

ORDINANCE NO. 2007-04-286

AN ORDINANCE GRANTING THE CITY COUNCIL OF TONTITOWN THE AUTHORITY TO ACCEPT THE SERVICE CONTRACT BETWEEN THE NORTHWEST ARKANSAS CONSERVATION AUTHORITY AND THE CITY OF TONTITOWN, ARKANSAS.

WHEREAS, the City Council of the City of Tontitown deems it necessary to provide the citizens of Tontitown proper and adequate sewer utilities, and the City Council believes that entering into a contract with the Northwest Arkansas Conservation Authority for water treatment services is necessary to accomplish that goal; and

WHEREAS, the City of Tontitown has determined that proper and adequate sewer utilities should be provided to its citizens and the most efficient way this can be accomplished is by the creation of this Ordinance; and

WHEREAS, the City of Tontitown's current contract with the City of Springdale, Arkansas, is temporary in nature, and Springdale will not have the capacity to receive, treat and dispose of Tontitown's sewage in the future; and

WHEREAS, Title 14 Chapter 233 of the Arkansas Code as amended, permits any two or more Arkansas municipalities or counties to come together to create, establish, and become a member of a solid waste disposal authority for the purposes of controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste as that term is defined in the Joint County and Municipal Solid Waste Disposal Act, Ark. Code Ann. § 14-233-101 et. seq.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS, AS FOLLOWS:

Section 1: The Mayor is hereby authorized and directed to execute the Service Contract Between the Northwest Arkansas Conservation Authority (NACA) and the City of Tontitown, Arkansas, for treatment and disposal of sewage, the Recorder/Treasurer is hereby authorized and directed to attest the same, and the City Attorney is hereby authorized and directed to approve the contract as to form. A true and correct copy of said contract is attached hereto and made part of this Ordinance by reference.

Section 2: Pursuant to the above-mentioned contract, NACA will require that the City of Tontitown commit to the repayment of monies expended by NACA for the installation of connecting lines between the NACA's new treatment facility and the City of Tontitown, as well as other fees.

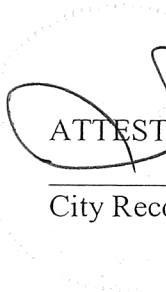
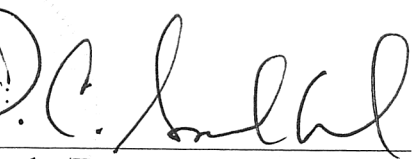
Section 3: Pursuant to Resolution 2005-04-212, the Water and Sewer Commission is entitled to forty percent (40%) of the 2005 series sales tax, which has been adopted into the City's budget every year. The above-mentioned funds will be applied to any and all projects that the Water and Sewer Commission undertakes until the NACA treatment facility is constructed and operational.

Thereafter, the above-mentioned funds will be used only for the payment of monies required under the Service Contract attached hereto.

PASSED AND APPROVED this 3rd day of April, 2007.
APPROVED:



Mayor


ATTEST: 

City Recorder/Treasurer

SPONSOR:

ROLL CALL

1st Reading

SHALL THE ORDINANCE PASS:

	Yea	Nay
Alderman Sunny Hinshaw	<u>✓</u>	_____ (Ward 1, Position 1)
Alderman Henry Piazza	<u>✓</u>	_____ (Ward 1, Position 2)
Alderman Arthur Penzo	<u>✓</u>	_____ (Ward 2, Position 1)
Alderman David Sbanotto	<u>✓</u>	_____ (Ward 2, Position 2)
Alderman Becky Alston	<u>✓</u>	_____ (Ward 3, Position 1)
Alderman Scott McNair	<u>✓</u>	_____ (Ward 3, Position 2)
Mayor Joseph Edgmon	_____	_____
TOTALS:	<u>6</u>	<u>0</u>

ROLL CALL

SHALL THE ORDINANCE BECOME EFFECTIVE IMMEDIATELY:

	Yea	Nay
Alderman Sunny Hinshaw	_____	_____ (Ward 1, Position 1)
Alderman Henry Piazza	_____	_____ (Ward 1, Position 2)
Alderman Arthur Penzo	_____	_____ (Ward 2, Position 1)
Alderman David Sbanotto	_____	_____ (Ward 2, Position 2)
Alderman Becky Alston	_____	_____ (Ward 3, Position 1)
Alderman Scott McNair	_____	_____ (Ward 3, Position 2)
Mayor Joseph Edgmon	_____	_____
TOTALS:	_____	_____

2nd Reading

ROLL CALL

SHALL THE ORDINANCE PASS:

	Yea	Nay
Alderman Sunny Hinshaw	<u> </u> ✓	<u> </u> (Ward 1, Position 1)
Alderman Henry Piazza	<u> </u> ✓	<u> </u> (Ward 1, Position 2)
Alderman Arthur Penzo	<u> </u> ✓	<u> </u> (Ward 2, Position 1)
Alderman David Sbanotto	<u> </u> ✓	<u> </u> (Ward 2, Position 2)
Alderman Becky Alston	<u> </u> ✓	<u> </u> (Ward 3, Position 1)
Alderman Scott McNair	<u> </u> ✓	<u> </u> (Ward 3, Position 2)
Mayor Joseph Edgmon	<u> </u>	<u> </u>
TOTALS:	<u> 6 </u>	<u> 0 </u>

ROLL CALL

SHALL THE ORDINANCE BECOME EFFECTIVE IMMEDIATELY:

	Yea	Nay
Alderman Sunny Hinshaw	<u> </u>	<u> </u> (Ward 1, Position 1)
Alderman Henry Piazza	<u> </u>	<u> </u> (Ward 1, Position 2)
Alderman Arthur Penzo	<u> </u>	<u> </u> (Ward 2, Position 1)
Alderman David Sbanotto	<u> </u>	<u> </u> (Ward 2, Position 2)
Alderman Becky Alston	<u> </u>	<u> </u> (Ward 3, Position 1)
Alderman Scott McNair	<u> </u>	<u> </u> (Ward 3, Position 2)
Mayor Joseph Edgmon	<u> </u>	<u> </u>
TOTALS:	<u> </u>	<u> </u>

ROLL CALL

SHALL THE ORDINANCE PASS:

	Yea	Nay
Alderman Sunny Hinshaw	<u>✓</u>	___ (Ward 1, Position 1)
Alderman Henry Piazza	<u>✓</u>	___ (Ward 1, Position 2)
Alderman Arthur Penzo	<u>✓</u>	___ (Ward 2, Position 1)
Alderman David Sbanotto	<u>✓</u>	___ (Ward 2, Position 2)
Alderman Becky Alston	<u>✓</u>	___ (Ward 3, Position 1)
Alderman Scott McNair	<u>✓</u>	___ (Ward 3, Position 2)
Mayor Joseph Edgmon	___	___
TOTALS:	<u>6</u>	<u>0</u>

ROLL CALL

SHALL THE ORDINANCE BECOME EFFECTIVE IMMEDIATELY:

	Yea	Nay
Alderman Sunny Hinshaw	___	___ (Ward 1, Position 1)
Alderman Henry Piazza	___	___ (Ward 1, Position 2)
Alderman Arthur Penzo	___	___ (Ward 2, Position 1)
Alderman David Sbanotto	___	___ (Ward 2, Position 2)
Alderman Becky Alston	___	___ (Ward 3, Position 1)
Alderman Scott McNair	___	___ (Ward 3, Position 2)
Mayor Joseph Edgmon	___	___
TOTALS:	___	___

SERVICE CONTRACT

between

NORTHWEST ARKANSAS CONSERVATION AUTHORITY

and

CITY OF TONTITOWN, ARKANSAS

Dated: _____

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SERVICE CONTRACT

THIS SERVICE CONTRACT dated as of the ____ day of _____, 2007, (regardless of when signed by the parties hereto), by and between NORTHWEST ARKANSAS CONSERVATION AUTHORITY (herein referred to as the "Authority"), a body corporate and politic duly organized and existing under the laws of the State of Arkansas, and TONTITOWN, ARKANSAS, a municipal corporation (herein referred to as the "City").

WITNESSETH:

WHEREAS, Title 14, Chapter 233 of the Arkansas Code as amended, permits any two or more Arkansas municipalities, any two or more counties, or any one or more Arkansas municipalities together with any one or more Arkansas counties to create, establish, and become a member of a solid waste disposal authority for the purpose of controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste as that term is defined in the Joint County and Municipal Solid Waste Disposal Act, Ark. Code Ann. §§14-233-101 et seq. (hereinafter the "Act") and for the purposes stated in the Act; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Authority has been duly created and is duly authorized to undertake the planning, financing, construction, maintenance and operation of a common system of trunk sewers, sewage treatment plant and related facilities to be constructed by the Authority to serve certain areas within Benton County and Washington County, Arkansas (hereinafter referred to as the "System"); and

WHEREAS, the Act permits the Authority to enter into agreements such as this Service Contract (hereinafter the "Contract");

WHEREAS, the City, as a political subdivision of the State, is authorized to enter into agreements such as this Service Contract with the Authority for the provision of sewage treatment services; and

WHEREAS, the City hereby agrees to pay a reasonable charge to the Authority for wastewater disposal, such charges to be based as determined by the Board of Directors from time to time and as determined pursuant to this Contract for sewage water used by the residential, commercial, and industrial establishments both within and without the jurisdictional limits of the City and discharged into the System together with such amounts, if any, of groundwater, surface water, and storm water that is allowed to be discharged into the System, said volume to be determined 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 Authority, insure the provision of sufficient revenues for the operation, maintenance, rehabilitation and restoration of the System and the payment of principal and interest on all outstanding revenue bonds issued by the Authority, or by any other financing source, as provided by law; and

WHEREAS, the Authority has the power and is authorized, pursuant to the Act, to issue its Bonds in such principal amount as, in the opinion of the Authority and with the concurrence of the Authority's Board of Directors 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 Authority 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 Authority expects to issue Bonds pursuant to the Act 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 Authority under the terms and provisions of Bond Documents duly adopted by the Authority prior to the issuance of the Outstanding Bonds; and

WHEREAS, the Authority has undertaken to review the needs of the System and has retained the services of professional consulting engineers to make such plans and designs for the System (herein referred to as the "Facility Plan") as will reasonably serve the needs of the Authority and its Users and provide capacity for the City for the near future; and

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

WHEREAS, the System will be for the benefit of the Users which contract with the Authority and are connected to the System; and

WHEREAS, the Authority pledges to use its reasonable best efforts and resources to secure binding service contracts with all Users seeking to use the System 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 Authority 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 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. Short Title

This Contract may be referred to as the "Service Contract" (herein sometimes designated as the "Contract").

SECTION 102. Definitions 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 including 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 Title 14, Chapter 233 of the Arkansas Code as amended, Ark. Code Ann. §§14-233-101 et seq.

"ADEQ" - The Arkansas Department of Environmental Quality and any successor

agency.

“Administrator” - Regardless of the title used by the Authority, that person appointed by action of the Authority’s Board of Directors and who shall have all powers authorized by the provisions of the Act, as now provided or as hereafter amended, as well as such other powers authorized by the Board of Directors of the Authority to the extent that such authorization is not inconsistent with the Act.

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

“Board of Directors” - Board of Directors shall mean the duly elected and constituted Board of the Authority as provided by the Act, and the provisions of the agreement between the member cities of the Authority as well as the bylaws of the Authority.

“Bonds” - All Outstanding Bonds issued by the Authority 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 all refunding bonds issued by it, or on its behalf, to refinance any such Bonds. The term also includes 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 Authority’s bond resolutions and all subsequent bond resolutions approved by the Board of Directors, 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.

“Charge(s)” - Such amounts as are recommended to the Board of Directors by the User Committee, which recommendation shall be accepted unless such recommendation is rejected or otherwise altered by super-majority vote [i.e. three-fourths of all members] by the Board of Directors of the Authority. Charges, once established, shall be utilized to determine the Contract Amount (Article V, Section 504). In no event shall Charges be established at an amount less than the minimum required by the Bond Documents and any covenants contained therein. Charges shall be established so as to always provide sufficient revenues for:

1. the operation and maintenance, including a reserve fund, of the System as set forth in the then current annual budget;
2. the payment of interest and principal on all Bonds of the Authority, issued to finance the System owned by the Authority, when the same become due;
3. the payments into the various Funds provided for in the Bond Documents;
4. any deficiencies in said Funds, except that such charge or charges shall not provide for revenues in any one year which, together with other revenues received and collected by the Authority and arising out of the use of the System by other Users, or others, exceeds the amounts required to be collected; and
5. debt service coverage as required by or defined by the Bond Documents and any covenant contained therein.

“City Connection” - A piped tie-in to the City’s Sewer System which conveys sewage.

"City's Sewer System", "City's Sanitary Sewer System", "City's Sewage Treatment Works" - Each means a system or other facilities owned by, or to be owned by, the City and connected to the System, which provides now or hereafter for the collection, treatment or disposal of sewage or wastewater or any combination thereof as permitted by law.

"Connection Fees" – Such amounts as are recommended to the Board of Directors by the User Committee, which recommendation shall be accepted unless such recommendation is rejected or otherwise altered by super-majority vote [i.e. three fourths of all members] by the Board of Directors of the Authority. Connection Fees are various amounts as reasonably and equitably to be determined to be paid by one or more City or Cities for future System Connections to finance part or all costs the Authority may incur for expansions of the System that are necessary to serve one or more City or Cities.

"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 Arkansas or any other state, selected, retained and compensated by the Authority but not in the regular employ or control of the Authority, including without limitation any successor of the present Consulting Engineer, if any.

"Contract Amount" - The amounts paid or required to be paid from time to time by the City to the Authority pursuant to this Contract (Article V, Section 504).

"Herein", "Hereinabove", "Hereinafter", "Hereof", "Hereto", "Hereunder", and any similar term, refer to this entire 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 non-domestic pollutants into the System.

“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.

“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 Authority in response to the requirements of Title 40, Code of Federal Regulations, Part 403 - “General Pretreatment Regulations for Existing and New Sources.”

“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.

"State" - The State of Arkansas.

"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 Authority or acquired from others, whether interim or permanent facilities, whether existing or to be constructed to serve the City's needs, 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 Authority's purposes.

"System Connection" - A piped tie-in to the System which conveys sewage.

"Technical Advisory Committee" - A committee consisting of various representatives of various members of the Authority who operate sewage collection systems as well as consulting engineers and others whose expertise is deemed valuable to the Authority by the Board of Directors and the Administrator.

"Total Construction Contract Cost" - The total amount paid by the Authority for and related to the completion of the System as extended from time to time.

"Trustee" - Refers to the Trustee as defined in the Bond Documents.

"User" - Any government unit or legal entity who has or will have a service contract with the Authority whereby that entity discharges sewage into the System. Where context suggests,

“User” shall also be those persons or entities which discharge sewage into the City’s Sanitary Sewer System.

“User Committee” - A committee of the Board of Directors consisting of a single representative, who shall be a Board Member of the Authority, from each User. In the case of a User with two Board Members, the User shall select one to serve and shall advise the Board of Directors and the Administrator of that choice. For purposes of this definition and being permitted to sit on the User Committee, User is limited to a governmental unit: (a) which is a member of the Authority; and, (b) which has executed a service contract with the Authority whereby that entity discharges sewage into the System.

“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 Authority to the City;
- (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 conflict arises with respect to any of the terms or conditions contained herein and any portion of the Bond Documents, the terms and conditions of said Bond Documents shall govern the rights of the parties hereto and, with respect to such terms and conditions of said Bond Documents, the Authority hereby covenants not to permit any amendment, modification or other revision of the Bond Documents which would impair the rights of the City without first obtaining the written consent of the City.

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 System for a period of forty years, but in no event less the point in time when the Authority shall have paid and retired or shall have made due and adequate provision for the payment and retirement of all of the Bonds issued by the Authority in respect of the System, and thereafter until such time as:

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

SECTION 104. Successors

Subject to the terms and conditions of the Bond Documents, wherever the Authority or the City, as the case may be, is referred to herein, such provision shall be deemed to include the successors of the Authority or the City, as the case may be, whether so expressed or not. Subject to the terms and conditions of the Bond Documents, all of the covenants, stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of the Authority or the City 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, 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 Authority or the City 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 Directors and the holders of the 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 Authority, the Authority may pledge, assign and transfer the right to receive and collect Contract Amounts provided for in the Contract, and from and after such pledge, assignment and transfer, such assignee shall have the Authority's rights and privileges hereunder to the extent and as conferred in such pledge, assignment and transfer.

ARTICLE II

CONSTRUCTION OF THE SYSTEM

SECTION 201. Construction of the System

The Authority 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 Authority shall not be deemed to be in default under the aforesaid covenant or any other applicable provision hereof if the construction of the System or any portion or extension thereof shall be delayed by the inability of the Authority or others to secure needed labor or materials, or by inclement weather which delays completion of the System, or by strikes, labor disputes, lockouts or like trouble among mechanics or laborers which delay construction of the System, or by acts of God, or by acts or neglect of the City 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 Authority, its agents or contractors, or by the inability of the Authority to award construction contracts for construction of the System or any extension thereof for total bids that are within the estimated cost, or in the event of the inability of the Authority to issue Bonds to finance the System.

The System shall, upon completion, be free and clear of all liens and encumbrances of every kind and character which may arise regarding the work of any character performed respecting the System, including mechanics', laborers' and materialmen's liens and other liens of a similar nature. However, nothing in this Section 201 shall require the Authority 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 System, the plans and specifications for such construction shall be submitted by the Authority to ADEQ 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 System shall become a part of the System owned exclusively by the Authority.

SECTION 203. Financing of System by the Authority

The Authority agrees to finance Total Construction Contract Costs of the System from the proceeds derived from the issuance of Bonds, from funds available from any federal, state or local source, from any other grants available from any source or from funds approved within the Authority's annual budget.

SECTION 204. System Construction Account Established Pursuant to Bond Documents

Except for repayment of monies advanced by the City and except where required to make deposits into the Funds established pursuant to the Bond Documents and for reserves and costs of issuance, all proceeds of Bonds shall be immediately deposited by the Authority, upon receipt, into the Construction Funds established pursuant to the Bond Documents for payment of the cost of the System.

The Authority shall keep, or cause to be kept, separate records as it may deem appropriate for the 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 Authority may pay as a part of Total Construction Contract Cost any claim against it arising from construction of the System or any extension as a result of a settlement acceptable to the Authority, or after the rendering of an award of such claim by a court of competent jurisdiction. The Authority 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 System and the payment of all System costs required to be paid, the Authority shall transfer or cause to be transferred, or encumber from the Construction Funds relating to the System, the amount of money, if any, remaining in such Construction Funds in accordance with and for application pursuant to the Bond Documents.

SECTION 207. Administrator and Consulting Engineer

A. Administrator

The Administrator shall have all powers authorized by the Board of Directors of the Authority to the extent that such authorization is not inconsistent with the Act.

B. Consulting Engineer

From the commencement of the design of the System until completion of the construction of the System, the Authority shall employ a Consulting Engineer whose duties shall be, among such other duties as may be imposed by the Authority, to be responsible for the design and to supervise the construction of the 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 Authority for inspection by the City and other interested parties.

SECTION 208. Assignment of Grants

Except for any grants made to the City for and on its own behalf regarding other sewer work in process or future work and not a part of the System or any extension or improvement thereof, the City hereby assigns to the Authority 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 System, and the Authority is hereby authorized by the City, and the Authority hereby agrees with respect to any such grants made or to be made, to make such applications or other requests 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 Authority

Any grant made or to be made to the Authority 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 System shall be used by the Authority in accordance with law as the Board of Directors, in its discretion, may determine.

ARTICLE III

OPERATION AND MAINTENANCE OF THE SYSTEM

SECTION 301. Operation of the System

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

The Authority shall at all times, after the System or any part thereof is placed in operation, operate the System properly and in a sound and economical manner. The Authority shall maintain, preserve, keep the System in good repair, order, and condition. The Authority shall, from time to time, make or cause to be made all necessary and proper repairs, replacements, and renewals so that the operation of the System may be properly conducted at all times in a sound and economical manner.

SECTION 302. Rules, Regulations and Other Details

The operation, use and services of the System shall be governed by "Sewer Use Code," adopted by the Board on _____, and as may be further amended from time to time (hereinafter "Sewer Use Code"). Said Sewer Use Code is 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 applies specifically to Industrial User discharges to the System or the City's Sewer System (see also Section 509 hereof). The Authority shall observe and perform all of the terms and conditions contained in the Act and the Bond Documents and shall comply with all valid acts, rules, regulations, orders and directives of any legislative, administrative or judicial body applicable to the System or the Authority.

SECTION 303. Sewer Use Code: City Discharge of Wastewater

System Connections shall be limited to the City's Sanitary Sewer System. The City shall not accept the waste of septic tank pumpers, leachate from landfills or other waste haulers. The City's ordinance adopting the Sewer Use Code of its sanitary sewers shall be filed with and accepted by the Authority prior to making any System Connections. Any amendments or changes proposed to standards accepted by the Authority shall be submitted for approval prior to adoption

by the City.

All measurements for flow rate and sampling for wastewater testing shall be conducted by the Authority with facilities provided thereof or at connecting points to the System or at other locations in the City's Sanitary Sewer System in accordance with applicable provisions of the Sewer Use Code.

If tests conducted by the Authority indicate wastewater discharged to the System exceeds the flow or quality criteria set forth in the Sewer Use Code, the Authority 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. Install a restriction device at the point of the System Connection(s);
- d. Require a penalty payment within guidelines established by the Environmental Protection Agency and ADEQ for each occurrence where excessive peak flows, toxic substances, or other materials upset the treatment process to the extent that effluent standards are exceeded and such upsets occur on days that tests on wastewater from the City indicate the presence of such flows or substances. Any imposition of fines or penalties shall have a rational relationship to the expense incurred by the Authority and shall provide due process to the City.

Should the Authority have validly imposed upon it a monetary penalty or fine by any court, agency or instrumentality of the State of Arkansas 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 the City with regard to its sewer system or the users thereof and whether or not the Authority has the right to enforce such compliance directly or indirectly, the Authority, in appropriate circumstances and in its sole business judgment, shall have the right to require the City to immediately reimburse the Authority for any monies so paid or so required to be paid because of said penalty or fine.

SECTION 304. Sewer Use Code: Industrial User Discharge of Wastewater

The parties recognize and acknowledge the Authority'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 Directors for a pretreatment program shall be applicable and enforceable by civil, administrative or other actions within any territory served by the System or treatment facilities and against any municipality, sub-authority, authority or industrial user who shall directly or indirectly discharge sewage or permit discharge of sewage into the System or treatment facilities.

The parties specifically authorize, recognize, and acknowledge the Authority's right to implement and enforce the Sewer Use Code 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 the City authorizes the Authority to perform technical and administrative duties necessary to implement and enforce the Sewer Use Code and Pretreatment Program.

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

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

- (1) If the City has not already done so, the City agrees as soon as reasonably possible (but in no event later than 120 days after the effective date hereof) to adopt sewer ordinances or other governing rules (hereinafter "Ordinances") which acknowledge and grant to the Authority the responsibility to require and monitor compliance and respond to and remedy violations or other instances of noncompliance with the Sewer Use Code and Pretreatment Program.
- (2) Whenever the Authority amends its Sewer Use Code or Pretreatment Program, it will immediately notify the City. For purposes of this Section 304, immediate notification means the Authority 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 Authority's notice), the City agrees that it will enact, as appropriate, any necessary amendments to its Ordinances to make them at least as stringent as the Sewer Use Code and Pretreatment Program, as amended.
- (3) The Authority and the City agree to periodically review the Sewer Use Code, the Pretreatment Program, and the City'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 Sewer Use Code. Either party, ADEQ, or the United States Environmental Protection Agency may request a joint review whenever deemed necessary.

- (4) If the City has not already done so, the City agrees as soon as reasonably possible (but in no event later than 120 days after the effective 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 Authority and as set forth in the Sewer Use Code and Pretreatment Program. If any revisions or additions are made to the Authority's Local Limits, the Authority will immediately notify the City. For purposes of this Section 304, immediate notification means the Authority 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 Authority's notice), the City agrees to adopt any revisions or additions made to the Authority's Local Limits.
- (5) The Authority, on behalf of the City, agrees to perform technical and administrative duties necessary to implement and enforce the Sewer Use Code and the Pretreatment Program, including, but not limited to, the following: (i) determining the acceptability of industrial waste to the System from Industrial Users within the City's jurisdiction; (ii) providing technical services such as sampling and analysis of effluent from Industrial Users; (iii) permitting Industrial

Users contributing to the System; (iv) conducting inspection and compliance monitoring of effluent from Industrial Users; and (v) performing enforcement for acts of noncompliance of the Sewer Use Code or the Pretreatment Program. In addition, the Authority is authorized, in accordance with the authority granted to it by Arkansas 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 System.

- (6) The Authority shall assess the City all costs and expenses reasonably incurred in implementing and enforcing the Sewer Use Code and Pretreatment Program on behalf of the City in accordance with the provisions hereof.
- (7) Notwithstanding that certain Industrial Users within the City's jurisdictional boundaries with operational pretreatment programs approved by ADEQ may be exempt from the Pretreatment Program, the City's discharges shall be controlled to the degree required by the Pretreatment Program, as approved by ADEQ.
- (8) Upon the City's failure to control Industrial User discharges as provided above, then any additional cost or charge to the Authority resulting from said failure shall be borne entirely by the City.
- (9) Before Industrial Users located outside the City's jurisdictional boundaries are allowed to discharge into the City's Sewer System, the City 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 Authority 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 Authority's power to enforce requirements directly against Industrial Users using the City's Sewer System, nor shall it preclude the Authority from seeking other remedies against the City.
- (11) The Authority and its authorized representatives are hereby granted the authority to enter the jurisdictional boundaries of the City to administer and enforce the Sewer Use Code and Pretreatment Program as authorized in this Section 304. The Authority shall indemnify and save harmless the City 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 Sewer Use Code and Pretreatment Program as authorized in this Section 304 caused by the negligent or intentional acts or omission of the Authority or its officers, employees or any other agents.
- (12) If (i) the Authority reasonably believes that a violation of the City's Ordinances exists and (ii) the alleged violation also violates the Sewer Use Code and/or Pretreatment Program, the Authority shall have the authority to demand that the City commence enforcement of its Ordinances against an Industrial User or any other user of the City's system by sending written notice to the City stating the reasons for its belief that a violation exists and requesting that such enforcement

by the City be commenced. Upon receipt of any such notice stating a reasonable belief that a violation exists, the City shall commence and diligently pursue enforcement of its Ordinances. If the Authority gives such written notice, and the City fails to commence and diligently pursue enforcement of its Ordinances, then any additional cost or charge to the Authority, including fines and penalties, resulting from said failure shall be borne entirely by the City, provided that the failure of the City to obtain a conviction shall not be deemed a failure to commence and diligently pursue enforcement. Unless the State of Arkansas has designated the City as a pretreatment control authority, the Authority shall assist the City with any inspection, monitoring, and sampling necessary to the enforcement action.

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

Subparagraphs (5), (6), and (11) of this section shall not apply within the jurisdictional boundaries of a city if the State of Arkansas has designated that City as a pretreatment control authority.

SECTION 305. Inflow and Infiltration

The parties recognize and acknowledge the Authority's right to implement and enforce federal and state regulations delegated to and implemented by the Authority as may become enacted to govern infiltration/inflow and to reasonably prevent sanitary sewer overflows of the System.

The Authority and the City 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 its respective sanitary wastewater collection systems, to the most reasonable extent possible, so as to preclude the admission of any more than minor quantities of storm, surface or groundwater.

The City 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. The City agrees to notify the Authority of any amendment to such ordinances. The City will further perform reasonable monitoring and inspection to avoid significant infiltration and inflow to the City's Sewer System. The Administrator shall meet annually with a representative of the City to establish mutually agreeable goals to reduce the infiltration and inflow to the System. The City shall advise the Authority in writing of the name and address of its representative.

SECTION 306. The City's Sewer System and Connection to the Authority

The City, 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 the City's Sewer System, except sewage flowing to the City's sewage treatment and collection facilities currently in operation as of the effective date of this Service Contract, to be delivered and discharged into the System. The City also will cause its sewer system to remain connected with the System.

Only sewage from customers actually hooked onto the City's sewage collecting systems which are a part of the City's Sewer System shall be discharged into the System.

Consistent with this Service Contract, the City 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 the City's authority to charge persons outside its jurisdictional limits for the use of the City's Sewer System.

SECTION 307. Connection to the Authority and Division of Costs

The City shall cause those portions of the City's Sewer System transporting sewage originating in the City's Sewer System, 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 System at the appropriate connecting points designated in Schedule A, 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 Authority of the availability of connecting points. Every such connection shall constitute and shall be operated by the Authority as part of the System and shall include all such metering and other facilities as may be necessary to cause all sewage delivered at said connecting point or points to be measured and discharged into the System. System Connections by the City shall be limited to the locations designated in the List of Connecting Points or any other point or points requested by the City and approved by the Authority. The "List of Connecting Points" may be modified by written consent of the City and the Authority.

The Authority will provide, at the Authority's expense, a connecting point that will permit the flow of wastewater by gravity or force main to the Authority 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. In the event a meter structure is required, the City will bear the cost of design and construction. Additional System Connections, if requested by the City, may be approved and

furnished by the Authority provided the City 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 System Connections will be listed in Schedule A, as revised, upon their approval by the Authority.

SECTION 308. Restrictions on Flow Rates Discharged by the City to the Authority's System

At each connecting point of the City's Sewer System to the Authority's System, the City shall not discharge flows at instantaneous rates that exceed the maximum permitted rate of flow for each connection as designated in Schedule A, attached hereto, without the written consent of the Authority.

The Authority will provide treatment flow capacity for all of the City's System Connections as follows:

Maximum Monthly Average Flow: 0.4 MGD.

Instantaneous Peak Flow: 1.0 MGD.

The sum of flows discharged by all of the City's System Connections to the Authority's System shall not exceed these flow rates without the written consent of the Authority.

SECTION 309. 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, the City shall not construct, grant, franchise or license a competing sewage treatment works for sewage, other than by the Authority; provided,

however, that the Authority shall consent to such grant or construction in the event that each of the following conditions exist:

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

SECTION 310. Insurance and Reconstruction

The Authority shall at all times maintain with responsible insurers all such insurance reasonably required and obtainable within limits and at costs deemed reasonable by the Authority as is customarily maintained with respect to sewage treatment works of like character against loss of or damage to the System, against use and occupancy, and against public and other liability to the extent at least reasonably necessary to protect the interest of the Authority and each holder of any Bond of the Authority, and also all such insurance as is required to indemnify and to save harmless the City 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 System caused by the negligence, including malfeasance or nonfeasance, or willful act of the Authority or its officers, employees, or any other agents. Any liability incurred

by the City as a result of the operation of its sewer system shall be its sole liability. If any part of the System required for the performance of the obligations of the Authority pursuant hereto shall be damaged or destroyed, the Authority 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 Authority and as will not impair the character of the System as a sewage treatment works. The proceeds of any insurance appertaining thereto shall be payable to the Authority 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 issued by the Authority are outstanding, such proceeds shall be applied to any deficiency in the Emergency Repair Fund established pursuant to the Bond Documents and, to the extent not so applied, such proceeds shall be paid into the Revenue Fund. If the cost of such repair and replacement of the damaged property exceeds the proceeds of such insurance available for the payment of the same, and if Bonds issued in respect to the System are outstanding, monies in the Emergency Repair Fund created and established in the Bond Documents in respect of the System shall be used to the extent necessary for such purposes.

SECTION 311. Covenant Against Waste

The Authority and the City covenant not to do, suffer or permit any waste or damage, disfigurement or injury to the System.

SECTION 312. Covenant Against Assignment

No part of the System shall be sold, leased or otherwise encumbered by the Authority,

except for the purpose of providing security for financing.

SECTION 313. Right of Inspection

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

SECTION 314. Records, Accounts and Audits

The Authority 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 or any part thereof and of the Contract Amount and all other revenues or monies received by or due to the Authority. All books and papers of the Authority shall at all reasonable times be available for inspection by such persons as may be designated by the City, and copies thereof provided as reasonably requested by the City or their designee, the cost of such copies to be paid for by the City.

SECTION 315. No Vested Rights of the City in System

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

ARTICLE IV

AUTHORITY'S OPERATION AND MAINTENANCE BUDGET

SECTION 401. Annual Operation and Maintenance Budget

The Authority's budget year shall be from January 1 to December 31. The Authority shall, no later than September 1 of each year, prepare and furnish copies to the City of a preliminary annual budget of operating and maintenance expenses of the System for the ensuing twelve-month period commencing January 1. The Authority 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 Amount to be paid by the City with respect to the costs of operation and maintenance of the System as set forth in the budget.

No later than October 1, before the beginning of the year for which such preliminary annual budget is prepared, the Authority shall hold a public hearing at which any authorized representative of the City may appear and present any objection the City may have to the preliminary annual budget for such year. Notice of the time and place of such hearing shall be sent to the City at least ten (10) days before the date fixed for the hearing.

Within thirty (30) days following such public hearing, the Authority shall adopt an annual budget 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 budget shall be sent to the Mayor or the Chief Executive Officer of the City and/or their designee.

If for any reason the Authority shall not have adopted the annual budget on or before the first day of January of any year, the proposed annual budget for the twelve months following

January 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 Authority may at any time adopt an amended annual budget for the then current twelve-month period, but no such amended annual budget shall supersede any prior budget until presented at a public hearing, as previously described.

The Authority will make provision in the annual 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 Authority shall not incur operation and maintenance expenses with respect to the System in any budget year in excess of the reasonable and necessary amount thereof. The Authority 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 budget or proposed annual budget (if any) then in effect, subject to the provisions of Section 401 hereof.

SECTION 403. Budget Disagreement - Remedy

In the event that the City disagrees with the operating budget or the Budget of the whole for the ensuing year, the City shall have the right, forty-five (45) days prior to January 1 of the ensuing year, to present to the Board of Directors a written statement of reasons as to why the

proposed budget is, in the City's opinion, unreasonable and unnecessary (hereinafter an "Original Statement of Reasons").

In the event the City properly submits an Original Statement of Reasons to the Authority, the Authority 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 Authority, submit in writing to the Authority its own statement of reasons as to why the proposed 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 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 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 considered by the Board of Directors. If the Board of Directors of the Authority do not adjust the Budget in a manner acceptable to the User within fifteen (15) days of receipt of the Original Statement of Reasons, the Original Statement of Reasons shall be promptly referred by the Board of Directors to an Arbitrator mutually agreed upon by the Authority and User that filed the Original Statement of Reasons. The referral to an Arbitrator shall be made within twenty (20) days of receipt of the Original Statement of Reasons. If the Authority and the User that submitted the Original Statement of Reasons are unable to mutually agree to an Arbitrator within such twenty (20) day period, then the Authority shall apply

to the Presiding Judge of the Circuit Court of Benton County, Arkansas 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 Authority shall cause notification to all Users to be served personally or by registered mail not less than five (5) days before the hearing. An appearance at the hearing waives such notice. The Arbitrator may adjourn the hearing from time to time as necessary and upon request of a party and for good cause or upon the Arbitrator's own motion may postpone the hearing to a time no 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 Authority or a User duly notified to appear. The Circuit Court of Benton County, Arkansas, upon application, may direct the Arbitrator to proceed promptly with the hearing and determination of the controversy. The Authority and any User submitting an Original Statement of Reasons or Supplemental Statement of Reasons are entitled to be heard, to present evidence 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 January 1 of that year, or the proposed budget shall automatically become the annual budget upon approval of the Board of Directors until such time as the Arbitrator shall render a decision which requires its amendment. The expense and salary incident to the services of the Arbitrator shall be shared equally by the Authority and all Users. The Authority's costs are to be considered an operational expense. The Authority agrees to include the binding arbitration provisions of this Section 403 in

any and all service contracts between the Authority and a User.

In all events, even during a dispute as provided in this Section 403, the Authority shall have the right to continue to collect from all Users an amount sufficient to satisfy Section 504(b).

ARTICLE V

PAYMENT BY THE CITY

SECTION 501. Agreement to Pay

The City agrees to pay the Authority for the treatment and disposal of its wastewater, as provided in Section 301 hereof, the Contract Amount provided for in Section 504 hereof. The City's obligation to make the payments as hereinafter provided shall begin at such time as the parties agree, but no later than the time that the City connects to the System and thereby receives service from the Authority.

SECTION 502. City's Source of Funds

The City shall be given credit towards the Contract Amount for the amount which the City has paid over to the Authority and caused to be transferred to the Authority pursuant to the _____ STAG grant originally obtained by the Osage Sewer District. This credit shall include any interest earned by the Authority from the investment of those funds. The parties shall agree upon the mechanism to apply the credit so that the impact upon the Authority's cash flow will be acceptable and not adversely affect operations of the Authority. If no agreement is reached on this issue, the credit to the City shall be spread over a period of three years. The Contract Amount shall be paid by the City from an activity account as provided below. If the monies paid to the Authority from the account are not sufficient to fully pay the Contract Amount or any portion thereof when due, the amount remaining unpaid, plus any delinquent charges, shall

be paid by the City from its other unencumbered income, revenues and property, as may be necessary to fully pay the Contract Amount.

SECTION 503. Authority Account

The City has provided, or hereby agrees to provide, by an appropriate ordinance or other governing rules for the imposition, collection and segregation of a charge for the use of the City'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 the City's activity account, sufficient funds to pay the Contract Amount. The City further agrees to annually budget and appropriate such monies to such account. The City may maintain other funds with the funds in the Authority account used to pay the Contract Amount.

SECTION 504. The Contract Amount

- (a) The City's Contract Amount shall be comprised of the following costs:
 - 1. Conveyance System Costs - Conveyance System Costs are those costs directly attributable to gravity interceptor sewers, pumping stations and force mains provided by the Authority to convey the City's flows from the City's connection points to the Authority's wastewater treatment plant. These costs include Debt Service costs, certain Operation and Maintenance costs and other costs as may be approved by the Board of Directors from time to time. The City's portion of Conveyance System Debt Service costs shall be 100% of Debt Service costs for conveyance facilities used solely by the City, and a percentage share of conveyance facilities Debt Service costs for conveyance facilities used by the City and other Users of the Authority's System based on the capacity provided for the

City in the shared conveyance facilities divided by the total capacity of the shared conveyance facilities. the City's portion of Conveyance System Operation and Maintenance Costs and other Conveyance System costs shall be a percentage share determined by dividing the City's total portion of Conveyance System Debt Service Costs by total Conveyance System Debt Service Costs. Conveyance System facilities provided by the Authority to convey the City's flows to the Authority's wastewater treatment plant and the City's share of each are as follows:

LOC-1-01: 60%

LOC-1-02: 100%

2. **Treatment Costs** - Treatment Costs are those costs directly attributable to wastewater treatment facilities provided by the Authority for treatment of the City's and other Users' flows. These costs include Debt Service costs, certain Operation and Maintenance costs and other costs as may be approved by the Board of Directors from time to time. The City's portion of Treatment Costs will be allocated based on the City's contributed percentage of the Authority's flow. For the purpose of budget development and billing, the City's contributed annual flow will be projected based on a linear regression from the preceding twenty (20) quarters of the City's actual measured flow. If, for any reason, twenty (20) quarters of flow information is not available for the City's flows, a linear regression using available data will be used to determine the City's contributed flow. The Board of Directors shall review such projected flow calculation for reasonableness and determine any readjustments. All Users' projected flows will

be added together to determine the total projected flow for the Authority. The total projected flow for the Authority will then be divided into each User's projected flow to determine the percentage of Treatment Costs to be billed to that User the next fiscal year. A preliminary allocation of Treatment Costs shall be provided to the City at the time of approval of the Annual Budget. The final allocation will be based on a linear regression using the previous twenty (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 Directors.

3. Pretreatment Costs- Pretreatment Costs are those costs associated with the Authority's pretreatment program as approved by the Board of Directors. These costs are allocated to those Users who do not have a pretreatment program approved by the State of Arkansas as follows: a percent of Pretreatment Costs based on total flow from Significant Industrial Users (SIU) located in the City divided by total flow from SIU's of all Users who do not already have an approved pretreatment program.

(b) The total of all Charges imposed by the Authority on all Users shall insure sufficient revenues for:

1. the operation, maintenance and reasonable reserves necessary for the System as set forth in the Authority's then current annual budget;
2. the payment of interest and principal of all Bonds of the Authority, issued to finance the System owned by the Authority, when the same become due;

3. the payment into various funds by the Authority as provided for in its Bond covenants;
4. any deficiencies in said funds; and
5. debt service coverage as required by or defined by the Bond Documents and any covenant contained therein.

In no event shall Charges be established at an amount less than the minimum required by the Bond Documents and any covenants contained therein.

(c) As soon as actual costs of the previous fiscal year are determined through an audit of the Authority's Debt Service costs, Operation and Maintenance costs, and other costs billed to the City as approved by the Board of Directors, an adjustment will be made to the City's next monthly bill to account for any differences between budgeted costs billed to the City during that fiscal year and actual costs for that fiscal year.

SECTION 505. Meter Reading and Calibration

This Section 505 is subject to change due to technological improvements in wastewater measurements. As needed, the Authority 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 Authority shall furnish the City with a written schedule of the date and location of each weekly visit, if requested. Representatives of the City may accompany the Authority's staff and observe the calculation of the weekly flow and the meter calibration. The City shall, no later than ninety (90) days after the visit, advise the Authority in writing of any differences between the City's readings and those of the Authority.

As needed, the Authority's staff or a representative of the maintenance service contractor

will calibrate and verify calibration of the meter at each meter structure. The City shall be given twenty four (24) hours notice of the time and place of said meter calibrations. Representatives of the City may accompany the Authority's staff and contractor and observe the calibration of the meter. The City shall, no later than ninety (90) days after the visit, advise the Authority of any differences regarding the meter calibrations, and the parties shall attempt to resolve any such differences with the Authority.

The City shall have the right, at its own expense, to retain consultants to observe any of the above referred to operations.

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

SECTION 506. Payment of Contract Amount

The Contract Amount shall be billed monthly. In all events, the monthly billing shall be due and payable upon receipt by the City.

SECTION 507. Delinquent Payment of the City

Any Contract Amount 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 Authority may commence legal proceedings or available administrative proceedings against any User which is delinquent in the payment of the Contract Amount, and the Authority shall at all times diligently prosecute said proceedings to its 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, the City may, in its discretion and upon default of the Authority, 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 Authority, and the proceeds of any sums collected shall be paid over to the Authority exclusive of costs and expenses of effecting said collection recovered in the proceedings. All sums recovered, whether by the Authority or by the City on behalf of the Authority, shall, after payment of reasonable costs of said proceedings, be returned to the non-delinquent Users in the proportion that the Contract Amount payment of the non-delinquent Users made up the deficiency of the delinquent User.

SECTION 508. Contracts With Others

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

SECTION 509. City's User Charge System

In conformance with Sections 503 and 707 of this Contract, the City is required, to the extent permissible by applicable law, to establish and maintain a User Charge System. The purpose of the City's User Charge System is to ensure the adequate collection of revenues to permit timely payment of the Contract Amount. This Section 509 shall in no way be construed as conferring on the Authority, and the Authority shall not have, any such right of review or approval of the City's User Charge System. The City shall adopt and 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 Amount that are not able to be resolved between the Authority and the City shall be referred to the Board of Directors for disposition. Any and all documentation shall be made available to the Board concerning the dispute. The City shall have sixty (60) days from the date of receipt of the Authority's annual audit to notify the Authority that it is contesting a bill from that audit period. Failure by the City to notify the Authority, 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 the City and the City 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 Directors determines that the City is entitled to a reduction of its bill, then all other 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 the City hereunder, the City agrees to pay to the Authority a "Connection Fee" for all future System Connections whereby the City's Sewer System is connected to the System as such fee amounts are reasonably and equitably determined by the Authority from time to time during the term of this Contract.

ARTICLE VI

ABANDONMENT OF THE CITY'S SEWER SYSTEM FACILITIES

SECTION 601. Abandonment Permitted

The City 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 the City's Sewer System, subject, however, to the provisions of Section 301, Section 305, Section 308 and Section 602 hereof, and any applicable laws or regulations.

SECTION 602. Notice of Abandonment

The City, 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 the City's Sewer System by the Authority in its System, shall file with the Authority a written notice of the City'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 Authority will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State and the United States and the resolutions of the Board of Directors and all Bond Documents. Similarly, the City will so perform all duties with respect to the System required by the Constitution, the laws of the State and the United States,

and the Ordinances or other governing rules of the City including, but not limited to, the prompt payment of the Contract Amount in respect of the System.

SECTION 703. Further Assurances

At any and all times, the Authority and the City 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) and 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 Amount in respect of the System, and other funds pledged or assigned, or intended so to be, of which the Authority or the City, 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 Bond Document or ordinance (or other governing rule) and to comply with the Act. The City consents to and acknowledges the assignment of the Contract Amount to the Trustee as provided for in any Bond Document of the Authority authorizing the issuance of Revenue Bonds. The Authority shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Contract Amount in respect of the System, and other funds pledged heretofore and hereafter, and all rights of every holder of any Bond against all claims and demands of all persons whomsoever.

SECTION 704. Limitations Upon Consent

Whenever, under the terms of the Contract, the Authority is authorized to give its written consent, the Authority 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 Authority into the System

from the City 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 Authority thereafter to accept or to make provisions for sewage delivered and discharged into the 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, the City 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 Authority 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 Authority giving such consent.

SECTION 706. Bonds of the Authority

The Bonds of the Authority shall not, except to the extent herein provided and in the Bond Documents, be a debt of the City, nor shall the City be liable thereon.

SECTION 707. Conformity With 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, and the Sewer Use Code 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 to the City'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 Bond Documents, 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 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 Bond Documents, 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 Schedule A, 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, 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 Arkansas. 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

The City accepts operational responsibility for any current joint use connection points and accepts future responsibility for any other joint use connection points as designated in the Schedule 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 Authority's regulations and charges.

SECTION 718. Injunctive Relief

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

SECTION 719. Authority

The City shall have an immediate and continuing right to discharge wastewater, or as otherwise permitted hereunder, into the System on condition that the City agrees to promptly enforce and cooperate with the Authority in the exercise of the Authority's enforcement of the restrictions, proscriptions, penalties and other terms provided for herein against any person discharging into the System in violation of the same. In default of the City's action at the Authority's request, the City authorizes the Authority to take all legal actions necessary to enforce the terms of this Contract and all Appendices thereto in the City'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 Authority: John Sampier
NACA Administrator
P.O. Box 2487
Rogers, AR 72757

with a copy to: Charles L. Harwell
NACA Attorney
P.O. Box 1400
Springdale, AR 72765

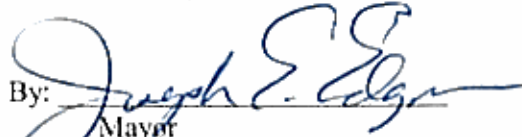
To City:

with a copy to:

THIS CONTRACT CONTAINS BINDING ARBITRATION PROVISIONS [IN SECTION 403
CONCERNING AUTHORITY 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 Authority by the Chairman of the Board of Directors, and attested to by the Secretary of the Board of Directors, and on behalf of the City by its authorized representative at the dates shown respectively.

TONTITOWN, ARKANSAS

By: 
Mayor

Date: 4-6-07

NORTHWEST ARKANSAS
CONSERVATION AUTHORITY

By: 
Chairman, Board of Directors

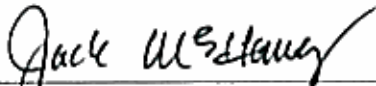
Date: 4-24-07

ATTEST:

By: 
City Recorder

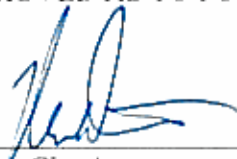
Date: 4/24/2007

ATTEST:

By: 
Secretary, Board of Directors

Date: 4/24/07

APPROVED AS TO FORM:

By: 
City Attorney

Date: 4/11/2007

APPROVED AS TO FORM:

By: _____
NACA Attorney

Date: _____

SERVICE CONTRACT
Between
NORTHWEST ARKANSAS CONSERVATION AUTHORITY
And
CITY OF TONTITOWN, ARKANSAS

SCHEDULE A

LIST OF CONNECTING POINTS

Connection No.	Type	Name	Peak Flow Rate (MGD)
BC-FM01	1	Brush Creek Force Main - Tontitown	2.0

Connection Types are as Follows:

Type 1 - Connection point with metering and sampling station.

Type 2 - Connection point with metering and sampling to be provided by other Authority facilities.

Type 3 - Connection point with or without metering and sampling facilities depending on the feasibility of the measuring for payment by other methods.

End of Schedule A