

Ordinance No. 27

SANITARY SEWER REVENUE BOND TOWNSHIP OF COVERT, VAN BUREN COUNTY, MICHIGAN

An ordinance to authorize and provide for the issuance of sanitary sewer revenue bonds to fund a portion of the cost of the Covert Sanitary Sewer System; to provide for the security of the bonds herein authorized; and to provide for the other matters relative to said improvements and bonds.

THE TOWNSHIP OF COVERT ORDAINS:

Sec. 1. DEFINITIONS.

Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

- A. **Act 94** means Act 94, Public Acts of Michigan 1933, as amended.
- B. **Additional Bonds** means any additional bonds of equal standing with the 1989 Bonds issued pursuant to Section 17 of this Ordinance.
- C. **Aggregate Debt Service** for any period means, as of any date of calculation by the Board, the sum of the amounts of the debt service for such period with respect to all Outstanding Bonds.
- D. **Aggregate Debt Service Requirement** means for any period, and as of any date of calculation, Aggregate Debt Service for such period, less any capitalized interest to be paid from the proceeds of the Bonds.
- E. **Board or Township Board** means the Township Board of the Township.
- F. **Bond Reserve Account** means the Bond Reserve Account of the Redemption Fund established pursuant to Section 11(B) of this Ordinance.
- G. **Bond Reserve Requirement** means \$21,000 for the Series A Bonds and \$10,000 for the Series B Bonds.
- H. **1989 Bonds** means the Township's Series A Bonds and Series B Bonds as authorized by this Ordinance.
- I. **Bonds** means the 1989 Bonds and, when issued and delivered, any Additional Bonds authorized and issued in accordance with Section 17 of this Ordinance.
- J. **Code** means the Internal Revenue Code of 1986, as amended.
- K. **Consulting Engineers** means the engineer or engineering firm or firms appointed from time to time, and having a favorable reputation for skill and experience in the design and operation of municipal sanitary sewer systems, at the time retained by the Board to perform the acts and carry out the duties provided for such Consulting Engineers in the Ordinance.

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- L. **Depository** shall mean the First of America Bank-Michigan N.A., Covert, Michigan, or such other bank as shall be qualified under Section 15 of Act 94 and designated to act as depository pursuant to this Ordinance by resolution of the Board.
- M. **Government** shall mean the United States of America Acting by the Farmers Home Administration-United States Department of Agriculture.
- N. **Government Obligations** means direct obligations of (including obligations issued or held in book entry form on the books of) the United States of America.
- O. **Investment Obligations** means (to the extent now or hereafter permitted by law) the investments permitted by Section 24 of Act 94.
- P. **Net Revenues** means the Revenues remaining after deducting the reasonable expenses of administration, operating, and maintenance of the System.
- Q. **Operation and Maintenance Fund** means the Operation and Maintenance fund established pursuant to Section 11(A) of this Ordinance.
- R. **Ordinance** means this Ordinance and any other ordinance amendatory to or supplemental to this Ordinance and shall include any resolution authorizing the sale of a series of Bonds.
- S. **Outstanding Bonds** means Bonds theretofore or thereupon being authenticated and delivered under this Ordinance except:
1. Bonds cancelled by the Transfer Agent at or prior to such date;
 2. Bonds (or portions of Bonds) for the payment or redemption of which moneys or Government Obligations equal to the principal amount or redemption price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under this Ordinance and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), provided that if such Bonds (or portions of Bonds) are to be redeemed, notice of such redemption shall have been given as provided in this Ordinance or provision satisfactory to the Transfer Agent shall have been made for the giving of such notice;
 3. Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered hereunder; and
 4. Bonds no longer deemed to be Outstanding Bonds as provided in Section 5 of this Ordinance.
- T. **Receiving Fund** means the receiving Funds established pursuant to Section 11 of this Ordinance.
- U. **Redemption Fund** means the Bond and Interest Redemption Fund established pursuant to Section 11 (B) of this Ordinance.

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- V. **Registered Owner** means the owner of a Bond as shown by the registration records kept by the Transfer Agent.
- W. **Replacement Fund** means the Replacement and Improvement Fund established pursuant to Section 11 (C) of this Ordinance.
- X. **Revenues** means the income derived from the rates charged for the services, facilities, and commodities furnished by the System, including income derived by reason of future improvements, enlargements, extensions or repairs to the System. Revenues shall include earnings on investment of funds and accounts of the System required to be deposited in the Receiving Fund pursuant to this Ordinance and other revenues derived from or pledged to operation of the system.
- Y. **Series A Bonds** means the Township's Sanitary Sewer Revenue Bonds, Series 1989A in the amount of \$316,000 authorized by this Ordinance.
- Z. **Series B Bonds** means the Townships Sanitary Sewer Revenue Bonds, Series 1989B in the amount of \$152,000 authorized by this Ordinance.
- AA. **Sufficient** means with respect to (i) cash or (ii) Investment Obligations, or by any combination thereof, not redeemable at the option of the issuer thereof, the principal and interest payments upon which, without reinvestment of the interest, come due at such times and in such amounts, as to be fully sufficient to pay the interest as it comes due on the Bonds or any portion thereof and the principal and redemption premium, if any, on the Bonds or any portion thereof as they come due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations or cash shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the Transfer Agent.
- BB. **System** means the complete sanitary sewage disposal system of the township intended to serve the unincorporated Village of Covert, including the community septic tank and drain field, lift stations, force mains, and collection sewers together with all plants, works, instrumentalities and properties, used or useful in connection with the collection and treatment of sanitary sewage and all additions, extensions and improvements existing or hereafter acquired.
- CC. **Township** means the Township of Covert, Van Buren County, Michigan.
- DD. **Transfer Agent** means the Township Treasurer, or such successor as shall be named by the Township.

Sec. 2. **NECESSITY; APPROVAL OF PLANS AND SPECIFICATIONS; ESTIMATED COST; PERIOD OF USEFULNESS.**

It is hereby determined to be necessary for the public health, safety and welfare of the Township to acquire and construct the System, in accordance with the detailed plans and specifications therefore prepared by Williams & Works, Consulting Engineers of Grand Rapids, Michigan, which plans and specifications are hereby approved. The cost of the System has been estimated by the engineers to be One Million Eight Hundred Seventy Thousand Dollars (\$1,870,000) including the payment of incidental expenses as are hereafter specified in Section 3

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of this Ordinance, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the Public Improvements is estimated to be greater than forty (40) years.

Sec. 3. ISSUANCE OF BONDS.

To defray a portion of the cost of acquiring and constructing the System, including the payment of legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Bonds, it is hereby determined that the Township borrow the sum of Four Hundred Sixty-Eight Thousand Dollars (468,000) and issue the 1989 Bonds therefore pursuant to the provisions of Act 94. The remaining cost of the System is expected to be paid by Government grants.

Sec. 4. 1989 BOND DETAILS, REGISTRATION AND EXECUTION.

The 1989 bonds shall be issued in two series, consisting of the Series A Bonds and the Series B Bonds. The Series A Bonds shall be issued in the aggregate amount of \$316,000 and shall be designated SANITARY SEWER REVENUE BONDS, SERIES 1989A. The Series B Bonds shall be issued in the aggregate amount of \$152,000 and shall be designated SANITARY SEWER REVENUE BONDS, SERIES 1989B. The 1989 Bonds shall be payable on a pari passu basis solely out of the Net Revenues and other monies pledged under this Ordinance and shall not be a general obligation of the Township. Bonds shall be issued in fully-registered form in a single manuscript bond or in the denomination of \$500 or integral multiples thereof not exceeding the amount of the Series A Bonds or Series B Bonds maturing on the same date and shall be numbered in consecutive order of authentication from A-1 upwards with respect to the Series A Bonds and from B-1 upwards with respect to the Series B Bonds. The 1989 Bonds shall be dated as of the date of delivery, shall bear interest in the manner set forth in the Bond form attached hereto as Exhibit A at the rate of six percent (6.0%) per annum payable on February 1, 1990, semiannually thereafter on February 1st and August 1st of each year, and shall mature on January 1st in the years 1991 to 2029, as follows:

<u>Maturity Date</u>	<u>Principal Due On Series A Bonds</u>	<u>Principal Due On Series B Bonds</u>
August 1, 1991	\$ 1,500	\$ 1,000
August 1, 1992	1,500	1,000
August 1, 1993	2,000	1,000
August 1, 1994	2,000	1,000
August 1, 1995	2,500	1,500
August 1, 1996	2,500	1,500
August 1, 1997	3,000	1,500
August 1, 1998	3,000	1,500
August 1, 1999	3,500	2,000
August 1, 2000	3,500	2,000
August 1, 2001	4,000	2,000
August 1, 2002	4,000	2,000
August 1, 2003	4,500	2,500
August 1, 2004	4,500	2,500
August 1, 2005	5,000	2,500
August 1, 2006	5,500	2,500

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August 1, 2007	6,000	3,000
August 1, 2008	6,500	3,500
August 1, 2009	7,000	3,500
August 1, 2010	7,500	3,500
August 1, 2011	8,000	4,000
August 1, 2012	8,500	4,000
August 1, 2013	9,000	4,500
August 1, 2014	9,500	4,500
August 1, 2015	10,000	5,000
August 1, 2016	10,500	5,000
August 1, 2017	11,000	5,500
August 1, 2018	11,500	5,500
August 1, 2019	12,000	6,000
August 1, 2020	12,500	6,000
August 1, 2021	13,000	6,500
August 1, 2022	13,500	6,500
August 1, 2023	14,000	6,500
August 1, 2024	14,500	6,500
August 1, 2025	15,000	7,000
August 1, 2026	15,000	7,000
August 1, 2027	16,000	7,000
August 1, 2028	16,000	7,000
August 1, 2029	17,000	7,000

Interest shall be payable by check drawn on the Depository and mailed to each Registered Owner at the registered address, as shown on the registration books of the Township maintained by the Transfer Agent. Interest shall be payable to the Registered Owner of record as of the fifteenth day of the month prior to the payment date for each interest payment. The date of determination of Registered Owner for purposes of payment of interest as provided in this paragraph may be changed by the Township to conform to market practice in the future. The principal of the Bonds shall be payable by the Transfer Agent at the principal office of the Depository upon presentation and surrender thereof. Principal of and interest on the bonds shall be payable in lawful money of the United States.

The 1989 bonds shall be subject to redemption prior to maturity in part or in whole in inverse order of maturity or any interest payment date at par and without premium upon thirty (30) days written notice to be given by the Transfer Agent.

The Bonds shall be signed by the original or facsimile signature of the Supervisor and countersigned by the original or facsimile signature of the Township Clerk. The Bonds shall have the corporate seal of the Township affixed thereto or printed thereon in facsimile form. No Bond shall be valid until authenticated by the Transfer Agent. The 1989 Bonds shall be delivered to the Transfer Agent for authentication and shall be delivered by the Transfer Agent to the purchaser in accordance with instructions from the Township upon payment of the purchase price for the 1989 Bonds. Executed blank 1989 Bonds for rejection and issuance to transferees shall simultaneously, and from time to time thereafter as necessary, be delivered to the Transfer Agent for safe keeping.

Any Bond, upon surrender of the Bond to the Transfer Agent by the Registered Owner thereof, accompanied by delivery of a duly executed written instrument of transfer satisfactory to the

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Transfer Agent, may be exchanged for Bonds of any other authorized denominations of the same aggregate principal amount, maturity date and interest rate as the surrendered Bond.

Any Bond may be transferred upon the books of the Township maintained by the Transfer Agent by the Registered Owner thereof, in person or by his duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the Transfer Agent shall authenticate and deliver a new Bond or bonds, for like aggregate principal amount, maturity, and interest rate. The Transfer Agent shall require the payment by the Registered Owner requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer.

The Township shall not be required (i) to issue, register the transfer of, or exchange any Bond during a period beginning at the opening of 15 business days before the date of the mailing of a notice of redemption of Bonds selected for redemption under this Ordinance and ending at the close of business on the day of that mailing, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of bonds being redeemed in part. The Township shall give the Transfer Agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

Sec. 5. PAYMENT OF BONDS; CREATION OF LIEN; DEFEASANCE.

The Bonds and the interest thereon shall be payable solely from the Net Revenues (except to the extent payable from the proceeds of bond insurance or other credit enhancement, if any, or from the proceeds of Bonds), and to secure such payment, there is hereby created a first priority statutory lien upon the whole of the Net Revenues. Pursuant to provisions of Act 94, the Township hereby pledges to the repayment of the principal of, redemption premium, if any, and interest on the Bonds, the funds and accounts established by this Ordinance, and a first priority statutory lien is hereby created on such funds and accounts. The lien and pledge provided by this Ordinance shall continue until payment in full of the principal of and interest on all Bonds Payable from Net Revenues, or, until Sufficient cash fully insured by the Federal Deposit Insurance Corporation, Sufficient Investment Obligations, consisting of direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by the United States or any combination thereof shall have been deposited in trust for payment in full of the principal of and the interest on all bonds to be paid to their maturity, or, if called or if irrevocable instructions have been given to call for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. Upon deposit of Sufficient cash fully insured by the Federal Deposit Insurance Corporation, Sufficient Investment Obligations consisting of direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by the United States, or any combination thereof, the statutory lien created by this Ordinance shall be terminated with respect to the Bonds to be paid from the cash, Investment Obligations consisting of direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by the United States, or combination thereof, the Registered Owners of such Bonds shall have no further rights under this Ordinance except for payment from the deposited funds and for the rights of replacement, registration, and transfer provided by this Ordinance, and such Bonds shall no longer be considered to be Outstanding Bonds under this Ordinance.

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Sec. 6. **MANAGEMENT.**

The operation, repair and management of the System shall be under the supervision and control of the Township Board.

Sec. 7. **CHARGES.**

The rates to be charged for service by the System and the methods of collection and enforcement of the collection of the rates shall be those permitted by law and established by the Board on or before the date of adoption of this Ordinance and thereafter as established by the Board.

Sec. 8. **NO FREE SERVICE.**

No free service shall be furnished by the System to any person, firm or corporation, public or private, or to any public agency or instrumentality.

Sec. 9. **RATE COVENANT.**

The rates charged pursuant to Section 7 of this Ordinance are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the system as are necessary to preserve the System in good repair and working order, and when taken together with Net Revenues, to provide for (i) an amount equal to the annual principal and interest requirements on all of the Bonds as the same become due and payable, (ii) the creation and maintenance of the Bond Reserve Account, and (iii) to provide for all other obligations, expenditures and funds for the System required by law and this Ordinance. The rates shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed to fix and maintain rates in accordance with Act 94 for services furnished by the System at all times sufficient to provide for the foregoing.

Sec. 10. **OPERATING YEAR.**

The System shall be operated on the basis of an operating year which corresponds to the fiscal year of the Township which currently commences on July 1st and ends of the last day of the following June.

Sec. 11. **FUNDS AND ACCOUNTS, FLOW OF FUNDS.**

All Revenues of the System shall be set aside as collected and credited to a fund established with the Depository to be designated SEWER SYSTEM RECEIVING FUND (the "Receiving Fund"). The Revenues so credited are pledged for the purpose of the following funds and shall be transferred or derived from the Receiving Fund periodically in the manner and at the times hereinafter specified:

- A. **OPERATION AND MAINTENANCE FUND:** Quarterly, out of the Revenues credited to the Receiving Fund there shall be first set aside in, or credited to, a fund hereby ordered to be established and maintained with the Depository and designated OPERATION AND MAINTENANCE FUND, a sum sufficient to provide for the payment of the ensuing quarter's expenses of administration and operation of the System including such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order.

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The Township Board, prior to the commencement of each operating year, shall adopt a budget covering the foregoing expenses for each year. During the course of the operating year, the total of such expenses shall not exceed the total amount specified in the budget, except by a majority vote of the members-elect of the Township Board. No payment shall be made to the Township from monies credited to the Operation and Maintenance Fund except for services directly rendered to the System by the Township or its representatives.

- B. **BOND AND INTEREST REDEMPTION FUND.** There shall be established and maintained a separate depository fund designated BOND AND INTEREST REDEMPTION FUND (the "Redemption Fund"), the moneys on deposit therein from time to time to be used solely for the purpose of paying the principal of, redemption premium, if any, and interest on the 1989 Bonds. Separate accounts shall be maintained in the Redemption Fund for the Series A Bonds and the Series B Bonds. The moneys in the Redemption Fund, shall be kept on deposit with the Depository for the Bonds.

Out of the Net Revenues remaining in the Receiving Fund, after provisions for the credit or deposit to the Operation and Maintenance Fund, there shall next be set aside, quarterly, and transferred to the Transfer Agent for deposit in the Redemption Fund in the separate accounts for the Series A Bonds and the Series B Bonds a sum proportionally sufficient to provide for the payment of the principal of, redemption requirements, if any, and interest on the 1989 Bonds as and when the same became due and payable, subject to any credit therefore as provided in this Section. If there shall be any deficiency in the amount previously required to be set aside, then the amount of such deficiency shall be added to the next succeeding quarter's requirements.

There is hereby established in the Redemption Fund a separate account to be known as the BOND RESERVE ACCOUNT, with separate sub-accounts for the Series A Bonds and the Series B Bonds. The Bond Reserve Account shall be funded by the Township commencing August 1, 1991 by the deposit of Net Revenues remaining, if any, after the set aside into the Redemption Fund of a sufficient sum for current principal and interest payments on the 1989 Bonds as provided in the preceding paragraph. The sub-account for the Series A Bond shall be funded, to the extent of available monies, in the amount of \$2,100 annually until the sum of \$21,000 has been accumulated. The sub-account for the Series B Bonds shall be funded, to the extent of available monies, in the amount of \$1,000 annually until the sum of \$10,000 has been accumulated. The deposits to the sub-accounts for the Series A Bonds and the Series B Bonds shall be on a pari passu basis. All investment earnings on each sub-account in the Bond Reserve Account shall be transferred to the respective account in the Redemption Fund and set aside for payment of current principal and interest on the Series A Bonds and the Series B Bonds. If at any time it shall be necessary to use moneys credited to the Bond Reserve Account for the payment of principal and interest on the 1989 bonds, then the moneys so used shall be replaced over a period of not more than 5 years from the Net Revenues first received thereafter which are not required for current principal and interest requirements. If at any time there is any excess in the Bond Reserve Account over the Bond Reserve Requirement, such excess may be transferred to such fund or account as the Board shall direct.

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No further payments need be made into the Redemption Fund after enough of the Bonds have been retired so that the amount then held in the Redemption Fund is equal to the entire amount of principal and interest which will be payable at the time of maturity of all Outstanding Bonds and the monies so held shall be used solely to pay the principal of and interest on the Bonds, including redemption premium, if any, as the Bonds become due either by maturity or by redemption prior to maturity.

A redemption requirement for the Bonds may be satisfied by calling the bonds as provided in this Ordinance or by the purchase and surrender to the Transfer Agent of Bonds of the same issue and maturity from moneys allocated therefore as provided herein, or purchased with other funds legally available therefore. The Township shall elect the manner in which it intends to satisfy a redemption requirement not less than forty-five days prior to the date of redemption and shall give written notice such election to the Transfer Agent at least forty-five (45) days prior to the date of the required redemption.

- C. **REPLACEMENT AND IMPROVEMENT FUND:** There shall be established and maintained with the Depository a fund designated **REPLACEMENT AND IMPROVEMENT FUND** (the "Replacement Fund"). Except as hereinafter provided, the money credited thereto shall be used solely for the purpose of making major repairs, replacements, improvements and extensions to the System. There shall next be set aside in or credited to the Replacement Fund, after provision is made for the requirements of the foregoing funds and accounts, such amount as established by the Township. If at any time it shall be necessary to use moneys in the Replacement Fund the moneys so used shall be replaced from any moneys in the Receiving Fund which are not required by this Ordinance to be used for the Operation and Maintenance Fund, and the Redemption Fund, including the Bond Reserve Account.
- D. **SURPLUS MONEYS:** Any revenues in the Receiving Fund at the end of any quarter of any operating year after satisfying all requirements of the Operation and Maintenance Fund, the Redemption Fund, including the Bond Reserve Account and the Replacement Fund, shall be deemed to be surplus moneys, and may, at the option of the Board be used for any of the following purposes:
1. Transferred to the Replacement Fund.
 2. Transferred to the Redemption Fund and used for the redemption, payment, or purchase of Bonds.

If there should be any deficit in the Operation and Maintenance Fund, Redemption Fund, including the Bond Reserve Account, or the Replacement Fund on account of defaults in setting aside required amounts therein, then transfers shall be made from the moneys remaining in the Receiving Fund at the end of any operating year to those funds in the priority and order specified herein, to the extent of any deficit, before any other disposition is made of the monies in the Receiving Fund at the end of any operating year.

Sec. 12. **DEPOSITORY; FIDELITY BOND.**

Moneys in the several funds and accounts established pursuant to this Ordinance, except moneys in the Redemption Fund, including the Bond Reserve Account, and moneys derived from the proceeds of sale of the Bonds and deposited to the Construction Fund in accordance with Section

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13, below, may be kept in one bank account with the Depository, in which event the moneys in the bank account shall be allocated on the books and records of the township or deposited to the fund and accounts herein established, in the manner and at the times provided in this Ordinance. So long as the Government is a Registered Owner of 1989 Bonds, the Township Treasurer and all other persons responsible for the handling of Revenues and proceeds of the 1989 Bonds shall execute a fidelity bond in the amount required by Government with a surety company approved by the government, on which the Township and the Government shall be named as co-obligees and the amount thereof shall not be reduced without the prior written consent of the Government.

Sec. 13. **PRIORITY OF FUNDS.**

In the event the moneys in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Fund or the Redemption Fund any moneys or securities in other funds of the System, except the proceeds of sale of the 1989 Bonds, shall be credited or transferred, first, to the Operation and Maintenance Fund and second, to the Redemption Fund, to the extent of any deficit therein.

Sec. 14. **1989 BOND PROCEEDS.**

From the proceeds of sale of the 1989 Bonds there shall be immediately deposited in the Redemption Fund, an amount equal to the accrued interest and premium, if any, received on delivery of the 1989 Bonds. The balance of the proceeds of the sale of the 1989 Bonds shall be deposited in a separate depository fund designated COVERT SEWER SYSTEM CONSTRUCTION FUND (the "Construction Fund"). The monies in the Construction Fund shall be kept on deposit with the Depository. Monies in the Construction Fund shall be applied solely in payment of the cost of the Project and any engineering, legal and other expenses incident thereto and to the financing thereof. Payment for construction, either on account or otherwise, shall not be made unless the registered engineer in charge of such work shall file with the Township a signed statement to the effect that the work has been completed in accordance with the plans and specifications therefore; that it was done pursuant to and in accordance with the contract therefore; that such work is satisfactory; and that such work has not been previously paid for. No proceeds of the Bonds shall be used to pay capitalized interest or fund the Bond Reserve Account.

Any unexplained balance of the proceeds of sale of the 1989 Bonds remaining after completion of the System in the Construction Fund may in the discretion of the Township and to the extent of fifteen percent (15%) of the principal amount of the 1989 Bonds be used for further improvements, enlargements, and extensions to the System if, at the time of such expenditure, such use is approved by the Municipal Finance Division of the Michigan Department of Treasury or any successor agency, if such permission is then required by law; provided that in the event the Government is a Registered Owner of the 1989 Bonds, the use of any unexpended balance in the Construction Fund must be authorized in writing by the Government. Any remaining balance after such expenditure shall be paid into the Redemption Fund and may be used for the purpose of redeeming Bonds or purchasing Bonds on the open market at not more than the fair market value thereof.

Sec. 15. **INVESTMENTS.**

Moneys in the funds and accounts established herein, and moneys derived from the proceeds of sale of the Bonds may be invested by the Township Treasurer on behalf of the Township in Investment Obligations. Investment of moneys in the Redemption Fund being accumulated for

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payment of the next maturing principal or interest payment on the Bonds shall be limited to Government Obligations bearing maturity dates prior to the date of the next maturing principal or interest payment respectively on the Bonds. Investments of moneys in any other funds or accounts, including moneys derived from the proceeds of sale of the Bonds, shall be limited to obligations bearing maturity dates or subject to redemption, at the option of the holder thereof, not later than the time estimated by the Township when the moneys from such investments will be required. Any securities representing investments shall be kept on deposit with the bank or trust company having on deposit the fund or funds or account form which such purchase was made. Earnings or profits on any investment of funds in any fund or account established in this Ordinance shall be deposited in or accredited to the Receiving Fund.

Sec. 16. COVENANTS.

The Township covenants and agrees with the Registered Owners of the Bonds that so long as any of the Bonds remain as Outstanding Bonds and unpaid as to either principal or interest:

- A. The Township will maintain the System in good repair and working order and will operate the same efficiently and will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State of Michigan and this Ordinance.
- B. The Township will maintain and keep proper books of record and account separate from all other records and accounts of the Township in accordance with Act 2, Public Acts of Michigan, 1968, as amended. Not later than six (6) months after the close of each operating year of the System, the Township will cause the annual audit of the books of record and account of the System for the preceding operating year by an independent certified public accountant. The audit shall be completed and so made available in accordance with Act 2, Public Acts of Michigan 1968, as amended. So long as the Government is the Registered Owner, the audit shall be performed in accordance with current Government requirements and a copy of the audit shall be filed with the Government. The audit may, at the option of the Township, be used in lieu of the statement to be prepared for the Michigan Department of Treasury and for all purposes which the statement is required to be used by this Ordinance.
- C. The Township shall maintain and carry, for the benefit of the Registered Owners of the Bonds, insurance on all physical properties of the System and liability insurance of the kinds and in the amounts normally carried by municipalities engaged in the operation of sanitary sewer systems. All moneys received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damaged or destroyed, and to the extent not so used, shall be placed in the Redemption Fund and used for the purpose of redeeming or purchasing Bonds.
- D. The Board will not sell, lease, mortgage or otherwise dispose of any part of the System, except for sales or exchanges of property or facilities which will not impair the ability of the Township to comply with the rate covenant described in Section 9 of this Ordinance.
- E. So long as the Government is the Registered Owner, and notwithstanding anything provided to the contrary in this Ordinance, the Township shall comply with all terms and provisions of Loan Resolution, Form FMHA 1942-47, as adopted by the Township prior to the issuance of the Bonds.

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- F. So long as the Government is the Registered Owner of the 1989 Bonds, it shall have the right to inspect the System and the records, accounts and data relating thereto at all reasonable times.

Sec. 17. **ADDITIONAL BONDS.**

The right is reserved, in accordance with the provisions of Act 94, to issue Additional Bonds payable from the Net Revenues of the System which shall be of equal standing and priority of lien on the Net Revenues of the System with the 1989 Bonds, but only for the following purposes and under the following terms and conditions.

- A. For repairs, extensions, enlargements and improvements to the System or for the purpose of refunding a part of any Outstanding Bond (unless such partial refunding is done in compliance with B below) and paying costs of issuing such Additional Bonds, including deposits which may be required to be made to the Bond Reserve Account. Bonds for such purposes shall not be issued pursuant to this subparagraph A unless the average actual or augmented Net Revenues of the System for the fiscal year of the System preceding the year in which the Additional Bonds are to be issued shall be equal to at least one hundred twenty (120%) percent of the average annual debt service requirements on all Outstanding Bonds and on the Additional Bonds then being issued; provided, that this limitation may be waived or modified by the written consent of the Registered Owners of not less than 75 percent in principal amount of the Bonds then outstanding. If the Additional Bonds are to be issued in whole or in part for refunding Outstanding Bonds the maximum Aggregate Debt Service shall be determined by deducting from the principal and interest requirements for each operating year the annual Aggregate Debt Service Requirements of any Bonds to be refunded from the proceeds of the Additional Bonds.

Net Revenues may be augmented as follows for the purposes of this subsection A.

1. If the System rates, fees or charges shall be increased at or prior to the time of authorizing the Additional Bonds, the Net Revenues may be augmented by an amount which in the opinion of the Consulting Engineers will reflect the effect on the increase had the System's billings during such time been at the increased rates.
2. The actual Net Revenues may be augmented by the estimated increase in Net Revenues which in the opinion of the Consulting Engineers will accrue as a result of new customers which have not been serviced during the preceding 12 months or as a result of the acquisition of the repairs, extensions, enlargements and improvements to said System which have been made during the preceding twelve months or which will be acquired in whole or in part from the proceeds of the Additional Bonds to be issued.
3. If the Bond Reserve Account is to be fully funded to an amount equal to the Bond Reserve Requirement from the proceeds of Additional Bonds, then the actual Net Revenues may be augmented by an amount equal to the investment income representing interest on investment estimated to be received each operating year from the addition to the Bond Reserve Account to be funded from the proceeds of the Additional Bonds being issued.

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No Additional Bonds of equal standing as to the Net Revenues of the System shall be issued pursuant to the authorization contained in subparagraphs A or C if the Township shall then be in default in making its required payments to the Operating and Maintenance Fund or the Redemption Fund.

- B. For refunding all of the Outstanding Bonds and paying costs of issuing such Additional Bonds, including deposits which may be required to be made to the Bond Reserve Account. For refunding a part of the Outstanding Bonds and paying costs of issuing such Additional bonds, if after giving effect to the refunding the maximum amount of Aggregate Debt Service in each future fiscal year shall be less than the Aggregate Debt Service in each future fiscal year prior to giving effect to the refunding.
- C. Additional Bonds may be issued without meeting any of the conditions and tests set forth in subsection A above for any one or more of the following purposes (i) to complete the acquisition and construction of the System in the event the proceeds of the 1989 Bonds are insufficient therefore, (ii) to pay the cost of acquisition and construction of any repairs, replacements, betterments, improvements, major renewals or corrections of any damage or loss to the System necessary, in the opinion of the Consulting Engineer, to keep the System in good operating condition or to prevent a loss of Revenues therefrom to the extent that the cost thereof cannot reasonably be paid from the Replacement Fund or from insurance proceeds, or (iii) to pay the cost of decommissioning, disposal or termination of the System.
- D. A determination by the Board as to existence of conditions permitting the issuance of Additional Bonds shall be conclusive.
- E. Notwithstanding the above, the issuance of Additional Bonds shall require the prior written consent of the Government, so long as the Government is the Registered Owner of the 1989 Bonds.

Sec. 18. **APPOINTMENT OF RECEIVER AND STATUTORY RIGHTS.**

In the event a default in the punctual payment of principal of and interest on the Bonds when due, any Court having jurisdiction in any proper action may appoint a receiver of the System in accordance with the provisions of Act 94. The Registered Owners of Bonds representing in the aggregate principal amount not less than twenty percent (20%) of all Outstanding Bonds, may protect and enforce the statutory lien and pledge of the funds and accounts and Net Revenues created by Act 94, and enforce and compel the performance of all duties of the officials of the Township and the Board, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of Revenues, and the proper application of Revenues. In addition to the rights conferred to Registered Owners by the Ordinance, the Registered Owners shall have all the rights conferred by Act 94. The statutory lien upon the Net Revenues, however, shall not be construed to compel the sale of the System or any part thereof.

Sec. 19. **REMEDIES NOT EXCLUSIVE.**

No remedy by the terms of the ordinance conferred upon or reserved to the Registered Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Ordinance or existing

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at law or in equity or by statute on or after the date of the Ordinance.

Sec. 20. **EFFECT OF WAIVER AND OTHER CIRCUMSTANCES.**

No delay or omission of any Registered Owner to exercise any right or power arising upon the happening or an event of default shall impair any right or power or shall be construed to be a waiver of any such event of default or be an acquiescence therein and every power and remedy given by this Ordinance to the Registered Owners may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Registered Owners.

Sec. 21. **1989 BOND FORM.**

The 1989 Bonds shall be in substantially the form attached to this Ordinance as Exhibit A.

Sec. 22. **STATE TREASURER APPROVAL; SALE OF 1989 BONDS.**

The Township Supervisor or Clerk shall prepare and submit all necessary applications to the Michigan Department of Treasury for its approval of the issuance of 1989 Bonds or for the exception to prior approval of the issuance of the 1989 Bonds. The 1989 Bonds shall be sold on a negotiated sale basis to the Government pursuant to Section 12 (4) of Act 94 on the terms set forth in this Ordinance. The Township Supervisor, Clerk and Treasurer are hereby authorized to do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the 1989 Bonds.

Sec. 23. **AMENDMENTS; CONSENT OF REGISTERED OWNERS.**

- A. The Township, from time to time and at any time, subject to the conditions and restrictions in this Ordinance, may enact one or more supplemental or amendatory ordinances or resolutions or both which thereafter shall form a part hereof, for any one or more of all of the following purposes:
1. To issue Additional Bonds;
 2. To add to the covenants and agreements of the Township contained in this Ordinance, other covenants and agreements thereafter to be observed or to surrender, restrict or limit any right or power herein reserved to or conferred upon the Township (including but not limited to the right to issue Additional bonds);
 3. To make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provisions contained in this Ordinance, or in regard to matters or questions arising under this Ordinance, as the Township may deem necessary or desirable and not inconsistent with this Ordinance and which shall not have a material, adverse effect on the interests of the Registered Owners of the Bonds; and
 4. To increase the size or scope of the System.

Any amendment or supplemental ordinance or resolution authorized by the provisions of this Section 23 (A) may be enacted by the Township without the consent of or notice to

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the Registered Owners of any of the Outstanding Bonds, notwithstanding any of the provisions of Section 23(B) below.

- B. With the consent of the Registered Owners of not less than fifty one percent (51%) in principal amount of the Bonds then outstanding, which consent shall not be unreasonably withheld, the Township may from time to time and at any time adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating of any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall (i) extend the fixed maturity of any Bond or reduce the rate of interest thereon or extend the time of payment of interest, or reduce the amount of the principal thereof, or reduce or extend the time for payment of any premium payable on the redemption thereof, without the consent of the Registered Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Registered Owners of the Bonds required to approve any such supplemental ordinance, or (iii) deprive the Registered Owners of the Bonds, except as aforesaid, of the right to payment of the Bonds from the Net Revenues, without the consent of the Registered Owners of all the Outstanding Bonds or, (iv) cause any modification or reduction of the lien on or pledge of the Net Revenues or the funds or accounts established hereunder.

It shall not be necessary for the consent of the Registered Owners under this Section 23(B) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the enactment by the Township of any supplemental ordinance pursuant to the provisions of Section 23(B), the Township shall cause the Transfer Agent to mail a notice by registered or certified mail to the Registered Owners of all Outstanding Bonds at their addresses shown on the bond register or at such other address as is furnished in writing by such Registered Owner to the Transfer Agent setting forth in general terms the substance of such supplemental ordinance.

Sec. 24. COVENANT REGARDING TAX EXEMPT STATUS OF THE BONDS.

The 1989 Bonds and the interest on the 1989 Bonds shall be exempt from the taxation by the State of Michigan or by any taxing authority within the State of Michigan. The Township hereby covenants it shall take all actions within its control necessary to maintain the exemption of the interest on the Bonds from general federal income taxation (as opposed to alternative minimum or other indirect taxation) under the Code, including but not limited to, actions relating to the rebate of arbitrage earnings and the expenditure and investment of Bond proceeds and moneys deemed to be Bond proceeds. Additionally, the Board hereby designates the 1989 Bonds as “qualified tax exempt obligations” for purposes of deduction of interest expense by financial institutions under the provisions of Section 265 (b)(3) of the Code, it being reasonably anticipated that the aggregate amount of qualified tax exempt obligations which will be issued by the Township and all subordinate entities to the Township shall not exceed \$10,000,000 during the calendar year 1989.

Sec. 25. ORDINANCE TO CONSTITUTE A CONTRACT.

In consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Ordinance shall be

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deemed to be and shall constitute a contract between the Township and the Registered Owners from time to time of the Bonds and the lien and pledge made in this Ordinance and the covenants and agreements herein set forth to be performed on behalf of the Township shall be for the equal benefit, protection and security of the Registered Owners of any and all of the bonds, all of which, regardless of the time or times of their authentication and delivery or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or permitted by this Ordinance. So long as the Government is the Registered Owner of the 1989 Bonds, this Ordinance shall be subject to the Loan Resolution, Form FMHA 1942-47, as adopted by the Township prior to the issuance of the Bonds.

Sec. 26. **GRADUATION OF BONDS.**

If at any time that the Government is a Registered Owner of the 1989 Bonds it shall appear to the Government that the Township is able to refund, upon call for redemption or with consent of the Government, the then Outstanding Bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similarly purposes and period of time the Township will, upon request of the Government, apply for and accept such loan, in sufficient amount to repay the Government.

Sec. 27. **CONFLICTING ORDINANCES.**

All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are repealed.

Sec. 28. **SEVERABILITY AND PARAGRAPH HEADINGS.**

If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provisions shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be a part of this Ordinance.

Sec. 29. **PUBLICATION AND RECORDATION.**

This Ordinance shall be published in full in the Herald Palladium, a newspaper of general circulation in the Township of Covert qualified under state law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the Township and such recording authenticated by the signatures of the Supervisor and the Township Clerk.

Sec. 30. **EFFECTIVE DATE.**

This Ordinance is hereby determined by the Township board to be immediately necessary for the preservation of the public peace, property, health, and safety of the Township and shall become effective immediately upon its adoption.

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Passed and adopted by the Township Board of the Township of Covert, Van Buren County, Michigan, on August 7, 1989, and approved by me on August 7, 1989.

Jerry Sarno, Supervisor
Township of Covert

Attest:

Geraldine E. Rood
Township Clerk