

Township of Pinconning  
County of Bay, State of Michigan

**RESOLUTION TO FUND WATERLINE INFRASTRUCTURE**

WHEREAS, the Township Board of the Township of Pinconning, County of Bay, State of Michigan, pursuant to Act 188, Public Acts of Michigan, 1954 as amended, tentatively declares its intention to undertake certain water supply system improvements described hereinafter as District Number 5 to be financed through a special assessment to each property owner, and pursuant to 51% of the property owners within the total land area of said district having requested the proposed water supply system improvement through the creation of a special assessment district; and

WHEREAS, the Township Board desires to proceed with the proposed water supply system improvement;

NOW, THEREFORE, BE IT RESOLVED THAT:

That the Pinconning Township Board does hereby designate National City Bank as the financial institution for the purpose of securing a loan in the amount of four hundred thousand dollars (\$400,000.00) at an interest rate of 4.6% for a total of fifteen years for a water supply system improvement in District Number 5.

Yeas:

Buchalski, Kusterer, Waibel and Stalsberg

Nays:

Lichon (Absent)

The Supervisor has hereby declared the resolution adopted.

10/31/05

Mary Kusterer  
Pinconning Township Clerk

**TOWNSHIP OF PINCONNING  
BAY COUNTY, MICHIGAN  
RESOLUTION REGARDING CONSTRUCTION AND  
ACQUISITION OF WATERLINES AND RELATED  
WATER SUPPLY SYSTEM IMPROVEMENTS IN THE  
TOWNSHIP'S SPECIAL ASSESSMENT DISTRICT NUMBER 5**

Minutes of a SPECIAL meeting of the Township Board of Trustees, Pinconning Township, County of Bay, Michigan, held in the Township Hall in said Township on the 31 of October, 2005 at 11:15 o'clock A.m. Member Kusteer moved for the adoption of the following Resolution seconded by Member Buehalski.

RESOLUTION APPROVING AN INSTALLMENT PURCHASE AGREEMENT TO FINANCE THE COST OF ACQUIRING AND CONSTRUCTING WATERLINES AND RELATED WATER SUPPLY SYSTEM IMPROVEMENTS IN ITS SPECIAL ASSESSMENT DISTRICT NUMBER 5, AUTHORIZING EXECUTION OF SAID INSTALLMENT PURCHASE AGREEMENT, AND AUTHORIZING THE UNDERTAKING OF ALL OTHER NECESSARY AND REQUIRED ACTS IN CONNECTION WITH THE CONSTRUCTION AND FINANCING OF THE WATERLINES AND RELATED WATER SUPPLY SYSTEM IMPROVEMENTS IN ITS SPECIAL ASSESSMENT DISTRICT NUMBER 5.

WHEREAS, the Township Board previously determined to acquire and construct waterlines and related water supply system improvements in its Special Assessment District Number 5 (the "Project") and finance the cost thereof through an installment purchase agreement; and

WHEREAS, the Township Board solicited bids from general contractors and others to construct the Project pursuant to certain plans and specifications prepared on behalf of the Township Board; and

WHEREAS, Mid-State Earth Works, Inc.'s (the "Contractor") bid was accepted by the Township Board and the Township and the Contractor have entered into an agreement for the acquisition and construction of the Project dated October 28, 2005, as amended from time to time by change orders; and

WHEREAS, under the provisions of Act No. 99, Public Acts of Michigan, 1933, as amended ("Act 99"), the Township Board is authorized to enter into an agreement for the acquisition of real and personal property for public purposes, to be paid for in installments over a



period of not to exceed fifteen (15) years, or the useful life of the property acquired, as determined by resolution of the Township Board (whichever is the lesser time period); and

WHEREAS, the outstanding balance of all such installment purchases by the Township Board under the Act 99, exclusive of interest, shall not exceed one and one-quarter percent (1¼%) of the equalized assessed value of the real and personal property of the Township on the date of such agreement or agreements; and

WHEREAS, the acquisition of the Project, pursuant to an installment purchase agreement, will not result in the outstanding balance of all such purchases to be in excess of the limitations contained in Act 99 as set forth above; and

WHEREAS, the Township Board requested proposals for financing the acquisition of the Project through an installment purchase agreement pursuant to Act 99; and

WHEREAS, the proposal of National City Bank of the Midwest (the "Bank") has been determined to be the lowest responsive proposal; and

WHEREAS, the Township Board has had presented to it at this meeting, the form of Installment Purchase Agreement (the "Agreement"), to be entered into by the Township, the Bank and the Contractor in connection with such financing, and it is the desire of the Township Board to approve and authorize the execution of such Agreement; and

WHEREAS, the Township Board desires to authorize the undertaking of all such acts necessary to complete the construction and financing of the Project.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The acquisition of the Project is hereby found and declared to be for valid public purposes and in the best interests of the health, safety and welfare of the residents of the Township.

2. A contract dated October 28, 2005, as amended from time to time by change orders, for excavation of the Project in the amount of \$400,000.00 has been awarded to the Contractor.

3. The proposal of the Bank is hereby approved and the cost of the Project to the extent of \$400,000.00 shall be financed through the Bank through and installment purchase at tax-exempt interest rate of 4.69% per annum, as provided in the Agreement. Payments of principal and interest shall be in the amounts and at the times set forth on Schedule "A" to the Agreement.

4. The Agreement is hereby approved substantially in the form presented at this meeting with such additions, changes and modifications as shall be approved by the Supervisor and Township Clerk.

5. The Project has a useful life extending beyond the final maturity date as set forth on Schedule "A" to the Agreement.

6. The Township Board hereby agrees to include in its budget for each fiscal year during the term hereof, an amount sufficient to pay when due, the principal of, and interest coming due under the Agreement during such fiscal year. In addition, the Township Board hereby pledges to levy in each fiscal year, ad valorem taxes on all taxable property in the Township in an amount which, together with other funds available for such purpose, shall be sufficient for the payments required under the Agreement in such fiscal year. Any such tax levy is, however, subject to existing charter, statutory and constitutional tax limitations.

7. The Township covenants that, to the extent permitted by law, it shall take all actions within its control necessary to maintain the exclusion of the interest component of the payments due under the Agreement from adjusted gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code").

8. The Township Board designates its obligation to pay the purchase price of the Project under the Agreement as a qualified tax-exempt obligation pursuant to Section 265(b)(3) of the Code and does not reasonably anticipate that qualified tax-exempt obligations of the Township will exceed \$5,000,000 during the 2005 calendar year.

9. The Township Supervisor and the Township Clerk, or either of them, are directed and authorized to execute the Agreement and such additional certificates and other documents in a form approved by either of them as shall be necessary to effectuate the closing contemplated by the Agreement.

10. All resolutions or parts of resolutions insofar as they conflict with the provisions hereof be, and the same hereby are, rescinded to the extent of such conflict.

Upon roll call vote, the following voted:

AYES: Bucchalski, Kusterer, Waidel, Statsberg  
(LICHON) absent

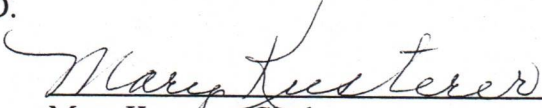
NAYS: \_\_\_\_\_



ABSTAIN: \_\_\_\_\_

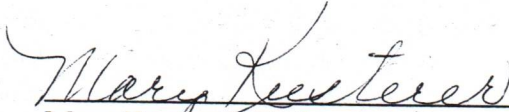
ABSENT: \_\_\_\_\_

RESOLUTION DECLARED ADOPTED.

  
\_\_\_\_\_  
Mary Kusterer, Clerk

I, Mary Kusterer, the duly elected and acting Clerk of the Township of Pinconning, hereby certify that the foregoing constitutes a true copy of an Excerpt of the Minutes of a *special* meeting of the Township Board of the Township of Pinconning, Bay County, Michigan, held on October 31, 2005, at which meeting \_ members were present, as indicated in said Minutes, and voted as therein set forth; that said meeting was held in accordance with the Open Meetings Act of the State of Michigan, and that due and proper notice of the meeting, as required by law, was given to the members of the Township Board, and that the minutes of said meeting were kept and will be, and have been, made available, as requested by said Act.

Dated: October 31, 2005

  
\_\_\_\_\_  
Mary Kusterer, Clerk

**TOWNSHIP OF PINCONNING  
BAY COUNTY, MICHIGAN  
ACT 99 INSTALLMENT PURCHASE  
(CONSTRUCTION AND ACQUISITION OF WATERLINES  
AND RELATED WATER SUPPLY SYSTEM IMPROVEMENTS  
IN THE TOWNSHIP'S SPECIAL ASSESSMENT DISTRICT NUMBER 5)**

**INSTALLMENT PURCHASE AGREEMENT**

THIS INSTALLMENT PURCHASE AGREEMENT made and executed this 31st day of October \_\_, 2005 (hereinafter referred to as the "Agreement"), by and between the Township of Pinconning, Bay County, Michigan, organized and existing under the Constitution and laws of the State of Michigan (hereinafter referred to as the "Buyer"), Mid-State Earth Works, Inc. (hereinafter referred to as the "Contractor"), and National City Bank of the Midwest, as assignee of the Contractor (hereinafter referred to as the "Bank").

**WITNESSETH:**

WHEREAS, the Buyer is to cause the acquisition and construction of waterlines and related water supply system improvements in its Special Assessment District Number 5 for use by the Buyer for public purposes (hereinafter referred to as the "Project") by executing a contract with the Contractor dated October 31, 2005, as amended from time to time by change orders; and

WHEREAS, the Buyer desires to pay the acquisition costs of the Project up to \$400,000.00 through an installment purchase contract as authorized by Act 99 of the Public Acts of Michigan of 1933, as amended (hereinafter referred to as "Act 99"); and

WHEREAS, the Bank is willing to provide the required funding that will enable the Buyer to construct the Project on an installment purchase basis pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the respective representations and agreements herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** The following terms, wherever used in this Agreement shall have the following meanings, unless the context shall indicate another or different meaning:

"Act 99" means Act 99 of the Public Acts of Michigan of 1933, as amended.

"Agreement" means this Installment Purchase Agreement, by and between the Buyer, the Contractor and the Bank.

"Buyer" means the Township of Pinconning, Bay County, Michigan.

"Buyer Funds" means any sum contributed by the Buyer from funds available to it towards the Total Purchase Price of the Project plus mutually agreed upon extras and change orders.



"Code" means the Internal Revenue Code of 1986, as amended. Reference to the Code shall also include applicable regulations and proposed regulations thereunder and any successor provisions thereof.

"Construction Contract" means the Agreement between the Buyer and the Contractor, dated October 31, 2005, as amended from time to time by change orders.

"Construction Fund" means the Construction Fund established by the Buyer pursuant to Section 3 of this Agreement to be used to pay the Contractor the Total Purchase Price for the Project.

"Contractor" means Mid-State Earth Works, Inc.

"Financed Purchase Price" means the sum of \$400,000.00 to be provided by the Bank towards the Total Purchase Price of the Project.

"Financed Purchase Price" means that portion of the Total Purchase Price of the Project, namely \$400,000.00 to be provided pursuant to the terms of this Agreement.

"Bank" means National City Bank of the Midwest.

"Interest Payment" means the payment of interest on the unpaid principal balance of the Financed Purchase Price in accordance with the schedule set forth in Schedule "A" attached hereto.

"Interest Rate" means a bank qualified tax-exempt interest rate of 4.69% per annum from the date of the first principal advance under this Agreement until October 31, 2020 when the entire principal balance of the Installment Purchase Agreement plus accrued interest shall be due and payable in full. Interest shall be calculated on a 360-day year basis with 30-day months.

Upon the occurrence of an Event of Taxability as described in Section 14 of this Agreement, interest on this Agreement shall be recomputed from the date of occurrence of the Event of Taxability to a variable rate per annum equal to the sum of the Bank's Prime Rate plus two (2.0%) per cent adjusted daily and payable monthly.

"Payment Date" means the date a Principal Payment and Interest Payment are due and payable in accordance with the schedule set forth in Schedule "A" attached hereto. The first Payment Date shall be October 31, 2006 and subsequent Payment Dates annually thereafter shall be as set forth on Schedule "A" with a final payment of the entire outstanding principal balance and accrued interest on October 31, 2020.

"Prime Rate" means a floating, variable and daily rate of interest per annum declared by the Bank to be its "Prime Rate" without reference to prime interest rates of any other financial institution, which rate may not necessarily be the lowest rate of interest charged by the Bank to any of its customers. The Bank's Prime Rate is an index and the actual rate charged to any borrower for a specific loan may be above or below that index.



"Principal Payment" means the payment of a principal installment of the Financed Purchase Price in accordance with the schedule set forth in Schedule "A" attached hereto.

"Project" means the acquisition of property, i.e., the construction and acquisition of waterlines and related water supply system improvements in the Township's Special Assessment District Number 5.

"State" means the State of Michigan.

"Total Purchase Price" means the purchase price of the Project in the amount of \$400,000.00 plus mutually agreed upon extras and change orders.

**Section 2. Construction and Purchase of Project.** The Buyer agrees to acquire by construction and the Contractor agrees to construct and sell the Project to the Buyer for the Total Purchase Price pursuant to the terms and conditions of this Agreement. The Contractor shall construct the Project in accordance with the provisions of the Construction Contract. The Buyer will cause the Contractor to be paid the Total Purchase Price for the Project with Buyer Funds and Financed Purchase Price deposited in the Construction Fund. To the extent, if any, that the Total Purchase Price exceeds the Financed Purchase Price, the Buyer shall make such payment from funds on hand legally available for such purpose.

**Section 3. Establishment and Use of Capital Projects Improvement Fund.** Simultaneously with the execution of this Agreement, the Buyer shall establish and maintain a separate fund entitled the "Township of Pinconning Capital Projects Improvement Fund – Waterlines and Related Water Supply System Improvements, Special Assessment District Number 5" (the "Fund") and shall deposit the Buyer Funds and the Financed Purchase Price into such escrow Fund. The Buyer shall keep and maintain the Fund as a separate fund not co-mingled with other monies of the Township. The monies in the Fund may be invested in investments permitted by the laws of the State of Michigan for investment of Buyer monies. Any income or profit from the investment of monies in the Fund shall belong to the Buyer and may be used to pay the costs of purchase of the Project and for no other purpose. Monies in the Fund not required for the purchase of the Project shall be used by the Buyer on or before one (1) year from the date of this Agreement to prepay in part the money owed to the Bank under this Agreement. The Buyer may withdraw money from the Fund and disburse such money to pay the Contractor or to reimburse the Buyer for payment made by the Buyer to the Contractor after the earlier of the date of this Agreement or the date of adoption of a resolution of intent to reimburse from proceeds of this Agreement money advanced by the Buyer towards the purchase of the Project.

The Buyer shall pay the Contractor the Total Purchase Price of the Project in strict compliance with the procedures provided in the Construction Contract from monies available in the Fund. If at any time the Total Purchase Price of the Project shall be increased because of Construction Contract change orders approved by the Buyer, upon such approval, the Buyer shall immediately deposit into the Fund an amount equal to the increase in the Total Purchase Price. Upon completion of the Project and the payment of all amounts due and owing the Contractor, the Fund shall be closed and any remaining balance therein shall be applied as a prepayment under this Agreement. From the Amount deposited in the Fund, the Buyer shall pay the Contractor, the applicable Total Purchase Price in compliance with the Construction Contract, provided, however, that to the extent that the Buyer has previously made any such payments, it may reimburse itself for any payments previously made on the Construction Contract in



accordance with all the applicable requirements of U.S. Treasury Regulation Section 1.150-2, as amended.

**Section 4. Assignment of Contractor's Interest.** The Contractor hereby irrevocably assigns its interest in this Agreement, except for certain warranties, indemnifications, representations and other obligations as hereinafter provided, to the Bank in consideration for the Buyer's promise to pay the Contractor from monies available in the Fund the Total Purchase Price of the Project in accordance with the provisions of the Construction Contract. Such assignment shall not, however, include any warranties, indemnifications, representations or other obligations of the Contractor referenced in Section 15 hereof, and the Contractor hereby acknowledges that all of said warranties, indemnifications, representations and other obligations shall not be assigned and shall remain the sole responsibility of the Contractor. The Buyer hereby consents to this assignment in consideration for the Bank's promise to provide the Buyer an amount equal to the Financed Purchase Price to be used to pay the Contractor the Total Purchase Price of the Project. The Bank hereby accepts this assignment and will, upon execution of this Agreement, pay to the Buyer in immediately available funds, an amount equal to the Financed Purchase Price of the Project to be deposited in the Fund and used by the Buyer together with Buyer Funds if necessary, to pay the Contractor the Total Purchase Price of the Project in consideration for the Buyer's promise to pay the Bank the Principal Payments and Interest Payments in accordance with Section 5 hereof

The assignment by the Seller to the Bank herein is intended to be an absolute and unconditional assignment and is not intended as a loan by the Bank to the Contractor. Accordingly, in the event of bankruptcy of the Contractor, the installment payments and the rights of the Bank hereunder shall not be part of the Contractor's estate. However, if the assignment herein is deemed to be a loan by the Bank to the Contractor, then the Contractor shall be deemed to have granted to the Bank, and hereby grants to the Bank, a continuing first priority security interest in the installment payments and the rights of the Bank hereunder (together with all proceeds thereof) as collateral security for all obligations of the Contractor and the Buyer under this Agreement, and this Agreement shall be deemed a security agreement with respect to such loan.

The Contractor represents and warrants that the assignment of this Agreement to the Bank does not violate any agreement, contract or loan agreement to which it is a party and that the Agreement has been duly authorized, executed and delivered by the Contractor. It is expressly agreed between the Contractor, the Buyer, and the Bank, by acceptance of this assignment of this Agreement, that the Buyer shall make all payments of principal and interest due hereunder directly to the Bank.

**Section 5. Installment Payments.** The Buyer agrees to pay to the Bank, as assignee of the Contractor, the Principal Payments and the Interest Payments on the Payment Dates in accordance with the schedule set forth in Schedule "A" attached hereto as payment for the Project on an installment purchase basis in accordance with Act 99.

**Section 6. Payments Unconditional.** The Buyer's obligation to the Bank to pay the Principal Payments and Interest Payments and any other amounts owed hereunder is absolute and unconditional and shall remain in full force and effect until the amounts owed hereunder shall have been paid by the Buyer to the Bank, and such obligation shall not be affected,



modified or impaired upon the happening from time to time of any event, including without limitation, any of the following:

- (a) Any failure of title with respect to the Project;
- (b) The invalidity, unenforceability or termination of this Agreement;
- (c) The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in this Agreement;
- (d) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment or other similar proceedings affecting the Contractor or any of its assets or any allocation or contest of the validity of this Agreement, or the disaffirmance of this Agreement in any such proceeding;
- (e) To the extent permitted by law, any event or action which would, in the absence of this clause, result in release or discharge by operation of law of the Contractor from the performance or observation of any obligation, covenant or agreement contained in this Agreement or the Construction Contract;
- (f) The default or failure of the Contractor fully to perform any of its obligations set forth in this Agreement, the Construction Contract or any other agreement; or
- (g) Any casualty or destruction of the Project.

The Buyer shall make payments when due and shall not withhold any such payments as a result of any disputes arising between the Buyer and the Contractor or any other person, nor shall the Buyer assert any right of set-off or counterclaim against its obligation to make such payments or be entitled to any abatement of such payments as a result of accident or unforeseen circumstances, or the Project being unusable.

**Section 7. Prepayment.** This Agreement may be prepaid in whole or in part at any time without penalty with funds withdrawn from the Buyer's cash reserves. Upon prepayment, interest shall cease to accrue on the Principal Payments prepaid, and, in the case of partial prepayment of the Financed Purchase Price, Schedule "A" attached hereto shall be revised to reflect such partial prepayment.

**Section 8. Useful Life of Project.** The Buyer represents that to its knowledge the useful life of the Project is equal to or longer than the date of the final Principal Payment as set forth in Schedule "A" attached hereto.

**Section 9. Security for Payment .Limited Full Faith and Credit.** The Buyer agrees to include in its budget for each fiscal year during the term hereof an amount sufficient to pay when due the Principal Payments and Interest Payments coming due under this Agreement during such fiscal year. In addition, the Buyer hereby pledges to levy in each fiscal year ad valorem taxes on all taxable property in the Buyer in an amount which, together with other funds available for such purpose, shall be sufficient for the payment of such Principal Payments and Interest



Payments in such fiscal year. Any such tax levy is, however, subject to existing charter, statutory and constitutional tax limitations.

**Section 10. Term of Agreement.** This Agreement shall terminate on the final Payment Date indicated on Schedule "A" attached hereto and payment of all principal and accrued interest due to the Bank under this Agreement, or such earlier date that all amounts due hereunder by Buyer to Bank are paid in full.

**Section 11. Representations of the Township.** The Buyer makes the following representations:

(a) The Buyer is a public body corporate and politic duly organized and legally existing under the constitution and laws of the State of Michigan.

(b) The Buyer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a public body corporate and politic.

(c) The Buyer has the power under the constitution and laws of the State to purchase and hold property for the public use and to make all contracts that may be necessary to exercise this power.

(d) This Agreement constitutes a legal, valid, binding and enforceable obligation of the Buyer in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) During the term of this Agreement, the Project will be used exclusively by the Buyer only for the purpose of performing one or more governmental public functions of the Buyer consistent with the permissible scope of the Buyer's authority.

(f) Except as disclosed in writing to the Bank to the Buyer's best knowledge, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by an court, public board or body, pending or threatened against or affecting the Buyer, nor to the best knowledge of the Buyer is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement. All actions, authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by the Buyer of this Agreement or in connection with the carrying out by the Buyer of its obligations hereunder have been obtained.

(g) Neither the payment of the Principal Payments and Interest Payments hereunder nor any portion thereof is directly or indirectly (a) secured by any interest in (i) property used or to be used for a private business use (within the meaning of Section 141(b) of the Code), or (ii) payments in respect of such project; or (b) to be derived from payments (whether or not to the Buyer) in respect of property, or borrowed money, used or to be used for a private business use (within the meaning of Section 141(b) of the Code). No portion of the Project will be used for any private business use (within the meaning of Section 141(b) of the Code).



(h) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which the Buyer is or is to be a party will not violate any judgment, order, law or regulation applicable to the Buyer.

(i) The Buyer has adopted a binding resolution determining the useful life of the Project is equal to or longer than the date of final payment hereunder.

**Section 12. Representations of the Contractor and Bank.** The Contractor and Bank each respectively make the following representations:

(a) It has the legal capacity to execute this Agreement and to carry out its obligations and undertakings hereunder and the person executing this Agreement on its behalf has been duly authorized to do so.

(b) The Agreement is valid, binding and in accordance with its terms upon it, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(c) The Bank understands that this Agreement is in compliance with Act 99 and other applicable State and Federal laws.

**Section 13. Tax Covenants.** The Buyer hereby agrees to comply with all applicable provisions of the Code that must be satisfied at the time of delivery of or subsequent to delivery of this Agreement in order that the Interest Payments be (or continue to be) excluded from gross income for federal income tax purposes. The Buyer further covenants and agrees that it will not take any action or fail to take any action with respect to the investment of the proceeds (as that term is used in Section 148 of the Code) of this Agreement which results in this Agreement constituting "arbitrage bonds" within the meaning of such term as used in Section 148 of the Code and that it will comply with any applicable rebate requirements of Section 148(f) of the Code.

If there is a change in the Code or its regulations or in the interpretation thereof by any court, administrative authority or other governmental authority (other than an Event of Taxability) which takes effect after the date of this Agreement and which changes the effective yield on the agreement to Bank, including but not limited to, changes in federal income tax rates, the interest rate on this Agreement shall increase accordingly to compensate the financial institution for such change in the effective yield on this Agreement not in excess of the maximum rate of interest permitted under the law of the State of Michigan.

**Section 14. Event of Taxability.** If an Event of Taxability shall occur, as hereinafter defined, the interest rate under this Agreement shall increase from the effective date of such Event of Taxability to a variable rate per annum equal to the sum of the Bank's Prime Rate plus 2.00% adjusted daily and payable monthly not in excess of the maximum rate permitted under the laws of the State of Michigan and at the option of the Bank, all outstanding Principal Payments plus accrued and unpaid interest shall be due and payable and the Buyer shall not later than 30 days following notice from the Bank pay said amounts to the Bank. An "Event of Taxability" shall mean the issuance of a statutory Notice of Deficiency by the Internal Revenue Service or a ruling of the National Office or any District Office of the Internal Revenue Service,



or a final decision of a court of competent jurisdiction which holds in effect that the Interest Payments are includable in the gross income of the Bank for federal income tax purposes.

**Section 15. Contractor's Representations, Warranties and Indemnification.** The Contractor agrees to all of the terms, conditions and provisions of the Construction Contract and any other agreement between the Buyer and the Contractor related to the construction of the Project. In the event of a conflict in terms between this Agreement and the above-referenced documents relating to the construction of the Project, the Construction Contract shall govern. In the event of any other conflict in terms between this Agreement and the above-referenced documents, the specific terms of this Agreement should govern. Representations, warranties and indemnification, if any, with respect to the Project shall not be assigned, but shall remain enforceable by the Buyer against the Contractor. The Buyer's sole remedy for the breach of any such warranties, representations or indemnification shall be against the Contractor. The Buyer expressly acknowledges that the Bank makes, and has made, no representation of warranties whatsoever as to the existence or availability or enforceability of such warranties of the Contractor.

**Section 16. Disclaimer of Warranties by Bank.** The Bank makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Project, or warranty with respect thereto. In no event shall the Bank be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or the Buyer's use of the Project or any item thereof

**Section 17. Indemnification by Buyer.** To the extent permitted by the laws and the constitution of the State, the Buyer shall protect, hold harmless and indemnify the Bank from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereto, and expenses in connection therewith, including without limitation, reasonable counsel fees and expenses arising out of the construction, use, operation or condition of the Project or any accident in connection with the operation, use or condition of the Project resulting in damage to property or injury or death to any person. This indemnification shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of this Agreement for any reason. To the extent permitted by the laws and the constitution of the State, the Buyer shall protect, hold harmless, and indemnify the Contractor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereto, and the expenses in connection therewith, including without limitation, reasonable counsel fees and expenses arising out of the Contractor's participation, use, and execution of the Installment Purchase Contract between the Buyer and the Bank. This indemnification shall continue in full force and effect notwithstanding the full payment of all obligations pursuant to the Construction Contract by the Buyer to the Contractor.

**Section 18. Events of Default.** The following shall be an "Event of Default" under this Agreement:

(a) Failure by the Buyer to make the Principal Payments and Interest Payments at the times specified on Schedule "A" attached hereto; or

(b) Failure of the Buyer to observe and perform any other covenant, condition or agreement on its part to be observed or performed and continuation of such failure for a period of



30 days after written notice specifying such failure and requesting that it be remedied, unless the Bank shall agree in writing to an extension of such time prior to its expiration, or unless such failure is other than the payment of money and shall be such that it cannot with due diligence be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Buyer within such period and diligently pursued until corrected; or

(c) The Buyer shall: (i) admit in writing its inability to pay its debt generally as they become due; (ii) commence a proceeding under any federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed or unstayed for 60 days; (iii) make an assignment for the benefit of creditors or provide for the entry into any agreement for the composition of creditors; or (iv) have applied for the appoint of a receiver, purchaser or liquidator for it or the whole or any substantial part of its property; or

(d) The Buyer shall materially breach any representation or warranty under this Agreement.

**Section 19. Remedies Upon Default.** Whenever an Event of Default referred to in Section 18 hereof shall occur and be continuing, the Bank shall have the right to exercise the following remedies:

(a) Upon the occurrence of an Event of Default described in Section 18(a) hereof and the failure to cure such Event of Default within ten (10) days, may declare all of the unpaid Principal Payments and Interest Payments (the portion thereof accrued) to be immediately due and payable, whereupon such amounts shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived; and

(b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement.

**Section 20. Assignment.** This Agreement, and the obligation of the Buyer to make the payments hereunder, may be assigned by the Bank and reassigned in whole or in part to one or more assignees at any time subsequent to its execution, without the necessity of obtaining the consent of the Buyer. The Bank agrees to give notice of assignment to the Buyer and upon receipt of such notice the Buyer agrees to make all payments to the assignee, notwithstanding any claim, defense, set off or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that the Buyer may from time to time have against the Bank, or the assignee. The Bank's interest in this Agreement may not be assigned or reassigned in whole or in part unless (i) the document by which such assignment or reassignment is made discloses the name and address of the assignee, and (ii) the Buyer receives written notification of the name and address of the assignee. The Buyer hereby designates the Bank or its assignee as its agent to maintain a book entry system in conformance with Section 149(a) of the Code, consisting of a record of ownership that identifies the owner of any interest in this Agreement, which record may be examined by the Buyer at its request. The right to payment of the amounts due hereunder may be transferred only through such book entry system. Anything in the foregoing to the contrary notwithstanding, the Bank's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for holders of certificates of participation in this Agreement.



**Section 21. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when dispatched by registered or certified mail, return receipt requested, postage prepaid, or by hand delivery, or by telegram and confirmed the same day by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Buyer:

1751 Cody-Estey Road  
Pinconning MI 48650  
Attention: Sharon Stalsberg

If to the Bank:

National City Bank of the Midwest  
300 Center Avenue  
Mail Code: R-H01-2A  
Bay City MI 48708  
Attention: Andrea Hales

If to the Contractor:

Mid-State Earth Works, Inc.  
12145 Wilkinson Road  
Freeland, MI 48623  
Attention: \_\_\_\_\_

The parties hereto may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications may be sent.

**Section 22. Buyer's Obligation.** This Agreement is a limited tax, general obligation of the Buyer, for which the Buyer has pledged its full faith and credit. The Buyer shall include in its general operating budget and pay each year until the Agreement is paid in full such sum or sums as may be necessary each year to make payments of principal and interest thereon when and as the same become due; provided, however, it is understood that the Buyer is not authorized to levy taxes in excess of its legal limitations for such purposes without the approval of its electors. The Buyer reasonably believes that sufficient funds can be obtained to make all installment payments during the term of the Agreement.

**Section 23. Act 99 Compliance.** The Buyer represents and warrants that (a) it has complied with the provisions of Act 99, Public Acts of Michigan, 1933, as amended, and all other applicable laws and regulations, and all acts or conditions precedent to the execution of this Agreement have been accomplished; (b) this Agreement does not require any approval or consent of any holders of any indebtedness or obligations of the Buyer and does not contravene any law, regulation or order binding on the Buyer or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of the Buyer under any indenture, mortgage, contract or other agreement to which the Buyer is a party, or by which it may be bound or affected; (c) this Agreement constitutes a legal, valid and binding

obligation of the Buyer enforceable against the Buyer in accordance with its terms; and (d) there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition or operations of the Buyer or the ability of the Buyer to perform its obligations under this Agreement.

**Section 24. Outstanding Balance of Installment Purchase Agreements.** The Buyer hereby warrants that the aggregate outstanding balance, exclusive of interest, of all installment contracts or agreements for purchases by the Buyer of lands, property or equipment for public purposes, including the purchase of the Property, does not exceed 1-1/4% of the equalized assessed value of the real and personal property within the boundaries of the Buyer.

**Section 25. Bank Qualified Tax-Exempt Obligation.** The Buyer has designated this Agreement as a "qualified tax-exempt obligation" for the purpose of deduction of interest expense by financial institutions under the provisions of the Internal Revenue Code of 1986, as amended. The Buyer covenants to comply with existing provisions of the Internal Revenue Code of 1986, as amended, necessary to maintain the exclusion of interest on this Agreement from gross income for federal income tax purposes.

**Section 26. Governing Law.** This Agreement shall be construed in all respects in accordance with the laws of the State.

**Section 27. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof

**Section 28. Binding Effect.** The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto.

**Section 29. Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 30. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 31. Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and there are no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, between the parties hereto with respect to this Agreement.

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**Section 32. Amendments.** This Agreement may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Buyer and the Bank.

**IN WITNESS WHEREOF**, the Buyer, the Bank and the Contractor have caused these presents to be signed all as of the day and year first above written.

**Township of Pinconning**  
**("Buyer")**

By: Sharon Stalsberg  
Sharon Stalsberg  
Its: Supervisor

**National City Bank of the Midwest**  
**("Bank")**

By: Andrea Hales  
Andrea Hales  
Its: Small Business Banking Officer

**Mid-State Earth Works, Inc.**  
**("Contractor")**

By: PAT GORNEY  
PAT GORNEY  
Its: SECRETARY

Township of Pinconning #1

"THIS AMORTIZATION SCHEDULE ASSUMES  
THAT ALL PAYMENTS ARE PAID ON THE  
DAY DUE. THIS SCHEDULE IS FOR  
INFORMATION PURPOSES ONLY"

Rate Period: Monthly

Nominal Annual Rate: 4.690 %

SCHEDULE "A"

## CASH FLOW DATA

	Event	Date	Amount	Number	Period	End Date
1	Loan	10/31/2005	400,000.00	1		
2	Payment	10/31/2006	37,733.65	15	Annual	10/31/2020

## AMORTIZATION SCHEDULE - U.S. Rule (no compounding), 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	10/31/2005				400,000.00
2005 Totals		0.00	0.00	0.00	
1	10/31/2006	37,733.65	18,760.00	18,973.65	381,026.35
2006 Totals		37,733.65	18,760.00	18,973.65	
2	10/31/2007	37,733.65	17,870.14	19,863.51	361,162.84
2007 Totals		37,733.65	17,870.14	19,863.51	
3	10/31/2008	37,733.65	16,938.54	20,795.11	340,367.73
2008 Totals		37,733.65	16,938.54	20,795.11	
4	10/31/2009	37,733.65	15,963.25	21,770.40	318,597.33
2009 Totals		37,733.65	15,963.25	21,770.40	
5	10/31/2010	37,733.65	14,942.21	22,791.44	295,805.89
2010 Totals		37,733.65	14,942.21	22,791.44	
6	10/31/2011	37,733.65	13,873.30	23,860.35	271,945.54
2011 Totals		37,733.65	13,873.30	23,860.35	
7	10/31/2012	37,733.65	12,754.25	24,979.40	246,966.14
2012 Totals		37,733.65	12,754.25	24,979.40	
8	10/31/2013	37,733.65	11,582.71	26,150.94	220,815.20
2013 Totals		37,733.65	11,582.71	26,150.94	
9	10/31/2014	37,733.65	10,356.23	27,377.42	193,437.78
2014 Totals		37,733.65	10,356.23	27,377.42	



10	10/31/2015	37,733.65	9,072.23	28,661.42	164,776.36
2015 Totals		37,733.65	9,072.23	28,661.42	
11	10/31/2016	37,733.65	7,728.01	30,005.64	134,770.72
2016 Totals		37,733.65	7,728.01	30,005.64	
12	10/31/2017	37,733.65	6,320.75	31,412.90	103,357.82
2017 Totals		37,733.65	6,320.75	31,412.90	
13	10/31/2018	37,733.65	4,847.48	32,886.17	70,471.65
2018 Totals		37,733.65	4,847.48	32,886.17	
14	10/31/2019	37,733.65	3,305.12	34,428.53	36,043.12
2019 Totals		37,733.65	3,305.12	34,428.53	
15	10/31/2020	37,733.65	1,690.53	36,043.12	0.00
2020 Totals		37,733.65	1,690.53	36,043.12	
Grand Totals		566,004.75	166,004.75	400,000.00	

Last interest amount increased by 0.11 due to rounding.