

INTERJURISDICTIONAL AGREEMENT
(SEWER USE)

**ENTERED INTO BETWEEN THE COUNTY AGENCY AND THE
TOWNSHIP OF BIRCH RUN.**

THIS AGREEMENT is made and entered into as of the last date of execution hereof (the "effective date") by and between the COUNTY OF GENESEE acting through its COUNTY AGENCY, a Michigan municipal agency established by the Genesee County Board of Commissioners pursuant to Act 342, Public Acts of Michigan of 1939 ("Act 342"), as amended, (the "County Agency"); and the TOWNSHIP OF BIRCH RUN, Saginaw County, Michigan, a Michigan General Law Township ("the Township").

WITNESSETH:

WHEREAS,

The Township has previously entered into contracts with the County Agency, including the agreement entitled the "Sewage Disposal Service Agreement" dated August 1, 1988, as amended, (the "August 1988 Agreement"), related to the acquisition, financing, operation of, and the collection, conveyance, and treatment of wastewater by the Genesee County sewer system (referred to herein as the Genesee County Publicly Owned Treatment Works or "POTW").

The Genesee County POTW currently provides wastewater treatment service for discharges of wastewater originating from within the Township pursuant to the August 1988 Agreement. The discharges from the Township to the Genesee County POTW are ultimately discharged into the Genesee County Sewage Disposal System and are treated at the Anthony Ragnone Treatment Plant. After treatment, the treated effluent is then discharged pursuant to the National Pollution Discharge Elimination System Permit ("NPDES Permit") held by the POTW.

The POTW is the designated "Control Authority" for the Genesee County sewer system as provided by its NPDES permit and by applicable state and federal laws, including: the Federal Water Pollution Control Act (also known as the "Clean Water Act"), as amended, 33 USC 1251, et seq.; the General Pretreatment Regulations (40 CFR part 403); Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCLA §§ 324.3101 et seq., as amended ("Water Resources Protection"); and the Michigan industrial pretreatment rules, Michigan Administrative Code, R 323.2301 et seq., as amended.

Under applicable state and federal laws and regulations, the Genesee County POTW, in its capacity as the Control Authority and holder of the NPDES Permit, is required to adopt a sewer use ordinance; implement and enforce an industrial pretreatment program ("IPP"); and have the same legal authority for all users, existing and future, throughout all areas served by the POTW, regardless of jurisdictional or political boundaries.

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At a minimum, applicable state and federal laws require the Genesee County POTW to have the legal authority and procedures, through its sewer use ordinance, IPP, and interjurisdictional agreements, that will enable it to independently assess and assure compliance by all users with applicable laws and regulations.

The County Agency has established and organized the Genesee County Water and Waste Services Division (“GCWWSD”) to administer, implement and enforce the provisions of Act 342, other applicable state and federal laws and regulations, and Genesee County’s sewer use ordinance.

On November 21, 2006, to comply with applicable State and Federal laws and regulations, the Genesee County Board of Commissioners repealed its existing sewer use ordinance and adopted a new sewer use ordinance (“The Genesee County Sewer Use Ordinance,” Genesee County Ordinance No. 0605).

Act 342 and other state and federal laws require the County Agency and the Township to enter into an agreement before the Township may discharge into the Genesee County POTW. Also, the Genesee County Sewer Use Ordinance requires that, as a condition to discharge to the POTW, the Township must adopt an ordinance that, except as specifically provided by the Genesee County Sewer Use Ordinance, must be identical to the County’s Ordinance. The sewer use ordinance adopted by the Township must expressly designate, empower and authorize the POTW to act as the agent and representative of the Township for purposes of administering and enforcing the Township’s sewer use ordinance within the Township.

The County Agency and the Township are entering this Agreement to comply with the requirements of Act 342, the County’s Sewer Use Ordinance, and the POTW’s NPDES Permit, and to ensure that the County Agency has the proper legal authority to administer, implement and enforce the County’s Sewer Use Ordinance and its IPP within the Township as required by applicable laws and regulations,.

NOW, THEREFORE, the Parties agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following terms are defined to mean as follows:

“Act 342” means the “County Public Improvement Act of 1939”, as amended, being MCLA 46.171 et seq., which act authorizes, in pertinent part, the establishment by the County of a system or systems of sewer, or sewage disposal improvements and services and disposal facilities and services within or between cities, villages, townships, charter townships, or any

duly authorized and established combinations thereof, within or without the county, and mains, trunks, connecting lines, and disposal facilities therefore.

“Clean Water Act” means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC. 1251, et seq.

“County” means Genesee County, Michigan.

“County Agency” means the public body or official as designated by the Genesee County Board of Commissioners pursuant to the provisions of Public Act 342 of the 1939 Public Acts of Michigan, being MCL 46.171 et seq., as amended (the “County Public Improvement Act”). The County Agency has established and organized the Genesee County Water and Waste Services Division (“GCWWSD”) to administer, implement and enforce the provisions of Act 342 and Genesee County’s Sewer Use Ordinance. Accordingly, for purposes of this Agreement, “GCWWSD” may also be used to refer to the “County Agency.”

“Discharge” means the introduction of waste, wastewater, effluent or pollutants into the POTW, whether intentional or unintentional, and whether directly (such as through an approved sewer connection or other approved discharge point as authorized by the Genesee County Sewer Use Ordinance) or indirectly (including, but not limited to, sources such as inflow and infiltration).

“GCWWSD” means the Genesee County Water and Waste Services Division (see “County Agency”).

“NPDES Permit” means a permit issued pursuant to Section 402 of the Clean Water Act.

“POTW” (Publicly Owned Treatment Works). The complete sewage disposal, transportation and treatment system of Genesee County, Michigan, as defined by the Act, the County Public Improvement Act, and Genesee County’s Sewer Use Ordinance, including any devices, processes and systems used in the storage, treatment, recycling or reclamation of wastewater, sewage or sludge, as well as sewers (including all main, lateral and intercepting sewers), pipes and other conveyances used to collect or convey wastewater or sewage to the treatment works, as now or hereafter added to, extended or improved. The term “POTW” shall also include any sewers that convey wastewaters to the POTW from persons who are, by contract or agreement with the County Agency, Users of the POTW. References in this Agreement to approvals, determinations, reviews, etc., “by the POTW” shall mean by the County Agency, the POTW Manager, or their authorized representatives. The term “POTW” may also be used to refer to the GCWWSD (acting through the County Agency) as the entity that has jurisdiction over the discharges to, and discharges from, the POTW (the “control authority”), as appropriate to the context in which the term is used.

“POTW Manager” or “Manager” means the person designated by the County Agency as being responsible to administer the POTW’s Industrial Pretreatment Program, and who is charged with certain duties and responsibilities as provided by Genesee County’s Sewer Use Ordinance. References to “POTW Manager” or “Manager” shall include the Manager’s authorized representatives.

“Premises” means a lot, tract, or parcel of land, or a building or structure, having any connection, directly or indirectly, to the POTW, or from which there is a discharge to the POTW.

“Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes; process changes; or other means, except for the use of dilution (unless expressly authorized by any applicable pretreatment standard or requirement and the POTW Manager). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings, subject to applicable requirements of local, state and federal laws and regulations.

“Pretreatment Requirement” means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on a Nondomestic User.

“Pretreatment Standard” means any regulation containing pollutant discharge limits promulgated in accordance with Section 307(b) and (c) of the Act or Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCL §§ 324.3101 et seq., including general and specific prohibitive discharge limits and local limits established in Genesee County’s Sewer Use Ordinance pursuant to MAC R 323.2303, and categorical standards.

“Surcharge” means the additional charges made by the POTW for the treatment of wastewater containing pollutants in excess of specified concentrations, loadings or other applicable limits, or for other purposes specified by Genesee County’s Sewer Use Ordinance.

“User” means any person who contributes, causes¹ or permits the contribution, introduction or discharge of wastewater into the POTW, whether intentional or unintentional, and whether directly or indirectly.

“User Permit” means an Industrial User Permit or a General User Permit as provided by Genesee County’s Sewer Use Ordinance.

“Wastewater” means the liquid and water-carried industrial or domestic waste from dwellings,

commercial buildings, industrial facilities, and institutions (including, without limitation, contaminated groundwater and landfill leachate), whether treated or untreated, that is contributed, introduced or discharged into the POTW. The term includes any water that has in any way been used and degraded or physically or chemically altered.

2. ADOPTION BY TOWNSHIP OF GENESSEE COUNTY'S SEWER USE ORDINANCE

A. As a condition to discharging wastewater from the Township into the Genesee County POTW, the Township shall adopt a new Township Sewer Use Ordinance as provided by this Paragraph 2.

B. The new Township Sewer Use Ordinance adopted by the Township shall be identical to Genesee County's Sewer Use Ordinance as amended from time to time. The only deviations and differences allowed between the Township's Sewer Use Ordinance and Genesee County's Sewer Use Ordinance shall be those as necessary to reflect the fact that the Township's Sewer Use Ordinance is an ordinance of the Township; or such other deviations or differences that are approved in advance by the County Agency.

C. The Township shall keep the Township's Sewer Use Ordinance continually up-to-date through amendments by the Township; such amendments shall be identical to any amendments as adopted from time to time by the County Agency to Genesee County's Sewer Use Ordinance (except for any deviations or differences that are approved in advance by the County Agency). The County Agency shall notify the Township in writing of any amendments made by the County to Genesee County's Sewer Use Ordinance. Upon receipt of the notice, the Township shall proceed to adopt the amendments to the Township's Sewer Use Ordinance as soon as possible, but in no case shall the ordinance amendments become fully effective as Township law later than 90 days after the date of receipt by the Township of the notice from the County Agency. The Township shall notify the POTW upon final enactment of all required amendments to the Sewer Use Ordinance and shall send a copy of the ordinance as amended to the County Agency.

D. The Township's Ordinance shall apply to all areas within the Township from which there are discharges of wastewater from the Township to the POTW.

E. The Township shall take such steps as required by the POTW to ensure that all requirements of Genesee County's and the Township's Sewer Use Ordinances are met (including, but not limited to, the issuance of user discharge permits) before allowing any connection to be made to the public sewer.

3. DESIGNATION OF POTW AS TOWNSHIP'S AGENT AND REPRESENTATIVE

A. As a condition to discharging wastewater from the Township into the Genesee County POTW, the Township hereby designates, authorizes, and empowers the Genesee County POTW as provided by this Paragraph 3.

B. The Township designates, authorizes, and empowers the Genesee County POTW to act as the principal agent and representative of the Township for purposes of administering and enforcing both Genesee County's Sewer Use Ordinance and the Township's Sewer Use Ordinance within the Township. This includes at a minimum the power and authority of the POTW to do all of the following, as determined necessary by the POTW, consistent with the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, and other applicable laws and regulations:

(1) Identify and locate all possible Township Users that might be subject to pretreatment requirements under the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, or other applicable laws and regulations; identify the character and volume of the discharges from those Township Users; and notify them of applicable requirements.

(2) Deny or condition discharges from the Township, Township Users, and Township Premises that do not meet the standards and requirements of the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, applicable pretreatment standards and requirements, or that would cause the POTW to violate its NPDES permit.

(3) Require all Township Users and Premises to comply with all applicable standards and requirements under the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, or other applicable laws and regulations.

(4) Take random samples, conduct inspections and surveillance activities and monitoring of Township Users and Premises, and take such other actions to independently assess and ensure compliance with the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, or other applicable laws and regulations.

(5) Enter the premises of any Township Users or Premises from which there is a discharge source.

(6) Immediately and effectively halt or prevent any discharge that might present an imminent endangerment to public health or welfare; and also to halt or prevent any discharge that might endanger the environment, interfere with the operation of the Genesee County POTW or cause the POTW to violate its NPDES Permit.

(7) Control discharges to the POTW from Township Users and Premises through User Permits issued by the POTW.

(8) Take enforcement action against any Township User or Premises under the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, or other applicable laws and regulations, including the power and authority of the POTW to immediately and independently investigate, enforce, and prosecute (administratively or judicially, and civilly or criminally) any violation of the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, or of any notice, order, permit, decision or determination promulgated, issued or made thereunder by the POTW, and to otherwise implement the requirements of the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, and other applicable laws and regulations.

In all cases, the POTW shall have primary responsibility for matters regarding discharges of wastewater to the POTW by the Township, Township Users, and Township Premises regulated under the Township's Sewer Use Ordinance, Genesee County's Sewer Use Ordinance, or other applicable laws and regulations; and the POTW shall have the ability to act independently of the Township regarding such matters and without the Township's approval.

C. The Township shall designate, authorize and empower the POTW Manager and the POTW Manager's designated representatives as being among the local officials authorized to issue municipal civil infraction notices and citations to Township Users or Premises for violations of the Township's Sewer Use Ordinance and/or Genesee County's Sewer Use Ordinance.

D. The Township agrees that it will take any other action required by law if and as necessary to effect the provisions of this paragraph.

4. **ACCEPTANCE, TREATMENT AND DISPOSAL OF WASTEWATER DISCHARGES**

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A. The Genesee County POTW will accept, provide treatment, and dispose of wastewater discharges from the Township to the POTW as provided by the August 1988 Agreement, as previously or subsequently amended, provided, however, that the POTW's obligation to accept, provide treatment, and dispose of such discharges shall be consistent with the terms, conditions, and requirements of this Agreement, notwithstanding any provision of the August 1988 Agreement to the contrary. If there is a conflict between this Agreement and the August 1988 Agreement, as previously or subsequently amended, regarding the application and binding regulatory effect of the County's sewer use ordinance and wastewater regulations on all discharges of wastewater from the Township to the POTW, the provisions of this Agreement shall govern and supersede such conflicting provisions of the August 1988 Agreement without requiring further action of the parties.

B. All discharges from the Township or from any User or Premises located within the Township shall be subject to and fully comply with the requirements of the Genesee County Sewer Use Ordinance, the terms, conditions, and requirements of any applicable User Permits issued by the POTW, and applicable state and federal laws and regulations, as amended, modified or revised. Treatment by the Genesee County POTW of the wastewater discharges shall comply with applicable state and federal standards and the POTW's NPDES permit. All exceedences of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements shall constitute a violation of the Genesee County Sewer Use Ordinance, subject to applicable fines, penalties and other enforcement actions and remedies provided by the Ordinance. In no case shall the imposition of a surcharge for a discharge which does not meet the applicable prohibitions, limitations, or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of the Genesee County Sewer Use Ordinance.

C. Similarly, all discharges from the Township or from any User or Premises located within the Township shall also be subject to and fully comply with the requirements of the Township's Sewer Use Ordinance, the terms, conditions, and requirements of any applicable User Permits issued by the POTW, and applicable state and federal laws and regulations, as amended, modified or revised. All exceedences of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements shall constitute a violation of the Township's Sewer Use Ordinance, subject to applicable fines, penalties and other enforcement actions and remedies provided by the Ordinance. In no case shall the imposition of a surcharge for a discharge which does not meet the applicable prohibitions, limitations, or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of the Township's Sewer Use Ordinance.

D. The failure or refusal by the Township to fully and timely comply with any of the terms, conditions, or requirements of this Agreement (including, but not limited to, the Township's failure or refusal to adopt or to timely and continually adopt required amendments to

the Township's Sewer Use Ordinance) shall not prevent the full application of Genesee County's Sewer Use Ordinance and IPP regulations to any discharge from the Township or from any Township User or Premises to the POTW or to limit in any way the Genesee County POTW's power, authority and discretion to administer and enforce the Genesee County Sewer Use Ordinance and IPP regulations with respect to such discharges; nor shall such failure or refusal be construed as authorizing the illegal discharge or otherwise excuse a violation of the Genesee County Sewer Use Ordinance. Further, the failure or refusal by the Township to fully and timely comply with any of the terms, conditions, or requirements of this Agreement, Genesee County's Sewer Use Ordinance, or the Township's Sewer Use Ordinance, as determined by the County Agency, constitutes sufficient cause for the Genesee County POTW to refuse or terminate service to the Township and to any User or Premises in the Township.

E. Nothing in this Agreement or in the August 1988 Agreement, as previously or subsequently amended, or any other agreement between the County Agency and the Township (or between the County Agency or the Township and any local governmental unit) shall operate or be construed to nullify, conflict with, or prevent the full application of any provision of Genesee County's Sewer Use Ordinance and IPP regulations to any discharge from the Township or from any Township User or Premises to the POTW or to limit in any way the Genesee County POTW's power, authority and discretion to administer and enforce the Genesee County Sewer Use Ordinance and IPP regulations with respect to such discharges.

F. Further, nothing in this Agreement or in the August 1988 Agreement, as previously or subsequently amended, or any other agreement between the County Agency and the Township (or between the County Agency or the Township and any local governmental unit) shall operate or be construed to nullify, conflict with, or prevent the full application of any provision of the Township's Sewer Use Ordinance to any discharge from the Township or from any Township User or Premises to the POTW or to limit in any way the Genesee County POTW's power, authority and discretion to act as the agent and representative of the Township for purposes of administering and enforcing the Township's Sewer Use Ordinance within the Township with respect to such discharges.

5. RELATIONSHIP OF PARTIES

Nothing under this Agreement and no action taken pursuant hereto shall cause the County and the Township to be treated as a partnership, joint venture, association, authority, or other common entity.

6. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives and successors.

7. SAVING CLAUSE

If any part of this Agreement is held by a Court of competent jurisdiction to be illegal or unenforceable or rendered invalid or unenforceable by state or federal law, such event shall not be deemed to affect the validity of any other portion hereof.

8. EFFECTIVE DATE

This Agreement shall become effective on the date that it has been signed by authorized representatives of both the County Agency and the Township as set forth below.

9. ENTIRE AGREEMENT

This Agreement constitutes the final, entire and exclusive agreement of the parties with respect to the subject matter addressed, and supersedes all prior communications, understandings and agreements relating to the subject matter, whether oral or written. Nothing in this Agreement shall limit the ability of the Parties to negotiate amendments to this Agreement, provided that except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. Nothing in this Agreement is intended to nor should it be construed to create any rights in any persons or entities that are not a party to this Agreement.

10. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Michigan.

11. CONSTRUCTION

This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the parties. This Agreement therefore shall not be construed against any party to this Agreement.

12. NOTICE

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Any notice required or permitted under this Agreement or under state or federal law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested or by overnight mail, addressed as follows:

If to Township:

Birch Run Township Clerk
Birch Run Township

If to County Agency:

Drain Commissioner
Genesee County Drain Commissioner's Office
G-4610 Beecher Road
Flint, Michigan 48532-2617

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IN WITNESS WHEREOF, this Agreement is signed and delivered by authority of the County Agency and the Township given on the dates set forth below.

COUNTY AGENCY,

a Michigan municipal agency established by the Genesee County Board of Commissioners pursuant to Act 342, acting on behalf of the COUNTY OF GENESEE

In the presence of:

By _____
Jeff Wright, Drain Commissioner,
As County Agency

STATE OF MICHIGAN)
) ss.
COUNTY OF GENESEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by Jeff Wright, the Genesee County Drain Commissioner, for and on behalf of the Control Agency.

Notary Public, Genesee County, MI
My commission expires:

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THE TOWNSHIP OF BIRCH RUN,

a Michigan Municipal Corporation,

In the presence of:

By _____
Supervisor

Township Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF SAGINAW)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____ and _____, the Supervisor and Township Clerk of the Township of Birch Run, for and on behalf of the Township of Birch Run.

Notary Public, _____ County, ____
My commission expires: _____

