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ATTORNEY-CLIENT PRIVILEGED CONFIDENTIAL COMMUNICATION

December 5, 2018

VIA ELECTRONIC MAIL

Northfield Township Board of Trustees
Township of Northfield
8350 Main Street
Whitmore Lake, Michigan 48189

Re: Wastewater Treatment Plant

Dear Trustees,

The Township Board has asked that my office summarize the Township's legal obligations with regard to its Wastewater Treatment Plant. In order to understand the legal obligations of the Township with regard to the Township's Wastewater Plant, it is important to understand its legal history. The history of the plant is very complex. Below is a list of the legal documents of which I am aware that relate to the Township's Wastewater Treatment Plant:

1. Lease of Sewage Disposal System and Sewage Treatment Agreement.
Dated: 09/30/1969
2. Opinion and Order
Dated: 02/29/1972
3. Order
Dated: 05/04/1972
4. Supplemental Order
Dated: 09/11/1978
5. Supplemental Order
Dated: 03/19/1991

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6. Intergovernmental Agreement (Northfield-Hamburg)
Dated: 03/14/1991
7. Amended Consent Judgment
Dated: 05/23/2002
8. Township of Northfield/Township of Green Oak Wastewater Treatment
Contract
Dated: 06/25/2001
9. Township of Northfield/Township of Green Oak Wastewater Treatment
Contract
Dated: 11/17/2004

* Copies the above documents will be forwarded to the Board by separate email due to their file size.

By way of explanation, in the early 1970's a lawsuit was initiated by the Lakeland Property Owner's Association against Northfield Township in the Livingston Circuit Court under the Michigan Environmental Protection Act. The Livingston Circuit Court took jurisdiction and rendered a legal Opinion and Order on February 29, 1972. In that court Order and Opinion the Livingston Circuit Court re-determined the effluent standards for the Township's Wastewater Treatment Plant previously set fourth by the State of Michigan. In short, at this point in time, the Township's Wastewater Treatment Plant's effluent standards and flow became under the dual jurisdiction of the State of Michigan and the Livingston County Circuit Court.

The Order and Opinion of the Livingston County Circuit Court states, in part, as follows:

It is the further order of this Court that defendant herein is no longer restrained from physically increasing the size of its waste water disposal plant but that said defendant cannot and is hereby ordered not to increase the volume of its daily discharges beyond 250,000 gallons per day until further order of the Court and the Court being satisfied, at that time, that the above judicially set standards have been met and will be regularly met and will continue to be met as the discharge volume increases and further that the Court is satisfied that plaintiffs receiving waters will not be polluted

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by such increase in volume of effluent discharge.

The Order and Opinion also states, in part:

It is further order of this Court that this Court shall retain jurisdiction of this matter pending completion of the re-designated time schedules mentioned above by the Water Resources Commission

The Order and Opinion was amended on September 11, 1979 by consent to increase the allowable flow of the Wastewater Treatment Plant to 700,000 gallons per day.

On March 19, 1991, after a Supplemental Order was entered by Livingston Circuit Judge, Stanley J. Latreille to allow for the expansion of the Wastewater Treatment Plant to 1,500,000 gallons per day, if Hamburg Township purchased capacity of 250,000 gallons per day and 1,300,000 gallons per day if Hamburg Township did not purchase capacity. Specifically the Supplemental Order states, in part:

1. NORTHFIELD shall be permitted to increase the capacity of its Wastewater Treatment Plant to One Million Five Hundred Thousand (1,500,000) gallons per day based upon an annual average. The Wastewater Treatment Plant with said increased Capacity is hereinafter referred to as the "EXPANDED PLANT", and is subject to the following provisions of this Supplemental Order.

5. If HAMBURG TOWNSHIP does not purchase 250,000 gallons per day of the capacity of the EXPANDED PLANT from NORTHFIELD, then the Capacity of the EXPANDED PLANT may only be Increased to One Million Three Hundred Thousand (1,300,000) gallons per day on an annual average. In such event, all other provisions of this Supplemental Order shall remain in full force and effect.

The Supplemental Order contemplates expansion of the Wastewater Treatment Plant and became the incentive for Northfield Township to enter into intergovernmental

agreements with Hamburg Township and Green Oak Township, which are parties to the lawsuit.

On March 14, 1991, at approximately the same time, Northfield Township entered into an intergovernmental agreement with Hamburg Township. The intergovernmental agreement states, in part:

The expansion is expected to occur in phases. Phase 1 is expected to increase the capacity of the Plant to One Million One Hundred Thousand (1,100,000) gallons per day. Phase 2 is expected to increase the capacity of the Plant to One Million Three Hundred Thousand (1,300,000) gallons per day. Phase 3 is expected to increase the capacity of the Plant to One Million Five Hundred Thousand (1,500,000) gallons per day. NORTHFIELD, in its discretion, may combine the phases and determine the timing of phases. NORTHFIELD agrees to exercise due diligence in the construction of its expanded Plant so as to provide service to HAMBURG pursuant to the terms of this Agreement. This provision is not intended to modify paragraph V(B) of this Agreement.

II. SEWAGE DISPOSAL SERVICE BY NORTHFIELD

A. NORTHFIELD agrees to receive and treat sanitary Sewage from HAMBURG provided that the flow does not exceed Two Hundred Fifty Thousand (250,000) gallons per day based upon an annual average, within eighteen (18) months after NORTHFIELD receives payment pursuant to paragraph IV(A) of this agreement, and

B. The effluent from HAMBURG shall emanate only from an area of HAMBURG outlined in Attachment "A" attached hereto, dated March 14th, 1991 and signed by the Supervisor and Clerk for each Township. Said effluent shall emanate only from residential homes and commercial establishments. No industrial effluent shall be permitted. The map may be altered with the written agreement of NORTHFIELD which may not be unreasonably withheld. It is the intent of the parties that the properties abutting Strawberry Lake, excluding the properties commonly referred to as the "Bluffs", be provided with sanitary sewage disposal service. HAMBURG agrees to use its best

efforts to provide service to said properties.

Hamburg did not exercise its right to purchase 250,000 gallons per day within the time parameters in the Intergovernmental Agreement. As a result, Hamburg Township's option to purchase capacity in Northfield's Wastewater Treatment Plant lapsed.

On May 25, 2002 an Amended Consent Judgment was entered by Livingston Circuit Judge, Daniel A. Burress. The Amended Consent Judgment allows expansion of the Wastewater Treatment Plant to 2.25 million gallons per day, upon certain conditions. The Amended Consent Judgment, in addition, creates a committee, known as the ISC (Intermunicipal Sewer Committee). The ISC is defined in the Consent Judgment:

PURPOSE OF INTERMUNICIPAL SEWER COMMITTEE

The ISC shall study currently existing, publicly owned treatment plants located within HAMBURG, NORTHFIELD and GREEN OAK and shall study whatever effluent to formulate written recommendations for the best available technology that is practical, economically feasible and effective for each community's treatment plant.

DUTIES AND POWERS OF INTERMUNICIPAL SEWER COMMITTEE

The ISC shall have general authority to monitor the member townships' existing sewage plants and make recommendations thereto. The existing sewage treatment plants shall mean (i) the Northfield Township Waste Water Treatment Plant on Lemay Road in Green Oak Township, (ii) the Hidden Lake Waste Water Treatment Plant located on Silver Lake Road In Green Oak Township, and (iii) the Hamburg Township Waste Water Treatment Plant located on M-36 in Hamburg Township.

Thereafter, two intergovernmental contracts were entered into between Northfield Township and Green Oak Township, on June 25, 2001 and November 17, 2014. The June 25, 2001 agreement was designed to legally "cap" the capacity provided to specific properties located in Green Oak Township. The properties in Green Oak Township were part of a long-standing special assessment district. At the time, Green Oak Township was granting connections to users in Green Oak Township unbeknownst to Northfield Township and to users that were not part of the Special Assessment District.

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The November 17, 2004 Intergovernmental Agreement was designed to provide sewer service to a specific portion of Green Oak Township and to provide connection revenue to support payment of municipal bonds for Northfield 's Wastewater Plant expansion. The Intergovernmental Agreement states, in part:

SEWAGE DISPOSAL SERVICE BY NORTHFIELD

Northfield agrees to receive into its plant and treat Sanitary sewage from Green Oak, provided the average daily flow as determined on an annual basis does not exceed a total of 200,000 gallons per day calculated on an annual basis (being equal to 1600 REU's) for the term of the Contract. The effluent From Green Oak shall emanate only from an area of Green Oak outlined in Exhibit "A" attached hereto

CHARGES FOR FUTURE CONNECTIONS TO NORTHFIELD'S WASTEWATER SEWAGE DISPOSAL SERVICE

Northfield and Green Oak agree that users currently Connected to the Northfield sewage disposal system will not be charged a connection fee pursuant to this contract. Northfield and Green Oak also agree that those property owners which are not currently connected to the Northfield sewage disposal system will be assessed a connection fee at such time as they indicate a willingness to connect to Northfield's sewage disposal system pursuant to this contract. The connection fee will be calculated based on Northfield's then prevailing rater per residential equivalent unit. Northfield's engineers shall determine the number of residential equivalent units applicable to the property requesting to connect to Northfield's sewage disposal system. The number of residential equivalent units shall be determined based on Northfield's ordinances then in effect. Green Oak agrees to be bound by Northfield's ordinances as to the calculations and charges for residential equivalent units. All requests by those property owners who desire to connect to Northfield's sewage disposal service shall request, in writing, service from Northfield.

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In summary, there are three tiers and/or layers of legal obligations that the Township is required to fulfill. They are:

2. Any and all requirements of the State of Michigan MDEQ permit which is currently in force and effect.
3. All requirements of the court orders that have been entered by the Livingston County Circuit Court, the most recent being dated May 23, 2002.
4. The contractual obligations of the intergovernmental agreements with both Green Oak Township and Hamburg Township.

Please contact our office with any questions in this regard.

Very truly yours,



Paul E. Burns

cc: Mr. Steven Aynes
Mr. Dan Willis