

Second Amended Restated Operating Agreement (2006)

This Second Amended Restated Operating Agreement amends a certain "Operating Agreement for Grand Traverse County, the Grand Traverse County Board of Public Works and the Townships of Acme, East Bay, and Garfield" effective July 1, 1985 which original agreement was amended September 1, 1991. under title of "First Amendment to Operating Agreement for Grand Traverse County, the Grand Traverse County Board of Public Works, and the Townships of Acme, East Bay, Garfield, Peninsula and Elmwood." The amended operating agreement was further amended and restated by a "Restated Operating Agreement" effective November 1, 2001 to add Part Two. The First Amended Restated Operating Agreement was added as of December 31, 2002 to add Parts Three and Four under title "First Amended Restated Operating Agreement (2002)" Parts One and Two of the Restated Operating Agreement remain in full force and effect.

The Second Amendment to the Restated Operating was approved by the parties in 2006 to add Blair Township as a participant in the Board of Public Works system.

The parties to this Second Amended Restated Operating Agreement are the Grand Traverse County Board of Public Works, an agency of Grand Traverse County (herein the Board or Board of Public Works), and the Townships of Acme, Blair and Peninsula, the Charter Townships of East Bay and Garfield, in Grand Traverse County, Michigan and the Charter Township of Elmwood in Leelanau County, Michigan. This Second Amended Restated Operating Agreement entirely restates and supercedes the previous operating agreement among the parties referenced above, as set forth below.

This Amended Restated Operating Agreement (2002) Part One contains the provisions of the existing Operating Agreement as amended as of November 1, 2001 which remain in full force and effect. Part Two contains new provisions applicable to the new treatment plant site described therein. Part Three contains new provisions applicable to the development of a septage treatment plant and is effective as of the date of approval set forth above. Part Four adds general provisions.

PART ONE OPERATIONS

1. Parties; Scope; Effective Date

This Second Amended Restated Operating Agreement made by and among Grand Traverse County (the County), acting through its Board of Public Works (the Board), and the

Townships of Acme, Blair, East Bay and Garfield in Grand Traverse County and the Township of Elmwood in Leelanau County (the Townships), is effective May 1, 2006 or upon the adoption by all parties, whichever is later. It is not the intention of this agreement to supersede or modify other prior agreements among the parties but rather to supplement existing contractual arrangements already in place.

2. Ownership of the Collection System

The Board is the owner of Grand Traverse County Sewer Collections Systems two through four and Peninsula Township and all modifications, extensions, and appurtenances for the use and benefit of the Grand Traverse County Townships and their inhabitants. The Board will remain the owner of the systems until such time as the bonds issued to finance the systems have been paid; at that time ownership of the systems reverts to the respective Townships. The Board will become the owner of the "Blair Township US-31/M-37 Commercial Area Sewer System" and all modifications, extensions, and appurtenances for the use and benefit of Blair Township and its inhabitants upon acceptance of the system following completion of construction. The Board will remain the owner of the Blair system until such time as the bonds issued to finance the system have been paid, at which time ownership of the system will revert to Blair Township.

The Township of Elmwood is the owner of a collection system referred to herein as the "Elmwood system" where necessary in this Agreement to distinguish between systems.

3. Operation, Maintenance, and Administration

The Board shall operate, maintain, and administer the system for the benefit of the Townships and their inhabitants in accordance with the contracts, laws, and ordinances heretofore adopted by the parties and in accordance with the budget established pursuant to paragraph 5 hereof. This arrangement may be revoked by one or more of the Townships upon six month's written notice and upon fulfillment of the insurance requirements set forth in applicable contracts and ordinances.

In connection with such operation, maintenance, and administration the Board may engage such employees, agents, and consultants as, from time to time, it shall deem necessary or convenient. All such persons shall be deemed employees, agents and consultants, as the case may be, of the Board and not of the Townships unless otherwise specifically agreed. Such employees may be part-time or full-time employees of Grand Traverse County.

A. Administration The Board agrees to provide such personnel and facilities as it shall deem reasonably necessary and convenient for the administration of the system. Unless otherwise directed by the Townships, acting through the Sewer and Water Committee,

, the Board shall prepare all bills and make all collections for sewer usage charges and the like.

B. **Operation and Maintenance** The Board agrees to operate and maintain the system. Such services may include but shall not be limited to issuing construction permits, conducting construction, repair or maintenance inspections, performing work upon the system (or engaging contractors to do so) monitoring the performance of the system, and performing such maintenance or repair services as required. The Board shall maintain such stocks of materials and equipment as it shall deem necessary from time to time to carry out its obligations under this Agreement. The Board shall keep the Townships advised of the performance of the system and the activities of the Board under this Agreement.

With respect of the Elmwood System, the Board shall operate and maintain the system but the Township shall provide its own administration including permitting, billing, and collections. The Board shall, upon Elmwood Township's request, provide administrative assistance if desired.

C. **Limitation** The Board in its undertakings is acting for the benefit of the Townships and neither Board nor County shall be liable for any loss or damage to the Townships arising out of or related to the activities of the Board under this Agreement. The Townships agree to hold Grand Traverse County, its Boards, Commissions, officers, agents, employees, and consultants harmless from any liability, not covered by insurance, arising out of or attributable to the Board's activities under this Agreement.

4. **Costs of Operation, Maintenance and Administration**

The Townships shall bear the entire cost of operation, maintenance and administration of the system. The Board shall, not less than thirty days in advance, notify each Township of the estimated cost of operation and maintenance of the system for the succeeding month, and the Townships shall pay such estimated costs to the Board no later than the first day of the calendar month for which the expenses were estimated. Such payment may be made from the Township receiving fund or otherwise as the Township may direct.

Any deficiency for the entire year shall be supplied by the Township within thirty days of being billed therefor by the Board. Any surplus shall be credited against the next monthly payment.

The Board shall keep account of its expenses and revenues from time to time in accordance with accounting policies which it may adopt. Such accounting records shall specify, as near as may be, those expenses which are directly attributable to specific Township systems and the Township concerned shall bear the expense thereof. Expenses which are not allocable directly to one or more of the systems shall be apportioned in accordance with this Agreement.

Costs not directly attributable to the Townships under this Paragraph 4 shall be allocated by a formula adopted by the Board. The allocation formula shall be set forth in the budget to be adopted each year and such formula shall bind each Township unless written notice of objection is delivered to the Board and the other parties to this Agreement prior to the adoption of the budget. The parties may make any agreement with respect to the allocation of costs of any item or service which they deem appropriate and such specific agreement shall take priority over the budget allocation formula.

5. Budget

The Board shall each year adopt a budget after review by and in consultation with the Townships in accordance with budget procedures established from time to time by Grand Traverse County. The budget shall project revenues and expenditures by Township.

The Board shall monthly report to the Township concerning Board expenditures and system revenues and shall advise the Townships concerning the relationship of Board expenditures to the established budget.

The budget established by the Board may be amended from time to time in accordance with County budget procedures.

No expenditure in excess of that provided for in the budget allocated for the Township shall be incurred by the Board without express Township approval, unless the Board shall determine that such expenditure is necessary because of emergency or is essential to protect the health, safety, and welfare of the public.

6. Annual Statement

Annually the Board shall provide an examination of the financial statements of the various funds of the Board as of the year end which examination shall be conducted by and certified to by a certified public accountant of the Board's selection.

7. Township Funds

The Township may elect to have the funds established by ordinance administered by the Grand Traverse County Treasurer and the Board. In such case the funds shall be administered as the respective Townships shall from time to time direct. Provided that in case of default by one or more Townships in the payment of contract payments of bond principal and interest, the County and Board shall have such rights granted to them by contract, ordinance, and statute.

In case of administration by the Board and County Treasurer, instructions as to transfers into and out of Township funds shall be given in writing by the Townships. The Board

shall be entitled to rely upon such instructions as a representation by the Township that it has determined such transfers to be appropriate and in accordance with applicable laws and ordinances. The County and Board shall have no obligation to inquire into or make an independent determination as to such matters.

The Board shall promptly deposit use charges, permit fees and the like received by it into the appropriate Township receiving fund and shall account to the Township therefor.

8. Rates

The Township shall from time to time establish use charges, permit fees, benefit and riser fees and the like. Each Township changing its rates shall notify the Board in writing of such changes promptly after adoption by the Township.

The Board shall apply such rates and charges in billing Township sewer users except as to any Township which undertakes its own billings and collections.

9. Enforcement

A. Standards

The Board shall conduct its activities with respect to the system in accordance with the respective Township Ordinances. The Board, through its permitting and inspection procedures, shall seek compliance by all system users with the applicable ordinances.

B. Charges

The Grand Traverse County Townships hereby designate the Board as the responsible entity to certify to the Townships as to charges unpaid for six months so that they may be placed upon the tax rolls in accordance with the with the applicable ordinance.

C. Ordinance Violations

The Townships are responsible for prosecuting ordinance violations. The Board shall advise the Township of any apparent ordinance violations which come to its attention and shall cooperate with the Townships in connection with any such prosecution.

10. Interpretation of Ordinances

Any Township shall, upon request of the Board, provide the Board with a written interpretation of any ordinance adopted by it, to guide the Board in its administration of the system. The Townships agree to make reasonable efforts to maintain consistent ordinance provisions and interpretations of their ordinances to aid in the efficient administration of the

system. The Board shall call the attention of the Townships to any apparent inconsistency of interpretation of which the Board has knowledge. Each Township retains the right and obligation to establish suitable fees, rates, and charges for its system.

11. Discretion of Board

Where the Board is granted discretion in the administration of the system, the Board may adopt formal policies and standards. In such case, it shall seek the advice of the Townships concerning such policies and standards and shall notify the Townships of such policies and standards promptly after adoption.

12. Extensions to System

Extensions, additions, and enhancements to the system by the Townships or by private parties with the approval of the Townships may be added to the system at such time as the new portion is turned over to the Board and accepted by it. Such new portions shall be administered, operated, and maintained in accordance with this Agreement unless otherwise agreed in writing at the time.

13. Insurance

The Board shall acquire and maintain such liability and casualty insurance upon the system and its personnel as the Board shall from time to time deem appropriate. Such insurance shall name, at a minimum, the County, the Board, and the Townships as insured. The cost of such insurance shall be borne by the Townships in accordance with this Agreement. Elmwood Township shall provide such insurance coverage upon its system as it deems desirable; the Board shall have no obligation to provide such insurance. Coverage obtained by the County, by the Board, or both, through the Michigan Municipal Risk Management Authority (MMRMA) shall fulfill the insurance requirement of this Agreement notwithstanding any provision of law that the activity of MMRMA is not the conduct of the insurance business.

14. Other Agreements

The Board may, from time to time, enter into Agreements to provide services to other local public or private entities. No such Agreement shall be entered into, if the effect would be to increase the costs borne by the Townships hereunder or impair the operation of the system, without the express consent of the Townships.

14A. Purchase of Capital Assets

The Townships have agreed that the value of the total assets held by the Townships for use by the Board and by the Board for the benefit of the Townships is \$375,000 as of November 2, 1990 and that the share to be contributed by Peninsula Township as its fair share of such assets is \$62,500.

Peninsula Township shall pay said amount on or before the date when sewage first flows from the Township system, which date is estimated at September 15, 1991. Such payment shall be made to the Board and shall be paid over to the other Townships in the following proportions:

Acme Township	20%	\$12,500.00
East Bay Township	20%	\$12,500.00
Elmwood Township	20%	\$12,500.00
Garfield Township	40%	\$25,000.00
Total	100%	\$62,500.00

Upon such payment, the Townships shall be deemed the beneficial owners of the Board assets including land, buildings and equipment, in the following proportions:

Acme Township	16.666%
East Bay Township	16.666%
Elmwood Township	16.666%
Garfield Township	33.334%
Peninsula Township	16.666%
Total	100.000%

Any substantial assets acquired by the Townships or Board after November 2, 1990 shall be accounted for and purchased by Peninsula Township in accordance with the preceding formula.

The parties acknowledge full payment by Peninsula of all amounts called for in this paragraph.

With respect to the admission of Blair Township in 2006, the townships have agreed that the net value of the total assets held by the Townships for use by the Board and by the Board for the benefit of the Townships is \$754,712 as of the date hereof and that the share to be paid by Blair Township as its fair share of such assets is \$107,816 to be paid in the following shares:

<u>Township</u>	<u>Proportion of Payment</u>	<u>Amount</u>
<u>Acme</u>	<u>16.6666%</u>	<u>\$17,969.33</u>
<u>East Bay</u>	<u>16.6666%</u>	<u>\$17,969.33</u>
<u>Elmwood</u>	<u>16.6666%</u>	<u>\$17,969.33</u>
<u>Garfield</u>	<u>33.3336%</u>	<u>\$35,938.68</u>
<u>Peninsula</u>	<u>16.6666%</u>	<u>\$17,969.33</u>
<u>Total</u>	<u>100.00%</u>	<u>\$107,816.00</u>

Such payment shall be due from Blair Township to the remaining Townships not later than May 31, 2006. Upon such payment by Blair Township, the Townships shall be deemed the beneficial owners of the Board assets including land, buildings and equipment, in the following proportions:

<u>Acme Township</u>	<u>14.2857%</u>
<u>Blair Township</u>	<u>14.2857%</u>
<u>East Bay Township</u>	<u>14.2857%</u>
<u>Elmwood Township</u>	<u>14.2857%</u>
<u>Garfield Township</u>	<u>28.5714%</u>
<u>Peninsula Township</u>	<u>14.2857%</u>
<u>Total</u>	<u>100.000%</u>

Beginning in 2007, Blair Township shall be responsible for 1/7th of the debt service on the remaining indebtedness for the shop building. As of the date hereof, the total outstanding indebtedness on the shop building is approximately \$270,000.00.

15. Capital Purchases

From time to time, the Board shall acquire capital equipment for use in performance of the duties in the administration, operation, and maintenance of the system. Such purchases shall require the approval of the Townships either as a part of the annual budget process or by special appropriation. Each Township shall be deemed to have a separate equitable beneficial interest in such capital items. The cost of such items shall be allocated to each Township in accordance with the formula established in paragraph 14A hereof, or as may be otherwise specifically agreed at the time of purchase.

16. Term and Termination

This Agreement shall continue until terminated by any party. Termination may be accomplished by delivering written notice thereof to the other parties six months in advance of the effective date. Upon termination the parties shall account to one another for their

respective investments in the capital assets held by the Board in connection with the performance of its duties as set forth herein.

The capital assets of the Board shall be valued as of the date of notice of termination. In the event the Board, or Grand Traverse County, has caused an appraisal to be made of its assets in the regular course of its business which appraisal was made within fifteen months of said date of termination, the value set forth in said appraisal as to the Board's capital assets shall be conclusive for purposes of this Agreement. In the case of capital assets acquired since the date of appraisal, the value of the capital assets shall be cost. Any item reflected in said appraisal which was disposed of subsequently shall not be included in the value.

As to capital assets not valued, or as to which no qualifying appraisal is available, the parties agree to designate an appraiser to value the Board's capital assets. The cost of said appraisal shall be borne by the Townships in the same proportion as their interests in the capital assets. In the event the Townships are unable to agree upon the use of a single appraiser, each Township may designate its own (or may join with one or more other Townships in designating its own) and the mean value of all new appraisals performed shall be deemed the value of the capital assets, in which case each Township shall bear its own appraisal cost.

The terminating Township's interest in the capital assets held by the Board shall be the interest established in paragraph 14A above.

As to each such asset, the remaining Townships may elect to pay the terminating Township the value of its interest as determined above, or, in the alternative, to cause the sale of the asset to be made in a commercially reasonable manner and the proceeds to be divided. As to assets as to which distribution in kind is feasible, the remaining Townships may determine to distribute such assets in kind. In any event, the distribution of assets or payment of the terminating township's interest therein shall be completed not later than one year after the date of notice of termination.

It is expressly understood and agreed that the capital assets held by the Board, as referred to in this paragraph do not include any capital assets held for use in connection with the operation of the Traverse City Regional Wastewater Treatment Plant. The rights of the Townships in and to such assets are not subject to or governed by this Agreement.

PART TWO
HOCH ROAD

Recitals

A. At the initiative of the Townships of Acme, East Bay, and the Charter Townships of Elmwood and Garfield, the Board of Public Works has entered into a Purchase Agreement with George Broad and Shelley Broad, husband and wife, to purchase real estate in the Township of Garfield, Grand Traverse County, Michigan. The legal description of the real estate to be purchased is attached hereto and made a part hereof as Exhibit A. This site is sometimes referred to as the "Hoch Road" site.

B. The purchase price for the real estate is \$1,350,000. The parties estimate that additional costs of investigation of the site and related matters, including the preparation of this Restated Operating Agreement may require up to an additional \$50,000.00 before and immediately following closing of the purchase. These amounts are referred to in this Part Two as the "purchase price" or the "cost of acquisition."

C. The parties are acquiring this site for the purpose of siting a new sewage treatment plant for future use by the Participating Townships and the Board of Public Works. The parties have engaged consultants to perform a "due diligence" examination of the property to determine whether the property satisfies the conditions of the purchase agreement.

D. The parties propose to finance the purchase through the issuance of Grand Traverse County DPW bonds the repayment obligation thereunder being borne by the townships of Acme, East Bay, Elmwood, and Garfield. (These Townships are sometimes referred to as the "Participating Townships") (Upon payment of the sum of \$13,745 as provided below, Blair Township shall be deemed a Participating Township.)

E. The parties wish to memorialize their agreement with respect to the acquisition and use of this site and have incorporated these provisions in their operating agreement for that purpose.

F. The Township of Peninsula has determined that it does not wish to participate in the acquisition and use of this site.

Agreement

1. Application of Part One

Except as expressly provided in this Part Two, the provisions of Part One apply to the ownership, operation, and use of the Hoch Road parcel.

2. Decision to Purchase

Before or after execution of this Restated Operating Agreement, the parties shall submit the question whether to complete the acquisition of the Hoch Road parcel to the Water

and Sewer Committee of the Grand Traverse County Board of Works. The Committee shall review the information available concerning the site and shall determine whether to recommend the purchase to the Board of Public Works. If it recommends against purchase, it shall identify the conditions or circumstances which prevent satisfaction of the terms of the purchase agreement.

3. No Purchase

If the Water and Sewer Committee does not recommend purchase of the Hoch Road parcel, the Board of Public Works shall notify the Seller under the purchase agreement and shall withdraw from the transaction. All parties understand and agree that the earnest money deposit of \$25,000.00 made upon the property is not refundable.

4. Completion of Purchase

If the Water and Sewer Committee recommends purchase, the Board of Public Works shall proceed with the purchase in accordance with its terms taking title in the name of Grand Traverse County or the Board of Public Works. If sale of the bonds to finance the purchase is not complete at the time of closing, the Board of Public Works shall apply to the Board of Commissioners of Grand Traverse County for an advance of funds to complete the requirements of closing, the amount thereof to be reimbursed out of the proceeds of sale of the bonds or otherwise paid by the Participating Townships.

5. Reimbursement of Board

The Participating Townships shall reimburse the Board of Public Works and Grand Traverse County for any funds advanced in order to accomplish the purchase.

6. Costs by Townships

The Participating Townships shall bear all of the costs of acquisition, improvement, and operation of the Hoch Road parcel as provided in this paragraph.

The Participating Townships shall divide the costs based on the proportion of "Participating Township flow" contributed by each township. "Participating Township flow" is the total annual flow into the sanitary sewer system operated by the Board of Public Works for the Participating Townships. An explanation of the method used in calculating these shares is set forth in Exhibit B. For the year ending June 30 2002 the following proportions shall apply:

Township	Flow	Percent
Acme	139,475,440	18.8%
East Bay	128,746,560	17.4%
Elmwood	77,212,767	10.4%
Garfield	396,162,200	53.4%
Total	1,548,814,000	100.00%

For the period July 1, 2001 - June 30, 2002, all expenses falling due during the period, including installments of principal and interest due upon bonds issued to finance the acquisition of the Hoch Road site, shall be paid by the Participating Townships in accordance with the percentages set forth above.

Expenses falling due in subsequent fiscal years shall be paid by the Participating Townships in accordance with the then current percentage of Participating Township flow as determined in accordance with Exhibit B. Blair Township shall participate in the costs of operation and maintenance of Hoch Road (excluding principal and interest payment on the bond issue) beginning July 1, 2007 based upon Blair Township's flows in 2006 - 2007

6A. Participation of Blair Township

Blair Township shall participate in the acquisition of the Hoch Road site and agrees to pay the sum of Thirteen Thousand Seven Hundred Forty-five Dollars (\$13,745.00) to the participating townships on or before May 31, 2006 as its portion of debt service from 2003 through 2008. Upon payment of said lump-sum amount, Blair Township shall be deemed the owner of a four percent (4%) interest in the Hoch Road parcel. In addition to the lump sum payment provided above, Blair Township shall, beginning in calendar year 2009 participate in the debt service payments along with the other Participating Townships in accordance with its flow into the sanitary sewer system. Blair Township's initial payment shall be made to the other Participating Townships as follows:

<u>Acme</u>	<u>18.8%</u>	<u>\$2,584.06</u>
<u>East Bay</u>	<u>17.4%</u>	<u>\$2,391.63</u>
<u>Elmwood</u>	<u>10.4%</u>	<u>\$1,429.48</u>
<u>Garfield</u>	<u>53.4%</u>	<u>\$7,339.83</u>
<u>Total</u>	<u>100.00%</u>	<u>\$13,745.00</u>

7. Management of Site

The Hoch Road parcel shall be managed by the Board of Public Works for the benefit of the Participating Townships following the directions of the Water and Sewer Committee of the Board of Public Works in accord with the rights and responsibilities of the Board of Public Works set forth in Part One of this Restated Operating Agreement. Provided that, the consent

of all five of the participating township members of the Water and Sewer Committee shall be required in the following cases:

- A. Sale or other disposition of all or part of the Hoch Road real estate; or,
- B. Use of the property for any use other than as the site for a sanitary sewage treatment plant including necessary or convenient appurtenances except in case of emergency.

8. Beneficial Interest

Each of the Participating Townships shall have a separate beneficial interest in the Hoch Road real estate in proportion to the financial contribution of each. However, no participating township shall have the right to receive the value of its interest in the Hoch Road real estate as provided in paragraph 16 of Part One. Nothing in this paragraph shall be deemed to prevent the transfer of interests in the Hoch Road parcel among Participating Townships (or with the consent of all Participating Townships with another local unit of government) upon such terms and conditions as the transferor and transferee shall agree upon so long as the transferee agrees to be bound by the terms of this Agreement.

9. Termination

Any termination of the Restated Operating Agreement as provided in paragraph 16 of Part One shall not result in termination of the rights and responsibilities of the Board of Public Works and the Participating Townships with respect to the Hoch Road parcel unless a majority in number of the Participating Townships agree thereto; in such case, the improved real estate shall be distributed to the Participating Townships in proportion to their financial contributions, subject to the continuing obligation of the Participating Townships to pay all installments of principal and interest on bonds issued to finance the acquisition and improvement of the parcel.

10. Accounting

The Board of Public Works shall budget for and keep account of all receipts and expenditures attributable to the Hoch Road parcel and shall report thereon to the Participating Townships. Payment of expenses shall be made by the Participating Townships as provided for other expenses in Part One.

11. Framework for Future

It is the intent of the parties that this Restated Operating Agreement shall provide a framework for the development of a sanitary sewage treatment facility upon the Hoch Road parcel, but no party shall be deemed to have agreed to the financing and construction of such

a facility at the present time. 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 wheher 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.

PART THREE
SEPTAGE TREATMENT PLANT

Recitals

A. The Board of Public Works, at the recommendation of the Townships of Acme, East Bay, Elmwood, Garfield and Peninsula (the Townships) is proceeding with the development and implementation of a Septage Treatment Plan (Plan). This plan was approved by the Water and Sewer Committee of the Board of Public Works on August 16, 2002 and thereafter was approved in concept by the Townships.

B. The Plan generally provides for the acquisition by the Board of Public Works of a suitable site and the construction of a septage treatment facility on that site for use by the residents of Grand Traverse County and Elmwood Township. The septage treatment facility is to be connected to a sanitary sewer so that the final treatment of the wastewater will be provided at the Traverse City Regional Wastewater Treatment Plant or at another suitable facility to be constructed by the Board of Public Works or the Townships in the future.

C. At the request of the Townships, the Board of Public Works has entered into an agreement to purchase real estate located in Garfield Township, Grand Traverse County, Michigan which the Townships believe, based on preliminary inquiry, will prove suitable for use as a septage treatment facility. The real estate is described as Lot #4 Hammond Industrial Centre; the purchase price is \$473,974.00

D. The Board of Public Works has applied to Garfield Township for zoning approval for use of the site, is conducting public hearings concerning the site and will conduct engineering and other investigation of the site with a view to completing its "due diligence" review.

E. The Board of Public Works and the Townships wish to modify their existing operating agreement to take account of the Septage Treatment Plan and to set forth their respective rights and responsibilities.

1. Application of Part One

Except as expressly provided in this Part Three, the provisions of Part One apply to the acquisition, ownership, and operation of the septage treatment facility.

2. Financing of Purchase

The parties to this agreement have tentatively agreed with the Board of Commissioners of Grand Traverse County that the County will provide short-term financing to fund the purchase of the property and that the funds so advanced shall be repaid together with interest as provided in resolutions to be adopted by the parties. The amounts advanced and interest thereof will be repaid to the County out of the proceeds of DPW bonds to be issued to finance the real estate and the construction and start-up of the facility. The Townships of Acme, East Bay, Elmwood, Garfield, and Peninsula hereby agree to pay to Grand Traverse County all amounts advanced by it to fund the purchase of the real estate in the proportions set forth below if the bonds contemplated by the parties are not issued or are not sufficient to repay the obligation.

3. Obligation to Purchase

On or before December 31, 2002 the Townships, acting through the Water and Sewer Committee of the Board shall direct the Board of Public Works whether or not to purchase Lot #4 of Hammond Industrial Centre. If the Townships shall instruct the Board not to purchase the parcel, the Townships shall reimburse the Board of Public Works for all expenses incurred in connection with the proposed acquisition. If the Townships instruct the Board to complete the purchase the Townships agree to provide the funds necessary to complete the purchase as provided in the Purchase Agreement whether or not short-term financing is available through Grand Traverse County. In any event the Townships shall bear all of the costs incurred in connection with the Hammond Industrial Centre Lot #4.

4. Ownership of Property

If the Board purchases Lot #4 it shall take title in its name provided, however, that the Townships shall be deemed to have beneficial ownership of the premises in proportion to the contribution made by each Township as provided below. The Board shall, upon written request of the Townships, convey the real estate and improvements to the Townships as tenants in common or to an entity designated by the Townships in writing. Provided, however, that the Board or the County, as the case may be, shall receive such assurances concerning repayment of County bonds issued to finance the project and the maintenance of insurance during such period during which the bonds are outstanding as shall be reasonably satisfactory to Board.

5. Proportion of Contribution and Ownership

The Townships severally agree to assume the following proportions of expense as determined by their respective proportions of septic and holding tanks as set forth in this paragraph. The data from which this proportion is derived is set forth in Exhibit C attached hereto and made a part hereof:

Acme	6.30%
East Bay	30.75%
Elmwood	16.32%
Garfield	25.10%
Peninsula	21.54%
Total	100.00%

The provisions of Part One Paragraph 16 providing for buyout of the beneficial interest of a Township do not apply to this Part Three.

6. Management of Site

Lot #4 shall be managed by the Board of Public Works for the benefit of the Townships following the directions of the Water and Sewer Committee of the Board of Public Works in accord with the rights and responsibilities of the Board of Public Works set forth in Part One of this Restated Operating Agreement. Provided that, the consent of all of the participating township members of the Water and Sewer Committee shall be required to sell or otherwise dispose of Lot #4 or to develop facilities upon it. Passage of resolutions and execution of contracts to facilitate the issuance of bonds to finance a project upon Lot #4 shall be deemed the necessary consent by any Township passing the resolutions and executing the contract.

7. Septage Treatment Facility

If the Board, with the approval of the Townships, undertakes to develop a Septage Treatment Facility, the Board shall be the manager of the facility with the advice and consent of the Water and Sewer Committee. With the approval of the Water and Sewer Committee, the Board may:

- A. Adopt rules and regulations for the operation of the facility including but not limited to hours of operation, use of facilities, prohibited discharges and such other matters as the Board deems necessary or useful;
- B. Adopt a schedule of rates and charges which shall be sufficient to recover the actual costs of operation including indirect and capital costs together with the establishing of a reserve for repair and replacement;

- C. Enter into contracts with licensed septage haulers to provide for use of the facility including payment terms for charges, equipment requirements, use of Board facilities, equipment maintenance and requirements and suspension of privileges in case of nonperformance of contract provisions;
- D. Enter into contracts with other local units of government providing for the construction of such capacity at the septage treatment plant as is thought necessary to provide capacity to meet the needs of the residents of the local units, provided that such contracting townships shall not be deemed to have acquired any rights in the septage plant except that of treatment of septage. The Board may require as a condition of such contact that the contracting local unit enter into an agreement to guarantee the pro-rata cost of constructing capacity for the local unit; all such local units shall consent to the provision of such services within the township and to the use of the public rights of way for such purpose;
- E. Establish an advisory committee for the governance of the septage treatment plant which may include representatives of other local units of government, septage haulers, and members of the public;
- F. Enter into contracts with one or more persons, firms, or corporations for the management of the septage treatment plant upon terms and conditions to be approved by the Water and Sewer Committee.

8. Uniform Ordinances

The Townships (and other local units of government who agree to participate in the septage treatment plant) shall adopt and keep in force one or more ordinances approved by the Water and Sewer Committee which will contain provisions requiring the use of the Septage Treatment Plant by all licensed septage haulers pumping holding tanks or septic tanks within the local unit and prohibiting the discharge of untreated septic tank or holding tank waste upon the ground surface within the local unit (whether or not incorporated into the soil). Such ordinance may contain optional provisions dealing with septic and holding tank permits.

9. Termination of Septage Plant Use

Any Township may elect by written notice delivered to the Board of Public Works to cease to use the Septage Treatment Plant for the treatment of septic tank waste or holding tank waste. Any Township which amends its Ordinance to eliminate the requirement that septic or holding tank waste be delivered to the Septage Treatment Facility or which takes other action inconsistent with maintaining use of the Septage Treatment Facility shall be

deemed to have given such written notice. Upon receipt of such notice, the Board shall notify the Township in writing of any debt on the Septage Treatment Plant which remains outstanding and the proportion of such debt remaining unpaid. If there are outstanding bonds issued in connection with the Septage Treatment Plant project, the Township so electing not to use the Septage Treatment Plant shall pay to the Board of Public Works within ninety (90) days of the date of the election an amount equal to that Township's guaranteed proportion of the unpaid debt. Such amount shall be retained by the Board of Public Works until such time as the bonded indebtedness is paid in full. Annually, following the close of the calendar year, the Board shall review the amount of bonded indebtedness outstanding and shall pay over to the township any amount in its account in excess of the amount that township has guaranteed which remains outstanding. The Board may make deductions from the amount deposited by the withdrawing township as follows:

- (a) If the remaining townships make capital payments from sources other than user fees in order to retire bonded indebtedness (but not in advance of the regular due date thereof) then the Board may withdraw the Township's proportionate share of such capital payment; and
- (b) If the rates at the Septage Treatment Plant are adjusted to increase the capital cost component thereof the Board may deduct from the Township's deposit an amount equal to the Townships guaranteed portion of the capital increase for the preceding year.

10. Accounting

The Board of Public Works shall budget for and keep account of all receipts and expenditures attributable to the Septage Treatment Plant report thereon to the Townships and to all Townships contracting for services. It is the intent that all of the direct and indirect expenses of the Septage Treatment Plant shall be paid for by user fees. A copy of the budget shall be supplied to the Townships upon adoption and to all townships contracting with the Board for septage treatment service. A copy of the annual statement of receipts and expenditures shall be supplied to each Township and to each township contracting with the Board for septage treatment service at least annually.

11. Framework for Future

It is the intent of the parties that this Amended Restated Operating Agreement (2002) shall provide a framework for the development of a Septage Treatment Plant but no party to this Agreement shall be deemed to have agreed to the financing and construction of such a facility at the present time by reason of executing this Agreement.

12. Blair Township

Blair Township shall have no ownership or beneficial interest in, nor liability for the obligations of the Septage Treatment Plant constructed in 2004 - 2006.

PART FOUR
GENERAL PROVISIONS

1. Integration

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

2. 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 construction.

3. 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.

4. 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, to the Director in the case of the Board of Public Works and to the respective Township Clerks of the Townships at the applicable Township Hall.

5. Waiver

The failure of any party to exercise a right or remedy will not operate as a waiver of any of the rights of any party.

6. 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.

7. 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 both parties.

8. 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. Provided that assignment to an authority undertaking the obligations of any party shall not require the consent of the non-assigning party.

9. 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.

10. Independent Counsel

This Agreement was drafted by Michael J. Houlihan, Esq. as counsel for the Board of Public Works. Each of the other parties represents that it is represented by other counsel and has consulted with Township counsel and other advisors to the extent that it deems necessary.

11. 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.

12. 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.

13. 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.

Witnesses:

Parties:

*Grand Traverse County Board of
Public Works*

By: _____
Chairperson

By: _____
Secretary

Dated:

Township of Acme

By: _____
Supervisor

By: _____
Clerk

Dated: _____

Township of Blair

By: _____
Supervisor

By: _____
Clerk

Charter Township of East Bay

By: _____
Supervisor

By: _____
Clerk

Dated: _____

Charter Township of Elmwood

By: _____
Supervisor

By: _____
Clerk

Dated: _____

Charter Township of Garfield

By: _____
Supervisor

By: _____
Clerk

Dated: _____

Township of Peninsula

By: _____
Supervisor

By: _____
Clerk

Dated: _____

Exhibit A
Legal Description
Hoch Road

Township of Garfield, County of Grand Traverse, State of Michigan

The Southwest quarter of the Southwest quarter except the West 165 feet thereof of Section 35, Town 27 North of Range 11 West, and that part of the South half of the Southeast quarter of Section 34, Town 27 North, Range 11 West, lying Easterly of the Grand Rapids and Indiana Railroad right-of-way (now Pennsylvania Railroad right-of-way), except the East 165 feet thereof and except commencing at the Southeast corner of the Southwest quarter of the Southeast quarter of said section; thence West on section line 537.74 feet to the point of beginning; thence West on section line, 186.41 feet to east line of Railroad right-of-way; thence North $19^{\circ}31'$ East, along right-of-way 353.30 feet; thence East 68.38 feet; thence South 333.00 feet to point of beginning.

* = degrees

Exhibit B

Computation of the share of the Participating Townships under Part Two of the Restated Operating Agreement.

1. Determine the total flow contributing to the sewer system operated by the Board of Public Works during the fiscal year ending June 30 next preceding the date of computation. Flows to treatment systems and facilities not connected to the system operated by the Board of Public Works are not included in Participating Township Flows.

Example:

Township	Flow	Percent
Acme	139,475,440	18.8%
East Bay	128,746,560	17.4%
Elmwood	77,212,767	10.4%
Garfield	396,162,200	53.4%
Total	1,548,814,000	100.00%

2. The flow from each Participating Township is then calculated as a percent of the total flow from participating townships for the fiscal year July 1, 2000 - June 30, 2001.

Acme	139,475,440/1,548,814,000	18.8%
East Bay	128,746,560/1,548,814,000	17.4%
Elmwood	77,212,767/1,548,814,000	10.4%
Garfield	396,162,200/1,548,814,000	53.4%
Total	1,548,814,000/1,548,814,000	100.0%

3. This percentage of township flow determined as of June 30 shall apply to expenses falling due during the succeeding one year period, in this example from July 1, 2001 through June 30, 2002.

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