

TOWNSHIP OF BIRCH RUN
Resolution #97-5

At a Special meeting of the Township Board of the Township of Birch Run, Saginaw County, Michigan, held in the Township Hall, Birch Run, Michigan on August 25, 1997, at 6:45 p.m. Eastern Standard Time, there were:

PRESENT: Harold Johnson, Sheila DiBerardino, Nancy Henige, Cheryl Hadsall,
John Jankowski, David Stewart, Edward Magnus

ABSENT: None

The following preamble and resolution were offered by Hadsall and seconded by Stewart.

**RESOLUTION APPROVING AN AGREEMENT REGARDING
PAYMENT FOR RIGHTS IN SEWAGE DISPOSAL SYSTEM**

WHEREAS, in 1991, the Township proposed to construct sewage collection facilities within the Township and had contracted for transportation and treatment of such sewage with the County of Genesee, State of Michigan; and

WHEREAS, the Township had entered into a sewage disposal service agreement (the "Genesee County Agreement") with the County of Genesee through the Genesee County Drain Commissioner (the "County Agency") for the transportation to and the treatment of such sewage by the County of Genesee through the facilities of the Genesee County Sewage Disposal System (the "System"); AND

WHEREAS, the Village of Birch Run (the "Village") had a need of additional sewage disposal and treatment facilities; and

WHEREAS, the Township and the Village therefore both agreed to share the capacity in the system provided for in the Genesee County Agreement by entering into an Agreement Assigning Rights in Sewage Disposal Service which Agreement was dated as of June 1, 1991 (the "1991 Agreement");

WHEREAS, the Township has pursuant to that agreement already assumed the responsibility to pay its share (28.35%) of the debt service on the \$1,400,000 Saginaw County Sewage Disposal System Bonds Birch Run Extension No. 2 (the "1991 Bonds") funds from which were used to purchase the capacity in the Genesee County System; and

WHEREAS, the Township wishes to authorize the payment by the County of Saginaw of an amount to reimburse the Village for prior payments made by the Village on the Township's share of the 1991 Bonds, which amount will come from the proceeds of a 1996 Saginaw County Bond Issue; and

WHEREAS, the Township wishes to request the County Public Works Commissioner to use the \$113,655.90 payment to be received from the Village by the County to permit the County to finish constructing sewer improvements on the Saginaw County Sanitary Sewer System Improvements (Dixie Highway Extension) Project (the "1996 Project") in an appropriate manner.

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

1. The Agreement Regarding Payment for Rights in Sewage Disposal Service Agreement (the "Agreement") attached as Appendix 1 is hereby approved and the Township officials shown thereon are authorized to execute and deliver the Agreement on behalf of the Township.

2. All resolutions, or portions thereof, insofar as they may be in conflict with the foregoing, are hereby rescinded.

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

YES: Johnson, DiBerardino, Henige, Hadsall, Jankowski, Stewart, Magnus

NO: None

ABSTAIN: None

CERTIFICATION

The undersigned, being the Township 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 Special meeting held on August 25, 1997, 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.

SEAL


Birch Run Township Clerk

Sheila DiBerardino

las.r1-birch

EXECUTION COPY Resolution 97-5
AGREEMENT REGARDING PAYMENT FOR
RIGHTS IN SEWAGE DISPOSAL SERVICE AGREEMENT

THIS AGREEMENT made and entered into as of the 1st day of August, 1997, be and among the COUNTY OF SAGINAW acting by and through its Public Works Commissioner (the "County"), the TOWNSHIP OF BIRCH RUN, a Municipal Corporation, located in the County of Saginaw, State of Michigan, 8411 Main Street, Birch Run, Michigan, (the "Township"), and the VILLAGE OF BIRCH RUN, a Village located in the County of Saginaw, State of Michigan, 12060 Heath Street, Birch Run, Michigan (the "Village").

WITNESSETH:

WHEREAS, in 1991, the Township proposed to construct sewage collection facilities within the Township and had contracted for transportation and treatment of such sewage with the County of Genesee, State of Michigan; and

WHEREAS, the Township had entered into a sewage disposal service agreement (the "Genesee County Agreement") with the County of Genesee through the Genesee County Drain Commissioner (the "County Agency") for the transportation to and the treatment of such sewage by the County of Genesee through the facilities of the Genesee County Sewage Disposal System (the "System"); and

WHEREAS, the Village had a need of additional sewage disposal and treatment facilities; and

WHEREAS, the Township and the Village therefore both agreed to share the capacity in the system provided for in the Genesee County Agreement by entering into an Agreement Assigning Rights in Sewage Disposal Service which Agreement was dated as of June 1, 1991 (the "1991 Agreement");

WHEREAS, the Township has pursuant to the Agreement already assumed the responsibility to pay its share (28.35%) of the debt service on the \$1,400,000 Saginaw County Sewage Disposal System Bonds Birch Run Extension No. 2 (the "1991 Bonds") funds from which were used to purchase the capacity in the Genesee County System; and

WHEREAS, on August 2, 1995 and October 1, 1995 the County paid to the Village the total sum of \$360,414.57 (the "1991 Proceeds") which were part of the proceeds of the \$1,400,000 Saginaw County Sewage Disposal System Bonds Birch Run Extension No. 2 (the "1991 Bonds"); and

WHEREAS, because of such assumption of part of the obligation due in the future and repayment for part of prior payments made in the past on the 1991 Bonds, the Township has a beneficial interest of 28.35% in the 1991 Proceeds paid to the Village; and

WHEREAS, the Village will repay to the County the sum of \$113,654.83 which is 28.35% of the amount paid to it in 1995 from the 1991 Bonds together with interest thereon through August 27, 1997; and

WHEREAS, on December 5, 1996, the County issued the Birch Run Township Sanitary Sewer System Improvements (Dixie Highway Extension) Bonds dated as of November 1, 1996 (the "1996 Bonds"); and

WHEREAS, the Village wishes to agree that all payments secured by the Village covered by this Agreement shall be used by the Village in accordance with the Regulations issued by the United States Department of Treasury (Internal Revenue Department) ("IRS Regulations").

NOW THEREFORE, IT IS AGREED by and between the COUNTY OF SAGINAW, THE TOWNSHIP OF BIRCH RUN AND THE VILLAGE OF BIRCH RUN, as follows:

A. COUNTY AGREES

1. On August 29, 1997, the County shall pay to the Village the sum of \$217,126.68 which represents \$212,519.18 plus \$8,734.54 (which is interest from December 5, 1996 to August 29, 1997) less 71.65% of \$4,785.00 in legal costs and \$975.00 in financial consulting costs (\$4,127.04) incurred by the County in connection with this transaction.

2. The sum of \$113,654.83 when received by the County from the Village shall be added to the proceeds of the 1996 Bonds in the possession of the County and

shall be used to complete the project for which the County issued the 1996 Bonds.

B. THE VILLAGE AGREES

1. On August 27, 1997, the Village shall pay to the County to be deposited in the Construction Account for the 1996 Bonds the sum of \$113,654.83.

2. The Village agrees with respect to the sum of \$287,244.04 and all interest earnings thereon after the date hereof (the "Remaining 1991 Bond Proceeds") still in the Village's possession to do the following:

a. During the period such funds are held by the Village, prior to being expended, the funds will not be invested at any time at a rate of interest in excess of 6.68% per annum. The Village hereby certifies that prior to execution of this agreement, none of the Remaining 1991 Bond Proceeds were invested at an interest rate in excess of 6.68% per annum.

b. The proceeds will be expended by the Village on an addition to the Village's Sanitary Sewer System. Such expenditures shall be made for construction, equipment, engineering and other expenses related to such sewer system improvements as are permitted by the regulations issued by the Internal Revenue Service for bond proceeds and shall not be used as working capital or for any operating expenses.

c. Within 90 days of the end of the Village's fiscal year, the Village shall notify the County of the purposes for which the proceeds were expended in the preceding fiscal year and such improvements shall be added to the Birch Run Village Sewage Disposal System No. 2 which was to be constructed for the Village by the County with the proceeds of the 1991 Bonds.

d. The Village certifies that it reasonably expects to completely expend all of the proceeds

by the end of its fiscal year ending June 30, 2000.

e. If the Village is not able to complete the expenditure of the proceeds by June 30, 2000, the Village will return the balance to the County for the purpose of defeasing some of the 1991 Bonds.

f. The Village agrees to pay to the County an amount equal to any amount the County is required to pay to the United States Internal Revenue Service on account of the failure of the Village to expend the Remaining 1991 Bond Proceeds in accordance with the IRS Regulations issued.

3. The Village agrees with respect to the sum of \$217,126.68 and all interest earnings thereon (the "1996 Bond Proceeds") to be paid to it by the County on August 29, 1997 from the proceeds of the 1996 Bonds to do the following:

a. After the period ending December 5, 1999 such funds are held by the Village, prior to being expended, the funds will not be invested at any time at a rate of interest in excess of 5.25% per annum.

b. The 1996 Bond Proceeds will be expended by the Village on public improvements. Such expenditures shall be made for construction, equipment, engineering and other expenses related to such public improvements as are permitted by the regulations issued by the Internal Revenue Service for bond proceeds and shall not be used as working capital or for any operating expenses.

c. Each year within 90 days of the end of the Village's fiscal year, the Village shall notify the County of the purposes for which the 1996 Bond Proceeds were expended in the preceding fiscal year.

d. The Village certifies that it reasonably expects to completely expend all of the 1996 Bond Proceeds by December 5, 1999.

e. If the Village is not able to complete the expenditure of the 1996 Bond Proceeds by March 31, 1999, the Village will take any action necessary to insure compliance with the Regulations of the United States Internal Revenue Service as shall apply to the 1996 Bond Proceeds.

f. The Village agrees to pay to the County an amount equal to any amount the County is required to pay to the United States Internal Revenue Service on account of the failure of the Village to expend the 1996 Bond Proceeds in accordance with the Regulations issued by the Internal Revenue Service.

C. THE TOWNSHIP AGREES

1. The Township agrees to the payment of \$217,126.68 to the Village by the County.

2. The Township agrees that its share (28.35%) of the legal fees and financial consulting fees incurred by the County in connection with this transaction shall be paid from the proceeds remaining in the possession of the County from the 1996 Bonds.

D. ALL PARTIES AGREE

1. To the extent this Agreement is inconsistent with the 1991 Agreement, the 1991 Agreement is superseded by the Agreement.

2. This Agreement is binding on the successors and assigns of all parties hereto.

IN WITNESS WHEREOF, we have hereunto set out hands the
27 day of August, 1997.

Witnesses:

Sharon A Honaman

Lawyer

Lawyer

James V. Belkman

Judith L. Gibson

COUNTY OF SAGINAW

By: Walter W. Welfer

By: _____

TOWNSHIP OF BIRCH RUN

By: David Johnson

By: Sheila Di Berardino

VILLAGE OF BIRCH RUN

By: William J. Gredert

By: Carol J. Worden