

**Chapter 98**  
**Wastewater Collection Facilities Agreement**

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 12-20-2000.]

**THIS AGREEMENT made and entered into this the \_\_\_\_ day of December 2000, by and between Henderson County, a body politic and corporate, hereinafter "County," the Mud Creek Water and Sewer District, a body politic and corporate, hereinafter "District," and the City of Hendersonville, a municipal corporation, hereinafter "City."**

**WITNESSETH:**

**WHEREAS**, the County and the District own and operate a sanitary sewerage collection system located in and serving a portion of the Mud Creek Water and Sewer District, hereinafter the "Mud Creek Collection System"; and

**WHEREAS**, the City owns and operates a 3.2 million MGD Sewerage Treatment Plant, and is in the process of constructing a new 4.8 MGD Sewerage Treatment Plant; and

**WHEREAS**, the County and the City entered into an agreement in 1986 to provide for the provision of sewerage treatment services to the County and the District for the Mud Creek Collection System, hereinafter the "1986 Agreement"; and

**WHEREAS**, there is outstanding litigation between the County and the City related to the 1986 Agreement, to wit Henderson County v. City of Hendersonville, 92 CVS 1186, hereinafter the "Lawsuit"; and

**WHEREAS**, the County and the City are desirous of replacing the 1986 Agreement with a new agreement to establish a joint undertaking by the City and the County for the provision of sewerage treatment services for the citizens of the Mud Creek Water and Sewer District, as amended, and upon reaching such a new agreement, terminating the Lawsuit; and

**WHEREAS**, as part of the new agreement, the City is desirous of purchasing a portion of the Mud Creek Collection System from the County and the District; and

**WHEREAS**, as part of the new agreement the County is desirous of securing an option for certain real property owned by the City currently being utilized by the City for its water and sewer operations, said property being more particularly described herein below; and

**NOW THEREFORE THIS AGREEMENT**, that for and in consideration of the mutual promises and covenants contained herein below, the parties agree as follows:

**Article I**  
**Purpose, Authority and Definitions**

**Section 1.01. Purpose.**

The purpose of this Agreement is to serve as a contract of purchase between the City, the County, and the District for a portion of the Mud Creek Water and Sewer System, and to establish a joint undertaking between the City and the County for the provision of sewer treatment services by the City primarily to the citizens located in a portion of that area currently encompassed in the District. It is understood and agreed that with respect to cooperative planning it is impossible to control the actions of the respective future elected officials; however it is hoped that the cooperation and joint planning efforts started with the execution of this Agreement will continue into the future for the benefit of the City and the County and the residents thereof.

**Section 1.02. Authority.**

This Agreement is entered into pursuant to the Authority of [N.C.G.S. 160A Article 20](#), and [160A-274](#).

**Section 1.03. Definitions.**

Unless the context otherwise clearly requires, the following terms are defined as indicated:

1. **Mud Creek Equipment** means all wastewater collection, transportation, conduction, pumping and similar equipment, and includes equipment used to facilitate or enable the above actions. The term may be used to indicate real property, fixtures, and personal property, or any combination of them, but does not include movable personal property in the nature of tools, generators, unconnected pumps and the like used by the County for work with systems other than or in addition to the Mud Creek Collection system.
2. **The Mud Creek Drainage Basin** means all area of Henderson County, North Carolina naturally draining into Mud Creek at or upstream from the Hendersonville sewer treatment plant existing on the date of execution of this agreement.
3. **Private Lines** means wastewater lines, including all types of real and personal property and fixtures as defined in the provision for Mud Creek Equipment above, which lines and equipment are constructed, installed or initially owned for a nongovernmental entity or for an individual.
4. **Non City Customers** means those customers located outside of the City limits. [Note: This was an omission from the agreement that has been filled in after conversation with City Attorney, Sam Fritschner.]

**Article II  
Sale of Assets**

**Section 2.01. Assets to Be Conveyed.**

The County and the District will convey by Special Warranty Deed to the City a portion of the Mud Creek Collection System, hereinafter "Mud Creek Equipment," Mud Creek Equipment being more particularly described in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.<sup>2</sup> The Mud Creek Equipment will be conveyed "AS-IS," with NO WARRANTIES, express or implied, including but not limited to NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NO WARRANTY OF TITLE, NOR ANY OTHER WARRANTY ARISING AT LAW, IN PRACTICE, OR IN EQUITY.

The County and the District shall convey by special warranty deed any real estate for which it has marketable title upon which is situated any of the Mud Creek Equipment.

**Section 2.02. Assets to Be Retained.**

The County will retain all right, title and interest in that portion of the Mud Creek Collection System located in the Naples Area and the Mountain Home Area, and will also retain ownership of the Prison Camp lines, the retained portions being collectively referred to hereinafter as "Retained Portion of the Mud Creek Collection System" or "Retained Equipment". The Retained Portion of the Mud Creek Collection System is more particularly shown and described in the attached Exhibit B, said Exhibit B being incorporated by reference as if fully set forth herein.<sup>3</sup> The County may opt to lease any or all of the Retained Equipment to the City in accordance with terms hereinafter provided.

**Section 2.03. Easements and Encroachments.**

The County and/or the District will convey all right, title and interest to any and all easements and rights-of-way related to the Mud Creek Equipment that have been secured by the County to the City. All of the easements and rights-of-way to be conveyed are listed in the attached Exhibit C, Exhibit C being incorporated by reference as if fully set forth herein.<sup>4</sup> Exhibit C also lists easements which will be secured by the County and conveyed to the City within one hundred twenty days after closing.

The parties shall take such action with respect to any encroachments on road rights-of-way as may be required by the North Carolina Department of Transportation.

**Section 2.04. Consideration.**

The City will pay to the County \$449,185.00 as partial consideration for the purchase of the Mud Creek Equipment, the remaining consideration being the obligations and covenants of the City made for the benefit of the County and the District as stated herein. The \$449,185.00 represents the County's contributions towards the Mud Creek Equipment, less applicable depreciation, as shown in the attached Exhibit D, Exhibit D being incorporated by reference as if fully set forth herein.

**Section 2.05. Possession.**

Possession of the Mud Creek Equipment shall be delivered at Closing.

**Section 2.06. Date of Closing.**

Closing on the conveyance of the Mud Creek Equipment and related easements, rights-of-way, and encroachments shall occur on December 19, 2000, or as soon thereafter as both parties agree, but in no event later than December 31, 2000.

**Section 2.07. Risk of Loss.**

The risk of loss on the Mud Creek Equipment shall rest with the County and the District until the date of Closing. Upon Closing, all risk of loss shall pass to the City.

**Section 2.08. Outstanding Liens or Debts.**

The County and the District warrant to the City that there are no outstanding liens or debts on or encumbering the Mud Creek Equipment. This covenant shall survive the grant of property at closing by deed or otherwise.

**Section 2.09. Closing Expenses.**

The County and/or the District will pay the costs of preparation for the Deed of Conveyance and the Bill of Sale associated with the purchase of the Mud Creek Equipment by the City. The City will pay all recording costs, if any, associated with the recordation of the Deed of Conveyance. Each party will be responsible for any other expenses, including attorneys' fees, which they incur as part of this transaction.

**Section 2.10. Delivery of Documents.**

The County agrees to deliver to the City not later than 5 days prior to the Date of Closing a copy of all documents in its possession regarding the ownership and construction and easements associated with the Mud Creek Equipment.

**Section 2.11. Defense of Title.**

Notwithstanding the foregoing, where the City's title to any of the Mud Creek Equipment and its associated easements is disputed by a third party, the County and/or the District agree to provide whatever assistance is necessary to the City to defend such title.

**Article III  
Creation of the Mud Creek District Advisory Council**

**Section 3.01. The Mud Creek District Advisory Council.**

There is hereby created with the execution of this Agreement the Mud Creek District Advisory Council, hereinafter "Advisory Council." The Advisory Council shall consist of nine members.

**Section 3.02. Purpose of the Advisory Council.**

The purpose of the Advisory Council shall be to advise the City and the County on all matters involving the provision of sewerage treatment services to the citizens of the District, as amended.

**Section 3.03. Powers and Duties.**

The Advisory Council shall have the following powers and duties:

1. To name officers, other than the Chair.

2. To adopt bylaws consistent with the terms of this Agreement, which bylaws must be approved by both the City and the County.
3. To appoint subcommittees.
4. To conduct studies as requested by the City and/or the County.
5. Recommend to the City and the County new boundaries for the District (referred to herein below as the Amended Mud Creek District), and upon approval of the new boundaries by both the City and the County, securing a legal description for the new boundaries. The recommended new boundaries shall be based upon the Service Area (defined herein below), and shall be compatible with (though they need not exactly equal) the boundaries of the Mud Creek Drainage Basin(s).
6. To create, within the planning departments of the Advisory Council members, and to recommend to the City and the County a short term and long term sewer development plan for the redrawn Mud Creek Drainage Basin, including, but not limited to the Village of Flat Rock and the Town of Laurel Park.

**Section 3.04. Appointment of the Advisory Council.**

The Advisory Council shall be appointed as follows:

1. Three members shall be appointed by the City, one of whom shall be a sitting member of City Council;
2. Three members shall be appointed by the County, one of whom shall be a sitting member of the Board of County Commissioners;
3. One member shall be appointed by the Village of Flat Rock;
4. One member shall be appointed by the Town of Laurel Park; and
5. One member shall be appointed by the other eight appointed members.

**Section 3.05. Terms of Membership and Vacancies.**

Each member shall serve a three year term. Members may not be appointed for more than two consecutive three-year terms. In the event of a midterm vacancy, the successor appointed shall fulfill the remainder of the unexpired term. Serving the remainder of an unexpired term shall not preclude the successor from serving two consecutive full three-year terms.

**Section 3.06. Selection of the Chairman.**

The Chairman of the Advisory Council will be appointed by the City for the first two-year term. The County will appoint the Chairman for the second two-year term. The City and County will thereafter alternate the appointment of the Chairman between them, each appointment to be for a two-year term.

**Section 3.07. Duration of Existence.**

The Advisory Council will exist for so long as this Agreement is in effect. Notwithstanding the foregoing, the Advisory Council may be dissolved sooner upon the mutual Agreement of both the City and the County.

**Section 3.08. Additional Duties.**

The City and the County may jointly assign additional duties to the Advisory Council.

**Section 3.09. Reporting of Activities.**

The Advisory Council shall be required to provide an annual report of its activities to the City and to the County. In addition to the annual report, the City and/or the County may request a report at anytime, and the Advisory Council will be required to provide such a report.

**Section 3.10. Finances.**

The City and the County agree to jointly provide any funding necessary for the Advisory Council to fulfill its duties. The cost for delineating a legal description for the Amended Mud Creek District (defined herein below) shall be shared equally between the City and the County, upon approval of budgets submitted to the City and the County.

**Section 3.11. Staff to the Advisory Council.**

The County Engineer and the City Water and Sewer Director, shall serve as staff to the Advisory Council.

**Section 3.12. Frequency of Meetings.**

The Advisory Council shall conduct regular meetings once per month, but shall hold special meetings as necessary to conduct its business. The regular meeting dates, times, and places shall be determined by the Advisory Council and stated in their bylaws. The Advisory Council Chairman shall have the authority to call special meetings and to continue meetings to another date and time as necessary for the conducting of the Advisory Council's business.

**Article IV**

**Mud Creek Service Area and the Cane Creek Expansion Area**

**Section 4.01. Mud Creek District Boundaries.**

The City and the County agree that the boundaries of the Mud Creek Sewer District will be redrawn to more accurately reflect the drainage basins for the Mud Creek District. It is anticipated that certain areas lying in the Mud Creek District will be annexed into the Cane Creek Water and Sewer District and removed from the Mud Creek Sewer District, said areas hereinafter referred to as "Cane Creek Expansion Area" and particularly shown and/or described on the attached Exhibit E, Exhibit E being incorporated by reference as if fully set forth herein.<sup>6</sup> The Mud Creek District Advisory Council will be asked to study and recommend an appropriate boundary for the District, which will be subject to the approval of both the City and the County. Upon such approval, the legal description for the Amended Mud Creek District shall be attached hereto and made a part of this Agreement. The Mud Creek District as redrawn is hereinafter referred to as the "Amended Mud Creek District."

Notwithstanding any other provision of this agreement, the Mud Creek District boundaries shall include only places that drain into Mud Creek upstream from the Hendersonville 3.0 MGD Wastewater Treatment Plant on Mud Creek as it exists as of the date of closing hereof. Unless specifically stated otherwise in this agreement, the City shall not be obligated by this agreement to accept, from the County or otherwise, wastewater collected from any place that does not drain, directly or indirectly, into Mud Creek upstream from the Hendersonville 3.0 MGD Wastewater Treatment Plant on Mud Creek as it exists as of the date of closing. [This is a proposed change to make sure that the City must accept the wastewater from the Naples, Mountain Home, and Prison Camp systems.]

**Section 4.02. Procedures for Amending Boundaries.**

**1. Mud Creek District Boundaries.**

- (a) The parties agree that as of the date of closing, the Mud Creek District is a County Sewer District formed in accordance with [N.C.G.S. Chapter 162A, Article 6](#). The parties further agree that in order to accomplish the intent to redraw the Mud Creek District boundaries, it may be necessary to abolish the District in its entirety, and to form a new district encompassing the desired area. It shall be the County's sole option whether to form the new district pursuant to the terms of [N.C.G.S. 162A, Article 6](#) or not.
- (b) The newly drawn district shall, for the purposes of this Agreement, be considered the "Amended Mud Creek District," regardless of whether formed under [N.C.G.S. Chapter 162A, Article 6](#). Until such time as the Amended Mud Creek District Boundaries have been determined and become effective, the primary service area to be governed by the terms of this Agreement shall encompass the portion of the Mud Creek District shown on the attached Exhibit F, hereinafter "Mud Creek Service Area" or "Service Area," said Exhibit F being incorporated by reference as if fully set forth herein.<sup>8</sup>
- (c) It is acknowledged by both parties that the Mud Creek Service Area shown on the attached Exhibit F has very generalized boundaries. The parties agree that such generalized boundaries shall be sufficient for purposes of this Agreement until such time as the generalized boundaries are made more specific and given

a legal description through the work of the Advisory Council, the County and the City, and are reclassified as the Amended Mud Creek District boundaries.

- (d) Upon the effective date of the Amended Mud Creek District, the primary area to be governed by the terms of this Agreement shall be the Amended Mud Creek District, regardless of whether it is formed pursuant to [N.C.G.S. Chapter 162A, Article 6](#), and any reference in this Agreement to "Service Area" or "Mud Creek Service Area" shall be deemed to refer to the Amended Mud Creek District.

2. Cane Creek District Boundaries. The parties agree that the Cane Creek Sewer District will be expanded to include, at a minimum, the Cane Creek Expansion Area. Pursuant to [N.C.G.S. Chapter 162A, Article 6](#), however, such an expansion will not be effective until the start of the fiscal year following the expansion. Notwithstanding the expansion of the Cane Creek Sewer District, the Cane Creek Expansion Area shall be governed by the terms of this Agreement to the extent explicitly stated herein.

#### **Section 4.03. Applicable Ordinances.**

It is agreed by both parties that the City's ordinances, policies, and procedures, as each may be amended, shall apply to the Mud Creek Equipment, any lines owned or to be owned by the City or leased to the City within the Mud Creek Service Area or leased to the City within the Cane Creek Expansion Area. To the extent that any grant of authority for such ordinances policies and procedures from the County and/or the District is necessary, such grant of authority is hereby deemed given. The County's and the District's Ordinances, as amended, shall continue to apply to any lines in the Service Area and/or the Cane Creek Expansion Area for which the County retains ownership and control. The City, County and the District agree to review their ordinances, policies and procedures, and to make such amendments as are necessary to provide for the obligations of each under this Agreement, and to remove any inconsistencies with this Agreement from said ordinances, policies and procedures.

### **Article V**

#### **Extension and Lease of Lines in the Service Area and the Cane Creek Expansion Area**

##### **Section 5.01. Extension of Lines by the City.**

The City shall not extend any sewer interceptor or collection lines into the unincorporated areas of the County, whether within the Service Area, the Cane Creek Expansion Area, or any other unincorporated area of the County, without the express written approval of the County Board of Commissioners, except as follows:

1. The City may install any collector or interceptor line requested to be installed by the County.
2. The City may install collector lines and/or interceptor lines in the Service Area whose purpose is to bypass a pump station or otherwise to eliminate a pump station.
3. The City may install collector lines and/or interceptor lines in the Service Area that connects to a portion of a system within the City, the Village of Flat Rock, the Town of Laurel Park, or any other then existing incorporated municipality situated in the Mud Creek Drainage Basin which by reasonable economic or engineering necessity must run through an unincorporated area of the County; and
4. The City may install a collector line or an interceptor line to serve an area for which an ordinance of annexation has been adopted by the City, regardless of the effective date of such ordinance. The City shall supply all annexed areas, (whether by voluntary or involuntary annexation) with sewer service.

Notwithstanding the foregoing, the City shall give to the County a minimum of thirty days advance written notice prior to the beginning of construction of any lines allowed by subsection (b), (c) or (d), above. Such notice shall state the purpose for the lines to be constructed with specific reference to (b), (c), or (d) above, and shall contain a map showing the location of the proposed lines. Additionally, potential customers located in the unincorporated areas of the County shall not be connected to any line built by the City pursuant to subsection (b) or (c) or (d) above without the express written approval of the County Board of Commissioners and/or the District Board of Commissioners, as appropriate. Upon annexation by the

appropriate City, Town or Village, the City may connect customers to lines constructed in accordance with Subsection (d) above without the permission of the County. The City shall be responsible for the operation and maintenance of any lines installed by the City pursuant to this Section 5.01 in accordance with Article VI below.

**Section 5.02. Methods of Acquiring Land and Easements Necessary.**

Where the City is authorized by this Agreement or requested by the County to construct a line in the Service Area, the Cane Creek Expansion Area, or any other unincorporated area of the County, the City may use all available legal means to acquire the land and easements necessary for the project, including but not limited to condemnation.

**Section 5.03 Extension of Lines by the County and/or the District.**

In the event the County and/or the District requests that a collection line(s) or interceptor line(s) be constructed by the City in the Service Area and the City denies the request, the County and the District shall have the right to extend or construct the collection line(s) or interceptor line(s), and to connect the line(s) to the City's collection system at any appropriate location as provided for below. In such event, the County and the District will be responsible for paying the costs of constructing the line(s) (less any available grants or other funding sources). The County, the District, and/or the Cane Creek Water and Sewer District may extend or construct sewer lines in the Cane Creek Expansion Area without making any request to the City.

1. The County and/or the District may elect to convey any line(s) extended by the County and/or the District in the Service Area to the City, and the City shall accept ownership thereof. Additionally, the County and/or the District may elect to lease any line(s) extended by the County in the Service Area and/or the Cane Creek Expansion Area to the City, and the City shall accept the demise thereof, for the annual price of \$1.00, provided that any such lease may be terminated by the County upon six months prior written notice to the City. As another alternative, the County may elect to retain both ownership and control of the lines(s). Notwithstanding any other provision of this agreement, the City shall not be obligated by or under this agreement to accept any sewer lines whose specifications it has not approved in writing before construction.
2. In the event the County elects to convey or lease to the City any line(s) extended by the County pursuant to this Section 5.03, the following terms and conditions shall apply to said line(s):
  - (a) The City's Ordinances, policies, and regulations shall apply to said line(s) unless specifically stated otherwise in this Agreement;
  - (b) All persons connecting to said line(s) shall pay the rates as provided in Section 6.02 of this Agreement.
  - (c) The City shall pay to the County twenty percent of the impact fees for future customers connecting to conveyed (but not leased) line(s) in accordance with the Ordinances and Policies currently in place for developers' installation of lines.
  - (d) All persons connected to lines owned or leased by the City shall be considered to be City customers; however, for lines leased to the City, the County will still have the authority to enact rates, fees or assessments for the customers connecting to said lines in addition to the City rates, and the City shall collect any such rates, fees, or assessments on the County's behalf and remit the revenues received from the additional rates, fees and/or assessments to the County. The City may charge its normal administrative fees to the County for the collection of the County's rates, fees, and assessments.
  - (e) The City shall accept and allow customers to connect to any of said lines in accordance with the same priorities under which customers are given service in the incorporated areas of the City, except that the rates provided for in Section 6.02 below and any rates, fees, or assessments imposed by the County and/or the District shall apply.

3. In the event the County and/or the District elects to retain both ownership and control of any lines extended by the County and/or the District in the Service Area and/or the Cane Creek Expansion Area, the following terms and conditions shall apply to these lines:
  - (a) The City shall charge the same rates and system development charges to customers on the lines as provided in Section 6.02 below; however, if requested to do so by the County, the City will collect any additional rates, fees or assessments enacted by the County from the customers on the lines and remit the revenues received from the additional rates, fees or assessments to the County. The City may charge its normal administrative fees to the County for such collection of the County's rates, fees, and assessments.
  - (b) The Ordinances, regulations and policies adopted by the County and/or the District shall apply to said lines.
  - (c) The City shall allow the County or the District, as the case may be, to connect any of the lines to any portion of the City's sewer collection system.
  - (d) The City shall accept and allow customers to connect to any of said lines in accordance with the same priorities under which customers are given service in the incorporated areas of the City, except that the rates provided for in Section 6.02 below and any rates, fees, and assessments imposed by the County and/or the District shall apply.
4. The City shall maintain and repair all lines extended by the County/or the District in the Service Area in accordance with Article VI herein below, at the City's sole cost, regardless of whether the County and/or the District conveys the lines to the City.

**Section 5.04. Extension of Lines by a Third Party.**

The parties hereto acknowledge that the Mud Creek Equipment, the Retained Equipment, and/or the City's collection system may be extended by independent third parties, hereinafter "Developers" or "Owners," to serve their properties.

1. The Mud Creek Service Area. Any persons desirous of extending collector lines (or interceptor lines) in the Service Area shall be bound by the following terms and conditions:
  - (a) The Developer or Owner must make application for a sewer line extension of any line to the City. Except as provided herein below, the City will evaluate the application in accordance with its standard procedures and policies.
  - (b) If the Developer is constructing an extension of a City-owned line, the City may require the Developer or Owner to convey title to said lines to the City, and may pay back to the Developer or Owner a portion of the system development charges in accordance with existing City policy for other customers which attach to said line. If the Developer is constructing a gravity extension of a line owned by the County, the City shall inquire as to whether the County wishes to take ownership of said gravity extension (regardless of whether the line is leased to the City). If the County elects to assume ownership, the City shall require the Developer to convey title to the extension to the County, which the County may lease to the City. All provisions of Subsection 5.03 (b) shall apply to any such extensions conveyed or leased to the City. All provisions of Subsection 5.03 (c) shall apply to any such extensions for which the County retains both ownership and control.
  - (c) The City may not permit the Developer or Owner, or any other customers, to connect to private lines within the Service Area, except as allowed by County Ordinances, policies and procedures.
  - (d) Where the Developer proposes to install a private force main system to serve property (ies) which could be served by a gravity system, the City shall ask the County whether the County wishes to pay the difference in cost between the



force main system and a gravity system to serve the area. Nothing herein shall prevent the City from participating in the installation of such a gravity system by the Developer in order to avoid a forced main system. If the gravity system is paid for in whole or in part by the City, the City shall require the Developer to convey ownership of the system to the City. If the gravity system is paid for in whole or in part by the County, the City shall require the Developer to convey ownership of the system to the County. If both the City and the County share in the cost of the gravity system, the City shall require the Developer to deed the system to the City if it connects into a City-owned line or to the County if it connects into a County-owned line. The County may lease any or all of the gravity system owned by the County to the City in accordance with Section 5.07 of this Agreement.

- (e) The City shall not work indirectly through a Developer or Owner in order to avoid the restrictions of Section 5.01 above.
- 2. The Cane Creek Expansion Area. In the event the County and/or the District elects to lease all or a part of the County's Retained Equipment or any other lines installed by the County and/or the District in the Cane Creek Expansion Area to the City, all of the provisions of Subsection 5.04(a) shall apply to such lease. If the County and/or the District chooses to retain both ownership and control of the lines within the Cane Creek Expansion area, the County's policies, ordinances, regulations and procedures shall apply.

**Section 5.05. Quality of Construction.**

All lines constructed by the City or the County pursuant to this Agreement shall conform to the uniform construction standards of the City of Hendersonville and the State of North Carolina.

**Section 5.06. Extension of Lines in Areas in the District Which Are Annexed.**

It is recognized that the duration of this Agreement is thirty years, and that during this time, portions of the Service Area and/or the Cane Creek Expansion Area may be annexed by the City, the Village of Flat Rock, the Town of Laurel Park, or other municipality existing at such time. The County shall have no responsibility for extending any lines in any annexed portion of the Service Area or any annexed portion of the Cane Creek Expansion Area. The City agrees to meet its statutory responsibilities for the provision of sewer collection and treatment services for any areas annexed by the City. However, the City may not meet its statutory responsibilities for providing sewer through the use of County-owned lines. The City shall therefore purchase any lines annexed by the City for a price equal to the County's depreciated cost, less grants funds, regardless of whether the lines are leased to the City or not. [This was a change requested by the Board.]

**Section 5.07. Lease of Lines.**

As provided within this Agreement, the County and/or the District may elect to lease County-owned lines within the Mud Creek Service Area and/or the Cane Creek Expansion Area to the City. It is agreed by the parties to this Agreement that a Master Lease Agreement shall be entered to govern the terms of such lease(s), such lease(s) to be exhibits to the Master Lease Agreement. The Master Lease shall provide the following terms and conditions (at a minimum):

- 1. The annual lease rate shall be \$1.00 per year.
- 2. For so long as the lease is in effect, all provisions of this Agreement pertaining to lines leased to the City shall apply to the lines covered by such leases.
- 3. The County may terminate any leases for any lines by giving the City six months' advance written notice. In such event of termination, the lines for which the lease are terminated shall revert to the control of the County, and all County policies, ordinances, regulations and procedures shall apply. For all lines within the Service Area, the customers shall continue to pay the rates as specified in Section 6.02 of this Agreement. For all lines within the Cane Creek Expansion Area, the customers shall continue to pay the rates specified in Section 6.02 of this Agreement for so long as the lines are connected into the City of Hendersonville wastewater treatment system. However, the County may elect to reverse the flow of wastewater and begin providing wastewater treatment services through a contract with Metropolitan Sewerage District or another

treatment provider, or from a wastewater treatment plant owned or operated by the County or a County affiliated agency, district, or board. In such event, the customers shall become County customers.

4. All other terms and conditions contained in this Agreement shall apply as the context requires.

## **Article VI**

### **Operation of the Mud Creek System, Maintenance and Rates**

#### **Section 6.01. Maintenance and Operation.**

1. Lines within the Service Area. The City shall operate and maintain the Mud Creek Equipment and all other lines constructed in the Service Area in good repair, whether owned or constructed by the City, the County, or the District, from and after the date of this Agreement at their sole cost and expense. The City shall have the discretion to decide the scope and timing of any maintenance or repairs for any system which they are maintaining pursuant to this Agreement, provided that due diligence and care is exercised. Notwithstanding the foregoing, the City shall repair or replace lines as necessary in order to maintain the level of treatment service provided hereunder. The City shall insure the Mud Creek Equipment and all lines owned by, to be owned by, or leased to the City in the Service Area, and shall use any insurance proceeds received to repair or replace damaged lines as necessary.
2. Lines within the Cane Creek Expansion Area. The City shall have no responsibility for maintenance or operation of any sewer lines installed or owned by the County inside the Cane Creek Expansion Area unless the County elects to lease such lines to the City as provided in this Agreement. In such event the City shall operate and maintain the leased lines in good repair from and after the date of any such lease at their sole cost and expense for so long as said lease is in effect. In the event the County leases Retained Equipment to the City, the City shall also operate and maintain these systems at their sole cost and expense. The City shall have the discretion to decide the scope and timing of any maintenance or repairs for any system which they are maintaining pursuant to this Agreement, provided that due diligence and care is exercised. The City shall repair or replace lines as necessary in order to maintain the level of treatment service provided hereunder.

#### **Section 6.02. Rates.**

The City will charge to all non City customers whose wastewater is being treated by the City of Hendersonville wastewater treatment plant as of the date of closing, regardless of whether they are located in the Service Area, the Cane Creek Expansion Area, or other unincorporated areas of the County, the outside-of-City rate plus a surcharge of 90 cents per thousand gallons for a period of ten years, after which said customers shall pay the outside City rate. [This was a clarification requested by the Board.] All new non City customers, including those having an allocation but having not yet paid a system development charge, regardless of whether they are located in the Service Area, the Cane Creek Expansion Area, or other unincorporated areas of the County, whose wastewater is treated by the City after the effective date of this Agreement will pay the outside City rates and the appropriate system development charge, but will not pay the 90 cents surcharge.

#### **Section 6.03. Adjustment of the Rates.**

If the City raises or adjusts the sewer rates in the future, the difference between the inside-City rates and the outside-City rates shall remain in the same relationship that presently exists (60% differential), unless a cost analysis indicates that the cost of maintenance and service to the outside customers is higher than the differential. The City shall give the County a minimum of sixty days advance written notice prior to the proposed effective date of any change in the sewer rates. If the City's proposed outside City rate will increase the differential of 60% between the inside City rate and outside City rate, the City shall include with the written notice a copy of the cost analysis indicating that such increase in the differential is

necessary because the cost of maintenance and service to the outside customers is higher than the differential. In the event the County disagrees with the cost analysis provided by the City, the County shall notify the City at least thirty days prior to the effective date of the increase. In such event, the City shall postpone the effective date of the rate increase until the Chairman and Mayor can meet and agree upon a proposed rate increase, if any, to recommend back to both the Board of Commissioners and City Council. If both the Board of Commissioners and the City Council agree, then the City may enact such agreed upon rate increase. If the Board of Commissioners and the City Council are unable to reach an agreement, either party may proceed in accordance with Section 9.05, which shall stay the effective date of the rate increase until procedures under Section 9.05 have been concluded.

**Section 6.04. Billing and Collection.**

The City will be responsible for billing and collecting from all customers connected to any line in the Service Area, or any line in the Cane Creek Expansion Area. The City may charge to the County its normal administrative fee for billing only those customers for which the County has enacted a rate, fee, or assessment (regardless of whether in the Service Area or the Cane Creek Expansion Area), and those customers connected to a County owned and controlled line in the Cane Creek Expansion Area; otherwise billing and collection shall be performed at the City's sole cost and expense. The City shall make available to the County during normal operating hours its billing and collection records for those customers paying a County rate, fee, or assessment.

**Section 6.05. Outstanding Allocations.**

The City agrees to honor any allocations which it has already made to customers in the District, regardless of whether said customers have actually connected into the Mud Creek System; provided however that said customers must pay the City's normal system development charge before connecting into the system if they have not already done so.

**Section 6.06. Future Applicants for Service.**

1. The Service Area. All persons requesting sewer treatment services in the Service Area shall make their application to the City. For those non City customers requesting service from a line constructed by the City in accordance with Section 5.01(b), (c), or (d), the City shall not approve any application for service without the prior written consent of the County or the District as appropriate. For those persons requesting to connect into a County-owned and -controlled line, the City shall forward the application to the County for processing in accordance with the County's Ordinances, policies and procedures. The City shall process all other applications in accordance with its Ordinances, policies and procedures, and the provisions of this Agreement.
2. The Cane Creek Expansion Area. In the event the County elects to lease the County's sewerage system within the Cane Creek Expansion Area to the City, persons requesting sewer treatment services shall make application to the City. The City shall in such case process all applications in accordance with their normal Ordinances, policies and procedures. Subject to the requirements of law, the applications for service received from customers within the City limits shall not be given a higher priority over applicants from within the Service Area or the Cane Creek Expansion Area. All applications for service, whether within the City, the Service Area, or the Cane Creek Expansion Area shall be granted on a first-come-first-serve basis, unless otherwise directed by the County.

**Section 6.07. Appeals Process for Persons Denied Service.**

Persons denied wastewater treatment services from a City owned line, or a line leased to the City, shall follow the normal appeals procedures established by the City. Persons denied service from a County-owned-and-controlled line shall appeal to the Board of Commissioners in accordance with the policies and procedures to be established by the County. In reviewing a denial, the Board of Commissioners shall be bound by the technical standards for connection established by the City. The City shall be bound by any decision of the Board of Commissioners with respect to any County-owned and -controlled line in the Service Area or the Cane Creek Expansion Area.

**Section 6.08. Enforcement.**

The City shall have the authority to use all legal means for collecting sewer charges, rates, fees and assessments enacted by the City or the County owed from any customers within the Service Area and the Cane Creek Expansion Area. The City shall utilize all means available to collect the sewer charges and fees for those customers owing payment for any rates, fees, or assessments imposed by the County and/or the District, provided that any direct expense paid by the city for extraordinary collection means, such as legal fees, shall be reimbursed by the County and/or the district.

**Section 6.09. Information to be Submitted to the County.**

The City agrees that upon written request by the County it will provide annually to the County maps of its entire collection system, both in the City of Hendersonville and in the Service Area, on a disc in AutoCAD compatible format, or in mutually agreed upon format. [This was a change requested by the Board.] Additionally, the City agrees to provide the County with a copy of all of its ordinances, codes, policies, and procedures governing the City's collection system, and to promptly update County's copy of said documents as each is amended or replaced.

**Article VII**

**Treatment of Sewerage in the Mud Creek Service Area, the Cane Creek Expansion Area, and Other Unincorporated Areas of the County**

**Section 7.01. Treatment of Sewage.**

1. The Mud Creek Service Area. The City will, without any cost participation by the County, treat any and all sanitary sewage that is generated in the Service Area (including the Mud Creek Equipment, and any lines owned by the County), regardless of whether they are leased to the City without regard to allocation or capacity. The City shall provide such treatment services at its current treatment plant, its new treatment plant, or any other treatment plant constructed or operated by the City. The City's obligation to perform treatment services shall be independent of which facility is being used to provide the treatment services.
2. The Cane Creek Expansion Area. The City will, without any cost participation by the County, treat any and all sanitary sewage that is generated in the lines in the Cane Creek Expansion Area, regardless of whether they are leased to the City, without regards to allocation or capacity. The City shall provide such treatment services at its current treatment plant, their new treatment plant, or any other treatment plant constructed or operated by the City. The City's obligation to perform treatment services shall be independent of which facility is being used to provide the treatment services.
3. Other Unincorporated Areas of the County. The City may treat any sanitary sewage that is generated in other unincorporated areas of the County not within the Service Area or the Cane Creek Expansion Area as its capacity permits.

**Section 7.02. Allocation.**

The City anticipates that the capacity of the current or new treatment facility will be adequate to meet the wastewater treatment needs for the City of Hendersonville, the Service Area, and the Cane Creek Expansion Area for the duration of this Agreement. There is therefore no specific allocation being granted to the County by the City pursuant to this Agreement. The City agrees to provide the entire wastewater treatment capacity needed for the City, the Service Area, and the Cane Creek Expansion Area at its sole cost without any participation by the County or the District for the duration of this Agreement. The County shall not be obligated to contribute any money towards the construction or repair of the City's current treatment plant, its planned new treatment plant, any other treatment plants, or any infrastructure upgrades necessary to provide the sewer treatment capacity as contemplated by this Agreement. The County's request to connect a collector line or an interceptor line to the City's system shall not be denied on the basis that there is insufficient treatment capacity in any current or future sewer treatment facility or infrastructure owned or operated by the City. In the event the current treatment plant, the new treatment plant, and/or any infrastructure are insufficient to serve all of the City of Hendersonville, the Service Area, and/or the Cane

Creek Expansion Area, the City agrees, at its sole cost, to take whatever steps are necessary to secure additional treatment capacity, whether that be by expanding any plant or infrastructure owned or operated by the City, building a new plant or infrastructure, or contracting for sewerage treatment capacity from another provider.

**Section 7.03. State Mandates.**

The City agrees that it will exercise good faith and due diligence and care in the operation of its sewer treatment facilities and in the performance of this Agreement. However, it is acknowledged that the City must provide treatment services in accordance with applicable State and Federal Laws, and must also comply with any order issued by courts having competent jurisdiction. The County and the District agree that any orders issued by any State or Federal Regulatory Agency, and any order issued by any court of competent jurisdiction regarding the operation of the City's sewer treatment facilities, whether constructed and operated now or in the future, will take precedence over any obligations of the City to perform under the terms of this Agreement. The City agrees that it will immediately notify the County in writing of any such orders anticipated or received. If any such orders hinder the ability of the City to perform, the City shall continue to perform this Agreement to the extent possible; proceed with due haste, due diligence, and good faith to put itself in a position to be able to fully perform this Agreement; and apply any restrictions imposed by or resulting from said orders uniformly to all customers, regardless of whether they are located within the City limits or not. In no event shall the County be required to participate in the cost to comply with any order of any court, or any mandate issued by any State or Federal agency.

**Section 7.04. Annual Report.**

The City shall semiannually for the first two years after the date of the Agreement and annually thereafter, within sixty days of the anniversary date of this Agreement, provide to the County a report showing its number of customers, treatment capacity available in any and all plants providing sewer treatment services on the City's behalf for purposes of this Agreement, total allocations to customers, actual discharges into the treatment plant, and any other information reasonably necessary to apprise the County of the City's status and ability to continue to perform its obligations under this Agreement.

**Section 7.05. Duty to Monitor.**

The City shall have the duty to monitor its ability to perform the provisions of this Agreement.

**Article VIII**

**Option to Purchase Property, And Resolution of Disputes**

**Section 8.01. Option.**

At closing the City agrees to execute a document granting to the County an Option for that property owned by the City, located within the City of Hendersonville, having an address of 318 4th Avenue East, Hendersonville, NC 28792, currently occupied by the City Water and Sewer Department, hereinafter "Water and Sewer Department Property," in accordance with the terms of Exhibit G, attached hereto, Exhibit G being incorporated by reference as if fully set forth herein.<sup>9</sup>

**Article IX**

**Agreement Term, Termination, Amendments, and Resolution of Disputes**

**Section 9.01. Agreement Term.**

Except as stated in the provision for termination in Section 9.02 below, this Agreement shall continue for a period of thirty years from the date hereof at which time it may be extended by the mutual consent of all the parties hereto or their successors or assigns for multiple periods not exceeding thirty years each.

**Section 9.02. Termination.**

This Agreement may not be terminated unless agreed upon in writing by all the parties. Upon termination, the rights and liabilities of the parties to each other shall cease to exist, and title to all real or personal property shall remain in the governmental entity then owning said property. Notwithstanding the foregoing, the City shall continue to provide sewerage treatment services to all customers being served at the time this Agreement expires. This requirement shall survive the termination of this Agreement.

**Section 9.03. Amendments.**

It is understood and agreed that it is impossible to provide for every contingency which may arise during the Term of this Agreement. This Agreement may be amended at any time by mutual agreement of all parties. In order to be effective, the amendment must be in writing and must be signed by the duly authorized representative of each party. The parties agree to use good faith to attempt to arrive at mutually acceptable amendments to this Agreement to provide for those unanticipated contingencies.

**Section 9.04. Prior Statements.**

No prior or contemporaneous oral or written statements or material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment as provided above.

**Section 9.05. Resolution of Disputes.**

In the event there is a dispute among the parties which cannot be resolved, the parties agree to submit to a non-binding public mediation process prior to instituting any action in a court of law or equity to enforce the provisions herein. Either party may call for the mediation process. The mediator must be properly certified by the North Carolina court system to conduct court-ordered mediations, and the mediation shall be conducted in accordance with all rules applicable to court-ordered mediations, except that the process shall be public. The party calling for the mediation shall choose the mediator. The parties shall share in the costs, fees and expenses of the mediator equally. Upon the conclusion of the public mediation process, either party may elect to pursue any available remedies at law or in equity.

**Article X  
Other Covenants and Obligations**

**Section 10.01. The 1986 Agreement.**

With the execution of this Agreement, the 1986 Agreement is hereby revoked, terminated, and ended. The parties shall in no way be bound by any provisions of the 1986 Agreement, hereafter, and each party is released from any obligations provided for therein.

**Section 10.02. The Lawsuit.**

At closing each party agrees to execute a Dismissal With Prejudice in the pending litigation between the City and the County, Henderson County v. City of Hendersonville, 92 CVS 1186, and each party hereto does hereby release the other party from any and all causes of action heretofore arising from or relating to the facts, occurrences, agreements and transactions that were the subject of that civil action.

**Section 10.03. Abolition of the Mud Creek Sewer District.**

In the event the Mud Creek Sewer District is abolished to provide for the formation of the Amended Mud Creek District, the District shall no longer be a party to this agreement. However, to the extent necessary to carry out the intent of this Agreement, references to the District in this Agreement shall be deemed to refer to the Amended Mud Creek District, and shall be deemed viable. Further, if the Amended Mud Creek District is formed in accordance with [N.C.G.S. Chapter 162A, Article 6](#), the new Amended Mud Creek District, as represented by the Amended Mud Creek District Board, shall be deemed to be an intended beneficiary of this Agreement, and shall be able to enforce all of the terms and provisions herein.

**Section 10.04. Fines and Penalties.**

The County shall not be liable for any payment of any fines and/or penalties in whole or in part, imposed by any State or Federal regulatory agency, and/or any Court of competent jurisdiction, associated in any way with the City's performance under this Agreement.

**Section 10.05. Successor Provisions.**

Any references to any laws, statutes or ordinances shall be deemed to refer to the successor provisions also.

**Section 10.06. Assignment.**

No party may assign this agreement, nor any obligations or benefits under this Agreement, to any third party without the prior written agreement of the other parties.

**Section 10.07. Severability.**

In the event any portion of this Agreement is deemed to be unenforceable or illegal by a court of competent jurisdiction, such a determination shall not affect the validity of the remaining provisions or the Agreement as a whole. All parties agree that in such event, each will continue to be bound by the benefits and obligations stated herein. Additionally, the intent of this Agreement shall be enforceable to the greatest extent permitted by law.

**Section 10.08. Governing Laws.**

This Agreement shall be construed and interpreted under the laws of the State of North Carolina.

**Section 10.09. Interpretation.**

The parties agree that no one particular party shall be deemed to be the drafter of this Agreement in the event of a breach of contract dispute, and consequently, the provisions herein shall not be construed more strictly against any party.

**Section 10.10. Third Party Beneficiaries.**

Except as specifically provided in this Agreement, there shall be no intended nor incidental third party beneficiaries to this Agreement, and the provisions herein shall not give rise to any cause of action for enforcing this Agreement to any third party.

**Section 10.11. Execution of Documents.**

Both parties shall execute any other documents reasonably necessary to effectuate or carry out the intent of this Agreement, including but not limited to, a Bill of Sale, Master Lease Agreement and subsequent exhibits (leases) to the Master Lease, Option to Purchase, Dismissals with Prejudice of the Lawsuit, and any other closing documents.

**Section 10.12. Indemnification.**

To the extent permitted by law, the City will indemnify and hold harmless the County and the District for all losses, injuries or damages to third persons related in any way to the operation of the Mud Creek Equipment and any other lines owned or leased in the Service Area and the Cane Creek Expansion Area, except for any losses, injuries, or damages caused by the affirmative acts of negligence of the County and/or the District, its agents and employees.

**Section 10.13. Recordation.**

This document shall be recorded in the Office of the Register of Deeds for Henderson County.

**Section 10.14. Waiver.**

The failure to enforce any of the terms of this Agreement by any party shall not be deemed a waiver of any right to enforce this Agreement. All waivers must be in writing and signed by a duly authorized agent of the appropriate party in order to be effective.

**Section 10.15. Right of Inspection.**

The City agrees that any duly authorized representative of the County shall have access to and the right to inspect, copy, audit, and examine during normal business hours all of the books, records, and other

documents relating to the fulfillment of this Agreement during the Term. The terms of this Paragraph shall survive the expiration or termination of this Agreement, or any determination by a Court of competent jurisdiction that any of its terms and/or provisions are null and void.

**Section 10.16. Compliance with Applicable Laws.**

The City represents and warrants to the County and the District that the City will comply with all applicable local, State, and Federal laws, rules and regulations in carrying out the obligations incurred by the City under the terms of this Agreement, including any provisions respecting any requirement that the City provide sewer service to City customers.

**Section 10.17. Notice.**

Any notice required or referred to by the terms of this Agreement shall be deemed given only if such notice is written, and is delivered in person, or mailed certified mail, return receipt requested to the persons named below:

To the County/District:                    Mr. David E. Nicholson, County Manager  
    100 North King Street  
    Hendersonville, NC 28792

Copy to the County Attorney at the same address

To the City:                                    Mr. Chris Carter  
    P.O. Box 1670  
    Hendersonville, NC 28793

With a copy to:                                Samuel H. Fritschner, City Attorney  
    P.O. Box 928  
    Hendersonville, NC 28793

**Section 10.18. Counterparts.**

This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single instrument.

**Section 10.19. Survival of Terms.**

Any provision herein contained which by its nature and effect is required to be observed, kept, or performed after the termination of this Agreement shall survive said termination and remain binding upon and for the benefit of the parties until fully observed, kept, or performed. Provided however, that all provisions of this Agreement which by their terms survive any termination of this Agreement shall survive indefinitely.

**Section 10.20. Effective Date of Agreement.**

This Agreement shall be effective after it has been duly executed by the two parties, the effective date being the date above first written.

**Section 10.21. Headings.**

The headings contained herein are for convenience only, and shall not be used for interpretive purposes.

Exhibit A, Part 1  
Sanitary Sewer System

Exhibit A, Part 2  
Sanitary Sewer System

Exhibit A1  
Mud Creek Sewer District Boundary



Exhibit B  
 Legal Description for the Amended Mud Creek District

Beginning at NCGS Grid Monument Bearwallow Fire Tower said point being located under and in the center of Bearwallow Fire Tower, thence from said beginning point S 67-55-10 E 12,613.40 feet to NCGS Grid Monument Barnwell, thence S 26-06-27 W 14,288.70 feet to NCGS Grid Monument St. Paul, thence S 7-18-17 E 8,104.04 feet to NCGS Grid Monument Moriah, thence S 26-28-31 W 13,609.80 feet to NCGS Grid Monument Piney, thence S-28-46-45 W 13,936.41 feet to NCGS Grid Monument Lane, thence S 4-43-55 W 4,561.37 feet to NCGS Grid Monument Dwarf, thence S 31-59-24 W 5,297.83 feet to NCGS Grid Monument Jackson, thence S 44-58-38 W 7,547.26 feet to NCGS Grid Monument Connector, thence S 11-18-27 W 3,802.74 feet to NCGS Grid Monument Oak Grove, thence S 24-23-36 W 2,568.45 feet to NCGS Grid Monument Five Points, thence S 8-56-59 W 2,079.92 feet to NCGS Grid Monument Jordan, thence S 31-57-01 W 2,105.20 feet to NCGS Grid Monument Butt, thence S 14-04-59 W 3,706.15 feet to NCGS Grid Monument Zirconia, thence S 82-37-58 W 18,870.40 feet to NCGS Grid Monument Oliuet, thence S 86-10-23 W 21,089.47 feet to NCGS Grid Monument The Pinnacle, thence N 4-12-02 E 6,157.69 feet to NCGS Grid Monument Dornstauder, thence N 7-17-55 W 13,919.31 feet to a point, thence N 9-29-10 W 6,876.33 feet to NCGS Grid Monument Beulahm, thence N 69-25-28 E 9,324.76 feet to NCGS Grid Monument Jumpoff, thence N 25-29-17 E 5,659.55 feet to NCGS Grid Monument Turley, thence N 1-18-18 E 7,787.27 feet to a point, thence N 73-49-14 E 4,950.99 feet to NCGS Grid Monument Sedge, thence S 16-28-08 E 2,055.96 feet to NCGS Grid Monument Scott, thence S 43-40-11 E 2,162.01 feet to NCGS Grid Monument Roe, thence N 36-04-56 E 5,104.83 feet to NCGS Grid Monument Stoney, thence S 67-31-57 E 4,074.39 feet to NCGS Grid Monument Berkley, thence N 37-49-38 E 9,733.11 feet to a point on Bryson Mountain, thence N 48-42-17 E 6,835.26 feet to a point on Rocky Mountain, thence N 12-34-21 E 11,957.81 feet to a point on Hightop Mountain, thence N 57-21-35 E 26,880.30 feet back to the point and place of Beginning being Bearwallow Fire Tower with a NCGS Coordinate value of, 639,518.101 and a Easting value of 1,000,437.695.

Exhibit B, Part 1  
 Mountain Home Sewer System

Exhibit B, Part 2  
 Prison Pump Station Sanitary Sewer

Exhibit B, Part 3  
 Naples Sanitary Sewer System

Exhibit D

**1993**

South Mud Creek:		
Construction	\$1,974,617.55	
Legal/Administrative/Engineering	264,583.52	
	\$2,239,201.07	
Less: Depreciation	-356,983.90	
Less: State Grant	-1,045,806.00	
Brooklyn Manor	<u>-536,818.33</u>	
	\$299,593.84	*

**1994**

Balfour:		
Construction	\$71,175.78	
Legal/Administrative/Engineering	14,811.09	
	\$85,986.87	
Less: Depreciation	-12,302.30	
Less: School	<u>-24,000.00</u>	
	\$49,684.57	*

**1996**

Upward Road:		
Construction	\$115,025.84	
Legal/Administrative/Engineering	16,378.05	
	\$131,403.89	
Less: Depreciation	-11,497.30	
Less: Developer	<u>-20,000.00</u>	
	\$99,906.59	*

\*Net County Contribution to Mud Creek \$449,185.00

Exhibit E  
Cane Creek Service Area

Exhibit F  
Mud Creek Service Area

Exhibit G  
Option to Purchase

**Section 1.01. Property.**

The City covenants and warrants that it is the sole owner of that certain real estate located in the City of Hendersonville, having an address of 318 4th Avenue East, Hendersonville, NC 28792, currently occupied by the City Water and Sewer Department, hereinafter "Water and Sewer Department Property," the Water and Sewer Department Property being more particularly described in the attached Exhibit 1, Exhibit 1 being incorporated by reference as if fully set forth herein.

**Section 1.02. Grant of Option.**

Subject to the terms and conditions contained herein, the City does hereby grant an option to the County to purchase the Water and Sewer Department Property from the City for the term of this Agreement, (hereinafter referred to as the "Option"). Said Option shall commence upon the earlier of the City's vacating the Water and Sewer Department Property, and the passage of four years from the date this Option is executed by both parties. Once commenced, said Option shall run for a period of two years.

**Section 1.03 Considerations for Option.**

Concurrent with the execution of this Agreement, the County shall pay to the City the sum of \$5,000.00 as payment in full for the Option granted herein for the Water and Sewer Department Property. Both parties agree that the sum of \$5,000 is adequate consideration for the Option.

**Section 1.04 Purchase Price of the Water and Sewer Department Property.**

If the County exercises the Option as provided in this Agreement, the parties agree that the purchase price for the Water and Sewer Department Property will be agreed upon between the City and the County; provided however that in the event the parties are unable to agree, the purchase price shall be the fair market value determined as of the date of the County delivers a Notice of Its Intent to Exercise the Option to the City. [This corrects a typographical omission.] Both the City and the County agree that the fair market value shall be determined as follows: within thirty days of the delivery of the Notice of Intent to Exercise the Option, the City and the County will each hire a certified MAI appraiser to render an opinion as to fair market value. The fair market value (purchase price) of the Water and Sewer Department Property shall be determined by averaging together the values stated by the chosen appraisers.

**Section 1.05 Exercise of the Option.**

Once the option period starts, the County may at any time exercise the Option by first sending to the City a written Notice of Intent to Exercise Option, and subsequently, when the purchase price has been determined as stated herein, executing and delivering an Offer to Purchase and Contract for the purchase price to the City in form substantially identical to the attached Exhibit 2, said Exhibit 2 being incorporated by reference as if fully set forth herein. [This was a change requested by the Board.]

**Section 1.06 Credit for the Option Price.**

If the County exercises the Option, the County shall be given a credit on the purchase price in an amount equal to the option price. [Language regarding five-year period omitted here.]

**Section 1.07 Inspections During the Option Period.**

The City shall make available to the County the Water and Sewer Department Property at reasonable times to conduct such investigations or make such inspections as deemed necessary by the County.

**Section 1.08 Title to the Water and Sewer Department Property.**

It is understood and agreed by both parties that if the County exercises the Option, the City will convey the Water and Sewer Department Property to the County in marketable fee simple absolute title, by general warranty deed with all normal covenants and warranties of title, free and clear of all security interests, liens, claims and encumbrances, other than easements and rights-of-way of record.

**Section 1.09 Obligation not to Commit Waste.**

The City undertakes that it will not commit waste of the Water and Sewer Department Property for such period as the County retains an option to purchase in accordance with the above terms.