

APPENDIX A

CITY OF HOWELL - MARION TOWNSHIP

WASTEWATER TREATMENT CONTRACT

THIS CONTRACT, made this 30th day of June 1997, 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, 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 is willing to expand the wastewater treatment capacity of its 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, and

WHEREAS the City acknowledges an existing agreement between the Township and Livingston County under which the County will issue bonds to enable the Township to construct a wastewater treatment facility and that under the terms of this Agreement, the Township will now use a portion of the bond proceeds to fund the initial expansion of the City's wastewater treatment facility.

WHEREAS, the City has had a long-standing policy of not providing municipal sanitary sewer service outside of its corporate limits, and

WHEREAS, the City is willing to change that policy in return for appropriate considerations as 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 of the City's wastewater treatment facilities refers to the "Phase I (immediate) - to meet City and Township needs" work as identified in the March 28, 1997 letter report from Ayres, Lewis, Norris and May, Inc. which will expand the plant capacity to 2.90 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 of the City's wastewater treatment facilities refers to the "Phase II (future) - to meet City and Township needs" work as identified in the March 28, 1997 letter report from Ayres, Lewis, Norris and May, Inc. which 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 sanitary sewer 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 2.90 MGD (being an additional 1.1 MGD) with all costs for this expansion including engineering, administration, bonding, etc. to be covered by the Township under the County Contract. Of the expanded capacity, 59% of the expansion capacity (approximately 0.65 MGD) shall be assigned to the Township.

C. In the future as needed and requested by the Township and after the Township shall have entered into an agreement with the County or another public authority having the power to issue bonds to finance such facility, the City will proceed with a second expansion of the wastewater treatment facilities to 3.64 MGD (being an additional 0.74 MGD). The cost for this expansion will be shared between the City and Township with the City covering 30 percent of the cost and the Township 70 percent of the cost. Of the expanded capacity, 69% of the expansion capacity (approximately 0.51 MGD) shall be assigned to the Township and 31% of the expansion capacity (approximately 0.23 MGD) shall be assigned to the City.

D. In the future as needed and requested by the Township and after the Township shall have entered into an agreement with the County or another public authority having the power to issue bonds to finance such facility, the City will 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 purchase of wastewater treatment service to another municipality or other party outside the City boundaries at a cost lower than \$1,500 per Residential Equivalent Unit (REU).

F. Upon execution of this Agreement, the City will accept 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.

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.

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. 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.

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 water usage at each residence or establishment. The Township

shall insure that a water meter is installed in all premises connected to the Township sanitary sewer collection system. Water meter type, manufacturer and installation shall be as approved by the City. Meter bypasses shall not be allowed. The Township shall pay to the City for the wastewater treatment facilities service 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.
- d) a charge per billing levied against all Township customers to cover all costs for meter reading, billing, accounting, administration, etc.

B. Capital Charges:

- 1) The Township shall pay a capital charge to the City prior to the connection of each user into the Township's sanitary sewer collection system. The charge shall be two hundred fifty dollars (\$250.00) for each residential equivalent unit (REU).
- 2) The Township shall adopt the same table for determining the number of REU's by type of use as is followed by the City. The capital charge per REU as specified in this Agreement shall be paid to the City by the Township customer prior to the physical connection of each user to the Township sanitary sewer collection system.
- 3) The initial expansion of the City's wastewater treatment facilities will provide for at least 2500 REU's of service for the Township. The second expansion will provide an additional 1961 REU's of service for the Township. The third expansion will provide an additional 3,039 REU's of service for the Township.
- 4) As a way of balancing the amount of capital money to be paid for improvements to the City's wastewater treatment facilities, new City users shall pay a capital charge to the City of five hundred dollars (\$500.00) per residential equivalent unit (REU) prior to connection into the City's sanitary sewer system.

C. As part of this agreement, the City shall handle all meter reading, billing, accounting and administration for the Township. When directed by the Township, the City will add additional costs or charges to Township customer billings. Funds received for these additional Township charges will be remitted back to the Township within 45 days after the payment for such charges is received.

D. 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.

E. 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.

F. 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 10-43 of the Howell City Code.

G. Since there are fixed costs associated with providing wastewater treatment facilities 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 100,000 GPD after issuance of the certificate of substantial completion.

H. In order for the City to perform meter readings, billing, accounting and administration, an initial investment will need to be made in computer equipment, software, meter reading equipment, office equipment, and related items. The Township shall cover these costs. The City shall provide an itemized billing for these items and the Township shall pay said bills within 30 days of receipt.

I. 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.

STATE OF MICHIGAN)
) ss
COUNTY OF LIVINGSTON)

On this 3rd day of June, 1997, before me a Notary Public in and for said County, personally appeared Paul B. Streng and Rebecca J. Rutan 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.



Notary Public
Livingston County, Michigan
My Commission expires: _____

CHRISTINE B. GELLER
Notary Public, Oakland County, MI
Acting in Livingston Co.
My Commission Expires Feb. 13, 2001