

## INTERGOVERNMENTAL AGREEMENT

### FOR FLOWAGE MONITORING OF THE CONWAY COHOCTAH UNION DRAIN

This Agreement (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **CONWAY COHOCTAH UNION DRAIN DRAINAGE DISTRICT** (“Drainage District”), a public body corporate, under the jurisdiction of the Livingston County Drain Commissioner (“LCDC”), having an address at 2300 E. Grand River Avenue, Suite #105, Howell, Michigan 48843; the **TOWNSHIP OF CONWAY** (“Conway”), a Michigan municipal corporation, having an address at 8015 N. Fowlerville Road, Fowlerville, Michigan 48836; and the **TOWNSHIP OF COHOCTAH** (“Cohoctah”), a Michigan municipal corporation, having an address at 10518 Antcliff Road, Fowlerville, Michigan 48836. Conway and Cohoctah may be referred to collectively in this Agreement as the “Townships,” and together with the Drainage District as the “Parties.”

**WHEREAS**, the Conway Cohoctah Union Drain (“Drain”) is an established county drain under the jurisdiction of the LCDC pursuant to the Michigan Drain Code, Public Act 40 of 1956, as amended, MCL 280.1 *et seq.* (“Drain Code”); and

**WHEREAS**, the Drain serves the properties and public corporations located within the Drainage District, which includes Conway and Cohoctah, as depicted on **Exhibit A**; and

**WHEREAS**, the Parties collectively desire to obtain baseline and post-event flowage monitoring data for purposes of protecting the public health, safety, and welfare relating to potential drainage impacts from land use changes; and

**WHEREAS**, the LCDC’s consulting engineering company, GEI, Inc., has submitted a proposal for the monitoring of flowage within the Drain (“Monitoring”); and

**WHEREAS**, GEI, Inc. has tentatively determined the estimated cost for the first year of monitoring to be \$27,478.00; and

**WHEREAS**, the Parties acknowledge that the Monitoring contemplated by this Agreement serves a shared governmental purpose, including drainage system management, planning, and protection of public infrastructure; and

**WHEREAS**, the Parties have agreed to share in the total cost to hire GEI, Inc. to perform the Monitoring in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the Parties acknowledge that certain Monitoring activities may be conducted in connection with future private solar company “Solar Company” development activity, and that reimbursement of such Monitoring costs may be appropriate from such Solar Company; and

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Authority and Purpose. Pursuant to the Drain Code and other applicable laws of the State of Michigan, the Parties enter into this Agreement to establish the terms and conditions for the Monitoring. The Parties agree to take all actions reasonably necessary to effectuate the objectives of this Agreement. The purpose of the Monitoring is to establish baseline hydrologic characteristics of the drainage system to support informed drainage system management and to evaluate potential changes in hydrologic conditions, including those that may be associated with any future Solar Company development.

2. Monitoring. The Monitoring shall consist of the activities outlined as Option #2A in the attached correspondence/proposal from GEI, Inc., attached as **Exhibit B**. Other variations or changes resulting in an increase in the total estimated Monitoring cost may be made if approved in writing by all Parties.

3. Estimated Cost. The Monitoring cost for 1 year is estimated to be \$27,478.00, and the Parties have agreed to equally divide this cost between the Drainage District, Conway, and Cohoctah,. In the event that the LCDC determines that the Monitoring will exceed the estimated cost provided, the LCDC will advise the Townships in writing, prior to the performance of such work, and final settlement of such costs, if any, shall be made upon completion of the Monitoring work following acceptance by the LCDC.

4. Insurance. The LCDC on behalf of the Drainage District, will obtain from GEI, Inc. all necessary insurance and bonds and will comply with all other requirements of by this Agreement and other applicable State of Michigan laws and regulations. The LCDC shall require GEI, Inc. to name, or provide an endorsement naming, Conway, Cohoctah, the Drainage District, Livingston County, the LCDC, and their respective officers, employees, and agents as additional insureds under the required insurance.

5. Permits. The Drainage District will be responsible for securing all licenses, permits, certificates, and governmental authorizations necessary to perform its obligations under this Agreement, the expense of which has been included in the estimated cost.

6. Liability. It is understood that to the extent there are any claims or lawsuits not otherwise covered by GEI, Inc.’s insurance, the costs and expenses of any lawsuits or claims arising directly out of this Agreement or the Monitoring shall constitute as expenses for inspection, maintenance, and/or repair of the Drain under MCL 280.196. This Agreement is not intended to give, nor will it be interpreted as giving, any of the Parties a right of indemnification, either by contract or by law, for claims arising out of the

performance of this Agreement. Nothing in this Agreement is intended to create, nor shall it be construed to create any joint and severable liability of the Parties.

7. Records. All Parties shall establish and maintain accurate records in connection with the Monitoring and this Agreement, in accordance with generally accepted accounting principles and record retention policies.

8. Effective Date and Term. This Agreement shall become effective upon execution by the authorized representatives of all Parties. This Agreement shall terminate at the expiration of one (1) year from the date of commencement of the Monitoring.

9. Governing Law. This Agreement is made and entered into in the State of Michigan and shall, in all respects, be interpreted, enforced, and governed by the laws of the State of Michigan. This Agreement shall be construed as a whole, in accordance with its fair meaning, and not strictly for or against any Party. Unless the context clearly requires otherwise, words used in the singular shall include the plural, and words used in the plural shall include the singular. Nothing in this Agreement shall be construed as obligating the Townships, the LCDC or the Drainage District to expend funds in excess of appropriations, assessments, or other funding authorized by law, or as committing the Townships, the LCDC, or the Drainage District to any action for which they lack statutory authority.

10. Laws and Regulations. The Parties shall adhere to all applicable Federal, State, and local laws, ordinances, rules, and regulations.

11. Severability. If any provision of this Agreement or the application thereof to any person or circumstance, is judicially determined to be invalid or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected and shall remain valid and enforceable, provided that the invalid or unenforceable provision does not substantially alter the intent of this Agreement or render its performance impracticable.

12. Binding Contract; Assignment; and Amendments. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign this Agreement, in whole or in part, without the prior written consent of the other Parties, which consent shall be granted only by a written amendment to this Agreement executed by all Parties. Any permitted assignee shall be bound by all terms and provisions of this Agreement.

13. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall be considered a valid original.

14. Captions. The section headings, titles, and numbering used in this Agreement are for convenience only and shall not be deemed to have any substantive meaning or to affect the interpretation of this Agreement.

15. Notices. All correspondence and written notices shall be considered delivered to a Party as of the date that such notice is deposited with the U.S. Postal Service to be delivered to the following:

**CONWAY COHOCTAH UNION DRAIN DRAINAGE DISTRICT**

Livingston County Drain Commissioner  
Attn: Kenneth E. Recker, II, P.E.,  
2300 E. Grand River Ave, Suite #105,  
Howell, Michigan 48843  
(517) 546-0040; [KRecker@livgov.com](mailto:KRecker@livgov.com)

and,

**TOWNSHIP OF CONWAY**

Attn.: Mike Brown, Supervisor  
P.O. Box 1157  
8015 N. Fowlerville Road  
Fowlerville, Michigan 48836  
(517) 223-0358; [supervisor@conwaymi.gov](mailto:supervisor@conwaymi.gov)

and,

**TOWNSHIP OF COHOCTAH**

Attn.: Mark Fosdick, Supervisor  
10518 Antcliff Road  
Fowlerville, Michigan 48836  
(517) 546-0655; [supervisor@cohoctahtownship.gov](mailto:supervisor@cohoctahtownship.gov)

16. Entire Agreement. This Agreement constitutes the entire agreement between the Drainage District and the Townships with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, or understandings, whether written or oral, relating thereto. The terms and conditions of this Agreement are contractual in nature and not mere recitals. This Agreement may not be amended or supplemented except as expressly provided herein and by a written instrument executed by all Parties.

17. Recitals. The recitals set forth above are incorporated into and made part of this Agreement for all purposes.

**IN WITNESS WHEREOF**, the Parties hereto have agreed upon the terms and conditions of this Agreement and executed same by their duly authorized representatives as of the day and year first written above.

[Signature Page to Follow]

