

## **CITY OF LATHRUP VILLAGE PROJECT COST SHARING AGREEMENT**

This Agreement is made this January \_\_, 2023 by and between the Evergreen-Farmington Sanitary Drain Drainage District (“EFSD”), a Michigan statutory corporation organized pursuant to Chapter 20 of the Michigan Drain Code, Act No. 40 of the Public Acts of Michigan of 1956, as amended (“Drain Code”), by and through its drain board and City of Lathrup Village, a Michigan municipal corporation organized whose address is 27400 Southfield Road, Lathrup Village, Michigan 48076 (“City”). In this Agreement, either the EFSD or the City may also be referred to individually as a “Party” or jointly as the “Parties.”

### **Recitals:**

**WHEREAS**, the City owns a sanitary retention tank, including related components, as generally itemized in the attached **Exhibit A** and as it may be expanded or altered from time to time (the "System"); and

**WHEREAS**, the Parties have agreed to allocation of capital costs of certain improvements to the City’s System, including but not limited to its sanitary retention tank facilities, as is described in the attached **Exhibit B**, the Lathrup Village Sanitary Retention Tank Improvements, Preliminary Estimate of Project Costs revised January 3, 2023 (hereinafter referred to as the “Project” or “System Improvements”); and

**WHEREAS**, EFSD is managing the construction of the Project and System Improvements,

**WHEREAS**, the Parties each have been authorized to execute this Agreement according to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, representations, and agreements in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the EFSD and the City mutually agree as follows:

### **Article I. Statement of Authority and Purpose.**

- 1.1. Authority. Pursuant to applicable laws of the state of Michigan, the EFSD and the City enter into this Agreement to establish terms and conditions for the sharing of costs for the Project for System Improvements. Each Party must take all actions reasonably necessary to effectuate the objectives in this Agreement.
- 1.2. Purpose. The purpose of this Agreement is to memorialize the Parties’ respective obligations to pay for the System Improvements.

### **Article II. Cost Sharing.**

- 2.1. Cost Sharing. Except as provided herein, the Parties are responsible as follows for the capital costs of the System Improvements: City 25% and EFSD 75%. The estimate of projects costs are described in Exhibit B. The percentage allocation will apply to all System Improvements capital costs even in the event of the Project costs exceed estimates.

- 2.2. Payment and Reimbursement of Project Costs. The City must pay the amounts owed under this Agreement within thirty (30) days of the City's receipt of invoicing from the EFSD. The City provides by virtue of this Agreement its prior written authorization for the expenditure of funds from the City's System Enterprise Fund and EFSD may, in its sole discretion, also arrange for payment from the System Enterprise Fund.

### **Article III. EFSD Responsibilities.**

- 3.1. Permit Assistance. Subject to rules and regulations which may be changed, developed or amended from time to time, the EFSD may assist the City in the procurement of all permits, guarantees, warranties, easements, licenses, and other similar approvals and consents necessary to construct the System Improvements. The Parties agree to fully cooperate and use good faith efforts to secure all necessary permits required by the state of Michigan, including but not limited to the Department of Energy, Great Lakes, and the Environment ("EGLE").
- 3.2. Project Management. EFSD is responsible for the project management of the Project and the construction of the System Improvements.

### **Article IV. City Responsibilities.**

- 4.1. Property Access. The City is responsible for and will secure the right of access to all property necessary for WRC Personnel or Contractors to perform the System Improvements. The City is responsible for all costs or claims associated with securing such rights of access.
- 4.2. Compliance with State and Federal Law and Regulations. The City is and will remain responsible for all costs associated with compliance with all federal, state, and local laws, ordinances, regulations, and requirements in any manner affecting any System Improvements or performance of this Agreement or with any City duty or obligation under any applicable state or federal laws and/or regulations or any operations, maintenance, or administration contract respecting the System.
- 4.3. The System Ownership. Notwithstanding any other term or condition in this Agreement, no provision in this Agreement is intended, nor shall it be construed, as constituting a divestiture or forfeiture of the City's absolute ownership of and authority over the System.
- 4.4. Payment. The City is responsible for the timely payment of amounts owed pursuant to this Agreement.

### **Article V. Force Majeure and No Third Party Beneficiary.**

- 5.1. Force Majeure; System Malfunction; Misuse or Vandalism of the System. The City is responsible for damage and liability to the System or components thereof caused by flood, fire, Acts of God or other force majeure, civil disturbance, Acts of War, terrorism or misuse of property. In addition, the City is responsible for all claims, damages and liability caused by design and/or construction defects, malfunction or failure of the System or any

component thereof, water loss, main breaks, hydrant damage and vandalism provided the same is not directly caused by the acts or omissions of EFSD Agents.

- 5.2. No Third Party Beneficiary. This Agreement does not create any rights or benefits to parties other than the City and the EFSD.

#### **Article VI. Cooperation, Communication, and Dispute Resolution.**

- 6.1. Dispute Resolution. The Parties agree that any and all claims alleging a breach of this Agreement must first be submitted to an alternative dispute resolution process. Such an alternative dispute resolution process may include, but is not limited to, facilitation, binding arbitration, or non-binding arbitration. The Parties must agree upon the form and procedures for the agreed upon alternative dispute resolution process. If the matter is not resolved through an alternative dispute resolution process, or if the Parties cannot agree upon the form and procedures for the alternative dispute resolution process, the Parties may seek legal recourse in a court of competent jurisdiction. For claims requiring immediate relief to prevent irreparable harm or for declaratory or injunctive relief, either Party may seek relief directly from a court of competent jurisdiction without submitting the matter to the alternative dispute resolution process.

#### **Article VII. Agreement Approval; Effective Date; and Amendments.**

- 7.1. Agreement Approval; Amendments; and Effective Date. Except as otherwise provided herein, this Agreement and/or any subsequent amendments shall not become effective before the approval by resolutions of both the City and the EFSD. The Effective Date of this Agreement, and any amendments hereto, must be the date as reflected in the opening paragraph of this Agreement.
- 7.2. Amendment. This Agreement may be amended only in a writing signed by the Parties.

#### **Article VIII. General Provisions.**

- 8.1. Governing Law. This Agreement is made and entered into in the state of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the state of Michigan. The language of all parts of this Agreement is intended to and, in all cases, must be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this Agreement, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.
- 8.2. Reservation of Rights; Governmental Function. This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. In addition, the Parties maintain that the obligations set forth in this Agreement will be in the exercise or discharge of a governmental function.
- 8.3. Severability. If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the

remainder of the Agreement, or the application of the provision of persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the Agreement or make execution impractical.

- 8.4. Binding Contract; Assignment; and Amendments. This Agreement will be binding upon and for the benefit of the Parties hereto and their respective successors and assigns, subject to any assignment requiring the prior written consent of the non-assigning Party by an amendment to this Agreement signed by all Parties, and the assignee binding the assignee to the terms and provisions of this Agreement.
- 8.5. Captions. The section headings or titles and/or all section numbers in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
- 8.6. Notices. Except as otherwise expressly provided herein, any and all correspondence, invoices, and/or any other written notices required, permitted or provided for under this Agreement to be delivered to the following:

EVERGREEN-FARMINGTON SANITARY DRAIN DRAINAGE DISTRICT

OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER  
1 Public Works Drive  
Waterford, Michigan 48328

CITY

CITY OF LATHRUP VILLAGE  
27400 Southfield Road  
Lathrup Village, Michigan, 48076

- 8.7. Notice Delivery. Except with respect to notices of termination, all correspondence and written notices shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the U.S. Postal Service. Notices of termination must be personally delivered or sent by certified mail, return receipt requested, and shall be considered delivered to a party on the date of receipt as represented by the return receipt or by a proof of personal service.
- 8.8. Entire Agreement. This Agreement sets forth the entire agreement between the EFSD and the City and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. The terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the EFSD and the City in any way related to the subject matter hereof, except as expressly stated herein. This Agreement must not be changed or supplemented orally and may be amended only as otherwise provided herein.

8.9. Recitals and Exhibits. The recitals and exhibits are integral to this Agreement.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, this Agreement is executed by the Parties on the date in the opening paragraph of this Agreement.

**EVERGREEN-FARMINGTON SANITARY DRAIN DRAINAGE DISTRICT**



By: \_\_\_\_\_

Jim Nash, Chairperson  
Evergreen-Farmington Sanitary Drain Drainage  
District

Date: 2/28/2023

**CITY OF LATHRUP VILLAGE**

By: \_\_\_\_\_

Mykale Garrett, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_

Susan Montenegro, City Administrator

Date: \_\_\_\_\_

**EXHIBIT A**

**EXHIBIT B**