



**PILOT DRINKING WATER COMMUNITY WATER SUPPLY GRANT AGREEMENT
BETWEEN THE
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AND CITY OF BENTON HARBOR**

This Grant Agreement ("Agreement") is made between the Michigan Department of Environmental Quality, (DEQ), Drinking Water and Municipal Assistance Division ("State"), and City of Benton Harbor ("Grantee").

The purpose of this Agreement is to provide funding in exchange for work to be performed for the project named below. Legislative appropriation of Funds for grant assistance is set forth in Public Act 201 of 2017. This Agreement is subject to the terms and conditions specified herein.

Project Name: DW AMP & LSL Replacement Project #: 1901-01
 Amount of grant: \$284,000
 Start Date: February 12, 2018 End Date: May 31, 2019

GRANTEE CONTACT:
Darwin Watson, City Manager
 Name/Title
City of Benton Harbor
 Community Water Supply
200 East Wall Street
 Address
Benton Harbor, Michigan
 Address
269-927-8457 x1163
 Telephone number
dwatson@cityofbentonharbormi.gov
 E-mail address
38-6004537
 Federal ID number

STATE'S CONTACT:
Sonya T. Butler, Manager
 Name/Title
Drinking Water and Municipal Assistance
 Division/Bureau/Office
525 West Allegan, P.O. Box 30817
 Address
Lansing, Michigan 48909-8311
 Address
517-373-2161
 Telephone number
Butlers2@michigan.gov
 E-mail address

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

FOR THE GRANTEE:
Darwin Watson
 Signature
Darwin Watson, City Manager
 Name/Title

6/7/18
 Date

FOR THE STATE:
Sonya T. Butler
 Signature
Sonya T. Butler, Manager
 Name/Title

6/18/2018
 Date

I. PROJECT SCOPE

This Agreement and its appendices constitute the entire Agreement between the State and the Grantee and may be modified only by written agreement between the State and the Grantee.

(A) The scope of this project is limited to the activities specified in Appendix A and such activities as are authorized by the State under this Agreement. Any change in project scope requires prior written approval in accordance with Section III, Changes, in this Agreement.

(B) By acceptance of this Agreement, the Grantee commits to complete the project identified in Appendix A within the time period allowed for in this Agreement and in accordance with the terms and conditions of this Agreement.

II. AGREEMENT PERIOD

Upon signature by the State, the Agreement shall be effective from the Start Date until the End Date on page 1. The State shall have no responsibility to provide funding to the Grantee for project work performed except between the Start Date and the End Date specified on page 1. Expenditures made by the Grantee prior to the Start Date or after the End Date of this Agreement are not eligible for payment under this Agreement.

III. CHANGES

Any changes to this Agreement shall be requested by the Grantee or the State in writing and implemented only upon advanced approval in writing by the State. The State reserves the right to deny requests for changes to the Agreement or to the appendices. No changes can be implemented without approval by the State.

IV. GRANTEE DELIVERABLES AND REPORTING REQUIREMENTS

The Grantee shall submit deliverables and follow reporting requirements specified in Appendix A of this Agreement.

(A) The Grantee may request grant disbursements no more frequently than monthly, using the Disbursement Request Form provided by the DEQ. Upon receipt of a disbursement request, the DEQ will disburse eligible grant funds equal to 100 percent of eligible costs that have been adequately documented. The forms provided by the State will include instructions on their use and shall be submitted to the DEQ representative at the address on page 1. All required supporting documentation (invoices) for expenses must be included with the disbursement request form. The Grantee is responsible for the final submittal of all documents prepared under this grant and included in the Project Scope identified in Appendix A.

*Due to the State's year-end closing procedures, there will be an accelerated due date for the report covering July 1 – September 30. Advance notification regarding the due date for the quarter ending September 30 will be sent to the Grantee. If the Grantee is unable to submit a report in early October for the quarter ending September 30, an estimate of expenditures through September 30 must be submitted to allow the State to complete its accounting for that fiscal year.

The forms provided by the State shall be submitted to the State's contact at the address on page 1. All required supporting documentation (invoices, proof of payment, etc.) for expenses must be included with the report.

(B) The Grantee shall provide a final Certification of Project Completeness in a format prescribed by the State. The Grantee shall submit the certification, including all supporting documentation for expenses, within 30 days from the End Date of the Agreement.

V. GRANTEE RESPONSIBILITIES

(A) The Grantee agrees to abide by all applicable local, state, and federal laws, rules, ordinances, and regulations in the performance of this grant.

(B) All local, state, and federal permits, if required, are the responsibility of the Grantee. Award of this grant is not a guarantee of permit approval by the State.

(C) The Grantee shall be solely responsible to pay all applicable taxes and fees, if any, that arise from the Grantee's receipt or execution of this grant.

(D) The Grantee is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services submitted to the State under this Agreement. The Grantee shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in drawings, designs, specifications, reports, or other services.

(E) The State's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Grantee of responsibility for the technical adequacy of the work. The State's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(F) The Grantee acknowledges that it is a crime to knowingly and willingly file false information with the State for the purpose of obtaining this Agreement or any payment under the Agreement, and that any such filing may subject the Grantee, its agents, and/or employees to criminal and civil prosecution and/or termination of the grant.

VI. USE OF MATERIAL

Unless otherwise specified in this Agreement, the Grantee may release information or material developed under this Agreement, provided it is acknowledged that the State funded all or a portion of its development.

The State retains a royalty-free, nonexclusive and irrevocable right to reproduce, publish, and use in whole or in part, and authorize others to do so, any copyrightable material or research data submitted under this grant whether or not the material is copyrighted by the Grantee or another person. The Grantee will only submit materials that the State can use in accordance with this paragraph.

VII. ASSIGNABILITY

The Grantee shall not assign this Agreement or assign or delegate any of its duties or obligations under this Agreement to any other party without the prior written consent of the State. The State does not assume responsibility regarding the contractual relationships between the Grantee and any subcontractor.

VIII. SUBCONTRACTS

The State reserves the right to deny the use of any consultant, contractor, associate, or other personnel to perform any portion of the project. The Grantee is solely responsible for all contractual activities performed under this Agreement. Further, the State will consider the Grantee to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Grant. All subcontractors used by the Grantee in performing the project shall be subject to the provisions of this Agreement and shall be qualified to perform the duties required.

IX. NON-DISCRIMINATION

The Grantee shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantee agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

X. UNFAIR LABOR PRACTICES

The Grantee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq.*

XI. LIABILITY

(A) The Grantee, not the State, is responsible for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by the Grantee under this Agreement, if the liability is caused by the Grantee, or any employee or agent of the Grantee acting within the scope of their employment or agency.

(B) Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Grantee, the State, its agencies, or their employees as provided by statute or court decisions.

XII. CONFLICT OF INTEREST

No government employee, or member of the legislative, judicial, or executive branches, or member of the Grantee's Board of Directors, its employees, partner agencies, or their families shall benefit financially from any part of this Agreement.

XIII. ANTI-LOBBYING

If all or a portion of this Agreement is funded with federal funds, then in accordance with OMB Circular A-21, A-87, or A-122, as appropriate, the Grantee shall comply with the Anti-Lobbying Act, which prohibits the use of all project funds regardless of source, to engage in lobbying the state or federal government or in litigation against the State. Further, the Grantee shall require that the language of this assurance be included in the award documents of all subawards at all tiers.

If all or a portion of this Agreement is funded with state funds, then the Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2). "Lobbying" means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State. Further, the Grantee shall require that language of this assurance be included in the award documents of all subawards at all tiers.

XIV. DEBARMENT AND SUSPENSION

By signing this Agreement, the Grantee certifies that it has checked the federal debarment/suspension list at www.SAM.gov to verify that its agents, and its subcontractors:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or the state.
- (2) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, as defined in 45 CFR 1185; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in subsection (2).
- (4) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- (5) Will comply with all applicable requirements of all other state or federal laws, executive orders, regulations, and policies governing this program.

XV. AUDIT AND ACCESS TO RECORDS

The State reserves the right to conduct a programmatic and financial audit of the project, and the State may withhold payment until the audit is satisfactorily completed. The Grantee will be required to maintain all pertinent records and evidence pertaining to this Agreement, including grant and any required matching funds, in accordance with generally accepted accounting principles and other procedures specified by the State. The State or any of its duly authorized representatives must have access, upon reasonable notice, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Grantee will provide proper facilities for such access and inspection. All records must be maintained for a minimum of three years after the final payment has been issued to the Grantee by the State.

XVI. INSURANCE

(A) The Grantee must maintain insurance or self-insurance that will protect it from claims that may arise from the Grantee's actions under this Agreement.

(B) The Grantee must comply with applicable workers' compensation laws while engaging in activities authorized under this Agreement.

XVII. OTHER SOURCES OF FUNDING

The Grantee guarantees that any claims for reimbursement made to the State under this Agreement must not be financed by any source other than the State under the terms of this Agreement. If funding is received through any other source, the Grantee agrees to delete from Grantee's billings, or to immediately refund to the State, the total amount representing such duplication of funding.

XVIII. COMPENSATION

(A) A breakdown of costs allowed under this Agreement is identified in Appendix A. The State will pay the Grantee a total amount not to exceed the amount on page 1 of this Agreement, in accordance with Appendix A, and only for expenses incurred. All other costs necessary to complete the project are the sole responsibility of the Grantee.

(B) Expenses incurred by the Grantee prior to the Start Date or after the End Date of this Agreement are not allowed under the Agreement.

(C) The State will approve payment requests after approval of reports and related documentation as required under this Agreement.

(D) The State reserves the right to request additional information necessary to substantiate payment requests.

(E) Payments under this Agreement may be processed by Electronic Funds Transfer (EFT). The Grantee may register to receive payments by EFT at the Contract & Payment Express Web Site (<http://www.cpexpress.state.mi.us>).

XIX. CLOSEOUT

(A) A determination of project completion, which may include a site inspection and an audit, shall be made by the State after the Grantee has satisfactorily completed the activities, and provided products and deliverables described in Appendix B.

(B) Upon issuance of final payment from the State, the Grantee releases the State of all claims against the State arising under this Agreement. Unless otherwise provided in this Agreement or by State law, final payment under this Agreement shall not constitute a waiver of the State's claims against the Grantee.

(C) The Grantee shall immediately refund to the State any payments in excess of the costs allowed by this Agreement.

XX. CANCELLATION

This Agreement may be canceled by the State, upon 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the Grantee, or upon mutual agreement by the State and Grantee. The State may honor requests for just and equitable compensation to the Grantee for all satisfactory and eligible work completed under this Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the State and the State will no longer be liable to pay the grantee for any further charges to the grant.

XXI. TERMINATION

(A) This Agreement may be terminated by the State as follows.

(1) Upon 30 days written notice to the Grantee:

- a. If the Grantee fails to comply with the terms and conditions of the Agreement, or with the requirements of the authorizing legislation cited on page 1, or the rules promulgated thereunder, or other applicable law or rules.
- b. If the Grantee knowingly and willingly presents false information to the State for the purpose of obtaining this Agreement or any payment under this Agreement.

- c. If the State finds that the Grantee, or any of the Grantee's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee, or agent of the State in an attempt to secure a subcontract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement.
 - d. If the Grantee or any subcontractor, manufacturer, or supplier of the Grantee appears in the register of persons engaging in unfair labor practices that is compiled by the Michigan Department of Licensing and Regulatory Affairs or its successor.
 - e. During the 30-day written notice period, the State shall withhold payment for any findings under subparagraphs a through d, above and the Grantee will immediately cease charging to the grant and stop earning match for the project (if applicable).
- (2) Immediately and without further liability to the State if the Grantee, or any agent of the Grantee, or any agent of any subcontract is:
- a. Convicted of a criminal offense incident to the application for or performance of a State, public, or private contract or subcontract;
 - b. Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;
 - c. Convicted under State or federal antitrust statutes; or
 - d. Convicted of any other criminal offense that, in the sole discretion of the State, reflects on the Grantee's business integrity.
 - e. Added to the federal or state Suspension and Debarment list.

(B) If a grant is terminated, the State reserves the right to require the Grantee to repay all or a portion of funds received under this Agreement.

XXII. IRAN SANCTIONS ACT

By signing this Agreement the Grantee is certifying that it is not an Iran linked business, and that its contractors are not Iran linked businesses, as defined in MCL 129.312.

XXIII. PROGRAM-SPECIFIC REQUIREMENTS: PILOT DRINKING WATER COMMUNITY WATER SUPPLY GRANT

(A) General Representations. The Grantee represents and agrees that:

(1) Grant funds shall be expended only to cover costs for the update of a Drinking Water Asset Management Plan, update to the distribution system material inventory, and/or lead and galvanized steel service line replacement construction.

(2) Grant funds used for administrative activities or activities performed by municipal employees shall be limited to work that is directly related to the Project and is conducted by employees of the Grantee.

(3) The Grantee has full legal right, power and authority to execute this Agreement, and to consummate all transactions contemplated by this Agreement, the Resolution, and any and all other agreements relating thereto. The Grantee has duly authorized and approved the execution and delivery of this Agreement, the performance by the Grantee of its obligations contained in this Agreement, and this Agreement is a valid, legally binding action of the Grantee, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

(4) The Resolution has been duly adopted by the Grantee, acting through its executive(s) or governing body, is in full force and effect as of the date hereof, and is a valid, legally binding action of the Grantee, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

(5) The execution and delivery of this Agreement by the Grantee, and the fulfillment of the terms and conditions of, and the carrying out of the transactions contemplated by the Resolution and this Agreement do not and will not conflict with or constitute on the part of the Grantee a breach of, or a default under any existing law (including, without limitation, the Michigan Constitution), any court or administrative regulation, decree or order or any agreement, indenture, mortgage, obligation, lease or other instrument to which the Grantee is subject or by which it is bound and which breach or default would materially affect the validity or binding effect of the Grant, or result in a default or lien on any assets of the Grantee. No event has occurred or is continuing which with the lapse of time or the giving of notice, or both, would constitute a default by the Grantee under the Resolution or this Agreement.

(6) No consent or approval of, or registration or declaration with, or permit from, any federal, state or other governmental body or instrumentality, is or was required in connection with enactment by the Grantee of the Resolution, or execution and delivery by the Grantee of this Agreement which has not already been obtained, nor is any further election or referendum of voters required in connection therewith which has not already been held and certified and all applicable referendum periods have expired.

(7) Proceeds of the Grant will be applied (i) to the financing of the Project or a portion thereof as set forth in the Resolution and Appendix A or (ii) to reimburse the Grantee for a portion of the cost of the Project. The Grantee will expend the proceeds of each disbursement of the Grant for the governmental purpose for which the Grant was issued.

(8) The attached Appendix A contains a summary of the estimated cost of the Project, which the Grantee certifies is a reasonable and accurate estimate.

(9) The Grantee reasonably expects (i) to fulfill all conditions set forth in this Agreement to receive and to keep the Grant, and (ii) that no event will occur as set forth in this Agreement which will require the Grantee to repay the Grant.

(10) The Grantee will ensure that activities of the Project are conducted in compliance with the requirements of the National Resource and Environmental Protection Act, 1994 PA 451, as amended, its Administrative Rules, and all applicable state and federal laws, executive orders, regulations, policies, and procedures. Prior to construction, the grantee will post on its website a copy of the proposal and applicable maps.

APPENDIX A

Pilot Drinking Water Community Water Supply Grant Program

Grantee: City of Benton Harbor, County of Berrien

Project Name: Lead Abatement Pilot Program

DEQ Approved Grant Amount: \$284,000 (Two Hundred Eighty-four Thousand Dollars)

Time Period for Eligible Costs: Start Date February 2018

End Date May 2019

Description of Approved Project Scope:

Update distribution system inventory, update asset management program and replace lead service lines.

DEQ Approved Project Costs	
1. Update Distribution System Material Inventory	\$35,000
2. Update/Improve Asset Management Program	\$30,000
3. Lead Service Line Construction	\$219,000
4. Approved Grant Amount	\$284,000

APPENDIX B



Department of Environmental Quality
Pilot Drinking Water Community Water Supply (CWS) Grant
Certification of Project Completeness
(complete as applicable to grant scope)

Completion Due Date _____
(30 days from the executed grant end date)

CWS Grant No. _____

The _____ (legal name of grantee) certifies that:

- 1) the distribution system material inventory project has been conducted.
- 2) the drinking water asset management plan (DWAMP) activities have been completed and the DWAMP, prepared with the assistance of CWS Grant funding, is being maintained.
- 3) the Notice to Proceed has been issued for lead/galvanized steel service line replacement.

Attached to this certification is an executive summary of the DWAMP. Copies of the DWAMP and/or other materials prepared through CWS Grant funding will be made available to the Department of Environmental Quality or the public upon request by contacting:

_____ at _____
 Name Phone Number Email

 Signature of Authorized Representative (Original Signature Required) Date

 Print Name and Title of Authorized Representative



DEQ Tracking Code/Project Number **1901-01**
Division/Office **DWMAD**
Amendment Number **001**

AMENDMENT TO THE PILOT DRINKING WATER COMMUNITY SUPPLY GRANT
AGREEMENT
BETWEEN THE
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AND THE
CITY OF BENTON HARBOR
(Authorized by 1994 PA 451)

This Amendment modifies the Grant Agreement between the Michigan Department of Environmental Quality (hereafter "State"), and the **City of Benton Harbor** (hereafter "Grantee"), signed by the State on **June 20, 2018** for the **Material Inventory, Asset Management Plan, Lead Service Line Replacement and Corrosion Control**. This Amendment does not take effect until signed by both parties.

The revisions to the Grant Agreement are limited to those specified below. All other provisions of the Agreement remain in effect.

PROJECT SCOPE (WORK PLAN)

The State and the Grantee agree to the following change in scope of work or work plan.
Installation of corrosion control system at the Benton Harbor Wastewater Treatment Plant.

AGREEMENT END DATE

The State and the Grantee agree to extend the end date of this Grant Agreement from **May 31, 2019** to **September 30, 2019**. The Grantee will complete all obligations under this Agreement no later than the end date, as amended. Costs incurred after the amended end date are not eligible for reimbursement under the Grant Agreement.

COMPENSATION (BUDGET)

The State and the Grantee agree to the budget modifications described below.

There are no Compensation changes.

IV. AUTHORIZED SIGNATURES

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

FOR THE GRANTEE:

Darwin Watson

Signature

Darwin Watson, Interim City Manager

Name/Title

5/3/19

Date

FOR THE STATE:

Karol Patton

Signature

Karol Patton, Acting Section Manager

Name/Title

5/17/2019

Date



EGLE Tracking Code/Project Number **1901-01**
Division/Office **Finance**
Amendment Number **002**

AMENDMENT TO THE PILOT DRINKING WATER COMMUNITY SUPPLY GRANT
AGREEMENT
BETWEEN
MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES AND ENERGY
AND
CITY OF BENTON HARBOR
(Authorized by 1994 PA 451)

This Amendment modifies the Grant Agreement between the Michigan Department of Environment, Great Lakes and Energy (hereafter "State"), formerly the Michigan Department of Environmental Quality, the **City of Benton Harbor** (hereafter "Grantee"), signed by the State on **June 18, 2018** for the **Asset Management Plan/Update Inventory, Lead Service Line Replacement, and Corrosion Control Project**. This Amendment does not take effect until signed by both parties.

The revisions to the Grant Agreement are limited to those specified below. All other provisions of the Agreement remain in effect.

PROJECT SCOPE (WORK PLAN)

The State and the Grantee agree to the following change in scope of work or work plan.

There are no Project Scope changes.

AGREEMENT END DATE

The State and the Grantee agree to extend the end date of this Grant Agreement from **September 30, 2019** to **March 31, 2020**. The Grantee will complete all obligations under this Agreement no later than the end date, as amended. Costs incurred after the amended end date are not eligible for reimbursement under the Grant Agreement.

COMPENSATION (BUDGET)

The State and the Grantee agree to the budget modifications described below.

There are no Compensation changes.

IV. AUTHORIZED SIGNATURES

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

FOR THE GRANTEE:

Ellis E. Mitchell

Signature

Ellis Mitchell, City Manager

Name/Title

9/13/2019

Date

FOR THE STATE:

Kelly Green

Signature

Kelly Green, Administrator

Name/Title

9.16.19

Date