

COUNTY OF OTTAWA

2020 SEWAGE DISPOSAL SYSTEM IMPROVEMENTS CONTRACT

THIS CONTRACT, made as of April 1, 2020, by and among the COUNTY OF OTTAWA, a Michigan county corporation (hereinafter called the “County”) by and through its Board of County Road Commissioners, the CHARTER TOWNSHIP OF GEORGETOWN, a Michigan charter township located in the County (“Georgetown”), the CHARTER TOWNSHIP OF JAMESTOWN, a Michigan charter township located in the County (“Jamestown”), and the CITY OF HUDSONVILLE, a Michigan home rule city located in the County (“Hudsonville”) (Georgetown, Jamestown and Hudsonville are hereinafter sometimes individually referred to as a “Municipality” and collectively as the “Municipalities”);

WITNESSETH:

WHEREAS, pursuant to Act 342, Public Acts of Michigan, 1939, as amended (hereinafter sometimes referred to as “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 (hereinafter sometimes referred to as the “County Agency”) 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 sewage disposal 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, enlargement or extension of such sewage disposal system and for the payment of the cost thereof by 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, as part of the aforementioned county-wide system or systems of water and sewer improvements and services, the County has previously established a sewage disposal system designated as the Rush Creek Sanitary Sewer System (the “Rush Creek System”) to provide sewer services to the Municipalities; and

WHEREAS, the City of Grandville owns and operates a wastewater treatment plant (the “Grandville Plant”) that provides sewage treatment and disposal services for itself and other units of government, including the Municipalities which are served by the Rush Creek System; and

WHEREAS, it is necessary for the public health to acquire and construct improvements to the Grandville Plant as hereinafter described, to serve the Municipalities (the “Project”); and

WHEREAS, it is proposed that the County pay all or part of its share of the cost of the Project from the proceeds of bonds to be issued by the County pursuant to Act 342, the bonds to be secured by the obligations of the Municipalities to pay their respective shares of the principal of and interest on the bonds as hereinafter provided, and if the bond resolution so provides, by the full faith and credit of the County; and

WHEREAS, in order to provide for the acquisition and construction of the Project for the benefit of the Municipalities, to provide for the issuance of such bonds and to provide for other matters relative to the Project, 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. The County and the Municipalities hereby approve and agree to the acquisition and construction of the Project. A description of the Project is set forth on Exhibit A attached hereto.

2. The County and the Municipalities approve the estimate of the cost of the Project and the County's share of the cost of the Project as shown on Exhibit B attached hereto and by this reference 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 (the "Bonds"), in the aggregate principal amount necessary to be borrowed (presently estimated to be \$11,300,000), the Bonds to mature as authorized by law, over a period of not to exceed forty (40) years and to be secured primarily by the obligations of the Municipalities to pay the County's share of 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 steps necessary to secure the adoption of such resolutions by the Board of Commissioners and the approval by the Treasurer of the State of Michigan for the issuance and sale of the Bonds; (c) 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 Bonds, if issued, will be supported by the pledge of the full faith and credit of the County and, subject to the provisions of Section 9 hereof, will be payable primarily from moneys received by the County from the Municipalities in performance of their contractual obligations to pay the County's share of the cost of the Project.

4. The County's share of the cost of the Project shall be paid by the Municipalities and shall be defrayed by the issuance of the Bonds. The County's share of the cost of the Project and the principal of and interest on the Bonds shall be allocated among the Municipalities as follows:

<u>Municipality</u>	<u>Allocation</u>
Charter Township of Georgetown	76.84%
Charter Township of Jamestown	9.85%
City of Hudsonville	<u>13.31%</u>
	100.00%

The County's share of the cost of the Project to be paid by the Municipalities shall include all items of cost included in Exhibit B or such items of cost of a similar nature as may be set forth in any revision of Exhibit B agreed to by the parties and incurred by the County in connection with the acquisition and construction of the Project.

5. As provided in Section 4 hereof, the cost of the Project 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 issuance. In the event it shall become necessary to increase the estimated County's share of the cost of the Project for any reason, or if the actual County's share of the cost of the Project shall exceed the estimated cost, then (without execution of any further contract or amendment of this contract) additional 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.

6. Each Municipality 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 the Bonds as provided in Sections 3, 4 and 5 hereof. The Municipalities covenant and agree to pay their respective 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) that 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 that shall be due and payable at least thirty days prior to each interest payment date specified in the Bonds. Such semi-annual installments shall commence on the date that interest (other than capitalized 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 then due and payable. The County Agency, within thirty days after delivery of the Bonds to the purchaser, shall furnish the treasurer of each Municipality with a schedule of the principal of and interest on the Bonds, and the County Agency also, at least thirty days before each payment is due to be made by the Municipalities, shall advise each treasurer of the amount payable to the County on such date. If any Municipality 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 Municipality from the obligation to make payment when due. Payments shall be made by the Municipalities 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. If one or more of the Municipalities shall pay its share of the cost of the Project, or any portion thereof, prior to the issuance of the Bonds, the obligations of such Municipality shall be adjusted accordingly. Any Municipality may pay in advance of maturity all or any part of an annual 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.

8. The proceeds of sale of the Bonds shall be used solely and only to pay the County's share of the cost of the Project, and after completion of the Project 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 obligation of each Municipality in respect to the Bonds or such maturities shall be reduced by its percentage (as specified in Section 4) of 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 Municipalities and approval by the County Agency, to extend, enlarge or improve the Rush Creek System or to acquire additional sewage treatment and disposal capacity.

9. Each Municipality, 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 that, 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 Municipality 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.

10. In the event that a Municipality 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 Municipality 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 Municipality to make payments in the manner and at the times required by this contract. It is specifically recognized by the Municipalities 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 the Bonds, and each Municipality 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 herein contemplated 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.

11. No change in the jurisdiction over territory in a Municipality shall in any manner impair the obligations of this contract. In the event all or any part of the territory of a Municipality is incorporated as a new municipality 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 Grandville Plant for the territory that is taken, based upon a division determined by the County Agency that 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 Municipality 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 Municipality and the new or annexing 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 Municipality or the new or annexing municipality shall fail to appoint its representative within

the time above provided, the County Agency may proceed without such recommendation. 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.

12. The County shall not be obligated to acquire or construct any facilities other than the Project. The responsibility for providing any additional sewage disposal 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.

13. After completion, the operation and maintenance of the Project shall be in accordance with the Sewage Disposal Agreement, dated February 20, 1968, between the City of Grandville and the County, as the same has been amended through the date hereof and as may be amended from time to time thereafter.

14. The County and the Municipalities expressly agree that the County and the County Agency shall not be liable and the Municipalities shall pay, indemnify and save the County and the County Agency harmless of, from and against all liability of any nature whatever regardless of the nature in which such liability may arise, for any and all claims, actions, demands, expenses, damages and losses of every conceivable kind whatsoever (including, but not limited to, liability for injuries to or death of persons and damages to or loss of property) asserted by or on behalf of any person, firm, corporation or governmental authority arising out of, resulting from, or in any way connected with the ownership, acquisition and construction of the Project, this contract, or the issuance, sale and delivery by the County of the Bonds. In connection with any proceeding brought about by reason of any such claim or demand, the Municipalities shall also pay, indemnify and save the County and the County Agency harmless from and against all costs, reasonable attorneys' fees and disbursements of any kind or nature

incidental to or incurred in said defense, and will likewise pay all sums required to be paid by reason of said claims, demands, or any of them, in the event it is determined that there is any liability on the part of the County or the County Agency. Upon the entry of any final judgment or a final award by an arbitration panel against the County or the County Agency on any claim, action, demand, expense, damage or loss contemplated by this Section 14 and notwithstanding that the County or the County Agency has not paid the same, the Municipalities shall be obligated to pay to the County or the County Agency, as the case may be, upon written demand therefor, the amount thereof not more than sixty (60) days after such demand is made. In the event that any action or proceeding is brought against the County or the County Agency by reason of any such claims or demands, whether such claims or demands are groundless or not, the Municipalities shall, upon written notice and demand from the County or the County Agency, resist and defend such action or proceeding on behalf of the County or the County Agency, as the case may be, but will not settle any such action or proceeding without the consent of the County or the County Agency, as the case may be. Notwithstanding the foregoing, nothing contained in this Section 14 shall be construed to indemnify or release the County or the County Agency against or from any liability which it would otherwise have arising from the wrongful or negligent actions or failure to act on the part of the County's or the County Agency's employees, agents or representatives with respect to matters related to the ownership, acquisition or construction of the Project, this contract or the issuance, sale or delivery of the Bonds. The payments required to be made by the Municipalities pursuant to this Section 14 shall be in the same proportion as is required for the payment of the costs of the Project set forth in Section 4 hereof. This Section 14 shall not apply to a lawsuit instituted by any Municipality to enforce its rights under this contract.

Notwithstanding any other provisions contained in this Section 14, the County Agency's covenants, duties, obligations and responsibilities contained in that certain Agreement between the County, by and through the County Agency, and Georgetown and Hudsonville dated June 1,

1973, as amended and as may be further amended from time to time, shall remain effective and shall not become void or be superseded by the above provisions of this Section 14.

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 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 hereof, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never 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 Municipalities to the payment of their respective shares 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 covenanted and agreed by each of them that so long as any of the Bonds shall remain outstanding and unpaid, the provisions of this contract shall not be subject to any alteration or revision that would affect adversely either the security for 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 otherwise, nevertheless is reserved insofar as the same do not have such adverse affect. The Municipalities and the County Agency further covenant and agree that they 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 that would in any way impair the Bonds, the security therefor or the prompt payment of

the principal thereof and the interest thereon. It is declared that the terms of this contract, insofar as they pertain to the security of any Bonds, shall be deemed to be for the benefit of the holders of the Bonds.

18. This contract shall become effective after approval by the governing bodies of the Municipalities and the Board of Commissioners of the County, execution by the authorized officials of the parties, and the expiration of 45 days after the date of publication of the notice required by Section 5b of Act 342; provided, however, that if, within the 45-day period, a proper petition is filed with the Clerk of a Municipality 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 Municipality 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, interest and bond service charges on 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 finance the Project if it is unable to sell the Bonds to finance the same. This contract may be executed in any number of counterparts.

[Signature pages to follow]

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.

COUNTY OF OTTAWA

By: Its Board of County Road Commissioners as  
County Agency

By: \_\_\_\_\_

Chairman

And: \_\_\_\_\_

Member

And: \_\_\_\_\_

Member

CHARTER TOWNSHIP OF GEORGETOWN

By: \_\_\_\_\_

Supervisor

And: \_\_\_\_\_

Township Clerk

CHARTER TOWNSHIP OF JAMESTOWN

By: \_\_\_\_\_  
Supervisor

And: \_\_\_\_\_  
Township Clerk

CITY OF HUDSONVILLE

By: \_\_\_\_\_  
Mayor

And: \_\_\_\_\_  
City Clerk

**EXHIBIT A**  
**DESCRIPTION OF IMPROVEMENTS**

GRANDVILLE PLANT 2020 IMPROVEMENTS

The Project consists of improvements to the Grandville Clean Water Plant as described below:

- The demolition and replacement of existing facilities with the construction of new solids handling facilities and equipment.
- The installation of new waste activated sludge thickeners, equalization, storage and digestion tanks, and a new dewatering building with solids conveyance equipment.
- Improvements to the biogas system and electrical distribution.
- Construction of a new access road, related site work and other facilities, equipment and improvements to the sanitary sewer system.
- Engineering, legal, financial and other expenses incidental thereto and to the issuance of the Bonds.

**EXHIBIT B**  
**COST ESTIMATE – PROJECT**

Ottawa County has 56% of the capacity in the Grandville Plant (5.6 mgd of capacity out of 10 mgd of total capacity). The cost estimate and Ottawa County allocation are described below:

Grandville Sewer Improvements 2020

Construction Cost	\$15,855,000
Engineering Cost	\$ 2,520,000
Project Contingencies	\$ 1,350,000
Subtotal Project Cost	<u>\$19,725,000</u>
Ottawa County Allocation (56%)	\$11,046,000
Ottawa County Financing Cost	\$ <u>254,000</u>
Total Ottawa County Cost	\$11,300,000