

GRAND TRAVERSE COUNTY BOARD OF PUBLIC WORKS

**OFFER TO BLAIR TOWNSHIP TO PARTICIPATE
IN THE GRAND TRAVERSE COUNTY
DEPARTMENT OF PUBLIC WORKS**

RECITALS

WHEREAS Grand Traverse County has established a Board of Public Works which operates a Department of Public Works (DPW) pursuant to MCLA 123.731 et. seq., and

WHEREAS the Board of Public Works has entered into a series of contracts with several townships, the most recent being the First Amended Restated Operating Agreement (2002) (Operating Agreement) among the Grand Traverse County Board of Public Works and the townships of Acme, East Bay, Garfield, Peninsula and Elmwood which Operating Agreement provides for the operation, maintenance, and administration of the township sewer and water systems by the Department of Public Works and for payment of all costs of operation of the DPW by the townships, (Syllabus Exhibit 1) and

WHEREAS in the course of performance of the series of contracts referred to above, the DPW has acquired real and personal assets in its own name which assets are necessary and convenient for the operation of the DPW and which assets are beneficially owned by the townships as provided in the Operating Agreement, and

WHEREAS the Township of Blair has developed a plan for the creation of a central sewer system in the township and has requested the opportunity to participate in the DPW system for the purpose of operating, maintaining, and administering its new sewer system if agreement can be had among the concerned parties, and

WHEREAS the Sewer and Water Committee of the Board of Public Works which has jurisdiction over matters related to sewer and water among the five townships named in the Operating Agreement has recommended to the Board of Public Works that an offer be made to admit Blair Township to the DPW system which offer is to contain certain principles articulated in resolutions adopted January 21, 2005 and January 31, 2005 (Syllabus Exhibits 2 and 3), and

WHEREAS on January 31, 2005 the Board of Public Works directed staff to prepare an offer to Blair Township for participation in the DPW system as provided in the Sewer and Water Committee resolutions and as discussed in public at its meeting on that date, and

WHEREAS this Offer has been approved and recommended by the Sewer and Water Committee and approved and adopted by the Grand Traverse County Board of Public Works subject to the approvals set forth herein, (Syllabus Exhibits 4 and 5)

AGREEMENT

A. Offer and Acceptance

1. Effective

This Offer shall become effective and subject to acceptance by Blair Township upon approval by the following Boards and Commissions (the Approving Parties.) Approval shall mean that the Board or Commission approving the same commits itself to enter into the agreements set forth herein with the Township of Blair and the other parties upon substantially the terms and conditions set forth herein. Approval of this Offer is required by:

- A. Grand Traverse County Board of Commissioners;
- B. City of Traverse City (as to capacity lease participation only);
- C. Township of Acme;
- D. Charter Township of East Bay;
- E. Charter Township of Elmwood;
- F. Charter Township of Garfield;
- G. Township of Peninsula.

If approval of all of these parties is not received by September 1, 2005, then this Offer shall be of no further force or effect.

Where used without qualifying language the word "party" in singular or plural means the Grand Traverse County Board of Public Works, Blair Township, and each one of the Approving Parties identified in this paragraph.

2. Open for Acceptance

Upon approval as provided in Paragraph 1, this Offer shall be transmitted to the Supervisor of the Township of Blair. It shall remain open for acceptance for a period of 120

days following the date of receipt by the Township of Blair and may not be extended without the approval of the Board of Public Works and the Approving Parties.

3. Manner of Acceptance

This Offer may be accepted only by adoption of a resolution by the Township of Blair accepting this Offer and transmitting a true copy of the accepting resolution by facsimile, certified mail, or personal delivery to Dennis Aloia, Director of Public Works, 400 Boardman, Traverse City, Michigan 49684 not later than the 120th day at 5 p.m. local time following the date this Offer was submitted to Blair Township, counting the date of receipt by Blair Township as the first such day.

4. Offer not Rejected

Requests to negotiate the terms of this Offer by Blair Township, the Board of Public Works, or by an Approving Party following approval of this Offer, counter-proposals, discussions, and reports shall not be deemed to reject this Offer; the submission of a counter-offer shall not be deemed to reject this Offer unless it be rejected by a resolution duly adopted by Blair Township.

5. Completion of Transaction

Following acceptance of this Offer by Blair Townships the parties agree to complete the approvals, amendments, ordinances, and resolutions required or convenient for the completion of this transaction by December 31, 2005.

B. Sewage Treatment Capacity

1. Source of Capacity Rights

The Townships of Acme, East Bay, Elmwood, Garfield and Peninsula, the City of Traverse City, and Grand Traverse County acting through its Board of Public Works are parties to an agreement entitled Master Sewer Agreement (2001) (Syllabus Exhibit 6) which defines the rights and obligations of the parties with respect to the Traverse City Regional Wastewater Plant which provides wastewater treatment to seweraged customers throughout the five townships and the City of Traverse City. This agreement grants certain "capacity rights" to each township which limit the use which can be made of the treatment capacity at the plant. Blair Township will not become a party to the Master Sewer Agreement (2001). In addition to the 40% treatment capacity granted to the townships in the Master Sewer Agreement (2001), the townships of Acme, East Bay, Elmwood, and Garfield are parties to a Capacity Lease Among the City of Traverse City, and the Townships of Acme, East Bay, Elmwood, and

Garfield (Syllabus Exhibit 7) All references to "capacity" herein shall be as defined in the Master Sewer Agreement.

Under the Capacity Lease, the four townships (Peninsula is not a party) receive a total of ten percentage points of capacity in the wastewater treatment plant in exchange for their agreement to pay to the City of Traverse City 10% of the annual debt service on the bond issue used to pay for recent wastewater treatment plant improvements. The term of the lease began in October 2004. As to eight points of capacity, the term of the lease is ten years; as to 2 percentage points of capacity the term of the lease is 5 years. During the term of the lease the townships pay the City of Traverse City in proportion to their annual sewage flows into the system. (Syllabus Exhibit 8). The cost of one percentage point of capacity is 1% of the debt service on the bond issue. In 2004 the cost of one percentage point of capacity under the lease was \$23,822.

The parties to the lease shall make available to Blair Township not to exceed three percentage points of leased capacity during the lease term. In exchange, beginning with calendar year 2006, Blair Township shall assume an amount equal to the greater of 2% of the annual debt service on the 2002 Wastewater Treatment Plant bonds or its proportion of flow as defined in the lease. Provided that Blair Township shall in no event exceed the capacity allocated to it under the Capacity Lease.

2. Future Capacity

The capacity available to Blair Township under the Capacity Lease represents roughly 250,000 gallons of treatment capacity, or less, depending upon BOD content and other factors. That capacity will terminate when the capacity lease terminates in 2014 unless extended by agreement of all of the parties to the lease. There is no assurance that the lease will be extended.

At present, the townships of Acme, East Bay, Elmwood, and Garfield are the owners of a parcel commonly known as the "Hoch Road" parcel located in Garfield Township. The townships intend to site a new sewage treatment facility upon the Hoch Road parcel when township treatment capacity needs dictate. The Sewer and Water Committee and the Board of Public Works have established 2008 as the date for conduct of a feasibility study and 2012 as the date for construction of a new treatment plant. The parties intend that this new plant will provide future treatment capacity for Blair Township among others but no party to this Offer or Approving Party shall be deemed to have bound itself to construct that plant or to do so at a particular time, that being left to future agreement of the parties.

3. Agreement to be Amended

The City of Traverse City, Blair Township, and the townships of Acme, East Bay, Elmwood, and Garfield shall amend the Capacity Lease in accord with this Section.

C. Transportation

1. Garfield Township System

Execution and delivery of the definitive agreements shall be conditioned upon an agreement between Blair Township and the Charter Township of Garfield providing for the transportation of Blair Township sewage through Garfield Township's system.

2. Limitation

Unless otherwise provided in the contemplated agreement between the Charter Township of Garfield and Blair Township, Blair Township agrees at its own expense to terminate its use of Garfield Township sewers for transportation of its sanitary waste and construct a new line directly to the new sewage treatment plant at Hoch Road when treatment operations begin at that site provided that nothing herein shall prohibit Garfield and Blair Townships from agreeing to construct such joint facilities they deem proper.

3. Agreements to be Amended

None. A new agreement between Blair Township and the Charter Township of Garfield shall be created.

D. Purchase of Assets

1. Purchase Price

The purchase price for Blair Township's share of the DPW assets owned by the Grand Traverse County Board of Public Works (the DPW Assets) shall be \$107,816.00. In addition, Blair Township shall assume, in the year in which sewage flows into the system begin, its due proportion of the debt service including principal and interest based upon the operating formula discussed in that section of this Offer.

2. Payment

Blair Township shall make the following payments of its purchase price no later than the time at which Blair Township flows into the sanitary sewer system begin:

Township	Proportion of Payment	Amount
Acme	16.6666%	\$17,969.33
East Bay	16.6666%	\$17,969.33
Elmwood	16.6666%	\$17,969.33
Garfield	33.3336%	\$35,938.68
Peninsula	16.6666%	\$17,969.33
Total	100.0000%	\$107,816.00

3. Shares

At the time of payment, Blair Township will become entitled to a 1/7 beneficial interest in the real and personal DPW assets held by the Board of Public Works for operation, maintenance, and administration of the township sewer and water systems excluding the Hoch Road real estate dealt with separately in Section **E Hoch Road**. This ownership share is independent of the formulas employed for operating expenses.

4. Agreement to be Amended

The First Amended Restated Operating Agreement (2002) will be amended to reflect the allocation of asset ownership by share and to reflect Blair Township's participation in the DPW system on the same basis as the other townships.

E. **Hoch Road**

1. Described

The Hoch Road parcel is shown on the site diagram (Syllabus Exhibit 9) The total parcel is divided by a utility easement running north and south. Acme, East Bay, Elmwood, and Garfield participated in the purchase; Peninsula did not participate because it does not foresee the need for additional sewage treatment capacity. The townships have agreed to locate a new sewage treatment facility on the portion of the parcel lying east of the right-of-way while the westerly portion is intended for some type of public recreational use.

2. Bond Issue

The purchase price of the Hoch Road parcel was \$1,350,000; the purchase price and acquisition expenses such as a study of the suitability of the site for a treatment plant were financed though a \$1,522,540 portion of a much larger bond issue entitled "Grand Traverse

County - Traverse City Wastewater Treatment Plant Upgrade (2002 Project) Bonds issued to finance the improvement of the Traverse City plant. A debt service schedule is found at Syllabus Exhibit 10. For the period beginning with the first bond issue installment in 2003, Blair Township's share of the amortization through 2008 is fixed at 4%:

Year	Total Amortization	Blair's Share
2003	\$54,376.42	\$2,175
2004	\$55,533.66	\$2,213
2005	\$56,690.31	\$2,268
2006	\$57,847.30	\$2,314
2007	\$59,004.20	\$2,360
2008	\$60,161.14	\$2,406
Total	\$343,612.70	\$13,745

3. Payment

Payment for Blair Township's total share of the 2003 - 2008 bond amortization shall be due at the time of payment for DPW assets provided in **D Purchase of Assets**.

4. Share

Following payment of the share of debt service provided for in 2. Bond Issue above, Blair Township shall be deemed the owner of 4% beneficial interest in Hoch Road and the shares of the other townships proportionately reduced.

5. 2009

It is expected that in 2008 the townships participating in the Hoch Road purchase will adjust their shares in the parcel to reflect their estimated capacity requirements. At that time, the shares of the debt service for the real estate may be adjusted to reflect those shares. Blair Township's estimated capacity needs to replace the capacity lease and future growth as determined by the township will be accounted for in the design and construction of the new plant and Blair Township shall be liable for its proportion of the cost of that construction. Until such time as the township shares are adjusted to reflect their capacity needs, following 2008, Blair Township shall be responsible for payment of that proportion of debt service as its sewer flows bear to the total sewer flows of Acme, Blair, East Bay, Elmwood, and Garfield Townships.

6. Operational Cost

Apart from the debt service which Blair pre-pays, Blair Township shall participate in the DPW operations budget for Hoch Road beginning in the year in which township flows begin in accordance with the allocation formula established by the townships from time to time.

7. System Capacity

Construction of a new sewage treatment facility at Hoch Road is viewed as an increase to the total sanitary system capacity and all townships requiring additional capacity will participate in the cost of construction regardless whether their sewage is transported to the new plant or to the existing plant. It is expected that treatment operating costs for both of the plants for the DPW townships will be leveled so that the treatment cost of the sewage is not a function of where it is treated.

8. Agreement to be Amended

The Operating Agreement will be amended to reflect Blair Township's participation in the Hoch Road project.

F. DPW Operations

1. Sewer and Water Committee

Blair Township will be designated a participating member of the Sewer and Water Committee of the Board of Public Works represented by its Supervisor or by a designee. The Supervisor will be eligible to serve as the Committee representative on the Board of Public Works upon the same terms and conditions. It is understood that this position is customarily rotated annually among the Supervisors but that is subject to the determination of the Committee from time to time.

2. Operations Budget

Beginning when township sewer flows begin, the DPW will create subject to the approval of Blair Township, an operations budget for the first fiscal year which shall reflect projected revenues and expenditures and expenditures. Blair Township, as is the case with each township, will be responsible for payment of all direct expenses of operation, maintenance, and administration of its sewer system by the Board of Public Works. DPW operational costs which are not directly attributable to a specific township will be allocated among all of the townships in accordance with one or more formulas to be approved from time to time by the Supervisors. Past formulas have taken into account length of pipe, number of customers, and flows; each change in formula is subject to the approval of all Supervisors.

3. Services Provided

The DPW will provide operation, maintenance, and administration of the Blair Township sewer system including billing and collections, and financial reporting.

4. Financial Responsibility

Blair Township will be financially responsible for all expenses incurred by the DPW in connection with the township system and will hold the DPW harmless from any cost or expense in connection therewith. The Board of Public Works participates in a self-insurance program with MMRMA; Blair Township will be responsible for its proportionate share of that cost. The Sewer and Water Committee has established a reserve funded by the townships (in proportion to flow) to provide a ready source of funds to meet the deductible portion of a sewer backup loss covered by insurance. It should be noted that although the contribution to the total \$150,000 fund may be small based upon Blair Township flows, the township remains liable for the full amount of the deductible in the event of loss.

5. Agreements to be Amended

The Operating Agreement needs to be amended as does the Board of Public Work's 1996 resolution creating the Sewer and Water Committee with jurisdiction over water and sewer issues. (Syllabus Exhibit 11 to add the Supervisor of Blair Township or his designee to the Sewer and Water Committee.

G. Ordinances and Standards

1. Ordinances for Sewer

The Operating Agreement encourages the townships to maintain a uniform system of ordinances regulating the construction and operation of the sewer systems. The townships have a "rate" ordinance which is uniform as to general provisions and the way in which benefits are allocated to particular uses, but township rates for those benefits vary. The portion of the sewer use ordinance which regulates certain industrial users (the so-called IPP portion) requiring special permits and inspections is administered by the City of Traverse City using OMI, the sewage treatment plant operator, as its agent. Blair Township will be required to participate in this Industrial Pre-treatment Program just as do the other townships.

2. Construction Standards

The Board of Public Works and each of the townships has adopted and approved construction specifications for sewer and water systems. In order to have its system

maintained by the DPW, Blair Township must adopt the sewer specifications and construct its system in accordance with those specifications. If the system design and inspection is not to be done by Gourdie Fraser of Traverse City, Michigan, the design and construction of the Blair system will need to be reviewed by Gourdie Fraser at the expense of the township. Private developers who construct sewers for connection to the public system will have to comply with those sewer construction standards and are subject to review by the township at the expense of the developer. Adoption of the uniform specifications as they relate to water systems will be optional with Blair Township.

3. Ordinances and Standards to be Adopted

- A. Uniform Sewer Use Ordinance (Syllabus Exhibit 12)
- B. Uniform Sewer Construction Ordinance (Syllabus Exhibit 13)
- C. "Rate" ordinance (Syllabus Exhibit 14)
- D. Resolution adopting standard specifications (New)

H. **Miscellaneous Provisions**

1. Costs of This Transaction

Blair Township shall bear all of the expenses of this transaction including attorney and engineering fees. The Township shall pay to the Department of Public Works any such bill for expenses at such time the Township receives bond or other funds which may be used to pay the costs of this project and in no event later than the date of payment for DPW assets.

2. Septage Treatment Facility

Blair Township has not been requested to assume any bond guaranty for the Septage Treatment Facility now under construction.

3. Use of County Bond Counsel

If Blair Township wishes to issue DPW bonds through Grand Traverse County it is required to use Grand Traverse County's designated bond counsel and financial consultant for that purpose.

4. Good Faith Cooperation

Each party to this offer pledges its good faith best efforts to complete this transaction in accord with the terms of this Offer.

5. Independent Contract

As to matters covered in this Offer but not the subject of a contract amendment, ordinance or resolution, this Offer when accepted will constitute an independent contract according to its terms and the rights and obligations of said independent contract will survive execution and delivery of the contracts, contract amendments, ordinances, and resolutions contemplated by this Offer.

6. Independent Review

This Offer has been prepared by Michael J. Houlihan Esq. as attorney for the Grand Traverse County Board of Public Works. Each party represents to the other that it has caused an independent review of this Offer to be made as it deems necessary.

Dated: April 25, 2005

Douglas S. Mansfield
Chairperson

CERTIFICATION

The undersigned, being the duly qualified and acting Deputy Secretary of the of the Grand Traverse County Board of Public Works hereby certifies that (1) the foregoing is a true and complete copy of an Offer duly adopted by resolution by the Board of Public Works at a regular/special meeting held on April 25, 2005 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 Board, (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.

Deputy Secretary
Date of Certification