

**OSHTEMO CHARTER TOWNSHIP BOARD  
7275 West Main Street  
Kalamazoo, MI 49009  
269.375.4260**

**Tuesday**

**January 7<sup>th</sup>, 2020**

**Township Board Special Meeting**

**6:00 p.m.  
AGENDA**

1. Call to Order
2. Public Comment
3. Other Township Business
4. Public Comment
5. Resolution to Enter into Closed Session to Discuss Opinion Letter issued to the Board by Township staff counsel to discuss property purchase and matters involving police protection for the township
6. Action, if any, after conclusion of closed session regarding opinion letter from township staff counsel.
7. Resolution to Enter into Closed Session to Discuss pending litigation brought by the Solareks against the Township and individual Township trustees, individually
8. Action, if any, after conclusion of closed session regarding litigation brought by the Solareks against the Township and township trustees, individually.
9. Consideration of Sewer Operations & Maintenance Contract Amendment
10. Adjournment

**Policy for Public Comment**  
**Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

- a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.
- b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be board discussion prior to call for a motion.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment or Citizen Comment on Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 5/9/2000)  
(revised 5/14/2013)

**Policy for Public Comment**  
**6:00 p.m. "Public Comment"/Portion of Township Board Meetings**

At the commencement of the meeting, the Supervisor shall poll the members of the public who are present to determine how many persons wish to make comments. The Supervisor shall allocate maximum comment time among persons so identified based upon the total number of persons indicating their wish to make public comments, but no longer than ten (10) minutes per person. Special permission to extend the maximum comment time may be granted in advance by the Supervisor based upon the topic of discussion.

While this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 2/27/2001)  
(revised 5/14/2013)



# Memorandum

**Date:** 5 January 2020  
**To:** Township Board  
**From:** Libby Heiny-Cogswell, Supervisor  
**Subject:** Wastewater Contract Amendment

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## **Objective**

Township Board consideration of contract amendments to the agreement with the City of Kalamazoo for wastewater operations and maintenance services.

## **Background**

The USDA Office of General Counsel (OGC) requested certain amendments to the active wastewater agreement. Township counsel worked with City of Kalamazoo Counsel to determine the language for the amendments. The OGC approved the draft language.

The amendments are constructive. They are also the last step needed to satisfy USDA requirements to send the Phase One sanitary sewer expansion projects out for construction bids.

## **Information Provided**

Wastewater contract agreement (with proposed amendments underlined).

## **FIRST AMENDMENT TO WASTEWATER SERVICE AGREEMENT**

THIS FIRST AMENDMENT TO WASTEWATER SERVICE AGREEMENT (the "First Amendment") is made and entered into as of this 1st day of \_\_\_\_\_, 20\_\_, by and between the City of Kalamazoo, a Michigan municipal corporation, of 241 West South Street, Kalamazoo, MI 49007 (hereinafter referred to as the "CITY") and the Charter Township of Oshtemo, a Michigan charter township, of 7275 West Main Street, Kalamazoo, MI 49009 (hereinafter referred to as the "MUNICIPALITY").

### **WITNESSETH:**

WHEREAS, the CITY and the MUNICIPALITY are parties to that certain Wastewater Service Agreement, dated as of October 8, 1984 (the "Original Wastewater Service Agreement") pursuant to the terms of which the CITY has, inter alia, agreed to accept, convey and treat sanitary sewage and wastewater generated by customers in the MUNICIPALITY; and

WHEREAS, the MUNICIPALITY is constructing capital improvements within the MUNICIPALITY consisting of extensions to the MUNICIPALITY's sewer system (the "Project"); and

WHEREAS, the MUNICIPALITY has received a funding commitment from the U.S. Department of Agriculture's Rural Utilities Service ("RUS") for the financing of a portion of the cost of the Project through a 40-year, low-interest loan from RUS; and

WHEREAS, to facilitate the financing of the Project through RUS, it is necessary for the CITY and the MUNICIPALITY to amend the Original Wastewater Service Agreement by the approval and execution of this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in the Wastewater Service Agreement as amended by this First Amendment (the Original Wastewater Service Agreement, as amended by this First Amendment shall be referred to as the "Wastewater Service Agreement"), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree that:

1. **Amendment to Paragraph 5 of Original Wastewater Service Agreement.** Paragraph 5 of the Original Wastewater Service Agreement is hereby amended to read in its entirety as follows:

5. **WASTEWATER CONTROL:** As long as the wastewater of MUNICIPALITY is treated by KALAMAZOO, MUNICIPALITY shall have in effect a plumbing code and such other ordinances, rules, and regulations as may be necessary to maintain standards for the construction, maintenance, repair, and use of the wastewater collection system equal to those then in effect in KALAMAZOO, and shall provide for the strict enforcement thereof.

At the request of KALAMAZOO, MUNICIPALITY shall terminate service to any premises which fail to comply with said ordinances, rules, and regulations. KALAMAZOO shall have the right to inspect the MUNICIPALITY Collection

System and premises connected thereto for purposes of enforcement of this Agreement.

The above ordinances, rules, and regulations governing construction, maintenance, repair, and use shall be as stringent as those of the City of Kalamazoo, including but not limited to the pertinent provisions of Chapter 28 of the Kalamazoo City Code, as that Code exists at present or may be amended from time to time. Any changes in Federal or State law or regulations or in the Kalamazoo City Code which set stricter standards shall automatically become part of this contract. In addition, so long as there is an outstanding balance on any loan made by the United States Department of Agriculture's Rural Utilities Service ("RUS") to MUNICIPALITY, this Agreement shall be subject to all present and any future RUS regulations.

The MUNICIPALITY collection system shall be used for only such wastewaters as are permitted under such laws, ordinances, rules, rules and regulations as are in effect at the time of the given use.

Any governmental unit through which MUNICIPALITY'S wastewater flows must also comply with the provisions of this Paragraph 5 with regard to those matters under that other governmental unit's jurisdiction in order for KALAMAZOO to accept MUNICIPALITY'S wastewater.

Detailed records of collection system additions or modifications shall be maintained by MUNICIPALITY, and copies of as-built drawings and records pertaining to service connections and property leads shall be furnished to KALAMAZOO. No system extensions beyond the MUNICIPALITY corporate limits or the area being served shall be made without prior written approval from KALAMAZOO.

**2. Amendment to Paragraph 16 of Original Wastewater Service Agreement.**

Paragraph 16 of the Original Wastewater Service Agreement is hereby amended to read in its entirety as follows:

16. OPERATING AGREEMENT: KALAMAZOO will use reasonable diligence but does not guarantee uninterrupted service and shall not be liable for injuries or damages caused by such interruptions whether caused by defects in original construction, cave-ins, accidents, repairs, or other causes, nor shall KALAMAZOO be liable to MUNICIPALITY or any customer or other person, firm, or corporation for injuries or damages of any nature caused by the use of the treatment facilities of KALAMAZOO or the MUNICIPALITY collection system or by interruptions therein. In the event that it is necessary for KALAMAZOO to restrict service to customers of the KALAMAZOO wastewater system, including MUNICIPALITY and other contractual community customers, all of such customers of KALAMAZOO shall share proportionally in such restriction of service; provided, however, that the foregoing shall not restrict KALAMAZOO's authority to either (a) discontinue service to a customer within the MUNICIPALITY if such customer discharges waste that is harmful to KALAMAZOO's wastewater system or treatment facilities, or (b) terminate

service to MUNICIPALITY for MUNICIPALITY's breach of this Agreement pursuant to paragraph 17. This paragraph does not modify paragraph 13.

3. **Amendment to Paragraph 17 of Original Wastewater Service Agreement.** Paragraph 17 of the Original Wastewater Service Agreement is hereby amended to read in its entirety as follows:

17. **TERMINATION:** This Agreement shall remain in full force and effect for an indefinite period of time, but for at least a period equal to the greater of either (a) thirty years, or (b) a period not less than the repayment term for any bonds issued by MUNICIPALITY to evidence a loan from RUS to MUNICIPALITY for improvements to and extension of the MUNICIPALITY'S collection system unless sooner termination by consent of the parties hereto or by either party because of a breach by the other party of a material provision or undertaking herein or failure to make a payment required hereunder; provided, however, that no termination shall be made because of such a breach until after the expiration of six months following a written notice of such breach to the offending party by the other party hereto, which notice shall specify how in the opinion of the non-offending party the breach can be corrected. After the expiration of the term, either party may terminate the agreement upon one-year's written notice to the other party.

4. **Un-Amended Provisions of Wastewater Service Agreement.** Except as specifically set forth herein, all other provisions of the Wastewater Service Agreement remain in full force and effect.

5. **Approval.** Each party expressly represents, each to the other, that this Second Amendment has been duly approved and accepted by the proper legislative body of each of them and is executed with the full authority of its City Commission and Township Board respectively, pursuant to resolution duly adopted at a regular meeting or special meeting of said Commission or

Board held in conformity with the Michigan Open Meetings Act, their respective charters, ordinances and state enabling legislation.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed and delivered, by their respective duly authorized officers, all as of the day and year first above written.

**CITY:**

**MUNICIPALITY:**

CITY OF KALAMAZOO

CHARTER TOWNSHIP OF OSHTEMO

By: \_\_\_\_\_  
David F. Anderson  
Its: Mayor

By: \_\_\_\_\_  
Libby Heiny-Cogswell, Supervisor  
Its: Supervisor

By: \_\_\_\_\_  
Scott A. Borling  
Its: Clerk

By: \_\_\_\_\_  
Dusty Farmer  
Its: Clerk