

THE BOARD OF PUBLIC WORKS FOR THE COUNTY OF VAN BUREN, MICHIGAN, met in Regular Session in the offices of the Van Buren County Road Commission, 325 W. James Street, Lawrence, Michigan, on March 2, 2006 at 8:19 p.m.

PRESENT: Commissioners Stein, Rhodes and Rosevelt
County Commissioner James Ray
Engineer-Manager Lawrence B. Hummel, P.E.
Accountant Gregory M. Pardike
Construction Engineer John Frank
Highway Engineer Barry Anttila
Attorney Kelly Page

The Chair called the Regular Meeting to order at 8:19 p.m.

Moved by Rosevelt, and seconded by Stein to approve the minutes of the December 15, 2005 Regular Meeting.

AYES: 3
NAYS: 0
MOTION CARRIED.

Moved by Rosevelt and seconded by Stein to ratify the actions taken at the following Road Commission meetings and transfer them to the Official Board of Public Works Minute Book as follows:

December 28, 2005

Moved by Rosevelt, seconded by Stein to approve the following Board of Public Works Vouchers:

**Covert Township Water System - Thunder Mountain Heights-
Wilderness Dunes**

Voucher #238	\$1,019.79	Van Buren Co. Road Commission
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AYES: 3
NAYS: 0
MOTION CARRIED.

January 12, 2006

Moved by Rhodes seconded by Rosevelt to approve the following Board of Public Works Vouchers:

**Covert Township Water System - Thunder Mountain Heights-
Wilderness Dunes**

Voucher #239	Schuitmaker, Cooper, Schuitmaker & Cypher, P.C.	\$48.00
Voucher #240	CC Johnson & Malhotra, PC	\$21,386.73

AYES: 3
NAYS: 0
MOTION CARRIED.

February 9, 2006

Moved by Rhodes, seconded by Rosevelt to approve the following Board of Public Works Vouchers:

Covert Township Water System

Voucher #241	Schuitmaker, Cooper, Schuitmaker and Cypher, P.C.	\$32.00
Voucher #242	C.C. Johnson & Malhotra, P.C.	12,335.65

Voucher #243

Compton, Inc.

4,135.00

AYES: 3
NAYS: 0
MOTION CARRIED.

The Board of Public Works Chairman, William Rhodes, relinquished the Chair to Road Commission Board Secretary, Greg Pardike, for the purpose of re-organizing the Board of Public Works.

The Road Commission Board Secretary called for nominations for the office of Chairman. Commissioner John Rosevelt nominated Commissioner Stein for the office of Chairman.

Commissioner William Rhodes moved that the nominations be closed and that a unanimous ballot be cast for Commissioner Stein as Chairman. A unanimous ballot was cast.

AYES: 3
NAYS: 0
MOTION CARRIED.

The Road Commission Board Secretary called for nominations for the office of Vice-Chairman. Commissioner William Rhodes nominated Commissioner Rosevelt for the office of Vice Chairman.

Commissioner Jean Stein moved that the nominations be closed and that a unanimous ballot be cast for Commissioner Rosevelt. A unanimous ballot was cast.

AYES: 3
NAYS: 0
MOTION CARRIED.

The Road Commission Board Secretary called for nominations for the office of Secretary. Commissioner John Rosevelt nominated Commissioner Rhodes for the office of Secretary.

Commissioner Jean Stein moved that the nominations be closed and that a unanimous ballot be cast for Commissioner Rhodes as Secretary. A unanimous ballot was cast.

AYES: 3
NAYS: 0
MOTION CARRIED.

Road Commissioner Board Secretary Greg Pardike relinquished the Chair to Commissioner Stein.

Moved by John Rosevelt and seconded by William Rhodes to appoint Lawrence B. Hummel, P.E., as the Director of the Board of Public Works for the County of Van Buren.

AYES: 3
NAYS: 0
MOTION CARRIED.

Recommendation by Hummel for Resolution approving amendment to 1997 Covert Water Agreement. Motion by Rosevelt, seconded by Rhodes, to approve the following Resolution:

RESOLUTION APPROVING AMENDMENT TO
1997 COVERT WATER AGREEMENT

WHEREAS, the County of Van Buren, acting by and through its Board of Public Works (the "County"); the Township of Covert, a Michigan general law township ("Covert Township"); the City of South Haven, a Michigan home-rule city (the "City"); the County of Allegan, acting by and through its Board of Public Works ("Allegan"); the Charter Township of South Haven, a Michigan charter township ("South Haven Township"); and the South Haven/Casco Township Sewer and Water Authority, a public body corporate established pursuant to Act 233 of the Public Acts of Michigan of 1955, as amended (the "Authority")

(collectively the County, Covert Township, the City, Allegan, South Haven Township and the Authority are referred to as the "Participating Entities") are parties to that certain Covert Water Agreement, dated as of May 1, 1997 (the "1997 Agreement"); and

WHEREAS, it is necessary to amend the 1997 Agreement so as to, among other things, permit and set forth the conditions for South Haven Township to use Covert Township's existing water system for the transmission and distribution of City water to additional areas within South Haven Township that are not currently served under existing agreements; and

WHEREAS, an amendment to the 1997 Agreement in the form attached here to as Exhibit A and dated as of March 1, 2006 (the "Amendment") has been presented to the Participating Entities for approval and execution.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Amendment is hereby approved and the Chair and Secretary of the County Board of Public Works are hereby authorized and directed to execute the Amendment on behalf of the County.

2. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded to the extent of such conflict.

AMENDMENT NO. 1 TO COVERT WATER AGREEMENT

THIS AMENDMENT NO. 1 (the "Amendment") is made and entered as of this 1st day of February, 2006, and amends that certain Covert Water Agreement, dated as of May 1, 1997 (the "1997 Agreement"), by and between the County of Van Buren, acting by and through its Board of Public Works, whose address is Van Buren County Courthouse, 212 Paw Paw St., Paw Paw, Michigan 49079 ("Van Buren"); the Township of Covert, a Michigan general law township, located in the County of Van Buren, State of Michigan and whose address is 73943 Lake St., P.O. Box 35, Covert, Michigan 49043 ("Covert"); the City of South Haven, a Michigan home-rule city, located in the Counties of Van Buren and Allegan, whose address is 539 Phoenix St., South Haven, Michigan 49090-1499 (the "City"); the County of Allegan, acting by and through its Board of Public Works, whose address is County Building, 113 Chestnut St., Allegan, Michigan 49010 ("Allegan"); the Charter Township of South Haven, a Michigan charter township, located in the County of Van Buren, State of Michigan, whose address is 09761 Blue Star Hwy., South Haven, Michigan 49090 ("South Haven Township"); and the South Haven/Casco Township Sewer and Water Authority, a public body corporate established pursuant to Act 233 of the Public Acts of Michigan of 1955, as amended, and whose address is 7064 111th Avenue, South Haven, Michigan 49090-9802 (the "Authority").

WITNESSETH:

WHEREAS, pursuant to the terms of the 1997 Agreement the parties thereto (a) authorized the transportation of the water purchased by Covert from the City through the Covert Transmission Main/South Haven Township Portion to the Covert Water System (as those terms are defined in the 1997 Agreement), (b) authorized the transportation of water purchased by South Haven Township and/or the Authority from the City through the Covert Transmission Main/South Haven Township Portion to the Casco-South Haven Water Supply System (as that term is defined in the 1997 Agreement), and (c) permitted connections to the Covert Transmission Main/South Haven Township Portion within certain areas of South Haven Township; and

WHEREAS, it is necessary for the parties to contract so as to (a) permit and set forth the conditions for South Haven Township to use the Covert Water System for the transmission and distribution of City water to additional areas within South Haven Township that are not currently served under existing agreements (the

“Additional South Haven Township Service Area”) and (b) authorize and ratify the fees charged to Border Street Customers (as that term is defined in paragraph 5(d) of this Amendment) in South Haven Township.

NOW THEREFORE, in consideration of their mutual undertakings, it is hereby agreed by and between the parties hereto as follows:

1. Use of Covert Water System. Van Buren and Covert agree to transport the water purchased by South Haven Township and/or the Authority from the City for the Casco-South Haven Water Supply System through the Covert Transmission Main/South Haven Township Portion, to the Covert Water System and through the Covert Water System to various points of connection located along 24th Avenue (the “Additional Points of Connection”) including, but not limited to a point of connection at 24th Avenue and 72nd Street (the “72nd Street Point of Connection”) back into South Haven Township to serve additional areas within South Haven Township that are not currently served by public water. South Haven Township, and Allegan and the Authority when acting on behalf of South Haven Township, shall have transmission rights in the Covert Water System, the 72nd Street Point of Connection and the Additional Points of Connection for such purposes.

Further, Van Buren and Covert consent to (a) the construction of additional transmission and distribution mains within South Haven Township to serve the Additional South Haven Township Service Area (the “Additional South Haven Township Mains”), and (b) the connection of the Additional South Haven Township Mains to the Covert Water System at the Additional Points of Connection. It is contemplated by the parties that the first point of connection to the Covert Water System will be via the 72nd Street Point of Connection. In the future, South Haven Township may connect to the Covert Water System at Additional Points of Connection.

Consistent with paragraph 5 of the 1997 Agreement, the parties hereby agree and confirm that (a) the transportation of the water purchased by Covert from the City for the Covert Water System through the Covert Transmission Main/South Haven Township Portion and (b) the transportation of water purchased by South Haven Township and/or the Authority from the City for the Casco-South Haven Water Supply System through the Covert Transmission Main/South Haven Township Portion and the Covert Water System, shall be at no cost to any of the parties hereto.

The parties hereto anticipate that the Additional South Haven Township Mains will be constructed and extended so as to complete a “loop” or several loops both within the Casco-South Haven Water Supply System and to the Covert Water System resulting in water flowing to and from the Covert Water System at multiple points via (a) the Covert Transmission Main/South Haven Township Portion and (b) the Additional South Haven Township Mains connected at the Additional Points of Connection. Water transported through the Casco-South Haven Water Supply System to the Covert Water Supply System via the Covert Transmission Main/South Haven Township Mains or the Additional South Haven Township Mains shall be transported at no cost to Covert.

Consistent with the 1997 Agreement, at no time shall the City, Allegan, South Haven Township or the Authority have any equitable or legal title to that portion of the Covert Water System located within Covert.

2. Review of Construction Plans; Inspection. Prior to the construction or connection of the Additional South Haven Township Mains to the Covert Water System, the party responsible for the construction of such mains (i.e., South Haven Township, the Authority or the City) shall provide detailed plans

and specifications of the mains to be constructed and the connections to be made to the Covert Water System to Covert, Van Buren and the City for prior review and approval. All construction shall be inspected and approved by the City.

3. Fire Hydrants and Water Service Leads. In connection with the construction of the Additional South Haven Township Mains to serve the Additional South Haven Township Service Area, South Haven Township may, but is not required to, construct fire hydrants and water service leads (including corporation cock, service line and valve box), at the expense of South Haven Township, at locations designated by South Haven Township. South Haven Township, or the entity owning the Additional South Haven Township Mains on behalf of South Haven Township, shall also own the water service leads, fire hydrants and appurtenances related thereto constructed in conjunction with the construction of such mains.

4. Ownership of Additional South Haven Township Mains. The Additional South Haven Township Mains constructed pursuant to this Amendment shall be part of the Casco-South Haven Water Supply System. Covert, Van Buren and the City shall have no equitable or legal title to the Additional South Haven Township Mains constructed pursuant to this Amendment.

5. South Haven Township Customers.

(a) Except as otherwise provided in Paragraph 5(d), properties located in South Haven Township, including properties located in the Additional South Haven Township Service Area, that connect to the Additional South Haven Township Mains and receive water from those mains and the Covert Water System, shall be considered customers of South Haven Township and/or the Authority and not customers of Covert or Van Buren (the "New South Haven Township Customers").

(b) The New South Haven Township Customers shall be subject to all applicable rules and regulations established by the City (in accordance with the South Haven Township Water Franchise Agreement), Allegan, South Haven Township or Authority ordinance, resolution, rules or regulations, which Allegan, South Haven Township and the Authority agree to adopt and maintain with provisions relating to connection to and use of the public water system that are not less restrictive than those adopted or to be adopted by Van Buren and Covert.

(c) The City agrees that (1) the water used by said New South Haven Township Customers served by the Covert Water System at the 72nd Street Point of Connection or the Additional Points of Connection and the Additional South Haven Township Mains connected thereto shall be charged against the capacity provided by the City for the Casco-South Haven Water Supply System by the terms of the South Haven Township Water Franchise Agreement, and (2) only water supplied to the Covert Water System within Covert and to the Border Street Customers (as that term is defined in subparagraph (d) below) shall be charged against the capacity provided by the City to Covert for the Covert Water System in accordance with the terms of the Water Construction and Supply Contract.

(d) The parties hereby acknowledge that Covert is currently providing water service to customers located within South Haven Township along 24th Avenue, which is the border street between Covert and South Haven Township, and that the properties located along the border street served by Covert are customers of Covert (the "Border Street Customers"). South Haven Township hereby consents to and approves (a) Covert serving any existing and future Border Street Customers as customers of the Covert

Water System and (b) the imposition and collection of a connection fee, currently set in the amount of \$4,500 per connection, by Covert to existing and future Border Street Customers. South Haven Township hereby consents to any change in the connection fee to be charged by Covert to future Border Street Customers.

6. Operation and Maintenance of Additional South Haven Township Mains.

(a) The Additional South Haven Township Mains constructed in South Haven Township to serve the Additional South Haven Township Service Area shall be operated and maintained as part of the Casco-South Haven Water Supply System.

(b) The Additional South Haven Township Mains constructed and connected to the Covert Water System at the 72nd Street Point of Connection and any Additional Points of Connection shall be maintained in good condition and repair. Van Buren and Covert shall have the right to inspect any connections to the Covert Water System, including the Additional South Haven Township Mains constructed to serve the Additional South Haven Township Service Area, at any time and to request the City to make any necessary repairs or replacements in order to maintain the Covert Water System in good repair and condition. If the City shall fail at any time to make such repairs and replacements within a reasonable time after being notified of the request by Van Buren or Covert to do so, then either Van Buren or Covert shall have the right to make the necessary repairs and replacements. In the event either Van Buren or Covert make said repairs and replacements, the City shall reimburse the party making the repairs and replacements within 30 days after such expense has been incurred. Nothing within this Amendment shall prohibit the City from seeking reimbursement from either South Haven Township or the Authority for such repairs or replacements.

(c) South Haven Township and/or the Authority shall purchase and maintain their own general liability insurance for personal injury or property damage as they deem appropriate to protect against all claims and losses arising from or relating to their respective ownership of any portion of transmission and distribution mains constructed in South Haven Township and connected to the Covert Water System.

7. Miscellaneous. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. All terms not otherwise defined in this Amendment shall have the same meaning as used in the 1997 Agreement. This Amendment has been executed in the State of Michigan, shall be governed by Michigan law and may only be amended pursuant to a written document executed by all of the parties hereto. The waiver by any party hereto of a breach or violation of any provision of this Amendment shall not be a waiver of any subsequent breach of the same or any other provision of this Amendment. If any section or provision of this Amendment is unenforceable for any reasons, the unenforceability thereof shall not impair the remainder of this Amendment, which shall remain in full force and effect. It is contemplated that this Amendment shall be executed in multiple counterparts, all of which together shall be deemed to be one contract. This Amendment supplements and does not repeal the 1997 Agreement or the Van Buren Bond Contract, Contract No. 2, the Water Construction and Supply Contract, or the South Haven Township Water Franchise Agreement (as those agreements are defined in the 1997 Agreement) (collectively the "Prior Agreements") and represents the entire understanding and agreement between the parties hereto with regard to the matters addressed herein. In the event of a conflict or inconsistency between the terms of this Amendment and the terms of the 1997 Agreement or the Prior

Agreements, the terms of this Amendment shall control. All prior oral or, except to the extent provided herein, written understandings and agreements with regard to the matters addressed herein are specifically merged herein. The captions in this Amendment are for convenience only and shall not be considered as a part of this Amendment or in any way to amplify or modify the terms and provisions hereof. This Amendment 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 Amendment, and, with the exception of holders of bonds issued by Allegan pursuant to the Allegan Bond Contract or the holders of bonds issued by Van Buren pursuant to the Van Buren Bond Contract and Contract No. 2, no other person shall have the right to enforce any of the provisions contained herein.

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IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by their respective, duly authorized officials.

COUNTY OF VAN BUREN, acting by and through its Board of Public Works

By: _____
Jean A. Stein
Its: Chairperson, Van Buren County Board of Public Works

By: _____
William Rhodes
Its: Secretary

TOWNSHIP OF COVERT

By: _____
Wayne Rendell
Its: Supervisor

By: _____
Dennis Palgen
Its: Clerk

CITY OF SOUTH HAVEN

By: _____
Dorothy Appleyard
Its: Mayor

By: _____
Amanda Sleigh
Its: Clerk

CHARTER TOWNSHIP OF SOUTH HAVEN

By: _____
Ross Stein
Its: Supervisor

By: _____
Kathy Poindexter
Its: Clerk

SOUTH HAVEN/CASCO TOWNSHIP

By: _____
Ross Stein
Its: Chairperson

By: _____
Don Maxwell
Its: Treasurer/Secretary

COUNTY OF ALLEGAN, acting by and through
its Board of Public Works

By: _____

Fred Neils

Its: Chairperson, Allegan County Board
of Public Works

By: _____

Becky Rininger

Its: Secretary

AYES: 3

NAYS: 0

RESOLUTION ADOPTED.

Motion by Rhodes, seconded by Rosevelt to approve the following Board of Public Works
vouchers:

Voucher #244 \$50.00 Mika Meyers Beckett & Jones

A motion was made and seconded to adjourn to the Call of the Chair at 8:39 p.m.

MOTION CARRIED.

Secretary

Chair