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April 19, 2024

**VIA CERTIFIED U.S. MAIL**

John Hoke, Director  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176  
And by e-mail to [john.hoke@dnr.mo.gov](mailto:john.hoke@dnr.mo.gov)

**RE: Missouri State Operating Permit MO-0108421; BCRSD Midway Arms WWTP**

Director Hoke:

I am writing to request a revised schedule of compliance provided in Missouri State Operating Permit MO-0108421 (“MSOP”) for the Midway Arms Wastewater Treatment Plant (“WWTP”). The Boone County Regional Sewer District (the “District”) would appreciate your consideration of the details provided below.

The District has been working diligently with the property owner to ensure the schedule of compliance set by the MSOP for September 1, 2024 is met. In April of 2022, the District entered into the enclosed agreement pursuant to which a property developer of land serviced by the WWTP agreed to by no later than September 1, 2024 either (i) make certain improvements to the WWTP; (ii) connect to the City of Columbia sewer system; or (iii) connect to another of the District’s wastewater treatment facilities – any of which options would effectively bring the District into compliance with the MSOP. While I understand the property developer has retained Crockett Engineering to perform the work necessary to comply with the enclosed agreement (and therefor the MSOP), the District has yet to receive detailed plans and specifications illustrating the developer’s plan for compliance despite the enclosed requests that such plans and specifications be provided.

While the District will continue to work with the property developer to ensure the WWTP is in compliance with the MSOP on or before September 1, 2024, given that the compliance deadline is less than six months away and the District has not yet had the opportunity to review and approve plans for compliance, it appears unlikely the District will be able to meet the current September 1, 2024 schedule of compliance provided in the MSOP despite its diligent efforts to do so.

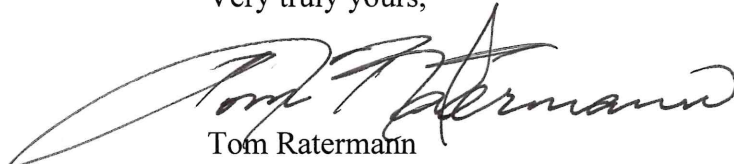
Missouri Department of Natural Resources  
Water Protection Program  
Dir. John Hoke  
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In light of the above circumstances, the District respectfully requests that the schedule of compliance for the MSOP be revised. The District takes compliance with all environmental laws seriously and will continue to work closely with the property developer to bring the WWTP into compliance with the MSOP as soon as possible.

Please let me know what other information I can provide to assist in your consideration of this request. I would also be glad to schedule a call or meeting at your convenience to discuss the District's request.

Thank you for your attention to this matter.

Very truly yours,



Tom Ratermann  
General Manager

Encls.

cc: Daniel Cunningham, BCRSD by email only  
Virgil Farnen, BCRSD by email only  
Joe Foster, BCRSD by email only  
File



Recorded in Boone County, Missouri

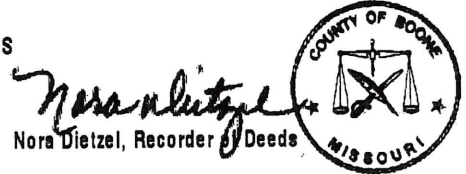
Date and Time: 05/04/2022 at 01:35:56 PM

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 21<sup>st</sup> 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 contract.

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.

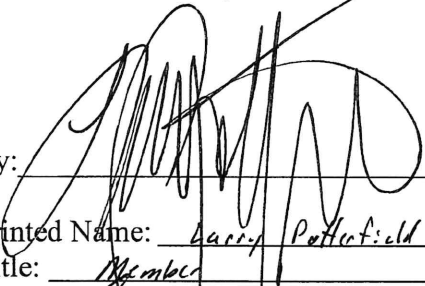
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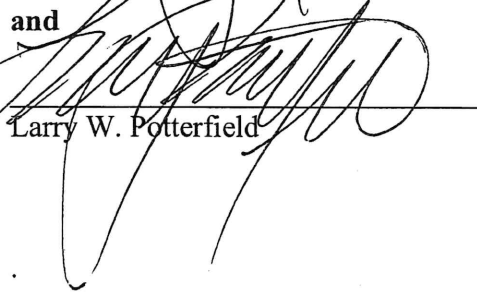


IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first set forth above.

**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 22<sup>nd</sup> 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.

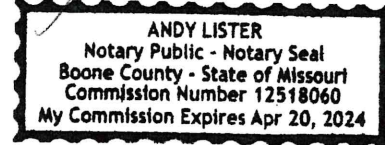
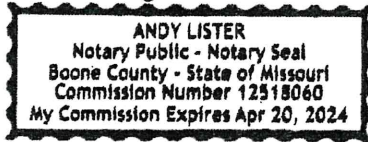
IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my official seal, at my office in Columbia, Missouri, the day and year first above written.

My Commission expires 4/20/2024



Andy Lister, Notary Public

State of Missouri )  
                                  )SS.  
County of Boone )

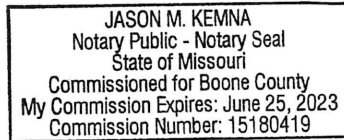


On this 28<sup>th</sup> day of April, 2022, before me, a Notary Public in and for the County of Boone, in the State of Missouri, personally appeared **Larry W. Potterfield, Member of VH Properties, LLC** to me known to be the persons who executed the foregoing Agreement for Provision of Wastewater Treatment 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.

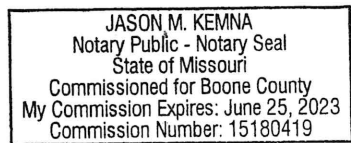
  
Jason M. Kemna, Notary Public

State of Missouri )  
                                  )SS.  
County of Boone )



On this 28<sup>th</sup> 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