

SANITARY SEWER SERVICE AGREEMENT
BETWEEN THE CITY OF GRAND RAPIDS
AND THE TOWNSHIP OF GAINES

This Agreement, made this 7th day of June, 1988, by and between THE CITY OF GRAND RAPIDS, a Michigan Municipal Corporation, located at 300 Monroe Avenue, N.W., Grand Rapids, Michigan 49503 (hereinafter referred to as "Grand Rapids"), and THE TOWNSHIP OF GAINES, a General Law Township, located at 1685 - 68th Street, S.E., P.O. Box 8876, Kentwood, Michigan, 49508 (hereinafter referred to as "Gaines").

WHEREAS, Gaines has requested sanitary sewer service from Grand Rapids on a bulk rate basis for the natural drainage basin of Plaster Creek (the "Plaster Creek Drainage Basin"), a map of which is attached to this Agreement as Exhibit A; and

WHEREAS, the Plaster Creek Drainage Basin is located primarily in Gaines, with lesser portions also located in the City of Kentwood ("Kentwood"), the Charter Township of Cascade and the Township of Caledonia; and

WHEREAS, Grand Rapids has agreed to provide the requested bulk rate sanitary sewer service for that portion of the Plaster Creek Drainage Basin located in Gaines, subject to specified terms and conditions; and

WHEREAS, this Agreement is intended to set forth the terms and conditions for the provision of bulk rate sanitary sewer service by Grand Rapids to Gaines.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

- (1) The Plaster Creek Drainage Basin is hereby designated as the Dutton Wastewater District. Grand Rapids agrees to provide sanitary sewer service to Gaines as a bulk rate customer under the terms and conditions of this Agreement for that portion of the Dutton Wastewater District that lies in Gaines, south of 60th Street and west of Patterson Avenue, a map which is attached to this Agreement as Exhibit A. Initially, sanitary sewer service in Gaines shall be limited to that portion of the Dutton Wastewater District that is located north of 76th Street and described as the Gaines Initial Service Area on the map attached to this Agreement as Exhibit A (the "Initial Service Area"). Gaines agrees to receive and utilize these services under the terms and conditions of this Agreement.
- (2) Gaines will construct, at no cost to Grand Rapids, the necessary sewer mains, laterals, and other appurtenant facilities to provide for the collection of sewage from its customers in Gaines served by this Agreement (the "Gaines System"), and arrange for the delivery thereof to the Grand Rapids Sanitary Sewer System (the "Grand Rapids System") at metering points mutually agreeable to the parties hereto, at which points the sewage shall be metered and then conducted through pipes or conduits provided by Grand Rapids to the Grand Rapids System for treatment and disposal. Initially, one metering point shall be located in the vicinity of 60th Street and Hannah Lake Avenue.

- (3) Sanitary sewer service to Gaines shall not begin until Gaines has constructed the components of the Gaines System necessary to connect to the metering point located pursuant to paragraph (2) above, or other metering points as are later mutually agreed upon. Grand Rapids agrees to extend or permit the extension of its facilities from its presently existing terminus in Kentwood over lands located in Kentwood, including without limitation Sections 26 and 35, to such metering point or points, but Grand Rapids shall not have the financial responsibility for the cost of any such extension.
- (4) Under the terms and conditions set forth in this Agreement, Grand Rapids shall use its sewage treatment and disposal facilities to treat and dispose of all sewage originating in the Initial Service Area, including those parcels outside the Initial Service Area but which abut the Initial Service Area and can be served by a single six (6) inch diameter lateral. Grand Rapids shall also treat and dispose of sewage from such other service areas outside of the Initial Service Area but within the Dutton Wastewater District after such area or areas are approved by Grand Rapids, which approval shall not be unreasonably withheld, it being understood that upon the request of Gaines said approval will be granted at such time as the Gaines Master Plan and/or zoning ordinances are revised to indicate the desirability and need for

such additional service areas. Except as otherwise provided in this Agreement Gaines will not provide any sewer service utilizing the Grand Rapids System either directly or indirectly to any place or customer outside of Gaines Township without approval by Grand Rapids.

- (5) Gaines as a bulk rate customer shall be responsible for all costs of the maintenance and repair of the Gaines System. Gaines shall also be responsible for billing and collecting rates and charges from users within Gaines Township.
- (6) Gaines as a single bulk rate customer of the System shall pay for such charges at the following rates and charges effective January 1, 1988 and commencing thereafter with the actual operation of the Gaines System:

COMMODITY CHARGE..... \$378.00/1,000,000 gal.
MONTHLY SERVICE CHARGE. \$212.00/month

These rates and charges are based upon the costs of providing service to Gaines as a bulk customer of the Grand Rapids System. Said rates and charges shall represent the proportionate share of the costs actually incurred by Grand Rapids to service Gaines and are comprised of appropriate allocated costs of operation, maintenance, replacement, depreciation and a reasonable rate of return on that part of the Grand Rapids System's investment which Gaines as a

bulk customer receives the benefit of. Such allocation of costs and rate of return shall be made in accordance with the methodology of the 1976-77 Grand Rapids Water System and Sewage Disposal System Rate Study as applied to the 1986 Water-Sewer Rate Study (the "Grand Rapids Rate Study")

Grand Rapids shall bill Gaines on a monthly or quarterly basis in arrears based upon the actual metered sewage flow from the Gaines System to the Grand Rapids System. All rates and charges billed shall be paid by the fifteenth day of the month following the month of billing. Rates and charges not paid within said period shall have an interest charge of ten (10%) percent per annum to be computed daily to the unpaid balance.

- (7) Rates and charges shall be reviewed by Grand Rapids annually using the same methodology applied in the Grand Rapids Rate Study to assure that Gaines is paying its proportionate share of the cost of the Grand Rapids System. Grand Rapids agrees to meet with representatives of Gaines during this review process to assure both input and understanding. Once the annual review has been completed, Grand Rapids shall report the results including any change in rates and charges to Gaines before they become effective. This period of review and exchange between Grand Rapids and Gaines shall not

take longer than thirty (30) days. The annual review shall be completed prior to the beginning of each calendar year so that wherever possible any change in rates and charges may become effective at the beginning of the calendar year. Any new rates or charges shall become effective upon compliance with the above procedures and approval by the Grand Rapids City Commission.

- (8) If Gaines disagrees with any new rates or charges and if that disagreement cannot be resolved between the parties, Gaines shall, within ninety (90) days of the effective date of the new rates and charges, serve a written Demand for Arbitration by Certified Mail upon Grand Rapids and the Michigan Municipal League setting forth the specific issues to be arbitrated. Within thirty (30) days thereafter, the Michigan Municipal League shall appoint a recognized utility rate consultant as arbitrator. The arbitrator shall determine the issues set forth in the Demand for Arbitration in accordance with the strict application of the methodology set forth in the Grand Rapids Rate Study, except as modified by State or Federal Law. The arbitrator's decision shall be submitted in writing to the parties and shall include a specific finding on each issue set forth in the Demand for Arbitration and shall demonstrate how each finding was determined. The arbitrator's decision shall be conclusive and binding

on the parties except that either party may avail itself of the remedy provided in Rule 3.602 of the Michigan Court Rules of 1985, as may from time to time be amended. Said arbitrator shall not live or work within the Grand Rapids System's service area or be employed by either party unless approved by both parties. Gaines shall not withhold payment of the new rates during the pendency of the disagreement but shall instead timely pay such rates and charges subject to adjustment at the conclusion of arbitration. Any adjustment resulting in the refund by Grand Rapids to Gaines of excess rates and charges paid by Gaines shall include the payment of interest at the rate of ten (10%) percent per annum accruing from the day of original payment. The arbitrator shall have the authority to award the cost of arbitration to either or both parties in the manner he determines proper.

- (9) In addition to other rates and charges, commercial and industrial users receiving service from the Grand Rapids System shall be charged a penalty if the concentration of their individual discharges exceeds a five (5) day biochemical oxygen demand (BOD) of 300 milligrams per liter (mg/l) and/or suspended solids (SS) of 350 milligrams per liter (mg/l) and/or phosphorus of forty (40) milligrams per liter (mg/l). The penalty charge shall be as established by Chapter 27 of the Grand Rapids City

Code, as amended. The present penalty charge is \$0.05 per pound of BOD and SS and \$0.38 per pound of phosphorus in excess of the prescribed limits. The penalty charge is intended to discourage discharge of effluent in excess of normally accepted concentrations. Grand Rapids shall be responsible for billing and collecting said penalty directly from commercial and industrial users. Employees of the Grand Rapids System shall have the right to monitor each commercial and industrial customer in Gaines in accordance with the rules and regulations of the Grand Rapids System in order to determine discharge concentrations.

- (10) At each point of delivery of sewer service from the Gaines System to the Grand Rapids System determined in accordance with paragraph 2 of this Agreement, a meter or related facility (or any replacement thereof as hereinafter provided) shall be installed by Grand Rapids at Gaines expense, which meter shall be of a type selected by Grand Rapids. Grand Rapids shall be responsible for all repairs and maintenance of the meter and related facilities, the cost of which shall be allocated to Gaines according to paragraphs 6 and 7 of this Agreement. In the event that any meter or related facility is not in service, or fails to measure correctly, Grand Rapids agrees to make all necessary repairs within a reasonable time. Until the meter or facility has been repaired, Grand Rapids

shall estimate the quantity of sewage received from the Gaines System with such estimates, if possible, to be based on the average use for a like number of days at the same time of the year for the immediately preceding one year period. At locations where, in the reasonable judgment of Grand Rapids, it is not economical or feasible to install a single meter to measure sewage flow from certain areas, Grand Rapids, on a temporary basis, will permit Gaines to furnish exact copies of accurate water meter readings which will be used as a basis to determine quantities of sewage, it being agreed that Grand Rapids may discontinue this practice and require installation of a master sewage meter or related facilities, if in its reasonable opinion the temporary method of determination of sewage quantity is not sufficiently accurate.

- (11) Gaines will maintain and have available at all reasonable times for Grand Rapids the following records:
- (a) Plans showing the location and size of all sewer lines and appurtenances.
 - (b) The number and sizes of all service connections.
 - (c) The number of customers served.
 - (d) Any other records and reports as may be reasonably required by Grand Rapids.
- (12) Gaines agrees to comply with the standards, specifications, rules, regulations, and requirements

for bulk customers of the Grand Rapids System as promulgated by the Grand Rapids City Commission from time to time with respect to sewage treatment and disposal.

- (13) Grand Rapids shall have the right of inspecting the Gaines System at any reasonable time upon reasonable advance notification to Gaines.
- (14) This Agreement pertains to sanitary sewage emanating from Gaines and no sewage having characteristics detrimental to the Grand Rapids System, including the treatment works, or detrimental to the effective operation of the treatment works, or detrimental to the public health or safety, or such as to require an unusually large treatment expense shall, after reasonable notice thereof is given to Gaines, be discharged into the Grand Rapids System. No storm water, roof water, or water from subsurface footing drains shall be permitted to enter the Gaines System flowing into the Grand Rapids System. Construction methods and materials used by Gaines shall be such as to minimize other sources of ground water infiltration. Gaines agrees to pay any fines or charges or cost of actions against Grand Rapids resulting from the discharge of sewage or waste emanating from the Gaines System in violation of this Agreement. Gaines agrees to pay the cost of repair of any damage to the Grand Rapids System resulting from the discharge of such wastes from the Gaines System.

- (15) (1) When the observed flow in any section of the Plaster Creek Interceptor Sewer located within the City limits of Grand Rapids with a diameter of sixty (60") inches or less (see attached Exhibit B) reaches the pipe capacity, Grand Rapids shall notify Gaines of that fact and shall promptly cause a registered professional engineer acceptable to both parties to study the sewer condition and the causes for the capacity flow. The cost of said study shall be allocated according to subparagraph 15(3) (c).
- (2) If the study reveals capacity has been reached because of unreasonable inflow and infiltration (illegally connected drains, watermain breaks, large cracks in the sewer, etc.), and not because of increased sewage volume, Grand Rapids shall correct the sources of unreasonable inflow and infiltration identified by the engineer and recover the costs from the responsible parties.
- (3) However, if the study reveals capacity has been reached because of increased sewage flow and reasonable inflow and infiltration (normal joint leakage, etc.), Gaines shall do the following:
- a) Construct within a reasonable time additional sewer(s) with sufficient capacity (as determined by the City Engineer of Grand Rapids) to properly relieve the Plaster Creek Interceptor Sewer of its capacity problems, with the costs for such additional sewer(s) to be allocated pursuant to subparagraph 15(3) (c).

- b) Pay to Grand Rapids its pro-rata share, pursuant to subparagraph 15(3)(c), of the damages for sanitary sewer back-up claims Grand Rapids is required to pay its customers pursuant either to the then current Grand Rapids City Commission Sanitary Sewer Backup Claims Policy (a copy of the current policy is attached as Exhibit C) or to judgment or settlement resulting from legal proceedings. Gaines will have the right to review proposed amendments to the foregoing Claims Policy in the same manner and following a similar procedure as the annual rate review required by the Grand Rapids Rate Study. Under this provision, Gaines would not have an obligation to make direct payments to any Grand Rapids customers.
- c) For purposes of allocation of costs pursuant to this paragraph 15, Gaines and the other customer communities who have agreed to provisions similar to those contained in this paragraph 15 shall share in such costs on a pro-rata basis as follows: Each community shall pay the percentage of total costs which equals the ratio of that community's then current volume of flow in the Plaster Creek Interceptor Sewer to the then current total volume of flow in the sewer, including the volume attributable to Grand Rapids. Grand Rapids shall not share in such

costs unless the then current volume of flow attributable to Grand Rapids exceeds the 1987 volume attributable to it (present volumes on attached Exhibit D); in such event, Grand Rapids' share shall be that percentage of total costs which equals the ratio of the incremental increase over present (1987) volumes to the then current total volume of flow.

- (4) This paragraph 15 shall be effective only at such time as an amendment containing provisions similar to this paragraph 15 has been approved and executed by Kentwood and is in full force and effect.
- (16) This Agreement, its terms, or any payments made or conditions fulfilled as required hereunder shall not vest any right, title, or interest by any party to the sewer facilities, or any part thereof, of the other party. Should it ever be construed thereof by any Court or otherwise that either party owns or co-owns any part of the sewer facilities of the other party, it is stipulated and agreed to by the parties hereto that either party may then repurchase the same for the sum of one (\$1.00) dollar.
- (17) Gaines and Grand Rapids recognize that the orderly development or urbanization within Gaines will result in more favorable sewer rates to Gaines users. It is, therefore, the intention of the two (2) parties hereto to promote and encourage such an orderly process of

development through such tools as a master plan, zoning ordinances, and sewer extension policies to minimize the cost of service to all users. It is understood that the use of such tools as master planning and zoning by either party to this Agreement is not subject to approval by the other, but will continue to reflect the current best efforts of the party involved.

- (18) Grand Rapids agrees to review with Gaines, proposed capital projects outside of Gaines which will have a significant financial effect upon Gaines. When wherever possible, this review will take place in the initial planning stage of a project.
- (19) This Agreement is effective and binding as of the date of execution, and shall continue for a term of forty (40) years. Either party may terminate this Agreement prior to the end of the forty (40) year period by giving five (5) year's advance written notice of termination to the other party.
- (20) Any request for changes or modifications to this Agreement or for extensions of service area outside the Initial Service Area or outside of Gaines in accordance with paragraph 4 of this Agreement, shall be in writing addressed to the Grand Rapids City Manager from an authorized designated official of Gaines. The Grand Rapids City Manager shall promptly review any such request and respond in writing to Gaines within a reasonable period of time.
- (21) Gaines represents and warrants to Grand Rapids that this Agreement has been duly approved by resolution

of the Gaines Township Board and that the Township officials whose signatures appear below were duly authorized by the Gaines Township Board to execute this Agreement on behalf of Gaines. Grand Rapids represents and warrants to Gaines that this Agreement has been duly approved by resolution of the Grand Rapids City Commission and that the Grand Rapids officials whose signatures appear below were duly authorized by the Grand Rapids City Commission to execute this Agreement on behalf of Grand Rapids.

- (22) Grand Rapids acknowledges that Gaines obtains sanitary sewer services by contract from the City of Wyoming for specified areas of the Township and agrees that this Agreement shall have no application to or effect on such services or contract. Grand Rapids further acknowledges and agrees that such services or contract shall have no application to or effect on this Agreement.

IN WITNESS WHEREOF, the respective parties have caused this Agreement to be executed pursuant to the authority of the respective parties.

WITNESSES:

Jane Magnum

Barbara Ellison

THE CITY OF GRAND RAPIDS, a
Michigan Municipal Corporation

BY Gerald R. Helmholdt
Gerald R. Helmholdt, Mayor

ATTEST Luzanna L. Brost, Deputy
for Sandra L. Wright,
City Clerk

APPROVED FOR MAYOR'S SIGNATURE

Stanley Bakita
Assistant City Attorney

TOWNSHIP OF GAINES

Shirley Vander Laan

BY James P. Uyl
James P. Uyl,
Township Supervisor

Carroll L. Beutel

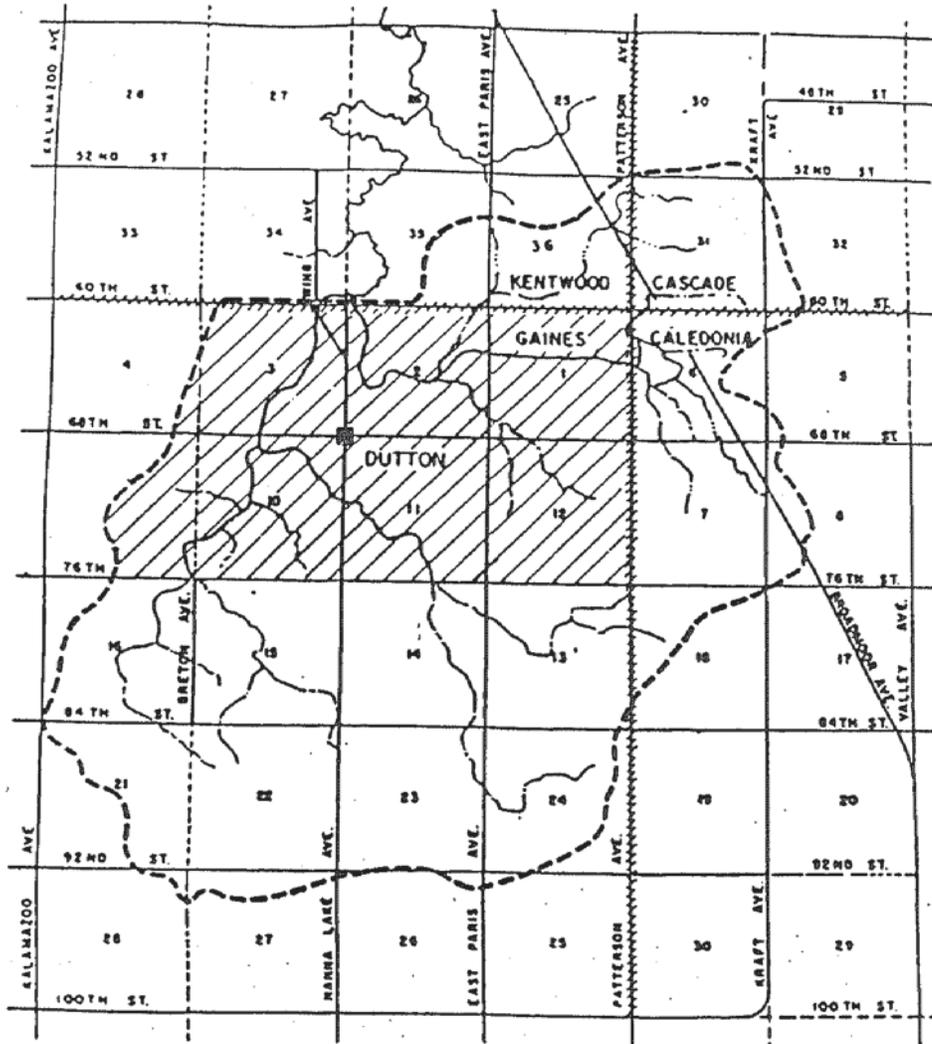
ATTEST Sidney Smit
Sidney Smit,
Township Clerk

LIST OF EXHIBITS

- A - Map of Dutton Wastewater District and Initial Service Area
- B - Map of 54" and 60" Plaster Creek Interceptor Sewer located in City of Grand Rapids
- C - Copy of City of Grand Rapids Sanitary Sewer Backup Claims Policy
- D - Plaster Creek Interceptor Sewer - Distribution of Use

EXHIBIT A

DUTTON WASTEWATER DISTRICT
GAINES TOWNSHIP
KENT COUNTY, MICHIGAN



--- BOUNDARY OF DUTTON WASTEWATER DISTRICT WITHIN THE PLASTER CREEK DRAINAGE BASIN

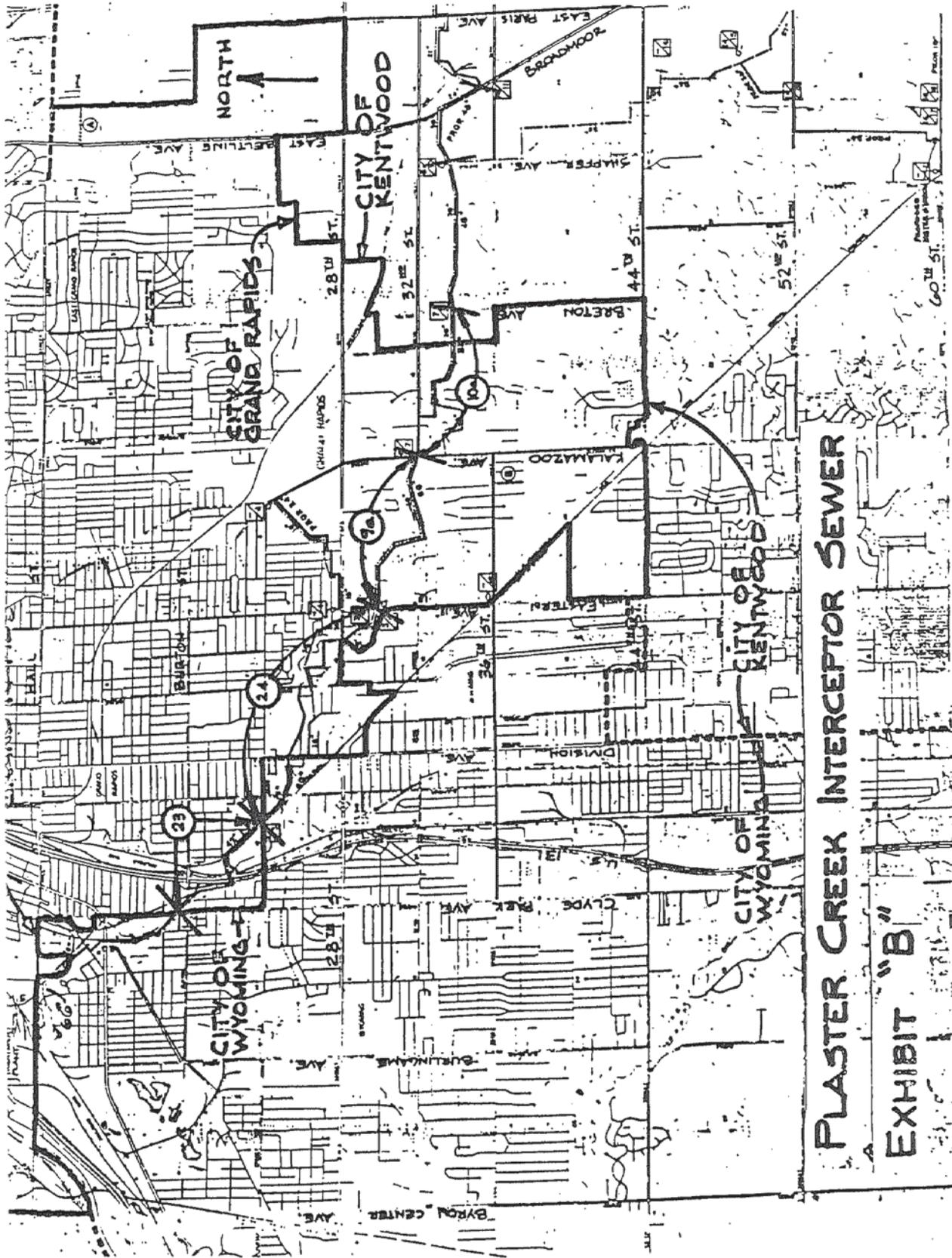
- - - - - MUNICIPAL BOUNDARIES

////// GAINES INITIAL SERVICE AREA (1987)

MARCH, 1987

MOORE & BRUGGINK
CONSULTING ENGINEERS
2000 W. HARRIS AVENUE
ANN ARBOR, MICHIGAN 48106

EXHIBIT - A



PLASTER CREEK INTERCEPTOR SEWER
EXHIBIT "B"