

**BILL NO. 15-18**

**ORDINANCE NO. 2396**

**AN ORDINANCE AUTHORIZING EXECUTION OF A BULK SEWER TREATMENT AGREEMENT BETWEEN PUBLIC WATER SUPPLY DISTRICT NO 2 OF ST. CHARLES COUNTY AND THE CITY OF WARRENTON, MISSOURI**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON, MISSOURI, AS FOLLOWS:

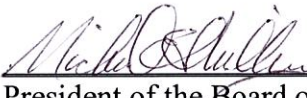
SECTION I. The City of Warrenton, Missouri does hereby enter into a Bulk Sewer Treatment Agreement with the Public Water Supply District No 2 of St. Charles County, a political subdivision of the State of Missouri as set forth in the agreement attached hereto and made a part of this Ordinance by reference.

SECTION II. That the Mayor is hereby authorized and directed to execute on behalf of the City an agreement and to do all things necessary to complete this agreement.

SECTION III. All Ordinances or parts of ordinances in conflict with the Ordinance are hereby repealed.

SECTION IV. This Ordinance shall take effect and be in full force from and after the passage and approval thereof.

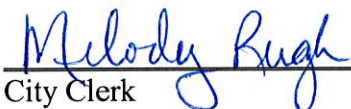
READ TWO TIMES AND PASSED by the Board of Alderman of the City of Warrenton, Missouri, this 20<sup>th</sup> day of March, 2018.

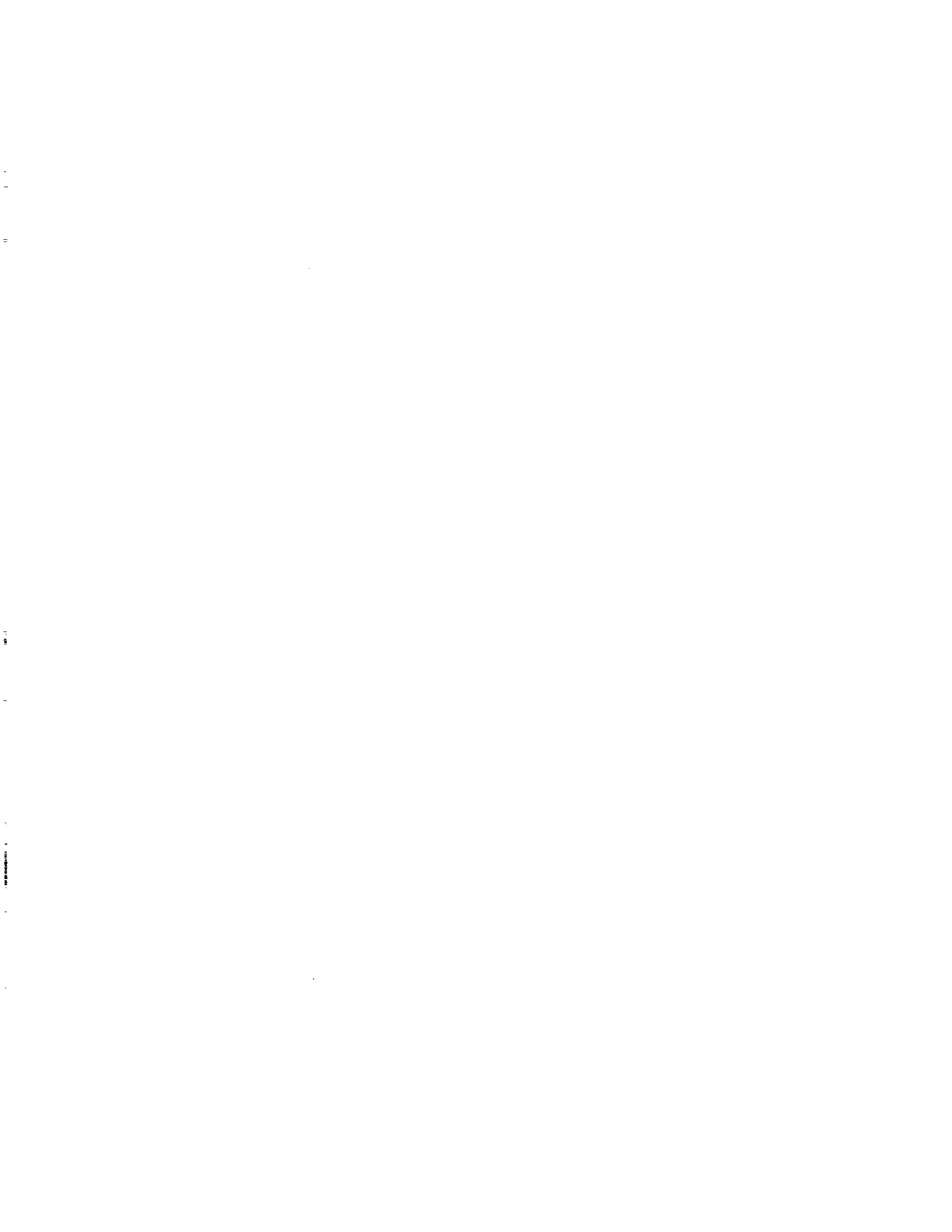
  
\_\_\_\_\_  
President of the Board of Aldermen

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 20<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



## **BULK SEWER TREATMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2018 between Public Water Supply District No. 2 of St. Charles County, Missouri, a corporation of the State of Missouri (the "District") and the City of Warrenton, Missouri a city of the fourth class located in Warren County, Missouri (the "City"), (collectively, the "parties").

### **RECITALS**

**WHEREAS**, The District desires to secure bulk sewer service from the City to serve property located in Warren County, Missouri currently owned and/or developed by MSA Heath, LLC, a Missouri Limited Liability Company, as set forth in Attachment "A" which is incorporated herein by reference (the "Property"), and such other properties as approved pursuant to the terms and conditions of this Agreement; and,

**WHEREAS**, The City owns and operates a sewer system in Warren County, including a sewer treatment plant that has sufficient capacity to provide wholesale bulk sewer treatment service to the District and is willing to provide such service to the District according to the terms and conditions as set forth in this Agreement; and,

**WHEREAS**, the City and the District agree that the sewer system shall be operated in an environmentally sound manner in accordance with all state and federal laws, rules, and regulations.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

### **ARTICLE I** **DEFINITIONS**

For purposes of this Agreement, the following words shall have the following meanings unless the context clearly requires otherwise:

*"Abnormal Occurrence"* means an event at a sewer plant or sewer transmission facility that has the potential to cause a violation of a wastewater treatment permit and is reportable to regulatory agencies that oversee the sewer operations. Abnormal occurrences include, but are not limited to, sewage spills, overflow, equipment failures, line breaks, and abnormal lab results.

*"Connection Point"* means a flow meter where the District's collection system is physically connected to the City's sewer transmission system for the purpose of transmitting sewage to the City's sewer treatment plant.

*"Force Majeure"* means acts of god, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of armed forces, epidemics, delays by carriers, inability to obtain materials or rights-of-way on reasonable terms, acts or failures to act by public authorities not under the control of either party to this Agreement, or acts or failures to act by

regulatory authorities.

**ARTICLE II**  
**GENERAL PROVISIONS**

- A. **Recitals.** The Recitals set forth above are true and correct and incorporated as if fully set forth herein.
- B. **Bulk Treatment.** The City agrees to provide bulk sewer treatment to the District in accordance with the terms and conditions contained herein, the rules and regulations of the Missouri Department of Natural Resources (“DNR”), and other governmental entities with regulatory jurisdiction over sewer treatment facilities.
- C. **Financial Responsibility.** The parties agree that neither assumes any financial responsibility for the operation and maintenance of the other’s sewer system.
- D. **Notification of Service Disruption.** The City shall notify the District as soon as practicable of an emergency event that will cause disruption of service. The City shall provide as much advance warning as is reasonable under the circumstances.

**ARTICLE III**  
**BULK SEWER TREATMENT SERVICE**

- A. **Service to the Property; Expansion of Service.** The District may collect and transmit sewage from the Property to the Connection Point and the City agrees to accept and treat the sewage from the District’s collection system. The District may not connect additional Properties or add additional connection points without the consent of the City and the City will have sole and absolute discretion in determining whether bulk sewer treatment service may be expanded beyond the Property. The District may request bulk sewer treatment service to serve additional properties located within the District’s territory for properties that are located within the city limits only. Upon receipt of a written request to expand bulk sewer treatment service from the District, the City shall notify the District within ninety (90) days in writing as to the City’s determination as to whether additional bulk sewer treatment will be extended.
- B. **Force Majeure Event.** The City shall not be liable for any damages, direct, indirect or consequential, resulting from its inability or failure to provide sewage treatment services on a temporary or emergency basis due to a Force Majeure event. The City will use its best efforts to provide the treatment capacity necessary to service the Property. In the event of restrictions imposed by governmental regulatory authorities, the City reserves the right to temporarily reduce the capacity treated pursuant to this Agreement, but only for such time as the capacity cannot be accommodated as the result of the imposed governmental restrictions.
- C. **Abnormal Event Notification.** In the event of an Abnormal Occurrence, the District or City (as appropriate) agrees to provide proper notification to DNR and all other applicable governmental regulatory agencies, as required under Federal and State law or as provided

under City ordinance.

**ARTICLE IV**  
**OWNERSHIP, MAINTENANCE AND REPAIRS**

- A. **Construction of District Facilities.** The District will design, permit, and construct its collection facilities in accordance with DNR standards, at no cost to the City, to receive and transmit sewage to the City's side of the Connection Point. The City may review and approve the District's connection facilities to the Connection Point, which approval shall not be unreasonably withheld.
- B. **Connection to Treatment Facility.** The City shall construct, at its sole cost and expense, a transmission main from the location of the bulk meter to the City's existing gravity sewer transmission main.
- C. **Maintenance of Facilities.** The City will, in accordance with applicable laws and regulations, own and maintain, at its own expense, that portion of the sewage transmission system from the Connection Point to the City's sewer treatment facility, including the sewer flow meter at the Connection Point. The Connection Point determines the limits of maintenance and ownership for both parties. The parties will maintain their facilities in accordance with the standards prescribed by applicable regulatory agencies and City ordinances and will maintain a level of performance, maintenance and repair that will not adversely affect customers of either party.
- D. **Sewage Flow Meter.** The sewage flow meter at the Connection point will be tested by the City and recalibrated, when necessary, at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standard. The District has the right to observe the annual test and recalibration of the sewage flow meter performed by the City. The City may retain the services of a third party to perform the sewage flow meter test to verify the calibration. The City agrees to provide the District with copies of the annual test report. The parties reserve the right to conduct additional meter testing at their own expense. The City shall notify the District, in writing, thirty (30) calendar days in advance of any meter testing and/or recalibration.
- E. **Repairs to District Facilities.** Facilities within the District's service area shall be repaired by the District if: (1) there are Excessive Flows due to a storm, a sudden surge of groundwater, infiltration and inflow, or other like conditions; or, (2) if any generally accepted testing or method of determining the condition of sewer lines indicates that a line is in need of repair or replacement. Lines or equipment may be repaired or replaced if they are not functioning in accordance with District's policies or applicable design standards. The City shall notify the District upon the occurrence of any Excessive Flows. In the event that the City determines repairs or replacements are needed, the District shall have ninety (90) days from written notification from City to evaluate the collection system and develop a plan of action acceptable to both parties to perform any necessary improvements or repairs to the collection system. These improvements shall be completed within a reasonable period of time. If, after notification, the District fails to perform the required evaluation and necessary improvements or repairs, the District may

be held responsible for its proportional share of any resulting monetary fines or required improvements ordered by any regulatory agency which are directly related to the Abnormal Occurrence. In the event the District fails to comply with the notice herein, the City shall have the right, but not the obligation, to terminate this Agreement and any sewer service to the District.

**ARTICLE V**  
**BULK SEWER FEES AND CONNECTION CHARGES**

- A. **Bulk Sewer Rate.** In consideration for the sewage treatment services provided by the City, the District shall pay to the City the City's current adopted in town residential sewer service rates for each thousand gallons of sewage treated by the City. The rate is subject to change by the City from time to time. The City shall notify the District at least 90 days in advance of any proposed service rate increase.
- B. **Payment of Invoices.** The City will invoice the District, on a monthly basis, for sewage treatment based upon the sewer flow meter readings taken at the Connection Point. The District will make payment to the City within forty (40) calendar days after receipt of an invoice from the City. Late payments will incur a penalty of 1.5% per month.
- C. **Connection Fees.** The District shall pay connection fees for all future customers at the current bulk sewer connection fee rate, currently equal to \$1,000 per connection. The City shall notify the District at least 90 days in advance of any proposed bulk sewer connection fee rate increase. All connections fee will be paid by the District on a monthly basis. Late payments will incur a penalty of 1.5% per month. Nothing in this Agreement shall give the City the right to restrict the District from charging an additional connection fee to the District Sewer System.

**ARTICLE VI**  
**DISCHARGE AND PERMITTED FLOWS**

- A. **Design, Construction and Maintenance of the District's System.** The District will design, construct and maintain all sewer lines to the Connection Point to mitigate the potential for any Abnormal Occurrence within the City's sewer system. The District will require present and future commercial and industrial customers of the District to install and maintain pretreatment devices and processes deemed necessary by the City to trap and remove certain identified wastes other than domestic sewage from the sewage generated by commercial customers.
- B. **Unapproved Connections to the District's System.** Downspouts, sump pumps, washing machines and rain leaders shall not to be connected to the District's sewer system. Pursuant to City ordinance and policy and District regulations, no party shall allow, suffer, or permit during the life of this Agreement the connection or use of downspouts to the District's sewer system. The District shall, if not already in effect, direct an ordinance or resolution to make such connections illegal and provide punishment therefore.



**ARTICLE IX**  
**MISCELANOUS PROVISIONS**

- A. **Non-Assignability.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. This Agreement may not be assigned, delegated, or transferred by a party without the written consent of the other party.
- B. **Governing Law, Jurisdiction and Venue.** This Agreement shall be construed and enforced according to the laws of the State of Missouri. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Warren County, Missouri. The District and City expressly waive any rights to bring such action in or to remove such action to any other court whether state or federal.
- C. **Third Party Beneficiary.** This Agreement is solely for the benefit of the parties hereto and no right or cause of action will accrue upon or by reason hereunder to or for the benefit of any third parties who are not signatories to this Agreement.
- D. **Waiver of Rights.** The failure of either party to enforce the provisions of this Agreement shall not be construed as a general waiver or relinquishment of the right to demand strict performance of this Agreement.
- E. **Severability.** This Agreement constitutes the entire Agreement between the parties and may not be amended, modified, or rescinded except in writing and signed by both Parties. If a provision of this Agreement is declared illegal, invalid, unenforceable, unconstitutional, or in violation of the bond covenants of the City by a Court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.
- F. **Force Majeure.** Neither party shall be liable or responsible to the other as a result of any injury to property or persons which is caused by a Force Majeure event.
- G. **Modification.** Except as herein provided, this Agreement may be changed or modified only upon mutual consent. Such changes or modifications may be requested by either party, in which event a meeting of the representatives of both parties shall be held within ninety (90) days after giving them a written notice, at which meetings the requested changes or modifications shall be considered and discussed. Anything to the contrary notwithstanding, the District shall be required to implement any changes, charges or maintenance requirements as set forth by the adoption of a City ordinance or policy.



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date and year first written above.

**PUBLIC WATER SUPPLY DISTRICT  
NO. 2 OF ST. CHARLES COUNTY,  
MISSOURI**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESS:**

\_\_\_\_\_

**CITY OF WARRENTON, MO**

By: Eric Schleuter  
Eric Schleuter, Mayor

Date: 3/20/2018

**ATTEST:**

By: Melody Bugh  
City Clerk

