

Chapter 96
Sewage Disposal Agreement

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 3-7-1988; 3-21-1989; 11-5-1990.]

THIS AGREEMENT, as of the first day of March 7, 1988 by and between Metropolitan Sewerage District of Buncombe County (hereinafter sometimes called the "District"), a North Carolina public body and body politic and corporate created and established under the provisions of the North Carolina Metropolitan Sewerage Districts Act, Chapter 153, Article 25, Sections 153-295 to 153-324, inclusive (succeeded by Chapter 162A, Article 5, Sections 162A-64 to 162A-81, inclusive) of the General Statutes of North Carolina, and the Cane Creek Water and Sewer District of Henderson County, North Carolina (hereinafter sometimes called the "CCWSD"), a body corporate and politic in Henderson County, North Carolina, acting by and through the Board of Commissioners of Henderson County, pursuant to Article 6, Chapter 162A of the General Statutes of North Carolina:

WITNESSETH:

WHEREAS, the District was created and established by the North Carolina State Stream Sanitation Committee by resolution adopted on January 19, 1982, and the District is currently comprised of the following political subdivisions:

- City of Asheville
- Town of Biltmore Forest
- Town of Weaverville
- Town of Black Mountain
- Woodfin Sanitary Water and Sewer District
- Busbee Sanitary Sewer District
- Crescent Hill Sanitary Sewer District
- Skyland Sanitary Sewer District
- Fairview Sanitary Sewer District
- East Biltmore Sanitary Sewer District
- Caney Valley Sanitary Sewer District
- Swannanoa Water and Sewer District
- Town of Montreat
- Beaverdom Water and Sewer District
- Venable Sanitary District
- Enka Candler Water and Sewer District

WHEREAS, under the North Carolina Metropolitan Sewerage Districts Act, and other State and Federal laws, the District is authorized and empowered among other things:

1. To acquire, construct, improve, extend, enlarge, equip, repair, maintain and operate a sewage disposal system;
2. To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of or for the services and facilities furnished by a sewage disposal system;
3. To make and enter into contracts or agreements with the governing bodies of any political subdivisions upon such terms and conditions and for such periods as any such governing body and the District Board of the District may determine with respect to:
 - (a) The collection, treatment and disposal of sewage,
 - (b) The billing and collecting by any such political subdivision or by the District of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its

inhabitants by any sewage disposal system, and for the enforcement of collection of such rents, rate, fees and charges; and

(c) The imposition of penalties, including the shutting off of the supply of water furnished by any water systems owned or operated by any such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges; and

4. To regulate by permit the discharge of waste into the system by any Industrial or Commercial Establishment (as hereafter defined), and

WHEREAS, the District operates a sewage treatment facility in Woodfin, Buncombe County, North Carolina, where it treats sewage received through interceptor lines operated by the District, the District's sewage disposal system being referred to as the "Sewage Disposal System;" and

WHEREAS, CCWSD was established February 26, 1981 and was created pursuant to the provisions of Article 6, Chapter 162A of the General Statutes of North Carolina for the purposes of providing water services or sewer services or both to the residents and Commercial and Industrial Establishments of the territory within the CCWSD, and is vested with all of the powers set forth in [Article 6, Chapter 162A](#); and

WHEREAS, CCWSD desires to contract for certain services relating to wastewater treatment and disposal with the District pursuant to its authority [Article 5, Section 73\(2\)\(a\)\(b\) and \(c\) of Chapter 162A](#) of the General Statutes of North Carolina;

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and obligations herein undertaken, it is agreed as follows:

1. The CCWSD will cause to be constructed a collector sewer system which will collect sewage within the CCWSD, which system shall be completed in a timely and workmanlike manner and in full compliance with all applicable laws and regulations in any way affecting such system and in full compliance with any ordinance, regulations, directives or standards issued or adopted by the District.

2. CCWSD will at all times maintain said collector sewer system in good state of use and repair and in compliance with all applicable laws and regulations in any way affecting such system and in full compliance with any ordinances, regulations, directives or standards adopted from time to time by the district provided such ordinance, regulations, directives or standards shall be no different from such ordinances, regulations directives or standards adopted and applicable by the District with respect to any collector sewer system located in Buncombe County.

3. The District has constructed an interceptor sewer line in the area of the CCWSD which will have the capacity to receive sewage from the collector sewage system which CCWSD will cause to be constructed and the sewage so collected can be transported through interceptor lines owned by the District to the main treatment plant of the District located in Woodfin, Buncombe County, North Carolina.

4. The District will receive and accept for collection, treatment and disposal sewage originating in the CCWSD collector sewer system or flowing through the collector sewer system of the CCWSD not exceeding .55 million gallons per day until July 1, 1990, at which time the figure .55 million gallons a day is changed to 1.35 million gallons a day. Should the CCWSD annex additional area pursuant to the provisions of [Article 6 of the North Carolina General Statutes, Chapter 162A](#), MSD will allocate flow to users in the annexed area on an as needed basis. Flow allocated to users in annexed areas will not be counted against the 1.35 mgd allocation set forth in the previous sentence. Users in annexed areas will be required to pay a Capacity Depletion Fee to the MSD before making connection to the Sewerage System. Provided, however, that the District reserves the right to limit the quantity and composition of sewage so received and accepted by the District if such sewage together with all other sewage received and accepted by the District from all sources will, in the sole discretion of the District, unreasonably burden the

efficient operation of the Sewage Disposal System, or violate any of the District's ordinances or regulations or violate any law or regulation imposed on the District by any other governmental authority; provided, further, that the District may in its sole and absolute discretion regulate by permit the discharge of sewage from any Commercial or Industrial Establishment.

5. The District shall have the right without prior notice to enter the premises of any Industrial or Commercial Establishment to monitor the composition and quantity of sewage discharged by such establishment into its Sewage Disposal System. The term Industrial or Commercial Establishment as used herein shall be defined as any person, firm, corporation, association, partnership or entity which discharges sewage in an amount exceeding 50,000 gallons within any 24 hour period or any toxic or hazardous waste or substance as those terms are defined by regulation or ordinance duly adopted from time to time by the District into any collector sewer system of CCWSD or into any interceptor sewer line now or hereafter built, owned or maintained by the District.

6. Subject to the terms of the Agreement, the District will collect, treat in accordance with law and dispose of any sewage originating in the CCWSD or flowing through the collector sewer system serving the CCWSD in the same manner and to the same extent or degree as it collects, treats and disposes of all other sewage entering the Sewage Disposal System.

7. So long as the Sewage Disposal System remains in existence and under operation by the District, or by any successor thereof, the CCWSD shall continue to have the right to make use of the services and facilities of the Sewage Disposal System in the manner and upon the conditions set out in this Agreement.

8. The CCWSD shall utilize the services and facilities provided by the Sewage Disposal System and shall not construct, acquire or utilize any facilities other than the facilities of the Sewage Disposal System for the collection, treatment and disposal of sewage except to the extent that the services and facilities of the Sewage Disposal System required to meet the sewage disposal needs of the CCWSD shall not be provided by the Sewage Disposal System.

9. The CCWSD shall comply with and shall obligate any user or its collector sewer system to comply with all ordinances, rules and regulations adopted by the District and all laws, rules and regulations which may be imposed on the District by any other governmental authority which may pertain to the collection, treatment and disposal of sewage by the Sewage Disposal System.

10. The CCWSD shall comply with and shall obligate any user of its collector sewer system to comply with the SEWER USE ORDINANCE OF THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA adopted by the District on 5-15-1984 and as the same may be amended from time to time provided that nothing herein shall be construed as requiring CCWSD to provide sewer service to any person or entity unless such service can be provided by CCWSD by means of a gravity line into a CCWSD collector sewer line with the point of sewer discharge being located no farther than 150 feet from the sewer connection into the CCWSD collector sewer line.

11. Any rates, fees, charges and permits for the use of and for the services and facilities furnished by the District to the CCWSD and to any person or entity situate within the CCWSD shall be fixed and established by the District in its sole and absolute discretion and shall not be subject to supervision or regulation by the CCWSD.

12. Residential, commercial, industrial, and all other users of the Sewage Disposal System within CCWSD shall be required to pay one or more rates, fees or charges for the services and facilities furnished by the District. The rates, fees or charges shall be set by the District in its sole discretion and may vary from user to user based on the composition and quantity of sewage discharged into the Sewage Disposal System. Such rates, fees or charges shall not exceed rates, fees or charges for comparable service elsewhere within the geographical limits of the District except in the following instances: First, in the instance in which a qualified, independent professional engineer determines that the cost of delivery of such services and facilities by the District is greater for the CCWSD than for the users elsewhere within the

geographical limits of the District in which event such additional cost shall be ratably added to the rates, fees or charges paid by users in the CCWSD. Second, in the instance in which the District chooses to levy an ad valorem tax on property situate within the District in which event an amount of money determined by an independent, Certified Public Accountant shall be added to the rates, fees or charges paid by users in the CCWSD which, when added to the rates, fees or charges paid by users in the CCWSD, will be consistent with comparable rates, fees or charges and taxes paid by persons resident within the District.

CCWSD shall be responsible for billing and collecting all rates, fees or charges as described in paragraph 11 above which are not billed and collected directly from Industrial or Commercial Establishments by the District as a condition of any discharge permit granted by the District to any Industrial or Commercial Establishment. The CCWSD shall promptly remit monthly all fees collected to the District Office in Woodfin, North Carolina. CCWSD shall make all reasonable efforts to ensure that rates, fees or charges are paid promptly and shall take appropriate action against those users who are delinquent in paying rates, fees or charges. The records and accounts of the CCWSD relating to the billing and collecting of rates, fees or charges shall be open to the inspection of the District at all reasonable times.

In conjunction with its duty to bill and collect rates, fees or charges, the CCWSD shall be required to maintain an accurate and up-to-date record of all users of the Sewage Disposal System within the CCWSD. CCWSD shall record all users by number and provide the District with copies of such record. The District shall be notified when additional users are given access to the Sewage Disposal System and shall receive a complete updated copy of such record of users annually. The records and accounts of CCWSD relating to the recording of users of the Sewage Disposal System shall be available for inspection by the District at all reasonable times.

The District and CCWSD are aware that certain persons, firms, corporations and entities (users) through whose real property some of the District's interceptor lines run have been given the right to discharge sewage directly into the interceptor lines as partial compensation for granting an easement to the District. This right shall in no way relieve the CCWSD of its responsibility to bill and collect rates, fees and charges each month from these users and to keep a record of those users which shall be available for inspection by the District at all reasonable times.

Notwithstanding any of the foregoing, the District shall reserve the right to bill and collect or to demand that CCWSD bill and collect rates, fees or charges the following ways:

(a) If, and to the extent that, the CCWSD or its agent or designee furnishes water on a retail basis to any lots or parcels of land which may be connected with or may use the Sewage Disposal System by or through any part of the collector sewer systems serving the CCWSD and the CCWSD or its agent or designee renders a bill for such water service, the CCWSD agrees that it or its agent or designee will act at its sole expense as billing and collecting agent for the District and will bill and collect and promptly deliver without offset or charge to the District the rates, fees or charges imposed by the District for the services and facilities provided by the Sewage Disposal System. The rates, fees or charges imposed by the District will be included as a separate item in the bills rendered by the CCWSD or its agent or designee for water service and if any payments received by the CCWSD or its agent or designee shall be less than the total amount of the charges for both water service and sewage disposal service, the amount received shall be pro-rated as to each such item. In the event that any sewage disposal rates, fees or charges shall not be paid, the CCWSD shall either itself or through its agent or designee, upon the receipt or instructions from the District, discontinue the furnishing of water to such lot or parcel of land until such time as the CCWSD shall be advised by the District to resume the furnishing of water. The records and accounts of the CCWSD or its agent or designee relating to such billing and collecting shall be open to the inspection of the District at all reasonable times.

(b) The District may collect the rates, fees or charges directly from users in CCWSD on a monthly basis. Failure by a user to remit rates, fees or charges to the District within the time specified for payment by the District shall give the District the right to disconnect the user's access to the interceptor line. The District shall have the right to enter the lands of user's at all reasonable times to

disconnect the user's access to the interceptor line when the user has failed to remit the rates, fees or charges within the time specified by the District.

13. This Agreement shall continue in full force and effect and without termination so long as the Sewage Disposal System remains in existence and operation or until it has been terminated by mutual agreement of the parties or by operation of law.

14. This agreement shall inure to the benefit of and be binding upon all successors of each of the parties hereto.

15. This Agreement shall become effective on the date of its execution by the parties hereto.

WHEREFORE, the parties hereto acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in two counterparts, each of which shall constitute an original.