

BILL NO. 3095

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE AMENDED SEWER SERVICES AND EXCLUSIVE TERRITORIAL AGREEMENT BETWEEN TANEY COUNTY AND THE CITY OF BRANSON AND AUTHORIZING MAYOR TO EXECUTE THE AMENDED AGREEMENT.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:

Section 1: The Board of Aldermen, as approved on July 13, 2004, agreed to amend the Sewer Services and Exclusive Territorial agreement by removing language pertaining to the required annexation of real property. The amended agreement is attached hereto as Exhibit "A".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 11th day of July 2005.


Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this _____ day of _____, 2005.

Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa K. Westfall
City Clerk



Matt K. Thompson
City Attorney

SEWER SERVICES AND EXCLUSIVE TERRITORIAL AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between the TANEY COUNTY, MISSOURI, hereinafter referred to as the "County" or the "Commission", TANEY COUNTY REGIONAL SEWER DISTRICT, hereinafter referred to as the "District", and the CITY OF BRANSON, a city of the Fourth Class, State of Missouri, hereinafter referred to as "Branson" or "City".

WITNESSETH:

WHEREAS, pursuant to Ordinance 694, Branson is authorized to enter into contracts to provide city services beyond the city limits of Branson; and,

WHEREAS, the safe and adequate disposal of waste water and sewage, within close proximity of Branson, is a continuing concern to Branson in protecting the public health, safety and welfare of the residents of the City of Branson; and,

WHEREAS, the County, the City and the District desire to create a plan to provide sanitary sewage services to the Table Rock Acres subdivision, the Bee Creek Watershed, and the Emory Creek Watershed; and

WHEREAS, the County will fund and the City will design and construct sanitary sewers in the Table Rock Acres subdivision, and in the Bee Creek and Emory Creek watersheds, to be owned, operated and maintained by the City as part of its sanitary sewer system; and

WHEREAS, all parties agree that the sewerage of the Bee Creek watershed wastewater is the top priority in Taney County and the County agrees to fund the construction of collector and interceptor sewers; and

WHEREAS, the County and the District believe that Branson is the entity most qualified to act as regional provider of sewer services and that it is appropriate that Branson should be the sole provider of wastewater treatment in the Bee Creek and Emory Creek watersheds; and

WHEREAS, Branson agrees to accept wastewater from the Table Rock Acres subdivision for treatment; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following agreement; and

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

- 1) The Parties agree that the subject of this Agreement is to provide wastewater collection, transfer and treatment service to the Table Rock Acres subdivision and the Bee Creek and Emory Creek watersheds, and to provide that the City of Branson shall be the exclusive provider of such services in those areas.

- 2) District Obligations and Duties as to Master Plan: The District agrees to do all things necessary to expedite the review and adoption of the Master Plan for sewers in Taney County, which is currently under consideration, the scope of which will be expanded to include all of the Taney County watersheds in the Branson urban services area depicted on Exhibit C, including the Bee and Emory Creek drainage basins, and which Plan will also include the prioritization placing of the basins in the matrix, ranked according to a uniform standard of evaluation. The Parties agree that the sewerage of the Bee Creek drainage basin is the top priority in Taney County, and will be identified as such in the Master Plan, but that it will be necessary to determine the priority of the Emory Creek drainage basin after reviewing the results of the study prepared by the District's consulting engineers. The scope of the Bee Creek sewer project shall be in substantial accordance with the existing preliminary design set forth in the Wastewater Improvements Facility Plan prepared for the Bee Creek Watershed by Archer Engineers dated March, 1994, and the sewer project to serve the Emory Creek drainage basins set forth in the Master Plan shall be no less thorough, and designed to replace septic systems no less completely, and designed to anticipate development no less inclusively, than Archer Engineer's aforesaid plan for Bee Creek, or any other drainage basin identified in the Master Plan.

- 3) Courtly Obligations and Duties as to Funding: From and after approval by the voters of the renewal of the County's sales tax for sewers, the County agrees to encumber funds from County Sales Tax revenues, for Master Plan projects, according to the same priority as is established by the Master Plan, withholding 25% of such revenues for distribution among Taney County municipalities according to a formula or priority that the County has yet to determine. Notwithstanding the foregoing, the Parties agree that the County will fund the Bee Creek basin project in its entirety before proceeding to any other project set forth in the Master Plan. Bee Creek basin, and other projects may be funded in phases, and upon accumulation of a sufficient account balance to fund the estimated cost of design, easement acquisition, advertisement, bidding and construction costs for each respective project phase, including the Bee Creek basin and the Emory Creek basin, the County shall:
 - a. Notify the City of that the estimated fund balance has been accumulated; and
 - b. Remit to the City sufficient funds to cover estimated project design, advertisement and bidding costs for the project phase, to be held in a special account established for that project.

- 4) Design: Upon receipt of funds to cover the estimated project design, advertisement and bidding costs for the project, the City shall, together with a representative appointed by the County Commission, select an engineer or engineers duly licensed and qualified to perform engineering work in the State of Missouri, and after the selection of the engineer with the concurrence of the County's representative, shall contract with and obtain plans and specifications for the project(s) from. Such plans and specifications prepared for the City, shall be submitted to the District for review to confirm that the scope of the design is consistent with the scope of the project set forth in the Wastewater Improvements Facility Plan prepared for the Bee Creek Watershed by Archer Engineers dated March, 1994. The District shall advise the City of its approval of the design prior to advertisement for bids for construction contracts, which approval shall not be unreasonably withheld, and shall thereupon remit to the City sufficient funds to cover the estimated costs of easement acquisition.

- 5) Easements: The cost of Easements shall be a legitimate project expense, payable from the sales tax fund encumbered by the County for any project undertaken pursuant to this Agreement. If condemnation of easements becomes necessary and the City does not have jurisdiction, the County will condemn such easements for the sewers as described herein, and all costs of easement condemnation, including damages by award or settlement, and all litigation expenses including attorneys fees shall be paid from such project fund.
- 6) Competitive Bids: Upon approval of the Plans and Specifications by District, and after acquisition of all necessary easements, the City shall solicit competitive bids for construction of such Project(s) or project phase(s), and upon receipt and bid opening, and determination of the apparent lowest responsible bidder, the City Shall notify the County of the amount of the proposed bid award, reserving the right to reject all bids. The County shall thereupon remit to the city sufficient funds to fully cover the award of the contract to the proposed contractor.
- 7) Construction and Acceptance: Upon receipt of such funds, the City will enter into a contract with such lowest responsible bidder for the construction of each respective project constructed pursuant to this agreement and upon completion, inspection and approval by the City of each completed project, the City will accept such sanitary sewer lines, lift stations and appurtenances for its use, operation and maintenance. The City shall require any contractor, on any sewer construction contracted under this agreement, to provide no less than one (1) year warranty against material defects and workmanship, in a form approved by the City Engineer.
- 8) Project Cost and Change Orders: No change order for any construction project funded by the County pursuant to this Agreement shall be deemed approved until it has been approved by the District Administrator, the County Engineer, and the City. All actual costs incurred by the City to design, advertise, bid, construct and complete an approved project pursuant to this Agreement shall be fully paid from the sales tax revenues which are collected by the County for the purpose of financing and funding Sewer Capital Improvement projects.
- 9) Contingencies: The City shall be under no obligation to undertake construction of any sewer project under this Agreement unless and until all contingencies set forth in this Agreement have been met, or waived in writing, including, without limitation the following:
 - 9.1 Approval of the project by District
 - 9.2 The city has received Project funding from the County in an amount sufficient to cover the estimated project, or project phase, costs.
 - 9.3 All necessary Easements have been dedicated or otherwise acquired.
- 10) The District and County agree to promptly enact sewer use regulations and ordinances, according to their jurisdiction, in the Table Rock Acres subdivision and the Bee Creek and Emory Creek watersheds, which are identical in all respects to the City's, in order that the all laws applicable to the use the sanitary sewer system are uniform and enforceable upon all customers of the system. The District and County agree to enforce all such laws within said areas, and agrees to do all things necessary to endow City officials with such commissions or other appointments as will authorize them to enforce such ordinances to the same extent as within the City of Branson.

- 11) Any individual property owner within the Table Rock Acres subdivision shall be responsible to obtain a sewer connection permit through the Public Works Department of the City of Branson, prior to connecting to any sanitary sewers constructed pursuant to this agreement. The individual property owner within the Table Rock Acres subdivision shall be responsible for the maintenance of any private sewer line or connection serving the subject property and connecting the building or structure to the public sewer collector. Branson shall be solely responsible for the maintenance of the public sewer facilities and appurtenances after their acceptance.
- 12) The District will refer all developers and applicants for County building permits in the Bee Creek and Emory Creek basins described in Exhibit B, to the City of Branson for review, and the District will defer its decision making authority pertaining to the disposal or treatment of wastewater in the said basins to the City of Branson. Any new or existing structures, facilities or users connected to the sewer line, or system, shall pay to Branson, the hook-up fee provided for in the City of Branson Municipal Code, as amended from time to time. Any new uses, facilities or structures requesting connection to the sewer line system must receive approval for connection to the line from the City of Branson Engineer and the Department of Natural Resources and must also pay the aforesaid hook-up fee. Each property owner shall be responsible to pay a hook-up fee, in accordance with the Branson Municipal Code, to the City of Branson. Both Branson and the District agree that lack of adequate line capacity or treatment plant capacity or failure of the DNR to approve hook-up are sufficient and adequate reasons for rejection of hook-up by the City of Branson Engineer.
- 13) The user fee to be charged new or existing facilities, structures or other users of said sewer line or system shall be that adopted by Branson for Sanitary Sewer Users (outside the city limits) as passed and adopted by Branson Board of Aldermen in the City of Branson Municipal Code as it may be amended from time to time.
- 14) The City agrees that sewer customers inside the platted boundaries of the Table Rock Acres subdivision described in Exhibit A, will be allowed to connect with the subject sewer in this Agreement without annexing their property into the City limits of Branson. Customers are still responsible for paying the hook-up fee as set forth in the City of Branson Municipal Code as it may be amended from time to time, and will be obligated to pay for sewer service at the rate applicable to out-of-City customers.
- 15) Exclusive Territorial Agreement: The County and District agree that Branson is and shall hereafter be the exclusive and the sole provider of wastewater treatment services for the Bee Creek watershed and the portion of the Emory Creek watershed situated west of U.S. Highway 65, and the portion of the Bull Creek watershed situated west of U.S. Highway 65, all as described with greater particularity on Exhibit B. The County and District will do all things necessary to prohibit and prevent any other entity from providing such services within such exclusive territory.
- 16) Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants; nor shall this Agreement prohibit the enactment or increase by the City of any tax or fee.

17) The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.

18) Incorporation of Documents: The following Exhibits, attached hereto, are fully incorporated herein as express terms and conditions of this Agreement:

EXHIBIT A - Table Rock Acres Subdivision

EXHIBIT B - Emory Creek and Bee Creek Watershed Boundaries

EXHIBIT C - Branson Urban Services Area

19) This agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties pertaining to sewer service to the Bee Creek watershed, the Emory Creek watershed and the Table Rock Acres subdivision. This agreement does not supersede in any way the Intergovernmental Agreement for Use of Sewer Grant Funds, dated October 22, 1998, pertaining to the Fall Creek watershed, except as to any provision regarding annexation of Table Rock Acres. Nor shall this agreement supersede in any way the Intergovernmental Agreement dated _____ for "flow through" of sewer sales tax revenues, except that any flow-through revenues not expended on projects pursuant to the October 22, 1998 Agreement may, at the city's discretion, be properly expended on projects authorized under this agreement. This Agreement can only be modified in writing, signed by both parties, and approved by Branson and the District with passage of ordinances approving the modification, addendum or amendment.

20) If there is litigation between the Parties with regard to any matter contained in this Agreement, it is agreed that the prevailing Party shall recover from the other Party all costs, litigation expenses, and attorney fees incurred in the prosecution or defense of its position.

21) As used in this Agreement, the terms "County", "District" and "City" shall include any of the future Boards of the respective Parties, and all such Parties shall have the right to enforce this Agreement, and shall be subject to the terms of this Agreement, as if they were the original parties thereto.

22) As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any City ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon the District.

23) This Agreement shall be recorded with the County Clerk of Taney County, Missouri.

24) The Parties stipulate that the City of Branson would not have entered into this Agreement to receive and treat sewage from the Table Rock Acres Subdivision, without Taney County Regional Sewer District's designation of Branson as the exclusive provider of sanitary sewer services for the Emory Creek and Bee Creek watersheds. In the event that any one or more phrases, sentences, clauses, paragraphs, or sections contained herein pertaining to the sewerage of the Emory Creek or Bee Creek watershed shall be declared invalid by decree or judgment of any Court, the City of Branson shall have the right to pursue annexation of Table

Rock Acres without opposition from the County or District, it being expressly stipulated and agree by the Parties that the Branson Board of Aldermen would not have authorized the execution of this agreement unless each and every clause pertaining to the sewerage of the Emory Creek and Bee Creek watersheds are in fact valid and enforceable.

- 25) Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.
- 26) The parties agree that, except as provided in paragraph 24 above, if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Missouri, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.
- 27) All Parties understand and agree that this agreement does not in any manner encumber funds already pledged for the completion of the Poverty Point sewer project, or any other funds generated from the sales tax imposed in 1993 for sewer improvements.
- 28) The City agrees not to oppose any effort by the County or District to secure State Revolving Funds (SRF) for financing sewer projects.

TANEY COUNTY REGIONAL SEWER DISTRICT

By: _____
Chairman of the Board

Attest: _____

TANEY COUNTY COMMISSION

By: _____
Presiding Commissioner

By: _____
Commissioner

Attest: _____

CITY OF BRANSON

By: _____
Louis E. Schaefer, Mayor

Attest: _____

Approved as to Form:

City Attorney

ACKNOWLEDGMENT

STATE OF MISSOURI)
)SS
COUNTY OF TANEY)

On this ____ day of _____, in the year 200_, before me _____,
a Notary Public in and for said state, personally appeared, _____,
Chairman of the Board of the Taney County Regional Sewer District, known to me to be the person
who executed the within Agreement and acknowledged to me that he executed the same by the
authority of the said Board for the purposes therein stated.

Notary Public

My commission expires:

(Notary's seal)
