

INTERGOVERNMENTAL AGREEMENT FOR BIG MARSH INTERCOUNTY DRAIN

This Agreement is made on _____, 2013, by and between the following parties: The Big Marsh Intercounty Drain Drainage District (“Drainage District”), by and through its Drainage Board, a municipal corporation whose address is care of the Michigan Department of Agriculture and Rural Development, P.O. Box 30017, Lansing, Michigan 48909; Calhoun County, a municipal corporation whose address is 315 West Green Street, Marshall, Michigan 49068; the City of Battle Creek, a municipal corporation whose address is 10 North Division Street, Battle Creek, Michigan 49014; and Emmett Charter Township, a municipal corporation whose address is 621 Cliff Street, Battle Creek, Michigan 49014.

Recitals

Whereas, the Big Marsh Intercounty Drain (“Drain”) and the Drainage District are, respectively, an existing intercounty drain and drainage district duly established under the provisions of Michigan Public Act 40 of 1956, and under the jurisdiction and control of the Big Marsh Intercounty Drain Drainage Board (“Drainage Board”), comprised of the Calhoun County Water Resources Commissioner, the Kalamazoo County Drain Commissioner and the Director of the Michigan Department of Agriculture and Rural Development, acting through her designated deputy; and

Whereas, on August 19, 2009, a petition seeking maintenance and improvement of the Drain in accordance with Michigan Public Act 40 of 1956 was signed by, and thereafter submitted to the Drainage Board on behalf of, the Calhoun County Road Commission; and

Whereas, following receipt of the Calhoun County Road Commission’s petition, the Drainage Board retained the services of Civil Engineers, Incorporated (“CEI”), to conduct a survey of the Drain, to identify and report areas of concern and to make recommendations with respect to the alternative extent, routes and types of construction for possible Drain projects; and

Whereas, CEI issued a report entitled “Minges Brook/Big Marsh Improvements” dated February 15, 2011, revised on March 31 and May 6, 2011, (“Engineer’s Report”) in which it identified drainage problems both within and outside of the Drainage District and made recommendations with respect to correcting those problems; and

Whereas, before the Drainage Board convenes as a board of determination to consider whether a drain project as requested in the Calhoun County Road Commission’s petition is necessary and conducive to public health, convenience or welfare, Calhoun County, City of Battle Creek and Emmett Charter Township have requested the opportunity to propose to undertake at their expense, work on, and in the vicinity of, the Drain to repair, maintain and improve it, address concerns identified in the Engineer’s Report and thereby reduce the potential for flooding; and

Whereas, Calhoun County, City of Battle Creek, Emmett Charter Township and the Big Marsh Intercounty Drain Drainage District are all municipal corporations as defined by MCL 124.1 empowered to enter into contractual undertakings with one another for the performance of services which each would have the power to perform separately, MCL 124.2; and

Whereas, MCL 280.200 provides that, in lieu of assessing the cost of maintenance and repair of any drain to parcels of land within any county, city or township, the Drainage Board may contract relative to the that cost with any county, city or township or a combination thereof in which the drain is located in whole or in part, or whose residents use the drain for drainage purposes; and

Whereas, MCL 280.431 authorizes the Drainage Board to enter into contracts and agreements with public corporations in respect to any matter connected with the construction, operation or maintenance of any flood control or drainage project or combination thereof, which contracts or agreements may provide that work done by the public corporation shall relieve it in whole or in part from assessments for the cost of the project; and

Whereas, all parties to this agreement are desirous of providing suitable drainage to lands and public roads within the Drainage District and to the residents of Calhoun County, the City of Battle Creek and Emmett Charter Township in an expeditious and cost efficient manner;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree to the following:

Agreement

1. **Incorporation of Recitals**. Each of the Recitals set forth above are incorporated as part of this Agreement.
2. **Development of Drain Repair, Maintenance and Improvement Work Plan**. Within sixty (60) calendar days after execution of this Agreement, Calhoun County, the City of Battle Creek and Emmett Charter Township, jointly with one another, at their cost allocated as mutually agreed between them and following consultation with the Drainage District's engineers, shall develop a work plan detailing repair, maintenance and improvement work proposed to adequately provide for the management of storm water runoff both in and outside of the Drainage District ("Work Plan"). The Work Plan shall be submitted to the Drainage Board upon completion.
3. **Required Work Plan Provisions**. The Work Plan shall include, but not be limited to, provisions requiring: (a) that all work proposed to be undertaken and all entities and individuals proposed to perform work within the Drainage District be acceptable to the Drainage Board (b) that the work to be performed shall be in accordance with plans and specifications approved by the Drainage Board prior to the commencement of construction, (c) that after commencement of construction any alterations or

modifications to the work to be performed be approved by the Drainage Board or its designated engineer before those alterations or modifications are made, (d) that the agreement shall be subject to the legislative approval of each respective municipality, (e) that all structures and improvements made to the Drain, regardless of kind or character, shall become the sole and separate property of the Drainage District upon completion of the work specified in the Work Plan; however, the underlying fee title to the property, if applicable shall remain held by the respective party to this agreement, subject to an easement as provided by MCL 280.6, and (f) require that work begin within one (1) calendar year of when the Work Plan is approved by the entities and shall be completed and in service within three (3) calendar years of the date the Work Plan is approved by the entities.

4. **Board of Determination Proceedings.** Upon receipt of the Work Plan, the Drainage Board shall schedule and notice a meeting of the board of determination as provided by law. At the hearing of the board of determination, the Drainage Board shall determine whether a drain project as requested in the petition referred to in the Recitals portion of this Agreement is necessary for the good of the public health convenience or welfare. In making that determination, the Drainage Board shall consider whether the Work Plan is acceptable to it and whether, if undertaken, the work specified in the Work Plan will render the project requested in the petition not necessary and conducive to public health convenience or welfare. If the Work Plan is unacceptable to the Drainage Board and a determination of necessity is made, this Agreement shall thereupon be automatically terminated and impose no further obligations upon any party. If the Work Plan is acceptable and approved by the Drainage Board and a determination of no necessity is made, Calhoun County, the City of Battle Creek and Emmett Charter Township will be contractually obligated to perform, subject to the legislative approval of each respective municipality, or have performed, at their expense as allocated within the Work Plan, all of the activities described in the Work Plan and this Agreement shall continue in full force and effect.
5. **Payment of Costs on Work Plan Approval.** If the Work Plan is approved by the Drainage Board, all costs heretofore or hereafter incurred by the Drainage District and/or the Drainage Board in connection with the Drain, the petition referred to in the Recitals portion of this Agreement and the Work Plan shall be paid in full by Calhoun County, the City of Battle Creek and Emmett Charter Township as set forth in the Work Plan. Costs payable under this provision shall be those specified in MCL 280.261 as applicable.
6. **Temporary Access and Permits.** If the Work Plan is approved by the Drainage Board, it will grant Calhoun County, the City of Battle Creek and Emmett Charter Township and their employees, agents, contractors and other representatives the right to enter into the Drainage District and Drain for the purpose of performing the activities described therein. To the extent of its authority, the Drainage Board will issue all permits necessary to performance of the work it approves. The Drainage Board's grant of access and permits pursuant to this Agreement will not excuse Calhoun County, the City of Battle Creek and Emmett Charter Township from obtaining any other permits or approvals required by any other unit of government or state, local or federal regulatory agency, or private party.

7. **Insurance.** If the Work Plan is approved by the Drainage Board, Calhoun County, the City of Battle Creek and Emmett Charter Township will provide, and require all contractors it engages to implement the Work Plan to provide, liability and Worker's Compensation insurance effective throughout the course of their activities in the Drainage District and Drain. Before these activities are commenced, the Drainage District shall be provided with a separate owner's liability insurance certificate evidencing all coverages and naming as insureds the Drainage District, the Drainage Board, Kalamazoo County, and their employees, affiliates, and agents. The insurance company certificate shall promise that not less than thirty (30) days prior written notice of any cancellation or material change will be provided, with "material change" defined as any change to the policy of insurance that affects or may affect the Drainage District or any provision of this Agreement.
8. **Reimbursement and Indemnification.** Except as otherwise prohibited by law, Calhoun County, the City of Battle Creek and Emmett Charter Township will reimburse, defend, indemnify and hold the Drainage District, the Drainage Board and Kalamazoo County harmless for and from all actions, claims, demands, liabilities, penalties, sanctions, fines, damages, costs and expenses, including but not limited to actual attorney fees, which are imposed on, or incurred by, one or any combination of them as a result of, or in any way relating to, the Work Plan or activities undertaken in furtherance of it. This obligation to reimburse, indemnify and hold harmless shall continue beyond completion of the Work Plan.
9. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and shall not be amended except in a writing executed by both parties.
10. **Applicable Law.** This Agreement shall be governed by the laws of the State of Michigan which shall apply to its interpretation and to the resolution of any disputes arising out of the matters set forth in this Agreement.
11. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall not be affected thereby, and those remaining provisions shall be valid, legal and enforceable to the fullest extent permitted by law if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.
12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed original and such counterparts shall constitute one and the same instrument. The Agreement is only effective when executed by all parties.

IN WITNESS WHEREOF, the Big Marsh Intercounty Drain Drainage Board, Calhoun County, the City of Battle Creek and Emmett Charter Township have each caused this Agreement to be executed as of the day and year first above written.

**BIG MARSH INTERCOUNTY DRAIN
DRAINAGE BOARD**

Dated: _____

By: Braden Harrington
Its: Chair

STATE OF MICHIGAN)
)ss
COUNTY OF INGHAM)

Acknowledged by Braden Harrington, Chair and authorized representative of the Big Marsh Intercounty Drain Drainage Board, before me on the ___ day of _____, 2013.

Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

CALHOUN COUNTY

Dated: _____

By:
Its:

As authorized by its governing board on _____, 2013.

STATE OF MICHIGAN)
)ss
COUNTY OF CALHOUN)

Acknowledged by _____, _____ (title) and authorized representative of Calhoun County, before me on the ___ day of _____, 2013.

Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

CITY OF BATTLE CREEK

Dated: _____

By:
Its:

As authorized by its governing board on _____, 2013.

STATE OF MICHIGAN)
)ss
COUNTY OF CALHOUN)

Acknowledged by _____, _____ (title) and authorized representative of City of Battle Creek, before me on the ___ day of _____, 2013.

Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

EMMETT CHARTER TOWNSHIP

Dated: _____

By:
Its:

As authorized by its governing board on _____, 2013.

STATE OF MICHIGAN)
)ss
COUNTY OF CALHOUN)

Acknowledged by _____, _____ (title) and authorized representative of Emmett Charter Township, before me on the ___ day of _____, 2013.

Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____