

WATER SERVICE AGREEMENT

between the

CITY OF ST. JOSEPH

and

**LINCOLN CHARTER TOWNSHIP,
ROYALTON TOWNSHIP,
ST. JOSEPH CHARTER TOWNSHIP**

and

**SOUTHWEST MICHIGAN REGIONAL
SANITARY SEWER AND WATER AUTHORITY**

May 1, 2009

WATER SERVICE AGREEMENT

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WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT made and executed as of May 1, 2009 (the "Agreement"), by and between the **CITY OF ST. JOSEPH**, Berrien County, Michigan, a Michigan municipal corporation (the "City"), and **LINCOLN CHARTER TOWNSHIP**, Berrien County, Michigan, a Michigan charter township ("Lincoln Township"), **ROYALTON TOWNSHIP**, Berrien County, Michigan, a Michigan general law township ("Royalton Township"), and **ST. JOSEPH CHARTER TOWNSHIP**, Berrien County, Michigan, a Michigan charter township (St. Joseph Township" and together with Lincoln Township and Royalton Township, the "Townships"), and the **SOUTHWEST MICHIGAN REGIONAL SANITARY SEWER AND WATER AUTHORITY**, a statutory authority formed by the Townships pursuant to Act 233 of the Public Acts of Michigan of 1955, as amended (the "Authority").

RECITALS

A. The City owns and operates a public water supply, treatment and distribution system which supplies water to users within portions of Berrien County, Michigan.

B. The City and the Lake Michigan Shoreline Water and Sewage Treatment Authority have previously entered into a 2003 Water Service Agreement dated May 30, 2003 (the "2003 Agreement"), pursuant to which the City provides water service to Users within portions of the Townships.

C. The City and the Townships desire to replace the 2003 Agreement with this Agreement.

NOW, THEREFORE, in connection of the respective representations and agreements contained herein, the parties hereto agree as follows:

Section 1. Definitions. The following terms, whenever used in this Agreement, shall have the following meanings, unless the context shall indicate another or different meaning:

“Agreement” means this Water Service Agreement between the City, the Townships and the Authority.

“Authority” means the Southwest Michigan Regional Sanitary Sewer and Water Authority.

“City” means the City of St. Joseph, Berrien County, Michigan.

“City System” means the water supply, treatment and delivery system up to and including the Connection Points through which water is provided to Users in the Township.

“Connection Point” means each location where the City supplies water through the City System to Users in the Townships as identified on the attached Exhibit A and such additional locations as shall be agreed by the City, the Townships and the Authority meeting standards and specifications established by the City based on good engineering practices.

“Joint Operating Board” means the Water Services Joint Operating Board described in Section 12 of this Agreement.

“Lake Michigan Shoreline Authority” means the Lake Michigan Shoreline Water and Sewage Treatment Authority.

“Lincoln Township” means Lincoln Charter Township, Berrien County, Michigan.

“Rate Setting Methodology” means the method of establishing rates and charges for Users in the Townships as described in the attached Exhibit B.

“Royalton Township” means Royalton Township, Berrien County, Michigan.

“Rights-of-Way” means the public streets, highways, alleys and other public places, rights-of-way and easements.

“St. Joseph Township” means St. Joseph Charter Township, Berrien County, Michigan.

“State” means the State of Michigan.

“Shared System” means certain components of the City System as well as certain booster pumps, water storage facilities and transmission mains located beyond the Connection Points located within the Township Systems as identified on the attached Exhibit C.

“Townships” or “Township” mean collectively Lincoln Township, Royalton Township and St. Joseph Township or separately each of Lincoln Township, Royalton Township and St. Joseph.

“Township Systems” or “Township System” means the water supply and delivery system located beyond the Connection Points, collectively or separately, in each of the Townships through which water is provided to Users within the Water Service Area(s) in the Township(s).

“User” means a user of water service supplied by the Water System within the Water Services Areas pursuant to this Agreement.

“Water System” means the public water supply, treatment and distribution system comprised of the City System and the Township Systems including the Shared System.

“Water Service Areas” or “Water Service Area” mean the area within the jurisdictional boundaries of Lincoln Township and Royalton Township and the area within the jurisdictional boundaries of St. Joseph Township west of the St. Joseph River, collectively or separately.

Section 2. Provision of Water Service. Subject to the right of the City and a Township or the right of the Townships to enter into a “borderline street” or similar agreement to serve an area along a common border, the City, the Townships and the Authority agree that the City shall be the exclusive provider of public water service within the Water Service Areas in the Townships. Provided the City System has sufficient capacity to meet substantiated demand, the

Townships shall not (a) individually or collectively construct, own or operate its (their) own public water supply and treatment system within the Water Service Areas in the Townships or (b) enter into an agreement or obtain water service from another service for Users within the Water Service Areas in the Townships without the prior written consent of the City. If the City does not provide water service to a Township to service Users within its Water Service Area to meet substantiated demand then the preceding provisions of this Section 2 providing that the City is the sole supplier of water within a Township Water Service Area shall not apply and said Township shall have the right to construct, own and operate, either individually or collectively, a water supply and treatment system and/or purchase such service from a third-party supplier.

A Township supplied water from the City System shall not provide water service, directly or indirectly, to any place or user outside its Water Service Area without the prior written consent of the City.

Section 3. Supply of Water. The City shall deliver through the City System potable, treated water to the Townships of the same quality and similar pressure, (*provided, however*, the City shall not be responsible for a temporary water loss or excessive pressure during an emergency) as that provided a water user in the City subject to such limitations and exceptions as are hereinafter in this Agreement provided.

Water supplied to a Township shall be through a Connection Point(s). Except for emergency interconnections with other water systems, water supplied through the City System to the Water Service Areas of the Townships shall not be mixed or mingled with water from any other source unless otherwise approved by the City. Further, each Township supplied water from the City System shall not permit water from any other source to be introduced into any part of its Township System.

Subject to the restrictions in this Section 3, nothing shall prevent property owners within the Water Service Areas in the Townships from installing and operating private wells provided such installation and operation does not violate the applicable Township cross-connection control program.

Each of the Townships individually or collectively through the Authority shall be responsible for providing water service to Users within their respective Water Service Area beyond the Connection Points including (a) the maintenance of water quality and (b) the cost of construction and replacement of water distribution lines and related appurtenances except for construction, repair, operation and maintenance of the Shared System.

Section 4. Operation and Maintenance of City System and Shared System. Subject to the general oversight responsibility of the Joint Operation Board provided for in Section 12 of this Agreement, the City shall be responsible for operation, maintenance and repair of the City System and the Shared System. In addition, the City shall be responsible for maintaining and enforcing a cross connection control program for users within the jurisdictional boundaries of the City.

Section 5. Operation and Maintenance of Township Systems. Each of the Townships shall be responsible for the operation, maintenance and repair of the water supply and delivery system serving or located beyond the Connection Points and within the Water Service Area in each of the Townships, i.e., the Township System, except for those components constituting a part of the Shared System, *provided, however*, each of the Townships, and not the City, shall be responsible for replacement of the facilities comprising the related Township System whether or not such facilities are a part of the Shared System. Such operation, maintenance and repair shall be provided by the City, as and to the extent provided in this Section 5, and the cost of which

shall be recovered through the rates and charges established pursuant to the Rate Setting Methodology.

Unless otherwise agreed to by the City and each of the Townships, respectively, in writing, the City shall, with the general oversight of the Joint Operating Board as provided in Section 12 of this Agreement, provide operation, repair and maintenance services for each of the related Township Systems which are not a part of the Shared System (which operation, maintenance and repair is provided for in Section 4 of this Agreement) including the repair and replacement of the hydrants within the Water Service Areas in the Townships, *provided, however,* the Authority pursuant to an agreement with the Townships shall be responsible for valve turning, hydrant flushing and administration and enforcement of a back flow prevention program within the Water Service Areas in the Townships. In addition, each of the Townships shall be responsible for maintaining and enforcing a cross connection control program for Users within their jurisdiction.

Section 6. Reading of Meters; Installation of Taps; Acquisition, Installation and Maintenance of Meters. For the purpose of determining water usage of Users within the Water Service Areas in the Townships, the City shall regularly read the meters of the Users within such Water Service Areas and maintain a record of such readings for review by an authorized User, the Township in which the User is located and the Authority.

In the event a meter of a User fails, until such meter has been repaired or replaced (which the City shall do promptly upon notice of a failure), the City shall estimate the water supplied to the User based on the average use of a like number of days at the same time of the year for the immediately preceding year and, if such historical information is not available, the City shall estimate the quantity of water supplied based on a similar period of use.

The City shall be responsible for the installation of water taps and for acquiring, installing and maintaining water meters used to determine water usage of Users within the Water Service Areas in the Townships. The City shall be entitled to charge such Users the same fees for the installation of water taps and for the installation and the turning such water meters on and off as it charges water users within the City.

Section 7. Rates and Charges. Rates and charges for water service provided to Users within the Water Service Areas in the Townships pursuant to this Agreement shall be determined annually through the Rate Setting Methodology, and as shall be set by the Joint Operating Board as provided in Section 12 of this Agreement.

As reflected in the attached Exhibit B, the current 15% surcharge to Users within the Water Service Areas in the Townships will be permanently reduced by 1/5 of the 15% in each of the calendar years 2010 through 2013 so that in calendar year 2014 and thereafter there will be no such surcharge to such Users.

The annual review and approval of water rates and charges applicable to Users within the Water Service Areas in the Townships shall be in accordance with procedures referenced in Section 12 of this Agreement related to the operation and authority of the Joint Operating Board and shall be completed whenever possible not less than 90 days or such other date as determined by the Joint Operating Board before the beginning of the City's fiscal year so that changes in rates and charges may become effective at the beginning of such fiscal year.

The City agrees not to charge the Townships or Users within the Water Service Areas in the Townships for the emergency use of water including water used for fire protection within the Water Service Areas, but excluding water supplied to fire suppression systems within the Water Service Areas.

Section 8. Additional Rates and Charges of Townships. Each of the Townships may establish additional rates and charges to provide for the costs of construction, operation, maintenance, repair and replacement of the respective Township Systems including the payment of such Township's share of any debt service related to the construction or replacement of facilities comprising such Township System. Upon a Township providing information to the City from time to time enabling it to determine such additional rates and charges not less than 90 days before such rates and charges are to be billed to Users within the Water Service Area in such Township or such additional time as the City requires to make a required computer programming change, the City shall add such additional rates and charges to the water bills of Users within the Water Service Area in the Township. The City shall collect such rates and charges in the same manner as the rates and charges established pursuant to Section 7 of this Agreement are collected and upon collection the City shall remit such amounts to the Township in accordance with procedures mutually agreed to by the City and the respective Township.

Section 9. Billing and Collection of Rates and Charges. The City shall bill and collect the water rates and charges as provided for in Section 7 and Section 8 of this Agreement for Users within the Water Service Areas in the Townships with the same frequency, using the same procedures and imposing the same late payment fees and penalties as applied to water users in the City which procedures shall be published and available for review by such Users, the Townships and the Authority.

The City shall be entitled to apply the same collection enforcement procedures, including the termination of service for nonpayment of water bills, to Users within the Water Service Areas in the Townships as are applied to water users in the City. The Townships shall adopt such ordinances, resolutions, rules and regulations as are required and requested by the City to enable

the application of such enforcement procedures including procedures for placing delinquent unpaid water bills as a lien on the property receiving service.

Section 10. Restriction of Water Service and Emergency Discontinuance. In the event the City is unable during a temporary period of scarcity or emergency to provide water service to Users within the Water Service Area in one or more of the Townships in the quantity and/or at the capacity required, the quantity and/or capacity which the City can provide shall be allocated insofar as physically possible during such period to all water users within the City and all Users within the Water Service Areas in the Townships in equitable proportions so that all such users are subject to similar restrictions on water service.

The City reserves the right to temporarily discontinue water service (a) without notice in times of emergency or (b) with not less than 24 hours notice upon the City finding it necessary for purposes of testing, repairing and replacing facilities of the Water System. The City shall provide prompt notice of such temporary discontinuance to members of the Joint Operating Board.

Upon notification by the City each of the Townships shall cause Users within the respective Water Service Area in the Township to comply with any water sprinkling/irrigation restriction which the City shall determine is necessary and which shall apply equally to all similarly situated users of the Water System.

Each Township waives any and all claims for damages resulting from such restrictions and discontinuance as set forth in this Section 10 and agrees to defend, indemnify and hold harmless the City, its commission, officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from such restrictions or discontinuance, but only if such restrictions or

discontinuance is not caused in whole or in part by the negligence of the City, its commission, officers, employees or agents.

Section 11. Rights-of-Way. Each of the Townships hereby agree, as a part of the consideration of this Agreement, and consent to permit the use by the City without cost of the Rights-of-Way in such Township for the purpose of constructing, installing, maintaining, repairing and replacing water facilities of the Shared System and providing operation, maintenance and repair services in the Water Service Areas in the Townships as provided in Section 5 of this Agreement as the City determines necessary to provide water service to Users within the Water Service areas in the Township or other users receiving water service within or outside the corporate boundaries of the City.

Each Township shall, upon the request of the City, execute or cause to be executed separate instruments in recordable form granting temporary or permanent easements or consents over, across, under and within the Rights-of-Way of such Township for such purposes as provided in this Section 11. Each Township agrees that the City shall have the right to use the Rights-of-Way in such Township for the purpose of providing operation, maintenance and repair services as provided in Section 5 of this Agreement as the City determines necessary to provide water service to Users within the Water Service Areas in the Townships or other users receiving water service within or outside the corporate boundaries of the City. Each Township further agrees, upon request of the City, to assist the City in obtaining any easement or consent over private property within such Township which the City determines is necessary to provide water service to users within or outside the corporate boundaries of the City.

In the event of such use of the Rights-of-Way by the City, the City shall promptly replace or restore the Rights-of-Way property including all public facilities, pavement and soil located

thereon to as good or better condition as before such use. The City shall not cause Rights-of-Way to be obstructed longer than is necessary for it to complete the required work.

Section 12. Joint Operating Board. The City and the Townships hereby create and establish the Joint Operating Board. It shall be composed of 1 member appointed by each of the Townships and 3 members appointed by the City. Each Township shall designate an alternate for the member it appoints. The City shall designate not less than 1 alternate nor more than 3 alternates for the members it appoints. Alternates shall serve on the Joint Operating Board in a related member's absence. Elected or appointed officers or other representatives of the City and the Townships may be appointed to the Joint Operating Board. Members of the Joint Operating Board shall be appointed to 3 year terms, *provided, however,* there shall be no limit to the number of terms a member may serve and the first members appointed by the City and the Townships shall serve for staggered 1, 2 and 3 year terms.

The Joint Operating Board shall be responsible for the general oversight of (a) the City water plant, (b) those other portions of the City System through which water is provided to Users within the Townships and (c) the Shared System. Such oversight shall include the operation and maintenance of such components of the Water System including (i) the prior approval, except in the case of an emergency, of the purchase of supplies and equipment which have not been budgeted for in a budget approved by the Board, (ii) the award of contracts and (iii) the approval of the payment of bills and invoices. The Joint Operating Board's oversight shall not, however, include Water System matters related to employment, labor relations and human resources which shall be within the exclusive control and responsibility of the City. Except in the case of an emergency, each capital improvement to (x) the City water plant, (y) other portions of the City System through which water is provided to Users in the Townships and (z) the Shared System

shall be subject to the prior approval of the Joint Operating Board. Further, the City shall, with input from the Joint Operating Board, initially prepare and the Joint Operating Board shall review and approve the annual operating and capital budgets for such components of the City System within the time frame of the City's annual budgeting process.

The City agrees to meet with the Board during the annual review of rates and charges applicable to Users within the Water Service Areas in the Townships for input and understanding by the Joint Operating Board. Once the annual review has been completed in accordance with the Rate Setting Methodology, the Joint Operating Board shall, in conformity with the Rate Setting Methodology, set the rates and charges for Users within the Water Service Areas of the Townships. The City shall make available to the Joint Operating Board upon request all records and other documents and work papers used by the City in recommending rates and charges for Users within the Water Service Areas in the Townships. The annual review and approval by the Joint Operating Board shall be undertaken in accordance with the timeline set forth in the attached Exhibit B.

The City shall keep the Joint Operating Board informed with respect to all aspects of the operation and maintenance of (a) the City water plant, (b) other portions of the City System through which water is provided to Users in the Townships and (c) the Shares System and shall provide the Joint Operating Board with regular periodic financial and operational reports of the Water System.

The Joint Operating Board shall meet monthly on such dates as established by the Joint Operating Board at the beginning of each calendar year. Additional meetings of the Joint Operating Board shall be called by the chairperson upon the request of any two members or upon independent action of the chairperson. Regular and special meetings of the Joint Operating

Board shall be established, posted and held in accordance within the Open Meetings Act, Act 267 of the Public Acts of Michigan of 1976, as amended. Each Joint Operating Board member and each alternate serving in the absence of a member shall receive \$50 per each meeting he/she attends which shall be paid from the revenues of the Water System.

The chairperson of the Joint Operating Board shall alternate every 2 years between a member appointed by the City and a member appointed by 1 of the Townships. A quorum of the Joint Operating Board for the purpose of conducting business shall consist of 2 members (or alternates serving in the absence of members) appointed by the City plus 2 members (or alternates serving in the absence of members) appointed by the Townships. Each member (or alternate serving in the absence of a member) shall be entitled to 1 vote. Approval of a matter by the Joint Operating Board shall require the affirmative vote by 2 members (or alternates serving in the absence of members) appointed by the City and 2 members (or alternates serving in the absence of members) appointed by the Townships.

The Joint Operating Board may, in its discretion, establish subcommittees, the members of which need not be members of the Joint Operating Board.

Section 13. Shared System Capital Improvements. The City, the Townships and the Authority hereby agree that it is necessary for the City to immediately undertake certain capital improvements to the Shared System at an estimated cost of \$13,800,000 which Users within the Water Service Areas in the Townships will utilize and receive the benefit of consisting of a new Lake Michigan water intake and low service pump station, a new generator and associated electrical upgrades and renovation of 4 filters (9 through 12) including rapid mix equipment which capital improvements are hereby approved by the City, the Townships and the Authority. Except for the capital improvements identified in the preceding sentence of this Section 13,

capital improvements to the Shared System shall be subject to the approval by the Joint Operating Board as described in Section 12 of this Agreement.

Section 14. Sale or Disposal of City Water Plant Property. If the City shall sell or otherwise dispose or utilize the land on which the City water plant is currently located, Users within the Water Service Areas in the Townships shall not be responsible for the cost of rebuilding or replacing the water plant at another location, but shall be responsible for their share of water plant expansions related to such rebuilding or replacing of the water plant as are approved by the Joint Operating Board in accordance with Section 13 of this Agreement in conformity with the Rate Setting Methodology.

Section 15. Title to Water System. All right, title and interest in all water facilities of the City System shall vest with the City and this Agreement, its terms or any payments made or conditions fulfilled as required hereunder shall not vest any right, title or interest in the City System to the Townships. All right, title and interest in the Township Systems shall vest to each of the respective Townships, the Authority or the Lake Michigan Shoreline Authority pursuant to agreements between the Authority or the Lake Michigan Shoreline Authority and the Townships and this Agreement, its terms or any payments made or conditions fulfilled as required hereunder shall not vest any right, title or interest in the Township Systems to the City.

Section 16. Term. This Agreement shall be effective for an initial term of 30 years commencing from the date set forth in the first paragraph of this Agreement. Not more than 90 days and not less than 30 days prior to each successive 5 year anniversary date of this Agreement, the City, the Townships and the Authority agree to consider the approval of a 5 year extension of the term of this Agreement on the same terms and provisions or other mutually agreeable terms and conditions.

Section 17. Indemnification by City and Townships. The City agrees to defend, indemnify and hold harmless each of the Townships, the Authority and the Lake Michigan Shoreline Authority and their respective boards, officers, employees and agents (the "Township/Authorities Indemnified Party" or "Township/Authorities Indemnified Parties") from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from injury or damage to persons or property with respect to the City's ownership, operation, construction, repair, replacement and maintenance of the City System, and with respect to the City's obligation to operate, maintain and repair the Shared System, *provided*, that if such injury or damage is caused in whole or in part by the acts or omissions of any of the Township/Authorities Indemnified Parties, then the City's indemnification obligation shall be reduced in proportion to the Township/Authorities Indemnified Party's or Parties' percentage of responsibility for such injury or damage. The indemnification obligations provided above shall include the payment of all reasonable attorneys' fees and other expenses of defense. The City shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the City is not waiving any defenses otherwise available to it by law; provided such defenses are also available to and asserted by the City for the benefit of the Township/Authorities Indemnified Parties. The City shall not be responsible for the indemnification obligations set forth above with respect to any Township/Authorities Indemnified Party to the extent that the Township/Authorities Indemnified Party has waived a defense which was otherwise available to it by law.

Each of the Townships, respectively, agree to defend, indemnify and hold harmless, the City and its commission, officers, employees and agents (the "City Indemnified Party" or "City

Indemnified Parties”) from and against all claims, damages, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from injury or damage to persons or property with respect to such Township’s (individually or collectively with one or more of the other Townships or the Authority or the Lake Michigan Shoreline Authority) ownership, operation, construction, repair, replacement and maintenance of the Township Systems beyond the applicable Connection Point(s) excluding, however, the Shared System, *provided*, that if such injury or damage is caused in whole or in part by the acts or omissions of any of the City Indemnified Parties, then the Township’s indemnification obligation shall be reduced in proportion to the City’s Indemnified Party’s or Parties’ percentage of responsibility for such injury or damage. The indemnification obligations provided above shall include the payment of all reasonable attorneys’ fees and other expenses of defense. The affected Township shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, a Township is not waiving any defenses otherwise available to it by law; provided such defenses are also available to and asserted by such Township for the benefit of the City Indemnified Parties. A Township shall not be responsible for the indemnification obligations set forth above with respect to any City Indemnified Party to the extent that the City Indemnified Party has waived a defense which was otherwise available to it by law.

Section 18. Townships Ordinances, Rules and Regulations. Except for those ordinances, rules and regulations applicable only to the City, each of the Townships shall from time to time promptly adopt and enforce such water use ordinances and rules and regulations promulgated pursuant thereto in substantially the form from time to time adopted and in effect in the City and such water use ordinances adopted by the Townships shall include language which, by reference, incorporates all rules and regulations promulgated from time to time by the City

pursuant to the City's water use ordinances. Such water use ordinances, rules and regulations shall be reviewed periodically by and the Joint Operating Board and revisions or modifications recommended to the City and the Townships for adoption. The Townships shall, upon request, provide the City with copies of all such ordinances, rules and regulations each has adopted or approved pursuant to this Section 18. Each of the Townships shall use all available means to strictly enforce such ordinances, rules and regulations.

Section 19. Expansions and Improvements to Township Systems. All expansions and improvements to the Township Systems shall be designed and constructed in accordance with good engineering practices and prior to construction the City shall have the opportunity to review design plans and specifications to determine if such expansions and improvements are consistent with and will not materially disrupt the operation, maintenance and performance of the Water System.

Section 20. Breach of Agreement and Remedies. Each nonbreaching party(ies) to this Agreement shall have such legal and equitable remedies against a breaching party(ies) as shall be awarded by a court of completed jurisdiction including the remedy of specific performance.

Section 21. Termination of 2003 Agreement. The City and the Lake Michigan Shoreline Authority agree to the termination of the 2003 Water Service Agreement dated May 30, 2003, between the City and the Lake Michigan Shoreline Authority as of the date of this Agreement as set forth in the first paragraph of this Agreement.

Section 22. Notices. All notices and other communications hereunder shall be sufficiently given and shall be deemed given when dispatched by regular, registered or certified mail, postage prepaid, or by hand delivery address as follows:

If to the City:

City of St. Joseph
City Hall
700 Broad Street
St. Joseph, Michigan 49085
Attention: City Manager

If to the Townships:

Lincoln Charter Township
Municipal Building
P. O. Box 279
2055 John Beers Road
Stevensville, Michigan 49127
Attention: Township Supervisor

Royalton Township
Township Hall
980 Miners Road
St. Joseph, Michigan 49085
Attention: Township Supervisor

St. Joseph Charter Township
Township Hall
P. O. Box 147
3000 Washington Avenue
St. Joseph, Michigan 49085
Attention: Township Supervisor

If to the Authority:

Southwest Michigan Regional Sanitary Sewer and Water Authority
P. O. Box 720
3000 Washington Avenue
St. Joseph, Michigan 49085
Attention: Chairman

The parties hereto may, by notice given pursuant to this Section 22, designate any further or different address or an e-mail address to which subsequent notices, certificates or other communications may be sent.

Section 23. Governing Law. This Agreement shall be construed in all respects in accordance with the laws of the State.

Section 24. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 25. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto.

Section 26. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 27. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 28. Entire Agreement. Except as otherwise indicated in this Agreement, this Agreement constitutes the entire agreement between the parties and there are no other representations, warranties, promises, guarantees or agreements, oral or written, express or implied, between the parties hereto with respect to this Agreement.

Section 29. Amendments. This Agreement may not be amended, changed, modified, altered, assigned or terminated before the end of its term without the written consent of the City, the Townships and the Authority.

Section 30. Exhibits. Any exhibit attached hereto are incorporated herein as though fully stated herein.

Section 31. Assignment. This Agreement and all rights and obligations hereunder shall not be assignable unless all parties hereto agree in writing to such assignment.

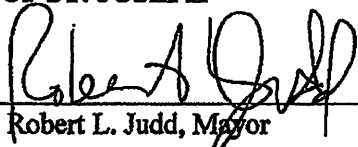
Section 32. Waiver. The waiver by any party hereto of a breach or violation of any provision of this Agreement shall not be a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 33. Parties. This Agreement shall be enforceable only by the parties hereto and their successors in interest by virtue of an assignment which is not prohibited under the terms of this Agreement and no other person shall have the right to enforce any provisions contained herein.

Section 34. Effective Date. This Agreement shall be effective as of the date set forth in the first paragraph hereof.

IN WITNESS WHEREOF, the City, the Townships and the Authority have caused these presents to be signed by their respective duly authorized officers.

CITY OF ST. JOSEPH

By: 
Robert L. Judd, Mayor

Attest: 
Deborah S. Koroch, City Clerk


LINCOLN CHARTER TOWNSHIP

By: 
Richard Stauffer, Supervisor

Attest: 
Stacy Lbar-Porter, Township Clerk

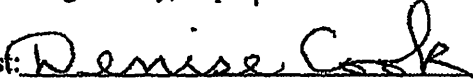
ROYALTON TOWNSHIP

By: 
Steve Tilly, Supervisor

Attest: 
Rocky Genovese, Township Clerk

ST. JOSEPH CHARTER TOWNSHIP

By: 
Roger Seely, Supervisor

Attest: 
Denise Cook, Township Clerk

**SOUTHWEST MICHIGAN REGIONAL
SANITARY SEWER AND WATER
AUTHORITY**

By: 
Charles Garlanger, Chairman

By: 
Alton Pscholka, Secretary

The Lake Michigan Shoreline Water and Sewage Treatment Authority hereby consents to the provisions of Section 21 of this Agreement.

**LAKE MICHIGAN SHORELINE WATER
AND SEWAGE TREATMENT AUTHORITY**

By: 
Charles Garlanger, Chairman

By: 
Alton Pscholka, Secretary

EXHIBIT B

RATE SETTING METHODOLOGY

1. Introduction

The goal of the Water Services Joint Operating Board (WSJOB) is to provide excellent quality water to the residents of our member municipalities, at the best long term rate. With respect to rate-setting, the objective of the WSJOB is to establish customer rates that properly fund:

- Operations and maintenance of all shared assets
- Maintenance of both the City and the Authority member water distribution systems
- Utility billing
- Administrative charges
- Outstanding debt service
- Maintenance of appropriate replacement reserves
- Provide for necessary future capital improvements

Customer rates and charges will be reviewed and considered annually with a view not only toward meeting the immediate financial needs of the system, but also to minimize rate fluctuations by considering anticipated system needs over a period of at least five years.

2. Methodology

The WSJOB member municipalities have concluded the 'Cash Basis' method of setting rates is most appropriate for the water system and therefore this approach will be used by the WSJOB to set the rates for all customers. The emphasis of the Cash Basis approach is to ensure that revenues are sufficient to cover total cash needs for a given period of time while maintaining the established reserve levels. To meet the objectives of the WSJOB, a rate review will be conducted at least annually to determine the cash requirements of the water system.

2.1 Cash Reserves

The basic components of the minimum Cash Reserve Fund will include:

- Operating and Maintenance Expenses: Three (3) months of the upcoming fiscal year budget
- Debt Service Payments: The actual amount of the upcoming fiscal year payments
- Contributions to Specified Reserves: at least 85% of the Accumulated Depreciation on Equipment listed on the Repair & Replacement Schedule
- Capital Expenditures: The budgeted cost of Capital Expenditures in the upcoming fiscal year, setting aside capital items purchased through debt financing or contributed.

This guideline may be amended from time to time by the WSJOB, although no component will be reduced below the level established above. The WSJOB may also elect to create additional designated reserve categories, such as Emergency Equipment Repairs Reserves and/or Future Capital Improvement Reserves (this is meant to be an example not a limitation).

2.2. Revenues

For the purpose of a rate analysis the following revenues will be considered:

- Water Sales -Ready to Serve & Commodity Charges
- Charges for Services – Water Taps and Meters (Hydrant Fees eliminated)
- Fines and Fees – Late Penalty, Shut Off Fees and NSF Fees
- Interest Income – Interest Earnings on Reserves
- Connection Fees/System Development Charge – New Service
- Miscellaneous Income

The WSJOB is authorized to establish and to amend from time to time a System Development Charge, as noted above. The System Development Charge would be charged to all new water accounts in the area of the WSJOB member municipalities. This System Development Charge would be in addition to the water service tap and meter fees already established by the City of St. Joseph or the tap-in fees established by the Townships. The purpose of a System Development Charge is to assign the capacity cost of growth, at least in part, to those causing the growth rather than to existing customers. Long-term, the goal of this charge would be to fund major system expansion, funding capital improvements, minimize debt, and maintain proper levels of cash reserves.

2.3 Expenditures.

For the purpose of the rate analysis, the following expenditures will be considered:

- Water Treatment Plant - Operations and Maintenance
- Water Distribution - Operations and Maintenance
- Utility Billings – Operations and Administrative Charges
- Upcoming Year Capital Improvements
- Upcoming Year Debt Service
- Annual MDEQ water service provider permit fees of the City and the Authority

3. Annual Rate Analysis

Each year, the City of St. Joseph Finance Director, Water Plant Superintendent and Public Services Director will develop and present to the WSJOB the proposed rates for the upcoming year. They will do so using the following methodology, which may be modified from time to time by the WSJOB:

- 1) Determine Desired Cash Reserves = O&M + Debt Service + Reserves (as indicated in paragraph 2.1 above)
 - a) Develop expenditure budget for upcoming year including the factors in paragraph 2.3 above.
- 2) Develop revenue budget using:
 - a) Sales Revenue
 - i) Current water rate
 - ii) Average usage over the past four years
 - iii) Current meter inventory

- b) Anticipated Non-Sale Revenue
 - i) Based on trending and averages
- 3) Calculate Projected Surplus/Shortfall
- 4) Compare Anticipated Cash Reserve Balance to Target Cash Reserve Balance
- 5) Increase or Decrease Rate to Achieve Desired Cash Balance
- 6) Compare estimated upcoming Year Cash Reserve Balance and Adjust Rate to Eliminate Large Fluctuations in Rate Changes
- 7) Recommend Rate to WSJOB at their March Meeting
- 8) Rates to Take Effect with the following nominal¹ July billing

4. Sample Rate Setting Document

See attached Attachment I.

¹. The nominal July bills may be sent out in the last few days of June or in July.

Attachment I

**City of St. Joseph
Water System
Historical Performance**

<i>Fiscal Year Ending June 30</i>	Audit 2008	Audit 2007	Audit 2006	Audit 2005	Audit 2004
Revenue [1]					
Charges for Water	3,225,772	2,897,610	2,980,437	2,401,265	2,487,147
Charges for Other Services	226,965	434,130	377,785	392,448	281,459
Fines, Fees and Forfeits	62,140	98,254	49,214	50,183	57,644
Interest Income	74,737	110,747	53,585	15,404	11,516
Other Revenues	136	1,210	11,579	5,733	59,859
Total Revenue	3,589,750	3,541,951	3,472,600	2,865,033	2,897,625
Operating Expenses [2]					
Water Treatment	1,434,102	1,219,823	1,264,213	1,245,809	1,253,671
Water Distribution	1,061,194	933,182	714,438	634,037	629,297
Water Administration	674,498	689,118	678,136	662,466	660,457
Total Expenses	3,169,794	2,842,123	2,656,786	2,532,312	2,543,425
Net Operating Cash Flow	419,956	699,829	815,814	332,721	354,200
Non-Operating					
Connection Charges	-	-	-	-	-
Debt Service	-	-	-	-	(4,879)
Capital Improvement	(314,046)	(191,195)	(179,893)	(110,734)	(118,283)
Subtotal	(314,046)	(191,195)	(179,893)	(110,734)	(123,142)
Net Cash Flow	105,910	508,634	635,921	221,987	231,058
Cash & Investments at June 30 [3]	1,915,758	1,886,034	1,545,136	909,215	687,228

[1] Does not include Capital Assets Transferred In

[2] Does not include depreciation.

[3] Does not include Utility Bills Receivable or Amount Due to Townships

City of St. Joseph
 Water System
 Current Meter Inventory

In-City					
Customer Count	General	Irrigation	Total	Meter Ratio	Meter Equivalent
by Meter Size					
5/8"	3165	15	3180	1.00	3180
3/4"	263	217	480	1.10	528
1"	154	148	302	1.40	423
1 1/2"	41	17	58	1.80	104
2"	83	34	117	2.90	339
3"	10	1	11	11.00	121
4"	7	0	7	14.00	98
6"	4	0	4	21.00	84
Total	3,727	432	4,159		4,878
Out-of City					
Customer Count	General	Irrigation	Total	Meter Ratio	Meter Equivalent
by Meter Size					
5/8"	6966	42	6988	1.00	6988
3/4"	1299	1201	2500	1.10	2,750
1"	390	973	1363	1.40	1,908
1 1/2"	153	106	259	1.80	466
2"	124	41	165	2.90	479
3"	13	0	13	11.00	143
4"	6	2	8	14.00	112
6"	3	1	4	21.00	84
Total	8,944	2,366	11,310		12,940

City of St. Joseph
 Water System
 Current Rate Structure

In-City			
Ready to Serve (RTS)	Number of Meters	Quarterly Rate	Revenue Generated
5/8"	3,180	\$9.00	114,480
3/4"	480	\$9.90	19,008
1"	302	\$12.60	15,221
1 1/2"	58	\$16.20	3,758
2"	117	\$26.10	12,215
3"	11	\$99.00	4,356
4"	7	\$126.00	3,528
6"	4	\$189.00	3,024
Totals	4,159		175,590

Out-of-City			
Ready to Serve (RTS)	Number of Meters	Quarterly Rate	Revenue Generated
5/8"	6,998	\$10.35	289,717
3/4"	2,500	\$11.39	113,850
1"	1,353	\$14.49	78,999
1 1/2"	259	\$18.63	19,301
2"	185	\$30.02	19,810
3"	13	\$113.85	5,920
4"	8	\$144.90	4,637
6"	4	\$217.35	3,478
Totals	11,310		635,712

In-City Commodity Charge	Rate per Ccf	Annual Volume	Annual Revenue
Water Service	1.30	641,548	834,012 CCF
Sprinkler Service	1.30	87,400	113,620
Total In-City		728,948	947,632
Out-of-City Commodity Charge	Rate per Ccf	Annual Volume	Annual Revenue
Water Service	1.50	950,219	1,425,329
Sprinkler Service	1.50	295,895	443,843
Total Out-of-City		1,246,114	1,869,171
Total Calculated Annual Revenue			\$3,628,105

City of St. Joseph
 Water System
 Proposed Rate Structure

In-City			
Ready to Serve (RTS)	Number of Meters	Quarterly Rate	Revenue Generated
5/8"	3,180	\$12.00	152,640
3/4"	480	\$13.20	25,344
1"	302	\$16.80	20,294
1 1/2"	58	\$21.60	5,011
2"	117	\$34.80	16,286
3"	11	\$132.00	5,808
4"	7	\$168.00	4,704
6"	4	\$252.00	4,032
Totals	4,159		234,120

Out-of-City			
Ready to Serve (RTS)	Number of Meters	Quarterly Rate	Revenue Generated
5/8"	6,998	\$13.44	376,212
3/4"	2,500	\$14.78	147,840
1"	1,363	\$18.82	102,585
1 1/2"	259	\$24.19	25,063
2"	165	\$38.98	25,724
3"	13	\$147.84	7,688
4"	8	\$188.16	6,021
6"	4	\$282.24	4,516
Totals	11,310		695,649

In-City Commodity Charge	Rate per Ccf	Annual Volume (ccf)	Annual Revenue
Water Service	1.30	630,442	819,575
Sprinkler Service	1.30	85,969	111,760
Total In-City		716,411	931,335

Out-of-City Commodity Charge	Rate per Ccf	Annual Volume (ccf)	Annual Revenue
Water Service	1.46	980,697	1,427,895
Sprinkler Service	1.46	309,695	450,916
Total Out-of-City		1,290,392	1,878,811
Total Calculated Annual Revenue			\$3,739,915

**City of St. Joseph
Water System
Projected Cash Flow**

Fiscal Year Ending June 30th	Surcharge Annual Adjustment	12% Projected 2010	9% Projected 2011	6% Projected 2012	3% Projected 2013	0% Projected 2014
Annual In-City Adjustments						
RTS Quarterly Charge	3.00%	12.00	14.00	14.50	15.00	15.00
Meter Equivalents	1.00%	4,878	4,883	4,888	4,893	4,898
Commodity Charge	4.00%	1.30	1.40	1.48	1.52	1.60
Annual Volume - Ccf		716,412	716,852	717,292	717,732	718,172
Typical Residential Quarterly Bill [1]		64.00	70.00	72.74	75.80	79.00
Direct Connection Charge	0.00%	346.90	346.90	346.90	346.90	346.90
New Direct Connections	0.00%	5	5	5	5	5
Annual Outside-City Adjustments						
RTS Quarterly Charge		13.44	15.26	15.37	15.45	15.00
Meter Equivalents		12,940	12,990	13,040	13,090	13,140
Commodity Charge		1.46	1.53	1.54	1.57	1.60
Annual Volume - Ccf		1,290,392	1,294,792	1,299,192	1,303,592	1,307,992
Typical Residential Quarterly Bill [1]		71.68	76.30	77.10	78.07	79.00
Direct Connection Charge	0.00%	346.90	346.90	346.90	346.90	346.90
New Direct Connections	0.00%	50	50	50	50	50
Revenue						
Total Annual Revenue from Sales		3,739,915	4,045,769	4,134,666	4,234,362	4,324,106
City Annual RTS		234,120	273,420	283,475	293,560	293,850
City Commodity Charge		931,335	1,003,592	1,044,377	1,090,952	1,149,075
Out-of-City Quarterly RTS		695,649	792,903	801,693	808,956	788,394
Out-of-City Commodity Charge		1,878,811	1,975,853	2,005,121	2,040,904	2,092,787
Charges for Services	-0.50%	151,800	151,600	150,842	150,088	149,337
Fines, Fees and Forfeits		57,000	60,000	60,000	60,000	60,000
Interest Income [2]	0.50%	37,500	37,500	11,484	12,284	13,043
Connection Charges		-	-	-	-	-
Other		6,000	3,000	3,500	3,500	3,500
Total Revenue		3,992,215	4,297,669	4,360,492	4,460,234	4,549,986
Expenses [3]						
Water Treatment Operations	3.00%	1,345,600	1,385,968	1,427,547	1,470,373	1,514,485
Water Distribution Operations	3.00%	1,016,400	1,046,892	1,078,299	1,110,648	1,143,967
Administration	3.00%	721,700	743,351	765,652	788,621	812,280
Net Operating Cash Flow		3,083,700	3,176,211	3,271,497	3,369,642	3,470,732

City of St. Joseph
Water System
Projected Cash Flow

Fiscal Year Ending June 30th	Surcharge Annual Adjustment	12% Projected 2010	9% Projected 2011	6% Projected 2012	3% Projected 2013	0% Projected 2014
Non-Operating Revenue						
Simulus Grant		2,428,600	2,345,800			
Proceeds from DWRF Loan		3,642,900	3,444,500			
Proceeds from Private Loan		2,000,000				
Subtotal		8,071,500	5,790,300	-	-	-
Non-Operating Expense						
Capital Improvement - Cash [4]		310,000	317,621	327,150	338,964	347,073
Intake Design/Construction		6,071,500	5,790,300	-	-	-
Filters 9-12 & Generator		2,000,000	-	-	-	-
Debt Service - DWRF Loan		308,600	601,900	601,900	601,900	601,900
Subtotal		8,686,100	6,709,821	929,050	938,864	948,973
Net Cash Flow		201,515	202,136	159,946	151,727	138,281
Cash & Investments		2,094,720	2,295,857	2,456,802	2,608,529	2,736,810
June 30, 2008 Cash Reserves = \$1,915,700						
(Under)/Over Target Reserves		(733,005)	(530,868)	(370,923)	(219,198)	(88,915)
RECOMMENDED CASH RESERVES						
Three months Operating Expense		770,925				
Equipment Repair & Replacement		1,500,000	1,718,000			
One Year Debt Service		656,800				
TOTAL TARGET RESERVES [5]		2,927,725				

[1] Assumes 40 ccf per quarter.

[2] Assumes a rate of 0.5%

[3] Does not include depreciation

[4] Based on projected capital improvements - 10% of Operations Cost

[5] Desired cash balance = Debt Service plus three months operating cost+Equipment Repair and Replacement fund

City of St. Joseph
 Water System
 Connection Charge

System Value	Amount	Total
Depreciated Assets - through 6/30/08	8,428,149	
Current Assets	282,500	8,710,649
5 Year CIP	11,840,000	20,550,649

REU Count	REU
System - Current (not including irrigation)	58,420
System - 5 year projection	59,241

Connection Charge Calculation	
Equity Value	\$154
Future Asset Value	\$347

Current Connection Charge - Base Rate	
City	\$347
Authority	\$347

Connection Charge Per Meter Size	
5/8 Inch	\$346.90
3/4 Inch	\$381.59
1 Inch	\$485.66
1.5 Inch	\$555.04
2 Inch	\$1,008.01
3 Inch	\$3,815.89
4 Inch	\$4,858.59
6 Inch	\$7,284.88
8 Inch	\$10,080.07
10 Inch	\$13,529.06

EXHIBIT C
SHARED SYSTEM

Water Plant

- City owned water treatment plant including the buildings, site piping, low service pump stations, water intake, generators and reservoirs

Water Towers

- City owned water tower north of the St. Joseph River to be replaced by a new elevated storage tank at Hilltop Road and Cleveland Avenue
- LMSWSTA owned water tower in Royalton Township south of Miners Road
- LMSWSTA owned water tower in Lincoln Charter Township west of Jericho Road

Booster Stations

- LMSWSTA owned booster station west of Cleveland Avenue and south of Hawthorne Avenue
- LMSWSTA owned booster station north of Hilltop Road and west of Washington Avenue

Reservoir and Booster System

- LMSWSTA owned reservoir and booster station north of Marquette Woods Road and east of Roosevelt Road

Transmission Mains

- LMSWSTA owned 24" and 20" water transmission mains on Lakeshore Drive to Cleveland Avenue to the Cleveland Avenue booster station
- City owned 16" and 20" water transmission main interconnect with the City of Benton Harbor including all associated meters and valves
- SWMRSSWA owned future water transmission main interconnect with Lake Charter Township including the meter, valves and water main required to interconnect, but excluding existing water distribution mains
- LMSWSTA owned 20" water transmission main on Hilltop Road to Hilltop Road booster station

- City Owned 16" water transmission main on Archer Road (between Lakeshore Drive and Lakeview Avenue) and 12" water transmission main on Lakeview Avenue to Hilltop Road

For all of the above identified locations applicable grounds maintenance shall be considered a part of Shared System operation and maintenance including, but not limited to, mowing, plowing, pavement repair, etc.