

## Agreement Regarding Certain M-121 and Rush Creek Trunk Sewers Improvements

This Agreement Regarding Certain M-121 and Rush Creek Trunk Sewers Improvements (“Agreement”) is entered into by and among the County of Ottawa, a Michigan county corporation, acting by and through its Board of County Road Commissioners (“OCRC”), the Charter Township of Georgetown, a Michigan charter township (“Georgetown”), the Charter Township of Jamestown, a Michigan charter township (“Jamestown”), and the City of Hudsonville, a Michigan municipal corporation (“Hudsonville”) (Georgetown, Jamestown, and Hudsonville are each referred to in this Agreement as a “Local Unit”, and they are collectively referred to as the “Local Units”). This Agreement shall become effective on the date stated in section 11, below.

### Recitals

- A. Pursuant to 1939 Public Act 342, as amended (“Act 342”), the Board of Supervisors of Ottawa County (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 OCRC to be the County’s implementing agency for the purposes of Act 342.
- B. The County, acting through the OCRC, is authorized to acquire a sewage disposal system or systems within the County and to construct, improve, enlarge, extend, operate, maintain, repair, and replace the same, and the County and Local Units are authorized to enter into a contract for the construction, improvement, enlargement, operation, maintenance, repair, and replacement of such sewage disposal system and for the payment of the costs thereof by the Local Units.
- C. As part of such county-wide system or systems of water and sewer improvements and services, the County previously has established a sewage disposal system designated as the Rush Creek Sanitary Sewer System to provide sewer service to the Local Units.
- D. The Local Units have entered into a number of agreements with the OCRC related to the construction and operation of the Rush Creek Sanitary Sewer System, including the Rush Creek Sewage Disposal System Contract among the OCRC, Georgetown, and Hudsonville dated November 1, 1967; the Agreement among the OCRC, Georgetown, and Hudsonville dated June 1, 1973; the Agreement among the OCRC, Georgetown, and Hudsonville dated February 27, 1975; the Sewage Disposal System Improvements Contract among the OCRC, Georgetown, Jamestown, and Hudsonville dated April 1, 2010; the Agreement among the OCRC, Georgetown and Jamestown dated January 12, 2012; and Agreement to Replace 12<sup>th</sup> Avenue Lift Station among the OCRC, Georgetown, Jamestown, and Hudsonville last signed October 4, 2012.
- E. Georgetown and Jamestown agree that approximately 5,200 feet of gravity sewer, referred to as the M-121 trunk sewer has reached the end of its useful life and needs to be removed and replaced for reasons identified in a report by the engineering firm Prein & Newhof to the OCRC dated September 2016. The Local Units also agree that approximately 1,300 feet of the Rush Creek trunk sanitary sewer line near the Rush Creek Bridge, a component of the

Rush Creek Sanitary Sewer System, has reached the end of its useful life and needs to be removed and replaced for the reasons identified in a report by Prein & Newhof to the OCRC dated October 12, 2016 regarding Prein & Newhof's preliminary investigation of the sewer pipe conditions in that area. This construction project regarding the M-121 trunk sewer and Rush Creek trunk sewer (collectively, the "Project") is described by Prein & Newhof in a November 2016 memorandum attached here as **Exhibit A**. A map of the Project is attached here as **Exhibit B**. Detailed preliminary cost estimates for the M-121 trunk sewer and Rush Creek trunk sewer aspects of the Project are attached here as **Exhibits C and D**, respectively. The Project includes construction of a bike path over a portion of the M-121 trunk sewer in Georgetown after the new M-121 trunk sewer is installed under this Agreement.

F. The Local Units wish to have the OCRC administer the Project at the sole expense of the Local Units and without any expense to the County or the OCRC.

G. The Local Units shall be responsible for all costs of the Project and shall pay for the Project from their respective cash reserves. The Local Units shall pay for all costs of the Project according to the allocation of percentages of cost described in the attached **Exhibit E** and according to the schedule set forth in **Exhibit F**.

### **Agreement**

Now, therefore, for good and valuable consideration, including the mutual covenants set forth in this Agreement, the parties agree to the provisions set forth in this Agreement.

1. **Recitals Incorporated.** The parties hereby ratify and confirm and incorporate the above recitals into this Agreement.

2. **Removal and Replacement of Section of Trunk Sewer.** Georgetown and Jamestown agree that approximately 5,200 feet of M-121 trunk sewer from 8<sup>th</sup> Avenue to Port Sheldon Street, as shown on the map included in **Exhibit B**, should be removed and replaced with new trunk sewer components meeting the design capacities detailed in the attached **Exhibit E**. The Local Units agree that approximately 1,300 feet of the Rush Creek trunk sanitary sewer line at Chicago Drive and Port Sheldon Street, as shown on the map included in **Exhibit B**, should be removed and replaced with new trunk sewer components meeting the design capacities detailed in the attached **Exhibit E**.

3. **Costs.** Georgetown and Jamestown approve the estimate of the total cost of the M-121 trunk sewer component of the Project as detailed in **Exhibit C**. The Local Units approve the estimate of the total cost of the Rush Creek trunk sewer component of the Project as detailed in **Exhibit D**. The Local Units acknowledge that the estimate is merely an estimate and they agree to pay the full actual costs to construct the Project, including but not limited to the costs of design, engineering, legal review and document preparation, acquisition of land and/or easements, materials, construction, installation, and testing associated with the Project and including the costs of demolition, removal, or release of those parts of the current M-121 trunk sewer and Rush Creek Sanitary Sewer System that will be rendered obsolete by the new improvements. In addition, the Local Units agree to pay the OCRC's administrative fee further

described in Section 4 of this Agreement. In the event the OCRC is entitled to indemnification pursuant to Section 10 of this Agreement, the amounts payable by the Local Units to satisfy their obligation of indemnification also shall be considered part of the cost of the Project, allocated as described in the attached **Exhibit E**. The Local Units will pay for the total costs of the Project based on the allocations as described in the attached **Exhibit E** with the following caveat. The allocation between Section G (41%) and the 42-inch Section (59%) of the Rush Creek trunk sewer component of the Project is an estimate at this time. The OCRC will structure the bid so the costs for these sections are separated so the OCRC can adjust this percentage if necessary after bids are received.

4. **Implementation and Administrative Fee.** The OCRC will coordinate and implement the Project, including obtaining additional land or easement rights as necessary, bidding and contracting with engineers and contractors, and taking other steps it determines appropriate to administer and complete the Project on a timely basis. OCRC agrees to perform this work on the conditions set forth in this Agreement, including (1) the condition that the Local Units are solely responsible for the entire actual cost of the Project, allocated as described in the attached Exhibit E, (2) the condition that the Local Units shall indemnify the County and the OCRC as stated in this Agreement, allocated as described in the attached Exhibit E, and (3) the condition that the Local Units shall pay the OCRC an administrative fee according to the OCRC's then current hourly billing rate. As with all Project costs, the OCRC's administrative fee will be shared by the Local Units in accordance with the allocation of percentages referenced in Section 3 of this Agreement and stated in **Exhibit E**. The OCRC shall not be obligated to acquire or construct any facilities other than the Project. The responsibility for providing any additional improvements as may be needed shall be that of the Local Units.

5. **Payment.** The Local Units shall pay the OCRC all costs of the Project according to the allocation of percentages set forth in **Exhibit E** and per the schedule set forth in **Exhibit F**. The Local Units represent and warrant that they will be using their existing cash reserves to pay for their share of the Project and that their existing cash reserves are available and sufficient for this purpose. Under no circumstances will the OCRC or the County be responsible for any costs of the Project or to advance or provide any OCRC or County funds for the Project. The OCRC shall place the funds it receives into a Project construction fund in the name of the OCRC, with all interest earned being credited to the fund. The OCRC will provide the Local Units with a regular statement of the fund balance during the Project. In the event of any change orders, contract extras, or any other unanticipated contingencies or expenses that increase the cost of the Project above the Project budget, the OCRC will invoice each of the Local Units in accordance with the allocation of percentages set forth in **Exhibit E** of this Agreement. In that event, the OCRC, when practicable, will provide advance notice before the expenses are incurred. In any event, each Local Unit shall pay the invoiced amount within thirty (30) days after the date of the invoice. The OCRC will reimburse to the Local Units any surplus funds from the Project in accordance with the allocation of percentages set forth in **Exhibit E** of this Agreement within thirty (30) days after making all final payments in connection with the Project.

6. **Overages.** For budgeting and planning purposes, the OCRC, when practicable, will notify the Local Units of any change orders, contract extras, or any other unanticipated contingencies or expenses that increase the cost of the Project above the Project budget before

the expenses are incurred. The Local Units are solely responsible for any and all such overages in accordance with the allocation of percentages set forth in Exhibit E, whether or not the Local Units were provided advance notice. When practicable, the OCRC will notify the Local Units of change orders to allow the Local Units an opportunity to comment prior to approval by the OCRC. Approval by the OCRC of any change orders or overages shall be in the OCRC's sole discretion, which it shall exercise reasonably.

**7. Pledges to Support Payment Obligations; Remedies for Default; Attorney's Fees.**

Each Local Unit hereby pledges its full faith and credit for the prompt and timely payment of its obligations under this Agreement to the OCRC. In the event it becomes necessary in the OCRC's reasonable determination for the OCRC to initiate suit against one or more Local Unit to enforce the payment obligations under this Agreement, the OCRC shall be entitled, if successful, to reimbursement of its reasonable attorney's fees by the Local Unit or Units against whom suit was necessary. In addition to the foregoing, the OCRC shall have all other rights and remedies provided by law to enforce the obligations of each Local Unit to make payments in the manner and at the times provided in this Agreement.

**8. Owner.** The OCRC shall be the owner of the Project for the purposes of acquiring the necessary real property and entering into contracts to construct the Project. After the Project is completed, it will be considered part of the M-121 trunk sewer and Rush Creek Sanitary Sewer System and jointly owned by the parties pursuant to the allocations of percentages as detailed in the attached **Exhibit E** for all purposes. For purposes of constructing part of the Project in Georgetown, specifically, the bike path to be installed over a portion of the M-121 trunk sewer in Georgetown being replaced under this Agreement, the OCRC entered into a "Non-Motorized Path Maintenance Permit" contract (hereafter, "MDOT Contract No. 17-5043") with the Michigan Department of Transportation, at MDOT's request, regarding the maintenance, operation, and use of the bike path. A copy of MDOT Contract No. 17-5043 is attached here as **Exhibit G**. Effective upon completion of the Project, the OCRC assigns, and Georgetown accepts the assignment of, all of the OCRC's rights and obligations under MDOT Contract No. 17-5043. If for any reason this assignment is not accepted by MDOT, Georgetown shall be responsible for any costs or liabilities incurred by the OCRC arising out of or relating to Contract No. 17-5043 and shall pay, indemnify, and hold the County and the OCRC harmless from and against all liability of any nature as described in Section 10 of this Agreement and as set forth in **Exhibit E**.

**9. Insurance.** The OCRC will require the contractor to obtain workers compensation (statutory), and automotive and general liability insurance for the Project naming the OCRC and Local Units as additional insureds. A copy of the certificates of insurance shall be provided to the Local Units upon request.

**10. Indemnification; Liability.** Unless otherwise agreed by all of the Local Units, the OCRC will represent the Local Units in the event any legal action is initiated against them arising out of the Project. All costs incurred by the OCRC in such action, including but not limited to legal fees and other items under this section, will be considered Project costs and will be paid for by each of the Local Units in accordance with the allocation of percentages referenced in Section 3 and stated in **Exhibit E** of this Agreement.

The parties expressly agree that the County and the OCRC shall not be liable and the Local Units shall pay, indemnify, and hold the County and the OCRC harmless from and against all liability of any nature whatsoever for any and all claims, actions, demands, expenses, damages and losses of every kind, 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, entity, or governmental authority, arising out of, resulting from, or in any way related to the Project, and pay, indemnify and save the County and the OCRC harmless from and against all costs, attorney fees, and disbursements of any kind or nature incidental to or incurred by the County or the OCRC in relation to said claims, actions, demands, expenses, damages and losses or any of them. Indemnification of the County and the OCRC shall be made within thirty (30) days after a demand for payment by the OCRC to the Local Units, and the Local Units shall be obligated to pay to the OCRC in accordance with the allocation of percentages referenced in paragraph 3 and stated in **Exhibit E** of this Agreement. Notwithstanding the foregoing, the Local Units will not be obligated to indemnify or hold the OCRC harmless against any liability which the OCRC would otherwise have arising from intentional or grossly negligent actions or omissions on the part of the OCRC or its agents with respect to the Project.

Without limiting the breadth of the foregoing, but merely by way of example, in no event shall the County or the OCRC be liable to one or more Local Units for any loss, damage, or expense incurred by any Local Unit because of the design or construction of the Project that is the subject of this Agreement; the OCRC's obligation under this Agreement is to coordinate and implement the Project as described in Section 4 of this Agreement, and the OCRC does not guarantee or warrant the design or construction.

The Local Units have agreed to combine several construction projects into one Project for purposes of efficiency, including cost savings. One of the construction projects is the M-121 trunk sewer component of the Project as described in this Agreement; another of the construction projects is the Rush Creek trunk sewer component of the Project as also described in this Agreement. The several construction projects, including discrete sections of the construction projects (each a "Component Project") together comprise the single Project that is the subject of this Agreement as defined in Recital E. In the event there is a liability triggering the OCRC's or the County's right to indemnification under this Agreement, and if in the sole discretion of the OCRC, which discretion it will exercise reasonably, the OCRC determines that the liability arises from or relates to only one Component Project and not another, the OCRC shall allocate the indemnification allocation in accordance with the cost allocations for the Component Projects set forth in **Exhibit E**. Otherwise, the indemnification allocation shall be the general Indemnification Allocation listed in the "Cost Estimate Summary and Indemnification Allocation" table in **Exhibit E**. For purposes of illustration only, if the OCRC determines that a liability arises from or relates to only the M-121 trunk sewer component of the Project and not the Rush Creek trunk sewer component of the Project, the OCRC shall allocate the indemnification allocations 15.88% to Jamestown and 84.13% to Georgetown in accordance with the cost allocations for the M-121 trunk sewer Component Project stated in **Exhibit E**.

11. **Effective Date.** This Agreement shall become effective when executed by the parties.
12. **Changes in Jurisdiction over Territory.** No change in the jurisdiction over territory in a Local Unit shall in any manner impair the obligations of any Local Unit under this Agreement.

13. **Notices.** All notices and other documents to be served or transmitted hereunder shall be in writing addressed to the respective parties hereto at the addresses set forth below or such other address or addressee as shall be specified by the intended recipient party from time to time and may be served or transmitted in person or by ordinary mail properly addressed with sufficient postage.

OCRC  
Director of Utilities  
P.O. Box 739  
Grand Haven, Michigan 49417

City of Hudsonville  
City Manager  
3275 Central Blvd.  
Hudsonville, Michigan 49426

Georgetown Charter Township  
Township Manager  
P.O. Box 769  
Jenison, Michigan 49429-0769

Jamestown Charter Township  
Township Supervisor  
2380 Riley Street  
Jamestown, Michigan 49426  
*Hudsonville*

14. **Signing Authority.** Each individual executing this Agreement below personally warrants to the other parties that the individual, in executing this Agreement, is acting with full authority to bind to the terms of this Agreement the respective party on whose behalf he or she purports to sign, and that evidence of such authority shall be submitted upon request.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter set forth in this Agreement and there are no other representations, warranties, promises, guarantees, or agreements, oral or written, express or implied, between the parties hereto with respect to the terms of this Agreement.

16. **Amendment; Waiver.** This Agreement may not be amended, changed, modified, altered, assigned, waived, or terminated without the express written consent and agreement of all parties. A waiver by any party hereto of a breach or violation of any provision of this Agreement shall not be a waiver of any subsequent breach of the same or any other provision of this Agreement.

17. **Interpretation; Severability.** If any provision of this Agreement is held to be invalid or unenforceable in any respect, the remaining provisions shall remain in effect and shall be construed without regard to the stricken provision.

18. **Exhibits.** All exhibits attached hereto are hereby incorporated as part of this Agreement as though fully stated herein.

19. **Captions.** The captions or headings to the sections in this Agreement are for convenience only and do not limit the scope or intent of the actual text of the sections of this Agreement.

20. **Governing Law.** This Agreement shall be construed in all respects in accordance with the laws of the State of Michigan.

21. **Binding Effect; Assignment.** This Agreement shall bind and benefit the parties. This Agreement and all rights and obligations hereunder shall not be assignable unless all parties agree in writing to such assignment.

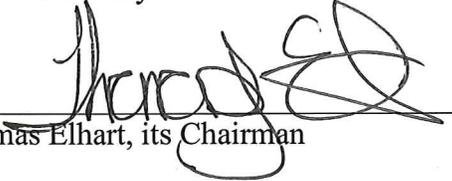
22. **Enforcement; No Third-Party Beneficiaries.** This Agreement shall be enforceable only by the parties hereto and their successors in interest by virtue of an assignment that is not prohibited under the terms of this Agreement, and no other person shall have the right to enforce any provisions contained herein. Nothing in this Agreement is intended to create any third-party beneficiary.

23. **Execution; Counterparts.** This Agreement may be executed in any number of counterparts. Signatures transmitted by facsimile transmission or otherwise electronically shall be deemed originals.

24. **Pages.** This Agreement consists of 7 pages and 24 numbered paragraphs. The signatures of the parties appear on page 7. The remainder of this page has been left blank intentionally.

To witness their agreement, the parties have executed this Agreement as of the date beneath their respective signatures.

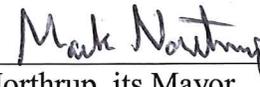
OTTAWA COUNTY, by and through its Board of County Road Commissioners

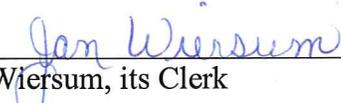
By:   
Thomas Elhart, its Chairman

By:   
Michael Mikita, its Secretary

Dated: 3-2-17

CITY OF HUDSONVILLE

By:   
Mark Northrup, its Mayor

By:   
Jan Wiersum, its Clerk

Dated: 3/16/17

GEORGETOWN CHARTER TOWNSHIP

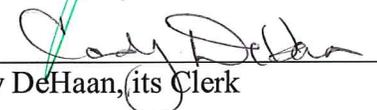
By:   
Jim Wierenga, its Supervisor

By:   
Rich VanderKlok, its Clerk

Dated: 03-08-17

JAMESTOWN CHARTER TOWNSHIP

By:   
Ken Bergwerff, its Supervisor

By:   
Candy DeHaan, its Clerk

Dated: 3/14/2017

OCRC/Georgetown Charter Township  
M121 & Rush Creek Trunk Sewers  
Project Descriptions

M-121

Remove approximately 5,200' of existing 24", 27" and 30" sanitary sewer in Chicago Drive from 8<sup>th</sup> Avenue to the Rush Creek Bridge. Replace with 36" sanitary sewer. Install one (1) Vortex flow insert at the existing forcemain discharge near 8<sup>th</sup> Avenue. Installation of the sewer will require crossing Rush Creek. Extensive bypass pumping is anticipated. See attached image of proposed project area.

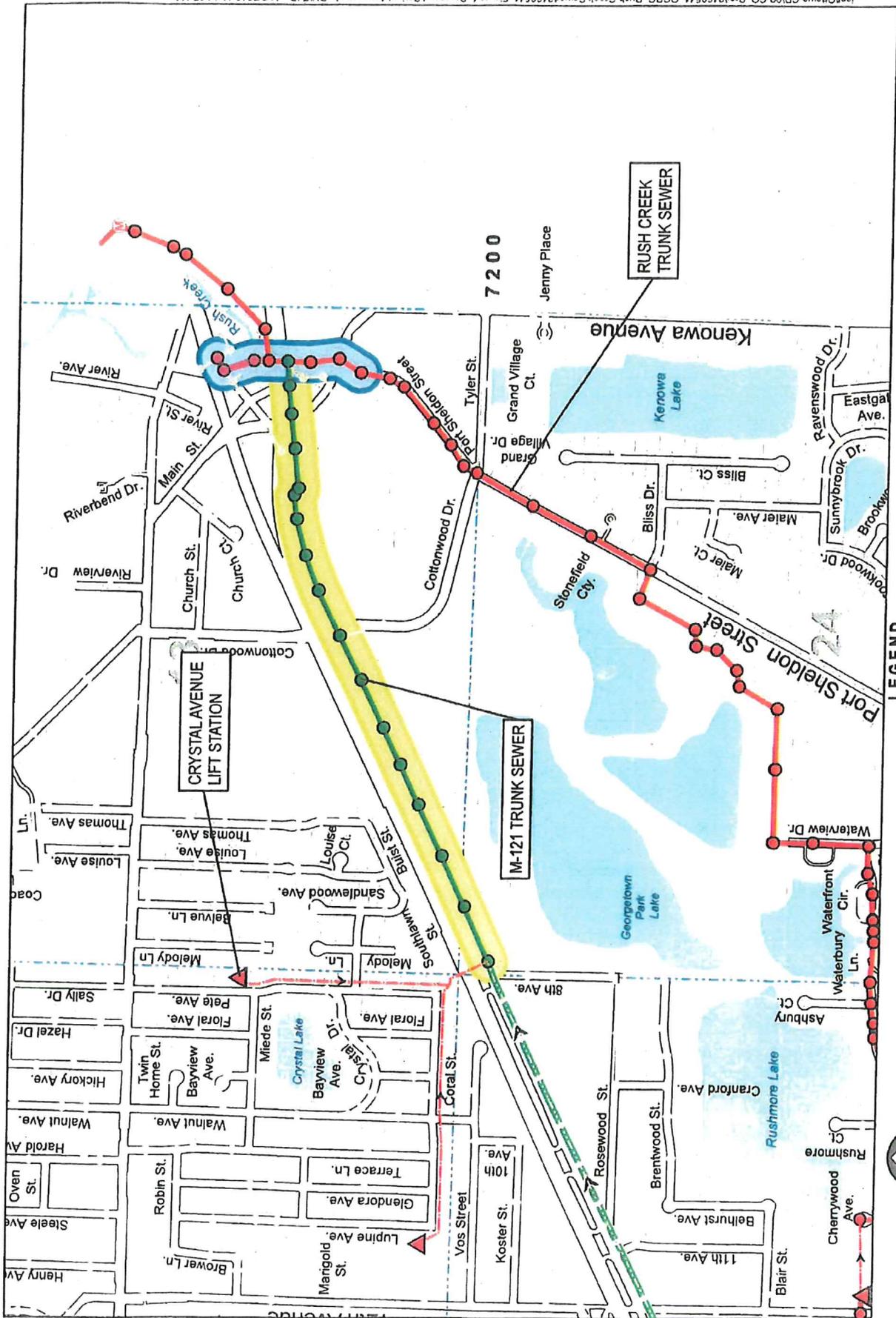
- Proposed 36" sewer will have a limiting capacity of 18.1 million gallons per day (mgd) with a minimum slope of 0.18%
- Estimated project cost is \$4.87 million. A detailed estimate has been attached.

Rush Creek

Remove and replace approximately 1,300' of sanitary sewer near the Rush Creek Bridge. Work includes installation of 650' of 30" sanitary sewer along Port Sheldon from south of Main St. north to Chicago Drive, installation of 150' of 42" sanitary sewer across Chicago Drive east of Rush Creek Bridge, and installation of 500' of 8" sanitary sewer from north of Chicago Drive north to Old M-121. Installation of the sewer will require crossing the Huizenga Drain, Chicago Drive and Rush Creek. Extensive bypass pumping is anticipated. See attached image of proposed project area.

- Proposed 30" sewer will have a limiting capacity of 6.4 mgd with a minimum slope of 0.06%
- Proposed 42" sewer will have a limiting capacity of 28.7 mgd with a minimum slope of 0.2%
- Estimated project cost is \$1.80 million. A detailed estimate has been attached.

The limiting capacity stated above is based on the preliminary design. The capacity needs and allocations are different and are described in Exhibit E.



OTTAWA COUNTY ROAD COMMISSION  
 OTTAWA COUNTY, MICHIGAN  
**PROPOSED PROJECT AREAS**  
 FIGURE 1  
 Project: Newhof  
 2160541

- LEGEND**
- Gravity Sewers
  - Hudsonville/Rush Creek Trunk Sewer
  - M-121 Trunk Sewer
  - Add'l Sewer in Project Area
  - Proposed M-121 Project Area
  - Proposed Rush Creek Project Area

SCALE: 1" = 1,000'



2/17/17

EXHIBIT C

M-121 Trunk Sewer - Cost Estimate	
Construction	\$ 4,242,518
Design Engineering	\$ 170,000
Construction Engineering	\$ 203,000
Legal	\$ 5,000
Administration	\$ 20,000
Contingencies	\$ 576,500
GRAND TOTAL	\$ 5,217,018

2/17/17

EXHIBIT D

Rush Creek Trunk Sewer - Cost Estimate	
Construction	\$ 950,476
Design Engineering	\$ 91,600
Construction Engineering	\$ 103,100
Legal	\$ 5,000
Administration	\$ 7,000
Contingencies	\$ 213,300
GRAND TOTAL	\$ 1,370,476

Cost Allocations: M-121 Trunk Sewer			
Description	Capacity	Allocation	Cost
Jamestown Township	2.54 mgd	15.88%	\$ 828,202
Georgetown Township	13.46 mgd	84.13%	\$ 4,388,816
Total M-121 Design Capacity	16.00 mgd	100.00%	\$ 5,217,018

* Preliminary Construction Cost Allocations: Rush Creek Trunk Sewer			
42" Total		51%	\$ 484,851
Section G Total		49%	\$ 465,625
Construction Total			\$ 950,476

Allocate Rush Creek Total Cost by Section			
42" Total		51%	\$ 698,943
Section G Total		49%	\$ 671,533
Grand Total			\$ 1,370,476

Section 42"			
Description	Capacity	Allocation	Cost
Hudsonville	2.26 mgd	10.81%	\$ 75,543
Jamestown Township	2.54 mgd	12.15%	\$ 84,903
Georgetown Township	16.11 mgd	77.04%	\$ 538,497
Total 42" Design Capacity	20.91 mgd	100.00%	\$ 698,943

Section G			
Description	Capacity	Allocation	Cost
Hudsonville	2.26 mgd	46.03%	\$ 309,097
Georgetown Township	2.65 mgd	53.97%	\$ 362,436
Total 30" Design Capacity	4.91 mgd	100.00%	\$ 671,533

Non-Motorized Trail			
Description	Capacity	Allocation	Cost
Georgetown Township		100.00%	\$ 248,430

Cost Estimate Summary and Indemnification Allocation		
	Indemnification Allocation	Cost
Hudsonville	5.6%	\$ 384,640
Jamestown Township	13.4%	\$ 913,104
Georgetown Township	81.0%	\$ 5,538,180
Total	100.0%	\$ 6,835,924

\* To be adjusted based on actual bid prices.

2/17/17

Project Financing Schedule

EXHIBIT F

<b>Due Date</b>	<b>Georgetown Township</b>	<b>Jamestown Township</b>	<b>Hudsonville</b>
03/01/2017	\$ 2,000,000.00	\$ 200,000.00	\$ -
04/01/2017	\$ 2,000,000.00	\$ -	\$ 200,000.00
05/01/2017	\$ 1,538,180.00	\$ 200,000.00	\$ -
06/01/2017	\$ -	\$ -	\$ -
07/01/2017	\$ -	\$ 513,104.00	\$ -
08/01/2017	\$ -	\$ -	\$ 184,640.00
<b>Total</b>	<b>\$ 5,538,180.00</b>	<b>\$ 913,104.00</b>	<b>\$ 384,640.00</b>