

APPENDIX "B"

**WATER AND/OR SEWER
DEVELOPMENT CONTRACT**

CONTRACT FACE PAGES

I. **PARTIES**

A. **DEVELOPER** (the "Developer"):

Name

Address

Type of legal entity, i.e. corporation, partnership, limited liability
Company, individual, etc.

B. **GEORGETOWN CHARTER TOWNSHIP** (the "Township")
1515 Baldwin Street, Jenison, MI 49429-0769

II. **PROJECT DESCRIPTION** (the "Project").

III. **PROJECT COMPLETION DATE** (the "Completion Date"):

IV. **IRREVOCABLE LETTER OF CREDIT**

A. Required prior to commencement of construction:

YES _____ No _____

B. Amount of letter of credit: \$ _____

V. **AGREEMENT OF THE PARTIES:**

In consideration of the mutual covenants and agreements contained in the attached Contract Terms, the parties mutually agree that the Developer will acquire and construct the Project at Developer's sole expense, that after completion of the Project ownership shall be transferred by the Developer to the Township for \$1.00, and that all aspects of the acquisition, construction, completion, and transfer of the Project to the Township shall be governed by the contract terms, a total of seven pages, attached hereto.

IN WITNESS WHEREOF, the parties have executed this Contract.

Witnesses:

DEVELOPER:

(1) _____

By: _____

(2) _____

Its: _____

By: _____

Its: _____

Dated: _____, 20__

TOWNSHIP:

(1) _____

By: _____

Its: Public Works Supervisor

(2) _____

Dated: _____, 20__

**APPENDIX B: WATER AND/OR SEWER
DEVELOPMENT CONTRACT**

CONTRACT TERMS

Section 1. **PRECONSTRUCTION MATTERS.** Before commencing construction of the Project, Developer shall accomplish all of the following:

(a) Obtain all necessary permits for the installation and construction of the Project from all state and county agencies having jurisdiction;

(b) Submit to the Township for approval detailed plans and specifications for the Project prepared by a professional engineer licensed in Michigan. Construction of the Project shall not commence unless and until the Township approves these plans and specifications in writing. Developer shall pay in cash to the Township the Township development fee then in effect. If the Township requests changes in the plans and specifications for the Project, Developer agrees to make such changes as shall be requested by the Township provided, however, the Township shall not withhold its approval of the plans and specifications unreasonably and, further, that if Township requirements with respect to the plans and specifications are in conflict with those of the state or any county agency having jurisdiction, the requirements of the state or county agency shall control. The fact the Township may require higher quality materials or better construction practices than a state or county agency shall not be deemed a conflict and the Township requirements shall control. The plans and specifications shall provide for complete restoration to original condition of all paved street surfaces and bicycle paths as well as replacement of all driveways and landscaping disturbed or damaged in the course of the construction of the Project;

(c) Submit to the Township the names of the proposed general contractor and all subcontractors who will be constructing and completing the Project on behalf of Developer. Construction of the Project shall not commence unless and until the Township has approved in writing Developer's general contractor and all subcontractors, such approval not to be withheld unreasonably. On request, Developer shall submit to the Township such information concerning Developer's proposed contractors as the Township shall reasonably request;

(d) Transfer to the Township all easements required to construct the Project. All easements shall be in such form and substance as shall be required by the Township. All easements shall be perpetual and shall be at least as wide as required by the Township but no less than twenty (20) feet in width in any event. Developer shall provide to the Township such proof of title and other title documentation as the Township shall reasonably require in order to verify that the Township is receiving good title to all easements being transferred to the Township by the Developer. The Developer shall also pay the cost of recording such easements in the office of the Ottawa County Register of Deeds.

Section 2. **PROJECT CONSTRUCTION.** Developer shall cause the Project to be constructed in accordance with the approved plans and specifications in a good and workmanlike manner and so as to meet all quality standards and tests which would apply and be conducted if the Township itself constructed and acquired the Project. During construction of the Project, the Township shall be free itself or with third party contractors to undertake such inspection of the Project as the Township shall deem appropriate. No change order shall be issued with respect to the approved plans and specifications without prior written approval of the Township, such approval not to be withheld unreasonably.

Section 3. **DEWATERING.** If the Project requires dewatering, Developer agrees that Developer alone, at Developer's sole cost, is responsible for any negative impact including, but without limitation, quantity, quality and taste, caused to the well water supply of any lands affected by Project dewatering. No Project shall be transferred to the Township, and the Township will not approve any Project or accept ownership thereof, unless and until the Township is satisfied that all negative impact to well water supplies caused by the Project have been fully and satisfactorily corrected. The Township may require written documentation from the owner of lands whose well water supply has been affected by Project dewatering that such land owner is satisfied with his/her/their well water supply if the lands have not been connected to the public water system. In the event of a disagreement between the Township and the Developer as to whether a particular well has been adversely affected by the Project, the Township engineer shall make a written determination and this determination shall be final and binding on the Township and the Developer.

Section 4. **COMPLETION OF THE PROJECT.** The Project shall be completed and made available to the Township for final inspection and approval no later than the completion date. Upon completion of the Project and after final inspection and written approval by the Township, such approval not to be withheld unreasonably, the Project shall be transferred by the Developer to the Township pursuant to the Township's standard form Warranty Bill of Sale.

The Township shall not be obligated to approve the Project or accept ownership thereof unless and until it is satisfied the Project has been constructed in accordance with the approved plans and specifications and in a good and workmanlike manner and, further, that the Project meets all quality standards and tests which would apply and be conducted if the Township itself acquired and constructed the Project. In addition, the Township shall not be obligated to approve the Project and accept ownership thereof unless and until all of the restoration has been fully completed.

Prior to approval of the Project and acceptance of ownership thereof, the Township shall receive from the Developer such waivers of lien, affidavits and other documentation as the Township shall reasonably deem necessary to be assured that all contractor(s) and all pipe and other equipment suppliers in connection with the Project have been paid in full and that there are no liens or other unpaid obligations outstanding with respect to the Project.

The Township also reserves the right to require, prior to approval of the Township and acceptance of ownership thereof, a written opinion from Developer's consulting engineer that the Project has been constructed and completed in accordance with the approved plans and specifications.

If the Contract face pages require that the Developer provide an irrevocable letter of credit prior to commencement of construction in order to guarantee completion of the Project by the Completion Date, this irrevocable letter of credit shall be issued by a bank having an office in Ottawa County in favor of the Township in the amount shown on the Contract face pages. The letter of credit to be provided shall be in such form and with such provisions as the Township shall reasonably require.

The Project shall not be connected to the Township sewer and/or water systems unless and until the Township has completed its final inspection and approved the Project in writing. If the Developer desires to connect the Project to the water and/or sewer systems in advance of this final inspection and written approval, Developer shall provide to the Township an irrevocable letter of credit issued by a bank having an office in Ottawa County in favor of the Township in such amount as the Township shall reasonably determine is necessary to pay all costs and expenses related to completing the Project. The letter of credit to be provided shall be in such form and with such provisions as the Township shall reasonably require.

If the Project is not completed by the Completion Date, the Township shall have the right to complete the Project at Developer's expense and to pay the full cost of such completion by making a draw or draws against Developer's letter of credit. Developer shall reimburse the Township for all costs incurred in completing the Project including, but without limitation, engineering, third party contractors and the charges of the Township personnel necessary to supervise the completion of the Project. To the extent the Township costs to complete the Project are not fully paid by a draw or draws on a letter of credit, Developer shall pay such amounts to the Township on demand. Amounts not paid on demand shall bear interest at a rate of 1% per month or fraction of a month that the amount remains unpaid.

Section 5. **INSURANCE.** Beginning as and when construction of the Project is commenced, and continuing at all times while the Project or any part thereof is under construction, Developer and/or its contractor(s) shall continuously carry and maintain the same insurance coverage which is routinely required by the Township with respect to the construction of its own water and sewer projects. The Township and its Township Board members, officers, agents and employees, the Township engineer and its directors, officers, agents and employees, and the Ottawa County Road Commission and its board members, officers, agents and employees, shall all be named as additional insured under such insurance, and such insurance shall also provide that it is the primary source of coverage for all such parties named as additional insureds with respect to the Project and the acts of omission of Developer and its contractor(s) related thereto.

Certificates evidencing the acquisition of all insurance required by this section and that such insurance is in full force and effect shall be deposited with the Township before construction of the Project is commenced. Developer shall furnish, or cause to be furnished, upon request of the Township, certified copies of all policies required pursuant to this section as well as all amendments and renewals. All insurance policies required pursuant to this section shall contain a provision that they are non-cancelable and not subject to material modification by the insurer except upon 30 days' prior written notice to the Township. At least 30 days prior to the expiration or cancellation of any such insurance policy, there shall be furnished to the Township evidence satisfactory to it that the policy has been renewed or replaced by another policy. Construction of the Project shall not commence unless and until the Township has approved the insurance required to be provided by Developer and its contractor(s) pursuant to this section in writing, such approval not be withheld unreasonably.

With respect to the Project, Developer agrees to indemnify the Township and its Township Board members, officers, agents and employees, as well as all of the other additional insureds named in the first paragraph of this section, from and against any and all claims, costs, actions, causes of action, losses, or expenses (including reasonable attorney's fees and other expense of defense) resulting from or caused by the acts or omissions of Developer or its contractor(s) in acquiring, construction and completing the Project.

Section 6. **CONNECTION CHARGES/RATES.** Developer shall pay all charges imposed by the Township pursuant to the applicable rate ordinance or rate resolution with respect to the Project on such terms and provision as are provided in that rate ordinance or rate resolution. The Township shall be entitled to establish such water rates and/or sewer usage rates as the Township deems appropriate. The fact the Developer has installed the Project at its expense shall not excuse Developer or any party owning or utilizing lands and premises within the development served by the Project or any part thereof from being obligated to pay water rates and sewer rates or any other charges levied by the Township generally against water and/or sanitary sewer customers.

Section 7. **TOWNSHIP UTILIZATION OF THE PROJECT.** As and when the Project has been transferred to the Township pursuant to the Bill of Sale referred to above, the Project shall become part of the Township water and/or sewer system, as the case may be, and may be utilized by the Township in such manner as the Township utilizes other portions of its water and sewer systems. Without limiting the generality of the preceding sentence, the Township may connect other water and/or sewer customers to the Project itself and may also connect water and/or sewer extensions to the Project and connect additional customers to those extensions, all without any obligation to make any payment or reimbursement to the Developer on account of the Developer having constructed the Project at Developer's expense, unless there is a written agreement to the contrary.

Section 8. **MISCELLANEOUS.** Neither this Contract nor any rights under it may be assigned nor may any duty be delegated without the prior written consent of the non-assigning or non-delegating party. Any attempt to assign or delegate rights or duties without prior written consent shall be void. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

All notices and other documents to be served and transmitted hereunder shall be in writing and addressed to the respective parties hereto at the addresses stated on the Contract face pages or such other address or addresses as shall be specified by the parties hereto from time to time and may be served or transmitted in person or by ordinary or certified mail properly addressed with sufficient postage. This is an integrated contract. It contains the full understanding of the parties and supersedes all other understandings, agreements or conditions, written or oral, regarding the subject matter of this Contract. This Contract has been executed in the State of Michigan and shall be governed by Michigan law, except as to matters pertaining to choice of law. The waiver by any party hereto of a breach or violation of any provision of this Contract shall not be a waiver of any subsequent breach of the same or any other provision of this Contract. If any section or provision of this Contract is unenforceable for any reason, the unenforceability thereof shall not impair the remainder of this Contract, which shall remain in full force and effect. It is contemplated that this Contract will be executed in multiple counterparts, all of which together shall be deemed to be one contract. The captions in this Contract are for convenience only and shall not be considered as part of this Contract or in any way to amplify or modify the terms and provisions hereof. This Contract shall be enforceable only by the parties hereto and their successors in interest by virtue of an assignment which is not prohibited under the terms of this Contract and no other person shall have the right to enforce any of the provisions contained herein. No amendment, modification or waiver shall be effective unless in writing and signed by both parties. All rights and remedies set forth in this Contract are cumulative and are in addition to any other legal or equitable rights and remedies.

[END OF CONTRACT TERMS]