

**GRSD SEWER AUTHORITY**

**SEWAGE DISPOSAL SYSTEM SERVICE CONTRACT**

**August 2000**

THIS CONTRACT, made and entered in counterparts on the date set forth opposite each party, by and between the GRSD SEWER AUTHORITY, a public corporation in the State of Michigan, (hereinafter sometimes referred to as the "Authority"), acting by and through its Board of Trustees and the CITY OF NEW BUFFALO, TOWNSHIP OF CHIKAMING, TOWNSHIP OF NEW BUFFALO, LAKE CHARTER TOWNSHIP, and CITY OF BRIDGMAN, political subdivisions in said county and state, (hereinafter sometimes referred to as the "Local Unit"). The GALIEN RIVER SANITARY DISTRICT executing this Agreement solely to confirm the transfers and assumptions of assets and liabilities and not as a party to continuing service.

**WITNESSETH:**

WHEREAS, the Authority was established under the provisions of Act 233, Public Acts of Michigan, 1955, as amended (hereinafter sometimes referred to as "Act 233"), as a Sanitary Sewer Authority for the furnishing of sanitary sewage disposal services to its members as authorized by said Act, which Authority is operated by a Board of Trustees (hereinafter sometimes referred to as the "Board") and is under the general control of the incorporating governmental units within the County of Berrien as provided by said Amended and Restated Articles of Incorporation of the GRSD Sewer Authority; and

WHEREAS, by the terms of said Act 233, the City of New Buffalo, the Township of Chikaming, the Township of New Buffalo, Lake Charter Township, and the City of Bridgman, (hereinafter sometimes referred to collectively as the "Local Units") are authorized as incorporating governmental units to enter into a contract with the Authority for the operation, maintenance, financing, improvement, enlargement or extension of a sewage disposal system by the Authority to serve the Local Units for payment of the financing and operational costs thereof to the Authority by the Local Units; and

WHEREAS, Section 10 of Act 233 allows for the Authority and its constituent members to contract for the furnishing of sewage disposal services by the Authority to the constituent municipalities; and

WHEREAS, the Authority is authorized, pursuant to request of one or more Local Units and with appropriate action of its Board of Trustees and the governing body of the requesting Local Units, to issue bonds of the Authority in one or more series to provide funds therefor, secured by the full faith and credit and contractual obligations of the Local Units to pay such cost with interest to the Board of Trustees; and

WHEREAS, the County of Berrien will transfer title of the Berrien County sewage disposal system no. 7 (Galien River Sanitary District), to the GRSD Sewer Authority, when all bonded indebtedness, from issuance of bonds through the County, are retired; and

WHEREAS, it has been determined by the parties hereto that operation and expansion of said system facilities can most economically and efficiently be acquired, maintained, operated, and financed by the Authority through the exercise of the powers conferred by said Act; and

WHEREAS, the Local Units have authorized and executed Amended and Restated Articles of Incorporation of the GRSD Sewer Authority, relative to the admission of the City of Bridgman and to the acquisition, financing, and operating of the former Galien River Sanitary District system, by the terms of which they have agreed, among other things, that those parts of the system which serve more than one of the Local Units shall be operated by the Authority as a "Joint System", the Board of Trustees as constituted therein with power to fix and collect rates for sewage disposal services furnished to the Local Units and that the Local Units shall pay their designated shares of the capital cost of the treatment plant and an interceptor and have correspondingly proportionate capacity rights therein pursuant to the terms of this Service Contract; and

WHEREAS, the execution of this service contract has been authorized by resolutions of the governing bodies of the Authority and each Local Unit, and all other necessary conditions have been satisfied and performed in order to permit the execution hereof by said Local Units;

THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE UNDERTAKINGS AND OBLIGATIONS HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Authority and the Local Units do each hereby approve and agree to the acquisition, operation, maintenance, expansion, and financing of the Galien River Sanitary District by the Authority, as herein provided, under and pursuant to Act 233. The Local Units hereby consent and agree to the establishment and location of said system within their respective corporate boundaries in accordance with the existing system as designed and laid out and to the use by the Authority of streets, highways, alleys, lands, rights-of-way or other public places for the facilities of the system. Any improvements, enlargements or extensions thereof shall be accomplished through a review process including the affected Local Unit and the Authority Board. The ultimate decision on any such improvement, enlargement or extension will remain with the Authority Board, after the review process has been completed with the affected Local Unit, subject to applicable permit and/or zoning requirements.

2. The GRSD Sewer Authority operates and maintains the following facilities, and where so indicated allocating capacity rights, as follows:

a. A sanitary sewage treatment plant and site (the "treatment plant") to serve all of the Local Units, who shall have capacity rights therein and shall share the cost thereof, in the following proportions/capacities, based on a total plant capacity of 3 million gallons per day:

Lake Charter Township	16.70% capacity right
City of New Buffalo	18.50% capacity right
Chikaming Township	28.40% capacity right
New Buffalo Township	19.70% capacity right
City of Bridgman	16.70% capacity right

b. Interceptor sewers: The Chikaming/New Buffalo Interceptor; The Lake Bridgman Interceptor; and ~~The City of New Buffalo Interceptor~~, respectively.

c. ~~The term, Interceptor sewers, as used herein, is defined as an interceptor utilized by more than one municipality.~~

3. Each of the Local Units shall be entitled to have the sanitary sewage originating therein treated and disposed of by the system to the extent of the capacity rights of such Local Unit in the treatment plant. None of the Local Units shall be allowed to have its sanitary sewage treated and disposed of by said plant in quantities exceeding its capacity rights herein, except upon payment of the established surcharge rate. When the amount of sanitary sewage delivered to the plant from any Local Unit reaches 90% of such Local Unit's capacity rights herein, for a continual period of time greater than 60 days, then the parties to this agreement agree to meet and discuss the development of a plan for the treatment and disposal of sanitary sewage in excess of any such Local Unit's capacity rights herein. Such may include plant expansion plans or otherwise. If no agreement between the parties has been reached for the treatment and disposal of sanitary sewage above 100% of any particular Local Unit's capacity rights herein, after such meetings and discussions as outlined above have ended, then no additional connections shall be permitted to such Local Unit until an agreement for a plant expansion, and/or additional capacity rights, or otherwise, has been reached, and to the mutual satisfaction of all parties hereto.

The Township of Chikaming, the Township of New Buffalo, Lake Charter Township, the City of Bridgman, and the City of New Buffalo, respectively, shall be entitled to have the sanitary sewage originating therein transported to the treatment plant

through the respective interceptors.

4. Authority rates will be set, from time to time, upon majority approval of the Authority Board, as may be necessary to meet all reasonable expenses, costs, fees and all other reasonable monetary obligations in regard to the operation and maintenance of the facilities as referenced in paragraph 2 herein. Such rates shall be uniform between and among all Local Units.

The Local Units shall collect rates and charges for sewage disposal services rendered to the Local Units and shall remit the same monthly to the Authority. Such rates and charges shall be in amounts sufficient at least to provide funds required for the operation, maintenance and repair of the parts of the system operated and maintained by the Authority and for the establishment and maintenance of reasonable reserves for such purposes and for replacements in the event of major breakdown.

There is established, as provided below, a surcharge rate amount for any Local Unit of the system who exceeds its monthly capacity right, as determined per paragraph 2a above, as follows:

Surcharge Rate Amount: 150% of existing current rate

Any such funds obtained by the Authority Board, by payment of any surcharge rate amount, shall be deposited, only, in the Capital Improvement Fund maintained by the Authority Board.

5. All meters shall be read by the Authority not less than monthly. A permanent log shall be kept by the Authority for each meter showing all meter readings that have been taken at such meter and all meter recordings shall be open to the Local Units for inspection. In the event a meter fails, until such meter has been repaired or replaced, the Authority, as may be applicable, shall estimate the sanitary sewage received through the connection point where the failed meter is located. This estimate shall be based on the average use for a like number of days at the same time of the year for the immediately preceding two years. If such historical information is not available, the Authority, as applicable, shall, in its reasonable judgment, estimate the quantity of sanitary sewage received based on a similar period of use at the connection point.
6. Should any Local Unit fail for any reason to pay the Authority at the times specified, the amounts herein required to be paid, the Authority Board shall immediately give written notice of such default and the amount thereof to the governing body of the Local Unit, and the Authority Treasurer shall notify the County Treasurer and/or the state treasurer, or other appropriate disbursing official, who shall deduct such

amounts and transfer such amount to the Authority, from any local, county, or unrestricted state funds returnable to the Local Unit as may be allowed by law. Any such monies so paid shall be considered to have been returned to the Local Unit within the meaning of the Michigan Constitution and statutes, the sole purpose of this provision being made voluntarily to authorize the use of such funds to meet past due obligations of the Local Unit hereunder. In addition to the foregoing, the Authority shall have all other rights and remedies provided by law to enforce the obligation of any Local Unit to make payments in the manner and at the times required by this contract.

7. Each Local Unit, pursuant to the authorization of Section 12a of Act 233, does hereby pledge its full faith and credit for the prompt and timely payment of any of its existing and/or future obligation expressed in or arising out of this service contract.
8. No change in the jurisdiction over any territory in any of the Local Units shall in any manner impair the obligations of this contract or affect the obligations of such party hereunder. In the event that all or any part of the territory of any Local Unit is incorporated as a new city or village or is annexed to or becomes a part of the territory of another municipality, with the result that the Local Unit is deprived of jurisdiction over that part of the system which is located in such territory or is deprived of the power to levy ad valorem taxes upon property in such territory, the municipality into which such territory is incorporated or to which such territory is annexed shall assume the proper proportionate share of the contractual obligations of the Local Unit in which such territory was previously located, and shall be entitled to capacity rights and the right to use of the facilities of the system, based upon a division determined by the Authority Board, which shall make such determination after taking into consideration all factors necessary to make the division equitable. Each Local Unit reserves its right of recourse to the courts with respect to such determination.
9. This contract is contingent upon those certain Conditions of Admission as set forth in the executed GRSD Sewer Authority Buy-In and Organizational Agreement of 1999, at provision II (B)(subprovision 1, (a), (b) & (c)) to defray the portion of the cost of the system paid or existing by the local units and to finance expansion, which bonds shall be issued under the authorization provided by law. In the event that such Bridgman bonds are not issued within eighteen (18) months from the date of this contract, then this contract shall become null and void, and Bridgman City shall receive its deposit back, less any costs incurred by the Authority, including engineering, legal and other costs and related expenses, in reliance by the Authority upon the Bridgman City Buy-In, and each remaining Local Unit shall pay its allocated portion of all engineering, legal and other costs and expenses theretofore incurred and shall be entitled to all plans, specifications and other engineering data

and materials so paid for.

10. From and after the date of this Agreement, the Authority shall operate and maintain the respective parts of the system for the benefit of the Local Units as follows:

- a. The treatment plant;
- b. The Chikaming/New Buffalo interceptor;
- c. The Lake/Bridgman interceptor;
- d. The City of New Buffalo interceptor;

It is understood and agreed that the operation, maintenance, and repair of the system shall be the responsibility of the Authority and shall be exercised with respect to the treatment plant and the interceptors. Each Local Unit is charged with the obligation to fix and maintain their local collection system.

Any enlargement or addition of/to any interceptor, or any enlargement or addition of/to the treatment plant, as referenced above, shall be paid for upon a mutually agreed allocated cost, as between the Authority Board and any Local Unit affected by said interceptor or treatment plant enlargement or addition.

11. Each of the contracting parties shall, by appropriate action of their respective governing bodies, adopt and put into effect with the approval of the EPA and DEQ, and/or their respective successor entities, as required by law, rule or regulation, an ordinance regulating the use of public and private sewers and drains, private sewage disposal, installation and connection of building sewers, and discharge of waters and wastes into the public sewage works of the system and Authority, and providing penalties for violations thereof, in which ordinance there shall be stand by provisions for industrial cost recovery and in which there shall also be all other necessary provisions to carry out and fulfill all obligations of the County imposed by the EPA and/or DEQ grant contracts with the County. Each Local Unit hereby agrees that it will comply with all Authority, county, state, and federal requirements in connection with anticipated grants for the system, including specifically the establishment of appropriate user charges and industrial cost recovery systems and the adoption of an appropriate sewer use ordinance, in accordance with prescribed timetables as requested.

12. The local collection systems shall at all times be maintained in good condition and repair to the satisfaction of the Authority Board which shall have the right to inspect such local collection systems at any time and to require the Local Units having jurisdiction thereof, individually or in any combination thereof, to make or cause to be made any repairs or replacements and to do any further acts which in the judgment of the Authority Board, and consistent with accepted engineering

practices may be necessary in order to maintain such local collection systems in good condition or repair. If any Local Unit shall fail at any time, with respect to local collection systems under its jurisdiction, to make or cause to be made such repairs and replacements and to take such action as may be required by the Authority Board, and consistent with accepted engineering practices, within a reasonable time after being notified by the Authority Board to do so, then the Authority Board shall have the right to perform the necessary repairs and replacements, and the Local Unit shall reimburse the Authority Board for the expense thereof within 30 days after such expense has been incurred. The Authority shall maintain insurance coverage on the system as a whole and each Local Unit shall provide or cause to be provided insurance of such types and such amounts on the local collection system within their jurisdiction as would ordinarily be carried by private companies engaged in a similar enterprise, which insurance shall include sufficient liability insurance protecting the Authority Board and each Local Unit against loss on account of damage or injury to persons or property imposed by reason of the ownership or operation of such local collection systems or resulting from any act or omission or commission on the part of the Authority or such Local Unit, their agents, officers, or employees, in connection with the ownership, operation, maintenance or repair of such local collection systems. The cost of such insurance shall be deemed to be an operating expense.

13. The Authority shall have no obligation or responsibility under this contract to provide sewage treatment facilities or sewers to serve the Local Units except as herein provided. Each Local Unit shall have the right to provide or construct facilities and sewers within its own boundaries and to connect the same to the system (subject to the limitations on its capacity rights as hereinbefore stated): provided, however, that no additional facilities or sewers shall be provided or constructed within any Local Unit or be connected directly or indirectly to the system without first securing a permit therefor from the Authority Board and also from the Berrien County Board of Public Works. The Authority Board, and the Berrien County Board of Public Works, may establish, and each Local Unit shall in such case comply with, general rules and regulations governing the construction of sewers to be connected to the system, the connection thereof to the system, and the discharge of sewage into the system. Any permits issued by the Authority Board and the Berrien County Board of Public Works may be made conditional upon approval of plans and specifications and upon inspection and approval of construction by the Authority Board and the Berrien County Board of Public Works. Permit requirements, herein, regarding the Berrien County Board of Public Works, shall terminate upon full pay-off of bond indebtedness, to Berrien County, from any and all constituent members of the GRSD Sewer Authority.

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14. Each Local Unit shall be responsible for the character of the sewage originating within each Local Unit, respectively, and shall comply with the Authority Board's

standards and regulations as set forth in the Sewer Use Ordinance referred to in Paragraph 10 of this Contract governing the discharge of industrial and/or commercial wastes into the system. Each Local Unit shall take all necessary steps to prevent entry into the system of wastes of such a character as to be injurious to the system or to the public health and safety. If the character of sewage discharged into the system be such that it imposes an unreasonable burden upon the system, then an additional charge may be made over and above the regular charge for treatment, or it may be required that such sewage be specially treated before being discharged into the system, or the right to discharge such sewage into the system may be denied, if necessary, for the protection of the system or the public health or safety.

Each Local Unit agrees to take those steps necessary to prevent damage to Authority property, including physical damage and/or chemical damage, as may be deemed necessary by the Local Unit as requested by the Authority Board.

15. This contract shall become effective for an initial term of thirty (30) years commencing from the date of execution by the chairman of the GRSD Sewer Authority, being the last in time of the executing parties hereto, provided, however, that it shall not be terminated at any time prior to payment in full of the principal of and interest on all bonds issued to finance all or part of the cost of the system, or improvements to the system, together with all bond service charges pertaining to said bonds as to any particular Local Unit with any such bonding indebtedness.

Not more than ninety (90) days and not less than thirty (30) days prior to each successive five (5) year anniversary date of this contract, the Authority and each Local Unit agree to consider the approval of a five (5) year extension of the term of this contract on the same terms and provisions, or other mutually agreeable terms and provisions. Any such approval, as referenced above, may only be adopted upon unanimous vote of the Authority Board. The Authority and a Local Unit may, upon majority vote of the Authority Board, on each five (5) year anniversary, agree to a five (5) year extension independently, and it shall not be necessary for all Local Units to agree to such an extension for such extension to be effective between the Authority and any such Local Unit.

Upon termination of this contract, the facilities shall be distributed pursuant to the provisions of Act 233, if applicable, or as mutually agreed among the parties hereto, except that each local collection system shall remain the sole property of the Local Unit in which located.

16. Any constituent Local Unit may, upon three (3) year's written notice to the Authority Board chairman, request to be released from this contract, and from those terms, conditions and responsibilities thereunder, as well as giving up the benefits and



rights thereunder. Such requested release may only be granted upon two-thirds ( $\frac{2}{3}$ ) approval of the full Authority Board, and upon those reasonable terms and conditions as may be set by a majority of the Authority Board at that time. The Authority Board is to exercise its reasonable discretion in regard to such a request and in regard to any terms and conditions attached thereto. The decision of the Authority Board shall be final. The Authority Board shall consider and vote on any such written request within twelve (12) months of receipt of such written notice to the Authority Board chairman.

17. Any Local Unit making any agreement, by contract, promise or otherwise, with any other constituent and/or non-constituent municipality, which agreement, promise or contract impacts, in any manner, with the Authority, its facilities and/or operations, in any respect whatsoever, shall first have any such agreement, promise or contract submitted to the Authority for approval by the Authority Board. No such agreement, promise or contract shall be entered into, until, and/or unless the approval of the Authority Board is granted. The Authority Board agrees to review any such contract promise or agreement, forthwith, and to issue its approval or disapproval in a timely manner.
18. The provisions of this contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This contract may be executed in several counterparts and incorporates all understandings and agreements of the parties with respect to the subject matter hereof and shall supersede and amend the provisions of any other agreements and contracts with respect to such subject matter.
19. Each Local Unit, to the extent it causes particular liability thereto, agrees to defend, indemnify and hold harmless the County of Berrien, the GRSD Sewer Authority, the GRSD Sewer Authority Board, and the GRSD Sewer Authority's officers, employees and agents from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever, arising out of the establishment, transfer and acquisition of the Galien River Sanitary District by the GRSD Sewer Authority, and, thereafter the operation and maintenance of the GRSD Sewer Authority pursuant to the terms of this Contract.

The indemnification obligations provided above shall include the payment of all reasonable attorneys' fees and other expenses of defense. The indemnitor shall have the option to settle any such claim, damage or liability on such terms as it shall determine. In providing the indemnification set forth above, the Local Units are not waiving any defenses otherwise available by law; provided such defenses are also available to and asserted by the indemnified parties. The Local Units shall not be responsible for the indemnification obligations set forth above with respect to any indemnified party, to the extent that such indemnified party has waived any

defense which was otherwise available to it by law.

Each Local Unit shall only be responsible for those indemnification obligations provided herein, to the extent of each such Local Unit's percentage of responsibility, if any, for any such injury or damage claimed.

20. In the event that any one or more of the provisions of this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
21. Any amendment of this sewage disposal system service contract shall, and must, be mutually agreed to by all parties hereto, signed, and in writing.

IN WITNESS WHEREOF, the parties hereto have caused this service contract to be executed and delivered by their respective duly authorized officers as of the day, month and year indicated below.

Dated:

GRSD Sewer Authority

By: \_\_\_\_\_  
Its: Chairman

By: \_\_\_\_\_  
Its: Secretary

IN WITNESS WHEREOF, the parties hereto have caused this service contract to be executed and delivered by their respective duly authorized officers as of the day, month and year indicated below.

Dated:

GRSD Sewer Authority

By: Robert D. Green  
Its: Chairman

By: Mike Jones  
Its: Secretary

Dated:

*October 19, 2000*

Township of Chikaming

By: *Carl R. Anderson*  
Its: Supervisor Carl R. Anderson

By: *Jeanne S. Dudeck*  
Its: Township Clerk Jeanne S. Dudeck

The forgoing August, 2000 GRSD SEWER AUTHORITY SEWAGE DISPOSAL SYSTEM CONTRACT was approved and adopted by the Township of Chikaming, Berrien County, Michigan at a meeting held on the 19 day of October, 2000.

Dated:

OCTOBER 17, 2000

City of New Buffalo

By: Rosam M. Pridel  
Its: Mayor

By: Joan Weiskaupt-Jones  
Its: Clerk

Dated: October 17 '00

Township of New Buffalo

By: Agnes Conway  
Its: Supervisor

By: Colleen Melendy  
Its: Township Clerk

Dated:

Lake Charter Township

By: Loren W. Bernick 8/24/00  
Its: Supervisor

By: Gloria A. Payne 8-26-00  
Its: Township Clerk

Dated:

City of Bridgman

By: *[Handwritten Signature]*  
Its: Mayor

By: *Elaine E. Thomas*  
Its: City Clerk