

10/30/89

WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF GRAND
RAPIDS AND THE COUNTY OF OTTAWA

Dated November 1, 1989

WATER SUPPLY AGREEMENT

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WATER SUPPLY AGREEMENT

THIS WATER SUPPLY AGREEMENT made and executed as of this 1st day of November, 1989 (hereinafter referred to as the "Agreement"), by and between the City of Grand Rapids, Kent County, Michigan, a Michigan municipal corporation (hereinafter referred to as the "City"), and the County of Ottawa, Michigan, organized and existing under the constitution and laws of the State of Michigan, acting by and through its Board of County Road Commissioners (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, the City owns and operates a public water supply, treatment and distribution system which supplies water to users within portions of Kent and Ottawa Counties, Michigan; and

WHEREAS, the County, pursuant to Act 342 of the Public Acts of Michigan of 1939, as amended, has designated the Board of County Road Commissioners of the County as the agency of the County responsible for establishing, maintaining and operating a County-wide system or systems of water and sewer improvements; and

WHEREAS, the City and the County entered into a Water Agreement on May 14, 1975 and a Water Purchase Contract on May 2, 1978, both of which have subsequently been amended on several occasions, and a Water Purchase Agreement dated as of October 1, 1989 (hereinafter referred to in these recitals with all amendments thereto collectively as the "Prior Agreements") under the terms of which the City agreed to sell to the County and the County agreed to purchase from the City water on a wholesale, bulk

basis to supply users within certain designated areas of the County; and

WHEREAS, the City desires to construct certain improvements to the System including a new 60-inch transmission main which will transverse the County; and

WHEREAS, the County is desirous of obtaining the right to purchase additional water from the City on a wholesale, bulk basis to supply users in the existing service area and also in an expanded service area; and

WHEREAS, the City desires to obtain the consent of the County and certain townships located within the County to the use of certain street rights-of-way in the County for the above-described improvements; and

WHEREAS, upon completion of construction of the above-described improvements, the System will have available additional water supply capacity which will enable the City to supply additional water to the County on a wholesale, bulk basis; and

WHEREAS, the City and County have determined that it is desirable that a new agreement be entered into which will replace the Prior Agreements and provide for the supply of water from the City to the County pursuant to the terms thereof.

NOW, THEREFORE, in consideration of the respective representations and agreements contained herein, the parties hereto agree as follows:

Section 1. Definitions. The following terms, wherever used in this Agreement, shall have the following meanings, unless the context shall indicate another or different meaning:

"1989 Improvements" means the following improvements to the System:

(a) Construction of a water intake and low lift pumping station at the City's existing Lake Michigan intake and low lift pumping station;

(b) Renovations and additions to the Lake Michigan filtration plant to expand plant capacity from 60,000,000 gallons per day to 135,000,000 gallons per day;

(c) Construction of the Fillmore Street Transmission Main including normal and necessary appurtenances; and

(d) Construction of an intermediate booster station and ground level reservoir, to be located within Kent County; and

(e) Modification of the Wilson Street pumping station and reservoir.

"Agreement" means this City of Grand Rapids - Ottawa County Water Supply Agreement by and between the City and the County.

"Business Day" means a day both the City and County are open to the public for business.

"City" means the City of Grand Rapids, Kent County, Michigan, a Michigan municipal corporation.

"City Commission" means the City Commission of the City, the legislative body of the City.

"City Manager" means the City Manager of the City, the chief administrative officer of the City, or his designee.

"Connection Point" means a Major Connection Point or a Minor Connection Point.

"County" means Ottawa County, Michigan, a county organized and existing under the constitution and laws of the State.

"Exclusive Service Area" means that area within the County identified as the exclusive service area on Exhibit B attached hereto, as amended from time to time.

"Fillmore Street Transmission Main" means the 60-inch water transmission main approximately 35 miles long to be located in part within the County along and within Lake Shore Drive from Lake Michigan Drive to Hiawatha Drive, Hiawatha Drive from Lakeshore Drive to Fillmore Street, Fillmore Street from Hiawatha Drive to Cottonwood Street, Cottonwood Street from Fillmore Street to Taylor Street, Taylor Street from Cottonwood Street to 10th Avenue, 10th Avenue from Taylor Street to its north termination, a public easement from the north termination of 10th Avenue to the west termination of Burton Street and Burton Street from its west termination to Kenowa Avenue and to be constructed as a part of the 1989 Improvements.

"Integrated System" means those portions of the System as identified in Exhibit A attached hereto

"M-45 Transmission Main" means the 46-inch water transmission main approximately 31 miles located in part within the County generally along and within Highway M-45 and constituting a part of the System.

"Major Connection Point" means a location along the Fillmore Street Transmission Main or the M-45 Transmission Main where the

City has supplied water to the County pursuant to this Agreement in excess of an average of 100,000 gallons per day over a calendar year period, excluding water used during a temporary water use emergency and water loss during a County distribution system malfunction.

"Minor Connection Point" means a location along the Fillmore Street Transmission Main or the M-45 Transmission Main where the City has not supplied water to the County pursuant to this Agreement in excess of an average of 100,000 gallons per day over a calendar year period, excluding water used during a temporary water use emergency and water loss during a County distribution system malfunction.

"Municipality" means any city, village or township located wholly or partially within the Service Area with which the County has an agreement now or in the future to supply water which is supplied to the County pursuant to this Agreement.

"Non-Exclusive Service Area" means that area within the County identified as the non-exclusive service area on Exhibit B attached hereto, as amended from time to time.

"Prior Agreements" means the Water Agreement between the City and County dated May 14, 1975, the Water Purchase Contract between the City and the County dated May 2, 1978, all subsequent amendments to each and the Water Purchase Contract between the City and the County dated as of October 1, 1989.

"Rate Setting Methodology" means the method of establishing rates and charges for Users of the System established and implemented through the Water Rate Study.

"Service Area" means the area within the County identified as the Exclusive Service Area and Non-Exclusive Service Area on Exhibit B attached hereto, as amended from time to time.

"State" means the State of Michigan.

"System" means the public water supply, treatment and distribution system owned and operated by the City as it now or may hereinafter exist.

"System Usage" means the composite water use of the System during a twenty-four hour day as expressed in million gallons per day.

"User" means the ultimate consumer of water supplied by the City through the System.

"Water Rate Study" means the initial 1976-77 Grand Rapids Rate Study and each subsequent annual rate study published or hereafter published by the City.

Section 2. Sale and Purchase of Water. The City and County agree that the City shall be the exclusive public water supplier within the Exclusive Service Area. The County shall have the exclusive right to supply water to Users in the Service Area and the City shall not sell water directly to any public body, User, or other party within the Service Area. Provided there is a sufficient supply of water available pursuant to this Agreement to meet demand, the County shall purchase water only from the City to supply Users within the Exclusive Service Area and shall not construct, own or operate its own public water supply and treatment system to serve Users within the Exclusive Service Area without the prior written approval of the City. Provided there is

a sufficient supply of water available pursuant to this Agreement to meet demand, the County shall prohibit the Municipalities from obtaining water from another source for use by Users within the Exclusive Service Area without prior written approval of the City. However, if the City does not supply water to the County for sale and distribution to the Municipalities and their Users in sufficient quantity to meet demand, then the preceding provisions of this Section 2 providing that the City is to be the sole public water supplier in the Exclusive Service Area shall not apply and the County and the Municipalities, acting separately and/or jointly, shall have the right to construct, own and operate their own public water supply and treatment system(s) to serve Users or to purchase water from any third-party supplier, including one or more of the Municipalities.

Pursuant to the terms and conditions of this Agreement, the City agrees to sell water supplied by the System to the County, upon request of the County, to be used by Users within the Non-Exclusive Service Area. Once a User in the Non-Exclusive Service Area connects to a County or Municipality water main that is supplied water by the System, that User plus an area adjacent to such User as identified by the County to the City as an area to be included in the Exclusive Service Area, shall become a part of the Exclusive Service Area and the provisions of the preceding paragraph of this Section 2 shall apply.

The County shall not supply and shall assure that the Municipalities do not supply water supplied pursuant to this Agreement to Users outside the Service Area, except on Service

Area boundary streets to serve buildings or structures any portions of which are located within 330 feet of the center of the boundary street.

Section 3. Delivery of Water.

(a) Designation of Connection Points. The City shall deliver potable, treated water to the County at the Connection Points. There currently exist two Major Connection Points along the M-45 Transmission Main located at approximately 42nd Avenue and 60th Avenue, respectively. During construction of the Fillmore Street Transmission Main, the City agrees to install tees and valves for future Connection Points at all reasonable locations and with such sizes as shall be specified by the County. These tees and valves may be Major or Minor Connection Points. The City also agrees that the County may use any existing chamber identified in Exhibit C attached hereto in the M-45 Transmission Main as a Major or Minor Connection Point, provided such use does not prevent said chamber from being used for its intended purpose. On request of the County, the City shall permit existing chambers not identified in Exhibit C attached hereto in the M-45 Transmission Main to be used as a Major or Minor Connection Point unless utilization of the Chamber for a Connection Point will materially jeopardize the structural integrity of the main or prevent the chamber from being used for its intended purpose. Any additional taps to the pipeline for Connection Points on the M-45 Transmission Main and the Fillmore Street Transmission Main shall be Major Connection Points and shall be approved by the City on request by the County, unless installation and utilization of an additional Major Connection

Point will materially jeopardize the structural integrity of the main. Connection Points to be located along the Fillmore Street Transmission Main at locations where hydrants exist shall be made by extending the hydrant connection pipe beyond the hydrant tee and moving the hydrant to an auxiliary pipe connected to the original hydrant connection pipe. No Minor Connection Point shall be made to the M-45 Transmission Main or the Fillmore Street Transmission Main except through utilization of a chamber on the M-45 Transmission Main or a hydrant connection pipe or tee and valve on the Fillmore Street Transmission Main. The cost of the tees and valves installed during construction of the Fillmore Street Transmission Main shall be a cost of the Integrated System. Thereafter, the costs of constructing all future Connection Points along either the Fillmore Street Transmission Main or the M-45 Transmission Main shall be borne directly by the County. Any damage caused to the System by the County or its contractor in constructing a Connection Point shall be repaired at the expense of the County.

(b) Major Connection Point Requirements. Each Major Connection Point shall be provided, at the expense of the County, with a metering station building to house a meter, control valve, rate of flow controller and telemetry instrumentation which will be used for normal operation of the Major Connection Point. The valve position indication (open or closed), the booster pump operation indication (on or off), and the flow rate indication at each Major Connection Point and the tank level of each storage tank in the Service Area supplied water pursuant to this Agreement

shall be telemetered to the Coldbrook control center and the rate of flow setpoint shall be telemetered from the Coldbrook control center at the cost of the County. Any transferring or upgrading of the existing telemetering equipment utilized with respect to the two existing Connection Points on the M-45 Transmission Main shall be at a cost of the Integrated System. The metering station building superstructure shall be above grade and shall be equipped with lighting, heating, dehumidification and drainage facilities. Each area served by a Major Connection Point shall be provided with such water storage facilities as are needed as soon as reasonably possible, the cost of which shall be borne directly by the County. For emergency operation, a local manual rate of flow setpoint shall be provided at each Major Connection Point.

(c) Minor Connection Point Requirements. A Minor Connection Point may have up to two User connections without a meter vault being required at the Minor Connection Point, provided, however, each User connection shall be separately metered and provided with pressure reducer valves and a back flow prevention device. If there are more than two User connections, a meter vault shall be constructed at the Minor Connection Point and a master meter, pressure reducer and back flow preventer shall be installed in the meter vault. One Minor Connection Point is currently under construction along the M-45 Transmission Main located approximately 800 feet West of US-31 on the north side of Lake Michigan Drive. When the water supplied through a Minor Connection Point exceeds an average of 100,000 gallons per day over a calendar year period, excluding water used during a

temporary water use emergency and water loss during a County distribution system malfunction, the Minor Connection Point shall become a Major Connection Point. The County shall have a reasonable time to meet the Major Connection Point requirements specified in subsection (b) above. The cost of installing a Minor Connection Point including meters, vaults, pressure reducers and back flow preventers, when required, and the cost of converting a Minor Connection Point to a Major Connection Point shall be borne by the County.

(d) General Provisions. No water shall be delivered to the Service Area except through a Connection Point, provided, however, water may be supplied without metering to hydrants located directly on the Fillmore Street Transmission Main in accordance with Section 16 hereof. The water delivered by the City at each Connection Point shall meet all applicable standards of the Michigan Department of Public Health or any successor regulatory agency and shall be delivered in sufficient quantities to meet the maximum withdrawal rate described in Section 5 hereof, provided, however, the City shall not be responsible for a temporary water loss or excessive pressure at a Connection Point during an emergency. In the event of a temporary water loss, the County shall valve-off any adversely affected Minor Connection Points until such time as the City can assure that water withdrawn from such Minor Connection Point meets all applicable standards of the Michigan Department of Public Health or any successor regulatory agency. The County shall be responsible for the maintenance, repair and replacement of Connection Points at its cost; however,

the City will maintain, repair and replace the telemetry instrumentation as a cost of the Integrated System. The cost of operating the telemetry instrumentation shall also be a cost of the Integrated System.

Section 4. Metering at Connection Points. All water supplied to the County at the Connection Points shall be metered. All such meters shall be (a) magnetic flow meters, (b) turbine meters, or (c) such other meters as mutually agreed to by the City and the County. The County shall be the owner of all meters and related control equipment. All meters shall be installed by the County at its expense. The City may inspect meter installations as it deems necessary at no direct cost to the County; however, the cost of such inspection may be included by the City as an Integrated System Expense. The County shall perform or cause to be performed all necessary maintenance and repair of such meters as soon as practical, which service shall be at its expense. In the event it is determined by the City in the exercise of reasonable engineering judgment that any meter or related control equipment is required to be repaired or replaced, the same shall be repaired or replaced or caused to be repaired or replaced by the County at the expense of the County.

All meter readings shall be taken by the County on the last Business Day of the calendar month, reported to the City by telephone by 4:00 p.m. on the following Business Day and confirmed in writing to be received by the City not later than 5 Business Days after the readings were taken. All meter recordings shall be open to reasonable inspection by the City. In addition, a permanent

log shall be maintained for each meter showing all meter readings that have been taken at the meter.

In the event a meter fails, until such meter has been repaired or replaced, the City shall estimate the quantity of water supplied through the Connection Point where the failed meter is located. This estimate shall be based on the average use for a like number of days at the same time of the year for the immediately preceding two-year period, or such portion thereof as water service hereunder has been provided. If such historical information is not available, the City shall, in its reasonable judgment, estimate the quantity of water supplied based on a similar period of use at the Connection Point.

Section 5. Withdrawal Rate. The City shall supply water to the County at the Connection Points as directed by the County at a rate which shall not collectively exceed 9,450 gallons per minute, provided, however, (a) this maximum rate of withdrawal may be exceeded, provided the System has a sufficient supply of water available, if the County experiences a (i) temporary water use emergency within the Service Area relating to public safety, such as a fire, or (ii) a County distribution system malfunction, and (b) this maximum rate of withdrawal may be increased as specified in Section 9 hereof. The County may not, however, exceed the maximum withdrawal rate for any single temporary water use emergency or distribution system malfunction for longer than 24 hours without the prior written approval of the City Manager, such approval not to be unreasonably withheld or delayed. The maximum withdrawal rate may also be exceeded at the reasonable discretion

of the City at such times as may be necessary to refill water reservoirs and storage tanks within the Service Area, provided such withdrawal rate does not materially adversely affect the distribution of water to other Users of the System.

Section 6. Rates. For all water supplied to the County pursuant to this Agreement, the County agrees to pay the rate established by the City from time to time by the Water Rate Study through the Rate Setting Methodology. Such rate shall be determined annually pursuant to the Water Rate Study and shall represent the County's proportionate share of the costs of the Integrated System as determined by application of the Rate Setting Methodology in the most recent annual Water Rate Study and shall never exceed the Integrated System rate component for Users within the City before taking into consideration integrated connection fees applicable to City Users. Such water rate shall be computed and expressed as a commodity charge per one hundred cubic feet or per million gallons only without any connection or other non-volume related charges. The City agrees that it will not add to the Integrated System rate component costs which are not reasonably a part of the Integrated System. At the beginning of the calendar year immediately following the date of completion of construction of the Fillmore Street Transmission Main, there shall be deleted from the Integrated System, for the purposes of determining the rate to be paid by the County, all costs of the Coldbrook pumping station except those costs related to Integrated System control.

The City agrees to meet with the County during the annual review of rates to assure both input and understanding by the County. Once the annual review has been completed, the City shall report the results, including any changes in rates and charges, to the County. The County shall then have an opportunity to review such rates with the City before they become effective. This period of review and exchange between the City and County shall not take longer than 30 days. The City shall make available to the County upon request all records and other documents used to establish such rates.

The annual review of rates shall be completed prior to the beginning of each calendar year so that whenever possible any change in rates and charges may become effective at the beginning of the calendar year. Any new rate shall be effective upon compliance with all of the above procedures.

If the County disagrees with any new rate and if that disagreement cannot be resolved between the parties, the County shall have the right, within 90 days of the effective date of the new rate, to serve a written demand for arbitration upon the City, setting forth the specific issues to be arbitrated. Within 30 days thereafter, the City and County shall mutually agree on a recognized utility rate consultant as arbitrator. The arbitrator shall determine the issues set forth in the demand for arbitration in accordance with this Agreement. The procedures to be followed for the arbitration shall be in accordance with the then current commercial arbitration rules of the American Arbitration Association. 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 Michigan Court Rule 3.602, as it may be amended from time to time. Said arbitrator shall not live or work within any area serviced by the System or be employed by either party unless approved by both parties. The County shall not withhold payment of the new rate during the pendency of the disagreement, but shall instead timely pay such rate subject to adjustment at the conclusion of arbitration. Any adjustment by the County to the City or the City to the County required as a result of the arbitration shall include the payment of interest at the rate of 10% per annum computed from the date payment is received by the City from the County. The arbitrator's fee and his travel and other expenses shall be shared equally by the City and the County. The arbitration shall be held at a mutually agreed upon location within the boundaries of the City or the County and shall be held within 90 days after the arbitrator has been selected.

Section 7. Billing for Rates. The City will bill the County for water supplied pursuant to this Agreement monthly at the end of each calendar month during the term hereof. Invoices shall be delivered pursuant to Section 26 hereof. Such amounts shall be paid within 30 days of the date of delivery or mailing and all amounts not paid on or before such due date shall carry a service charge equal to 10% per annum to be computed daily on all unpaid

amounts currently due and payable beginning with the date the bill first became delinquent.

Section 8. Expansion of Service Area. Upon request of the County, the City agrees from time to time to discuss expansions of the Service Area, provided, the City is only required to undertake such discussions if the County has not exceeded on any given day 90% of the maximum withdrawal rate set forth in Section 5 hereof as it may be amended as provided in Section 9 hereof (except when authorized for a temporary water use emergency or County distribution system malfunction or to refill water reservoirs and storage tanks) and System Usage has not, except when there is a temporary water use emergency or System malfunction, exceeded on any given day 90% of its maximum daily design capacity. If these conditions are met, the City agrees to enter into good faith negotiations with the County to expand the Service Area.

Section 9. Increase in Withdrawal Rate. If the County withdrawal rate has reached on any given day 90% of the maximum withdrawal rate set forth in Section 5 hereof, and System Usage has not exceeded on any given day 90% of the maximum daily design capacity, the maximum withdrawal rate specified in Section 5 hereof shall be increased to an amount equal to 10% of the then unused capacity of the System. In determining System Usage pursuant to the preceding sentence, water usage during a temporary water use emergency, County distribution system malfunction or System malfunction shall not be considered. The right of the County to have the maximum withdrawal rate increased as provided

above may be executed by the County one or more times but not more often than once each year.

Section 10. Expansion of System. At such time as System Usage has on any given day reached 90% of its maximum daily design capacity, except when there is a temporary water use emergency or System malfunction, the City and County, as an Integrated System cost, will jointly prepare a reliability study in the form and as often as required by the Michigan Department of Public Health or its successor regulatory agency. When a reliability study concludes that expansion of the System is warranted, the City will utilize its best efforts to expand the System, as soon as reasonably possible, as necessary to meet the needs of the County, its Users and potential Users within the Service Area.

Section 11. County and City Responsibility for Water Service. In order to supply water to Users within the Service Area, the County shall be responsible, at its cost and/or the cost of the Municipalities, for constructing or causing the construction of all necessary transmission mains, pumping stations and local distribution lines, as well as all costs for distribution, maintenance and collection of rates from Users within the Service Area. The County and/or Municipalities shall further be responsible for the maintenance of water quality and purity at all points at and beyond the Connection Points. The County agrees, at its expense, to defend, indemnify and hold harmless the City, its commission, officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting

from impure or substandard water emanating at or beyond the Connection Points, provided that if such impure or substandard water is caused in whole or in part by the acts or omissions of any of the indemnified parties, then the County's indemnification obligation shall be reduced in proportion to the indemnified party's percentage of responsibility for such impure or substandard water. In addition, the County agrees, at its expense, to defend, indemnify and hold harmless the City, its commission, officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from the lack of water quantity, pressure and/or discontinuance of water service at or beyond the Connection Points, but only if such lack of water quantity or pressure and/or discontinuance of water service is not caused in whole or in part by the acts or omissions of any indemnified party in operating the System or by reason of force majeure. The indemnification obligations provided above shall include the payment of reasonable attorneys' fees and other expenses of defense. The County shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the County is not waiving any defenses otherwise available to it by law.

The City agrees, at its expense, to defend, indemnify and hold harmless the County, the Board of County Road Commissioners, the Municipalities and their respective boards, officers, employees and agents from and against any and all claims, damages,

demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from impure or substandard water emanating from the System before the Connection Points or from any other wholesale City water customer provided, that if such impure or substandard water is caused in whole or in part by the acts or omissions of any of the indemnified parties, then the City's indemnification obligation shall be reduced in proportion to the indemnified party's percentage of responsibility for such impure or substandard water. In addition, the City agrees, at its expense, to defend, indemnify and hold harmless the County, the Board of County Road Commissioners, the Municipalities and their respective boards, officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from the lack of water quantity, pressure and/or discontinuance of water service before the Connection Points, but only if such lack of water quantity, pressure and/or discontinuance of water service before the Connection Points is not caused in whole or in part by the acts or omissions of any indemnified party or by reason of force majeure. The indemnification obligations provided above shall include the payment of reasonable attorneys' fees and other expenses of defense. The City shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the City is not waiving any defenses otherwise available to it by law.

Section 12. Protection Against Abnormal Operations. The County shall use its best efforts to protect or cause the protection of the System from unnecessary surges, excessive withdrawal rates, backflow of water or anything else detrimental to the System which is under the control of the County or the Municipalities.

Section 13. Prevention of Mixing and Mingling of Water. The County shall not, without the prior written approval of the City, such approval not to be unreasonably withheld or delayed, permit water supplied by the City to be mixed or mingled with water from any other source. The County or the Municipalities may, however, without obtaining the consent specified in the first sentence of this Section 13, use or cause the use of any wells owned by the County or any of the Municipalities and in existence and serving Users of a portion of the Service Area prior to the time such Users began receiving water from the System, to supply Users in the Service Area, if the City does not supply water to such Users in sufficient quantity to meet demand for any reason, including, without limitation, failure or malfunction of the System, lack of pressure, or lack of adequate withdrawal rate pursuant to Section 5 hereof. To ensure a continuing quality of water from such wells, the County and the Municipalities are authorized to operate or cause the operation of such wells as often as necessary for such minimum period as shall be necessary to maintain such wells in usable condition. By mutual agreement between the parties, the County may operate or cause the operation of such wells in circumstances other than specified above.

The County shall guard and shall cause the Municipalities to guard carefully against all forms of contamination and, should contamination occur at any time, the County and Municipalities affected shall take all reasonable measures necessary to abate the condition. The County shall promptly inform the City of any contamination problem and the measures being taken to correct the problem and shall promptly take with the Municipalities affected such measures as are reasonably necessary to correct the problem.

The City shall guard and shall cause its other wholesale water customers to guard carefully against all forms of contamination and, should contamination occur at any time, the City and its other wholesale water customers affected shall take all reasonable measures necessary to abate the condition. The City shall promptly inform the County of any contamination problem and the measures being taken to correct the problem and shall promptly take with its other wholesale customers affected such measures as are reasonably necessary to correct the problem.

Section 14. Secondary Source of Water. The City shall as a part of the 1989 Improvements modify the Wilson Avenue pumping station and reservoir to provide an emergency water supply to the M-45 Transmission Main. These modifications of the Wilson Avenue pumping station and reservoir shall be completed as early as reasonably possible in the construction of the 1989 Improvements. If the County shall be required by the Michigan Department of Public Health or its successor regulatory agency to provide other secondary sources of water, the provision and utilization of such

secondary sources shall not be a violation of any term or provision of this Agreement.

Section 15. Emergency Discontinuance and Restriction of Water Use. The City shall make every reasonable effort to provide a continuous steady supply of water at each Connection Point, but reserves the right to discontinue temporarily the supply of water at any Connection Point (i) without notice in times of emergency or (ii) whenever it shall, upon its own determination and after not less than 48 hours' notice to the County, find it necessary for purposes of testing, repairing or replacing the System. In the event the supply of water is discontinued temporarily, the supply of water that is available shall be pro rated to the County in proportion to its usage during the last calendar year to the total System Usage during the same period. In the event of such discontinuance, the County agrees that it shall not hold the City responsible for any damages or injuries which may result to the County because of such temporary discontinuance. The County waives and shall require the Municipalities to waive any and all claims for damages resulting from such discontinuance of service. The County agrees, at its expense, to defend, indemnify and hold harmless the City, its commission, officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from such discontinuance of service, but only if such discontinuance of service is not caused in whole or in part by the negligence of the City. The indemnification obligations provided above shall include the payment of reasonable

attorneys' fees and other expenses of defense. The County shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the County is not waiving any defenses otherwise available to it by law.

Upon notification by the City, the County shall, within a reasonable time after such notification, comply and cause the Municipalities and Users in the Service Area to comply with any water sprinkling ban or other restrictions on the use of water which shall be deemed necessary by the City and which shall apply equally to Users within the City and Users within the City's other customer communities. The County waives and shall require the Municipalities to waive, any and all claims for damages resulting from such control or restriction. The County agrees, at its expense, to defend, indemnify and hold harmless the City, its commission, officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from such control or restriction, but only if such control or restriction is not caused in whole or in part by the negligence of the City. The indemnification obligations provided above shall include the payment of reasonable attorneys' fees and other expenses of defense. The County shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the County is not waiving any defenses otherwise available to it by law.

Section 16. Hydrants. The City shall install hydrants along the Fillmore Street Transmission Main as a part of the 1989 Improvements at mutually agreeable locations which are accessible for use for fire protection. Such hydrants shall not, however, be a part of the Integrated System. The City shall be responsible for the maintenance, repair and replacement of such hydrants and the County shall pay the City a fee equal to the monthly service charge for an 8-inch fire connection in the City as established from time to time by the Water Rate Study. The City will bill the County for these charges annually at the end of the calendar year. Invoices shall be delivered pursuant to Section 26 hereof. Such charges shall be paid within 30 days of the date of delivery or mailing and all amounts not paid on or before such date shall carry a service charge of 10% per annum to be computed daily on all unpaid amounts currently due and payable beginning from the date the bill first became delinquent. These hydrants may only be used for fire protection unless prior written permission is obtained from the City Manager, such permission not to be unreasonably withheld or delayed.

Section 17. Title to the System. Ownership of the System shall vest with the City and this Agreement, its terms or any payments made or conditions fulfilled as required hereunder shall not vest any right, title or interest in the System to the County.

Section 18. County Consent, Warranty Bond, Insurance. The County, as part of the consideration for this Agreement, grants its consent to the City, without cost (except for customary rights-of-way permit fees, including engineering and inspection,

established in accordance with County policies and procedures), for the construction, operation, maintenance, repair, reconstruction, inspection, replacement, improvement and removal of pipelines and related appurtenances for the Fillmore Street Transmission Main under and in those portions of the streets and public easements specified in the definition of the Fillmore Street Transmission Main contained in Section 1 hereof. This consent shall not apply to any enlargement of such pipelines or any further extension of the System. This consent shall not, in any way, limit the rights of the County to specify right-of-way location, pipe depth, and other particulars relating to the construction of the Fillmore Street Transmission Main. The County will assist and cooperate with the City in obtaining the required consents from those townships within which the Fillmore Street Transmission Main is located.

In connection with the construction of the 1989 Improvements, a warranty bond, satisfactory in content and form to the County and its attorneys, shall be provided for the restoration for two years of all streets utilized by the 1989 Improvements and for one year for all side streets affected by the 1989 Improvements. The City shall restore all existing structures and/or improvements, excluding trees and shrubs, lying in the street right-of-way to as good condition as before construction of the 1989 Improvements took place. The parties shall cooperate one with the other in resolving any conflicts that may arise concerning the installation of the 1989 Improvements.

The City shall acquire or cause to be acquired insurance in connection with the acquisition, construction and completion of the portion of the 1989 Improvements located in the County in accordance with the "City of Grand Rapids Wrap Up Plan Insurance Specifications - Non Marine," "City of Grand Rapids Wrap Up Plan Insurance Specifications - Marine Contractor," and "City of Grand Rapids Wrap Up Plan Insurance Specifications - Pipe, Valve and Pump Suppliers" attached hereto as Exhibit D. Proof of the maintenance of this insurance shall be provided by the City to the County when requested by the County. The City agrees, at its expense, to defend, indemnify and hold harmless the County, the Board of County Road Commissioners and all townships in the County within which the 1989 Improvements are or will be located and their respective officers, boards, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from the construction, operation, maintenance, repair, reconstruction, inspection and replacement of the pipeline, pumping station and other related facilities which are a part of the 1989 Improvements, provided that if such claim, damage, demand, expense, liability or loss is caused in whole or in part by the acts or omissions of any of the indemnified parties, then the City's indemnification obligation shall be reduced in proportion to the indemnified party's percentage of responsibility for the claim, damage, demand, expense, liability or loss. The indemnification obligations provided above shall include the payment of all reasonable attorneys' fees and other expenses of defense. The City shall have the option to settle

any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the City is not waiving any defenses otherwise available to it by law; provided such defenses are also available to and asserted by the City for the benefit of the County, the Board of County Road Commissioners and all townships in the County within which the 1989 Improvements are or will be located and their respective officers, boards, employees and agents. The City shall not be responsible for the indemnification obligations set forth above with respect to any indemnified party to the extent that that indemnified party has waived a defense that was otherwise available to it by law. The pipelines, pumping stations and other related facilities which are a part of the 1989 Improvements shall remain the property of the City and shall remain within the exclusive control of the City.

Notwithstanding any other term or provision of this Agreement to the contrary, the consent granted by the County pursuant to this Section 18 for the use of streets, roads, highways, alleys and public places under the County's jurisdiction for the 1989 Improvements, and the similar consent to be granted by the townships in which the 1989 Improvements will be located, shall only be effective as long as this Agreement has not expired on account of the refusal of the City to agree to a renewal of this Agreement on the same terms and provisions or other mutually agreeable terms and provisions. If this Agreement expires on account of the City's refusal to renew it on the same terms and provisions or other mutually agreeable terms and provisions, then the consent granted pursuant to this Section 18 by the County, and

the consent which this Section 18 contemplates will be given by the townships within which the 1989 Improvements will be located, shall automatically cease and terminate.

Section 19. Term. This Agreement shall be effective for an initial term of 40 years commencing from the date set forth in the first paragraph of this Agreement. However, the term of this Agreement may be extended on the same terms and provisions or other mutually agreeable terms and provisions by one or more renewals.

Despite the limitation of the initial term of this Agreement to 40 years, it is the intention of the parties that this Agreement continue as long as the System is operational. However the City is limited by its charter to a term of no longer than 40 years.

If this Agreement expires because of the refusal of the City to agree to a renewal on the same terms and provisions or other mutually agreeable terms and provisions, then notwithstanding any other term or provision of this Agreement to the contrary, the parties agree that the consent for right-of-way use granted by the County in Section 18 hereof shall, as is provided therein, expire automatically as of the expiration of this Agreement. Likewise, any township consent for right-of-way use contemplated by Section 18 hereof shall also expire automatically as of the expiration of this Agreement. The City shall render the Fillmore Street Transmission Main inoperative on the date such consents expire.

Section 20. Effective Date - Termination of Prior Agreements. This Agreement shall become effective and the Prior Agreements

shall terminate only at such time as the City shall have received from the County and the townships within which the Fillmore Street Transmission Main is located the necessary consents pursuant to Section 18 hereof to construct, operate, maintain, repair, reconstruct, inspect, replace, improve and remove the Fillmore Street Transmission Main and related appurtenances.

Further, provisions of this Agreement which require the completion of construction of the 1989 Improvements to be operative including specifically applicability of the Service Area in Section 2 hereof and the maximum withdrawal rate in Section 5 hereof shall not become effective until construction of the 1989 Improvements is completed. Until such time, the applicable provisions of the Prior Agreements shall continue to apply. Upon obtaining the necessary consents as herein provided and completion of construction of the 1989 Improvements, the provisions of the Prior Agreements shall terminate and shall be of no further force and effect.

Section 21. Applicable Rules and Regulations. This Agreement is subject to such rules and regulations of the State or of the United States of America as may be applicable. The City and the County agree to cooperate and collaborate in obtaining any required permits, certificates, approvals or the like as may be required to give effect to the provisions of this Agreement.

Section 22. Indemnification by City. The City agrees, at its expense, to defend, indemnify and hold harmless the County, the Board of County Road Commissioners, the Municipalities and their respective boards, officers, employees and agents from and

against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from injury or damage to persons or property with respect to ownership and operation of the System provided, that if such injury or damage is caused in whole or in part by the acts or omissions of any of the indemnified parties, then the City's indemnification obligation shall be reduced in proportion to the indemnified party's percentage of responsibility for such injury or damage. The indemnification obligations provided above shall include the payment of all reasonable attorneys fees and other expenses of defense. The City shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the City is not waiving any defenses otherwise available to it by law; provided such defenses are also available to and asserted by the City for the benefit of the County, the Board of County Road Commissioners, the Municipalities and their respective boards, officers, employees and agents. The City shall not be responsible for the indemnification obligations set forth above with respect to any indemnified party to the extent that that indemnified party has waived a defense that was otherwise available to it by law.

Section 23. Indemnification by County. The County agrees, at its expense, to defend, indemnify and hold harmless the City, its commission, officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or

resulting from injury or damage to persons or property arising from owning and operating water mains, pumping stations, water distribution lines, hydrants and related appurtenances at and beyond the Connection Points provided, that if such injury or damage is caused in whole or in part by the acts or omissions of any of the indemnified parties, then the County's indemnification obligation shall be reduced in proportion to the indemnified party's percentage of responsibility for such injury or damage. The indemnification obligation provided above shall include the payment of reasonable attorneys fees and other expenses of defense. The County shall have the option to settle any such claim, demand or liability on such terms as it shall determine. In providing the indemnification set forth above, the County is not waiving any defenses otherwise available to it by law; provided such defenses are also available to and asserted by the County for the benefit of the City, its commission, officers, employees and agents. The County shall not be responsible for the indemnification obligations set forth above with respect to any indemnified party to the extent that that indemnified party has waived a defense that was otherwise available to it by law.

Section 24. Availability of Records. The County shall maintain and shall provide the City annually, with respect to water service provided pursuant to this Agreement, the following information:

- (a) Exclusive Service Area map updates;
- (b) The number of Users served in the Service Area;

- (c) Maps of the County and/or Municipalities distribution systems;
- (d) Water reliability studies;
- (e) Water usage summaries.

Section 25. Review of Capital Improvement Projects. The City agrees to review with the County proposed capital improvement projects of the System which will have a significant effect upon the Users within the Service Area. This review shall take place in the initial planning stages of such capital improvement projects.

Section 26. Inspection. If the County or any other unit of government in the County shall undertake construction work which may affect the System, and if the City shall elect to inspect such construction work, the cost of such inspection shall not be charged to the County or other unit of government but may be included by the City as an Integrated System Expense.

Section 27. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when dispatched by regular, registered or certified mail, postage prepaid, or by hand delivery or by telegram confirmed the same day by regular, registered or certified mail, postage prepaid, addressed as follows:

If to the City:

City of Grand Rapids
City Hall
300 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503
Attention: City Manager

With a Copy to:

City of Grand Rapids
1101 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503
Attention: Director of Utilities

If to the County:

County of Ottawa
Board of County Road Commissioners
U.S. 31 at Rosy Mound Drive
Grand Haven, Michigan 49417
Attention: Director of Public Utilities

The parties hereto may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications may be sent.

Section 28. Governing Law. This Agreement shall be construed in all respects in accordance with the laws of the State.

Section 29. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 30. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto.

Section 31. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 32. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or

describe the scope or intent of any provisions or sections of this Agreement.

Section 33. Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, between the parties hereto with respect to this Agreement.

Section 34. Amendments. This Agreement may not be amended, changed, modified, altered, assigned or terminated without the written consent of the City and the County.

Section 35. Exhibits. All exhibits attached hereto are hereby incorporated as though fully stated herein.

Section 36. Assignment. This Agreement and all rights and obligations hereunder shall not be assignable unless both parties agree in writing to such assignment.

Section 37. Waiver. The 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.

Section 38. Parties. This Agreement 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 Agreement and no other person shall have the right to enforce any provisions contained herein.

IN WITNESS WHEREOF, the City and County have caused these presents to be signed by their respective duly authorized officers all as of the day and year first written above.

CITY OF GRAND RAPIDS
"City"

By: Gerald R. Helmholdt
Gerald R. Helmholdt, Mayor

Attest:

Sandra L. Wright
Sandra L. Wright, City Clerk

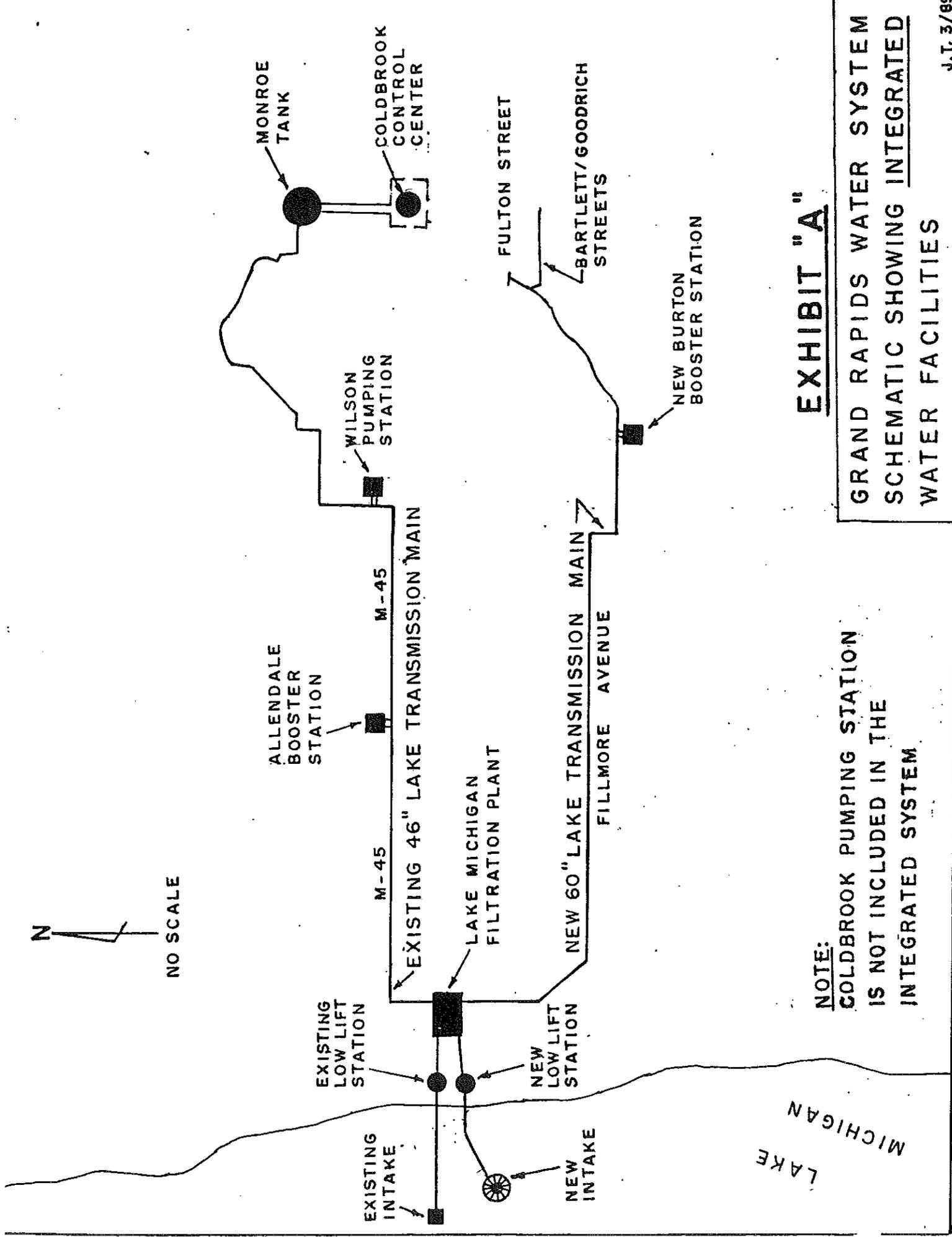
COUNTY OF OTTAWA BY ITS BOARD OF
COUNTY ROAD COMMISSIONERS
"County"

By: John R. Walkout
Chairperson

By: Frederick W. Shallick
Member

By: E. Jay DuRue
Member

AFFIX
Mayor's Signature
S. Bakita 2/9/90
Dept. of Law



NO SCALE

EXHIBIT "A"

**GRAND RAPIDS WATER SYSTEM
SCHEMATIC SHOWING INTEGRATED
WATER FACILITIES**

**NOTE:
COLDBROOK PUMPING STATION
IS NOT INCLUDED IN THE
INTEGRATED SYSTEM**

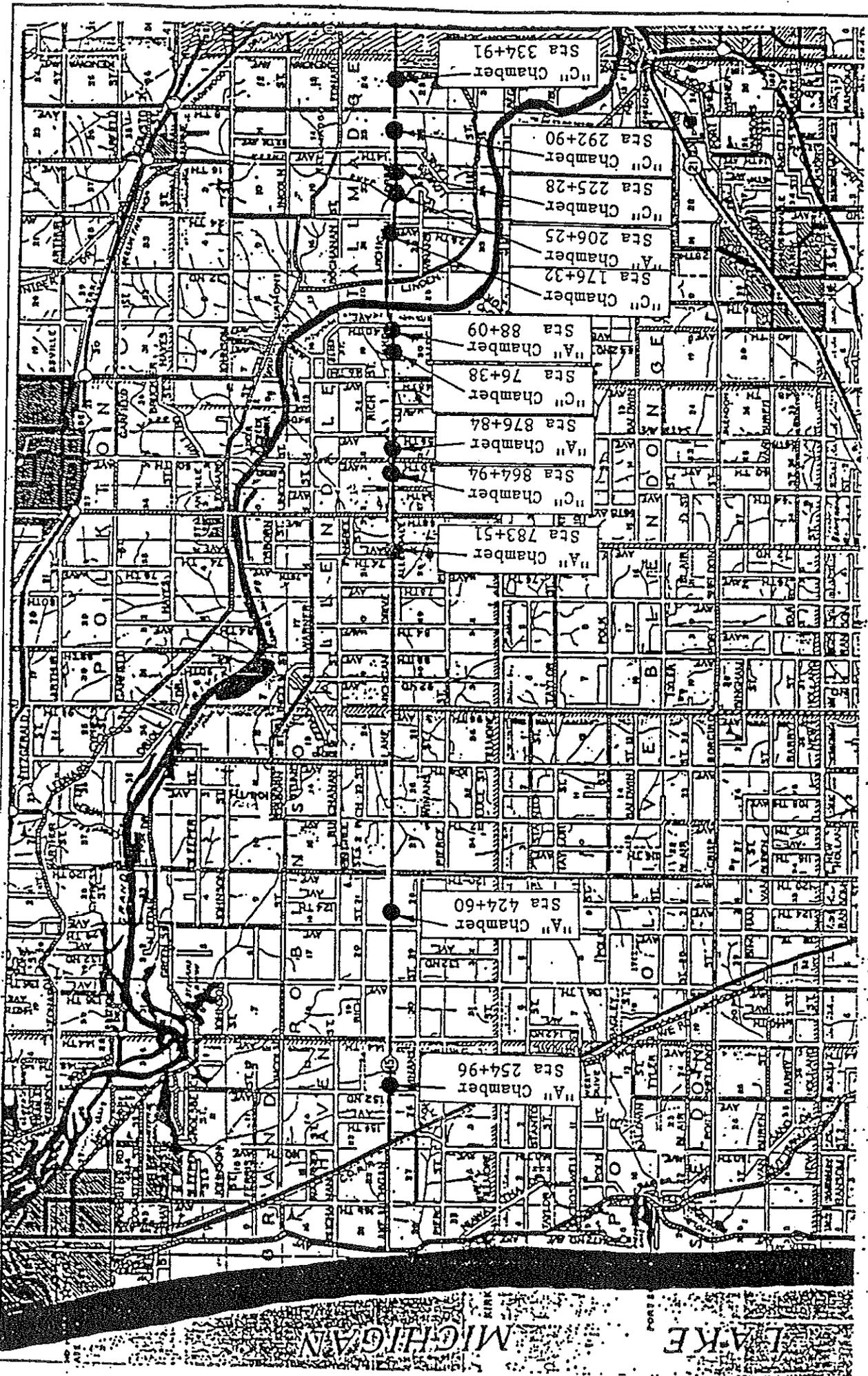


EXHIBIT "C"
 LOCATIONS OF TYPE "A"
 AND "C" CHAMBERS

N
 NO SCALE

LAKES
 MICHIGAN

EXHIBIT D

CITY OF GRAND RAPIDS

WRAP UP PLAN

INSURANCE SPECIFICATIONS

PIPE, VALVE AND PUMP SUPPLIERS

PIPE SUPPLIER
MODIFICATIONS TO CITY OF GRAND RAPIDS
CONTRACTOR AND SUBCONTRACTORS
INSURANCE SPECIFICATIONS FOR
LAKE MICHIGAN FILTRATION PLAN AND
TRANSMISSION MAIN

Definitions

Project Safety Coordinator - The person designated by the City Engineer as the coordinator of safety activities on this project.

Project Safety Policies - The guidelines and procedures established by the City for all Contractors and Subcontractors working on this project.

Contractor Safety Manager - The person employed by the Contractor who will be responsible for the coordination and implementation of the Contractors safety program.

Contractor - The individual, partnership or corporation undertaking the execution of work under the terms of the contract and acting directly or through agents or employees.

- I. No Contractor or Subcontractor shall commence any work and shall not receive any compensation for any work performed prior to submitting all necessary information, forms, documents, insurance and sureties acceptable to the City.

- II. (a) Requirements - Prior to commencing work under the Contract, the Contractor as successful bidder and all of its Subcontractors shall file with the City a certificate of insurance acceptable to the City as proof that the Contractor has secured the types and amounts of insurance as stated herein or as stated in any Special Specifications applicable to the Contract. The City reserves the right, in its sole discretion, to require the Contractor to file with the City certified copies of any policies of required insurance either prior to the execution of the contract or at any time thereafter.

The certificate, policies, or other proofs of insurance filed with the City must provide for giving the City 60 days prior written notice of any cancellation or material change in coverage

prior to the expiration date of the insurance. In addition, if the stated expiration date for any of the required policies of insurance precedes the stated contract completion date, the applicable certificate, policy, or other proof of such insurance filed with the City must provide for giving the City 60 days prior written notice of an intent not to renew any such required insurance coverage.

The furnishing by the Contractor of any insurance policies and insurance certificates required and their acceptance or approval by the City shall not release the Contractor from the obligation to provide sufficient coverage as set forth herein and shall not waive liability of the Contractor to indemnify the City against all damage as aforesaid.

For each contract to which these Specifications apply, the following types and amounts of insurance shall be provided by the Contractor. The Contractor may comply with these Special Specifications by providing insurance with separate limits for bodily injury and property damage and/or by providing umbrella insurance which provides substantially equivalent coverage to that required by the applicable specifications. THE CITY RESERVES THE ABSOLUTE RIGHT TO MAKE THE FINAL DETERMINATION AS TO WHETHER ANY INSURANCE PROVIDED BY THE CONTRACTOR COMPLIES WITH THESE STANDARD SPECIFICATIONS OR ANY APPLICABLE SPECIAL SPECIFICATIONS. In addition, the City reserves the absolute right to modify or waive at any time, by mutual agreement with the Contractor, any applicable insurance requirements when, at the sole discretion of the City's Risk Manager or other authorized representative of the City Manager, it is in the City's best interest to do so.

(b) Business Automobile Insurance - Shall be provided for all owned, non-owned and hired vehicles with required Michigan endorsements, including the City of Grand Rapids, Ottawa County and the Ottawa County Road Commission, Georgetown Township, Blendon Township, Allendale Township, Port Sheldon Township, Olive Township, Grand Haven Township and their representatives, officers, employees, boards and agents as additional insureds, in an amount of Ten Million Dollar (\$10,000,000) Combined Single Limit (CSL) per occurrence for bodily injury and property damage. Such insurance is to be provided through the Insurance Services Office (ISO) Business Auto Policy, 1986 Form, Occurrence Basis, or through another policy which provides equivalent or greater coverages than those provided as a standard feature of such ISO form, with no exclusions other than the standard exclusions.

This coverage shall apply to all automobiles, trucks, trailers and mobile equipment of any kind used to deliver pipe to the City.

In addition the Contractors insurance policy shall include the endorsement titled "Form MCS - 90 Endorsement for Motor

Carrier Policies of Insurance for Public Liability Under Section 29 and 30 of the Motor Carrier Act of 1980." This endorsement shall provide a coverage limit of not less than \$1,000,000 (One Million Dollars) for each accident.

(c) General Liability Insurance - The Contractor and/or Supplier shall secure and maintain during the life of the Contract, Commercial General Liability insurance in an amount not less than Five Million Dollars (\$5,000,000) Combined Single Limit (CSL) per occurrence; Five Million Dollars (\$5,000,000) General Aggregate; Five Million Dollars (\$5,000,000) Products - Completed Operations Aggregate for both bodily injury and property damage providing the coverages equivalent or greater than those provided by Insurance Services Office (ISO) 1986 Commercial Liability Policy, Occurrence Form, without any other than the standard exclusions contained in such ISO policy form.

These coverages include but are not limited to:

Premises/Operations

Products/Completed Operations - This coverage must stay in effect for 2 years after project is completed.

Independent Contractors

Bodily Injury, Property Damage and Personal Injury City of Grand Rapids, Ottawa County and the Ottawa County Road Commission, Georgetown Township, Blendon Township, Allendale Township, Port Sheldon Township, Olive Township, Grand Haven Township and their representatives, officers, employees, boards and agents as additional insureds

Contractual Liability - Including coverage for the Indemnity Liability assumed pursuant to Section 1.04.04 (a)

Explosion, Collapse and Underground Hazard

(d) Worker's Compensation Insurance - The Contractor and/or supplier agrees that it and all of its Sub-contractors will comply with all applicable Worker's Compensation laws including \$1,000,000 Employers Liability Coverage and will provide proof of such insurance coverage. Include the following additional coverage:

United States Longshoreman and Harbor Workers and All States Coverage.

(e) Send Insurance Certificates specified above in duplicate to:

Wrap-Up Coordinator
Corroon & Black/Poggi-Harrison
P.O. Box 401
Grand Rapids, Michigan 49501
Phone Number, 616-774-0200

The Certificates will be reviewed by the City's Agent for this project prior to execution of the contract.

Contractor's Safety - The Contractor shall comply and shall require all of its Subcontractors to comply with all Federal, State, and local laws, safety policies, regulations, and "Construction Safety Standards" of the Occupational Safety and Health Standards governing the furnishing and use of all safeguards, safety devices, protective equipment, and work procedures, and take any other needed actions on his own responsibility as necessary to protect the life and health of employees on the job and the safety of the public and to protect property during the construction of the project.

Termination of Contract - If the Contractor shall be prosecuting the work with a work force, equipment or materials insufficient to complete the work by the date set for completion; or shall discontinue the performance of the work; or shall neglect or refuse to remove such materials or to replace any such work as shall have been rejected as defective and unsuitable; or shall, for any reason, including but not limited to the insurance and safety requirements contained herein, not complete the work in accordance with the contract; the Engineer may give the Contractor and Surety written notice, specifying the delay, neglect or default, and the action to be taken by them; and if the Contractor or Surety, within a period of ten days after such notice, shall not proceed satisfactorily in accordance therewith, then the City shall have full power and authority to take the work out of the hands of the Contractor and Surety; to appropriate and use any and all materials on the site which may be suitable; or to enter into contract, or use such other methods as in its judgment, may be required for the proper completion of the work. If the Contractor commits any act of bankruptcy, or becomes insolvent or is declared bankrupt; if the Contractor allows any final judgment against him to remain unsatisfied for a period of five days; or, if the Contractor shall make an assignment for the benefit of his creditors; then in such case, the City shall have full power upon the delivery by the Engineer to the Contractor and Surety of written notice stating the reasons for his said action.

In case the City takes over the uncompleted work under any of the provisions of this section, all additional costs and damages, and costs and charges of completing the work shall be deducted from moneys due or to become due the Contractor; and if the total of such damages, costs and charges exceeds the balance of the contract price which would have been payable to the Contractor had he completed the work, then the Contractor and Surety shall, on demand, pay to the City the amount of such excess.

CITY OF GRAND RAPIDS
WRAP UP PLAN
INSURANCE SPECIFICATIONS
MARINE CONTRACTOR

MARINE CONTRACTOR
MODIFICATIONS TO CITY OF GRAND RAPIDS
STANDARD CONSTRUCTION SPECIFICATIONS FOR
WRAP-UP PROJECT BIDDING

CONTRACT #'s

ADD 1.01.36

Project Safety Coordinator - The person designated by the City Engineer as the coordinator of safety activities on this project.

1.01.37 Project Safety Policies - The guidelines and procedures established by the City for Contractors and Subcontractors working on this project.

1.10.38 Contractor Safety Manager - The person employed by the contractor who will be responsible for the coordination and implementation of the Contractors safety program.

ADD TO 1.04.02

"No Contractor or Subcontractor shall commence any work and shall not receive any compensation for any work performed prior to submitting all necessary information, forms, documents, insurance and sureties acceptable to the City."

REPLACE 1.04.04 (b), (c), (d), (e) Insurance Requirements with the following:

(b) Requirements - Prior to commencing work under the Contract, the Contractor as successful bidder shall file with the City a certificate of insurance acceptable to the City as proof that the Contractor has secured the types and amounts of insurance as stated herein or as stated in any Special Specifications applicable to the Contract. The City reserves the right, in its sole discretion, to require the Contractor to file with the City certified copies of any policies of required insurance either prior to the execution of the Contract or at any time thereafter.

The certificate, policies, or other proofs of insurance filed with the City must provide for giving the City 60 days prior written notice of any cancellation or material change in coverage prior to the expiration date of the insurance. In addition, if the stated

expiration date for any of the required policies of insurance precedes the stated contract completion date, the applicable certificate, policy, or other proof of such insurance filed with the City must provide for giving the City 60 days prior written notice of an intent not to renew any such required insurance coverage.

The furnishing by the Contractor of any insurance policies and insurance certificates required and their acceptance or approval by the City shall not release the Contractor from the obligation to provide sufficient coverage as set forth herein and shall not waive liability of the Contractor to indemnify the City against all damage as aforesaid.

For each contract to which these Specifications apply, the following types and amounts of insurance shall be provided by the Contractor, unless any Special Specifications applicable to the contract provide for different insurance requirements. The Contractor may comply with these or any Special Specifications by providing insurance with separate limits for bodily injury and property damage and/or by providing Bumbershoot insurance which provides substantially equivalent coverage to that required by the applicable specifications. THE CITY RESERVES THE ABSOLUTE RIGHT TO MAKE THE FINAL DETERMINATION AS TO WHETHER ANY INSURANCE PROVIDED BY THE CONTRACTOR COMPLIES WITH THESE STANDARD SPECIFICATIONS OR ANY APPLICABLE SPECIAL SPECIFICATIONS. In addition, the City reserves the absolute right to modify or waive at any time, by mutual agreement with the Contractor, any applicable insurance requirements when, in the sole discretion of the City's Risk Manager or other authorized representative of the City Manager, it is in the City's best interest to do so.

(c) Business Automobile Insurance - For all owned, non-owned and hired vehicles the Contractor and/or supplier shall secure and maintain during the life of the contract Business Automobile Insurance, with required Michigan endorsements, including the City of Grand Rapids, Ottawa County and the Ottawa County Road Commission, Georgetown Township, Blendon Township, Allendale Township, Port Sheldon Township, Olive Township, Grand Haven Township and their representatives, officers, employees, boards and agents as additional insured, in an amount of Five Million Dollars (\$5,000,000) Combined Single Limit (CSL) per occurrence for bodily injury and property damage. Such insurance is to be provided through an Insurance Services Office, ISO, Business Auto Policy, 1986 Form, Occurrence Basis, or through another policy which provides equivalent or greater coverages than those provided as a standard feature of such ISO form, with no exclusions other than the standard exclusions.

(d) General Liability Insurance - The Contractor of any tier and/or supplier shall secure and maintain during the life of the Contract, Commercial General Liability insurance in an amount not less

than Fifteen Million Dollars (\$15,000,000) Combined Single Limit (CSL) per occurrence; Fifteen Million Dollars (\$15,000,000) General Aggregate; Fifteen Million Dollars (\$15,000,000) Products-Completed Operations Aggregate for both bodily injury and property damage providing the coverages equivalent or greater than those provided by Insurance Services Office (ISO) 1986 Commercial Liability Policy, Occurrence Form without any other than the standard exclusions contained in such ISO policy form.

These coverages include but are not limited to:

- Premises/Operations
- Products/Completed Operations (This coverage must remain in force 2 years after project completion)
- Independent Contractor
- 1986 Form Broad Language
- City of Grand Rapids, Ottawa County and the Ottawa County Road Commission, Georgetown Township, Blendon Township, Allendale Township, Port Sheldon Township, Olive Township, Grand Haven Township and their representatives, officers, employees, boards and agents as Named Insured
- Jones Act Coverage (Full Maritime Endorsement including transportation, maintenance and cure).
- Protection and Indemnity including - Masters and Members of crew.
- Full Coverage for Owned and Non-Owned Watercraft (bodily injury and property damage).
- Explosion, Collapse and Underground

(e) Owners and Contractors Protective Liability Insurance - The Contractor shall secure and pay the premiums for, and maintain during the entire life of the contract, Owners and Contractors Protective Liability Insurance written in the name of the City of Grand Rapids in an amount of Five Million Dollars (\$5,000,000) Combined Single Limit (CSL) per occurrence for bodily injury and property damage, such insurance to be provided through an ISO Owners Contractors Protective Liability, 1986 Occurrence Form, or through another policy which provides equivalent or greater coverages than those provided as a standard exclusions for such form. The City of Grand Rapids and Greely Hansen - Prien Newhof Joint Venture shall be named insured on such policy.

(f) Workers' Compensation Insurance - The Contractor and/or supplier agrees that it and all of its Sub-contractors will comply with all applicable Workers' Compensation laws including One Million Dollars (\$1,000,000) Employers' Liability Coverage and will provide proof of insurance coverage.

The following additional coverages must be included:

- United States Long-Shoreman and Harbor Workers Act
- Broad Form All States
- Jones Act
- Voluntary Compensation

(g) Builders Risk Insurance - The Contractor will provide Builders Risk Coverage including the City as named insured. Coverage must provide all Risk Coverage against damage during construction/ installation and while in transit.

(h) Send the Insurance Certificates specified above in the duplicate to:

Wrap-Up Coordinator
Corroon & Black/Poggi-Harrison
P.O. Box 401
Grand Rapids, Michigan 49501
(616) 774-0200

The certificates will be reviewed by the City's Agent for the project prior to the execution of the Contract.

Add to 1.32 "...for any reason including but not limited to failure to comply with the provisions of sections 1.04.04 and 1.08.02, not complete the work..."

CITY OF GRAND RAPIDS
WRAP UP PLAN
INSURANCE SPECIFICATIONS
NON MARINE

MODIFICATIONS TO CITY OF GRAND RAPIDS
STANDARD CONSTRUCTION SPECIFICATIONS FOR
LAKE MICHIGAN FILTRATION PLANT AND
TRANSMISSION MAIN EXCLUDING WORK IN LAKE MICHIGAN

CONTRACT #'s

ADD 1.01.36

Project Safety Coordinator - The person designated by the City Engineer as the coordinator of safety activities on this project.

1.01.37 Project Safety Policies - The guidelines and procedures established by the City for Contractors and Subcontractors working on this project.

1.10.38 Contractor's Safety Manager - The person employed by the Contractor who will be responsible for the coordination and implementation of the Contractors safety program.

ADD TO 1.04.02

"No Contractor or Subcontractor shall commence any work and shall not receive any compensation for any work performed prior to submitting all necessary information, forms, documents, insurance and sureties acceptable to the City."

ADD TO 1.04.04

All Contractors or Subcontractors replace 1.04.04 (b), (c), (d), (e) insurance requirements with the following:

(b) Requirements - Prior to commencing work and execution of the Contract, the Contractor as successful bidder and all Subcontractors shall file with the City a certificate of insurance acceptable to the City as proof that the Contractor has secured the types and amounts of insurance as stated herein or as stated in any Special Specifications applicable to the Contract. The City reserves the right, at its sole discretion, to require the Contractor to file with the City certified copies of any policies of required insurance prior to the execution of the Contract.

The certificate, policies, or other proofs of insurance filed with the City must provide for giving the City 60 days prior written

notice of any cancellation or material change in coverage prior to the expiration date of the insurance. In addition, if the stated expiration date for any of the required policies of insurance precedes the stated contract completion date, the applicable certificate, policy, or other proof of such insurance filed with the City must provide for giving the City 60 days prior written notice of an intent not to renew any such required insurance coverage.

The furnishing by the Contractor of any insurance policies and insurance certificates required and their acceptance or approval by the City shall not release the Contractor from the obligation to provide sufficient coverage as set forth herein and shall not waive liability of the Contractor to indemnify the City against all damage as aforesaid.

For each contract to which these Specifications apply, the following types and amounts of insurance shall be provided by the Contractor, unless any Special Specifications applicable to the contract provide for different insurance requirements. The Contractor may comply with these or any Special Specifications by providing insurance with separate limits for bodily injury and property damage and/or by providing umbrella insurance which provides substantially equivalent coverage to that required by the applicable specifications. THE CITY RESERVES THE ABSOLUTE RIGHT TO MAKE THE FINAL DETERMINATION AS TO WHETHER ANY INSURANCE PROVIDED BY THE CONTRACTOR COMPLIES WITH THESE STANDARD SPECIFICATIONS OR ANY APPLICABLE SPECIAL SPECIFICATIONS. In addition, the City reserves the absolute right to modify or waive at any time, by mutual agreement with the Contractor, any applicable insurance requirements when, in the sole discretion of the City's Risk Manager or other authorized representative of the City Manager, it is in the City's best interest to do so.

The Contractor and all Subcontractors (all tiers) shall secure and maintain during the life of the contract:

1. Business Automobile Insurance, for all owned, non-owned and hired vehicles, with required Michigan endorsements, including the City of Grand Rapids, Ottawa County and the Ottawa County Road Commission, Georgetown Township, Blendon Township, Allendale Township, Port Sheldon Township, Olive Township, Grand Haven Township and their representatives, officers, employees, boards and agents as additional insureds, in an amount of Five Million Dollars (\$5,000,000) Combined Single Limit (CSL) per occurrence for bodily injury and property damage. Such insurance is to be provided through an Insurance Services Office (ISO) Business Auto Policy, 1986 Form, Occurrence Basis, or through another policy which provides equivalent or greater coverages than those provided as a standard feature of such ISO form, with no exclusions other than the standard exclusions.

2. Worker's Compensation Insurance providing coverage for the Contractor's employees while such employees are not working on the defined site of the Wrap-Up Insurance Program. (This requirement is mandated by State statute).

(c) Owner (City) Furnished Insurance:

Without in any way measuring or limiting the Contractor's obligations under this Contract the City will under its Wrap-Up Insurance Program take out, carry and maintain without cost to the Contractor the following insurance coverages with the Contractor named as an insured. Additional named insureds include Ottawa County and the Ottawa County Road Commission, Georgetown Township, Blendon Township, Allendale Township, Port Sheldon Township, Olive Township, Grand Haven Township and their representatives, officers, employees, boards and agents:

1. Worker's Compensation:
 - a. Providing statutory coverage at the defined site for the Wrap-Up Insurance Program, and Employer's Liability for limits of \$1,000,000/\$1,000,000/\$1,000,000. In addition this policy will provide United States Longshoremen and Harbor Worker's Act Coverage, All States Endorsement and Voluntary Compensation Endorsement.
 - b. The Contractor, and each Subcontractor, will be issued a Worker's Compensation certificate in their own name for this specific project.
2. Commercial General Liability Coverage, I.S.O 1986 Occurrence Form.
 - a. Limits:
 - \$1,000,000 per occurrence per Contractor
 - \$2,000,000 aggregate all Contractors
 - \$2,000,000 occurrence and aggregate products and completed operations
 - b. Coverages: Premises and Operations at the defined site, Bodily Injury, Property Damage, Personal Injury, 1986 Form Broad Language, Explosion, Collapse and Underground, Railroad Protective, Oral and Written Contractual Liability, Cross Liability, Site Definition endorsement, Extended Completed Operations Coverage (3 years after completion).
 - c. Exclusion: Standard 1986 I.S.O. Exclusions, Asbestos Exclusion and Pollution Exclusion.

3. Excess Liability:

- 1) Liability coverage in excess of primary commercial general liability and railroad protective liability policies described below. The limits of liability may be provided under one or more policies but shall be the total limit of liability per occurrence or aggregate regardless of the number of insureds under the policy or policies. Limits for the initial year will be at least:

Limits of Liability: \$49,000,000. per Contractor, per occurrence. \$49,000,000. aggregate, all Contractors.

Limits for subsequent years as dictated by the City's Risk Manager.

4. Railroad Protective Liability

- 1) The City shall furnish, when required, the insurance coverage to be provided in a policy and form acceptable to the applicable railroad companies.

5. Builders Risk Insurance - The City will name the Prime Contractor and all Subcontractors, as their interest may appear, on the Builder's Risk insurance policy purchased by the City.

d. Compliance: Prior to execution of the contract

1. The Contractor and Subcontractors shall comply with City's insurance carrier(s) requirements on all matters relating to insurance as described in the Project Wrap-Up coverage and Administrative Guide including:

- a.) Dissemination of all owner-furnished insurance information to affected Subcontractors.
- b.) Completion of the Wrap-Up application forms and payroll reports.
- c. Provide authorization to obtain current experience modification and audit information.
- d.) Provide access to payroll records for audit purposes.

- e.) Properly completed and signed inter-insurance company agreement prior to contract execution. THE INSURANCE CERTIFICATE SPECIFIED IN 1.04.04 (b) AND ALL WRAP-UP FORMS AND INTER INSURANCE COMPANY AGREEMENTS SHALL BE SENT TO:

Corroon & Black/Poggi-Harrison
P.O. BOX 401
Grand Rapids, MI.: 49501
Attn: Wrap-Up Coordinator

THE DOCUMENTS WILL THEN BE FORWARDED TO THE CITY.

The Project Safety Manual and Wrap-Up Administration Manual will be made available to all bidders, Contractors and Subcontractors by Corroon & Black/Poggi-Harrison (678 Front Ave., N.W., Grand Rapids, Michigan 49504, (616) 774-0200.

- e. THE CONTRACTOR SHALL TAKE THE FULL COST OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE OUT OF ITS BID. ANY AMOUNT NOT DEDUCTED WILL BE SUBTRACTED FROM ANY BONUS THE CONTRACTOR MIGHT RECEIVE UNDER SECTION F) BELOW.
- f. All return premiums or final retrospective adjustments associated with the City's Wrap-Up insurance coverage shall be the responsibility and privilege of the City.

WRAP-UP CONTRACTORS - SAFETY BONUS FORMULA

Twenty five percent (25.0%) of the total premium returned to the City will be made available for safety bonuses to Prime Contractors. The portion of these funds to be distributed to each Contractor will be determined as shown below:

The total of each Prime Contractor and its Subcontractors' payrolls from work on this project will be divided by the total of payrolls. This figure will then be multiplied by the amount available for bonuses. This figure will then be divided by the Contractors experience modification factor as determined by the City's selected workers' compensation carrier as of the month the Contractor submits its bid. From this amount, all incurred and reported workers' compensation and liability claims covered by the Wrap-Up insurance policies plus a 30% reserve for incurred but not reported claims (the value of these claims shall be as determined

by the City's selected insurance company) attributed to the Prime Contractor and its Subcontractors shall be deducted. The remaining sum shall be paid to the Contractor. The actual dollar amounts shall be calculated and the timing of the distribution of such amounts shall be determined by the City's Risk Management Division. The methods used to calculate the actual bonus amounts will be the interpretations and definitions used by the City's Risk Manager or other representatives of the City Manager, whose decisions on such matters are final.

WRAP-UP CONTRACTORS -SAFETY BONUS
FORMULA CALCULATIONS

EXAMPLE ONLY

Total Retro Return Premium
to the City x 25%

$$\$868,000 \times .25 = \$217,000$$

Multiplied by the Contractor's
Share of Total Payroll on the Project

$$\frac{\$4,000,000}{\$19,500,000} \times .20513 \times 217,000 = \$44,413$$

Divided by the Contractor's
Experience Modification Factor

$$\$44,513 \text{ divided by } .85 = \$52,368$$

Less all Incurred and Reported Losses
Plus 30% of IBNR

$$\$52,368 - (15,000 + (15,000 \times .30)) = \$32,868$$

$$\text{Amount Paid to Contractor} = \$32,868$$

Change 1.08.02 "...appropriate City..." to "...Project..."

Add to 1.08.02

When so ordered by the Project Safety Coordinator, the Contractor shall stop any part of the work which the Project Safety Coordinator deems unsafe until corrective measures satisfactory to

the Project Safety Coordinator have been taken and the Contractor agrees that it shall not have nor make any claims for damage growing out of such stoppages. Should the Contractor neglect to take such measures, the City may do so at the cost and expense of the Contractor and may deduct the cost thereof from any payments due or to become due to the Contractor. Failure on the part of the Project Safety Coordinator or the City to stop or prevent unsafe practices shall in no way release the Contractor of its sole responsibility therefore.

The Contractor shall also require all of its Subcontractors to comply with the provisions of this section.

Add to 1.32 "...for any reason including but not limited to failure to comply with the provisions of sections 1.04.04 and 1.08.02, not complete the work..."