

TOWNSHIP OF BIRCH RUN

At a Regular meeting of the Township Board of the Township of Birch Run, Saginaw County, Michigan, held in the Township Hall on October 11, 1994 at 7:30 P.m., Eastern Daylight Savings Time, there were

PRESENT: Edward Magnus, Sheila DiBerardino, Nancy Henige,
Larry Russell, Gary St. Charles, JoAnne Strahm

ABSENT: Jackie Hayes

The following resolution was offered by DiBerardino and seconded by Russell:

**RESOLUTION RECOMMENDING APPROVAL
OF THE SUPPLEMENTAL CONTRACT**

WHEREAS, a proposed Supplemental Contract between the Township of Birch Run (the "Township"), the Township of Taymouth and the County of Saginaw (the "County") has been presented to this Board for execution in the form attached hereto as Appendix 1.

NOW, THEREFORE, BE IT IS RESOLVED BY THE TOWNSHIP BOARD OF TOWNSHIP OF BIRCH RUN as follows:

1. The Supplemental Contract (attached as Appendix 1) in the form attached hereto is approved and the Supervisor and the Clerk of the Township may hereby execute the Supplemental Contract on behalf of the Township.

A vote on the following resolution was taken and was as follows:


YES: Magnus, DiBerardino, Henige, Russell, St. Charles, Strahm

NO: _____

ABSTAIN: _____

CERTIFICATION

The undersigned, being the duly qualified and acting Clerk of the Township of Birch Run, hereby certifies that (1) the foregoing is a true and complete copy of a resolution duly adopted by the Township Board at a Regular meeting held on October 11, 1994, at which meeting a quorum was present and remained throughout, (2) that an original thereof is on file in the records of the Township, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended), and (4) minutes of such meeting were kept and will be or have been made available as required thereby.



Sheila DiBerardino, Clerk

APPENDIX I

SUPPLEMENTAL CONTRACT BETWEEN

THE COUNTY OF SAGINAW

and

THE TOWNSHIP OF TAYMOUTH

and

THE TOWNSHIP OF BIRCH RUN

TOWNSHIP OF TAYMOUTH
WATER SUPPLY SYSTEM PROJECT

SAGINAW COUNTY, MICHIGAN

DATED AS OF SEPTEMBER 1, 1994

SUPPLEMENTAL CONTRACT

THIS SUPPLEMENTAL CONTRACT (the "Contract") is made as of September 1, 1994, by and between the COUNTY OF SAGINAW, a Michigan county (the "County"), the TOWNSHIP OF TAYMOUTH, a township located in the County, the TOWNSHIP OF BIRCH RUN a township located in the County (both Townships hereafter referred to as the "Townships").

The County has constructed certain extensions to the Township's water system in the Townships as described in Exhibit A and intends to construct such improvements pursuant to Act No. 185, Michigan Public Acts of 1957, as amended ("Act 185").

Bartow & King Engineers has prepared final plans for the Project (such plans as from time to time revised, as the context may dictate, are referred to in this Contract as the "Plans"), which have been placed on file in the office of the DPW.

The Township of Taymouth ("Taymouth") and the County have already entered into a Contract for the construction and financing of Taymouth's portion of the Project and the County and the Township of Birch Run ("Birch Run") wish to contract to provide for the operation of Birch Run's portion of the Project.

In consideration of the premises and in order to provide for the operation of the Project by the County, for the operation and maintenance of the Project and for other related matters, the County and the Townships agree as follows:

1. Approval of Project. The County and the Townships approve and agree to the acquisition, construction and financing of the Project under and pursuant to Act 185. The parties approve the designation of "Township of Taymouth Water Supply System Project" as the name of the Project. The Townships, by way of compliance with Section 29, Article VII, Michigan Constitution of 1963, consents and agrees to the establishment and location of the Project and any extension, improvement or enlargement of it within its corporate boundaries in accordance with the terms of this Contract or on land presently owned by and located in the Townships, and to the use by the County of the streets, highways, alleys, lands, rights-of-way or other public places in the Townships for the purpose and facilities of the Project and any improvements, enlargement or extension of it. The Townships further agree that, in order to evidence and effectuate this agreement and consent, it will obtain or assist the County in obtaining all easements, licenses, rights-of-way and/or title to property necessary for completion of the Project and will execute and deliver to the County such easements, rights-of-way, licenses, permits or consents as may be requested by the County.

2. Project Description. The Project shall consist of the public improvements described and specified in Exhibit A and as are more particularly set forth in the Plans, which Plans are on file with the DPW and are hereby approved and adopted. The respective shares of the Taymouth and Birch Run project shall be as set forth on Exhibit B.

3. Payments by Townships. The Townships shall pay to the County the respective shares of the Cost of the Project set forth on Exhibit B. The Cost of the Project has been defrayed by the issuance of Bonds. The Townships covenants and agrees to pay the principal of, premium, if any, and interest on the expenses and charges (including the DPW's administrative expenses) which are payable on account of the Bonds (such fees, expenses and charges being called "Bond Service Charges"). Payments shall be made to the County in semiannual installments which shall be due and payable 10 days prior to the day specified in the Bonds as the interest payment dates with respect to the Bonds, in amounts at least sufficient to pay all principal, premium, and/or interest falling due on such interest payment dates and all Bond Service Charges then due and payable.

The DPW shall, within 30 days after delivery of the Bonds, supply the County and the Townships with a complete schedule of the payments of principal of and interest on the Bonds, and the DPW shall also, at least 30 days before each payment is due to be made by the Townships, advise the Treasurer of the Townships of the amount payable to the County on such date. If the Townships fail to make any payment to the County when due, the same shall be subject to a penalty of 1% of the amount due for each month or fraction of a month that such amount remains unpaid after it is due. Failure of the DPW to furnish the schedule or give notice as above required shall not excuse the Townships from the obligation to make payment when due. Payments shall be made by the Townships when due whether or not the Project has then been completed or placed in operation. The foregoing obligations shall apply to all Bonds issued by the County to defray the Cost of the Project.

In the event the County is required to pay any amounts to the United States Department of Treasury (the "Treasury") because of regulations issued by the Treasury or the Internal Revenue Service, the Townships shall reimburse the County for such amounts.

4. Advance Payments. If either the Townships pays the Cost of the Project or any portion of it prior to the issuance of the Bonds, then the obligations of such Townships shall be adjusted accordingly. The Townships may pay in advance of maturity all or any part of a semiannual installment due to the County on the Bonds by surrendering to the County bonds issued hereunder of a like principal amount maturing in the same calendar year or by paying cash to the County and requesting the County to purchase any Bonds or call any Bonds in accordance with their terms.

5. Refunding and Advance Refunding. In the event it appears advantageous in the opinion of the County's Financial Consultant to issue bonds to refund any series of bonds issued by the County pursuant to this Contract (including advance refunding bonds), the Townships consent to the such refunding so long as:

(1) In the case of any refunding bonds and the first issue of advance refunding bonds, there is a net overall saving to the City in its remaining payments to the County of at least 5% or \$20,000, whichever is less.

(2) In the case of any refunding not covered in subparagraph (1), the Townships consent to such refunding.

6. Full Faith and Credit. The Townships, pursuant to the authorization of Section 12(2) of Act 185, hereby pledges its full faith and credit for the prompt and timely payment of its obligations expressed in this Contract. Each year the Townships shall levy a tax in an amount which, taking into consideration estimated delinquencies in tax collections, will be sufficient to pay its obligations under this Contract coming due before the time of the following year's tax collections, provided, however, that if at the time of making its annual tax levy, the Townships shall have on hand in cash other funds or reasonably expects to receive other funds (from special assessments (including received or anticipated prepayments thereof), user charges, connection fees or otherwise) which have been or will be set aside and pledged or are otherwise available for the payment of such contractual obligations falling due prior to the time of the next collection, then the annual tax levy may be reduced by such amount. In the event amounts pledged to or otherwise earmarked for payment of the Bonds are received in amounts so great as to jeopardize the status of the County's Bond Payment Fund as a bona fide debt service fund for purposes of federal tax regulations, the County shall, within 30 days prior to the next scheduled payment of principal on the Bonds, devote such excess sum toward the purchase of Bonds on the open market. Any taxes levied by the Townships shall be subject to the applicable statutory, charter and constitutional tax limitations.

7. Failure to Pay; Remedies. In the event that the Townships fail for any reason to pay to the DPW the amounts required to be paid under this Contract when due, (1) the County Treasurer is authorized to notify the State Treasurer, or other appropriate disbursing official, of such failure, and the State Treasurer or other appropriate disbursing official shall deduct the amount due the County from any moneys in his or her possession belonging to the Townships which are not pledged for the payment of debt and pay the same to the County, all as provided in and governed by Section 17 of Act 185, and/or (2) the County Treasurer is authorized to withhold payments which would otherwise be due to the Townships from the County's Delinquent Tax Revolving Fund, in each case such withheld funds to be applied to each Township's obligations under this Contract. In

addition to the foregoing, the County shall have all other rights and remedies provided by law to enforce the obligations of the Townships to make payments to the County under this Contract. The Townships acknowledge that such payments are to be pledged for the payment of the principal of, premium, if any, and interest on the Bonds, and the Townships covenants and agrees that it will make its required payments to the County promptly and at the times specified in this Contract, without regard as to whether the Project is actually completed or placed in operation.

8. Change in Townships. No change in the jurisdiction over territory in the Townships shall in any manner impair the obligations of this Contract. In the event all or any part of the territory of the Townships is incorporated as a new city or is annexed to or becomes a part of the territory of another municipality, the municipality into which such territory is incorporated or to which such territory is annexed shall assume the proper proportionate share of the contractual obligations and right to capacity in the Project of the Townships from which such territory is taken in accordance with law.

9. Additions to or Extensions of Project. The County shall not be obligated to acquire or construct any facilities other than those described in paragraph 2 above. The responsibility for providing such additional facilities as may be needed shall be that of the County which shall have the right to cause to be constructed and maintained, through the County, such necessary additional facilities. No extensions of the Project shall be made without DPW approval, which shall have the right to cause to be constructed and maintained, through the County, such necessary additional facilities. No extensions of the Project shall be made without DPW approval, which approval shall be limited to approval of appropriate plans, specifications and construction and health standards.

10. Ownership of Project. The County, subject to the terms of this Contract and during the term of this Contract, shall have legal title to the Project. After the retirement of the Bonds, and after the Township's obligations under this Contract are satisfied, the legal title to the Project shall be transferred to the Townships. The Townships shall each operate their portion of the Project.

11. Costs and Expenses. The parties agree that the costs and expenses of any lawsuits arising directly or indirectly out of this Contract to the extent that such costs and expenses are chargeable against the County or the DPW, shall be deemed to constitute a part of the Cost of the Project and shall be paid by the Townships in the same manner as provided in this Contract with respect to other Costs of the Project. In the event of such litigation, the DPW shall consult with the Townships and shall retain legal counsel agreeable to the County and the Townships to represent the County. If the County and the Townships cannot

agree as to such representation within a reasonable time, the DPW shall exercise its discretion as to the retention of such counsel.

12. DPW Authority. All powers, duties and functions vested by this Contract in the County shall be exercised and performed by the DPW, for and on behalf of the County, unless otherwise provided by law or in this Contract.

13. Invalidity of Provisions. In the event that any one or more of the provisions of this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Contract, but this Contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

14. No Impairment of Bondholder's Interests. The County and the Townships each recognize and declare that the holders from time to time of the Bonds issued by the County under the provisions of Act 185, and secured by the full faith and credit limited tax pledge of the Townships to the payment of the principal of and interest on the Bonds as set forth in this Contract, will have contractual rights in this Contract and it is therefore covenanted and agreed by each of the parties that so long as any of the Bonds remain outstanding and unpaid, the provisions of this Contract shall not be subject to any alteration of or revision which would in any manner adversely affect either the security of the Bonds or the prompt payment of principal of or interest on the Bonds. The right to make changes in this Contract, by amendment, supplemental contract or otherwise, is nevertheless reserved insofar as the same do not have such adverse affect. The Townships and the DPW further covenant and agree that they will each comply with their respective duties and obligations under the terms of this Contract at the times and in the manner set forth in this Contract, and will not suffer to be done any act which would in any way impair the Bonds, the security for them, or the prompt payment of principal of and interest on the Bonds.

15. Miscellaneous.

a. Effective Date. This Contract shall become effective after approval by the legislative body of each of the Townships and by the Board of Commissioners of the County, and execution by the authorized officials of the parties. It shall terminate 40 years from its date or upon the earlier payment in full of all principal of, premium, if any, and interest on the Bonds, at which time the full right, title and ownership to the Project shall revert to the Townships. The County shall take any and all necessary actions to fully transfer ownership of the Project to the Townships, at no cost to the Townships, upon the termination of this Contract.

b. Counterparts. This Contract may be executed in several counterparts each of which shall be deemed one and the same agreement. It shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

c. Existing Contract. This Contract is supplemental to the existing Contract between the County and Taymouth dated as of February 1, 1992 (the "Main Contract") which governed the acquiring and constructing the Project, and nothing contained in this Contract shall amend the Main Contract except for setting forth Birch Run's duties under this Contract and specify the respective rights and dates of the Townships with respect to their shares of the Project.

d. Governing Law. This Contract shall be interpreted under the laws of the State of Michigan.

e. Authority. Each party warrants and represents that the execution and performance of this Contract have been duly authorized by all necessary action and do not contravene any policy, resolution or controlling rule.

f. Entire Agreement. This Agreement sets forth the entire agreement between the County and the Townships with respect to the subject matter of this Contract.

g. Captions and Bylines. The captions and bylines used in this Contract are for the convenience of reference only and in no way define, limit or describe the scope of intent of any provision of this Agreement.

h. Use of the Singular. The use in this Contract of the singular shall be deemed to be and include the plural (and vice versa) where applicable.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed and delivered, by their respective duly authorized officers, all as of the day and year first above written.

TOWNSHIP OF TAYMOUTH

COUNTY OF SAGINAW

By its Board of Public Works

By: _____
Its: Supervisor

By: _____
Its: Chairman

By: _____
Its: Clerk

By: _____
Its: Secretary

TOWNSHIP OF BIRCH RUN

By: *Cleward Magner*
Its: Supervisor

By: *Sheila DiBenedio*
Its Clerk

jra.r-sag21

EXHIBIT A

DESCRIPTION OF THE PROJECT

In addition to the Project described in the Main Contract, additional water lines have been constructed to serve the following Taymouth Township and Birch Run Township residents:

jra.R-SAG21

Bartow & King Engineers

2500 E. Midland Road, Bay City, MI 48706

930204

May 10, 1994

Mr. John Axe
John R. Axe and Associates
21 Kercheval Avenue, Suite 360
Grosse Point Farms, Michigan 48236

Re: Taymouth Township, Saginaw County, Michigan
Water System Improvements, Extension 2

Dear John:

Pursuant to your request, I am sending you copies of all the signed contracts for water users that have signed up after the initial assessment district was set up.

The water system was extended along Busch Road westerly out of Fosters approximately 1635 LF, and was extended northerly approximately 1200 LF on Dorwood Road from Fosters.

Those people signing contracts outside the original assessment district along Dorwood and Busch Roads are as follows:

Dorwood Road

James H. Russell	L. 1878 - P. 1975-1977
T. G. Thompson	L. 1878 - P. 1591-1593
Great Lakes Contracting Enterprises	L. 1880 - P. 1747-1749

Busch Road

Cris A. Pegley	L. 1878 - P. 1594-1596
Ida L. Pegley	L. 1878 - P. 1968-1970

Residents within the original Phase III assessment district which live within Birch Run Township along Elms Road are as follows:

BA Manley I. & Enia N. Stowell	L. 1891 - P. 1575-1578
BA Norman D. & Janet T. Knutson	L. 1884 - P. 897-900
BA Peter A. & Rose Kleinbreil	L. 1898 - P. 1403-1406
BA Patrick A. & Nancy L. Henige	L. 1898 - P. 1407-1410
MA Curtise & Donna J. Blasdell	L. 1884 - P. 893-896

A-2

(517) 684-8850

Fax (517) 684-8404

Mr. John Axe
May 10, 1994
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Residents within the original Phase III assessment district not originally assessed or requested additional water taps:

Brenda A. Kleinfeld	L. 1885 - P. 445-448
John J. & Marjorie R. Dick	L. 1898 - P. 1411-1414
Daryl F. Colpean	L. 1887 - P. 1005-1008
Kay A. Blessing	L. 1884 - P. 1816-1818
W. J. & R. A. Fankhauser	L. 1891 - P. 1571-1574

As discussed, the Township wishes to transfer monies to the Saginaw County Department of Public Works for completion of the Phase III water project. The amount of money necessary to transfer to the DPW is approximately \$105,000.


The amount of contracts signed within the Phase III District to date is fifteen. Ten are on the assessment roles and five have paid cash.

We need to have Taymouth Township transfer these funds as soon as possible. A letter from you authorizing Taymouth to transfer these funds will be appreciated.

Let us know if you need any additional information.

Very truly yours,

BARTOW & KING ENGINEERS, INC.


Gary O. Bartow

GOB:nj

Enclosures

cc: Tom Kerr
Walter J. Wendling

EXHIBIT B

SHARE OF PROJECT ASSIGNED
TO EACH TOWNSHIP

<u>Township</u>	<u>Share</u>
Birch Run	<u>1.634</u> %
Taymouth	<u>98.366</u> %
TOTAL	100.00%

jra.R-SAG21