

# Chapter VI

## Utilities

### Article 1. ELECTRIC FRANCHISE

**Section 1.1 Grant Term.** The Township of Sharon, Washtenaw County, Michigan, hereby grants the right, power and authority to the Consumers Power Company, a Michigan corporation, its successors and assigns, hereinafter called the "Grantee," to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances, for the purpose of transmitting, transforming and distributing electricity on, under, along and across the highways, streets, alleys, bridges and other public places, and to do a local electric business in the Township of Sharon, Washtenaw County, Michigan, for a period of thirty years.<sup>1</sup>

**Section 1.2 Consideration.** In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.<sup>2</sup>

**Section 1.3 Conditions.** All of Grantee's towers, masts and poles shall be neat and sightly, and so placed on either side of the highways, streets, alleys and bridges as not to unnecessarily interfere with the use thereof for highway, street and alley purposes. All of Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways, streets and alleys shall be done so as not to interfere with the use thereof, and when completed, the same shall be left in as good condition as when work was commenced. The Grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the highway authorities.<sup>3</sup>

**Section 1.4 Hold Harmless.** Said Grantee shall at all times keep and save the Township free and harmless from all loss, costs and expense to which it may be subject by reason of the negligent construction and maintenance of the structures hereby authorized. In case any action is commenced against the Township on account of the permission herein granted, said Grantee shall, upon notice, defend the Township and save it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance.<sup>4</sup>

**Section 1.5 Rates.** Said Grantee shall be entitled to charge the inhabitants of said Township for electric energy furnished therein, the rates as approved by the Michigan Public Service Commission, to which Commission or its successors authority and jurisdiction to fix and regulate electric rates and rules regulating such service in said Township, are hereby granted for the term of this franchise. Such rates and rules shall be subject to review and change at any time upon petition therefor being made by either said Township, acting by its Township Board, or by said Grantee.<sup>5</sup>

**Section 1.6 Franchise Not Exclusive.** The rights, power and authority herein granted, are not

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<sup>1</sup>Ord. No. 17, §1, adopted January 7, 1988

<sup>2</sup>Ord. No. 17, §2, adopted January 7, 1988

<sup>3</sup>Ord. No. 17, §3, adopted January 7, 1988

<sup>4</sup>Ord. No. 17, §4, adopted January 7, 1988

<sup>5</sup>Ord. No. 17, §5, adopted January 7, 1988

exclusive.<sup>6</sup>

**Section 1.7 Revocation.** The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.<sup>7</sup>

**Section 1.8 Michigan Public Service Commission, Jurisdiction.** Said Grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to electric service in said Township.<sup>8</sup>

## Article 2. CONSUMER POWER GAS FRANCHISE

**Section 2.1 Grant, Term.** The Township of Sharon, Washtenaw County, Michigan, hereby grants to the Consumers Power Company, a Michigan corporation, its successors and assigns, hereinafter called the "Grantee," the right, power and authority to lay, maintain and operate gas mains, pipes and services on, along, across and under the highways, streets, alleys, bridges and other public places, and to do a local gas business in the Township of Sharon, Washtenaw County, Michigan for a period of thirty years.<sup>9</sup>

**Section 2.2 Consideration.** In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.<sup>10</sup>

**Section 2.3 Conditions.** No highway, street, alley, bridge or other public place used by said Grantee shall be obstructed longer than necessary during the work of construction or repair, and shall be restored to the same order and condition as when said work was commenced. All of Grantee's pipes and mains shall be so placed in the highways and other public places as not to unnecessarily interfere with the use thereof for highway purposes.<sup>11</sup>

**Section 2.4 Hold Harmless.** Said Grantee shall at all times keep and save the Township free and harmless from all loss, costs and expense to which it may be subject by reason of the negligent construction and maintenance of the structures and equipment hereby authorized. In case any action is commenced against the Township on account of the permission herein given, said Grantee shall, upon notice, defend the Township and save it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance.<sup>12</sup>

**Section 2.5 Extensions.** Said Grantee shall construct and extend its gas distribution system within said Township, and shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations.<sup>13</sup>

**Section 2.6 Franchise Not Exclusive.** The rights, power and authority herein granted, are not

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<sup>6</sup>Ord. No. 17, §6, adopted January 7, 1988

<sup>7</sup>Ord. No. 17, §7, adopted January 7, 1988

<sup>8</sup>Ord. No. 17, §8, adopted January 7, 1988

<sup>9</sup>Ord. No. 18, §1, adopted May 7, 1992

<sup>10</sup>Ord. No. 18, §2, adopted May 7, 1992

<sup>11</sup>Ord. No. 18, §3, adopted May 7, 1992

<sup>12</sup>Ord. No. 18, §4, adopted May 7, 1992

<sup>13</sup>Ord. No. 18, §5, adopted May 7, 1992

exclusive. Either manufactured or natural gas may be furnished hereunder.

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**Section 2.7 Rates.** Said Grantee shall be entitled to charge the inhabitants of said Township for gas furnished therein, the rates as approved by the Michigan Public Service Commission, to which Commission or its successors authority and jurisdiction to fix and regulate gas rates and rules regulating such service in said Township, are hereby granted for the term of this franchise. Such rates and rules shall be subject to review and change at any time upon petition therefor being made by either said Township, acting by its Township Board, or by said Grantee.<sup>15</sup>

**Section 2.8 Revocation.** The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.<sup>16</sup>

**Section 2.9 Michigan Public Service Commission Jurisdiction.** Said Grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to gas service in said Township.<sup>17</sup>

### Article3. MICHIGANCONSOLIDATEDGASCOMPANYGAS FRANCHISE

**Section 3.1 Grant of Gas Franchise and Consent to Laying of Pipes, Etc.** Subject to all the terms and conditions mentioned in this ordinance, consent is hereby given to Michigan Consolidated Gas Company, a corporation organized under the laws of the State of Michigan (the "Company") , and to its successors and assigns, to lay, maintain, operate, and use gas pipes, mains, conductors, service pipes, and other necessary equipment in the highways, streets, alleys, and other public places in the Township of Sharon, Washtenaw County, Michigan, and a franchise is hereby granted to the Company, its successors and assigns, to transact local business in said Township of Sharon for the purposes of conveying gas into and through and supplying and selling gas in said Township of Sharon and all other matters incidental thereto.<sup>18</sup>

**Section 3.2 Installation and Extension of System.** If the provisions and conditions herein contained are accepted by the Company, as in Section 6 hereof provided, then within not more than one (1) year following the later of the date upon which this ordinance takes effect and the date upon which the Company receives such regulatory approval as may be necessary for the Company to convey gas to the Township of Sharon and to construct and operate its facilities therein, the Company shall determine the area within the Township of Sharon to be served initially and commence the installation of a gas distribution system within such area, and the Company shall thereafter proceed to complete said initial installation as soon as reasonably practicable; provided, however, that the Company shall not be held responsible for delays due to weather or labor conditions, inability to procure necessary materials, or other causes beyond its control; and provided further that such initial installation and any extensions shall be subject to the Main Extension provisions, the Area Expansion Program provisions (if and where applicable), and other applicable provisions now or from time to time hereafter contained in the Company's Rules and Regulations for Gas Service as filed with the Michigan Public Service Commission or successor agency having similar jurisdiction.<sup>19</sup>

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<sup>14</sup>Ord. No. 18, §6, adopted May 7, 1992

<sup>15</sup>Ord. No. 18, §7, adopted May 7, 1992

<sup>16</sup>Ord. No. 18, §8, adopted May 7, 1992

<sup>17</sup>Ord. No. 18, §9, adopted May 7, 1992

<sup>18</sup>Ord. No. 19, §1, adopted February 2, 1995

<sup>19</sup>Ord. No. 19, §2, adopted February 2, 1995

**Section 3.3 Use of Streets and Other Public Places.**

- a. The Company, its successors and assigns, shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or other public places within said Township of Sharon and shall within a reasonable time after making an opening or excavation, repair the same and leave it in as good condition as before the opening or excavation was made. For three years after any opening in highways, streets, alleys or other public places, the company, its successors and assigns, shall be responsible for maintaining the repair to the opening. The Company shall repair and replace any vegetation damaged or destroyed in connection with any opening of highways, streets, alleys or other public places. If any tree in any highway, street, alley or public place is destroyed or die within two years of any activity of the company, in connection with this franchise, the Company shall replace it with a suitable tree or trees having a total d.b.h. (diameter at breast height) equal to or greater than d.b.h. of the tree that died or was destroyed. The Company will insure that none of the openings or repairs will cause a soil erosion, drainage or sedimentation nuisance. The Company, its successors and assigns, shall use due care in exercising the privileges herein contained and shall be liable to said Township of Sharon for all damages and costs which may be recovered against Township of Sharon arising from the default, carelessness, or negligence of the company or its officers, agents, and servants. The Company, its successors and assigns, shall indemnify, defend and hold harmless the Township, its officers and employees regarding any claims arising out of its activities in the Township including the excavation, use or repair of highways, streets, alleys or other public places pursuant to this franchise. The Company its successors and assigns shall indemnify, defend and hold harmless the Township, its officers and employees with regard to any claim regarding the validity or propriety of this franchise.
  
- b. No road, street, alley, or highway shall be opened for the laying of trunk lines or lateral mains except upon application to the Highway Commissioner or the Township of Sharon or other authority having jurisdiction in the premises, stating the nature of the proposed work and the route. Upon receipt of such application, it shall be the duty of the Highway Commissioners or the Township Board, or such other authority as may have jurisdiction, to issue a permit to the Company to do the work proposed. Issuance of the permit may be conditioned upon payment of a fee to compensate the authority having jurisdiction for necessary inspection and enforcement of the franchise standards.<sup>20</sup>

**Section 3.4 Standards and Conditions of Service; Rules, Regulations and Rates.**

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Company is now under the jurisdiction of the Michigan Public Service Commission to the extent provided by statute; and the rates to be charged for gas, and the standards and conditions of service and operation hereunder, shall be the same as set forth in the Company's schedule of rules, regulations, and rates as applicable in the several cities, villages, and townships in which the Company is now rendering gas service, or as shall hereafter be validly prescribed for the Township of Sharon under the orders, rules, and regulations of the Michigan Public service Commission or other authority having jurisdiction in the premises.<sup>21</sup>

**Section 3.5 Successors and Assigns.** The words "Michigan Consolidated Gas Company" and "the Company", wherever used herein, are intended and shall be held and construed to mean and include both Michigan Consolidated Gas Company and its successors and assigns, whether so expressed or not.<sup>22</sup>

**Section 3.6 Effective Date: Term of Franchise Ordinance: Acceptance by Company.** This ordinance shall take effect the day following the date of publication thereof, which publication shall be made within thirty (30) days after the date of its adoption, and shall continue in effect for a period of thirty (30) years thereafter, subject to revocation at the will of the Township of Sharon at any time

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<sup>20</sup>Ord. No. 19, §3, adopted February 2, 1995

<sup>21</sup>Ord. No. 19, §4, adopted February 2, 1995

<sup>22</sup>Ord. No. 19, §5, adopted February 2, 1995

during said thirty (30) year period; provided, however, that when this ordinance shall become effective the Township Clerk shall deliver to the Company a certified copy of the ordinance accompanied by written evidence of publication and recording thereof as required by law, and the Company shall, sixty (60) days after receipt of the above documents, file with the Township Clerk its written acceptance of the conditions and provisions hereof. <sup>23</sup>

## Article 4. COMMUNITY WASTEWATER UTILITY SYSTEMS

### Section 4.1 General

- a. **Intent and Purpose.** The majority of the land area of Sharon Township relies on individual on-site wastewater disposal systems. Although the Township may, in the future, provide public wastewater disposal within designated sewer service areas, it is unlikely that the land area served by the public sewer system will ever cover a significant portion of the Township

Pursuant to the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994, as amended, the Michigan Department of Environmental Quality ("MDEQ") is authorized to issue permits for on-site sewage disposal systems that service more than one property (referred to herein as a "community wastewater utility system" or "CWSU"). The Township recognizes that a community wastewater utility system may, some circumstances, be in the best interests of the health, safety, and welfare of the Township and the residents. The Township, however, requires assurance that any community wastewater utility system will be designed, constructed, operated, maintained, repaired and/or replaced in a manner that best serves and protects the health, safety, and welfare of the Township and its residents. Furthermore, the Township requires that it shall be indemnified by the owner and operator of the community wastewater utility system from any costs or liability in connection with the design, construction, operation, maintenance, repair and/or replacement of that system. The Township also recognizes if a community wastewater utility system fails or does not properly function or if the owner or operator of the community wastewater utility system fails or is unable to continue to operate the system, public sewer may not be available due to the location of a development in proximity to designated sewer system areas. In certain circumstances, the Township may be required to take over the operation of the community wastewater utility system in order to protect the health, welfare and safety of residents of the Township. To this effect, this Ordinance is intended to regulate community wastewater utility systems to provide those assurances.

- b. **Township's Authority.** This Ordinance is enacted under the authority of the Township's general police powers to protect the health, safety, and welfare of its residents and under the authority of the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994, as amended. <sup>24</sup>

### Section 4.2 Definitions

- a. **Act 451.** The Natural Resources and Environmental Protection, Act 451 of the Public Acts of 1994 as amended, MCL 324.101 et seq.
- b. **Applicable Sewer Laws.** All applicable laws, regulations and standards of and permits issued by the Michigan Department of Environmental Quality ("MDEQ"), the Michigan Department of Public Health ("MDPH"), the Washtenaw County Health Department ("W CHD"), the Michigan Public Service Commission and any other applicable laws and regulations of the federal government, State of Michigan, Washtenaw County, and the Township which relate or apply to the operation of public or private sewer systems.

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<sup>23</sup>Ord. No. 19, §6, adopted February 2, 1995

<sup>24</sup>Ord. 2007-1, §1 adopted January 4, 2007

- c. **Applicant.** A person or entity having an ownership or other contractual interest in land who proposes to construct a CWUS on the land. The Applicant may also be the CWUS Owner.
- d. **Association (Condominium).** An "association of co-owners" as defined in the Condominium Act, Act No. 59 of the Michigan Public Acts of 1978, as amended, meaning the person designated in the condominium documents to administer the condominium project.
- e. **Association (Non-condominium).** The homeowners or property owners organized as a non-profit corporation or organized pursuant to deed restrictions and/or restrictive covenants in a particular Development who are authorized to govern the affairs of that subdivision or other Development. An Association may also be the CWUS Owner.
- f. **Community Wastewater Utility System or System ("CWUS").** A facility which is owned by a non-governmental entity and is designed, constructed, operated, and maintained to transport, collect, process, and treat sanitary sewage from more than one dwelling unit or structure. The system shall include any individual septic tanks, pumps, lines, and appurtenances serving each dwelling unit or structure in addition to facilities, sewers and appurtenances that serve more than one dwelling unit or structure.
- g. **CWUS Owner.** A legal entity of perpetual duration that owns the facilities and assets of the CWUS. The CWUS Owner may also be the CWUS Operator if it meets all of the requirements of a CWUS Operator.
- h. **CWUS Operator.** A legal entity of perpetual duration that is responsible for the day-to-day operation and maintenance of the CWUS and insuring compliance with all permits and applicable laws and regulations.
- i. **CWUS Permit.** The permit issued by the Township pursuant to this Ordinance.
- j. **Development.** Either a (1) subdivision as defined by the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended, (2) a condominium pursuant to the provisions of the Condominium Act, Act No. 59 of the Public Acts of 1978, as amended, or (3) any group of dwellings or structures which are proposed to be serviced by a CWUS.
- k. **Development Agreement.** The agreement described in Section 3.4.C.3 below.
- l. **Development Documents.** The articles of incorporation and bylaws of an Association and
  - (1) with regard to a condominium project, the master deed and bylaws provided by the Condominium Act, Act No. 59 of the Public Acts of 1978, as amended; or
  - (2) with regard to subdivisions or other developments, deed restrictions, subdivision plats, development agreements and/or restrictive covenants, including deed restrictions required by this Ordinance
- m. **Expansion.** Any activity whereby additional dwelling units, structures or users shall be added to or an alteration is made of an existing system.
- n. **Public Sanitary Sewer System.** A publicly-owned sanitary sewer system
- o. **MDEQ.** The Michigan Department of Environmental Quality, or its successors
- p. **Residential Owner.** The owner of a fee simple interest, a land contract purchaser, or owner of a unit in a condominium, of property which is serviced or is proposed to be serviced by a CWUS.
- q. **Township.** Sharon Township Washtenaw County, Michigan, acting through its duly elected

**Section 4.3 Regulations**

a. *Regulations.*

- (1) Except as provided in this Ordinance, it shall be unlawful to construct, install, or operate a CWUS within the Township.
- (2) Community wastewater utility systems shall require a conditional use permit from the Township Board in accordance with the procedures and standards set forth in Article 5 of the Sharon Township Zoning Ordinance.
- (3) Pursuant to the terms of Section 3.6 of this Ordinance, the Township Board shall review and approve or deny the CWUS Permit Application pursuant to this Ordinance and shall authorize the issuance of a CWUS Permit only after a conditional use permit has been approved pursuant to the Sharon Township Zoning Ordinance and the Board determines that the applicant has met all the standards requirements and regulations contained in this Ordinance.

b. *Qualifications for a CWUS Owner.* The CWUS Owner shall be the Association, the Applicant or other entity of perpetual duration approved by the Township with the capacity to own and operate the CWUS (or to contract with a CWUS Operator for operation of the CWUS) for the benefit of the Association and the Residential Owners and who meets the requirements of Section 3.5.B of this Ordinance. The CWUS Owner shall have the capacity to and shall perform all obligations of the CWUS Owner under the CWUS Permit, all necessary approvals or permits issued by any other entity having jurisdiction pursuant to the Applicable Sewer Laws, including but not limited to MDEQ approval under Act 451, the Development Agreement, the agreement with the CWUS Operator, and the Development Documents.

c. *Qualifications for a CWUS Operator.* The CWUS Operator shall employ one or more individuals who have all qualifications and certifications required under Applicable Sewer Laws to operate the CWUS.

d. *Requirements for approval.*

- (1) The design, construction, and operation of the proposed CWUS shall comply with the terms of this Ordinance and the Applicable Sewer Laws.
- (2) No new CWUS or an expansion of an existing system shall be constructed, installed, or operated within the Township unless the plans for the construction, installation and operation of the system have been approved by the Township, and all other governmental authorities having jurisdiction over the construction and maintenance of a CWUS, including but not limited to Washtenaw County, the Michigan Department of Public Health, the MDEQ and the Michigan Public Service Commission.
- (3) The Applicant shall provide the following to the Township before approval for a CWUS may be granted.
- (4) A certification from an engineer on behalf of the CWUS Owner stating that the system as designed and constructed will adequately process wastewater as required by all Applicable Sewer Laws. The Township engineer shall review and make a recommendation regarding the adequacy of such certification.
- (5) An executed CWUS Operating Agreement between the Applicant, CW US Owner,

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<sup>25</sup>Ord. 2007-1, §2 adopted January 4, 2007

the CWUS Operator and/or Association containing provisions for:

- (a) inspection, operation, maintenance, repair, and replacement of the system;
- (b) the imposition and collection of charges for connection to, and use, operation, maintenance, repair, and replacement of the system;
- (c) compliance with all Applicable Sewer Laws and agreements regarding the CWUS; and
- (d) establishment, maintenance and capital expenses.

The CWUS Operating Agreement must include a provision that the Agreement may not be terminated so long as the system is serving the Development, except that the CWUS Operating Agreement may be assigned to another CWUS Operator in accordance with the Applicable Sewer Laws and upon prior written approval of the Township. The CWUS Operating Agreement shall provide that it may not be terminated, amended, renewed or substituted without Township written approval.

The Township attorney and Township engineer shall review and make a recommendation regarding the adequacy of such an agreement or any amendment thereto. A proposed CWUS Operating Agreement must be submitted with the application for the CWUS Permit.

- (6) An executed Development Agreement between the Applicant, CWUS Owner, and/or the Association, and the Township in a form acceptable to the Township. The Development Agreement shall:
  - (a) Provide that the Applicant, CWUS Owner, and/or Association are jointly and severally responsible for the operation, inspection, monitoring, maintenance, repair, retention and replacement of the system and retaining a CWUS Operator.
  - (b) Specify standards for inspection, monitoring, operation, maintenance, repair and/or replacement of the system in accordance with the Applicable Sewer Laws and the guidelines recommended by the system manufacturer and the CWUS Operator. The Applicant will provide the proposed standards to the Township for review and approval and such standards shall be included in the Development Documents.
  - (c) Require indemnification of the Township, including a duty to defend, by the Applicant, CWUS Owner, and Association, jointly and severally, from any and all costs, expenses and liability incurred by the Township with respect to the community wastewater treatment utility system, including but not limited to the operation, maintenance, repair and replacement of all or a part of the system.
  - (d) Require that the Applicant, CWUS Owner, CWUS Operator and Association shall provide a policy of casualty insurance for the replacement value of the insurable components of the system and comprehensive general liability insurance with limits acceptable to the Township, naming the Township as an additional insured, and shall provide the Township with a copy of the policy each year. All insurance policies shall be issued by an insurer registered/licensed to issue insurance in Michigan and with an A.M. Best Rating acceptable to the Township. No policy of such insurance shall be cancelled or permitted to lapse without 30 days advance written notice to the Township and without securing similar coverage.
  - (e) Unless waived by the Township, a statement acknowledging that the Applicant, Owner and or Association shall provide a policy of liability

insurance for sudden and accidental environmental contamination with limits of a minimum of \$5,000,000.00, naming the Township as an additional insured and providing coverage for claims discovered within three (3) years after the term of the policy at a minimum. The Township shall be provided with a copy of this policy each year.

- (f) Grant the Township authority, at its sole discretion, to require that the CWUS be abandoned and all properties in the development be connected at the expense of the Association and Residential Owners to any publicly-owned community sewer system which may be constructed in the future and available to the Development.
- (g) Grant the Township the right to purchase for the sum of \$1.00:
  - (i) marketable title to any lands required to be titled in the name of the Township by governmental or regulatory requirements, or
  - (ii) easements reasonably deemed by the Township to be necessary in conjunction with the Township's assumption of responsibility for the CWUS or future publicly-owner community sewer system.
- (h) Provide that the Township in its sole discretion may remove all trees, shrubs, brush, vegetation or other similar impediments that may interfere with the operation of the CWUS.
- (i) Consent to the creation of a special assessment district to be established as described in Section 3.4.I below.
- (j) Transfers ownership and operation of the CWUS to the Township in the event that the CWUS Owner:
  - (i) becomes insolvent or goes into bankruptcy or receivership, or
  - (ii) fails to maintain the required operating, maintenance and capital reserves required by this Ordinance within 6 months after written notice from the Township that the reserves do not meet Ordinance requirements, or
  - (iii) is unable, unwilling or fails for any reason to operate the CWUS in full compliance with Applicable Sewer Laws where failure to meet such requirements in 6 successive months or in more than 8 months in a 12-month period shall be conclusively determined to be an inability to comply with Applicable Sewer Laws.

In the event that the Township assumes ownership of the CWUS, the Township shall hold and operate the CWUS for the benefit of the Association and Residential Owners. The Township may transfer the facilities, assets and reserves of the CWUS to a new CWUS Owner on the condition that such facilities, assets or reserves be used solely for providing sewer services to the Residential Owners.

- (k) Grant the Township the right to inspect any part of the CWUS for compliance with the Development Agreement and all Applicable Sewer Laws, consenting to personal jurisdiction and venue in Washtenaw County or U.S. District Court for the Eastern District of Michigan agreeing that money damages cannot make the Township whole for damages arising out of the breach of the Development Agreement, and agreeing to injunctive remedies in any action brought by the Township to enforce the Development Agreement or enforce compliance with Applicable Sewer Laws.

- (7) The provisions of the Development Agreement referenced in section 3.4.C.3 above and other obligations of the Association and Residential Owners shall be included in a separate document, in form approved by the Township attorney, and included within the Development Documents that shall run with the land, including but not limited to the condominium disclosure documents for a condominium project, and in a separate recordable document for all forms of development, and be delivered to the prospective purchaser prior to the execution of a purchase agreement for property proposed to be serviced by a community wastewater utility system.
- (8) A permanent and irrevocable easement, in recordable form, shall be granted by the Owner and/or Association to the Township and its employees, agents, and assigns authorizing them to enter on the Development and the property upon which the system is located for the purpose of inspections. The property on which the system is located shall be maintained so it is accessible at all times, prohibiting any structures or landscaping within such area that would unreasonably interfere with such access.
- (9) Each CWUS shall be a general common element of a condominium in which it is located, or part of common areas of any other Development. The system shall be inspected, monitored, operated, maintained, repaired and replaced by the CWUS Owner or Association with the right of the CWUS Owner or Association to assess the Residential Owners for all such costs.
- (10) Each CWUS Owner shall maintain a reserve sufficient for five (5) years of monitoring, inspection, operation, maintenance and repair of the system and an adequate replacement reserve in the amounts certified by a design engineer or the CWUS Operator and required by the applicable governmental entities and shall be subject to Township review and approval. The CWUS Operator and the Association shall provide the Township with evidence of the reserves annually.
- (11) A copy of the Articles of Incorporation and Bylaws of the Association and a copy of the form of the restrictive covenant/deed restrictions/or master deed imposing upon Residential Owners the obligation to pay for all capital and operating costs and reserves associated with the CWUS.
- (12) Evidence satisfactory to the Township Board that the CWUS Operator employs one or more individuals who have all qualifications and certifications required under Applicable Sewer Laws to operate the system.
- (13) Evidence satisfactory to the Township that the CWUS Owner has the qualifications to own the CWUS.
- (14) No building permit shall be used for any structure or dwelling unit proposed to be serviced by a CW US until the Township Board has approved such system in accordance with terms and provision of this Ordinance.
- (15) The Township shall inspect the system:
  - (a) during construction and
  - (b) after construction is completed by an independent engineer or consultant to ensure proper construction and installation of the system.

The Township shall not issue a CWUS Permit until the Township has certified that the CWUS has been constructed according to the approved plans and specifications.

- (16) The Township will inspect the system annually to insure compliance with this Ordinance. The Township will retain the services of an engineer or other qualified

consultant to conduct this inspection and the cost will be paid for by the Applicant or CWUS Owner. To this end the Applicant or CWUS Owner shall, by January 1st of each year, pay into an escrow account maintained by the Township an amount estimated by the Township to be necessary to pay for the expense of such engineer or consultant.

- (17) Anything in this Ordinance to the contrary notwithstanding, the Township shall not be responsible or obligated to perform any needed or desired repairs, maintenance, improvement, and/or replacement of the system or any portion thereof.
- (18) The CWUS Owner, CWUS Operator and/or Association shall furnish periodic operating and maintenance reports in accordance with the maintenance requirements and schedule. Any such requirements shall be made a part of the Development Documents.
- (19) After the Township's approval, the Development Documents and the Development Agreement shall be recorded at the office of the Washtenaw County Register of Deeds prior the first sale of any unit, lot or parcel served by a CWUS. After approval by the Township, the Development Documents, as they pertain to the system, shall not be amended without Township approval. The Development Documents shall contain language to that effect.
- (20) Prior to recording the Development Documents and sale of any unit, lot or parcel served by a CWUS, the Applicant shall circulate or initiate a petition for the Township to establish a special assessment district for the Development, the purpose of which shall be to provide for assessment of the units, lots or parcels in each development by the Township for the costs of construction, improvement and maintenance, of the CWUS or any other purposes authorized by law in the event the Association shall fail to properly perform such work or in the event the Township takes control of the CWUS. If the Applicant or CWUS Owner petitions for a district under the Township Public Improvement Act, Public Act 188 of 1954), the record owners as defined by Act 188 of property benefitted by the CWUS shall execute a petition legally sufficient for the establishment of a special assessment district, using petition forms acceptable to the Township, in order to allow for financing the construction, improvement, and maintenance of the CWUS. If the Applicant determines to proceed to create a special assessment district under a different statute than Act 188 such as the Drain Code, the Applicant shall circulate or initiate a petition meeting the standards of that statute
- (21) The Association, CWUS Owner, Residential Owners and the Applicant shall be jointly and severally responsible for all costs involved in the installation, operation, maintenance, repair, replacement of equipment and facilities and liability associated with the system. The Township may, at its option, elect to collect all costs, including actual legal fees it may incur in connection with the system, pursuant to the other provisions of this Ordinance, or by direct court action against the Association, CWUS Owner and Residential Owners, and Applicant.

e. *Transfer of Ownership of the CWUS*

- (1) The CWUS Owner shall not transfer, convey or assign any facilities or assets of the CWUS required for the ongoing operation of the CWUS in compliance with this Ordinance and Applicable Sewer Laws, except as provided in this Section 3.5.
- (2) The CWUS Owner shall not transfer, convey or assign the facilities and assets of the CWUS without (i) approval of the Township Board, (ii) a demonstration that the entity seeking to become the new CWUS Owner meets all requirements of a CWUS Owner under this Ordinance and can fulfill all duties and obligations of a CWUS Owner under the CWUS Permit, all necessary approvals or permits issued by any other entity having jurisdiction pursuant to the Applicable Sewer Laws, including but

not limited to MDEQ approval under Act 451 the Development Agreement, the Development Documents, and the agreement with the CWUS Operator; (iii) demonstration that the new CWUS Owner has established or has the right to receive a transfer of all required operating, maintenance and capital reserves and (iv) agreement by the new CWUS Owner to undertake all obligations imposed on a CWUS Owner under this Ordinance, the agreement with the CWUS Operator, the Development Agreement and the Development Documents.

- (3) Transfer of ownership of the CWUS by a CWUS Owner shall not relieve such owner from civil or criminal liabilities arising under this Ordinance or any Applicable Sewer Laws nor from the obligation to comply with any court-ordered injunctive relief related to obtaining or enforcing compliance with this Ordinance or Applicable Sewer Laws that accrue or arise prior to the date of Township Board approval of the transfer.

f. *Permit to Operate a CWUS*

- (1) No CWUS may be constructed, installed or operated within the Township without a CWUS Permit.
- (2) Township Board approval of the CWUS pursuant to this Ordinance and Township Zoning Ordinance shall serve as the permit to construct and install the CWUS, which permit shall not become effective until the CWUS has received all necessary approvals by any other entity having jurisdiction pursuant to the Applicable Sewer Laws, including but not limited to MDEQ approval under Act 451. The Township Board approval of the CWUS pursuant to this Ordinance and Township Zoning Ordinance shall also serve as the CWUS Permit, which CWUS Permit shall not become effective until the CWUS has received all necessary approvals by any other entity having jurisdiction pursuant to the Applicable Sewer Laws, including but not limited to MDEQ approval under Act 451.
- (3) The CWUS Owner shall annually submit the following information to the Township:
  - (a) The name of the CWUS Operator and a copy of the current contract between the CWUS Owner and CWUS Operator, and current copies of all required certifications for individuals operating the CWUS.
  - (b) Proof that the CWUS Owner and CWUS Operator meet the insurance and other requirements under this Ordinance.
  - (c) A certification with supporting documentation from a financial institution that the required operating, maintenance and capital reserves are maintained.
  - (d) The operating budget for the CWUS together with a schedule of all user fees and charges.
  - (e) A certification from a licensed professional engineer with expertise in wastewater systems that (i) sets forth the maintenance, repair and replacement needs or recommendations for the CWUS for the 12-month period coinciding with the upcoming permit year together with an estimate of likely associated expenses, and (ii) states without exception or reservation that the condition of the CWUS, together with operating budget and the satisfaction of the maintenance, repair and replacements needs, is such that the CWUS is capable of meeting all discharge limitations and other requirements related to unacceptable direct environmental impacts (e.g., noise, odor, and airborne emissions) during the permit year.
  - (f) Copies of all approvals and permits required by the Applicable Sewer Laws.
- (4) The CWUS Owner shall notify the Township of any and all violations of the

Applicable Sewer Laws, including but not limited to all MDEQ Permit Requirements.

- (5) The Township may attach reasonable conditions to the CWUS Permit to ensure compliance with the provisions of this Ordinance.
- (6) The CWUS Permit shall be deemed rescinded and canceled without further action of the Township in the event that any necessary approvals or permits issued by any other entity having jurisdiction pursuant to the Applicable Sewer Laws, including but not limited to MDEQ approval under Act 451, lapses, expires without renewal, is revoked by the entity having jurisdiction or otherwise ceases to be in effect.

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#### **Section 4.4 Fees, Penalties and Enforcement.**

- a. *Fees.* An Application for CWUS approval under this Ordinance shall be accompanied by a non-refundable administrative application fee in an amount specified from time to time by resolution of the Sharon Township Board. In addition, an Applicant shall pay an additional escrow fee in an amount determined by resolution of the Sharon Township Board for the estimated cost of outside consultant(s) who may be retained by the Township in connection with the review of the application. In the event the cost of the services of the consultant(s) is less than the escrow fee, the Applicant shall be refunded the balance. In the event the cost of the services of the consultant(s) exceeds the amount of the escrow fee, the Applicant shall pay the deficiency to the Township prior to the issuance of a permit. A denial of an application for a permit shall not affect the Applicant's obligation to pay the escrow fee provided for in this Section.
- b. *Penalties and Enforcement.*
  - (1) *Enforcement.* The Enforcement Officer or his/her agent, officer or employee shall have authority under this Ordinance to enter upon privately-owned land for the purpose of performing the Township's duties under this ordinance and may take or cause to be made such examinations, surveys or samplings as are deemed necessary.
  - (2) *Civil Remedies.* The provisions of this Ordinance shall be enforceable through any and all remedies at law or in equity in any court of competent jurisdiction.
    - (a) *Injunction.* Any activity conducted in violation of this Section is declared to be a nuisance per se, and the Township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation, and/or requiring restoration of the property as nearly as possible to its condition before the violation
    - (b) *Stop-Work Order.* The Township may also issue a stop-work order or withhold issuance of a permits or inspection until the provisions of this Ordinance, including any conditions attached to a permit, have been fully met. Failure to obey a stop-work order shall constitute a violation of this Ordinance.
  - (3) *Criminal remedies.* In addition to the rights and remedies herein provided to the Township, any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00), or be imprisoned in the county jail for a period not exceeding ninety (90) days, or be both so fined and imprisoned. Each day such violation is continued or permitted to continue shall

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<sup>26</sup>Ord. 2007-1, §3 adopted January 4, 2007

constitute a separate offense and shall be punishable as such hereunder.

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**Section 4.5 Ordinance Conflict.** Nothing in this Ordinance shall be interpreted to conflict with present or future state statutes in the same subject matter; conflicting provisions of this Ordinance shall be abrogated to, but only to, the extent of the conflict. Moreover, the provisions of this Ordinance shall be construed, if possible, to be consistent with relevant state regulations and statutes. <sup>28</sup>

**Section 4.6 Severability.** If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such holding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force. Rights and duties which have matured, penalties which have been incurred, proceedings which have begun and prosecutions for violations of law occurring before the effective date of this Ordinance are not affected or abated by this Ordinance. <sup>29</sup><sup>1</sup>

**Section 4.7 Effective Date.** This Ordinance shall take full force and effect upon thirty (30) days following final publication of said ordinance. <sup>30</sup>

**Section 4.8 Certification.** I, Teri Aiuto, Clerk of Sharon Township, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Sharon Township Board at a regular meeting on January 4, 2006. <sup>3</sup>

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<sup>27</sup>Ord. 2007-1, §4 adopted January 4, 2007

<sup>28</sup>Ord. 2007-1, §5 adopted January 4, 2007

<sup>29</sup>Ord. 2007-1, §6 adopted January 4, 2007

<sup>30</sup>Ord. 2007-1, §7 adopted January 4, 2007

<sup>31</sup>Ord. 2007-1, §8 adopted January 4, 2007