

## AGREEMENT REGARDING CAPACITY LEASE

This Agreement Regarding Capacity Lease (Agreement) made among the Township of Blair, the Township of Acme, the Charter Townships of East Bay, Elmwood, and Garfield dated as of May 1, 2006 provides as follows:

### RECITALS

Whereas the Townships of Acme and the Charter Townships of East Bay, Elmwood, and Garfield are parties to a certain Capacity Lease with the City of Traverse City, a copy of which is attached hereto and made a part of this Agreement as Exhibit A by means of which the Townships of Acme, East Bay, Elmwood, and Garfield have the right to make use of Ten Percent of the treatment capacity of the Traverse City Regional Wastewater Treatment plant ; and

Whereas the date of "substantial completion" of the Traverse City Regional Wastewater Treatment Plant improvements (that being the starting date of the capacity lease) is: October 1, 2004, and

Whereas the Township of Blair has accepted an offer (the Offer) to become a participant in the Department of Public Works directed by the Grand Traverse County Board of Public works in connection with the construction of a new central business district sewer under construction within the Township of Blair, and

Whereas the Township of Blair and the Charter Township of Garfield have entered into an agreement by means of which Blair Township's sanitary waste may be transported from the new Blair Township collection system to the Traverse City Regional Wastewater Treatment Plant for treatment; and

Whereas under the terms of the Offer the Townships of Acme and the Charter Townships of East Bay, Elmwood, and Garfield have agreed to make certain capacity at the Traverse City Regional Wastewater Treatment Plant (which the Townships have leased from the City of Traverse City) available for use by Blair Township, and

Whereas Blair Township has agreed to bear a proportion of the treatment capacity lease cost as provided in this Agreement, and

Whereas the parties have agreed to set forth their understanding in writing.

### AGREEMENT

1. Minimum Capacity

The parties hereby agree to sub-lease to Blair Township a minimum of two (2) and a maximum of three (3) percentage points of capacity of the ten (10) percentage points of capacity leased from the City of Traverse City under the terms of the Capacity Lease effective for the year 2006.

2. Definition of Capacity

"Capacity" as used in this Agreement shall have the same meaning as when used in the Master Sewer Agreement (2001) among the City of Traverse City and the Townships of Acme and Peninsula, and the Charter Townships of East Bay, Elmwood, and Garfield. The measurement of capacity use for purposes of this Agreement, shall be as set forth in Exhibit C to the Master Sewer Agreement (2001). In general, one percentage point of capacity represents one percent of 8,500,000 gallons per day at the Regional Wastewater Treatment Plant at BOD concentrations of 285 mg/l of BOD or less.

3. Minimum Payment

Blair Township agrees to pay over to the Townships of Acme, East Bay, Elmwood, and Garfield (or the Grand Traverse County Treasurer acting as their agent for payment) a minimum of twenty percent (20%) of the amount billed to the townships under the capacity lease for bond payments due in May and November of each year as provided in the Capacity Lease beginning in 2006. This minimum payment shall remain in effect until such time as Blair Township's flows exceed two (2) percentage points of capacity.

4. Additional Capacity

At such time as Blair Township's "peak average daily flow" (as defined in the Master Sewer Agreement (2001)) exceeds the two percent (2%) minimum capacity granted to it under this Agreement, Blair Township shall pay the same proportion of the bond payment allocated to the townships under the Capacity Lease as its flow bears to the capacity allocated to the townships under the Capacity Lease, provided however, in no event shall Blair Township's "peak average daily flow" exceed 30% of the capacity allocated to the Townships under the Capacity Lease.

Example: If Blair Township's "peak average daily flow" for 2007 uses 2.5 percentage points of the 10 percentage points of the capacity allocated to the townships under the Capacity Lease, Blair Township would be responsible for 25% of the bond payment allocated to the townships for the May 1 bond payment in 2008.

Example: if Blair Township's "peak average daily flow" during the fiscal year July 1, 2007 - June 30, 2008 used 2.75 percentage points of the capacity allocated to the townships under the Capacity Lease, Blair Township would be responsible for 27.5% of the bond payment allocated to the townships for the November 1, 2008 bond payment.

5. Application of Payment

The payment received from Blair Township shall be applied to generally reduce the obligation of the remaining townships which shall continue to be responsible for payment of the capacity lease in accordance with their flows as provided in the Capacity Lease.

6. Traverse City Not a Party

Traverse City is not a party to this Agreement and assumes no obligation hereunder.

7. Term and Termination

This Agreement shall become effective upon approval by the parties hereto and shall remain in force so long as the Capacity Lease remains in effect.

8. Future Capacity

It is understood and agreed that the capacity provided under this sub-lease is intended to be a temporary measure providing capacity for use by Blair Township until such time as new treatment capacity becomes available. The parties agree to act in good faith to provide Blair Township the opportunity to participate in the development of new sewage treatment capacity in accordance with its needs; Blair Township acknowledges that the acquisition of future treatment capacity to serve its needs will likely require substantial capital investment on its part and that the remaining parties are not obligated to develop treatment capacity on its behalf in the absence of that investment.

9. No Warranty

By entering into this Agreement, no party warrants to another that the capacity available under this lease will be available without interruption. The parties understand and agree that sewage treatment capacity under this Agreement, the Capacity Lease, and the Master Sewer Agreement (2001) is provided subject to the operational requirements of the Traverse City Regional Wastewater Treatment Plant managed by the City of Traverse City.

10. Miscellaneous

A.. Integration

This Agreement together with affixed schedules and exhibits constitute only a portion of the transaction by which Blair Township undertakes to participate in the Board of Public Works and should be construed together with other agreements between the parties covering the same general subject matter included but not limited to the Operating Agreement.

B. Choice of law

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity, and enforcement..

C. Choice of forum

The parties submit to the jurisdiction and venue of the Circuit Court for the County of Grand Traverse, State of Michigan with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient.

D. Notices

All notices and other communications required or permitted under this Agreement will be in writing and will be deemed given when delivered personally or by registered or certified mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

Township of Acme:  
Township Supervisor  
6042 Acme  
Acme, Michigan 49610.

Township of Blair:  
Township Supervisor  
2121 County Rd. 633  
Grawn, Michigan, 49637

Charter Township of East Bay:  
Township Supervisor  
1965 3 Mile Road N.  
Traverse City, Michigan 49686

Charter Township of Elmwood:

Township Supervisor  
10090 E. Lincoln Rd.  
Traverse City, Michigan 49684

Charter Township of Garfield  
Township Supervisor  
3848 Veterans Drive  
Traverse City, Michigan 49684

E. Waiver

The failure and any party to exercise a right or remedy or acceptance of partial or delinquent performance will not operate as a waiver of any party's obligations or rights under this Agreement. and will not constitute a waiver of Seller's right to declare an immediate or a subsequent default.

F. Severability

Whenever possible, each provision of this Agreement will be interpreted in such a way as to be effective and valid under applicable law. If a provision is prohibited by or invalid under applicable law, it will be ineffective only to the extent of such prohibitions or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

G. Amendments

The terms of this Agreement may not be varied or modified in any manner, except in a subsequent writing executed by an authorized representative of all parties.

H. Assignment

No assignment of this Agreement or of any right or obligation under this Agreement will be made by either party without the prior consent of the nonassigning party.

I. Remedies cumulative

The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertions by such party of any other rights or the seeking of any other remedies.

J. Successors and assigns

In the event of a proper assignment, this Agreement will be binding upon and inure to the benefit of the parties' successors and assigns.

K. Relationship of the parties

The parties to this Agreement are independent bodies; no party should be deemed the agent of the other.

L. Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original agreement, but all of which will be considered one instrument and will become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.

M. Injunctive relief

The parties acknowledge that irreparable injury will result from the failure of either party to comply with the terms of this Agreement. In the event of any actual or threatened default or breach of any of the provisions of this Agreement, the aggrieved party will have the right to specific performance or injunctive relief, as well as monetary damages and any other appropriate relief.

N. Force Majeure

Seller will not be deemed to be in default or otherwise responsible for delays or failure in performance resulting from acts of God; acts of war or civil disturbance; epidemics; governmental action or inaction; fires; earthquakes; unavailability of labor, materials, power, or communication; or other causes beyond Seller's reasonable control.

O. Titles

Titles and heading to articles, sections, or paragraphs in this Agreement are inserted for convenience of reference only and are not intended to effect the interpretation or construction of the Agreement.

P. Attorney review

The parties represent that they have carefully read this Agreement and have consulted with their attorneys. The parties affirmatively state that they understand the contents of this Agreement and sign this Agreement as their free act and deed.

Q. Third-party beneficiaries

This Agreement will not confer any rights or remedies on any third party, other than the parties to this Agreement and their respective successors and permitted assigns.

R. Attorney fees

In the event of a dispute arising out of this Agreement, the prevailing party will be entitled to actual attorney fees and costs.

S. Civil Rights

The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age sex, height, weight, handicapped status or marital status.

T. Approvals

This Agreement was approved by the respective Boards of Trustees of the parties on the date set forth below:

Acme  
Blair  
East Bay  
Elmwood  
Garfield  
Peninsula

Township of Acme

\_\_\_\_\_  
Supervisor

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Clerk

Township of Blair

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Supervisor

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Clerk

Township of East Bay

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Supervisor

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Clerk

Township of Elmwood

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Supervisor

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Clerk

Township of Garfield

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Supervisor

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Clerk