

**WATER INFRASTRUCTURE IMPROVEMENT, WAIVER OF SPECIAL
ASSESSMENT NOTICES AND HEARING,
AND CONSENT TO SPECIAL ASSESSMENT AGREEMENT**

This Agreement, made this [redacted] day of [redacted], 2024, by and between **The Means M.A.A.B. Partnership, LLC** of 1175 West Long Lake Road, Suite 202, Troy, MI 48098 (hereinafter referred to as the "Property Owner"); and the **VILLAGE OF PINCKNEY**, a Michigan Municipal Corporation, of 220 S. Howell Pinckney, MI 48169 (hereinafter referred to as the "Village").

W I T N E S S E T H:

WHEREAS, Property Owner is the title holder to certain real property located South of M-36 in the western portion of the Village of Pinckney, Livingston County, Michigan (hereinafter referred to as the "Special Assessment Property") that is located at 935 Main Street (M-36), Pinckney, MI 48169, being Taxation Parcel Identification Numbers 4714-22-300-003 and 4714-22-401-153, and legally described as set forth in **Appendix A**; and

WHEREAS, Property Owner has received approval to construct a development on the Special Assessment Property that required extensions and improvements to the Village public water system to obtain public water service; and

WHEREAS, under the Village Code of Ordinances, at §51.09(E), provides that all water system improvements and extension costs are to be at the expense of the person or properties benefitted by the improvements or extension; and

WHEREAS, the extensions of the water system were required for the development and would be a benefit to the Property Owner, and would also enhance the public water system in the western portion of the Village and provide some benefit to the public water supply system; and

WHEREAS, the parties to this Agreement agreed to the needed improvements for water system extension and improvement in the Village of Pinckney, Livingston County, and as to the cost sharing for such improvements and extension; and

WHEREAS, the cost of the entire proposed road, storm sewer, sanitary sewer, water project is \$2,719,444.10, with the Property Owner's share for the water extension portion of the total project being \$633,913.15, and the connection and inspection charges under the Village Code of Ordinances being \$24,480.00 for the Water Main Connection Charges \$146,429.16 for the 8-inch Fire Suppression Charges, and \$400.00 for the applicable Water Connection Inspection Charges, for a total shared cost to the Property Owner of \$805,222.31; and

WHEREAS, Village Council at its August 12, 2024, regular meeting, approved such connection payments for the Property Owner's share through a special assessment and approved entering a special assessment agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. The Means Water Extension Project.

- (a) The parties to this Agreement, having reviewed the necessary improvements required to handle the Property Owner's new development, and hereby mutually agree to jointly participate in the construction costs of the agreed upon Water System extension and improvements (hereinafter referred to as the "Means Water Extension Project").
- (b) The Means Water Extension Project consists of the Water System Extension and Improvements set forth in the drawings and plans prepared by the Village's Engineers, Wolverine Engineering & Surveyors, Inc. (hereinafter referred to as the "Wolverine"), which drawings and plans are entitled **NORTHWEST QUADRANT INFRASTRUCTURE IMPROVEMENTS – RECORD DRAWING** and dated 2024, and are hereby incorporated by reference into this Agreement, along with the necessary engineering and other professional services to complete such improvements.

Section 2. Plans.

The contract plans, specifications, cost and other estimates, contract documents and studies for the Means Water Extension Project prepared in accordance with a contract between the Village and the Village Engineer, Wolverine, under the direction of the Village, at the joint expense of the Village and Property Owner, with the Property Owner's portion as set forth in this Agreement.

Section 3. Construction.

- (a) The Village be constructed the Means Water Extension Project in accordance with the plans, specifications and special provisions referred to above prepared by Wolverine for such Project. The cost of construction and the performance of all other work required in connection with the Means Water Extension Project shall be jointly paid for by the Village and the Property Owner in the manner and proportions set forth in this Agreement.

Section 4. Costs.

- (a) Property Owner hereby agrees to pay the Property Owner's share of the total project for the Means Water Extension Project portion of that project, with the Property Owner's share for construction, and engineering costs and being **\$633,913.15**, and the connection and inspection costs of **\$171,309.16**, for a total Property Owner's share of the Means Water Extension Project of **\$805,222.31**, to be paid through the agreed upon special assessment established through this Agreement.
- (b) The cost of engineering, including studies, surveys, soil borings, design, preparation of final detailed plans, specifications, estimates and contract documents for the Means Water Extension Project shall be paid for by the Village and Property Owner on the basis of the actual costs, and shall be apportioned as required under Section 4(a), above.
- (c) The cost of construction and construction engineering of the Means Water Extension Project shall be paid for by the Village and Property Owner on the basis of the actual

contract costs chargeable to the Means Water Extension Project, and shall be apportioned as required under Section 4(a), above.

Section 5 Special Assessment Created.

- (a) *Creation of Assessment.* At the request of the Property Owner, the Village hereby determined to assist the Property Owner to defray a portion of the cost of the Improvements on the Special Assessment Property by the levy of the Special Assessment upon the Special Assessment Property, which the Village finds is especially benefited in proportion to the cost of the Improvements. The Special Assessment created hereby has been spread by the Authorized Official on behalf of the Village on the Special Assessment Roll attached hereto as **Appendix B** (the “Special Assessment Roll”), with the consent of the Property Owner, to allocate one hundred percent (100%) of the Means Water Extension Project Special Assessment to the Special Assessment Property.
- (b) *Consent.* The Property Owner hereby consents to the imposition of the Special Assessments to be levied against the Property Owner’s Special Assessment Property equal to the Assessment Amount in accordance with this Agreement. The Property Owner expressly approves the Special Assessments and agree that the dollar value of the benefit accruing to the Special Assessment Property equals or exceeds the amount of the Special Assessment allocated to Property Owner’s Property in accordance with this Agreement.
- (c) *Principal Amount.* The Special Assessment, as allocated by the Village with the consent of the Property Owner, is hereby finally established and levied against the Special Assessment Property as described on the attached **Appendix A** in the principal amount of **\$805,222.31** as stated on the Special Assessment Roll.
- (d) *Interest.* The Village of Pinckney shall have the right annually during the payment period above specified to place an amount equal to one-fifteenth (1/15) of said charge above specified, together with interest on all unpaid balances thereof at the prevailing interest rate 4.0 percent (4.0%) on the tax roll to be collected together with the general taxes in the same manner as if said charge had been levied as a special assessment against the Special Assessment Property and as if the said annual amounts were installments of special assessment. The Special Assessment is effective immediately upon the execution and delivery of this Agreement by the Property Owner.
- (e) *Installments.* The Special Assessment shall be paid by the Property Owner in fifteen (15) annual installments on the dates and in the amounts set forth in the payment schedule attached hereto as **Appendix C** (the “Payment Schedule”). The Special Assessment Roll and the Payment Schedule are hereby confirmed by the Village. The unpaid amount of the Special Assessment Roll shall bear interest from the date of execution and delivery of this Agreement at the Applicable 4.0% Interest Rate payable by the Property Owner annually on each date on which any installment of the Special Assessment is due in accordance with the Payment Schedule.

Section 6. Property Owner’s Consent to Special Assessment Waivers.

- (a) *Waivers.* The Property Owner understands that they are entitled to a public hearing to consider the Means Water Extension Project, and a public hearing to confirm the assessment rate, pursuant to Chapter 32 of the Village Code of Ordinances. The Property Owner hereby waive such hearings and any appeal rights, and also hereby waive any and

all other procedural and substantive objections to the Special Assessments, whether provided by Chapter 32 of the Village Code of Ordinances, the Village Charter, or any other statute, ordinance or law, including but not limited to: (a) notice and public hearing requirements; (b) claims that the Special Assessment Property, or any part thereof, does not receive a benefit from the Public Improvements equal to or greater than the dollar amount of the Special Assessments allocated to such property; (c) claims that the Special Assessments are not uniform upon the same classes of property; and (d) any rights to an appeal from the Special Assessments, or any other appeal rights available under Chapter 32, Village Code of Ordinances, the Village Charter, or any other statute, ordinance or law.

- (b) The Property Owner, for themselves, their heirs, successors and subsequent Owners of the Property, hereby irrevocably consent to and confirms the creation of the Special Assessment Roll and the levy of the Special Assessment established pursuant to this Agreement and, for themselves, their heirs, successors and subsequent Owners of the Property, **EXPRESSLY WAIVE ANY AND ALL CLAIMS CHALLENGING AND DEFENSES TO, THE LEGALITY, VALIDITY, ENFORCEABILITY OR COLLECTABILITY OF THE SPECIAL ASSESSMENT**, including, but not limited to, claims arising from, relating to or otherwise based upon any theory of procedural defect concerning the approval of the Improvements, the establishment of the Special Assessment District, confirmation of the Special Assessment Roll and the Payment Schedule, the Village's right to place the Special Assessment lien on the Special Assessment Property, the collectability and due dates of the Special Assessment installments and interest due and payable on the Special Assessment Roll, or any other theory or claim. These waivers include, but not limited to: (a) notice and public hearing requirements; (b) claims that the Special Assessment Property, or any part thereof, does not receive a benefit from the Public Improvements equal to or greater than the dollar amount of the Special Assessments allocated to such Lot; (c) claims that the Special Assessments are not uniform upon the same classes of property; and (d) any rights to an appeal from the Special Assessments to the Michigan Tax Tribunal, or any other appeal rights available under Chapter 32, Village Code of Ordinances, Village Charter, or any other statute, ordinance or law. The Property Owner further waive notice of hearing and the right to file objections if and to the extent such rights exist under any law or special assessment ordinance of the Village.
- (c) The special assessment shall be treated in all manner exactly the same as a tax assessment including the provisions for the delinquent payment interest and fees, imposition of penalties, and availability of foreclosure. The Property Owner covenants that this Agreement shall be considered an assessment by contract and shall operate as a complete special assessment procedure and all other requirements for special assessments imposed upon the Village by statute, charter or ordinance are expressly waived by the Property Owner. The method of collection provided for in this section shall be in addition to any other remedy available to the Village and shall not be considered the exclusive means of collection.
- (d) Following the signing of this Agreement, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of the Special Assessment, and the Property Owner, for itself and its successors in interest, lessees, purchasers, and assigns with respect to all or any part of the Special Assessment Property, hereby irrevocably waives its rights to contest the Special Assessment with any

adjudicative body having jurisdiction over the subject matter, including, but not limited to, the Michigan Tax Tribunal.

- (e) In addition to any other conditions, covenants, warranties and representations specified in this Agreement, the Property Owner shall not sell, transfer, alienate or convey any of its interest in the Special Assessment Property without first having given written notice of the Special Assessment to any successors in interest, lessees, purchasers or assigns and having made a copy of this Agreement part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which the Property Owner purports to assign all or any part of its interest in the Special Assessment Property to any successors in interest, lessees, purchasers, transferees, licensees and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Property by the Village with the Register of Deeds of Livingston County, State of Michigan.
- (f) The Property Owner agrees that they, and their successors and assigns shall, during the term of this Agreement and the Special Assessment, pay all ad valorem real property taxes and assessments levied against the Special Assessment Property when due and the Property Owner specifically waives, irrevocably for itself, its successors and assigns as to any and all portions of the Special Assessment Property, the right to pay ad valorem real property taxes and assessments on any other installment method which may be available to Property Owner in the Village.

Section 7. Lien.

- (a) The Special Assessment established herein is an obligation with respect to the Special Assessment Property, and shall, until paid, be a lien upon the Special Assessment Property for the amount of the Special Assessment and all interest, charges and penalties that may accrue thereon. The special assessment shall be and remain a lien upon the Special Assessment Property assessed, of the same character and effect as a lien created by general law for State and Village taxes, until paid, with the same penalty and interest to be paid on such assessment when delinquent as is provided by the Village Charter and State law to be paid on delinquent general Village property taxes. The Special Assessment confirmed hereby is a debt to the Village from the Property Owner and their successors in interest, lessees, purchasers, and assigns. No judgment or decree shall destroy or impair any lien of the Village upon the premises assessed for such amount of the Special Assessment as may have been equitably or lawfully charged and assessed thereon. Failure of the Property Owner, or any subsequent Special Assessment Property Owners to receive any notice required to be sent under the provisions of the ordinances of the Village or this Agreement shall not invalidate the Special Assessment or the Special Assessment Roll and shall not be a jurisdictional requirement.
- (b) The Village agrees that following payment by the Property Owner in full of the Special Assessment, together with all accrued interest on the Special Assessment Roll, and all other interest, charges and penalties which may accrue thereon, has been paid in full, it will promptly execute and deliver documentation discharging the lien of the Special Assessment on the Special Assessment Property. Until the Special Assessment liability has been fully satisfied and the lien discharged, each purchaser of all or any part of the Special Assessment Property, as a condition of closing on such purchase, shall execute and deliver to the Village

a written notice: (1) acknowledging the principal amount unpaid and outstanding on the Special Assessment; (2) agreeing to the assumption of the liability to pay the Special Assessment, and any interest thereon, on a timely basis, when due, until the remaining balance and interest on said Special Assessment has been paid in full; (3) acknowledging that the title insurance policy will state that the Special Assessment has not been paid at time of closing thereon; and (4) agreeing to pay to the Village at or prior to the close of the purchase all past due installments of the Special Assessment and all past due payments of interest on the Special Assessment Roll. The representations set forth in such written notice shall be enforceable at law and in equity, including without limitation, by way of specific performance.

Section 8. Default.

- (a) *Payment Default.* If any installment of the Special Assessment or interest due on the Special Assessment Roll shall not have been paid by the Property Owner to the Village, at the time and in the amount required by Section 5 hereof (a “Payment Default”), the Village shall take such actions as may be required to cause the Payment Default Amount to be certified for collection on the summer or winter tax bill next succeeding the Payment Default Date, and such Payment Default Amount shall be collected at the same time and in the same manner as is prescribed for the collection of the Village taxes under the General Property Tax Act and the ordinances of the Village. The Village may assess a fee for delinquent taxes, interest, penalties, and fees as provided under General Property Tax Act, Section 78 (MCL 211.78). Notwithstanding the foregoing provisions of this Section 8(a), if the Village shall determine that there is not sufficient time to permit the Payment Default Amount to be placed for collection on the summer or winter tax bill next succeeding the Payment Default Date, such Payment Default Amount shall be certified for collection on the next summer or winter tax bill issued thereafter.
- (b) *Tax Penalties/Interest.* In the event that any interest, penalties, fees or other charges shall be imposed upon the Special Assessment Property or against the Special Assessment Roll or the amount of any unpaid Special Assessment pursuant to the ordinances of the Village or the General Property Tax Act, by Livingston County and/or the State of Michigan, for the administration, billing, collection or enforcement of the Special Assessment created hereby, such amounts shall remain a debt of the Property Owner to Livingston County and/or the State of Michigan, as their interests may appear.
- (c) *Notice.* If the Property Owner shall default in the performance of any covenant or agreement on their part contained in this Agreement and such default shall continue for a period of ten (10) days after written notice thereof has been given to the Property Owner by the Village, an “Event of Default” shall be deemed to have occurred under this Agreement.
- (d) *Remedies.* Upon the occurrence of an Event of Default as provided in Section 8(c) hereof, the Village, after giving written notice as required, without further notice of any kind, and in addition to all other rights and remedies provided at law or in equity, shall be entitled to seek and obtain a decree of specific performance of this Agreement from a court of competent jurisdiction; or the right to recover from the Property Owner any damages incurred by the Village and any costs incurred by the Village in enforcing or attempting to

enforce this Agreement or the Special Assessment, including attorneys' fees and expenses; or to foreclose on the Special Assessment Property and to sell all or any part of the Special Assessment Property to the extent necessary to recover any damages and costs; or any combination of the foregoing. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Village shall not be obligated to institute any of the actions or proceedings or to exercise any of the remedies authorized by this Section 8(c) and(d) upon the occurrence of an Event of Default hereunder, and that its obligations with respect to the billing, collection and enforcement of the Special Assessment or any installment thereon shall be as set forth in Sections 6(c), 7(a), and 8(a) and (b) of this Agreement.

Section 9. Prepayment of Special Assessment.

Subject to the provisions of this Agreement, the Property Owner may prepay any installment of the Special Assessment specified in the Payment Schedule by causing to be paid to the Village the amount of the installment to be prepaid, together with accrued interest thereon to the date of prepayment.

Section 10. Recording.

Promptly following the Effective Date, the Village shall cause this Agreement to be recorded in the office of the Livingston County Register of Deeds against all of the Special Assessment Property and the above-described Special Assessment Property shall be subject to the covenants and obligations contained herein, and the covenants and obligations shall inure to the benefit of and be enforceable by the Village, or the Property Owner, and/or their respective legal representatives, heirs, successors, and assigns. Any modification or amendment of this Agreement shall, promptly upon the execution thereof, be recorded by the Property Owner(s) of the affected property at the sole expense of the Owner(s) thereof. The Property Owner shall promptly deliver to the Village a duplicate copy of the recorded documents.

Section 11. Mutual Cooperation.

Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement. Each party to this Agreement shall exercise reasonable diligence in reviewing, approving, executing, and delivering all documents necessary to accomplish the purposes and intent of this Agreement. Each party to this Agreement also shall use its best efforts to assist the other parties to this Agreement in the discharge of its obligations.

Section 12. No Waiver.

No action or inaction by any party to this Agreement shall be deemed to constitute a waiver of any right under this Agreement, except a writing expressly waiving a right. No waiver of a particular breach shall be deemed to constitute a waiver of any subsequent breach.

Section 13. Amendments, Changes, and Modifications.

This Agreement may not be amended or any of its terms modified except by written amendment authorized and executed by the Village and the Property Owner of the Special Assessment Property. Any waiver of any term of this Agreement, amendments, changes or modifications requires Village Council approval and will not be deemed effective until such approval has been granted. Any amendment hereto shall be recorded in accordance with Section 10 of this Agreement.

Section 14. Entire Agreement.

This Agreement, including the appendices and documents incorporated by reference, contain the entire agreement between the Parties pertaining to the Means Water Extension Project and fully supersedes all prior agreements and understandings between the Parties pertaining to the Means Water Extension Project.

Section 15. Binding Effect; No Third-Party Beneficiary.

This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns. In no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party, except for permitted assigns.

Section 16. Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 17. Force Majeure.

No party hereto shall be liable for the failure to perform its obligations hereunder if said failure to perform is due to Force Majeure. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; *provided, however*, that the party seeking to take advantage of this Section shall notify the other party in writing, setting forth the event giving rise to said failure to perform, within ten (10) business days after the occurrence of said event.

Section 18. Time of Essence.

The parties agree that time is of the essence of this Agreement.

Section 19. Captions.

The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

Section 20. Applicable Law.

This Agreement shall, in all respects, be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of Michigan and venue for any dispute shall lie in Livingston County, Michigan.

Section 21. Execution in Counterparts.

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 22. Signatures.

The parties whose signatures appear below hereby represent and warrant that they have the authority and capacity to sign this Agreement and bind the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

Dated this [redacted] day of [redacted], 2024.

Witnesses:

The Village of Pinckney

By _____

By _____
Linda E. Lavey, Village President

By _____

By _____
Andrea P. McCall, Village Clerk

The Means MAAB Partnership, LLC

By _____

By _____
[redacted], as authorized agent of
The Means MAAB Partnership, LLC and
Property Owner of Taxation Parcel Nos. 4714-
22-300-003 and 4714-22-401-153

STATE OF MICHIGAN)
)ss.
COUNTY OF LIVINGSTON)

The foregoing instrument was signed before me this ___ day of _____, 2024, by Linda E. Lavey and Andrea P. McCall, President and Clerk respectively of the Village of Pinkney.

My commission expires:

