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TO: Rolland Sizemore Jr.  
Chair, Ways & Means Committee

FROM: Verna McDaniel  
County Administrator

Curtis N. Hedger  
Corporation Counsel

DATE: October 5, 2011

SUBJECT: Contract with Sylvan Township to Address the Repayment of the  
Re-funded Water and Wastewater Systems Bond Contingent  
Upon Sylvan Township Voter Approval of a 4.75 Millage Request  
in November

**BOARD ACTION REQUESTED:**

The Washtenaw County Administrator and Corporation Counsel request that the Board of Commissioners approve a Resolution authorizing the County Administrator to sign a contract with Sylvan Township ("Township") which will address the rights and responsibilities of the Township and County to repay the debt service on the refunded water and sewer bonds contingent upon approval of a 4.75 millage in November to assist paying off the existing refunded bond debt service.

**BACKGROUND:**

On July 18, 2001, the Washtenaw County Board of Commissioners approved a Resolution (Resolution #01-0138) to sell \$12.5 million in bonds to assist the Township in the construction of a water and wastewater system. Although the bonds were issued by the County, the Township contractually agreed to be responsible for making the required bond payments. At the time the bonds were initially issued, the Township's financial analysis utilized projected revenue from future growth from the parcels to be served by the new projects as part of the cash flow to pay for the bonding for the projects.

As part of the initial bond approval by the County in 2001, the Township and County executed contracts for the projects which provided, in part, that while the County would issue bonds and extend its full faith and credit for the projects, the Township would also issue its full faith and credit for the bonds financing the projects and would ultimately be liable to the County should the bonds not be paid.

The projects were substantially completed by October, 2002. The two companies who were to build the new housing to be served by the projects were Magellan and Hamill. In June, 2003, the County discovered that the developers failed to pay the first installment on the special assessments for the Projects and that the Township had entered into development agreements with the developers which credited future connection fees to the developers rather than to the bond debt service. Magellan ultimately agreed to an amended development agreement removing the credit of future connection fees and reducing the assessment on Magellan property from \$4.6 million to \$3.2 million. Hamill refused to execute a similar amended agreement and eventually sold its interest in the development property to Norfolk Development Corporation (which also purchased part, but not all of the development properties from Magellan).

In 2007 and 2008, the special assessments on the development properties went delinquent. The County Treasurer advanced funds to the Township to cover this delinquency. Currently, the Township owes the County Treasurer \$1,243,268.40 which includes interest for these unpaid advanced special assessments.

In August, 2007, Magellan and Norfolk sued Sylvan Township in Washtenaw County Circuit Court claiming that the special assessments for the projects were illegal under a number of theories. This suit has been heard before a Washtenaw County Circuit Court Judge, the Michigan Court of Appeals and currently is back before the Circuit Court on remand from the Court of Appeals.

In recent years, the Township has had difficulties paying the amounts owed under the debt service schedule for the original bonds. This lack of funding can be attributed to the lack of development on the development properties as originally anticipated in 2001 as well as the on-going lawsuit between the developers and the Township. To fend off a possible Township default on the original bond repayment, the County and Township agreed in 2010 to refinance the bonds. To that extent, on March 3, 2010, the Board of Commissioners approved a Resolution refinancing the outstanding debt service of \$9,775,000 for the original Projects. The refunding bond resolution back-loaded payments to the end of the 20 year bond debt service payment schedule so that the first few years of payments were interest only thus reducing the amount of payments for the first few years of the new debt payments schedule to assist the Township in meeting its repayment obligations.

Even with the refinanced debt, the lack of development on the development properties served by the Projects will eventually cause the Township to default on its debt payments obligations. Township officials project that this default would occur in May, 2012. To avoid a default, the Township has approved a 4.75 mill increase to be placed on the ballot this November. If approved, the millage will provide a consistent 20-year stream of funds to help pay the debt service on the refunded bonds. However, even if the millage is approved, it will still not generate enough income to avoid a Township default on the bond debt repayment; as such, the County is being asked to assist the Township with advances from its Capital Reserve to help the Township meet its

obligations and avoid a default. The County and Township are proposing to execute a contract which will detail the respective duties and obligations of the parties. It should be noted that under the proposed contract, interest accrues on the County's advanced funds which will be fully paid off by Township millage funds once the refunded bonds are fully paid.

**DISCUSSION:**

Approval of the proposed Contract with the Township will provide a means for the Township to avoid defaulting on the payment of the debt service on the refunded bonds. The lack of past development of the development properties and the unlikelihood of future development due to the poor economy has created a situation where the Township will most likely default on its bond repayment obligation in May, 2012. A default would require the County to file suit against the Township for breach of contract for failing to meet its debt repayment obligation which would be time consuming and expensive for the County. In addition, to avoid having the County's bond rating negatively affected, the County would have to make the scheduled bond payments until such time as it received judicial relief from its lawsuit against the Township.

To avoid this scenario, the County and Township are proposing that two funding streams assist the Township in paying its bond debt service obligations; the first is a 4.75 mill increase which the Township agreed to present to Township voters in November, 2011. Even if this millage is approved, however, the on-going funding stream from this millage will not solely permit the Township to keep current with its bond debt payment obligations; thus, the County and Township are proposing a contract between the parties which will provide, in part, that the County will annually advance funds from its capital reserve fund to add to the millage funds generated for that year to meet the bond debt payments. In addition, the millage would re-pay the County Treasurer for approximately \$1.2 million dollars which the Treasurer advanced to the Township in 2007 and 2008 for delinquent special assessments, plus interest on that amount.

The County has a number of safeguards in the proposed contract. First, the contract is only effective should the voters approve the new 20 year 4.75 millage request. The contract specifically states that the contract is contingent on this approval. Failure to approve the millage nullifies the contract. Second, the County receives interest on its advanced capital reserve funds. The interest is broken down in five year increments with the first five years being very low (1%) with the remaining advances accruing interest at 3.43%. Since the proposed millage is four years longer than the bond debt repayment schedule, once the Treasurer and the bonds are fully repaid, the millage collected for the last few years will be used to repay the County's advanced capital reserve funds, plus interest.

**IMPACT ON PERSONNEL:**

The proposed Resolution has no impact on County personnel.

**IMPACT ON BUDGET:**

There will be no impact on the County general fund budget. The County will, however, advance funds from its Capital Reserve Fund to assist the Township in meeting its bond debt service obligations under the proposed contract. These advanced funds, plus interest, will be primarily reimbursed to the County during the last few years of the 20 year, 4.75 Township millage should it be approved.

**IMPACT ON INDIRECT COSTS:**

There will be no impact on indirect costs.

**IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:**

Under the proposed Resolution, the Township is ultimately responsible to make the bond payments for the refunded bond issue.

**CONFORMITY TO COUNTY POLICIES:**

This action is in conformance with County policies.

**ATTACHMENTS/APPENDICES:**

Proposed Contract between Washtenaw County and Sylvan Township to be presented as a part of supplemental packet.

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A CONTRACT WITH SYLVAN TOWNSHIP TO ADDRESS THE REPAYMENT OF RE-FUNDED WATER AND WASTEWATER SYSTEMS BONDS CONTINGENT UPON SYLVAN TOWNSHIP VOTER APPROVAL OF A 4.75 MILLAGE INCREASE

WASHTENAW COUNTY BOARD OF COMMISSIONERS

October 19, 2011

WHEREAS, on July 18, 2001, the Washtenaw County Board of Commissioners approved a Resolution (#01-0138) to sell \$12.5 million dollars in bonds to assist Sylvan Township in the construction of a water and wastewater system; and

WHEREAS, although the County issued the bonds and pledged its full faith and credit for their repayment, Sylvan Township also pledged its full faith and credit and contractually agreed to be the party ultimately responsible to repay the bond debt service on the bond; and

WHEREAS, at the time the original bonds were issued, financial analyses utilized projected revenue from future growth from the parcels to be served by the new projects to provide the cash flow to pay the on-going debt service on the bonds; and

WHEREAS, not only did the projected future growth not materialize, the developers of the parcels to be served by the projects ultimately sued the Township to invalidate the special assessments on the development parcels; and

WHEREAS, in 2007 and 2008 the special assessments on the development parcels went delinquent and the County Treasurer advanced funds to the Township to cover this delinquency; and

WHEREAS, the amount of the funds advanced by the Treasurer plus statutory interest is currently \$1,243,268.40; and

WHEREAS, to assist Sylvan Township in meeting its bond debt service payments, on March 3, 2010 (Resolution #10-0037), the County agreed to refinance the existing bond debt for 15 years which had the effect of lowering the annual payments for the Township for the first 3 years; and

WHEREAS, due to the lack of income on the development parcels, Sylvan Township is still having difficulty making its bond debt service payments on the refunded bonds and is projecting that it will default on required payment in May, 2012; and

WHEREAS, Sylvan Township and Washtenaw County officials have met on numerous occasions in an attempt to avoid a Township default of its bond debt service obligations; and

WHEREAS, Sylvan Township has approved ballot language for the November, 2011 election asking Sylvan Township voters to approve a 20 year 4.75 millage increase with the funds generated from the millage to be dedicated exclusively to paying the Township's bond debt obligations for the refunded water and wastewater bonds; and

WHEREAS, even if the millage is approved, the projected income from the millage will not be enough to meet Sylvan Township's annual bond obligations; as such, the Township and Washtenaw County are proposing to execute a contract which will provide for the County to advance Capital Reserve Funds to assist the Township in meeting its annual bond debt service payment; and

WHEREAS, under the contract, the amount advanced from the County's Capital Reserve Fund will be repaid to the County, plus interest, once the County Treasurer's advanced special assessments plus interest for 2007 and 2008, as well as the remaining bond debt service obligation are fully paid.

NOW THEREFORE, BE IT RESOLVED that the Washtenaw County Board of Commissioners authorizes the County Administrator, upon review and approval of Corporation Counsel, to execute the attached contract with Sylvan Township to address the Township's obligation to repay its bond debt service for the March 3, 2010, refunded water and wastewater bond issues.