

COPY

CITY OF HOWELL - MARION TOWNSHIP

FIRST AMENDED WASTEWATER TREATMENT CONTRACT

THIS CONTRACT, made this 8th day of Oct, 2001 by and between the City of Howell, a Michigan Municipal Corporation, with offices at 611 E. Grand River, Howell, Michigan 48843, (hereinafter "City"), and the Township of Marion, a general law township, with offices at 2877 W. Coon Lake Road, Howell, Michigan 48843, (hereinafter "Township").

RECITALS

WHEREAS, the City owns and operates a municipal sanitary sewer system, and is authorized by Article 7, Section 24 of the Michigan Constitution of 1963; by Public Act 279 of 1909 as amended, by Public Act 34 of 1917 as amended, and by Public Act 35 of 1951 as amended, to provide sanitary sewer service to customers outside of its corporate limits, and

WHEREAS, the Township is authorized by Public Act 35 of 1951 as amended, and Public Act 107 of 1941 as amended, to enter into agreements to receive sanitary sewer service from another municipality, and is authorized by Article 7, Section 29 of the Michigan Constitution of 1963 to grant franchises within the Township, and

WHEREAS, a certain contract (hereinafter referred to as the "Contract") between the City and the Township was entered into on June 30, 1997 regarding the cooperation of the City and the Township in the expansion of the City's Wastewater Treatment Facility; and

WHEREAS, since the execution of the Contract there have been financial constraints on the ability of the Township to construct the expansion of the City's Wastewater Treatment Facility in the initial phase as stipulated, to 2.90 million gallons per day (MGD), and the Township can only expand the facility in the initial phase to 2.45 MGD; and

WHEREAS, payment of land acquisition costs associated with the initial expansion of the City's Wastewater Treatment Facility requires clarification; and

WHEREAS, the City should be allowed to initiate a second or third expansion to the City's Wastewater Treatment Facility in the same manner as the Township; and

WHEREAS, the cost per REU for purchase of wastewater treatment service from the City by other parties should be revised to reflect actual construction cost of the initial expansion in Phase I, plus Phase II estimated cost, of the City's Wastewater Treatment Facility; and

WHEREAS, it is more economical to include in the initial expansion of the City's Wastewater Treatment Facility certain improvements which may have been postponed until the

second expansion; and

WHEREAS, in order to maximize the utilization of the City's Wastewater Treatment Facility, both the City and Township are willing to loan to the other its unused capacity; and both the City and the Township are willing to restore such loaned capacity to the other in the next expansion; and

WHEREAS, the City has 0.234 MGD (900 REUs) of capacity that it is willing to sell to the Township; and

WHEREAS, certain charges are required to be paid by the parties under the Contract and the disposition of those charges in City fund accounts and related details require clarification; and

WHEREAS, the City will not be performing meter reading, billing, accounting and administration for the Township as was contemplated under the original Contract; and

WHEREAS, payment of operating costs by the City during the initial expansion of the City's Wastewater Treatment Facility requires clarification; and

WHEREAS, the parties hereby acknowledge the changes in circumstances above and desire to amend the Contract to reflect such changes.

WHEREAS, the Township desires to obtain wastewater treatment service from the City for residential, commercial and industrial properties in the Township, and

WHEREAS, it is in the mutual interest of the City and the Township to cooperate in the expansion of the City wastewater treatment facility for providing additional treatment capacity for the City and the Township, in accordance with the terms of this Agreement, and

WHEREAS, the City and the Township have expanded the wastewater treatment capacity of its the City's plant to provide the Township initially with 650,000 gallons per day of wastewater treatment service and to expand this capacity to 1,950,000 gallons per day in the future, subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in return for the considerations, promises and covenants contained in this Agreement, it is agreed as follows:

1. Definitions.

A. City Sanitary Sewer Collection System: The system of pipes, lift stations, fittings, valves, lines and all accessory equipment for the collection of sanitary sewage within the City of Howell, except that portion of the sanitary sewer collection system in the City that is paid for by the Township and which is used to transport sewage from the Township to the City wastewater treatment facility.

B. City Sanitary Sewer System: The sanitary sewer, collection and treatment system of the City, including but not limited to the treatment plant and related systems, lift stations, buildings, machinery and equipment, pipes, lines, meters and valves, and any other item property, or equipment used to provide sanitary sewer service to the customers of the City.

C. City Wastewater Treatment Facilities: The treatment plant and related systems, pumps, buildings, tanks, intake, physical and chemical treatment equipment, mains and all appurtenances that act to treat sanitary sewage for the City and Township Sanitary Sewer Collection Systems.

D. Initial Expansion: The initial expansion (also known as Phase 1) of the City's wastewater treatment facilities will expand the plant capacity to 2.45 million gallons per day (MGD).

E. Residential Equivalent Unit (REU): For design purposes, one (1) REU equals 260 gallons per day of wastewater treatment capacity.

F. Second Expansion: The second expansion (also known as Phase 2) of the City's wastewater treatment facilities will expand the plant capacity to 3.64 MGD.

G. Township Sanitary Sewer Collection System: The system of pipes, lift stations, fittings, valves, lines and all accessory equipment for the collection of sanitary sewage within the Township of Marion and including that portion of the sanitary sewer collection system in the City that is paid for by the Township and which is used to transport sewage from the Township to the City wastewater treatment facility.

2. City to Provide Wastewater Treatment Service, Capacity and Volume Limitation.

A. The City shall provide and the Township shall purchase wastewater treatment service from the City. The City shall provide such improvements to the wastewater treatment facilities as are necessary to supply the agreed upon capacities and the City shall own, operate, repair and maintain the wastewater treatment facilities and comply with all applicable regulations of the authorities having jurisdiction. The Township has entered into a Contract (the "County Contract") with the County of Livingston (the "County") dated as of November 1, 1996, a copy of which is attached hereto, wherein the County agreed, among other things, to cause a sewage disposal facility to be constructed for the Township. The Township will enter into an appropriate amendment to the County Contract providing that the Township has obtained the consent of the City to cause the sewage disposal facility to be constructed as an expansion of the City wastewater treatment plant. The Township will remain obligated (as is currently the case) to make all payments to retire the bonds to be issued for such purposes. The City and the Township will enter into such additional agreements among each other and the County as shall be necessary to provide for operation of the new sewage treatment facilities by the City, the ownership of which shall, subject to such rights as the County shall have while bonds are outstanding, belong to the City.

B. The present peak month, average day capacity of the City's wastewater treatment facilities is 1.8 million gallons per day (MGD). As part of this agreement, the City will proceed in a timely manner with an initial expansion of this capacity to 2.45 MGD (being an additional 0.65 MGD) with all costs for this expansion including engineering, administration, bonding, etc. to be covered by the Township under the County Contract. All of the expansion capacity (approximately 0.65 MGD) shall be assigned to the Township. The parties acknowledge that the City will relinquish its capacity, which was planned to be 0.45 MGD under the original Contract, by the execution of this first amended wastewater treatment contract. Such loss of capacity in the initial expansion shall be restored to the City by the Township in the next expansion, as set forth in Paragraph 2.C. contained herein. The City agrees to pay all land acquisition costs and costs related to land acquisition associated with the initial expansion of the City's Wastewater Treatment Facilities.

C. In the future as needed and requested by the Township or as needed and requested by the City, the City shall proceed with a second expansion of the wastewater treatment facilities to 3.64 MGD (being an additional 1.19 MGD). The cost for this expansion will be shared between the City and Township with the City covering 19 percent of the cost and the Township 81 percent of the cost. Of the expanded capacity, 43% of the expansion capacity (approximately 0.51 MGD) shall be assigned to the Township and 57% of the expansion capacity (approximately 0.68 MGD) shall be assigned to the City.

D. In the future as needed and requested by the Township or as needed and requested by the City, the City shall proceed with a third expansion of the wastewater treatment facilities to provide an additional 0.79 MGD of capacity to the Township. The cost for this expansion will be shared between the City and Township based on the percentage share of the expanded capacity assigned to each party to this Agreement.

E. The City will not negotiate the sale of wastewater treatment service to another municipality or other party outside the City boundaries at a cost lower than \$3,900 per Residential Equivalent Unit (REU). The amount of \$3,900 is calculated by adding the total project cost paid by the Township in Phase 1 (\$6,500,000.00) divided by the total REU capacity of Phase 1 (2,500 REU's), which equals \$2,600 per REU. This is added to the Township's share of the total estimated project costs of Phase 2 (\$7,132,300.00) multiplied by .81, which equals \$5,777,163, divided by the total REU capacity of Phase 2 (4,577 REU's), which equals \$1,262 per REU. The parties agree to round off the sum of \$2,600 in Phase 1 and \$1,262 in Phase 2 to the calculated amount, above, of \$3,900.00. This cost shall be subject to annual adjustment by use of the Michigan Consumer Price Index and by any updated cost estimate of the Phase II expansion. Notwithstanding this paragraph, the cost of the second expansion and the assignment of the expanded capacity in the second expansion shall remain the same as set forth in Paragraph 2 (C), above.

F. The parties acknowledge that with the execution of the original agreement of June 30, 1997, and this First Amended Wastewater Treatment Contract, the City allowed and will continue to allow immediate connections from the Township.

G. The City recognizes the Township system will be new and have very little infiltration and, therefore, the City will continue its efforts to reduce infiltration into its collection system. The Township and the City will include in their ordinance provisions to preclude unlawful connections to the sanitary system.

H. The Township agrees to pay for any improvements which are included in the initial expansion of the City's Wastewater Treatment Facilities as stipulated in Paragraph 7.B.3 2) but which could feasibly have been postponed until the second expansion.

I. In the future if needed and requested by the City or the Township, either will loan to the other any part of the unused capacity, provided, that the party making the loan shall determine the amount of capacity it will loan; and further provided, that the party receiving the loan shall restore such loaned capacity to the other party in the next expansion; and further provided, that such amount of loaned capacity shall be so stipulated in a written addendum to this Contract.

J. The City shall sell 900 REU's of its pre-existing sanitary sewer capacity (i.e., the capacity that existed before the June 30, 1997 Contract dealing with 7,500 REU's) to the Township at the rate of \$2,615 per REU. The Township will pay for these REU's in five (5) equal annual installments (principal only--no interest) commencing with the effective date of execution of this First Amended Contract, and these REU's will be transferred by the City to the Township in five equal installments (i.e., 180 REU's per installment) upon payment of the annual installment amount. Accordingly, 20% of the total cost of these 900 REU's shall be paid at the time of execution of this First Amended Contract, and 20% of the total cost shall be paid on each anniversary date thereafter until the cost has been paid in full.

### 3. Ownership of City Wastewater Treatment Facilities.

A. The Township shall not receive any right, title or interest, either legal or equitable in the City Wastewater Treatment Facilities, except as to the rights granted herein.

B. A Capital Improvement and Rate Advisory Board shall be formed to approve capital improvements to the City's wastewater treatment facilities, to recommend rate increases, and to make recommendations on the operation, maintenance and improvement of the facilities. The Board shall be comprised of two members appointed by the City, two members appointed by the Township, and one member appointed by the Livingston County Board of Commissioners. Upon initial appointment, the Board shall establish rules for its operation. However, if the Board fails to insure that funds are available for the operation and maintenance of the City's wastewater treatment facilities and cash is not available to pay current bills, then the City Council of the City of Howell may impose a rate increase or capital charge increase equal to all users sufficient to insure adequate funding of the treatment facilities. All Board members shall serve without compensation, however, reasonable expenses associated with carrying out their duties shall be reimbursed.

C. The City will keep detailed records of manpower, equipment and materials used to

operate and maintain the wastewater treatment facilities. These records will be included in the City's annual audit process. The Township, on request, will be given a reasonable opportunity to review the City's records concerning the operation and maintenance of the wastewater treatment facilities.

4. Ownership of City Sanitary Sewer Collection System and Township Sanitary Sewer Collection System.

A. The Township shall not receive any right, title or interest, either legal or equitable, in the City Sanitary Sewer Collection System, except as to the rights granted herein. The ownership, control and operation of the City Sanitary Sewer Collection System will remain with the City.

B. The City shall not receive any right, title or interest, either legal or equitable, in the Township Sanitary Sewer Collection System. The ownership, control and operation of the Township Sanitary Sewer Collection System shall remain with the Township.

5. Facilities Constructed in Township.

A. The Township shall have complete and full responsibility to pay for the cost of designing, constructing and inspecting sewer lines, lift stations or any other appurtenances thereto for the purpose of the Township connecting to the City's wastewater treatment facilities. The Township and City agree to coordinate the design and construction of Township improvements and City improvements, as necessary, to provide for optimal and efficient operation of the completed City and Township systems. Specific to the Northeast corner of the Township, north of I-96, the Township, upon City approval of specifications and design, may connect to City Sanitary Sewer System to service Township customers in this specific area. The cost of metering, connection, upgrading of transmission lines or lift stations, or any other change necessary to the City or Township Sanitary Sewer Collection System, shall be borne exclusively by the Township. In addition, the Township shall pay a collection rate to the City similar to the rate assessed against sanitary sewer users of the City. The rate shall be recommended by the Board as described in Paragraph 3 (B) of this First Amended Contract.

B. The Township shall not interconnect the components of its sanitary sewer collection system, as defined in Section 1-G, with another municipality's system during the time the Township's system is connected to the wastewater treatment facilities in the City of Howell without the permission of the City.

C. The Township shall be responsible for all testing and other operational requirements of Federal, State and County agencies for the Township Sanitary Sewer Collection System.

6. Operation, Maintenance and Repair of Sanitary Sewer Collection System to Service the Township.

A. All operation, maintenance and repair costs associated with the Township Sanitary

Sewer Collection System located within the Township as well as facilities located in the City that were installed to connect the Township Sanitary Sewer Collection System to the City wastewater treatment facilities shall be borne by the Township.

B. The Township shall operate its system in a manner that insures that no negative effects will be applied to the City wastewater treatment facilities and if the Township fails to correct any negative situation, after notice and within a reasonable time, then the City may take appropriate, corrective action as necessary and bill the Township for all costs incurred. The Township hereby grants to the City its irrevocable consent to the use of such highways, streets, alleys, easements and rights-of-way and other public places as may be reasonably necessary to permit the City to take the corrective action that is required.

7. City Wastewater Treatment Facilities - Charges.

A. Service Charges:

- 1) Wastewater Treatment Facilities service shall be charged for based on the metered sewage flow at the Township's master sewage flow meters. The Township shall provide and maintain master sewage flow metering at its sewage pump stations capable of measuring total sewage entering the City Wastewater Treatment Facility from the Township. The meters shall be of accuracy acceptable to the City and shall be maintained in said accuracy. The Township shall provide to authorized City personnel access to such meters in a manner mutually agreeable to the parties, for purposes of ascertaining sewage flows. The Township shall pay to the City for the Wastewater Treatment Facility services supplied a charge determined as follows:
  - a) the same readiness-to-serve charge as is levied on City residents based on meter size.
  - b) the same wastewater treatment facilities usage charge as is levied on City residents.
  - c) its prorata share of capital improvement expenses, other than those described herein.
- 2) The City shall establish an account for revenues and expenditures associated with the operation, maintenance, repairs and upgrades of the City Wastewater Treatment Facility. This account (the "OM&R Account") shall be separate and distinct from other City accounts, and shall be established prior to substantial completion of the Initial Expansion. Service charges paid by City and Township users as stipulated under Paragraph 7.A shall be placed in the OM&R Account. Surplus amounts in the OM&R Account, and any interest

accruing thereto, shall remain in the OM&R Account. Short term loans to the OM&R Account by the City may be charged reasonable interest. If at any time this account is depleted and monies are needed to make up such deficiency, then, said deficiency shall be resolved by contributions from the City and the Township based upon the percentage of assigned capacity at the time the account is depleted.

B. Capital Charges:

- 1) The Township shall adopt the same table for determining the number of REU's by type of use as is followed by the City.
- 2) The initial expansion of the City's wastewater treatment facilities will provide for at least 2,500 REU's of service for the Township. The second expansion will provide an additional 1,961 REU's of service for the Township. The third expansion will provide an additional 3,039 REU's of service for the Township.

C. The above charges and rate structure will be adjusted or modified from time to time as recommended by the Capital Improvement Rate Advisory Board and as approved by the Howell City Council.

D. The Township shall adopt the same rate schedule, penalty structure and administrative procedures as are used by the City. Except where otherwise provided in Paragraphs 6 and 7 of the agreement, all rates and charges shall be the same for City and Township users.

E. Surcharges: If the character of the sewage of any manufacturing or industrial plant or any other building or premises is such as to impose any unreasonable burden upon the City sanitary sewer system or upon the sewage treatment plant in excess of established limitations when it's prescribed by the Resolution of the City Council, an additional charge shall be made and assessed over and above the regular rates charged for sewage service, said charges to be governed by Chapter 1043 of the Howell City Code.

F. Since there are fixed costs associated with providing wastewater treatment facility services to the Township and because initial billable gallons by Township users will be very low, the Township shall compensate for any difference between revenue received and a minimum billable gallons of 0.10 MGD after issuance of the certificate of substantial completion. Operation and maintenance costs incurred by the City during construction of improvements to the City's wastewater treatment facility in Phase I will be paid by the City.

G. The City will continue to include the wastewater treatment facilities in its annual audit. In addition, the Township, upon reasonable notice, may review the financial and operating records of the City's sanitary sewer system.



8. Term.

This contract shall commence on the date hereto and shall only be terminated or modified by mutual agreement by the City and Township.

9. Planned Interruption of Service.

In the event the proper operation of the City's sanitary sewer treatment facilities requires the City to discontinue temporarily all or part of the sanitary sewer system serving the Township, no claims for damages for such discontinuance shall be made by the Township against the City. The City shall immediately notify the Township upon learning of any accidental interruptions of service. Whenever service to the points of connection will be intentionally interrupted temporarily by the City to facilitate repair, modification or connection of the City's sanitary sewer treatment facilities, the City shall, prior to such interruption occurring, give the Township reasonable notice of the time, duration and area affected by the interruption of service.

10. Failure of Performance.

No failure or delay in the performance of the executed wastewater treatment facilities contract by either party shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any Act of God, strikes or lockouts, wars, riots, epidemics, explosions, sabotage, breakage, or accidents to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise not in the control of the party claiming suspension. The City or Township agree that the wastewater treatment services provided under this agreement is a governmental function.

11. Indemnification.

A. The Township agrees to save harmless the City against and from any and all claims, costs, charges and expenses (including without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed against the City by reason of any of the following occurring during the term of this Contract:

- 1) Any negligent or tortious acts, errors or omissions of the Township or any of its personnel, employees, subcontractors, or consultants in the construction, operation, or maintenance of the Township sanitary sewer collection system and facilities, notwithstanding any prior approval of the City of the plans and specifications relating to the construction of such systems and facilities and inspections conducted thereof by the City; and
- 2) Any failure by the Township or any of its personnel employees, consultants, or subcontractors, to perform its obligations, either express or implied, under this Contract or any negligent or tortious acts, errors or omissions of the township, its

personnel, employees, consultants or subcontractors.

B. The City agrees to save harmless the Township against and from any and all claims, costs, charges and expenses (including without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed against the Township by reason of any of the following occurring during the term of this Contract:

- 1) Any negligent or tortious acts, errors or omissions of the City or any of its personnel, employees, subcontractors, or consultants in the construction, operation, or maintenance of the City sanitary sewer system and facilities, notwithstanding any prior approval of the Township of the plans and specifications relating to the construction of such systems and facilities and inspections conducted thereof by the Township; and
- 2) Any failure by the City or any of its personnel employees, consultants, or subcontractors, to perform its obligations, either express or implied, under this Contract or any negligent or tortious acts, errors or omissions of the City, its personnel, employees, consultants or subcontractors.

12. Resolution of Disputes.

It is recognized by both parties that in the future certain disputes regarding the terms of this Contract may arise between the City and the Township. In order to provide for the orderly resolution of these matters, the following process is established:

- A. Within thirty (30) calendar days after a grievance is noted, the offended legislative body shall inform the other legislative body of their disagreement in writing. The non-aggrieved party shall have up to thirty (30) days in which to respond to the grievance. This response shall be in writing.
- B. Should the parties be unable to resolve their differences within sixty (60) days of the date of the written response to the grievance or be then unable to agree upon a method to mediate and resolve the differences, either party may seek its lawful or equitable remedies in the Michigan Court having lawful jurisdiction over the subject matter of the dispute.

13. Non-Assignability.

This Contract is not assignable by the Township without written consent from the City nor is this Contract assignable by the City without written consent from the Township.

14. Successors.

It is hereby agreed that this Contract shall be binding upon all successor governmental units

which may assume jurisdiction over all or part of the areas now governed by the parties.

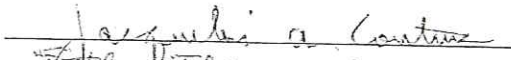
15. Severability.

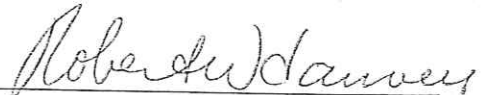
Should any provision of this Contract be found by a court of law to be unconstitutional, it shall be severed from the Contract and the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

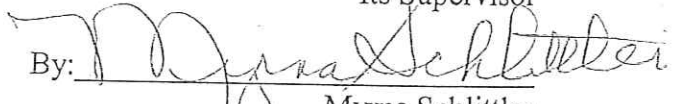
WITNESSES:

TOWNSHIP OF MARION  
A General Law Township

  
JACQUE LIME A. COUTURE

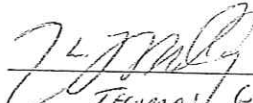
By:   
Robert Hanvey  
Its Supervisor

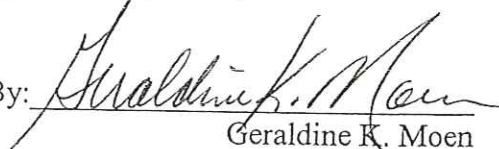
  
Myrna Schlittler

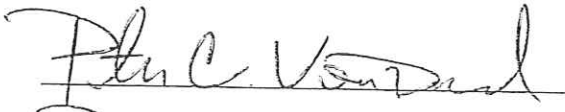
By:   
Myrna Schlittler  
Its Clerk

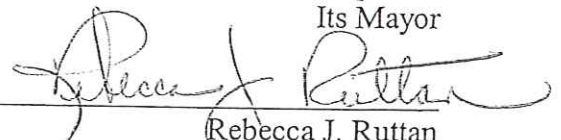
WITNESSES:

CITY OF HOWELL  
A Michigan Municipal Corporation

  
THOMAS G. MALLOY

By:   
Geraldine K. Moen  
Its Mayor

  
Peter C. Vondrak

By:   
Rebecca J. Ruttan  
Its City Clerk

STATE OF MICHIGAN          )  
  ) ss  
COUNTY OF LIVINGSTON       )

On this 8th day of October, 2001, before me a Notary Public in and for said County, personally appeared Robert Hanvey and Myrna Schlittler to me known to be the Supervisor and Township Clerk of the Township of Marion, who being by me duly sworn, did say that they

executed the foregoing City of Howell-Marion Township Wastewater Treatment Contract on behalf of the Township of Marion by authority duly vested in them by the Marion Township Board.

Cynthia M. Hodge  
Notary Public

Livingston County, Michigan

My Commission expires: 10-8-05

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF LIVINGSTON )

On this 8th day of October, 2001, before me a Notary Public in and for said County, personally appeared Geraldine K. Moen and Rebecca J. Ruttan to me known to be the Mayor and City Clerk of the City of Howell, who being by me duly sworn, did say that they executed the foregoing City of Howell-Marion Township Wastewater Treatment Contract on behalf of the Township of Marion by authority duly vested in them by the Marion Township Board.

[Signature]  
Notary Public

Livingston County, Michigan

My Commission expires: 7-12-03