

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of _____, 2023 (the “Effective Date”) between FOWLerville AREA FIRE AUTHORITY, a municipal Michigan Emergency Services Authority a with an address of _____, Fowlerville, Michigan 48836 (“Seller”), and LIVINGSTON COUNTY, a municipal corporation, with an address 304 E Grand River Ave, Suite 201, Howell, MI 48843 (“Purchaser”).

Background

Seller owns real property commonly known 200 North Grand, Fowlerville, Michigan 48836 as Parcel ID Number 4705-11-305-003:

SEC 11 T3N R3E VILLAGE OF FOWLerville ASSESSOR'S PLAT NO. 2 LOT 3
EXC. E 88 FT. THEREOF

Of the Village of Fowlerville, Township of Handy, Livingston County, Michigan, as more particularly described and depicted in Exhibit “A” attached hereto, together with and subject to Seller’s interest in all improvements, fixtures and appurtenances pertaining thereto, and all easements and other matters of record (collectively, the “Property”). Seller desires to sell, and Purchaser desires to purchase the Property on the terms and conditions set forth herein in order to facilitate intra-county mutual governmental cooperation and efficient use of public facilities for public purposes.

Agreement

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN THE PARTIES AGREE AS FOLLOWS:

1. **Agreement for Purchase and Sale.** Seller shall sell, transfer, and convey to Purchaser, and Purchaser shall purchase from Seller, subject to, and on the terms and conditions set forth in this Agreement, the land legally described in the attached Exhibit A and Seller’s interest in all other improvements of every kind and nature, all fixtures of every kind and nature located in or on the Property.
2. **Consideration.** The consideration for this agreement shall be payment by the Purchaser to the Seller of Two Hundred and Eighty Thousand Dollars (\$280,000.00), the receipt and the sufficiency of which is hereby acknowledged by Seller, and in further consideration of the mutual covenants and agreements herein contained, in this Agreement. There shall be no earnest money deposit.
3. **Pre-Closing Access To The Property.** Purchaser shall have access to and the right to conduct it’s due diligence review of the Property between now and closing as follows:

- A. Seller has provided Purchaser with investigation by Wolverine Engineering with soil borings dated August 6, 2013.
- B. The Purchaser has engaged in due diligence and has already obtained, and is relying on, a Phase I Environmental Site Assessment Report dated March ___, 2023 (PESI).
- C. The Purchaser intends to conduct a Phase II environmental assessment prior to closing. Before closing, Purchaser and its respective employees, agents, contractors, and invitees shall have reasonable access to the Property. While Purchaser or its employees, agents, contractors, or invitees are on the Premises, (a) they shall not unreasonably interfere with any use of the Property by Seller; and (b) Seller shall not be liable for any damage, loss, or injury they cause. On completion of all such inspections and evaluations, Purchaser shall return the Property substantially to their prior condition. Seller shall reasonably cooperate with Purchaser during the Investigation Period and has provided/shall provide Seller's Reports which constitute all of the environmental reports that are in Seller's possession or control.

4. **"As Is" Sale.** Purchaser acknowledges and agrees that Seller has not made, does not make, and expressly disclaims any warranties, representations, covenants, or guarantees, either express or implied, whether arising by operation of law or otherwise, regarding (a) the nature, quality or condition of the property, including without limitation the water, soil and geology, (b) the income which may be derived from the property and its use, (c) the compliance of or by the property of its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (d) the habitability, merchantability or fitness for a particular purpose of the property, or (e) any other matter with respect to the property and specifically disclaims any representations regarding hazardous waste or materials including. Purchaser affirms that it

- A. has investigated and inspected the property and is familiar and satisfied with its environmental condition and physical condition; and
- B. has made its own determination as to the merchantability, quantity, quality, environmental condition, and physical condition of the property, including the possible presence on, at, under, or emanating from the property of hazardous materials or other environmental contamination; and the property's suitability or fitness for any particular purpose or use.

The closing of the transaction contemplated by this agreement shall constitute Purchaser's acceptance of the property in its present environmental condition and physical condition on an "as is," "where is," and "with all faults and defects" basis, regardless of how such faults and defects were caused or created.

5. **Board Approval.** The Purchaser's and Seller's obligation to close hereunder is contingent upon both obtaining final approval from their respective boards for the purchase and sale transaction contemplated. Each party will notify the other promptly of receipt of said approval.

6. **Closing.**

6.1 Closing Date. Purchaser and Seller shall close this transaction ("Closing") in escrow or at such other place as the parties may mutually agree, at a time agreed to by the parties, which shall be no later than **May 6th, 2023** (the "Closing Date").

6.2 Closing. Seller shall prepare the closing documents and deliver them to Purchaser for review and approval at least 10 days before closing. At closing, Seller shall be responsible for the payment of the state and county transfer taxes; the title insurance premium to issue a policy pursuant to the title commitment referenced below; and the costs of any recording fees to record any documents to clear title. Purchaser shall pay the fees necessary to record the deed and any other documents to transfer title. Purchaser and Seller shall each pay their own attorney and other professional fees.

6.3 Seller's Responsibilities. At closing Seller shall:

i. Execute and deliver to Purchaser a Warranty Deed to the Property, that is subject to easements, restrictions, and all other matters of record as shown on the title commitment delivered to Purchaser as stated above. (with the exception of mortgages or liens of Seller reflecting Property financing which shall be paid as of Closing);

ii. Execute and/or deliver affidavits and other documents that may be reasonably required by the title company for the issuance of a title insurance policy, except that any UCC, bankruptcy, or judgment lien searches or the like shall be done at the sole effort, cost, and expense of Purchaser;

iii. Execute, at Purchaser's option, a Michigan Real Estate Transfer Tax Valuation Affidavit;

iv. Execute and deliver to Purchaser an Affidavit of non-foreign status;

v. Deliver all keys to and possession of the Property to Purchaser, free and clear of the possessory rights of any person or entity;

6.4. Purchaser's Responsibilities. At closing Purchaser shall:

i. Cause the title company to be paid the premium for the title policy;

ii. Remit to the Seller the Purchase price;

iii. Pay the costs for Title Company to perform the Closing; and

iv. Pay the real estate transfer taxes imposed under Michigan law, if any, in connection with the recordation of the deed.

6.5. Joint Responsibilities.

- i. Seller and Purchaser shall execute a mutually acceptable Closing Statement; and
- ii. Seller and Purchaser shall execute all other documents deemed necessary by Purchaser, Seller or Title Company to close the transactions contemplated by this Agreement in accordance with its terms.

6.6 Taxes and Assessments. Any taxes and assessments which are paid by Seller that are a lien on the Property, or that otherwise relate to the Property and are due and payable as of the date of closing (other than the lien of general real estate taxes that are not due and payable as of Closing) shall be paid by Seller on or before Closing. IF ANY, current real estate taxes shall be prorated as of the date of Closing between Seller and Purchaser based on the due date of the respective taxing authority. However, for purposes of this proration, taxes shall be deemed paid in advance. Seller and Purchaser understand and acknowledge that the amount of any past due real estate taxes on the Premises not paid by the date of Closing may be deducted from the Purchase Price paid at Closing and be paid to the respective taxing authority at Closing.

7. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser, that as of the date hereof, and on the Closing Date:

7.1 Marketable title to the Property shall be transferred to Purchaser on the closing date, free from liens, encumbrances, claims of others, unless otherwise specified herein or in the Warranty Deed given and accepted at closing;

7.2 Seller has all requisite power and authority to execute and deliver this Agreement and to perform the obligations of Seller hereunder. The execution, delivery and performance of this Agreement by Seller does not and will not violate any provisions of Seller's charter, by-laws or similar governing instruments, violate any law or governmental or regulatory rule or regulation, or any order, judgment or award of any court or administrative agency or any contract to which Seller is a party or require the consent of any third party;

7.3 This Agreement constitutes a legal, valid, and binding agreement of Seller;

7.4 To Seller's actual knowledge, there is no pending or threatened bankruptcy proceeding involving Seller.

7.5 There is no litigation or proceeding pending, or to the Seller's knowledge threatened, against or involving the Seller or Property, and the Seller does not know

of any ground for any such litigation or proceeding, which could have a material adverse impact on Purchaser or Purchasers title to the Property

7.6 No prior options or rights of first refusal have been granted by Seller to any third parties to purchase or lease any interest in the Property, or any part thereof, which are effective as of the execution date.

8. **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to Seller that as of the date hereof, and on the Closing Date:

8.1 Purchaser has the full power and authority to execute, deliver and perform Purchaser's obligations under this Agreement; and

8.2 This Agreement and all agreements, instruments and documents herein provided to be executed by Purchaser are and as of the Closing will be duly authorized, executed and delivered by Purchaser.

8.3 Purchaser has the financial ability to consummate the transactions contemplated by this Agreement.

8.4 There is no litigation or proceeding pending, or to Purchaser's knowledge threatened, against or involving Purchaser, and Purchaser does not know of any ground for any such litigation or proceeding, which could have an adverse impact on Seller or Seller's interest under this Agreement.

8.5 Purchaser will not be insolvent upon the consummation of the transactions contemplated by this Agreement.

9. **Default and Remedies.**

9.1 **Purchaser's Default; Seller's Remedy.** In the event of any default by Seller that continues without cure for 10 days after delivery by Purchaser of notice to Seller, Purchaser shall have the right (but not the obligation) to terminate this Agreement by notice to Seller within 15 days after the end of the cure period allowed to Seller, or Purchaser shall have, as its sole remedy, the right to enforce this Agreement by an action for specific performance.

9.2 **Seller's Default; Purchaser's Remedies.** In the event of any default by Purchaser that continues without cure for 10 days after the delivery by Seller of notice to Purchaser, Seller shall have the right (but not the obligation) to terminate this Agreement by notice to Purchaser within 15 days after the end of the cure period allowed to Purchaser, or Seller shall have, as its sole remedy, the right to enforce this Agreement by an action for specific performance.

10. **Damage to Property or Condemnation.** If between the Effective Date of this Agreement and the Closing Date, all or any part of the Property is damaged by fire or natural

elements or other causes beyond the Seller's control, which cannot be repaired prior to the Closing Date, or any part of the Property is taken pursuant to any power of eminent domain, Seller shall promptly notify Purchaser of such occurrence, and Purchaser may terminate this Agreement with written notice to Seller within fifteen (15) days after the date of damage or taking. If Purchaser does not elect to terminate this Agreement, there shall be no reduction of the purchase price and Seller shall assign to Purchaser whatever rights Seller may have with respect to any insurance proceeds or eminent domain award at Closing.

11. **Brokerage Commission.** Seller and Purchaser represent that neither of them engaged the services of a real estate broker or consultant with respect to this transaction. As such, Seller and Purchaser shall be solely and exclusively responsible for any commission, fee or other compensation owing to any broker or consultant that each created in connection with the transaction contemplated by this Agreement. This warranty will survive Closing or termination of this Agreement.

12. **Miscellaneous.**

12.1 This Agreement shall be governed by and construed under the laws of the State of Michigan and venue for any disputes arising under this Agreement or the transactions contemplated hereby shall be in the appropriate court in Livingston County, Michigan.

12.2 This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument. This Agreement may be executed in facsimile or electronic copies and facsimile or electronic signatures shall be binding upon the parties and shall have the same full force and effect as if an original executed copy of this Agreement had been delivered.

12.3 Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

12.4 This Agreement supersedes all prior discussions and agreements between Seller and Purchaser with respect to the conveyance of the Property and all other matters contained herein and constitute the sole and entire agreement between Seller and Purchaser with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

12.5 All notices, payments, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective either upon the second (2nd)

business day after being deposited in the United States mail, postpaid and registered or certified with return receipt requested; or upon delivery, when sent by private courier service for same-day delivery or by national overnight delivery service. The time period in which a response to any notice, demand or request must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept delivery or inability to deliver because of changed address of which no notice has been given, shall constitute receipt of the notice, demand or request sent. The address of the parties for the purposes of this Agreement and for all notices under this Agreement shall be the address indicated in the introductory paragraph of the Agreement.

12.6 This Agreement shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

12.7 If any date of performance hereunder falls on a Saturday, Sunday or legal holiday, such date of performance shall be deferred to the next day which is not a Saturday, Sunday or legal holiday.

12.8 In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision is severed and deleted from this Agreement.

12.9 By signing this Agreement the parties acknowledge that they have the authority to execute this Agreement and be bound by its terms, they have read this document, they know its contents and they are voluntarily signing it. The parties have executed this Agreement on the date listed on the first page.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

**PURCHASER: COUNTY OF
LIVINGSTON**

By: _____
Chairperson
Livingston County Board of Commissioners

Date: _____

**SELLER: FOWLERVILLE AREA
FIRE AUTHORITY**

By: _____,
Chairperson
Board of Fowlerville Area Fire Authority

Date: _____

By: _____
Director, Emergency Medical Services Dept.

By: _____,
Chief

Date: _____

Date: _____

EXHIBIT “A”
PROPERTY

The land referred to in this Commitment is located in the Village of Fowlerville, County of Livingston, State of Michigan, and described as follows:

Lot(s) 3, Assessor's Plat No. 2, according to the recorded Plat thereof, as recorded in Liber 4 of Plat(s), Page 10, Livingston County Records, EXCEPTING therefrom the East 88 feet

