

## **WATER AND SEWER AGREEMENT**

This Water and Sewer Agreement made this 11th day of October, 1993 (hereinafter referred to as the "Agreement"), by and between Lowell Charter Township, Kent County, Michigan, a charter township organized and existing under the constitution and laws of the State of Michigan (hereinafter referred to as "Lowell Township") and Vergennes Township, Kent County, Michigan, a general law township organized and existing under the constitution and laws of the State of Michigan (hereinafter referred to as "Vergennes Township").

### **RECITALS**

Lowell Township has recently negotiated a water supply agreement (the "Water Agreement") with the City of Lowell (the "City"). Attached hereto as Exhibit A is a document also attached to the Water Agreement as Exhibit A. That document shows both exclusive service areas and non-exclusive service areas located within Lowell Township and Vergennes Township.

Lowell Township and the City of Lowell (the "City") have previously executed a agreement for sanitary sewer service (the "Sewer Agreement"). The Sewer Agreement provides for service of all portions of Lowell Township located north of the Grand River. Under the Sewer Agreement the service district can be extended to areas outside of Lowell Township with the written consent of the City. Upon execution of this Agreement, Lowell Township shall seek the City's consent to expand the service district in the Sewer Agreement to the same areas within Vergennes Township shown on Exhibit A attached hereto.

### **AGREEMENT**

NOW, THEREFORE, for an in consideration of the mutual covenants and conditions contained herein, Lowell Township and Vergennes Township hereby agree as follows:

1. System Ownership and Maintenance. Any portions of the public water supply,

treatment and distribution system or the sewage disposal system constructed within Vergennes Township pursuant to the terms of this Agreement or subsequent agreements, ordinances, or resolutions adopted in accordance with the terms of this Agreement shall be owned and maintained by Lowell Township.

2. Construction and Financing. Construction and financing for the construction of the water and sewer systems shall be accomplished and paid for by Lowell Township or some other entity other than Vergennes Township, subject only to approval by Vergennes Township of the location of water and sewer lines and related facilities, which approval shall not be unreasonably withheld.

3. Customers. All water and sewer customers located within Vergennes Township shall be considered customers of Lowell Township. Lowell Township shall be responsible for billing and collection of water and sewer charges. Vergennes Township shall adopt ordinances (see paragraph 6) which shall contain provisions including but not limited to provisions dealing with imposing liens in the event of non-payment. All charges for water and sewer services rendered to customers located within Vergennes Township shall be the same as those charged to similarly-situated customers located in Lowell Township, it being the intent of the parties that charges rendered to system customers shall not change based upon whether such customers are located in Lowell or Vergennes Township.

4. Approval of Water Agreement. Vergennes Township hereby approves of the Water Agreement and agrees to abide by all of the terms and conditions thereof and accepts all obligations imposed upon Vergennes Township thereunder.

5. Approval of Sewer Agreement. Vergennes Township hereby approves of the Sewer Agreement and agrees to abide by all of the terms and conditions thereof and accepts all obligations imposed upon Vergennes Township thereunder.

6. Ordinances. Attached hereto as Exhibits C through E respectively, are the following existing or proposed Lowell Township Ordinances:

- Exhibit C - Water Service Ordinance.
- Exhibit D - Water User Charges Ordinance.
- Exhibit E - Sewer Discharge Requirements and Enforcement Procedures Ordinance.
- Exhibit F - Sewer Use Ordinance.

Vergennes Township agrees to promptly adopt similar ordinances, in form approved by the Lowell Township Supervisor. In addition, Vergennes Township agrees to adopt, in a form approved by the Lowell Township Supervisor, ordinances similar to any further ordinances adopted by Lowell Township pursuant to the terms of the Water Agreement or the Sewer Agreement.

7. Indemnification by Lowell Township. Lowell Township agrees, at its expense, to defend, indemnify and hold harmless Vergennes Township, its board, 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 water or sewer system; provided, that if such injury or damage is caused in whole or in part by the actions or omissions of any of the indemnified parties, then Lowell Township's indemnification obligation shall be reduced in proportion to the indemnified parties percentage or responsibility for such injury or damage. The indemnification obligations provided above shall include the payment of all reasonable attorney fees and other expenses of defense. Lowell Township shall have the option to settle any such claim, demand or liability on such terms as it shall determine unless such settlement would require a payment by Vergennes. In providing the indemnification set forth above, Lowell Township is not waiving any defenses otherwise available to it by law. Lowell Township shall not be responsible for the indemnification obligation 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.

8. Indemnification by Vergennes Township. Vergennes Township agrees, at its expense, to defend, indemnify and hold harmless Lowell Township, its board, 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 the responsibilities of Vergennes Township under this Agreement; provided, that if such injury or damage is caused in whole or in part by the actions or omissions of any of the indemnified parties, then Vergennes Township's indemnification obligation shall be reduced in proportion to the indemnified parties percentage or responsibility for such injury or damage. The indemnification obligations provided above shall include the payment of all reasonable attorney fees and other expenses of defense. Vergennes Township 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, Vergennes Township is not waiving any defenses otherwise available to it by law. Vergennes Township shall not be responsible for the indemnification obligation 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.

9. Notice. 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 Vergennes Township:

Vergennes Township  
10381 Bailey Drive  
Lowell, MI 49331  
Attention: Supervisor

If to Lowell Township:

Lowell Charter Township  
2910 Alden Nash, SE  
Lowell, MI 49331  
Attention: Supervisor

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.

10. Term. The term of this Agreement shall be for a period of forty (40) years from its effective date unless terminated earlier by agreement of the parties; provided, however, that the parties agree to negotiate all or such part of this Agreement on termination as may be necessary to assure them- -existing Vergennes Township customers with continual, reasonable, and adequate water and sewer services.

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

12. 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.

13. 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.

14. 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.

15. 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.

16. Amendments. This Agreement may not be amended, changed, modified, altered, assigned or terminated without the written consent of the parties hereto.

17. Exhibits. All exhibits attached hereto are hereby incorporated as though fully stated herein in the context in which they are referenced.

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

19. 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.

20. 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 parties have caused these presents to be signed by their respective duly authorized officers all as of the day and year first written above.

Original is Signed by:

LOWELL CHARTER TOWNSHIP

John R. Timpson, Supervisor

Attest:

Carol L. Wells, Township Clerk

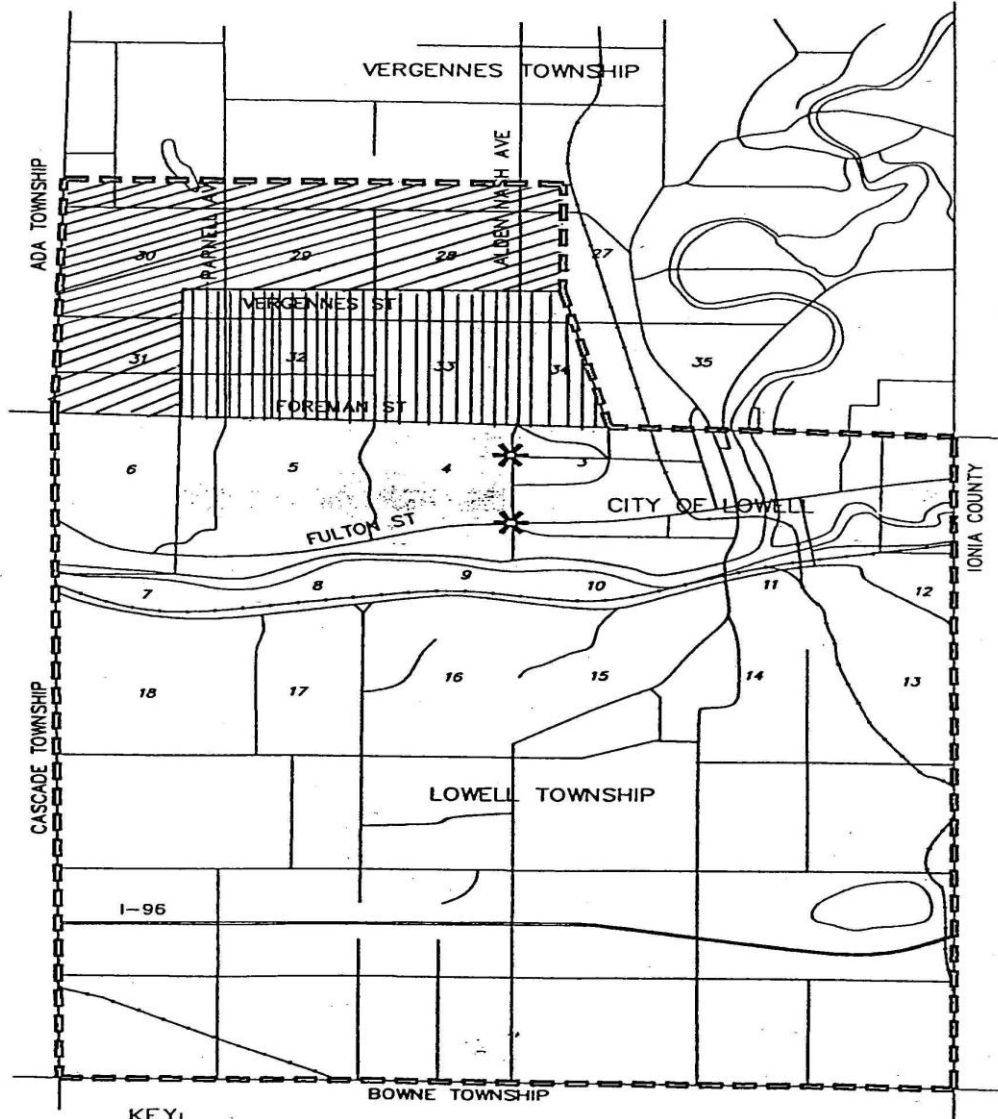
VERGENNES TOWNSHIP

James B. Cook, Supervisor

Attest:

Jenean Hoffman

EXHIBIT 1  
SERVICE AREA



KEY:  
 [Vertical Hatching] EXCLUSIVE SERVICE AREA  
 [Diagonal Hatching] NON-EXCLUSIVE SERVICE AREA

PREPARED BY:  
 MOORE & BRUGGINK  
 CONSULTING ENGINEERS  
 OCTOBER, 1992