

**City of Lowell – Lowell Charter Township**  
**Contract for the Conditional Transfer of Property Pursuant**  
**to Public Act 425 of 1984**

This Contract for the Conditional Transfer of Property pursuant to Public Act 425 of 1984 (the “**Agreement**”) is made as of [REDACTED], 2024 between the City of Lowell, a Michigan home rule city, the principal business address of which is 301 East Main Street, Lowell, Michigan 49331 (“**City**”) and Lowell Charter Township, a Michigan charter township the principal business address of which is 2910 Alden Nash Avenue, SE, Lowell, Michigan 49331 (“**Township**”); the Township and City are referred to herein as the “**Parties**”).

**RECITALS**

- A. The City and Township wish, through cooperation, to foster quality economic development to benefit their respective communities.
- B. A developer has proposed an industrial development project within the Township known as Covenant Business Park (the “**Project**”) involving an approximately 235-acre parcel of land located at the intersection of Alden Nash Avenue Southeast and I-96 that is more specifically described and depicted on the attached Exhibit A (the “**Conditionally Transferred Property**”).
- C. Currently, neither public water nor public sewer serves the Conditionally Transferred Property. The Project, in order to maximize its economic development potential, requires public water and sewer in order to serve the end users of the Project.
- D. The City operates and maintains a municipal water supply and sanitary sewer collection, treatment, and disposal system (the “**Public Utilities**”) that currently serve, in addition to the City, portions of the Township pursuant to certain separate contractual use agreements.
- E. The Parties wish to extend the Public Utilities and undertake certain capital improvements to the Public Utilities in order to provide the Public Utilities to the Conditionally Transferred Property.
- F. The Parties are currently negotiating new water and sanitary sewer use agreements (the “**New Utility Agreements**”) governing various matters related to the extension of the Public Utilities to the Conditionally Transferred Property, the allocation of costs between the Parties related to the same, and the operation, administration, and maintenance of the Public Utilities.
- G. The City and Township recognize that extending Public Utilities to the Conditionally Transferred Property serves the Parties’ mutual goals relative to quality economic development.
- H. Pursuant to Public Act 425 of 1984, MCL 124.21 *et seq.* (“**Act 425**”), two or more “local units” may enter into a contract to conditionally transfer property from the jurisdiction of one local unit to the jurisdiction of the other local unit for the purpose of an economic development project.
- I. The Township and City acknowledge that they are both “local units” for purposes of Act 425 and the Project is a qualifying “economic development project” under Act 425.
- J. The City and the Township have considered and analyzed the factors set forth in Section 3 of Act 425 including, but not limited to, the respective populations; population density; land area and land uses; assessed valuation; topography, natural boundaries, and drainage basins; past and probable future growth; comparative data from the property proposed to be transferred and the remainder of the City

and the Township thereafter; the need for organized community services; the present cost and adequacy of governmental services; the probable future needs for services; the practicality of supplying such services; the probable effects of the proposed transfer and of alternate courses of action; the probable change in taxes and tax rates in relation to the benefits expected to accrue; the financial ability of the City and the Township to provide and maintain such services; and the general effect upon both the City and the Township after the transfers, as well as the relationship to the proposed transfers to existing land uses.

- K. In accordance with the provisions of Act 425, the City of Lowell City Council held a public hearing on [REDACTED] at [REDACTED] and the Township Board of Lowell Charter Township held a public hearing on [REDACTED], at [REDACTED], regarding the conditional transfer of the property pursuant to this Agreement.
- L. The City Council of the City of Lowell and the Township Board of Lowell Charter Township have both decided by a majority vote of the members elected and serving on both bodies, to enter into this Agreement.
- M. The Parties find that the conditional transfer of property authorized by this Agreement will assist economic development and be beneficial to the residents, businesses, and visitors of the City and Township.

NOW, THEREFORE, by the authority of Act 425, and in consideration of the promises, covenants, and conditions set forth herein, the Parties agree as follows:

#### TERMS AND CONDITIONS

- Section 1. Authority and Affirmation. This Agreement is made pursuant to Act 425, as well as other provisions of state law. The Recitals set forth above are affirmed as correct by the Parties and are incorporated herein for all purposes.
- Section 2. Transfer of Property. Subject to Section 14, the Township consents to the conditional transfer of jurisdiction of the Conditionally Transferred Property to the City for the limited purposes and under the terms and conditions hereinafter described. The jurisdiction for the provision of all government services will remain with the Township unless expressly transferred to the City pursuant to this Agreement.
- Section 3. Jurisdiction upon Termination or Expiration. Upon the termination, expiration, or non-renewal of this Agreement, the Conditionally Transferred Property will for all purposes return to the jurisdiction of the Township.
- Section 4. Utilities. Subject to Section 14, the Parties shall undertake such capital improvements as are necessary to supply the Public Utilities to the Conditionally Transferred Property. Jurisdiction over the Public Utilities serving the Conditionally Transferred Property shall be with the Township, consistent with the terms of the New Utility Agreements as adopted. Rates, fees, and charges for the use of the Public Utilities shall be set by the Township in accordance with the terms of the New Utility Agreements and other legal requirements.
- Section 5. Emergency Services. Upon the Effective Date, the City shall have jurisdiction and legal authority over the provision of police, fire, and emergency medical services for the Conditionally Transferred Property. This Agreement shall not affect any mutual or automatic aid agreements involving the Parties.

Section 6. Other Governmental Services.

- (a) *Roads.* In the event that the Project contains public roads within the development, the City shall have jurisdiction and responsibility for such roads. The City shall be entitled to receive and retain any Act 51 revenues attributable to public roads within the Conditionally Transferred Property.
- (b) *Voting.* Any persons residing on the Conditionally Transferred Property shall be entitled to vote on the same basis as all other persons residing within the legal limits of Township. The Parties recognize that because at the termination of this Agreement, the Conditionally Transferred Property will once again lie within the Township's jurisdictional limits, the long-term interests of those registered electors who may reside on the Conditionally Transferred Property will likely voter's residing thereon to want to have input into Township electoral matters.

Section 7. Regulatory Ordinances. The City may adopt and enforce such ordinances as are necessary to provide police, fire, and emergency medical services to the Conditionally Transferred Property, including, but not limited to, ordinances regulating criminal, public peace, and traffic and motor vehicles matters. To the extent of any conflict between the City's authority under this Section 7 and the Township's authority under Section 8 or 9, Section 8 or 9 will control. The City may retain all costs, fees, penalties, and similar items that are assessed pursuant to a regulatory ordinance enforced under this section.

Section 8. Zoning and Land Use. The Township shall retain jurisdiction and authority over zoning, planning, land use, or land division authority or function as part of this Agreement. Without limiting the generality of the foregoing, within the Conditionally Transferred Property, the Zoning Ordinance, Subdivision Control Ordinance, and Land Division Ordinance of the Township will apply to all occupancy and use of land and structures. Nothing in this Agreement shall be interpreted or relied upon as a grant of approval of any zoning, land use, or similar legal requirement, and the developer of the Project shall remain responsible to apply for and obtain all such approvals independent of this Agreement.

Section 9. Building Regulations. The Township shall retain jurisdiction and authority over the administration or enforcement of the State Construction Code Act, Public Act No. 230 of 1972 (MCL 125.1501, et seq.) as well as all associated authority including, but not limited to, the administration and enforcement of the state building code, plumbing code, electrical code, fire code, and any property maintenance code. The Township shall also retain jurisdiction over all nuisance-type matters applicable to the Conditionally Transferred Property (e.g., blight, vegetation, etc.).

Section 10. Taxes and Other Revenues.

(a) *Jurisdiction.* For all purposes related to the assessment, levy, and collection of taxes on real and personal property, as well as the responsibility to defend associated appeals before the State, the Conditionally Transferred Property shall be considered as being within the jurisdictional limits of the City, and the City shall assess, levy, and collect all real and personal property taxes. Upon request of the City, the Township shall share such historical assessment information typically acquired in property assessing as is reasonably required for the City to fulfill its obligations under this section.

(b) *Other Revenue Sharing.* Subject to other express provisions herein including, without limitation, Section 6(a), above, the Parties shall negotiate in good faith with respect to any income taxation, any future permitted local sales taxation (such as the hotel/motel tax), or other similar revenues which become available as a result of the Project, or which arises from the Conditionally Transferred Property.

(c) *Past Due Taxes.* Any property taxes assessed and levied against the Conditionally Transferred Property prior to or on the Effective Date shall remain a lien on the affected parcel in the Conditionally Transferred Property and, when collected, such taxes, including any applicable penalties, interest and administration fees shall be remitted to the Township.

(d) *Tax Appeals.* The City Board of Review will hear any appeals of the assessed and taxable valuations, claims for exemption, or other matters over which a board of review has jurisdiction.

(e) *Tax Revenue Sharing.* All tax revenue collected by the City within the Conditionally Transferred Property pursuant to subsection (a) above (“**Tax Revenue**”) will be shared between the Parties as follows:

(i) The City currently levies a charter operating millage of 15.7 mills. Subject to subsection (e)(ii) below, the City shall pay to the Township an amount equivalent to 6.0 mills of the total number of mills levied and collected within the Conditionally Transferred Property (the “**Tax Revenue Sharing Rate**”) of all Tax Revenue. The City shall make the payments twice annually, one for summer taxes and one for winter taxes (if any), within 30 days of the last date the respective taxes may be collected by the City Treasurer. To the extent that property taxes levied by the City remain uncollected on some or all of the parcels within the Conditionally Transferred Property as of the date that the taxes are due, then the portions that are delinquent shall be paid to the Township within 30 days of the date upon which they are collected from the taxpayer or, upon settlement with the Kent County Treasurer and payment from the delinquent tax revolving fund. Any amount not paid to the Township when due under this Agreement shall bear interest at a rate of 1.0% per month until paid. Interest and penalties collected by the City from the taxpayer(s) for the Conditionally Transferred Property shall be paid to Township on a *pro rata* basis and the City shall not waive any such interest or penalties without the Township’s consent.

(ii) If, in any given year the City’s charter operating millage rate levied pursuant to the City’s charter authority to levy property taxes is reduced under applicable law, and not by action of the City, such that the City may not levy more than 13.9 mills, the Tax Revenue Sharing Rate will be adjusted proportionally by such amount necessary to maintain a 6:15.7 ratio of revenue sharing to the Township. For example, if the City’s total maximum allowable millage rate is reduced to 13.7 mills, the Township would be entitled to a 5.2356 mill equivalent payment.

(iii) If subsequent to a revenue sharing payment to the Township under this Agreement, an event occurs under which the City is required to refund Tax Revenue either to a property owner or the Kent County Treasurer, upon 30 days’ prior written notice, the Township shall promptly repay to the City the Township’s *pro rata* share of any such tax refund together with the Township’s share of any interest due on the tax refund.

(iv) The City shall annually, by April 10 of each year, provide to the Township a parcel-by-parcel accounting of the state equalized value, taxable value, taxes levied and taxes and other amount collected, including the collection date for each tax numbered parcel of property within the Conditionally Transferred Property.

(v) The party receiving any property tax assessment appeal shall promptly notify the other party and provide copies of all notices, petitions, all notices from governmental agencies or officials, and any other written communication regarding or affecting the taxation of the Conditionally Transferred Property.

(vi) The City may retain any property tax administration fees generated by the City’s collection of the real and personal property taxes levied against the Conditionally Transferred Property.

(vii) If by operation of law, the City's authority to levy *ad valorem* real or personal property taxes within the Conditionally Transferred Property is eliminated or reduced, and a substitute tax or revenue source is expressly provided in lieu of *ad valorem* real or personal property taxes, then the City shall share such substitute tax or revenue source with the Township with the intent of achieving a reasonably equivalent annual remittance as otherwise contemplated by subsection (e)(ii), above.

Section 11. Special Assessments. This Agreement transfers no authority over the creation of special assessment districts or the levy of special assessment, which authority will remain with the Township.

Section 12. Tax Related Economic Development Incentives and Tools.

(a) *Authority.* Subject to the limitations in this section, the Township transfers to the City all authority for property tax related economic development incentives, tax abatements, tax increment financing, and similar tools on the Conditionally Transferred Property including, but not limited to, the Brownfield Redevelopment Financing Act, Public Act 381 of 1996, MCL 125.2651 et seq., and the Plant Rehabilitation and Industrial Developments Districts Act, Public Act 198 of 1974, MCL 207.551 et seq.

(b) *Township Input.* Prior to the City considering approval of any economic development incentive under subsection (a) above, the City shall provide the Township with notice and provide a 30-day period for the Township Board to provide a recommendation to approve or deny the proposed economic development incentive. The City Council shall follow the Township's recommendation unless the City Council by a majority vote of the members elect declares that the City Council will not follow the recommendation.

(c) *Duration.* Notwithstanding anything in this Agreement to the contrary, the City shall not approve or grant any tax incentives or abatements on the Conditionally Transferred Property the duration of which exceeds the Term (defined below) of this Agreement.

Section 13. Non-Tax Related Economic Development Incentives and Tools. The Parties shall reasonably cooperate to pursue and share non-tax related economic development tools and incentives, such as grants, connected with the Project.

Section 14. Effective Date; Term; and Termination.

(a) *Effective Date.* In accordance with Act 425, following the Parties' execution of this Agreement and proper approval by the respective legislative bodies, a duplicate original of the Agreement shall be filed with the Kent County Clerk and the Michigan Secretary of State. As more fully set forth in subsection (b), below, it is a condition precedent to this Agreement becoming effective that the New Utility Agreements be approved, fully executed, and binding between the Parties. The "**Effective Date**" of this Agreement will be the date upon which this Agreement is filed with the Kent County Clerk and the Michigan Secretary of State in the manner required by Act 425, whichever is later. This Agreement, certified by such County Clerk and Secretary of State, shall be prima facie evidence of the conditional transfer of the Conditionally Transferred Property.

(b) *Pre-Conditions to Filings.* **The Parties expressly acknowledge and agree that this Agreement may not be filed as provided for in subsection (a), above, and may not under any circumstance be deemed to be effective, unless and until the New Utility Agreements have been satisfactorily negotiated and formally approved as evidenced by the Parties' governing bodies each adopting a resolution to this effect. By way of further explanation but not limitation, the Parties further acknowledge and agree that the New Utility Agreements to be adopted shall be consistent with the terms for the same as substantially outlined in a Letter of Understanding entered into between the Parties dated August 7, 2024, a copy of which is on file with the City and Township.**

(c) *Term.* The “**Term**” of this Agreement lasts for fifty (50) years from the Effective Date and terminates at 11:59 PM on the last day fifty years following the Effective Date. The Terms may be extended for additional periods no longer than fifty (50) years if approved by resolution of both the City Council of the City of Lowell and the Township Board of Lowell Charter Township.

(d) *Termination.* This Agreement will terminate:

(i) Upon the expiration of the Term unless otherwise renewed; or

(ii) If either of the New Utility Agreements is no longer in effect between the Parties for any reason. However, the termination of this Agreement shall not be construed or intended to disturb or negate either New Utility Agreement in effect between the Parties and the Parties shall abide by the Utility Agreements according to their terms; or

(iii) In the event the Project has not received zoning and land use approvals within one (1) year of the Effective Date; or

(iv) In the event that substantial construction of the Project has not begun within two (2) years of the Effective Date.

#### Section 15. Disputes.

(a) *Notification and Meeting.* Before the City or the Township may undertake any legal or equitable action pursuant to or to enforce any provision of this Agreement, that party shall first notify in writing the other party of the basis for the claim, including detailed recitations of the facts and the law upon which the claiming party is relying. The party receiving such a claim letter shall, within 21 days of receiving the claim, respond in writing identifying those issues on which there is agreement and stating in detail the facts and law upon which the responding party is relying. The parties shall schedule a meeting to occur within 14 days after the date the response is due to discuss and seek to resolve the dispute. These time frames may be adjusted with the written consent of the parties.

(b) *Mediation.* In the event a dispute arises that remains unresolved following the negotiation procedures outlined in subsection (a) above, the Parties shall participate in at least four hours of mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

(c) *Remedies.* Should the Parties be unable to resolve a dispute pursuant to the required mediation under subsection (b) above, the Parties may pursue any remedy available at law or equity including, without limitation, mandamus, specific performance and injunctive relief.

(d) *Cost Recovery.* To the extent not prohibited by law, the Parties agree that the prevailing party in any action pursuant to or to enforce any provision of this Agreement may, in addition to any other remedy to which it may be entitled, recover its actual reasonable costs, including, without limitation, actual reasonable filing fees, attorney fees, expert consulting and witness costs, discovery costs, investigative costs, professional fees and any other expenses incurred to investigate, bring, maintain or defend any such action from its first accrual or first notice thereof through all appellate and any collection proceedings.

#### Section 16. Miscellaneous.

(a) *Notices.* Any notice, demand, or communication required, permitted, or desired to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by first-class mail addressed to those addresses first provided above. The parties may, by written notice, designate any further or different address to which subsequent notices, demands, or communications may be given.

(b) *Interpretation.* The article and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. However, the recitals are an integral part of this Agreement.

(c) *Integration.* Except where otherwise expressly provided for herein, this Agreement is the entire agreement between the parties with respect to its subject matter. It supersedes and replaces all previous or contemporaneous, express or implied, written or oral statements, covenants, representations or agreements. So, no oral statements or prior or contemporaneous written material not specifically incorporated in this Agreement shall be of any force and effect, and both parties specifically acknowledge, in entering into and executing this Agreement, they are relying solely upon the representations and agreements contained in this Agreement or expressly referenced herein and no others.

(d) *Amendment.* This Agreement may be amended by the Parties through the adoption of resolutions by the Lowell City Council and the Township Board of Lowell Charter Township after noticed public hearings. Any amendments shall be reduced to writing as an amendment to this Agreement.

(e) *Counterparts; Mutual Drafting.* This Agreement may be executed in any number of counterparts and each such counterpart shall be considered a valid original. All the parties consulted legal counsel and had input into the drafting of this Agreement. It should therefore be construed as if it were mutually drafted.

(f) *Assignment.* Neither party may assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other party.

(g) *Additional Filing.* The Parties agree to the filing of additional documents, such as notices, forms and reports that may be reasonably required or requested by county, state or other agencies necessary to give full effect and to fully implement this Agreement.

(h) *Successors.* It is hereby agreed that this Agreement will be binding upon all successor governmental units which may assume jurisdiction over all or part of the Conditionally Transferred Property.\

(i) *No Third-Party Beneficiaries.* Nothing contained in this Agreement shall create a third-party beneficiary relation or status for any person or entity. The provisions of this Agreement relate to, and may be relied upon solely by, the named parties.

The parties have signed this Agreement as of the date first written above.

**CITY OF LOWELL**, a Michigan home rule city

**LOWELL CHARTER TOWNSHIP**, a Michigan charter township

By: \_\_\_\_\_, Mayor

By: \_\_\_\_\_, Supervisor

By: \_\_\_\_\_, Clerk

By: \_\_\_\_\_, Clerk

**EXHIBIT A**  
**DESCRIPTION OF CONDITIONALLY TRANSFERRED PROPERTY**  
**DEPICTION OF CONDITIONALLY TRANSFERRED PROPERTY**

DRAFT