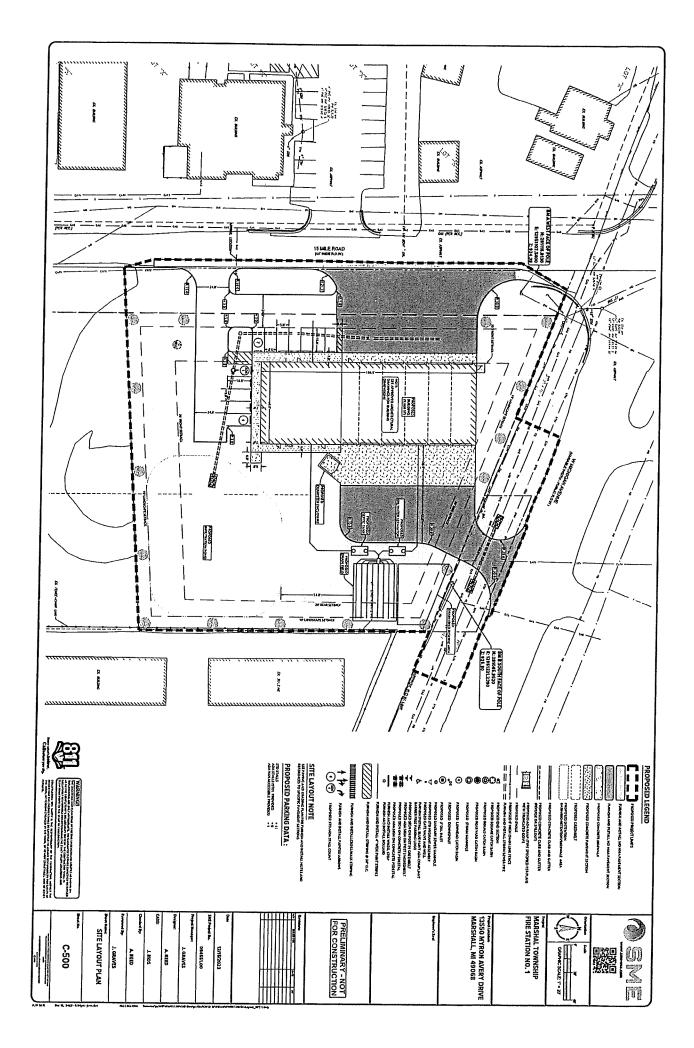


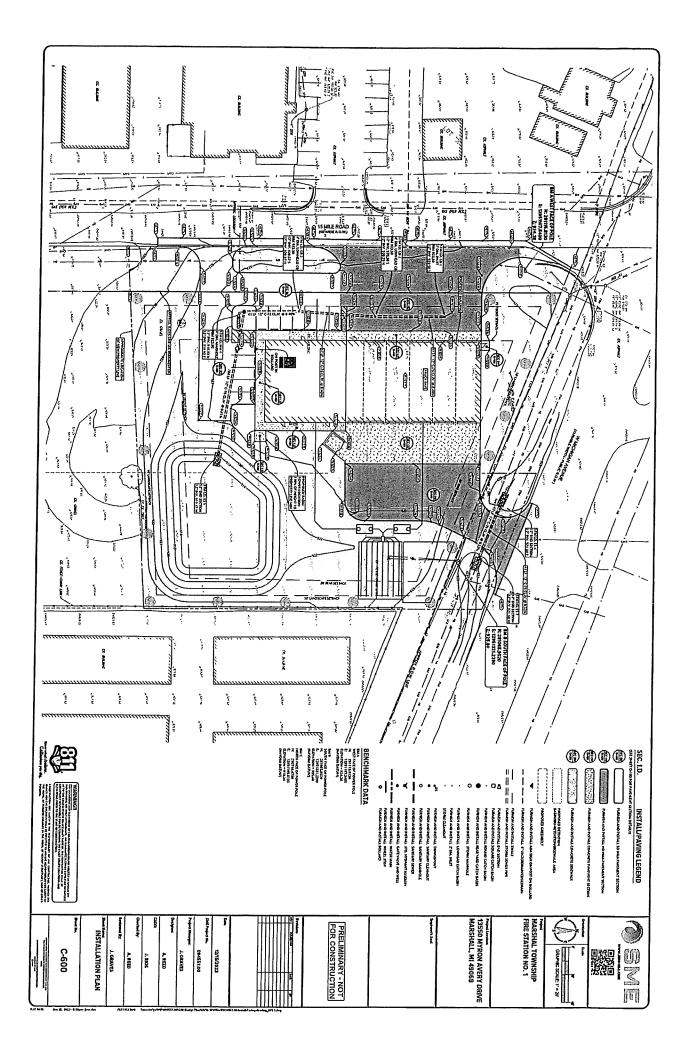
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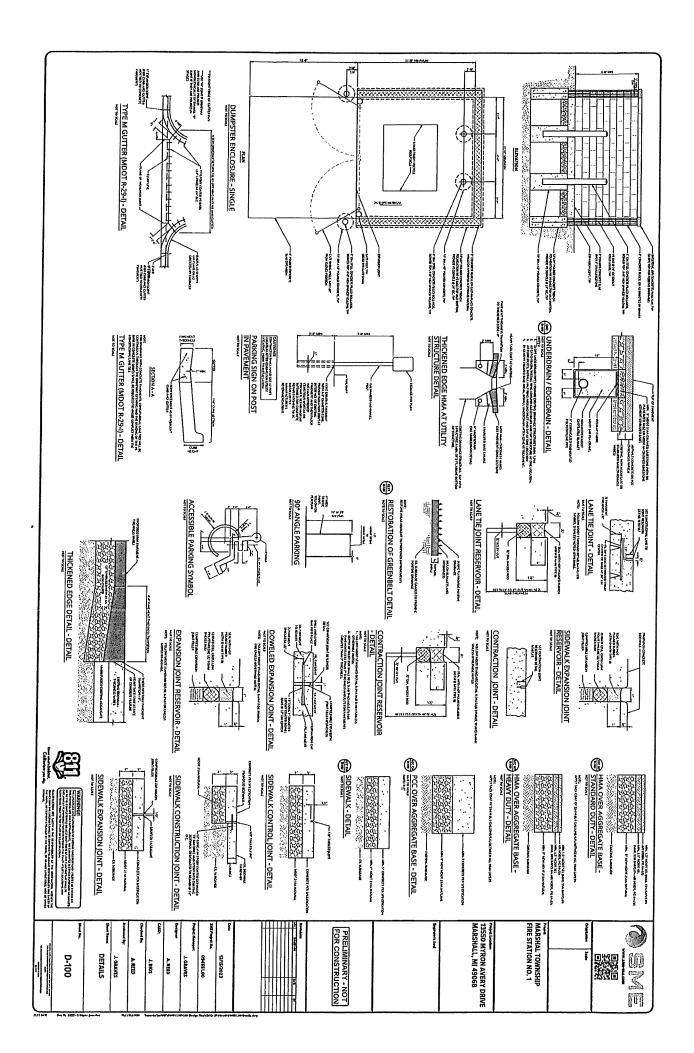












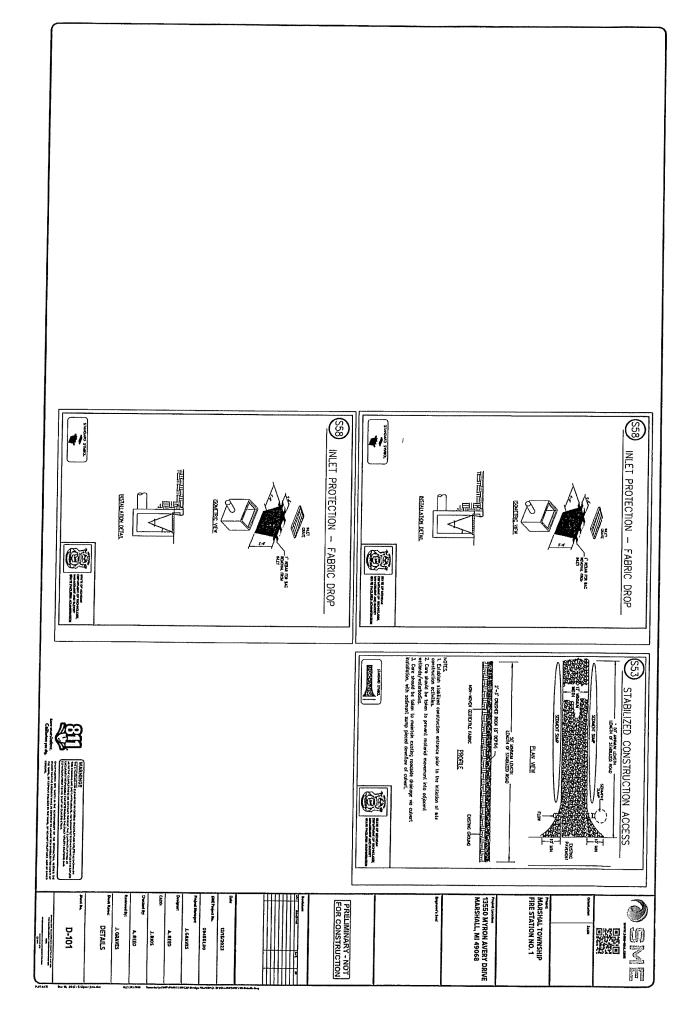
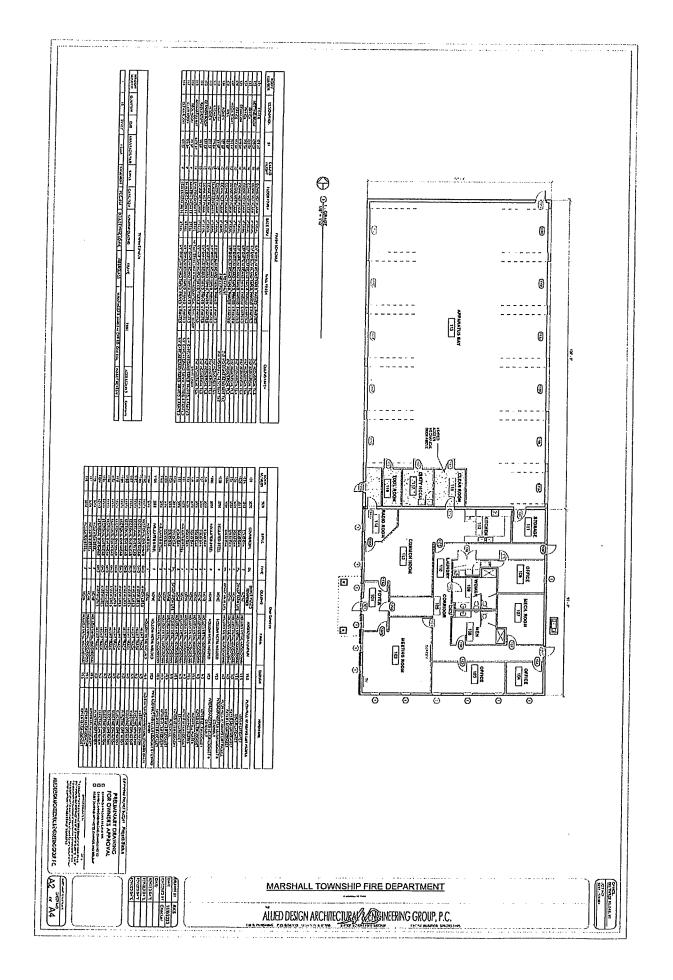
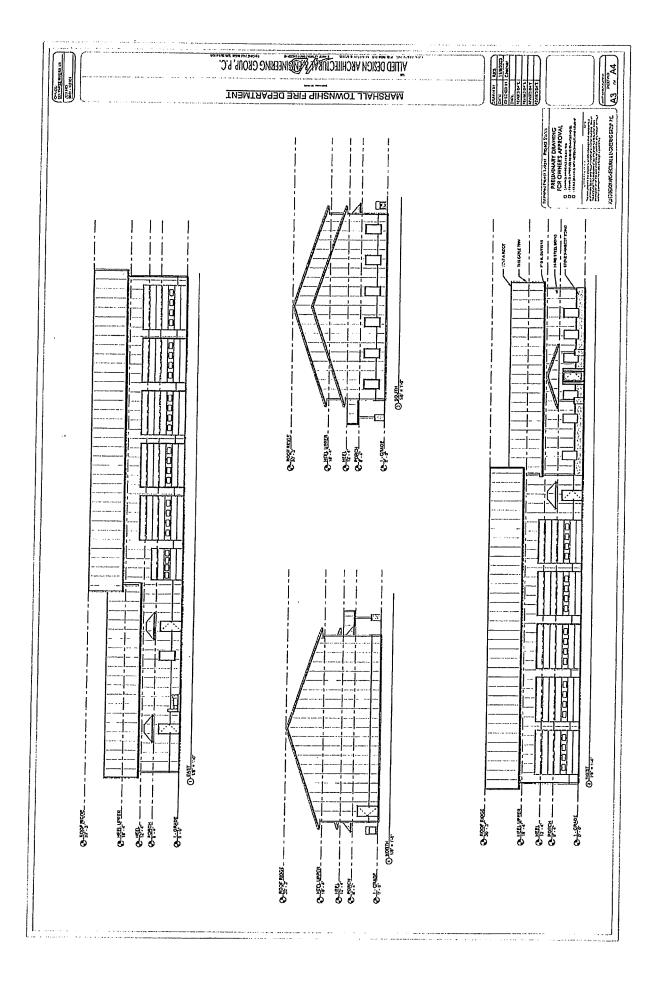


EXHIBIT E

(see attached Construction Plans for Fire Station to be constructed)





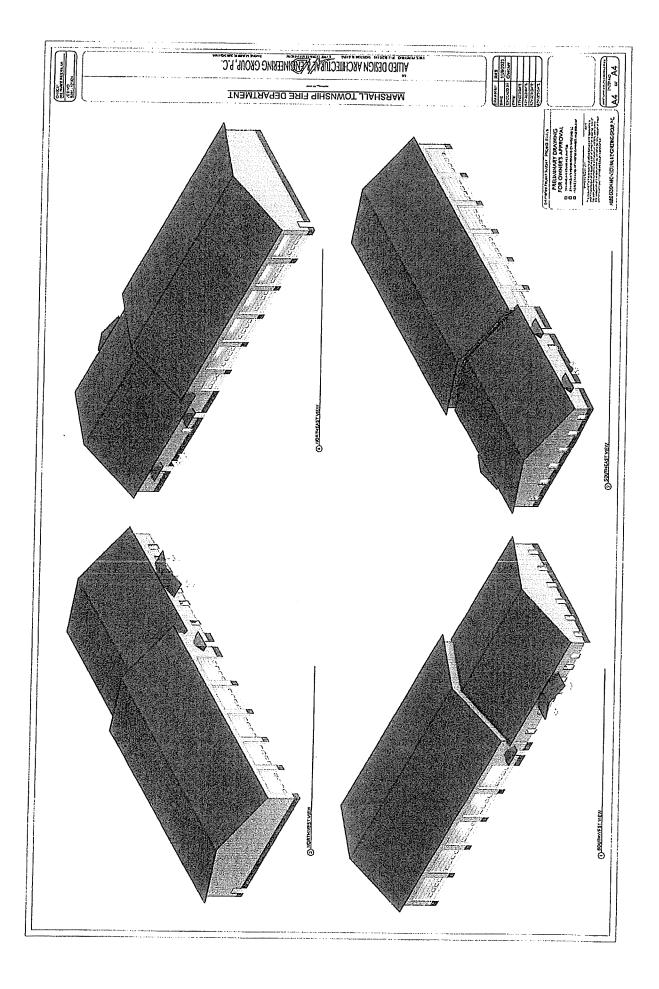


EXHIBIT F

(see attached Proposal to Develop a Project Delivery System)

2101221462



252 W. Adams, P.O. Box 399 • Morton, Illinois 61550-0399

Project: Date:

B061128924 2/14/2024

Page:

1 of 2

PROPOSAL TO DEVELOP A PROJECT DELIVERY SYSTEM

Qviner

Marshall Area Economic Development Alliance

323 West Michigan Ave

Marshall, MI 49068



Marshall Area Economic Development Alliance

13550 15 Mile Road

Marshall, MI 49068

ADD ORDER Step 2 for Proposal to Develop a Project Delivery System for a Marshall Area Economic Development Alliance,

With a tentative construction of Q3 2024.

Construction Package Details:

The payment to engage Morton designBUILD and authorized professional designers for the development of finalized plans for the proposed Morton building in accordance with client's intended function and desired aesthetics is: \$150,000.00

Client-requested revisions during this Construction Package phase should be very minor and complete before plans are sealed by licensed professionals. The full amount of this payment will be applied towards the Construction Activation Agreement with Morton Buildings, Inc.

Project cost is estimated to be \$2,791,347.00 based on findings at completion of Concept Package. NOTE: If Concept Package phase was not completed, then the estimated cost is based on national averages and the extensive experience of Morton's designBUILD team. The final project cost will be reviewed upon completion of the Construction Package and the services identified below will be provided to substantiate findings. Project cost can increase or decrease based on findings throughout this Construction Package phase.

This Construction Package Provides the Following Services to You the Client:

OPlans Finalized

DCivil Engineered Site Plan

DGeotechnical soil investigation

DArchitectural and Structural plans

[Mechanical plans (Plumbing, HVAC, Electrical) and specifications

©Permitting Requirements are finalized

Costs and responsibilities determined

[]Assemble construction team

[IVerification of subcontractors qualifications and insurance

II Subcontractor cost negotiated and determined

Didentify parties controlling construction

DConstruction Schedule

DMilestones and requirements identified

©Construction documents with lump sum construction cost

DActivation Contract

©Construction Plans

DFinal scope of work is agreed upon

Il Meeting to present and review Construction Package

Construction:

Once building permits are secured, the estimated budget cost shall be adjusted with a Construction Activation Agreement with a clear Scope of Work, divisional responsibilities, time schedules, final pricing and payment schedule.

MBMI GC License:

2101221462



252 W. Adams, P.O. Box 399 · Morton, Illinois 61550-0399

Project:

B061128924

Date: Page:

2/14/2024 2 of 2

NOTE: Plans and specifications developed under this agreement are solely for the purpose of a Morton Building system. If Morton Buildings, Inc. is not the builder of the projects, the client must hire another designer(s) of record, who can use the plans and specifications procured under this agreement as a basis for their own design, but must provide their own certified design(s).

It is understood by the parties hereto that the terms and conditions of a subsequent construction agreement shall be finalized, stated and executed on Morton Buildings, Inc. Construction Proposal after the building and project manuals are approved by the owner, permit issuing authorities in the form of locally required permits, and subcontractors, on who's proposal this budget estimate is made. It is further understood that prior to Morton Buildings, Inc. acceptance of subsequent construction agreements an investigative consumer report may be obtained; and that prior to such acceptance the entire liability of Morton Buildings, Inc. under this and subsequent contracts may be discharged by the return of any moneys which the purchaser may have deposited as a condition of the contract.

Steneture

Signature of Marshall Area Economic Development Alliance , By: James Durian, Title: Chief Executve Officer

Signature Date

NOTE: YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THE TRANSACTION.

EXHIBIT G

(see attached Construction Document Review and Disbursement Agreement)

CONSTRUCTION DOCUMENT REVIEW [and DISBURSING AGREEMENT]

Escrow No. Commitment/Policy No.

ARTICLE 1: 0	General Information				
A. Owner Name: Address:		Attorney for Owner: Name: Address:			
Phone: Fax: e-Mail:	Phone: Fax: e-Mail:				
Designated Co	ntact for purposes of notice as se	t forth in Art. 6 Par. C is:			
B. Title Compa Name: Address: Phone: Fax: e-Mail:	any: Rita Morin, Construction Specia Chicago Title of Michigan, Inc. (941 W. Milham Road Portage, MI 49024 (269-903-0058 (800) 978-4853 Rita.Morin@ctt.com	list nereinafter known as "CTI")			
C. Inspector/Architect:					
D. General Contractor:					
E. Project Name:					
F Project Location:					
ARTICLE 2: Recitals					

The Owner has requested CTI to perform certain services related to the construction of the subject "Project", as detailed and set forth below, as well as update the status of title on an interim basis as the project construction progresses for the land identified above and more particularly described in CTI Commitment/Policy No.

Further, subject to the provisions of Article 5 Par. C3., the commitment/and or policy when issued will provide no construction lien coverage and will be issued subject to the following construction lien

exception, "Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records."

ARTICLE 3: Requirements

A. Owner shall furnish CTI a copy of the complete executed construction contract between the Owner and the General Contractor along with a properly completed and executed Michigan statutory form of sworn statement, as set forth at MCL 570.1110, executed by the Owner reflecting the contract between the owner and General Contractor.

The Owner shall furnish or cause to be furnished to CTI a properly completed and executed Michigan statutory form of sworn statement provided to Owner by the General Contractor setting forth the names and addresses of such persons furnishing labor, service or materials (i.e., subtrades and material supplies), the kind of labor, service or materials to be furnished, the amounts of the contracts, amount paid to date, if any, amounts of current payments, if any, and balances to become due, if any.

If the Owner has contracted with any other party in addition to the General Contractor for the furnishing of services, labor and/or materials in connection with the project, or if the amount to be paid for work to be performed shall vary from the original contract amount, then Owner shall furnish copies of all providers executed contracts, and the Owner's sworn statement shall set forth the names and addresses of such persons furnishing labor, service or materials (i.e., subtrades and material supplies), the kind of labor, service or materials to be furnished, the amounts of the contracts, amount paid to date, if any, amounts of current payments, if any, and balances to become due, if any.

- B. The Owner shall furnish or cause to be furnished to CTI a copy of the Notice of Commencement (recorded copy or fully executed original in recordable form, if applicable) required pursuant to MCLA 570.1108 or 570.1108(a).
- C. Prior to each disbursement the Owner shall furnish or cause to be furnished to CTI the following:
 - A current dated sworn Owner's Statement as described hereinbefore in this Article 3A if
 the Owner/Borrower has contracted with any party other than the General Contractor for
 the furnishing of services, labor and/or materials in connection with the Project, or if the
 total amount to be paid for work to be performed per any contract will vary from the
 original contract amount.

Note: This requirement may be omitted if the Owner/Borrower has only contracted with the General Contractor and the contract price has not changed.

- 2. A current dated, properly completed and executed Michigan statutory form of sworn statement to Owner by the General Contractor, covering its current construction draw request.
- Copies of any Notices of Furnishing received pursuant to MCL 570.1109 together with lien waivers from such parties serving the Notice of Furnishing who were to be paid in the prior draw.
- 4. Statements, change orders, affidavits, supporting lien waivers, and releases of Lien from such persons as disclosed in the Sworn Statement(s) or by such other documentation provided to or reviewed by CTI.
- 5. If required under the provisions of this Agreement, either a report by the Inspector or a certification by the Architect certifying that work has been completed and materials are in

place as indicated by the current construction draw request of the General Contractor, or a current dated and executed statement by the Owner stating that work has been completed and materials are in place as indicated by the current construction draw request of the General Contractor.

ARTICLE 4: Depositing Good Funds & CTI Disbursing Funds

- A. If the Owner has requested CTI to provide a disbursing service for the payment of project construction costs and other related development costs per the written direction of the Owner. CTI will be acting only in the capacity as a disbursing agent and is not acting in the capacity of an escrow agent or other fiduciary role. The fee for CTI to hold all the construction funds will be \$200.00 and is in addition to the fees charged in Article 5.
- B. "Good Funds" in the total amount of \$_____ are being deposited with CTI for the payment of Project construction costs and other related development costs. CTI makes no representations that the amount being deposited will or will not be sufficient to cover the costs of development and improvements covered under the Construction Contract between the Owner and the General Contractor.
- C. As to any deposited funds, the Owner agrees that CTI shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that CTI may deposit such funds with other deposits or and may use any part or all of such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish CTI's obligation to apply the full amount of the deposits in accordance with the terms of these instructions. Further, Owner acknowledges and agrees that funds deposited are not to be held in an interest bearing account for the benefit of Owner and that they will be deposited with other escrow funds in a CTI general escrow account. As a result, CTI may receive interest, an array of bank services, accommodations or other benefits from the Depository, which shall accrue to CTI and its affiliates. CTI will have no obligation to account to you for the value of such interest earned, services, accommodations or other benefits.
- D. If CTI has been requested to disburse funds for the construction payments to General Contractor, then the following additional matters must be satisfied prior to any disbursement:
 - 1. A written approval by Owner to have CTI make the requested disbursement.
 - 2. In the event that non-construction costs are to be paid by CTI with the funds, then Owner shall provide written payment directions to CTI setting forth the names and addresses of the payee, the amounts of the respective payments, and the purpose of the payments, i.e., legal fees, real estate taxes, etc.
 - 3. Amount of good funds provided to CTI sufficient to cover the current disbursement request.
 - 4. Note: In the event that the General Contractor and any subcontractor jointly authorize CTI to pay any funds due one to the other, CTI may not comply with such authorization without the written approval of Owner. Further, it is understood that any person who is not a party signatory to this agreement shall not have the right to look to CTI for any disbursement hereunder under a third party beneficiary theory or otherwise, and that CTI owes no duty to any such third party to make any disbursement.

[Strike/Delete Art. 4 in its entirety if CTI is not disbursing draws]

ARTICLE 5: General Conditions

Where the title search and/or review of the documentation required by CTI reveals a lien or other matter which may adversely affect title, CTI will promptly notify the Owner of the existence of such matter. In addition, if CTI is disbursing funds they shall await further written direction from Owner prior to making any disbursements.

B. If at any time during the course of construction and review of construction documentation submitted, the total of the unpaid disclosed cost of construction, as indicated by the construction column totals on the current dated sworn statement(s) furnished CTI, exceeds the amount of undisbursed construction funds as disclosed in the construction contract between Owner and General Contractor, CTI shall apprise the Owner, and if disbursing funds CTI shall not make any further disbursements until such time as sufficient additional funds have been deposited with CTI for purposes of disbursing, or CTI is provided with documentation sufficient to evidence that any imbalance in the funding of the project was due to a clerical error and revisions have been made to bring the funding of the project into balance.

Also, if CTI discovers errors or inconsistencies in any documentation furnished by General Contractor or Owner, or any errors or inconsistencies between or among any figures in the Owner's Statement, or the General Contractor's Statement or any subcontractor's statement, the Owner will be notified accordingly. When deemed necessary by CTI, they shall verify information submitted by the Owner and the contractors, and/or may require the relevant parties to furnish or cause to be furnished verification of contractor amounts by subcontractors or material suppliers.

- C. Following the completion of the construction Project, CTI herein agrees to consider the endorsing of the Owner's Policy or the revising of the commitment under the terms and conditions set forth hereafter:
 - 1. CTI shall perform and review a final title search certified through the date of the final construction documentation after the latter of either:
 - a. 120 days after the issuance of an unconditional Certificate of Occupancy for the project; or
 - b. The final disbursement has been made with all work on the Project completed and all required construction documentation having been provided to CTI by Owner and General Contractor.
 - 2. Upon receipt of a final title search and the review of any documentation disclosed therein, CTI may then determine to endorse the existing Owner's Policy by issuing a Date Down Endorsement that would extend the Effective Date of the Policy, or revise the title commitment and issue the Owner's Policy, to the date of the final construction documentation, subject to, additional matters disclosed, if any, affecting title (including, but not limited to liens, claims, taxes or special assessments) which have not otherwise been "cleared" by the Owner to the satisfaction of CTI.
 - 3. CTI may delete the general construction lien exception referred to in Article 2 after the receipt of a final title search, the review of any documentation disclosed therein and the determination that based upon the construction documentation provided under the provisions of this Agreement and results of the search that there are no adverse matters affecting title related to the construction of the Project.
 - 4. CTI may delete the general survey exceptions, upon the receipt and review by CTI of:

- a. An "as built" survey dated through the completion date of the Project and certified to CTI when the Project has involved the construction of a 1-4 family residence.
- An ALTA/NSPS survey dated through the completion date of the Project and certified to CTI when the Project has involved construction of an improvement other than a 1-4 family residence.

Further, any adverse matters which may be reflected on the survey provided will be added as Exceptions to title on any commitment/Policy being issued.

5. CTI shall also, if requested, increase the face amount of the Owner's insured coverage amount, upon the payment of the applicable premium at the filed rate of insurance.

ARTICLE 6: Other Provisions

- A. The functions and duties assumed by CTI include only those described in this Agreement and CTI is not obligated to act except in accordance with the terms and conditions of this Agreement. CTI does not insure that the project will be completed, nor does it insure that the project, if completed, will be in accordance with plans and specifications for the project. CTI makes no representations that sufficient funds will be available for completion of the project, nor does it make any certification(s) of any Inspector/Architect or Owner's statements its own and does not assume any liability for the same other than its procurement if listed as one of the conditions precedent to each disbursement.
- B. In the event that the Owner has engaged the services of a "Construction Manager" in lieu of a "General Contractor", as noted in Article 1 hereof, then all references contained in this Agreement to "General Contractor" are hereby deleted and "Construction Manager" is hereby substituted therefore.
- C. Any request, direction, notice, or other services required or permitted to be made or given by any party hereto shall be in writing and shall be deemed sufficiently given or serviced for all purposes if delivered in person, by First Class mail, by facsimile transmission or by e-mail to the parties designated to receive notice at the addresses or contact numbers/information set forth below in Art. 1 Par. A and B, or at such other address as any party shall specify, from time to time, by written notice given to all parties hereto.
- D. For the purposes of calculating any dated or time period under the provisions of this Escrow Agreement, notice shall be deemed effective upon mailing, personal delivery, or transmission of the notice, whichever is applicable.
- E. The undersigned agree that this Agreement is not intended by any of the undersigned to give benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other as a third party beneficiary or otherwise under any theory of law.
- F. Additional Terms (if any):
 - 1. Owner to issue any required 1099's.

[Add any additional terms as necessary]

G. Interpleader and Indemnification:

Notwithstanding anything to the contrary herein contained, in the event that a controversy arises between the parties hereto or between any of the parties hereto and any other person not a party hereto, as to whether or to whom CTI shall deliver any funds or as to any other matter arising out of or relating hereto, CTI shall not be required to determine the same and need not make any delivery of the funds or any portion thereof to the parties to the dispute, but may (a) commence an action in a

court of competent jurisdiction and pay over the funds at issue as such court shall direct or (b) retain same until the rights of the parties to the dispute shall have been finally determined by agreement or by final court order of a competent jurisdiction. In this latter instance, CTI shall deliver the funds within seven (7) days after CTI has received written notice of any such agreement or final order or finding; provided, however, that the time for appeal from any such final order or finding has expired without an appeal having been taken and such written notice is accompanied by an affidavit that the time for appeal has expired without an appeal having been taken. CTI shall be entitled to assume that no such controversy has arisen unless it has received a written notice from Owner, General Contractor, or a third party that such controversy has arisen which refers specifically to this Agreement and specifically identifies by name and address the adverse claimants to the controversy and the nature of the controversy.

In any interpleader action or in case CTI is made a party defendant to any suit or proceedings regarding this Agreement, the undersigned, for themselves, their heirs, personal representatives, successors, and assigns, jointly and severally, agree to pay to said CTI, upon written demand, all costs, attorney's fees, and expenses incurred with respect thereto. CTI shall have a lien on the funds herein for any and all such costs, fees and expenses. If said costs, fees and expenses are not paid, then CTI shall have the right to reimburse itself out of the said funds.

- In performing any of its duties hereunder, CTI shall not incur any liability to anyone for damages, losses or expenses except for willful default or breach of trust. The undersigned parties further specifically agree to hold CTI harmless from any liability including attorneys' fees and expenses arising from the failure of any party hereto or third party to perform as agreed or anticipated, or in the event that any monies deposited are not enough to cover such costs, fees, and expenses.
- 2. The Owner authorizes and directs CTI to accept, comply with, and obey any and all writs, orders, judgments or decrees entered or issued by any court; and in case CTI obeys or complies with any such writ, order, judgment or decree of any court, it shall not be liable to any of the parties hereto or any other person, by reason of such compliance, notwithstanding that any such writ, order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated.

H. Governing Law:

This Agreement is governed by and is to be construed under the laws of the State of Michigan. The instructions, amendments or supplemental instructions hereto, may be executed in counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

IN WITNES	S WHERI	EOF, the undersigned have executed this Agreement this	day of
Owner:			
	Ву:		
	Ву:		

Chicago Title of Mic	higan, Inc. (CTI)
Ву:	
WE HAVE NOT C OUR BUILDER	ONTRACTED FOR ANY WORK OUTSIDE OF OUR CONTRACT WITH
Ву:	
Bv:	