

AMENDMENT #1 TO AGREEMENT
Between
MIDLAND AND GLADWIN COUNTIES
and
FOUR LAKES TASK FORCE

This AMENDMENT (“Amendment #1”) to the Agreement dated August 21, 2019 between the COUNTY OF MIDLAND, a Michigan constitutional corporation whose address is County Services Building, 220 W. Ellsworth Street, Midland, Michigan 48640, the COUNTY OF GLADWIN, a Michigan constitutional corporation, whose address is 401 W. Cedar Ave, Gladwin, Michigan 48624 (collectively referred as the “Counties”), and the FOUR LAKES TASK FORCE, a Michigan non-profit corporation whose address is 233 E. Larkin, Midland, Michigan 48640 (“Delegated Authority”) is entered into as of June 9, 2020 (Effective date).

In this Amendment #1, either the Counties and/or the Delegated Authority may also be referred to individually as a “Party” or jointly as “Parties.”

Recitals:

- A. On August 21, 2019 the Parties entered into an Agreement (“Agreement”) to establish terms and conditions between the Counties, and the Delegated Authority with respect to the acquisition of the Part 307 Facilities (as defined in the Agreement) privately owned and operated by Boyce Hydro Power, LLC (“Boyce Hydro”¹); to administer, operate, maintain, repair, replace and improve the four (4) hydroelectric dams that are currently privately owned and operated by Boyce Hydro; and take other actions necessary and required by the Delegated Authority, as provided in Part 307.
- B. On December 31, 2019, the Delegated Authority entered into a Purchase Agreement with Boyce Hydro for the acquisition of the Part 307 Facilities with a final closing to occur in January 2022. Said Purchase Agreement was subsequently amended on April 27, 2020 to address, among other things, the timing of certain interim payments related to the acquisition of the Part 307 Facilities.
- C. On May 19, 2020 Edenville and Sanford dams experienced a catastrophic failure resulting in the loss of Wixom and Sanford Lakes and permanent damage and/or loss of to the dams and earthen dikes of a severity yet unknown, of not only Wixom and Sanford, but also possibly Secord and Smallwood. These catastrophic events have fundamentally changed the transaction originally contemplated by the Purchase Agreement, and at this time, it appears that the dam owner (Boyce Hydro) is incapable of restoring and replacing the Part 307 Facilities that were damaged/lost.

¹ Boyce Hydro Power, LLC includes all Boyce entities described in the definition section of the Purchase Agreement between Boyce and FLTF dated December 31, 2019 that holds real and personal property interests set forth in the Purchase Agreement; hereinafter referred to as “Boyce Hydro”)

- D. Protection of the public, replacement and repair of the dams, and the restoration of Wixom and Sanford lakes will require significant coordination between Federal and State regulatory agencies and departments, as well as local and County government. The Delegated Authority has expertise and experience to lead and coordinate with the federal, state and local agencies as well as the Boyce Hydro, with respect to the restoration of Wixom and Sanford Lakes, with a focus on public safety.
- E. This Amendment #1 is intended to amend the Agreement between the Counties and the Delegated Authority to provide that the Delegated Authority will serve as the Counties' lead authority in coordinating the funding, design, repairs and replacement of the damaged Part 307 Facilities, to coordinate all efforts with Federal, State and local agencies and departments with respect to the restoration of the damaged Part 307 Facilities, and to indemnify and hold harmless the Delegated Authority in these efforts.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amend Section 1 of the Agreement as follows:

Appointment and Authority. Pursuant to the urban cooperation act of 1967, Part 307 and any other applicable laws of the State of Michigan, the Counties and the Delegated Authority enter into this Agreement to establish terms and conditions for the operation and maintenance of the Project. Each Party agrees to take all actions reasonably necessary to effectuate the objectives set forth in this Agreement consistent with Part 307. In addition, the Counties hereby reaffirm their appointment of the Four Lakes Task Force as the Counties' Delegated Authority pursuant to Part 307 with the authority and responsibilities, set forth in Part 307, and in accordance with the terms and conditions set forth in this Agreement.

The Delegated Authority shall serve as the Counties' lead authority in coordinating the funding, administration, design, improvements, repairs and replacement of the Part 307 Facilities damaged or lost on May 19, 2020 or anytime thereafter. The Delegated Authority is authorized to coordinate any and all efforts, including funding, design, contracting, with Federal, State and local agencies and departments with respect to the restoration, replacement and/or repairs of the damaged Part 307 Facilities, and the restoration of Wixom and Sanford Lakes. Further, to the every extent possible, the Delegated Authority shall be imbued with all governmental immunity available by law to the Counties and each of them.

2. Amend Section 8 of the Agreement as follows:

Liability of Four Lake Special Assessment District. Except as provided in this Section, and in Section 10, infra, the Parties understand and agree, all costs and expenses, including Claims (as previously defined in this Agreement), associated with the operating and maintaining the lake levels, and permitted under Part 307, shall be the responsibility of the Four Lakes Special Assessment District established and shall be defrayed by special assessments, gifts or grants, if any, pursuant to Part 307.


Notwithstanding the Section 4(f) of the Agreement (“Indemnification”), and until such time that a special assessment roll (for the Four Lakes Special Assessment District) is approved by the Counties, until a successor delegated authority is appointed, or the Act 307 Order is terminated, the resolving County, to the extent the resolving county is covered by its insurance policies, hereby agrees to indemnify, defend and hold the Delegated Authority harmless from any and all Claims (as defined in the Agreement) that are incurred by or asserted against Delegated Authority by any person, entity or governmental agency, and alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of the Delegated Authority with respect to the Delegated Authority’s coordination of the funding, administration, design, improvements, repairs and replacement of the Part 307 Facilities as contemplated by this Amendment #1. This indemnification of the Delegated Authority shall commence on the Effective date of this Amendment, and to the extent possible, shall be the responsibility of the county in which the acts giving rise to the claim were performed.

3. Except for the foregoing, all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this Agreement if executed by the Parties on the date hereafter set forth in the opening paragraph of this Agreement.

COUNTY OF MIDLAND

By:  Dated: 6-9-20
Mark Bone
Chairperson, Midland County Board of Commissioners


By:  Dated: 6-9-20
Ann Manary
Midland County Clerk

COUNTY OF GLADWIN

By: _____ Dated: _____
Sharron Smith
Chairperson, Gladwin County Board of Commissioners

By: _____ Dated: _____
Laura Brandon-Maveal
Gladwin County Clerk

FOUR LAKES TASK FORCE

By: 
David Kepler
Chairperson

Dated: 6/9/2020

Notwithstanding the Section 4(f) of the Agreement (“Indemnification”), and until such time that a special assessment roll (for the Four Lakes Special Assessment District) has been approved by the Counties, until a successor delegated authority is appointed, or the Act 307 Order is terminated, the resolving County, to the extent the resolving county is covered by its insurance policies, hereby agrees to indemnify, defend and hold the Delegated Authority harmless from any and all Claims (as defined in the Agreement) that are incurred by or asserted against Delegated Authority by any person, entity or governmental agency, and alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of the Delegated Authority with respect to the Delegated Authority’s coordination of the funding, administration, design, improvements, repairs and replacement of the Part 307 Facilities as contemplated by this Amendment #1. This indemnification of the Delegated Authority shall commence on the Effective date of this Amendment, and to the extent possible, shall be the responsibility of the county in which the acts giving rise to the claim were performed.

- 3. Except for the foregoing, all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this Agreement if executed by the Parties on the date hereafter set forth in the opening paragraph of this Agreement.

COUNTY OF MIDLAND

By: _____
Mark Bone
Chairperson, Midland County Board of Commissioners

Dated: _____

By: _____
Ann Manary
Midland County Clerk

Dated: _____

COUNTY OF GLADWIN

By: Sharron Smith
Sharron Smith
Chairperson, Gladwin County Board of Commissioners

Dated: 06-09-2020

By: Laura Brandon-Maveal
Laura Brandon-Maveal
Gladwin County Clerk

Dated: 06-09-2020