

1988 WATER SUPPLY SYSTEM CONTRACT

THIS CONTRACT, made and entered into as of the 1st day of April, 1988, by and among the COUNTY OF OTTAWA, (hereinafter referred to as the "County"), by and through its Board of County Road Commissioners (hereinafter referred to as the "County Agency"), party of the first part, and the TOWNSHIP OF BLENDON, CHARTER TOWNSHIP OF GEORGETOWN, CHARTER TOWNSHIP OF HOLLAND, TOWNSHIP OF JAMESTOWN, TOWNSHIP OF OLIVE, TOWNSHIP OF PARK, TOWNSHIP OF PORT SHELDON, CITY OF HUDSONVILLE and CHARTER TOWNSHIP OF ZEELAND (hereinafter referred to as the "Municipalities"), parties of the second part;

WITNESSETH:

WHEREAS, pursuant to the provisions of Act 342, Public Acts of Michigan, 1939, as amended, ("Act 342") the Board of Supervisors of the County made the provisions of Act 342 applicable to the County, authorized and directed that there be established, maintained and operated under the provisions of Act 342 a county-wide system or systems of water and sewer improvements and services and designated the Board of County Road Commissioners of the County to be the agency of the County for the purposes set forth in Act 342; and

WHEREAS, by the terms of Act 342 the County is authorized through its County Agency to acquire a water supply system within the County and to improve, enlarge, extend, operate and maintain the same, and the County and

the Municipalities are authorized to enter into a contract for the acquisition, improvement, enlargement or extension of such water supply system and for the payment of the cost thereof by certain of the Municipalities, with interest, over a period of not exceeding forty (40) years, and the County is then authorized, pursuant to appropriate action of its Board of Commissioners, to issue its bonds to provide the funds therefor, secured by the full faith and credit contractual obligations of the Municipalities to pay the cost thereof; and

WHEREAS, the County and the Township of Blendon, the Charter Township of Georgetown, the Charter Township of Holland, the Township of Jamestown, the Township of Olive, the Township of Park, the Township of Port Sheldon and the City of Hudsonville (the "Original Municipalities"), pursuant to Act 342, heretofore have entered into contracts providing for the establishment and acquisition of Section 2 of the Ottawa County Water Supply and Sewerage and Sewage Disposal System, therein defined as 15% of the production capacity in the water supply facilities acquired, constructed and financed by the City of Wyoming to take water from Lake Michigan and to transport the same across the County to said city (said contracts hereinafter referred to as the "Base Contracts" and said water supply facilities hereinafter referred to as the "Wyoming System"); and

WHEREAS, pursuant to Act 342, the Base Contracts and the CITY OF WYOMING - OTTAWA COUNTY WATER SUPPLY AGREEMENT, dated July 21, 1964, the County acquired on behalf of

the Original Municipalities approximately 15% of the production capacity of the Wyoming System and has issued bonds of the County to finance such acquisition; and

WHEREAS, pursuant to Act 342, the 1972 WATER SUPPLY SYSTEM CONTRACT, dated as of February 1, 1972, the 1973 WATER SUPPLY SYSTEM CONTRACT dated as of June 1, 1973 and the CITY OF WYOMING - OTTAWA COUNTY 1972 WATER SUPPLY AGREEMENT, dated June 22, 1972, the County acquired on behalf of the Original Municipalities additional production capacity such that the County now owns 15% of the production capacity of the Wyoming System; and

WHEREAS, the County and the City of Wyoming have entered into the CITY OF WYOMING - OTTAWA COUNTY RESTATED WATER SUPPLY AGREEMENT, dated as of May 5, 1988 (the "Restated Wyoming Agreement") to provide for the expansion of the Wyoming System and the acquisition by the County of additional production capacity to the extent that the County will own on behalf of the Municipalities 33% of the production capacity of the Wyoming System as expanded; and

WHEREAS, the County, the Original Municipalities and the Charter Township of Zeeland previously have determined that the Charter Township of Zeeland should be served by the Wyoming System on the same basis as if it were an Original Municipality and should participate in the expansion of the Wyoming System on a contractual basis; and

WHEREAS, it is proposed that the cost of acquiring 33% of the production capacity of the Wyoming System as

expanded be defrayed by the issuance of bonds by the County pursuant to Act 342, said bonds to be secured by the obligations of the Charter Township of Georgetown, the Charter Township of Holland, the Township of Jamestown, the Township of Olive, the Charter Township of Zeeland and the City of Hudsonville (the "1988 Participants") to pay their respective shares of the principal of and interest on said bonds; and

WHEREAS, in order to effectuate the acquisition of such production capacity of the Wyoming System as expanded, to provide for the issuance of said bonds and to provide for other matters relative to the Wyoming System it is necessary for the County and the Municipalities to enter into this contract;

NOW, THEREFORE, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

1. Each Municipality acknowledges that it has received a copy of the Restated Wyoming Agreement and approves the provisions thereof. The County and the Municipalities approve the acquisition on behalf of the Municipalities of additional production capacity of the Wyoming System such that the County will own 33% of the production capacity of the Wyoming System as expanded pursuant to the provisions of Act 342 and the Restated Wyoming Agreement. The acquisition of additional production capacity of the Wyoming System as expanded (the "Project") shall be in

accordance with the Restated Wyoming Agreement and any agreements made supplemental thereto.

2. The County and the Municipalities approve the estimate of the cost of the Project as shown on Exhibit A which is attached hereto and by this reference is made a part hereof. The cost of the Project shall include the payments to be made by the County pursuant to the Restated Wyoming Agreement and all other costs, including the costs of issuing bonds, incurred by the County in connection with the Project. The County and the Municipalities also approve the allocation of the total production capacity of the Wyoming System as expanded as set forth on Exhibit B which is attached hereto and by this reference is made a part hereof.

3. After execution of this contract by the County and the Municipalities the County Agency shall take such of the following steps as theretofore have not been taken: (a) submit to the Board of Commissioners of the County such resolutions as may be necessary, duly approved and recommended by the County Agency, providing for the issuance and sale of the County bonds in one or more series, in the aggregate principal amount necessary to be borrowed, said bonds to mature serially as authorized by law, over a period of not more than forty (40) years and to be secured primarily by the obligations of the 1988 Participants to pay the cost of the Project with interest and secured secondarily, if a majority of the members-elect of the Board of Commissioners affirmatively vote therefor, by the pledge of the full faith and credit of the County; (b) take all necessary

steps to secure the adoption of said resolutions by the Board of Commissioners and the approval of the Treasurer of the State of Michigan for the issuance and sale of the bonds; (c) advertise, sell and deliver the bonds and apply the proceeds as herein provided; and (d) do all other things required of the County Agency under the provisions of Act 342. It is understood and agreed that the County bonds, if so voted, will be supported by the pledge of the full faith and credit of the County and, subject to the provisions of Section 10 hereof, will be payable primarily from moneys received by the County from the 1988 Participants in performance of their contractual obligations to pay the cost of the Project.

4. In order to accommodate the addition of the Charter Township of Zeeland as a Municipality, the allocation of the obligations of the Municipalities with respect to bonds issued pursuant to the Base Contracts, the 1972 Water Supply System Contract and the 1973 Water Supply System Contract shall be as follows:

<u>Municipality</u>	<u>Allocation</u>
Township of Blendon	3.22%
Charter Township of Georgetown	45.17%
Charter Township of Holland	16.13%
Township of Jamestown	3.22%
Township of Olive	3.22%
Township of Park	6.46%
Township of Port Sheldon	6.46%
Charter Township of Zeeland	3.22%
City of Hudsonville	12.90%
	<u>100.00%</u>

Capital return payments attributable to such bonds shall be credited to the Municipalities in accordance with the foregoing Allocation.

5. The 1988 Participants shall pay to the County the entire cost of the Project. The cost is allocated among the 1988 Participants as follows:

<u>1988 Participant</u>	<u>Allocation</u>
Charter Township of Georgetown	53.87%
Charter Township of Holland	29.41%
Township of Jamestown	1.13%
Township of Olive	7.62%
Charter Township of Zeeland	2.26%
City of Hudsonville	5.71%
	<u>100.00%</u>

The cost to be paid by the 1988 Participants shall include all items of cost included in Exhibit A or such items of cost of a similar nature as may be set forth in any revision of Exhibit A agreed to by the parties hereto and incurred by the County in acquiring the Project. Capital return payments attributable to the bonds issued pursuant to this contract shall be credited to the 1988 Participants in accordance with the foregoing Allocation.

6. The cost of the Project shall be paid by the 1988 Participants as provided in paragraph 5 hereof and will be represented by one or more series of bonds to be issued by the County in the aggregate principal amount necessary to be borrowed as determined or estimated at the time or times of such issuance. In the event that it shall become 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, then (without execution of any further contract or amendment of this contract) County bonds (upon

the adoption of an authorizing resolution therefor by the Board of Commissioners) shall be issued to defray such increased or excess cost to the extent that funds therefor are not available from other sources.

7. Each 1988 Participant shall pay to the County its share of the cost of the Project. The cost of the Project will be defrayed by the issuance of County bonds as provided in paragraphs 3 and 6 hereof. Each 1988 Participant covenants and agrees to pay its share of the principal of and interest on the bonds and all paying agency and transfer fees and other expenses and charges (including the County Agency's administrative expenses) which are payable on account of the bonds (such fees, expenses and charges being herein called "bond service charges"). Such payments shall be made to the County in semi-annual installments which shall be due and payable on June 1 and December 1 of each year. Such semi-annual installments shall commence on the June 1 or December 1 preceding the July 1 or December 1 that interest first becomes payable on the bonds, and the aggregate amount of the installments shall be at least sufficient to pay, when due, all principal and interest on the bonds and all bond service charges payable on account of the bonds. The County Agency, within thirty days after delivery of the County bonds to the purchaser, shall furnish the treasurer of each 1988 Participant with a complete schedule of the principal of and interest on the bonds and its share of such principal and interest, and the County Agency also, at least thirty days before each payment is due to be made by the 1988 Participants, shall advise the treasurer of each 1988 Participant of the amount payable to the

County on such date. If a 1988 Participant fails to make any payment to the County when due, the same shall be subject to a penalty of 1% thereof for each month or fraction thereof that such amount remains unpaid after due. Failure of the County Agency to furnish the schedule or give the notice as above required shall not excuse a 1988 Participant from the obligation to make payment when due. Payments shall be made 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.

8. If a 1988 Participant shall pay the cost of the Project or any portion thereof prior to the issuance of bonds, the obligations of the 1988 Participants shall be adjusted accordingly. A 1988 Participant may pay in advance of maturity all or any part of an installment due the County on the bonds by surrendering to the County bonds issued hereunder of a like principal amount maturing in the same calendar year.

9. The proceeds of sale of the bonds shall be used solely and only to pay the cost of the Project, and after completion thereof and payment of all costs in connection therewith, any surplus remaining from the sale of the bonds shall be (1) used to purchase the bonds on the open market or (2) retained by the County Agency as a reserve for the payment of the bond principal and interest maturities next falling due, and in such event the contract obligations of the 1988 Participants in respect to such bonds or such maturities shall be reduced by the principal amount of bonds

so purchased or of said reserve, said reduction in case of the purchase of bonds, to be applied as to year, in accordance with the year of the maturity of the bonds so purchased. Any bonds so purchased shall be canceled. In the alternative, such surplus may be used, on request of the 1988 Participants and approval by the County Agency, to extend, enlarge or improve the Wyoming System or to acquire additional production capacity.

10. Each 1988 Participant, pursuant to the authorization of Section 5a of Act 342, hereby pledges its full faith and credit for the prompt and timely payment of its obligations expressed in this contract and, subject to applicable constitutional, statutory and charter tax limitations, each year 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 becoming due before the time of the following year's tax collections; provided, however, that the annual tax levy may be reduced by the amount of cash or other funds which the 1988 Participant has on hand (or to its credit in the hands of the County) and available for the payment of such obligations. Such other funds may be raised in any manner permitted by law, and it is recognized that the 1988 Participants will be credited with their respective shares of the capital return as provided in the Restated Wyoming Agreement and the amounts credited shall be applied to reduce the obligations of the 1988 Participants under this contract. It is expressly agreed that capital return payments received by the County from the City of Wyoming pursuant to the Restated Wyoming Agreement shall be

attributed first, to the bonds issued pursuant to the Base Contracts, the 1972 Water Supply System Contract and the 1973 Water Supply System Contract and second, to the bonds issued pursuant to this contract. In the event that the capital return payments received in any year shall not be sufficient to pay that year's requirement for the principal of and interest on all bonds payable therefrom, the amount received shall be applied first to the payment of the bonds issued pursuant to the Base Contracts, the 1972 Water Supply System Contract and the 1973 Water Supply System Contract.

11. In the event that a 1988 Participant shall fail for any reason to pay to the County Agency at the times herein specified the amounts herein required to be paid, the state treasurer or other official charged with the disbursement of unrestricted state funds returnable to the defaulting 1988 Participant pursuant to the Michigan constitution hereby is authorized to withhold sufficient funds to make up any default or deficiency in funds. In addition to the foregoing, the County shall have all other rights and remedies provided by law to enforce the obligations of each 1988 Participant to make payments in the manner and at the times required by this contract. It is specifically recognized by the 1988 Participants that the payments required to be made by them pursuant to the terms of this contract are to be pledged for the payment of the principal of and interest on bonds to be issued by the County, and each 1988 Participant covenants and agrees that it will make its required payments to the County promptly and at the times herein specified, without regard as to whether the Project is actually completed or placed in operation; provided that

nothing herein contained shall limit the obligation of the County to perform in accordance with the covenants contained herein.

12. No change in the jurisdiction over territory in a 1988 Participant in any manner shall impair the obligations of this contract. In the event all or any part of the territory of a 1988 Participant 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 and right to capacity in the Project for the territory which is taken based upon a division determined by the County Agency which shall make such determination after taking into consideration all factors necessary to make the division equitable and, in addition, prior to such determination, shall receive a written recommendation as to proper division from a committee composed of one representative designated by the governing body of the 1988 Participant from which the territory is taken, one designated by the governing body of the new municipality or the municipality annexing such territory and one independent registered engineer appointed by the County Agency. The 1988 Participant and the municipality shall appoint their representatives within fifteen (15) days after being notified to do so by the County Agency and within a like time the County Agency shall appoint the engineer third member. If either the 1988 Participant or the municipality shall fail to appoint its representative within the time above provided, the County Agency may proceed without such recom-

mentation. If the committee shall not make its recommendation within forty-five (45) days after its appointment or within any extension thereof by the County Agency, the County Agency may proceed without such recommendation.

13. The County shall not be obligated to acquire or construct any facilities other than the Project. The responsibility for providing such additional water supply facilities as may be needed shall be that of the Municipalities which shall have the right to cause to be constructed and maintained, either directly or through the County, such necessary additional facilities.

14. The parties hereto 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 County Agency, shall be deemed to constitute a part of the cost of the Project and shall be paid by the 1988 Participants in the same manner as herein provided with respect to other costs of the Project. In the event of such litigation, the County Agency shall consult with the 1988 Participants and shall retain legal counsel agreeable to the County and the 1988 Participants to represent the County; provided that if the County and the 1988 Participants cannot agree as to such representation within a reasonable time, the County agency shall exercise its discretion as to the retention of such counsel. This paragraph 14 shall not apply to a lawsuit instituted by the 1988 Participants to enforce their rights under this contract.

15. All powers, duties and functions vested by this contract in the County shall be exercised and performed by the County Agency, for and on behalf of the County, unless otherwise provided by law or in this contract. The County Agency, prior to the submission of County financial information to a rating agency, shall consult with the Controller/Administrator and the County Treasurer with respect to the accuracy of such information.

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

17. The County and the Municipalities recognize that the holders from time to time of the bonds issued by the County under the provisions of Act 342, and secured by the full faith and credit pledges of the 1988 Participants 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 them that so long as any of said bonds shall remain outstanding and unpaid, the provisions of this contract shall not be subject to any alteration or revision which in any manner would affect adversely either the security of the bonds or the prompt payment of the principal of or interest on the bonds. The right to make changes in this contract, by amendment, supplemental contract or other-

wise, is nevertheless reserved insofar as the same do not have such adverse affect. The Municipalities and the County Agency further covenant and agree that they each will comply with their respective duties and obligations under the terms of this contract promptly, at the times and in the manner herein set forth, and will not suffer to be done any act which in any way would impair the security of the bonds or the prompt payment of the principal of and interest on the bonds. It is declared hereby that the terms of this contract, insofar as they pertain to the security of the bonds, shall be deemed to be for the benefit of the holders of the bonds.

18. This contract shall become effective after its execution by each party hereto and the expiration of the 45-day referendum period required for each 1988 Participant; provided, however, that if, within the 45 day period, a proper petition is filed with the Clerk of a 1988 Participant in accordance with the provisions of Section 5b of Act 342, this contract shall not become effective until approved by the vote of a majority of the electors of such 1988 Participant qualified to vote and voting thereon at a general or special election. This contract shall terminate forty (40) years from its date or on such earlier date when the Municipalities are not in default hereunder and the principal of, interest on and bond service charges with respect to the bonds issued as hereinabove described are fully paid and discharged. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing herein contained, however,

shall require the County to acquire and construct the Project if it is unable to sell bonds to finance the same. This contract may be executed in any number of counterparts.

IN WITNESS WHEREOF, the parties hereto 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 BLENDON

BY: *William H. Hinkley*
Supervisor

BY: *Paul H. Schaitman*
Township Clerk

COUNTY OF OTTAWA
By: Its Board of County Road
Commissioners as County
Agency

BY: *John T. Walcott*
Chairman

BY: *Louis Barray II*
Member

BY: *Fred A. Schuler*
Member

CHARTER TOWNSHIP OF GEORGETOWN

BY: *Edward H. Wadsworth*
Supervisor

BY: *Ed. Jacobs Toyes*
Township Clerk

CHARTER TOWNSHIP OF HOLLAND

BY: *Jack M. Jongedijk*
Supervisor

BY: *Kit Krutera*
Township Clerk

TOWNSHIP OF JAMESTOWN

BY: *Charles DeYoung*
Supervisor

BY: *Lisa Maren*
Township Clerk

TOWNSHIP OF OLIVE

BY: *Robert Mackel*
Supervisor

BY: *Bruce J. Dawson*
Township Clerk

TOWNSHIP OF PARK

BY: Stuart Plase
Supervisor

BY: W. Van Gault
Township Clerk

TOWNSHIP OF PORT SHELDON

BY: [Signature]
Supervisor

BY: [Signature]
Township Clerk

CHARTER TOWNSHIP OF ZEELAND

BY: Robert L. Stempke
Supervisor

BY: Marilyn Evinck
Township Clerk

CITY OF HUDSONVILLE

BY: [Signature]
Mayor

BY: [Signature]
City Clerk

EXHIBIT A

1988 WATER SUPPLY SYSTEM CONTRACT

ESTIMATE OF COST

Value of Original Project 6/20/86	\$20,352,321
Ottawa County Share (33%)	6,716,266
Less Current Investment	<u>3,052,848</u>
Balance Due	\$ 3,663,418

1986 Project	
Plant Pumps	\$ 2,569,478
Pipeline Phase I	18,500,000
10 MG Tank	<u>3,000,000</u>
Total	\$24,069,478
Ottawa County Share (33%)	<u>7,942,928</u>
	\$ 7,942,928

Total Additional Investment Required	\$11,606,346
Engineering (10 MG Tank)	<u>150,000</u>
Sub-Total	\$11,756,346

Legal, Financial & Administration

Bond Counsel	\$ 37,500
Financial Consultant	25,000
Local Attorney	35,000
Printing & Publishing	12,500
Rating Fees	10,000
OCRC Administration	60,000
Kent Conty Administration	67,000
Contingencies	<u>21,654</u>
Sub Total	\$268,654
	\$ 268,654
Total Estimate Cost	\$12,025,000

EXHIBIT B

1988 WATER SUPPLY SYSTEM CONTRACT

ALLOCATION OF CAPACITY OF WYOMING SYSTEM AS EXPANDED

Total capacity of Wyoming System as expanded: 80 mgd
Ottawa County capacity - 33%: 26.4 mgd

<u>Municipality</u>	<u>Capacity/mgd</u>	<u>Capacity/Percentage</u>
Township of Blendon	0.31	1.18%
Charter Twp of Georgetown	13.38	50.68%
Charter Township of Holland	6.49	24.58%
Township of Jamestown	0.50	1.89%
Township of Olive	1.59	6.02%
Township of Park	0.62	2.35%
Township of Port Sheldon	0.62	2.35%
City of Hudsonville	2.20	8.33%
Charter Township of Zeeland	<u>0.69</u>	<u>2.62%</u>
	<u>26.40</u>	<u>100.00%</u>