

## **INTERGOVERNMENTAL CONTRACT FOR EXTENSION OF WATER SUPPLY SERVICE TO CERTAIN EMMETT TOWNSHIP PROPERTIES**

The Parties, Emmett Charter Township (“Emmett Township”), a Michigan municipal corporation whose address is 621 Cliff Street, Battle Creek, Michigan 49014 and the City of Battle Creek (“City”), a Michigan Home Rule City whose address is 10 North Division Street, Battle Creek, Michigan 49014, agree as follows:

### **Recitals:**

A. Pursuant to Public Act 35 of 1951, Intergovernmental Contracts between Municipal Corporations, two or more municipal corporations are authorized to enter a contract to provide for the performance of any service which each would have the power to perform separately.

B. After the July, 2010 Enbridge Oil spill in Calhoun County, extensive water testing took place which identified high levels of arsenic present in the water for several properties located in the City of Battle Creek and in Emmett Charter Township which are serviced by wells and not by municipal water service. The Calhoun County Health Department has issued a deadline to the City that untreated well water will not be permitted to be used at the affected parcels revealing high levels of arsenic on that affected property located in the City of Battle Creek unless the City can assure the Health Department that City water service will be available within the next approximately two years. The parties anticipate that this same warning will be issued to Emmett Township for the affected parcels and require that it likewise assure the Health Department that municipal water service will be available to the Emmett Township properties revealing high levels of arsenic within the next two years.

C. Twelve Emmett Township parcels revealed arsenic during Health Department water testing, all abutting South Shore Drive. Additional parcels that are not yet developed are also encompassed within this area. In total, there are fourteen Emmett Township locations, separated into twenty-two parcel numbers which are the subject of this Agreement, which revealed arsenic during Health Department water testing, and they all abut South Shore Drive. Those affected Emmett Township parcels are identified in the attached Exhibit A, which is incorporated into this Agreement (“Affected parcels”). There is one parcel which revealed elevated levels of arsenic in the water that is located in the City of Battle Creek, which is separated into two separate addresses and multiple parcel numbers as it includes multiple tenants, which is identified in the attached Exhibit B, which is incorporated into this Agreement.

D. The City intends to construct certain improvements consisting of installation of a new water main bounded on the west by I-194/M-66, south by Columbia and on the north and east by the Kalamazoo River as an extension of City’s municipal water service in the Spring/Summer of 2016 (“City Improvements”), and Emmett Township desires that the water main and City water service be extended to those Affected Parcels as identified on Exhibit A, the improvements which are more particularly described in Exhibit “C,” attached hereto, and incorporated into this Agreement (“Emmett Township Improvements.”). The Parties believe that since City and Emmett

Township have a shared governmental goal and City has the expertise, knowledge, and resources to design the project and act as the owner's representative on this project, and bid out the construction of the project, that it is most beneficial for the City to undertake this project, with Emmett Township then compensating the City for costs and expenses as provided below. This cooperative effort will allow the City to construct in a more direct route to extend municipal water service to the City Exhibit B properties, rather than having to pursue the more costly route of crossing M-66. The Parties believe that this approach will be cost-saving for both Emmett Township and the City, provided that Emmett Township ensures that it will be mandatory that the Exhibit A Affected Parcels hook up to City water service, rather than each municipality individually undertaking the work as separate projects.

E. The City acknowledges and agrees that the Emmett Township Improvements will benefit the public by making City's water main extension to Exhibit B parcels a part of a larger project with the City Improvements and is in furtherance of its continued cooperative efforts with Emmett Township, therefore it has designed and bid, as an alternate plan to the City Improvements, the construction of the improvements in exchange for Emmett Township's reimbursement of Seventy-Five Percent (75%) of the below specified costs. It is estimated that the Emmett Township portion of the water main construction portion of the project for those parcels in Exhibit A is Two Hundred Forty-Two Thousand Dollars (\$242,000). Pursuant to this Agreement, City would pay Twenty-Five Percent (25%) of Emmett Township's actual cost of crossing Columbia Avenue, and that portion of the water installation necessary to reach the City's parcel. The roads in Emmett Township affected by this project will have total asphalt replacement, the cost of which is included in the construction project bid, however cost for this portion of the project will be solely Emmett Township's responsibility (hereafter "Emmett Township Improvements"). It is estimated that the City portion of the water main construction project for those parcels in Exhibit B is Ninety-Four Thousand Dollars (\$94,000).

F. The City and Emmett Township agree that it is in their mutual best interest to simultaneously construct the improvements to obtain operational efficiencies and economies of scale, all as more particularly described herein.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

**1. EMMETT TOWNSHIP IMPROVEMENTS.** The Emmett Township Improvements shall include all services necessary to properly complete the physical improvements described in Exhibit "C," at least to applicable industry standards, and shall include, but shall not necessarily be limited to, design/engineering, surveying, cost estimation, bidding, preparation of project documentation (including contract forms, general conditions, project manual, etc.), acquisition of permits and other necessary approvals, excavation, demolition, construction, project close-out and transfer of applicable warranties.

**2. CITY RESPONSIBILITIES.** Subject to Paragraph 3 below, the City shall be fully and solely responsible, either directly or through contracts with third parties, for the proper

performance of all Emmett Township Improvements. The City shall be responsible for the following:

- Design. The City has prepared a final design for the Emmett Township Improvements, working with Emmett Township with respect to same, which Emmett Township has approved, and which will be used for bidding purposes.
- Cost Estimates. The City prepared a final cost estimate for the Emmett Township Improvements using qualified and experienced estimators. Emmett Township affirms that it approved the final cost estimate before the project is put out to bid as an alternate plan to the City Improvements. The cost estimates include all project costs attributable to Emmett Township as described above, and are identified by line item construction costs.
- Bidding. The City has prepared drawings, specifications, contract forms and other bidding documents as an alternate to the public bid for the City Improvements. Emmett Township is aware of the City public bidding process and agrees that it satisfies Emmett Township's bidding requirements.
- Trade Contracts. Emmett Township acknowledges that trade contracts between the City and individual trade contractors are consistent with its requirements, including with respect to the timeline and standard of performance. Emmett Township also acknowledges that the City trade contracts include requirements related to performance and payment bonds, insurance, enforcement and processes regarding change orders, and other matters required by law. The City shall provide a copy of the trade contracts to Emmett Township, upon request.
- Construction Oversight. Subject to Paragraph 3, the City will provide daily supervision of the construction of any Emmett Township Improvements to use its best efforts to ensure timely completion of the work, and to inform Emmett Township of any issues regarding progress or performance. The City will conduct periodic project meetings, shall invite Emmett Township to attend same.
- General Updates. The City shall provide Emmett Township with periodic updates on the progress of the Emmett Township Improvements and shall further respond to all reasonable requests from Emmett Township regarding same. Emmett Township shall have reasonable access to City representatives participating in the Emmett Township Improvements and to all related information and documentation.

**3. EMMETT TOWNSHIP RIGHTS AND RESPONSIBILITIES.** Emmett Township shall have rights and responsibilities including, but not necessarily limited to, the following:

- Payment. Emmett Township shall be responsible to pay the City for Seventy-Five Percent (75%) of the following specified costs: It is estimated that the Emmett Township portion of the water main construction portion of the project for those parcels in Exhibit A is Two Hundred Forty-Two Thousand Dollars (\$242,000). Pursuant to this Agreement, City would pay Twenty-Five Percent (25%) of Emmett Township's actual cost of crossing Columbia Avenue, and that portion of the water installation necessary to reach the City's parcel. Emmett Township shall be responsible to pay the City for One Hundred Percent (100%) of the following costs: The roads in Emmett Township affected by this project will have total asphalt replacement, the cost of which is included in the construction project bid.

Emmett Township shall not be responsible to pay any portion of the design and construction engineering, which shall be excluded from the total cost of the Emmett Township Improvements. City shall provide Emmett Township with an invoice for its portion of the work, as described herein, and Emmett Township shall remit payment in full for the work within thirty (30) days after receipt.

- Termination. Emmett Township shall, at any time prior to bid award of the alternate plan to the City Improvements, have the right to terminate this Agreement and, in such an event, Emmett Township shall pay to the City its actual expenses incurred to the date of termination.
- Mandatory Hook-Up to City Water Service for Exhibit A Parcels. Emmett Township shall require that the hookup to City municipal water service shall be mandatory for all developed parcels identified on attached Exhibit A upon completion of Emmett Township Improvements. For those parcels identified on Exhibit A that are not yet developed, Emmett Township shall ensure that if and when developed, hookup to City municipal water service shall be mandatory. In order to ensure this, Emmett Township Board, in compliance with its ordinance, Section 58-38 (h)(1) shall make a determination that once this public water service construction project is complete, that no new private wells shall be drilled to provide such water supply and such structures shall be immediately connected to City water service, because of an Emmett Township Board finding that a health hazard exists or is fairly imminent from the existing water supply.
- Access. Emmett Township shall at all times have reasonable access to the project site, City representatives, and all project documentation/information.

**4. SIMULTANEOUS, SEPARATE PROJECTS.** It is acknowledged and understood that a primary element to this Agreement is that the City Improvements and the Emmett Township Improvements will occur simultaneously, for the primary purpose of reducing the costs to both parties through shared processes and efforts, but that the two projects are otherwise separate and distinguishable. Emmett Township shall not be required to pay for any pre-construction or construction-phase costs or expenses related solely to the City Improvements, nor shall Emmett Township be responsible to pay the design and construction engineering cost attributed to the Emmett Township Improvements. Moreover, with respect to design, bidding, estimating, oversight and other similar costs, the City shall clearly delineate and apportion those

costs between the City Improvements and the Emmett Township Improvements. The parties will meet periodically, or upon request of either party, to discuss the apportionment and reasonableness of such costs.

**5. PROJECT COSTS.** Emmett Township's total construction costs shall not exceed: A) Seventy-Five percent (75%) of Emmett Township portion of the water main construction portion of the project for those parcels in Exhibit A, which is the actual cost of crossing Columbia Avenue, and that portion of the water installation necessary to reach the City's parcel; and B) 100% of the total asphalt replacement of the roads in Emmett Township affected by this construction project, except and to the extent of any change orders approved by Emmett Township in writing prior to the performance of applicable added or different work.

**6. MISCELLANEOUS.**

6.1 Neither party shall assign this Agreement nor its rights and duties hereunder nor any interest herein without the prior written consent of the other party.

6.2 This Agreement and any other documents incorporated by reference constitutes the entire agreement between the parties regarding the performance of services described herein and supersedes any prior or contemporaneous understandings or agreements with respect to such services.

6.3 None of the terms and provisions of this Agreement may be modified or amended in any way except by an instrument in writing executed by authorized representatives of City and Emmett Township.

6.4 Failure by either party at any time to require performance by the other party or to claim breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach nor affect the validity and operation of this Agreement, nor prejudice either party with regard to any subsequent action to enforce the terms of this Agreement.

6.5 Any notice or other communications required or permitted under this Agreement shall be sufficiently given if in writing and delivered personally or sent by confirmed facsimile transmission, confirmed email to an authorized representative, registered or certified mail (postage prepaid with return receipt requested) addressed to the party's principal place of business or such other address of which the parties may have given notice.

Unless otherwise specified herein, notices shall be received: (a) on the date delivered, if delivered personally, confirmed facsimile transmission, or confirmed email; (b) three (3) business days after being signed for, if sent by registered or certified mail.

6.6 This Agreement shall be interpreted and enforced under the laws of the State of Michigan applicable to contracts made and to be performed entirely within such State without giving effect of choice of law principles of such State. The parties irrevocably

consent to the jurisdiction of the Courts of Michigan to determine all issues which may arise under this Agreement.

6.7 If any provision of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected, impaired or prejudiced thereby.

6.8 Neither party hereto shall be liable to the other for any loss of business or any other damages caused by an interruption of this Agreement where such interruption is due to circumstances outside of the reasonable control of that party, which may include, war, rebellion or insurrection; an act of God; fire; government statute, order or regulation prohibiting the performance of this Agreement; riots; strikes, labor stoppages, lockouts or labor disputes.

6.9 The Paragraph headings of this Agreement are for convenience of the parties only and in no way alter, modify, amend, limit or restrict contractual obligations of the parties.

6.10 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which constitute one and the same agreement.

6.11 Nothing in this Agreement shall be intended to confer third party beneficiary status or rights, pursuant to MCL 600.1405 or under the common law, to any person or entity that is not a party to this Agreement. Nothing herein shall be interpreted to reduce or eliminate either party's defense of governmental immunity.

6.12 The Recitals are incorporated into this Agreement as if fully restated herein.

6.13 This Agreement has been duly authorized, executed and delivered by the parties and constitutes a legal, valid and binding obligation upon each of them, enforceable in accordance with its terms. Each person placing his/her signature below represents and warrants that he/she is the signatory duly authorized to execute this Agreement on behalf of the City or Emmett Township, as is respectively applicable.

**CITY OF BATTLE CREEK,**

By: \_\_\_\_\_

Rebecca L. Fleury

Its: City Manager

Dated: \_\_\_\_\_

**EMMETT CHARTER TOWNSHIP,**

By: \_\_\_\_\_

Tim Hill

Its: Supervisor

Dated: \_\_\_\_\_