

LATERAL SEWER SYSTEM

OPERATION AND/OR MAINTENANCE AGREEMENT

THIS AGREEMENT, dated this ____ day of _____, 202____, by and among the County of Genesee, a Michigan municipal corporation, acting by and through its Drain Commissioner, in his capacity as the duly appointed and acting "County Agency", with principal offices at G-4610 Beecher Road, Flint, Michigan 48532, and _____, a Michigan municipal corporation, with principal offices at _____, Michigan (hereinafter referred to as "the Municipality"). The County Agency and the Municipality are sometimes hereafter collectively referred to as "the Parties".

WITNESSETH

WHEREAS, Act 342 provides that a county board of commissioners may authorize and direct that there be established a system or systems of water, sewer, or sewage disposal improvements and services within or between cities, villages, townships, charter townships or any duly authorized and established combinations thereof, within or without the County; and

WHEREAS, Section 2 of Act 342 authorizes the County to operate, repair and/or manage sewer or sewage disposal improvements, facilities and services (i.e., Lateral Sewer System) of any unit of government (i.e., municipality) by agreement entered into between the County and said unit of government; and

WHEREAS, Section 5 of Act 342 authorizes the County Agency to enter into agreements with units of government for the collection by the County Agency of connection charges (i.e., capital improvement fees), and rates, or assessments for sewer services; and

WHEREAS, the Municipality seeks to have the County Agency perform the services the Municipality has designated on the attached schedules, according to the terms stated below and in the attached schedules, as may be modified during the term of this Agreement as provided below.

NOW THEREFORE, for the mutual consideration and purposes set forth above, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

I. DEFINITIONS

The terms below are defined herein as follows:

- A. Act 222: shall mean 2001 PA 222, as amended.
- B. Act 342: shall mean 1939 PA 342, as amended.
- C. Act 425: shall mean 1984 PA 425, as amended.
- D. CMOM: shall mean the Capacity Management and Operations Maintenance standards of the County Agency.
- E. Fee Schedule: A schedule of fees charged by the County Agency for services, including those services set forth herein, which is posted at the County Agency's primary office and that may be updated from time-to-time by the County Agency. The Fee Schedule that is anticipated to be adopted and effective on January 1, 2026, is hereby incorporated herein by reference.
- F. Force Majeure: Shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State, or any civil or military authority, insurrection, riots, epidemics, pandemics, endemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to

machinery, pipelines or canals, partial or entire failure of a treatment facility, or on account of any other causes not reasonably within the control of the party claiming such inability.

G. Hot Spot(s): An area or areas determined by the County Agency within the Municipality's sewer system that experiences frequent blockages or needs frequent cleaning. Examples include, but are not limited to, areas of flat grade and the accumulation of fats, oils, and grease. If an area needs to be cleaned or flushed at a frequency of greater than or equal to once every ninety (90) days to remove obstructions, it shall be automatically considered a Hot Spot as that term is used herein.

H. Inflow and Infiltration Policy: The Inflow and Infiltration Policy shall mean the September 14, 2022, policy adopted by the County Agency, and any future amendments or revisions to said policy.

I. Maintenance: Such activities, as are identified in the attached Exhibit, that have been selected by the Municipality to be done by the County Agency to keep the Municipality's System of Lateral Sewers reasonably functioning in accordance with the CMOM standards of the County Agency. "Maintenance" activities include an inspection of the Municipality's System of Lateral Sewers to ascertain its current condition and to make reasonable repairs as prescribed in the attached Exhibit A. Maintenance does not include upgrades, improvements, or capital replacement of the System of Lateral Sewers, lift stations, and other similar assets that are recommended by the County Agency as part of its inspection services.

J. Operation: To manage and administer the general business activities of the System of Lateral Sewers, including such activities, where requested, of issuing permits, and collecting fees, for connection of users or customers of the System of Lateral Sewers; billing, and collecting payments from said users or customers, for sewage disposal services received by them

at the rates set by the Municipality; remitting said payments to the Municipality, except as otherwise provided herein; and providing an accounting for said payment to the Municipality.

It also includes responding to, and making a record of, calls for service from the Municipality or users or customers of the Municipality; receiving complaints for property damage and/or personal injury due to backups or overflows in the System of Lateral Sewers; referring those complaints to the designated official or employee of the Municipality; and performing Michigan Utility Notification Center, commonly known as "Miss Dig" services.

K. Satellite Sewer System: Is a wastewater collection system that is owned and either operated by the Municipality or a third-party contracted by the Municipality with the exception of the County Agency, and discharges into the County Agency's interceptor mains to be treated at the County Agency's wastewater treatment facility.

L. Service Lead(s): The sewer line from the structure to the lateral sewer.

M. Sewage Disposal System Event: Shall have the same meaning as defined by Act 222, as hereinafter amended. Only for a point of reference, the current definition of Sewage Disposal System Event as set forth in Act 222, which has been codified into Sec. 16 of 1964 PA 170, reads as follows:

"Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:

- (i) An obstruction in a Service Lead that was not caused by a governmental agency.
- (ii) A connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout.
- (iii) An act of war, whether the war is declared or undeclared, or an act of terrorism.

N. System of Lateral Sewers: The sewer lines owned by the Municipality that collect and transport domestic and non-domestic wastewater from parcels that serve buildings, structures, , homes, businesses, institutions, etc., to the interceptor mains of the County. The System of Lateral Sewers does not include Service Leads from the Lateral Sewer to the building or structure, including the portion located in the right-of-way.

II. SCOPE OF SERVICES

The scope of services under this agreement will vary according to whether the Municipality has contracted for Operation and/or Maintenance services by the County Agency. The Municipality has the option of selecting such services as it desires from the respective schedules of services set forth on Exhibit A that is attached hereto and incorporated by reference herein. The Municipality is required to state either "Yes" or "No" next to each service offered by the County Agency. By selecting "Yes" the Municipality is agreeing that the County Agency will be performing that service and by selecting "No" the Municipality agrees that the County Agency will not perform that service.

The description of the type of services provided is as stated on the schedule of service. If selected "Yes" by the Municipality, the County Agency is responsible for performing such services for the Municipality in accordance with applicable federal, state or Genesee County laws, regulations or standards. Otherwise, the County Agency shall perform such services in the reasonable and customary using best practices similar to other governmental agencies in Michigan. However, the performance of "Operation and/or Maintenance" services by the County Agency shall not impose on it the liability of the Municipality as owner of the System of Lateral Sewers for: 1) unlawful discharges into said system or inflow and infiltration into said system not caused by the act or omission of the County Agency; and/or 2) property damage and/or physical injury

caused by backup or overflow in the system the cause of which was an act or omission other than that of the County Agency.

If the Municipality elects to have the County Agency perform Maintenance services, the County Agency shall not be responsible for any Sewage Disposal System Event because of Hot Spots or the Municipality refusing to upgrade, improve, or capital replacement of the System of Lateral Sewers, lift stations, and other similar assets as recommended by the County Agency as part of its inspection services.

Upon written request by the Municipality, the County Agency will perform repair on Service Leads that are located within the right-of-way. The Municipality shall be responsible for the actual cost of the repair as invoiced by the County Agency.

III. RIGHT-OF-WAYS

If the Municipality elects to have the County Agency provide Maintenance services under this Agreement, the Municipality agrees that it will grant the County Agency the right to use its streets, highways, other public places and public easements for the purpose of performing the Maintenance services under this Agreement.

IV. CUSTOMER RECORDS

The Municipality shall maintain complete records of the number, sizes of service connections, and registered property owner for each parcel that is connected to the System of Lateral Sewers ("Primary Information"). Records may also include information typically maintained by a public utility, including, but not be limited to, GIS information, as-built drawings, sewer models, city works, and similar information ("Secondary Information"). The Municipality shall provide Primary Information to the County Agency upon request or monthly at the sole option of the County Agency. Secondary Information shall be provided to the County Agency by the

Municipality upon request by the County Agency or monthly at the sole option of the County Agency. In addition, the Municipality shall also furnish at the County Agency's written request the number of Residential Equivalent Units ("REU") for each water or sewer account located in the Municipality or serviced by the Municipality pursuant to Act 425 or similar public act.

V. FEES

The fees payable to the County Agency for the services provided under this Agreement shall be in the amount set forth in the schedule of service selected by the Municipality, as may be periodically modified as provided herein. The County Agency shall invoice the Municipality for all fees, which shall be delivered to the Municipality by the Agency by first class mail, email, or other mutually acceptable method. All fees shall be paid by the Municipality to the County Agency at the address set forth in Section X, below, by any method agreeable to the County Agency pursuant to the terms as stated on the invoice set by the County Agency to the Municipality.

Except for Items 2 and 3.B. of EXHIBIT A, which may be adjusted annually, fees in each schedule are reviewed on a five-year basis (the first opportunity for the County Agency to adjust the rates set forth herein is scheduled for January 1, 2031), at which time the fees will be set for the next five-year period. If determined by the County Agency to be inadequate, the fees for that service may be increased upon ninety (90) day advance written to the Municipality. If the fee increase for the service exceeds by more than five percent (5%) the fee for the immediately preceding five (5) year period, the Municipality may elect to cancel that service for the balance of the term of this Agreement as is stated in Section VII, which cancellation would be effective with the date a scheduled increase would cause the total of all costs to exceed by more than five percent (5%) the total costs of the preceding five (5) years.

The balance of any unpaid fees owed by the Municipality under this Agreement for services provided by the County Agency must be paid in full at the time the Municipality elects to cancel any services of this Agreement as provided above. Following notice of the cancellation of any service by the Municipality, or if any fees are due and unpaid within six (6) months of the end of this Agreement, the County Agency may escrow any funds it has collected but not remitted to the Municipality as security for the payment of the fees due to the County Agency for its services under this Agreement.

In addition, if the Municipality does not pay the fees owed for services provided by the County Agency when due, there shall be added a penalty of one percent (1%) per month for each month or fraction thereof for which the same remains unpaid. The County Agency shall have the right to utilize any method permitted by law, including, but not limited to, those remedies set forth in Section 5a of Act 342, being MCL § 46.175a or by this Agreement for the collection of the fees owed to it.

VI. INSURANCES

The County Agency is insured for its errors, omissions, and negligent acts regarding the services provided herein. If there is a Sewage Disposal System Event as a result of the Maintenance provided by the County Agency, the County Agency will accept and defend any claim provided pursuant to Act 222 with the exception of Hot Spots. If the County Agency has recommended replacement or upgrade of any System of Lateral Sewers or sanitary lift station(s) that are not considered Maintenance and the Municipality has elected not to replace or upgrade the System of Lateral Sewers or sanitary lift station(s), the Municipality acknowledges that it shall be responsible for to defend any claim and may be named in any Sewage Disposal System Event

lawsuit. The Municipality is therefore required to insure its System of Lateral Sewers or sanitary lift station(s).

VII. TERM OF AGREEMENT

This Agreement shall become effective after approval by the governing body of the Municipality and by the County Agency and execution by the authorized officials of the Parties. It shall continue until 11:59 p.m., local time, on December 31, 2035, unless any service is earlier terminated as authorized by Section V, above or if the State of Michigan adopts legislation governing Satellite Sewer Systems or similar legislation, then this Agreement may be terminated by the County Agency by providing thirty (30) days' notice to the Municipality. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, if any.

VIII. ENFORCEMENT OF COUNTY STANDARDS

The Municipality shall adopt, maintain and enforce an ordinance that sets minimum standards or requirements for: a) connection of buildings to the Municipality's System of Lateral Sewers; b) the types of sewage that may be properly discharged into said system; c) the amount and terms of payment for connection fees and sewage disposal service rates; and d) penalties and enforcement mechanisms for violations of the above provisions.

The minimum standards prescribed by said ordinance shall be not less than those established by the Ordinance, Rules and Regulations of the Genesee County Drain Commissioner, as County Agency, as may be amended from time to time, which include, and not be limited to the following: the County Agency's Industrial Pretreatment Program ("IPP"); the Inflow and Infiltration Policy; and the Genesee County Sewer Use Ordinance.

The County Agency agrees that if the Municipality requests the County Agency to enforce IPP standards against a discharge point originating within the Municipality, the County Agency will enforce the IPP standards at no cost the Municipality.

The Municipality specifically acknowledges and agrees that should it select "No" to having the County Agency perform Maintenance services for the Municipality under this Agreement, then the Municipality must still acknowledge in writing that it is responsible to conform to the requirements of this CMOM policy and the County Agency's Inflow and Infiltration Policy.

The Municipality shall provide a copy of any proposed ordinance or amendment to an ordinance that is intended to satisfy the requirements of this Agreement, to the County Agency for review and comment prior to the enactment of said ordinance or amended ordinance. The review and comment by the County Agency shall not relieve the Municipality of its obligation to enact an ordinance which complies with the requirements of this Agreement. Nor shall such review and comment cause a waiver of the obligation of the Municipality to include in its ordinance any terms required by this Agreement.

IX. INDEMNIFICATION OF COUNTY AGENCY

In addition to Hot Spots and the Municipality not replacing or upgrading the System of Lateral Sewers as recommended by the County Agency, the Municipality agrees to defend, indemnify, save and hold harmless the County of Genesee, Michigan, its Boards, Departments, Commissions, officers, agents, employees, including the County Agency, its officers, agents, and employees, from and against any and all claims, demands or causes of action, whether based in contract, statute or tort, for economic and/or non-economic loss, due to personal injury or property damage, or both, arising out of the subject matter of this Agreement and not due to an act or

omission of the County Agency or some other municipality. This indemnification includes, but is not limited to, liability for a Sewage Disposal System Event, if the “substantial proximate cause” of the injury or damage was not an act or omission of the County Agency or some other municipality. It is expressly acknowledged and agreed that the Municipality is the sole “appropriate governmental agency” under Act 222 for its System of Lateral Sewers. The County Agency agrees to refer any claim, demand, or cause of action submitted to it and arising out of an alleged Sewage Disposal System Event to the designated officer or employee of the Municipality. Within ten (10) business days of receiving a claim, demand, or cause of action, the County Agency will notify the Municipality as to whether the County Agency will defend the claim, demand, or cause of action.

In the event of a dispute between the County Agency and the Municipality with respect to the “substantial proximate cause” of the overflow or backup, or whether the cause of injury or damage was otherwise due to an act or omission of the County Agency or some other municipality, the matter will be submitted to a committee consisting of one (1) representative appointed by the Municipality, one (1) representative appointed by the County Agency and one (1) representative mutually selected by the Municipality and the County Agency that has a worked in or adequate knowledge and operation of sewer systems. If the committee is unable to resolve the dispute, the Parties are left to their available remedies at law.

X. NOTICES

Unless otherwise provided herein, any notice, communication (other than invoices for fees and payment of any fees pursuant to an invoice provided to the Municipality by the County Agency), request, reply or advice (herein severally and collectively, for convenience, called “Notice”) herein provided or permitted to be given, made or accepted by any party to any other

party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the Municipality:

If to the County Agency: Genesee County Water and Waste Services
ATTN: Director, Division of Water and Waste Services
G-4610 Beecher Road
Flint, Michigan 48532

The Parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party hereto.

XI. DISREGARDING TITLES

The titles of the sections set forth in this Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

XII. COMPLETE AGREEMENT

This Agreement, and any additional or supplementary documents incorporated herein by specific reference, contains all the terms and conditions agreed upon by the Parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the Parties hereto.

XIII. VENUE AND GOVERNING LAW

All amounts due under this Agreement, including, but not limited to, payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due at the location of the principal administrative offices of the County Agency. It is specifically agreed among the Parties to this Agreement that Genesee County, State of Michigan is the place of performance of this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in the Genesee County Circuit Court.

This Agreement shall be governed by, interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Michigan.

XIV. CONSTRUCTION

This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the Parties hereto. This Agreement therefore shall not be construed against any party to this Agreement.

XV. MODIFICATION

This Agreement shall not be modified, altered, or amended except through a written amendment signed by a duly authorized representative of both the Municipality and the County Agency.

XVI. SEVERABILITY

The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the Parties hereto shall be construed and remain in force accordingly.

XVII. NON-BENEFICIARY AGREEMENT

This Agreement is not intended to be a third-party beneficiary agreement and confers no rights on anyone other than the Parties hereto.

XVIII. FORCE MAJEURE

If by reason of Force Majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, other than the obligation of the Municipality to make the payments required under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome

such inability with all reasonable dispatch. If the event results in an insurance claim and settlements are authorized, the settlement proceeds shall be in the name of the County Agency and the name of the Municipality. The County Agency and the Municipality shall mutually determine if the County Agency, the Municipality, or both shall be entitled to a share of the insurance proceeds.

XIX. CERTIFICATION OF AUTHORITY TO SIGN AGREEMENT

The persons signing on behalf of each of the Parties hereto certify by their signatures that they are authorized to sign this Agreement on behalf of such Party and that this Agreement has been authorized by such Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered, by their respective duly authorized officers, all as of the day and year first above written.

APPROVED AS TO FORM

Attorney for

Municipality Supervisor/Mayor

Municipality Clerk

COUNTY OF GENESEE

By and through its:
COUNTY AGENCY

Jeffrey Wright, Genesee County
Drain Commissioner