

CHARTER TOWNSHIP OF EAST BAY

**RESOLUTION
APPROVING CONTRACT FOR SEPTAGE TREATMENT
CAPACITY**

Whereas the Township has heretofore approved the Septage Treatment Plan proposed by the Grand Traverse County Board of Public Works financed by the townships of Acme, East Bay, Elmwood, Garfield and Peninsula, and

Whereas the Septage Treatment Plant envisioned by the Plan is under construction at 1717 Ahlberg Drive, Traverse City, Michigan, and

Whereas the Septage Treatment Plant is scheduled to open for general service on or about May 1, 2005, and

Whereas the Board of Public Works has proposed to the Township a Uniform Septage Control Ordinance of 2004 (the Ordinance) for consideration by the Township as well as the Contract for Septage Treatment Capacity (the Contract) between the Township and the Board of Public Works, and

Whereas the Township has determined that the Ordinance and the Contract comply with the Septage Treatment Plan and that approval of the Contract is in the best interests of the Township and the health, safety, and welfare of its residents,

Now, Therefore, It is Hereby Resolved:

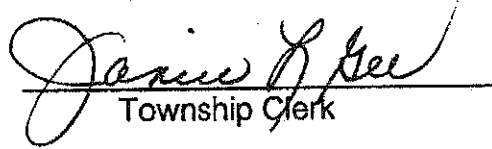
1. The "Contract for Septage Treatment Capacity" proposed by the Board of Public Works in the form attached to this Resolution shall be and hereby is approved.
2. The Supervisor and Clerk are hereby authorized and directed to execute and deliver the contract on behalf of the Township.

Date: 11-8-04

000283

CERTIFICATION

The undersigned, being the duly qualified and acting Clerk of the Charter Township of East Bay hereby certifies that (1) the foregoing is a true and complete copy of a resolution duly adopted by the Board of Trustees of the Township at a regular/special meeting held on Nov 8, 2004 at which meeting a quorum was present and remained throughout, (2) that an original of said resolution is on file in the records of the Township, (3) the meeting was conducted, and public notice there was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended), and (4) minutes of such meetings were kept and will be made available as required by law.


Township Clerk

[SEAL]

Date of Certification: 11/22/04

Contract for Septage Treatment Capacity

This Contract for Septage Treatment Capacity made by and between Grand Traverse County acting through its Board of Public Works with offices at 2650 LaFranier Road, Traverse City, Michigan 49686 (herein BPW) and the Charter Township of East Bay with offices at 1965 Three Mile Road, Traverse City, Michigan 49686 (herein Township) provides as follows:

Recitals:

WHEREAS the Grand Traverse County Board of Public Works has developed a Septage Treatment Plan (Revised June 1, 2003) which provides for the design, construction, and operation of a septage treatment facility in Grand Traverse County, and

WHEREAS the Board of Public Works has developed a Preliminary Design for the septage treatment facility, has acquired a site for its construction, and has issued approximately \$7,800,000 in DPW bonds for the purpose of constructing the facility, and

WHEREAS the facility is to be financed through user fees collected from the haulers who deliver septage to the treatment facility, and

WHEREAS the Septage Treatment Plan was approved by the Townships of Grand Traverse County, the City of Traverse City, and Elmwood Township on the following dates:

Acme	06/03/2003
Blair	05/14/2003
East Bay	06/16/2003
Elmwood	07/15/2003
Fife Lake	05/28/2003
Garfield	06/12/2003
Grant	05/19/2003
Green Lake	05/12/2003
Long Lake	04/09/2003
Mayfield	04/14/2003
Paradise	05/07/2003
Peninsula	06/10/2003
Union	05/14/2003
Whitewater	05/20/2003
City of Traverse City	

and,

WHEREAS the Septage Treatment Plan as approved calls for the adoption of local ordinances in the approving Townships and contracts between participating Townships and the BPW,

NOW, THEREFORE, IT IS AGREED:

1. Effective Date

This Contract shall become effective upon the execution and delivery of the signed agreement following approval by the Township and by the BPW.

2. Ownership of Treatment Facility

The Grand Traverse County Septage Treatment Facility is the sole property of the BPW subject to the rights of the Townships of Acme, East Bay, Elmwood, Garfield, and Peninsula which have provided the financial guarantees for the project, all as set forth in a certain First Amendment to Restated Operating Agreement (2002) and in a certain Amendment to Contract Between the County of Grand Traverse and the Township of Acme, the Charter Township of East Bay, the Charter Township of Garfield, the Township of Peninsula and the Charter Township of Elmwood dated as of December 1, 2003.

3. Obligation of BPW

3.1. Design and Construction

The BPW agrees to design and to construct the Septage Treatment Facility with sufficient capacity to meet the reasonable needs of the Township for treatment of septage and holding tank waste as identified at the present time, and as reasonably foreseeable for the ten (10) year period following date of Township approval of the Septage Treatment Plan.

3.2. Operation of Treatment Facility

When complete, the BPW shall operate the Septage Treatment Facility for the receipt and treatment of septage and holding tank waste collected within the Township as determined by BPW from time to time. The BPW shall:

3.2.1. Adopt rules and regulations from time to time for the use of the septage treatment facility;

3.2.2. Establish rates and charges which shall be uniform for septage collected within Grand Traverse County and Elmwood Township in Leelanau County which rates shall be sufficient to recover all of the

costs of ownership and operation of the septage treatment facility including capital costs;

3.2.3. Enter into contracts from time to time with haulers wishing to make use of the facility which contracts may require compliance with the rules and regulations of the facility, provide standards for maintenance, appearance, and operation of all trucks making use of the facility, establish credit or payment standards, provide for suspension or termination in the case of violation of the contract terms and such other matters the BPW deems appropriate.

3.3. Accounting

Annually, the BPW shall provide an examination of the financial statements of the septage funds of the BPW as of the year end which examination shall be conducted by and certified to by a certified public accountant of the BPW's selection. A copy of the report shall be furnished to the Township as soon as practical after it becomes available.

3.4. Annual Meeting of Participating Governments

Annually, following delivery of the audit report provided above, the BPW shall hold a public meeting to report on operation of the Septage Treatment Facility. Each Township, Village, and City which has signed an agreement similar to this one shall be invited to participate and to comment.

4. Obligation of Township

4.1. Septage Control Ordinance

The Township shall adopt and keep in force the Uniform Septage Control Ordinance of 2004 in the form proposed by the BPW. Provided, however, that if less than ten (10) of Grand Traverse County Townships have failed to adopt said ordinance by April 30, 2005, then the obligation of the Township to maintain and keep said ordinance in force shall terminate.

4.2. Amendments to Ordinance

The Board of Public Works may, from time to time, propose amendments to the Uniform Septage Control Ordinance for adoption by participating Townships in Grand Traverse County and Elmwood Township in Leelanau County. Any such proposed amendment shall be considered by the Township in good faith, and shall be adopted by the Township unless the proposed amendment is not consistent with the obligations of the parties under this Contract.

5. Duration of Contract

This Contract shall remain in force between the Township and the BPW for the physical life of the septage treatment facility or for so long as bonds issued to finance the acquisition of the facility shall be outstanding, whichever is less.

6. Miscellaneous Provisions

6.1. Integration

This contract and the documents to which it refers, together with any affixed schedules and exhibits, constitutes the entire understanding between the parties with respect to the subject matter of this contract and supersedes any prior discussions, negotiations, agreements, and understandings.

6.2. Choice of law

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

6.3. Choice of forum

The parties submit to the jurisdiction and venue of the Circuit Court for the County of Grand Traverse. The parties stipulate that the venues referenced in this Contract are convenient.

6.4. Notices

All notices and other communications required or permitted under this Contract shall be in writing and shall 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):

If to BPW:

Grand Traverse County Board of Public Works
2650 LaFranier Road
Traverse City, Michigan 49686

Attention: Director of DPW

If to Township:

Charter Township of East Bay
1965 Three Mile Road
Traverse City, Michigan 49686

Attention: Supervisor

6.5. Waiver

The failure of either party to exercise a right or remedy or acceptance of a partial or delinquent payment or performance will not operate as a waiver of any rights under this contract and will not constitute a waiver of the right of that party to declare an immediate or a subsequent default or to insist upon strict performance in the future.

6.6. Severability

Whenever possible, each provision of this Contract 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 Contract.

6.7. Amendments

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

6.8. Remedies cumulative

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

6.9. Successors and assigns

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

6.10. Service

BPW agrees to use good faith efforts to maintain regular service at the septage treatment facility but Grand Traverse County, its commissions, boards, agencies, employees, agents and consultants shall not be liable for any interruption in service

arising out of equipment malfunction, sewer blockage, utility interruption or other cause.

6.11. Titles

Titles and headings to articles, sections, or paragraphs in this Contract are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this contract.

6.12. Attorney review

The parties acknowledge that this Contract was drafted at their joint request and have consulted with their separate attorneys. The parties affirmatively state that they understand the contents of this contract and sign this contract as their free act and deed.

6.13. Third-party beneficiaries

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

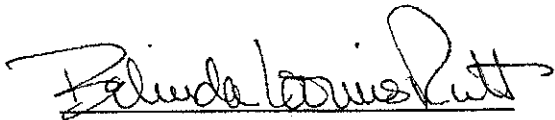
6.14. Civil Rights

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.

Dated: December 6, 2004

Witnesses:





Parties:

Grand Traverse County Board
of Public Works

By: 
Its Chairperson

By: 
Its Secretary

Charter Township of East Bay

By: Joseph Baud
Its Supervisor

By: Janice R. Bee
Its Clerk
