

AMENDED AND RESTATED
SERVICE CONTRACT

between

LITTLE BLUE VALLEY SEWER DISTRICT

and

LEE'S SUMMIT, MISSOURI

MIDDLE BIG CREEK SUBDISTRICT

Dated:

April 11, 2002

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AMENDED AND RESTATED SERVICE CONTRACT

Between

LITTLE BLUE VALLEY SEWER DISTRICT
Jackson and Cass Counties, Missouri

and

LEE'S SUMMIT, MISSOURI

MIDDLE BIG CREEK SUBDISTRICT

THIS AMENDED AND RESTATED SERVICE CONTRACT dated as of the ____ day of _____, 2002, (regardless of when signed by the parties hereto), by and between LITTLE BLUE VALLEY SEWER DISTRICT (herein referred to as the "District"), a body corporate and politic duly organized and existing under the laws of the State of Missouri, and LEE'S SUMMIT, MISSOURI, a municipal corporation (herein referred to as the "Public Entity").

WITNESSETH:

WHEREAS, pursuant to and in accordance with the provisions of Section 204.250, et seq. of the Revised Statutes of the State of Missouri, 1994, as amended to 2001, (herein referred to as the "Act"), the District has been duly created and is duly authorized, pursuant, to the Act, to undertake the planning, financing, construction, maintenance and

operation of a common system of trunk sewers, sewage treatment plant and related facilities including, without limitation, certain expanded facilities to be constructed by the District to serve certain areas within Jackson County and Cass County, Missouri (hereinafter referred to as the "System") and those separate facilities to be constructed for the Middle Big Creek Subdistrict described below and sometimes referred to as the "MBC System"; and

WHEREAS, District, Public Entity and other public bodies have formed a subdistrict within the jurisdictional boundaries of the District, the Middle big Creek Subdistrict ("MBC Subdistrict"), for the proper treatment and disposal of wastewater; and,

WHEREAS, the MBC Subdistrict is a "Customer" of the District, as such term is defined by Section 204.370, RSMo, and which has a service or user agreement with the District; and

WHEREAS, Public Entity is a part of the MBC Subdistrict; and,

WHEREAS, Public Entity entered into a service agreement with the District on September 15, 1995 (referred to as "Original Contract"); and

WHEREAS, Public Entity has the power to contract with the District in building sanitary sewers and related facilities; and,

WHEREAS, Public Entity is authorized, pursuant to the Act, to pay a reasonable charge to the District for wastewater disposal, such charge to be based upon such equitable means as employed by the District from time to time at the point of discharge to the System, such charge to be fixed at

such rate that shall, together with all other revenues of the District, insure the provision of sufficient revenues for the operation, maintenance, rehabilitation and restoration of the System and the payment of principal and interest on revenue bonds issued, or contemplated to be issued, by the District as provided in the Act and the Bond Documents or by any other financing source, as provided by law; and

WHEREAS, the District has the power and is authorized, pursuant to the Act, to issue its bonds in such principal amount as, in the opinion of the District and with the concurrence of the Advisory Board and as provided in the Act, shall be necessary to provide sufficient funds for achieving its purposes, including the acquisition and construction, improvement, extension and rehabilitation of the common sewer system and treatment plants, and other expenditures of the District incident to and necessary or convenient to carry out its purposes and powers; and

WHEREAS, in order to provide funds to pay a portion of the cost of the System, the District has issued and delivered certain original issue Sewer System Revenue Bonds consisting of Series "A", October 1, 1971, in the principal amount of Nine Million Dollars (\$9,000,000); Series "B", Sewer System Revenue Bonds 1998 Refunding Series A in the amount of Four Million Eight Hundred Sixty-Five Thousand Dollars (\$4,865,000) and Sewer System Revenue Bonds 1998 Refunding Series B in the amount of Twenty-One Million Two Hundred Ninety-Five Thousand Dollars (\$21,295,000) payable from and secured by revenues from the System; (to the extent now

or hereafter outstanding all said original issue and refinancing bonds are hereinafter sometimes collectively referred to as the “Outstanding Bonds”), and to the extent the same are outstanding during the term hereof the Outstanding Bonds represent continuing obligations of the District under the terms and provisions of Bond Documents duly adopted by the District prior to the issuance of the Outstanding Bonds, with copies of said Bond Documents being available at the District’s General Offices; and,

WHEREAS, in order to provide funds to pay the costs of the MBC System, the District has issued and delivered its Sewerage System Revenue Bonds (State Revolving Fund Program - Middle Big Creek Subdistrict Project) Series 1995 and any additional parity bonds of the MBC System issued hereafter (the “MBC Bonds”) which while outstanding during the term thereof, will represent continuing obligations of the District from revenues of the Subdistrict under the terms and provisions of Bond Documents duly adopted by the District prior to the issuance of the MBC Bonds, with copies of said MBC Bond Documents being available, or to be available, at the District’s General Offices; and

WHEREAS, District has undertaken to review the existing infrastructure of the System and has approved a Facility Plan, dated August 2001, for improvement, expansion, rehabilitation and replacement of the System; and,

WHEREAS, the comprehensiveness of implementing the Facility Plan necessitates consideration of appropriate methods of financing such

implementation, including the issuance of new Bonds or alternative sources of financing; and,

WHEREAS, the various Users of the District have participated in organized workshops and public meetings to review the proposed Facility Plan and to pursue various alternative financing; and,

WHEREAS, certain variations exist among the Service Agreements with District Users attributable to the conditions which existed at the time individual Service Agreements were entered into; and,

WHEREAS, it is necessary to modify existing provisions in the various service agreements with all Customers in order to resolve any differences within individual Service Agreements, however slight, to facilitate the financing of the improvement, rehabilitation and replacement of the System; and,

WHEREAS, the District has the right to condemn the land necessary for the operation of the System and the MBC System, or take an interest in real property sufficient for the location of the System or the MBC System thereon, free and clear of all liens and encumbrances which would materially affect the value or usefulness of such land or interest in real property for the intended use thereof; and

WHEREAS, the District herein agrees to promptly obtain all governmental approvals required by law for the acquisition, construction, ownership, operation, and maintenance of the System and the MBC System by the District; and

WHEREAS, the System and the MBC System will be for the primary benefit of the Users within the District and the MBC Subdistrict and for others connected to the Systems; and

WHEREAS, the District pledges to use its reasonable best efforts and resources to secure binding service contracts with all Users within the District's boundaries and with sewer systems tributary to the System or non-tributary sewer systems to the extent that the same can practically and economically be made a part of the System to maximize its efficient use and provide for the connection of, use of and payment for use of the System; and,

WHEREAS, it is the intention of the parties and all Users of the District that no change or modification be made which would impair any Outstanding Bonds or modify any current provisions for payment of such Outstanding Bonds now or in the future; and,

WHEREAS, nothing set forth in this AMENDED AND RESTATED SERVICE CONTRACT shall be construed in a manner to adversely affect the rights of the holders of any Outstanding Bonds.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

ARTICLE I

SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS

SECTION 101. Precedence; Short Title

This Amended and Restated Service Contract is an amendment and restatement of the Original Contract and shall supercede and have precedence over such Original Contract. Any Original Contract between Public Entity and the District is replaced in its entirety by this Service Contract. This Contract may be referred to as the "Service Contract" (herein sometimes designated as the "Contract").

SECTION 102. Meanings and Constructions

A. Definitions

All terms which are defined herein shall have the same meanings for all purposes of this Contract as amended and supplemented, and of any instrument or document appertaining hereto and whether or not such term is capitalized when used (except where the context by clear implication otherwise requires).

"Act" - The applicable provisions of Section 204 of the Revised Statutes of the State of Missouri, 1994, as amended to 2001.

“Administrator” - Regardless of the title used by the District, that person appointed by action of the Little Blue Valley Sewer District’s Board of Trustees and who shall have all powers authorized by the provisions of Chapter 204, Revised Statutes of Missouri, as now provided or as hereafter amended as well as such other powers authorized by the Board of Trustees of the District to the extent that such authorization is not inconsistent with Chapter 204.

“Advisory Board” - A board consisting of the mayor or chief executive officer or the authorized representative of every incorporated municipality, and a representative (authorized in writing to act in that capacity) of every subdistrict or private district which lies partially within the District and which operates a sewage collection system which will discharge sewage into the System.

“Annual Budget”- The budget or the amended budget for the operation and administration of the Little Blue Valley Sewer District for a twelve-month period commencing October 1 of each year and adopted by the District or in effect pursuant to Article IV hereof.

“Annual Subdistrict Budget” - The budget or the amended budget for the Middle Big Creek Subdistrict for a twelve-month period commencing October 1 of each year and adopted by the MBC Subdistrict or in effect pursuant to Article IV hereof.

“Bonds” - All Outstanding Bonds and the MBC Bonds issued by the District to date, and all subsequent bonds issued by it, or on its

behalf, for the purpose of paying the cost of acquiring, constructing, improving or extending the System and, as applicable, the MBC System and all refunding bonds issued by it, or on its behalf, to refinance any such Bonds. The term also includes Sewer System Revenue Bonds issued to date and all subsequent bonds issued for the purpose of paying the cost of acquiring, constructing, improving and extending a sewer system, including land and easements, interceptor sewer lines, sewage treatment facilities, and refunding bonds.

“Bond Documents” – The District’s bond resolutions and all subsequent bond resolutions approved by the Board of Trustees, together with all documents necessary for authorizing and directing the issuance of sewer system revenue bonds and sewer system refunding bonds for the purpose of paying the cost of acquiring, constructing, improving and extending a sewer system, including land and easements, interceptor sewer lines, and sewage treatment facilities.

“Connection” - A piped tie-in to the System which conveys sewage, may also be a piped tie-in to Public Entity’s Sewer System which conveys sewage.

“Consulting Engineer” - Any registered or licensed professional engineer, firm or professional corporation composed of such engineers, or an association thereof entitled to practice and practicing as such under the laws of the State of Missouri or any other state, selected, retained and compensated by the District but not in the regular employ or control of the

District, including without limitation any successor of the present Consulting Engineer, if any.

“Contract Sum” - The amounts paid or required to be paid from time to time by Public Entity to the District pursuant to this Contract (Article V, Section 504).

“Customer” or “Customers” – As provided by Section 204.370, RSMo, “Customer” shall mean 1) a political subdivision within the District which has a service or user agreement with the District or 2) a duly created subdistrict.

“Hereby”, “Herein”, “Hereinabove”, “Hereinafter”, “Hereinbefore”, “Hereof”, “Hereto”, “Hereunder”, and any similar term, refer to this Contract and not solely to the particular portion thereof in which such word is used; “Heretofore” means before the stated date of this Contract; and, “Hereafter” means after the stated date of this Contract.

“Industrial User” - An industrial manufacturing process, trade, or business which generates water-carried wastes and is a source for the introduction of nondomestic pollutants into the Systems.

“Infiltration” - Includes any storm water, surface water or groundwater that enters a sanitary sewer collection system through broken or defective pipes, improper joints or connections, deteriorated manhole components, broken foundation drains or defective service laterals.

“Inflow” - Includes any storm water which gains access to a sanitary sewer collection system through direct sources, including, but not

limited to vented manhole lids, downspouts, area drains, indirect storm sewer connections, storm sewer cross-connections and uncapped cleanouts below grade, roof drains, cellar or basement drains, sump pumps or yard drains.

“MBC Advisory Board” - The authorized representative of every political subdivision which lies partially within the MBC Subdistrict and which operates or is served by a sewage collection system which will discharge sewage into the trunk sewers or the sewage facilities of the MBC System and representatives of all other political subdivision and of each county having territory within the MBC Subdistrict.

“MBC Bonds” - Includes Little Blue Valley Sewer District Sewerage System Revenue Bonds (State Revolving Fund Program - Middle Big Creek Subdistrict Project), Series 1995 and all subsequent bonds issued for the purpose of paying the cost of acquiring, constructing, improving and extending a sewer system, including land and easements, interceptor sewer lines, sewage treatment facilities, and any refunding bonds for the MBC Subdistrict.

“MBC Bond Documents” - The District’s bond resolutions and all subsequent bond resolutions approved by the Board of Trustees, together with all documents necessary for authorizing and directing the issuance of sewer system revenue bonds and sewer system refunding bonds for the purpose of paying the cost of acquiring, constructing, improving and

extending the System or the MBC System, including land and easements, and interceptor sewer lines.

“MBC Subdistrict” - The Middle Big Creek Subdistrict that has been formed as a subdistrict of the District pursuant of the Act to gather, treat and dispose of wastewater and sewage.

“MDNR” - The Missouri Department of Natural Resources and any successor agency.

“Non-MBC Funding Procedures” - The rules, requirements or regulations established for the handling and disbursement of any funds received from the Environmental Protection Agency, the Corps of Engineers, the Missouri Department of Natural Resources or any other grants or funds available from any source to finance the MBC System.

“Person” - A natural person, corporation or other entity; or two or more natural persons, corporations or other legal entities acting jointly as a firm, partnership, unincorporated association, joint venturers, or otherwise.

“Pretreatment Program”- The documents (rules, regulations, ordinances, contracts, or agreements), procedures and funding mechanisms developed and adopted by the District in response to the requirements of Title 40, Code of Federal Regulations, Part 403 - “General Pretreatment Regulations for Existing and New Sources.”

“Public Entity’s Sewer System”, “Public Entity’s Sanitary Sewer System”, “Public Entity’s Sewage Treatment Works” - Each means a system

or other facilities owned by, or to be owned by, Public Entity and connected to the MBC System, which provides now or hereafter for the collection, treatment or disposal of sewage or wastewater or any combination thereof as permitted by law.

“Rate(s)” – Such charges as are recommended to the Board of Trustees by the Advisory Board and adopted by the Board of Trustees of the District for the operation and maintenance of the District and the MBC Subdistrict and which shall always provide sufficient revenues for:

1. the operation and maintenance, including a reserve fund, of the MBC System as set forth in the then current annual budget including the treatment charges of the System;
2. the payment of interest and principal on any MBC Bonds of the District, issued to finance the MBC System owned by the District, when the same become due;
3. the payments into the various Funds provided for in the Bond Documents including MBC Bond documents; and
4. any deficiencies in said Funds. Except that such rate or rates shall not provide for revenues in any one year which, together with other revenues received and collected by the District and arising out of the use of the System by other Customers, Users, or others, exceeds the amounts required to be collected.

“Sanitary Sewer Overflow” - A condition in which the wastewater flow rate in a sewer system exceeds the capacity of the sewer to the extent that untreated raw wastewater is discharged to waters of the State.

“Sewage” - The spent water of a community which may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any groundwater, surface water, and storm water that may be present.

“System” - The interrelated physical components constituting the whole and including without limitation the interceptor trunk and connecting sewers, manholes, access junctions, metering, sampling and related structures, pump stations, treatment plants and support facilities, solid waste disposal systems and land, easements and rights-of-way, all as may be acquired or constructed by the District or acquired from others, whether interim or permanent facilities, whether existing or to be constructed, and whether acquired or constructed as initially planned facilities, as extensions or replacements thereof or improvements thereto, all as necessary or appropriate to achieve the District’s purposes.

“Systems” - Subject to context, Systems shall include both the District System and the MBC System.

“Total Construction Contract Cost” - The total amount paid by the District for and referable to the completion of the MBC System.

“User” - Any government unit or legal entity who has or will have a service contract with the District.

“Wastewater” – Same as the definition for “Sewage” above.

B. Construction

This Contract, except where the context by clear implication herein otherwise requires, shall be construed as follows:

- (1) All interpretations and applications of this Service Contract shall be construed to apply only to the extent that the terms of this Service Contract impact the services provided by the District to Public Entity.
- (2) Definitions include both singular and plural; pronouns include both singular and plural and cover all genders;
- (3) Articles, sections, subsections, paragraphs, and subparagraphs mentioned by number, letter and otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Contract so numbered or otherwise so designated;
- (4) In the event a controversy arises with respect to any of the terms or conditions contained herein or in the Bond Documents or the MBC Bond Documents, the terms and conditions of said Bond Documents or MBC Bond Documents shall govern the rights of the parties hereto and, with respect to such terms and conditions of said

Bond Documents or MBC Bond Documents, the District hereby covenants not to permit any amendment, modification or other revision of the Bond Documents or MBC Bond Documents which would impair the rights of Public Entity without first obtaining the written consent of Public Entity.

SECTION 103. Duration of the Contract

This Contract and each and every provision hereof shall remain in full force and effect with respect to the Systems until the District shall have paid and retired or shall have made due an adequate provision for the payment and retirement of all of the Bonds issued by the District in respect of the Systems, and thereafter until such time as:

- (1) no Bonds or any other debt of the District exists; and
- (2) the District and Public Entity thereafter agree to terminate this Contract in writing.

SECTION 104. Successors

Subject to the terms and conditions of the Bond Documents, wherever the District or Public Entity, as the case may be, is referred to herein, such provision shall be deemed to include the successors of the District or Public Entity, as the case may be, whether so expressed or not. Subject to the terms and conditions of the Bond Documents and the MBC Bond Documents, all of the covenants, stipulations, obligations and

agreements by or on behalf of and other provisions for the benefit of the District or Public Entity contained herein shall bind and shall inure to the benefit of such successors and shall bind and shall inure to the benefit of any officer, board, district, commission, authority, agent, or instrumentality to whom or to which there shall be transferred by or in accordance with law any powers, duty or function of the District or Public Entity respectively, or of its successors, the possession of which is necessary or appropriate in order to comply with any such covenant, stipulation, obligation, agreement, or other provision hereof.

SECTION 105. Parties of Interest and Interest of Bondholders

Nothing in this Contract expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the parties hereto, the Trustees and the holders of the Bonds (including MBC Bonds) and the coupons thereunto appertaining, any rights, remedy or claim, legal or equitable, under or by reason of this Contract, this Contract being intended to be and being for the sole and exclusive benefit of the parties hereto, the Trustee and the holders from time to time of the Bonds and the coupons thereunto appertaining. For the purpose of providing payment of the principal of and interest on the Bonds, or for the enforcement of collection of revenue owed to the District, the District may pledge, assign and transfer the right to receive and collect Contract Sums provided for in the Contract, and from and after such pledge, assignment

and transfer, such assignee shall have the District's rights and privileges hereunder to the extent and as conferred in such pledge, assignment and transfer.

SECTION 106. Bond Sale - Method

All Bonds sold or offered for sale to finance the System, including the MBC System, may be offered and sold either upon competitive bid or through negotiated sale.

ARTICLE II

CONSTRUCTION OF THE MBC SYSTEM

SECTION 201. Construction of the MBC System

The District shall have full discretion in determining the size, capacity, route and location of all trunk, interceptor and outlet sewers, pumping and metering stations, treatment plant and outlet works or other structures.

The District shall not be deemed to be in default under the aforesaid covenant or any other applicable provision hereof if the construction of the MBC System or any portion or extension thereof shall be delayed by the inability of the District or others to secure needed labor or materials, or by inclement weather which delays completion of the MBC System, or by strikes, labor disputes, lockouts or like trouble among mechanics or

laborers which delay construction of the MBC System, or by acts of God, or by acts or neglect of Public Entity or its agents or employees, or by regulations or restrictions imposed by any governmental agency or authority, or by fire or other similar catastrophe or other similar delay beyond the reasonable control of the District, its agents or contractors, or by the inability of the District to award construction contracts for construction of the MBC System or any extension thereof for total bids that are within the estimated cost, or in the event of the inability of the District to issue MBC Bonds to finance the MBC System.

The MBC System shall, upon completion, be free and clear of all liens and encumbrances of every kind and character which may arise in connection with the work of any character performed in connection with the MBC System, including mechanics', laborers' and materialmen's liens and other liens of a similar nature. However, nothing in this Section 201 shall require the District to pay or cause to be discharged or to make provision for the payment of any such lien or encumbrance so long as the validity thereof shall be contested in good faith by appropriate legal proceedings. Before undertaking construction of any substantial part of the MBC System, the plans and specifications for such construction shall be submitted by the District to MDNR in order to obtain such permits or other approvals as are required by law.

SECTION 202. Additional Construction

All acquisitions, additions, alterations, re-construction, improvements or extensions to the MBC System shall become a part of the System owned exclusively by the District.

SECTION 203. Financing of MBC System by District

The District agrees to finance Total Construction Contract Costs of the MBC System from the proceeds derived from the issuance of MBC Bonds, from funds available from any federal, state or local source, from any other grants available from any source and covenants that said sum will be sufficient to pay said Total Construction Contract Costs with any funds from sources other than MBC Bonds herein referred to as Non-MBC Funding.

SECTION 204. MBC System Construction Account Established Pursuant to Bond Documents

Except for repayment of monies advanced by Public Entity and except where required to make deposits into the Funds established pursuant to the MBC Bond Documents and Non-MBC Bonds Funding Procedures and for reserves and costs of issuance, all proceeds of any MBC Bonds or Non-MBC Bonds Funding Procedures shall be immediately deposited by the District, upon receipt, into the Construction Funds established pursuant to the MBC

Bond Documents or Non-MBC Bonds Funding Procedures for payment of the cost of the MBC System.

The District shall keep, or cause to be kept, separate records as it may deem appropriate for the MBC System.

All monies held in the various Funds established in the Bond Documents shall, as nearly as may be practicable, be invested and reinvested.

SECTION 205. Inclusion of Claims

The District may pay as a part of Total Construction Contract Cost any claim against it arising from construction of the MBC System or any extension as a result of a settlement acceptable to the District, or after the rendering of an award of such claim by a court of competent jurisdiction. The District has the authority to include interest, court costs and legal fees, if any, in the payment of any such claim.

SECTION 206. Transfer of Funds

Promptly after the completion of the construction of the MBC System and the payment of all MBC System costs required to be paid, the District shall transfer or cause to be transferred, or encumber from the Construction Funds relating to the MBC System, the amount of money, if any, remaining in such Construction Funds in accordance with and for

application pursuant to the MBC Bond Documents or Non-MBC Bonds Funding Procedures.

SECTION 207. Administrator and Consulting Engineer

A. Administrator

The Administrator shall have all powers authorized by the provisions of Chapter 204, Revised Statutes of Missouri, as now provided or as hereafter amended as well as such other powers authorized by the Board of Trustees of the District to the extent that such authorization is not inconsistent with Chapter 204.

B. Consulting Engineer

From the commencement of the design of the MBC System until completion of the construction of the MBC System, the District shall employ a Consulting Engineer whose duties shall be, among such other duties as may be imposed by the District, to be responsible for the design and to supervise the construction of the MBC System and provide certain operational assistance as may be required, and to execute, from time to time, certificates appertaining thereto.

C. Filing Copies

Copies of the reports, estimates, or certificates of the Consulting Engineer, Administrator, and other employees, consultants or agents, as the case may be, and copies of the recommendations and estimates made, as hereinabove provided, shall be filed and remain upon

file with the District for inspection by Public Entity and other interested parties.

SECTION 208. Assignment of Grants

Except for any grants made to Public Entity for and on its own behalf regarding other sewer work in process or to be done in the future and not a part of the MBC System or any extension or improvement thereof, Public Entity hereby assigns to the District all right, title and interest in and to any grant made or to be made by the United States of America or any agency or instrumentality thereof or by the State or any agency or instrumentality thereof in respect to the MBC System, and the District is hereby authorized by Public Entity and the District hereby agrees with respect to any such grants made or to be made, to make such applications or other request for such grants, to enter into and perform any and all agreements required to comply with any applicable laws in respect thereof, and to take such other and further action as is required or permitted.

SECTION 209. Use of Grant Funds by the District

Any grant made or to be made to the District by the United States of America or any agency or instrumentality thereof or by the State or any agency or instrumentality thereof in respect to the Systems shall be used by the District in accordance with law as the Board of Trustees, in its discretion, may determine.

SECTION 210. Information to and Recommendations from the MBC Advisory Board

The Board of Trustees of the District shall keep the MBC Advisory Board reasonably informed as to all phases of the planning and operations of the MBC Subdistrict, and the MBC Advisory Board shall have the right to make recommendations to the District Advisory Board as it deems advisable with regard to the construction and operation of the MBC System.

ARTICLE III

OPERATION AND MAINTENANCE OF THE SYSTEMS

SECTION 301. Operation of the System

The District and Public Entity shall take such action from time to time as is required to permit the System and the MBC System, a part thereof, to receive, treat and dispose of wastewater delivered into the MBC System by Public Entity, and thereafter the District will operate and maintain the System and the MBC System so as to receive, treat and dispose of wastewater in accordance with the terms and provisions hereof.

The District shall at all times, after the System and the MBC System or any part thereof are placed in operation, operate the same properly and in a sound and economical manner and shall maintain, preserve, and keep the same, or cause the same to be so maintained, preserved, and kept in good repair, order, and condition, and shall from time to time make or

cause to be made all necessary and proper repairs, replacements and renewals so that at all times the System and the MBC System may be properly operated in a sound and economical manner.

SECTION 302. Rules, Regulations and Other Details

The operation, use and services of the Systems shall be governed by "Regulations For Use", adopted by the Board on June 1, 1971, amended on January 14, 1982, and July 2, 1992, and June 1, 1994, and as may be further amended from time to time (hereinafter "Regulations for Use"). Said Regulations For Use are attached hereto as an Appendix to this Contract and made a part hereof by reference as much as if set forth, in full, and verbatim in this Contract at this point. The Pretreatment Program of the Regulations for Use applies specifically to Industrial User discharges to the Systems or Public Entity's Sewer System (See also Section 509 hereof). The District shall observe and perform all of the terms and conditions contained in the Act and the Bond Documents and the MBC Bond Documents or Non-MBC Bonds Funding Procedures and shall comply with all valid acts, rules, regulations, orders and directives of any legislative, administrative or judicial body applicable to the System and the MBC System or the District.

SECTION 303. Regulation for Use: Public Entity Discharge of Wastewater

Connections to the MBC System shall be limited to Public Entity's Sanitary Sewer System. Public Entity's ordinance for "Regulation of Use"

of its sanitary sewers shall be filed with and accepted by the District prior to making any connections to the MBC System. Any amendment or changes proposed to standards accepted by the District shall be submitted for approval prior to adoption by Public Entity.

All measurements for flow rate and sampling for wastewater testing shall be conducted by the District with facilities provided therefor at connection points to the Interceptor, or at other locations in Public Entity's Sanitary Sewer System in accordance with applicable provisions of the District's Regulations For Use.

If tests conducted by the District indicate wastewater discharged to the System and the MBC System exceeds the flow or quality criteria set forth in the District's Regulations For Use, the District may:

- a. Require pretreatment to an acceptable condition before discharge, in keeping with good engineering practices and the recommendations of the regulatory agencies;
- b. Require a surcharge payment to cover the added cost of treatment for characteristics outside the established limits, in keeping with good engineering practices and the recommendations of regulatory agencies;
- c. If the District's Pretreatment Program is applicable to Public Entity and if included as part of the District's Pretreatment Program approved by MDNR, require a penalty payment within guidelines established by the Environmental Protection Agency

and MDNR for each occurrence where excessive peak flows, toxic substances, or other materials discharged into the Systems upset the treatment process to the extent that effluent standards are exceeded and such upsets occur on days that tests on wastewater from Public Entity indicate the presence of such flows or substances. The District and Public Entity recognize and agree that the District, as of the effective date of this Service Contract, has no authority to impose its own fines or penalties against Public Entity, except as provided in the District's Pretreatment Program.

Should the District have validly imposed upon it a monetary penalty or fine by any court, agency or instrumentality of the State of Missouri or the United States of America having competent jurisdiction, and should such penalty be imposed because of some action or failure to take action on the part of Public Entity with regard to its sewer system or the users thereof and whether or not the District has the right to enforce such compliance directly or indirectly, the District, in appropriate circumstances and in its sole business judgment, shall have the right to require Public Entity to immediately reimburse the District for any monies so paid or so required to be paid because of said penalty or fine.

SECTION 304. Regulations for Use: Industrial User Discharge of Wastewater

This section shall not apply within the jurisdictional boundaries of a Public Entity if the State of Missouri has designated that Public Entity as a pretreatment control authority.

The parties recognize and acknowledge the District's right to the establishment, operation, administration, and enforcement of a publicly owned treatment works pretreatment program consistent with state and federal pretreatment standards, including inspection, monitoring, sampling, permitting and reporting programs and activities. The rules and regulations adopted by the Board of Trustees for a pretreatment program shall be applicable, and enforceable by civil, administrative or other actions within any territory served by the Systems or treatment facilities and against any municipality, subdistrict, district or industrial user who shall directly or indirectly discharge sewage or permit discharge of sewage into the Systems or treatment facilities as defined in the Regulations for Use.

The parties specifically authorize, recognize, and acknowledge the District's right to implement and enforce the Regulations for Use including its Pretreatment Program, as amended, promulgated pursuant to the Act and the applicable provisions of Title 40, Code of Federal Regulations, Part 403 as published in the Federal Register, (hereinafter "40 CFR Part 403") and further Public Entity authorizes the District to perform technical and administrative duties necessary to implement and enforce the Regulations

for Use and Pretreatment Program.

The parties acknowledge the District's right to implement and enforce all present and future laws and regulations as authorized or mandated by the Federal Clean Water Act and/or the Missouri Clean Water Act.

Because Industrial Users in Public Entity's jurisdictional boundaries will or may contribute wastewater to the Systems which includes industrial waste, the parties agree to the following terms and conditions:

- (1) If Public Entity has not already done so, Public Entity agrees as soon as reasonably possible (but in no event later than 120 days after the effective date hereof) to adopt a sewer ordinance or other governing rules (hereinafter "Ordinances") which acknowledges and grants to the District the responsibility to require and monitor compliance and respond to and remedy violations or other instances of noncompliance of the District's Regulations for Use and Pretreatment Program.
- (2) Whenever the District amends its Regulations for Use or Pretreatment Program, it will immediately notify Public Entity. For purposes of this Section 304, immediate notification means the District will use its reasonable best efforts to forward a copy of any amendments within five (5) business days of enactment thereof. As soon as is reasonably possible (but in no event later than 120 days after receipt of the District's notice), Public Entity agrees that it will enact, as appropriate, any necessary amendments to its Ordinances to make them at least as stringent as the Regulations for Use and Pretreatment Program, as amended.

- (3) The District and Public Entity agree to periodically review the Regulations for Use, the Pretreatment Program, and Public Entity's Ordinances, and use their reasonable best efforts to jointly draft and adopt equivalent amendments when deemed necessary for the effective administration and operation of the District's Regulations for Use. Either party, or MDNR, or the United States Environmental Protection Agency may request a joint review whenever deemed necessary.
- (4) If Public Entity has not already done so, Public Entity agrees as soon as reasonably possible (but in no event later than 120 days after the date hereof) to adopt "Local Limits" which address at least the same pollutant parameters and which are at least as stringent as the Local Limits enacted by the District and as set forth in the Regulations for Use and Pretreatment Program. If any revisions or additions are made to the District's Local Limits, the District will immediately notify Public Entity. For purposes of this Section 304, immediate notification means the District will use its reasonable best efforts to forward a copy of any revisions or additions to the Local Limits within five (5) business days of enactment. As soon as reasonably possible (but in no event later than 120 days after receipt of the District's notice), Public Entity agrees

to adopt any revisions or additions made to the District's Local Limits.

- (5) The District, on behalf of Public Entity, agrees to perform technical and administrative duties necessary to implement and enforce the Regulations for Use and the Pretreatment Program, including, but not limited to, the following: (i) determining the acceptability of industrial waste to the Systems from Industrial Users within Public Entity's jurisdiction; (ii) providing technical services such as sampling and analysis of effluent from Industrial Users; (iii) permitting Industrial Users contributing to the Systems; (iv) conducting inspection and compliance monitoring of effluent from Industrial Users; and (v) performing enforcement for acts of noncompliance of the District's Regulations for Use and the Pretreatment Program. In addition, the District is authorized, in accordance with the authority granted to it by Missouri law, to take emergency action to stop or prevent any discharge for any Industrial User which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to materially interfere with the operation of the Systems.
- (6) The District shall assess Public Entity all costs and expenses

reasonably incurred in implementing and enforcing the Regulations for Use and Pretreatment Program on behalf of Public Entity, in accordance with the provisions hereof.

- (7) Notwithstanding that certain Industrial Users within Public Entity's jurisdictional boundaries with operational pretreatment programs approved by MDNR may be exempt from the Pretreatment Program, Public Entity's discharges shall be controlled to the degree required by the Pretreatment Program, as approved by MDNR.
- (8) Upon Public Entity's failure to control Industrial User discharges as provided above, then any additional cost or charge to the District resulting from said failure shall be borne entirely by Public Entity.
- (9) Before Industrial Users located outside Public Entity's jurisdictional boundaries are allowed to discharge into Public Entity's Sewer System, Public Entity agrees to negotiate and secure an agreement with such user. Such an agreement shall be substantially equivalent to this Section 304, and a draft thereof shall be forwarded to the District for its reasonable approval prior to execution.
- (10) Any disputes arising out of this Contract shall be resolved in accordance with the applicable provisions hereof, which shall in no way limit the District's power to enforce requirements

directly against Industrial Users using Public Entity's Sewer System, nor shall it preclude the District from seeking other remedies against Public Entity.

- (11) District and its authorized representatives are hereby granted the authority to enter the jurisdictional boundaries of Public Entity to administer and enforce the Regulations for Use and Pretreatment Program as authorized in this Section 304. District shall indemnify and save harmless Public Entity against all liabilities, judgments, costs, damages, expenses and attorneys' fees for loss, damage, or injury to person or property resulting from the administration and enforcement of the Regulations for Use and Pretreatment Program as authorized in this Section 304 caused by the negligent or intentional acts or omission of the District or its officers, employees or any other agents.
- (12) If i) the District reasonably believes that a violation of Public Entity's Ordinances exists and ii) the alleged violation also violates the District's Regulations for Use and Pretreatment Program, the District shall have the authority to demand that Public Entity commence enforcement of its Ordinances against an Industrial User or any other user of Public Entity's System,

by sending written notice to Public Entity stating the reasons for its belief that a violation exists and requesting that such enforcement by Public Entity be commenced. Upon receipt of any such notice stating a reasonable belief that a violation exists, Public Entity shall commence and diligently pursue enforcement of its Ordinances. The District, if requested, shall assist Public Entity with any inspection, monitoring, and sampling necessary to the enforcement action.

If the District gives such written notice, and Public Entity fails to commence and diligently pursue enforcement of its Ordinances, then any additional cost or charge to the District, including fines and penalties, resulting from said failure shall be borne entirely by Public Entity, provided that the failure of Public Entity to obtain a conviction shall not be deemed a failure to commence and diligently pursue enforcement.

Any failure of the District to give any notices required under this Section within the time stated shall not excuse Public Entity from complying with the terms of the notice once it is given.

SECTION 305. Inflow and Infiltration.

The parties recognize and acknowledge the District's right to implement and enforce federal and state regulations delegated to and implemented by the District, as may become enacted to govern

infiltration/inflow and reasonably prevent sanitary sewer overflows of the System or the MBC System.

The District and Public Entity will each operate and maintain its own respective wastewater collection systems according to standard engineering and management practices, and in doing so, each will effectively police, monitor and control, to the most reasonable extent possible, its respective sanitary wastewater collection systems so as to preclude other than minor quantities of storm, surface or groundwater that is not intentionally admitted.

Public Entity further agrees to maintain in effect Ordinances prohibiting the connection of roof drains, porch drains, driveway drains, parking lot drains, footing drains and surface or ground water sump pumps to the sanitary wastewater collection system. Public Entity agrees to notify District of any amendment to such Ordinances. Public Entity will further perform reasonable monitoring and inspection to avoid significant infiltration and inflow to Public Entity's Sewer System. The Administrator shall meet annually with a representative of Public Entity to establish mutually agreeable goals to reduce the infiltration and inflow to the District's wastewater collection system. Public Entity shall advise District in writing of the name and address of its representative.

SECTION 306. Public Entity's Sewer System and Connection to the District

Public Entity, at its own expense and cost, will construct, install, and operate any and all improvements to its sewer system necessary to cause all sewage, originating in Public Entity's Sewer System and also within the jurisdictional limits of the MBC Subdistrict, except sewage flowing to sewage treatment and collection facilities currently in operation as of the effective date of this Service Contract, to deliver and discharge into the System and the MBC System. Public Entity will keep its sewer system connected with the MBC System.

Only sewage from such sewage collecting systems which are a part of Public Entity's Sewer System within the MBC Subdistrict shall be discharged into the Systems.

Public Entity may deliver and discharge into the Systems sewage originating outside the District's jurisdictional limits by special agreement and consistent with contract limitations agreed to in writing by the District, including those areas set forth on Schedule E, if any.

Consistent with this Service Contract, Public Entity shall retain full power and authority over its existing sewer system and full power and authority to provide additional sewer service inside its jurisdictional limits. Nothing herein shall be deemed to limit Public Entity's power with regard to areas inside its jurisdictional limits but outside the jurisdictional limits of the MBC Subdistrict. Nothing herein shall be deemed to limit Public Entity's authority to charge persons outside its jurisdictional limits for the

use of Public Entity's Sewer System.

Section 307. Connection to the District and Division of Costs

Public Entity shall cause those portions of Public Entity's Sewer System transporting sewage originating in Public Entity's Sewer System and also within the MBC Subdistrict, except sewage flowing to sewage treatment and collection facilities currently in operation as of the effective date of this Service Contract, to be connected with the MBC System at the appropriate connecting points designated in Schedule A, Schedule B, Schedule C, and Schedule D, attached hereto and made a part hereof by reference as much as if set forth in full and verbatim in this Service Contract at this point (hereinafter sometimes referred to as the "List of Connecting Points"), upon notice from the District of the availability of connection points. Every such connection shall constitute and shall be operated by the District as part of the System and the MBC System and shall include all such metering and other facilities as may be necessary to cause all sewage delivered at said point or points of connection to be measured and discharged into the Systems. Connections of Public Entity's Sewer System to the Systems shall be limited to the locations designated in the List of Connecting Points or any other point or points requested by Public Entity and approved by the District. The "List of Connecting Points" may be modified by written consent of the Contracting Party and the District.

The District will provide at the District's expense a connection point

that will permit the flow of wastewater by gravity to the District via a junction structure or other facility for effecting the connection and will make provision for metering and sampling as a means of determining the quantity and characteristics of wastewater contributed at each location in Schedule A. The District will provide at the District's expense, a connection point that will permit the flow of wastewater by gravity to the District via a junction structure or other facility for effecting the connection at each location listed in Schedule B with metering and sampling to be provided at other District facilities. The District will provide at the District's expense a junction structure or other facility for effecting connection at each location listed in Schedule C. Metering and sampling facilities may or may not be provided at Schedule C connection points depending upon the feasibility of the measuring for payment by other methods. In the event a meter structure is required, Public Entity will bear the cost of design and construction. Additional connections, if requested by Public Entity, may be approved and furnished by the District provided Public Entity bears the cost of design and construction of the junction structure or structures or other facility if required to connect, meter, and sample flows contributed at that point. Such additional connections will be listed in Schedule D upon their approval by the District.

SECTION 308. Restrictions on Competing Systems or the Construction of Other Sewage Treatment Works

So long as this Contract is in effect, and except for sewage treatment and collection systems currently in operation as of the effective date of this Service Contract, to the extent such restriction is not prohibited by applicable law, Public Entity shall not construct, grant, franchise or license a competing sewage treatment works for sewage originating within the MBC Subdistrict's boundaries, other than by the District; provided, however, that the District shall consent to such grant or construction in the event that each of the following conditions exist:

- a. It is reasonably projected that Public Entity's sewage flow will exceed the District's capacity to receive and treat it within the time period needed to plan, design, finance and construct a treatment facility by Public Entity;
- b. The construction of such sewage treatment works by Public Entity or by any other person shall not impair the security for the payment of any Bonds of the District, including all Bonds of the District hereafter issued by or on behalf of the District;
and
- c. The construction of such sewage treatment works by Public Entity or by any other person shall be approved by MDNR.

SECTION 309. Insurance and Reconstruction

The District shall at all times maintain with responsible insurers all such insurance reasonably required and obtainable within limits and at costs deemed reasonable by the District as is customarily maintained with respect to sewage treatment works of like character against loss of or damage to the MBC System, against use and occupancy, and against public and other liability to the extent at least reasonably necessary to protect the interest of the District and each holder of any Bond or MBC Bond of the District, and also all such insurance as is required to indemnify and to save harmless Public Entity against all liabilities, judgments, costs, damages, expenses, and attorneys' fees for loss, damage, or injury to person or property resulting from the operation or a failure of operation of the MBC System caused by the negligence, including malfeasance or nonfeasance, or willful act of the District or its officers, employees, or any other agents. Any liability incurred by Public Entity as a result of the operation of its sewer system shall be its sole liability. If any part of the MBC System required for the performance of the obligations of the District pursuant hereto shall be damaged or destroyed, the District shall, as expeditiously as reasonably possible, commence and diligently prosecute the repair or replacement of the damaged property so as to restore the same to substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of additional property) as may be

desired by the District and as will not impair the character of the MBC System as a sewage treatment works. The proceeds of any insurance appertaining thereto shall be payable to the District and (except for proceeds of use insurance) shall be applied to the necessary costs involved in such repair and replacement, and to the extent not so applied, if any Bonds or MBC Bonds issued by the District are outstanding, shall be applied to any deficiency in the Emergency Repair Fund established pursuant to the MBC Bond Documents, and to the extent not so applied, shall be paid into the Revenue Fund. In the event the cost of such repair and replacement of the damaged property exceeds the proceeds of such insurance available for the payment of the same, if MBC Bonds issued in respect to the MBC System are outstanding, monies in the Emergency Repair Fund created and established in the MBC Bond Documents in respect of the MBC System shall be used to the extent necessary for such purposes.

SECTION 310. Covenant Against Waste

The District and Public Entity covenant not to do or suffer or permit any waste or damage, disfigurement or injury to the System or the MBC System.

SECTION 311. Covenant Against Assignment, etc.

No part of the MBC System shall be sold, leased or otherwise encumbered by the District, except as provided by law and any Bond Documents or Non-MBC Bonds Funding Procedures. However this restriction as stated herein does not prohibit a lease solely for the purpose of financing.

SECTION 312. Right of Inspection

The District covenants and agrees to permit Public Entity and the authorized agents and representatives of Public Entity to enter the MBC System during usual business hours for the purpose of inspecting the same. As permitted by law, upon reasonable notice to Public Entity, and the right of Public Entity to accompany, the District shall have the right but not the obligation to inspect Public Entity's Sewer System.

SECTION 313. Records, Accounts and Audits

The District shall keep proper books of record and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the System and the MBC System or any part thereof and of the Contract Sum and all other revenues or monies received by or due to the District. All books and papers of the District shall at all reasonable times be available for inspection by such persons as may be designated by Public Entity, and copies thereof provided

as reasonably requested by Public Entity or their designee, the cost of such copies to be paid for by Public Entity.

SECTION 314. No Vested Rights of Public Entity in Systems

Public Entity shall not acquire any vested rights in the System or the MBC System by reason of this Service Contract. All or any portion of the Contract Sums to be paid by Public Entity shall be deemed to be current operating expenses of Public Entity's Sewer System.

SECTION 315. Abatement Order; Compliance

The district shall at all times use its reasonable best efforts to operate the System, including the MBC System a part thereof properly, and in a sound and economical manner under the Stipulation and Order for Replacement of Abatement Order No. 00795 dated July 22, 1992, issued by MDNR and Order and Dismissal of Appeal dated July 30, 1992, issued by the Missouri Clean Water Commission or any further proceedings pertaining thereto ("Abatement Order") and shall maintain, preserve, and keep the same, or cause the same to be so maintained, preserved and kept in good repair, order and condition and shall from time to time use its reasonable best efforts to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the System, including the MBC System a part thereof, may be properly conducted in a sound and economical manner and as required by the

Abatement Order. Provided, however, that the District shall not be required to expend any funds in the performance of its duties hereunder with respect to the Abatement Order except as such funds are made available from the operation of the MBC System or by the MBC Subdistrict customers.

ARTICLE IV

DISTRICT'S OPERATION AND MAINTENANCE BUDGET

SECTION 401. Annual Operation and Maintenance Budget

The District's MBC budget year shall be from October 1 to September 30 of the following calendar year. The District shall, not later than July 1 of each year, prepare and furnish copies to Public Entity of a preliminary annual budget of operating and maintenance expenses of the MBC System for the ensuing twelve-month period commencing October 1. The District shall prepare such preliminary annual budget and every annual budget of such operating expenses, to the extent reasonably possible, so that operating and maintenance expenses may be determined from such budget. Every proposed annual budget shall set forth a statement of the sources of funds available to defray such expenditures included therein, including without limitation that portion of the Contract Sum to be paid by Public Entity with respect to the costs of operation and maintenance of the MBC System as set forth in the budget.

Not less than sixty (60) days before the beginning of the year for

which such preliminary annual MBC budget is prepared, the District shall hold a public hearing at which any authorized representative of Public Entity may appear and present any objection Public Entity may have to the preliminary annual budget for such year. Notice of the time and place of such hearing shall be sent to Public Entity at least ten (10) days before the date fixed for the hearing.

Prior to the first day of October following such public hearing, the District shall adopt an annual MBC budget, which has been recommended by the MBC Advisory Board, for such year and the total expenditures thereof shall not exceed the total income for such year. Within ten (10) days after its adoption, excluding Saturdays, Sundays and Holidays, a copy of the annual MBC budget shall be sent to the Mayor or the Chief Executive officer of Public Entity and/or their designate.

If for any reason the District shall not have adopted the annual MBC budget on or before the first day of October of any year, the proposed annual budget for the twelve months following October 1 shall be deemed to be in effect for such twelve-month period until the annual budget for such twelve-month period is adopted; provided, however, that if the proposed annual budget for such twelve-month period has not been prepared, the annual budget for the preceding twelve-month period shall be deemed to be in effect for the ensuing twelve-month period until the proposed annual budget for such twelve-month period has been prepared.

The District may at any time adopt an amended annual MBC Budget

for the then current twelve-month period, but no such amended annual budget shall supersede any prior budget until presented to the MBC Advisory Board at a regularly scheduled meeting.

The District will make provision in the annual MBC budget for items of expenditure which are normally provided for by municipalities and other public bodies engaged in the operation of a similar project to the System, including, but not limited to, all administrative, legal and fiscal expenses.

SECTION 402. Limitations on Operation and Maintenance Expenses

The District shall not incur operation and maintenance expenses with respect to the MBC System in any budget year in excess of the reasonable and necessary amount thereof. The District shall not expend any amount and shall not incur any indebtedness for operation and maintenance expenses in excess of the aggregate amount provided therefor in the annual MBC budget or proposed annual budget (if any) then in effect, subject to the provisions of Section 401 hereof. In preparing the annual MBC budget, in addition to charges for operation and maintenance of the System attributable to the MBC Subdistrict, the District shall include a proportionate share of the District's costs of administration attributable to the MBC Subdistrict.

SECTION 403. Budget - Disagreement - Remedy

In the event that the operating MBC Budget or the MBC Budget of the whole for the ensuing year exceeds the prior year's MBC Budget by more than ten percent (10%), Public Entity shall have the right to, thirty (30) days prior to October 1 of the ensuing year, present to the Board of Trustees a written statement of reasons as to why the proposed MBC Budget is, in Public Entity's opinion, unreasonable and unnecessary (hereinafter an "Original Statement of Reasons").

In the event Public Entity properly submits an Original Statement of Reasons to the District, the District shall, upon receipt of an Original Statement of Reasons, forward a copy of the same to all Users. Each User may, within ten (10) days of receipt of such Original Statement of Reasons from the District, submit in writing to the District its own statement of reasons as to why the proposed MBC budget is, in that User's opinion, unreasonable and unnecessary (hereinafter a "Supplemental Statement of Reasons"). The Original Statement of Reasons and any Supplemental Statement of Reasons for any one particular MBC budget, shall be considered a single statement of reasons for purposes of resolution by arbitration, (hereinafter a "Combined Statement of Reasons") pursuant to this Section 403. If User elects not to, or fails to properly, submit either an Original Statement of Reasons or a Supplemental Statement of Reasons for a particular proposed MBC budget, that User shall be bound by any final decision of an Arbitrator, pursuant to this Section 403.

The Original Statement of Reasons shall be promptly referred by the Board of Trustees to an Arbitrator mutually agreed upon by the District and User that filed the Original Statement of Reasons. The referral to an Arbitrator shall be made within ten (10) days after the District has sent a copy of the Original Statement of Reasons to all Users of the District. If the District and the User that submitted the Original Statement of Reasons are unable to mutually agree to an arbitrator within such ten (10) day period, then the District shall apply to the Presiding Judge of the Circuit Court of Jackson County, Missouri for the immediate appointment of the Arbitrator.

The Combined Statement of Reasons shall also be submitted to the Arbitrator. The Arbitrator shall appoint a time and place for the hearing. The District shall cause notification to all Users to be served personally or by registered mail not less than five (5) days before the hearing. Appearances at the hearing waives such notice. The Arbitrator may adjourn the hearing from time to time as necessary and on request of a party and for good cause or upon their own motion may postpone the hearing to a time not later than the date fixed by this Contract for making the decision. The Arbitrator may herein determine the controversy upon the evidence produced notwithstanding the failure of the District or a User duly notified to appear. The Circuit Court of Jackson County, Missouri, upon application, may direct the Arbitrator to proceed promptly with the hearing and determination of the controversy. The District and any User submitting an Original Statement of Reasons or Supplemental Statement of Reasons

are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing. The hearing shall be conducted by the Arbitrator who will determine all questions and render a final decision. The Arbitrator shall render the decision within ten (10) days after the hearing. In every event, the decision will be rendered by October 1 of that year, or the proposed MBC budget shall automatically become the annual MBC budget upon approval of the Board of Trustees. The expense and salary incident to the services of the Arbitrator shall be shared equally by the District and all Users; and the District's costs are to be considered an operation expense. The District agrees to include the binding arbitration provisions of this Section 403 in any and all service contracts between the District and a User.

ARTICLE V

PAYMENT BY PUBLIC ENTITY

SECTION 501. Agreement to Pay

Public Entity agrees to pay the District for the treatment and disposal of its wastewater, as provided in Section 301 hereof, the Contract Sum provided for in Section 504 hereof. Public Entity shall not, under any circumstances, be required to make the payments hereinafter provided for until Public Entity connects to the MBC System.

SECTION 502. Public Entity's Source of Funds

The Contract Sum shall be paid by Public Entity from an activity account as provided below. If the monies paid to the District from the account are not sufficient to fully pay the Contract Sum or any portion thereof when due, the amount remaining unpaid, plus any delinquent charge, shall be paid by Public Entity from its other income, revenues and property, as may be necessary to fully pay the Contract Sum.

SECTION 503. Little Blue Valley Middle Big Creek Sewer District Account

Public Entity has provided, or agrees hereby to provide, by an appropriate ordinance or other governing rules for the imposition, collection and segregation of a charge for the use of Public Entity's Sewer System or any part thereof, said charge to be sufficient to provide, and from time to time be revised to always be sufficient to provide within Public Entity's activity account, containing sufficient funds to pay the Contract Sum; Public Entity further agrees to annually budget and appropriate such monies to such account. Public Entity may maintain other funds with the funds in the Little Blue Valley Middle Big Creek Sewer Subdistrict Account used to pay the Contract Sum. To the extent prohibited by applicable law, no payment of the Contract Sum by Public Entity shall be from the "net revenues" of Public Entity's Sewer System (as the term "net revenues" is defined in subsection 2 of Section 250.130 of the Revised Statutes of Missouri, 1994, as amended to 2001, with respect to revenue bonds, if any,

now or hereafter issued by Public Entity pursuant to Sections 250.010 to 250.250 both inclusive or any amendment or reenactment thereof).

SECTION 504. The Contract Sum

(a) The Contract Sum shall be the proportionate charge from time to time imposed by the District on Public Entity, which charge shall bear the same proportionate relationship to the total of all charges imposed by the District on all MBC Subdistrict consumers as the volume of wastewater (together with any ground water, surface water, and storm water that may be present) discharged by the Public Entity into the District's MBC System, determined at the point of discharge into the District's MBC System and measured by the District's meters at the point of discharge, bears to the total volume of all wastewater (together with any ground water, surface water, and storm water that may be present) so measured and discharged into the District's MBC system by all consumers of the MBC Subdistrict, or if meter structures are not available or being used to measure such discharge, other equitable means such as those based on the number of Connections for a consumer may be used as reasonably determined by the District.

The total of all such charges imposed by the District on all MBC Subdistrict consumers shall insure sufficient revenues for:

1. the operation and maintenance of the MBC System as set forth in the District's then current annual MBC Budget, including the treatment

charges of the System;

2. the payment of interest and principal of any MBC Bonds of the District, issued to finance the MBC System owned by the District, when the same become due;

3. the payment into various funds by the District as provided for in any Bond Covenants including MBC Bond covenants; and

4. any deficiencies in said funds.

Except such charges shall not provide for revenue in any one year which exceed the amounts required to be collected or as budgeted by the Board of Trustees.

(b) The annual bill for the MBC Subdistrict shall be comprised of Volume Related Costs, Administrative Costs, Meter Costs and Pretreatment Costs, as follows:

1. Volume Related Costs – Volume Related Costs are those costs directly attributable to the flow. These costs include Debt Service costs, certain Operation and Maintenance costs and other costs as may be approved by the Board of Trustees from time to time. MBC Subdistrict's portion of the Volume Related Costs will be allocated based on MBC Subdistrict's contributed percentage of the District's flow.

For the purpose of budget development and billing, MBC Subdistrict's contributed annual flow will be projected based

on the linear regression from the preceding 20 quarters of MBC Subdistrict's actual measured flow.

If, for any reason, 20 quarters of flow information is not available from MBC Subdistrict, a linear regression, using available data, will be used to determine MBC Subdistrict's contributed flow. The Board of Trustees shall review such projected flow calculation for reasonableness and determine any readjustments.

All Users' projected flow will be added together to determine the total projected flow of the District. This total projected flow for the District will then be divided into each User's projected flow to determine the percentage of Volume Related Costs to be billed to that User for the next fiscal year.

A preliminary allocation of Volume Related Costs shall be provided to MBC Subdistrict at the time of approval of the Annual MBC Budget. The final allocation will be based on a linear regression using the previous 20 quarters of flow ending September 30 of the prior fiscal year. No changes will be made to this allocation until the next fiscal year, unless approved by the Board of Trustees.

2. Administrative Costs – Administrative Costs are those costs that do not increase or decrease in relation to the volume of flow. These costs include administrative costs related to the

conveyance system, User related costs, and other costs as determined and approved by the Board of Trustees from time to time. These costs shall be divided among the Users of the District as shall be approved by the Board of Trustees. For the purpose of billing and budget development, the District will determine these costs each year for the following year's budget.

3. Meter Costs – Meter Costs are those costs associated with repair and maintenance of the District's meters and meter structures as approved by the Board of Trustees. These costs will be determined as part of the budget development process for the next fiscal year, and are to be allocated by dividing the number of each User's meters by the total number of meters in the System.
4. Pretreatment Costs – Pretreatment Costs are those costs associated with the District's pretreatment program as approved by the Board of Trustees. These costs are allocated to those Users who do not have a pretreatment program approved by the State of Missouri, as follows: a percent of the costs based on the percentages established above and a percent of the of the costs based on flow from Significant Industrial Users (SIU).

SECTION 505. Meter Reading and Calibration

This Section 505 is subject to change due to technological improvements in wastewater measurements. In the event wastewater discharge is being measured by meter structures and, a(A)s needed, the District will change the flow charts at each meter structure, perform maintenance of flow measuring equipment, calculate flow quantities based on the flow readings, and perform a calibration of the meters. The District shall furnish Public Entity with a written schedule of the date and location of each weekly visit if requested. Representatives of Public Entity may accompany the District's staff and observe the calculation of the weekly flow and the meter calibration. Public Entity shall, no later than ninety (90) days after the visit, advise the District in writing of any differences between Public Entity's readings and those of the District.

As needed, the District's staff or a representative of the maintenance service contractor will calibrate and verify calibration of the meter at each meter structure. Public Entity shall be given twenty-four (24) hours notice of the time and place of said meter calibrations. Representatives of Public Entity may accompany the District's staff and Contractor and observe the calibration of the meter. Public Entity shall, no later than ninety (90) days after the visit, advise the District of any differences regarding the meter calibrations, and the parties shall attempt to resolve any such differences with the District.

Public Entity shall have the right, at its own expense, to

retain consultants to observe any of the above referred to operations.

Neither the failure of Public Entity to observe the District's calculation of weekly flow or meter calibration, nor the failure of Public Entity to advise the District and record in writing any differences between Public Entity's readings or calibrations and those of the District shall effect the authority or ability of Public Entity to dispute a billing in accordance with Section 510.

SECTION 506. Payment of Contract Sum

The Contract Sum shall be billed quarterly, following the budget quarter most recently completed as determined in Section 504. In all events, the quarterly billing shall be due and payable upon receipt by Public Entity.

SECTION 507. Delinquent Payment of Public Entity

Any Contract Sum not paid within sixty (60) days from the date of billing will be considered delinquent and an additional charge of one and one-half percent (1.5%) per month for each month or portion thereof that the bill remains delinquent will be added thereto. The District may commence legal proceedings or available administrative proceedings against any User which is delinquent in the payment of the Contract Sum, and the District shall at all times diligently prosecute said proceedings to their conclusion. Should any other User become delinquent in the payment of

its cost and charges for a period of twelve (12) months after the same shall become due and payable, Public Entity may, in its discretion and upon default of the District, commence legal proceedings or available administrative proceedings against said delinquent User to recover said sum or sums then due in the name and on behalf of the District, and the proceeds of any sums collected shall be paid over to the District exclusive of costs and expenses of effecting said collection recovered in the proceedings. All sums recovered, whether by the District or by a User on behalf of the District, shall, after payment of reasonable costs of said proceedings, be returned to the non-delinquent MBC Subdistrict Users in the proportion that the Contract Sum payment of the non-delinquent MBC Subdistrict Users made up the deficiency of the delinquent MBC Subdistrict User.

SECTION 508. Contracts With Others

No sewer district, county, municipality, or other entity shall be permitted to connect to the System or the MBC System unless it has first duly entered into a contractual agreement substantially in the same form as and providing for payment of Contract Sums as defined in this Contract.

SECTION 509. Public Entity's User Charge System

In conformance with Section 204(b)(1)(A) of Public Law 92-500 and current Federal Regulations, or as subsequently amended, and Sections

503 and 707 of this Contract, Public Entity is required, to the extent permissible by applicable law, to establish and maintain a User Charge System which meets Federal User Charge Requirements. The purpose of Public Entity's User Charge System is to ensure the adequate collection of revenues to support the operation, maintenance and replacement needs of the treatment works within the District's MBC Subdistrict Service Area. By signing this Service Contract, Public Entity specifically acknowledges its ongoing obligation to comply with applicable Federal User Charge Requirements.

The District is required by federal regulations (and may also be required by the terms of certain federal grants for the construction of the MBC System) and by the terms of its several federal grants for the construction of the MBC System to ensure that each MBC Subdistrict member's Service Contract contains the above provisions. Although the State or Federal governments may have the authority to review and otherwise determine the acceptability of each Public Entity's User Charge System, this Section 509 shall in no way be construed as conferring on the District, and the District shall not have, any such right of review or approval of Public Entity's User Charge System. Public Entity shall maintain its User Charge System in accordance with applicable law.

SECTION 510. Resolution of Disputes

Any and all billing disputes, including the measurement of metered flow for purposes of computation of the Contract Sum, that are unable to be resolved between the District and Public Entity shall be referred to the Board of Trustees for disposition. Any and all documentation shall be made available to the Board concerning the dispute. Public Entity shall have sixty (60) days from the date of receipt of District's annual audit to notify District that it is contesting a bill from that audit period. Failure by Public Entity to notify the District, in writing, and to pay in full the undisputed portion of a bill within said sixty (60) day period shall constitute a waiver on the part of Public Entity and Public Entity shall be deemed to have agreed to the accuracy of said bill. Upon receipt of notice of a contested bill, the disputed portion shall be referred to the Board for determination of the matter. The Board shall establish such procedures and policies as it reasonably deems necessary to resolve all disputes. If the Board of Trustees determines that Public Entity is entitled to a reduction of its bill, then all other MBC bills for the billing period in question shall be amended, showing the appropriate adjustment on the next regular billing cycle.

SECTION 511. Connection Fees

In addition to other sums payable by Public Entity hereunder, Public Entity agrees to pay to the District a "Connection Fee" as reasonably and equitably determined by the District.

ARTICLE VI

ABANDONMENT OF PUBLIC ENTITY'S SEWER SYSTEM FACILITIES

SECTION 601. Abandonment Permitted

Public Entity may, in its sole discretion, at any time, abandon, or in the alternative, continue to operate, maintain, and repair all or any part of those sewage treatment or disposal facilities constituting, at the time of the effective date of the Contract, a part of Public Entity's Sewer System, subject however, to the provisions of Section 301, Section 306, Section 308 and Section 602 hereof, and any applicable laws or regulations.

SECTION 602. Notice of Abandonment

Public Entity, prior to abandoning any such sewage treatment or disposal facilities referred to in Section 601 hereof, which abandonment will substantially increase the sewage received from Public Entity's Sewer System by the District in its MBC System, shall file with the District a written notice of Public Entity's intention to abandon such facilities on the date specified in such notice at least one (1) year prior to the date so specified, said notice to set forth the estimated amount of the increase.

ARTICLE VII
MISCELLANEOUS

SECTION 701. Effective Date

The effective date of this Contract is the date as set out in the first paragraph of this document.

SECTION 702. Performing Duties

The District will faithfully and punctually perform all duties with respect to the System and the MBC System required by the Constitution and laws of the State of Missouri and the United States and the resolutions of the Board of Trustees, and all Bond Documents and any MBC Bond documents or any Non-MBC Bonds Funding Procedures. Similarly, Public Entity will so perform all duties with respect to the System and the MBC System required by the Constitution, the laws of the State of Missouri and the United States, and the ordinances or other governing rules of Public Entity, including but not limited to the prompt payment of the Contract Sums in respect of the MBC System.

SECTION 703. Further Assurances

At any and all times, the District and Public Entity shall (insofar as they may be authorized by law) pass, make, execute, acknowledge and deliver any and every such further resolution or ordinance (or other

governing rule) respectively, and acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable to better assure, convey, grant, assign and confirm, all and singular, the Contract Sums in respect of the MBC System, and other funds pledged or assigned, or intended so to be, of which the District or Public Entity, as the case may be, may heretofore or hereafter become bound to pledge or to assign, as may be reasonable and required to carry out the purposes of any such MBC Bond Document or Non-MBC Bonds Funding Procedures or ordinance (or other governing rule) and to comply with the Act. Public Entity consents to and acknowledges the assignment of the Contract Sum to the Trustee as provided for in any MBC Bond Document of the District authorizing the issuance of MBC Revenue Bonds or such other assignment of the Contract Sum as may be required by any Non-MBC Bonds Funding Procedures. The District shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Contract Sum in respect of the MBC System, respectively, and other funds pledged heretofore and hereafter, and all rights of every holder of any MBC Bond against all claims and demands of all persons whomsoever.

SECTION 704. Limitations Upon Consent

Whenever, under the terms of the Contract, the District is authorized to give its written consent, the District in its discretion may give or may refuse such written consent; and if given, may restrict, limit or condition

such consent in such manner as it shall deem advisable. Such written consent shall not be unreasonably withheld. Acceptance by the District into the MBC System from Public Entity of sewage in the volume or with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Contract in one or more instances or under one or more circumstances shall not constitute a waiver of such limit or restriction or of any of the provisions of this Contract and shall not in any way obligate the District thereafter to accept or to make provisions for sewage delivered and discharged into the MBC System in a volume or with characteristics exceeding or violating any such limit or restriction in any other instances or under any other circumstances.

SECTION 705. Form of Consent

All consents of any party required under this Contract shall be given in writing. Whenever under the terms of this Contract Public Entity is authorized to give its consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its City Clerk or other designated official and under its seal (if any), of an ordinance (or other governing rule) adopted by its governing body giving such consent. Whenever under the terms of this Contract the District is authorized to give its consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its Secretary and under its seal, of a resolution adopted by the District and giving such consent.

SECTION 706. Bonds of the District

The Bonds and MBC Bonds, if any, of the District shall not, except to the extent herein provided and in the Bond Documents or the MBC Bond Documents, be a debt of Public Entity, nor shall Public Entity be liable thereon.

SECTION 707. Conformity With The Laws And Regulations

Each party hereto agrees to abide by and to conform to all applicable laws and regulations of the United States of America, the State of Missouri, or any political subdivision thereof having any jurisdiction in the premises, and the Regulations For Use set out in the Appendix hereto, as reasonably amended from time to time.

SECTION 708. Acts of God

No party hereto shall be responsible or liable in any way for Acts of God or any other act or acts or omissions beyond the control of such party which may in any way cause an interruption or a discontinuance of service appertaining to the System, or the MBC System a part thereof, or to Public Entity's Sewer System.

SECTION 709. Nonassignability

No party to this Contract may assign any interest herein to any person without the consent of all the other parties hereto at that time; and subject to the terms of the MBC Bond Documents or any Non-MBC Bonds Funding Procedures, the terms of this Contract shall inure to the benefit of and be binding upon the respective successors of each party hereto. Nothing herein contained, however, shall be construed as preventing the reorganization of any party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liability, disabilities, functions and duties of a party hereto, as may be authorized by law, subject to the terms and conditions of the MBC Bond Documents and in the absence of any prejudicial impairment of any obligation of contract hereby imposed.

SECTION 710. Amendments

Subject to and in accordance with the MBC Bond Documents or Non-MBC Bond Funding Procedures, this Contract may be amended from time to time by written agreement, duly authorized and executed by the parties hereto.

SECTION 711. Severability

If any provision of this Contract shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision

shall not affect any of the remaining provisions of this Contract and this Contract shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

SECTION 712. Execution of Documents; Further Acts

This Contract may be executed at different times by the parties in any number of counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all deeds, documents or other instruments, and take such other actions as are reasonably necessary to carry out and to give effect to the terms of this Contract.

SECTION 713. Waiver

No waiver by either party of any term or condition of this Contract shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsequent paragraph, clause, phrase, or other provision of this Contract.

SECTION 714. Remedies

If permitted by law, this Contract shall be specifically enforceable by any party hereto.

SECTION 715. Entirety

This Contract, inclusive of the Appendix and Schedules “A”, “B”, “C”, “D” and “E”, which are attached hereto and made a part hereof, merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof, including, without limitation, any Interim Service Contract between the District and Public Entity with respect to the providing of similar services to those described herein prior to the formation of the MBC Subdistrict, and constitutes the entire agreement between the parties hereto in respect thereof.

SECTION 716. Applicable Law; Captions

This Contract shall be governed by and construed in accordance with the laws of the State of Missouri. The captions at the beginning of Articles, Sections and Subsections are used for convenience only and are not to be used in attempting to construe any part of this Contract.

SECTION 717. Joint Use Connection Points

Public Entity accepts operational responsibility for any current joint use connection points and accepts future responsibility for any other joint use connection points as designated on the Schedules attached hereto. The parties agree that any designated joint use connection points are agreed to for engineering and technical purposes only. All joint use agreements shall

be reviewed and revised from time to time to take into account the District's regulations and charges.

SECTION 718. Injunctive Relief

Public Entity shall provide injunctive relief at the request of the District to restrain the violation or attempted violation of any of the provisions of this Contract and all attachments thereto. Upon failure of Public Entity to act within ten (10) days of written request, District shall be authorized to so proceed, in Public Entity's name, if necessary.

SECTION 719. Authority

Public Entity shall have immediate and continuing right to discharge wastewater originating in the Middle Big Creek Subdistrict watershed, or as otherwise permitted hereunder, into the District's interceptor on condition that Public Entity agrees to promptly enforce and cooperate with the District in the exercise of the District's enforcement of the restrictions, proscriptions, penalties and other terms provided for herein against any person discharging into the System, or the MBC System a part thereof, in violation of the same. In default of Public Entity's action at the District's request, Public Entity authorizes the District to take all legal actions necessary to enforce the terms of this Contract and all attachments thereto, in Public Entity's name, if necessary.

SECTION 720. Notice

Any notice required by the terms of this Service Contract shall be sent via facsimile or certified mail, return receipt requested, as follows:

To the District: Executive Director
 21101 E 78 Highway
 Independence, MO 64057-2767
 Fax: 816-796-5910

To Public Entity: Director of Water Utilities
 115 SE 2nd
 Lee's Summit 64063
 Fax: 816-969-7632

with a copy to: City Attorney
 207 SW Market
 PO Box 1600
 Lee's Summit, MO 64063
 Fax: 816-969-6834

and to: City Administrator
 207 SW Market
 PO Box 1600
 Lee's Summit, MO 64063
 Fax: 816-969-6834

SECTION 721. Indemnification

The District shall indemnify and save harmless Public Entity against all liabilities, judgments, costs, damages, expenses and attorneys' fees for loss, damage, or injury to person or property caused by the negligent or

intentional acts or omission of the District or its officers, employees or any other agents.

THIS CONTRACT CONTAINS BINDING ARBITRATION PROVISIONS [IN SECTION 403 CONCERNING DISTRICT BUDGET DISPUTES] WHICH MAY BE ENFORCED BY THE PARTIES

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on behalf of the District by the Chairman of the Board of Trustees, and attested to by the Secretary of the Board of Trustees, and on behalf of Public Entity by its authorized representative at the dates shown respectively.

LEE'S SUMMIT, MISSOURI

**LITTLE BLUE VALLEY
SEWER DISTRICT**

By: *Karen R. Messerli*
Karen R. Messerli, City of Lee's Summit
KAREN R. MESSERLI

By: *Dennis A. Molendorp*
Chairman, Board of Trustees

Date: *April 11, 2002*

Date: *May 8, 2002*

ATTEST:

ATTEST:

By: *Denise R. Chisum*
DENISE R. CHISUM, CITY CLERK

By: *Karyl Wilson*
Secretary, Board of Trustees

Date: *April 11, 2002*

Date: *May 8, 2002*

APPROVED AS TO FORM:

APPROVED

By: *Richard L. Wood*
Assistant City Attorney

By: *John P. Reece*
John P. Reece,
Administrator for The District

Schedule "A"

Initial Connection Points - Metering at this Location

Location

None Identified

Schedule "B"

Initial Connection Points - Metering Provided at Another Location

The initial connection points are identified in the Middle Big Creek Connection Manual. Lee's Summit Connection Manual. Lee's Summit connection points are listed in Table II-1 and are the following:

20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,32, 33, 34, 35, 35, 37, 38,
40,41, 42

Connection Point 43 is a Mullendike/Lee's Summit connection point

Schedule "C"

Future Connection Points – Metering to be at that Location

None identified

Schedule "D"

Additional Connection Points

None requested by Lee's summit as of September, 1995

Schedule "E"

Certain Costs Paid by Lee's Summit

None identified