

**AGREEMENT REGARDING COST-SHARING AND CONSTRUCTION
OF SHELDON ROAD SANITARY SEWER EXTENSION FOR DISTRICT 21**

This Agreement (the "Agreement") is made between the CITY OF ROCHESTER HILLS (the "City"), a Michigan municipal corporation, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309-3033 and W.G. GILBERT, INC. ("Gilbert"), a Michigan corporation, _____, Michigan 48__.

RECITALS:

A. On April 29, 1990, the City of Rochester Hills entered into an agreement with Oakland Township and Oakland County regarding sanitary sewer service for Oakland Township's District 21 (hereinafter, the "District 21 Agreement"). The District 21 Agreement provided for the transportation of Oakland Township's District 21 sanitary sewer flows through the Stony Creek Arm to the Clinton-Oakland Interceptor in the City. The Stony Creek Arm was designed to accommodate the flows from Oakland Township's District 21 so as to not affect or reduce the City's purchased capacity in the Clinton-Oakland Interceptor; and

B. The sanitary sewer extension along Sheldon Road, from Clear Creek Drive in the City, to Mead Road in Oakland Township was identified for construction as part of the Oakland County Drain Commissioner ("OCDC") Extension Program No. 5, and in the City's Capital Improvement Plan. The construction of the sewer extension will provide sanitary sewer service to potentially 155 lots in the City and 546 lots in Oakland

Township (These numbers are estimates of potential and are not guaranteed by the City);
and

C. Gilbert has offered to construct the sanitary sewer extension (the “Sewer Extension”) in advance of the OCDC Extension Program No. 5. The proposed Sewer Extension will provide service to Gilbert’s property (“Gilbert’s Property”), located in Oakland Township, as described in attached Exhibit 1. The proposal includes sharing costs of the sanitary sewer based on the percentage of lots benefited by the Sewer Extension. Gilbert will construct the Sewer Extension and pay one hundred percent (100%) of the actual construction costs. After completion and approval of the project, the City will reimburse Gilbert for the City’s 22.1% pro-rata share of the cost of the Sewer Extension.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the sufficiency of which the parties hereby acknowledge, the City and Gilbert agree:

1. **Description of Sewer Extension Project.** The Sewer Extension consists of the design, engineering, easement acquisition, permitting, bonding, materials, construction, layout, installation, restoration, testing, construction inspection and dedication of, among other things, a 15 inch sanitary sewer along Sheldon Road extending from Clear Creek Drive in the City across Mead Road in Oakland Township, then converting to a 12 inch sanitary sewer north on Sheldon, all as depicted in the Concept Plan attached as Exhibit 2.

2. **Preparation of Plans, Specifications and Regulatory Matters.** Gilbert, at its expense as described further in Paragraph 4 below, agrees to make all necessary

submissions to and obtain all necessary approvals and permits from all governmental agencies having jurisdiction and/or regulatory authority over the Sewer Extension, and to complete all of the design, engineering, layout, easement acquisition (in Oakland Township), construction, installation, restoration and testing of the Sewer Extension in accordance with applicable City requirements, the requirements of OCDC and all other applicable regulatory agencies. The City approves the Concept Plan, attached as Exhibit 2, as constituting the general location and scope of the Sewer Extension. The City will provide or acquire any necessary easements in the City, and the City will provide inspection services at no charge to Gilbert.

3. **Construction of the Sewer Extension.** Gilbert will contract directly with a contractor to construct the Sewer Extension. The contractor shall be selected on the basis of competitive bidding, and Gilbert shall obtain at least three (3) written competitive bids before selecting a contractor. The identity of the proposed contractor and the bids received by Gilbert will be provided to the City for approval, which approval shall not be unreasonably withheld or delayed. The City's engineers shall monitor the installation of the Sewer Extension. The cost of the density testing shall be borne by Gilbert as provided in Paragraph 4, below.

4. **Costs of Sewer Extension.** The total projected cost of the design, engineering, permitting, layout, materials, bonding, easement acquisition (in Oakland Township), construction, installation, restoration and testing of the Sewer Extension is \$1,055,589.51 (the "Cost Estimate"), as reflected in attached Exhibit 3. The City shall be responsible for reimbursing Gilbert, in the manner prescribed in paragraph 7 of this Agreement, 22.1% of the cost of the Sewer Extension. The Cost Estimate shall not be

exceeded unless unforeseeable circumstances result in higher construction costs, in which event Gilbert shall certify to the City the necessity and reason for the additional cost. The Mayor, or the Mayor's authorized agent, may consent to the additional costs, before they are incurred, and such consent shall not be unreasonably withheld. Gilbert agrees to pay all actual costs and expenses necessary to complete the design, engineering, layout, materials, bonding, construction, installation, restoration and testing of the Sewer Extension; provided, however, that Gilbert shall not be obligated under this Agreement to pay for stubs and house leads or any other improvements that would serve properties in the City along the path of the Sewer Extension other than those owned, controlled or being developed by Gilbert. Gilbert will include such features in the Sewer Extension project as requested by the City, provided that the cost of same shall be paid for by the City or the benefited property owners in the City. Gilbert shall also secure and pay for those costs and expenses customarily and ordinarily charged for permitting, review and testing by the State, County, Oakland Township, City, and Gilbert shall also pay for and secure any and all permits, licenses and approvals as may be necessary to construct and complete the Sewer Extension. The City shall cooperate with Gilbert in good faith with respect to Gilbert's efforts in obtaining such permits, licenses and approvals, but shall, in all events, not be obligated to bear any of the costs or expenses of obtaining same.

5. **Hazardous Materials.** Neither the City nor Gilbert assume the economic risk, cost or responsibility for cleaning up or remediating any off-site environmental contamination encountered in connection with the construction of the Sewer Extension and/or mitigating wetlands. In the event any such environmental conditions are encountered and remediation thereof is required pursuant to applicable ordinance, law,

rule or regulation, the City and Gilbert will cooperate and make good faith best efforts to agree to reasonable revisions to the Concept Plan to relocate portions of the Sewer Extension to avoid such contaminated or other environmentally sensitive areas. In the event such revisions are not reasonable, feasible and appropriate, the City and Gilbert will cooperate with each other and negotiate in good faith in resolving the problem and reaching agreement on an appropriate and fair resolution, with the understanding that such resolution shall in all events not include the payment of any money by the City nor remediation or clean-up responsibility by the City.

6. **Easement Costs.** It is the understanding of the parties that the proposed Sewer Extension does not require the acquisition of new easements or rights-of-way. However, in the event such understanding is incorrect and some off-site easements, rights-of-way and/or property interests (collectively, the “Easements”) located in the City must be obtained for the construction of the Sewer Extension, it shall be the responsibility of the City to obtain same, at the City’s expense. The City may, but is not obligated, to commence condemnation proceedings for such purposes and will have sole and exclusive discretion with respect to such condemnation actions. Gilbert and the City shall cooperate in agreeing to reasonable revisions to the Concept Plan to relocate portions of the Sewer Extension in the event certain Easements cannot be timely or economically obtained despite all reasonable and good faith efforts of Gilbert and the City; provided, however, that any such revisions can be accomplished in a more timely and economically reasonable manner than obtaining the applicable easement. Any easements, rights-of-way and/or property interests located in Oakland Township that

must be acquired for construction of the Sewer Extension shall be the responsibility of Gilbert to acquire and pay for.

7. **Payback.** Upon completion of the Sewer Extension and testing, inspection, approval and acceptance of same by all governmental agencies having jurisdiction, the City will make available to Gilbert sewer taps as needed by Gilbert to serve Gilbert's Property (within the limits set in the District 21 Agreement), and the City shall, within 60 days after completion and acceptance, repay Gilbert, without interest, for the cost of the Sewer Extension up to the amount stated in paragraph 4 (or as adjusted pursuant to paragraph 4) of this Agreement.

8. **Maintenance Bond.** Gilbert shall also file a two-year maintenance bond and an escrow amount to guarantee the Sewer Extension as is ordinarily required by the ordinances and regulations of the City.

9. **City's Obligation to Repay Contingent Upon Completion.** The City shall have no obligation to repay Gilbert hereunder unless and until construction has been completed and the Sewer Extension has been accepted by the City. Any cost or expense incurred by Gilbert before completion and the City's acceptance of the Sewer Extension shall be the sole responsibility of Gilbert, whether or not construction of the Sewer Extension ever takes place. Gilbert shall require performance and payment bonds under any construction contract(s), which bonds shall run in favor of both Gilbert and the City.

10. **City's Responsibility for Continued Operation.** Once the Sewer Extension has been completed and accepted by the City, and after the expiration of the two-year maintenance bond required in paragraph 8 above, the City shall own and be solely responsible for the continued operation, repair and maintenance of the sanitary

sewer located in the City with the exception of the metering manhole located in Oakland Township.

11. **Insurance.** During the course of construction, Gilbert (or its contractors) shall maintain appropriate public liability and worker's compensation insurance policies, with limits reasonably satisfactory to the City and with endorsements naming the City, and its boards, councils, commissions, elected and appointed officials, employees, contractors and agents as additional insured on such coverage.

12. **Indemnification.** To the fullest extent permitted by law, Gilbert shall defend, hold harmless and indemnify the City and its boards, councils, commissions, elected and appointed officials, employees, contractors and agents from any loss, cost, damage, claim or expense, which may arise out of and/or during the construction of the Sewer Extension, other than from the negligent and/or intentional acts or omissions of the City.

13. **Number of Taps.** The City does not guarantee or warrant the number of sewer taps Gilbert will be allowed in Oakland Township, as that is or will be governed by separate agreement(s) between Gilbert and Oakland Township.

14. **Representations.** The parties represent and warrant that the persons signing this Agreement have been duly authorized to execute this Agreement and perform their obligations hereunder.

15. **Entire Agreement.** This Agreement and the Exhibits hereto, which are incorporated herein by reference, contain the entire understanding among the parties concerning the subject matter hereof, and supercede any prior understandings or

agreements. This Agreement may not be changed, modified or altered except by an agreement in writing signed by both parties.

16. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan.

17. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns. It is expressly understood that Gilbert may assign or transfer this Agreement in writing to another person, entity or business, including one in which he may have no interest; provided that the assignee or transferee agrees in writing to be bound by the terms hereof, and provided that the City is given advance written notice of such assignment/transfer and agrees that such writing satisfactorily binds the assignee/transferee to the terms of this Agreement (which agreement shall not be unreasonably withheld or delayed), such assignment shall be deemed approved, and Gilbert shall have no further liability or responsibility under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written above.

THE CITY OF ROCHESTER HILLS,
A Michigan municipal corporation.

By: _____
Pat Somerville, Mayor

