

1314 North 7th Street
Columbia, MO 65201
p: 573-443-2774
f: 573-499-0489

www.bcrsd.com

November 10, 2023

VH Properties, LLC
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205

Larry W. Potterfield
6001 Van Horn Tavern Road
Columbia, MO 65203

RE: Compliance with Agreement for Provision of Wastewater Collection and Treatment Services and MO-0108421

Dear Mr. Potterfield:

As you may recall, the Boone County Regional Sewer District (the "District") entered into that certain Agreement for Provision of Wastewater Collection and Treatment Services with you and VH Properties, LLC dated April 21, 2022 (the "Agreement"). I have enclosed a copy of the Agreement for your reference.

Pursuant to Section 2.6 of the Agreement, you agreed that by no later than September 1, 2024, you would either (i) complete construction of the improvements to the WWTP in accordance with Section 2.1 of the Agreement; (ii) connect the property to the City of Columbia wastewater collection system in accordance with Section 2.2 of the Agreement; or (iii) connect to the District's Midway Crossing Wastewater Treatment Plant, subject to availability of capacity. The September 1, 2024, deadline is necessary to meet the Missouri Department of Nature Resources' compliance schedule associated with Missouri State Operating Permit Number MO-0108421 for the Midway Arms Wastewater Treatment Plant (the "MSOP").

Sections 2.1 and 2.2 of the Agreement each require that the District approve any plans and specifications detailing how you will either complete the improvements required by the MSOP or connect to the City of Columbia. Although the deadline to meet these requirements is less than one year from the date of this letter, you have yet to provide any plans for the District's review and approval. **At your earliest convenience, but by no later than December 18th, 2023 please provide to the District detailed plans outlining how you intend to comply with the provisions of the Agreement by the September 1, 2024 deadline.** In the event you fail to complete the Agreement requirements by September 1, 2024, you will be liable for any penalty, fee, fine or

VH Properties, LLC
Mr. Larry Potterfield
Page 2
November 10, 2023

other monetary demand that Missouri Department of Natural Resources might assess against the District as agreed in Section 2.6 of the Agreement.

If you have any questions or would like to discuss the contents of this letter or your obligations pursuant to the Agreement, please feel free to contact me at the above-listed phone number or by e-mail at tratermann@bcrsd.com.

Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Ratermann", written in a cursive style.

Tom Ratermann
General Manager

Encl.

C: Jason Kemna by e-mail only at jkemna@thepotterfieldgroup.com and jkemna@midwayusa.com

Daniel Cunningham, BCRSD by e-mail only

File



Recorded in Boone County, Missouri
 Date and Time: 05/04/2022 at 01:35:56 PM
 Instrument #: 2022009662 Book: 5615 Page: 76

Instrument Type: AGR
 Recording Fee: \$45.00 S
 No. of Pages: 8



**AGREEMENT FOR PROVISION
 OF WASTEWATER COLLECTION AND TREATMENT SERVICES**

THIS AGREEMENT dated the 21st day of April, 2022, is made by and between Boone County Regional Sewer District, a common sewer district organized and operated under the provisions of Chapter 204 RSMo., (herein “District”), and VH Properties, LLC, a Missouri Limited Liability Company, and Larry W. Potterfield (herein “Developer”).

IN CONSIDERATION of the performance by each party of the respective obligations described in this agreement, the parties specifically agree to the following:

1. **Background of Agreement** - This Agreement is made in view of the following facts which the parties agree to be true:

1.1 Developer owns real estate (the “Property”) located in Boone County, Missouri and described as follows:

Lots 3-4 of the FINAL PLAT of VH ACRES, PLAT No. 2 as shown by final plat recorded in Plat Book 49, Page 14, Records of Boone County, Missouri.

District currently operates Midway Arms WWTP (the “WWTP”), a wastewater collection and treatment system providing collection and treatment services to the Property. Said treatment system is currently operating under Missouri State Operating Permit issued by the State of Missouri Department of Natural Resources; said Permit Number being MO-0108421 with an effective date of November 1, 2020 (the “MSOP”).

1.2 Developer is willing to make improvements to the existing collection and treatment system in order to meet the final effluent limitations outlined in the MSOP if required in the future in exchange for District’s agreement to provide wastewater collection and treatment services. Such agreement shall be in writing and shall contain such terms and conditions as mutually agreed upon by Developer and District. Developer’s timely performance of its obligations under the terms and conditions of this Agreement shall be a condition precedent to District’s performance of its obligations under this Agreement.

1.3 District is willing to provide wastewater collection and treatment services to the Property, subject to the terms and conditions set forth herein.

1.4 In order to memorialize the terms and conditions of the Developer's and District's agreement with respect to the provision of public sanitary sewer services to Developer's property, the parties are entering into this written Agreement.

2. **Developer's Obligations** - Developer agrees to perform the following obligations:

2.1 **Design and Construction of Future Improvements to Midway Arms WWTP** – The State of Missouri requires certain improvements to the WWTP as outlined in the MSOP, and Developer shall pay any and all costs associated with said improvements. Such costs shall include, but not be limited to, environmental studies (such as a "Reasonable Potential Analysis" study) if required by MDNR. Developer hereby agrees to, at Developer's sole expense, retain a licensed, qualified engineer reasonably acceptable to District to develop the plans and specifications for construction of the new public sewer main, treatment system and sewer connections to the WWTP, with overall capacity and design approved by District, in accordance with District and MDNR standards and regulations. Upon District's approval of such plans and specifications, Developer further agrees to construct such improvements at Developer's sole expense in accordance with the approved plans and specifications. Plans and specifications for the construction of the new public sewer main, treatment system and sewer connections shall be reviewed and approved by District as a condition precedent to the performance by District of its obligations under this Agreement. All sanitary sewer construction by Developer shall be inspected and approved by District. Developer agrees to obtain all necessary permits and to pay all fees for permits required by governmental agencies having jurisdiction over construction work.

2.2 **Connection to City of Columbia** – The provisions of Section 2.1 of this Agreement notwithstanding, Developer may elect to connect the Property to the City of Columbia wastewater collection system in lieu of paying costs associated with improvements to the WWTP required by the State of Missouri. In the event that Developer elects to connect the Property to the City of Columbia wastewater collection system, Developer hereby agrees to, at Developer's sole expense, retain a licensed, qualified engineer reasonably acceptable to District to develop the plans and specifications for the construction of extension of the existing collection system to the City of Columbia collection system, in accordance with District and MDNR standards and regulations. Upon District's approval of such plans and specifications, Developer further agrees to construct such extension at Developer's sole expense in accordance with the approved plans and specifications. Plans and specifications for the construction of the extension shall be reviewed and approved by District as a condition precedent to the performance by District of its obligations under this Agreement. All sanitary sewer construction by Developer shall be inspected and approved by District.

2.3 **District Permits** – Developer shall discharge wastewater into District's collection and treatment system only in compliance with a Waste Water Treatment Capacity Allocation Permits duly issued by District. Each of the four lots comprising the

Property shall operate in compliance with a separate permit for each individual lot. The permits shall authorize daily discharge of wastewater in an amount not to exceed the following: (i) Lot 1 of the Property – six hundred (600) gallons per day; (ii) Lot 2 of the Property – one thousand (1,000) gallons per day; (iii) Lot 3 of the Property – two thousand (2,000) gallons per day; and (iv) Lot 4 of the Property – one thousand two hundred (1,200) gallons per day. Each such permit shall run with the land to which it applies, be binding upon the Developer and its successors in title, and shall be recorded by District in the office of the Boone County Recorder of Deeds. Developer agrees that it will comply with all conditions of the permits issued by District. In the event that Developer connects to the City of Columbia wastewater collection system and, consequently, the above-described permits are no longer required, District shall rescind the permits and record appropriate documentation of such rescission with the Boone County Recorder of Deeds as necessary. Upon Developer's connection to the City of Columbia wastewater collection system and rescission of the above-described permits, capacity will be limited to the hydraulic capacity of the collection system.

2.4 Closure of WWTP – In the event that operation of the WWTP is no longer necessary due to Developer's election to connect to the City of Columbia wastewater collection system or for any other reason, Developer shall close the WWTP in accordance with the MSOP at the sole expense of Developer.

2.5 Pumping of Septic Tank – Developer agrees that District may pump out the septic tank serving the building located on the Property commonly known as the Midway Arms building ("Midway Arms Septic Tank") at any time until such time as the Midway Arms Septic Tank has been replaced or is no longer needed. The necessity for pumping the Midway Arms Septic Tank, the frequency of such pumping, whether the Midway Arms Septic Tank has been replaced or is no longer needed, and all other considerations related to pumping the Midway Arms Septic Tank shall be determined by District at its sole and exclusive discretion. Developer agrees to bear all costs associated with District pumping the Midway Arms Septic Tank as determined in accordance with the District's Labor and Equipment Rates in effect at the time of such pumping, which rates may be amended from time to time at the sole discretion of District. District shall bill the Developer for the service described in this Section 2.5, and Developer shall promptly remit payment to District for such services rendered in addition to Developer's payment for services as described in Section 3.1 below.

2.6 Timeline and Payment of Penalty – By no later than September 1, 2024, Developer shall either (i) complete construction of the improvements to the WWTP in accordance with Section 2.1 of this Agreement; (ii) connect the Property to the City of Columbia wastewater collection system in accordance with Section 2.2 of this Agreement; or (iii) subject to available capacity, connect to District's Midway Crossing Wastewater Treatment Plant at Developer's sole cost and expense and in accordance with a separate written agreement with District. If, after failure by Developer to perform one of the actions described in clauses (i) – (iii) of the preceding sentence by September 1, 2024, the Missouri Department of Natural Resources assesses a penalty, fee, fine or any other monetary demand of any sort whatsoever against District for violation of the MSOP, Developer shall be liable for any such penalty, fee, fine or monetary demand and Developer shall reimburse District the full and complete amount of any such penalty, fee,

fine or monetary demand.

3. **District Obligations** - District hereby agrees to undertake and perform the following obligations:

3.1 **Provision of Treatment Services** - In exchange for Developer's performance of Developer's obligations under this Agreement, District agrees to provide wastewater collection and treatment services necessary to serve Developer's development as described in Section 1.1 above as permissible under the zoning regulations of Boone County and Missouri Department of Natural Resources design guidelines for waste water treatment capacity necessary to serve the Property, with overall treatment capacity not to exceed 4,800 gallons per day. All service shall be provided in accordance with and subject to District's normal rules, policies, procedures and regulations applicable to providing customer services and at the rates and charges normally scheduled for those services. Specifically, Developer shall pay four (4) base service fees (one such fee for each commercial building of the Property), District's standard treatment charge based upon water usage, and surcharges for septic tank pumping and pump maintenance, in accordance with Rate B of District's User Rate Regulations and its 2022 Labor and Equipment Rates, both of which may be amended from time to time.

3.2 **Conduct Plan Review and Evaluation** - Developer acknowledges that District intends to retain a licensed, qualified engineer to conduct independent plan review and evaluation of the construction plans and specifications described in Sections 2.1 or 2.2 herein as applicable. The Developer shall reimburse to the District the actual cost of the plan review and evaluation study within sixty (60) days of invoice. Cost of independent plan review and evaluation of the construction plans shall not exceed \$5,200 without written approval of the Developer.

3.3 **Waiver of Connection Fees** - District agrees not to impose general District connection fees for the lots for which treatment capacity is provided under this Agreement so long as Developer fulfills all obligations hereunder.

3.4 **Conveyance of WWTP Site** - District hereby covenants and agrees that in the event that District or its successor or assign shall cease to use the real estate upon which the WWTP is located for wastewater collection and treatment purposes and reclaim such property, then District shall give reasonable written notice to the Developer or their successor or assign of such fact, including the filing of such notice in the land records of Boone County, Missouri. After District's notice to Developer and completion of the closure of the WWTP by Developer in accordance with Section 2.4 of this Agreement, District or its successors or assigns covenants and agrees that it shall convey the real estate upon which the WWTP is located to the Developer or their successors or assigns. If the Developer fails to close the WWTP in accordance with Section 2.4 of this Agreement, then the District's covenant to convey shall be thereafter void and of no force or effect.

4. **Assignment** - The Developer shall not assign its rights or obligations under this Agreement in whole or in part as a part of any sale or transfer of ownership of the land to which this Agreement is applicable without the written consent of District; provided, however, nothing in the Agreement shall be construed to prohibit Developer from selling, leasing, or assigning part or all of its ownership interests in the property which is the subject matter of this Agreement under permissible

zoning provided that any such sale, lease, or assignment shall be subject to the terms and conditions of this Agreement as applicable and any other regulations adopted by the District which are binding upon users of District services and customers of the District.

5. **Miscellaneous** - The following provisions shall be applicable to the entire Agreement unless the specific language of any provision herein shall indicate otherwise:

5.1 This Agreement shall be governed by and construed pursuant to the laws of the State of Missouri.

5.2 Time is declared to be of the essence of this Agreement.

5.3 The parties hereto agree that this Agreement was negotiated at arm's length and that for purposes of interpretation neither party shall be deemed the drafter of this Agreement.

5.4 Whenever the context requires, the singular shall be deemed to include the plural, the plural shall be deemed to include each of the singular, and pronouns of one or no gender shall be deemed to include the equivalent pronoun of the other or no gender.

5.5 Each person whose signature appears subscribed below on behalf of any entity party hereto who is not a natural person, does hereby warrant that he or she is duly authorized to so subscribe this Agreement and that said act is sufficient, or has been made sufficient by co-subscription or seal, to bind and commit said entity to all terms, requirements and conditions of this Agreement.

5.6 All exhibits and other documents specifically referenced herein shall be for all purposes incorporated herein and adopted by reference, as is set forth herein verbatim et literatim.

5.7 Unless specified otherwise, any reference to a "day" or "days" herein shall mean a calendar day or days.

5.8 The rights, powers and remedies of either party contained in this Agreement are cumulative; and no one of them is exclusive of the others or exclusive of any rights, powers or remedies allowed either party by law, and shall not affect the right of either party to pursue any other equitable or legal remedy to which that party might be entitled so long as any remedy remains unsatisfied or undischarged.

5.9 No waiver by either party or any breach of any other party's obligations, agreements, or covenants hereunder shall be deemed to be a waiver of any prior or subsequent breach of the same or any other obligation, agreement, or covenant, nor shall any forbearance to seek remedy for any such breach be deemed a waiver by either party of its rights and remedies with respect to such breach or any prior or subsequent breach.

5.10 Neither this Agreement, nor any terms or provisions hereof, may be changed, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, discharge or termination is sought.

5.11 The covenants, promises and conditions to be performed pursuant to this Agreement shall survive the closing of the transaction and shall continue to be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

5.12 This Agreement shall be binding upon, and inure to the benefit of, Developer and District, and their respective successors and permitted assigns.

5.13 The parties hereby waive trial by jury in any action or lawsuit brought by either party against the other, at any time, arising out of this Agreement or the subject matter of this contact.

6. **Entire Agreement and Amendment of Agreement** - This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations and agreements between the parties, written or verbal, and may be amended only by a signed writing executed with the same formality as this Agreement. All parties to this Agreement acknowledge that by executing this Agreement they have read, considered, and understand the terms and conditions of this agreement and consequences thereof.

7. **Signature, Execution, and Authorizations.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof. Each party agrees that this Agreement may be electronically signed, and that any electronic signatures appearing on this Agreement are the same as the handwritten signatures for the purposes of validity, enforceability, and admissibility.

8. **Recording** – The District shall record this Agreement in the office of the Boone County Recorder of Deeds.

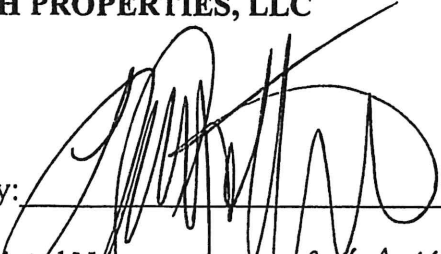
9. **Developer Representations and Warranties** – On behalf of Developer, the undersigned hereby represent and warrant to District that each of the persons who signs this agreement is empowered to bind said Developer, in their respective capacities as _____ and/or individual, to the terms and conditions herein contained.

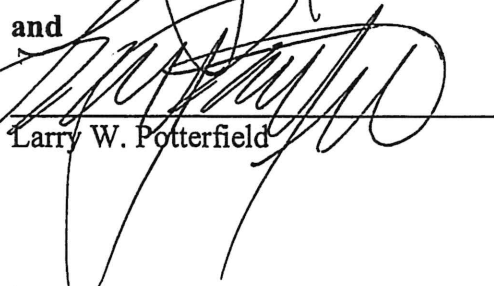
[Remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first set forth above.

DEVELOPER:

VH PROPERTIES, LLC

By: 
Printed Name: Larry Potterfield
Title: Member

and

Larry W. Potterfield

DISTRICT:


**BOONE COUNTY
REGIONAL SEWER DISTRICT**

By: 
Tom Ratermann, General Manager

ATTEST:


Lara Florea, Assistant Secretary

FORM APPROVED:

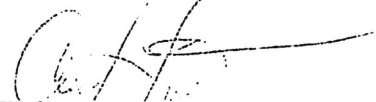
By: 
Christopher Pieper, General Counsel

State of Missouri)
)SS.
County of Boone)

On this 22nd day of April, 2022, before me, a Notary Public in and for the County of Boone, in the State of Missouri, personally appeared Tom Ratermann, to me known to be the General Manager of the Boone County Regional Sewer District, described in and who executed the foregoing agreement for provision of Wastewater Treatment Services, on behalf of said Boone County Regional Sewer District for the purposes therein stated.

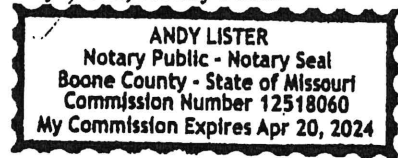
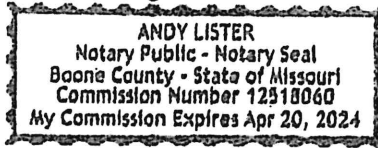
IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my official seal, at my office in Columbia, Missouri, the day and year first above written.

My Commission expires 4/20/2024



Andy Lister, Notary Public

State of Missouri)
)SS.
County of Boone)

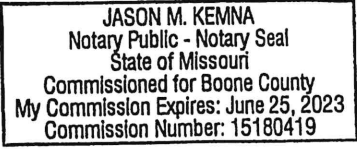


On this 28th day of April, 2022, before me, a Notary Public in and for the County of Boone, in the State of Missouri, personally appeared Larry W. Potterfield, Member of VH Properties, LLC to me known to be the persons who executed the foregoing Agreement for Provision of Wastewater Treatment Services, and being duly sworn, acknowledged that he is a Member of VH Properties, LLC, a limited liability company, and that he is authorized by said limited liability company to execute said Agreement for Provision of Wastewater Treatment Services on behalf of said Limited Liability company and acknowledged that he executed the same as a free act and deed of said limited liability company for the purposes therein stated.

IN TESIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Boone County, Missouri, the day and year first above written.

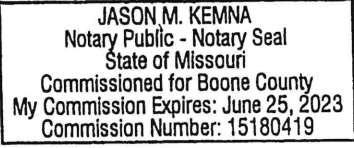

Jason M. Kemna, Notary Public

State of Missouri)
)SS.
County of Boone)



On this 28th day of April, 2022, before me, a Notary Public in and for the County of Boone, in the State of Missouri, personally appeared Larry W. Potterfield, Developer, to me known to be the person who executed the foregoing Agreement for Provision of Wastewater Treatment Services, and acknowledged that he executed the same as his free act and deed.

IN TESIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Boone County, Missouri, the day and year first above written.


Jason M. Kemna, Notary Public