

**COUNTY OF CLINTON
BOARD OF COMMISSIONERS**

At a regular meeting of the Board of Commissioners of Clinton County, held in St. Johns, Michigan on February 23, 1999, at 9:00 o'clock a.m., there were

PRESENT: John Arehart, Russel H. Bauerle, Richard Hawks, Scott A. Hummel,
Larry Martin, Sara Clark Pierson and Mary Rademacher.

ABSENT: None

The following preamble and resolution were offered by Commissioner Pierson and seconded by Commissioner Martin.

**1999-5
RESOLUTION APPROVING THE CONTRACT
WITH BINGHAM TOWNSHIP**

WHEREAS, the County of Clinton by resolution of its Board of Commissioners has approved the establishment of a project (the "Project") known as the "Bingham Township Sanitary Sewer Extension Project (1999)".

WHEREAS, it is necessary for Clinton County, acting through its Department of Public Works (the "DPW"), to enter into a contract with Bingham Township with respect to the Project, which contract is attached as Exhibit A.

NOW, THEREFORE, IT IS RESOLVED AS FOLLOWS:

1. The contract attached as Exhibit A is hereby approved by the Clinton County Board of Commissioners.
2. The DPW is authorized to execute the Contract in substantially the form attached to this Resolution, with such changes as may be determined to be appropriate by the chairman and secretary of the DPW, based upon advice of counsel. The DPW is also authorized to execute any other necessary documents or agreements in order to effectuate the transactions set forth in the Contract.
3. All resolutions, or portions thereof, insofar as they may be in conflict with the foregoing, are hereby rescinded.

A vote on the foregoing resolution was taken and was as follows:

YES: Arehart, Bauerle, Hawks, Hummel, Martin, Pierson and Rademacher

NO: None

ABSTAIN: None

CERTIFICATION

I certify that the foregoing is a true and accurate copy of a resolution adopted at a regular meeting of the Clinton County Board of Commissioners, and that notice of such meeting was given as required by law and such meeting was held in compliance with Act No. 267, Michigan Public Acts of 1976, as amended.

Clinton County Clerk

Dated: _____, 1999

LA\45044.1

EXHIBIT A

**Contract Between the County of
Clinton and the Township of Bingham**

**CONTRACT BETWEEN
THE COUNTY OF CLINTON
and
THE TOWNSHIP OF BINGHAM**

Bingham Township Sanitary Sewer Extension Project (1999)

Dated as of _____, 1999

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CONTRACT

THIS CONTRACT (the "Contract") is made as of _____, 1999, by and between the COUNTY OF CLINTON, a Michigan county (the "County"), and BINGHAM TOWNSHIP, a township located in the County (the "Municipality").

The County has approved the construction of certain improvements to the sewer system of the Municipality which are designed to enhance quality of the sewer system pursuant to Act No. 185, Michigan Public Acts of 1957, as amended ("Act 185"). The Department of Public Works of the County (the "DPW") under the control and direction of the Board of Public Works has been established to administer the powers conferred upon the County by Act 185. The County and the Municipality are authorized to enter into a contract for the acquisition, construction and financing of the Project (as defined below) and for the payment of all or a part of the Cost of the Project (the "Cost" or the "Costs" shall mean the total cost of the Project unless the context clearly indicates otherwise) by the Municipality with interest, over a period not exceeding 40 years. The County is also authorized to hereafter issue its bonds to be secured by the full faith and credit contractual obligations of the Municipality and by the full faith and credit of the County.

The County and the Municipality have concluded that the acquisition and construction of the sewer system improvements described on Exhibit A (the "Project") are needed to promote and improve the health and welfare of the residents of the Municipality, and that the Project can most economically and efficiently be provided and financed by the County acting through the DPW pursuant to the provisions of Act 185.

Spicer Group Engineers has prepared preliminary plans for the Project (such preliminary plans as from time to time revised or the final plans, as the context may dictate, are referred to in this Contract as the "Plans"), which have been placed on file in the office of the DPW.

In consideration of the premises and in order to provide for the acquisition and construction of the Project by the County, for the financing of the Project through the issuance of the Bonds (as defined below), for the operation and maintenance of the Project and for other related matters, the County and the Municipality agree as follows:

1. Approval of Project. The County and the Municipality approve and agree to the acquisition, construction and financing of the Project under and pursuant to Act 185. The parties approve the designation of "Bingham Township Sanitary Sewer Extension Project (1999)" as the name of the Project. The Municipality, by way of compliance with Section 29, Article VII, Michigan Constitution of 1963, consents and agrees to the establishment and location of the Project and any extension, improvement or enlargement of it within its corporate boundaries in accordance with the terms of this Contract or on land presently owned by and located in the Municipality, and to the use by the County of the streets, highways, alleys, lands, rights-of-way or other public places in the Municipality for the purpose and facilities of the Project and any

improvement, enlargement or extension of it. The Municipality further agrees that, in order to evidence and effectuate this agreement and consent, it will obtain or assist the County in obtaining all easements, licenses, rights-of-way and/or title to property necessary for completion of the Project and will execute and deliver to the County such easements, rights-of-way, licenses, permits or consents as may be requested by the County. The cost of obtaining necessary easements, licenses, rights-of-way and/or title to property in connection with the Project shall be Costs of the Project payable from the proceeds of the Bonds as set forth below.

2. Project Description. The Project shall consist of the sewer system improvements described and specified in Exhibit A and as are more particularly set forth in the Plans, which Plans are on file with the DPW and are hereby approved and adopted. The Project shall be acquired and constructed substantially in accordance with the Plans and in accordance with final plans and specifications to be prepared and submitted by Spicer Group Engineers but variations from the Plans which do not materially change the location, capacity or overall design of the Project, and which do not require an increase in the total estimated Cost of the Project, may be permitted on the authority of the DPW. Other variations or changes may be made if approved by the DPW and by resolution of the governing body of the Municipality and if provisions required by paragraph 5 below are made for payment or financing of any resulting increase in the total estimated Cost. The estimates of the Cost of the Project, not to exceed \$3,300,000, and the period of usefulness of the Project, in excess of 20 years, are likewise approved and adopted.

3. Issuance of Bonds. The County and the DPW shall take or cause to be taken all actions required or necessary, in accordance with Act 185, to procure the issuance and sale of bonds by the County (the "Bonds"), in one or more series, in whatever aggregate principal amount is necessary to defray the Cost of the Project. The Bonds shall be issued in anticipation of, and be payable from, the payments to be made by the Municipality to the County as provided for in this Contract, shall be secured by the full faith and credit and limited taxing power of the County, and shall be payable in annual maturities, the last of which shall be not more than 25 years from the date thereof.

4. Construction. The construction of the Project will be governed by the contract between the DPW and the successful bidder on the Project, which contract will be on file in the offices of the DPW.

5. Increase in Bonds. If, after the sale of the Bonds, it becomes necessary to increase the estimated Cost of the Project for any reason, or if the actual Cost of the Project shall exceed the estimated Cost, whether as the result of variations or changes made in the approved Plans or otherwise, then (without execution of any further contracts or amendment of this Contract) increased or additional bonds, after approval of an authorizing resolution by the Board of Public Works and upon the adoption of such authorizing resolution by the Board of Commissioners, shall be issued to defray such increased or excess Cost to the extent that funds for the same are not available from other sources; provided, however, that no such increase or excess shall be approved and no such additional bonds shall be authorized to be issued, nor shall the County enter into any contract for the acquisition or construction of the Project or any part thereof or incur any obligation for or pay any item of cost therefor, where the effect thereof

would be to cause the total Cost of the Project to exceed by more than 5% the total estimated cost as hereinbefore approved, unless the governing body of the Municipality shall have previously adopted a resolution approving such increase or excess and agreeing that the same (or such part thereof as is not available from other sources) shall be defrayed by the issuance of additional bonds in anticipation of increased or additional payments agreed to be made by the Municipality to the County in the manner hereinafter provided; provided, further, that the adoption of such approving resolution by the governing body of the Municipality shall not be required prior to or as a condition precedent to the issuance of additional bonds by the County, if the County has previously issued or contracted to sell bonds to pay all or part of the Cost of the Project, and the issuance of the additional bonds is necessary (as determined by the County) to pay such increased, additional or excess costs as are essential to completion of the Project according to the plans as last approved prior to the time when the previous Bonds were issued or contracted to be sold.

6. Payments by Municipality. The Municipality shall pay to the County the Cost of the Project. The Cost of the Project will be defrayed by the issuance of Bonds as provided in paragraphs 3 and 5 above. The Municipality covenants and agrees to pay the principal of, premium, if any, and interest on the Bonds and all registration, paying agent fees and other expenses and charges (including the DPW's administrative expenses) which are payable on account of the Bonds (such fees, expenses and charges being called "Bond Service Charges"). Payments shall be made to the County in semiannual installments which shall be due and payable 10 days prior to the day specified in the Bonds as the interest payment dates with respect to the Bonds, in amounts at least sufficient to pay all principal, premium, and/or interest due on such interest payment dates and all Bond Service Charges then due and payable. The Bonds shall mature in the amounts and on the dates determined by the Chairman of the DPW.

The DPW shall, within 30 days after delivery of the Bonds, supply the County and the Municipality with a complete schedule of the payments of principal of and interest on the Bonds, and the DPW shall also, at least 30 days before each payment is due to be made by the Municipality, advise the treasurer of the Municipality of the amount payable to the County on such date. If the Municipality fails to make any payment to the County when due, the same shall be subject to a penalty of 1% of the amount due for each month or fraction of a month that such amount remains unpaid after it is due. Failure of the DPW to furnish the schedule or give notice as above required shall not excuse the Municipality from the obligation to make payment when due. Payments shall be made by the Municipality when due whether or not the Project has then been completed or placed in operation. The foregoing obligations shall apply to all Bonds issued by the County to defray the Cost of the Project.

7. Advance Payments. If the Municipality pays the Cost of the Project or any portion of it, prior to the issuance of the Bonds, then the obligations of the Municipality shall be adjusted accordingly. The Municipality may pay in advance of maturity all or any part of a semiannual installment due to the County on the Bonds by surrendering to the County bonds issued hereunder of a like principal amount maturing in the same calendar year or by paying cash to the County and requesting the County to purchase any Bonds or call any Bonds in accordance with their terms.

8. Use of Excess Bond Proceeds. The proceeds of the sale of the Bonds shall be used solely and only to pay the Cost of the Project. After completion of the Project and payment of all Project Costs, any surplus remaining from the sale of the Bonds shall, at the option of the Municipality, be (a) used, with the review and approval of the DPW (which review and approval shall be in accordance with the same planning standards employed to review the Project originally, subject to all applicable laws, regulations and governmental standards then in effect), to extend, enlarge or improve the Project or any other project which has been constructed and/or maintained by the County for the benefit of the Municipality, (b) retained by the DPW for the payment of principal of and interest on the Bonds or (c) used to purchase the Bonds on the open market. In the event such surplus is used for principal and interest or used to purchase Bonds, the contract obligation of the Municipality with respect to such Bonds or such maturities shall be reduced accordingly.

9. Full Faith and Credit. The Municipality, pursuant to the authorization of Section 12(2) of Act 185, hereby pledges its full faith and credit for the prompt and timely payment of its obligations expressed in this Contract. Each year the Municipality shall levy a tax in an amount which, taking into consideration estimated delinquencies in tax collections, will be sufficient to pay its obligations under this Contract coming due before the time of the following year's tax collections, provided, however, that if at the time of making its annual tax levy, the Municipality shall have on hand in cash other funds or reasonably expects to receive other funds (from special assessments, user charges, connection fees or otherwise) which have been or will be set aside and pledged or are otherwise available for the payment of such contractual obligations falling due prior to the time of the next collection, then the annual tax levy may be reduced by such amount. Any taxes levied by the Municipality shall be subject to the applicable statutory, charter and constitutional tax limitations.

10. Failure to Pay; Remedies. In the event that the Municipality fails for any reason to pay to the DPW the amounts required to be paid under this Contract when due, (1) the County Treasurer is authorized to notify the State Treasurer, or other appropriate disbursing official, of such failure, and the State Treasurer or other appropriate disbursing official shall deduct the amount due the County from any moneys in his or her possession belonging to the Municipality which are not pledged for the payment of debt and pay the same to the County, all as provided in and governed by Section 17 of Act 185, and/or (2) the County Treasurer is authorized to withhold payments which would otherwise be due to the Municipality from the County's Delinquent Tax Revolving Fund, in each case such withheld funds to be applied to the Municipality's obligations under this Contract. In addition to the foregoing, the County shall have all other rights and remedies provided by law to enforce the obligations of the Municipality to make payments to the County under this Contract. The Municipality acknowledges that such payments are to be pledged for the payment of the principal of, premium, if any, and interest on the Bonds, and the Municipality covenants and agrees that it will make its required payments to the County promptly and at the times specified in this Contract, without regard as to whether the Project is actually completed or placed in operation.

11. Change in Municipality. No change in the jurisdiction over territory in the Municipality shall in any manner impair the obligations of this Contract. In the event all or any part of the territory of the Municipality is incorporated as a new city or is annexed to or becomes a part of the territory of another municipality, the municipality into which such territory is incorporated or to which such territory is annexed shall assume the proper proportionate share of the contractual obligations of the Project.

12. Additions to or Extensions of Project. The County shall not be obligated to acquire or construct any facilities other than those described in paragraph 2 above. The responsibility for providing such additional facilities as may be needed shall be that of the Municipality which shall have the right to cause to be constructed and maintained, either directly or through the County, such necessary additional facilities. No extensions of the Project shall be made without DPW approval, which approval shall be limited to approval of appropriate plans, specifications and construction and health standards if such extension does not involve the assistance of the County in the financing of the same.

13. Ownership of Project. The County, subject to the terms of this Contract and during the term of this Contract, shall have legal title to the Project. After the retirement of the Bonds, and after the Municipality's obligations under this Contract are satisfied, the legal title to the Project shall be transferred to the Municipality. Both during the term of this Contract and thereafter the Municipality shall have the exclusive rights to the Project with respect to the operation, maintenance, service connections, and extensions to the Project. All connections to the sewer system made during the construction of the Project, or after the completion thereof, shall only be made by the Municipality.

14. Costs and Expenses. The parties agree that the costs and expenses of any lawsuits arising directly or indirectly out of this Contract or the construction or financing of the Project, to the extent that such costs and expenses are chargeable against the County or the DPW, shall be deemed to constitute a part of the Cost of the Project and shall be paid by the Municipality in the same manner as provided in this Contract with respect to other Costs of the Project. In the event of such litigation, the DPW shall consult with the Municipality and shall retain legal counsel agreeable to the County and the Municipality to represent the County. If the County and the Municipality cannot agree as to such representation within a reasonable time, the DPW shall exercise its discretion as to the retention of such counsel.

15. DPW Authority. All powers, duties and functions vested by this Contract in the County shall be exercised and performed by the DPW, for and on behalf of the County, unless otherwise provided by law or in this Contract.

16. Invalidity of Provisions. In the event that any one or more of the provisions of this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Contract, but this Contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

17. No Impairment of Bondholders' Interests. The County and the Municipality each recognize and declare that the holders from time to time of the Bonds issued by the County under the provisions of Act 185, and secured by the full faith and credit limited tax pledge of the Municipality to the payment of the principal of and interest on the Bonds as set forth in this Contract, will have contractual rights in this Contract and it is therefore covenanted and agreed by each of the parties that so long as any of the Bonds remain outstanding and unpaid, the provisions of this Contract shall not be subject to any alteration or revision which would in any manner adversely affect either the security of the Bonds or the prompt payment of principal of or interest on the Bonds. The right to make changes in this Contract, by amendment, supplemental contract or otherwise, is nevertheless reserved insofar as the same do not have such adverse affect. The Municipality and the DPW further covenant and agree that they will each comply with their respective duties and obligations under the terms of this Contract at the times and in the manner set forth in this Contract, and will not suffer to be done any act which would in any way impair the Bonds, the security for them, or the prompt payment of principal of and interest on the Bonds.

18. County Treasurer. It is agreed that the County Treasurer may act as the Treasurer of the DPW and that the County Treasurer will have the responsibility to invest all funds coming into the County's possession in connection with the Project. The Treasurer is accordingly authorized to invest any such surplus funds in any obligations permitted by law and credit investment earnings for the benefit of the Municipality to the fund earning the same.

19. Miscellaneous.

a. Effective Date. This Contract shall become effective after approval by the legislative body of the Municipality and by the Board of Commissioners of the County, and execution by the authorized officials of the parties. It shall terminate 26 years from its date or upon the earlier payment in full of all principal of, premium, if any, and interest on the Bonds, at which time the full right, title and ownership to the Project shall revert to the Township.

b. Counterparts. This Contract may be executed in several counterparts each of which shall be deemed one and the same agreement. It shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

c. Contingency. This Contract is contingent upon the County issuing its Bonds to defray the cost of acquiring and constructing the Project, and nothing contained in this Contract shall require the County to acquire or construct the Project if it is unable, after use of its best efforts, to sell the Bonds to finance the same.

d. Governing Law. This Contract shall be interpreted under the laws of the State of Michigan.

e. Authority. Each party warrants and represents that the execution and performance of this Contract have been duly authorized by all necessary action and do not contravene any policy, resolution or controlling rule.

f. Entire Agreement. This Agreement sets forth the entire agreement between the County and the Municipality with respect to the subject matter of this Contract.

g. Captions and Bylines. The captions and bylines used in this Contract are for the convenience of reference only and in no way define, limit or describe the scope or intent of any provision of this Agreement.

h. Use of the Singular. The use in this Contract of the singular shall be deemed to be and include the plural (and vice versa) where applicable.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed and delivered, by their respective duly authorized officers, all as of the day and year first above written.

TOWNSHIP OF BINGHAM

COUNTY OF CLINTON

By Its Board of Public Works

By: _____

By: _____

Its: Supervisor

Its: Chairman

LA\44221.1

EXHIBIT A

Description of the Project

[See Attached Map]

