

# CITY COUNCIL AGENDA

## Regular Meeting

June 5, 2023 at 7:00 PM



- 1) **CALL TO ORDER**
- 2) **ROLL CALL**
- 3) **INVOCATION**
- 4) **PLEDGE OF ALLEGIANCE**
- 5) **APPROVAL OF AGENDA** - Items can be added or deleted from the Agenda by City Council action.
- 6) **PUBLIC COMMENT ON AGENDA ITEMS** Persons addressing City Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of three (3) minutes. Comments shall address AGENDA ITEM topics. Public Hearing items shall be addressed during the PUBLIC HEARING portion (Item 10) of the meeting agenda. Non-Agenda items shall be addressed during the PUBLIC COMMENT-NON-AGENDA ITEMS (Item 14) portion of the meeting agenda.
- 7) **CONSENT AGENDA**
  - A. **City Council Minutes**  
Regular Session - May 15, 2023  
Work Session- May 15, 2023
  - B. **City Bills**

|                     |                       |
|---------------------|-----------------------|
| Purchases- 5/12/23  | \$43,372.57           |
| Purchases- 5/19/23  | \$228,087.59          |
| Purchases- 5/26/23  | \$198,797.41          |
| April Power Invoice | \$784,411.29          |
| <b>Total</b>        | <b>\$1,365,668.86</b> |
  - C. **ROTARY FOUNDATION- CHARITABLE GAMING LICENSE**
  - D. **JAM FOR THE CURE- CHARITABLE GAMING LICENSE**
  - E. **MARSHALL HOUSE PSA FIRST AMENDMENT AND REINSTATEMENT**
- 8) **PRESENTATIONS AND RECOGNITIONS**
- 9) **INFORMATIONAL ITEMS**
- 10) **PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION** Persons addressing City Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of three (3) minutes per public hearing.
- 11) **OLD BUSINESS**

MAYOR: James Schwartz    CITY MANAGER: Derek N. Perry  
COUNCIL MEMBERS: Joe Caron, Theresa Chaney-Huggett, Jacob Gates,  
Ryan Traver, Ryan Underhill, Scott Wolfersberger  
Council Chambers, 323 W Michigan Ave, Marshall, Michigan 49068

**12) REPORTS AND RECOMMENDATIONS**

- A. VINTAGE MARKET SPECIAL EVENT REQUEST**
- B. HOME TOUR MARKET SPECIAL EVENT REQUEST**
- C. YPC-FRIDAY'S AT THE FOUNTAIN SPECIAL EVENT REQUEST**
- D. STORIES AT THE FOUNTAIN SERIES SPECIAL EVENT REQUEST**
- E. GRAND RIVER ANNIVERSARY SPECIAL EVENT REQUEST**
- F. GRAND RIVER BREWERY SIDEWALK USE PERMIT**
- G. MARIA'S UNCORKED MLCC SOCIAL DISTRICT PERMIT REQUEST**
- H. AMP MICHIGAN CAT PEAKING PROJECT**
- I. GREEN STREET RECONSTRUCTION AND 2023 STREET IMPROVEMENTS CONSTRUCTION CONTRACT**
- J. CAHILL RENTAL REHABILITATION DEVELOPMENT AGREEMENT**
- K. SET PUBLIC HEARING FOR OPRA DISTRICT CREATION FOR 112 N EAGLE STREET**
- L. SET PUBLIC HEARING FOR 902/1102 WEST HANOVER STREET SPECIAL LAND USE**
- M. 2023-2026 POLICE PATROL COLLECTIVE BARGAINING AGREEMENT**
- N. CITY OF MARSHALL MEMBERSHIP IN THE WEST MICHIGAN HEALTH INSURANCE POOL**
- O. MICHIGAN HARD CAP EXEMPTION**

**13) APPOINTMENTS / ELECTIONS**

- 14) PUBLIC COMMENT ON NON-AGENDA ITEMS** Persons addressing City Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of two (2) minutes. Comments shall address NON-AGENDA ITEM topics. Public Hearing items shall be addressed during the PUBLIC HEARING portion (Item 10) of the meeting agenda. Agenda items shall be addressed during the PUBLIC COMMENT-AGENDA ITEMS (Item 6) portion of the meeting agenda.

**15) COUNCIL AND MANAGER COMMUNICATIONS**

**16) ADJOURNMENT**



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## CITY COUNCIL MINUTES

May 15, 2023

Regular Meeting - 7:00 PM

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**1) CALL TO ORDER**

IN A REGULAR SESSION held on Monday, May 15, 2023 at 7:00 PM in the Council Chambers of City Hall, 323 West Michigan Ave, Marshall, MI 49068, the Marshall City Council was called to order by Mayor Schwartz.

**2) ROLL CALL**

Roll was called:

Present: Mayor James Schwartz, Joe Caron, Theresa Chaney-Huggett, Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger

Also Present: Manager Perry and Clerk Eubank

Absent: None

**3) INVOCATION** Brandon Crawford- Grace Baptist Church

**4) PLEDGE OF ALLEGIANCE**

Mayor Schwartz led the Pledge of Allegiance.

**5) APPROVAL OF AGENDA** - Items can be added or deleted from the Agenda by City Council action.

**Moved** Scott Wolfersberger, supported Jacob Gates to approve the agenda as submitted. On a voice vote: **Motion carried.**

**6) PUBLIC COMMENT ON AGENDA ITEMS** Persons addressing City Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments shall address AGENDA ITEM topics. Public Hearing items should be addressed during the PUBLIC HEARING portion (Item 10) of the meeting agenda. Non-Agenda items shall be addressed during the PUBLIC COMMENT-NON-AGENDA ITEMS (Item 14) portion of the meeting agenda.

Barry Wayne Adams of 622 W Green St stated that he objected to the previous meetings minutes as he believed the record was padded with people being sent away and demanded that all letters be available to the public.

Julie Bryant of 159 Squaw Creek stated that the megasite and all the local officials were causing mental health issues by bullying those opposed to the project and not allowing them to participate in meetings.

Emily Emerson Rich of 616 Union St stated that her name was spelled incorrectly in the last meeting minutes and questioned where she could find more information about the city bills. Perry stated that she could submit a request to his office and invoices could be pulled.

Leigh Rothwell of Ceresco stated that the megasite is causing mental health issues as it

has been stressful and stated that the additional land could be used for green space to improve mental health. She further stated that she hoped the change to rules and procedures wasn't to take the comment time down to one minute, as that is not enough time.

Maggie Emerson Rich of 616 Union St stated that the budget is a big document to wade through and questioned what miscellaneous revenue is because it accounts for 20% of the revenue funds.

**7) CONSENT AGENDA**

**Moved** Jacob Gates, supported Scott Wolfersberger to approve the consent agenda as submitted. On a roll call vote:

Ayes: Joe Caron, Theresa Chaney-Huggett, Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger, James Schwartz

Nays: None

Abstain: None

**Motion carried.**

**A. City Council Minutes**

Regular Session - May 1, 2023

Work Session- May 11, 2023

**B. City Bills**

Purchases 4/28/2023

\$178,540.40

Purchases 5/5/2023

\$57,650.68

**TOTAL**

**\$236,191.08**

**C. THIRD QUARTER FY2023 FINANCIAL REPORT**

**D. THIRD QUARTER FY2023 INVESTMENT PORTFOLIO**

**E. THIRD QUARTER FY2023 CASH POSITION REPORT**

**F. THIRD QUARTER FY2023 BUDGET AMENDMENTS**

**8) PRESENTATIONS AND RECOGNITIONS**

**A. MENTAL HEALTH MONTH PROCLAMATION**

Mayor Schwartz read a proclamation declaring May Mental Health Month in Marshall.

**B. NATIONAL POLICE WEEK PROCLAMATION**

Mayor Schwartz presented Chief Lankerd with a proclamation declaring May 14-20, 2023 National Police Week in Marshall.

**9) INFORMATIONAL ITEMS**

## **10) PUBLIC HEARINGS & SUBSEQUENT COUNCIL ACTION**

### **A. FISCAL YEAR 2024 BUDGET PUBLIC HEARING & RESOLUTION TO ADOPT CITY OF MARSHALL BUDGET, RELATED PROPERTY TAX MILLAGE RATES, AND FEE SCHEDULE**

Manager Perry stated that there is no proposed millage increase in the budget, nor is there a structural deficit. Director Dopp stated that the Miscellaneous Revenue line item accounts for money received from Firekeepers, a grant received to aide in the revision of the Master Plan, as well as other small line items. Perry stated that the fund balance exceeds what is required and that the budget proposes using the remaining ARPA funds for upgrades to the City Hall audio visual equipment, including Council Chambers, and for repairs and upgrades to the riverwalk.

Mayor Schwartz opened the public hearing on Resolution 2023-16, The City of Marshall General Appropriation Act and Tax Levy Resolution approving the City of Marshall budget, fee schedule, and related property tax millage rates for Fiscal Year 2024 at 7:32 pm.

Barry Wayne Adams of 622 W Green St stated that if there is more money in the sinking fund than is needed, a tax break should be given to the citizens.

Emily Emerson Rich of 616 Union St stated that the packet suggested that nearly every line item would need to be amended and questioned how that would be paid for. Dopp stated that the adjustments seen in the packet were for FY2023 and that the budget is reviewed quarterly. Emerson Rich questioned if the budget was more of a prediction for future spending. Perry stated that the budget is a working document throughout the year, and that we do make the best informed guess at the start of the budget and amend the budget quarterly as needed. Emerson Rich further questioned what the safety fund was for. Perry stated that it is for the building department's expenses to allow for better tracking of permit fees.

Maggie Emerson Rich of 616 Union St questioned who would be footing the bill for the cost of the infrastructure for the water and sewer for Ford. Perry stated that the money would be coming from the state, not any city funds. Maggie Emerson Rich further questioned where the water was coming from. Perry stated that Ford would be a City of Marshall utility customer, and that they would have water from both the City of Marshall and Battle Creek, which would be purchased by the city at wholesale.

Mayor Schwartz closed the public hearing on Resolution 2023-16, The City of Marshall General Appropriation Act and Tax Levy Resolution approving the City of Marshall budget, fee schedule, and related property tax millage rates for Fiscal Year 2024 at 7:42 pm.

Caron stated that he appreciated the time the staff had put in to presenting a balanced budget and was proud of the fiscal progress the city was making.

Woltersberger stated that he was pleased that the budget came in early and that this was a smooth process.

Schwartz stated that when he was running for office that a balanced budget with real numbers was important to him, so he was pleased to see a balanced approach where

we are bringing in what we are spending without touching our reserves.

Traver stated that he wanted the record set straight on the City Manager's pay, as it is being stated that the entire departmental salary is his pay, and were using numbers from last year when there was an overlap in budget years between the outgoing City Manager and the new City Manager.

**Moved** Joe Caron, supported Ryan Traver to adopt Resolution 2023-16, The City of Marshall General Appropriation Act and Tax Levy Resolution approving the City of Marshall budget, fee schedule, and related property tax millage rates for Fiscal Year 2024. On a roll call vote:

Ayes: Theresa Chaney-Huggett, Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger, James Schwartz, Joe Caron

Nays: None

Abstain: None

**Motion carried.**

## **11) OLD BUSINESS**

## **12) REPORTS AND RECOMMENDATIONS**

### **A. CITY COUNCIL RULES AND ORDER OF BUSINESS REVISION**

Manager Perry stated that the changes bring the rules and procedures in line with current practices and the surrounding communities. Wolfersberger stated that the change will give more people the opportunity to participate in meetings. Gates stated that he is easily accessible by e-mail for anything that will take longer than the comment time. Chaney-Huggett stated that she believed 3 minutes may not be enough for some people who speak slower. Schwartz stated that a survey was done and that most boards are at either 3 minutes or 2 minutes for their comment time.

**Moved** Ryan Traver, supported Scott Wolfersberger to adopt the Revised City Council Rules and Order of Business as presented. On a voice vote: **Motion carried.**

### **B. MARKET ON MAIN SPECIAL EVENT**

Director Davenport gave background on the event. Council questioned the detour, barricades and waste containers. Davenport stated that all traffic would be routed to Mansion St to avoid potential construction on Green St, standard barricades would be used and that additional rolling trash carts would be placed in the area.

**Moved** Scott Wolfersberger, supported Ryan Underhill to approve the Market on Main special event application to be held on July 22, 2023. On a voice vote: **Motion carried.**

### **C. PASTRAMI JOE'S SIDEWALK USE PERMIT**

**Moved** Joe Caron, supported Jacob Gates to approve the Sidewalk Use application from Pastrami Joe's for the purpose of an outdoor cafe from May 1, 2023 to April 30, 2024. On a voice vote: **Motion carried.**

### **D. SCHULER'S SIDEWALK USE PERMIT**

**Moved** Ryan Traver, supported Scott Wolfersberger to approve the Sidewalk Use application from Schuler's for the purpose of an outdoor cafe from May 1, 2023 to April 30, 2024. On a voice vote: **Motion carried.**

**E. SOUTH KALAMAZOO CONSTRUCTION CONTRACT AWARD**

**Moved** Ryan Traver, supported Scott Wolfersberger to approve the construction contract with Quality Excavators Inc in the amount of \$413,725.02 with a contingency of \$41,274.98 for a total funded amount of \$455,000.00 and Approve the construction engineering contract with ENG in the amount of \$49,647.00 with a contingency of \$5,353 for a total funded amount of 55,000.00 with the condition that staff contact MDOT to see if any additional grant funding is available for the project. On a roll call vote:

Ayes: Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger, James Schwartz, Joe Caron, Theresa Chaney-Huggett

Nays: None

Abstain: None

**Motion carried.**

**F. BLUESFEST SPECIAL EVENT APPLICATION**

**Moved** Jacob Gates, supported Ryan Underhill to approve the Bluesfest special event application for June 24, 2023 from 1200 to 2400. On a voice vote: **Motion carried.**

**G. SPECIAL LEGAL COUNSEL RECOMMENDATION**

Attorney Revore gave background on Clark Hill law firm. The council questioned if there was a minimum associated with the retention. Revore stated that there was no minimum and it would be on an as-needed basis at this time.

**Moved** Scott Wolfersberger, supported Joe Caron to approve the retention of Clark Hill legal services per City Charter section 3.08 (d) for the purposes of economic development and elections. On a roll call vote:

Ayes: Ryan Traver, Ryan Underhill, Scott Wolfersberger, James Schwartz, Joe Caron, Theresa Chaney-Huggett, Jacob Gates

Nays: None

Abstain: None

**Motion carried.**

**13) APPOINTMENTS / ELECTIONS**

- 14) PUBLIC COMMENT ON NON-AGENDA ITEMS** Persons addressing City Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments shall address NON- AGENDA ITEM topics. Public Hearing items should be addressed during the PUBLIC HEARING portion (Item 10) of the meeting agenda. Agenda items shall be addressed during the PUBLIC COMMENT-AGENDA ITEMS (Item 6) portion of the meeting agenda.

Connie Wireman of Marshall Township stated that audio help in the chambers would be appreciated, that the council should be honest and above board, and that the megasite will effect events in the City.

Barry Wayne Adams of 622 W Green St stated that is was disturbing that elected officials were pairing down peoples rights and that they have no authority to do so. He further

stated that the pollution from lithium will be worse than anything from Enbridge as lithium doesn't break down.

Corey Schumaker of Kalamazoo stated that lithium batteries are powerful and dangerous and that if a fire were to start it couldn't be put out.

Wayne Right of Marshall Township appreciated that there would be input on the beautification of S Kalamazoo and stated that the last council meeting was discouraging and would like to see more opportunity for public input in the future.

Holly Hardin of 401 E Mansion stated that she spoke with Nancy Finegood about the historic buildings that will be lost due to the megasite and that we should be promoting historical tourism and not tearing down historic homes.

Emily Emerson Rich of 616 Union St stated that she would like to see recycling bins offered at events and downtown, that a city crew simply pushed debris off the drain in front of her residence instead of removing it, that there needs to be more visibility to the crosswalks at the fountain, that she was requesting that all meetings be moved back to the county chambers until the city can secure AV equipment, that she would like to see the City Council and Township board meet on different days, and that no more 425 agreements should be approved.

Maggie Emerson Rich of 616 Union St stated that the megasite is bad for the environment, that the promise of good jobs is a mistruth, and that the jobs will not pay well.

Heather Rocho of Emmett Township stated that she couldn't hear in the chambers, and expressed concern over the lack of knowledge of the megasite in Emmett township. She further stated that she wants officials to listen to the people and this is taxation without representation.

George Wayland of S Eagle St and the president of the Marshall Historical Society stated that while the society will remain neutral, they would like to see the historic buildings preserved, as what is historic Marshall if the historic buildings are not there.

Julie Bryant of Squaw Creek, Marshall Township, read from a posting from Facebook that people's hearts are ripping in 2 over the destruction of land, that people were planted in power to push this through, the Ford could have placed the factory on a brownfield and that Marshall won't be visited anymore nor any money spent here.

Rich Sadler of Squaw Creek, Marshall Township stated that council was cowardly with the rezoning, that Marshall will cease to exist, that people are being lied to and would like a full forensic audit of everything behind the project.

Leigh Rothwell of Cersco stated that the farmsteads should be preserved as the site plan shows them in a buffer zone, that there will be no way to use the green space, that the council didn't want to hear people so they lowered the time limit, and that it was a waste of the Joint Planning Commissions time to give a recommendation that wasn't listened to.

## **15) COUNCIL AND MANAGER COMMUNICATIONS**

Woltersberger stated that there were no ZBA, Planning Commission or NIA meetings this month. He further stated that the city does not own the properties on which the farmsteads lie and any preservation efforts should be directed to the owner, as the City cannot force someone to do something with their property.

Chaney-Huggett stated that she appreciated everyone's passion on both sides of the megasite issue, but that everyone needs to find a way to come together and forge ahead in our community and remember to be kind to each other.

Perry stated that he has been pushing MDOT to improve safety in town, specifically at the fountain.

Revore stated that the Ad-Visor published that he stated that there were NDAs related specifically to the Blue Oval project, but that is not the case.

**16) ADJOURNMENT**

The meeting was adjourned at 9:12 pm.

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## CITY COUNCIL MINUTES

May 15, 2023

Work Session - 6:00 PM

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**1) CALL TO ORDER**

IN A WORK SESSION held on Monday, May 15, 2023 at 6:00 PM in the Training Room of Town Hall, 323 West Michigan Ave, Marshall, MI 49068, the Marshall City Council was called to order by Mayor Schwartz.

**2) ROLL CALL**

Roll was called:

Present: Mayor James Schwartz, Joe Caron, Theresa Chaney-Huggett, Jacob Gates, Ryan Traver, Ryan Underhill, Scott Wolfersberger

Also Present: Manager Perry and Clerk Eubank

Absent:None

**3) PUBLIC COMMENT ON AGENDA ITEMS** Persons addressing City Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments shall address AGENDA ITEM topics. Public Hearing items should be addressed during the PUBLIC HEARING portion of the meeting agenda. Non-Agenda items shall be addressed during the PUBLIC COMMENT-NON-AGENDA ITEMS portion of the meeting agenda.

**NONE**

**4) DISCUSSION ITEMS**

**A. ELECTRIC POWER SUPPLY AND CAPACITY REVIEW**

Director Maynard gave background on electric power capacity and provided options of how to increase capacity for the future.

**5) PUBLIC COMMENT ON NON-AGENDA ITEMS** Persons addressing City Council are required to give their name and address for the record when called upon by the Mayor. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments shall address NON-AGENDA ITEM topics. Public Hearing items shall be addressed during the PUBLIC HEARING portion of the meeting agenda. Agenda items should be addressed during the PUBLIC COMMENT-AGENDA ITEMS portion of the meeting agenda.

**NONE**

**6) ADJOURNMENT**

The meeting was adjourned at 6:49 pm.



APPROVAL LIST FOR CITY OF MARSHALL  
EXP CHECK RUN DATES 05/12/2023 - 05/12/2023  
UNJOURNALIZED  
OPEN

| INVOICE<br>NUMBER | VENDOR<br>NAME         | DESCRIPTION                                        | PO<br>NUMBER | AMOUNT    |
|-------------------|------------------------|----------------------------------------------------|--------------|-----------|
| 33918103          | APPLIED CAPITAL, LLC   | CONTRACT NO. 132-1753516-000 MRLEC COPIE           |              | 117.52    |
| 225-503662        | AUTO VALUE MARSHALL    | FIRE DEPT - CREDIT MEMO FOR LIFT SUPPORT           |              | (37.38)   |
| 174793            | BRUTSCHE CONCRETE PROD | CUST ID: 0412 TAX EXEMPT - FOUNDATIONS             |              | 2,010.00  |
| 174580            | D & D MAINTENANCE SUPP | ACCT NO. CIMA1 JANITORIAL SUPPLIES                 |              | 507.56    |
| 174581            | D & D MAINTENANCE SUPP | ACCT NO. CIMA1 JANITORIAL SUPPLIES                 |              | 257.50    |
| 174664            | D & D MAINTENANCE SUPP | ACCT NO. CIMA1 SPRING LOCK W/ SERVICE              |              | 30.58     |
| 610373            | DARLING ACE HARDWARE   | CUST NO. 1650 - CHAIN SHARPENER                    |              | 14.00     |
| 610357            | DARLING ACE HARDWARE   | CUST NO. 1650 - TUB STOPPER, FAUCET SUPP           |              | 61.95     |
| 610510            | DARLING ACE HARDWARE   | CUST NO. 1650 - GLOVES                             |              | 17.99     |
| 610916            | DARLING ACE HARDWARE   | CUST NO. 1650 - BATTERIES                          |              | 17.99     |
| 611502            | DARLING ACE HARDWARE   | CUST NO. 1650 - PLUMBING TORCH KIT, CYLI           |              | 44.98     |
| 611607            | DARLING ACE HARDWARE   | CUST NO. 1650 - POLY TUBE, FROG TAPE               |              | 13.67     |
| 611743            | DARLING ACE HARDWARE   | CUST NO. 1650 - KITCHEN FAUCET                     |              | 64.99     |
| 612234            | DARLING ACE HARDWARE   | CUST NO. 1650 - KEYS, NUTS, BOLTS                  |              | 15.06     |
| 612532            | DARLING ACE HARDWARE   | CUST NO. 1650 - HOOK CLEVIS, SLIP HOOK             |              | 26.98     |
| 612810            | DARLING ACE HARDWARE   | CUST NO. 1650 - USB CABLE, THROTTLE CABL           |              | 89.76     |
| 612952            | DARLING ACE HARDWARE   | CUST NO. 1650 - NOZZLE, NUTS, BOLTS                |              | 12.19     |
| 613007            | DARLING ACE HARDWARE   | CUST NO. 1650 - SPORT MIRROR                       |              | 16.99     |
| 613225            | DARLING ACE HARDWARE   | CUST NO. 1650 - BATTERIES                          |              | 11.99     |
| 613227            | DARLING ACE HARDWARE   | CUST NO. 1650 - FLAT HR PLAIN, TUBE SQUA           |              | 47.97     |
| 613499            | DARLING ACE HARDWARE   | CUST NO. 1650 - PAPER TOWEL                        |              | 2.79      |
| 613636            | DARLING ACE HARDWARE   | CUST NO. 1650 - ROPE POLY                          |              | 19.99     |
| 613675            | DARLING ACE HARDWARE   | CUST NO. 1650 - KEYS, NUTS, BOLTS                  |              | 8.03      |
| 613749            | DARLING ACE HARDWARE   | CUST NO. 1650 - SIMPLE GREEN, CONNECTORS           |              | 18.17     |
| 613922            | DARLING ACE HARDWARE   | CUST NO. 1650 - LP GAS                             |              | 18.88     |
| 613940            | DARLING ACE HARDWARE   | CUST NO. 1650 - SAND MIX QUIKRETE                  |              | 14.98     |
| 614127            | DARLING ACE HARDWARE   | CUST NO. 1650 - LED BULBS                          |              | 17.99     |
| 614170            | DARLING ACE HARDWARE   | CUST NO. 1650 - POLY TAPE                          |              | 8.99      |
| 05022023          | ERB, JASON             | BOOT ALLOWANCE - ERB, JASON FR OUTERWEAR           |              | 95.39     |
| 024280204         | GALLS, LLC             | ACCT NO. 1003688492 REDMAN FULL TRAINING 2023.233  |              | 3,045.17  |
| 23-04075          | GARAGE DOORS UNLIMITED | SERVICE AT MARSHALL HOUSE FOR ENTRANCE D           |              | 375.00    |
| 2337537           | GRIFFIN PEST SOLUTIONS | ACCT NO. 3542611 SERVICES AT CITY HALL 3           |              | 35.00     |
| 2338299           | GRIFFIN PEST SOLUTIONS | ACCT NO. 197892 SERVICES AT FIRE STATION           |              | 42.00     |
| 18521             | HOEKSTRA ROOFING COMP  | AJOB NO. SMARS1005 PSB ROOF REPAIR                 |              | 1,980.53  |
| 05112023          | HOFFMAN, STEFANI       | BOOT ALLOWANCE - CITY LOGO APPAREL                 |              | 56.18     |
| D381449-IN        | ILLUSTRATUS, DIVISION  | (ACCT NO. 01-BT508 MARSHALL HOUSE SUBSCRI          |              | 46.93     |
| 947               | IMPACT LAWN & LANDSCAP | :2023 LAWN MOWING APRIL TO JUNE 2023 - AT 2023.216 |              | 1,080.00  |
| 948               | IMPACT LAWN & LANDSCAP | :2023 LAWN MOWING APRIL TO JUNE 2023 - AT 2023.216 |              | 1,105.00  |
| 950               | IMPACT LAWN & LANDSCAP | :2023 LAWN MOWING APRIL TO JUNE 2023 - IN 2023.216 |              | 150.00    |
| 962               | IMPACT LAWN & LANDSCAP | :2023 LAWN MOWING APRIL TO JUNE 2023 - WA 2023.216 |              | 330.00    |
| 963               | IMPACT LAWN & LANDSCAP | :2023 LAWN MOWING APRIL TO JUNE 2023 - WA 2023.216 |              | 200.00    |
| 979               | IMPACT LAWN & LANDSCAP | :2023 LAWN MOWING APRIL TO JUNE 2023 - MA 2023.216 |              | 180.00    |
| 42131             | LAKELAND ASPHALT CORPO | :3.79 TONS BITUMINOUS AGGREGATES                   |              | 261.51    |
| 35513897          | LINDE GAS & EQUIPMENT  | CUST NO. 59879658 GAS                              |              | 142.29    |
| 002450            | MARSHALL HARDWARE, LLC | ELECTRIC - VAC BAGS                                |              | 27.98     |
| 64058             | MCNALLY ELEVATOR COMP  | AACCT NO. MA2391 MARSHALL HOUSE ELEVATOR           |              | 711.85    |
| S5194098.001      | MEDLER ELECTRIC COMPAN | MATERIALS FOR UNDERGROUND UTILITY RELOCA 2023.230  |              | 8,966.77  |
| 05112023          | MUSSER, TIM            | LODGING & MEALS FOR CODE OFFICIALS CONFE           |              | 510.15    |
| 1078              | NEPHEW HONEY FARM & BE | BEE INSPECTION AT MARSHALL HOUSE 4/20/23           |              | 50.00     |
| 04202023          | OAKLAWN HOSPITAL       | ACCT NO. 9950-56303 DRUG SCREEN/DOT PHYS           |              | 315.00    |
| 05082023          | PHELPS, REBECCA        | MARSHALL REC REFUND FOR YOUTH BASEBALL             |              | 83.00     |
| 70881712          | ROSE PEST SOLUTIONS    | CLIENT NO. 70019775 MARSHALL HOUSE SERVI           |              | 148.00    |
| 70877127          | ROSE PEST SOLUTIONS    | CLIENT NO. 70019775 MARSHALL HOUSE SERVI           |              | 1,465.00  |
| 05/11/2023        | SCROGGINS, MICHAEL     | UB refund for account: 2401460000                  |              | 1,544.66  |
| 1648427175        | STAPLES BUSINESS CREDI | CREDIT ACCT NO. 302063 OFFICE SUPPLIES             |              | 441.95    |
| 162               | TOP TO BOTTOM TREE SER | ELECTRIC LINE CLEARANCE (3-PERSON \$132/H2023.163  |              | 4,818.00  |
| 173635164         | TRUGREEN               | CUST NO. 2790083525 LAWN SERVICE AT CITY           |              | 197.89    |
| 15825             | TSR COMSUPPLY          | FIBERNET AIR FILTERS FOR NODES                     |              | 1,220.00  |
| 9933910499        | VERIZON WIRELESS       | ACCT NO. 987146080-00001 MAY 2023                  |              | 1,961.03  |
| 05052023          | WEBERLING, ERIC        | BOOT ALLOWANCE - CITY LOGO APPAREL                 |              | 66.78     |
| 05042023          | WEBERLING, ERIC        | MEAL REIMBURSEMENT FOR WASTEWATER EXAM             |              | 13.88     |
| 05052023          | WHITESSELL, ANGELA     | REIMBURSEMENT FOR DDA FACADE GRANT                 |              | 5,000.00  |
| 04292023          | WOW! BUSINESS          | ACCT NO. 014226414 FIRE STATION MAY 2023           |              | 133.53    |
| 05022023          | WOW! INTERNET-CABLE-PH | ACCT NO. 010040764 MARSHALL HOUSE MAY 20           |              | 1,431.50  |
| 4176354           | XEROX FINANCIAL SERVIC | CUST NO. 69580 XEROX LEASE APRIL 2023              |              | 1,688.49  |
| GRAND TOTAL:      |                        |                                                    |              | 43,372.57 |

APPROVAL LIST FOR CITY OF MARSHALL  
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UNJOURNALIZED  
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| INVOICE<br>NUMBER | VENDOR<br>NAME          | DESCRIPTION                               | PO<br>NUMBER | AMOUNT    |
|-------------------|-------------------------|-------------------------------------------|--------------|-----------|
| 449777            | AD-VISOR & CHRONICLE    | AD NO. 6100458 ADS 4/1, 4/8, 4/15, 4/22   |              | 2,216.40  |
| 67206             | ALEXANDER CHEMICAL CORP | CUST NO. 100413 WWTP CHEMICALS            | 2023.023     | 2,744.24  |
| 1VWG-C9XQ-3FPX    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 GLOW STICKS       |              | 53.66     |
| 19NT-P6TJ-7JPY    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 HAND DRYER        |              | 246.49    |
| 194C-K6VX-4LKV    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 TRAFFIC CONES     |              | 165.89    |
| 1WTC-P631-DJXR    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 HARNESS           |              | 114.99    |
| 1Y71-6MMG-Q3V4    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 CERTIFICATE FRAM  |              | 64.97     |
| 1XJM-LMN1-TXH9    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 CLEANING TOWELS   |              | 145.44    |
| 1WTG-KDXR-TVXV    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 DRAIN PUMP        |              | 332.00    |
| 1HH1-7VVF-RDC9    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 HARNESS           |              | 128.39    |
| 14KW-DQQK-14WW    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 PAPER TOWEL DISP  |              | 29.99     |
| 1H1K-Y1T4-1RJR    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 HARNESS RETURN    |              | (101.01)  |
| 19H3-JN4N-4RPD    | AMAZON CAPITAL SERVICE  | ACCT NO. A1P4GM99HG1E02 CAR SEATS         |              | 156.27    |
| 05/19/2023        | ANDREW VANHOVEN         | UB refund for account: 3163               |              | 80.80     |
| 269781843105-2023 | AT&T                    | ACCT NO. 269 781-8431 746 9 AIRPORT MAY   |              | 263.15    |
| 269781949205-2023 | AT&T                    | ACCT NO. 269 781-9492 594 7 MARSHALL HOU  |              | 252.62    |
| 269789901105-2023 | AT&T                    | ACCT NO. 269 789-9011 599 1 MRLEC MAY 20  |              | 223.87    |
| 225-506675        | AUTO VALUE MARSHALL     | GARAGE/STREETS - TORX BIT SET             |              | 40.29     |
| 225-506698        | AUTO VALUE MARSHALL     | GARAGE/STREETS - AIR/OIL FILTER, OIL      |              | 93.14     |
| 225-506731        | AUTO VALUE MARSHALL     | WATER DEPT - HITCH PIN & CLIP, MOUNTING   |              | 30.08     |
| 225-506763        | AUTO VALUE MARSHALL     | GARAGE/STREETS - POWER TOOL 2 PC SET      |              | 845.28    |
| 225-506817        | AUTO VALUE MARSHALL     | GARAGE/STREETS - LAMP                     |              | 42.91     |
| 225-506783        | AUTO VALUE MARSHALL     | GARAGE/STREETS - CONTOUR BLADES           |              | 79.38     |
| 129664            | CARR BROTHERS & SONS,   | 28 YDS CRUSHED STONE & 28 YDS PEASTONE    |              | 1,748.64  |
| 764216            | CHR SOLUTIONS           | FIBERNET SUPPORT CONTRACT - MAY 2023      | 2023.098     | 5,100.00  |
| 04142023          | COMFORT INN (CADILLAC)  | ACCT NO. 861532121 HOTEL FOR PEHRSON      |              | 499.50    |
| 10043             | COURTNEY & ASSOCIATES   | MONTHLY RETAINER SERVICE - APRIL 2023     |              | 250.00    |
| S3-76358          | CUMMINS SALES AND SERV  | CUST NO. 179288 GENERATOR SERVICE AT IND  |              | 993.88    |
| S3-76388          | CUMMINS SALES AND SERV  | CUST NO. 179288 GENERATOR SERVICE AT FIR  |              | 930.75    |
| S3-76391          | CUMMINS SALES AND SERV  | CUST NO. 179288 GENERATOR SERVICE AT WAS  |              | 1,863.46  |
| S3-77214          | CUMMINS SALES AND SERV  | CUST NO. 179288 GENERATOR SERVICE AT WAT  |              | 1,272.00  |
| 616305            | DARLING ACE HARDWARE    | CUST NO. 1650 - SHIP AUGER BIT            |              | 37.99     |
| 616619            | DARLING ACE HARDWARE    | CUST NO. 1650 - CHAINSAW, GAS CAN         |              | 755.97    |
| 616590            | DARLING ACE HARDWARE    | CUST NO. 1650 - DISH SOAP                 |              | 9.98      |
| 616698            | DARLING ACE HARDWARE    | CUST NO. 1650 - STAIN, VELCRO             |              | 32.98     |
| 616864            | DARLING ACE HARDWARE    | CUST NO. 1650 - BATTERIES                 |              | 19.98     |
| 616922            | DARLING ACE HARDWARE    | CUST NO. 1650 - CONTRACTOR SHIMS          |              | 14.99     |
| 616923            | DARLING ACE HARDWARE    | CUST NO. 1650 - WALL PLATES, SCREW DRIVE  |              | 48.61     |
| 616948            | DARLING ACE HARDWARE    | CUST NO. 1650 - ROUNDUP, TOP SOIL, RAISE  |              | 147.11    |
| 616998            | DARLING ACE HARDWARE    | CUST NO. 1650 - KEYS                      |              | 4.78      |
| 617078            | DARLING ACE HARDWARE    | CUST NO. 1650 - SHOP TOWELS, WIRE BRUSH   |              | 21.98     |
| 617048            | DARLING ACE HARDWARE    | CUST NO. 1650 - PRIMER, PAINT, BRUSHES,   |              | 249.41    |
| 617058            | DARLING ACE HARDWARE    | CUST NO. 1650 - UTILITY PUMP              |              | 199.99    |
| 617142            | DARLING ACE HARDWARE    | CUST NO. 1650 - ADHESIVE                  |              | 15.87     |
| 3375664           | EDWARDS INDUSTRIAL SAL  | CUST ID: 92775 LIQ. FILLED GAUGE FOR POW  |              | 128.34    |
| I124025           | ERIC DALE HEATING & AI  | AIR CONDITIONER TUNE UP - OAKRIDGE CHAPE  |              | 91.40     |
| I124043           | ERIC DALE HEATING & AI  | AIR CONDITIONER TUNE UP - PSB             |              | 84.00     |
| I124046           | ERIC DALE HEATING & AI  | AIR CONDITIONER TUNE UP - CITY HALL       |              | 170.12    |
| 83572304          | FIRST ADVANTAGE RESIDE  | ACCT NO. 138549 RESIDENTIAL SCREENING AT  |              | 20.39     |
| 9694950651        | GRAINGER                | ACCT NO. 804945673 RDT FLOW SWITCH        |              | 303.98    |
| 25526752          | GRANGER WASTE SERVICES  | ACCT NO. 2782490 COMMERCIAL/WASTE MAY 20  |              | 1,131.98  |
| 25516726          | GRANGER WASTE SERVICES  | ACCT NO. 18400290 RESIDENTIAL MAY 2023    |              | 31,517.40 |
| 25525126          | GRANGER WASTE SERVICES  | ACCT NO. 2890780 875 E. MICHIGAN AVE MAY  |              | 183.50    |
| 25491071          | GRANGER WASTE SERVICES  | ACCT NO. 18422860 CITY BUILDINGS/RECYCLI  |              | 114.08    |
| 2342571           | GRIFFIN PEST SOLUTIONS  | ACCT NO. 3422841 SERVICES AT PSB 4/17/23  |              | 51.00     |
| 05012023          | HERITAGE CLEANERS       | ACCT NO. 100243 MARSHALL POLICE DRY CLEA  |              | 490.00    |
| 0072049-IN        | HYDROCORP               | CUST: MUNMARS - INSPECTION & REPORTING A  |              | 909.00    |
| 1605660           | J HARLEN CO., INC.      | CUST ID: 127923 CLIMBING HOOKS            |              | 86.23     |
| 3527              | JACK FROST              | DRAIN CLEANING AT WASTE WATER 5/1/23      |              | 420.00    |
| 05/19/2023        | JOSHUA BALOG            | UB refund for account: 3513               |              | 28.00     |
| 208554            | K&H CONCRETE CUTTING    | O HORIZONTAL CURB CUTTING PER LINEAR FOOT |              | 700.00    |
| IN213394          | KIESLER POLICE SUPPLY   | CUST NO. L12818 MARSHALL POLICE AMMO      |              | 412.00    |
| 05/19/2023        | KING, CODY & GOOD, RAC  | UB refund for account: 2102440014         |              | 200.00    |
| 05/19/2023        | LAKE, CAMERON           | UB refund for account: 154800             |              | 82.04     |
| 42262             | LAKELAND ASPHALT CORPO  | 2021 STREET IMPROVEMENTS #2 (FINAL PAYME  | 2022.147     | 40,623.60 |
| 29244             | LEGG LUMBER             | AIRPORT - GRAVEL MIX                      |              | 31.96     |
| 1720997-20230430  | LEXISNEXIS RISK DATA    | MBILLING ID: 1720997 APRIL 2023           |              | 200.00    |
| 35581570          | LINDE GAS & EQUIPMENT,  | CUST NO. 59879658 GAS                     |              | 40.73     |
| 47180             | MARSHALL CUSTOM EMBROI  | NEW LOGO ON VESTS                         |              | 18.00     |
| 05182023          | MARSHALL RECREATION -   | 2023 MARSHALL REC UMPIRE PAY              |              | 1,400.00  |
| 3353              | MARSHALL WELDING & FAB  | RESTORATION OF PORTABLE BAND SHELL        |              | 4,630.00  |
| 7                 | MCSA GROUP, INC.        | SERVICES FOR EATON PARK DESIGN 4/1/23 -   | 2023.092     | 5,000.00  |
| 14331             | MDK GROUP               | MRLEC SHRED SERVICES THROUGH 5/1/23       |              | 155.00    |
| S5172534.005      | MEDLER ELECTRIC COMPAN  | CUST NO. 979 100W BULBS                   |              | 149.61    |
| 33613467          | MSC INDUSTRIAL SUPPLY   | CUST NO. 02356117 MARKING PAINT           |              | 372.40    |
| NG-553            | NUTRIGRO ENVIRONMENTAL  | BIOSOLIDS HAULING AND LAND APPLICATION 4  | 2023.141     | 26,431.20 |
| 844993            | NYE UNIFORM COMPANY     | MARSHALL PD - HYDE VEST                   |              | 1,132.84  |
| 118731            | O'LEARY WATER CONDITIO  | FIRE DEPT - WATER DELIVERY MAR/APR 2023   |              | 55.00     |
| 118732            | O'LEARY WATER CONDITIO  | POWER HOUSE - COOLER & WATER APR/MAY 202  |              | 104.00    |

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|-------------------|-------------------------|-------------------------------------------|--------------|------------|
| 2577446           | OFFICE 360              | ACCT NO. 26140 COPY PAPER, POST-IT NOTES  |              | 47.78      |
| 23-5293           | PLANTWISE, LLC          | PRESCRIBED ECOLOGICAL BURN BROOKS PARK (  |              | 2,925.00   |
| 05172023          | POTTER, MATT            | MEAL REIMBURSEMENT FOR LEADERSHIP TRAINI  |              | 67.08      |
| 56738596          | POWER LINE SUPPLY       | CUST ID: 100402 SAFETY VESTS              |              | 288.45     |
| 56738900          | POWER LINE SUPPLY       | CUST ID: 100402 SLEEVE STRAPS             |              | 108.45     |
| 56738901          | POWER LINE SUPPLY       | CUST ID: 100402 HARNESS                   |              | 213.00     |
| 56740345          | POWER LINE SUPPLY       | CUST ID: 100402 TRANSFORMER FOR FAIRGROU  |              | 2,979.00   |
| 05032023          | QUADIENT FINANCE USA,   | ACCT NO. 7900 0440 5582 9307 POSTAGE MAY  |              | 3,000.00   |
| 49213             | R.W. LAPINE INC.        | SERVICE CALL FOR HEATER REPAIR AT PSB 3/  |              | 490.00     |
| 108051            | ROWE PROFESSIONAL SERV  | 2023 BRIDGE INSPECTIONS & FY2026 FUNDING  |              | 400.00     |
| 9273              | SCOTT L. COATES DBA CO. | SERVICE CALL TO MARSHALL HOUSE FOR LIGHT  |              | 75.00      |
| 05092023          | SHELDON, PAUL           | CITY OF MARSHALL INSPECTION SERVICES 5/5  |              | 150.00     |
| 05012023          | SPARTAN STORES          | CUST NO. 021063 REC OPERATING SUPPLIES    |              | 11.98      |
| 551-615875        | STATE OF MICHIGAN       | HAZARDOUS MATERIAL COURSE - BEST, RONNIE  |              | 900.00     |
| 551-615879        | STATE OF MICHIGAN       | HAZARDOUS MATERIAL COURSE - JACKSON, JAC  |              | 900.00     |
| 551-615882        | STATE OF MICHIGAN       | HAZARDOUS MATERIAL COURSE - PARKS, MATT   |              | 900.00     |
| 1020377           | STEENSMA                | CUST NO. 5154 EXMARK ZERO TURN MOWER W/   | 2023.206     | 22,346.00  |
| X306216448:01     | STOOPS FREIGHTLINER     | ACCT NO. 298999 FAN HUB, FAN CLUTCH REPA  |              | 1,255.60   |
| 1963              | THE WOODHILL GROUP, LL  | FINANCE & ACCOUNTING SERVICES FY2023      | 2023.056     | 2,111.02   |
| 13547             | TIRE CITY TIRE PROS     | 2016 FORD INTERCEPTOR REPAIR C1           | 2023.242     | 3,898.37   |
| 3784833           | TITAN AVIATION FUELS    | CUST NO. 04873 AV FUEL 100 LL FOR BROOKS  | 2023.241     | 30,132.27  |
| 163               | TOP TO BOTTOM TREE SER  | ELECTRIC LINE CLEARANCE (3-PERSON \$132/H | 2023.163     | 660.00     |
| 1620063241        | UNIFIRST CORPORATION    | UNIFORM SERVICES - MARSHALL HOUSE 4/26/2  |              | 46.55      |
| 1620063238        | UNIFIRST CORPORATION    | UNIFORM SERVICES - DPW & GARAGE 4/26/23   |              | 56.69      |
| 1620063240        | UNIFIRST CORPORATION    | UNIFORM SERVICES - ELECTRIC & FIBER 4/26  |              | 166.61     |
| 1620063239        | UNIFIRST CORPORATION    | UNIFORM SERVICES - POWER HOUSE 4/26/23    |              | 70.63      |
| 1620063236        | UNIFIRST CORPORATION    | UNIFORM SERVICES - WASTE WATER 4/26/23    |              | 41.44      |
| 1620063242        | UNIFIRST CORPORATION    | UNIFORM SERVICES - WATER 4/26/23          |              | 44.72      |
| 1620063941        | UNIFIRST CORPORATION    | UNIFORM SERVICES - MARSHALL HOUSE 5/3/23  |              | 46.55      |
| 1620063938        | UNIFIRST CORPORATION    | UNIFORM SERVICES - DPW & GARAGE 5/3/23    |              | 56.69      |
| 1620063940        | UNIFIRST CORPORATION    | UNIFORM SERVICES - ELECTRIC & FIBER 5/3/  |              | 166.61     |
| 1620063939        | UNIFIRST CORPORATION    | UNIFORM SERVICES - POWER HOUSE 5/3/23     |              | 70.63      |
| 1620063936        | UNIFIRST CORPORATION    | UNIFORM SERVICES - WASTE WATER 5/3/23     |              | 41.44      |
| 1620063942        | UNIFIRST CORPORATION    | UNIFORM SERVICES - WATER 5/3/23           |              | 44.72      |
| 109073            | VC3 INC                 | ACCT NO. MAR11 MICROSOFT TABLET, KEYBOAR  |              | 2,729.35   |
| INV-5250          | WALTERS-DIMMICK PETROL  | ACCT ID: 10130 GREASE TUBES               |              | 161.60     |
| 89122279          | WEX BANK                | ACCT NO. 0470-00-462076-1 FUEL MAY 2023   |              | 10,549.45  |
| GRAND TOTAL:      |                         |                                           |              | 228,087.59 |

APPROVAL LIST FOR CITY OF MARSHALL  
EXP CHECK RUN DATES 05/26/2023 - 05/26/2023  
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| INVOICE<br>NUMBER | VENDOR<br>NAME         | DESCRIPTION                              | PO<br>NUMBER | AMOUNT   |
|-------------------|------------------------|------------------------------------------|--------------|----------|
| 9137712832        | AIRGAS USA, LLC        | PAYER NO. 1438173 NITRILE GLOVES         |              | 135.35   |
| 1LDL-VVLD-NCRD    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 FILE FOLDERS, BA |              | 37.28    |
| 1GFK-J3VY-6GWH    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 DRY ERASE BOARD  |              | 283.20   |
| 17NP-N3Y1-4K1X    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 WIRELESS HEADPHO |              | 26.95    |
| 1WRV-H7K1-6TKN    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 STORAGE SHELF, P |              | 75.12    |
| 1DFY-GX1D-4PM4    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 CAR PHONE CHARGE |              | 20.97    |
| 1Q1K-GJQP-PCYW    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 PROMOTIONAL ITEM |              | 36.95    |
| 1YCF-TLFT-7G7L    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 IRRIGATION COVER |              | 91.65    |
| 17NC-3QHL-44H3    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 BOND PAPER       |              | 102.48   |
| 1N6C-PX97-GFFC    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 LOGO STICKERS    |              | 55.66    |
| 1M3K-74W1-1QCH    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 ROUTERS BLUEOVAL |              | 2,160.00 |
| 1YKR-CHCH-MFF9    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 BASEBALLS        |              | 99.88    |
| 16TH-93RL-MG1Q    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 SOFTBALLS        |              | 119.90   |
| 16MD-FR7M-KP64    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 LAPTOP CAR CHARG |              | 24.98    |
| 1JXX-PWQ4-KMWL    | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 LAPTOP CAR CHARG |              | 24.98    |
| 1PXD-MLN-LLV4     | AMAZON CAPITAL SERVICE | ACCT NO. A1P4GM99HG1E02 VACUUM BAGS      |              | 18.85    |
| 506528            | ASCENSION MICHIGAN EMP | PHYSICAL EXAM/DRUG SCREEN - GOBLE, MICHA |              | 116.00   |
| 6059              | AUGUST ENVIRONMENTAL S | QUARTERLY WASTE WATER LAB SERVICES       |              | 1,404.00 |
| 225-506905        | AUTO VALUE MARSHALL    | GARAGE/STREETS - OIL & AIR FILTER, OIL   |              | 93.14    |
| 225-506908        | AUTO VALUE MARSHALL    | GARAGE/STREETS - EXHAUST FLUID           |              | 403.05   |
| 225-506947        | AUTO VALUE MARSHALL    | GARAGE/STREETS - OIL & AIR FILTER        |              | 33.44    |
| 225-507087        | AUTO VALUE MARSHALL    | GARAGE/STREETS - DISC BRAKE PADS         |              | 407.55   |
| 225-507215        | AUTO VALUE MARSHALL    | GARAGE/STREETS - WINDOW SEALER           |              | 37.47    |
| 225-507258        | AUTO VALUE MARSHALL    | GARAGE/STREETS - AIR, FUEL, & OIL FILTER |              | 150.14   |
| 225-507259        | AUTO VALUE MARSHALL    | GARAGE/STREETS - OIL FILTER              |              | 8.37     |
| 225-507359        | AUTO VALUE MARSHALL    | GARAGE/STREETS - CABLE TIES, TRAILER BRI |              | 85.71    |
| 225-507427        | AUTO VALUE MARSHALL    | GARAGE/STREETS - VEHICLE BATTERY         |              | 169.00   |
| 225-507429        | AUTO VALUE MARSHALL    | GARAGE/STREETS - FORD TAIL LIGHT         |              | 337.29   |
| 225-507600        | AUTO VALUE MARSHALL    | GARAGE/STREETS - POLISH                  |              | 22.08    |
| 225-507757        | AUTO VALUE MARSHALL    | GARAGE/STREETS - TRAILER CONNECTOR ADAPT |              | 165.68   |
| P16081            | BELL EQUIPMENT COMPANY | ACCT NO. MARSH022 EXTENSION & GUTTER BRO |              | 1,457.74 |
| 159358            | BOSHEARS FORD SALES, I | CUST NO. 59497 2011 CHEVROLET CAPRICE RE |              | 404.76   |
| 77356             | BUD'S TOWING & AUTOMOT | MARSHALL PD - TOW/HOOK FEE FOR 2011 CHEV |              | 65.00    |
| 252-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 252-23                |              | 15.06    |
| 243-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 243-23                |              | 6.02     |
| 242-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 242-23                |              | 15.03    |
| 249-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 249-23                |              | 19.16    |
| 256-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 256-23                |              | 22.83    |
| 285-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 285-23                |              | 24.45    |
| 247-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 247-23                |              | 6.50     |
| 253-23            | CALHOUN COUNTY TREASUR | PRE CHANGE INVOICE 253-23                |              | 23.34    |
| 129918            | CARR BROTHERS & SONS,  | 90 YDS SAND & 30 YDS CRUSHED STONE       |              | 2,042.20 |
| 129819            | CARR BROTHERS & SONS,  | 90 YDS SAND & 92 YDS CRUSHED STONE       | 2023.251     | 3,980.00 |
| 260235            | CIVICPLUS, LLC         | MUNICODE FULL SERVICE CODE ONLINE 6/17/2 |              | 1,950.00 |
| 05142023-A        | COMFORT INN (CADILLAC) | ACCT NO. 861533381 HOTEL FOR SCHIPPER 5/ |              | 499.50   |
| 05142023-B        | COMFORT INN (CADILLAC) | ACCT NO. 861532710 HOTEL FOR HENRY 5/7/2 |              | 499.50   |
| 05192023          | COMFORT INN (CADILLAC) | ACCT NO. 861533585 HOTEL FOR SCHIPPER 5/ |              | 499.50   |
| 203766633890      | CONSUMERS ENERGY       | ACCT NO. 1000 9033 6411 AIRPORT MAY 2023 |              | 91.22    |
| 202698743943      | CONSUMERS ENERGY       | ACCT NO. 1000 0916 3435 CITY HALL MAY 20 |              | 437.92   |
| 202698743945      | CONSUMERS ENERGY       | ACCT NO. 1000 0916 3971 DPW MAY 2023     |              | 533.67   |
| 203766633128      | CONSUMERS ENERGY       | ACCT NO. 1000 0759 4680 DPW MAY 2023     |              | 297.29   |
| 202609783778      | CONSUMERS ENERGY       | ACCT NO. 1030 1580 0248 FIRE STATION MAY |              | 355.06   |
| 206347118282      | CONSUMERS ENERGY       | ACCT NO. 1000 8921 1096 KP FIREPLACE MAY |              | 311.84   |
| 206614029115      | CONSUMERS ENERGY       | ACCT NO. 1000 0033 5602 MARSHALL HOUSE M |              | 2,921.42 |
| 204300602443      | CONSUMERS ENERGY       | ACCT NO. 1030 1852 1130 MRLEC MAY 2023   |              | 2,736.12 |
| 203944638957      | CONSUMERS ENERGY       | ACCT NO. 1030 1852 0884 MRLEC BARN MAY 2 |              | 603.30   |
| 203499678008      | CONSUMERS ENERGY       | ACCT NO. 1000 0916 3203 WASTE WATER MAY  |              | 116.98   |
| 202698743944      | CONSUMERS ENERGY       | ACCT NO. 1000 0916 3708 WASTE WATER MAY  |              | 119.04   |
| 203766642896      | CONSUMERS ENERGY       | ACCT NO. 1030 1352 1119 WASTE WATER LIFT |              | 30.42    |
| 201541863827      | CONSUMERS ENERGY       | ACCT NO. 1000 7224 3312 WATER MAY 2023   |              | 384.86   |
| 10415600          | CRYSTAL FLASH MARSHALL | ACCT NO. 051300000 REC GAS 5/10/23       |              | 1,671.64 |
| S3-77213          | CUMMINS SALES AND SERV | CUST NO. 179288 GENERATOR MAINTENANCE AT |              | 1,522.54 |
| 174746            | D & D MAINTENANCE SUPP | ACCT NO. CIMA1 JANITORIAL SUPPLIES       |              | 72.24    |
| 174748            | D & D MAINTENANCE SUPP | ACCT NO. CIMA1 JANITORIAL SUPPLIES       |              | 76.60    |
| 174827            | D & D MAINTENANCE SUPP | ACCT NO. CIMA1 JANITORIAL SUPPLIES       |              | 45.67    |
| 617268            | DARLING ACE HARDWARE   | CUST NO. 1650 - RAKE                     |              | 25.99    |
| 617324            | DARLING ACE HARDWARE   | CUST NO. 1650 - 2 HOLE STRAPS            |              | 3.58     |
| 617370            | DARLING ACE HARDWARE   | CUST NO. 1650 - KEYS                     |              | 4.78     |
| 617392            | DARLING ACE HARDWARE   | CUST NO. 1650 - 2 CYCLE OIL, GAS CAN     |              | 37.95    |
| 617442            | DARLING ACE HARDWARE   | CUST NO. 1650 - WOODCUTTER BAR & SAW CHA |              | 18.99    |
| 617516            | DARLING ACE HARDWARE   | CUST NO. 1650 - TOOL CADDY, BROOM/DUSTPA |              | 35.98    |
| 617529            | DARLING ACE HARDWARE   | CUST NO. 1650 - KEYS, GAS CAN            |              | 43.94    |
| 617622            | DARLING ACE HARDWARE   | CUST NO. 1650 - KEYS                     |              | 2.39     |
| 617717            | DARLING ACE HARDWARE   | CUST NO. 1650 - EAR PLUGS                |              | 2.90     |
| 617828            | DARLING ACE HARDWARE   | CUST NO. 1650 - PAINTER'S TAPE           |              | 5.99     |
| 618052            | DARLING ACE HARDWARE   | CUST NO. 1650 - MENDING BRACE, NUTS, BOL |              | 7.51     |
| 618035            | DARLING ACE HARDWARE   | CUST NO. 1650 - METRIC DIE, NUTS, BOLTS  |              | 10.35    |
| 618245            | DARLING ACE HARDWARE   | CUST NO. 1650 - MOP HEAD                 |              | 13.99    |
| 45366             | DUNCAN & ALLEN LLP     | CLIENT NO. 003154 SERVICES THROUGH 4/30/ |              | 2,576.00 |

APPROVAL LIST FOR CITY OF MARSHALL  
EXP CHECK RUN DATES 05/26/2023 - 05/26/2023  
UNJOURNALIZED  
OPEN

| INVOICE<br>NUMBER | VENDOR<br>NAME                 | DESCRIPTION                               | PO<br>NUMBER | AMOUNT    |
|-------------------|--------------------------------|-------------------------------------------|--------------|-----------|
| 05/25/2023        | DUVAL, KARA                    | UB refund for account: 2900320038         |              | 38.43     |
| 05242023          | EGNATUK, ALEC                  | WASTE WATER PLANT OPEN HOUSE SUPPLIES     |              | 43.66     |
| 040770            | ENVIRONMENTAL RESOURCE         | ACCT NO. C381602 WWTP LAB QA SUPPLIES     |              | 709.82    |
| S105073527.001    | ETNA SUPPLY                    | CUST NO. 5277 O-RING, HOSE NOZZLE         |              | 488.50    |
| 12674             | FREDRICKSON SUPPLY, LL         | MISCELLANEOUS GARAGE TOOLS/PARTS          |              | 222.29    |
| 23-01259          | GARAGE DOORS UNLIMITED SERVICE | AT MARSHALL HOUSE FOR ENTRANCE D          |              | 175.00    |
| 23-05096          | GARAGE DOORS UNLIMITED SERVICE | AT MARSHALL HOUSE FOR ENTRANCE D          |              | 125.00    |
| 120441329         | GLOBAL INDUSTRIAL              | CUST NO. 688867 WORK PANTS                |              | 50.95     |
| 120463703         | GLOBAL INDUSTRIAL              | CUST NO. 688867 WORK PANTS                |              | 71.43     |
| 20230365          | GRP ENGINEERING, INC.          | ENGINEERING SERVICES MISC. 4/3/23 - 4/30  |              | 407.50    |
| 20230366          | GRP ENGINEERING, INC.          | ENGINEERING SERVICES - BROOKS SUBSTATION  | 2022.046     | 1,800.00  |
| 05222023          | HENRY, JUSTIN                  | MEAL REIMBURSEMENT FOR LINEMAN SCHOOL     |              | 393.85    |
| 05122023          | HOME DEPOT CREDIT SERV         | ACCT NO. 6035 3225 3883 7836 TOOL BAG, C  |              | 285.99    |
| 36266             | HUNTER-PRELL COMPANY           | JOB NO. KL23-0135 MARSHALL HOUSE SPRINKL  |              | 275.00    |
| 52131             | HUNTINGTON NATIONAL BAI        | ACCT NO. 3584295102 LDFA BOND ADMIN FEES  |              | 500.00    |
| 3129077136        | IDEXX DISTRIBUTION, IN         | ACCT NO. 40552 WWTP LAB SUPPLIES          |              | 2,935.49  |
| 175545            | IMPACT SOLUTIONS               | CLIENT NO. MARSH - DOOR HANGERS           |              | 245.30    |
| 175579            | IMPACT SOLUTIONS               | CLIENT NO. MARSH - NAME PLATES PLANNING   |              | 27.13     |
| 05082023          | ISAAC & SONS                   | MARSHALL HOUSE CARPET CLEANING - 1ST/2ND  |              | 1,405.00  |
| 30975             | J AND K PLUMBING SUPPL         | WATER DEPT - METER COUPLINGS              |              | 79.10     |
| 31045             | J AND K PLUMBING SUPPL         | WATER DEPT - METER COUPLINGS              |              | 31.64     |
| KC23-00037        | J.R. UNDERGROUND, LLC          | DIRECTIONAL BORING AND CONDUIT PLACEMENT  | 2023.235     | 15,447.50 |
| 101024743         | KIMBALL MIDWEST                | ACCT NO. 181800 CLEANER, DISCS            |              | 1,331.65  |
| 42184             | LAKELAND ASPHALT CORPO         | 1.99 TONS BITUMINOUS AGGREGATES           |              | 137.31    |
| 42211             | LAKELAND ASPHALT CORPO         | 2.64 TONS BITUMINOUS AGGREGATES           |              | 182.16    |
| 018586            | LEWEY'S SHOE REPAIR            | BOOT ALLOWANCE - WEBERLING, ERIC          |              | 57.99     |
| 018587            | LEWEY'S SHOE REPAIR            | BOOT ALLOWANCE - HAZEL, CHAD              |              | 318.97    |
| 1453              | MARSHALL EXCHANGE CLUB         | MARSHALL EXCHANGE CLUB DUES 2023 MARCH T  |              | 180.00    |
| 05112023          | MCGINTY, HITCH, PERSON         | CLIENT NO. 4030.001 SERVICES THROUGH 4/3  |              | 11,301.00 |
| 64273             | MCNALLY ELEVATOR COMP          | ACCT NO. MA2391 SERVICE CALL MARSHALL HO  |              | 410.00    |
| S5189957.003      | MEDLER ELECTRIC COMPAN         | CUST NO. 979 MATERIALS FOR UNDERGROUND U  | 2023.230     | 2.16      |
| S5195501.001      | MEDLER ELECTRIC COMPAN         | CUST NO. 979 MATERIALS FOR ELECTRICAL PO  | 2023.238     | 13,584.18 |
| S5204334.001      | MEDLER ELECTRIC COMPAN         | CUST NO. 979 CONDUIT CEMENT               |              | 263.55    |
| S5204533.001      | MEDLER ELECTRIC COMPAN         | CUST NO. 979 CONDUIT CEMENT               |              | 263.55    |
| 69639             | MICHIGAN ASSOCIATION O         | MEMBERSHIP RENEWAL - ZUZGA, ERIC          |              | 65.00     |
| J035496           | MICHIGAN PIPE & VALVE          | CUST NO. 0001906 SAW BLADES               |              | 895.60    |
| 1877429           | MILLER JOHNSON ATTORNE         | CLIENT NO. 52636 SERVICES THROUGH 4/30/2  |              | 2,818.51  |
| 36786307          | MSC INDUSTRIAL SUPPLY          | (CUST NO. 02356117 CAUTION TAPE           |              | 83.56     |
| 487335            | NORTH CENTRAL LABORATO         | ACCT NO. 27850 WWTP LAB SUPPLIES          | 2023.015     | 750.84    |
| 487482            | NORTH CENTRAL LABORATO         | ACCT NO. 27850 WWTP LAB SUPPLIES          | 2023.015     | 938.26    |
| 851422            | NYE UNIFORM COMPANY            | MARSHALL PD - GOODRICH EMBLEM SEWN ON     |              | 17.20     |
| 851423            | NYE UNIFORM COMPANY            | MARSHALL PD - HUG EMBLEM SEWN ON          |              | 8.00      |
| 2582827           | OFFICE 360                     | ACCT NO. 26140 COPY PAPER                 |              | 300.87    |
| 2587770           | OFFICE 360                     | ACCT NO. 26140 HAND SOAP                  |              | 54.06     |
| 62669             | OHM ADVISORS                   | TRAFFIC STUDY AT S. KALAMAZOO AND HUGHES  | 2023.228     | 5,148.75  |
| 72566             | PEERLESS MIDWEST, INC.         | HYDROGEOLOGIST CONSULTING APRIL 2023      | 2022.225     | 500.00    |
| 72567             | PEERLESS MIDWEST, INC.         | WELLHEAD PROTECTION PROGRAM (WHPP) PLAN   | 2022.225     | 3,000.00  |
| 1752071-00        | POTTER DISTRIBUTING, I         | CUST NO. 4883 MARSHALL HOUSE AIR CONDITI  |              | 2,420.00  |
| 56740634          | POWER LINE SUPPLY              | CUST ID: 100402 BOOT ALLOWANCE - SUNDBER  |              | 199.00    |
| 56740893          | POWER LINE SUPPLY              | CUST ID: 100402 GRAY SPOOLS, BOLTS        |              | 282.42    |
| 56740894          | POWER LINE SUPPLY              | CUST ID: 100402 #2 AL TRIPLEX             |              | 1,000.00  |
| 56741399          | POWER LINE SUPPLY              | CUST ID: 100402 DIELECTRIC GLOVES         |              | 97.43     |
| 56742293          | POWER LINE SUPPLY              | CUST ID: 100402 SCREW LAG                 |              | 390.20    |
| 56742410          | POWER LINE SUPPLY              | CUST ID: 100402 FR HAT                    |              | 58.00     |
| 56742542          | POWER LINE SUPPLY              | CUST ID: 100402 METER SLEEVES             |              | 66.24     |
| 00192872          | PROGRESSIVE AE                 | PROJECT NO. 83260007.0 PHASE 1 - SITE PL  |              | 6,152.30  |
| 333520            | PVS TECHNOLOGIES, INC.         | WASTE WATER FERRIC CHLORIDE               | 2023.245     | 9,286.34  |
| 2023BLUESFEST-2   | RENTALEX                       | 2023 BLUES FEST TENT/CHAIRS FINAL PAYMEN  |              | 2,048.40  |
| 2022-8598         | RHINO'S PLUMBING & HVA         | INSTALL BALL VALVE SHUTOFF AT WATER METE  |              | 510.31    |
| 05222023          | SCHIPPER, CLINT                | MEAL REIMBURSEMENT FOR LINEMAN SCHOOL     |              | 406.21    |
| INV34829          | SD MYERS LLC                   | CUST ID: 9063450 OIL TESTING              | 2023.197     | 3,780.00  |
| 10635             | SIGNWORLD CONCEPTS             | VENDOR NO. 7471 MAGNETIC/VINYL DECALS NE  |              | 435.00    |
| 05262023          | STAR TRUCK RENTALS, IN         | ENTRY LEVEL DRIVER TRAINING - CRUZ, CHAN  |              | 4,440.00  |
| 1702-6            | THE SHERWIN-WILLIAMS C         | ACCT NO. 2475-6137-6 MARSHALL HOUSE COMP  |              | 4,365.15  |
| 05082023          | THE TOWER CLOCK COMPAN         | CITY HALL BELL TOWER CLOCK REPAIR, RESTO  | 2022.045     | 37,000.00 |
| 13752             | TIRE CITY TIRE PROS            | 2021 FORD INTERCEPTOR NEW TIRES & INSTAL  |              | 868.00    |
| 164               | TOP TO BOTTOM TREE SER         | ELECTRIC LINE CLEARANCE (3-PERSON \$132/H | 2023.163     | 3,828.00  |
| 1620064695        | UNIFIRST CORPORATION           | UNIFORM SERVICES - MARSHALL HOUSE 5/10/2  |              | 46.55     |
| 1620064694        | UNIFIRST CORPORATION           | UNIFORM SERVICES - ELECTRIC & FIBER 5/10  |              | 166.61    |
| 1620064692        | UNIFIRST CORPORATION           | UNIFORM SERVICES - DPW & GARAGE 5/10/23   |              | 56.69     |
| 1620064693        | UNIFIRST CORPORATION           | UNIFORM SERVICES - POWER HOUSE 5/10/23    |              | 70.63     |
| 1620064690        | UNIFIRST CORPORATION           | UNIFORM SERVICES - WASTE WATER 5/10/23    |              | 41.44     |
| 1620064696        | UNIFIRST CORPORATION           | UNIFORM SERVICES - WATER 5/10/23          |              | 44.72     |
| 1620065567        | UNIFIRST CORPORATION           | UNIFORM SERVICES - MARSHALL HOUSE 5/17/2  |              | 46.55     |
| 1620065566        | UNIFIRST CORPORATION           | UNIFORM SERVICES - ELECTRIC & FIBER 5/17  |              | 166.61    |
| 1620065564        | UNIFIRST CORPORATION           | UNIFORM SERVICES - DPW & GARAGE 5/17/23   |              | 56.69     |
| 1620065565        | UNIFIRST CORPORATION           | UNIFORM SERVICES - POWER HOUSE 5/17/23    |              | 70.63     |
| 1620065562        | UNIFIRST CORPORATION           | UNIFORM SERVICES - WASTE WATER 5/17/23    |              | 55.69     |
| 1620065568        | UNIFIRST CORPORATION           | UNIFORM SERVICES - WATER 5/17/23          |              | 44.72     |

05/25/2023 05:40 PM  
User: KWAGNER  
DB: Marshall

APPROVAL LIST FOR CITY OF MARSHALL  
EXP CHECK RUN DATES 05/26/2023 - 05/26/2023  
UNJOURNALIZED  
OPEN

Page: 3/3

| INVOICE<br>NUMBER | VENDOR<br>NAME         | DESCRIPTION                               | PO<br>NUMBER | AMOUNT     |
|-------------------|------------------------|-------------------------------------------|--------------|------------|
| 0005574148        | USA TODAY NETWORK      | ACCT NO. 584585 PLANNING & ZONING PUBLIC. |              | 363.80     |
| 530370665         | UTILITIES INSTRUMENTAT | SERVICE TO HYDRO UNITS THROUGH 4/27/23    |              | 960.00     |
| 105900            | VC3 INC                | ACCT NO. MAR11 MAINTENANCE TO POLICE SEC  |              | 2,112.96   |
| 9696              | WATERSOLVE, LLC        | WASTE WATER SLUDGE THICKENING POLYMER     | 2023.247     | 13,404.00  |
| 4307855           | XEROX FINANCIAL SERVIC | CUST NO. 69580 XEROX LEASE MAY 2023       |              | 1,688.49   |
| GRAND TOTAL:      |                        |                                           |              | 198,797.41 |





MICHIGAN SOUTH CENTRAL POWER AGENCY

168 DIVISION STREET  
COLDWATER, MICHIGAN 49036  
PHONE (517) 279-6961  
FAX (517) 279-6969

INVOICE MONTH: April, 2023  
INVOICE DATE: 5/17/2023  
DUE DATE: 5/31/2023  
TOTAL AMOUNT DUE: \$784,411.29

MARSHALL CITY ELECTRIC DEPARTMENT  
323 WEST MICHIGAN AVENUE  
MARSHALL, MICHIGAN 49068  
ATTN: KEVIN MAYNARD

MSCPA Member Power Billing - April, 2023

|                                               |              |
|-----------------------------------------------|--------------|
| Total Power Charges:                          | \$620,422.58 |
| Transmission / Capacity / Ancillary Services: | \$132,507.41 |
| Total Other Charges:                          | \$10,700.90  |
| Total Miscellaneous Charges:                  | \$20,780.40  |

TOTAL CHARGES \$784,411.29

NOTE: PLEASE SEE ENCLOSED BACKUP FOR ADDITIONAL DETAIL

\* Any amounts due and not paid by the due date shall bear interest at the rate of 1% per month until paid

Notes:

# ITEM: 7.C

## ADMINISTRATIVE REPORT

---



**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
**DATE:** June 5, 2023  
**SUBJECT:** **ROTARY FOUNDATION- CHARITABLE GAMING LICENSE**

---

The Marshall Rotary Foundation desires to conduct licensed gaming events as allowed by Public Act 382 of 1972. In order to complete their application to the State of Michigan Bureau of State Lottery, they must have an approved resolution by the City of Marshall recognizing them as a nonprofit organization in the community.

**BUDGET IMPACT:**  
None.

**RECOMMENDATION:**  
Approve the LOCAL GOVERNING BODY RESOLUTION FOR CHARITABLE GAMING LICENSES as required by MCL.432.103(k)(ii) for the Marshall Rotary Foundation





Charitable Gaming Division  
Box 30023, Lansing, MI 48909  
OVERNIGHT DELIVERY:  
101 E. Hillsdale, Lansing MI 48933  
(517) 335-5780  
www.michigan.gov/cg

## LOCAL GOVERNING BODY RESOLUTION FOR CHARITABLE GAMING LICENSES

(Required by MCL.432.103(K)(ii))

At a \_\_\_\_\_ meeting of the \_\_\_\_\_  
REGULAR OR SPECIAL TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD

called to order by \_\_\_\_\_ on \_\_\_\_\_  
DATE

at \_\_\_\_\_ a.m./p.m. the following resolution was offered:  
TIME

Moved by \_\_\_\_\_ and supported by \_\_\_\_\_

that the request from \_\_\_\_\_ of \_\_\_\_\_,  
NAME OF ORGANIZATION CITY

county of \_\_\_\_\_, asking that they be recognized as a  
COUNTY NAME

nonprofit organization operating in the community for the purpose of obtaining charitable

gaming licenses, be considered for \_\_\_\_\_.  
APPROVAL/DISAPPROVAL

### APPROVAL

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

### DISAPPROVAL

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the \_\_\_\_\_ at a \_\_\_\_\_  
TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD REGULAR OR SPECIAL

meeting held on \_\_\_\_\_.  
DATE

SIGNED: \_\_\_\_\_  
TOWNSHIP, CITY, OR VILLAGE CLERK

PRINTED NAME AND TITLE

ADDRESS

COMPLETION: Required.  
PENALTY: Possible denial of application.

BSL-CG-1153(R6/09)

# ITEM: 7.D

## ADMINISTRATIVE REPORT

---



**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
**DATE:** June 5, 2023  
**SUBJECT:** JAM FOR THE CURE- CHARITABLE GAMING LICENSE

---

The Jam for the Cure 501(c)(3) organization desires to conduct licensed gaming events as allowed by Public Act 382 of 1972. In order to complete their application to the State of Michigan Bureau of State Lottery, they must have an approved resolution by the City of Marshall recognizing them as a nonprofit organization in the community.

**BUDGET IMPACT:**  
None.

**RECOMMENDATION:**  
Approve the LOCAL GOVERNING BODY RESOLUTION FOR CHARITABLE GAMING LICENSES as required by MCL.432.103(k)(ii) for the Jam for the Cure organization.



Charitable Gaming Division  
Box 30023, Lansing, MI 48909  
OVERNIGHT DELIVERY:  
101 E. Hillsdale, Lansing MI 48933  
(517) 335-5780  
www.michigan.gov/cg

## LOCAL GOVERNING BODY RESOLUTION FOR CHARITABLE GAMING LICENSES

(Required by MCL.432.103(K)(ii))

At a \_\_\_\_\_ meeting of the \_\_\_\_\_  
REGULAR OR SPECIAL TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD

called to order by \_\_\_\_\_ on \_\_\_\_\_  
DATE

at \_\_\_\_\_ a.m./p.m. the following resolution was offered:  
TIME

Moved by \_\_\_\_\_ and supported by \_\_\_\_\_

that the request from \_\_\_\_\_ of \_\_\_\_\_,  
NAME OF ORGANIZATION CITY

county of \_\_\_\_\_, asking that they be recognized as a  
COUNTY NAME

nonprofit organization operating in the community for the purpose of obtaining charitable

gaming licenses, be considered for \_\_\_\_\_.  
APPROVAL/DISAPPROVAL

### APPROVAL

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

### DISAPPROVAL

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the \_\_\_\_\_ at a \_\_\_\_\_  
TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD REGULAR OR SPECIAL

meeting held on \_\_\_\_\_.  
DATE

SIGNED: \_\_\_\_\_  
TOWNSHIP, CITY, OR VILLAGE CLERK

PRINTED NAME AND TITLE

ADDRESS

COMPLETION: Required.  
PENALTY: Possible denial of application.

BSL-CG-1153(R6/09)

# ITEM: 7.E

## ADMINISTRATIVE REPORT

---



**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
**DATE:** June 5, 2023  
**SUBJECT:** **MARSHALL HOUSE PSA FIRST AMENDMENT AND REINSTATEMENT**

---

On April 17, 2023, City Council approved the Purchase and Sale Contract with the Gene B. Glick Family Housing Foundation, Inc. for the sale of the Marshall House property. As part of that sale agreement, a forty (40) day feasibility period was included under Article III of the contract to allow the purchaser and its agents to enter the property and perform studies, examinations, inspections and investigations. While significant progress has been made towards that effort, there still remains several outstanding items that require more time beyond the allowed 40-day period to investigate to the satisfaction of the buyer.

As both parties strongly wish to continue with the sale and the related due diligence, a First Amendment to Purchase and Sale Contract is being presented for consideration and approval. The new Purchase and Sale Contract has an extension of the due diligence period until June 30, 2023. While we believe this additional time period will be sufficient, we are requesting that, as part of your approval, you also authorize the City Manager to extend it another 30-days if necessary.

### **BUDGET IMPACT:**

The purchase price is \$9.5 million. Upon finalization of the sale, a recommendation on the use of the proceeds will be provided to the City Council for your approval.

### **RECOMMENDATION:**

Approve the First Amendment to Purchase and Sale Contract with the Gene B. Glick Family Housing Foundation, Inc. in substantial form and authorize the City Manager and City Clerk to sign the necessary documents and further authorize the City Manager to execute another 30-day extension of the feasibility period if necessary to complete the due diligence required of the sale.

**FIRST AMENDMENT TO  
PURCHASE AND SALE CONTRACT**

This **FIRST AMENDMENT TO PURCHASE AND SALE CONTRACT** (this "Amendment") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date") by and between the **CITY OF MARSHALL**, a Michigan municipal corporation ("Seller"), and **GENE B. GLICK FAMILY HOUSING FOUNDATION, INC.**, an Indiana nonprofit corporation ("Purchaser").

WHEREAS, Seller and Purchaser entered into a certain Purchase and Sale Contract dated April 18, 2023 (the "Agreement"); and

WHEREAS, the parties now desire to amend the Agreement on the terms and conditions below.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. Defined Terms. Any capitalized terms not otherwise defined herein shall have the same meaning in this Amendment as defined in the Agreement.

2. Extension of Due Diligence for Certain Matters. The Feasibility Period shall be extended through and including June 30, 2023; provided, however that Purchaser shall only be allowed to terminate in its discretion under Section 3.2 of the Agreement and receive a return of the Deposit for a termination concerning (i) the environmental condition of the Property, (ii) Purchaser's review of Property Contracts; or (iii) uncured Objections under Section 4.3 of the Agreement. Purchaser otherwise waives its right to terminate the Agreement under Section 3.2 of the Agreement.

3. Facsimile Signatures; Execution of Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Any or all parties may execute this Amendment by facsimile signature, and any such facsimile signature shall be deemed an original signature.

4. Effect of Amendment; Reinstatement. Except as provided for herein, all other terms and conditions of the Agreement shall remain unchanged. This Amendment may only be varied by a document, in writing, of even or subsequent date hereof, executed by the parties hereto. By execution of this Amendment, Purchaser revokes its letter of conditional termination delivered prior to the execution and delivery of this Amendment by Purchaser and Seller. The parties hereto agree that the Agreement is reinstated with the amendments set forth herein.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned parties have executed this First Amendment as of the Effective Date.

**Seller:**

**CITY OF MARSHALL,**  
a municipal public corporation

By: \_\_\_\_\_  
Michelle Eubank, Clerk, City of Marshall

**Purchaser:**

**GENE B. GLICK FAMILY HOUSING  
FOUNDATION, INC.,** an Indiana non-profit  
corporation

By: \_\_\_\_\_  
David O. Barrett, President and CEO

**Purchaser's Tax Identification Number/Social  
Security Number:**

20-1698926



PO Box 40177  
8801 River Crossing Blvd.  
Suite 200  
Indianapolis, IN 46240  
T 317.469.0400  
genebglick.com

VIA FEDERAL EXPRESS and EMAIL

Writer's Direct Dial: (317) 495-6634  
Email: [arichter@glickco.com](mailto:arichter@glickco.com)

City of Marshall  
c/o Derek Perry, City Manager  
323 W. Michigan Avenue  
Marshall, MI 49068  
[dperry@cityofmarshall.com](mailto:dperry@cityofmarshall.com)

May 30, 2023

City of Marshall  
c/o David Revore, City Attorney  
323 W. Michigan Avenue  
Marshall, MI 49068  
[davidrevore@mcgintylaw.com](mailto:davidrevore@mcgintylaw.com)

Re: Marshall House Apartments – Purchaser's Notice of Conditional Termination ("Notice")

This Notice is delivered on behalf of Gene B. Glick Family Housing Foundation, Inc. and Glick Marshall House, LLC (collectively, "Purchaser") pursuant to a certain Purchase and Sale Contract (the "Purchase Agreement") by and between Purchaser and the City of Marshall ("Seller") dated April 18, 2023. Under the Purchase Agreement, Purchaser has agreed to acquire the apartment complex owned by Seller commonly referred to as "Marshall House" (the "Property"), subject to the terms stated therein.

After conducting its due diligence, the Purchaser continues to be excited about the Property and looks forward to successful closing. The Purchaser, however, has identified two issues that it has not been able to resolve. Such issues concern the Property's environmental condition and certain uncured Objections under Section 4.3 of the Purchase Agreement.

The Purchaser would like to discuss with the Seller the possibility of an amendment to the Purchase Agreement to extend the Inspection Period thereunder to allow for additional time to resolve the issues described above. In exchange, the Purchaser would otherwise waive its right to terminate the Agreement under Section 3.2 of the Agreement except as it relates to the above-described issue.

Unfortunately, with the Inspection Period expiring as of the date of this Notice, neither party has adequate time to discuss and negotiate the amendment described above. Purchaser has every reason to believe that the parties, if given additional time, will come to a mutually acceptable resolution concerning the matter. However, given today's expiration of the Feasibility Period, Purchaser must issue this termination. Therefore, Purchaser hereby terminates the Purchase Agreement pursuant to Section 3.2 of the Purchase Agreement. Upon execution of such a mutually agreed upon amendment, Purchaser shall formally revoke this Termination and the parties will formally reinstate the Purchase Agreement.

Please know that Purchaser desires to proceed to Closing, and this Termination, while binding, is delivered as a precaution. We look forward to continuing to work with you.

Very truly yours,

Gene B. Glick Company, Inc.

A handwritten signature in blue ink that reads "Adam J. Richter". The signature is written in a cursive style with a large initial "A".

Adam J. Richter, Esq.

Executive Vice President and General Counsel



## PURCHASE AND SALE CONTRACT

**THIS PURCHASE AND SALE CONTRACT** (this “**Contract**”) is entered into as of the \_\_\_\_ day of April, 2023 (the “**Effective Date**”), by and between the **CITY OF MARSHALL**, a Michigan municipal corporation, its address of 323 W. Michigan Avenue, Marshall Michigan, 49068 (“**Seller**”), and **GENE B. GLICK FAMILY HOUSING FOUNDATION, INC.**, an Indiana nonprofit corporation having a principal address at 8801 River Crossing Blvd., Suite 200, Indianapolis, Indiana 46240 (“**Purchaser**”).

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, Seller and Purchaser hereby agree as follows:

### RECITALS

A. Seller owns the real estate located in Calhoun County, Michigan as more particularly described in **Exhibit A** attached hereto and made a part hereof, and the improvements thereon, commonly known as the Marshall House Apartments.

B. Purchaser desires to purchase, and Seller desires to sell, such land, improvements and certain associated property, on the terms and conditions set forth below.

### ARTICLE I DEFINED TERMS

Unless otherwise defined herein, any term with its initial letter capitalized in this Contract shall have the meaning set forth in Schedule 1 attached hereto and made a part hereof.

### ARTICLE II PURCHASE AND SALE, PURCHASE PRICE & DEPOSIT

2.1 **Purchase and Sale.** Seller agrees to sell and convey the Property to Purchaser and Purchaser agrees to purchase the Property from Seller, all in accordance with the terms and conditions set forth in this Contract.

2.2 **Purchase Price and Deposit.** The total purchase price (“**Purchase Price**”) for the Property shall be an amount equal to Nine Million Five Hundred and No/100 Dollars (\$9,500,000.00) payable by Purchaser, as follows:

2.2.1 Within 3 days following the Effective Date, Purchaser shall deliver to First American Title Insurance Company, National Commercial Services, 211 N. Pennsylvania Street, Suite 1250, Indianapolis, IN, 46204, Attn: Tanya McFadden, [tmcfadden@firstam.com](mailto:tmcfadden@firstam.com) (“**Escrow Agent**” or “**Title Insurer**”) an initial deposit (the “**Deposit**”) of \$500,000.00 by wire transfer of immediately available funds (“**Good Funds**”).

2.2.2 Intentionally omitted.

2.2.3 Intentionally omitted.

2.2.4 The balance of the Purchase Price for the Property shall be paid to and received by Escrow Agent by wire transfer of Good Funds no later than 2:00 p.m. Eastern time on the Closing Date.

2.3 **Escrow Provisions Regarding Deposit.**

2.3.1 Escrow Agent shall hold the Deposit and make delivery of the Deposit to the party entitled thereto under the terms of this Contract. If directed by Purchaser, Escrow Agent shall invest the Deposit in an FDIC-insured, interest bearing bank account or FDIC-insured money market fund reasonably approved by Purchaser and Seller, and all interest and income thereon shall become part of the Deposit and shall be remitted to the party entitled to the Deposit pursuant to this Contract.

2.3.2 Escrow Agent shall hold and apply the Deposit in strict accordance with the terms of this Contract. The tax identification numbers of the parties shall be furnished to Escrow Agent upon request.

2.3.3 Except for the return of the Deposit to Purchaser as a result of Purchaser exercising its termination right under Section 3.2 below (in which event Escrow Agent shall promptly release the Deposit to Purchaser on demand), if, prior to the Closing Date, either party makes a written demand upon Escrow Agent for payment of the Deposit, Escrow Agent shall give **written notice** (as defined in Schedule I) to the other party of such demand. If Escrow Agent does not receive a written objection from the other party to the proposed payment within 5 Business Days after the giving of such notice, Escrow Agent is hereby authorized to make such payment as directed by the party making such written demand. If Escrow Agent does receive such written objection within such 5-Business Day period, Escrow Agent shall continue to hold such amount until otherwise directed by joint written instructions from both parties to this Contract or a final judgment of a court having competent jurisdiction over the Property. However, Escrow Agent shall have the right at any time to deliver the Deposit and interest thereon, if any, with a court of competent jurisdiction in the state in which the Property is located. Escrow Agent shall give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

2.3.4 The parties acknowledge that Escrow Agent is acting solely as a stakeholder at the parties' request and for their convenience, and that Escrow Agent shall not be deemed to be the agent of either of the parties and shall not be liable for any act or omission on its part unless taken or suffered in bad faith in willful disregard of this Contract or involving gross negligence. Seller and Purchaser jointly and severally shall indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorney's fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Contract or involving gross negligence on the part of the Escrow Agent.

2.3.5 The parties shall deliver to Escrow Agent a fully executed copy of this Contract. Escrow Agent shall execute the signature page for Escrow Agent attached hereto which shall confirm Escrow Agent's agreement to comply with the terms of Seller's and



Purchaser's separate closing instruction letters delivered at Closing and the provisions of this Section 2.3.5.

2.3.6 Escrow Agent, as the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), shall file all necessary information, reports, returns, and statements regarding the transaction required by the Code including, but not limited to, the tax reports required pursuant to Section 6045 of the Code. Further, Escrow Agent agrees to indemnify and hold Purchaser, Seller, and their respective attorneys and brokers harmless from and against any Losses resulting from Escrow Agent's failure to file the reports Escrow Agent is required to file pursuant to this Section.

### **ARTICLE III FEASIBILITY PERIOD**

3.1 **Feasibility Period.** Subject to the terms of Sections 3.3 and 3.4 and the rights of Tenants under the Leases, from the Effective Date to and including the date occurring forty (40) days following the Effective Date (the "**Feasibility Period**"), Purchaser, and its agents, contractors, engineers, surveyors, attorneys, and employees (collectively, "**Consultants**") shall, at no cost or expense to Seller, have the right from time to time to enter onto the Property to conduct and make any and all customary studies, tests, examinations, inquiries, inspections and investigations of or concerning the Property, review the Materials and otherwise confirm any and all matters which Purchaser may reasonably desire to confirm with respect to the Property and Purchaser's intended use thereof (collectively, the "**Inspections**").

3.2 **Expiration of Feasibility Period.** If the condition of the Property is unsatisfactory to Purchaser, then Purchaser shall have the right to terminate this Contract by giving written notice to that effect to Seller and Escrow Agent prior to expiration of the Feasibility Period. If Purchaser provides such notice, this Contract shall terminate and be of no further force and effect subject to and except for the Survival Provisions, and Escrow Agent shall return the Deposit to Purchaser. If Purchaser fails to provide Seller with written notice of termination prior to the expiration of the Feasibility Period, Purchaser's right to terminate under this Section 3.2 shall be permanently waived and this Contract shall remain in full force and effect, the Deposit shall be non-refundable except as otherwise expressly set forth in this Contract.

3.3 **Conduct of Investigation.** Purchaser shall not permit any construction liens or any other liens to attach to the Property by reason of the performance of any work or the purchase of any materials by Purchaser or any other party in connection with any Inspections conducted by or for Purchaser. Purchaser shall give reasonable advance notice to Seller prior to any entry onto the Property and shall permit Seller to have a representative present during all Inspections conducted at the Property. Purchaser shall take reasonable actions and implement reasonable protections necessary to ensure that all actions taken by, or on behalf of Purchaser or any of its Consultants, or any employees, officers or agents of Purchaser or any of its Consultants in connection with the Inspections, and all equipment, materials and substances generated, used or brought onto the Property by, or on behalf of Purchaser or any

of its Consultants, or any employees, officers or agents of Purchaser or any of its Consultants pose no material threat to the safety of any persons, property or the environment.

### 3.4 **Purchaser Indemnification.**

3.4.1 Purchaser shall indemnify, hold harmless and, if requested by Seller (in Seller's sole discretion), defend (with counsel approved by Seller) Seller, together with Seller's City Council, its members, staff, personnel, employees, agents and representatives (collectively, including Seller, "**Seller's Indemnified Parties**"), from and against any and all damages, construction liens, liabilities, penalties, interest, losses, demands, actions, causes of action, claims, costs and expenses (including reasonable attorneys' fees, including the cost of in-house counsel and appeals) (collectively, "**Losses**") arising from or related to Purchaser's or its Consultants' entry onto the Property, and any Inspections or other acts by Purchaser or Purchaser's Consultants with respect to the Property during the Feasibility Period or otherwise.

3.4.2 Notwithstanding anything in this Contract to the contrary, Purchaser shall not be permitted to perform any invasive tests on the Property without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Purchaser desires to perform any invasive tests, Purchaser shall give prior written notice thereof to Seller, which notice shall be accompanied by a reasonably detailed description and plan of the invasive tests Purchaser desires to perform. Seller shall, within two (2) Business Days after receiving such notice from Purchaser, approve or disapprove such invasive testing. If Seller fails to respond to Purchaser's request within such two (2) Business Day period, Seller shall be deemed to have disapproved Purchaser's request to perform such invasive testing. Further, Seller shall have the right, without limitation, to disapprove any and all entries, surveys, tests (including, without limitation, a Phase II environmental study of the Property), investigations and other matters that in Seller's reasonable judgment could result in any injury to the Property or breach of any contract, or expose Seller to any Losses or violation of applicable law, or otherwise adversely affect the Property or Seller's interest therein. Purchaser shall, at Purchaser's sole cost and expense, and in accordance with all applicable environmental laws, dispose of any hazardous materials which have been specifically removed from the Property by Purchaser or its agents, representatives, employees or designees in connection with Purchaser's environmental studies. Purchaser shall use reasonable efforts to minimize disruption to Tenants in connection with Purchaser's or its Consultants' activities pursuant to this Section. No consent by Seller to any such activity shall be deemed to constitute a waiver by Seller or assumption of liability or risk by Seller. Purchaser hereby agrees to restore, at Purchaser's sole cost and expense, the Property to substantially the same condition existing immediately prior to Purchaser's exercise of its rights pursuant to this Article III. Purchaser shall maintain and cause its third party consultants to maintain (a) casualty insurance and commercial general liability insurance with coverages of not less than \$1,000,000.00 for injury or death to any one person and \$3,000,000.00 for injury or death to more than one person and \$1,000,000.00 with respect to property damage, and (b) worker's compensation insurance for all of their respective employees in accordance with the law of the state in which the Property is located. Purchaser shall deliver proof of the insurance coverage required pursuant to this Section 3.4.2 to Seller (in the form of a certificate of insurance) prior to Purchaser's or Purchaser's Consultants' entry onto the Property. Purchaser shall cause Seller to be named as an additional insured on the commercial general liability insurance required of Purchaser above.



### 3.5 Property Materials.

3.5.1 Not later than 5 Business Days after the Effective Date, and to the extent the same have not already been provided by Seller to Purchaser, Seller shall deliver to Purchaser, or at Seller's option make available at the Property, copies of such documents and information concerning the Property that are in Seller's possession or reasonable control (collectively, the "**Materials**"), that are listed on Schedule 3.5.1 attached hereto that Seller has in its possession or reasonable control.

3.5.2 In providing the Materials to Purchaser, other than Seller's Representations, Seller makes no representation or warranty, express, written, oral, statutory, or implied, and all such representations and warranties are hereby expressly excluded and disclaimed. If this Agreement is terminated for any reason, all Materials shall be returned by Purchaser to Seller (or the destruction thereof shall be certified in writing by Purchaser to Seller) within thirty (30) days of such termination.

3.5.3 Not later than 5 Business Days after the Effective Date, and to the extent the same has not already been provided by Seller to Purchaser, Seller shall deliver to Purchaser (or otherwise make available to Purchaser as provided under Section 3.5.1) the most recent rent roll for the Property, which shall list the move-in date, the monthly base rent payable, the lease expiration date and any unapplied security deposits, except and to the extent the foregoing information is set forth in other reports delivered to Purchaser as part of the Materials delivery under Section 3.5.1 (the "**Rent Roll**").

3.5.4 Not later than 5 Business Days after the Effective Date, and to the extent the same has not already been provided by Seller to Purchaser, Seller shall deliver to Purchaser (or otherwise make available to Purchaser as provided under Section 3.5.1) a list of all current Property Contracts (the "**Property Contracts List**").

3.6 Property Contracts. On or before the expiration of the Feasibility Period, Purchaser may deliver written notice to Seller (the "**Property Contracts Notice**") specifying any Property Contracts which Purchaser desires to have the Seller terminate at the Closing (the "**Terminated Contracts**"); provided that (a) the effective date of such termination on or after Closing shall be subject to the express terms of such Terminated Contracts, and (b) if any such Property Contract cannot by its terms be terminated at Closing, it shall be assumed by Purchaser and not be a Terminated Contract. To the extent that any such Terminated Contract requires payment of a penalty, premium, or damages, including liquidated damages, for cancellation, Purchaser shall be solely responsible for the payment of any such cancellation fees, penalties, or damages, including liquidated damages. If Purchaser fails to deliver the Property Contracts Notice on or before the expiration of the Feasibility Period, then there shall be no Terminated Contracts and Purchaser shall assume all Property Contracts at the Closing. If Purchaser delivers the Property Contracts Notice to Seller on or before the expiration of the Feasibility Period, then Seller shall execute and deliver, on or before Closing, a vendor termination notice for each Terminated Contract informing the vendor(s) of the termination of such Terminated Contract as of the Closing Date (subject to any delay in the effectiveness of such termination pursuant to the express terms of each applicable Terminated Contract) (the "**Vendor Terminations**"). Seller shall indemnify, hold harmless and, if

requested by Purchaser (in Purchaser's sole discretion), defend (with counsel reasonably approved by Purchaser) Purchaser and its parent, subsidiaries and affiliates from and against any and all Losses incurred by Purchaser arising from or related to Seller's failure to deliver any of the Vendor Terminations. To the extent that any Property Contract to be assigned to Purchaser requires vendor consent, then, prior to the Closing, Seller shall attempt to obtain from each applicable vendor a consent to such assignment.

#### **ARTICLE IV TITLE**

4.1 **Title Documents.** Not later than 5 Business Days after the Effective Date, and to the extent the same has not already been provided by Seller to Purchaser, Seller shall provide to Purchaser an electronic copy of Seller's most recent title insurance policy and shall order an updated standard form commitment or preliminary title report ("**Title Commitment**") to provide a standard American Land Title Association owner's title insurance policy for the Land and Improvements, using the current policy jacket customarily provided by the Title Insurer, in an amount equal to the Purchase Price (the "**Title Policy**"), together with copies of all instruments identified as exceptions therein (together with the Title Commitment, referred to herein as the "**Title Documents**"). At Closing, Seller shall pay the premium for the base owner's Title Policy, and Purchaser shall pay any premiums for extended coverage and any endorsement to the owner's Title Policy and all costs associated with any lender's policy benefitting Purchaser's lender, if any.

4.2 **Survey.** Not later than 5 Business Days after the Effective Date, and to the extent the same has not already been provided by Seller to Purchaser, Seller shall provide to Purchaser any ALTA land title survey of the Property in Seller's possession (the "**Existing Survey**"). Purchaser may, at its sole cost and expense, order a new or updated ALTA/NSPS Land Title Survey of the Property ("**New Survey**") either before or after the Effective Date (such New Survey together with the Existing Survey, is referred to herein as the "**Survey**").

4.3 **Objection and Response Process.** On or before the date occurring 6 Business Days prior to expiration of the Feasibility Period (the "**Objection Deadline**"), Purchaser may give written notice (the "**Objection Notice**") to Seller of any objections to Title Documents and the Survey (the "**Objections**"). Assuming Seller receives the Objection Notice by the Objection Deadline, Seller shall have 5 Business Days from Purchaser's delivery of the Objections Notice (the "**Response Deadline**") in which Seller may, in Seller's sole discretion, give Purchaser notice (the "**Response Notice**") of those Objections which Seller is willing to cure, if any. If Seller fails to deliver a Response Notice by the Response Deadline, Seller shall be deemed to have elected not to cure or otherwise resolve any matter set forth in the Objection Notice. If Purchaser is dissatisfied with the Response Notice or the lack of Response Notice, Purchaser may, as its exclusive remedy, exercise its right to terminate this Contract by giving written notice under Section 3.1 of this Contract, upon which the Deposit shall be remitted to Purchaser and this Contract shall be of no further force and effect subject to and except for the Survival Provisions. If Purchaser fails to timely deliver the Objection Notice or exercise such termination right, Purchaser shall be deemed to accept the Title Documents and Survey upon the resolution by Seller of the Objections set forth in the Response Notice (or if no Response Notice is tendered, without any resolution of the Objections).



4.4 **Permitted Exceptions.** The Deed delivered pursuant to this Contract shall be subject to the following, all of which shall be deemed "**Permitted Exceptions**":

4.4.1 All matters shown in the Title Documents and the Survey, except that the following items shall not be deemed Permitted Exceptions: (a) those Objections, if any, which Seller has agreed to cure pursuant to the Response Notice under Section 4.3, (b) liens, including but not limited to tax liens (except for the lien of any mortgages assumed by Purchaser at Closing), (c) the standard exception regarding the rights of parties in possession, which shall be modified to be limited to those parties in possession pursuant to the Leases, and (d) the standard exception pertaining to taxes and assessments, which shall be limited to taxes and assessments not yet due and payable as of the Closing Date;

4.4.2 All Leases with Tenants;

4.4.3 Recorded rights regarding any oil and mineral leases and agreements.

4.4.4 Intentionally omitted;

4.4.5 Applicable zoning and governmental regulations and ordinances; and

4.4.6 Any defects in or objections to title to the Property, or title exceptions or encumbrances, arising by, through or under Purchaser.

4.5 **Subsequently Disclosed Exceptions.** If at any time after the expiration of the Feasibility Period, any update to the Title Commitment or Survey discloses any additional item which was not disclosed on any version of or update to the Title Commitment or Survey delivered to Purchaser during the title and survey review period described above and which materially and adversely affects title to the Property as reasonably determined by Purchaser (the "**New Exception**"), Purchaser shall have a period of 5 Business Days from the date of its receipt of such update (the "**New Exception Review Period**") to review and notify Seller in writing of Purchaser's approval or disapproval of the New Exception. If Purchaser disapproves of the New Exception, Seller may, in Seller's sole discretion, notify Purchaser in writing as to whether it is willing to cure the New Exception. If Seller elects to cure the New Exception, Seller shall be entitled to reasonable adjournments of the Closing Date to cure the New Exception, not to exceed 30 days in the aggregate. If Seller fails to deliver a notice to Purchaser within 3 Business Days after the expiration of the New Exception Review Period, Seller shall be deemed to have elected not to cure the New Exception. If Purchaser is dissatisfied with Seller's response, or lack thereof, Purchaser may, as its exclusive remedy elect either: (i) to terminate this Contract, in which event the Deposit shall be promptly returned to Purchaser or (ii) to waive the New Exception and proceed with the transactions contemplated by this Contract, in which event Purchaser shall be deemed to have approved the New Exception. If Purchaser fails to notify Seller in writing of its election to terminate this Contract in accordance with the foregoing sentence within 6 days after the expiration of the New Exception Review Period, Purchaser shall be deemed to have elected to approve and irrevocably waive any objections to the New Exception.

4.6 **HUD Approval.**

4.6.1 Purchaser and Seller acknowledge that the Property is subject to a Section 8 HAP Contract and that the parties hereto intend for HUD to approve (the "**HUD HAP Assumption Approval**") the assumption by Purchaser and the release of Seller from further obligations under the HAP Contract using a HUD approved form of Assignment, Assumption and Amendment Agreement Section 8 Housing Assistance Payment Contract (the "**HAP Assumption**").

4.6.2 Within 30 days following the Effective Date, Purchaser shall, at its sole cost and expense, submit a complete application to the applicable HUD office for the HUD HAP Assumption Approval, (the "**HUD Application**").

4.6.3 Purchaser agrees promptly to deliver to HUD all documents and information required in order to obtain the HUD HAP Assumption Approval, and such other information or documentation as HUD reasonably may request. Seller agrees that it will cooperate with Purchaser and HUD, at no cost or expense to Seller, in connection with the HUD Application and the HUD HAP Assumption Approval.

4.6.4 At Closing, Seller shall transfer or assign to Purchaser all reserves, residual receipts, impounds and other accounts Seller maintains or causes to be maintained in connection with the HAP Contract. Prior to Closing, Seller shall be permitted to utilize any and all existing reserves, residual receipts, impounds or other accounts after obtaining Purchaser's written approval, which shall not be unreasonably withheld, conditioned or delayed. At Closing, the Purchase Price shall be increased by an amount equal to the reserves residual receipts, impounds and other accounts being transferred or assigned to Purchaser.

4.6.5 Purchaser shall be responsible at its sole cost and expense for correcting any deficiencies in the application noted by HUD and shall use commercially reasonable good faith to keep Seller informed of Purchaser's efforts with respect to the HUD HAP Assumption Approval and to re-submit appropriate corrections promptly.

4.6.6 Purchaser shall pay all fees and expenses (including, without limitation, transfer fees, assumption fees, application fees, title fees, endorsement fees, inspection fees and other fees) imposed or charged by HUD in connection with the HUD HAP Assumption Approval.

#### 4.7 **PILOT Approval**

All approvals, documents, agreements, and other actions necessary to formalize a mutually acceptable PILOT ordinance shall be completed as a condition precedent to Purchaser's obligation to close the transaction as contemplated herein (collectively, the "**PILOT Approvals**"). Purchaser and Seller agreed to work in good faith to cause the PILOT Approvals to be filed for and pursued on a timeline commensurate with the anticipated Closing Date (defined herein).

### **ARTICLE V CLOSING**

5.1 **Closing Date.** The Closing shall occur no later than on the date that is the later of the following: (i) 30 days after satisfaction of all conditions to Closing set forth herein, including



but not limited to Purchaser's receipt of the HUD HAP Assumption Approval and the PILOT Approvals or (ii) 120 days following the Effective Date of this Contract (the "**Closing Date**"). Notwithstanding the foregoing, the Closing Date shall not occur any later than the date occurring 180 days following the Effective Date (the "**Outside Closing Date**"). Provided further, however, that Purchaser shall have the one time right to extend the Outside Closing Date by an additional 90 days by (i) giving written notice thereof to Seller no later than 10 Days prior to the original Closing Date and (ii) depositing with the Title Company, no later than 3 Business Days prior to the original Closing Date, an additional amount of Earnest Money equal to \$100,000, to be treated as "Additional Earnest Money". The Additional Earnest Money shall be nonrefundable to Purchaser except in the event of a termination under Section 8.1 or 10.2 of this Contract. Otherwise the Additional Earnest Money shall be treated in the same manner as the Deposit. The Closing shall occur through an escrow with Escrow Agent, whereby Seller, Purchaser and their attorneys need not be physically present at the Closing and may deliver documents by overnight air courier or other means.

5.2        **Seller Closing Deliveries.** Except for the closing statement, which shall be delivered on or before the Closing Date, Seller shall deliver to Escrow Agent, each of the following items no later than 1 Business Day prior to the Closing Date:

5.2.1     A Limited or Special Warranty Deed (the "**Deed**") in the form attached as **Exhibit B** to Purchaser, subject to the Permitted Exceptions, and any government-mandated forms of sales disclosure (the "**Sales Disclosure**").

5.2.2     A Bill of Sale in the form attached as **Exhibit C**.

5.2.3     A General Assignment in the form attached as **Exhibit D** (the "**General Assignment**").

5.2.4     An Assignment of Leases and Security Deposits in the form attached as **Exhibit E** (the "**Leases Assignment**").

5.2.5     Seller's counterpart signature to the closing statement prepared by Title Insurer.

5.2.6     A title affidavit or an indemnity form reasonably acceptable to Seller, which is sufficient to enable Title Insurer to delete the standard pre-printed exceptions to the title insurance policy to be issued pursuant to the Title Commitment.

5.2.7     A certification of Seller's non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

5.2.8     All of Seller's signatures to any documents and agreements required as part of the PILOT Approvals.

5.2.9     A countersigned counterpart of the Assignment of HAP Contract or other documents that may be required by HUD in connection with the HUD HAP Assumption Approval.

5.2.10 Resolutions, certificates of good standing, and such other organizational documents as Title Insurer shall reasonably require evidencing Seller's authority to consummate this transaction.

5.2.11 An updated Rent Roll effective as of a date no more than 3 Business Days prior to the Closing Date.

5.2.12 An updated Property Contracts List effective as of a date no more than 3 Business Days prior to the Closing Date.

5.2.13 Such notices, transfer disclosures, affidavits or other similar documents that are required by applicable laws to be executed by Seller or otherwise reasonably necessary to record the Deed or in order to consummate the transactions contemplated under the terms of the Contract, including any documents that Seller must deliver to satisfy any Objection or New Exception that Seller has elected to cure and including an affidavit as to brokers as required by Title Insurer to issue the title insurance policy without exception as to brokers' rights.

5.2.14 If the legal description of the Property from the New Survey differs from the legal description on Exhibit A attached hereto, a quitclaim deed in form reasonably acceptable to Seller and Title Insurer with the New Survey legal description attached.

5.3 **Purchaser Closing Deliveries.** Except for: (i) the closing statement, which shall be delivered on or before the Closing Date, and (ii) the balance of the Purchase Price (with credit for the Deposit), plus or minus the adjustments or prorations required by this Contract, which is to be delivered at the time specified in Section 2.2.4), Purchaser shall deliver to Escrow Agent, each of the following items no later than 1 Business Day prior to the Closing Date:

5.3.1 Purchaser's counterpart signature to the closing statement prepared by Title Insurer.

A countersigned counterpart of the Sales Disclosure.

5.3.2 A countersigned counterpart of the General Assignment.

5.3.3 A countersigned counterpart of the Leases Assignment.

5.3.4 Resolutions, certificates of good standing, and such other organizational documents as Title Insurer shall reasonably require evidencing Purchaser's authority to consummate this transaction.

5.3.5 All of Purchaser's signatures to any documents and agreements required as part of the PILOT Approvals.

5.3.6 A countersigned counterpart of the Assignment of HAP Contract or other documents that may be required by HUD in connection with the HUD HAP Assumption Approval.



5.3.7 Such notices, transfer disclosures, affidavits or other similar documents that are required by applicable law to be executed by Purchaser or otherwise reasonably necessary in order to consummate the transactions contemplated under this Contract.

#### 5.4 Closing Prorations and Adjustments.

5.4.1 General. All normal and customarily prorable items, including, without limitation, collected rents, operating expenses, personal property taxes, other operating expenses and fees, shall be prorated as of the Closing Date, Seller being charged or credited, as appropriate, for all of same attributable to the period up to the Closing Date (and credited for any amounts paid by Seller attributable to the period on or after the Closing Date, if assumed by Purchaser) and Purchaser being responsible for, and credited or charged, as the case may be, for all of the same attributable to the period on and after the Closing Date. Seller shall prepare a proration schedule (the "Proration Schedule") of the adjustments described in this Section 5.4 prior to Closing and shall use good faith efforts to deliver such Proration Schedule 5 Business Days prior to Closing.

5.4.2 Operating Expenses. All of the operating, maintenance, taxes (other than real estate taxes), and other expenses incurred in operating the Property that Seller customarily pays, and any other costs incurred in the ordinary course of business for the management and operation of the Property shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue prior to the Closing Date and Purchaser shall pay all such expenses that accrue from and after the Closing Date.

5.4.3 Utilities. The final readings and final billings for utilities will be made if possible as of the Closing Date, in which case Seller shall pay all such bills as of the Closing Date and no proration shall be made at the Closing with respect to utility bills. Otherwise, a proration shall be made based upon the parties' reasonable good faith estimate, subject to adjustment upon receipt of the actual final billings as provided by Section 5.11. Seller shall be entitled to the return of any deposit(s) posted by it with any utility company, and Seller shall notify each utility company serving the Property to terminate Seller's account, effective as of the Closing Date. Seller shall have no responsibility or liability for Purchaser's failure to arrange utility service for the Property as of the Closing Date.

5.4.4 Real Estate Taxes and Special Assessments. Not applicable as the property is municipal owned. ~~Any special assessments ("SA(s)") and ad valorem or similar taxes for the Property, including real and personal property taxes (collectively, "Taxes"), will be prorated at Closing as follows: Seller shall be responsible for all SAs and Taxes assessed in the year in which the Closing Date occurs for the period up to the Closing Date, and Purchaser shall be responsible for all SAs and Taxes assessed for the period on or after the Closing Date. Such proration shall be based on SAs and Taxes for such year or, if said SAs and Taxes are not available, based upon the SAs and Taxes, as applicable, for the previous year.~~

5.4.5 Property Contracts. Purchaser shall assume at Closing the obligations under the Property Contracts assumed by Purchaser; however, operating expenses shall be prorated under Section 5.4.2. Notwithstanding the foregoing, any upfront payments or bonuses made to Seller by vendors under any of the Property Contracts will be prorated between

Purchaser and Seller as of the Closing Date, with the Seller keeping a portion of the upfront payment or bonus equal to the amount of the upfront payment multiplied by the number of days between the effective date of the applicable Property Contract and the Closing Date, then divided by the total number of days in the initial term of the Property Contract. The remaining balance of the upfront payment or bonus shall be paid by Seller to Purchaser as a credit against or reduction of the Purchase Price at Closing, as elected by Seller.

#### 5.4.6 Leases.

5.4.6.1 All collected rent (whether fixed monthly rentals, additional rentals, escalation rentals, retroactive rentals, operating cost pass-throughs or other sums and charges payable by Tenants under the Leases), income and expenses from any portion of the Property shall be prorated as of the Closing Date. Purchaser shall receive all collected rent and income attributable to dates from and after the Closing Date. Seller shall receive all collected rent and income attributable to dates prior to the Closing Date. Notwithstanding the foregoing, no prorations shall be made in relation to either (a) non-delinquent rents which have not been collected as of the Closing Date, or (b) delinquent rents existing, if any, as of the Closing Date (the foregoing (a) and (b) referred to herein as the “**Uncollected Rents**”). In adjusting for Uncollected Rents, no adjustments shall be made in Seller’s favor for rents which have accrued and are unpaid as of the Closing, but Purchaser shall pay Seller such accrued Uncollected Rents as and when collected by Purchaser. For a period of 90 days following Closing, Purchaser agrees to bill Tenants of the Property for all Uncollected Rents and to take reasonable actions (which shall not include an obligation to commence legal action) to collect Uncollected Rents. Notwithstanding the foregoing, Purchaser’s obligation to collect Uncollected Rents shall be limited to Uncollected Rents of not more than 90 days past due, and Purchaser’s collection of rents shall be applied, first, towards current rent due and owing under the Leases, second, to Purchaser’s reasonable third-party costs of such collection, and third to Uncollected Rents. After the Closing, Seller shall continue to have the right, but not the obligation, in its own name, to demand payment of and to collect Uncollected Rents owed to Seller by any Tenant, which right shall include, without limitation, the right to continue or commence legal actions or proceedings against any Tenant and the delivery of the Leases Assignment shall not constitute a waiver by Seller of such right; provided however, that the foregoing right of Seller shall be limited to actions seeking monetary damages and, in no event, shall Seller seek to evict any Tenants in any action to collect Uncollected Rents. Purchaser agrees to cooperate with Seller in connection with all efforts by Seller to collect such Uncollected Rents and to take all reasonable steps, whether before or after the Closing Date, as may be necessary to carry out the intention of the foregoing; provided, however, that Purchaser’s obligation to cooperate with Seller pursuant to this sentence shall not obligate Purchaser to terminate any Tenant lease with an existing Tenant or evict any existing Tenant from the Property, nor appear in any collection action.

5.4.6.2 At Closing, Purchaser shall receive a credit against the Purchase Price in an amount equal to the received and unapplied balance of all cash (or cash equivalent) Tenant Deposits, including, but not limited to, security, damage, pet or other refundable deposits paid by any of the Tenants to secure their respective obligations under the Leases, together, in all cases, with any interest payable to the Tenants thereunder as may be required by their respective Tenant Lease or state law (the “**Tenant Security Deposit Balance**”). Any cash (or cash equivalents) held by Seller which constitutes the Tenant Security Deposit Balance shall be retained



by Seller in exchange for the foregoing credit against the Purchase Price and shall not be transferred by Seller pursuant to this Contract (or any of the documents delivered at Closing), but the obligation with respect to the Tenant Security Deposit Balance nonetheless shall be assumed by Purchaser. The Tenant Security Deposit Balance shall not include any non-refundable deposits or fees paid by Tenants to Seller, either pursuant to the Leases or otherwise.

**5.5 Intentionally Omitted.**

**5.6 Insurance.** No proration shall be made in relation to insurance premiums and insurance policies will not be assigned to Purchaser. Seller shall have the risk of loss of the Property until 11:59 p.m. the day prior to the Closing Date ("**Risk of Loss Transfer**"), after which time the risk of loss shall pass to Purchaser and Purchaser shall be responsible for obtaining its own insurance thereafter.

**5.7 Employees.** All of Seller's and Seller's manager's on-site employees shall have their employment at the Property terminated as of the Closing Date; provided that Purchaser shall, from and after the Effective Date, be allowed to interview and solicit Seller's Manager's on-site employees for employment with Purchaser commencing on the Closing Date.

**5.8 Closing Costs.** Purchaser shall pay any premiums or fees required to be paid by Purchaser with respect to the Title Policy pursuant to Section 4.1, and one-half of the customary closing costs of the Escrow Agent. Seller shall pay (i) the base premium for the Title Policy and search and examination fees shall be paid pursuant to Section 4.1, (ii) the cost of recording any instruments required to discharge any liens or encumbrances against the Property, (iii) one-half of the customary closing costs of the Escrow Agent, and (iv) all transfer taxes and similar assessments. .

**5.9 Possession.** Possession of the Property shall be delivered to Purchaser at the conclusion of Closing.

**5.10 Post Closing Adjustments.** Purchaser or Seller may request that Purchaser and Seller undertake to re-adjust any item on the Proration Schedule (or any item omitted therefrom), with the exception of real property taxes which shall be final and not subject to readjustment, in accordance with the provisions of Section 5.4 of this Contract; provided, however, that neither party shall have any obligation to re-adjust any items (a) after the expiration of 90 days after Closing, or (b) subject to such 90-day period, unless such items exceed \$5,000.00 in magnitude (either individually or in the aggregate).

**5.11 Closing Date and Closing Documents.** Purchaser and Seller acknowledge and agree that any and all documents to be delivered at or as of Closing shall be dated as of the date of Closing.

**ARTICLE VI**  
**REPRESENTATIONS AND WARRANTIES OF SELLER AND PURCHASER**

**6.1 Seller's Representations.** Except, in all cases, for any fact, information or condition disclosed in the Title Documents, the Permitted Exceptions, the Property Contracts, or



the Materials, or which is otherwise known by Purchaser prior to the Closing, Seller represents and warrants to Purchaser the following (collectively, the “**Seller’s Representations**”) as of the Effective Date and as of the Closing Date; provided that Purchaser’s remedies if any such Seller’s Representations are untrue as of the Closing Date are limited to those set forth in Section 8.1:

6.1.1 Seller is validly existing under the laws of the state of its formation set forth in the initial paragraph of this Contract and has the entity power and authority to sell and convey the Property and to execute the documents to be executed by Seller and prior to the Closing will have taken, as applicable, all corporate, partnership, limited liability company or equivalent entity actions required for the execution and delivery of this Contract, and the consummation of the transactions contemplated by this Contract. To Seller’s knowledge, the compliance with or fulfillment of the terms and conditions hereof will not conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any contract to which Seller is a party or by which Seller is otherwise bound, which conflict, breach or default would have a material adverse effect on Seller’s ability to consummate the transaction contemplated by this Contract or on the Property. This Contract constitutes a valid and binding agreement of Seller in accordance with its terms;

6.1.2 Seller is not a “foreign person,” as that term is used and defined in the Internal Revenue Code, Section 1445, as amended;

6.1.3 Except for (a) any actions by Seller to evict Tenants under the Leases, or (b) any matter covered by Seller’s current insurance policy(ies), to Seller’s knowledge, there are no material actions, proceedings, litigation or governmental investigations or condemnation actions either pending or threatened in writing against the Property which will adversely impact Seller’s ability to convey the Property;

6.1.4 To Seller’s knowledge, Seller has not received any written notice of any material default by Seller under any of the Property Contracts that will not be terminated on the Closing Date;

6.1.5 To Seller’s knowledge, the Materials and the delivery thereof are true, accurate and complete, except as to Materials produced and assembled by third parties, or otherwise outside of Seller’s control.

6.1.6 To Seller’s knowledge, the Rent Roll (as updated pursuant to Section 5.2.11) is accurate in all material respects; and

6.1.7 To Seller’s knowledge, the Property Contracts List (as updated pursuant to Section 5.2.12) is accurate in all material respects.

6.1.8 Except as otherwise previously disclosed to Purchaser, to Seller’s knowledge, Seller has disclosed all written notices from governmental agency(ies) of any uncured material violations of any federal, state, county or municipal law, ordinance, order, regulation or requirement affecting the property;

6.1.9 To Seller’s knowledge, there are no condemnation actions pending against all or any portion of the Property;

6.1.10 To Seller's actual knowledge, (a) no hazardous or toxic materials or other substances regulated by applicable federal or state environmental laws are stored by Seller, or have been located by Seller, on, in or under the Property in quantities which violate applicable laws governing such materials or substances and (b) the Property is not used by Seller for the storage, treatment, generation or manufacture of any hazardous or toxic materials or other substances in a manner which would constitute a violation of applicable federal or state environmental laws. Notwithstanding the foregoing, Seller agrees to convey all environmental reports, studies, or other information in Seller's possession regarding the Property, and Seller makes no representations, guarantees, nor warranty as to the completeness, accuracy, fitness, nor veracity of such materials produced by third parties.

6.2 **AS-IS**. Except as otherwise expressly set forth in Seller's Representations:

6.2.1 The Property is expressly purchased and sold "AS IS," "WHERE IS," and "WITH ALL FAULTS."

6.2.2 The Purchase Price and the terms and conditions set forth herein are the result of arm's-length bargaining between entities familiar with transactions of this kind, and said price, terms and conditions reflect the fact that Purchaser shall have the benefit of, but is not relying upon, any information provided by Seller or statements, representations or warranties, express or implied, made by or enforceable directly against Seller, including, without limitation, any relating to the value of the Property, the physical or environmental condition of the Property, any state, federal, county or local law, ordinance, order or permit; or the suitability, compliance or lack of compliance of the Property with any regulation, or any other attribute or matter of or relating to the Property (other than any covenants of title contained in the Deed conveying the Property and Seller's Representations). Purchaser agrees that Seller shall not be responsible or liable to Purchaser for any defects, errors or omissions in the Materials, or on account of any conditions affecting the Property.

6.2.3 Prior to Closing, Seller shall have the right, but not the obligation, to enforce its rights against any and all Property occupants, guests or Tenants. Purchaser agrees that the departure or removal, prior to Closing, of any of such guests, occupants or Tenants shall not be the basis for, nor shall it give rise to, any claim on the part of Purchaser, nor shall it affect the obligations of Purchaser under this Contract in any manner whatsoever; and Purchaser shall close title and accept delivery of the Deed with or without such tenants in possession and without any allowance or reduction in the Purchase Price under this Contract.

6.2.4 Purchaser, its successors and assigns, and anyone claiming by, through or under Purchaser, hereby fully releases Seller's Indemnified Parties from, any and all claims and causes of action that it or they may now have or hereafter acquire against Seller's Indemnified Parties with respect to any and all Losses arising from or related to any defects, errors, omissions or other conditions affecting the Property. Purchaser represents and warrants that, as of the date hereof and as of the Closing Date, it has and shall have reviewed and conducted such independent analyses, studies (including, without limitation, environmental studies and analyses concerning the presence of lead, asbestos, water intrusion and/or fungal growth and any resulting damage, PCBs and radon in and about the Property), reports, investigations and inspections as it deems appropriate in connection with the Property. If Seller provides or has provided any documents,



summaries, opinions or work product of consultants, surveyors, architects, engineers, title companies, governmental authorities or any other person or entity with respect to the Property, Purchaser and Seller agree that Seller has done so or shall do so only for the convenience of both parties, Purchaser shall not rely thereon and the reliance by Purchaser upon any such documents, summaries, opinions or work product shall not create or give rise to any liability of or against Seller's Indemnified Parties. Purchaser acknowledges and agrees that, except as otherwise stated in Seller's Representations, no representation has been made and no responsibility is assumed by Seller with respect to current and future applicable zoning or building code requirements or the compliance of the Property with any other laws, rules, ordinances or regulations, the financial earning capacity or expense history of the Property, the continuation of contracts, continued occupancy levels of the Property, or any part thereof, or the continued occupancy by tenants of any Leases or, without limiting any of the foregoing, occupancy at Closing.

6.3 **Survival of Seller's Representations.** Seller and Purchaser agree that Seller's Representations shall survive as written in Section 6.1 above up to and including the Closing date and shall survive in the event that the Seller commits fraud with respect to any of the Seller's Representations for a period of 6 months following closing (the "**Survival Period**"). Seller shall have no liability after the Survival Period with respect to Seller's Representations contained herein except to the extent that Purchaser commenced litigation against Seller during the Survival Period for breach of any of Seller's Representations. Notwithstanding anything contained herein to the contrary, in the event that Purchaser determines prior to the Closing that any representation or warranty of Seller is untrue or incorrect, and such untrue or incorrect representation or warranty would have a material adverse effect on the condition of the Property, Purchaser shall have the right, as its sole and exclusive remedy, to either terminate this Contract and obtain a refund of the Earnest Money, or, alternatively, to close and take title to the Property subject to the truth of applicable matter, in which case Purchaser shall be deemed to have waived any claim against Seller based on the representation or warranty being untrue (and, Purchaser shall be deemed to have elected to proceed to Closing and waive any claim against Seller based on the representation or warranty being untrue if Purchaser obtains actual knowledge of such facts during the Feasibility Period and does not elect to terminate this Contract during the Feasibility Period); provided, however, if any representation or warranty of Seller is discovered, after expiration of the Feasibility Period, to be untrue or incorrect due to fraud or willful misconduct by Seller, Purchaser may exercise its rights under Section 10.2 herein.

6.4 **Definition of Seller's Knowledge.** Any representations and warranties made "to the knowledge of Seller" shall not be deemed to imply any duty of inquiry. For purposes of this Contract, the term Seller's "**knowledge**" shall mean and refer only to actual knowledge of the Property Manager and shall not be construed to refer to the knowledge of any other partner, officer, director, agent, employee or representative of Seller, or any affiliate of Seller, or to impose upon such Property Manager any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Property Manager any individual personal liability. As used herein, the term "**Property Manager**" shall refer to Derek Perry, who is the City Manager of the City of Marshall (Seller).

6.5 **Representations and Warranties of Purchaser.** For the purpose of inducing Seller to enter into this Contract and to consummate the sale and purchase of the Property in

accordance herewith, Purchaser represents and warrants to Seller the following as of the Effective Date and as of the Closing Date:

6.5.1 Purchaser is a non-profit corporation duly organized, validly existing and in good standing under the laws of Indiana.

6.5.2 Purchaser, acting through any of its or their duly empowered and authorized officers or members, has all necessary entity power and authority to own and use its properties and to transact the business in which it is engaged, and has full power and authority to enter into this Contract, to execute and deliver the documents and instruments required of Purchaser herein, and to perform its obligations hereunder; and no consent of any of Purchaser's partners, directors, officers or members are required to so empower or authorize Purchaser. To Purchaser's knowledge, the compliance with or fulfillment of the terms and conditions hereof will not conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any contract to which Purchaser is a party or by which Purchaser is otherwise bound, which conflict, breach or default would have a material adverse effect on Purchaser's ability to consummate the transaction contemplated by this Contract. This Contract is a valid, binding and enforceable agreement against Purchaser in accordance with its terms.

6.5.3 No pending or, to the knowledge of Purchaser, threatened litigation exists which if determined adversely would restrain the consummation of the transactions contemplated by this Contract or would declare illegal, invalid or non-binding any of Purchaser's obligations or covenants to Seller.

6.5.4 Purchaser is not a Prohibited Person.

6.5.5 None of its investors, affiliates or brokers or other agents (if any), acting or benefiting in any capacity in connection with this Contract is a Prohibited Person.

6.5.6 The funds or other assets Purchaser will transfer to Seller under this Contract are not the property of, or beneficially owned, directly or indirectly, by a Prohibited Person.

6.5.7 The funds or other assets Purchaser will transfer to Seller under this Contract are not the proceeds of specified unlawful activity as defined by 18 U.S.C. § 1956(c)(7).

## **ARTICLE VII OPERATION OF THE PROPERTY**

7.1 **Leases and Property Contracts.** During the period of time from the Effective Date to the Closing Date, in the ordinary course of business Seller may enter into new Property Contracts, new Leases, renew existing Leases or modify, terminate or accept the surrender or forfeiture of any of the Leases, modify any Property Contracts, or institute and prosecute any available remedies for default under any Lease or Property Contract without first obtaining the written consent of Purchaser; provided, however, Seller agrees that, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, any new or renewed Leases shall not have a term in excess of 1 year and any new Property Contract shall be terminable upon 30 days' notice without penalty.



7.2 **General Operation of Property.** Except as specifically set forth in this Article VII, Seller shall operate the Property after the Effective Date in the ordinary course of business, and except as necessary in Seller's sole discretion to address (a) any life or safety issue at the Property or (b) any other matter which in Seller's reasonable discretion materially adversely affects the use, operation or value of the Property, Seller will not make any material alterations to the Property or remove any material Fixtures and Tangible Personal Property without the prior written consent of Purchaser which consent shall not be unreasonably withheld, denied or delayed.

7.3 **Liens.** Seller covenants that it will not voluntarily create or cause any lien or encumbrance to attach to the Property between the Effective Date and the Closing Date (other than Leases and Property Contracts as provided in Section 7.1) unless Purchaser approves such lien or encumbrance, which approval shall not be unreasonably withheld, conditioned or delayed. If Purchaser approves any such subsequent lien or encumbrance, the same shall be deemed a Permitted Encumbrance for all purposes hereunder.

7.4 **Rent Ready Units.** Seller agrees that, at the Closing, Purchaser shall receive a credit against the Purchase Price for the Property in an amount equal to the product of (a) the number of Tenant Units on the date of the Closing that are vacant (and have been vacant for more than 10 days prior to the Closing) and not in Rent-Ready Condition, and (b) \$1,000.00.

## **ARTICLE VIII CONDITIONS PRECEDENT TO CLOSING**

8.1 **Purchaser's Conditions to Closing.** Purchaser's obligation to close under this Contract shall be subject to and conditioned upon the fulfillment of the following conditions precedent:

8.1.1 All of the documents required to be delivered by Seller to Purchaser at the Closing pursuant to the terms and conditions hereof shall have been delivered;

8.1.2 Each of Seller's Representations shall be true in all material respects as of the Closing Date;

8.1.3 Seller shall have complied with, fulfilled and performed in all material respects each of the covenants, terms and conditions to be complied with, fulfilled or performed by Seller hereunder;

8.1.4 Seller shall not be a debtor in any bankruptcy proceeding, nor shall have been in the last 6 months a debtor in any bankruptcy proceeding;

8.1.5 Purchaser shall have received the HUD HAP Assumption Approval and the PILOT Approval; and

8.1.6 Seller shall have cured those Objections and those objections to New Exceptions that Seller shall have elected to cure under Article 4.

If any condition set forth above is not met by the Outside Closing Date, Purchaser may (a) waive any of the foregoing conditions and proceed to Closing on the Closing Date with no offset or deduction from the Purchase Price, (b) terminate this Contract and receive a return of the Deposit from the Escrow Agent, or (c) if such failure constitutes a default by Seller of its covenants hereunder, exercise any of its remedies pursuant to Section 10.2.

**8.2 Seller's Conditions to Closing.** Without limiting any of the rights of Seller elsewhere provided for in this Contract, Seller's obligation to close with respect to conveyance of the Property under this Contract shall be subject to and conditioned upon the fulfillment of the following conditions precedent:

8.2.1 All of the documents and funds required to be delivered by Purchaser to Seller at the Closing pursuant to the terms and conditions hereof shall have been delivered;

8.2.2 Each of the representations, warranties and covenants of Purchaser contained herein shall be true in all material respects as of the Closing Date;

8.2.3 Purchaser shall have complied with, fulfilled and performed in all material respects each of the covenants, terms and conditions to be complied with, fulfilled or performed by Purchaser hereunder;

8.2.4 Purchaser shall not be a debtor in any bankruptcy proceeding; and

8.2.5 Seller shall have received all consents, documentation and approvals necessary to consummate and facilitate the transactions contemplated hereby, including, without limitation, (a) from Seller's partners, members, managers, shareholders or directors to the extent required by Seller's (or Seller's affiliates') organizational documents, and (b) as required by law.

If any of the conditions set forth in Sections 8.2.1 through 8.2.5 to Seller's obligations to close with respect to the conveyance of the Property under this Contract are not met on or prior to the Closing Date, Seller may (a) waive any of the foregoing conditions and proceed to Closing on the Closing Date, or (b) exercise any of its remedies pursuant to Section 10.1.

## **ARTICLE IX BROKERAGE**

9.1 **Indemnity.** Seller and Purchaser each represents and warrants to the other that it has not dealt with or utilized the services of any other real estate broker, sales person or finder in connection with this Contract, other than Marcus and Millichap (the "Broker"), and each party agrees to indemnify, hold harmless, and, if requested in the sole and absolute discretion of the indemnitee, defend (with counsel approved by the indemnitee) the other party from and against all Losses relating to brokerage commissions and finder's fees payable to any party other than Broker arising from or attributable to the acts or omissions of the indemnifying party. Seller shall pay Broker any brokerage commissions due at Closing pursuant to a separate written agreement.



## ARTICLE X DEFAULTS AND REMEDIES

10.1 **Purchaser Default.** If Purchaser defaults on its obligations hereunder to (a) deliver the Deposit (or any other deposit or payment required of Purchaser hereunder), (b) deliver to Seller the deliveries specified under Section 5.3 on the date required thereunder, or (c) deliver the Purchase Price in accordance with Article II and close on the purchase of the Property on the Closing Date, then, immediately and without the right to cure or to receive notice pursuant to Section 2.3.3, Purchaser shall forfeit the Deposit, and the Escrow Agent shall deliver the Deposit to Seller, and neither party shall be obligated to proceed with the purchase and sale of the Property. If Purchaser defaults on any of its other representations, warranties or obligations under this Contract, and such default continues for more than 10 days after written notice from Seller, then Purchaser shall forfeit the Deposit, and the Escrow Agent shall deliver the Deposit to Seller, and neither party shall be obligated to proceed with the purchase and sale of the Property. The Deposit is liquidated damages and recourse to the Deposit is, except for Purchaser's indemnity and confidentiality obligations hereunder, Seller's remedy for Purchaser's failure to perform its obligation to purchase the Property or breach of a representation or warranty. SELLER EXPRESSLY DOES NOT WAIVE THE REMEDY OF SPECIFIC PERFORMANCE FOR SUCH DEFAULT BY PURCHASER; PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING, SELLER AGREES THAT IT SHALL BE ALLOWED, IN THE EVENT OF A BUYER DEFAULT, TO ELECT TO EITHER KEEP THE FORFEITED DEPOSIT OR TO PURSUE SPECIFIC PERFORMANCE. IN EITHER CASE, THE SELLER'S ELECTION SHALL BE DEEMED LIQUIDATED DAMAGES.

10.2 **Seller Default.** If Seller (i) defaults on its obligations hereunder to deliver to Escrow Agent the deliveries specified under Section 5.2 on the date required thereunder, or to close on the sale of the Property on the Closing Date, or (ii) prior to the Closing defaults on its covenants or obligations under this Contract and such default continues for more than 30 days after written notice from Purchaser, then, at Purchaser's election and as Purchaser's exclusive remedy, Purchaser may either (a) terminate this Contract, and all payments and things of value, including the Deposit, provided by Purchaser hereunder shall be returned to Purchaser and Purchaser may recover, as its sole recoverable damages (but without limiting its right to receive a refund of the Deposit), its direct and actual out-of-pocket expenses and costs (documented by paid invoices to third parties) in connection with this transaction, which damages shall not exceed \$50,000 in the aggregate, or (b) subject to the conditions below, seek specific performance of Seller's obligation to close on the sale of the Property pursuant to this Contract (and in lieu of any and all damages). Purchaser may seek specific performance of Seller's obligation to close on the sale of the Property pursuant to this Contract only if, as a condition precedent to initiating such litigation for specific performance, Purchaser shall (x) not otherwise be in default under this Contract; and (y) file suit therefor with the court on or before the 45th day after the Closing Date. If Purchaser fails to file an action for specific performance within 45 days after the Closing Date, then Purchaser shall be deemed to have elected to terminate the Contract in accordance with subsection (a) above. Purchaser agrees that it shall promptly deliver to Seller an assignment of all of Purchaser's right, title and interest in and to (together with possession of) all plans, studies, surveys, reports, and other materials paid for with the out-of-pocket expenses reimbursed by Seller pursuant to the

foregoing sentence. SELLER AND PURCHASER FURTHER AGREE THAT THIS SECTION 10.2 IS INTENDED TO AND DOES LIMIT THE AMOUNT OF DAMAGES DUE PURCHASER AND THE REMEDIES AVAILABLE TO PURCHASER, AND SHALL BE PURCHASER'S EXCLUSIVE REMEDY AGAINST SELLER, BOTH AT LAW AND IN EQUITY ARISING FROM OR RELATED TO A BREACH BY SELLER OF ITS COVENANTS OR ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT. UNDER NO CIRCUMSTANCES MAY PURCHASER SEEK OR BE ENTITLED TO RECOVER ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES, ALL OF WHICH PURCHASER SPECIFICALLY WAIVES, FROM SELLER FOR ANY BREACH BY SELLER, OF ITS COVENANTS OR ITS OBLIGATIONS UNDER THIS CONTRACT. PURCHASER SPECIFICALLY WAIVES THE RIGHT TO FILE ANY LIS PENDENS OR ANY LIEN AGAINST THE PROPERTY UNLESS AND UNTIL IT HAS IRREVOCABLY ELECTED TO SEEK SPECIFIC PERFORMANCE OF THIS CONTRACT AND HAS FILED AND IS DILIGENTLY PURSUING AN ACTION SEEKING SUCH REMEDY.

## ARTICLE XI RISK OF LOSS OR CASUALTY

11.1 **Major Damage.** In the event that the Property is damaged or destroyed by fire or other casualty prior to Risk of Loss Transfer, and the cost for demolition, site cleaning, restoration, replacement, or other repairs (collectively, the "**Repairs**"), is more than \$1,000,000.00 (a "**Major Damage**"), then Seller shall have no obligation to make such Repairs, and shall notify Purchaser in writing of such damage or destruction (the "**Damage Notice**"). If there is a Major Damage, then Purchaser may elect, by delivering written notice to Seller on or before the earlier of (x) Closing and (y) the date which is ten (10) days after Purchaser's receipt of the Damage Notice, to terminate this Contract, in which event the Deposit shall be returned to Purchaser. In the event Purchaser fails to timely terminate this Contract pursuant to this Section 11.1, this transaction shall be closed in accordance with Section 11.3 below.

11.2 **Minor Damage.** In the event that the Property is damaged or destroyed by fire or other casualty prior to Risk of Loss Transfer, and the cost of Repairs is equal to or less than \$1,000,000.00, then this transaction shall be closed in accordance with Section 11.3, notwithstanding such casualty. In such event, Seller may at its election endeavor to make such Repairs to the extent of any recovery from insurance carried on the Property, if such Repairs can be reasonably effected before the Closing. Regardless of Seller's election to commence such Repairs, or Seller's ability to complete such Repairs prior to Closing, this transaction shall be closed in accordance with Section 11.3 below.

11.3 **Closing.** In the event Purchaser fails to terminate this Contract following a casualty as set forth in Section 11.1, or in the event of a casualty as set forth in Section 11.2, then this transaction shall be closed in accordance with the terms of the Contract, at Seller's election, either (i) for the full Purchase Price, notwithstanding any such casualty, in which case Seller shall, at Closing, execute and deliver an assignment and assumption in favor of Purchaser (in a form reasonably required by Seller) of Seller's rights and obligations with



respect to the insurance claim related to such casualty, and thereafter Purchaser shall receive all insurance proceeds pertaining to such claim, less any amounts which may already have been spent by Seller for Repairs (plus a credit against the Purchase Price at Closing in the amount of any deductible payable by Seller in connection therewith); or (ii) for the full Purchase Price less a credit to Purchaser in the amount necessary to complete such Repairs (less any amounts which may already have been spent by Seller for Repairs).

11.4 **Repairs.** To the extent that Seller elects to commence any Repairs prior to Closing, then Seller shall be entitled to receive and apply available insurance proceeds to any portion of such Repairs completed or installed prior to Closing, with Purchaser being responsible for completion of such Repairs after Closing. To the extent that any Repairs have been commenced prior to Closing, then the Property Contracts shall include, and Purchaser shall assume at Closing, all construction and other contracts entered into by Seller in connection with such Repairs; provided, however, that (except in the event of emergency, as determined in Seller's sole discretion) Seller will consult with Purchaser prior to entering into any such contract if Purchaser will likely have to assume such Contract. Notwithstanding the foregoing to the contrary, Seller retains the sole right and authority to enter into any such contract.

## **ARTICLE XII EMINENT DOMAIN**

12.1 **Eminent Domain.** In the event that, between the Effective Date and Closing, any material part of the Property is acquired, or is about to be acquired, by any governmental agency by the powers of eminent domain or transfer in lieu thereof (or in the event that at such time there is any notice of any such acquisition or intent to acquire by any such governmental agency), Seller or Purchaser shall have the right, at such party's option, to terminate this Contract by giving written notice within 10 days after Purchaser's receipt from Seller of notice of the occurrence of such event, and if either party so terminates this Contract, Purchaser shall recover the Deposit hereunder. If neither party terminates this Contract within such 10-day period, this transaction shall be closed in accordance with the terms of this Contract for the full Purchase Price and Purchaser shall receive the full benefit of any condemnation award. It is expressly agreed between the parties hereto that this Section shall in no way apply to customary dedications for public purposes ("**Dedications**") which may be necessary for the development of the Property; provided, however, that Seller shall be solely responsible for obtaining at Seller's sole expense any and all approvals necessary for the Dedications under law, its own governance, any lenders or HUD and shall indemnify Purchaser for any cost, loss or expense, including reasonable attorneys' fees, that Purchaser may incur as a result of Seller's failure to procure any of the foregoing approvals.

## **ARTICLE XIII MISCELLANEOUS**

13.1 **Binding Effect of Contract.** This Contract shall not be binding on either party until executed by both Purchaser and Seller and delivered to the other party. The Escrow Agent's execution of this Contract shall be a prerequisite to its effectiveness. Subject to

Section 13.3, this Contract shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective successors and permitted assigns.

13.2 **Exhibits and Schedules.** All Exhibits and Schedules, whether or not annexed hereto, are a part of this Contract for all purposes.

13.3 **Assignability.** Except to the extent required to comply with the provisions of Section 13.18 related to a 1031 Exchange, this Contract is not assignable by Purchaser without first obtaining the prior written approval of Seller. Notwithstanding the foregoing, Purchaser may assign this Contract, without first obtaining the prior written approval of Seller, to one or more entities so long as (a) Purchaser is an affiliate of the purchasing entity(ies), (b) Purchaser is not released from its liability hereunder, and (c) Purchaser provides written notice to Seller of any proposed assignment no later than 5 Business Days prior to the Closing Date. As used herein, an affiliate is a person or entity controlled by, under common control with, or controlling another person or entity. Seller hereby acknowledges receipt of notice that Purchaser intends to assign this Contract after expiration of the Feasibility Period to an affiliate named "Glick Marshall House, LLC", an Indiana limited liability company, and further agrees that no further notice or consent shall be required in connection with such an assignment by Purchaser; Purchaser agrees that such assignment notwithstanding, it will not be released from its liability hereunder as provided in this Section 13.3

13.4 **Captions.** The captions, headings, and arrangements used in this Contract are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

13.5 **Number and Gender of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

13.6 **Notices.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by electronic delivery with the same notice then subsequently delivered via one of the methods described in (a)-(c) unless such subsequent delivery is waived by the recipient. All notices shall be deemed effective when actually delivered as documented in a delivery receipt, or if electronic delivery is completed after 6:00 P.M. Eastern Time or on a day other than a Business Day, on the next succeeding Business Day; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. Any notice provided



for hereunder may be given by a party's attorney or other representative. All notices shall be sent to the addressee at its address set forth following its name below:

To Purchaser:

Gene B. Glick Family Housing Foundation, Inc.  
c/o Gene B. Glick Company, Inc.  
8801 River Crossing Blvd., Suite 200  
Indianapolis, IN 46240  
Attn: Colin Atkinson, (colin.atkinson@glickco.com); VP of Real Estate Development  
Attn: Adam Richter (adam.richter@glickco.com); EVP and General Counsel

To Seller:

City of Marshall  
C/o City Manager  
323 W. Michigan Avenue  
Marshall, Michigan 49068

With a copy to:

City of Marshall  
C/o City Attorney  
323 W. Michigan Avenue  
Marshall, Michigan 49068

Unless specifically required to be delivered to the Escrow Agent pursuant to the terms of this Contract, no notice hereunder must be delivered to the Escrow Agent in order to be effective so long as it is delivered to the other party in accordance with the above provisions.

13.7 **Governing Law and Venue.** The laws of the State of Michigan shall govern the validity, construction, enforcement, and interpretation of this Contract. All claims, disputes and other matters in question arising out of or relating to this Contract, or the breach thereof, shall be decided by proceedings instituted and litigated in a court of competent jurisdiction in the state of Michigan, within Calhoun County, in which the Property is situated, and the parties hereto expressly consent to the venue and jurisdiction of such court.

13.8 **Entire Agreement.** This Contract embodies the entire Contract between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and contracts, whether written or oral.

13.9 **Amendments.** This Contract shall not be amended, altered, changed, modified, supplemented or rescinded in any manner except by a written contract executed by all of the parties; provided, however, that, the signature of the Escrow Agent shall not be required as to any amendment of this Contract other than an amendment of Section 2.2.4.

13.10 **Severability.** In the event that any part of this Contract shall be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed, and enforced to the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Contract and the remaining portions of this Contract shall be valid and enforceable.

13.11 **Multiple Counterparts/Electronic Signatures.** This Contract may be executed in a number of identical counterparts. This Contract may be executed by electronic delivery of signatures which shall be binding on the parties hereto, with original signatures to be delivered as soon as reasonably practical thereafter.

13.12 **Construction.** No provision of this Contract shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Contract; both parties, being represented by counsel, having fully participated in the negotiation of this instrument.

13.13 **Confidentiality.** Seller and Purchaser shall not disclose the terms and conditions contained in this Contract and shall keep the same confidential, provided that each may disclose the terms and conditions of this Contract (a) as required by law (including but not limited to the Freedom of Information Act), (b) to consummate the terms of this Contract, or any financing relating thereto, or (c) to its lenders, attorneys and accountants, and (d) Seller's City Council for approval of this Contract. Any information obtained by Purchaser in the course of its inspection of the Property, and any Materials provided by Seller to Purchaser hereunder, shall be confidential and Purchaser shall be prohibited from making such information public to any other person or entity other than its Consultants, without Seller's prior written authorization, which may be granted or denied in Seller's sole discretion. In addition, each party shall use its reasonable efforts to prevent its Consultants from divulging any such confidential information to any unrelated third parties except for the limited purpose of analyzing and investigating such information for the purpose of consummating the transaction contemplated by this Contract. Unless and until the Closing occurs, Purchaser shall not market the Property (or any portion thereof) to any prospective purchaser or lessee without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion.

13.14 **Time of the Essence.** It is expressly agreed by the parties hereto that time is of the essence with respect to this Contract and any aspect thereof.

13.15 **Waiver.** No delay or omission to exercise any right or power accruing upon any default, omission, or failure of performance hereunder shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver, amendment, release, or modification of this Contract shall be established by conduct, custom, or course of dealing and all waivers must be in writing and signed by the waiving party.

13.16 **Attorneys' Fees.** In the event either party hereto commences litigation or arbitration against the other to enforce its rights hereunder, each party shall be responsible for



its individual attorney's fees, costs, and expenses, including expert witness fees and costs, during any litigation and appeals therefrom.

13.17 **Time Zone/Time Periods.** Any reference in this Contract to a specific time shall refer to the prevailing local time in the time zone where the Property is located. (For example, a reference to 3:00 p.m. refers to 3:00 p.m. MST if the Property is located in Denver, Colorado.) Should the last day of a time period fall on a weekend or legal holiday, the next Business Day thereafter shall be considered the end of the time period.

13.18 **1031 Exchange.** Seller and Purchaser acknowledge and agree that the purchase and sale of the Property may be part of a tax-free exchange for Purchaser pursuant to Section 1031 of the Code, the regulations promulgated thereunder, revenue procedures, pronouncements and other guidance issued by the Internal Revenue Service. Each party hereby agrees to cooperate with each other and take all reasonable steps on or before the Closing Date to facilitate such exchange if requested by the other party, provided that (a) no party making such accommodation shall be required to acquire any substitute property, (b) such exchange shall not affect the representations, warranties, liabilities and obligations of the parties to each other under this Contract, (c) no party making such accommodation shall incur any additional cost, expense or liability in connection with such exchange (other than expenses of reviewing and executing documents required in connection with such exchange), and (d) no dates in this Contract will be extended as a result thereof, except as specifically provided herein.

13.19 **No Personal Liability of Officers, Trustees or Directors.** Purchaser acknowledges that this Contract is entered into by Seller, which is a Michigan public entity, and Purchaser agrees that none of Seller's Indemnified Parties shall have any personal liability under this Contract or any document executed in connection with the transactions contemplated by this Contract. Seller acknowledges that this Contract is entered into by Purchaser which is an Indiana nonprofit corporation, and Seller agrees that none of Purchaser, or Purchaser's partners, managers, members, employees, officers, directors, trustees, shareholders, counsel, representatives, or agents shall have any personal liability under this Contract or any document executed in connection with the transactions contemplated by this Contract.

13.20 **Intentionally Omitted.**

13.21 **No Recording.** Purchaser shall not cause or allow this Contract or any contract or other document related hereto, nor any memorandum or other evidence hereof, to be recorded or become a public record without Seller's prior written consent, which consent may be withheld at Seller's sole discretion. If Purchaser records this Contract or any other memorandum or evidence thereof, Purchaser shall be in default of its obligations under this Contract. Purchaser hereby appoints Seller as Purchaser's attorney-in-fact to prepare and record any documents necessary to effect the nullification and release of the Contract or other memorandum or evidence thereof from the public records. This appointment shall be coupled with an interest and irrevocable.

13.22 **Relationship of Parties.** Purchaser and Seller acknowledge and agree that the relationship established between the parties pursuant to this Contract is only that of a seller and a purchaser of property. Neither Purchaser nor Seller is, nor shall either hold itself out to be, the agent, employee, joint venturer or partner of the other party.

13.23 **Intentionally Omitted**

13.24 **Intentionally Omitted**

13.25 **Survival.** Except for any other provisions in this Contract (a) that by their express terms survive the termination of this Contract or the Closing; (b) by context require that such term survive the termination of this Contract or the Closing; or (c) any payment or indemnity obligation of Purchaser under this Contract (the foregoing (a), (b), and (c) referred to herein as the “**Survival Provisions**”), none of the terms and provisions of this Contract shall survive the termination of this Contract, and if the Contract is not so terminated, all of the terms and provisions of this Contract (other than the Survival Provisions, which shall survive the Closing) shall be merged into the Closing documents and shall not survive Closing.

13.26 **Multiple Purchasers.** As used in this Contract, the term “**Purchaser**” includes all entities acquiring any interest in the Property at the Closing, including, without limitation, any assignee(s) of the original Purchaser pursuant to Section 13.3 of this Contract. In the event that “Purchaser” has any obligations or makes any covenants, representations or warranties under this Contract, the same shall be made jointly and severally by all entities being a Purchaser hereunder.

13.27 **WAIVER OF JURY TRIAL.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS CONTRACT.

#### **ARTICLE XIV LEAD-BASED PAINT DISCLOSURE**

14.1 **Disclosure.** Seller and Purchaser hereby acknowledge delivery of the Lead Based Paint Disclosure attached as **Exhibit F** hereto.

[Remainder of Page Intentionally Left Blank]

NOW, THEREFORE, the parties hereto have executed this Contract as of the date first set forth above.

**Seller:**

**CITY OF MARSHALL,**  
a municipal public corporation

By: \_\_\_\_\_  
Michelle Eubank, Clerk, City of Marshall

**Purchaser:**

**GENE B. GLICK FAMILY HOUSING  
FOUNDATION, INC.,** an Indiana non-profit  
corporation

By:  \_\_\_\_\_  
David O. Barrett, President and CEO

**Purchaser's Tax Identification Number/Social  
Security Number:**

20-1698926

**[SIGNATURES CONTINUED ON NEXT PAGE]**



## ESCROW AGENT SIGNATURE PAGE

The undersigned executes the Contract to which this signature page is attached for the purpose of agreeing to the provisions of the Contract applicable the Escrow Agent.

**ESCROW AGENT:**

**FIRST AMERICAN TITLE GUARANTY  
COMPANY**

By: Tatiana McFadden  
Name: Tatiana McFadden  
Title: Authorized Signatory

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Land in the City of Marshall, Calhoun County, MI, described as follows:

Beginning at the intersection of the East line of Madison Street and the South line of Spruce Street, also being the Northwest corner of Lot 292 of the recorded Plat of Upper Village of Marshall, Section 25, Town 2 South, Range 6 West, Village of Marshall, now City of Marshall, Calhoun County, Michigan, as recorded in the Office of the Register of Deeds for Calhoun County, Michigan, in Liber 3 of Plats on pages 12 and 13; thence East along said South line of Spruce Street, 285.09 feet to a point 109.00 feet West of the Northeast corner of Lot 193 of said Plat; thence South 00 degrees 33 minutes 05 seconds East, 132.00 feet; thence East 109.00 feet to the Southeast corner of said Lot 193; thence South 00 degrees 33 minutes 05 seconds East, along the East line of Lot 200 of said Plat and the Southerly extension thereof, 165.00 feet to the centerline of vacated Pearl Street; thence East along said centerline 66.00 feet to the Northerly extension of the East line of Lot 208 of said Plat; thence South 00 degrees 33 minutes 05 seconds East, along said East line of Lot 208 and the Northerly extension thereof, 214.85 feet to a point on the bank of Rice Creek; thence South 80 degrees 04 minutes 07 seconds West, along said bank of Rice Creek 169.69 feet; thence continuing along said bank of Rice Creek, North 61 degrees 34 minutes 18 seconds West, 252.48 feet to the Easterly line of the Westerly 66.00 feet of Lot 305 of said Plat; thence North 39 degrees 51 minutes West, parallel with the Westerly line of said Lot 305 a distance of 119.48 feet; thence North 50 degrees 34 minutes 50 seconds East, parallel with the Southerly line of Pearl Street 97.35 feet; thence North 49 degrees 47 minutes 20 seconds West, 133.42 feet to said Southerly line of Pearl Street; thence North 50 degrees 34 minutes 50 seconds East, along said Southerly line of Pearl Street, 36.66 feet to the East line of Madison Street; thence North 00 degrees 19 minutes 50 seconds West, along said East line of Madison Street 157.94 feet to the place of beginning.

**EXHIBIT B**  
**FORM OF DEED**  
**COVENANT DEED**

---

[] (“**Grantor**”), whose address is [], hereby sells, conveys, grants and bargains to [] (“**Grantee**”), whose address is [], the premises situated in [] more specifically described as:

See Exhibit A hereto

for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith.

Grantor, for itself, its successors and assigns, covenants, grants, bargains, and agrees to and with Grantee, its successors and assigns, that, subject to the exceptions set forth on Exhibit B hereto, Grantor has not done, committed or knowingly suffered to be done or committed any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, or shall or may be, charged or encumbered in title, estate or otherwise.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make \_\_\_\_\_  
(\_\_\_\_\_) division(s) under Section 108 of the Land  
Division Act, Act No. 288 of the Public Acts of 1967, as amended.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

**IN WITNESS WHEREOF**, Grantor has executed this Covenant Deed on the date set forth below.

**[insert signature Grantor block and notary block at Closing]**



**Drafted by:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**When recorded return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Send subsequent tax bills to: Grantee

Recording Fee: \_\_\_\_\_

Transfer Tax: See Real Estate Transfer Tax Valuation Affidavit

## **EXHIBIT C**

### **FORM OF BILL OF SALE**

THIS BILL OF SALE ("**Bill of Sale**") is made this \_\_\_\_ day of \_\_\_\_\_, 2023 by the **CITY OF MARSHALL**, a Michigan municipal corporation, its address of 323 W. Michigan Avenue, Marshall, Michigan, 49068 ("**Seller**"), in favor of **GLICK MARSHALL HOUSE, LLC**, an Indiana limited liability company ("**Purchaser**").

### **W I T N E S S E T H:**

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Contract dated as of April \_\_\_, 2023 (the "**Contract**") with respect to the sale of certain Property identified therein. (Any capitalized term used, but not otherwise defined herein, shall have the meaning set forth in the Contract).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Purchaser all of the Fixtures and Tangible Personal Property, in their "AS IS, WHERE IS, WITH ALL FAULTS" condition, without representation or warranty of any kind whatsoever except as set forth in and subject to the terms of the Contract.

WITH RESPECT TO ALL MATTERS TRANSFERRED, WHETHER TANGIBLE OR INTANGIBLE, PERSONAL OR REAL, SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

This Bill of Sale shall be binding upon and inure to the benefit of the successors and permitted assigns of Purchaser and Seller.

This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Michigan.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the day and year first written above.

**SELLER:**

**CITY OF MARSHALL,**  
a municipal public corporation

By: \_\_\_\_\_  
Michelle Eubank, Clerk, City of Marshall

## **EXHIBIT D**

### **GENERAL ASSIGNMENT AND ASSUMPTION**

This General Assignment and Assumption (this “**Assignment**”) is executed by the **CITY OF MARSHALL**, a Michigan municipal corporation, its address of 323 W. Michigan Avenue, Marshall, Michigan, 49068 (“**Seller**”), in favor of **GLICK MARSHALL HOUSE, LLC**, an Indiana limited liability company (“**Purchaser**”) as of \_\_\_\_\_, 2023 (the “**Effective Date**”).

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Contract dated as April \_\_\_\_, 2023 (the “**Contract**”) with respect to the sale of certain Property identified therein. (Any capitalized term used, but not otherwise defined herein, shall have the meaning set forth in the Contract).

WHEREAS, pursuant to the Contract, Seller has agreed to assign, without recourse or warranty, to Purchaser all of Seller’s right, title and interest, if any, in and to the Miscellaneous Property Assets, the Permits (other than the Excluded Permits), and the Property Contracts.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **Assignment.** As of the Effective Date, Seller hereby assigns, sells and transfers, without recourse or warranty, to Purchaser all of Seller’s right, title and interest, if any, in and to the Miscellaneous Property Assets, the Permits (other than the Excluded Permits), and the Property Contracts.

2. **Assumption.** As of the Effective Date, Purchaser expressly agrees to assume and hereby assumes all liabilities and obligations of the Seller which are to be performed or which become due on or after the Effective Date in connection with the Miscellaneous Property Assets, the Permits (other than the Excluded Permits), and the Property Contracts; provided, however, that to the extent that any Property Contract constitutes a Terminated Contract, Purchaser assumes such Property Contract only (a) through the effective date of the termination of such Property Contract pursuant to its express terms, and (b) to the extent of any cancellation fees, penalties or damages, including liquidated damages, due as a result of such termination.

3. **Seller Indemnity.** Seller hereby agrees to indemnify, defend and hold harmless Purchaser from and against any and all costs, damages, losses, liabilities and expenses (excluding all attorneys’ fees, costs and expenses) incurred by Purchaser as a result of claims or causes of action arising out of or relating to Seller’s failure to perform any of the obligations on its part to be performed under the Miscellaneous Property Assets, the Permits (other than the Excluded Permits), and the Property Contracts occurring prior to the Effective Date.

4. **Purchase Indemnity.** Purchaser hereby agrees to indemnify, defend and hold harmless Seller from and against any and all costs, damages, losses, liabilities and expenses (excluding all attorneys’ fees, costs and expenses) incurred by Seller as a result of claims or causes of action arising out of or relating to Purchaser’s failure to perform any of the obligations on its



part to be performed with respect to the Miscellaneous Property Assets, the Permits (other than the Excluded Permits), and the Property Contracts occurring on and after the Effective Date.

5. Counterparts. This Assignment may be executed in a number of identical counterparts. Signatures may be delivered by electronic delivery, and such signatures shall be binding on the parties hereto, with original signatures to be delivered as soon as reasonably practical thereafter.

6. Attorneys' Fees. In the event either party hereto commences litigation or arbitration against the other to enforce its rights hereunder, each party shall be responsible for its individual attorney's fees, costs, and expenses, including expert witness fees and costs, during any litigation and appeals therefrom.

7. Applicable Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Michigan.

8. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

WITH RESPECT TO ALL MATTERS TRANSFERRED, WHETHER TANGIBLE OR INTANGIBLE, PERSONAL OR REAL, SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE) AND PURCHASER ACCEPTS ALL SUCH MATTERS IN THEIR "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned has executed this General Assignment and Assumption as of the day and year first written above.

**SELLER:**

**CITY OF MARSHALL,**  
a municipal public corporation

By: \_\_\_\_\_  
Michelle Eubank, Clerk, City of Marshall

*[Purchaser's Signature Page Follows]*

**PURCHASER:**

**GLICK MARSHALL HOUSE, LLC**, an Indiana limited liability company

**By: GENE B. GLICK FAMILY HOUSING FOUNDATION, INC.**, an Indiana non-profit corporation, its sole member

By: \_\_\_\_\_  
David O. Barrett, President and CEO

## **EXHIBIT E**

### **ASSIGNMENT AND ASSUMPTION OF LEASES AND SECURITY DEPOSITS**

This Assignment and Assumption of Leases and Security Deposits (this “**Assignment**”) is executed by the **CITY OF MARSHALL**, a Michigan municipal corporation, its address of 323 W. Michigan Avenue, Marshall, Michigan, 49068 (“**Seller**”), in favor of **GLICK MARSHALL HOUSE, LLC**, an Indiana limited liability company (“**Purchaser**”) as of \_\_\_\_\_, 2023 (the “**Effective Date**”).

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Contract dated as of April \_\_\_, 2023 (the “**Contract**”) with respect to the sale of certain Property more particularly described in the Contract. (Any capitalized term used, but not otherwise defined herein, shall have the meaning set forth in the Contract).

WHEREAS, Seller, as landlord, has entered into certain leases for the use of the Property by tenants (collectively, together with all amendments, modifications, supplements, restatements and guarantees thereof, the “**Leases**”).

WHEREAS, the Contract requires Seller and Purchaser to execute this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. **Assignment and Assumption.** As of the Effective Date, Seller hereby irrevocably assigns, sets over, transfers and conveys to Purchaser all of Seller’s right, title and interest in and to the Leases. Purchaser hereby accepts this Assignment and the rights granted herein, and Purchaser hereby expressly assumes, for itself and its successors, assigns and legal representatives, the Leases and the Tenant Security Deposit Balance and all of the obligations and liabilities, fixed and contingent, of Seller thereunder accruing from and after the date hereof with respect to the Leases and the Tenant Security Deposit Balance and agrees to (i) be fully bound by all of the terms, covenants, agreements, provisions, conditions, obligations and liability of Seller thereunder, which accrue from and after the date hereof, and (ii) keep, perform and observe all of the covenants and conditions contained therein on the part of Seller to be kept, performed and observed, from and after the date hereof.

2. **Seller Indemnity.** Seller hereby agrees to indemnify, defend and hold harmless Purchaser from and against any and all costs, damages, losses, liabilities and expenses (excluding all attorneys’ fees, costs and expenses) incurred by Purchaser as a result of claims or causes of action being brought against Purchaser, as Seller’s successor in interest to the Leases, arising out of or relating to Seller’s failure to perform any of the obligations under the Leases occurring prior to the Effective Date.

3. **Purchaser Indemnity.** Purchaser hereby agrees to indemnify, defend and hold harmless Seller from and against any and all costs, damages, losses, liabilities and expenses (excluding all attorneys’ fees, costs and expenses) incurred by Seller as a result of claims or causes



of action being brought against Seller arising out of or relating to Purchaser's failure to perform any of the obligations of the lessor under Leases occurring from and after the Effective Date or relating to any and all claims incurred by Seller with respect to the Security Deposits assigned herein.

4. General Provisions.

a. Successors. This Assignment shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

b. Counterparts. This Assignment may be executed in a number of identical counterparts. Signatures may be delivered by electronic delivery, and such signatures shall be binding on the parties hereto, with original signatures to be delivered as soon as reasonably practical thereafter.

c. Governing Law. This Assignment and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State wherein the Property is located, without reference to the conflict of law provisions thereof.

d. Attorney's Fees. In the event either party hereto commences litigation or arbitration against the other to enforce its rights hereunder, each party shall be responsible for its individual attorney's fees, costs, and expenses, including expert witness fees and costs, during any litigation and appeals therefrom.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned has executed this Assignment and Assumption of Leases and Security Deposits as of the day and year first written above.

**SELLER:**

**CITY OF MARSHALL,**  
a municipal public corporation

By: \_\_\_\_\_  
Michelle Eubank, Clerk, City of Marshall

**PURCHASER:**

**GLICK MARSHALL HOUSE, LLC,** an Indiana  
limited liability company

By: **GENE B. GLICK FAMILY HOUSING  
FOUNDATION, INC.,** an Indiana non-profit  
corporation, its sole member

By: \_\_\_\_\_  
David O. Barrett, President and CEO

## **EXHIBIT F**

### **LEAD-BASED PAINT DISCLOSURE**

EVERY PURCHASER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY ON WHICH A RESIDENTIAL DWELLING WAS BUILT PRIOR TO 1978 IS NOTIFIED THAT SUCH PROPERTY MAY PRESENT EXPOSURE TO LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL DAMAGE, INCLUDING LEARNING DISABILITIES, REDUCED INTELLIGENCE QUOTIENT, BEHAVIORAL PROBLEMS, AND IMPAIRED MEMORY. LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT WOMEN. THE SELLER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE THE PURCHASER WITH ANY INFORMATION ON LEAD-BASED PAINT HAZARDS FROM RISK ASSESSMENTS OR INSPECTIONS IN THE SELLER'S POSSESSION, IF ANY, AND NOTIFY THE PURCHASER OF ANY KNOWN LEAD-BASED PAINT HAZARDS. A RISK ASSESSMENT OR INSPECTION FOR POSSIBLE LEAD-BASED PAINT HAZARDS IS RECOMMENDED PRIOR TO PURCHASE.

## **SCHEDULE 1**

### **DEFINED TERMS**

- 1.1. Intentionally Omitted.
- 1.2. Intentionally Omitted.
- 1.3. Intentionally Omitted.
- 1.4. Intentionally Omitted.
- 1.5. “**Business Day**” means any day other than a Saturday or Sunday or Federal holiday.
- 1.6. “**Closing**” means the consummation of the purchase and sale and related transactions contemplated by this Contract in accordance with the terms and conditions of this Contract.
- 1.7. “**Closing Date**” means the date on which date the Closing of the conveyance of the Property is required to be held pursuant to Section 5.1.
- 1.8. “**Excluded Permits**” means those Permits which, under applicable law, are nontransferable.
- 1.9. “**Fixtures and Tangible Personal Property**” means all fixtures, furniture, furnishings, fittings, equipment, machinery, apparatus, appliances and other articles of tangible personal property located on the Land or in the Improvements as of the Effective Date, to the extent transferable, and used or usable in connection with the occupation or operation of all or any part of the Property; provided, however, that the term “**Fixtures and Tangible Personal Property**” specifically excludes any of the foregoing to the extent (a) the same are not owned by Seller (including, without limitation, if the same are leased by Seller or are owned or leased by any Tenant or guest, employee or other person furnishing goods or services to the Property), or (b) the same are owned by Seller but are not used exclusively for the business, operation or management of the Property.
- 1.10. “**Improvements**” means all buildings and improvements located on the Land.
- 1.11. “**Land**” means all of those certain tracts of land located in the State of Michigan described on **Exhibit A**, and all rights, privileges and appurtenances pertaining thereto, as more particularly described in the Deed.
- 1.12. “**Lease(s)**” means the interest of Seller in and to all leases, subleases and other occupancy contracts, whether or not of record, which provide for the use or occupancy of space or facilities on or relating to the Property and which are in force as of the Closing Date for the applicable Property.



1.13. “**Miscellaneous Property Assets**” means all assignable contract rights, leases, concessions, warranties, plans, drawings and other items of intangible personal property relating to the ownership or operation of the Property and owned by Seller, excluding, however, (a) receivables, (b) Property Contracts, (c) Leases, (d) Permits, (e) Fixtures and Tangible Personal Property, (f) cash or other funds, whether in petty cash or house “banks,” or on deposit in bank accounts or in transit for deposit, (g) refunds, rebates or other claims, or any interest thereon, for periods or events occurring prior to the Closing Date, (h) utility and similar deposits, (i) insurance or other prepaid items, (j) any residual receipts account, (k) any capital replacement, repair or other reserves held by Seller, or any other party on behalf of or for the benefit of Seller, with respect to the Property, (l) Seller’s proprietary books and records, or (m) the Management Contract. The term “**Miscellaneous Property Assets**” also shall include all of Seller’s rights, if any, in and to the name “**The Marshall House Apartments**” and derivations thereof and to any internet domain name (but not the content of any website maintained by Seller or any of Seller’s affiliates), as they relate solely in connection with the Property (and not with respect to any other property owned or managed by Seller, Property Manager, or their respective affiliates) and all social media accounts.

1.14. “**Permits**” means all licenses and permits granted by any governmental authority having jurisdiction over the Property owned by Seller and required in order to own and operate the Property.

1.15. “**Prohibited Person**” means any of the following: (a) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) (the “**Executive Order**”); (b) a person or entity owned or controlled by, or acting for or on behalf of any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (c) a person or entity that is named as a “specially designated national” or “blocked person” on the most current list published by the U.S. Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) at its official website, <http://www.treas.gov/offices/enforcement/ofac>; (d) a person or entity that is otherwise the target of any economic sanctions program currently administered by OFAC; or (e) a person or entity that is affiliated with any person or entity identified in clause (a), (b), (c) and/or (d) above.

1.16. “**Property**” means (a) the Land and Improvements and all rights of Seller, if any, in and to all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Land and Improvements, (b) the Property Contracts, Leases, Permits (other than Excluded Permits), and the right, if any, of Seller in and to the Fixtures and Tangible Personal Property, and (c) the Miscellaneous Property Assets owned by Seller which are located on the Property and used in its operation.

1.17. “**Property Contracts**” means all contracts, agreements, equipment leases, purchase orders, maintenance, service, or utility contracts and similar contracts, excluding Leases, regardless of whether entered into by Seller, Property Manager, or an affiliate of either, which relate to the ownership, maintenance, construction or repair and/or operation of the Property, whether or not assignable by their terms, but not including (a) any national contracts entered into by Seller or Property Manager with respect to the Property (i) which terminate automatically upon transfer of the Property by Seller, or (ii) which Seller, in Seller’s sole discretion, elects to terminate

with respect to the Property effective as of the Closing Date, or (b) any cellular phone contract or property management contract for the Property. Property Contracts shall not include forward or similar long-term contracts to purchase electricity, natural gas, or other utilities, which contracts shall be “**Utility Contracts**” governed by the provisions of Section 0.

1.18. “**Property Manager**” means the current City Manager of Seller, owner of the Property.

1.19. “**Rent-Ready Conditions**” means the physical to which Seller, in the ordinary course of its business, would prepare Tenant Units in anticipation of renting such Tenant Units to prospective Tenants.

1.20. “**Tenant**” means any person or entity entitled to occupy any portion of the Property under a Lease.

1.21. “**Tenant Deposits**” means all security deposits, prepaid rentals, cleaning fees and other refundable deposits and fees collected from Tenants, plus any interest accrued thereon, paid by Tenants to Seller pursuant to the Leases. Tenant Deposits shall not include any non-refundable deposits or fees paid by Tenants to Seller, either pursuant to the Leases or otherwise.

1.22. “**Tenant Unit**” means each apartment in the Property which is leased by Seller to Tenants in the ordinary course of Seller’s business.

1.23. “**Third-Party Reports**” means any reports, studies or other information prepared or compiled for Purchaser by any Consultant or other third-party in connection with Purchaser’s investigation of the Property.

1.24. “**Written Notice**” Whether capitalized or not, means written correspondence delivered to the receiving party in the manner described in Section 13.6 of the Contract.

**SCHEDULE 3.5.1**  
**LIST OF MATERIALS**

IN ALL INSTANCES, THE FOLLOWING MATERIALS WILL BE DELIVERED ONLY TO THE EXTENT THE SAME EXIST AND ARE IN SELLER'S POSSESSION OR REASONABLE CONTROL.

**PROPERTY RELATED ITEMS**

- A. Seller's form of residential lease agreement and copies of tenant files (available on site).
- B. All Property Contracts, equipment leases, and vendor lists with contact names and contact information.
- C. Any property locator or similar agreements (other than agreements with the Property Manager), if any, pertaining to the marketing and advertisement of the Property for leasing (and payment of commissions in connection therewith).
- D. All engineering studies, environmental reports, physical needs assessment reports, termite inspections, and appraisals to the extent available and in Seller's possession, which relate to the Property and were prepared for Seller by third parties.
- E. To the extent in Seller's possession, ad valorem and personal property tax statements for the current year and prior two (2) years and the status of any pending appeal.
- F. Current Rent Roll in Microsoft Excel Format that shows units on notice to vacate, vacant rented, etc.
- G. Unit Address List with unit numbers and mailing addresses for each unit in Microsoft Excel format.
- H. Current Income Statements for the Property and for the three (3) years prior to the year in which the Effective Date occurs.
- I. Current Year Budget
- J. Copies of Existing Certificates of Insurance (Including Flood and all other types available)
- K. Copies of Existing FEMA elevation certificates.
- L. A summary of pending insurance claims and pending litigation and for the three (3) years prior to the year in which the Effective Date occurs, if any, provided that such summary shall be prepared to Seller's knowledge and Seller makes no representations or warranties regarding the outcome of such claims or litigation.
- M. Insurance company loss runs for the three (3) years prior as well as copies of any active workman's comp claims.
- N. To the extent available and in Seller's possession, guaranties or warranties with respect to the Property, if any.
- O. Seller's ACM plan, lead in water O&M, lead based paint O&M plans and other O&M plans, if any.
- P. Copies of any certificates of occupancy and/or other Permits, to the extent available and in Seller's possession.
- Q. Seller's plans and specifications for the Property including general site plan.
- R. Utility bills for the past two (2) years.
- S. An inventory of the Fixtures and Tangible Personal Property, including and noting any Fixtures or Tangible Personal Property that Seller desires to retain after Closing, if any.
- T. A concessions report.
- U. A security deposit report.
- V. Prepaid balance report listing all residents with credit balance.
- W. Listing of accrued security deposit interest per tenant if applicable.
- X. A delinquency report.
- Y. A traffic/occupancy turnover.
- Z. Listing of any fees taken for future move-ins
- AA. Maintenance records for each unit for a minimum of the past three (3) years.
- BB. A minimum three (3) year history of all capital improvements, including any unit improvements.
- CC. Listing of current on-site employees, their job description and compensation.
- DD. Copy of incident/accident and crime related reports on the property for the past two (2) years
- EE. Property brochures and floorplans
- FF. Report detailing age of water heaters, condensers, and major appliances, estimates of remaining useful life for all, and estimated annual failure rate.

- GG. A traffic generation/conversion rate report from currently used internet marketing sources (Apartment Guide, For Rent, etc.).
- HH. Copies of any previously received bids for major asphalt/concrete drive and parking repairs.
- II. Copy of any recent lighting study
- JJ. Report that includes resident income and demographics
- KK. Resident Selection Plan

#### **HUD RELATED ITEMS**

- A. A current HAP contract and all correspondence with HUD regarding management review (MOR) and REAC inspections for prior three (3) years.
- B. Original HAP Contract
- C. Copy of Regulatory Agreement
- D. Copy of most recent HAP voucher.
- E. Contact information for HUD Project Manager.
- F. Property TRACS mail ID. Is this ID property specific or portfolio specific?
- G. Copy of most recent Rent Study if applicable
- H. All other relevant HUD documents reasonably requested by Purchaser.
- I. Copy of the closing transcript from the Property's Mark to Market closing.
- J. Current Waiting List showing original date and time of application, income, and approval status
- K. Copy of most recent Management Certification – HUD Form 9839-B
- L. Copy of most recent Affirmative Fair Housing Marketing Plan
- M. Copy of 504 Self Evaluation Plan
- N. Copy of 504 Transition Plan
- O. Copy of the Closing





## ITEM 12.A

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**TO:** City Council  
**FROM:** Derek N. Perry, City Manager  
Marguerite Davenport, Director of Public Services  
Joshua Lanker, Chief of Police  
**DATE:** June 5, 2023  
**SUBJECT:** VINTAGE MARKET SPECIAL EVENT REQUEST

---

The Vintage Garden Market sponsor, Ms. Janet Ostrum, has submitted a special event application for July 8 and 9, 2023. The Vintage Garden Market is an outdoor market during the Marshall Garden Club's Garden Tour. The market will close North Park Avenue from Michigan Ave to the south of the Kellogg Credit Union drive-through driveway. In addition, the event requests use of Veteran's Park. This event will have vendors with plants, garden art, etc in the Park Avenue and Veterans Park areas. The market will include amplified speaker use from 1200 to 1500 for musicians and singers and request an electric drop installed at the veterans park area.

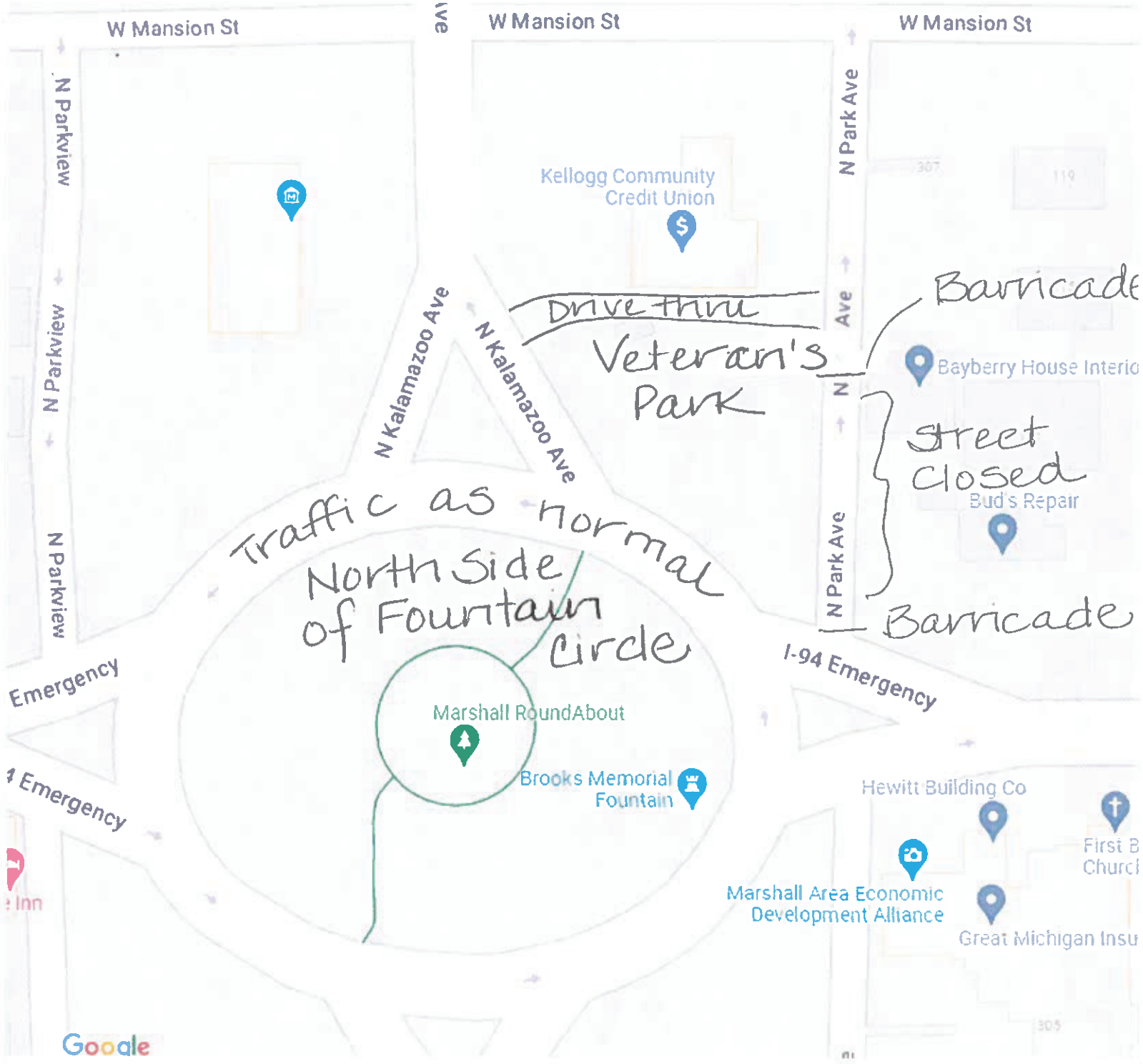
The Downtown Development Authority reviewed this application and recommended it for approval at the May 25, 2023 board meeting.

**BUDGET IMPACT:**

None. The event will cost approximately \$500 for barricades. The City will bill the event sponsor after the event has occurred.

**RECOMMENDATION:**

Approve the Vintage Garden Market Special Event Application.





## ITEM 12.B

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**TO:** City Council  
**FROM:** Derek N. Perry, City Manager  
Marguerite Davenport, Director of Public Services  
Joshua Lanker, Chief of Police  
**DATE:** June 5, 2023  
**SUBJECT:** HOME TOUR MARKET SPECIAL EVENT REQUEST

---

The Hometour Vintage Market sponsor, Ms. Janet Ostrum, has submitted a special event application for September 9 and 10, 2023. The Hometour Vintage Market is an outdoor market during the Marshall Historical Society's Hometour. The market will close North Park Avenue from Michigan Ave to the south of the Kellogg Credit Union drive-through driveway. In addition, the event requests use of Veteran's Park. This event will have vendors with plants, garden art, etc in the Park Avenue and Veterans Park areas. The market will include amplified speaker use from 1200 to 1500 for musicians and singers and request an electric drop installed at the veterans park area.

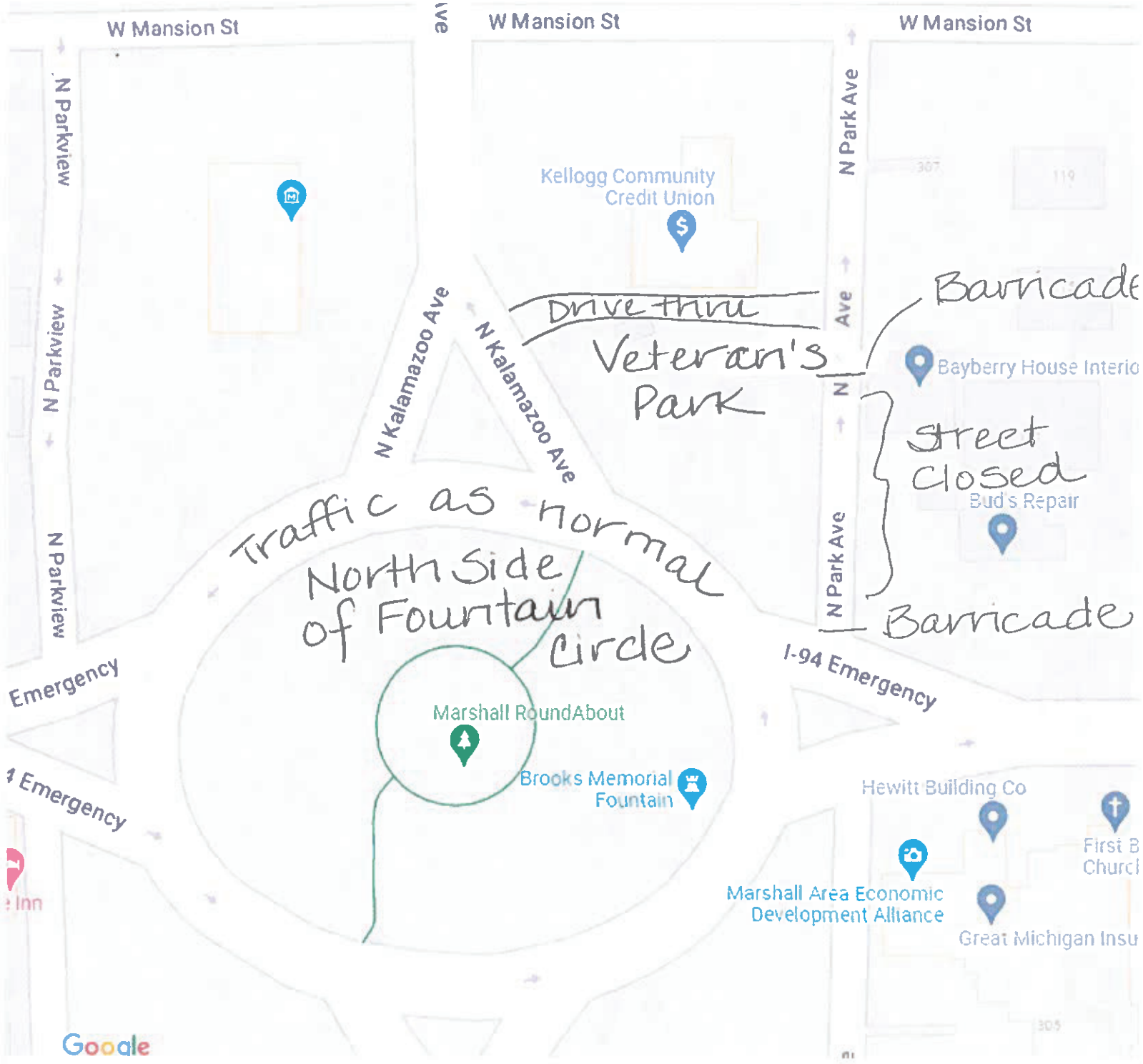
The Downtown Development Authority reviewed this application and recommended it for approval at the May 25, 2023 board meeting.

**BUDGET IMPACT:**

None. The event costs will be approximately \$500 and the event sponsor will be invoiced for actual costs incurred following the event.

**RECOMMENDATION:**

Approve the Hometour Vintage Market Special Event Application.







## ITEM 12.C

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**TO:** City Council  
**FROM:** Derek N. Perry, City Manager  
Marguerite Davenport, Director of Public Services  
**DATE:** June 5, 2023  
**SUBJECT:** YPC-FRIDAY'S AT THE FOUNTAIN SPECIAL EVENT REQUEST

---

The Youngish Professional Committee is hosting the Friday's at the Fountain special events this summer on June 23, July 17 and 21, and August 4 and 18. The event is scheduled from 1900 - 2100 hours, with setup beginning at 1800 hours. The sponsor is requesting use of the Brooks Memorial Fountain for the event. The sponsors will have small yard signs advertising the event while it is occurring and request electronic service each week for the musicians.

The Downtown Development Authority reviewed this application and recommended it for approval at the May 25, 2023 board meeting.

**BUDGET IMPACT:**

The electric drop fee per event is \$35. The City will invoice the sponsor incurred costs after the conclusion of the event.

**RECOMMENDATION:**

Approve the *Fridays at the Fountain* Special Event Application.



## ITEM 12.D

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**TO:** City Council  
**FROM:** Derek N. Perry, City Manager  
Marguerite Davenport, Director of Public Services  
**DATE:** June 5, 2023  
**SUBJECT:** **STORIES AT THE FOUNTAIN SERIES SPECIAL EVENT REQUEST**

---

The Marshall District Library has requested use of the fountain circle on Fridays in July and August. This is an annual series provided by the library and planned for 11:00am to 12:00pm each Friday. The event includes the posting of a small yard sign by the group attending and amplified speaker for the reader. Some music is presented during the readings, including ukuleles and singers.

The Downtown Development Authority reviewed this application and recommended it for approval at the May 25, 2023 board meeting.

**BUDGET IMPACT:**

None. The event does not require any services that would be billed to the event sponsor.

**RECOMMENDATION:**

Approve the Marshall District Library *Stories at the Fountain* Special Event Application.



MARSHALL DISTRICT LIBRARY  
YOUTH PROGRAMMING PRESENTS

# Stories at the Fountain

FRI. JUL. 14, 21, 28  
FRI. AUG. 4, 11, 18  
FROM 11 AM-12 PM

MARSHALL  
DISTRICT  
LIBRARY

ALL  
TOGETHER  
NOW

2023 SUMMER READING PROGRAM



[WWW.YOURMDL.ORG/EVENTS](http://WWW.YOURMDL.ORG/EVENTS)

Join us at the Brooks Memorial Fountain for a special storytime with YourMDL's staff picks, silly songs, & group games. Bring a blanket, a camping chair--even an entire picnic setup--& soak up the community spirit. Brooks Memorial Fountain is located at 323 W Michigan Ave, Marshall, MI, 49068. All ages are welcome to attend. Inclement weather location is the library.





## ITEM 12.E

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**TO:** City Council  
**FROM:** Derek N. Perry, City Manager  
Marguerite Davenport, Director of Public Services  
Joshua Lanker, Chief of Police  
**DATE:** June 5, 2023  
**SUBJECT:** **GRAND RIVER ANNIVERSARY SPECIAL EVENT REQUEST**

---

A special event request has been submitted for August 19, 2023 by Grand River Brewery from 1000 - 2300 hours for a 5-year Anniversary Party. The event is requesting the closure of South Jefferson from Michigan Avenue to the south alley drive. The event includes amplified music by a band from 1300 to 2100 hours. The services requested from the city include street closure barricades. The social district will remain in effect during this event.

**BUDGET IMPACT:**

None. The event costs will be approximately \$500 and the event sponsor will be invoiced for actual costs incurred following the event.

**RECOMMENDATION:**

Approve the *Grand River 5-Year Anniversary Special Event Application*.

# ITEM: 12.F

## ADMINISTRATIVE REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Michelle Eubank, City Clerk  
**DATE:** June 5, 2023  
**SUBJECT:** **GRAND RIVER BREWERY SIDEWALK USE PERMIT**

---

In accordance with Section 90-16(c) of the Marshall City Code, City Council may license an outdoor restaurant, café and other public/private sidewalk uses under such terms and conditions as the Council may determine upon submittal of a sidewalk use application. Grand River Brewery has submitted their certificate of insurance and paid the proper fee.

The use of the sidewalk would be from May 1, 2023 through April 30, 2024.

**BUDGET IMPACT:**

There is a \$100 fee for a one year sidewalk use permit which is applied to the general fund.

**RECOMMENDATION:**

Approve the Sidewalk Use application from Grand River Brewery for the purpose of an outdoor cafe from May 1, 2023 to April 30, 2024.



CITY OF MARSHALL  
APPLICATION FOR A SIDEWALK USE LICENSE

**Grand River Brewery** located at <sup>101</sup>~~109~~ **West Michigan Avenue** in the City of Marshall, hereby make application for a sidewalk use license to operate an outdoor restaurant/café in accordance with Section 90-16(c) of the Marshall City Code, at the above address for a period of one year beginning May 1, 2023 and ending April 30, 2024.

  
Signature

GM  
Title

269-727-9211  
Contact number

Sketch of the area, including number of tables, and the width of open sidewalk that will still be accessible:



# ITEM: 12.G

## ADMINISTRATIVE REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Joshua Lanker, Chief of Police  
**DATE:** June 5, 2023  
**SUBJECT:** **MARIA'S UNCORKED MLCC SOCIAL DISTRICT PERMIT REQUEST**

---

We were contacted by Maria Van Arman of Maria's Uncorked requesting approval for a social district permit at 116 E. Michigan Ave. Maria's Uncorked moved to 116 E. Michigan Ave and has partnered with Warner Vineyards which required several changes in their licensing. Maria's Uncorked was approved and has a pending MLCC Joint off premise tasting room license at 116 East Michigan Avenue and a pending small wine maker license at 1002 W. Michigan Ave. Warner Vineyards was also approved and has a pending MLCC joint tasting room license and social district permit. There is a current Social District Permit issued at 116 East Michigan Ave under Warner Vinyards which will transition to a new social district permit once all the license changes are made.

The Marshall Police Department has spoken with MLCC and was advised this approval would be the last request needed to complete the changes by Maria's Uncorked and Warner Vineyards. The Marshall Police Department has no issues with the approval of the social district permit. To effect the change, the Michigan Department of Licensing and Regulatory Affairs Liquor Control Commission (MLCC) requires the approval of the local governmental unit by resolution.

### **BUDGET IMPACT:**

Adding this social district permit may provide an increase in our fees that the city receives from the state.

### **RECOMMENDATION:**

Approve the LOCAL GOVERNMENTAL UNIT APPROVAL FOR SOCIAL DISTRICT PERMIT pursuant to MCL 436.1551 for Maria's Uncorked at 116 East Michigan Ave.





## Local Governmental Unit Approval For Social District Permit

### Instructions for Governing Body of Local Governmental Unit:

A qualified licensee that wishes to apply for a Social District Permit must first obtain approval from the governing body of the local governmental unit where the licensee is located and for which the local governmental unit has designated a social district with a commons area that is clearly marked and shared by and contiguous to the licensed premises of at least two (2) qualified licensees, pursuant to MCL 436.1551. Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a \_\_\_\_\_ meeting of the \_\_\_\_\_ council/board  
(regular or special) (name of city, township, or village)

called to order by \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_  
(date) (time)

the following resolution was offered:

Moved by \_\_\_\_\_ and supported by \_\_\_\_\_

that the application from \_\_\_\_\_  
(name of licensee - if a corporation or limited liability company, please state the company name)

for a **Social District Permit** is \_\_\_\_\_ by this body for consideration for approval by the  
(recommended/not recommended)  
Michigan Liquor Control Commission.

If not recommended, state the reason: \_\_\_\_\_

### Vote

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the \_\_\_\_\_  
council/board at a \_\_\_\_\_ meeting held on \_\_\_\_\_  
(regular or special) (date) (name of city, township, or village)

I further certify that the licensed premises of the aforementioned licensee are contiguous to the commons area designated by the council/board as part of a social district pursuant to MCL 436.1551.

\_\_\_\_\_  
Print Name of Clerk

\_\_\_\_\_  
Signature of Clerk

\_\_\_\_\_  
Date

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. Further, the Commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the licensure of businesses and individuals.



# ITEM: 12.H

## ADMINISTRATIVE REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Kevin Maynard, Director of Electric Utilities  
**DATE:** June 5, 2023  
**SUBJECT:** **AMP MICHIGAN CAT PEAKING PROJECT**

---

Per the requirements of the Midcontinent Independent System Operator (MISO) and the State of Michigan, the Marshall Electric Department must have sufficient generating capacity available to meet customers' peak demands, plus a reserve margin. These capacity requirements may be self-supplied (i.e., the Marshall Power Plant), through capacity contracts with others or through the MISO annual Planning Resource Auction (PRA). The allowable amount purchased through the PRA is limited to 5% of the requirements by Michigan law.

The City has a capacity deficit that is projected to increase in the future. The City has met many of its capacity obligations through capacity contracts. Contract capacity cost has been volatile, averaging approximately \$5.00-\$5.50/kilowatt-month (kW-month) over the last year, and is projected to increase to \$6.00-\$7.00/kW-month over the next year. Total City capacity costs increased from approximately \$46,000/month in May 2022 to approximately \$68,000/month beginning in June 2022, an increase of nearly 50%.

The Michigan South Central Power Agency (MSCPA) has evaluated installation of additional generation in its four member communities (Clinton, Coldwater, Hillsdale and Marshall) to stabilize capacity costs and to provide additional emergency backup generation. The MSCPA evaluated a number of potential options including PowerSecure diesel, Enchanted Rock natural gas and Caterpillar natural gas generating units.

The MSCPA proposes installation of four 2.5-MW Caterpillar G3520 natural gas generators in Marshall. Three of the units would be installed in the Power Plant #2 building (which currently houses City Generator #6), and the fourth unit would be housed in an outdoor enclosure at the South Substation, south of the Power Plant. Natural gas and electric infrastructure to connect with the generating units is readily available at these two sites.

The estimated \$10.5 million generating improvement would be owned, operated and financed by American Municipal Power (AMP). The project debt would be carried by AMP, not by the City of Marshall. This is similar to the arrangement that the City and AMP have regarding the Prairie State Energy Campus, AMP Fremont Energy Center and AMP Hydroelectric projects. Project fixed and variable costs (including debt service and fuel) would be charged on the City's monthly AMP power supply invoice. The proposed arrangement would require a lease agreement



between AMP and the City for the generator sites.

Michigan Caterpillar (Michigan CAT) will serve as the Engineer, Procure and Construct (EPC) contractor for the turnkey project. Michigan CAT will initially provide maintenance and warranty services for the generating units. If approved, Michigan CAT has committed to have the four units installed and in service no later than June 2024, the beginning of the next capacity year.

The estimated monthly AMP Michigan CAT Peaking Project charge with 20-year, 5% tax-exempt financing and a 30-year maintenance agreement is \$5.54/kW-month. This is approximately the same cost as current capacity contracts. Power from the generators to reduce Marshall purchases, may reduce the net effective project cost to approximately \$3.24/kW-month with 500 hours of annual operation and approximately \$1.72/kW-month with 2,000 hours of annual operation. This appears to be the least expensive capacity option currently available to the City of Marshall.

Benefits of the proposed project include:

- Stabilize 10 MW of capacity costs over the 30-year life of the generating units
- Replace capacity contracts with local generating assets (rent vs. own)
- Approximately the same cost as current capacity contracts
- Replace capacity contracts with CAT units
- Little projected customer rate impact
- Generate energy to reduce purchases from the market
- An additional 10 MW backup generation is available in the event of an emergency.
- AMP finances, owns, operates and maintains the project.

**BUDGET IMPACT:**

The AMP Michigan CAT Peaking Project has no expected impact on the current fiscal year budget and little projected impact on the FY2023-2024 budget. The generating units are expected to begin commercial operation on June 1, 2024, when project billing will commence; however, project costs will replace contract capacity costs currently included in electric rates.

**RECOMMENDATION:**

Adopt Resolution 2023-20, A Resolution to approve the form and authorize the execution of a power sales contract and supplemental agreement thereto with American Municipal Power, Inc. (AMP) and taking other actions in connection therewith regarding participation in the AMP Michigan CAT peaking project and authorize the City Manager and City Clerk to sig the necessary documents.

**CITY OF MARSHALL, MICHIGAN  
RESOLUTION NO. 2023-20**

**A RESOLUTION TO APPROVE THE FORM AND AUTHORIZE THE EXECUTION OF  
A POWER SALES CONTRACT AND SUPPLEMENTAL AGREEMENT THERETO WITH  
AMERICAN MUNICIPAL POWER, INC. AND  
TAKING OTHER ACTIONS IN CONNECTION THEREWITH  
REGARDING PARTICIPATION IN THE  
AMP MICHIGAN CAT PEAKING PROJECT**

Minutes of a regular meeting of the Council of the City of Marshall, held on June 5, 2023 at 7:00 PM.

PRESENT:

ABSENT:

The following preamble and resolution were offered by \_\_\_\_\_, and supported by \_\_\_\_\_.

**WHEREAS**, the City of Marshall, Michigan ("Municipality") owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

**WHEREAS**, Municipality is a member of the Michigan South Central Power Agency ("MSCPA"); and

**WHEREAS**, Municipality is also a member of American Municipal Power, Inc., ("AMP"); and

**WHEREAS**, Municipality and MSCPA have agreements in place under which MSCPA is to supply to Municipality and Municipality is to purchase from MSCPA, all bulk power needs of Municipality related to its municipal electric utility system; and

**WHEREAS**, Municipality and MSCPA, and certain of MSCPA's other member municipalities, acting individually and, along with other municipalities that own and operate electric utility systems, jointly, endeavor to arrange for reliable, reasonably priced supplies of electric power and energy for ultimate delivery to their customers; and

**WHEREAS**, AMP is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric power and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of its Members, such Members, including the Municipality, being, and to be, political subdivisions of their respective states that operate, or whose members operate, electric systems in, as of the date of adoption hereof, Delaware, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia; and

**WHEREAS**, each of the Members owns and operates its electric system for the benefit of its customers; and

**WHEREAS**, certain of the Members, including the Municipality, have determined it requires additional, long-term sources of reliable and reasonably priced electric capacity and energy and has requested that AMP arrange for the same; and

**WHEREAS**, in furtherance of such purpose, Municipality, along with other Members (collectively "Participants") request and AMP agrees and intends to finance, construct, operate and own certain natural gas reciprocating internal combustion engine systems, and interconnection facilities ("Interconnection") interconnected with Municipality's electric utility system to be known collectively as the AMP Michigan CAT Peaking Project ("Project"); and

**WHEREAS**, AMP has resolved, in accordance herewith, to develop, including, as appropriate, the financing, acquisition, construction, ownership and operation of, and arrangements for the acquisition, financing, payment and prepayment of fuel for, its ownership interest in the Project as well as other arrangements related thereto, which AMP and, in certain cases, the Participants, deem necessary to enable AMP to fulfill its obligations hereunder to sell and transmit, or otherwise make available, electric capacity and energy to the Participants pursuant to the AMP Michigan CAT Peaking Project Power Sales Contract (hereinafter "PSC"); and

**WHEREAS**, in order to obtain such sources of electric capacity and energy, the Participants are willing to pay AMP for their respective rights to such electric capacity and energy and transmission service at rates that are sufficient, but only sufficient, to enable AMP to (i) recover all costs and expenses incurred with respect to, and arrangements for the acquisition, financing, payment and prepayment of fuel for, the Project as set forth herein, all other Power Sales Contract Resources obtained by AMP to supplement the Project, and related service arrangements undertaken by AMP to enable it to fulfill its obligations hereunder, and (ii) recover any other expenditures or revenues authorized hereunder.

**WHEREAS**, Municipality desires, and AMP has agreed, that Municipality be a Host Member whereby one or more of the Project's natural gas peaking systems will be located within the Municipality and interconnected to the Municipality's electric distribution system; and

**WHEREAS**, prior to the adoption of this resolution, AMP has (i) kept MSCPA and Municipality informed regarding the developmental process and efforts undertaken by AMP; (ii) afforded representatives of MSCPA and Municipality the opportunity to ask such questions, review such data and reports, conduct such inspections and otherwise perform such investigations with respect to planning and proposed engineering, acquisition, construction and operation of the Project and the terms and conditions of the PSC, as supplemented by the Supplement to Power Sales Contract ("Supplement") authorized below as MSCPA and Municipality deem necessary or appropriate in connection herewith; and

**WHEREAS**, the Supplement provides that, so long as Municipality and MSCPA maintain their contractual agreements under which MSCPA must supply and Municipality must purchase from MSCPA all of Municipality's bulk power needs, and until MSCPA and Municipality file a notice of termination of agency with AMP, MSCPA shall act as agent for Municipality under the PSC, and exercise and perform all rights, duties and obligations of Municipality thereunder, including but not limited to, the right to receive power and energy, and the obligation to pay all Service Fees, Rates and Charges and other amounts owing by Municipality thereunder; provided that in the event MSCPA fails to pay on behalf of Municipality any amounts owing under the PSC, Municipality shall nevertheless be liable therefor; and

**WHEREAS**, the PSC states that any amount payable by Municipality thereunder shall be payable solely from the revenues of Municipality's municipal electric utility system as an operating expense; and

**WHEREAS**, the proposed form of the PSC, as supplemented by the Supplement, has been reviewed by this Council and this Council has been advised on the same; and

**WHEREAS**, it is necessary and desirable to act upon the PSC, including the Supplement:

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARSHALL THAT:**

SECTION 1. The PSC and the Supplement, drafts of which are on file with Municipality Clerk, are hereby approved, and the City Manager is authorized and directed to execute on behalf of Municipality a final form of the PSC and the Supplement, substantially in the form approved by this resolution with such changes as the City Manager may approve as neither inconsistent with this resolution nor materially detrimental to the Municipality, his or her execution of the PSC to be conclusive evidence of such approval.

SECTION 2. That the City Manager is hereby authorized to acquire on behalf of the Municipality, as a Participant, as defined in the PSC, Power Sales Contract Resources (hereinafter "PSCR Share"), as defined in the PSC, without bid, from AMP and to execute and deliver any and all documents necessary to become a Participant in the Project pursuant to the conditions set forth herein and in the PSC and the Supplement and to carry out its obligations thereunder.

SECTION 3. That it is further acknowledged and understood that because the Participants will finalize the precise PSCR Share to be acquired by each Participant electing to enter into the PSC after all such Participants execute and deliver the PSC, the City Manager in connection with the execution and delivery of the PSC, is authorized and directed to determine and acquire Municipality's PSCR Share (not taking into account the Step-Up as defined in the PSC), of up to a nominal amount of 10,000 kilowatts, after consultation with AMP and the other Participants regarding the PSCR Share available pursuant to said PSC, such PSCR Share to be set forth in Appendix A of the PSC, such determination as to such PSCR Share being conclusively evidenced by the adoption of Appendix A to the PSC, as authorized therein.



SECTION 4. That the City Manager of this Municipality, as a part of such officer's official duties, is hereby appointed as Municipality's representative for any meetings or determinations of the Participants or the Participants Committee pursuant to the PSC and is authorized and directed, acting for, in the name of and on behalf of this Municipality, to vote Municipality's PSCR Share with regard to any determinations regarding the Project as set forth in the PSC.

SECTION 5. That the City Manager may appoint, in writing from time to time as necessary, another representative of the Municipality as his or her alternate to carry out the duties set forth in Section 4 hereof.

SECTION 6. That the City Manager is hereby authorized and directed to negotiate one or more site leases for land owned by the Municipality and related interconnection agreements with AMP for the Project's systems that will be located in or near the Municipality and interconnected to the Municipality's electric distribution system.

SECTION 7. As provided in the form of the PSC, Municipality appoints MSCPA as its agent for all purposes under the PSC, unless and until Municipality and MSCPA file a termination of agency with AMP as provided in the Supplement.

SECTION 8. That any necessity of competitive bidding that may arguably be required for the Municipality to execute the Project PSC is hereby waived as in the best interest of the Municipality.

SECTION 9. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION 10. If any section, subsection, paragraph, clause or provision or any part thereof of this resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this resolution shall be unaffected by such adjudication and all the remaining provisions of this resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

Resolution declared adopted this 5th day or June, 2023.

-----  
Michell Eubank, City Clerk

I, Michelle Eubank, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of the resolution adopted by the

City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on June 5, 2023 and that the said meeting was conducted and that the minutes of the meeting were kept and will be or have been made available.

-----  
Michell Eubank, City Clerk

# **COURTNEY & ASSOCIATES**

## ***Public Utility Consultants***

1016 North Blanchard Street, Suite A

Findlay, Ohio 45839

Tel (419) 425-2719

Fax (419) 425-2118

## **MEMORANDUM**

TO: Kevin Maynard

FROM: John Courtney

DATE: May 31, 2023

SUBJECT: AMP Michigan CAT Peaking Project

DISCUSSION: In response to your request, we are submitting this memorandum of recommendation regarding the City of Marshall's (City) participation in the AMP Michigan CAT Peaking Project (CAT Project) (Memorandum). In preparation of the Memorandum, we have reviewed several documents and analyses provided by AMP and others relative to the CAT Project, including the draft Power Sales Contract, the draft Resolution Authorizing Execution of the Power Sales Contract and your memo to the Mayor and City Council regarding the CAT Project (Memo).

Based on our review, we concur with your analysis and conclusion that the CAT Project is the least expensive capacity option available to the City. In addition to being the least expensive capacity option, the CAT Project also provides several benefits to the City, which you have listed in your Memo, not the least of which is providing an additional 10 MW of backup generation in the event of an emergency.

In conclusion, it is our recommendation that the City subscribe for 10 MW of the CAT Project. This resource will provide a long-term hedge against future volatile capacity and energy prices and will provide additional backup generation during power outages.

**POWER SALES CONTRACT  
REGARDING THE  
AMP MICHIGAN CAT PEAKING PROJECT**

**BETWEEN  
AMERICAN MUNICIPAL POWER, INC.  
AND  
CITY OF MARSHALL, MICHIGAN**

**Dated as of \_\_\_\_\_, 2023**



## Table of Contents

| <u>SECTION</u> | <u>HEADING</u>                                                                                             | <u>PAGE</u> |
|----------------|------------------------------------------------------------------------------------------------------------|-------------|
| SECTION 1.     | Definitions and Explanations of Terms .....                                                                | 3           |
| SECTION 2.     | Representations.....                                                                                       | 16          |
| SECTION 3.     | Sale and Purchase.....                                                                                     | 21          |
| SECTION 4.     | AMP Undertakings.....                                                                                      | 22          |
| SECTION 5.     | Rates and Charges; Method of Payment.....                                                                  | 26          |
| SECTION 6.     | Scheduling of Deliveries, Dispatching.....                                                                 | 36          |
| SECTION 7.     | Electric Characteristics; Point of Delivery; Measurement of Electric<br>Capacity and Energy Furnished..... | 38          |
| SECTION 8.     | Metering.....                                                                                              | 39          |
| SECTION 9.     | [Reserved].....                                                                                            | 40          |
| SECTION 10.    | – Reactive Power; Power Factor.....                                                                        | 41          |
| SECTION 11.    | <i>Force Majeure</i> .....                                                                                 | 42          |
| SECTION 12.    | Insurance.....                                                                                             | 43          |
| SECTION 13.    | Accounting.....                                                                                            | 44          |
| SECTION 14.    | Access to Information.....                                                                                 | 45          |
| SECTION 15.    | Bonds; Trust Indenture; Power Sales Contract.....                                                          | 47          |
| SECTION 16.    | Disposition or Termination of AMP Michigan CAT PeakingProject.....                                         | 48          |
| SECTION 17.    | Additional Covenants of Participant.....                                                                   | 49          |
| SECTION 18.    | Default.....                                                                                               | 53          |
| SECTION 19.    | Waiver of Default.....                                                                                     | 58          |
| SECTION 20.    | Relationship to and Compliance with Other Instruments.....                                                 | 59          |
| SECTION 21.    | Tax Matters, Disclosure.....                                                                               | 60          |
| SECTION 22.    | Modification or Amendment of this Contract.....                                                            | 63          |
| SECTION 23.    | Opinions as to Validity.....                                                                               | 64          |
| SECTION 24.    | Notices and Computation of Time.....                                                                       | 65          |
| SECTION 25.    | Governing Law.....                                                                                         | 66          |
| SECTION 26.    | Severability.....                                                                                          | 67          |
| SECTION 27.    | Assignment of Contract.....                                                                                | 68          |
| SECTION 28.    | Beneficiaries.....                                                                                         | 70          |
| SECTION 29.    | Survivorship of Obligations.....                                                                           | 71          |

|   |                                                    |    |
|---|----------------------------------------------------|----|
| 1 | SECTION 30. Dispute Resolution. ....               | 72 |
| 2 | SECTION 31. Liability.....                         | 74 |
| 3 | SECTION 32. Term of Contract.....                  | 75 |
| 4 | SECTION 33. Additional Sites and Systems. ....     | 77 |
| 5 | SECTION 34. Additional Host Member Provisions..... | 78 |
| 6 | SECTION 35. Counterparts.....                      | 80 |
| 7 | SECTION 36. Other Agencies.....                    | 81 |
| 8 | SECTION 37. PSCR Share Allocation. ....            | 82 |

|    |                                                                                      |
|----|--------------------------------------------------------------------------------------|
| 1  |                                                                                      |
| 2  | <b><u>Appendices</u></b>                                                             |
| 3  | Appendix A – Schedule of Participants and PSCR Shares (Preliminary Estimates)        |
| 4  | Appendix B - AMP Michigan CAT Peaking Project Rate Schedules                         |
| 5  | Appendix B-1 – Power Sales Rate Schedule                                             |
| 6  | Appendix B-2 – Example of the Calculation of Project Aggregate LMP                   |
| 7  | Appendix B-3 – Sample Monthly Invoice                                                |
| 8  | Appendix C – Points of Delivery (Preliminary)                                        |
| 9  | Appendix C-1 – Secondary Points of Delivery                                          |
| 10 | Appendix D – Project Description (As of _____, 2023)                                 |
| 11 | Appendix E – Development Costs and Interconnection Costs                             |
| 12 | Appendix F – Related Agreements                                                      |
| 13 | Appendix G – Trust Indenture                                                         |
| 14 | Appendix H – Form of Legal Counsel Opinion                                           |
| 15 | Appendix I – Special Provisions – Scheduling and Dispatching                         |
| 16 | Appendix J – Notices                                                                 |
| 17 | Appendix K – Disclosures                                                             |
| 18 | Appendix L – AMP Michigan CAT Peaking Project Participants Meetings and Participants |
| 19 | Committee Regulations                                                                |

1                                   **POWER SALES CONTRACT**  
2                                   **REGARDING THE**  
3                                   **AMP MICHIGAN CAT PEAKING PROJECT**  
4                                   **BETWEEN**  
5                                   **AMERICAN MUNICIPAL POWER, INC.**  
6                                   **AND**  
7                                   **CITY OF MARSHALL, MICHIGAN**  
8  
9

10           This Power Sales Contract (as used herein capitalized words have the meaning  
11 set forth in Section 1 hereof), dated as of \_\_\_\_\_, 2023 is made and  
12 entered into between American Municipal Power, Inc. ("AMP") on the one hand, and its  
13 Members listed on the Schedule of Participants attached hereto as Appendix A (the  
14 "Participants"), including the City of Marshall, Michigan ("Participant").

15                                   **WITNESSETH:**

16           WHEREAS, AMP is an Ohio nonprofit corporation, organized to own and operate  
17 facilities, or to provide otherwise, for the generation, transmission or distribution of  
18 electric Capacity and Energy as defined herein, or any combination thereof, and to  
19 furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of its  
20 Members, such Members, including Participant, being, and to be, Political Subdivisions  
21 of their respective states that operate Electric Systems in, as of the date hereof  
22 Delaware, Indiana, Kentucky, Ohio, Maryland, Michigan, Pennsylvania, Virginia and  
23 West Virginia;

24           WHEREAS, Participant is a Political Subdivision of the State of Michigan which  
25 owns and operates its Electric System for the benefit of its customers, or members, and  
26 is a Member of AMP;

27           WHEREAS, in order to satisfy the electric Capacity and Energy requirements of  
28 its Electric System, Participant has heretofore purchased, or desires to do so in the  
29 future, economical and reliable Capacity, Energy and Transmission Service from AMP;

30           WHEREAS, Participant acting individually and, along with other Members which  
31 own and operate Electric Systems, jointly, endeavors to arrange for reliable, reasonably



1 priced supplies of electric Capacity, Energy and Transmission Service for the ultimate  
2 benefit of its customers or members;

3 WHEREAS, Participant has determined it requires additional, long-term sources  
4 of Capacity and Energy from peaking facilities and has requested that AMP arrange for  
5 the same;

6 WHEREAS, in furtherance of such purpose, each of the Participants requests  
7 and AMP agrees and intends that it will develop, including, as appropriate, the  
8 financing, acquisition, construction, ownership and operation, of the Project;

9 WHEREAS, AMP will offer shares of the Capacity Attributes and Energy derived  
10 from the Systems at an economical price to Participants; and

11 WHEREAS, AMP has offered to enter into this Power Sales Contract so that  
12 AMP can generate and sell to Participants, and Participants will agree to take and pay  
13 for, a PSCR Share including payments with respect to the Bonds;

14 **NOW, THEREFORE**, for and in consideration of the mutual covenants and  
15 agreements herein set forth, it is agreed by and between Participant and AMP as  
16 follows:

## SECTION 1

### **SECTION 1. Definitions and Explanations of Terms**

Capitalized terms defined in this Contract shall have the meaning ascribed to them herein. Except where the context otherwise requires, words impacting the singular number shall include the plural number and vice versa, and words impacting persons shall include firms, associations, public and private corporations, and any other legal entities. As used herein:

Additional Sites shall have the meaning set forth in Section 33.

AMP shall mean American Municipal Power, Inc.

AMP Michigan Caterpillar ("CAT") Peaking Project or Project shall mean (i) all the Products generated by or made available to AMP from the Sites and Systems developed by AMP and any related rights and interests (Appendices A, C and D shall be amended to reflect any additions to or changes in the AMP Michigan CAT Peaking Project, authorized or undertaken in accordance with Section 33 as well as other provisions of this Contract); and (ii) the Systems, all Additional Sites and all related permits, licenses, easements and other real and personal property rights and interests, together with all additions, improvements, renewals and replacements to said electric generating facilities necessary to keep the Systems in good operating condition or to prevent a loss of revenues therefrom or as required by any governmental agency having jurisdiction necessary for AMP to arrange for the beneficial use of the Products made available to the Participants through AMP.

Appendix shall mean any of the attachments to this Contract, all of which are incorporated herein and made a part hereof as the same shall be modified, updated or replaced from time to time pursuant to the terms hereof.

Behind-the-Meter-Generation means a generation unit that delivers energy to load that is located behind a commercial pricing node and is not scheduled or settled by MISO.

## SECTION 1

Bonds shall mean revenue bonds, notes, bank loans, commercial paper or any other evidences of indebtedness, without regard to the term thereof, whether or not certificated, whether or not any issue thereof shall be subordinated as to payment to any other issue thereof, from time to time issued by AMP (including any legal successor thereto) to finance or refinance any cost, expense or liability paid or incurred or to be paid or incurred by AMP with respect to the AMP Michigan CAT Peaking Project, including Development Costs, Interconnection Costs, costs of issuance, Fuel procurement, and any other Project Costs necessary or convenient to arrange for the beneficial use of the Products by the Participants, including rate stabilization, or otherwise paid or incurred or to be paid or incurred by AMP in connection with the performance of its obligations under this Power Sales Contract. Bonds shall also include any financial or commodity hedge or swap instrument and the effect thereof, where the context is appropriate. For the avoidance of doubt, the term Bonds shall include AMP's obligations, certificated or not, for money borrowed on a temporary or interim basis pending the issuance of long-term Bonds.

Business Day shall mean a day other than a Saturday, Sunday or national or state holiday in any state in which a Party is domiciled.

Capacity shall mean the ability of the Systems to produce kWhs, MWhs, ancillary services or other Capacity Attributes measured in kW or MW.

Capacity Attributes shall mean any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other Capacity-related value or attribute of the Systems, other than Transmission Attributes, that may provide or add value in any manner to the Systems.

Capacity Charge – see Demand Charge.

Commercial Operation shall mean the System on a respective Site is determined to be in service, after physical completion and completion of all required testing, for all

## SECTION 1

1 commercial operating purposes without material restriction, as confirmed by a certificate  
2 of an independent engineer selected by AMP.

3 Contract or Power Sales Contract shall mean this Power Sales Contract together  
4 with all Appendices, amendments and supplements hereto as permitted by the  
5 provisions hereof.

6 Delivery Point(s) – see Point(s) of Delivery.

7 Demand Charge or Capacity Charge shall mean the rate or charge per kW to  
8 Participants principally designed to recover any fixed Project Costs which comprise  
9 Revenue Requirements as set forth in Section 5 hereof and the Rate Schedule  
10 including any payments respecting Bonds and as are not otherwise recovered by AMP.

11 Development Costs shall mean all development costs incurred by AMP in  
12 furtherance of the planning, investigating, siting, licensing, engineering, financing,  
13 permitting, equipping, land acquisition, construction, procurement and related activities  
14 in connection with the Project, the estimated costs of which are set forth on Appendix E.

15 Effective Date shall have the meaning set forth in Section 32.

16 Electric System shall mean each Participant's electric utility system.

17 Energy shall mean electric energy in kWh or MWh delivered by the Systems to  
18 the Points of Delivery as specified in Appendix C.

19 Energy Attributes shall mean the electric energy generated by the Project as  
20 metered at the Delivery Point, expressed in kWhs at the nominal voltage specified in the  
21 Interconnection Agreement. Energy Attributes shall be net of (i) any electric energy  
22 generated by the Project and consumed by the Project prior to delivery to the Delivery  
23 Point and (ii) any transformation losses between the Project and the Delivery Point.

24 Energy Charge shall mean the rate or charge per kWh to Participants, principally  
25 designed to recover variable Project Costs, including those variable costs that comprise



## SECTION 1

1 Revenue Requirements, as set forth in Section 5 hereof and in the Rate Schedule, not  
2 otherwise recovered hereunder.

3 Environmental Fund shall mean the sub-fund of the Reserve and Contingency  
4 Fund referred to in Section 5(A)(xi) that may be used from time to time to mitigate the  
5 Project's environmental impacts or to moderate volatility in the costs of environmental  
6 compliance, including but not limited to the funding of reserves for, or the purchase  
7 and/or sale of, allowances or off sets from Participants, AMP or others.

8 FERC shall mean the Federal Energy Regulatory Commission and its  
9 successors.

10 Financial Transmission Rights or FTRs shall mean a financial instrument  
11 awarded to bidders in the FTR auctions conducted by an RTO or other transmission  
12 operator that entitles the holder to a stream of revenues or charges based on factors  
13 such as the hourly day ahead congestion price differences across a transmission path.

14 Fixed Demand Charge means the amounts included within the Demand Charge  
15 required for payment by AMP for the scheduled principal of and premium, if any, and  
16 interest on any Bonds.

17 Force Majeure means any event or circumstance which wholly or partly prevents  
18 or delays the performance of any material obligation arising under this Contract, other  
19 than the obligation to pay amounts due, but only to the extent (1) such event is not  
20 within the reasonable control, directly or indirectly, of the Party seeking to have its  
21 performance obligation(s) excused thereby, (2) the Party seeking to have its  
22 performance obligation(s) excused thereby has taken all reasonable precautions and  
23 measures in order to prevent or avoid such event or mitigate the effect of such event on  
24 such Party's ability to perform its obligations under this Contract and which by the  
25 exercise of due diligence such Party could not reasonably have been expected to avoid  
26 and which by the exercise of due diligence it has been unable to overcome, and (3)  
27 such event is not the direct or indirect result of the fault or negligence of the Party  
28 seeking to have its performance obligations excused thereby.

## SECTION 1

1  
2        Fuel shall mean diesel fuel, natural gas, biodiesel fuel, diesel fuel storage or  
3 related rights, contracts or assets, and any hedges or other financial devices to mitigate  
4 prices or risks of the same, as are necessary or convenient to operate the Project.

5        Host Member shall mean each Participant, acting solely in its capacity as an  
6 municipally-owned electric utility, which has a System connected to such Participant's  
7 Electric System.

8        Host Site shall mean the Site of a Host Member.

9        Interconnection Costs shall mean costs of interconnection and interconnection  
10 facilities from a System's Delivery Point to the Host Member's Electric System, including  
11 all costs of facility upgrades and planning studies required by the Transmission Owner,  
12 an appropriate allocation of any operating and maintenance costs of such facilities, all to  
13 the extent incurred by AMP or the Host Member and reimbursed by AMP more  
14 particularly described on Appendix E.

15        kW shall mean kilowatt (AC), unless otherwise indicated.

16        kWh shall mean kilowatt hour (AC), unless otherwise indicated.

17        Load Modifying Resource or LMR shall mean the behind the meter generation or  
18 storage system that is eligible to receive MISO capacity accreditation under the MISO  
19 resource adequacy requirements. The term LMR as used in this contract shall apply to  
20 any future name MISO might assign to the use of Behind-the-Meter Generation or  
21 storage systems that are eligible to qualify as capacity resources.

22        Locational Marginal Pricing (LMP) shall mean the hourly integrated market clearing  
23 marginal price for Energy at the location the Energy is delivered or received.

24        Long Term shall mean periods greater than one (1) year.

25        Member shall mean any Political Subdivision that is a member of AMP.

## SECTION 1

Michigan South Central Power Association (MSCPA) shall mean the public body politic and corporate organized as a joint agency by its members pursuant to P.A. 1976, No. 448 to, among other things, supply electric power and energy for the present and future needs of its members. MSCPA also takes MISO transmission service on behalf of Participant.

MISO RTO shall mean the Midcontinent Independent System Operator, Inc.

Month or Monthly shall mean or refer to a calendar month.

MW shall mean megawatt (AC), unless otherwise indicated.

MWh shall mean megawatt hour (AC), unless otherwise indicated.

NERC shall mean the North American Electric Reliability Corporation, its successors and assigns, and includes related regional entities such as ReliabilityFirst Corporation and their successors and assigns.

Net Congestion, Losses, FTR Charge shall include all costs and credits associated with delivery of Capacity and Energy from the Delivery Point including, but not limited to, marginal losses, marginal congestion, FTR purchase costs and, FTR congestion credits.

Network Integration Transmission Service or NITS shall mean the transmission service that allows AMP to deliver Energy from the Project to a Secondary Delivery Point.

O&M Expenses shall mean the ordinary and usual operating expenses of a Participant's Electric System including purchased Capacity and Energy expense and all amounts payable by Participant to or for the account of AMP under this Contract, including all other items included in operating expenses under generally accepted accounting principles as adopted by the Governmental Accounting Standards Board or other applicable authority; provided, however, that if any amount payable by a Participant under this Contract is prohibited by applicable law or by a contract existing on the Effective Date hereof from being paid as an O&M Expense of Participant's

## SECTION 1

Electric System, such amount shall be payable from any available funds of Participant's Electric System and shall constitute an O&M Expense of Participant's Electric System at such time as such law or contract shall permit the same or be terminated.

Participant shall mean each Member and, if approved by the AMP Board of Trustees, other municipal electric systems or joint action agencies comprised of Political Subdivisions that have applied for AMP membership and that operate Electric Systems, and in either case have entered into this Contract and are listed on the Schedule of Participants attached as Appendix A, including the Member named in the Parties clause of this Contract and shall include, as the context requires, their officers, representatives and agents.

Participants Committee shall mean a committee consisting of Participants, the members of which, in the aggregate, have not less than a majority of the PSCR Shares, organized and operating in accordance with Appendix L.

Party with reference to this Contract shall mean AMP or Participant.

Point(s) of Delivery or Delivery Point(s) shall mean (i) the points as set forth in Appendix C at which AMP shall be required to make available or deliver Capacity and Energy, at the Project Rate, to or for the benefit of Participants from the various Sites included in the Project pursuant to this Contract and (ii) Replacement Power, the point or points at which Capacity or Energy is received by or made available to AMP for delivery to the Participants, and, in the case of (i) and (ii), at the Project Rate.

Political Subdivision shall mean a city, village, town, municipality, borough, joint action agency or other public entity that constitutes a political subdivision of a state, within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended and Treas. Reg. Section 1.103-1, and as the same may be modified or amended from time to time.

Power Cost Adjustment Factor shall adjust either or both of the Capacity Charge and the Energy Charge upward or downward to reflect any and all out of period adjustments not covered in the Capacity Charge, Energy Charge, Net Congestion,

## SECTION 1

Losses or FTR Charge as set forth in Section 5 hereof and in the Rate Schedule, that are required to assure that the total costs invoiced for Capacity and Energy delivered under this Contract are equal to the expenses incurred, or expected to be incurred, in providing the Products hereunder.

Power Sales Contract or Contract shall mean this Power Sales Contract, together with all Appendices, amendments and supplements hereto as permitted by the provisions hereof.

Power Sales Contract Resources or PSCR shall mean, to the extent acquired or utilized by AMP to meet its obligations to deliver electric Capacity and Energy to the Participants at the Point of Delivery pursuant to this Contract, (i) the Products and (ii) all sources of Replacement Power, whether real or personal property or contract rights.

Products shall mean the net Energy generated by the Systems, and associated Transmission Attributes and Capacity Attributes.

Project - see AMP Michigan CAT Peaking Project.

Project Aggregate LMP shall mean the calculated hourly LMP value equal to the production weighted average hourly LMP for all Systems.

Project Costs shall mean (i) all Development Costs, costs for the operation and maintenance of the Project, and Interconnection Costs, including without limitation, the costs of any necessary interconnection facilities or upgrades required to interconnect any of the Systems of the Project with a Host Member, Transmission Owner or with the respective RTO or any other transmission provider and make available or transmit Products to or on behalf of the Participants, any payments or prepayments for acquisition of an arrangements for Fuel, or costs otherwise paid or incurred or to be paid or incurred by or on behalf of the Participants or AMP in connection with its performance of its obligations under this Contract, any Trust Indenture or any Related Agreement, and (ii) any taxes or payments in lieu of taxes, initial inventories, including the purchase of any inventories of emission allowances or other environmental rights, working capital, spares and other start-up related costs, related environmental



## SECTION 1

1 compliance costs, legal, engineering, accounting, advisory and other financing costs  
2 relating thereto, including the funding of reserves established under a Trust Indenture,  
3 and the refurbishing, improving, repairing, replacement, retiring, decommissioning or  
4 disposing of the Project.

5 Project Rate shall mean the total delivered cost to any Participant for Demand  
6 Charges, Energy Charges and any other changes or power cost adjustments at the  
7 Points of Delivery, as specified in the Rate Schedule.

8 PSCR Share for any Participant expressed in kilowatts (kW) shall mean such  
9 Participant's nominal entitlement to Products from the Project such that the sum of all  
10 PSCR Shares (in kW) equals the total Project Capacity (in kW) as shown in Appendix A,  
11 subject to adjustment as set forth herein. PSCR Share for any Participant expressed as  
12 a percentage (%), rounded to the nearest one-hundredth of one percent, shall mean the  
13 result derived by dividing such Participant's PSCR Share in kW by the total of all of the  
14 Participants' PSCR Shares (including such Participant's PSCR Share) in kW, as shown  
15 in Appendix A, subject to adjustment as set forth herein, such that the sum of all such  
16 PSCR Shares expressed as a percentage (%) is at all times one hundred percent  
17 (100%). While the Participants' PSCR Shares in kW may change on account of the  
18 rerating or availability of such Capacity, the Participants' PSCR Shares expressed in  
19 percentage (%) will not change on account of any rerating or availability.

20 Prudent Utility Practice shall mean any of the practices, methods and acts which,  
21 in the exercise of reasonable judgment, in the light of the facts, including but not limited  
22 to the practices, methods and acts engaged in or approved by a significant portion of  
23 the United States electrical utility industry prior thereto, known at the time the decision  
24 was made, would have been expected to accomplish the desired result at the lowest  
25 reasonable cost consistent with reliability, safety and expedition. It is recognized that  
26 Prudent Utility Practice is not intended to be limited to the optimum practice, method or  
27 act to the exclusion of all others, but rather it is a spectrum of possible practices,  
28 methods or acts which could have been expected to accomplish the desired result at  
29 the lowest reasonable cost consistent with reliability, safety and expedition.

## SECTION 1

1        Rate Schedule shall mean the schedule of rates and charges attached hereto as  
2 Appendix B, as the same may be revised from time to time in accordance with the  
3 provisions of Section 5 hereof.

4        Rate Stabilization Fund shall have the meaning set forth in a Trust Indenture or  
5 otherwise established by the Participants Committee as a Project fund and refers to a  
6 special fund, including any sub-funds, established by AMP to accumulate funds  
7 sufficient to provide an immediately available source of funds to stabilize or levelize  
8 rates hereunder.

9        Related Agreements shall mean (i) any agreements for Transmission Service for  
10 any of the Systems included in the Project to the appropriate transmission or distribution  
11 system such as to a Participant, MSCPA, the MISO RTO, or other transmission owner,  
12 including, as set forth in Appendix F, any Interconnection Agreements or agreements for  
13 Supplemental Transmission Service and any Additional Sites, any other agreements for  
14 Transmission Service to enable AMP to meet its obligations to make available or deliver  
15 electric Capacity and Energy to each Participant at its respective Secondary Points of  
16 Delivery or otherwise pursuant to this Contract, any agreements for the purchase of  
17 Replacement Power, any Long Term agreements entered into by AMP for the  
18 acquisition of Fuel or Replacement Power, as the same may be amended from time to  
19 time, and (ii) any agreement entered into pursuant to Sections 33 or 36 hereof, all as  
20 the same may be amended from time to time.

21        Replacement Power shall mean capacity and energy purchased or sold by AMP  
22 to be made available or for delivery on or after the Commercial Operation of any System  
23 (i) to account for the difference between scheduled output of the Project's generation  
24 facilities and actual output of the Project's generation facilities; or (ii) to replace all or  
25 any portion of the Project's installed capacity through a MISO Planning Resource  
26 Auction (or successor) or from a bilateral capacity purchase during periods in which any  
27 System is expected, for any reason, to be derated or otherwise incapable of generating  
28 its full nominal capability; or (iii) when, with the approval of a Super Majority of the  
29 Participants, the purchase from or sale to the market of capacity or the entry into

## SECTION 1

reserve sharing arrangements or like transactions, will lower the expected Project Rate or is consistent with Prudent Utility Practice.

Reserve and Contingency Fund shall have the meaning set forth in a Trust Indenture and refers to a special fund, including any sub-funds, established by AMP to accumulate funds sufficient to provide an immediately available source of funds for the extraordinary maintenance, repair, overhaul and replacement of the Project to mitigate environmental impacts, achieve environmental compliance or purchase allowances (Environmental Fund) to stabilize or mitigate rate volatility or rate increases to the Participants (Rate Stabilization Fund) and to meet other requirements of the Trust Indenture for which other funds are not, by the terms of the Trust Indenture, immediately available.

Revenue Requirements shall have the meaning assigned to such term in Section 5(A).

RTO shall mean any one of the regional transmission organizations approved by the FERC or its successors or assigns, the territory of which includes the transmission systems to which a Point of Delivery is connected.

Service Fee shall mean AMP's Service Fee B charge of up to one mill (\$0.001) per kWh for all Energy delivered hereunder at the Points of Delivery under this Contract. As of January 1, 2023, said charge is \$0.00058 per kWh. Said charge may be prospectively increased or decreased at the sole option of AMP's Board of Trustees at any time provided, however, that except as provided hereunder, such fee shall not exceed one mill (\$0.001) per kWh. Any such increases are limited, however, to an additional one-tenth of one mill (\$0.0001) per kWh for Energy delivered hereunder on and after January 1 of each year this Contract is in effect; provided, however, that (i) in the event AMP's Board of Trustees elects not to increase said charge in any such year, the charge may be increased in any following year by an additional one-tenth of one mill (\$0.0001) per kWh for each year said charge was not increased; and (ii) at the sole option of AMP's Board of Trustees, it may convert and replace said charge per kWh to a system of charges based upon Demand (in kW) and Energy (in kWh), provided,

## SECTION 1

however, that any such Demand and Energy charges may not operate to cause any Participant to incur Service Fees in excess of what would have been allowable under the “per kWh” method utilizing the actual capacity factor of the Project. Service Fee B may be increased above \$0.001 per kWh with the approval of both the AMP Board of Trustees and the Participants Committee.

Site(s) shall mean the individual location of reciprocating internal combustion engine natural gas peaking facilities that are part of the Project.

Step Up Power shall have the meaning set forth in Section 18(B).

Super Majority shall mean not less than seventy-five percent (75%) of the weighted vote, based upon PSCR Shares of those present and voting for, respectively, (i) votes in all Participants meetings and (ii) votes at Participants Committee meetings.

System or Systems shall mean a natural gas engine, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, natural gas line to be installed at a Site.

Tax Exempt Obligations shall have the meaning set forth in Section 21.

Transmission Attributes shall mean any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific or any other transmission related value or attribute of the Project that may provide or add value in any manner to the Systems.

Transmission Owner shall mean the incumbent owner of transmission facilities to which the Host Member's distribution system is interconnected, including but not limited to DTE Electric (“DTE”) and Michigan Electric Transmission Company, LLC (“METC”).

**Commented [EH1]:** There's a marked note about ITC Holdings on the PSC pdf. I'm not sure if this is to be added to the list since it appears that METC is part of ITC Holdings...

Transmission Service shall mean all transmission or delivery arrangements, together with all related or ancillary services rights and facilities, to the extent the same are necessary or prudent to provide for the availability or delivery, whether actual or contractual, of Capacity and Energy hereunder to the Points of Delivery, including any congestion or other applicable RTO charges.

## SECTION 1

1        Trust Indenture shall mean any one or more trust indentures, trust agreements,  
2        loan agreements, resolutions or other similar instruments providing for the issuance and  
3        securing of Bonds.

4        Utility Governing Body shall mean, as to any Participant, the governing body of  
5        the Participant identified in paragraph 3 of the legal opinion, in substantially the form of  
6        Appendix H hereto, furnished to AMP by such Participant pursuant to Section 23 hereof  
7        upon its execution and delivery of this Contract.

8        Weighted Vote shall mean the majority vote, based upon PSCR Shares of those  
9        present and voting, at any meeting at which a quorum is present.



## SECTION 2

### SECTION 2. Representations.

(A) Unless otherwise noticed in writing to Participant prior to the Effective Date, AMP represents that, as of the Effective Date:

(i) AMP is a nonprofit corporation duly created and validly existing pursuant to the Constitution and statutes of the State of Ohio, and the Board of Trustees of AMP is responsible for the management of its affairs.

(ii) AMP has full legal right and authority to enter into this Power Sales Contract, to carry out its obligations hereunder and to sell the Products as provided herein.

(iii) AMP's Board of Trustees duly approved this Power Sales Contract and authorized the execution and delivery hereof, on behalf of AMP, by action duly and lawfully adopted at a meeting duly called and held at which a quorum was present and acting throughout.

(iv) This Power Sales Contract has been executed and delivered by the appropriate officers of AMP and, assuming Participant has all the requisite power and authority to execute and deliver and has duly authorized, executed and delivered this Contract, as between AMP and Participant, constitutes a legal, valid and binding obligation of AMP enforceable in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and by equitable principles.

(v) The execution and delivery by AMP of this Power Sales Contract and the performance by AMP of its obligations hereunder does not and will not contravene any law in existence on the date of execution and delivery of this Contract or any order, injunction, judgment, decree, rule or regulation in existence on the date of execution and delivery of this Contract of any court or administrative agency having jurisdiction over AMP or its property or result in a breach or violation of any of the terms and provisions of, or constitute a default

## SECTION 2

1 under, any bond ordinance, trust agreement, indenture, mortgage, deed of trust  
2 or other agreement in existence on the date of execution and delivery of this  
3 Contract to which AMP is a party or by which it or its property is bound.

4 (vi) All approvals, consents or authorizations of, or registrations or  
5 filings with, any governmental or public agency, authority or person required on  
6 the part of AMP in connection with the execution, delivery and performance of  
7 this Contract have been obtained or made, other than such approvals, consents,  
8 authorizations, registrations, or filings not yet required to have been obtained or  
9 submitted.

10 (vii) Except as set forth in Appendix K, there is no litigation or other  
11 proceedings pending or, to the knowledge of AMP, threatened against AMP in  
12 any court, regulatory agency or other tribunal of competent jurisdiction (either  
13 State or Federal) questioning the creation, organization or existence of AMP or  
14 the validity, legality or enforceability of this Contract or the authority of AMP or, to  
15 AMP's knowledge, Participant to perform as contemplated by the terms of this  
16 Contract, other than any proceeding which may be brought by or on behalf of  
17 AMP or Participant to validate this Power Sales Contract or any Bonds issued  
18 under a Trust Indenture.

19 (viii) The facts, descriptions and other information regarding this  
20 Contract and the AMP Michigan CAT Peaking Project, and Product supply  
21 matters provided by AMP have been prepared by or on behalf of AMP, in good  
22 faith and based on the facts known to AMP, and AMP has no knowledge or  
23 reason to believe there exists any information that has been withheld from  
24 Participant that would cause such information to be materially misleading.

25 (B) Unless otherwise noticed in writing to AMP prior to the Effective Date,  
26 Participant represents to AMP that, as of the Effective Date:

## SECTION 2

1 (i) Participant is a Political Subdivision duly created and validly  
2 existing pursuant to the Constitution and laws of its domicile State or State, and  
3 is a Member of AMP;

4 (ii) Participant has full legal right and authority to enter into this  
5 Contract, to carry out its obligations hereunder and to furnish the electric  
6 Capacity and Energy to its customers made available by AMP hereunder on a  
7 take or pay basis;

8 (iii) The governing body that has the requisite authority to authorize an  
9 appropriate officer of Participant to execute and deliver this Contract in the name  
10 of, and on behalf of, Participant is the Utility Governing Body. The Utility  
11 Governing Body duly approved this Contract and its execution and delivery on  
12 behalf of Participant by legislative action duly and lawfully adopted at a meeting  
13 or meetings duly called and held pursuant to any necessary public notice at  
14 which any necessary quorums were present and acting throughout in compliance  
15 with any applicable open meetings requirements;

16 (iv) This Contract has been duly executed and delivered by the  
17 appropriate officers of Participant so authorized or directed pursuant to legislative  
18 action of its Utility Governing Body, and, assuming that AMP has all the requisite  
19 power and authority to execute and deliver and has duly authorized, executed  
20 and delivered this Contract, this Contract, as between AMP and Participant,  
21 constitutes a legal, valid and binding obligation of Participant enforceable in  
22 accordance with its terms, except to the extent enforceability may be limited by  
23 bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting  
24 creditors' rights generally and by equitable principles;

25 (v) The execution and delivery of this Contract by Participant and the  
26 performance by Participant of its obligations hereunder do not and will not  
27 contravene any law in existence on the date of execution and delivery of this  
28 Contract or any order, injunction, judgment, decree, rule or regulation in  
29 existence on the date of execution and delivery of this Contract of any court or

## SECTION 2

1 administrative agency having jurisdiction over the Participant or its property or  
2 result in a breach or violation of any of the terms and provisions of, or constitute  
3 a default under, any bond ordinance, trust agreement, indenture, mortgage, deed  
4 of trust or other agreement in existence on the date of execution and delivery of  
5 this Contract to which Participant is a party or by which it or its property is bound;

6 (vi) All approvals, consents or authorizations of, or registrations or  
7 filings with, any governmental or public agency, authority or person required on  
8 the part of Participant in connection with the execution, delivery and performance  
9 of this Contract have been obtained or made;

10 (vii) Except as disclosed in writing to AMP prior to the execution and  
11 delivery of this Contract and described in Appendix K, Participant has the power  
12 and authority to establish, collect and revise the rates charged to the customers  
13 of its Electric System in accordance with this Contract and such rates are not  
14 subject to regulation by any regulatory authority of its domicile State or  
15 Commonwealth or the United States of America;

16 (viii) Except as disclosed in writing to AMP prior to the execution and  
17 delivery of this Contract and described in Appendix K, the obligations of  
18 Participant to make payments to AMP pursuant to this Contract are payable as  
19 O&M Expenses of Participant's Electric System and, neither Participant nor its  
20 Electric System has outstanding any bonds, notes or other evidences of  
21 indebtedness payable from any revenues of its Electric System prior to or on a  
22 parity with its obligations to make payments to AMP under this Contract;

23 (ix) Except for pending or threatened litigation, if any, disclosed in  
24 writing to AMP prior to the execution and delivery of this Contract by Participant  
25 and set forth in Appendix K, there is no litigation or other proceedings pending or,  
26 to the best knowledge of Participant, threatened against Participant in any court,  
27 regulatory agency or other tribunal of competent jurisdiction (either local, State or  
28 Federal) questioning the creation, organization or existence of Participant or its  
29 Electric System or the title to any property material to the operation of its Electric

## SECTION 2

1 System or, if the Participant in a Host Member, any Host Site owned or leased by  
2 Participant, or the validity, legality or enforceability of this Contract other than any  
3 proceeding which may be brought by or on behalf of AMP or any Participant to  
4 validate this Power Sales Contract or any Bonds issued under a Trust Indenture;

5 (x) Prior to the execution and delivery of this Contract by Participant,  
6 AMP has afforded the duly authorized representatives of Participant the  
7 opportunity to ask such questions, review such data and reports, conduct such  
8 inspections and otherwise perform such investigations with respect to planning  
9 and proposed engineering, acquisition, construction and operation of the Project  
10 and the terms and conditions of this Contract, as Participant deems necessary or  
11 appropriate in connection with its entering into this Contract;

12 (xi) After consideration of the potential risks and benefits of the Project  
13 and this Contract, Participant has determined it is reasonable and in its best  
14 interests to enter into this Contract for the purpose of purchasing from AMP  
15 pursuant to this Contract on a take or pay basis the Products and to pay AMP at  
16 the rates determined in accordance with this Contract and sufficient to enable  
17 AMP to recover all of its Revenue Requirements with respect to this Contract and  
18 the Project, undertaken by AMP to enable it to meet its obligations hereunder;

19 (xii) By the execution and delivery of this Contract, Participant  
20 authorizes, empowers and directs AMP to perform such undertakings for the  
21 benefit of Participant as are specified in this Contract, subject to such limitations  
22 and standards as are set forth herein.



## SECTION 3

### **SECTION 3. Sale and Purchase.**

(A) AMP hereby agrees to sell to each Participant, and each Participant agrees to buy from AMP, their PSCR Share (in kW) of the Project subject to increase or reduction as provided in Section 37. AMP's obligations to furnish Power Sales Contract Resources hereunder shall be principally those set forth in Section 4, in addition to those set out in other provisions of this Contract. Each Participant's obligations to take or pay for such Power Sales Contract Resources shall be principally those set forth in Section 5 and the Rate Schedule (Appendix B), in addition to those set out in other provisions of this Contract.

(B) Subject to the absolute payment obligations of each Participant set forth in Section 5(I), AMP is authorized and requested on behalf of the Participants to finance, through the issuance of the Bonds, all or a portion of the Development Costs, and other amounts in respect of AMP's Revenue Requirements.

(C) If at any time any Participant has capacity and/or energy in excess of its needs, it may request that AMP sell and deliver any or all of said Participant's PSCR share of the Products available hereunder, and AMP shall use commercially reasonable efforts in consultation with such Participant to attempt to sell such surplus Products at not less than a minimum price approved by such Participant, to any other entity on such terms and for such period as AMP deems appropriate and as AMP deems not adverse to the tax or regulatory status or other interests of AMP, the Participants or any Bonds. All net proceeds (proceeds received less any expenses incurred in connection with the sale) received by AMP from any such sales shall be credited against the Revenue Requirements allocable to such Participant on its next invoice rendered pursuant to Section 5 hereof, provided that nothing contained herein shall relieve such Participant from any obligation hereunder, unless and to the extent AMP shall actually receive net proceeds from such sales and only to the extent of such net proceeds received.

## SECTION 4

### SECTION 4. AMP Undertakings.

(A) AMP, in good faith and in accordance with the provisions of this Contract and Prudent Utility Practice:

(i) shall undertake, or cause to be undertaken, the planning, developing, engineering, acquisition, construction and equipping, with or without formal bidding, of the Project and its Fuel supply, the financing of costs of the same (including financing costs, legal, engineering, accounting and financial advisory fees and expenses and the Development Costs), and the operating, maintaining, refurbishing, replacing, retiring, decommissioning and disposing of the Project including without limitation acquisition of an arrangements for Fuel, and to obtain, or cause to be obtained, all Federal, state and local permits, licenses and other rights and regulatory approvals as are necessary or convenient to accomplish its obligation hereunder;

(ii) shall utilize, to the extent available and in the best interests of the Participants, the Project as the primary Power Sales Contract Resource to fulfill its obligations to make available or deliver Products to or on behalf of each Participant at Points of Delivery and any respective Secondary Points of Delivery hereunder and utilize Replacement Power, when prudent and appropriate, as a secondary Power Sales Contract Resource;

(iii) may undertake, or cause to be undertaken, the acquisition of Replacement Power, as AMP deems necessary or desirable to enable AMP to make available or deliver scheduled electric capacity and energy to the Participants at their respective Secondary Points of Delivery in such amounts and on such terms as are set forth herein; provided, however, that any obligations for any such Replacement Power shall be subject to approval of the Participants Committee if such obligations are Long Term;

(iv) may, at the direction of the Participants Committee, utilize funds from the Reserve and Contingency Fund, to the extent not inconsistent with any Trust

## SECTION 4

1 Indenture, to defray the costs of Replacement Power to the Participants during any  
2 prolonged outage or derating of any System; and

3 (v) shall inform the Participants Committee on a regular basis, not less  
4 often than quarterly, of its actions, plans and efforts undertaken in furtherance of its  
5 obligations and other activities under this Contract regarding the Project and shall  
6 receive and give due consideration to any recommendations of the Participants  
7 Committee regarding the same.

8 (B) In the event that, notwithstanding its efforts undertaken in accordance with  
9 this Section 4, AMP incurs additional costs or is unable to supply all of the Products  
10 anticipated to be available hereunder whether due to a failure to deliver, an event of  
11 default or otherwise, except to the extent AMP recovers from a third party for such  
12 failure, AMP shall not, absent willful, wanton or reckless conduct, be liable to such  
13 Participant for damages resulting from such interruption or diminution of service.

14 (C) It is the express understanding and intention of AMP and the Participants  
15 that the Project and all Systems qualifies as Behind-the-Meter Generation and that, as  
16 such, it shall reduce the load service obligations of the Participants including those  
17 obligations associated with ancillary services, energy delivery and congestion charges,  
18 provided that the Project output shall not be bid into the MISO markets. The Project  
19 and all Systems shall be registered and offered or scheduled as Load Modifying  
20 Resources (LMR) to provide capacity value to the Project participants. In the event that  
21 MISO determines at any time during the term of this Agreement that the Project or the  
22 Systems are not eligible for treatment as Behind-the-Meter Generation or LMR under  
23 the MISO rules, after consultation with the Participants, AMP may schedule and offer  
24 the Products into the MISO markets as appropriate. Participants shall be responsible  
25 for any and all costs and charges associated with scheduling and/or offering the  
26 Products into the MISO markets, including but not limited to transmission service and  
27 upgrade costs, if any, and shall retain the value received from such sale or offer into the  
28 MISO markets.

#### SECTION 4

(D) If the Project is capable of supplying surplus Products that AMP believes may be salable to another entity in light of prevailing market conditions and the characteristics of any such surplus, or which due to prevailing market conditions make it desirable and in the best interests of AMP, the holders of the Bonds or the Participants to sell all or any portion of the Products associated with the Project, AMP shall use commercially reasonable efforts to attempt to sell such surplus at not less than a minimum price approved by each Participant which may have such excess on such terms and for such period as AMP deems appropriate and as AMP deems not adverse to the tax or regulatory status or other interests of AMP, the Participants or any Bonds. All net proceeds received from AMP from surplus sales pursuant to this subsection (D) shall be utilized by AMP to reduce the Revenue Requirements that otherwise must be paid by such Participant and thereby offset rates and charges hereunder. Any such sales for periods of one year or greater shall be subject to approval by the Participants Committee.

(E) In addition to sales of Capacity and Energy to any entity permitted by subsection (D) of this Section 4 and subsection (C) of Section 3, AMP may (i) sell, on a temporary or permanent basis, or otherwise dispose of Fuel, emission allowances or other inventory or spare parts for or byproducts from the Project or any other Power Sales Contract Resource or sell, lease or rent any excess land or land rights, including mineral or other subsurface rights and facilities associated with any such property or rights not required for operation of the Project or any other Power Sales Contract Resource or (ii) sell, lease or otherwise dispose of on a temporary or permanent basis any other rights or interests associated with any Power Sales Contract Resource; provided, however, that prior to entering into any such agreement on a permanent basis, or for any term of five (5) years or longer, pursuant to this clause (E)(ii), AMP shall have determined that such disposition will not adversely affect the tax or regulatory status of AMP or any Bonds and, for such sales if the rights or interests are valued in excess of \$500,000 in 2022 dollars, shall have obtained the approval of the Participants Committee and a report or certificate of an independent engineer or engineering firm having a national reputation for experience in such work to the effect that such permanent sale, lease or other disposition should not, in the ordinary course of

#### SECTION 4

1 operation of the Project, materially adversely affect the operation of the Project or  
2 AMP's ability to perform its obligations under this Contract. A sale/lease back or similar  
3 financial or operating device appropriate under Prudent Utility Practice where the  
4 property sold or leased continues to provide benefits to Power Sales Contract  
5 Resources shall not be construed to be governed by the provisions of clause (ii) of this  
6 subsection (E), provided that the same is approved by the Participants Committee.

7 (F) All Capacity sold or made available hereunder shall include an appropriate  
8 credit or other adjustment for a PSCR Share of all associated Capacity Attributes.

9 (G) AMP covenants that, (i) prior to entering into any variable rate  
10 indebtedness or hedge or swap agreements or Fuel price hedges hereunder, it shall, in  
11 consultation with the Participants Committee, adopt, maintain and revise from time to  
12 time a written policy respecting such indebtedness and agreements, including the  
13 circumstances and terms under which such indebtedness and agreements may be  
14 terminated; (ii) prior to purchasing any Fuel reserves or entering into any Long Term  
15 prepayments respecting Fuel for the Project, it shall receive the approval of a Super  
16 Majority of the Participants; and, (iii) prior to entering into any Long Term Fuel hedges,  
17 Long Term prepayments respecting Fuel, or the purchase of Fuel reserves, AMP shall  
18 offer each Participant the ability to opt out of any such arrangements.

19 (H) AMP shall update the Appendices hereto as appropriate hereunder and  
20 provide copies of the same to the Participants.



## SECTION 5

### **SECTION 5. Rates and Charges; Method of Payment.**

(A) After consultation with the Participants at the time of budget approvals for the upcoming calendar year, the Board of Trustees shall establish, maintain and adjust rates or charges, or any combination thereof, as set forth in the Rate Schedule, for the Power Sales Contract Resources made available under this Contract that result in Project Rates and other rates and charges hereunder, adjusted as set forth herein, at levels that will provide revenue to or for the account of AMP sufficient, but only sufficient, to meet the "Revenue Requirements" of AMP, which Revenue Requirements shall consist of the sum of the following without duplication:

(i) all, or to the extent appropriate an allocable portion of all, costs incurred by AMP under any other Related Agreements, including, without limitation, the cost of any Replacement Power and required Transmission Service to make available or deliver Capacity and Energy under this Contract to the Points of Delivery as well as any costs incurred pursuant to Section 18(E);

(ii) all of AMP's Project Costs incurred and not otherwise recovered by AMP, including but not limited to: the cost of acquisition of or arrangements regarding Fuel, equipment and other leases, an appropriate allocation of AMP's energy control center, metering and other common costs of AMP reasonably allocable to the Project and not otherwise recovered by the Service Fee or other fees or charges that AMP charges pursuant to other agreements, the cost to AMP of taxes, payments in lieu of taxes, all permits, licenses and related fees, related to the Project and not recovered through charges under this Contract, the cost AMP incurs of insurance and damage claims to the extent associated with the Project, pollution control or emissions costs, fees and allowances, legal, engineering, accounting and financial advisory fees and expenses;

(iii) costs of decommissioning and disposal of the Project, including reserves therefor;

## SECTION 5

1 (iv) to the extent incurred hereunder, the cost to establish and maintain,  
2 or to obtain the agreement of third parties to provide, to the extent not included in  
3 Project Costs, an allowance for working capital, inventories and spares, including  
4 emission fees, allowances, credits or other environmental rights, and reasonable  
5 reserves for repairs, refurbishments, renewals, replacements and other  
6 contingencies deemed necessary by the Board of Trustees in order to carry out  
7 its obligations under this Contract and the cost to AMP of renewals and  
8 replacements of the Project to the extent not paid for out of working capital or  
9 reserves;

10 (v) to the extent required and applicable, the cost of compliance with  
11 all applicable FERC, RTO, local Transmission Owner or NERC requirements, to  
12 the extent incurred by AMP in connection with the performance of its obligations  
13 under this Contract or in attempting to comply with laws or regulations requiring  
14 the same to the extent such laws or regulations are applicable after the Delivery  
15 Point;

16 (vi) the cost of power and Fuel supply engineering, planning and  
17 forecasting incurred by AMP in connection with the performance of its obligations  
18 under this Contract or in attempting to comply with laws or regulations requiring  
19 the same to the extent such laws or regulations are applicable to the Project;

20 (vii) the Service Fees not otherwise charged by AMP pursuant to other  
21 agreements;

22 (viii) payments of principal of and premium, if any, and interest on all  
23 Bonds, payments which AMP is required to make into any fund or account during  
24 any period to be set aside for the payment of such principal, premium or interest  
25 when due from time to time under the terms of any Trust Indenture (whether, in  
26 the case of principal of any Bond, upon the stated maturity or upon prior  
27 redemption, including any mandatory sinking fund redemption, under such Trust  
28 Indenture), and payments which AMP is required to make into any fund or  
29 account to establish or maintain a reserve for the payment of such principal,

## SECTION 5

1 premium or interest under the terms of any Trust Indenture, provided, however,  
2 that the amounts required to be included in Revenue Requirements pursuant to  
3 this clause (viii) shall not include payments in respect of the principal of any  
4 Bonds payable solely as a result of acceleration of maturity of such Bonds and  
5 not otherwise scheduled to mature or to be redeemed by application of  
6 mandatory sinking fund payments; provided further, however, that the amounts  
7 required to be included in Revenue Requirements pursuant to this clause (viii)  
8 may include payments in respect of a termination of a hedge or swap agreement;

9 (ix) all amounts required under any Trust Indenture to be paid or  
10 deposited into any fund or account established by such Trust Indenture (other  
11 than funds and accounts referred to in clause (viii) above), including any amounts  
12 required to be paid or deposited by reason of the transfer of moneys from such  
13 funds or accounts to the funds or accounts referred to in clause (viii) above;

14 (x) all costs to establish and maintain additional reserves, or to obtain  
15 the agreement of third parties to provide, for contingencies including (a) reserves  
16 against losses established in connection with any program of self-insurance, (b)  
17 the making up of any deficiencies in any funds or accounts as may be required  
18 by the terms of any Trust Indenture, and (c) contributions to any Rate  
19 Stabilization Fund or Environmental Fund, subject, to the extent not otherwise  
20 required to be paid as a part of Revenue Requirements or required by any Trust  
21 Indenture, to approval by the Participants Committee;

22 (xi) all amounts required to be paid by AMP to procure, or to perform its  
23 obligations under, any liquidity or credit support obligation (to the extent not  
24 included in clause (ix) above), interest rate swap or hedging instrument  
25 (including, in each case, any amounts due in connection with the termination  
26 thereof to the extent not included in clause (ix) above) associated with any Bonds  
27 or amounts payable with respect thereto;

28 (xii) all additional amounts, if any, which must be realized by AMP in  
29 order to meet the requirements of any rate covenant with respect to coverage of

## SECTION 5

1 debt service on Bonds under the terms of any Trust Indenture, and such  
2 additional amounts as may be deemed by AMP desirable to facilitate marketing  
3 Bonds on favorable terms; and,

4 (xiii) any cost and expenditures approved by the Participants Committee  
5 for investigating, planning, and developing any potential or actual Additional Sites  
6 to any Systems that are being considered for inclusion pursuant to Section 33  
7 hereof;

8 less amounts available as a result of: (1) any appropriate refunds, rebates,  
9 miscellaneous revenues or other distributions relating to the Project; and, (2) any  
10 sales or other arrangements referred to in subsections (C) and (D) of Section 4  
11 hereof (after payment of all associated costs and expenses incurred by AMP in  
12 connection therewith) and less any Bond proceeds or related investment income  
13 applied by AMP in the exercise of its discretion to pay any costs referred to in  
14 clauses (i) through (xiii) above, provided, however that in the event that any Trust  
15 Indenture requires another application of such funds or AMP determines that any  
16 of such amounts of proceeds or income must be applied in accordance with the  
17 provisions of clause (i) of subsection (J) of this Section 5, then and to such extent  
18 such other application shall be required, such funds shall be so applied.

19 (B) The Revenue Requirements of AMP in respect of any Month shall be  
20 computed as provided in this Section 5 and shall be paid through rates and charges as  
21 set forth in the Rate Schedule. In determining the rates and charges hereunder,  
22 estimated amounts may be utilized until actual data becomes available, at which time  
23 any adjustments necessary to true-up the estimates to actual shall be made.

24 (C) The rates and charges under this Contract, as set forth on the Rate  
25 Schedule, shall be a uniform Project Rate to the Points of Delivery, provided that (i)  
26 each Participant shall be responsible for the cost of Supplemental Transmission Service  
27 or other services related to delivery to a Secondary Point and, if not paid to a third party  
28 transmission entity, each Participant shall be charged an additional amount equal to the  
29 additional cost to AMP, if any, of delivery to such Secondary Point of Delivery, including

## SECTION 5

1 any state and local taxes incurred as a result of such delivery or sale, as set forth on the  
2 Rate Schedule.

3 (D) An estimated initial Rate Schedule is attached as Appendix B hereto.  
4 After consultation with the Participants Committee, the Board of Trustees will determine  
5 and establish the initial Rate Schedule, to be effective on or about the Commercial  
6 Operation Date of the first System to achieve Commercial Operation, to meet AMP's  
7 Revenue Requirements. Except as provided in subsection (A) of this Section 5, at such  
8 intervals as the Board of Trustees shall determine appropriate, but in any event not less  
9 frequently than each calendar year, the Participants Committee and the Board of  
10 Trustees shall review and, if necessary, the Board of Trustees shall revise prospectively  
11 the Rate Schedule to ensure that the rates and charges under this Contract continue to  
12 cover AMP's estimate of all of the Revenue Requirements and to recognize, to the  
13 extent not inconsistent with this Contract, other factors and changes in service  
14 conditions as it determines appropriate. AMP shall transmit to each Participant a notice  
15 of such revised rates schedule, setting forth the effective date thereof, for delivery not  
16 less than thirty (30) days prior to such effective date. Each Participant agrees that the  
17 revised Rate Schedule, as determined from time to time by the Board of Trustees in  
18 accordance with this Section 5, shall be deemed to be substituted for the Rate Schedule  
19 previously in effect and agrees to pay for Products and related Transmission Service  
20 made available by AMP to it hereunder after the effective date of any revision of the  
21 Rate Schedule in accordance with such revised Rate Schedule.

22 Unless otherwise determined by the Board of Trustees, the Rate Schedule shall  
23 be structured so as to consist of: (i) Demand or Capacity Charges (which may include  
24 charges per MWh or kWh as well as a charge per MW or kW), principally designed to  
25 recover fixed costs, including those described in clauses (viii) through (xii) of the  
26 definition of Revenue Requirements in subsection (A) of this Section 5 associated with  
27 providing Power Sales Contract Resources hereunder; (ii) an Energy Charge, principally  
28 designed to recover variable costs of providing the Project's output, as well as any other  
29 variable costs associated with AMP's obligations thereunder and hereunder; (iii) to the  
30 extent physical or contracted Energy flows from a Delivery Point to a secondary Point of



## SECTION 5

1 Delivery, a Net Congestion, Losses, FTR Charge, designed to recover all costs and  
2 provide all credits associated with delivery of Capacity and Energy from the Delivery  
3 Point to any Secondary Points of Delivery, including, but not limited to, marginal losses,  
4 marginal congestion, FTR purchase costs and FTR congestion credits; (iv) a Power  
5 Cost Adjustment Charge designed to adjust either or both the Demand Charge or the  
6 Energy Charge upward or downward to reflect any and all out of period adjustments not  
7 covered in the above that are required to assure that the total costs invoiced for Power  
8 Sales Contract Resources delivered under this Contract are equal to the Revenue  
9 Requirements; (v) the Service Fee; (vi) a late payment charge as set forth in this  
10 Section 5. The determination of the Power Cost Adjustment Charge each Month shall  
11 be made according to methodology determined by AMP and the Participants Committee  
12 and approved by the Board of Trustees, and no specific action by the Participants or  
13 Board of Trustees to approve the Power Cost Adjustment Charge so determined each  
14 Month shall be required.

15 (E) Unless some other time period is otherwise approved by the Board of  
16 Trustees and the Participants Committee, in each Month after the establishment of the  
17 Rate Schedule, AMP shall render a Monthly invoice (a sample of which is included in  
18 Appendix B-3) showing the amount payable under this Contract with respect to Capacity  
19 and Energy, Transmission Service, including any Supplemental Transmission Service  
20 or other charges, credits, adjustments or true-ups, with respect to the immediately  
21 preceding Month. Prior to the Commercial Operation of any System, such invoice may  
22 include payments with respect to any Bonds issued hereunder as well as Replacement  
23 Power, but only to the extent required and approved as required in subsection (B) of  
24 Section 3. Each Participant shall pay such amounts to AMP at its principal office, or to  
25 such other person at such other address as shall be designated by AMP by written  
26 notice to each Participant, at such time and in such manner as shall provide to AMP (or  
27 such other person so designated by AMP) funds available for use by AMP (or its  
28 designee, including a trustee under any Trust Indenture) on the first banking day not  
29 less than the fifteenth (15<sup>th</sup>) day after the date of the issuance of the Monthly invoice.

## SECTION 5

(F) If a Participant does not make a required payment in full in funds available for use by AMP (or its designee) on or before the close of business on the due date thereof, a delayed-payment charge on the unpaid amount due for each day over-due will be imposed at a rate per annum equal to the lesser of (i) the maximum rate permitted by law, and (ii) two percent (2%) per annum above the rate available to AMP through its short-term credit facilities as the same may be adjusted from time to time, together with any damages or losses incurred by AMP, or through AMP, as a result of such failure to make timely payment which is not compensated by such delayed-payment charge.

(G) In the event of any dispute as to any portion of any invoice, such Participant shall nevertheless pay the full amount of the disputed charges when due and shall give written notice of the dispute to AMP not later than one hundred eighty (180) days from the date such payment is due; provided, however, that AMP shall not be required to refund any disputed amounts relating to third-party charges if such notice, although timely hereunder, does not afford AMP a reasonable opportunity to pursue a claim against such third-party due to the requirements of a Related Agreement, Supplemental Transmission Agreement, RTO or other Transmission Service provider dispute resolution procedures. Such notice shall identify the disputed invoice, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment need be considered or made for disputed charges unless such notice is given. AMP shall consider such dispute and shall advise the Participant with regard to its position relative thereto within sixty (60) days following receipt of such written notice. Upon final determination (whether by agreement, arbitration, adjudication or otherwise) of the correct amount, any difference between such correct amount and such full amount, together with interest (from the date of the disputed payment to the due date of the invoice next submitted to the Participant after such determination) at the rate which would apply under this Contract to overdue payments pursuant to subsection (F) of this Section 5, shall be subtracted by AMP from the invoice next submitted after such determination (and paid by AMP to the Participant in funds available for use by the Participant on the due date of such next invoice if, but only to the extent by which, the amount so due exceeds the amount of the next invoice).

## SECTION 5

For purposes of this subsection (G), the date of payment shall mean the date on which funds in the amount so paid first become available for use by AMP (or its designee). Billing disputes and any subsequent adjustments hereunder shall be limited to the one (1) year period prior to the date timely notice was given as required by this subsection (G); provided, however, that to the extent AMP may reasonably pursue a third-party on account of such dispute for a period longer than such one (1) year period, AMP shall do so and adjustments may, to such extent, relate to such longer period.

(H) In the event that at any time AMP shall determine that it has rendered an invoice containing a billing error, AMP shall promptly furnish a revised invoice, clearly marked as such, with the error corrected. If the revised invoice indicates an undercharge, the difference between the amount paid and the correct amount, together with interest (from the date of payment of the incorrect amount to the due date of the invoice next submitted after AMP has furnished the revised invoice) at the rate which would apply under this Contract to overdue payments pursuant to subsection (F) of this Section 5, less two percent (2%), shall be paid to AMP (or such other person designated by AMP pursuant to subsection (E) of this Section 5) at such time and in such manner as shall provide to AMP (or such other person so designated) funds available for use by AMP (or its designee) on the due date of such next invoice. If the revised invoice indicates an overcharge, the difference between the correct amount and the amount paid, together with interest (from the date of payment of the incorrect amount to the due date of the invoice next submitted after AMP has furnished the revised invoice) at the rate which would apply under this Contract to overdue payments pursuant to subsection (F) of this Section 5, less two percent (2%), shall be subtracted by AMP from the invoice next submitted (and paid by AMP in funds available for use by the Participant on the due date of such next invoice if, but only to the extent by which, the amount so exceeds the amount of the next invoice). For purposes of this subsection (H), the date of payment shall mean the date on which funds in the amount so paid first become available for use by AMP (or its designee).

(I) The obligations of each Participant to make payments under this Section 5 shall constitute obligations of such Participant payable as an O&M Expense of its

## SECTION 5

1 Electric System. No Participant shall be required to make payments under this Contract  
2 except from the revenues of its Electric System and from other funds of such system  
3 legally available therefor. In no event shall any Participant be required to make  
4 payments under this Contract from tax revenues, or any other source of funds other  
5 than its Electric System's funds, but it may elect, in its sole discretion, to do so. The  
6 obligations to make payments under this Section 5 in respect of any Month or other  
7 billing period shall be on a "take-or-pay" basis and, therefore, shall not be subject to any  
8 reduction, whether by offset, counterclaim, or otherwise, such payment obligations shall  
9 not be conditioned upon the performance by AMP or any other Participant of its  
10 obligations under this Contract or any other agreement, and such payments shall be  
11 made whether or not any generating unit of the Project, any other component thereof or  
12 any other Power Sales Contract Resource is completed, operable, operating or capable  
13 of providing capacity or energy and, as long as Bonds issued under Section 15 hereof  
14 remain outstanding, notwithstanding the suspension, interruption, interference,  
15 reduction or curtailment, in whole or in part, for any reason whatsoever, of the  
16 Participant's PSCR Share, including Step Up Power, if any, provided, however, that  
17 nothing contained herein shall be construed to prevent or restrict any Participant from  
18 asserting any rights which it may have against AMP under this Contract or in any  
19 provision of law, including institution of legal proceedings.

20 (J) Proceeds from the sale of Bonds in excess of the amount required for the  
21 purposes for which such Bonds were issued and investment income earned on any  
22 investments held under the Trust Indenture shall be applied, subject to the provisions of  
23 any Trust Indenture, by AMP, as approved by the Participants Committee: (a) to pay  
24 principal or interest on the Bonds, (b) to the purchase or redemption of Bonds prior to  
25 their stated maturity, and (c) to the payment of costs of renewals and replacements of  
26 any property constituting a part of the Project, or as a reserve therefor. Insurance  
27 proceeds, condemnation awards and damages received by AMP in connection with the  
28 Project and not required to be applied to the restoration, renewal or replacement of  
29 facilities, and proceeds from the sale or disposition of surplus property constituting a  
30 part of the Project, shall be applied by AMP, subject to approval by the Participants  
31 Committee, (x) to the purchase or redemption of Bonds prior to their stated maturity, (y)

## SECTION 5

1 to the payment of costs of renewals and replacements of any property constituting a  
2 part of the Project, or as a reserve therefor by deposit to the Reserve and Contingency  
3 Fund, or (z) as a credit against Revenue Requirements. Notwithstanding anything  
4 contained in the foregoing provisions of this subsection (J), if any Trust Indenture, any  
5 instrument of a similar nature relating to borrowings by AMP or any Related Agreement  
6 shall require the application of any amount referred to in the foregoing provisions of this  
7 subsection (J) to any specific purpose, AMP shall apply such amount to such purpose  
8 as so required.

9 (K) AMP shall, utilizing procedures and methodologies approved by the  
10 Participants Committee from time to time, allocate Fuel costs among the Participants to  
11 reflect all cost differences, including credit and credit risk related costs, respecting any  
12 Participant's decision to opt out as specified in subsection (G) of Section 4 of this  
13 Contract.

## SECTION 6

### SECTION 6. Scheduling of Deliveries, Dispatching.

(A) At the request of any Participant, AMP shall coordinate with MSCPA to provide scheduling services for such Participant for the capacity and energy purchased hereunder without additional charge over and above what is included in Revenue Requirements. Each Participant shall be entitled to schedule in each hour up to the amount of energy associated with such Participant's percentage PSCR Share shown for such Participant in Appendix A times the Available Capacity. Each Participant shall provide AMP information, in the form reasonably requested by AMP, for the purpose of preparing schedules, including revisions from time to time, for deliveries or availability of capacity and energy hereunder, and such information shall be submitted in a timely manner and in a form sufficient to allow AMP to satisfy the requirements for scheduling in any applicable tariffs for Supplemental Transmission Service or any Related Agreements. Subject to the provisions of each such tariff or Related Agreement, AMP shall, recognizing losses (with losses on Supplemental Transmission Service treated separately as shown in the Rate Schedule), schedule or cause to be scheduled deliveries hereunder in accordance with the information including revisions thereto, furnished to it by each Participant or its agent as herein. Should it so desire, each Participant or its agent shall be permitted to maintain twenty-four (24) hour communication with AMP's energy control center or appropriate AMP operating personnel for purposes of modifying schedules. It is understood by each Participant that each System has specific operational parameters. Accordingly, such Participant shall schedule all energy deliveries hereunder, in accordance with Appendix I, in amounts no greater than an amount of energy equal to the percentage of that Participant's PSCR Share as shown on Appendix A multiplied by the sum of (i) the net capability during such hour, as determined by AMP in accordance with Prudent Utility Practice, plus (ii) associated Capacity, plus (iii) any available capacity or energy associated with Replacement Power at that time (collectively "Available Capacity"). The scheduling protocol set forth herein may be modified by AMP upon the recommendation of the Participants Committee if not otherwise inconsistent with this Power Sales Contract or any Related Agreement and consistent with Prudent Utility Practice. It is understood by the Parties, however, that to the extent there are no economic, technical,



## SECTION 6

operating or engineering reasons not to change these requirements to allow the benefits of economic dispatch to an individual Participant, the requirements stated herein and in Appendix I may be modified accordingly.

(B) It is further understood by each Participant, however, that such Participant may be required from time to time to accept scheduling or delivery protocols from AMP, upon the recommendation of the Participants Committee, regarding capacity and energy from Power Sales Contract Resources that limit, both up and down, the levels or the change in level requested in any hour, for operating reasons. AMP shall use its best efforts to inform each Participant or its agent when such Participant's schedule of energy in any hour is increased or decreased. AMP shall attempt to sell any excess or otherwise mitigate the impact of such changes on the Participants and to the extent it cannot, shall impose any such change equitably. In the event any Participant fails to provide AMP with the necessary written information for the purpose of AMP preparing schedules, AMP, in its sole judgment and discretion, shall have the right to estimate a schedule for deliveries to such Participant and use such estimated schedule for purposes of satisfying any scheduling requirements of AMP. AMP shall endeavor to keep each Participant or its agent informed of all matters that may affect such Participant's ability to carry out its responsibilities under the provisions of this Section 6.

(C) Any modifications to the scheduling and dispatch protocols set forth in this Section 6 shall be reflected in a revised Appendix I.

## SECTION 7

1        **SECTION 7. Electric Characteristics; Point of Delivery; Measurement of**  
2        **Electric Capacity and Energy Furnished.** Electric Capacity and Energy to be  
3        furnished or made available hereunder shall be furnished as alternating current, three  
4        phase, 60 Hertz. Electric Capacity and Energy scheduled or made available pursuant  
5        to this Contract shall be delivered or made available at the Points of Delivery unless  
6        otherwise determined by AMP. The points of measurement, delivery voltage and other  
7        conditions of service shall be as set forth on Appendix C or as otherwise agreed  
8        between AMP and any Participant or as otherwise determined pursuant to policies and  
9        procedures agreed to by AMP and the Participants Committee.

## SECTION 8

### SECTION 8. Metering.

(A) Unless otherwise agreed, all deliveries or availability of Capacity and Energy to or on behalf of the respective Participants pursuant to this Contract shall be on a scheduled basis.

(B) AMP shall install, maintain and operate, or cause to be installed, maintained and operated, any metering equipment, including area interchange metering and telemetering equipment, required to measure the Capacity and Energy produced and delivered or made available pursuant to this Contract. Each Participant agrees to cooperate with AMP as necessary to enable AMP to meet its obligations pursuant to the immediately preceding sentence.

(C) Each Participant shall be responsible for the costs of metering at its respective Secondary Points of Delivery in accordance with any applicable RTO's or Transmission Owner's tariffs, rules or regulations.

**SECTION 9**

1        **SECTION 9. [Reserved].**

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## SECTION 10

### **SECTION 10. – Reactive Power; Power Factor.**

It is understood by the Parties that each Participant shall furnish or cause to be furnished, at its own expense, its own interconnection reactive power requirements in accordance with the standards of the applicable RTO or other entity providing wholesale delivery service to its Secondary Delivery Point. It is also understood that the delivery or availability of electric capacity and energy to such Secondary Delivery Point pursuant to this Contract may require such Participant to maintain a specific power factor or keep its power factor within a specified range. Such Participant shall take all steps necessary to maintain the range or specific power factor required so as to be able to accept deliveries hereunder. AMP may levy a charge on a Participant equal to AMP's cost of obtaining any required local load interconnection reactive power or power factor service for such Participant if and to the extent AMP is required to pay the same in order to deliver or make available capacity and energy hereunder. If under an RTO or other applicable tariff or agreement AMP or the Participant is required to obtain equipment to correct such local load interconnection reactive power or power factor deficiencies, the Participant will cooperate with AMP to install the required equipment and will be solely responsible for the costs associated with the equipment. It is further understood that should a Participant designate delivery or availability of capacity and energy hereunder to some other entity, then such Participant is responsible for arranging for such entity to comply with the provisions of this Section 10.

Non-compliance with this Section 10 shall relieve AMP of any responsibility or liability for failure to deliver to any Secondary Delivery Point if, and to the extent, it is unable to do so as a result of a Participant's non-compliance. In such instance, the Participant shall nonetheless be liable for all payments hereunder.

## SECTION 11

1        **SECTION 11. Force Majeure.** Neither AMP nor any Participant shall be  
2 considered to be in default in respect to any obligation hereunder (other than the  
3 obligation of each Participant to make payments hereunder) if prevented from fulfilling  
4 such obligation by reason of *Force Majeure*. A Party rendered unable to fulfill any such  
5 obligation by reason of *Force Majeure* shall exercise due diligence to remove such  
6 inability with all reasonable expediency in a commercially reasonable manner, and such  
7 Party shall promptly communicate with the other regarding such *Force Majeure*, its  
8 expected length and the actions being taken to remove the same.



## SECTION 12

1        **SECTION 12. Insurance.** AMP shall maintain, or cause to be maintained, in  
2 force, and is authorized to procure insurance with responsible insurers with policies  
3 payable to the parties as their interests shall appear, against risk of direct physical loss,  
4 damage or destruction, at least to the extent that similar insurance is mandated by law  
5 or usually carried by utilities constructing and operating facilities of the nature of the  
6 facilities of the Project, including liability insurance, workers' compensation and  
7 employers' liability, all to the extent available at reasonable cost and subject to  
8 reasonable deductible provisions, but in no case less than will satisfy all applicable  
9 regulatory requirements, and conform to Prudent Utility Practice. AMP may procure  
10 additional insurance subject to the approval of the Participants Committee.  
11 Notwithstanding the foregoing, AMP may, to the extent permitted by the Related  
12 Agreements, the Trust Indentures and the similar instruments relating to borrowings by  
13 AMP to finance the Project and, subject to the approval of the Participants Committee,  
14 self-insure or participate in a program of self-insurance or group insurance to the extent  
15 it receives a written opinion of a qualified insurance consultant that such self-insurance,  
16 after consideration of any existing or required reserve deposits, is reasonable in light of  
17 existing programs of comparable utilities constructing and operating facilities of the  
18 nature of the facilities of the Project. All insurance proceeds shall be utilized in  
19 accordance with and subject to the provisions of subsection (J) of Section 5 hereof.

## SECTION 13

1        **SECTION 13. Accounting.** Subject to the terms of any Related Agreements,  
2        AMP shall keep accurate records and accounts relating to this Contract substantially in  
3        accordance with generally accepted accounting principles, separate and distinct from its  
4        other records and accounts. Said accounts shall be audited annually by a firm of  
5        independent public accountants, of favorable national reputation, to be employed by  
6        AMP. A copy of each annual audit, with all written comments and recommendations of  
7        such accountants included with or accompanying such final audit, shall be made  
8        available to each Participant within a reasonable time after the end of each calendar  
9        year. Each Participant agrees to keep accurate records and accounts relating to the  
10       conduct of its Electric System in accordance with generally accepted governmental  
11       accounting standards or otherwise if and as required by applicable law or any contract  
12       existing on the Effective Date.

## SECTION 14

### **SECTION 14. Access to Information.**

(A) Subject to applicable law and the provisions of any Related Agreements and upon written request to AMP and during reasonable business hours at AMP's headquarters:

(i) all drawings, plans, specifications, capital cost estimates, capital budgets, construction schedules, licenses, permits and contracts relating to the planning, engineering, acquisition, construction, operation, Fuel procurement and maintenance of the Project and any other Power Sales Contract Resources shall be made available for examination by any Participant;

(ii) copies of all agreements and data in the possession of AMP relating to its financing of costs associated with the Project shall be made available for examination by each Participant;

(iii) copies of all budgets, operating and billing and financial data records and reports, in the possession of AMP, including but not limited to rates under the Rate Schedule and the data relating to the determination of Revenue Requirements shall be made available for examination by each Participant;

(iv) copies of insurance policies (or certificates of insurance) carried pursuant to Section 12 hereof shall be made available for examination by each Participant; and

(v) copies of records pertaining to the Project and which underlie the annual audit prepared pursuant to Section 13 and any other records pertaining to the Project shall be made available for examination by each Participant insofar as may be necessary to ascertain the reasonableness, accuracy, or computation of any payment, charge, credit or other amount arising under the Contract or any Related Agreements.

(B) Each Participant shall, upon written request, furnish to AMP all such information, certificates, engineering reports, feasibility reports, financial statements,

## SECTION 14

1 opinions of counsel and other documents as shall be reasonably necessary or useful to  
2 AMP in connection with the performance of AMP's obligations under this Contract,  
3 including the issuance and sale of Bonds by AMP. For Participants for which AMP does  
4 not process their RTO or other transmission provider invoices, all such Participants shall  
5 provide AMP all such invoices on a timely basis to the extent necessary or convenient  
6 for AMP to appropriately calculate all credits, revenues or costs that impact any billing  
7 hereunder.

8 (C) AMP and each Participant will promptly furnish to each other such other  
9 information as may be reasonably requested from time to time in order to carry out the  
10 intent and purpose of this Contract or as may be reasonably necessary and convenient  
11 in the conduct of the operations of the party requesting such information and, in  
12 particular, may be necessary or useful in connection with the issuance of Bonds by  
13 AMP or the issuance of debt by any Participant.

14 (D) The Parties shall accommodate reasonable requests for documents and  
15 information made available pursuant to subsections (A), (B) and (C) of this Section 14  
16 via electronic copies, secure internet access or paper copies sent to the requesting  
17 Party without charge, unless such request is unduly burdensome on the Party upon  
18 whom such request is made. In such case, such documents or information may be  
19 made available for inspection only at the offices of the Party in possession of such  
20 documents or information with copies to be made available for a reasonable charge.  
21 The Parties recognize such information may be proprietary and/or business confidential  
22 and agree, to the extent consistent with law, to treat the same as such.

## SECTION 15

1        **SECTION 15. Bonds; Trust Indenture; Power Sales Contract.** AMP is hereby  
2 requested and authorized by each Participant to issue Bonds or enter into other  
3 financial arrangements for the purpose of financing the Project Costs, including, without  
4 limitation, reimbursement to AMP of all Development Costs and Interconnection Costs,  
5 all upon such terms and pursuant to one or more Trust Indentures having such terms as  
6 AMP, in its sole discretion and exclusive judgment, deems necessary or desirable to  
7 enable AMP to fulfill satisfactorily its obligations hereunder; provided, however, that  
8 AMP shall not issue Bonds having a final maturity date extending beyond the estimated  
9 remaining useful life of the Project, as estimated, in a report or certificate of an  
10 independent engineer or engineering firm or corporation having a national reputation for  
11 experience in electric utility matters. All Bonds, any Trust Indenture, and all revenues  
12 and other funds of AMP allocable to the Project, other than the Service Fee, shall be  
13 separate and apart from all other borrowings, indentures, revenues, and funds of AMP.  
14 AMP shall not pledge or assign any of its right, title or interest in, to or under any of the  
15 foregoing, this Power Sales Contract or the Project, or otherwise make available any  
16 thereof, to secure or pay any indebtedness or obligation of AMP other than as expressly  
17 permitted by this Power Sales Contract.

## SECTION 16

### **SECTION 16. Disposition or Termination of AMP Michigan CAT Peaking**

**Project.** For so long as any Bonds or other financial arrangements are outstanding, except as permitted in this Section 16, AMP shall not sell or otherwise dispose of, in whole or in part, its ownership interest in any of the Systems or the attributes available from all Systems included in the Project without the consent of the Participants. This Section 16 shall not prohibit (i) a merger or consolidation or sale of all or substantially all of the property of AMP, (ii) any sale, lease or other disposition or arrangement permitted by subsection (E) of Section 4, or (iii) the mortgaging, pledging or encumbering of all or any portion of AMP's ownership interest in the Project or this Contract pursuant to any Trust Indenture to secure any Bonds. Subject to the provisions of the Related Agreements, any Systems of the Project shall be terminated and AMP shall cause such Systems to be salvaged, discontinued, decommissioned, and disposed of or sold in whole or in part on such terms as both the Board of Trustees and Participants determine to be reasonable and appropriate when:

(a) so required pursuant to the applicable Related Agreement;

or

(b) both the Board of Trustees and Participants determine that AMP is unable to operate such facilities due to regulatory or operating conditions or other similar causes; or

(c) both the Board of Trustees and Participants determine that such facilities are not capable of producing or delivering energy consistent with Prudent Utility Practice.

Any consent required by the terms of this Section 16 shall be approved by a Super Majority of the Participants.



## SECTION 17

### **SECTION 17. Additional Covenants of Participant.**

(A) Each Participant covenants and agrees to establish and maintain rates for electric Capacity and Energy to its customers which shall provide revenues at least sufficient, together with other available funds, to meet its obligations to AMP under this Contract; to pay all other O&M Expenses; to pay all obligations, whether now outstanding or incurred in the future, payable from, or constituting a charge or lien on, the revenues of its Electric System; and to make any other payments required by law.

(B) Each Participant covenants and agrees that, unless this Contract has been assigned pursuant to Section 27 hereof, it shall not sell, lease or otherwise dispose of all or substantially all of its Electric System except on 180 days' prior written notice to AMP and, in any event, shall not so sell, lease or otherwise dispose of the same unless AMP shall reasonably determine that all of the following conditions are met: (i) such Participant shall assign this Contract and its rights hereunder (except as otherwise provided in the last sentence of this subsection (B)) in writing to the purchaser or lessee of the Electric System and such purchaser or lessee, as assignee of rights and obligations of such Participant under this Contract, shall assume in writing all obligations (except to the extent theretofore accrued) under this Contract or such Participant shall post a bond or other security, in either case reasonably acceptable to AMP, to assure its obligations hereunder are fulfilled and clauses (iv) (a), (b) and (c) are satisfied; (ii) if and to the extent necessary to reflect such assignment and assumption, AMP and such assignee shall enter into an agreement supplemental to this Contract to clarify the terms on which Capacity and Energy are to be sold or made available hereunder by AMP to such assignee; (iii) the senior debt of such assignee shall be rated in one of the four highest whole rating categories, without regard to sub-categories represented by + or – or similar designations, by at least one nationally recognized bond rating agency or if such entity is not rated, AMP and any trustee under any Trust Indenture shall receive an opinion from a nationally recognized financial expert that the assignment does not materially adversely affect the security for any Bonds; and (iv) AMP shall have received an opinion or opinions of counsel of recognized standing selected by AMP stating that such assignment (a) will not adversely affect any pledge

## SECTION 17

1 and assignment by AMP of this Contract or the revenues derived by AMP hereunder  
2 (other than the Service Fee) as security for the payment of Bonds and the interest  
3 thereon, (b) is lawfully permitted under applicable law, and (c) will not affect the tax  
4 status of the Bonds. Notwithstanding the foregoing, AMP may, by delivery of written  
5 notice thereof sent no later than 120 days following receipt by AMP of notice pursuant to  
6 the immediately preceding sentence, refuse to approve such sale, lease or other  
7 disposition and, should such Participant nonetheless and in contravention of the  
8 provisions of this Contract proceed with such sale, lease or other disposition, terminate,  
9 effective upon such sale, lease or other disposition, all of such Participant's rights under  
10 this Contract (except to the extent of any rights theretofore accrued); provided, however,  
11 that prior to the effective date of any such termination AMP shall have arranged for the  
12 assignment of its rights (except as otherwise in the last sentence of this subsection) and  
13 obligations (except to the extent theretofore accrued) hereunder to another entity which  
14 assumes in writing all obligations of such Participant hereunder (except to the extent  
15 theretofore accrued) and which satisfies each of the conditions set forth in clauses (ii)  
16 through (iv) of the immediately preceding sentence; provided, further, that nothing  
17 contained in this subsection (B) shall be construed to prevent or restrict such Participant  
18 from issuing mortgage revenue bonds (subject to the provisions of subsection (E) of this  
19 Section 17) secured by a mortgage of the property and revenues of such Participant's  
20 Electric System, including a franchise. Such Participant agrees to cooperate in effecting  
21 any assignment pursuant to the immediately preceding sentence.

22 (C) Each Participant covenants and agrees that it shall take no action the  
23 effect of which would be to prevent, hinder or delay AMP from the timely fulfillment of its  
24 obligations under this Contract, any Related Agreement, any then outstanding Bonds or  
25 any Trust Indenture; provided, however, that nothing contained herein shall be  
26 construed to prevent or restrict a Participant from asserting any rights which it may have  
27 against AMP hereunder or under any provision of law, including institution of legal  
28 proceedings for specific performance or recovery of damages.

29 (D) Each Participant covenants and agrees that it shall, in accordance with  
30 Prudent Utility Practice, (i) operate the properties of its Electric System and the

## SECTION 17

1 business in connection therewith in an efficient manner, (ii) maintain its Electric System  
2 in good repair, working order and condition, and (iii) make all necessary and proper  
3 repairs, renewals, replacements, additions, betterments and improvements with respect  
4 to its Electric System; provided, however, that this subsection (D) shall not be construed  
5 as requiring a Participant to expend any funds which are derived from sources other  
6 than the operation of its Electric System, although nothing herein shall be construed as  
7 preventing such Participant from doing so.

8 (E) Each Participant covenants and agrees that it shall not issue bonds, notes  
9 or other evidences of indebtedness or incur lease or contractual obligations which are  
10 payable from the revenues derived from its Electric System superior to the payment of  
11 the O&M Expenses of its Electric System; provided, however, that nothing herein shall  
12 limit such Participant's present or future rights (i) to incur lease or contractual  
13 obligations that, under generally accepted accounting principles, are operating  
14 expenses of its Electric System and that are payable on a parity with O&M Expenses or  
15 (ii) to issue bonds, notes or other evidences of indebtedness payable from revenues of  
16 its Electric System subject to the prior payment or provision for the payment of the O&M  
17 Expenses, including amounts payable under this Contract, of its Electric System.

18 (F) Each Participant covenants and agrees that, not later than the date on  
19 which it issues bonds, notes or other evidences of indebtedness or incurs capital lease  
20 or other contractual obligations that are payable from the revenues of its Electric  
21 System on a parity with O&M Expenses it will provide to AMP an independent  
22 engineer's estimation that such issuance or incurrence will not result in total O&M  
23 Expenses and debt service in excess of the revenues of such Participant's Electric  
24 System adjusted for any rate increases enacted by the Governing Body prior to such  
25 issuance and becoming effective no later than in the fiscal year immediately succeeding  
26 the issuance of such obligations.

27 (G) Each Participant agrees (i) to use all commercially reasonable efforts to  
28 take all actions necessary or convenient to fulfill all of its obligations under this Contract;

## SECTION 17

1 and (ii) to reasonably cooperate with AMP in such a manner as to facilitate AMP's  
2 performance of its obligations hereunder.

3 (H) Each Participant agrees that, prior to any assignment of its rights under  
4 this Contract pursuant to subsection (B) of this Section 17 it shall grant to AMP a right of  
5 first refusal to purchase a Participant's PSCR Share, for a period of not less than one  
6 hundred twenty (120) days to match any *bona fide* offer for such assignment.

7 (I) Each Participant that has noted an exception to Section 2(B)(viii) on  
8 Appendix K, or otherwise has some contractual or other legal impediment to its payment  
9 obligation to AMP hereunder being O&M Expenses, covenants and agrees that it will in  
10 good faith endeavor to remove any such contractual or other legal impediments at the  
11 earliest possible time.

## SECTION 18

### SECTION 18. Default.

(A) In the event any payment due by a Participant under this Contract remains unpaid subsequent to the due date thereof, such event shall constitute a default hereunder and AMP may, upon thirty (30) days' prior written notice to and at the cost and expense of such Participant (i) withhold any payments otherwise due and suspend deliveries or availability under this Contract, (ii) bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to enforce any covenant, agreement or obligation against such Participant, and (iii) take any other action permitted by law to enforce this Contract. Upon suspension of the rights of the defaulting Party as provided in the immediately preceding sentence, AMP shall be entitled to and may sell or make available, from time to time, to any other person or persons any Power Sales Contract Resources arising from such Participant's PSCR Share, and any such sale may be on such terms and for such period deemed necessary or convenient in AMP's judgment, which shall not be exercised unreasonably, to make such sale under then-existing market conditions; provided, however, that no such sale shall be made for a period exceeding two (2) Months. Any such sale contracted for by AMP under this Section 18 shall not relieve the defaulting Party from any liability under this Contract, except that the net proceeds of such sale shall be applied in reduction of the liability (but not below zero) of such defaulting Party under this Contract. When any default giving rise to the suspension of the rights, including the delivery or availability of such Power Sales Contract Resources of the defaulting Party, has been cured in less than sixty (60) days subsequent to such default and payment has been made by the defaulting Party to AMP of all costs and expenses incurred as a result of such default, such Participant shall be entitled to the restoration of its rights, including a resumption of delivery or other service to this Contract, subject to any sale to others made by AMP pursuant to this Section 18.

(B) (i) If any Participant shall fail to pay any amounts due under this Contract, or to perform any other obligation hereunder, which failure constitutes a default under this Contract and such default continues for sixty (60) days or more, AMP may, in addition to any other remedy available at law or equity, terminate the provisions

## SECTION 18

of this Contract insofar as the same entitle the Participant to a PSCR Share. During such default, the defaulting Participant shall not be entitled to any vote on the Participants Committee or any matter which requires a vote of the Participants, but the obligations of the Participant under this Contract shall continue in full force and effect. AMP shall forthwith notify such Participant of such termination.

(ii) Upon the termination of entitlement to a PSCR Share as provided in paragraph (i) of this subsection (B), AMP shall attempt to sell the defaulting Participant's PSCR Share first to other Participants, then to Members who are not Participants and then to other persons, and, to the extent such defaulting Participant's obligations are not thereby fulfilled, each non-defaulting Participant shall purchase, for so long as such default remains uncured, a *pro rata* share of the defaulting Participant's entitlement to its PSCR Share which, together with the shares of the other non-defaulting Participants, is equal to the defaulting Participant's PSCR Share, in kW, as set forth in Appendix A ("Step Up Power"); provided; however, that no such termination shall reduce the defaulting Participant's obligations under paragraph (iii) of this subsection (B); and, provided further, however, that the sum of all such increases for each non-defaulting Participant pursuant to this paragraph (ii) of subsection (B) shall not exceed, without consent of the non-defaulting Participant, an accumulated maximum kW equal to twenty-five percent (25%), or such lesser percentage as set forth in any Trust Indenture, of such non-defaulting Participant's initial PSCR Share in kilowatts as shown on Appendix A prior to any such increases. AMP shall mail written notice, and may, at its option, also transmit the same by electronic means, to each non-defaulting Participant of the amount of any Step Up Power as soon as practicable. All Step Up Power Costs shall be determined consistent with and be treated as a part of Revenue Requirements pursuant to Section 5 and shall be paid by the non-defaulting Participant in accordance with this Contract. Notwithstanding the foregoing provision of this Section 18 (B)(ii), within twenty (20) days after the notice of default by any other Participant sent in accordance with Section 18 (A), a Participant may notify AMP in writing of its election to purchase voluntarily Step Up Power under the terms and conditions of this Section 18 (B) in any amount more than that which would otherwise be its *pro rata* share and up to the amount of the defaulting Participant's PSCR Share.



## SECTION 18

Such purchase shall continue for so long as the default is not cured. To the extent the sum of such voluntary elections is greater than the amount of Step Up Power to be distributed, the same shall be distributed among the Participants so electing in proportion to the amounts requested. To the extent the sum of such voluntary elections is less than the defaulting Participant's PSCR Share, the remainder shall be distributed *pro rata* among the balance of the Participants as otherwise set forth herein. Non-defaulting Participants assuming Step-Up Power shall be entitled to exercise all voting rights associated with all amounts of Step Up Power taken or assigned.

(iii) The fact that other Participants have assumed their obligations for Step Up Power Costs shall not relieve the defaulting Participant of its liability for such payments and all Participants assuming such obligation (voluntarily or otherwise), either individually or as a member of a group, shall have a right of recovery from the defaulting Participant of all damages occasioned thereby, including all costs of recovery and attorney fees less any amounts recovered by operation of this Section 18. AMP, in consultation with the Participants Committee, may commence such suits, actions or proceedings, at law or in equity, including suits for specific performance, as may be necessary or appropriate to enforce the obligations of this Contract against the defaulting Participant.

(C) In the event of default by a Participant in the payment of any of the sum or sums now or hereafter secured hereby, or in the performance of any of the covenants and conditions of this Contract; or in the event a Participant shall for any reason be rendered incapable of fulfilling its obligations hereunder; or final judgment for payment of money shall be rendered against such Participant which adversely affects its ability to fulfill its obligations hereunder, and any such judgment shall not be discharged within 60 days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which, or pursuant to which, such judgment shall have been granted, or entered, in such manner as to stay the execution of, or levy under, such judgment, order, decree, or process or the enforcement thereof, or any proceeding shall be instituted with the consent or acquiescence of a Participant for the purpose of effecting a compromise between such Participant and its creditors, or for the purpose of

## SECTION 18

1 adjusting the claims of such creditors pursuant to any Federal or State statute now or  
2 hereafter enacted, if the claims of such creditors are under any circumstances payable  
3 from such Participant's rights under this Contract; or if (a) a Participant is adjudged  
4 insolvent by a court of competent jurisdiction which assumes jurisdiction of such  
5 Participant's Electric System, or (b) an order, judgment or decree be entered by any  
6 court of competent jurisdiction appointing, without the consent of such Participant, a  
7 receiver or trustee of such Participant or of the whole or any part of such Participant's  
8 Electric System and any of the aforesaid adjudications, orders, judgments or decrees  
9 shall not be vacated or set aside or stayed within sixty (60) days from the date of entry  
10 thereof; or if a Participant shall file a petition or answer seeking reorganization or any  
11 arrangement under the Federal bankruptcy laws or any other applicable law or statute  
12 of the United States of America or any State thereof, which would place jurisdiction of  
13 such Participant's Electric System in other than such Participant; then, in addition to the  
14 remedies specified in subsections (A) of this Section 18, and any other remedy  
15 available under applicable law, including the remedy of specific performance, AMP shall  
16 have the right and capacity to, and may, at its sole option, by notice in writing to such  
17 Participant, apply for the appointment of a receiver of rents, income and profits of such  
18 Participant's Electric System received or receivable by such Participant as a matter of  
19 right and as security for the amounts due AMP without consideration of the value of  
20 such Participant's Electric System, or the solvency of any person or persons liable for  
21 the payment of such amounts, the rents, income and profits of the Electric System  
22 received or receivable by such Participant being hereby assigned by such Participant to  
23 AMP as security for payment of the sum or sums now or hereafter secured hereby.

24 (D) Anything in this Section 18 to the contrary notwithstanding, if at any time  
25 before the entry of final judgment or decree in any suit, action or proceeding instituted  
26 by AMP on account of default as defined above, or before the completion of the  
27 enforcement of any other remedy under this Contract or law, such Participant shall pay  
28 all sums then payable by their stated terms, and all arrears of interest, if any, upon said  
29 sums then outstanding and the charges, compensation, expenses, disbursements,  
30 advances and liabilities of AMP, and all other amounts then payable hereunder, and  
31 every other default of which AMP has notice shall have been remedied to the

## SECTION 18

1 satisfaction of AMP, then and in every such case AMP shall, and if such default has  
2 continued for a period greater than one (1) year, AMP may, with the approval of its  
3 Board of Trustees rescind and annul the declaration of default and its consequences.  
4 However, no such rescission or annulment shall extend to or affect any subsequent  
5 default or impair any right consequent thereon.

6 (E) Should AMP default on any of its obligations hereunder and such default  
7 continues for a period of thirty (30) days, any Participant may give AMP written notice of  
8 such default. Subject to the provisions of any Trust Indenture, should AMP not cure  
9 such default, or provide such Participant with a satisfactory plan to cure such default  
10 within sixty (60) days of such written notice, then by the affirmative vote of a Super  
11 Majority of Participants, AMP may be directed to contract with a third party to perform  
12 whatever duties or obligations which are in default. The costs of such contract shall be  
13 included in Revenue Requirements.

14 (F) AMP shall provide timely reports to the Participants Committee of any  
15 Participant defaults and actions taken by AMP pursuant to Section 18.

## SECTION 19

1        **SECTION 19. Waiver of Default.** No waiver at any time by any Party to this  
2        Contract of its rights with respect to any default of any other Party hereto, and no grant  
3        by any Party to any other Party of an extension of time on any payments hereunder or  
4        with respect to any other matter arising in connection with this Contract, shall be  
5        considered a waiver with respect to any subsequent default, right or matter.

## SECTION 20

### **SECTION 20. Relationship to and Compliance with Other Instruments.**

(A) It is recognized by the Parties hereto that AMP, in undertaking, or causing to be undertaken, the planning, engineering, permitting, licensing, financing, construction, refurbishment, acquisition, operation, acquisition of an arrangements regarding Fuel, and maintenance of the Project, must comply with the requirements of each Trust Indenture, the Related Agreements and all licenses, permits and regulatory approvals necessary therefor, and it is therefore agreed that this Contract is made subject to the terms and provisions of each Trust Indenture, the other Related Agreements and all such licenses, permits and approvals.

(B) AMP intends to issue Bonds, the interest on which is excluded from gross income for Federal income tax purposes under Section 103 of the Code ("Tax Exempt Obligations"), to finance eligible costs of the Project, and thereby reduce the Project Costs that are included in the Revenue Requirements billed to Participants. To obtain such cost reductions, AMP, for itself and on behalf of the Participants, may be required to make certain representations and covenants. In addition to the obligations set forth in Section 21, each Participant agrees to reasonably cooperate with AMP with regard to such representations and covenants.

## SECTION 21

### **SECTION 21. Tax Matters, Disclosure**

(A) (i) Each Participant acknowledges that it is the intention of (a) AMP to utilize, to the maximum extent possible, the proceeds of Bonds the interest on which is excluded from gross income for Federal income tax purposes ("Tax Exempt Obligations") under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), to finance the costs of the Project and related costs, and (b) the Participants to enable AMP to issue Bonds that are Tax Exempt Obligations. Each Participant acknowledges that at any time that AMP issues Tax-Advantaged Obligations, each Participant must expect to own and not expect to sell or otherwise dispose of or change the use of its rights to output of the Project prior to the final maturity date of the respective Tax Exempt Obligations.

(ii) Each Participant acknowledges that output contracts with nongovernmental persons for the purchase of electricity produced by a generating facility financed with Tax Exempt Obligations may result in private business use of such generating facilities and that only a limited amount of private business use is permitted under the Federal income tax laws addressing Tax Exempt Obligations.

(iii) Each Participant hereby represents, warrants and covenants that, notwithstanding any other provisions of this Power Sales Contract, it will take all actions necessary to enable AMP to issue the Bonds as Tax Exempt Obligations to finance the Project.

(iv) Each Participant represents, warrants and covenants that it will not take any action (including but not limited to entering into output contracts), or fail to take any action, that would adversely affect the tax advantaged status of any Tax Exempt Obligations. Each Participant represents, warrants and covenants that its interest in the Project will be used for the governmental purpose of such Participant while such Participant owns rights to output of the Project. In addition, each Participant represents, warrants and covenants that, to the extent applicable, it will take no action (including but not limited to entering into output contracts) or fail to take any action which action or failure would cause the Tax Exempt Obligations issued by AMP to become private



## SECTION 21

1 activity bonds, including qualified 501(c)(3) bonds, and it will not dispose of or change  
2 the use of its Electric System unless an opinion of nationally recognized bond counsel  
3 acceptable to AMP is received stating that such action will not have an adverse effect  
4 on the tax advantaged status of Bonds issued as Tax Exempt Obligations.

5 (v) Each Participant represents, warrants and covenants that it has, or  
6 will establish, reasonable procedures to ensure that no action is taken by it that would  
7 cause any Bonds issued as Tax Exempt Obligations to meet, to the extent applicable,  
8 the private business use test or the private loan test of Section 141 of the Code and to  
9 ensure continued qualification of the Bonds issued as Tax Exempt Obligations.

10 (vi) Each Participant agrees to assist and to cooperate with AMP  
11 regarding any matters related to its PSCR Share to the extent needed to maintain the  
12 tax status of Bonds issued as Tax Exempt Obligations, including but not limited to (a)  
13 delivering, prior to issuance of any Tax Exempt Obligations, executed certificates  
14 relating to the tax requirements applicable to Tax Exempt Obligations, and (b) providing  
15 to AMP periodic reports after the issuance of any Tax Exempt Obligations regarding the  
16 covenants in this Section 21;

17 (vii) AMP agrees to assist the Participants in complying with the  
18 provisions of this Section 21.

19 (B) (i) In order to facilitate the marketing of the Bonds secured by this  
20 Contract and to assist the underwriter(s) thereof in complying with their obligations  
21 under Rule 15c2-12 of the Securities Exchange Act of 1934, as amended from time to  
22 time (the "Rule"), AMP may, from time to time, designate certain Participants to be  
23 "obligated persons" within the meaning of the Rule. AMP will initially inform Participants  
24 of such designation prior to the initial issuance of any Bonds and, thereafter, annually  
25 not later than September 30. Each Participant designated as an obligated person shall  
26 furnish to AMP annually, no later than April 1 of each year, or such earlier date the Rule  
27 may require, and to the extent required for AMP to comply with its undertakings made  
28 pursuant to such Rule, (a) information updating the financial and operating data  
29 respecting the Participant and its Electric System, which data was presented or included

## SECTION 21

1 by specific reference in an official statement or other comparable document of AMP  
2 prepared in connection with the offering of its Bonds, (b) the Participant's audited  
3 financial statements relating to its Electric System, when they become publicly  
4 available, and prepared in accordance with generally accepted governmental  
5 accounting standards or otherwise as required by law, and (c) such other information as  
6 required by the Securities and Exchange Commission.

7 (ii) In addition, each Participant, including, but not limited to, the  
8 Participants designated by AMP to be obligated persons, agrees to take such actions  
9 and sign such certificates as are deemed necessary by AMP to successfully market any  
10 Bonds secured by this Contract.

## SECTION 22

### **SECTION 22. Modification or Amendment of this Contract.**

Except to the extent otherwise provided herein, including the Appendices hereto and supplemental agreements entered into pursuant to this Contract, this Contract shall not be amended, modified or otherwise changed except by written instrument executed and delivered by the Parties; provided, however that this Contract shall not in any event be amended, modified or otherwise changed in any manner that will materially adversely affect the security afforded by the provisions of this Contract for the payment of the principal, interest, and premium, if any, on the Bonds, except as, and to the extent, permitted by any Trust Indenture.

## SECTION 23

1        **SECTION 23. Opinions as to Validity.** Each Participant, upon execution and  
2 delivery of this Contract, shall furnish to AMP, substantially in the form of Appendix H  
3 hereto, an opinion of counsel acceptable to AMP. Upon request by AMP made from  
4 time to time after the Effective Date, each Participant shall furnish AMP with a letter  
5 from the attorney or firm of attorneys which rendered the foregoing opinion, or such  
6 other attorney as shall be acceptable to AMP, confirming, as of the date specified in  
7 such request, the foregoing opinion delivered upon execution and delivery of this  
8 Contract.

## SECTION 24

1        **SECTION 24. Notices and Computation of Time.** Any notice or demand to  
2 AMP under this Contract shall be deemed properly given if mailed postage prepaid and  
3 addressed to AMP as set forth in Appendix J. Any notice or demand by AMP to a  
4 Participant under this Contract shall be deemed properly given if mailed postage  
5 prepaid and addressed to such Participant at the address furnished to AMP in  
6 connection with the execution and delivery of this Contract and set forth on Appendix J.  
7 In computing any period of time from any such notice, such period shall commence (i)  
8 on the same Business Day that the notice is issued if hand delivered, (ii) at Noon on the  
9 first Business Day following the date such notice was issued if delivered by electronic  
10 mail or facsimile, or (iii) at Noon of the second Business Day following the date such  
11 notice was issued if sent by overnight mail, or (iv) at Noon of the third Business Day  
12 following the date such notice was issued if sent by regular mail. The name and  
13 address to which such notice or demand is directed may be changed at any time and  
14 from time to time by any Party giving notice as above which shall then be updated on  
15 Appendix J.

## SECTION 25

1        **SECTION 25. Governing Law.** This Contract and any controversies arising  
2 hereunder and thereunder are to be construed and determined in accordance with the  
3 law of the State of Ohio, provided, however, the power and authority of each Participant  
4 to enter into this Contract (and the required procedures with respect thereto) shall be  
5 construed in accordance with the laws of such Participant's domicile state.

## SECTION 26

1        **SECTION 26. Severability.** If any section, subsection, clause or provision of  
2 this Contract shall be finally adjudicated by a court of competent jurisdiction to be  
3 invalid, the remainder of this Contract shall be unaffected by such adjudication and all  
4 the remaining provisions of this Contract shall remain in full force and effect as though  
5 such section, paragraph, clause or provision or any part thereof so adjudicated to be  
6 invalid had not been included herein.



## SECTION 27

### **SECTION 27. Assignment of Contract.**

(A) This Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Contract; provided, however, that (i) except for any assignment by AMP authorized by subsection (B) of this Section 27, neither this Contract nor any interest herein shall be transferred or assigned by AMP except with the consent of the Participants by Majority Weighted Vote, which consent shall not be unreasonably withheld, and (ii) except for an assignment by a Participant with the consent of AMP in accordance with subsection (C) of this Section 27 or an assignment in connection with the sale, lease or other disposition of all or substantially all of such Participant's Electric System as provided in Section 17(B) hereof, neither this Contract nor any interest herein shall be transferred or assigned by any Party.

(B) AMP may sell, lease or otherwise dispose of all or substantially all of its property and assets to or merge into or consolidate with, any other entity which shall assume all of AMP's obligations hereunder or may be required to undertake such sales, leases, assignments or the like, and that AMP may assign and pledge to any trustee or similar fiduciary designated in any Trust Indenture all of, or any interest in, its right, title, and interest in and to all payments to be made to AMP under the provisions of this Contract (other than the Service Fee) as security for the payment of any Bonds, and, upon such assignment, pledge and delivery, AMP may grant to such trustee any rights and remedies herein to AMP and thereupon any reference herein to AMP shall be deemed, to the extent of such rights and remedies and with the necessary changes in detail, to include such trustee which shall be a third party beneficiary of the covenants and agreements.

(C) Any Participant may assign to any entity this Contract and its rights hereunder (except as otherwise in the last sentence of this subsection) if all of the following conditions are met: (i) AMP consents in writing to such assignment, which consent shall not be unreasonably withheld; (ii) the assignment shall be evidenced by a written instrument pursuant to which the assignee shall assume all obligations (except to the extent theretofore accrued) of such Participant under this Contract or such

## SECTION 27

Participant shall post an acceptable bond or other reasonably acceptable security to assure its obligations hereunder are fulfilled and clauses (vi) (a), (b) and (c) of this subsection (C) are satisfied; (iii) if and to the extent necessary to reflect such assignment and assumption, AMP and such assignee shall enter into an agreement supplemental to this Contract to clarify the terms on which Capacity and Energy are to be sold or made available hereunder by AMP to such assignee; (iv) in the opinion of a nationally recognized financial expert, such assignment will not materially adversely affect the security afforded by the provisions of this Contract for the payment of the principal, interest and premium, if any, on the Bonds; and (v) AMP shall have received an opinion or opinions of counsel of recognized standing selected by AMP stating that such assignment (a) will not adversely affect the pledge and assignment of this Contract or the revenues derived by AMP hereunder (other than the Service Fee) as security for payment of Bonds and the interest thereon, (b) is lawfully permitted under the law of such Participant's domicile state, and (c) will not affect the regulatory or tax status of AMP or any Bonds. Nothing contained in this subsection (C) shall be construed to prevent or restrict such Participant from issuing mortgage revenue bonds (subject to the provisions of subsection (E) of Section 17) secured by a mortgage of the property and revenues of such Participant's Electric System, including a franchise.

(D) Each Participant agrees that, prior to any assignment of its rights under this Contract pursuant to subsection (C) of this Section 27, it shall grant to AMP a right of first refusal to purchase a Participant's PSCR Share for a period of not less than 120 days to match any *bona fide* offer for such assignment.

## SECTION 28

1        **SECTION 28. Beneficiaries.** Subject to the provisions of Section 32, this  
2 Contract shall constitute a binding agreement between AMP and each Participant.  
3 Other than a trustee or creditor but only to the extent for either specifically set forth in  
4 any Trust Indenture in the event of any default under this Contract and as a  
5 consequence, a default by AMP under such Trust Indenture, there shall be no third  
6 party beneficiaries to this Contract.

## SECTION 29

1        **SECTION 29. Survivorship of Obligations.** The termination of this Contract  
2 shall not discharge any Party hereto from any obligation it owes to any other Party  
3 under this Contract by reason of any transaction, loss, cost, damage, expense, or  
4 liability which shall occur or arise (or the circumstances, events, or basis of which shall  
5 occur or arise) prior to such termination. It is the intent of the Parties hereby that any  
6 such obligation owed (whether the same shall be known or unknown at the termination  
7 of this Contract or whether the circumstances, events, or basis of the same shall be  
8 known or unknown at the termination of this Contract) shall survive the termination of  
9 this Contract.

## SECTION 30

### **SECTION 30. Dispute Resolution.**

(A) The Parties agree to negotiate in good faith to settle any and all disputes arising hereunder. Representatives of the Participants Committee and AMP Board of Trustees shall participate in any such negotiations.

(B) Good faith mediation shall be a condition precedent to the filing of any litigation in law or equity by any Party against any other Party relating to this Contract except injunctive litigation necessary to solely restrain or cure an imminent threat to the public or employee safety. Before the remedies provided for in this Section 30 may be exercised by any Party, such Party shall give written notice to the other Parties that such Party believes that an event of default or impasse under this Contract may have occurred, specifying the circumstances constituting the event of default or impasse in sufficient detail that the other Parties will be fully advised of the nature of the event of default or impasse. The responding Party shall prepare and serve a written response thereto within ten (10) Business Days of receipt of such notice.

(C) The Parties shall attempt to resolve the controversy by engaging a single mediator, experienced in the subject matter, to mediate the dispute. The mediator shall be mutually selected by the Parties to the controversy and conduct mediation at a location agreed upon by the Parties or absent agreement, by the mediator. Within two (2) Business Days of selection, the mediator shall be furnished copies of the notice, this Contract, response and any other documents exchanged by the Parties. If the Parties and the mediator are unable to settle the same within thirty (30) days from selection, or such other time as the Parties agree, the mediator shall make a written recommendation as to the resolution of the dispute. Each Party, in its sole discretion, shall accept or reject such recommendation in writing within ten (10) Business Days. Should the Parties be unable to agree upon a single mediator within five (5) Business Days of the written response of the responding Party, any Party or the Parties jointly shall petition the Presiding Judge of the Court of Common Pleas of Franklin County, Ohio, to appoint a mediator, experienced and knowledgeable in the matters which are the subject of the dispute. Notwithstanding the preceding sentence, the parties reserve

## SECTION 30

1 the right to file suit or pursue litigation in any court that is otherwise proper with respect  
2 to jurisdiction and venue. The Parties' consent to selection of a mediator by the  
3 Franklin County Court of Common Pleas shall not constitute consent to jurisdiction of  
4 such court or waiver of defenses as to venue or jurisdiction. The costs of the Mediator  
5 and the mediation shall be shared equally by the Parties to the dispute.

6 (D) The Parties may mutually agree to waive mediation or subsequent to  
7 mediation waive their right to litigate in court and, in either case, submit any dispute  
8 hereunder to binding arbitration, if permitted by law, before one or more arbitrators  
9 pursuant to the Commercial Arbitration Rules of the American Arbitration Association or  
10 such other arbitration procedures to which they may agree. Such agreement shall be in  
11 writing and may otherwise modify the procedures set forth in this Section 30 for  
12 resolving any particular dispute.

13 (E) Nothing in this Section 30 shall be construed to affect jurisdiction or venue  
14 over any dispute that is otherwise appropriate under law, except to the extent the  
15 Parties mutually arbitrate pursuant to subsection (D) of this Section 30.

## SECTION 31

### SECTION 31. Liability.

(A) AMP shall not be responsible for the receipt, transmission, control, use, application, availability or distribution of electric Capacity and Energy under this Contract beyond any Point of Delivery or Secondary Point of Delivery and shall not, in any event, be liable for damage or injury to any person or property whatsoever arising, accruing, or resulting from, in any manner, the receipt, transmission, control, use, application, availability or distribution of said electric Capacity and Energy beyond the interconnection with another entity of any facilities owned and operated by AMP.

(B) No recourse shall be had against any individual member of the Utility Governing Body of any Participant or any individual Member of the AMP Board of Trustees, or their respective representatives, or any officer, employee or other agent of such Participant or AMP, past, present or future, either directly or indirectly, whether by virtue of any penalty or otherwise, for any claim based upon or arising out of this Contract or the obligations of the parties hereunder, all such liability, if any, being by the execution and delivery of this Contract specially waived and released; provided, however, the foregoing shall not relieve any individual from the performance of any official duty imposed by law.



## SECTION 32

### SECTION 32. Term of Contract.

(A) This Contract shall become effective upon its execution and delivery ("Effective Date"); provided, however, that any Member of AMP or other municipal electric systems or joint action agencies comprised of Political Subdivisions that operate Electric Systems that execute this Contract subsequent to the Effective Date may nonetheless become a Participant upon execution so long as the same (a) is not inconsistent with any Trust Indenture and (b) is approved by the Participants Committee and AMP's Board of Trustees as set forth in Section 33 (B) and (c) is before August 31, 2023 or such later date as approved by AMP's Board of Trustees. Notwithstanding the foregoing and the representations of the Participants herein, in the event it is ultimately determined that any Participant failed duly and validly to execute and deliver this Power Sales Contract or that this Power Sales Contract, or any portion hereof, is invalid or unenforceable with respect to any Participant for any reason whatsoever, such determination shall in no way affect the commencement, term, validity or enforceability of this Power Sales Contract with respect to any other Participant or AMP or relieve any other Participant of its obligations hereunder.

(B) This Contract shall remain in effect until December 31, 2045 and thereafter, unless otherwise required by law, until (i) the date the principal of, premium, if any, and interest on all Bonds have been paid or deemed paid in accordance with any applicable Trust Indenture; and (ii) the Participants by Super Majority recommend this Contract be terminated; provided further, however, that all Participants shall remain obligated to pay to AMP the costs of terminating, discontinuing, disposing of, and decommissioning the Project except those portions of the Project which AMP, in its sole discretion, elects not to terminate, discontinue, dispose of or decommission in connection with or prior to the termination of this Contract; and provided further, however, that the requirements of subsection (B)(i) of this Section are satisfied. Neither termination, cessation of taking Products hereunder, nor expiration of this Power Sales Contract shall affect any accrued right, liability or obligation hereunder.

## SECTION 32

(C) If, upon termination of this Contract pursuant to subsection (B) of this Section 32, AMP seeks to sell or otherwise dispose of any System, AMP hereby grants a right of first offer to acquire said System to the Host Participant owning the Site upon which the System is located. Said Host Participant shall have one hundred twenty (120) days after termination of this Contract to notify AMP in writing of its offer. If the aforementioned Host Participant submits an offer, the Parties shall have sixty (60) days to negotiate the principal business terms of that transaction. If the Parties agree on those terms, then they shall continue to prepare definitive documents to effect that transfer on mutually acceptable terms during the next sixty (60) days (but no later than one hundred fifty (150) days following the date of the initial proposed offer). If at the end of that time, the Parties are unable to consummate the transaction, then AMP shall be free to sell the System to any other potential purchaser in accordance with Section 16 of this Contract.

Notwithstanding anything contained herein to the contrary, any sale or disposition made pursuant to this Section 32 (C) must be approved by the Participants in accordance with Section 16 of this Contract.

## SECTION 33

### **SECTION 33. Additional Sites and Systems.**

(A) Each Participant recognizes that in order to spread risks, pursue economies of scale, maximize efficiencies and provide for additional generation, it may be appropriate to pursue additional Systems or additional sites ("Additional Sites") on which additional Systems may be sited to become part of the Project, with approval of the Participants Committee.

(B) For such additional Systems or Additional Sites to be added to the Project, approval of both the AMP Board of Trustees and a Super Majority of the Participants Committee is required, together with any requirements as might be imposed by the Trust Indenture. With such approvals, AMP may undertake as a part of the Project, the planning, engineering, siting, permitting, licensing, construction and operation of one or more Systems or Additional Sites in MW amounts not to exceed the total MW then authorized hereunder.

(C) Approval of each Additional Site is contingent upon negotiation of a lease and interconnection agreement with the Host Participant for each Additional Site.

(D) AMP shall revise the Appendices hereto to reflect any resulting modified Delivery Points, Secondary Points of Delivery and other relevant information.

## SECTION 34

### **SECTION 34. Additional Host Member Provisions**

(A) Each Host Member recognizes that as a Host Member, it has obligations under its Lease and Interconnection Agreement to AMP, and to the other Participants. Accordingly, each Host Member, as a condition of it being approved as a Host Member, agrees:

(i) to honor its obligations under the Lease, and, if the Lease Term is less than the term of this Contract, to either renew the Lease for periods to be cumulatively not less than the term of this Contract, or, upon a failure of the Host Participant to renew, pay, for the benefit of the Project, the lesser of (x) two and one-half (2 ½) times the fair market value of the leased premises, (y) the cost to move the System to another location on the Host's Electric System or (z) the value of the actual loss of that System's production to the Project;

(ii) to fulfill its obligations under the Lease and Interconnection Agreement; and further in the event the Host Member recklessly, willfully or wantonly breaches any obligation under the Lease or Interconnection Agreement that results in the Project or AMP incurring costs or expenses, that the Host Member will be solely responsible for such costs or expenses;

(iii) to reasonably assist AMP to support any applications for tax abatements or the like for the Site or System located thereon;

(iv) to reasonably cooperate on needed review and approval of Site and System design and construction plans;

(v) to provide construction and other electric service to the Site and System, such kWh to be repaid to the Host Member via netting from System output after Commercial Operation;

(vi) to not voluntarily permit any interference with the Site or System, and to not construct or permit to be constructed any structure on the Site that would adversely affect the System. The Host Member shall be solely responsible

## SECTION 34

1 for any costs or expenses incurred by the Project or AMP due to reckless, willful  
2 or wanton breaches of this commitment; and

3 (vii) to reimburse AMP or the Project for any real property taxes paid in  
4 connection with the Site, except for any such taxes allocable to the System or the  
5 portion of the Site occupied by the System.

6 (B) In consideration of the responsibilities set forth in Section 34(A) and the  
7 Host Member's lease of its Host Site(s) to AMP for nominal consideration, a Host  
8 Member may utilize any System installed on its Host Site(s), to the extent required and  
9 available, for system power for the Host's Electric System in the event of an emergency  
10 when other sufficient power is not available.

11 (C) A Host Member that utilizes any System in accordance with part (B) of this  
12 Section 34 shall pay AMP for all Fuel costs, in the amount reasonably determined by  
13 AMP, incurred during such operation.

## SECTION 35

### 1        **SECTION 35. Counterparts.**

2            This Contract may be executed and delivered in counterparts, each of which  
3        shall for all purposes be treated as the original hereof and all of which shall constitute a  
4        single agreement.

## SECTION 36

1        **SECTION 36. Other Agencies.** AMP and the Participants recognize that certain  
2 Participants may be, as of the Effective Date, and may continue to be or in the future  
3 may become members of other joint action agencies. AMP may enter into Related  
4 Agreements with such Participants and such agencies, pursuant to which such  
5 agencies may, by written agreement with AMP or between such agency and/or such  
6 agency's member Participants, act on behalf of its members or such Participants for the  
7 purposes of this Contract; provided, however, that nothing in such Related Agreements  
8 shall relieve any Participant of any obligation incurred hereunder.



## SECTION 37

### **SECTION 37. PSCR Share Allocation.**

(A) In order to spread risks, pursue economies of scale, maximize efficiencies, and provide for diesel generation, the minimum PSCR Shares for Participants hosting a Site shall not be less than one half of the installed capacity value of the System(s) at such Site.

(B) As soon as practical after the Effective Date of this Contract, there shall be an initial meeting of the Participants held at a time and place determined by AMP. Notice for such meeting shall be given to each Participant in writing delivered by electronic means, not less than seven (7) days prior to such meeting. In addition to such other business that shall properly be determined by the Participants at such meeting in accordance with the Regulations, the Participants shall adopt at such meeting (or at a later meeting called for such purpose at such time) an initial allocation of PSCR Shares among the Participants with due regard to, among other things, the total kW available and the amount requested by each Participant; provided, however, that in no case shall a Participant be allocated a PSCR Share greater than any maximum amount specified by such Participant pursuant to the legislative action by such Participant's Utility Governing Body authorizing execution of this Power Sales Contract. Such finalized PSCR Shares, as adopted, shall be reflected on a revised Appendix A and shall total one hundred percent (100%) of PSCR Shares.

(C) If additional Participants are added to the Project pursuant to Section 33, the PSCR Shares shall be reallocated accordingly and the requests of the Participants for the same will be determined in accordance with methodologies contained herein and as approved by the Participants Committee; provided, however, that no Participant shall be allocated a PSCR Share greater than that authorized by such Participant's Utility Governing Body.

1           The undersigned Participant requests a PSCR Share of up to the kW amount  
2 noted below. Should the undersigned Participant request to host a Site such Participant  
3 shall indicate such below.

4           IN WITNESS WHEREOF, the parties hereto have caused this Contract to be  
5 executed by their proper officers respectively, being thereunto duly authorized, and their  
6 respective corporate seals, if any, to be hereto affixed.

|                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AMERICAN MUNICIPAL POWER, INC.</b><br><br>By _____<br><b>Jolene M. Thompson</b><br><b>President/CEO</b><br><br><b>Approved as to form:</b><br><br>_____<br><b>Rachel Gerrick</b><br><b>Senior Vice President/General Counsel</b><br><b>for Corporate Affairs</b> | <b>CITY OF MARSHALL, MICHIGAN</b><br><br>By _____<br><b>Name:</b> _____<br><b>Title:</b> _____<br><br><b>Address for receipt of notice:</b><br>_____<br>_____<br>_____<br>_____<br><br><b>Approved as to form:</b><br>_____<br><b>Name:</b> _____<br><b>Title:</b> _____ |
|                                                                                                                                                                                                                                                                     | <b>Participant requests a PSCR Share of up to</b><br><b><u>10,000</u> kW.</b><br><b>Participant requests to Host a Site.</b><br><b>Yes X          No <input type="checkbox"/></b>                                                                                        |

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**APPENDICES  
TO  
POWER SALES CONTRACT  
REGARDING THE  
AMP MICHIGAN CAT PEAKING PROJECT**

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**APPENDIX A**  
**SCHEDULE OF PARTICIPANTS**  
**AND PSCR SHARES**  
***(Preliminary Estimates)***

APPENDIX A  
AMP MICHIGAN CAT PEAKING PROJECT  
SCHEDULE OF PARTICIPATING MEMBERS

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**PSCR SHARE**  
*(Preliminary Estimates)*

| Participant                  | Capacity (AC) - MW |
|------------------------------|--------------------|
| Village of Clinton, Michigan | 2,500              |
| City of Coldwater, Michigan  | 7,500              |
| City of Marshall, Michigan   | 10,000             |
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**APPENDIX B**  
**AMP MICHIGAN CAT PEAKING PROJECT**  
**RATE SCHEDULES**

**APPENDIX B-1  
AMP MICHIGAN CAT PEAKING PROJECT  
RATE SCHEDULE**

**SCHEDULE 1  
EFFECTIVE \_\_\_\_\_, 20\_\_  
AMP MICHIGAN CAT PEAKING PROJECT  
POWER SALES RATE SCHEDULE**

- 1) Applicability and Availability. This rate schedule is solely applicable to and available for the Participants under the terms and conditions of the AMP Michigan CAT Peaking Project Power Sales Contract.
- 2) Billing Capacity. The Billing Capacity in each billing period shall be the allocation of the PSCR Share in kilowatts (kW) assigned to the Participants as set forth opposite their names in Appendix A.
- 3) Billing Energy. The Billing Energy in each billing period shall be the respective Participant's scheduled reservation of its PSCR Share in kilowatt-hours (kWh) at the Delivery Point.
- 4) Rates and Charges. The charges for each billing period shall be determined from the applicable Rate Schedule as described in Section 5 of the Contract and will be invoiced as follows:
  - a) Demand Charge (which may be called Capacity Charge). This is the Billing Capacity times the fixed O&M rate principally designed to recover any fixed Project Costs included in the Revenue Requirements as set forth in Section 5 hereof.
  - b) Energy Charge. This is Billing Energy delivered during a billing period times the energy rate principally designed to recover variable Project Costs and also including any payments respecting those variable costs that comprise Revenue Requirements, as set forth in Section 5 hereof and in the Rate Schedule, not otherwise recovered hereunder.



**APPENDIX B-1  
AMP MICHIGAN CAT PEAKING PROJECT  
RATE SCHEDULE**

- 1 c) Debt Service. This is the Billing Capacity times the Project's Debt Service  
2 rate principally designed to recover any Principal, Interest, or other Debt  
3 related Project Costs included in the Revenue Requirements as set forth  
4 in Section 5 hereof.
- 5 d) Net Congestion, Losses, FTR. This is the net of all costs and credits  
6 associated with delivery of Capacity and Energy from the Delivery point  
7 to the Participant's Secondary Point of Delivery including, but not limited  
8 to, marginal losses, marginal congestion, FTR Purchase costs and FTR  
9 congestion credits.
- 10 e) Adjustment for prior period(s). In accordance with Section 5 subsection (B)  
11 of this contract: Insofar as AMP is unable to use actual cost data and  
12 must rely on estimated costs at the time of invoice generation, any dollar  
13 difference between actual and estimated costs shall be reflected in the in  
14 a future billing period.
- 15 f) Rate Levelization. If applicable, this is a credit or charge required to bring  
16 the overall Project rate for the billing period, exclusive of Net Congestion,  
17 Losses, FTR, Adjustments for prior period(s), and Service Fee, to the  
18 approved rate stated in the applicable resolution or budget.
- 19 g) Service Fee. In addition to the charges detailed above, each  
20 Participant shall also pay the Service Fee in accordance with Section 5 of  
21 this contract.
- 22 h) Additional Charges (which may be called Power Cost Adjustment). This  
23 shall include any and all charges not covered in the above that are  
24 required to assure that the total costs invoiced for power and energy  
25 delivered under this contract are equal to the expenses incurred in  
26 providing said power and energy. The above enumeration of charges  
27 does not preclude any charges to any Participant as determined from

**APPENDIX B-1  
AMP MICHIGAN CAT PEAKING PROJECT  
RATE SCHEDULE**

1                   time to time and approved by the Participants Committee and/or Board of  
2                   Trustees in accordance with Section 5 of this Contract.

3    5) Late Payment Charge. Will be assessed as set forth in Section 5 of this Contract.

4    6) Billing Period. The Billing Period shall be Monthly or such other period determined  
5       in accordance with Section 5 of the AMP Michigan CAT Peaking Project PSC.

6

7    Effective: \_\_\_\_\_

**APPENDIX B-2**  
**AMP MICHIGAN CAT PEAKING PROJECT**  
**RATE SCHEDULE**

**SCHEDULE 2**  
**EFFECTIVE \_\_\_\_\_**  
**AMP MICHIGAN CAT PEAKING PROJECT**  
**EXAMPLE OF THE CALCULATION OF THE PROJECT AGGREGATE**

**Project Rates**

- Delivery will be to the Project Aggregate LMP
- Each Participant receives their PSCR Share of the Project Capacity and Energy
- Each Participant pays their own congestion and losses from the Delivery Point to the participant load point

**Project Billing**

- All Sites' output settled hourly in total
- All Participants receive their PSCR Share of the hourly output
- Source is Project Aggregate LMP = production weighted average LMP
- Sink is Participant load point

**Sample Calculation of Project Aggregate LMP**

[TO BE ADDED]

**APPENDIX B-3  
AMP MICHIGAN CAT PEAKING PROJECT  
RATE SCHEDULE**

**SAMPLE MONTHLY INVOICE**

Where applicable, power and energy delivered under this contract will be invoiced as part of the Participant's total monthly power invoice from AMP. The charges for power delivered under this contract will be detailed in a separate section of the monthly invoice. An example of the charges invoiced and the detail to be provided follows:

**[TO BE ADDED]**

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**APPENDIX C**  
**POINTS OF DELIVERY**  
**(Preliminary)**

**APPENDIX C-1  
AMP MICHIGAN CAT PEAKING PROJECT  
POINTS OF DELIVERY**

**Points of Delivery  
(Preliminary)**

The Delivery Point for billing purposes for all Project Participants shall be the Project Aggregate LMP that has a calculated LMP value equal to the production weighted average LMP for all Peaking Sites. The actual physical Points of Delivery shall be the “Delivery Point” at the meter unless the same is modified in writing by the parties and are as set forth below.

| Participant                | Site                       | Delivery Point                                        | Interconnection Voltage |
|----------------------------|----------------------------|-------------------------------------------------------|-------------------------|
| Village of Clinton         | Powerhouse Substation      | Tie into new feeder breaker inside village substation | 4,160V                  |
| City of Coldwater          | Michigan Avenue Substation | Tie into old breaker inside City Substation           | 13.8kV                  |
| City of Marshall (2.5 MWs) | South Substation           | Tie into old unused feeder breaker                    | 13.2kV                  |
| City of Marshall (7.5 MWs) | Powerhouse 2 Substation    | Tie into new feeder breaker                           | 13.2kV                  |

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**APPENDIX D**  
**PROJECT DESCRIPTION**  
**(AS OF \_\_\_\_\_, 2023)**

**APPENDIX D  
AMP MICHIGAN CAT PEAKING PROJECT  
PROJECT DESCRIPTION**

**AMP MICHIGAN CAT PEAKING PROJECT  
(PRELIMINARY)**

A. The Project is proposed to initially consist of the development, construction and integration of CAT modular generation systems at three sites for an approximate total project size of 20.0 megawatts ("MW").

| <u>MEMBER</u>       | <u>SITE NAME</u>    | <u>State</u> | <u>RTO</u> | <u>Load Zone</u> | <u>Approx. Size (MW)</u> |
|---------------------|---------------------|--------------|------------|------------------|--------------------------|
| Clinton             | Public Works        | MI           | MISO       | DTE              | 2.5                      |
| Coldwater           | Michigan Avenue Sub | MI           | MISO       | METC             | 7.5                      |
| Marshall            | Powerhouse Sub      | MI           | MISO       | METC             | 10                       |
| <b><u>Total</u></b> |                     |              |            |                  | <b><u>20</u></b>         |

AMP will engage CAT for an all-inclusive, fixed price project to site, install, and maintain its G3520 distributed generation systems. AMP will own the CAT systems, finance their construction, and dispatch the resources. AMP will lease the land from the community for each project site, and will manage the interconnection process with the local distribution system and the incumbent transmission utility. CAT will prepare the sites, design the installation, manage construction, and maintain and remotely monitor the units. Utility employees will receive maintenance and troubleshooting training for the generators from CAT.



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**APPENDIX E**  
**DEVELOPMENT COSTS**  
**AND**  
**INTERCONNECTION COSTS**

**APPENDIX E**  
**AMP MICHIGAN CAT PEAKING PROJECT**  
**DEVELOPMENT COSTS AND INTERCONNECTION**  
**COSTS**

- 1 Development Costs, currently estimated at [TO COME], to be recovered by AMP on a
- 2 pro rata basis based upon an estimated [TO COME] MW Project and all Interconnection
- 3 Costs associated with each System, shall be recovered as a part of the financing each
- 4 System to be recovered by AMP and financed as a part of the financing plan approved
- 5 by the Participants Committee.

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**APPENDIX F**  
**RELATED AGREEMENTS**

**[To Come]**

**APPENDIX F  
AMP MICHIGAN CAT PEAKING PROJECT  
RELATED AGREEMENTS**

**SUPPLEMENT TO THE  
AMP MICHIGAN CAT PEAKING PROJECT POWER SALES CONTRACT**

**Among  
AMERICAN MUNICIPAL POWER, INC.  
And  
THE CITY OF MARSHALL, MICHIGAN  
And Its Agent,  
MICHIGAN SOUTH CENTRAL POWER AGENCY**

THIS SUPPLEMENT TO POWER SALES CONTRACT (the "Supplement"), dated as of \_\_\_\_\_, 2023 relates to the POWER SALES CONTRACT (the "PSC" and together with this Supplement, the "Contract") regarding the AMP Michigan CAT Peaking Project, dated as of \_\_\_\_\_, 2023 and is made and entered into among American Municipal Power, Inc. ("AMP") an Ohio corporation not for profit, on the one hand, and the City of Marshall, Michigan (the "Participant") and the Michigan South Central Power Agency (hereinafter "MSCPA"), a public body politic and corporate organized and existing under Act 448, Public Acts of Michigan, 1976, as amended, as agent for the Participant, on the other hand.

**WITNESSETH:**

WHEREAS, AMP and the Participant have entered into the PSC relating to the sale by AMP and the purchase by the Participant of power and energy from the Michigan CAT Project, and other sources; and

WHEREAS, the Participant is a member of MSCPA and coordinates with, and receives all of its power supply needs from, MSCPA; and

WHEREAS, the Participant and the other PSC Participants that are members of MSCPA, being the Cities of Coldwater, Hillsdale and Marshall, and the Village of Clinton, each

**APPENDIX F  
AMP MICHIGAN CAT PEAKING PROJECT  
RELATED AGREEMENTS**

of which is a political subdivision of the State of Michigan (the "MSCPA Municipalities"), have established and entered into contracts with MSCPA to allow the MSCPA Municipalities to manage risks and to more economically arrange for the purchase and transmission of reliable power supply; and

WHEREAS, this Supplement to Power Sales Contract is a Related Agreement, as described in and subject to, Section 36 of the PSC:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and among the parties hereto as follows:

**SECTION 1. Definitions and Explanations of Terms.** As used herein all capitalized terms not defined herein shall have the meanings ascribed thereto in the PSC.

**SECTION 2. MSCPA as Agent for the Participant.** This Supplement, and a similar Supplement with the other MSCPA Municipalities, shall be entered into by AMP, each respective MSCPA Municipality and MSCPA, as agent for the MSCPA Municipalities. The Participant hereby appoints, for the duration of the term of the Contract, MSCPA as its agent for purposes of exercising and performing all of its rights, duties and obligations thereunder. In furtherance of the same, MSCPA shall exercise and perform all rights, duties and obligations of the Participant under the Contract, including but not limited to, the right to receive power and energy, the right to designate Points of Delivery and Secondary Points of Delivery, the right to direct AMP with respect to sales of power and energy on behalf of the Participant, and the obligation to pay all Service Fees, Rates and Charges and other amounts owing thereunder by the Participant. The Contract is not intended to supersede the provisions of the contractual arrangements between the Participant and MSCPA with respect to the obligation of MSCPA to provide, and of the Participant to purchase from MSCPA, all of the Participant's bulk power needs. In the event AMP fails to receive any payment when due from MSCPA under the Contract, AMP shall immediately notify MSCPA and the Participant of such failure, and shall

**APPENDIX F  
AMP MICHIGAN CAT PEAKING PROJECT  
RELATED AGREEMENTS**

1 immediately send an invoice to Participant showing its share of any payment which AMP has  
2 failed to receive, and Participant shall promptly pay, but only from the sources and with the  
3 priority specified in the PSC, such share of the unpaid amounts; provided, however, that neither  
4 failure of AMP to send, nor of Participant or of MSCPA to receive, such notice or invoice shall  
5 relieve Participant of its obligation to make any payments required under the PSC.

6 Notwithstanding anything in the preceding paragraph, (i) no amendment to the Contract  
7 shall be effective without the authorized signature of each of the Participant and MSCPA, and  
8 (ii) in the event that each of MSCPA and the Participant execute and deliver to AMP a Notice of  
9 Termination of Agency terminating the agency relationship established hereunder between  
10 MSCPA and the Participant, thereafter the Participant shall exercise and perform, for and on its  
11 own behalf, all of its rights, duties and obligations under the PSC, and MSCPA shall be released  
12 from any duties and obligations thereunder.

13 **SECTION 3. Source of Payments by MSCPA.** The payment obligations of MSCPA  
14 under the Contract are in accordance with the provisions of Section 5(I) of the Contract, and  
15 MSCPA's obligations are payable solely from those revenues of its system established for the  
16 provision of power and energy to the MSCPA Municipalities, which revenues are paid to  
17 MSCPA by the Participant and the other MSCPA Municipalities therefor; provided, however, that  
18 until the outstanding bonds of MSCPA are paid or defeased in full, the obligations of MSCPA  
19 under the Contract are subject to the provisions of MSCPA's Power Supply System Revenue  
20 Bond Resolution, adopted February 5, 2014, as amended and supplemented to the date hereof  
21 (the "Bond Resolution"). In the event that any time MSCPA is prohibited from paying to AMP  
22 any amounts owing by MSCPA to AMP under the Contract as a result of any provision of the  
23 Bond Resolution, MSCPA's agency on behalf of the Participant under the Contract shall  
24 immediately be suspended, and MSCPA shall return any moneys previously paid to MSCPA by  
25 the Participant hereunder which have not been paid to AMP, for payment by the Participant to

**APPENDIX F  
AMP MICHIGAN CAT PEAKING PROJECT  
RELATED AGREEMENTS**

AMP. The suspension of the agency of MSCPA shall be continued until each of AMP, the Participant and MSCPA agree that all disabilities of payment by MSCPA to AMP under the Bond Resolution have been resolved.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to Power Sales Contract to be executed by their proper officers respectively, being thereunto duly authorized, and their respective corporate seals, if any, to be hereto affixed.

**AMERICAN MUNICIPAL POWER, INC.**

[Seal]

By \_\_\_\_\_  
Jolene M. Thompson  
President/CEO

Approved as to form:

\_\_\_\_\_  
Lisa G. McAlister  
SVP and General Counsel

**CITY OF MARSHALL, MICHIGAN**

[Seal]

By \_\_\_\_\_  
Title: City Manager

By \_\_\_\_\_  
Title: Clerk

Approved as to form:

Miller, Canfield, Paddock and Stone, P.L.C., Special Counsel

By: \_\_\_\_\_  
Steven D. Mann

**MICHIGAN SOUTH CENTRAL POWER AGENCY**

By: \_\_\_\_\_  
Pamala M. Sullivan  
Title: Acting General Manager

Approved as to form:

Miller, Canfield, Paddock and Stone, P.L.C., General Counsel

By: \_\_\_\_\_  
Steven D. Mann

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**APPENDIX G**  
**TRUST INDENTURE**



**DREW DUNAGIN, CHIEF FINANCIAL OFFICER OF AMP, PREPARED THIS INTRODUCTION TO THE MASTER TRUST INDENTURE TO PROVIDE INFORMATION AS TO THE PRELIMINARY AMP MICHIGAN CAT PEAKING PROJECT FINANCING PLAN. IT IS NOT A PART OF APPENDIX G AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.**

*The following introductory memorandum is in lieu of the form of the Master Trust Indenture ("MTI") that AMP may execute and deliver to secure its obligations to repay moneys it borrows and other indebtedness, secured by the Power Sales Contract, it incurs to provide permanent financing for the AMP Michigan CAT Peaking Project and, from time to time, various improvements thereto.*

Written on or about \_\_\_\_\_, 20\_\_ this memorandum assumes that AMP will obtain:

First, interim financing for the AMP Michigan CAT Peaking Project by draws on the line of credit available to AMP under the terms of its current Credit Agreement with interest likewise paid (capitalized) from draws on the line, and

Second, a public offering or private placement of long-term Bonds or other financial arrangement in the capital markets.

Given (i) the uncertainty as to the ultimate capacity of this Project and the corresponding principal amount to be financed, (i) any public offering of Bonds would have an MTI similar to those for other AMP projects; and (ii) any private placement of Bonds or other financial arrangement may result in a substantially changed MTI. Such a placement could also result in multiple issuances and closings as Additional Sites are identified. Once a financing structure is determined and approved by the Participants, a copy of the form of the MTI will be provided.

Please contact me at AMP with any questions you may have regarding AMP's plan of finance or the MTI.

Drew Dunagin

AMP

Senior Vice President Finance

and Chief Finance Officer

**APPENDIX G  
AMP MICHIGAN CAT PEAKING PROJECT  
TRUST INDENTURE**

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**DOCUMENT TO COME**

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**APPENDIX H**  
**FORM OF LEGAL COUNSEL OPINION**

**APPENDIX H  
AMP MICHIGAN CAT PEAKING PROJECT  
FORM OF LEGAL COUNSEL OPINION**

FROM DOCUMENT #4844-8181-7879

[For any questions or an electronic copy of this document, please contact

Michael Kyser at 614-540-0984 or [mkyser@amppartners.org](mailto:mkyser@amppartners.org).]

**[TO BE RECEIVED FROM PARTICIPANT'S COUNSEL]**

\_\_\_\_\_, 20\_\_

Rachel Gerrick  
Senior Vice President and General Counsel  
for Corporate Affairs  
American Municipal Power, Inc.  
1111 Schrock Rd.  
Columbus, OH 43229

Re:           Legal Opinion Pertaining to the AMP Michigan CAT Peaking  
              Project

Dear Ms. Gerrick:

We have acted as counsel to \_\_\_\_\_,  
("Participant") in connection with its authorization of the Power Sales Contract ("PSC")  
regarding the American Municipal Power, Inc. ("AMP") Michigan CAT Peaking Project  
between AMP and Participant.

In so acting and for purposes of rendering the opinions hereinafter set forth, our  
examination of documents has been limited to the examination of originals or copies of  
the following:

1.     The PSC;
2.     The laws and constitution of the State of Michigan;
3.     Any relevant ordinance and/or charter provisions of Participant;

4. Outstanding instruments relating to bonds, notes or other indebtedness of, or relating to, Participant's operations and its electric system; and,
5. The existence of any pending or threatened litigation or other proceedings.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in Paragraphs (1) through (5) above. In particular, we have not reviewed any document (other than the documents listed in Paragraphs (1) through (5) above) that is referred to in or incorporated by reference into any document reviewed by us, and we have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein, and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed that: (i) all signatures on documents examined by us are genuine; (ii) all documents submitted to us as originals are authentic; and (iii) all documents submitted to us as copies conform to the originals of those documents.

Capitalized terms used but not defined herein have the meanings given them in the PSC.

Based upon the foregoing, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. Participant is duly created and validly existing pursuant to the Constitution and laws of the State of Michigan;

2. Participant has full legal right and authority to enter into the PSC, to carry out its obligations thereunder and to furnish to its customers the Capacity and Energy associated with its PSCR Share;
3. The governing body which has the requisite authority to authorize an appropriate officer of Participant to execute and deliver the PSC in the name of, and on behalf of, Participant is the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_. The \_\_\_\_\_ duly approved the PSC and authorized its execution and delivery on behalf of Participant by legislative action duly and lawfully adopted at a meeting or meetings duly called and held pursuant to any necessary public notice at which any necessary quorums were present and acting throughout. Such legislative action has become effective.
4. The PSC has been duly authorized, executed and delivered on behalf of Participant by the appropriate officers of Participant pursuant to legislative action authorizing or directing the same;
5. Participant has full power and authority to fix, charge, collect and revise the rates charged to its electric utility customers for Participant's PSCR Share of the capacity and energy purchased by Participant under the PSC;
6. The obligation of the Participant to make payments to AMP pursuant to the PSC is a "take or pay" obligation of Participant payable as an operating expense of its electric system (except to the extent, if any, set forth on Appendix K of the PSC) and from the revenues thereof, as set forth in the PSC;
7. The execution and delivery of the PSC by Participant and the performance by Participant of its obligations thereunder do not contravene in any material respect any applicable resolution, ordinance or charter provision, or any

order, injunction, judgment, decree, rule or regulation of any court or administrative agency having jurisdiction over Participant or its property or, in any material respect, result in a breach or violation of any of the terms and provisions of, or constitute a default under, any bond ordinance, trust agreement, indenture, mortgage, deed of trust or other agreement to which Participant is a party or by which it or its property is bound and relating to Participant's electric system; and

8. Except to the extent, if any, set forth on Appendix K, there is no litigation or other proceedings pending or threatened against Participant in any court, regulatory agency, or other tribunal of competent jurisdiction (either local, State or Federal) questioning the creation, organization, or existence of Participant or its electric system or the validity, legality, or enforceability of the PSC.

With respect to the existence of (i) litigation, and (ii) orders, injunctions, judgments, or decrees of any court or administrative agency having jurisdiction over Participant or its property in each case relating to Participant's electric system or its operation and for purposes of the opinions expressed in paragraphs 7 and 8 above, we have relied solely upon written representations of the appropriate officers of Participant and/or the Utility Governing Body or the attached opinion of other counsel.

We are admitted to practice law in the State of Michigan. The opinions herein expressed are limited in all respects solely to the matters governed by the internal laws of the State of Michigan and Federal law (excluding matters subject to the jurisdiction of the Federal Energy Regulatory Commission).

The opinions in this letter are limited to the matters set forth herein. No opinion may be inferred or is implied beyond the matters expressly stated in this letter and the opinions in this letter must be read in conjunction with the assumptions, qualifications and limitations set forth herein. We assume no obligation to update or supplement this

**Commented [KM2]:** Are these the correct paragraph numbers?

American Municipal Power, Inc.

\_\_\_\_\_, 20\_\_

Page 5

opinion to reflect any facts or circumstances which may hereafter come to our or any changes in the laws which may hereafter occur.

This opinion letter may be relied upon only by: (i) the addressee, its successors and assigns, and only in connection with the matters set forth herein; and (ii) counsel to AMP for purpose of furnishing their opinions respecting the validity of the PSC. Neither the addressee nor counsel to AMP may rely on this opinion letter for any other purpose, and no other person may rely upon this opinion without the prior written consent of this Firm, nor may this opinion letter be referred to, or described, furnished or quoted to any other firm, person or entity without the prior written consent of this Firm.

Very truly yours,

[LEGAL FIRM]

[NAME]

[TITLE]

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**APPENDIX I**

**SPECIAL PROVISIONS – SCHEDULING AND DISPATCHING**

**APPENDIX I**  
**AMP MICHIGAN CAT PEAKING PROJECT**  
**SPECIAL PROVISIONS – SCHEDULING AND DISPATCHING**

1 Unless otherwise agreed in accordance with Section 6 of the Power Sales  
2 Contract, AMP shall act as the scheduling agent for each Participant's PSCR Share and  
3 will ensure that day-ahead schedules are submitted in accordance with the then  
4 effective RTO day-ahead scheduling requirements. If a Participant uses a scheduling  
5 agent other than AMP, the Participant must ensure that its scheduling agent submits the  
6 required day-ahead schedules to AMP at least one hour prior to the then effective RTO  
7 day-ahead scheduling deadline. As of \_\_\_\_\_, 2023, the day-ahead RTO  
8 scheduling deadline is: MISO 10:30 a.m. Eastern Prevailing Time (EPT).

9  
10 Participants will schedule their hourly PSCR Share from the applicable Site LMP  
11 point.

12  
13 The Participant will be responsible for delivery of the power from the applicable  
14 Site LMP point to its Secondary Point(s) of Delivery.

15  
16 As the scheduling agent for the Participants' PSCR Share, AMP will ensure that  
17 the hour to hour total scheduled deliveries to the Participants respects the physical  
18 limitations of the AMP Michigan CAT Peaking Project as well as any limitations imposed  
19 under the Related Agreements, NERC reliability standards, the Regional Entity reliability  
20 standards, or the MISO and/or Transmission Owner Tariffs or other currently effective  
21 operating rules or the rules of any successor organization(s). To the extent that the  
22 planned scheduled deliveries must be modified to accommodate any such limitation,  
23 AMP will, as necessary, adjust the Participants up or down on a *pro-rata* basis.

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**APPENDIX J**

**NOTICES**

**APPENDIX J  
AMP MICHIGAN CAT PEAKING PROJECT  
NOTICES**

For AMP:

Jolene Thompson  
President / CEO  
American Municipal Power, Inc.  
1111 Schrock Rd., Suite 1000  
Columbus, OH 43229  
Office: (614) 540-1111  
Fax: (614) 540-1113

With a copy to:

American Municipal Power, Inc.  
Senior Vice President & General Counsel  
1111 Schrock Rd., Suite 1000  
Columbus, OH 43229  
Office: (614) 540-6379  
Fax: (614) 540-1037

If to Participant:

City Manager  
City of Marshall, Michigan  
323 West Michigan Avenue  
Marshall, MI 49068  
Office: (269) 558-0329

With a copy to:

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**APPENDIX K**  
**DISCLOSURES**

**APPENDIX K  
AMP MICHIGAN CAT PEAKING PROJECT  
DISCLOSURES**

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**[ANY DISCLOSURES TO COME]**

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**APPENDIX L**

**AMP MICHIGAN CAT PEAKING PROJECT  
PARTICIPANTS MEETINGS  
AND  
PARTICIPANTS COMMITTEE REGULATIONS**

## **ARTICLE I – INTRODUCTION, INITIAL MEETING, VOTING**

Section One     These Regulations govern both meetings of the Participants and meetings of the Participants Committee under the Power Sales Contract.

Section Two     AMP shall notice the first such meeting in accordance with Section 37(B) of the Contract.

Section Three    All action hereunder shall be by Weighted Vote as specified in Section 5 of Article IV. All actions shall be carried by a simple majority of the Weighted Vote unless otherwise specified in the Power Sales Contract or these Regulations.

## **ARTICLE II – DEFINITIONS**

Section One     Unless otherwise indicated or supplemented herein, words and phrases used herein shall have the meanings specified in the Power Sales Contract.

## **ARTICLE III – MEMBERSHIP**

Section One     Each Participant shall be entitled to have one (1) representative, with alternates, to be designated to AMP in writing, for purposes of exercising its rights and obligations in Participants meetings or, if elected to the Participants Committee, meetings of the Participants Committee.

## **ARTICLE IV – MEETINGS**

Section One     At least annually, and at such other times as are approved by the Participants Committee or upon the written request of Participants having not less than twenty-five percent (25%) of the weighted vote, all Participants shall meet to receive reports from the Participants Committee and AMP on the AMP Michigan CAT Peaking Project and

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other matters pertaining to the Power Sales Contract and to conduct other business.

- Section Two      Action items required to be submitted to all Participants between meetings may be submitted by written instrument, in lieu of meeting, as determined by the Participants Committee.
- Section Three     Special meetings of the Participants, other than the annual meeting, may be called by the Participants Committee Chair or the Chair of the AMP Board of Trustees.
- Section Four      Written notice of meetings of the Participants, stating the time and place thereof, shall be mailed, or, at AMP's option, sent via email or facsimile, to each Participant not less than seven (7) days before the date of such meeting. If mailed, such notice shall be deemed to have been perfected by deposit in the United States mail by first class mail addressed to the Participant at its address as it appears on Appendix J, at the time of the mailing of said notice. Participants may waive notice of any meeting.
- Section Five      All Participant voting at meetings or upon actions submitted to Participants without meetings shall be determined by a Weighted Vote, with each Participant having a Weighted Vote in proportion to such Participant's PSCR Share expressed as a percentage.
- Section Six       Participants representing a majority of the Weighted Vote shall constitute a quorum for the transaction of business at any meeting of the Participants. Unless otherwise specified herein or in the Power Sales Contract, a majority Weighted Vote of the quorum may carry any matter at a meeting. Whether or not a quorum is present, a majority Weighted Vote of the voting Participants present at a meeting may adjourn such meeting.

Section Seven The Participants Committee and the AMP Board of Trustees shall determine the agenda for meetings, which shall be included in the notice thereof. Such agenda may be modified by the Participants, upon motion, at such meeting, as they deem appropriate.

Section Eight Each Participant in good standing shall designate in writing one (1) representative and may also designate one (1) or more alternates. Each Participant, through its representative or alternate representative, shall be entitled its Weighted Vote on any matter coming before the Participants. A representative shall only be eligible to represent one (1) Participant.

Section Nine A Participant in good standing is defined to mean a Participant who is not in default under the Power Sales Contract.

#### **ARTICLE V – PARTICIPANTS COMMITTEE**

Section One The Participants Committee shall consist of not less than two (2) Participants, or such other number as determined appropriate by the Participants from time to time prior to the elections pursuant to Section 3 of this Article V, representing not less than a majority of the total Weighted Vote and shall operate and have the duties and responsibilities set forth in these regulations and the Power Sales Contract and be elected as set forth herein.

Section Two The terms of the members of the Participants Committee shall be for a period of three (3) years ending on November 1st three (3) years subsequent to the last regular election of its members.

Section Three Participants may be added to the Participants Committee at any meeting by a vote of the then-existing Participants Committee.

Section Four AMP's General Counsel, unless otherwise determined by the AMP Board of Trustees, shall be responsible for ballot preparation, counting, and generally assuring the integrity of the election process.

#### **ARTICLE VI – PARTICIPANTS COMMITTEE MEETINGS**

Section One Participants Committee meetings shall be held at the principal offices of AMP or at such other place as may be determined by the AMP Board of Trustees or the Chair of the Participants Committee.

Section Two A majority of the Weighted Vote of the Committee shall constitute a quorum for the transaction of business and, unless otherwise set forth herein or in the Power Sales Contract, action by the majority of the Weighted Vote of the Participants Committee present at a meeting at which a quorum is present shall be the act of the Committee. The Participants Committee shall keep minutes of its actions.

Section Three The President of AMP shall be an ex-officio member of the Participants Committee and shall be entitled to notice of all meetings and to participate therein, but shall not be entitled to vote nor be counted in determining a quorum.

Section Four Notice of the time, place, and purpose of any meeting of the Participants Committee may be waived by majority of Weighted Vote of the Committee.

Section Five The Participants Committee members, excluding ex-officio members, shall not receive any compensation for their services as committee members, but may, by resolution of the AMP Board of Trustees, be reimbursed for any necessary and proper expenses incurred in the performance of duties as members of the Committee.

Section Six      Actions required to be submitted to the Participants Committee may be submitted to the Committee members for approval by written instrument at the request of the Chair.

#### **ARTICLE VII - OFFICERS**

Section One      The officers of the Participants Committee, elected or appointed as individuals, shall be the Chair and a Vice-Chair.

Section Two      The Chair and Vice-Chair of the Participants Committee shall be elected from the representatives of the Participants on the Committee and shall serve for a period of one (1) year. Should the Chair or Vice-Chair be absent from three (3) consecutive meetings of the Committee, that officer shall forfeit such office unless such absences are excused by action of the Committee.

Section Three    The Chair and Vice-Chair of the Participants Committee shall be elected in that order at the first meeting of the Participants and thereafter at the Participants meeting held each year during the AMP Annual Conference, or the first Participants Committee meeting held following the date of the Conference, if no such meeting is held during the Conference. Absent representatives may be nominated. Voting may be by secret ballot if so determined by the Committee. In order to qualify as elected, a candidate must receive a majority of the Weighted Vote for the office. If after tabulating the votes there is not a candidate receiving a majority, then the two (2) (or more should there be a tie) candidates receiving the highest number of votes shall be candidates in subsequent elections until a candidate receives a majority.

Section Four     The Chair of the Participants Committee shall preside at all Participant and Participant Committee meetings. In addition, he or she shall appoint the chairs and members of any sub-committees that may be established from time to time. The chair of each such sub-committee

shall be appointed as an individual. The Chair shall also perform such other duties as may be directed and authorized by the Committee.

Section Five      The Vice-Chair of the Participants Committee shall perform the duties of the Chair in the event of the latter's absence, resignation, inability, or refusal to perform the duties of the office. The Vice-Chair shall perform such other duties as authorized and as directed by the Committee.

#### **ARTICLE VIII – AMENDMENTS TO REGULATIONS**

Section One      Amendments to the Regulations may be proposed by the Participants Committee or any three (3) Participants may submit a proposed amendment to the Committee in writing and such proposed amendment shall be presented to the Participants at the next meeting.

Section Two      Copies of proposed amendments shall be mailed, or at AMP's option sent via email or facsimile, to all Participants with the meeting notice. A Super Majority of the Participants must vote in favor of the amendment for passage.

# ITEM: 12.I

## ADMINISTRATIVE REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Marguerite Davenport, Director of Public Services  
Eric Zuzga, Director of Community Services  
**DATE:** June 5, 2023  
**SUBJECT:** **GREEN STREET RECONSTRUCTION AND 2023 STREET IMPROVEMENTS CONSTRUCTION CONTRACT**

---

The City issued bids for construction for two major projects, West Green Street Reconstruction between Eagle and Jefferson and the 2023 Street Improvements, on May 8, 2023. The bid package was split into two parts, with Part 1 being West Green Street and Part 2 being the 2023 Street Improvements. Bids were received on May 25, 2023 with the following results:

| Bidder                 | City             | Part 1       | Part 2       | Total          |
|------------------------|------------------|--------------|--------------|----------------|
| Quality Excavators Inc | Marshall, MI     | \$476,196.24 | \$781,816.54 | \$1,258,012.72 |
| Hunter Prell           | Battle Creek, MI | \$545,180.00 | \$861,538.38 | \$1,406,718.38 |

Part 1 was a rebid of a portion of the Activation Zone project that was previously issued for bid in March. Unfortunately, the City did not receive any bids for the work. The biggest factor, as we understand, was the schedule outlined in the bid documents and contractors being booked for the season at the time of bidding. The need to complete, at a minimum, the Green Street portion of the Activation Zone project remained high, however, due to the existing road condition. The City and its engineering consultant, Progressive AE, re-strategized a path forward and came up with the project as outlined in the issued bid documents. Part 1 construction timeline was given some more flexibility than previously, but still requires a November 1, 2023 substantial completion. The other components of the Activation Zone project will be bid at a later date for construction in 2024.

In an effort to entice contractors to bid on Part 1, which is a relatively small project in today's competitive bidding market, the City included the 2023 Street Improvements in the contract so that the project could be larger. The Part 2 work had not yet been bid this year and the bidding timeframe for the season was decreasing. Therefore, the substantial completion of Part 2 was pushed until November 1, 2024. However, to encourage bidders to complete some Part 2 work in 2023, a performance bonus specification as written into the documents. The performance bonus specifies that for every block of street improved under Part 2 and substantially complete by November 1, 2023, the City will pay a 10% bonus on completed work.

Part 2 work is the planned year 3 construction under the 2020 voter approved street millage. Unfortunately, high construction inflation is causing the final year's scope to be reduced more

than originally planned. The performance bonus will allow the City to prioritize the most urgent streets for construction in 2023 while also maintaining bid pricing for any work completed in 2024.

The Activation Zone project was started in the spring of 2021 with a RFP for engineering services and the creation of a stakeholder committee to contribute ideas and concerns from local stakeholders. During the design engineering selection, the stakeholder group selected Progressive AE to be the design engineer based on their proposal, a presentation to the group, and successful completion of similar projects. Progressive AE was awarded the design contract on this project in June of 2021. Since then, Progressive AE has provided exemplary service to the City through the design and scope finalization of the project. They have also been a good resource and provided assistance with communicating with local stakeholders. As such, City staff have requested a construction engineering proposal from Progressive AE for Part 1 work under this contract. The proposal is \$85,300.

Part 1 funding is a combination of funding from the street millage bond revenue funds, DDA funds, and a RAP grant awarded to the City through Southwest Michigan First and MEDC. The overall project budget, used to establish the funding levels of these entities, included \$444,000 for street improvements, \$161,500 in contingency, and \$100,000 in construction engineering services. The low bid on Part 1 is approximately \$32,000 over the \$444,000 street improvement budget and staff are recommending using a portion of the contingency amount to make up the difference in construction. Additionally, the Activation Zone street improvement budget included a conversion of the 100 block of Jefferson Street to one-way and additional parking. At this time, funding for the Jefferson Street portion of the project will be allocated to Green Street and a new plan to fund Jefferson Street work will need to be devised. If approved, the work would commence in mid to late July with a November 1 completion date identified.

Part 1 Funding Matrix

| Fund 298<br>RAP Grant<br>Budget Lines | Activation<br>Zone<br>Budget | Amount<br>Allocated to<br>Part 1 | Contingency | Total<br>Funded<br>Amount |
|---------------------------------------|------------------------------|----------------------------------|-------------|---------------------------|
| Street<br>Improvements                | \$444,000                    | \$444,000                        | \$0         | \$444,000                 |
| Contingency                           | \$161,800                    | \$32,196.24                      | \$48,000    | \$80,196.24               |
| Construction<br>Engineering           | \$100,000                    | \$85,300                         | \$0         | \$85,300                  |
| Totals                                |                              | \$561,496.24                     | \$48,000    | \$609,496.34              |

Part 2 funding comes mostly from the local street millage bond revenue funds with portions being funded by the LDFA and the Northeast NIA. Fund 204, the local street millage fund, has a fund balance of approximately \$800,000 for the third and final year of construction. Some roads on the proposed list are in the LDFA, Adams and George Brown, and the expense of those road improvements have been planned in the LDFA capital budget. In addition, improvements to Comstock and Colgrove will be funded by the Northeast NIA as these streets fall within that district. Schedule has yet to be determined and will be subject to the completion of the other projects Quality Excavators Inc. is performing for the City.

## Part 2 Funding Matrix

| Fund                                               | Budget           | Amount Allocated to Part 2 | Contingency | Total Funded Amount |
|----------------------------------------------------|------------------|----------------------------|-------------|---------------------|
| 204 - Local Streets Budget                         | \$750,000 (FY24) | \$632,558.00               | \$117,442   | \$750,000.00        |
| 250 - Local Development Finance Authority          | \$360,000 (FY23) | \$97,954.59                | \$20,000    | \$117,954.59        |
| 247 - Northeast Neighborhood Improvement Authority | \$0              | \$51,303.96                | \$12,000    | \$63,303.96         |
| Totals                                             |                  | \$781,816.55               | \$149,442   | \$931,258.55        |

### **BUDGET IMPACT:**

Part 1: The project will be funded entirely from fund 298 - RAP Grant with transfers from contributing funds as follows:

- Transfer \$70,000 from fund 204 to fund 298 for the local street millage funded portion
- Transfer \$50,000 from fund 248 to fund 298 for the DDA FY23 contribution to the project

Part 2: The project will be funded directly from funds 204, 250, and 247.

- A budget amendment for FY23 will be required for fund 247 in the amount of \$63,303.96 from fund balance to contracted services due to these street improvements not being budgeted originally. The fund balance at the end of FY 23 is anticipated to be \$117,011.

### **RECOMMENDATION:**

- Approve the construction contract with Quality Excavators Inc for Part 1 in the amount of \$476,196.24 with a contingency of \$48,000 for a total funded amount of \$524,196.24
- Approve the construction engineering contract with Progressive AE for Part 1 in the amount of \$85,300
- Approve the construction contract with Quality Excavators Inc for Part 2 in the amount of \$781,816.55 with a contingency of \$159,000 for a total funded amount of \$940,816.55



|                                                                                                                                  |  |     |
|----------------------------------------------------------------------------------------------------------------------------------|--|-----|
| <p>City of Marshall</p> <p><b>Improvements to Green Street</b></p> <p><b>Bid Form</b></p> <p>Progressive AE Revised 5/5/2023</p> |  | QEI |
|----------------------------------------------------------------------------------------------------------------------------------|--|-----|

| ITEM NO. | MDOT PAY ITEM | DESCRIPTION                                                     | QTY. | UNITS | UNIT PRICE   | TOTAL        |
|----------|---------------|-----------------------------------------------------------------|------|-------|--------------|--------------|
| 1        | 1100001       | Mobilization, Max                                               | 1    | LSUM  | \$ 20,292.00 | \$ 20,292.00 |
| 2        | 2020002       | Tree, Rem, 19 inch to 36 inch                                   | 3    | Ea    | \$ 1,876.00  | \$ 5,628.00  |
| 3        | 2020004       | Tree, Rem, 6 inch to 18 inch                                    | 5    | Ea    | \$ 1,362.00  | \$ 6,810.00  |
| 4        | 2030001       | Culv, Rem, Less than 24 inch                                    | 1    | Ea    | \$ 1,530.00  | \$ 1,530.00  |
| 5        | 2030011       | Dr Structure, Rem                                               | 1    | Ea    | \$ 2,800.00  | \$ 2,800.00  |
| 6        | 2040020       | Curb and Gutter, Rem                                            | 1255 | Ft    | \$ 7.00      | \$ 8,785.00  |
| 7        | 2040050       | Pavt, Rem                                                       | 2407 | Syd   | \$ 14.00     | \$ 33,698.00 |
| 8        | 2040055       | Sidewalk, Rem                                                   | 368  | Syd   | \$ 11.00     | \$ 4,048.00  |
| 9        | 2050030       | Machine Grading                                                 | 8    | Sta   | \$ 1,600.00  | \$ 12,800.00 |
| 10       | 2080020       | Erosion Control, Inlet Protection, Fabric Drop                  | 9    | Ea    | \$ 120.00    | \$ 1,080.00  |
| 11       | 2090001       | Project Cleanup                                                 | 1    | LSUM  | \$ 7,834.00  | \$ 7,834.00  |
| 12       | 3010002       | Subbase, CIP                                                    | 1020 | Cyd   | \$ 32.00     | \$ 32,640.00 |
| 13       | 3020016       | Aggregate Base, 6 inch                                          | 575  | Syd   | \$ 11.00     | \$ 6,325.00  |
| 14       | 3020020       | Aggregate Base, 8 inch                                          | 3060 | Syd   | \$ 11.00     | \$ 33,660.00 |
| 15       | 4020033       | Sewer, CI A, 12 inch, Tr Det B                                  | 6    | Ft    | \$ 96.00     | \$ 576.00    |
| 16       | 4030050       | Dr Structure Cover, Type K                                      | 2    | Ea    | \$ 410.00    | \$ 820.00    |
| 17       | 4030210       | Dr Structure, 48 inch dia                                       | 1    | Ea    | \$ 4,800.00  | \$ 4,800.00  |
| 18       | 4037050       | Adjusting Drainage Structure, Case 1, Modified                  | 6    | Ea    | \$ 775.00    | \$ 4,650.00  |
| 19       | 4037050       | MH, Storm Cover, Marshall                                       | 2    | Ea    | \$ 410.00    | \$ 820.00    |
| 20       | 5010025       | Hand Patching                                                   | 8    | Ton   | \$ 290.00    | \$ 2,320.00  |
| 21       | 5012025       | HMA, 4EML                                                       | 675  | Ton   | \$ 93.00     | \$ 62,775.00 |
| 22       | 6027001       | Thickened Edge Sidewalk Curb                                    | 738  | Ft    | \$ 49.28     | \$ 36,368.64 |
| 23       | 8020038       | Curb and Gutter, Conc, Det F4                                   | 770  | Ft    | \$ 30.00     | \$ 23,100.00 |
| 24       | 8027001       | Valley Gutter, Conc, Modified                                   | 1029 | Ft    | \$ 33.60     | \$ 34,574.40 |
| 25       | 8030010       | Detectable Warning Surface                                      | 12   | Ft    | \$ 55.00     | \$ 660.00    |
| 26       | 8030044       | Sidewalk, Conc, 4 inch                                          | 7780 | Sft   | \$ 5.50      | \$ 42,790.00 |
| 27       | 8030046       | Sidewalk, Conc, 6 inch                                          | 3435 | Sft   | \$ 7.00      | \$ 24,045.00 |
| 28       | 8032001       | Curb Ramp, Conc, 4 inch                                         | 80   | Sft   | \$ 10.00     | \$ 800.00    |
| 29       | 8100371       | Post, Steel, 3 lb                                               | 69   | Ft    | \$ 35.00     | \$ 2,415.00  |
| 30       | 8100404       | Sign, Type IIIA                                                 | 10   | Sft   | \$ 89.00     | \$ 890.00    |
| 31       | 8100405       | Sign, Type IIIB                                                 | 18   | Sft   | \$ 89.00     | \$ 1,602.00  |
| 32       | 8110231       | Pavt Mrkg, Waterborne, 4 inch, White                            | 1352 | Ft    | \$ 0.60      | \$ 811.20    |
| 33       | 8110232       | Pavt Mrkg, Waterborne, 4 inch, Yellow                           | 1205 | Ft    | \$ 0.60      | \$ 723.00    |
| 34       | 8110237       | Pavt Mrkg, Waterborne, 12 inch, White                           | 264  | Ft    | \$ 3.50      | \$ 924.00    |
| 35       | 8110293       | Pavt Mrkg, Waterborne, for Rest Areas, Parks, and Lots, 4 inch, | 125  | Ft    | \$ 3.00      | \$ 375.00    |

HUNTER PRELL

| UNIT PRICE   | TOTAL        |
|--------------|--------------|
| \$ 20,000.00 | \$ 20,000.00 |
| \$ 1,800.00  | \$ 5,400.00  |
| \$ 1,200.00  | \$ 6,000.00  |
| \$ 1,200.00  | \$ 1,200.00  |
| \$ 1,200.00  | \$ 1,200.00  |
| \$ 15.00     | \$ 18,825.00 |
| \$ 18.00     | \$ 43,326.00 |
| \$ 15.00     | \$ 5,520.00  |
| \$ 2,000.00  | \$ 16,000.00 |
| \$ 200.00    | \$ 1,800.00  |
| \$ 20,000.00 | \$ 20,000.00 |
| \$ 35.00     | \$ 35,700.00 |
| \$ 15.00     | \$ 8,625.00  |
| \$ 18.00     | \$ 55,080.00 |
| \$ 200.00    | \$ 1,200.00  |
| \$ 1,200.00  | \$ 2,400.00  |
| \$ 6,000.00  | \$ 6,000.00  |
| \$ 1,200.00  | \$ 7,200.00  |
| \$ 850.00    | \$ 1,700.00  |
| \$ 150.00    | \$ 1,200.00  |
| \$ 90.00     | \$ 60,750.00 |
| \$ 44.00     | \$ 32,472.00 |
| \$ 35.00     | \$ 26,950.00 |
| \$ 30.00     | \$ 30,870.00 |
| \$ 80.00     | \$ 960.00    |
| \$ 6.00      | \$ 46,680.00 |
| \$ 8.00      | \$ 27,480.00 |
| \$ 10.00     | \$ 800.00    |
| \$ 20.00     | \$ 1,380.00  |
| \$ 20.00     | \$ 200.00    |
| \$ 20.00     | \$ 360.00    |
| \$ 1.00      | \$ 1,352.00  |
| \$ 1.00      | \$ 1,205.00  |
| \$ 5.00      | \$ 1,320.00  |
| \$ 3.00      | \$ 375.00    |

|    |         |                                             |     |      |               |              |
|----|---------|---------------------------------------------|-----|------|---------------|--------------|
| 36 | 8117001 | Pavt Mrkg, Waterborne, 24 inch, Stop Bar    | 34  | Ft   | \$ 7.00       | \$ 238.00    |
| 37 | 8117050 | Pavt Mrkg, Waterborne, Accessible Sym       | 2   | Ea   | \$ 80.00      | \$ 160.00    |
| 38 | 8127051 | Temporary Traffic Control                   | 1   | LSUM | \$ 13,423.00  | \$ 13,423.00 |
| 39 | 8150002 | Watering and Cultivating, First Season, Min | 1   | LSUM | \$ 11,771.00  | \$ 11,771.00 |
| 40 | 8157050 | Acer x Freemanii 'Jeffsred', 3 inch         | 7   | Ea   | \$ 692.00     | \$ 4,844.00  |
| 41 | 8157050 | Ulmus Americana 'Valley Forge', 3 inch      | 4   | Ea   | \$ 692.00     | \$ 2,768.00  |
| 42 | 8160025 | Mulch                                       | 16  | Syd  | \$ 123.00     | \$ 1,968.00  |
| 43 | 8160055 | Sodding                                     | 500 | Syd  | \$ 14.40      | \$ 7,200.00  |
| 44 | 8160062 | Topsoil Surface, Furn, 4 inch               | 500 | Syd  | \$ 8.40       | \$ 4,200.00  |
| 45 | 8230391 | Gate Box, Adj, Temp, Case 1                 | 6   | Ea   | \$ 280.00     | \$ 1,680.00  |
| 46 | 8230421 | Water Shutoff, Adj, Case 1                  | 2   | Ea   | \$ 600.00     | \$ 1,200.00  |
| 47 | 8230432 | Gate Box, Adj, Case 2                       | 2   | Ea   | \$ 600.00     | \$ 1,200.00  |
| 48 | 8252146 | Sanitary Structure Cover, Adj, Case 2       | 1   | Ea   | \$ 775.00     | \$ 775.00    |
|    |         |                                             |     |      | \$ 476,196.24 |              |

|               |              |
|---------------|--------------|
| \$ 10.00      | \$ 340.00    |
| \$ 100.00     | \$ 200.00    |
| \$ 20,000.00  | \$ 20,000.00 |
| \$ 10,000.00  | \$ 10,000.00 |
| \$ 550.00     | \$ 3,850.00  |
| \$ 650.00     | \$ 2,600.00  |
| \$ 60.00      | \$ 960.00    |
| \$ 12.00      | \$ 6,000.00  |
| \$ 6.00       | \$ 3,000.00  |
| \$ 550.00     | \$ 3,300.00  |
| \$ 550.00     | \$ 1,100.00  |
| \$ 550.00     | \$ 1,100.00  |
| \$ 1,200.00   | \$ 1,200.00  |
| \$ 545,180.00 |              |



March 27, 2023

Marquerite Davenport, PE  
Public Services Director  
City of Marshall  
323 West Michigan Avenue  
Marshall, MI 49068

Re: Proposal for City of Marshall  
Green Street, Jefferson Street, and Activation Zone Construction Administration

Dear Ms. Davenport,

As we have recently received bids for the Private Utility Relocation project and the Green Street, Jefferson Street, and Activation Zone project is also out to bid with a defined construction schedule, I thought it would be timely to provide the City of Marshall (City) with a proposal for construction administration services. Additionally, we have provided a small fee for unexpected expenses in bidding the two projects, which were not previously anticipated. A bulleted summary of pricing for our professional services is below:

|   |                                                              |                     |
|---|--------------------------------------------------------------|---------------------|
|   | Construction Staking                                         | \$4,200             |
| • | Private Utility Relocation Project Bid as a Separate Project | \$2,300             |
| • | Unanticipated Lighting Coordination                          | \$2,100             |
| • | Private Utility Relocation Construction Administration       | \$11,600            |
| • | Construction Administration for Street Work                  | \$38,400            |
| • | <del>Construction Administration for Parking Lot Work</del>  | <del>\$31,700</del> |
| • | Expenses                                                     | \$6,000             |
| • | Total                                                        | \$85,300            |

A spreadsheet detailing assumptions on hours and level of effort dedicated to serving the City to the level we anticipate you want is attached. We are open to discussion for added or reduced scope to ensure we adequately meet your needs. A rough schedule is also provided which is subject to some change based on how the Contractor intends to achieve the work.

The terms of this proposal defining project understanding, scope, schedule, clarifications, and professional compensation are incorporated into the Standard Agreement Provisions for Professional Services which are attached. The terms and conditions as identified in the Standard Agreement Provisions will be valid unless superseded by an AIA Standard Form of Agreement. If this proposal meets with your approval, please sign below and return a copy of the signed proposal. Your signature will be our authorization to begin the work and place the project in the firm's schedule. If you do not sign and return this proposal, and after receipt of this proposal you request or accept services from Progressive AE in connection with this or any other engagement, your request or acceptance of such services will be deemed to be an acquiescence or agreement with the terms provided in this proposal.

We look forward to working with the City of Marshall team to bring this project from vision to reality. If you are in agreement with this proposal, please sign below and return it to me. If you should have any questions, please feel free to contact us at 616.447.3414 or [bradshawt@progressiveae.com](mailto:bradshawt@progressiveae.com).

Progressive AE, Inc.

Corporate Office: | 1811 4 Mile Road NE | Grand Rapids, MI 49525 | 616.361.2664 | [progressiveae.com](http://progressiveae.com)  
Regional Office: | 330 South Tryon Street, Suite 500 | Charlotte, NC 28202 | 704.731.8080 | [progressiveae.com](http://progressiveae.com)

Sincerely,

*Tim Bradshaw*

Timothy M. Bradshaw  
Municipal Practice Leader

William Walter Culhane

Digitally signed by William Walter Culhane  
DN: C=US,  
E=culhaneb@progressiveae.com,  
CN=William Walter Culhane  
Reason: I have reviewed this document  
Date: 2023.03.27 15:17:36-04'00'

William W. Culhane RA, CDT, LEED AP  
Director of Project Delivery, Principal

Accepted By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF MARSHALL**

The parties to this Agreement, Progressive AE, Inc., Grand Rapids, Michigan, USA, hereinafter called the ENGINEER and City of Marshall, Marshall, Michigan, USA, hereinafter called the OWNER, hereby agree to the following conditions:

1. Scope of Services: The services provided by the ENGINEER shall be limited to those described in the proposal dated March 27, 2023. The parties agree that the Standard Agreement Provisions incorporated herein shall govern.
2. Term: If services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the ENGINEER, extension of the ENGINEER's services beyond that time shall be compensated as additional services.
3. Changed Conditions: If, during the term of this Agreement, the ENGINEER becomes aware of any circumstances or conditions that were not originally contemplated by or known to the ENGINEER, then to the extent that they affect the scope of services, compensations, schedule, allocation of risks or other material terms of this Agreement, the ENGINEER may call for re-negotiation of appropriate portions of the Agreement. The ENGINEER shall notify the OWNER of the changed conditions necessitating re-negotiation, and the ENGINEER and the OWNER shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
4. Additional Services: Additional services not specifically identified in the Scope of Services shall be paid for by the OWNER in addition to the fees previously stated, provided the OWNER authorizes such additional services in writing. Special services will be billed monthly as work progresses and invoices are due upon receipt.
5. Standard of Care: Professional Services provided by the ENGINEER will be conducted in a manner consistent with that level of care ordinarily and normally exercised by licensed engineers and engineers practicing in the State where the Project resides. In reference to the Standard of Care, the Owner and ENGINEER acknowledge that changes may be required because of possible errors, omissions, ambiguities or inconsistencies in the plans and specifications, and, therefore, that the costs of the project may exceed the construction contract sum. The Owner and ENGINEER agree that a design contingency in the amount of three percent (3 percent) of the cost of the work be established, as required, to pay for any such increased project costs. The Owner further agrees to make no claim by way of direct or third-party action against the ENGINEER or his or her subconsultants with respect to any payments within the limit of the contingency reserve made to the construction contractors because of such changes or because of any claims made by the construction contractors relating to such changes. Costs or expenses that are considered value added/betterment (see Paragraph 29) to the project shall not be applied against the design contingency. The design contingency shall be established as a line item in the overall project budget and be carried through the project's construction phase.
6. Schedule for Rendering Services: The ENGINEER shall prepare and submit for OWNER approval a schedule for the performance of the ENGINEER's services. This schedule shall include reasonable allowances for review and approval times required by the OWNER, performance of services by the OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by the OWNER, or for delays or other causes beyond the ENGINEER's reasonable control.
7. Payment Terms: Invoices will be submitted by the ENGINEER monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the date of invoice. Invoices past due shall accrue interest at one percent (1%) per month from the

original invoice date. If past due invoices cause the ENGINEER to proceed with legal action or collection services, the OWNER agrees to pay all of the ENGINEER's collection expenses including reasonable attorney fees.

8. Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the OWNER understands that the ENGINEER has no control over the cost or availability of labor, equipment, or materials, or over market conditions or the Contractor's method of pricing, and that the ENGINEER's opinions of probable construction costs are made on the basis of the ENGINEER's professional judgment and experience. The ENGINEER makes no warranty, express or implied that the bids or the negotiated cost of the Work will not vary from the ENGINEER's opinion of probable construction cost.
9. Ownership of Instruments of Service: The OWNER acknowledges the ENGINEER's design documents, including electronic files, reports, drawings, worksheets, plans, supporting documents and other material as the ENGINEER's instruments of professional service. Provided that the OWNER complies with all obligations of this Agreement and, upon completion of the services and payment in full of all monies due to the ENGINEER, the ENGINEER shall provide the OWNER with an exclusive agreement to use the final construction documents prepared under this Agreement for construction or maintaining the project. The OWNER shall not reuse or make any modifications to the construction documents without the prior written authorization of the ENGINEER. The OWNER agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the ENGINEER, its officers, directors, employees, and subconsultants (collectively, ENGINEER) against any damages, liabilities or costs, including reasonable lawyers' fees and defense costs, arising from or allegedly arising from or in any way related to or connected with the unauthorized reuse or modification of the construction documents by the OWNER or any person or entity that acquires or obtains the construction documents from or through the OWNER without the written authorization of the ENGINEER.

Under no circumstances shall the transfer of ownership of the ENGINEER's drawings, specifications, electronic files, or other instruments of service be deemed a sale by the ENGINEER, and the ENGINEER makes no warranties, either express or implied, of merchantability and fitness for any particular purpose, nor shall such transfer be construed or regarded as any waiver or other relinquishment of the ENGINEER's copyrights or intellectual property rights including Universal Design innovation strategies, checklists, reports and processes in any of the foregoing, full ownership of which shall remain with ENGINEER, absent the ENGINEER's express prior written consent.

10. Digital Data/Electronic Media: The ENGINEER reserves the right to remove all indications of its ownership and/or involvement in the material from each electronic medium not held in its possession. The OWNER may retain copies of the work performed by the ENGINEER in CAD form. Release of digital data will be by execution of the ENGINEER's digital data licensing Agreement (AIA Document C106-2013 or latest edition). Copies shall be for information and used by the OWNER for the specific purpose for which the ENGINEER was engaged. Said material shall not be used by the OWNER, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended without the ENGINEER's express written permission. Any unauthorized modification or reuse of the materials shall be at the OWNER's sole risk, and the OWNER agrees to defend, indemnify, and hold the ENGINEER harmless, from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the unauthorized use or modification of all Project documentation. Under no circumstance shall the transfer of drawings or data or other instruments of service on digital data for use by the Recipient be construed to be as a sale. ENGINEER makes no warranties, either express or implied or of merchantability or of fitness for a particular purpose. To the extent that the digital data includes building information models (Models), the parties agree to the following terms. (1) The Models are intended for the purpose of communicating design intent only and are not construction documents. (2) The Models may not detect all conflicts or inconsistencies. (3) The Models are

not intended for quantity take-offs, cost estimates, fabrication, or dimensional purposes. (4) Information contained in the Models will not be construed to dictate construction means or methods. This will remain the Contractor or Fabricator's responsibility.

11. Dispute Resolution: In an effort to resolve any conflict, the duly authorized representatives of each party will meet together in good faith in an attempt to resolve the conflict. If this attempted resolution fails to resolve the claim or dispute, the parties agree that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for non-binding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. The parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto. Any time expended in mediation shall not be included in calculating the time for filing arbitration.

If mediation fails to resolve the claim or dispute, the matter shall be submitted to arbitration with the American Arbitration Association under the Construction Industry rules, unless the parties agree otherwise or unless a plaintiff not a party hereto institutes litigation in a court of competent jurisdiction and said court takes personal jurisdiction over one of the parties hereto regarding the same subject matter as in dispute between the parties hereto.

No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement except by written consent of the parties and such consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not described therein. This Agreement to arbitrate and any Agreement to arbitrate with an additional person(s) shall be specifically enforceable under the prevailing arbitration law.

The demand for arbitration shall be made within one (1) year of the date the claimant knew or should have known of the existence of the claim, dispute, or other matter but in no event later than 3 years after the date of substantial completion of the project. If the demand for arbitration is not effectuated within such times, the claim, dispute, or other matter shall be forever barred.

The decision rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event either party makes a claim or brings an arbitration action or lawsuit against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys' fees) incurred by the other party in defense of such claim or action.

12. Termination: If the OWNER fails to make payments in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the ENGINEER's option, cause for suspension of services. The ENGINEER shall provide seven days' written notice. If the OWNER or ENGINEER suspends the Project, the ENGINEER shall be compensated for services performed prior to notice of suspension. The ENGINEER's fees for the remaining services and the time schedule shall be equitably adjusted. Either party may terminate this Agreement upon not less than seven days' written notice to the other party for convenience and without cause. If the Agreement is terminated, the ENGINEER shall be compensated by the OWNER for services performed prior to termination and reimbursable expenses including costs attributable to termination, including the costs attributable to the ENGINEER's termination of consultant Agreements.
13. Professional Liability Insurance and Limitation of Liability: The ENGINEER maintains professional liability insurance as part of its normal business practice. The OWNER agrees to limit the ENGINEER's liability to the OWNER and to all Construction Contractors and Subcontractors on the project due to the ENGINEER's negligent acts, errors, or omissions,

such that the total aggregate liability of the ENGINEER to all those named shall not exceed the amount of the ENGINEER's compensation for the Project.

14. Indemnification: Subject to the limitation in Paragraph 13 above the ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense cost, to the extent caused by the ENGINEER's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the ENGINEER is legally liable.

The OWNER agrees to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively ENGINEER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable.

Neither OWNER or ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

15. Mutual Waiver of Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the ENGINEER, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of incidental, indirect and consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and the ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
16. Delays: The OWNER agrees that the ENGINEER is not responsible for any damages arising directly or indirectly from any delays for causes beyond the ENGINEER's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, epidemics, pandemics, or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in a timely manner; failure of performance by OWNER or the OWNER's contractors or consultants; or discovery of any hazardous substance or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by the ENGINEER to perform its services in an orderly and efficient manner, the ENGINEER shall be entitled to a reasonable adjustment in schedule and compensation.
17. Disputed Invoices: If the OWNER objects to any portion of an invoice, the OWNER shall so notify the ENGINEER in writing within ten (10) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest at one percent (1%) per month shall be paid by the OWNER on all disputed invoice amounts that are subsequently resolved in the ENGINEER's favor and shall be calculated on the unpaid balance from the due date of the invoice.



18. ADA Requirements: The ENGINEER shall make a reasonable professional effort to interpret applicable ADA requirements as they apply to this project but cannot warrant or guarantee compliance due to the fact it is civil rights legislation and open to many different interpretations.
19. Code Compliance: The ENGINEER shall put forth reasonable professional efforts to comply with applicable laws, codes, and regulations in effect as of the date of the execution of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after the date shall entitle the ENGINEER to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.
20. Buried Utilities: The OWNER will be responsible for furnishing the ENGINEER information identifying the type of all underground utilities and verifying their specific locations. The ENGINEER (or their subconsultant) will rely on this information and prepare a plan that shows the locations intended for connections with respect to assumed locations of underground utilities provided by the OWNER. The OWNER will approve of all locations of subsurface penetrations prior to them being made. The OWNER agrees to waive all claims and causes of action against the ENGINEER for damages to underground improvements. The OWNER further agrees to indemnify and hold the ENGINEER harmless from any damage, liability, or cost, including reasonable attorney's fees and defense costs for any property damage, injury or economic loss arising or allegedly arising from subsurface penetrations.
21. Condominium Conversion: If the ENGINEER's services and Construction Documents are intended for the design and construction of residential or commercial rental units, they shall be under the ownership and control of a single, integrated OWNER. In the event the Project is changed to any other purpose or use, including, but not limited to, subdivision into individual units for sale, the ENGINEER shall have no responsibility, and shall be released from all obligations and liabilities for the Project, and each and every right, license and/or ownership interest of the OWNER of the Construction Documents shall be void. The OWNER shall be expressly prohibited from making any further use of the Construction Documents for any purpose, including, but not limited to, the conversion of the Project to another purpose. Further, the OWNER agrees, to the fullest extent permitted by law, to indemnify, immediately defend, and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all damages, liabilities, or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the services performed under this Agreement.
22. Energy Tax Deduction: The ENGINEER may wish to pursue an energy tax deduction under Section 179D of the Internal Revenue Code for this Project. Such deductions are available to design firms for projects that reduce overall energy use of a building. If Progressive AE determines that this Project meets the relevant 179D qualification criteria, the OWNER agrees to allocate the tax deduction to Progressive AE by signing an Allocation Acknowledgement form which is required by the IRS to receive the deduction.
23. Evaluation of Work: The ENGINEER shall have authority to reject work that does not conform to the contract documents; however, the ENGINEER does not have authority to stop work at any time.
24. Hazardous Materials: The ENGINEER shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

25. Hiring of Personnel: OWNER may not directly hire any employee of the ENGINEER. OWNER agrees that it shall not, directly, or indirectly solicit any employee of the ENGINEER from accepting employment with OWNER, affiliate companies, or competitors of ENGINEER.
26. Means and Methods: The ENGINEER shall not have control over, charge of, or responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work, nor shall the ENGINEER be responsible for the constructor's failure to perform work in accordance with the contract documents.
27. Site Signage: The ENGINEER shall be permitted to install on the project premises an exterior sign of not more than sixty square feet for promotional purposes. The location of the sign shall be mutually agreed upon by OWNER and ENGINEER, not to be unreasonably withheld by either.
28. Timeliness of Performance: The OWNER and ENGINEER are aware that many factors outside the Agreement control may affect the ENGINEER's ability to complete the services to be provide under Agreement. The ENGINEER will perform these services with reasonable diligence and expediency consistent with sound professional practices.
29. Value-Added/Betterment: If, due to the ENGINEER's error or omission, any required item or component of the project is omitted from the ENGINEER's Construction documents, the ENGINEER shall not be responsible for paying the cost to add such item or components to the extent that such item or component would have otherwise been necessary to the project or otherwise adds value or betterment to the project. In no event will the ENGINEER be responsible for any cost or expenses that provides value, upgrade, or enrichment of the project.

## Schedule of Invoice Rates - 2023

### Hourly Staff Charges

|                     |                                                                                                                                                                                                              |            |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Class 10 Personnel: | Directors, Principals                                                                                                                                                                                        | \$265/hour |
| Class 9 Personnel:  | Practice Leader, Project Principal, Senior Construction Leader, Senior Project Manager                                                                                                                       | \$215/hour |
| Class 8 Personnel:  | Senior Architect, Senior Construction Administrator, Senior Engineer, Senior Healthcare Planner, Senior Project Manager                                                                                      | \$190/hour |
| Class 7 Personnel:  | Construction Superintendent, Senior Project Manager, Senior Architect, Senior Designer, Senior Engineer                                                                                                      | \$170/hour |
| Class 6 Personnel:  | Construction Superintendent, Engineer II, Project Manager II, Senior Designer, Senior Technician, Senior Interior Designer                                                                                   | \$145/hour |
| Class 5 Personnel:  | Architect II, Engineer I, Preconstruction Coordinator/Estimator, Project Manager I, Scientific Operations Specialist                                                                                         | \$130/hour |
| Class 4 Personnel:  | Architect I, Architectural Designer, Construction Project Manager, Construction Superintendent, Graduate Engineer, Interior Designer II, GIS Technician, Planner I, Technician II, Water Resource Specialist | \$110/hour |
| Class 3 Personnel:  | Associate Planner, Construction Observer, Executive Assistant, Field Scientist, Graduate Architect, Technician I                                                                                             | \$ 90/hour |
| Class 2 Personnel:  | Graduate Interior Designer, Project Assistant                                                                                                                                                                | \$ 80/hour |
| Class 1 Personnel:  | Interns                                                                                                                                                                                                      | \$ 60/hour |

### Reimbursable Expenses

1. Fees for Program, Financial or Procurement Management services when the Owner has engaged a supplier and Architect is subject to a fee.
2. Building permit fees and plan review fees as required by the authorities having jurisdiction over projects at cost plus 10%.
3. Outside services, consultants, travel and lodging at cost plus 10%.
4. Copies, telephone, cell phone voice and data charges and office supplies will be charged through a \$25 per month Misc. Office Expense charge. This charge will not be applied to invoices under \$1,000.
5. CAD black/white plotting at 15¢ per square foot; CAD color plotting at 25¢ per square foot; CAD low density color images at 30¢ each; CAD high density color images at 50¢ each; large-format color plotting at \$9 per square foot. Postage, shipping, and lab tests at cost. Files written to CD will be minimum \$100 per drawing or \$500 maximum. Passenger vehicle mileage on projects at the IRS Standard Rate (currently 65.5¢ per mile). Lodging, meals, and airfare at cost. Machine rental GPS at \$250 per day. Traffic Counters at \$60 per count. Surveying supplies at 50¢ per stake.
6. Overtime expenses requiring higher than normal rates if authorized by owner.

#### Notes:

1. Invoices are due upon receipt. Unpaid invoices shall bear interest at a rate of 1 percent per month if not paid within 30 days of the date of the invoice.
2. Special media requests may be at higher rate.
3. Hourly staff charges and expenses subject to change annually.

STD RATE

January 12, 2023

Progressive AE, Inc.

Corporate Office: | 1811 4 Mile Road NE | Grand Rapids, MI 49525 | 616.361.2664 | progressiveae.com  
Regional Office: | 330 South Tryon Street, Suite 500 | Charlotte, NC 28202 | 704.731.8080 | progressiveae.com

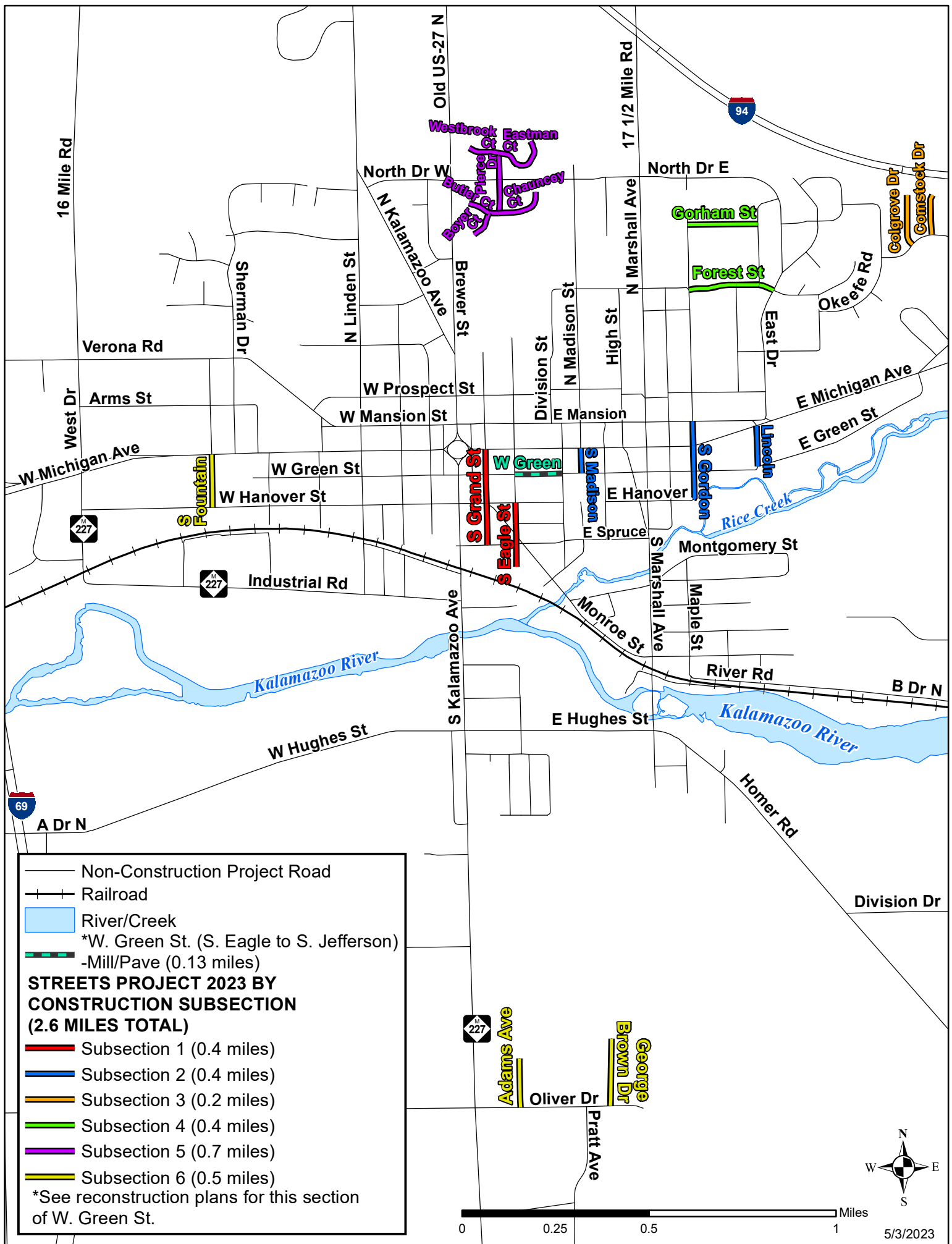


# BID FORM

PROJECT: 2023 Street Improvements

DATE: 5/31/2023

| ITEM # | MDOT<br>ITEM # | DESCRIPTION                                              | UNIT | QTY    | EOPPC Unit Price | EOPPC Extended Price | QEI               |                | Hunter Prell      |                |
|--------|----------------|----------------------------------------------------------|------|--------|------------------|----------------------|-------------------|----------------|-------------------|----------------|
|        |                |                                                          |      |        |                  |                      | Unit Price as Bid | Extended Price | Unit Price as Bid | Extended Price |
| 1      |                | AUDIO VISUAL RECORDING                                   | Ea   | 1      | \$ 3,500.00      | \$ 3,500.00          | \$ 3,600.00       | \$ 3,600.00    | \$ 20,000.00      | \$ 20,000.00   |
| 2      |                | Mobilization, Max 5% of bid                              | Ea   | 1      | \$ 26,080.58     | \$ 26,080.58         | \$ 39,039.00      | \$ 39,039.00   | \$ 40,000.00      | \$ 40,000.00   |
| 3      | 1037050        | MH, SANITARY, COVER, MARSHALL                            | Ea   | 32     | \$ 800.00        | \$ 25,600.00         | \$ 410.00         | \$ 13,120.00   | \$ 750.00         | \$ 24,000.00   |
| 4      | 1037050        | MH, STORM, COVER, MARSHALL                               | Ea   | 19     | \$ 800.00        | \$ 15,200.00         | \$ 410.00         | \$ 7,790.00    | \$ 750.00         | \$ 14,250.00   |
| 5      | 2040020        | CURB AND GUTTER, REM                                     | Ft   | 2,567  | \$ 10.00         | \$ 25,670.00         | \$ 7.00           | \$ 17,969.00   | \$ 20.00          | \$ 51,340.00   |
| 6      | 6037001        | SAWCUT PAVEMENT                                          | FT   | 100    | \$ 5.00          | \$ 500.00            | \$ 3.00           | \$ 300.00      | \$ 12.00          | \$ 1,200.00    |
| 7      | 8020023        | CURB & GUTTER CONC., DET. C4                             | Ft   | 2,627  | \$ 27.00         | \$ 70,929.00         | \$ 30.00          | \$ 78,810.00   | \$ 35.00          | \$ 91,945.00   |
| 8      | 2040050        | PAVT, REM                                                | Syd  | 427    | \$ 15.00         | \$ 6,405.00          | \$ 14.00          | \$ 5,978.00    | \$ 15.00          | \$ 6,405.00    |
| 9      | 2040055        | SIDEWALK, REM                                            | Syd  | 146    | \$ 22.00         | \$ 3,212.00          | \$ 11.00          | \$ 1,606.00    | \$ 25.00          | \$ 3,650.00    |
| 10     | 2080020        | EROSION CONTROL, INLET PROTECTION, FABRIC DROP           | Ea   | 89     | \$ 250.00        | \$ 22,250.00         | \$ 120.00         | \$ 10,680.00   | \$ 200.00         | \$ 17,800.00   |
| 11     | 4030004        | DR STRUCTURE COVER, ADJ, CASE 1, MODIFIED                | Ea   | 51     | \$ 600.00        | \$ 30,600.00         | \$ 775.00         | \$ 39,525.00   | \$ 950.00         | \$ 48,450.00   |
| 12     | 4030050        | DR STRUCTURE COVER, TYPE K                               | Ea   | 6      | \$ 550.00        | \$ 3,300.00          | \$ 410.00         | \$ 2,460.00    | \$ 1,200.00       | \$ 7,200.00    |
| 13     | 4030390        | DR STRUCTURE, TEMP LOWERING                              | Ea   | 51     | \$ 300.00        | \$ 15,300.00         | \$ 650.00         | \$ 33,150.00   | \$ 400.00         | \$ 20,400.00   |
| 14     | 5010002        | COLD MILING HMA SURFACE                                  | Syd  | 45,777 | \$ 4.00          | \$ 183,108.00        | \$ 1.33           | \$ 60,883.41   | \$ 1.50           | \$ 68,665.50   |
| 15     | 5010703        | HMA, 4EML                                                | Tons | 4,100  | \$ 100.00        | \$ 410,038.75        | \$ 94.43          | \$ 387,199.59  | \$ 90.00          | \$ 369,034.88  |
| 16     | 6020015        | CONC BASE CSE, NONREINF, 6 INCH                          | Syd  | 331    | \$ 30.00         | \$ 9,930.00          | \$ 56.00          | \$ 18,536.00   | \$ 35.00          | \$ 11,585.00   |
| 17     | 8010005        | DRIVEWAY, NONREINF. CONC., 6"                            | Syd  | 352    | \$ 40.00         | \$ 14,080.00         | \$ 54.00          | \$ 19,008.00   | \$ 72.00          | \$ 25,344.00   |
| 18     | 6037001        | CURB CUT FOR ADA RAMP (PROVISIONAL)                      | Ft   | 20     | \$ 1.00          | \$ 20.00             | \$ 50.00          | \$ 1,000.00    | \$ 20.00          | \$ 400.00      |
| 19     | 8030010        | DETECTABLE WARNING SURFACE                               | Ft   | 89     | \$ 37.00         | \$ 3,293.00          | \$ 55.00          | \$ 4,895.00    | \$ 65.00          | \$ 5,785.00    |
| 20     | 8030034        | SIDEWALK RAMP CONC. 6"                                   | Sft  | 1,199  | \$ 7.00          | \$ 8,393.00          | \$ 9.46           | \$ 11,342.54   | \$ 8.00           | \$ 9,592.00    |
| 21     | 8030044        | SIDEWALK, CONC, 4"                                       | Sft  | 50     | \$ 5.00          | \$ 250.00            | \$ 7.00           | \$ 350.00      | \$ 8.00           | \$ 400.00      |
| 22     | 8030046        | SIDEWALK, CONC, 6"                                       | Sft  | 76     | \$ 8.00          | \$ 608.00            | \$ 9.00           | \$ 684.00      | \$ 8.00           | \$ 608.00      |
| 23     | 8110024        | PAVT. MRKG., OVLY. COLD PLASTIC, 6", X-WALK              | Ft   | 59     | \$ 5.00          | \$ 295.00            | \$ 6.00           | \$ 354.00      | \$ 10.00          | \$ 590.00      |
| 24     | 8110231        | PAVT. MRKG., WATERBORNE, 4", WHITE                       | Ft   | 200    | \$ 3.00          | \$ 600.00            | \$ 3.00           | \$ 600.00      | \$ 4.00           | \$ 800.00      |
| 25     | 8110232        | PAVT. MRKG., WATERBORNE, 4", YELLOW                      | Ft   | 260    | \$ 3.00          | \$ 780.00            | \$ 2.00           | \$ 520.00      | \$ 2.00           | \$ 520.00      |
| 26     | 8110231        | PAVT. MRKG., WATERBORNE, 4", BLUE                        | Ft   | 38     | \$ 3.00          | \$ 114.00            | \$ 3.00           | \$ 114.00      | \$ 4.00           | \$ 152.00      |
| 27     | 8110425        | PAVT. MRKG., WATERBORNE, FOSP, 4", WHITE                 | Ft   | 513    | \$ 3.00          | \$ 1,539.00          | \$ 2.00           | \$ 1,026.00    | \$ 2.00           | \$ 1,026.00    |
| 28     | 8110045        | PAVT. MRKG., OVLY. COLD PLASTIC, 24" STOP BAR            | Ft   | 30     | \$ 12.00         | \$ 360.00            | \$ 17.00          | \$ 510.00      | \$ 20.00          | \$ 600.00      |
| 29     | 8110063        | PAVT. MRKG., OVLY. COLD PLASTIC, LEFT TURN ARROW SYMBOL  | Ea   | 1      | \$ 100.00        | \$ 100.00            | \$ 230.00         | \$ 230.00      | \$ 350.00         | \$ 350.00      |
| 30     | 8110071        | PAVT. MRKG., OVLY. COLD PLASTIC, RIGHT TURN ARROW SYMBOL | Ea   | 1      | \$ 100.00        | \$ 100.00            | \$ 230.00         | \$ 230.00      | \$ 350.00         | \$ 350.00      |
| 31     | 8110204        | PAVT. MRKG., PREFORM. THERM., ACCESSIBLE SYM.            | Ea   | 2      | \$ 500.00        | \$ 1,000.00          | \$ 525.00         | \$ 1,050.00    | \$ 850.00         | \$ 1,700.00    |
| 32     | 8167011        | TURF ESTABLISHMENT                                       | Syd  | 1,066  | \$ 8.00          | \$ 8,528.00          | \$ 12.00          | \$ 12,792.00   | \$ 6.00           | \$ 6,396.00    |
| 33     | 8230411        | GATE BOX, RECONST., CASE 1 (provisional)                 | Ea   | 1      | \$ 550.00        | \$ 550.00            | \$ 850.00         | \$ 850.00      | \$ 550.00         | \$ 550.00      |
| 34     | 8230421        | WATER SHUTOFF, ADJ, CASE 1 (provisional)                 | Ea   | 1      | \$ 400.00        | \$ 400.00            | \$ 575.00         | \$ 575.00      | \$ 550.00         | \$ 550.00      |
| 35     | 8230431        | GATE BOX ADJ., CASE 1                                    | Ea   | 18     | \$ 350.00        | \$ 6,300.00          | \$ 280.00         | \$ 5,040.00    | \$ 550.00         | \$ 9,900.00    |



## ITEM: 12.J

### ADMINISTRATIVE REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Eric Zuzga, Director of Community Services  
**DATE:** June 5, 2023  
**SUBJECT:** CAHILL RENTAL REHABILITATION DEVELOPMENT AGREEMENT

---

The Cahill Rental Rehabilitation project is ready to move forward as the CDBG agreement with the MEDC is signed and preconstruction meeting scheduled. This project will lead to the creation of 5 1-bedroom apartments above the candy store and Just Bead It.

As part of the rental rehabilitation projects, we have required the party benefiting from the grant to sign a development agreement laying out their responsibilities during the construction period. The agreement has been reviewed by Attorney Revore and signed by the Cahills. Your approval is needed to authorize the City Clerk to sign and to allow the project to move forward to the construction phase.

**BUDGET IMPACT:**  
None anticipated.

**RECOMMENDATION:**  
Approve the Cahill Development Agreement and authorize the City Clerk to sign on behalf of the City.

## DEVELOPMENT AGREEMENT

Between City of Marshall and CWK Property Holdings LLC

for

### Cahill Rental Rehabilitation Project

This Development Agreement (the "Agreement") is made and effective June 5, 2023, by and between the **CITY OF MARSHALL** ("City"), a Michigan municipal corporation, whose addresses is 323 W. Michigan Avenue, Marshall, Michigan 49068 and **CWK Property Holdings LLC, Justin Cahill, and Heather Cahill**, (collectively, the, "Developer(s)") whose address is 3065 Nottawa Lake Drive, Marshall, MI 49068 (individually a "party," collectively the "parties").

### RECITALS

**WHEREAS**, the Developer owns the real property located in the City of Marshall, Michigan, commonly known as 125-127 W. Michigan Avenue, Marshall Michigan 49068 and legally described on the attached Exhibit "A".

**WHEREAS**, pursuant to the Michigan Community Development Block Grant Program ("CDBG"), the Developer has sought financial support for the rehabilitation of certain area of the structure on the Property.

**WHEREAS**, at the request of the Developer, the City has submitted to the Michigan Economic Development Corporation ("MEDC") an application for grant funding for the rehabilitation of the Property, which has been approved:

**WHEREAS**, the Developer intends to revitalize portions of its second and third floors of the historic building in downtown Marshall, Michigan into five (5) new rental units as described in the following definition of the "Project" and within and in accordance with the CDBG Grant Agreement, No. MSC-221033-RR.

**WHEREAS**, the Developer and the City wish to set forth their respective duties and obligations relative to this Project and set forth the terms governing the development of the Project.

**WHEREAS**, the City of Marshall and the Developer have recognized the need for the development of additional rental units in the City.

**WHEREAS**, the Developer will develop certain areas within the Property for additional residential units, by way of the use grant funding for the rehabilitation of the Property that will allow the following:

- Use of grants to complete the Property improvements.
- Create a clear plan to improve the designated area.
- Encourage City residence by bringing more people into the area to live, work, and enjoy the City.

**NOW THEREFORE**, in consideration of the above recitals, the parties agree as follows:

**1. RECITALS.** The foregoing recitals are incorporated in and form a part of this Agreement.

**2. SCOPE OF PROJECT.** The scope of the Project is defined as the construction, rehabilitation and improvement of the Property to include five (5) new rental units to be added to the building, including demolition/cleanout, framing, electrical, HVAC, plumbing, insulation, drywall, paint, cabinets, flooring, and appliances, up through certificate of occupancy and close-out of any Grant obligations, and including but not limited to, and process of, all necessary accounting and reporting to government agencies.

**3. CDBG GRANT AGREEMENT.** The parties agree to be bound by and adhere to the terms and conditions of the CDBG Grant Agreement, No. MSC-221033-RR.

**4. DEFINITIONS.**

"CDBG" shall mean Michigan Community Development Block Grant Program.

"City" shall mean the City of Marshall, Michigan.

"Capital Investment Commitment" shall mean the direct capital expenditures to construct, equip and complete the Project.

"Capital Investment Commitment Date" shall mean May 24, 2023.

"City Representative" or "City Official" shall mean an employee, elected official or appointed official of the City together with any City agent or consultant disclosed to the Developer.

"Developer" shall mean CWK Property Holdings LLC.

"Development Period" shall mean June 5, 2023 through July 15, 2025.

"Effective Date" shall mean the date when both the City and the Developer have executed this Agreement.

"Laws" shall mean all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders and other governmental requirements applicable to the Project, including, without limitation, those relating to the environment, health and safety, disabled or handicapped persons.

"MEDC" shall mean the Michigan Economic Development Corporation.



"Permit fees" shall mean all fees for required permits due the City after the Effective Date.

"Permits" shall mean all permits, licenses, approvals, entitlements, notifications, determinations, and other governmental and quasi-governmental authorizations, including without limitation zoning and land use approvals and certificates of occupancy, required in connection with the ownership, planning development, construction, use, operation, or maintenance of the Project. As used herein, "quasi-governmental" shall include the providers of all utility services to the Project.

"Person" shall mean a natural person, corporation, partnership, trust, association, limited liability company or other entity.

"Project" shall mean the construction, rehabilitation and improvement of the Property to include five (5) new rental units to be added to the building located at 125-127 W. Michigan Avenue, Marshall Michigan 49068, including demolition/cleanout, installation of an elevator, framing, electrical, HVAC, plumbing, insulation, drywall, paint, cabinets, flooring, and appliances, up through certificate of occupancy and close-out of any Grant obligations, and including but not limited to, and process of, all necessary accounting and reporting to government agencies.

"Project Budget" shall mean the overall budget for the cost of constructing, equipping, and completing the Project and shall include capital and a general summary of the planned sources and uses for the Project.

"Property" shall mean the premises at 125-127 W. Michigan Avenue, in the City of Marshall, Calhoun County, Michigan, legally described on the attached Exhibit "A."

"Term" shall mean the term of this Agreement, commencing on the Effective Date and expiring upon the first to occur of: (i) the termination of this Agreement pursuant to an express provision of the Agreement; or (ii) the mutual written agreement of the Parties to terminate this Agreement; or completion of the Project and issuance of certificate of occupancy and close-out of any grant obligations, and including but not limited to, and process of, all necessary accounting and reporting to government agencies.

"Water and Sewer Connection Charges" shall mean those charges for connections, installations, tap-in, meter and other costs not based on the use of water and sewer services at the Project.

## **5. PROJECT OVERVIEW AND INITIAL CONDITIONS.**

A. Project Costs. The total estimated Project cost is \$889,840.00. (“Project Costs”)

B. CDBG Grant. Of the total Project cost, CDBG Grant funds shall not exceed \$500,000.

C. Public Contributions. The City will not provide direct financial assistance to the Project; however, the City has approved an Obsolete Property Rehabilitation exemption and will commit reasonable staff time to complete the Project.

D. Financial Contributions. The City shall not be required to contribute any City funds for the Project, and the Developer and City acknowledge same. The City shall serve as Grantee under the CDBG Grant Agreement, No. MSC-221033-RR. Developer shall be solely responsible for any Project costs more than the Grant funds, that may also include repayment of Grant funds, as required under this Agreement and Grant Agreement.

E. Project Milestones. The Project Milestones shall be as follows:

- Grant Agreement Executed: May 24, 2023
- Construction Commencement: July 15, 2023
- Construction Completion: July 15, 2025

F. Community Support. The City shall continue to provide support for the Project as specifically set forth and limited as provided under this Agreement.

G. Repayment. The Developer acknowledges that should any of the specifications in this Agreement or the CDBG Grant Agreement for the Project not be met, the City may require the repayment of the Grant up to the full amount from the Developer.

H. Environmental Review. The Developer acknowledges that it must complete the CDBG environmental review and have received written authorization from MEDC prior to incurring any Project costs.

I. Reporting Requirements. The Developer shall be required to provide progress reports every three (3) months to the City to assure reporting requirement compliance is met on time as outlined in the executed CDBG Grant Agreement. Developer shall be responsible for all audits and reporting requirements as required under the CDBG Grant Agreement.

## **6. DEVELOPMENT REQUIREMENTS.**

A. Development Period Covenants of Developer. The Developer covenants and agrees to undertake the following actions during the Development Period: June 5, 2023 to July 15, 2025, or earlier as provided for under this Agreement.

B. Project Construction. The Developer will commence construction of the Project and will proceed diligently to construct and develop the Project during the Development Period as outline in the CDBG Term Sheet and CDBG Request for Release of funds for this Project, which are incorporated in this Agreement by reference.

C. Capital Investment Commitment. Not later than the Capital Investment Date, the Developer shall fulfill or cause the Capital Investment Commitment to be fulfilled.

D. Project Books, Records and Materials. The Developer shall provide evidence acceptable to the City to document the fulfillment of the Capital Investment Commitment. The City may review Project books, records, and related materials to confirm the Capital Investment Commitment. If the Project books, records, and related contain confidential or proprietary Developer information, the same shall be reviewed privately by the City Person at a location mutually agreeable to the Parties.

E. Permits and Approvals. The City shall expedite, to the extent it is legally permitted to do so, the issuance of all Permits and City approvals necessary for the Project, provided that the Developer has submitted the required application or information under the generally applicable standards for granting such Permits by in the City. Promptly following the Developer completed submissions, the City shall review the same. The Developer shall maintain, as required by law and all applicable building codes, all Permits that are necessary in order for the Developer to construct and complete the Project, whether required by the City and/or other governmental agencies. The Developer shall obtain and maintain the Permits as its sole cost and expense.

F. Payment of Taxes. The Developer shall pay and discharge prior to the date when a penalty would apply, all taxes assessed against the Property.

G. Maintain Existence in Good Standing. The Developer shall maintain its existence as a limited liability company in good standing in the State of Michigan.

H. Developer's Insurance. Prior to commencing construction on all or any portion of the Property, Developer shall and Developer shall cause its agents, contractors and subcontractors, (the "Developer Parties") to procure and maintain in full force and effect, at Developer's sole expense, Builders Risk, Commercial General Liability Insurance, Commercial Automobile Liability Insurance, (including coverage for owned automobiles and for non-owned and hired automobiles), Umbrella or Excess Liability Insurance for the Commercial General Liability Insurance and Commercial Automobile Liability Insurance, Professional Liability as specified herein and any other insurance as may be required from time to time. With the exception of Worker's Compensation and Professional Liability Insurance, each policy must (i) identify the City as an additional insured and (ii) include an endorsement providing that coverage in favor of City will not be impaired in any way by any act, omission, or default of Developer, its contractors, employees, agents, representatives or any other person. All insurance policies required hereunder shall be written as primary policies, not contributing with or in excess of any coverage maintained by the City of Marshall. Developer shall provide the City with a

Certificate of Insurance and a copy of the additional insured endorsement at any time upon request. Commercial General Liability Insurance, Commercial Automobile Liability Insurance, Umbrella or Excess Coverage and Worker's Compensation Insurance shall be written with limits of liability not less than those shown below. Builders Risk policies for each portion of the Project will be for the completed value of the structures and the Infrastructure Improvements, either in whole or as component parts of the Project based upon the construction cost.

|                                                |                                   |
|------------------------------------------------|-----------------------------------|
| Builders Risk                                  | As stated above                   |
| Commercial General Liability                   |                                   |
| i. Each Occurrence                             | \$1,000,000;                      |
| ii. General Aggregate                          | \$2,000,000 and;                  |
| iii. Products/Completed Operations (Aggregate) | \$2,000,000;                      |
| Personal and Advertising Injury                | \$1,000,000                       |
| Commercial Automobile                          | \$1,000,000 combined single limit |
| Umbrella                                       | \$2,000,000 each occurrence       |
| Worker's Compensation                          | Statutory limits                  |
| Employer's Liability                           | \$1,000,000                       |
| Limited Pollution                              | \$1,000,000                       |
| Professional Liability                         | \$1,000,000                       |

Developer shall, and shall cause its contractors to, maintain in effect all insurance coverages required hereunder, at the Developer's sole expense or such Developer Party's sole expense. All insurance is to be issued by companies having a "General Policyholders Rating" of at least "A" and a financial rating of not less than Class XII. All insurance policies shall provide that the coverage afforded shall not be canceled or non-renewed or restrictive modifications added, until at least ten (10) days' prior written notice has been given to each of the Developer's Designees. Developer shall, at least thirty (30) days prior to the expiration of such policies, furnish the City with renewals thereof. In the event the Developer or Developer Parties fail to obtain or maintain any insurance coverage required under the Agreement, the City may purchase such coverage and charge the cost thereof to Developer at 125% of the actual costs in order to compensate the City for the administrative time involved.

I. General Indemnification. To the extent not covered by the proceeds from the insurance policies required to be carried hereunder or under any other agreements between the parties hereto, Developer agrees that it shall indemnify and hold harmless the City from against and from any loss, damage, claim of damage, liability or expense to or for any person or property, whether based on contract, tort, negligence or otherwise, arising directly or indirectly out of or in connection with its acts or omissions in conjunction with the performance of this Agreement so indemnifying, its agents, servants, employees or contractors; provided, however, that nothing herein shall be construed to require a party to indemnify the other against such party's own acts, omissions, or neglect.

J. Development Period Termination. In the event of Developer default, the City may terminate this Agreement during the Development Period only after and during the continuance of a Developer Event of Default. The Developer may terminate this Agreement only after and during the continuance of a City Event of Default.

## **7. CONFLICTS OF INTEREST.**

A. No Conflict Representation of Developer. The Developer and its Controlling Member represent and warrant that, to their actual knowledge and except as disclosed to the City, the Mayor of the City, any member of the City Council, City Manager or any other City Representative who exercises any discretionary function or responsibility in connection with the approval of any action required under this Agreement (collectively "City Official(s)"), that said City Officials have no personal financial interest in the Developer or the Project.

B. No Conflict Covenant of Developer. The Developer and its Controlling Member covenant and agree that no City Official may, to the extent of the Developer and Controlling Member have the authority to prevent, (i) obtain a personal or financial interest in the Developer or the Project, (ii) hold or have an interest in any contract, subcontract, or agreement for payment with respect to the construction and development of the Project, either for themselves or those with whom they have a direct family or business relationship during their tenure as a City Official.

## **8. REPRESENTATION AND WARRANTIES.**

A. Default by Developer. The occurrence of any of the following events shall be an event of default by the Developer under this Agreement (a "Developer Event of Default"):

- 1) Breach of this Agreement, Representation and Warranties. Breach of any provision of this Agreement, representation, or warranty made in this Agreement or in connection with any delivery, application or commitment for the Project by the Developer is false or misleading in any material respect at the time made.
- 2) Breach of CDBG Grant Agreement, No. MSC-221033-RR.
- 3) Failure to Complete Project.
- 4) Payment and Performance Default. The Developer fails, after receiving any required notice, to perform any covenant, agreement, obligation, term, or condition under this Agreement within any applicable grace or cure period, or if no due date or grade period is set forth in this Agreement and is not expressly prohibited, then within sixty (60) days for monetary default following written demand and sixty (60) days for non-monetary default following written demand (specifying the nature of the default), and for non-monetary default during the Development Period, the Development shall not be in default if the nature of the default is such that the Developer may need more time to cure, in which case the period to cure shall be extended for ninety (90) days for so long as may be reasonably required to cure such default provided the Developer

5) Bankruptcy.

6) Developer adjudicated insolvent, or shall make assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer, and the appointment of same adversely affects the Project or the City.

7) A petition is filed or any case, proceeding or other action is commenced against the Developer seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction whether now or hereafter in effect or a court of competent jurisdiction enters an order for relief against the Developer that is not dismissed within one hundred twenty (120) days after being commenced.

8) Dissolution of Developer. Any dissolution, termination, or partial or complete liquidation of the Developer prior to completion of the Project.

9) Failure to Maintain Property / Project Insurance as Required.

B. Remedies of the City. After and during the continuance of a Developer Event of Default, the rights and remedies of the City shall include, but not limited to:

1) Damages and Injunction. The City may maintain an action to recover any damages (including reasonable fees and expenses of legal counsel, consultants, and expert witnesses incurred in connection therewith) resulting from the Development Event of Default. Notwithstanding the foregoing, in no event will the Developer be liable for any punitive, speculative, or consequential damages alleged by the City. The City may also seek injunctive relief.

2) Termination. The City may terminate this Agreement in accordance with the specific termination rights set forth in this Agreement.

3) Specific Performance of this Agreement.

4) Developer shall be liable to City and/or any governmental agency for any amounts of the Grant, repayment of the Grant, or reimbursement of Grant funds, to any governmental agency by reason of Developer's breach of this Agreement, default, or failure to complete the Project.

C. Default by the City. The occurrence of any of the following events shall be

an event of default by the City under this Agreement (a "City Event of Default").

- 1) Payment or Performance Default. City fails, after receiving any required notice, to perform any covenant, agreement, obligation, term, or condition under this Agreement, within any applicable grace period, or if no due date or grace or cure period is set forth, then within sixty (60) days following written demand specifying the nature of the default.
- 2) Breach of Representations and Warranties. Any representation or warranty made in this Agreement or in connection with any delivery application or commitment relating to the Project by the City is false or misleading in any material respect at the time made.

D. Remedies of Developer. After and during the continuance of a City Event of Default, the rights and remedies of the Developer shall be limited to:

- 1) Injunction. Developer may seek an injunction resulting from the City Event of Default. Notwithstanding the foregoing, in no event will the City be liable for any punitive, speculative, consequential, or any other damages due to loss, or personal liability damages, alleged by the Developer. The Developer may also seek injunctive relief.
- 2) Termination. Developer may terminate this Agreement in accordance with the specific termination rights set forth in this Agreement; notwithstanding, section 8(B)(4) above shall survive termination of this Agreement.
- 3) Specific Performance of this Agreement.

## **9. MISCELLANEOUS.**

A. Effect of Agreement. The City shall be obligated to perform only those undertakings expressly set forth in this Agreement and its obligation and duties pursuant to applicable laws, ordinance and charter. Execution of this Agreement is no way constitutes City approval of the Project or obligates the City to support or approve the Project except as expressly set forth in this Agreement.

B. Compliance with Laws. The Developer and the City shall each comply with all applicable laws at all times during the Term, and that may be required subsequent.

C. City Consent. Where the consent of the City is required or requested under this Agreement after the Effective Date, such consent may be provided by the City Manager.

D. Costs. Except as specifically set forth in this Agreement, each of the Parties will bear its own cost and fees with respect to actions taken as required by this Agreement or in support of such obligations. The City and the Developer shall have no liability for any claims of any nature except as expressly set forth in this Agreement.

E. Assignability, Transferability, Modification. The obligations of the Developer under this Agreement are not assignable, transferable, or modifiable without the express written agreement of the City. If assignment or transfer is authorized, the obligations of the Developer under this Agreement shall survive any assignment, unless waived or modified by the City. If the City declines to approve an assignment in accord with the provisions of this section, Developer shall remain obligated to complete its obligations under the Agreement.

F. Notices. Except as otherwise specified herein, all notices, consents, approvals, requests, and other communications (collectively called "Notices") required or permitted under this Agreement must be given in writing and are effective on delivery. Delivery may be effectuated by personal service with receipt obtained; certified mail or first-class mail with delivery proof; or nationally recognized overnight courier delivery service with next business day delivery. Notices must be addressed as follows:

To the City: City Manager  
323 W. Michigan Avenue  
Marshall, Michigan 49068

With a copy to: City Attorney  
323 W. Michigan Avenue  
Marshall, Michigan 49068

To the Developer: Justin and Heather Cahill  
CWK Property Holdings LLC  
3065 Nottawa Lake Drive  
Marshall, MI 49068

G. Amendment. No amendment or modification to or of this Agreement shall be binding upon a Party to this Agreement until such amendment or modification is reduced to writing and executed by the Parties after the consent of the City Council.

H. Binding Effect. This Agreement shall be binding upon the Parties to this Agreement and upon their respective successors and assigns.

I. Survival and Litigation Costs. The terms, conditions and provisions of this Agreement which are expressly provided to survive shall survive its termination. In any litigation arising out this Agreement, each Party shall be responsible for its individual attorneys' fees, expenses and costs, including its expenses of consultants and expert witnesses, and costs at trial and for appeals, and the provisions of this sentence shall survive the termination of this Agreement.

J. Severability. In any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of



the remaining clauses, provisions, or sections of this Agreement.

K. Time of Essence. Time shall be of the essence of this Agreement.

L. Execution in Counterparts. The Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

M. Captions. The captions and heading in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

N. Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of State of Michigan and all applicable federal laws of the United States. Any claims, lawsuits, or causes of action arising out of the Agreement shall be exclusively litigated in the Courts for the County of Calhoun, Michigan.

O. Force Majeure. No Party hereto shall be liable for the failure to perform its obligations hereunder if such failure is due to unforeseeable events beyond the Party's reasonable control and without such Party's fault or negligence, including but not limited to, acts of God, acts of the public enemy, acts of any government, acts of the other Party, fires, flood, epidemics, quarantine restriction, strikes and embargoes, shortage of materials and delays of contractors due to such causes. The failure to perform shall be excused only for the period during which the events giving rise to the failure to perform exists; provided, however, that the Party seeking relief from its obligation under this Section shall notify the other Party in writing, setting forth the event giving rise to such failure to perform, within thirty (30) business days following knowledge of the occurrence of such event.

P. Relationship of the Parties. The relationship of the City and the Developer shall be defined solely by the expressed terms of this Agreement, including the implementing documents described or contemplated herein, and neither the cooperation of the parties hereunder nor anything expressly or implicitly contained herein shall be deemed or construed to create a partnership, limited or general, or joint venture between the City and the Developer, nor shall any party or their agent be deemed to be the agent or employee of any party to this Agreement. Under no circumstances shall an agent, employee or contractor of the Developer, be, nor considered to be, an employee of the City of Marshall.

Q. Entire Agreement. The parties agree that this Development Agreement contains the entire terms and conditions between the City and Developer and that there are no other agreements, representations, statements, or understandings, which have been relied on by the parties.

R. Drafting and Construction. All parties to this Agreement have participated fully and equally in the negotiation and preparation hereof; therefore, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against

any party hereto.

S. Due Authorization. The City and the Developer each warrant and represent to the other that this Agreement and the terms and condition thereof have been duly authorized and approved by, in the case of the City, its City Council and all other governmental agencies whose approval may be required as a precaution or precondition to the effectiveness hereof, and as to the Developer, by the Property owner or members thereof, and that the persons who have executed this Agreement below have been duly authorized to do so. The parties hereto agree to provide such opinions of counsel as to the due authorization and binding effect of this Agreement and the collateral documents contemplated hereby as the other party shall reasonably request.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

WITNESSES:

CITY OF MARSHALL,

By \_\_\_\_\_  
Michelle Eubank, City Clerk

Date \_\_\_\_\_

CWK PROPERTY HOLDINGS LLC

By \_\_\_\_\_  
DocuSigned by:  
*Justin Cahill*  
Justin Cahill, Developer and  
Property Owner

Date 5/26/2023

CWK PROPERTY HOLDINGS LLC

By \_\_\_\_\_  
DocuSigned by:  
*Heather Cahill*  
Heather Cahill, Developer and  
Property Owner

Date 5/26/2023

5/26/2023

**EXHIBIT "A"**

(Legal Description)

MARSHALL CITY, LOWER VILLAGE E 1/2 LOT 4 BLK 24 LYING N OF ALLEY.

(Parcel I.D. No: 53-000-564-04)

# ITEM: 12.K

## ADMINISTRATIVE REPORT

---



**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Eric Zuzga, Director of Community Services  
**DATE:** June 5, 2023  
**SUBJECT:** SET PUBLIC HEARING FOR OPRA DISTRICT CREATION FOR 112 N EAGLE STREET

---

The City has received a request from Sue Damron to consider granting an Obsolete Property Rehabilitation (OPRA) exemption for 112 North Eagle Street. Ms. Damron is planning to renovate this property into an event center (see attached plans) and house two boutique hotel rooms. The property has sat vacant for many years and is in need of major improvements to make it a viable facility. In our opinion, this facility is the very definition of functionally obsolete.

OPRA is a tool created by the legislature in 2000, to encourage the redevelopment of blighted structures. It works by freezing the taxable value of a property for a period of up to twelve (12) years. Freezing the taxable value of a property provides an incentive for a property owner to make significant improvements to a building without incurring an increase in property taxes for the period approved by the City.

The first step in considering this request is the creation of an OPRA District which requires a public hearing. Staff recommends scheduling a public hearing for an upcoming meeting to consider this request.

**BUDGET IMPACT:**

None at this time.

**RECOMMENDATION:**

Schedule a public hearing for June 19, 2023 to consider creation of an OPRA District for 112 North Eagle Street.

**RESOLUTION 2023-18**  
**RESOLUTION TO ESTABLISH AN OBSOLETE PROPERTY**  
**REHABILITATION DISTRICT**

Minutes of a regular meeting of the Council of the City of Marshall, held on June 19, 2023 at Marshall City Hall in Marshall, MI at 7:00 PM.

PRESENT:

ABSENT:

The following preamble and resolution were offered by \_\_\_\_\_, and supported by \_\_\_\_\_.

**Resolution 2023-18 Establishing an Obsolete Property Rehabilitation (OPRA)**  
**District for 112 N Eagle Street**

WHEREAS, pursuant to PA 146 of 2000, the City of Marshall has the authority to establish "Obsolete Property Rehabilitation Districts" within the City of Marshall; and

WHEREAS, Sue Damron has filed a written request with the clerk of the City of Marshall requesting the establishment of the Obsolete Property Rehabilitation District for an area in the vicinity of 112 North Eagle Street located in the City of Marshall hereinafter described; and

WHEREAS, the City Council of the City of Marshall determined that the district meets the requirements set forth in section 3(1) of PA 146 of 2000; and

WHEREAS, written notice has been given by mail to all owners of real property located within the proposed district and to the public by newspaper advertisement in the Marshall Advisor and/or by public posting of the hearing on the establishment of the proposed district; and

WHEREAS, on June 19, 2023 a public hearing was held and all residents and taxpayers of the City of Marshall were afforded an opportunity to be heard thereon; and

WHEREAS, the City Council deems it to be in the public interest of the City of Marshall to establish the Obsolete Property Rehabilitation District as proposed.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marshall that the following described parcel(s) of land situated in the City of Marshall, Calhoun County, and State of Michigan, to wit:

MARSHALL CITY, LOWER VILLAGE S 1/2 OF LOTS 1 & 2 BLK 13

be and here is established as an Obsolete Property Rehabilitation District pursuant to the provisions of PA 146 of 2000 to be known as 112 N Eagle Street Obsolete Property Rehabilitation District No. 1.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Council of the City of Marshall, County of Calhoun, Michigan at a regular meeting held on June 19, 2023.

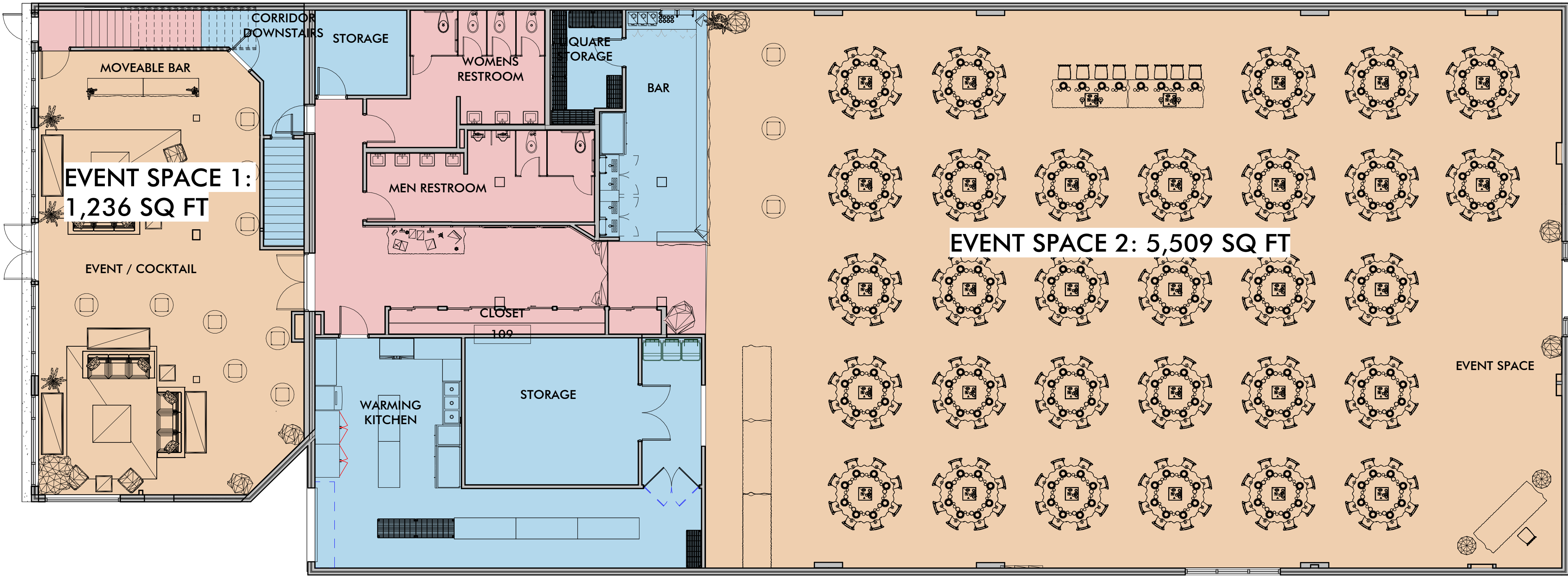
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Michelle Eubank  
Clerk



# 19 Zero Nine Events

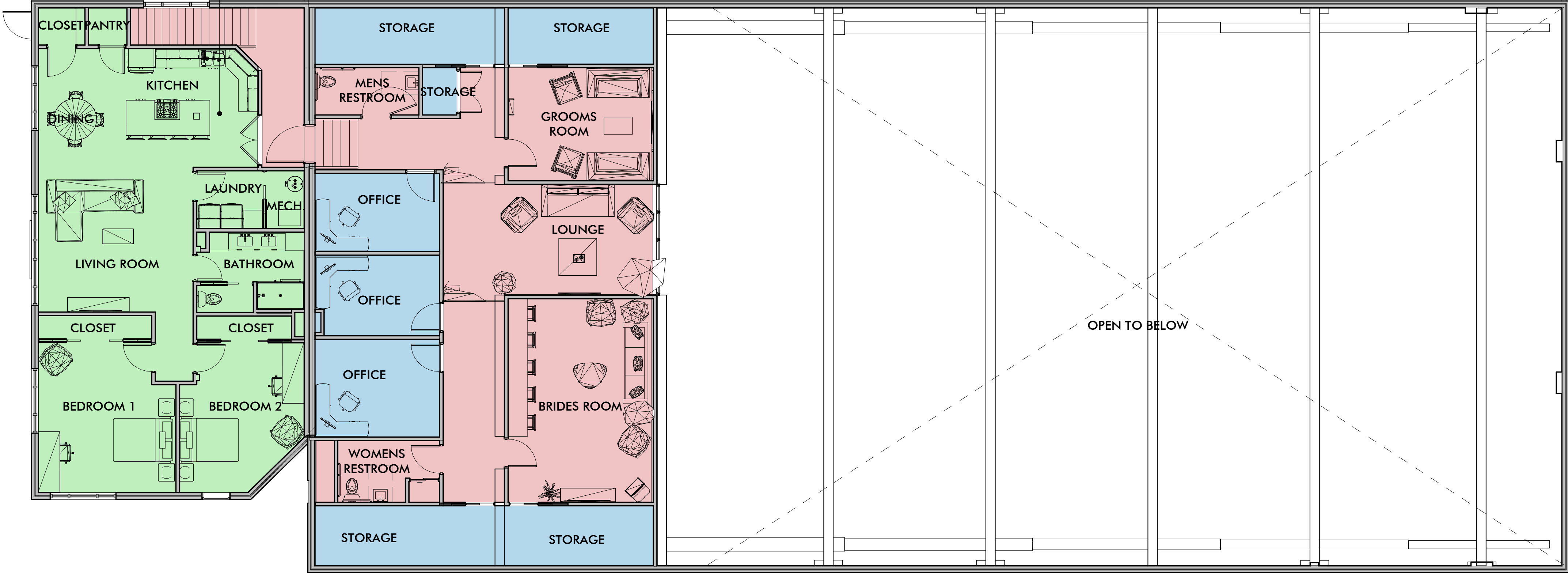
# COMING SOON



## FIRST FLOOR

### APARTMENT A

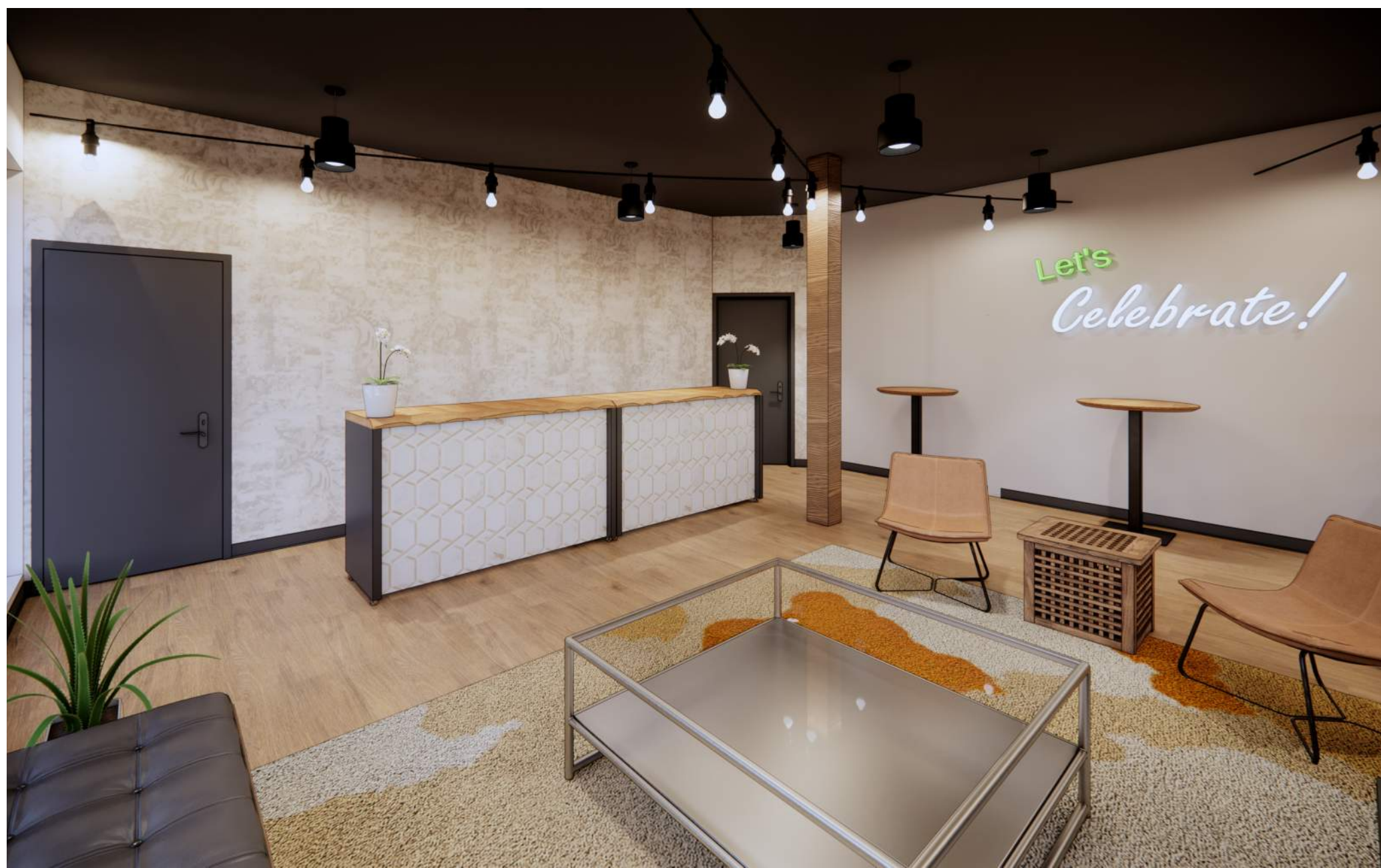
2 BED, 1 BATH  
1,319 SQ FT



## SECOND FLOOR



# 19 Zero Nine Events





# 19 Zero Nine Events





# ITEM: 12.L

## ADMINISTRATIVE REPORT

---



**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Eric Zuzga, Director of Community Services  
**DATE:** June 5, 2023  
**SUBJECT:** **SET PUBLIC HEARING FOR 902/1102 WEST HANOVER STREET  
SPECIAL LAND USE**

---

Adan Rickert has proposed the development of a self-storage facility at 902/1102 West Hanover Street. The property is currently zoned Research and Technology District (I-1) which categorizes self-storage facilities as a Special Land Use, which requires Planning Commission review and City Council approval. The Planning Commission will review this request and the site plan for the project on June 14, 2023.

**BUDGET IMPACT:**  
None at this time.

**RECOMMENDATION:**  
Schedule a public hearing for June 19, 2023 to consider approval of a special land use for 902/1102 West Hanover Street.

# ITEM: 12.M

## ADMINISTRATIVE REPORT

---



**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
**DATE:** June 5, 2023  
**SUBJECT:** **2023-2026 POLICE PATROL COLLECTIVE BARGAINING AGREEMENT**

---

Following a negotiation session on May 12, 2023, the City of Marshall and the Police Officers Labor Council (PLC), Marshall Patrol Unit came to a tentative agreement for a three (3) year employment contract. On May 16, 2023, the City was notified that the Union membership approved and passed the contract tentative agreement.

Substantial changes to the agreement include: changing Director of Public Safety title to Police Chief, modifying seniority bumping rights, modifying the scheduling authority and time frames, increasing annual vacation credit accumulation schedule, increasing the ability to accumulate annual sick leave hours, but maintaining payout schedule, providing an allowance for two additional holidays, updating bereavement leave to include the use of sick leave, including language to allow for employee recognition and activities, updating City provided uniform language, increasing footwear allowance to \$150 per year, defining retirement final average compensation calculation language, increasing wages to July 1, 2023 - \$2, July 1, 2024- 3%, July 1, 2025- 3%, increasing afternoon shift differential to 2%, and including a trial acting command officer premium of \$2 under a letter of understanding (LOU).

**BUDGET IMPACT:**

The agreement will increase the Police Department Budget from \$2,382,273 to \$2,413,639 in FY 2024.

**RECOMMENDATION:**

Approve the 2023-2026 City of Marshall Collective Bargaining Agreement and the associated Acting Shift Command Officer Letter of Understanding with the Police Officers Labor Council, Patrol Officers Division and authorize the City Manager and City Clerk to sign.

## Table of Contents

|                                                                         |         |
|-------------------------------------------------------------------------|---------|
| Agreement .....                                                         | Page 1  |
| Article 1 – Purpose and Intent .....                                    | Page 1  |
| Article 2 – Recognition - Employees Covered .....                       | Page 1  |
| Article 3 – Management Rights.....                                      | Page 1  |
| Article 4 – Union Checkoff .....                                        | Page 3  |
| Article 5 – Public Security .....                                       | Page 4  |
| Article 6 – Probation .....                                             | Page 5  |
| Article 7 – Seniority.....                                              | Page 5  |
| Article 8 – Layoff and Recall .....                                     | Page 7  |
| Article 9 – Working Hours .....                                         | Page 7  |
| Article 10 – Vacation Leave .....                                       | Page 10 |
| Article 11 – Sick Leave .....                                           | Page 12 |
| Article 12 – Holidays.....                                              | Page 14 |
| Article 13 – Insurance .....                                            | Page 14 |
| Article 14 – Other Leave .....                                          | Page 17 |
| Article 15 – Promotions.....                                            | Page 18 |
| Article 16 – Disciplinary Action .....                                  | Page 19 |
| Article 17 – Transfers.....                                             | Page 20 |
| Article 18 – Wage Classification .....                                  | Page 20 |
| Article 19 – Longevity Pay Program.....                                 | Page 20 |
| Article 20 – Miscellaneous .....                                        | Page 21 |
| Article 21 – Uniforms .....                                             | Page 23 |
| Article 22 – Retirement .....                                           | Page 23 |
| Article 23 – Personnel Policies .....                                   | Page 25 |
| Article 24 – Valid Driver’s License .....                               | Page 25 |
| Article 25 – Grievance Procedure .....                                  | Page 25 |
| Article 26 – Part-time Patrol Officers.....                             | Page 27 |
| Article 27 – Agreement, Ratification, Termination and Modification..... | Page 29 |
| Article 28 – Classification.....                                        | Page 29 |
| Appendix A – Wages .....                                                | Page 31 |
| Appendix B – Drug/Alcohol Testing Policy.....                           | Page 32 |
| Appendix C .....                                                        | Page 36 |

## **AGREEMENT**

THIS AGREEMENT is entered into between the CITY OF MARSHALL, Michigan, hereinafter referred to as the "City", and the POLICE OFFICERS LABOR COUNCIL Patrol Officer's Division, hereinafter referred to as the "Union".

### **ARTICLE 1** **PURPOSE AND INTENT**

Section 1: It is the intent and purpose of this Agreement to assure sound and mutually beneficial working and economic relationships between the parties hereto and to set forth herein the basic and full agreement between the parties concerning rates of pay, wages and conditions of employment. The parties recognize that the interest of the community and job security of the employees depend upon the City's success in establishing a proper service to the community.

### **ARTICLE 2** **RECOGNITION - EMPLOYEES COVERED**

Section 1: The City recognizes the Union as the exclusive collective bargaining representative for all regular full-time sworn employees of the Police Department of the City of Marshall whose positions are classified as patrol officer, excluding all other employees in this Department.

The City shall not enter into any other agreements with the employees in this bargaining unit, individually or collectively, which in any way conflicts with the provisions hereof.

Section 2: Employees within the bargaining unit may be represented by a Union representative for each work shift. The Union shall furnish the City with a list of representatives' names and their assigned work areas and shall keep the list current at all times. Alternate representatives may be appointed by the local Union president to serve in the absence of the regular representatives.

### **ARTICLE 3** **MANAGEMENT RIGHTS**

Section 1: The City, on its behalf and on behalf of its electors, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the constitution of the State of Michigan and of the United States, the City Charter and General Ordinances of the City of Marshall and any modifications made thereto and any resolutions passed by City elected officials. Further, all rights which ordinarily vest in and are exercised by employers, except such as are specifically relinquished by or are consistent with this

Agreement, are reserved to and remain vested in the City, including but without limiting the generality of the foregoing the right:

- (a) To manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered, the control of materials, tools and equipment to be used, and the discontinuance of any services, materials or methods of operation.
- (b) To introduce new equipment, methods, machinery or processes; change or eliminate existing equipment, methods, machinery or processes; change or eliminate existing equipment and institute technological changes; decide on materials, supplies, equipment and tools to be purchased.
- (c) To subcontract or purchase any or all work, processes or services, or the construction of new facilities or the improvement of existing facilities consistent with this Agreement.
- (d) To determine the number, location and type of facilities and installations.
- (e) To determine the size of the work force and increase or decrease its size consistent with this Agreement.
- (f) To hire, assign, lay off employees, to reduce the work week or the work day or effect reductions in hours worked by combining layoffs and reductions in work week or work day consistent with this Agreement.
- (g) It is further agreed that in emergency situations, the City shall have the discretion of employing or authorizing any person or persons to perform any duty, task or assignment normally delegated to employees covered under the terms of this Agreement in order to effectively cope with such an emergency situation.
- (h) To direct the work force, assign work, and determine the number of employees assigned to operations.
- (i) To establish, change, combine or discontinue job classifications and prescribe and assign job duties, content and classification and to establish wage rates for any new or changed classification.
- (j) To determine cleanup times, the starting and quitting time and the number of hours to be worked. PROVIDED, HOWEVER, that employees shall be allowed two (2) fifteen (15) minute breaks per day and a lunch period not to exceed forty (40) minutes. ~~One break should be taken in the first half of the employee's shift and the second break in the second half of the employee's shift. The lunch period shall be taken during the middle~~

~~portion of the employee's shift.~~ It is agreed that the lunch period and breaks will not be taken in a manner that interrupts the performance of duties or services by the employees.

- (k) To establish work schedules consistent with this Agreement.
- (l) To discipline and discharge employees for just cause.
- (m) To adopt, revise and enforce working rules and regulations and carry out cost and general improvement programs. It is understood that the reasonableness of any change in existing working rules and regulations shall be grievable by the employees through Step 2 only of the grievance procedure and that the decision of the City Manager shall be binding and permanent.
- (n) To transfer, promote and demote employees from one classification, department and shift to another.
- (o) To select employees for promotion or transfer to supervisory or other positions and to determine the qualifications and competency of employees to perform available work.

#### **ARTICLE 4**

#### **UNION MEMBERSHIP and CHECK-OFF of UNION DUES**

To the extent Federal and State laws permit, it is agreed that:

- (1) The Employer agrees to make Union dues deductions once each month from the pay of each employee who has authorized that such deductions be made as set forth in Subsection 3, until such time as the employee revokes the authorization by written notice to the Employer. The Employee shall notify the union promptly.
- (2) Each employee who becomes a member of the Union after July 1, 2020, must sign the Union's Membership Application and Dues Check-off Card.
- (3) In accordance with the June 27, 2018 Supreme Court Ruling in the Janus case, the Employer shall not make any Union dues deductions from any employee without written authorization from the employee. In the case of an employee who becomes a member after July 1, 2020, written authorization must be in the form of a signed and completed Membership Application and Dues Check-off Card. For an employee who became a member prior to July 1, 2020, the employer must have from the employee written authorization showing the employee's clear intent to participate in Union dues deductions.



- (4) Deductions for any calendar month shall be remitted to the Union. In the event that a refund is due to any employee for any sums deducted from wages and paid to the Union, it shall be the responsibility of such employee to obtain the appropriate refund from the Union.
- (5) The Employer shall not be liable for the remittance or payment of any sums other than those constituting actual deductions made. If the Employer fails to make a deduction for any employee as provided, it shall make that deduction from the employee's next pay period in which such deduction is normally deducted after the error has been called to its attention by the employee or the Union.
- (6) If there is an increase or decrease in Union payroll deductions, as determined and established by the Union, such changes shall become effective upon the second pay period following notice from the Union to the Employer of the new amount(s).
- (7) The Union agrees to defend, indemnify and save the City harmless against any and all claims, suits or other forms of liability arising out of its deduction from an employee's pay of Union dues or in reliance on any list, notice, certification or authorization furnished under this section. The Union assumes full responsibility for the disposition of the deductions so made once they have been sent to the Union.

## **ARTICLE 5**

### **PUBLIC SECURITY**

Section 1: The Union recognizes that strikes and work stoppages are illegal and contrary to public policy in Michigan and that strikes or work stoppages are detrimental to the public safety and welfare. The Union, therefore, agrees that there shall be no interruption of the services performed by employees covered by this Agreement for any cause within the control of the Union or its individual members, nor shall they absent themselves from their work, stop work or abstain in whole or in part from the full, faithful and proper performance of the duties of their employment, or picket or cause other interference on the City's premises. The occurrence of any such acts as set forth hereinabove shall subject the violating employee or employees to discharge and/or other discipline at the discretion of the City. Such discharge or discipline shall be grievable under the terms of this Agreement only through Step 2 and decision of the City Manager shall be permanent and binding.

Section 2: The City agrees that during the term of this Agreement, it will not lock out the employees; PROVIDED, HOWEVER, that refusal to admit employees to the premises caused by the unwillingness of the employees to continue to work in a normal manner shall not be considered a lockout.

## **ARTICLE 6**

### **PROBATION**

Section 1: All new, permanent full-time Patrol Officers shall have a probationary period for the first twelve (12) months of employment. At the conclusion of the probationary period, the employee's name shall be added to the seniority list as of the last hire date. During the probationary period, the employee shall have no seniority status.

- (a) The Probationary period is for the purpose of enabling the City to determine if an employee has attributes, attitude and capabilities of becoming a permanent full-time employee. A probationary employee may be terminated for any reason at the discretion of the City during twelve (12) month probationary period.

## **ARTICLE 7**

### **SENIORITY**

#### **Section 1: Seniority Definition**

City-wide Seniority shall be defined as the total time elapsed since the employee's last date of hire with the City without a break in service and shall be used to determine an employee's longevity payments and vacation allotment.

Department Seniority shall be defined as the total time elapsed within the City of Marshall Police Department as a sworn officer. This definition shall be used for layoff and recall.

Bargaining Unit Seniority shall be defined as the total elapsed time within the bargaining unit since the employee's last date of hire. This definition of seniority shall be used for vacation selection, job vacancies and promotions, holiday selection, personal leave selection, shift bidding and all other areas where seniority is a consideration, except in those areas where city-wide or department seniority is the determining factor.

Section 2: Seniority will continue to accumulate during paid leave, including sick leave, personal leave, workers compensation and paid vacation. Except as otherwise provided, seniority will not terminate but will not accumulate during lay-off and unpaid leaves of absence in excess of thirty (30) calendar days.

Section 3: The City will maintain an up-to-date seniority list. An up-to-date copy of the seniority list provided by the payroll department will be posted on the bulletin board every twelve (12) months by the union steward. The names of all permanent, full-time employees who have completed their probationary periods shall be listed on the seniority list in the order of their last hiring date, starting with the senior employee at the top of the list. If two (2) or more employees were hired on the same day, their names shall appear on the seniority list alphabetically by the first letter of their last name. If two

(2) or more employees have the same last name, the same procedure shall be followed with respect to their first names.

Section 4: An employee shall lose status as an employee and seniority shall be terminated if the employee:

- (a) resigns or quits.
- (b) is discharged and not reinstated through the grievance procedure.
- (c) retires.
- (d) is convicted of a felony, a misdemeanor involving moral turpitude or O.W.I. (Decision to be entirely at the City's discretion).
- (e) has been on layoff for a period of time equal to seniority at the time of layoff or twenty-four (24) months, whichever is less.
- (f) is absent from work, including the failure to return to work at the expiration of a leave of absence, vacation or disciplinary layoff, for three (3) consecutive working days without notifying the City, except when the failure to notify and work is due to circumstances beyond the control of the employee.
- (g) Subsections (d) and (f) shall be subject to the grievance procedure.

Section 5: If there is no command officer present on a shift, the most senior person shall act as the shift command officer. Such person shall receive one dollar fifty cents (\$1.50) per hour additional pay for all hours worked on that basis. The person so designated shall have all the duties and responsibilities of a command officer.

Section 6: Command Officers may utilize prior Patrol seniority to bump into the patrol ranks:

- in the event of a lay-off in the command unit, or
- if, during the probation period, the Chief, in his discretion, determines the Command Officer is not suited for the position, or
- if, during the probation period, the officer elects to return to the patrol unit.

~~In addition, a Command Officer may be demoted to the rank of Patrol in accordance with the provisions of the Command Collective Bargaining Agreement. In such event the demoted officer will resume his/her prior Patrol seniority which will have been frozen as of the date of promotion.~~

## **ARTICLE 8**

### **LAYOFF AND RECALL**

Section 1: Layoff shall mean the separation of employees from the active work force due to lack of work or funds. Layoffs shall not be in an arbitrary manner.

Section 2: If and when it becomes necessary to reduce the number of employees in the work force, probationary employees will be laid off first. Then employees shall be laid off in inverse department seniority order (provided the remaining employees have the ability to perform the remaining work without trial or training), and they shall be recalled in their order of department seniority.

Section 3: Employees to be laid off indefinitely shall be given at least seven (7) calendar day's prior notice.

Section 4: Employees returning from layoff shall be given a maximum of five (5) calendar days to report back to work after notice has been sent by certified mail to their last known address on record with the City.

Section 5: It is agreed that in the event the City in its discretion, sub-contracts the normal police functions of the Marshall Police Department in its entirety, the parties, if requested, must negotiate through the collective bargaining process, the effects of such sub-contracting on the bargaining unit. This provision is inapplicable, however, to the sub-contracting or employment of non-bargaining unit persons to perform normal police functions at special events or in the event of an emergency.

Section 6: In the event the City in its absolute discretion deems it necessary, due to lack of work or funds, it shall use all reasonable efforts to lay off personnel rather than effectuate a change in the working hours or days of the work force.

## **ARTICLE 9**

### **WORKING HOURS**

Section 1: Work Day and Hours

- (a) Employees covered by this Agreement shall be required to be on duty a minimum of eight (8) consecutive hours during each scheduled duty day, excepting as excused by the City, and shall be required to be on duty a minimum of five (5) consecutive days (40 hours) per week, excepting as excused by the City.
- (b) Employees covered hereby shall receive a bi-weekly wage for their work as defined in Appendix A hereof.

- (c) Employees will be paid bi-weekly. City reserves the right to pay employees via direct electronic ACH bank payments into an account(s) as specified by the employee. For any payment made through direct electronic ACH bank payment, employee will be provided, in writing, with the detailed payroll information.

## Section 2: Scheduling.

A schedule shall be posted once every ~~six (6)~~three (3) months to determine the normal work days and hours, including all scheduled days off, for every member of the bargaining unit. Such schedule shall be posted fourteen (14) days prior to the first of the month of required posting. The schedule shall include ten (10) days of work with four (4) days off during a two-week pay period, and not less than two (2) consecutive days off at a time. Normally, the schedule will consist of five (5) consecutive days of work with two (2) consecutive days off.

Changes may be made in the posted shift schedule by the ~~Director of Public Safety~~Chief of Police as may be required to meet the needs of the department; however, the City will not change any employee ~~assignment or~~ schedule in order to avoid payment of overtime, or for the purpose of reprimand or Union activity, unless requested by the employee.

Note: The City reserves the right to change of the assignment/schedules of any employee under the following circumstances to avoid the paying of overtime shall not include the following:

- (a) Schedule adjustment for attending schools or training
- (b) ~~Filling in for vacation~~
- (c) ~~Holidays~~
- (d) Emergencies
- (e) Sick leave - if the City is given ~~less~~more than three (3) ~~hours~~days notice of sick time.

Section 2A: Non-emergency schedule adjustments will not be made without a 72-hour notice to the officers involved, unless mutually agreed upon.

Section 2B: An employee may select a bid for the shift schedule based on seniority. Such bid for a posted schedule shall be in writing to the ~~Director of Public Safety~~Chief of Police no less than seven (7) days prior to the implementation of the posted schedule. If the bidding results in two officers with less than two (2) years seniority assigned to the same shift, the ~~Director~~Chief may make revisions in the schedule. The ~~Director~~Chief may have the option, however, to make assignments to shifts regardless of seniority in order to take advantage of the special training and skills of an individual employee or to make special assignments of a temporary nature if the individual employee agrees to the assignments.

Determination of the starting time of the daily, weekly and monthly work schedule shall be made by the City. Should it be necessary in the interest of emergency or efficiency, the employee shall work such overtime hours as shall be required by the City. Employees are expected to complete a definite assignment even though it requires additional hours over the standard duty day. In cases of emergency, employees shall return to duty when requested by the ~~Director of Public Safety~~Chief of Police or City Manager. Any shift schedule to start before midnight is considered to be the shift for that day in which the shift begins.

Section 3: An employee shall receive overtime pay at the rate of one and one-half (1-1/2) times the normal base hourly rate under the following conditions:

- (a) Daily -- all work performed in excess of eight (8) consecutive regular hours in any twenty-four (24) hour period except at times of shift change.
- (b) Periodically -- all work performed in excess of forty (40) hours in any five (5) consecutive day work week except at times of shift change.
- (c) The overtime rate shall be one and one-half (1-1/2) times the employee's normal base hourly rate, including premium.
- (d) Opportunities to work overtime, if available at the City's discretion, shall be distributed as equally as possible among the Patrol Officers, provided the Patrol Officers are fully qualified to perform the work required. ~~An initial list, on the basis of seniority, shall be compiled for the purposes of offering available overtime. If overtime is performed by, or is offered to the first on the list and refused, said Patrol Officer will be credited with the opportunity for overtime and be placed on the bottom of the list. Overtime postings will be awarded based on Patrol Officer overtime totals on the overtime list, with the lowest officer on the list being awarded the overtime. Bargaining Union Seniority will be used as a tie breaker. Overtime call/text outs will be offered and awarded on a first come first serve basis (following a 15 minute response window).~~ Available overtime shall be offered to all full-time Patrol Officers capable of performing said overtime before any part-time Patrol Officer is offered said overtime.



- (e) For the purpose of computing overtime, all hours paid will be considered time worked. Overtime premium shall not be pyramided, compounded or paid twice for the same time worked.

Section 4: Any employee who completes the assigned shift and is released from duty shall receive, if called back to duty, a minimum of two (2) hours pay for duty at the rate of time and one-half (1-1/2). Call back shall include, but not be limited to, court appearance. Upon completion of this specific duty the employee shall be released from duty.

Section 5: All employees covered by this Agreement shall have the option to exchange any overtime hours worked for Earned Time Off (ETO) hours at the rate of time and one-half (1 ½). The scheduling of ETO time off shall be arranged in advance by the employee with their supervisor (shift commander, sergeant, ~~lieutenant~~, deputy chief, ~~direct~~ or chief). A request for use of ETO may be denied if it would cause the number of employees scheduled to be on duty on the particular shift to fall below staffing for the planned work or if the time off would be required to be filled by an employee at other than straight time rates. The city will not deny the use of ETO in an arbitrary or capricious manner. Non-emergency cancelation of ETO will not be made without a 72-hour notice to the officer involved, unless mutually agreed upon.

ETO may be accumulated to a maximum of forty-eight (48) hours and be carried from one fiscal year to the next. However, in June of each year, employees have the option to request to be paid for all or all but eight (8) hours of unused compensatory time. Payment will be made on or before the third Friday in July at the rate of pay in effect as of June 30 of that year.

- (a) Employees will be granted ETO on a first-come first-served basis. If a determination cannot be made which request was first, seniority shall rule.

## **ARTICLE 10**

### **VACATION LEAVE**

Section 1: A seven (7) day written request, or less than seven (7) days if overtime is not created by the request, shall be given to the ~~Director of Public Safety~~Chief of Police for approval. This will allow for development of the Patrol Officer's work and vacation schedules.

Section 2: All employees covered by this Agreement shall be eligible to accumulate and receive vacation leave benefits, with pay, within the limits prescribed herein. Vacation leave shall be based on length of continuous service. No vacation leave shall be earned by an employee during a leave of absence without pay. No employee shall be entitled to vacation leave credit until twelve (12) months of service have been completed at which time the earned vacation will be credited. An employee leaving the department for any reason shall receive vacation pay pro rata rounded to the nearest full day.



Section 3: Vacation shall be accumulated on a pro-rata monthly basis based upon the employee's entitlement to annual vacation as set forth below. Vacation credit earned in one employment year shall be taken in the following employment year. "Employment Year" shall be based upon the anniversary of the employee's date of hire. An employee who completes the employment year shall receive vacation based on the following schedule:

| <u>Completion of</u>         | <u>Vacation Credit</u> |
|------------------------------|------------------------|
| 1- <del>4</del> 3 years      | 80 hours               |
| <del>5-9</del> 4-6 years     | 136 hours              |
| <del>10-14</del> 7-10 years  | 152 hours              |
| <del>15-19</del> 11-15 years | 176 hours              |
| <del>16</del> -20 years      | 200 hours              |
| 21 years and over            | 240 hours              |

Section 4: Scheduling of Vacation. Bargaining unit seniority will be the controlling factor in scheduling vacations. ~~No more than two (2) officers may be scheduled, in advance, for paid leave (vacation, holiday, personal leave, or ETO) at any one time.~~ The vacation schedule will be established each year between October 1 and December 15 for the following year. During that time, each officer will sign up for vacation, and no more than two (2) officers may be scheduled for paid leave (vacation, holiday, or personal leave) at any one time. In case of conflicts, the officer with the most bargaining unit seniority will be given preference. Any changes to the vacation schedule after December 15 will be on a first come-first served basis.

After December 15<sup>th</sup>, once the "vacation schedule" has been created, more than two (2) officers may be scheduled for paid leave (vacation, holiday, or personal leave) at anyone time, as long as the requested time off does not create overtime or adversely affect the department or staffing levels. No "shifting" of schedules shall be made to accommodate these requests. These requests, once approved and placed on the schedule, shall not be denied/canceled within 7 days of approved time off.

If the officer who has scheduled and been approved for vacation, including a minimum of five (5) contiguous pass days, is bumped from the shift or bids to a different shift, pursuant to Article 9, Section 2(b), the City will adjust the work schedule so the approved period remains intact. The adjustment of the ~~bumped~~ officer's work schedule to accommodate the previously approved vacation will not result in any other officer losing a leave or pass day.

Except in the case of an emergency, officers shall not be ordered to work on their regularly scheduled pass days if the full shift before or the full shift after has been approved for time off (vacation, holiday, or personal leave). The pass days and the scheduled time off shall be put on the leave calendar and included in the daily limit of officers who can be scheduled off at any one time. The employee may be contacted and offered the work but shall not be ordered if refused. A qualifying emergency shall

be determined by ~~the Director of Public Safety~~, the Chief of Police and/or their designee.

Section 5: The amount of vacation leave charged to an employee during leave shall be equal to the number of regularly scheduled hours the employee would otherwise have worked during the absence on such leave. Vacation shall be charged in not less than four (4) hour increments.

Section 6: Vacation leave may not be accumulated beyond the amount that can be earned in any one year following the preceding year's accumulation. Under certain conditions, special exceptions may be made by the City Manager.

## **ARTICLE 11**

### **SICK LEAVE**

Section 1: Patrol Officers earn sick leave after one full month of employment. Sick leave shall be accrued at the rate of 8 hours per month. Sick leave credit cannot be earned during a leave of absence without pay.

Section 2: Sick leave shall not be considered a privilege for use at the employee's discretion, but shall be allowed for the following reasons:

- a. Employee's or a family member's mental or physical illness, injury, health condition, or treatment of same
- b. Employee's or a family member's preventative medical care
- c. For various reasons (as listed in the Paid Medical Leave Act) if employee or family member is a victim of domestic violence or sexual assault
- d. If employee's primary workplace is closed by order of public health official due to a public health emergency
- e. If an employee needs to care for a child family member whose school or place of care was closed by public health official
- f. If it is determined by health authorities that the employee's or a family member's presence in the community would jeopardize health of others because of exposure to communicable disease
- g. Any other permissible use under the Paid Medical Leave Act
- h. For purposes of this Section, "family member" includes all of the following:

- A biological, adopted or foster child, stepchild or legal ward, or a child to whom the eligible employee stands in loco parentis.
- A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an eligible employee or an eligible employee's spouse or an individual who stood in loco parentis when the eligible employee was a minor child.
- An individual to who the eligible employee is legally married under the laws of any state.
- A grandparent
- A grandchild
- A biological, foster, or adopted sibling

To receive compensation while on sick leave, the employee shall notify the immediate supervisor or ~~Director of Public Safety~~the Chief of Police prior to the beginning of the assigned shift. This requirement may be waived at the ~~Public Safety Director's~~Chief's discretion.

Section 3: When absence is more than three days, the employee shall be required to file a physician's certificate unless the ~~Director~~Chief has personal knowledge of the employee's sickness or disability. In the event of absence of less than three (3) days, the City may require a physician's certificate indicating the nature of the reason for the absence in the event there is reason to suspect abuse of the sick leave benefit.

Section 4: The amount of sick leave charged to an employee during any leave shall be equal to the number of regularly scheduled hours the employee would otherwise have worked during the absence on such leave.

Section 5: Any unused portion of the earned sick leave becomes accumulative. This accumulation may be carried over from year to year to a total of not more than ~~nine hundred sixty (960) hours~~one thousand four hundred and forty (1440) hours.

Section 6: Upon termination of employment by reason of death or retirement, employees ~~hired prior to July 1, 2008 will be paid one-half (50%) of the sick leave so accumulated~~shall be paid a percentage of sick leave so accumulated up to a maximum of 960 accumulated hours. Upon termination of employment by reason of death or retirement, Employees hired prior to July 1, 2008 will be paid one-half (50%) of the sick leave so accumulated, and employees hired after July 1, 2008 will be paid twenty-five percent (25%) of the sick leave so accumulated.

Section 7: If, after ten (10) years of employment, in good standing, an employee hired prior to July 1, 2008 voluntarily leaves, quits or resigns employment with the City while

in good standing and with proper notice (two weeks) and not as a result of discharge or discipline, said employee shall be paid the equivalent of 25% (1/4) of the accumulated sick leave up to a maximum of 960 accumulated hours. If, after 10 years of employment an employee hired on or after July 1, 2008 voluntarily leaves, quits or resigns employment while in good standing and with proper notice (two weeks), and not as a result of discharge or discipline, said employee shall be paid a percentage of accumulated sick leave up to a maximum of 960 accumulated hours as follows:

|                      |                               |
|----------------------|-------------------------------|
| 10 years of service  | 10% of accumulated sick leave |
| 11 years of service  | 11% of accumulated sick leave |
| 12 years of service  | 12% of accumulated sick leave |
| 13 years of service  | 13% of accumulated sick leave |
| 14 years of service  | 14% of accumulated sick leave |
| 15 years of service  | 15% of accumulated sick leave |
| 16 years of service  | 16% of accumulated sick leave |
| 17 years of service  | 17% of accumulated sick leave |
| 18 years of service  | 18% of accumulated sick leave |
| 19 years of service  | 19% of accumulated sick leave |
| 20 years of service  | 20% of accumulated sick leave |
| 21 years of service  | 21% of accumulated sick leave |
| 22 years of service  | 22% of accumulated sick leave |
| 23 years of service  | 23% of accumulated sick leave |
| 24 years of service  | 24% of accumulated sick leave |
| 25+ years of service | 25% of accumulated sick leave |

## **ARTICLE 12**

### **HOLIDAYS**

Section 1: The following are designated as holidays:

|                 |                                     |
|-----------------|-------------------------------------|
| New Year's Day  | Thanksgiving Day                    |
| President's Day | Day following Thanksgiving          |
| Good Friday     | Christmas Eve Day                   |
| Memorial Day    | Christmas Day                       |
| Fourth of July  | Employee's Birthday                 |
| Labor Day       | Employee's Anniversary Date of hire |

If during the terms of this agreement City Council approves additional holidays to be added to the Personnel Manual, the same holidays shall be added to the Patrol Agreement.

The above holidays may be taken at any time in the calendar year. Requests for holidays must be put in writing and submitted to the supervisor at least seven (7) days prior to the requested leave, or less than seven (7) days if overtime is not created by the request. ~~No more than two (2) officers may be scheduled, in advance, for paid leave~~

~~(vacation, holiday, personal leave, or ETO) at any one time.~~ In the event the employee uses a holiday before the actual date and terminates employment with the City for any reason, the holiday pay will be deducted from the employee's final paycheck.

Section 2: Any unused holidays shall be paid at eight (8) hours straight time the first pay period in January for any holidays not taken in the prior calendar year.

Section 3: An employee who does not work on the regularly scheduled work day immediately prior to or immediately following a holiday shall not be compensated for such holiday unless the absence was excused prior to the holiday by the ~~Director of Public Safety~~. Chief of Police

## **ARTICLE 13** **INSURANCE**

Section 1: The City shall, for the duration of this contract, continue to provide health, medical and hospitalization insurance to its regular full-time employees and the employee's dependents. Said coverage shall be substantially equivalent to the coverage effective July 1, 2017. The City will follow the so-called "hard cap" requirements of Section 3 of the Publicly Funded Health Insurance Contribution Act (Act 152 of 2011) hereinafter referred to as the "Act" for the immediate future. Accordingly, the Employer will pay no more of the total annual costs including taxes and fees of the medical benefit plan than the amounts annually determined by the state treasurer pursuant to Section 3 of the Act. The Employees will pay the balance of those costs, if any. For purposes of this provision, total annual costs include the premium or illustrative rate of the medical benefit plan and all employer payments for reimbursement of co-pays, deductibles, and payments into health savings accounts, flexible spending accounts or similar accounts used for health care but does not include the costs of dental and vision and does not include beneficiary-paid copayments or beneficiary payments into health savings accounts, health reimbursement arrangements, flexible spending accounts or similar accounts used for health care. The determination by the City to continue to follow the requirements of Section 3, to elect to pay a maximum of eighty (80%) percent of the medical benefit plan costs pursuant to Section 4 or to exempt itself from the requirements of the Act for the next succeeding year shall be made by the Employer annually in its absolute discretion in accordance with the Act and shall be binding on the parties to this Agreement.

- (a) Employees hired prior to July 1, 2008, the employee and employer shall each contribute 50% of the premium for the Family Continuation Rider to be deducted from the employee's pay each pay period for as long as the Family Continuation Rider is in effect.

Employees hired after July 1, 2008 the employee shall contribute 100% of the premium for the Family Continuation Rider to be deducted from the



employee's pay each pay period for as long as the Family Continuation Rider is in effect.

- (b) Notwithstanding the provisions of section 1 above, if the City elects, or by default is required, to pay a maximum of the amounts annually set by the State Treasurer pursuant to section 3 of the Act (PA 152) then employees will be required to pay the greater of either the total annual cost including taxes and fees over and above the so-called "hard cap" or the percentages of the total costs including taxes and fees as set forth in subsections (i) or (ii) below:
- i. Employees hired prior to July 1, 2011 shall pay twelve percent (12%) of the cost of health insurance premiums charged to the City for their coverage. Such payments will be made by payroll deduction. Employees may make such payment through the City's premium only cafeteria plan.
  - ii. Employees hired on or after July 1, 2011 shall pay twenty percent (20%) of the cost of health insurance premiums charged to the City for their coverage. Such payments will be made by payroll deduction. Employees may make such payment through the City's premium only cafeteria plan.
- (c) If an employee elects to waive his/her enrollment in the City's group health insurance plan, said employee shall receive forty percent (40%) of the monthly premium level that applies to the employee (single/two-person/family) paid monthly based on the insurance plan with the most active City of Marshall employees enrolled.

If an employee elects to drop his/her dependents or spouse from the City coverage, the employee shall receive forty percent (40%) of the premium savings paid monthly.

To be eligible, the employee must file an affidavit verifying he/she has coverage through another health insurance plan. Such affidavit shall be filed annually during open enrollment.

The employee shall have the right to re-join the City's group health insurance plan only during open enrollment or as a result of a qualifying event as defined by the health insurance carrier.

Section 2: The City of Marshall provides Vision Service Plan – 12 (VSP-12) optical insurance. A complete explanation of coverage is available through the **Department of Human Resources Payroll and Benefits office**. Employees shall pay the percentages of the total costs including taxes and fees as set forth below:

- (a) Employees hired prior to July 1, 2011 shall pay twelve percent (12%) of the cost of optical insurance premiums charged to the City of their coverage. Such payments will be made by payroll deduction. Employees may make such payments through the City's premium only cafeteria plan.
- (b) Employees hired on or after July 1, 2011 shall pay twenty percent (20%) of the cost of optical insurance premiums charged to the City for their coverage. Such payments will be made by payroll deduction. Employees may make such payments through the City's premium only cafeteria plan.

Section 3: The City agrees to continue dental insurance coverage substantively similar to that provided per the current patrol officer's agreement. Should the City wish, during the life of this Agreement, to change carriers, it may do so after consultation with the Union. The City agrees that a new carrier should provide the same overall coverage as presently exists, except by mutual agreement of the parties.

Section 4: A regular, full-time employee, upon completion of the probationary period, shall be entitled to group life insurance in the amount of \$50,000 with double indemnity.

Section 5: An employee injured on the job and receiving Worker's Compensation shall receive supplemental pay from the City for a period up to one (1) year from the time the Worker's Compensation payments begin. In no event shall combined payments be more than the employee's normal regular weekly salary.

- (a) All payments received during the last six (6) months of the above one (1) year period shall be calculated to relate to the employee's sick leave with the deduction being made from the employee's accumulated sick leave. In the event the employee has insufficient sick leave to cover this period of time, the above supplemental pay shall stop at the expiration of the available sick leave to be used for this purpose.

Section 6: The City shall furnish liability insurance, if practicable, to and including those standard limits customarily secured for other agencies similarly situated, protecting the employees in this bargaining unit from any and all liability that arises out of and in the course of their employment. Said insurance coverage shall include but not be limited to intentional torts and acts of negligence of the employee performed during his course of duty and shall further provide that said employee, if sued, shall be provided with an adequate defense and if any judgment is rendered against him, it shall be satisfied to the extent of the insurance coverage.

## **ARTICLE 14**

### **OTHER LEAVE**

Section 1: An employee will be granted up to 3 successive calendar days off with pay ~~to attend a funeral~~ for the death of a member of the immediate family. For purposes of this Section, immediate family shall be defined as the employee's:



spouse, child, stepchild, mother, father, stepmother, stepfather, sister, stepsister, brother, stepbrother, grandmother, grandfather, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, spouse's grandmother, spouse's grandfather, grandchild, step grandchild.

~~One day shall be granted to attend the funeral of an aunt, uncle, cousin, niece or nephew, and will be charged to vacation, personal leave. If the employee has accrued no vacation or personal time it will be charged to sick leave.~~

If additional time off is needed beyond the days provided for a death in the immediate family, it may be granted by the City Manager. ~~This time off~~ will be charged to sick leave, vacation, ~~or~~ personal time, ~~holidays or ETO~~. If the employee does not have any ~~vacation, personal leave, or sick paid~~ leave remaining; the time off will be unpaid.

~~Other than immediate family, For attendance at funerals other than for family members, an employee, at the discretion of the Director, may receive take up to 4 hours time off to be charged to vacation or personal time. two (2) normal working days from either the employee's accumulated vacation, sick leave, personal time, holidays or ETO. Anything beyond two days must be taken from vacation or personal time. If the employee does not have any paid leave remaining, the time off will be unpaid.~~

~~To qualify for bereavement pay an employee may not be on leave of absence or layoff.~~

Section 2: Personal Leave. An employee is entitled to one (1) personal leave day per calendar quarter after reaching and maintaining ~~480~~ 440 or more hours of accumulated sick leave in accordance with Article 11. An employee may not accumulate more than four (4) such personal leave days per year.

An employee's eligibility for personal leave days (i.e., the number of accumulated sick hours) shall be determined on the first day of each calendar quarter.

Section 3: Military Leave.

- (a) Employees who enter the military service of the United States shall be granted leaves of absence and reinstated to employment as required by applicable provisions of Act 263, PA of 1951, and any other applicable statutes.
- (b) All members of the bargaining unit who are members of the reserve or National Guard may have their pass leave days arranged to allow them to attend monthly or weekend meetings.

Section 4: Family and Medical Leave. The City of Marshall has endorsed the Family and Medical Leave Act which is fully set forth in the Personnel Manual. The parties agree to comply with the act and any mandated changes thereto. The parties agree to comply with the act and any mandated changes thereto. As part of the family or medical leave, the employee must first utilize any accumulated sick leave, vacation leave, and/or personal leave. Thereafter, if such paid leave has been exhausted, the remainder of the leave shall be unpaid.

Section 5. An employee on sick leave of absence or off work due to a compensable injury shall have the employer's portion of his/her health insurance premium paid for one (1) year while on leave by the City. The employee will be responsible for his/her portion of said premium.

## **ARTICLE 15** **PROMOTIONS**

Section 1: A promotion within the bargaining unit shall be made on the basis of ability to perform the job and seniority. A promotion is defined as a position involving a higher rate of pay for the employee applying for the position. The City shall not be obligated to consider a request from an employee who has not submitted his request for promotion in writing. There shall be a competitive written examination each time a vacancy is to be filled.

Section 2: An employee who is promoted will assume the new responsibility on the effective date cited on the notice of promotion and will be granted the classification and rate of pay consistent with the promotion.

## **ARTICLE 16** **DISCIPLINARY ACTION**

Section 1: Discipline is primarily the responsibility of the first line supervisor. Discipline shall be positive, developmental, and progressive in nature. When the City feels that the positive, developmental and progressive discipline has not succeeded in solving the problem, further punishment and/or discharge may be necessary for alleged violations of departmental rules and regulations. Such punishment or discipline or discharge shall be imposed by the ~~Director Chief~~ or the ~~Director's Chief's~~ designee.

Section 2: Whenever disciplinary action is taken against a Patrol Officer, the charges and specifications resulting in such discipline or discharge shall be reduced to writing and copies shall be furnished to the Union and to the employee against whom the charges are brought.

Section 3: Employees shall be permitted the presence of a Union steward if they so request at the time disciplinary action is initiated against the employee.

Section 4: In the event the employee believes that the discipline or discharge is not just, such shall constitute a case arising under the grievance procedure, provided a written grievance with respect thereto is presented to the Director-Chief or the Director's Chief's designee within five (5) days after such disciplinary action is taken. An employee who receives disciplinary action such as discharge may file a written grievance within five (5) days after Step 2 of the grievance procedure.

Section 5: The employee against whom the charges have been made may be represented at any hearing by the Steward or another Union representative. The City may be represented at such hearing by the representative of its choice.

Section 6: In imposing any discipline, the City will not base its decision upon any infraction of department rules or regulations which occurred more than two years previously.

Section 7: In the event it should be decided, under the grievance procedure, that the employee was unjustly disciplined, the City shall reinstate the employee. Full compensation, partial or no compensation may be decided under the grievance procedure. Compensation, if any, shall be at the employee's regular rate of pay at the time of such discipline less any compensation earned by the employee during the period of time off work due to discipline.

Section 8: Probationary employees shall not be entitled to benefits and procedures herein provided in cases of disciplinary action.

Section 9: All disciplinary action shall be for just cause.

## **ARTICLE 17** **TRANSFERS**

Section 1: In the event of a newly created position within the bargaining unit, employees will be given the opportunity to transfer on the basis of qualifications, ability to perform the work and seniority.

**ARTICLE 18**  
**WAGE CLASSIFICATION**

Section 1: While employed by the City, each regular full-time employee of the bargaining unit is designated as being in a wage classification corresponding to the length of service with the department. Step increases, as provided in Appendix A, shall be allowed each year for each member of the bargaining unit until the maximum limit, unless that member receives written notification from the ~~Director of Public Safety~~Chief of Police outlining the reasons for not being allowed advancement. Such notification shall be received prior to the date set for such advancement, which shall be the date of hire for the employee. The written notification shall state the reasons and shall be reasonable and will be subject to the grievance procedure.

- (a) All employees shall be paid as outlined in Appendix A, unless a higher rate is approved by the City Manager.
- (b) Salary increases shall be made on the basis of performance and service and in the amounts and at the intervals as provided for in Appendix A.

**ARTICLE 19**  
**LONGEVITY PAY PROGRAM**

Section 1: In addition to rates outlined in Article 18 and Appendix A, any employee hired prior to July 1, 2002, who has been continuously employed by the City for a period of not less than five (5) years shall receive \$2,000 longevity pay.

Section 2: All employees covered by this agreement hired between July 1, 2002 – June 30, 2014, having completed five (5) or more years of continuous service shall be eligible to receive longevity pay as follows:

|                  |           |                   |           |
|------------------|-----------|-------------------|-----------|
| 5 years service  | \$ 500.00 | 11 years service  | \$1100.00 |
| 6 years service  | \$ 600.00 | 12 years service  | \$1200.00 |
| 7 years service  | \$ 700.00 | 13 years service  | \$1300.00 |
| 8 years service  | \$ 800.00 | 14 years service  | \$1400.00 |
| 9 years service  | \$ 900.00 | 15+ years service | \$1500.00 |
| 10 years service | \$1000.00 |                   |           |

Section 3: Employees hired on or after July 1, 2014 are not eligible to receive longevity payments.

Section 4: In order to be entitled to longevity pay under this Article, an employee must have been hired before July 1, 2014 and have completed five (5) years of service prior to November 1 of the current year. Longevity pay will be paid to eligible employees in one (1) lump sum on the first pay day in December of each year.

## **ARTICLE 20**

### **MISCELLANEOUS**

Section 1: Addresses and Telephone Numbers of Employees. Each employee covered hereby, whether on or off the active payroll, shall keep the City currently advised of correct mailing address and telephone number. The information will not be given out without the written consent of the employee.

Section 2: Resignation. Any employee covered hereby, who desires to resign, shall present the resignation in writing to the ~~Director of Public Safety~~Chief of Police or the City Manager. The resignation must be submitted two (2) weeks, exclusive of earned vacation time, prior to the date it is to be effective. Any employee failing to give such proper notice may forfeit all leave benefits accrued under this Agreement.

Section 3: Effect of this Agreement. This Agreement supersedes any past practice otherwise not covered by this Agreement, and it supersedes any previous Agreement, verbal or written, between the City and any employee covered hereby.

Section 4: Waiver Clause. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, except as set forth in Article 8, Section 5, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, and with respect to any subject or matter not specifically referred to or covered in this Agreement even though such subject or matter may not have been within the knowledge and contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

Section 5: All employees will receive a service weapon issued by the Department.

Section 6: Save Harmless Clause. Should any provision or section or portion of this Agreement be held by a court of competent jurisdiction to be invalid, illegal or unconstitutional, such holding shall not be construed as affecting the validity of this Agreement as a whole or of any remaining portion.

Section 7: Conformance with State Law or Federal Law. If State or Federal law is amended on a mandatory basis that would affect any provisions in this Agreement, the Agreement shall be automatically amended to conform with the law on the effective date of such law.



Section 8: Bulletin Boards. The City will select and erect a bulletin board within the Police Department. The City will pay all costs for the purchase and erection of the bulletin board. The Union, exclusively, will maintain and monitor ~~a locked, glass enclosed~~the Union bulletin board~~, to be furnished by the City and placed in the Squad Room, exclusively for Union members.~~ The material posted on said board shall be reviewed by Union representatives within the units (all labor council units within the City). The City reserves the right to remove offensive material which shall be subject to the grievance procedure

Section 9: Personnel File. Union member's personnel files shall be kept under the jurisdiction of the Human Resources Department. The City will allow only authorized personnel to read, view, have a copy of or in any way peruse in whole or in part a Union member's personnel file or any document which may become a part of his or her file. A member of the Union may view own personnel file as to its total content, except the background investigation report, upon request to the City's Human Resources Department. The City agrees not to divulge the contents of the employee's file without written release from the employee concerned.

Section 10: Jury Duty. If an employee is called upon for jury service during the regularly scheduled work day, jury duty leave shall be granted. If not selected and/or is not sitting on a jury the employee shall return to and perform the regularly scheduled work.

If selected to serve, the employee shall be paid the difference between the regular base rate of pay and the jury duty pay.

The City may request the court to excuse an employee from jury duty.

Section 11: Schools and Training. An employee who is required to attend an employment related school on the regularly scheduled work day will receive pay for the time in actual attendance and for travel time to and from the school or training. If the school or training is less than twelve (12) hours, the employee shall return to the City and complete the remainder of the shift.

An employee who is required to attend a school on a non-work day shall be paid for time actually in attendance and for time spent in transit directly to and from same.

Section 12: AMERICANS WITH DISABILITIES ACT (ADA). The City and the Union agree to cooperate in an attempt to find a reasonable accommodation in order to allow a disabled applicant or employee to perform the essential functions of the position.

Section 13: Drug/Alcohol Testing. The Drug/Alcohol testing policy attached as Appendix B is incorporated in this Agreement in its entirety.

Section 14: To engage employees and improve moral, the City may hold employee recognition activities or events, including but not limited to employee appreciation picnic,

holiday parties, issuance of employee recognition awards and/or payment, paid leave or other one-time benefits to employees in conjunction with these recognition events, activities or awards.

## **ARTICLE 21**

### **UNIFORMS**

Section 1: Uniforms. The City shall furnish all uniforms for employees as outlined below:

Shirts - Three (3) long sleeve, ~~and~~ three (3) short sleeve, and two (2) polo style training shirts

~~Pants - Three (3)~~

Ties - Three (3)

~~Coats - One (1) spring jacket and one (1) winter coat~~

~~Sam Brown - One (1) including holster/cuff and case, ammo pouch and belt~~

~~Belt - One (1) trouser~~

~~Tie Clasp - One (1)~~

~~Name Bar - One (1)~~

~~Hat - One (1) dress with badge and one (1) cap~~

~~Rain coat - One (1)~~

~~Whistle/Chain - One (1)~~

~~I.D. Number~~

Duty Belt and accoutrements (Holster, Cuff Case, magazine holder, belt, etc.)

Exterior Vest Cover and Vest with accoutrements

Hat - one dress with badge, one wither cap, one baseball style hat

Section 2: The City shall maintain the above items in good, serviceable condition and shall replace such items at its discretion. The City shall arrange for a place that employees may take their uniforms for cleaning at the expense of the City.

Section 3: At the beginning of this agreement, the city will set aside an amount equal to ~~\$100~~\$150 per year of this contract for the purchase of footwear that must be worn on the job. The set aside will dissolve at the expiration of this contract. The employee must demonstrate proof of purchase to the Finance Department who will process the City's contribution through established account payable procedures. If an employee leaves employment of the City within 12 months of the purchase, the employee will reimburse the city for the allowance prorated on a monthly basis.

## **ARTICLE 22**

### **RETIREMENT**

Section 1: The employees shall be required to participate in the Municipal Employees' Retirement System (MERS) established pursuant to Act 427 P.A. 1984 as amended.



The precise details of the coverage are available in the MERS handbook and the provisions of the statute. The provisions of this article are guidelines only and are intended merely to memorialize some of the substantive provisions of the Retirement System available to the employees. These provisions include:

- a. F 50 at 25 (Full retirement at 50 years of age with 25 years of service with a waiver of reduction of benefits);
- b. Benefit Program 3% (3% of employee's final average compensation multiplied by years and months of credited service);
- c. FAC-3 (final average compensation is computed on the highest 36 consecutive months of earnings, divided by 3); and
- d. Employee contribution - 8.79% of the employee's total, annual gross compensation.
- e. Employees hired prior to May 8, 2023 shall follow the Defined Benefit Plan Adoption Agreement Addendum that is on file with MERS and was effective January, 2021, but will also include the stipend for health insurance opt out payment in their calculations.

Employees hired on or after May 8, 2023 shall follow the Defined Benefit Plan Adoption Agreement Addendum that is on file with MERS and was effective January, 2021 as written.

## **Section 2: HEALTH CARE SAVINGS PROGRAM**

The post-employment Health Care Savings Program (HCSP) is an employer-sponsored savings account designed for you to set aside money to cover the escalating costs of post-employment health care for you and your spouse and/or legal dependents. Under the program, contributions are made while you are an active employee and then once you leave employment with the City, regardless of the reason you leave or the age you leave, you may be reimbursed for healthcare related expenses (i.e. insurance premiums, doctor co-pays, cobra, drug co-pays, many over-the-counter medications, etc.).

Any employee that retires between July 1, 2020 – June 30, 2023 shall contribute the following:

- (a) **Vacation Leave Contribution:** 100% of unused and earned vacation leave will be contributed to the MERS HCSP at the time of retirement.
- (b) **Sick Leave Contribution:** Eligible sick leave payout will be contributed to the MERS HCSP at the time of retirement.

- (c) **Personal Leave Contribution:** 100% unused personal leave will be contributed to the MERS HCSP.
- (d) **Post-Tax Employee Contributions:** Employees can make Post-Tax voluntary contributions to the MERS HCSP. Post-Tax contribution will be made through payroll deduction as allowed by the City of Marshall.

## **ARTICLE 23**

### **PERSONNEL POLICIES**

Section 1: The Policies contained in the City of Marshall Personnel Policy Manual shall apply to the employees covered by this Agreement except to the extent that the policies are inconsistent with the terms of this Agreement.

## **ARTICLE 24**

### **VALID DRIVER'S LICENSE**

Section 1: All Patrol Officers are required to hold a valid, Michigan driver's license.

- (a) A Patrol Officer who is notified by the Secretary of State office that the driver's license has been suspended or revoked must so notify the ~~Director of Public Safety~~Chief of Police or the ~~Director's Chief's~~ designee.
- (b) The ~~Director of Public Safety~~Chief of Police or the ~~Director's Chief's~~ designee shall validate that the license has been suspended or revoked.
- (c) A Patrol Officer whose driver's license has been suspended or revoked shall be subject to disciplinary action up to and including termination. The suspension shall be verified by the Secretary of State's Office in writing and is subject to the grievance procedure.
- (d) A Patrol Officer who knowingly fails to advise the ~~Director of Public Safety~~Chief of Police or the ~~Director's Chief's~~ designee that the license has been suspended or revoked shall be subject to disciplinary action up to and including termination.

## **ARTICLE 25**

### **GRIEVANCE PROCEDURE**

Section 1: Definition of a Grievance. A grievance is defined as a claim founded on an alleged violation of this Agreement; any grievance filed shall refer to the specific provision alleged to have been violated and shall set forth the facts pertaining to the

alleged violation. Any grievance not conforming to the provisions of this section shall be denied on the basis of not constituting a valid grievance.

Section 2: Steps of the Grievance Procedure. Whenever a grievance arises, an employee may present said grievance to the immediate supervisor within five (5) working days of the event on which the grievance is based. The employee shall suffer no loss of pay for the time spent with the immediate supervisor discussing the grievance. The employee who feels aggrieved shall be allowed the presence of a local union representative when discussing the alleged grievance. If the issue is unresolved, the employee, on his/her own time, may reduce the grievance to writing on a form provided by the Union and approved by the City and then present it according to the following procedure and by all rules for grievance processing per Section 3 of this Article. Failure to comply with all of the requirements as set forth in the following grievance procedure or by the rules for grievance processing shall be used by a management representative at any step as a permanent grievance denial.

Step 1. If the command officer's answer is not satisfactory to the grievant, the employee's representative may, within two (2) days thereafter, present it to the ~~Director of Public Safety~~Chief of Police or the ~~Director's Chief's~~ designated representative who shall answer it in writing on the form no more than two (2) days later.

Step 2. If the answer of the ~~Director of Public Safety~~Chief of Police in Step 1 is not considered satisfactory by the employee, the employee's representative or his/her designee may, within three (3) days thereafter, present it to the City Manager. The Union or the City Manager may call a meeting at which any participant may attend who has participated in a previous Step. The grievant and local representative shall be present for that meeting. The Labor Council representative may be present. The City Manager shall answer the grievance, in writing, no later than ten (10) days after it is presented to him or the date of the meeting, whichever is later.

Step 3. If, at this point, the grievance has not been satisfactorily settled, the Union shall have the right to refer such grievance to arbitration in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association then in effect, provided such referral is made within fifteen (15) calendar days after receipt by the Union of the City's Step 2 answer for such a grievance. If the grievance has not been submitted to arbitration within the said fifteen (15) calendar day period, it shall be considered resolved. The arbitrator shall have no authority to add to, subtract from, change or modify any provisions of this Agreement, but shall be limited solely to the interpretation and application of specific provisions contained herein. However, nothing contained herein shall be construed to limit the authority of an arbitrator, in his/her

own judgment, to sustain, reverse or modify any alleged unjust discharge that may reach this stage of the grievance procedure. The decision of the arbitrator shall be final and binding upon the parties hereto. The expenses and fees of the arbitrator and the American Arbitration Association shall be shared equally by the City and the Union.

### Section 3: Rules of Grievance Processing.

- (a) Employees shall write, investigate, process and present a grievance so that this activity will not conflict with the full, faithful and proper performance of their required duties.
- (b) All grievances must be filed within five (5) working days following the date of occurrence.
- (c) Management representatives shall date and sign the grievance indicating receipt thereof.
- (d) When a management representative returns the form with his answer on it, the grievant shall date and sign the grievance indicating receipt thereof.
- (e) A grievance not appealed to the next higher step within the time limit shall be deemed permanently denied.
- (f) A grievance not answered within the time limit provided shall be automatically advanced to the next higher level.
- (g) "Days" within the grievance procedure shall be defined to exclude Saturdays, Sundays and all Holidays and "Days" for the procedural time limits are to begin at 12:01 a.m. the following day.

## **ARTICLE 26 PART-TIME PATROL OFFICERS**

Section 1: The City may use up to six (6) part time officers who are not covered under this collective bargaining agreement.

- (a) The City's use of part-time officers shall be up to the equivalent of the number of hours of approved time off for full time officers over the course of a year. Part-time officers can work up to the equivalent of 24 hours a week per the maximum number of part-time officers. This condition shall not apply while a newly hired officer is participating in the initial field training program.

- (b) Part-time officers may be used for the following reasons:
1. schedule adjustments for attending schools or training
  2. filling in for vacations
  3. holidays
  4. earned time off (comp. time)
  5. emergencies
  6. sick leave (if the City is given more than three (3) hours notice)
  7. retirement and/or termination of employment, provided the City is actively trying to fill the position.
  8. FMLA and/or Workers Comp until such time it is known the employee will not return to work.
- (c) Part-time officers will be used to supplement the work force and not replace full-time officers.
- (d) No part-time officer shall be used as a supervisor, (Shift Commander).
- (e) Part-time officers can only be scheduled to work when there is a Supervisor on duty or a Patrol Officer with a minimum two (2) years of service with the City.
- (f) Full-time officers will be offered overtime before part-time officers.
- (g) Part-time officers are laid off before full-time officers
- (h) The City reserves the right to keep one part-time officer in the case of a layoff. However, if one or more full-time positions are laid off, the full-time officer with the most departmental seniority has first option to fill the part-time position before the part-time officer.
- (i) The City will avoid bumping full-time officers from their regular shifts whenever possible by utilizing part-time officers as authorized by this article.

The Union and City mutually agree to participate in a special conference upon the request of either party to discuss the application of this section. The meeting will be set at a mutual place and time.

**ARTICLE 27**  
**AGREEMENT, RATIFICATION,**  
**TERMINATION AND MODIFICATION**

Section 1: This Agreement incorporates all Agreements and resolves all issues between the parties and shall continue in full force and effect until its termination date.

Section 2: This Agreement shall become effective \_\_\_\_\_, 2020~~3~~ and shall continue in full force and effect until June 30, 202~~3~~6 at 12:00 midnight, and for successive annual periods thereafter unless not more than one hundred twenty (120) days or less than ninety (90) days prior to the end of its original term or of any annual period thereafter, either party shall serve upon the other written notice that it desires termination, revision or modification and such written notice shall have the effect of terminating this Agreement in its entirety on the expiration date in the same manner as a notice of a desire to terminate.

Section 3: The parties to this collective bargaining agreement include the following language in subsection "a" of this section as is currently required by state statute. This language was not bargained for nor negotiated in any manner by either party and should be deemed meaningless to the extent that the state statute requiring such language or the authority of an emergency financial manager be altered, amended or be found unconstitutional.

- a. "An emergency financial manager appointed under the local government and school district fiscal accountability act may reject, modify, or terminate the collective bargaining agreement as provided in the local government and school district fiscal accountability act."

**ARTICLE 28**  
**CLASSIFICATION**

Section 1: The City retains the right to eliminate, change and establish classifications within the bargaining unit. Whenever the City initiates its right, it will provide the Union with a written copy of the new or changed classification. If there is a disagreement within the rate schedule of the new or changed classification, the Union may file a grievance at Step 3 of the grievance procedure.

This provision has no effect on Article 3, Section 1(i) except as modified above.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on this \_\_\_\_\_ day of June, 2017~~22~~23.

POLICE OFFICERS  
LABOR COUNCIL

CITY OF MARSHALL

\_\_\_\_\_  
Marc Smith  
Labor Representative

\_\_\_\_\_  
Derek Perry  
City Manager

\_\_\_\_\_  
Scott Keller  
Union Steward

\_\_\_\_\_  
Michelle Eubank  
Clerk



## APPENDIX A WAGES

Section 1: Listed below are the classifications and corresponding annual wages and the merit increases for each step increase agreed to by the parties to this Agreement.

- (a) The Patrol Officer classification is established as a starting position for all Patrol Officers. The status will then be adjusted as outlined in Article 18 (Wage Classification) of this Agreement.

| Effective      | Start   | 6 MONTHS | ONE YEAR | TWO YEARS | THREE YEARS | FOUR YEARS |
|----------------|---------|----------|----------|-----------|-------------|------------|
| 7/1/2023 (\$2) | \$26.12 | \$27.49  | \$28.19  | \$29.56   | \$30.92     | \$32.29    |
| 7/1/2024 (3%)  | \$26.90 | \$28.31  | \$29.04  | \$30.45   | \$31.85     | \$33.26    |
| 7/1/2025 (3%)  | \$27.71 | \$29.16  | \$29.91  | \$31.36   | \$32.81     | \$34.26    |

~~Section 2:~~ In addition, Patrol officers hired prior to July 1, 1996 who have completed police administration course work at Kellogg Community College, or college credits accepted by Kellogg Community College, for Police Administration with a grade average of "C" or better or a grade point average in another grading system equivalent to a "C" or better, shall, upon presentation of a transcript to the City, be paid an education bonus on a quarterly basis as follows:

|                    | <u>ANNUAL AMOUNT</u> | <u>QUARTERLY AMOUNT</u> |
|--------------------|----------------------|-------------------------|
| 12 credit hours    | \$200.00             | \$ 50.00                |
| 24 credit hours    | \$300.00             | \$ 75.00                |
| 30 credit hours    | \$400.00             | \$100.00                |
| Associate Degree   | \$500.00             | \$125.00                |
| in Law Enforcement |                      |                         |

- ~~(a) This education bonus becomes effective on the employee's anniversary date following attainment of credit hours.~~

Section 32: Those officers assigned to work the afternoon shift shall receive a ~~one (1%)~~two (2%) percent differential. Those officers assigned to a third shift or split shift shall receive a two (2%) percent differential. Such shift premium shall be applied per pay week (Sunday – Saturday) based on the straight hours worked by each employee. However, training and required court appearances may change work hours but shall not result in a swing shift premium.

## APPENDIX B DRUG/ALCOHOL TESTING POLICY

### Testing

1. Reasonable Suspicion. Testing of bargaining unit members for the presence of controlled substances or illegal drugs must be based upon the reasonable suspicion that an employee has consumed controlled substances or illegal drugs. The test must be requested by the ~~Director of Public Safety~~Chief of Police.
2. Standard for Determining Reasonable Suspicion.
  - (a) Reasonable suspicion shall be based upon specific objective facts and reasonable inferences drawn from those facts in light of experience and/or training.
  - (b) Where reasonable suspicion is based upon personal observation by a command officer, the objective facts must be articulable and may include the person's appearance and behavior.
  - (c) When an informant has supplied information, the informant's veracity, reliability and basis of knowledge will be relevant. If the informant is a member of the department in a lower ranking position, he/she may approach the ~~Director of Public Safety~~Chief of Police to provide such information, without regard to the normal chain of command.
  - (d) When another employee who is not a command officer has supplied information or has made a personal observation, his/her basis of knowledge will be relevant.
  - (e) The facts forming the basis for the reasonable suspicion shall be disclosed to the employee at the time that demand for testing is made, and the employee shall, at that same time, be given the opportunity to explain his/her behavior or actions. Provided, however, that in situations where drug testing is recommended, the employee shall be allowed to make such explanation to the ~~Director of Public Safety~~Chief of Police in person and further allowed to commit said explanation to written form, prior to the conducting of such test. The employee shall have the right to union representation. The employee shall not have a right to refuse to submit to the test.
  - (f) Within five (5) calendar days after the demand for testing, the facts forming the basis for reasonable suspicion and reasonable inferences drawn from those facts including employee's statement, if any, shall be reduced to writing, and a copy given to the employee.

3. Release from Duty. Any time an employee has been ordered to submit to a test based on reasonable suspicion, the employee will not drive a vehicle or perform any duty or function as a department employee, unless so authorized by the ~~Director of Public Safety~~Chief of Police or the designee. The employee will be compensated according to his/her collective bargaining agreement for all time spent in the testing process. Wherever possible, such testing process will be conducted during the employee's scheduled on-duty time.
4. Laboratory Tests. Arrangements will be made to transport the person taking the test to the hospital, medical office, clinic, or independent laboratory to perform the test. A proper chain of custody will be maintained on all test samples.

In the case of urine testing for illegal use, the laboratory used must be certified by the National Institute on Drug Abuse (NIDA) or MLEOTC. The initial screening test will be conducted using the "EMIT" test. No disciplinary action shall be taken based on the initial screen test but, rather, may only be taken after a confirmation or follow up test has been administered. Confirmation or follow up tests will be conducted using the Gas Chromatograph/Mass Spectrometer. The sample will be retained (frozen) for up to one year for the purpose of further confirmation tests.

"Decision" levels are set sufficiently high enough so as to preclude any other possible reason for a drug's presence except illicit use. The following "decision" levels, reported in nanograms per milliliter, are proposed for deciding the point at which the presence of a drug on an EMIT test would be reported as positive, i.e., the point at which a confirmation test (GC/MS) would be required.

NIDA-5 (screen and GC/MS confirmation)

| <u>Drug Group</u>     | <u>Drug or Metabolite Detected</u> | <u>Initial test level ng/ml</u> | <u>GC/MS confirmation</u> |
|-----------------------|------------------------------------|---------------------------------|---------------------------|
| Amphetamine           | Amphetamine                        | 1,000 ng/ml                     | 500 ng/ml                 |
|                       | Methamphetamine                    | 1,000 ng/ml                     | 500 ng/ml                 |
| Cocaine metabolites   | Benzoyllecgonine                   | 300 ng/ml                       | 150 ng/ml                 |
| Marijuana metabolites | delta-9-THC-9-COOH                 | 100 ng/ml                       | 15 ng/ml                  |
| Opiate metabolites    | Codeine                            | 300 ng/ml                       | 300 ng/ml                 |
|                       | Total Morphine                     | 300 ng/ml                       | 300 ng/ml                 |
| Phencyclidine         | PCP                                | 75 ng/ml                        | 75 ng/ml                  |

If an EMIT test detects the presence of a drug above the "cut off" level but below the "decision" level, the test results will be reported as "negative."

Upon completion of all testing, the employee shall be notified of the results of the testing as soon as is practical after the City receives such notification. If the results are negative, all records and reports concerning the test will be destroyed. If the results of confirmation testing are positive, the results will be reported to the ~~Director of Public Safety~~Chief of Police.

## 5. Disciplinary Action

Grounds for Immediate Discharge. Employees will be subject to immediate discharge for the first offense in any of the following circumstances:

- (a) Refusal to take a requested urine and/or blood (breath) test, including refusal to execute any required consent forms and/or refusal to cooperate regarding collection of samples.
- (b) Drinking alcoholic beverages during working hours, during breaks, or lunch, or between shifts prior to scheduled assignments or assignments where an employee has notification he/she may be called in.
- (c) Having a blood alcohol content of .02% or more during working hours, based on the test result and application of the recognized .015% per hour blood alcohol dissipation rate.
- (d) Working or reporting for work when ability to perform is impaired by drugs. A positive drug test when confirmed by evidence of impairment during working hours, shall conclusively establish impairment.
- (e) Possession, concealment, unlawful manufacture, distribution, dispensation, or sale of alcoholic beverages or prohibited drugs while on duty or on the City's premises.
- (f) Conviction of any criminal drug statute.
- (g) Violation of Rehabilitation and Last Chance Agreement. Depending upon the circumstances involved, including, but not limited to, the employee's work record, whether illegal drugs or other illegal activity took place, and any other relevant factors, the City will allow the offending employee's employment to continue pending successful completion of a rehabilitation program pursuant to an unpaid leave of absence. In such a case, the City may also require that any return to work by the offending employee will be based upon a "last chance" agreement containing provisions different from those contained in this document or any other City drug/alcohol abuse policy, procedure or work rule. After returning to work, the last chance

agreement will provide that any failure for a subsequent drug/alcohol test will result in discharge.

6. Confidentiality. All testing records, records indicating reasonable suspicion of employee substance abuse, or records relating to rehabilitation or "last chance" agreements, and any other record concerning individual employee substance abuse, will be considered strictly confidential and will be available only to those person(s) involved in decisions concerning the affected employee.
7. The City recognizes that drug and alcohol abuse are treatable illnesses, and that the proper response to these illnesses is education, treatment and rehabilitation, not punishment.
8. No Waiver of Legal Rights. The parties agree that this program shall not diminish the rights of individual employees under State and Federal laws relating to drug testing.
9. Prior to accepting an assignment in the "drug-unit," and/or upon completion of an assignment in the "drug-unit," an officer will take a drug test.
10. Refusal by an employee to take a drug test, pursuant to paragraph (9) above, shall subject the employee to immediate termination.

## APPENDIX C

### EMPLOYEES HIRED PRIOR TO JULY 15, 1986

The City of Marshall will continue to provide health insurance at the same level as provided for City of Marshall non-union, full time, employees for the employee, the employee's spouse (must be married at time of the employee's departure) and for the employee's dependents, (must be dependent at the time of employee's departure) and who leaves City of Marshall employment

- ◆ with 25 or more year's service
- ◆ at age 55 with 15 or more years service
- ◆ at age 60 with 10 or more years service

The retiree will be required to make the same co-payments, deductibles, and premium contributions as being paid by non-union employees. If and when the health insurance coverage changes for City of Marshall non-union, full time, active employees, the same changes will be in effect for all retirees covered under this provision.

If, at the time of the covered retiree's death, the plan available provides coverage for the retiree's spouse and/or dependent(s), then said coverage shall continue until the retiree's death or the death of the spouse (if married at the time of retirement), whichever occurs later. When retiree (and/or spouse, if included in coverage) becomes Medicare eligible the retiree (and/or spouse if included in coverage) MUST enroll in parts A and B and the City of Marshall will provide supplemental coverage only.

### EMPLOYEES HIRED AFTER JULY 15, 1986

The City of Marshall will continue to provide health insurance at the same level as provided for City of Marshall non-union, full time, employees for the employee, the employee's spouse (must be married at time of the employee's departure) and for the employee's dependents (must be dependent at the time of employee's departure) and who leaves City of Marshall employment per the following schedule:

| AGE | SERVICE | % OF ANNUAL PREMIUM |            |
|-----|---------|---------------------|------------|
|     |         | CITY                | INDIVIDUAL |
| 50  | 15      | 0                   | 100        |
| 50  | 16      | 10                  | 90         |
| 50  | 17      | 20                  | 80         |
| 50  | 18      | 30                  | 70         |
| 50  | 19      | 40                  | 60         |
| 50  | 20      | 50                  | 50         |
| 50  | 21      | 60                  | 40         |
| 50  | 22      | 70                  | 30         |
| 50  | 23      | 80                  | 20         |
| 50  | 24      | 90                  | 10         |
| 50  | 25      | 100                 | 0          |

The retiree will be required to make the same co-payments, deductibles, and premium contributions as being paid by non-union employees. If and when the health insurance coverage changes for City of Marshall non-union, full time, employees, the same changes will be in effect for all retirees covered under this provision.

If, at the time of the covered retiree's death, the plan available provides coverage for the retiree's spouse and/or dependent(s), then said coverage shall continue until the retiree's death or the death of the spouse (if married at the time of retirement), whichever occurs later. When retiree (and/or spouse if included in coverage) becomes Medicare eligible the retiree (and/or spouse if included in coverage) MUST enroll in parts A and B and the City of Marshall will provide supplemental coverage only.

### **EMPLOYEES HIRED AFTER JULY 1, 1996**

The City of Marshall may make available health insurance at the same level as provided for City of Marshall non-union, full time, employees for a retiree and the retiree's spouse (must be married at time of retirement), and for the retiree's dependents, (must be dependent at the time of employee's departure) providing the retiree remits, in advance, the entire monthly health insurance premium to the Finance Department on a monthly basis. **To be eligible for this provision the retiree must, at time of departure, be eligible to immediately begin receiving the MERS pension payment.**

If, at the time of the covered retiree's death, the plan available provides coverage for the retiree's spouse and/or dependent(s), then said coverage shall continue until the retiree's death or the death of the spouse (if married at the time of retirement), whichever occurs later. When retiree (and/or spouse if included in coverage) becomes Medicare eligible the retiree (and/or spouse if included in coverage) MUST enroll in parts A and B and the City of Marshall will provide supplemental coverage only.





## **LETTER OF UNDERSTANDING**

This Letter of Understanding is entered into between the Police Officers Labor Council, Patrol Officer's Division (hereinafter "Union") and the City of Marshall (hereinafter "City").

WHEREAS, during contract negotiation a proposal was put on the table by the Union to increase the per hour rate for acting Shift Command Officer.

WHEREAS, the City of Marshall agrees to a 1-year trial from July 1, 2023 – June 30, 2024 regarding the acting Shift Command Officer pay and responsibilities.

THEREFORE, the Union and City agree to the following:

- From July 1, 2023 – June 30, 2024, if there is no command officer present on a shift, the most senior person shall act as the shift command officer. Such person shall receive two dollars (\$2.00) per hour additional pay for all hours worked on that basis.
- Acting Shift Command Officers shall have all the duties and responsibilities of a command officer. Calls to Chief, Deputy Chief, and Command Officer shall be limited to emergencies only.
- In June 2024, the City will evaluate this process to determine if acting Shift Command Officers are making the decisions required for the position.
- Based on the June 2024 evaluation, this rate of pay will either continue or revert back to current contract rate of pay.

ENTIRE AGREEMENT. The parties agree that there is no obligation on the part of the City to bargain further over this issue or any other issue that this letter of understanding represents.

POLICE OFFICERS  
LABOR COUNCIL

CITY OF MARSHALL

By: \_\_\_\_\_  
Marc Smith, Business Agent

By: \_\_\_\_\_  
Derek Perry, City Manager

By: \_\_\_\_\_  
Scott Keller, Union Steward

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

# ITEM: 12.N

## ADMINISTRATIVE REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Tracy Hall  
William Dopp, Finance Director/ City Treasurer  
**DATE:** June 5, 2023  
**SUBJECT:** **CITY OF MARSHALL MEMBERSHIP IN THE WEST MICHIGAN  
HEALTH INSURANCE POOL**

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City staff are always searching for opportunities to find potential budget savings, while maintaining or improving the quality of services and products we receive and provide. Earlier this year, we were informed by our current health insurance provider to budget for double digit rate increases. With that possibility, the staff thought it was a favorable time to reach out to the Western Michigan Health Insurance Pool (WMHIP), which consistently receives great feedback and recommendations from other municipalities and public entities.

The WMHIP is a Public Employer Pooled Plan (PEPP) that provides pooled self-funded health insurance coverage, as authorized by the Public Employees Health Benefit Act, Act 106 of 2007. WMHIP has received from the Michigan Department of Insurance and Financial Services a certificate of registration authorizing the establishment of the PEPP.

After multiple meetings and discussions, it was apparent that it was time to make the change to WMHIP. Rather than an increase in employee health insurance costs this year, the City has an opportunity to save over \$200,000 by switching to WMHIP. In addition to the savings, the City is able to switch from Priority Health back to Blue Cross Blue Shield, which has had a great reception from staff.

The City will still stay with our current local provider for dental, eye, and additional optional benefits. We are requesting that the City Council approve the attached resolution authorizing our membership in the WMHIP for our health insurance coverage.

### **BUDGET IMPACT:**

Switching to WMHIP provides the City with more than a 16% savings (\$200,000+). It also makes future employee health insurance budgeting more accurate, with more reliable and manageable increases each year.

### **RECOMMENDATION:**

Approve Resolution #2023-19, A Resolution Authorizing City of Marshall Membership in the

West Michigan Health Insurance Pool (WMHIP) for a Minimum Three-Year Period and authorize the City Manager and City Clerk to sign the required documents.

**CITY OF MARSHALL, MICHIGAN  
RESOLUTION NO. 2023-19**

**A RESOLUTION AUTHORIZING CITY OF MARSHALL MEMBERSHIP  
IN THE WEST MICHIGAN HEALTH INSURANCE POOL ("WMHIP") FOR A MINIMUM  
THREE-YEAR PERIOD**

Minutes of a regular meeting of the Council of the City of Marshall, held on June 5, 2023 at 7:00 PM.

PRESENT:

ABSENT:

The following preamble and resolution were offered by \_\_\_\_\_, and supported by \_\_\_\_\_.

**WHEREAS**, The Western Michigan Health Insurance Pool ("WMHIP") is a Public Employer Pooled Plan ("PEPP") that provides pooled self-funded health insurance coverage, as authorized by the Public Employees Health Benefit Act, Act 106 of 2007; and

**WHEREAS**, WMHIP has received from the Michigan Department of Insurance and Financial Services ("DIFS") a certificate of registration authorizing establishment of the PEPP; and

**WHEREAS**, The Council has had opportunity to consider the obligations of the City of Marshall to WMHIP and PEPP plans, and services available to the City of Marshall by WMHIP, and has carefully reviewed the WMHIP Amended Trust Agreement and Bylaws; and

**WHEREAS**, The Council desires to authorize membership of the City of Marshall in the WMHIP for a minimum period of three years; and

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARSHALL** approves the WMHIP Amended Trust Agreement and bylaws, and accepts WMHIP provision of City of Marshall self-funded, pooled health insurance coverage under the PEPP plan; and

The Superintendent, Manager, or CFO of the City of Marshall or, with their approval, the person appointed by the Council as WMHIP Trustee or Alternate Trustee, is hereby authorized to execute all documents necessary for the City of Marshall to become a Member in the WMHIP PEPP plan; and

The Council hereby confirms its appointment of City Manager Derek N. Perry as Trustee and Payroll and Benefits Coordinator, Tracy Hall as Alternate Trustee to serve as Trustee when the initial Trustee is not available or in attendance to carry out the Trustee's duties.

As required by law, neither the Trustee nor the Alternate Trustee is an owner, officer, or employee of any third-party administrator or any other third-party providing services to WMHIP. The Trustee and Alternate Trustee shall serve until replaced by action of the Council. Once appointments are made known to the WMHIP, the persons appointed shall remain in office until the WMHIP receives evidence of appointment of other persons. Evidence of proper appointment of the Trustee and Alternate Trustee shall be a certified copy of the resolution passed by the Council, indicating the names of the designated Trustee and/or Alternate Trustee. Failure of the City of Marshall to designate a Trustee, or the failure of that Trustee/Alternate Trustee to participate on the Council of Trustees, shall not affect the responsibilities or duties of the City of Marshall under the Amended Trust Agreement; and

The City of Marshall shall continue participation in the WMHIP for a minimum of three full years under its PEPP plan; and

All resolutions and parts of resolutions insofar as they conflict with the provisions of this Resolution be and the same are hereby rescinded.

Resolution declared adopted this 5th day of June 2023.

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Michell Eubank, City Clerk

I, Michelle Eubank, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of the resolution adopted by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on June 5, 2023 and that the said meeting was conducted and that the minutes of the meeting were kept and will be or have been made available.

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Michell Eubank, City Clerk

# ITEM: 12.0

## ADMINISTRATIVE REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Derek N. Perry, City Manager  
Tracy Hall  
William Dopp, Finance Director/ City Treasurer  
**DATE:** June 5, 2023  
**SUBJECT:** MICHIGAN HARD CAP EXEMPTION

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Public Act 152 of 2011 sets an annual limit on the amount that a public employer may contribute to a medical benefit plan for its employees. For 2023, the Public Employer Contributions to Medical Benefit Plans (known as the Hard Cap) has increased by 1.3%.

In an effort to keep our Health Insurance rates low, over the years we have changed coverage plans, changed deductibles, changed prescription co-pays, and required employees to pay a premium share. Currently, employees are paying between 12% - 22% of their monthly premium based on their hire date and their collective bargaining agreement. In 2021, we moved from Blue Cross to Priority Health to save 13.6%. This year we are moving to the Western Michigan Health Insurance Pool (a public employer pooled plan).

One way to comply with PA 152 is for the local unit of government to adopt a resolution to exempt itself from the requirements of the Act by an annual 2/3 vote of the governing body.

### **BUDGET IMPACT:**

By joining the West Michigan Health Insurance Pool and using the exemption option allowable under PA 152, we anticipate an overall FY24 budget savings of approximately 16% or \$200,000.

### **RECOMMENDATION:**

Approve Resolution #2023-21, A Resolution to Adopt the Annual Exemption Option as set forth in Public Act 152, the Publicly Funded Health Insurance Contribution Act and authorize the City Manager and City Clerk to sign the necessary documents.

**CITY OF MARSHALL, MICHIGAN  
RESOLUTION NO. 2023-21**

**A RESOLUTION TO ADOPT THE ANNUAL EXEMPTION OPTION AS SET FORTH IN  
PUBLIC ACT 152, THE PUBLICLY FUNDED HEALTH INSURANCE CONTRIBUTION  
ACT**

Minutes of a regular meeting of the Council of the City of Marshall, held on June 5, 2023,  
at 7:00 PM.

PRESENT:

ABSENT:

The following preamble and resolution were offered by \_\_\_\_\_, and  
supported by \_\_\_\_\_.

**WHEREAS**, 2011 Public Act 152 (the "Act") was passed by the State Legislature and  
signed by the Governor on September 24, 2011; and

**WHEREAS**, the Act contains three options for complying with the requirements of the  
Act; and

**WHEREAS**, the three options are as follows:

- 1) Section 3 - "Hard Caps" Option - limits a public employer's total annual health care costs for employees based on coverage levels, as defined in the Act;
- 2) Section 4 - "80%/20%" Option - limits a public employer's share of total annual health care costs to not more than 80%. This option requires an annual majority vote of the governing body;
- 3) Section 8 - "Exemption" Option - a local unit of government, as defined in the Act, may exempt itself from the requirements of the Act by an annual 2/3 vote of the governing body; and

**WHEREAS**, the Marshall City Council has decided to adopt the annual exemption option as its choice of compliance under the Act; and

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARSHALL** elects to comply with the requirements of 2011 Public Act 152, the Publicly Funded Health Insurance Contribution Act, by adopting the annual Exemption option for the medical benefit plan coverage year July 1, 2023, through June 30, 2024.

Resolution declared adopted this 5th day of June 2023.

\_\_\_\_\_  
Michell Eubank, City Clerk



I, Michelle Eubank, being duly sworn as the City Clerk for the City of Marshall, hereby certify that the foregoing is a true and complete copy of the resolution adopted by the City Council, City of Marshall, County of Calhoun, State of Michigan, at a regular meeting held on June 5, 2023 and that the said meeting was conducted and that the minutes of the meeting were kept and will be or have been made available.

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Michell Eubank, City Clerk