

AN ORDINANCE APPROVING THE CONTRACT WITH PUBLIC WATER SUPPLY DISTRICT NO. 3 OF TANEY COUNTY FOR WATER TERMINATION AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, the City of Branson desires to contract with Public Water Supply District No. 3 of Taney County for water termination; and

WHEREAS, Public Water Supply District No. 3 of Taney County has been recommended for approval by staff; and

WHEREAS, the Board of Aldermen desires to approve the contract.

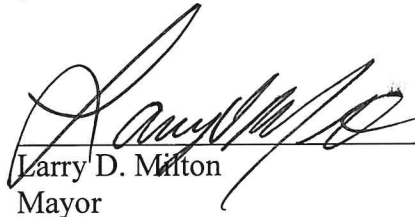
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby approves the contract with Public Water Supply District No. 3 of Taney County for water termination and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".


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

Read, this first time on this 9th day of August, 2022.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 9th day of August, 2022.


Larry D. Milton
Mayor

ATTEST:


Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

/s/ Bridget M. Findley #72572 08/04/2022
Interim City Attorney

AGREEMENT FOR TERMINATION OF WATER SERVICE

Draft 07/20/22

THIS AGREEMENT made this ____ day of _____, 2022, by and between the City of Branson, Missouri, a fourth class city in Taney County, Missouri organized under Chapter 79, RSMo., hereinafter referred to as **Branson or Sewer Provider** and **Public Water Supply District No. 3 of Taney County, Missouri**, a political subdivision of the State of Missouri organized under Chapter 247 RSMo., hereinafter referred to as **District or Water Provider**.

WITNESSETH:

WHEREAS, in the interest of mutual cooperation, the parties wish to conclude an agreement consistent with Section 393.016, RSMo under circumstances outlined in the following recitals:

WHEREAS, the Sewer Provider is engaged in supplying sewer services to the citizens and residents of Taney County including the geographical area within the district; and

WHEREAS, the Sewer Provider charges a fee for such sewer services and bills for such fees on a periodic basis to its citizens and residents served; and

WHEREAS, the District is the owner and operator of a water distribution system serving customers located in a portion of Taney County also serviced by the Sewer Provider; and

WHEREAS, the General Assembly of the State of Missouri has enacted Section 393.016, RSMo., demanding that district upon the request of a public Sewer Provider must contract with the Sewer Provider to terminate water services of any water user for nonpayment of a delinquent sewer bill owed to the Sewer Provider; and

WHEREAS, the Sewer Provider requests and the district is statutorily required to enter into such a contract, to be approved by the governing bodies of said District, or to submit to an involuntarily concluded contract by a commission appointed by the court under Section 393.016.3, RSMo., and

WHEREAS, the parties acknowledge that the district lacks the manpower to perform the collection activities of the Sewer Provider and prefers not to engage in the prosecution of collection activity not associated with its own operations, and enters into this agreement involuntarily solely by reason of the statutory mandate;

NOW THEREFORE, in consideration of the mutual promises herein contained, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Independent Contractor – Tools – Compensation.** The Sewer Provider will at all times act as the District's Independent Contractor as to termination of water service and will provide at all times competent members of its staff, trained as to courtesy and decorum in dealing with delinquent customers and in determining whether all present and future statutory

and contractual conditions exist which apply to the issue of termination of service. The Sewer Provider will provide its own employee's compensation or fees, benefits, and maintain its own insurance including worker's compensation and public liability coverage at all times. Said Sewer Provider and its staff personnel assigned termination and certification duties hereunder shall be at all times in the status of an employee of Sewer Provider, not an actual or loaned employee of the district and the district shall have no day-to-day control. The Sewer Provider shall provide the Sewer Provider personnel with all tools, transportation, equipment, communications, insurance, compensation and office support, needed to fully execute the obligations of this contract.

Special Provision: To minimize customer hostility, Sewer Provider will not terminate water service after noon before a weekend or holiday and will restore service as promptly as is reasonable feasible - in any event within twelve hours of payment of the unpaid bill in full or the conclusion of a payment arrangement acceptable to Sewer Provider.

2. **Certification and Request for Termination of Water Service to the District.** Water service may be terminated to premises of a customer of the Water District for nonpayment of a sewer bill due Branson (the Sewer Provider) upon the request and certification (Exhibit A) of Branson (the Sewer Provider) to the District. No such termination of water service may occur until thirty days after Branson (the Sewer Provider) has provided written notice to the customer of the Water District. The notice of termination must comply in all respects with all applicable provisions and contract terms set out in Sections 393.015 and 393.016, RSMo. The request from Branson (the Sewer Provider) to the District seeking termination of water service, shall contain and certify all the following information :

- a. Certification of the name and address of the Sewer Provider's customer of record that is in arrears on payments of sewer charges; the address of the customer's premises where such customer receives sewer service; the name and address of the property owner of such premises in cases where the name of the owner is different from the name of the Sewer Provider's sewer customer; the date due and amount of the delinquent bill and all penalties and interest thereon;
- b. Certification that (1) the arrearage of said sewer customer's sewer charges has continued for more than thirty (30) days after sending written notice by certified mail required by Section 393.015, RSMo, and (2) the Sewer Provider's intent to terminate service by means of a written request to the District to discontinue said District's customer's water service, and (3) a copy of the reply receipt signed by the District's customer must be attached or proof of in person service of the notice by the Taney County Sheriff's Office, an independent processor server, or an authorized officer of the Branson Police Department who has personally delivered the notice to the District's customer.
- c. Certification that the Sewer Provider's customer is the same person as the District's (water provider's) customer whose service is to be terminated (See 396.016.1, RSMo.) ;

- d. Certification that the Sewer/Water customer has been afforded a right to be heard on the correctness of the Sewer Provider's record of arrearage and the correctness of the unpaid status;
- e. Certification that all known federal and state constitutional and statutory prerequisites applicable to the collection of debt have been properly satisfied by the Sewer Provider;
- f. Certification that the Sewer Provider has complied with its own procedures, and
- g. Certification that all provisions of this agreement and all present and all provisions hereafter enacted by the Missouri legislature for the benefit of the customer have been fully complied with.

Such request and certification by the Sewer Provider and the Sewer Provider's verification shall be substantially in the form of **Exhibit A**, which is attached hereto and incorporated herein by reference.

3. Verification and Termination of Service by Branson (acting as independent contractor of the District) – Training of Sewer Provider's Personnel.

- a. Upon receipt by the District (water provider) of the written request prepared by the utilities division of Branson, for Termination of Water Service and fact Certification as set forth in paragraph 2, Branson (acting as independent contractor of the District) shall terminate water services to the District's customer's premises **PROVIDED** Branson will not terminate such water service until Branson personnel, (acting as an independent contractor of the District) have verified completeness of the Certifications made by the utilities division of Branson, in the Request for Termination of Service and that the customer of District being terminated is the same customer of Branson delinquent in sewer charges.
- b. Branson (acting as independent contractor of the District) shall be responsible for all costs incurred in termination of service.
- c. Branson Personnel discharging the obligations under this agreement as independent contractor of the district, will be instructed by Branson (with co-ordination with the District), as to methodology to be applied to avoid damage to the District's facilities and equipment including meters and meter yokes, and to minimize difficulty with the District's customers. Training will be at initiation of employment and at least once every two years thereafter - reasonably coordinated with the District.

4. Notice to Customer at Time of Termination. At the time the meter is turned off and locked, Branson, acting as said independent contractor will place a notice on the door knob of

the residence, structure or building informing the occupant that:

The Sewer Provider has turned off your water for nonpayment of your sewer bill. The District is required by Missouri law, Sections 393.015 and 393.016, RSMo., to permit the Sewer Provider to do this. To restore water service you may contact the Sewer Provider 24 hours per day, 7 days per week, at telephone number _____. The office address is _____. When the sewer bill is paid or appropriate arrangements are made, the City of Branson must turn the water service back on. The District cannot restore service.

5. **Pad Lock Meter – Personnel available to receive payment and Restore Service.**

1. When the Sewer Provider terminates service, a pad lock or “barrell lock” approved by the District will be affixed to the meter yoke locking the meter in the off position.
2. The Sewer Provider will be available to restore service as promptly as is reasonably feasible, in any event within 12 hours of payment of the unpaid bill in full or the conclusion of a payment arrangement agreed to by the sewer district and the customer.

6. **Restoration of Service.** When the unpaid charges of the Sewer Provider are paid, the Sewer Provider will restore service provided the water bill of such user owed to the District is not then delinquent. (See Section 393.016, RSMO.) The Sewer Provider will observe and obey the Rules and Regulations of the District including but not limited to Rule 9 (i) which provides that “Water will not be turned on to any property unless there be at least one adult person above the age of 18 present therein at such time to see that all water outlets in the premises are closed to prevent damage by escaping water”. If the water bill of the user is delinquent, the Sewer Provider will restore service promptly when advised by the District that the bill is current. Where the District determines there are compelling circumstances and requests it, or the Sewer Provider concludes compelling circumstances exist, restoration of service will be made available by the Sewer Provider 24 hours per day, 7 days per week. The Sewer Provider shall be responsible for all costs incurred in restoration of service.

7. **Notification to District of Restoration of Service.**

- a. When the Sewer Provider restores service, a notice will be given the District of the date and time service was restored and the name of the person performing it from whom verification might be obtained if needed.
- b. This information is essential to permit the District to calculate the lost sales income during the turn off period.
- c. The notification will include the “Turn-off Number” contained on the notification initially proved to the District.

- d. Such Notification by the Sewer Provider and the Sewer Provider will be substantially in the form of **Exhibit B**, which is attached hereto and incorporated herein by reference.

8. **Civil Liability - Insurance.**

The parties are informed by section 393.016.2 that a District or a Sewer Provider acting for a District under said statute shall be exempt from all civil liability whatsoever arising from or related to termination of water service pursuant to a contract executed in compliance with said statute, however, the parties are aware that disputes occur and result in legal expenses and litigation costs.

Branson as Sewer Provider and acting as Independent Contractor shall provide and maintain insurance protecting itself and the Water District and itself acting as an independent contractor, all as set forth and required by Section 393.016.4(3), RSMo as the same may be amended from time to time. Said coverage is to provide the indemnity demanded by Section 393.015.2, RSMo, which may be provided by contractual liability endorsement or otherwise as may be arranged by Branson, the Sewer Provider. The district will be named as an additional insured and such coverage must be primary and noncontributory. Branson's liability coverage is to include contractual liability coverage or a contractual liability endorsement to cover the indemnity obligations set forth in Section 393.015.2, RSMo. An owner's protective policy issued in the name of the District delivered to the District, will be substituted if said coverage is not available to Branson in its General Liability coverage.

Appropriate certificates of insurance will be provided and maintained as provided in Section 393.016.4(3), RSMo. As stated in said statute, water service terminations will not be made at any time this requirement is not fully satisfied.

9. **Reimbursement of Lost Revenues.**

- a. The Sewer Provider, in addition to the sums set forth above, shall pay to the District the estimated loss of water revenues resulting from each such termination made hereunder calculated as suggested in Section 393.016.4(4), RSMo. (including but not limited to loss of revenues by the District caused by disconnection of water service when the water bill was not delinquent).
- b. Such estimated loss of water revenues shall be based upon the actual period of time during which the supply of water is discontinued in each instance and the average water revenue received by the District for a like period of time during the prior year from the same property, or at the Water Provider's option estimated as to the type of customer demand involved in the instance, as determined from similar customers reflected in the books and records of the Water Provider.
- c. The estimated loss of revenue shall be billed by the District to the Sewer Provider in the amounts the District would have billed the customer if the water service had

not been terminated, and Sewer Provider shall pay each such bill within thirty (30) days of receipt thereof.

10. **Fees and Costs Not Covered by Insurance.** In the event the District or any independent contractor who performs this agreement under contract with the District incurs attorney fees or other costs or liability of any kind including expert witness fees not paid by the insurance as a result of any claim, litigation, or threatened litigation against the District or Sewer Provider, including costs of obtaining the Water Provider's own legal representation, the Sewer Provider will reimburse such amounts to the District or the independent contractor, if other than the Sewer Provider and pay any costs incurred by the District in collecting the same including attorney fees.

11. **Changes in Costs.** The parties agree to review the costs of compliance with this agreement annually if requested by either party.

12. **Expenses, Overhead and Costs Incurred by the District– Annual Billing.**

- a. The parties have structured this agreement in an effort to minimize the costs, burden and imposition to the District of meeting the statutory mandate.
- b. Nevertheless it is recognized that water customers may persistently complain to the Water Provider, direct their inquiries to the Water Provider, and certain bookkeeping as to water sales lost during shut-off, and time of staff devoted to sewer customer complaints, and time of staff in constantly updating customer lists in a form of use to the sewer provided, is visited by the agreement on the Water Provider.
- c. The Sewer Provider agrees to promptly reimburse to the District all expenses and costs incurred in performing or carrying out the agreement.
- d. The reimbursement shall be billed and paid annually.
- e. In determining the expenses incurred, the District and the Sewer Provider agree to address the time described above and any expenses suggested in Section 393.016.4(8), items (a) through (g), RSMo.
- f. The parties may agree to utilize a central office overhead cost similar to the methodology employed by both parties in negotiation of contracts for professional service for engineering service.
- g. To permit the Sewer Provider to verify that the Sewer Provider customer is the same customer that has executed a contract with the Water Provider, the District will provide the Sewer Provider with an initial list of all customers who have signed contracts for service and will update the list on a monthly basis.
- h. Such a list (restricted to a complete current record Sewer Provider's customers)

has not been heretofore a necessity for the Water Provider.

- i. The cost of preparation of the list will be billed to the Sewer Provider.
- j. In the event of dispute the parties will determine the issue by arbitration, by one arbitrator (normally a senior judge or an attorney trained in arbitration) agreed to by the attorneys of the two entities.
- k. Costs of arbitration shall be paid by the Sewer Provider.

13. **Indemnification.** The District shall not be liable for any loss, damage, or other claims asserted by the Sewer Provider's customers, the owner and/or tenant of the premises, the water customer, the Sewer Provider or any other person, corporation, or entity based upon or arising from the activities of the Sewer Provider or the termination of water service at the request of the Sewer Provider. To the extent permitted by law, including Section 393.015.2, and 393.016.4(6), RSMo., the Sewer Provider will indemnify, defend and hold the District harmless from and against any and all claims, complaints or causes of action and expense including attorney fees arising out of actions taken under this contract and will promptly reimburse expenses therefore when billed.

14. **Interruption of Service under the Agreement.**

- a. The Sewer Provider's action required under this Agreement shall be interrupted and suspended temporarily when in the opinion of the Water Provider's management, action is improvident and/or when due to matters beyond its control, including but not limited to employee work stoppages, strikes, inclement weather, or emergencies requiring utilization of manpower or resources elsewhere termination service cannot reasonably be provided.
- b. Termination will not be completed if a local board of health, municipality, fire district, court of competent jurisdiction or other governmental entity having jurisdiction, issues instruction to the District ordering it not to terminate water service.
- c. At such time, District will relay such conflicts to the Sewer Provider and the Sewer Provider will not knowingly take further action toward termination until the District notifies the Sewer Provider in writing that it has resolved the conflict.
- d. This provision shall not prohibit the Sewer Provider from seeking an agreement under the terms of Section 393.016, RSMo. in the event of prolonged interruption of the agreement.
- e. In no event shall the District be required to disconnect a fire line service without authorization from the governmental authority responsible for fire protection to the affected property, even in cases of combined fire and domestic service lines.

15. **Collection of Past Due Accounts and Collections from Owners – Accounts subject to this agreement.**

- a. Sewer Provider's customers with amounts due or past due on or before the effective date of this agreement shall not be subject to water termination for said amounts.
- b. This agreement and its provisions apply only to Sewer Provider sewer service charges becoming past due after the effective date of this agreement.
- c. This agreement applies only to arrearages which occur at a location in the DISTRICT where the Sewer Provider Customer is also a customer of the Water Provider. Further, the Sewer Provider may desire to attempt to collect sewer service charges from the owners of rental residences as authorized by Section 250.140, RSMo.
- d. The District does not normally make such collections and does not engage the owner as its customer.
- e. Such collection would deprive the District of income from new tenants who are not obligated as to the Sewer Provider's charge.
- f. Water service will not be terminated at a water connection contracted to a third party in an effort by the sewer district to collect a bill from an owner not a party to the current service agreement with the DISTRICT.

16. **Term of Contract - Cancellation.** The initial term of this agreement shall be for one year. The parties may renew the agreement as deemed appropriate thereafter. If at any time the Missouri Law is amended or judicially interpreted in a manner relieving the District from involuntarily accepting the obligations of this agreement, the District may, on 60 days written notice to the Sewer Provider, cancel the agreement.

17. **Practices Unacceptable or of Concern to the Water Provider.** In the event the Sewer Provider engages in practices which create difficulty or concern to the Water Provider, the District will have its General Counsel contact the General Counsel of the Sewer Provider in an effort to confer as to the difficulty and develop alternate methodology to abate the problems unnecessarily visited on the Water Provider. It shall not be grounds to reject the Water Provider's corrective suggestions that some reasonable cost might be involved to better train personnel or to implement better and more considerate procedures or to provide better communication with Sewer Provider customers who are also customers of the Water Provider. As needed the governing bodies will meet and confer at the request of either party to improve the arrangement, perfect communication and to provide proper relationships with mutual customers. The Sewer Provider will make reasonable efforts to comply with reasonable requests of the Water Provider.

18. **Expenses in concluding Agreement.** The parties are aware that Missouri Law contemplates that the Sewer Provider will pay per Section 393.016.4(8), RSMo, all expenses of

the District attributable to this agreement. The Sewer Provider will promptly reimburse the District said costs including the legal fees attributable to the contract and contract negotiations.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the date first above written.

CITY OF BRANSON, MISSOURI

PUBLIC WATER SUPPLY DISTRICT NO.
3 OF TANEY COUNTY, MO

By: _____
Mayor

By: _____
Cory Ross, President

(SEAL)

(SEAL)

ATTEST: _____
City Clerk

ATTEST: _____
Marti Hancock, District Clerk

APPROVED AS TO FORM:

/s/ Bridget M. Findley #72572
Interim City Attorney

07/20/2022
Date

Exhibit "A"

**VERIFICATION, CERTIFICATION AND REQUEST FOR
TERMINATION OF WATER SERVICE**

Date of Termination _____
Sequential Turn-off Number 2022 - _____

The City of Branson Missouri pursuant to §393.015 RSMo, submits this request to terminate the water service of _____ (name) and acting as the independent contractor of the PWSD#3 agrees to terminate service as the Independent Contractor of said District and verifies, certifies and warrants the following facts and circumstances:

1. _____ (name) is a sewer customer of the City of Branson Missouri who is in arrears.
2. _____ (address) is the address of the City's Sewer customer named in Item 1 above.
3. _____ (name) is the owner of the property whose address appears in Item 2 above.
4. \$_____ is the total arrearages owed by the sewer customer whose name appears in Item 1 above. To this figure must be added penalties of \$_____ and interest or other charges of \$_____ for a total delinquency of \$_____.
5. This arrearage has been due for more than thirty (30) days after proper notice was given to customer by certified mail as **required by Section 393.015, RSMo**. A copy of the reply receipt is attached hereto evidencing receipt of **the statutory notice** by the customer.
6. _____ (name) is the customer who was afforded at least thirty (30) days written notice by certified mail informing said person of the amount then past due, and of the City of Branson's intent to make a written request to the Water District to disconnect said sewer customer's water service.
7. Said customer has been afforded a right to be heard on the correctness of the Sewer District's record of arrearage all as set out in the notice, a copy of which is attached.
8. All known federal and state constitutional and statutory prerequisites applicable to the collection of debt have been properly satisfied and provided to the customer.
9. All City ordinances and procedures and all existing statutory provisions for the benefit of the customer have been properly complied with prior to the making of this certificate.
10. The undersigned has checked and warrants that the sewer service customer is one

and the same person whose water service is sought to be terminated.

All circumstances stated above certified and warranted by the Chief Executive Officer of the City of Branson, Missouri, in its capacity as a Missouri Municipality, this ____ day of _____, 20 ____.

By: _____
City Administrator
Branson, Missouri

All circumstances stated above certified and warranted by the Official of the City of Branson, Missouri assigned Independent Contractor Duties for the City of Branson, Missouri, in its capacity as the Independent Contractor of PWSD #3 of Taney County, Missouri, for termination of water services under the contract between the parties mandated under Section 393.015 and 393.016, RSMo., this ____ day of _____, 20 ____.

By: _____ *

Operations Manager designated by the City of Branson, Missouri assigned duties of Verification, Certification and Termination of service under the contract between the parties.
(* The signatures must be by two separate parties. Verification of Circumstances by two parties is required by the agreement concluded between the parties.)

Confirmation of Receipt

Copy delivered to PWSD #3 of Taney County, Missouri, following termination of service of customer above identified, this ____ day of _____, 20 ____.

Office of the Water District Clerk
or Deputy Clerk

Exhibit "B"

**VERIFICATION, CERTIFICATION AND NOTICE
OF RESTORATION OF WATER SERVICE**

Customer Name _____
Date of Termination _____
Date of Restoration _____
Sequential Turn-off Number 2022- __ _____

To permit Public Water Supply District No. 3 of Taney County, Missouri to calculate the lost revenue occasioned by the termination of water service on the date identified above, the City of Branson provides this verification and certification of restoration of water service with the date of restoration as stated above.

Copy delivered to PWSD #3 of Taney County, Missouri, following restoration of service of said customer identified above this _____ day of _____, 20____.

By: _____
City Administrator
Branson, Missouri

By: _____ *

Operations Manager designated by the City of Branson, Missouri assigned duties of Verification, Certification and Termination of service under the contract between the parties.
(* The signatures must be by two separate parties. Verification of Circumstances by two parties is required under the agency agreement.)