

## RE-NEGOTIATED WASTEWATER TREATMENT AGREEMENT

THIS AGREEMENT made and entered into this 28<sup>th</sup> day of November, 2011, by and between the City of Rushford, a municipal corporation within the County of Fillmore, State of Minnesota, hereinafter called the "City", and the City of Rushford Village, a municipal corporation within the County of Fillmore, State of Minnesota, hereinafter called the "Village". This agreement is authorized by Minnesota Statutes Sections 116.19, 412.211 and 412.221 and Chapter 1, Section 1 of the Rushford City Charter to accomplish the purposes of Chapter 115 of the Minnesota Statutes concerning water pollution control. This agreement replaces and supersedes all previous agreements between the City and Village concerning water pollution control, including an agreement *WASTEWATER TREATMENT CONTRACT* dated September 14<sup>th</sup> 1994 and any amendments thereto.

### SECTION I - RECITALS

- 1.01. The City currently owns and operates a wastewater treatment facility that is licensed by the Minnesota Pollution Control Agency for the treatment of residential, commercial, and industrial sewage.
- 1.02. The Village is a party to an agreement with the City whereby the Village reserves capacity in the City's central wastewater treatment facility.
- 1.03. Because of pollution problems, that existed prior to September 14<sup>th</sup>, 1994, that were caused by failed individual on-site systems, the Village, on behalf of South Rushford, terminated its dependence on its individual systems within the area known as "South Rushford." The Village constructed and operates a sanitary sewer collection system-which discharges wastewater collected from South Rushford to the City's central wastewater treatment facility.
- 1.04. The City operates its central wastewater treatment facility within the limits imposed by its National Pollution Discharge Elimination Permit as issued by The Minnesota Pollution Control Agency.
- 1.05. The wastewater loading and rates of flow treated by the central wastewater treatment facility have increased since 1994, and the treatment facility is no longer optimally configured to treat higher spring sewage flows.

- 1.06. The City has been advised by its Engineers that the City's central wastewater treatment facility is required to be upgraded to include a new final clarifier and additional sludge storage capacity to meet new State and Federal regulations.
- 1.07. The intent of this agreement is to describe the means and methods by which the Village will be authorized to continue to discharge a sanitary sewer collection system from South Rushford, as depicted on Exhibit A, to the City's central wastewater treatment plant, and to secure a reserved treatment capacity for wastewater that is generated from properties that are located in the South Rushford Sanitary Sewer Service Area as depicted on Exhibit A.
- 1.08. This agreement shall be effective when signed by all parties hereto. The twenty (20) year term of the agreement shall begin as of the final signing date between the parties.

## SECTION II – DEFINITIONS

- 2.01. Average Dry Weather Flow & Average Wet Weather Flow – the total measured volume as defined by the Minnesota Pollution Control Agency, and as recorded by a properly operating and calibrated sewage meter.
- 2.02. City - means the City of Rushford, its Council, officials, employees, and agents.
- 2.03. ERU - means the Equivalent Residential Unit. A single ERU is defined as having the flow and loading characteristics shown by table 4.01(b) Non-residential users shall be assigned ERU's based on their estimated wastewater production compared to a single ERU as defined by Table 4.01(b).
- 2.04. Septage - the wastewater or contents of septic or holding tanks, dosing chambers, seepage beds, seepage pits, seepage trenches, privies, portable restrooms, or RV or Trailer holding tanks. No discharge of septage is permitted into the Village Sanitary Sewer Collection System.
- 2.05. Sewer System – pipeline or conduits, pumping stations, force mains and all constructions, devices, and appliances appurtenant thereto used for conducting sewage to a wastewater treatment plant.
- 2.06. South Rushford Sanitary Sewer Service Area – that certain area within the Village commonly known locally as South Rushford and described as follows:

NE1/4; N1/2 SE1/4; SW1/4 SE1/4; SW1/4; SE1/4 NW1/4, all in Section 23, and  
NW1/4; N1/2 SW1/4 all in Section 24.

All lands described being in Township 104 North, Range 8 West, Fillmore County, Minnesota. As shown by Exhibit A attached and by reference made a part hereof, as may be changed from time to time by mutual agreement between the parties.

- 2.07. User - persons or parties whose property is connected to the sanitary sewer system of either the City or the Village and located within the area described in 2.05.
- 2.08. Village - means the City of Rushford Village, its Council, officials, employees and agents.
- 2.09. Wastewater or Sewage - The water carried waste from residences, public buildings, institutions, businesses, industries, and other buildings, including the excrementitious or other discharge from the bodies of human beings.
- 2.10. Wastewater Treatment Contract – that Contract negotiated between the City of Rushford and the City of Rushford Village dated September 14<sup>th</sup>, 1994 appended hereto by reference as Exhibit B for informational purposes only.
- 2.11. Central Wastewater Treatment Plant or Facility - That facility owned and operated by the City for the treatment, stabilizing and disposal of sewage including the grounds upon which it is located, the buildings and structures enclosing the treatment facilities, all goods and supplies used therein, all equipment, appliances, tools and machinery used therein, all leased equipment used therein, and all parts of the plant or other property that carry or allow the flow of or receive sewage, its by-products or results until the discharge is entirely disposed of, including the allocated costs of personnel to operate and maintain the facility.

### SECTION III - TERM OF AGREEMENT AND GENERAL PROVISIONS

- 3.01. Purpose - In consideration of the agreement and covenants set forth in this agreement, the Village agrees to participate with the City by paying its equitable share of costs of construction and operation of the upgraded wastewater treatment facilities, and the City grants permission and authority to the Village to continue the interconnection with the City central wastewater treatment plant as long as the Village is in compliance with all terms and conditions of this

agreement. The Village's sanitary sewer collection system shall convey only authorized sewage derived from approved users of the South Rushford Sanitary Sewer Service Area, as depicted on Exhibit A and described in 2.05.

3.02. City Rules and Regulations - All ordinances adopted by either the City or the Village shall comply with the requirements of the Minnesota Pollution Control Agency or other entities that may have supervisory authority over the wastewater treatment plant. In the construction, operation and maintenance of its sewer collection system, the Village and City will comply with all applicable State and Federal Laws. The City shall enforce its ordinances, rules, regulations and conditions at the points of discharge from the Village into the City's system and in addition to this agreement and legal remedies shall have the right to refuse to accept or treat sewage in violation of its ordinances and/or State, Federal Regulations. Except in the case of an emergency or MPCA Violation, the Village shall be given written notice of its violations and shall be given an opportunity, not to exceed 120 days, to rectify the violations.

3.03. Village Rules and Regulations - The Village agrees to review its ordinances and rules and enact ordinances, rules, regulations or conditions, which are at least as restrictive as those adopted by the City, said review and adoption shall be done within 120 days of the date the City provides the Village with copies of its ordinances. The City shall provide the Village with a written copy of all applicable City Rules, Regulations and Ordinances. The Village agrees that in using the City's central wastewater treatment facility, it shall at all times be in compliance with ordinances, rules, regulations and conditions which the City has already adopted and such future ordinances, rules, regulations, and conditions concerning wastewater treatment or amendments that may result from changes of MPCA State or Federal rules and regulations and that are uniformly applicable in the City and Village. Any such revisions or new requirements shall be adopted, and enforced by the Village within 120 days after the effective date of this agreement or of subsequent notice from the City of adoption of revisions or new requirements. The City and Village agree that the Village will update its ordinances, rules, regulations or conditions that will enforce the requirements of the City ordinances, rules, regulations, or conditions concerning wastewater treatment and amendments thereafter adopted by the City, and to adopt suitable penalties for the violation of any such ordinance rules, regulations, or conditions and to strictly enforce the same. This will include a sewer use ordinance as defined

in Minnesota Rules Part 7077.0105. This review and adoption shall be done within 120 days of the effective date of such revisions or new requirements.

SECTION IV - RESERVED CAPACITY

4.01. Limitation on Use - The total flow of sewage from the Village's sanitary sewer collection system to the City's central wastewater treatment plant shall not exceed the Flow and Loading Parameters for 124 ERU's, as shown by Table 4.01(a) without purchasing additional ERU capacity:

Table 4.01(a) Flow and Loading Parameters attributable to 124 ERU's

Parameter	Total Flow and Loading	Village Flow and Loading	City Flow and Loading
<b>Average Dry Weather Flow</b>	183,000 GPD	17,170 GPD	165,830 GPD
<b>C BOD</b>	725 lbs./day	68 lbs./day	657 lbs./day
<b>Total Suspended Solids</b>	830 lbs./day	78 lbs./day	752 lbs./day
<b>Phosphorus</b>	16.73 lbs./day	1.57 lbs./day	15.16 lbs./day
	(8.1 mg/L)	(8.1 mg/L)	(8.1 mg/L)
<b>Average Wet Weather Flow</b>	321,000 GPD	37,500 GPD	283,500 GPD
<b>Peak Hourly Wet Weather Flow</b>	625,000 GPD	62,900 GPD	562,100 GPD
<b>Peak Instantaneous Wet Weather Flow</b>	819,000 GPD	103,300 GPD	715,700 GPD

Table 4.01(b), below, represents the individual flow and loading metrics for a single ERU of the upgraded design capacity of the central waste water treatment plant after this 2011 improvement is completed. The design of the upgraded facility is based on a total design capacity of 1321 ERU's, of which the Village is initially reserving capacity based on 124 ERU's.

Table 4.01(b) Definition of the Flows and Loadings attributed to a single ERU.

<b>Flow and Loading Parameter</b>	<b>Daily Value per ERU</b>
Average Dry Weather Flow	138.53 GPD
C BOD	.5488 lbs./day
Total Suspended Solids	.6283 lbs./day
Phosphorus	.0127 lbs./day
Average Wet Weather Flow	243.00 GPD
Peak Hourly Wet Weather Flow	507.26 GPD
Peak Instantaneous Wet Weather Flow	833.06 GPD

The Flows and Loadings as reserved by the Village shall be as shown by Table 4.01(a) or until amended and agreed by both parties of this Agreement.

Actual Village and City Flows and Loadings will be determined by the Sampling and Testing provisions contained in Section 5.09 below.

If the Village exceeds these Flow and Loading Parameters a total of 4 or more times in a calendar year, the Village and City shall immediately negotiate to allow the purchase of additional capacity by the addition of ERU's as needed to meet the Flow and Loadings based on the average 4 highest laboratory test results exceeding the Villages total ERU capacity including any capacity purchases. Monthly values <50% or >150% shall be thrown out and will not be considered valid for this agreement.

The Capital cost of the 2011 WWTP upgrades per each additional ERU shall be the Total Project Cost divided by 1321, plus any annual accrued interest from the effective date of the of PFA loan at a rate equal to the average bond rate financing the improvements, or initiate a re-negotiation of this agreement.

Once additional reserve capacity is purchased by the Village pursuant to agreement or this Section 4.01, said reserve capacity may not be refunded, meaning that the Village cannot sell back reserve capacity to the City, unless by mutual written agreement.

4.02. Village Connections - The Village shall notify the City in writing within 30 days of its approval of a building permit or land use permit that will cause any change in the number of users on properties connected to its sanitary sewage collection system or when any user is connected to the sanitary sewer collection system in the Village or an existing user is permanently disconnected. The notice shall give the street address or location of each new connection or disconnection. The Parties agree that the City of Rushford may deny the connection of any non-residential user or discharge of trucked in wastewater.

The City reserves the right to limit the purchase of WWTP capacity by the Village to a total of 150 ERU's, as defined by Table 4.01(b). If a potential development situation creates a need for capacity above this limit, the City agrees to negotiate with the Village in good faith.

Any subsequent request from the Village for increases in Flows or Loadings beyond the flows and loadings generated by the initially reserved capacity shall be subject to the provisions of Section 4.01.

The parties acknowledge that there can be significant daily variation in the concentrations and mass loadings from normal domestic customers. The primary means of determination that the Village is within the allowable capacity will be as per Section 4.01. Should the Village monthly average discharge exceed any of the limits as set forth in Section 4.01, the City and Village shall jointly investigate the cause. If the exceedance is related to excessive infiltration/inflow or a non-domestic source, the Village shall develop a plan for corrective action and submit it to the City within 60 days. With the consent of the City, the Village may use additional capacity during this 60 day time period. The design parameters for the WWTP are as shown by Exhibit C, appended hereto for informational purposes only.

4.03. Discharge Limitations - The Parties shall comply with all regulations or ordinances now in effect or hereafter enacted by the City of Rushford or the State of Minnesota Pollution Control Agency or other regulating authority regarding unacceptable waste discharges into the wastewater treatment plant. If the sanitary sewage from the Village is found to not meet the requirements in existence, then written notice shall be given to the Village describing what improper

substance or substances are being delivered to the wastewater treatment plant. The Village shall forthwith determine the source of the improper substance or substances and eliminate the introduction of such substance into the City's central wastewater treatment plant by whatever means are necessary. The Village will not allow septage to be disposed of in the Village sanitary sewer collection system at any time without the prior written permission of the City (i.e., dumping station, or 'portable toilet vendors', etc.) The Village shall not allow any user whether, residential, non-residential or business entity from outside area shown by Exhibit A to discharge sewage into its sewer collection system without the prior written approval of the City. The Village agrees to provide the City a complete list of the current users' addresses or locations of connection within thirty (30) days following the execution of this amendment.

4.04. Restriction of Discharge - If any substance enters into the City's central wastewater treatment plant that causes or threatens to cause danger to or irreparable harm to the plant, then the City may immediately take whatever steps are necessary to remove such substance or to restrict the flow of wastewater from the Village as is necessary to remove the danger to the wastewater treatment plant. If the dangerous matter is determined to have come from the Village, then the Village shall be solely responsible for any costs of repair or cleanup, and any fines or penalties incurred, that the dangerous matter is determined to have caused. If the dangerous material came from the City, then the City shall be solely responsible for any costs of repair or cleanup, and any fines or penalties incurred.

The City anticipates that the MPCA will include a limitation on the mass and concentration of phosphorus in its effluent discharge. The Village shall prepare and implement a Phosphorus Management Plan, and agrees to adopt phosphorus limits on the influent to the WWTP from South Rushford, which are at least as restrictive as those adopted by the City of Rushford.

4.05. Inspection of Systems - The City may inspect, sample and test the concentration of contaminants including TSS, BOD, Phosphorus and Mercury components within the Village sanitary sewer system. Said inspection shall be conducted with a Village's designated MPCA S.D. licensed Operator at any time upon notice by phone call and follow up by e-mail to the Village. The Village may inspect the City's central wastewater treatment plant at any time with a City Official upon similar notice to the City. The costs of any inspection shall be paid by the party requesting the inspection. No inspection shall interfere with the regular operation or maintenance of the

facility being inspected. If the Village is shown to exceed any of the allowable contract limits then the total costs associated with inspection and testing shall accrue to the Village. If the Village exceeds any of the allowable contract limits either part may require the renegotiation of this contract

4.06. Plans and Specifications - The Village shall prepare and give to the City a copy of all plans and specifications for extensions of its collection system after the date of this agreement, said plans and specifications shall be provided to the City at least 30 days before construction begins. The City shall provide a copy of all plans and specifications describing any changes to the City's Central Wastewater Treatment Plant, created after the date of this agreement and its subsequent upgrades.

4.07 Maintenance Plan- The village shall prepare a Maintenance Plan for their collection system for describing the on-going maintenance actions and a schedule thereof for City review and approval. The Villages Maintenance Plan shall be submitted to the City within 60 days of signing this agreement. The City shall have 30 days thereafter to review the Village's Maintenance Plan and may require any necessary changes.

#### SECTION V - RATES AND CHARGES

5.01. Village Sewer Rate - As consideration for treatment of the South Rushford wastewater at the City's central wastewater treatment facility, the Village shall pay the City for use of the Wastewater Treatment Plant (WWTP) its proportionate share of the operation, maintenance and replacement cost of the WWTP. At the time of signing this will be based on the 124 ERU's for the Village and 1197 ERU's for the City, and will be adjusted to reflect any future capacity the Village secures. The Village payment will specifically exclude the portion of the sewer service charge attributable to the City collection system, and for bond costs the City incurred that are capital expenses attributable to the construction of the wastewater treatment prior to 1994. The costs of operating the Central Wastewater Treatment Plant shall be as defined by the City Auditor and as shown by the annual audit statement of the City's Sewer Enterprise Fund.

5.02. Annual Review of Unit Costs for O,M&R - An annual review of the sewer Operation, Maintenance and Replacement Fund costs shall be made in September at which time the City shall assemble, tabulate and distribute data in accordance with the following steps:

Step 1: In September, the City will tabulate the projected annual review requirements in a table format that clearly demonstrates which budget amounts are to be shared in proportion to flow by the WWTP users, and which amount is the sole responsibility of either party.

Step 2: The City will tabulate annual wastewater flow data for the WWTP for the immediately preceding 12 month period. The data shall be determined by the monthly flow monitoring and contain the following information:

Total Flow: In units of million gallons per year.

Flow from the Village: In units of million gallons per year.

Step 3: The annual budget costs shall be distributed based on Village's measured Flow to the Total measured flow as tabulated above.

Step 4: The Villages share of the Total O, M&R cost shall be:

Total O, M&R times the proportion of Village's Annual Flow/Total

The Cost Components shall be computed by applying the data assembled in Steps 1 through 3 of the formulas presented above. The City shall bill the Village monthly for a twelfth (1/12<sup>th</sup>) of the Village's Total Annual O, M&R cost.

Step 5: The City shall share copies of the above data with the Village by October 15th each year and the actual budgets or audits. The Village shall have access to the books and records of the WWTP at a reasonable time.

Step 6: With respect to the Village, the City will use the rates derived by the preceding steps for the following calendar year.

Step 7: The City shall reconcile the previous year's billings to the Village based upon the O,M&R costs shown by the City's Audited Sewer Enterprise Fund. Said reconciliation shall apply Steps 1 through 4 and determine any difference between amounts billed and the prorated share of cost incurred. Any difference shall be due and payable in full, by either party to the other by June 15<sup>th</sup> of the year following the annual audit year.

5.03. Increased Costs Due to Plant Upgrade or Regulatory Change - In the event, the WWTP is upgraded to meet current regulations, to comply with new regulations, or to provide reasonable system reliability, the Village shall share the costs of said upgrade on a pro-rated basis according to the Village's share of design capacity. The City and the Village agree that any improvements contemplated therein will become part of the Plant and will become the property of the City.

5.04. Payment for substances excluded by ordinance - Where any unreasonable, abnormal, harmful substances or gases, or substance otherwise excluded by the City's sewer use ordinance or State or Federal Regulations enter the City's central wastewater treatment facility through the Village's sewer collection system, the reasonable cost of necessary repairs or cleaning shall be billed to, and payable by, the Village in addition to other charges that are imposed by this agreement.

Where any unreasonable, abnormal, harmful substances or gases, or substance otherwise excluded by the City's sewer use ordinance or State or Federal Regulations enter the City's central wastewater treatment facility through the City's sewer collection system, the reasonable cost of necessary repairs or cleaning shall be billed to, and payable by, the City.

5.05. Village Capital Cost- It is anticipated that the City will spend approximately \$1,500,000 to upgrade the WWTP in 2011, to provide capacity to serve both the City and the South Rushford Sanitary Sewer Service Area, as depicted on Exhibit A. The final cost of the improvement is not known at the time this agreement is executed, but is estimated to be approximately \$1,500,000. The formula for computing the Village proportion of the expansion shall be as follows:

$$(Total\ Project\ Cost\ of\ upgrade) \times (Initial\ Percent\ of\ Village\ Contribution\ Use\ (which\ is\ 9.39\%)) = \\ Initial\ Village\ Contribution\ to\ Capital\ Cost\ of\ Upgrade$$

The Percent of Village Contribution Use, above, is determined by dividing the Village share of design reserved capacity ERU's (124) by the total design capacity ERU's (1321).

5.06. The cost of the expansion shall include the City's costs for the following:

- 1) Final Cost of construction WWTP Improvement Project
- 2) Cost of engineering WWTP Improvement Project
- 3) Legal, including bond fees WWTP Improvement Project

- 4) Accounting and audit costs WWTP Improvement Project
- 5) Equipment and supplies acquired, pursuant to WWTP Improvement Project
- 6) Miscellaneous costs attributable to WWTP Improvement Project

5.07. Amount of Village Use - The percent of Village use of the plant shall be determined by how much use of the design capacity of the plant the Village acquires. The terms of this agreement specify that the Village has reserved the right to use an initial capacity equivalent to 124 ERU's as defined in Table 4.01(b).

5.08. Public Facilities Authority Loan/Bond Payment - The City received a Public Facilities Authority Loan (PFA) for upgrade of the WWTP, in the amount of \$1,414,400. The Village shall participate with the City in the PFA loan. The Village's share of the loan/bond payment shall be the same as the percent of Village costs that are included in the Total Project Cost. The City shall provide the Village with a copy of the PFA Loan amortization schedule. The City shall provide the Village with a mailed reminder notice that the payment is due on the PFA Loan 45 days prior to the payment date. The Village share of PFA Bond Payments will be payable to the City 15 days prior to the payment date specified by the lender's amortization schedule. The Village's share shall include a prorate share of any set-aside amounts required by the PFA to guarantee against nonpayment of user fees. These payments are in addition to the Rate, Usage, Operation and Maintenance costs paid by the Village.

5.09. Monthly Monitoring

A. To measure the volume of sewage discharged from the Village into the City's central wastewater treatment facility, an accurate sewage meter acceptable to the City shall be provided by the Village and maintained by the Village at the connection point to the City's central wastewater treatment system. The purpose of the meter is to accurately measure the Village sewage at point before the sewage is combined. This metering device shall be equipped with a remote registering and recording mechanism housed in a suitable structure, approved by the City, which indicates and continuously records the rate of flow, and which continuously measures the quantity of sewage passing through the meters. The flow data shall be continuously transmitted to the City's central wastewater treatment plant control building.

B. Both parties may maintain at their respective cost, automatic, flow paced, composite sampling devices in such manner as to ensure proper sampling of sewage that will enable the parties to track the Village's wastewater for compliance with Section 4.01 and for billing purposes and to allow for reconciliation of Village testing data to that of City testing data. The City's meter shall be the meter monitoring the total flow coming into the central treatment facility. Wastewater samples may be collected, from the Village's flow, by the City at least once a month and analyzed for BOD, TSS or other parameters required by the Minnesota Pollution Control Agency. The sample collection day shall be consistent with the City's sampling day as per the NPDES permit. Each party's wastewater samples shall be analyzed by an independent laboratory and paid for by the respective party. Any analytic results lower than 50% or higher than 150% of the previous year's average monthly loading for that parameter shall be discounted and the average loading rate shall be substituted. The parties shall exchange all sample reports with each other.

C. The City shall provide the Village with monthly reports of the WWTP operations. Included shall be: a signed copy of the Discharge Monitoring Report as submitted to the MPCA; a daily tabulation of Total, Village, and City Flows treated at the WWTP; a report of any testing analysis conducted on Village or WWTP sewage; a tabulation of Total, Village and City contributions of TSS and BOD shown in pounds per day and mg/L.

D. In the event of an upset or other significant event occurring at the WWTP the City shall advise the Village of said occurrence by telephone call and e-mail to the Clerk of the Village.

5.10. Annual Audit - The financial records concerning the operation of the central wastewater treatment plant shall be audited annually by the City and a copy of each audit will be provided to the Village.

## SECTION VI – DISPUTES

6.01. Local Negotiations - In the event of any dispute concerning this agreement or violation of the terms and conditions of this agreement, the aggrieved party, after first giving reasonable written notice and affording reasonable opportunity, which shall not exceed 120 days, to correct the same, may give notice of a request for local negotiations and make a written election appointing two representatives to meet with two (2) representatives from other party; the other party shall within ten (10) days thereafter appoint two (2) representatives. The

appointed representatives from each party shall schedule a meeting to discuss the dispute within 10 days of all representatives being appointed. Upon the failure to timely appoint representatives as required herein, the complying party or either party in the event of the failure to appoint the required representatives may in writing request the Judge of the District Court of Fillmore County to appoint the necessary representatives. The parties agree to abide by the appointment of the Court.

6.02. Jurisdiction of Disputes - If local negotiations cannot resolve a dispute, jurisdiction to resolve disputes is agreed to be vested in the Fillmore County District Court.

#### SECTION VII - TERM OF AGREEMENT

7.01. Beginning and Ending - This agreement shall be for a term of twenty (20) years beginning the date the agreement is signed by both the City and Village. This agreement shall end at midnight on the day 20 years after the last date this agreement is signed. If no changes, amendments or modifications of this agreement have altered the ending date of this Agreement before the 19<sup>th</sup> anniversary of the joint signing of this Agreement, the appointed sub-committee's from the City and the Village shall meet to establish a plan for the revision and updating of this Agreement based on the conditions and other factors at that time.

City grants permission and authority to the Village to continue the interconnection with the City's central wastewater treatment plant as long as the Village is in compliance with all terms and conditions of this agreement or until the Agreement is terminated as otherwise provided herein.

7.02. Termination Costs - If the Village terminates this agreement before 20 years, the Village shall be responsible for their full share of the Capital Costs for the 2011 Wastewater Improvement Project, for the number of years remaining. The component units of the Wastewater Treatment Facility that are anticipated to be constructed under this agreement will have a design life of at least twenty (20) years, provided there is no change in the City's NPDES Permit. If the Village utilizes the facility as intended by this agreement but does not continue for the full 20 years possible, there will be no refund of the Village investment in the plant expansion. If the Village discontinues the use of the City Wastewater Treatment Plant after the initial 20 year term, the Village will no longer be responsible for any capital costs or O,M&R costs for the City Wastewater Treatment Plant thereafter. The agreed reason for no refund of capital contribution

by the Village is to compensate the City for operating a larger wastewater treatment plant than would otherwise be required if not for the Village needs.

#### SECTION VIII MISCELLANEOUS TERMS

- 8.01. Village Indemnification - The Village has agreed by the terms of this agreement to own, operate and maintain at no expense to the City its entire sewer collection system from the points within South Rushford to delivery at points of connection with the City's central wastewater treatment plant. In addition, the Village does hereby covenant and agree to hold harmless, protect, indemnify and defend, including the payment of reasonable attorney fees, the City and all of its officers, agents, employees and servants from any and all claims arising from, or that may be claimed to arise from, the operation, maintenance, repair or existence of the South Rushford sewer collection system.
- 8.02. City Indemnification - The City does hereby covenant and agree to hold harmless, protect, indemnify and defend, including the payment of reasonable attorney fees, the Village and all of its officers, agents, employees and servants from any and all claims arising from, or that may be claimed to arise due to the City's actions from, the operation, maintenance, repair or existence of the City's central wastewater treatment plant. In a similar manner Village does hereby covenant and agree to hold harmless, protect, indemnify and defend, including the payment of reasonable attorney fees, the City and all of its officers, agents, employees and servants from any and all claims arising from, or that may be claimed to arise due to the Village's actions.
- 8.03. Amendments - Either party to this agreement may propose an amendment to this agreement at any time. Any amendment proposed shall be given to the other party in writing together with a written explanation of the proposal and its purpose. Each side pledges to be cooperative in the interpretation of this agreement and in the consideration of any proposed amendment. No amendment will be effective until it has been set forth in writing, approved by the respective city Councils, and has been executed by the proper officials for each city.
- 8.04. Assignment - Neither party to this agreement can assign its rights or duties to any other party or person without first obtaining the written consent of the other party to this agreement.
- 8.05. Severability - The provisions of this agreement shall be severable and the invalidity of any agreement or any part hereof shall not void this agreement.

IN WITNESS WHEREOF the parties hereto have caused this instrument consisting of sixteen (16) typed pages and EXHIBITS "A", "B", and "C" to be executed pursuant to resolutions by the respective councils and have caused the respective seals to be affixed and that agreement is effective as of the date below signed.

Dated: Nov 28, 2011

CITY OF RUSHFORD

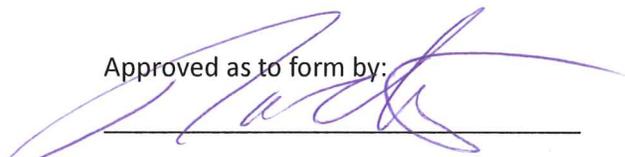
By: 

Its Mayor

By: 

Its City Clerk

Approved as to form by:



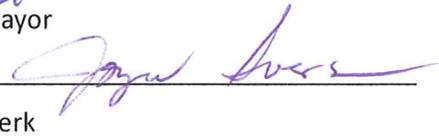
City Attorney

Dated: Nov 28, 2011

CITY OF RUSHFORD VILLAGE

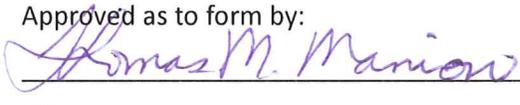
By: 

Its Mayor

By: 

Its Clerk

Approved as to form by:



Village Attorney



Jun 3, 2009 43°47'48.28"N 91°45'11.71"W elev. 736 ft



  
 SCALE IN FEET

REV.DATE: 03/03/2011



**EXHIBIT 'A'**  
**SOUTH RUSHFORD**  
**SANITARY SEWER SERVICE AREA**  
**CITY OF RUSHFORD VILLAGE, MN**

02/21/2011	Project #
Drawn: SRS	1525-031.081
Checked: JFK	Sheet 1 OF 1

115 6th ST S. - P.O. Box 2076 La Crosse, Wisconsin, 54602 - Phone: (608) 782-3130 Fax: (608) 784-6611

\\SR\Rushford Village, MN\2011\1525-031 Wastewater Contract\Drawings\San Sewer Service Area.dwg. 3/3/2011 8:14:07 AM

**EXHIBIT "C": RUSHFORD WASTEWATER TREATMENT PLANT**

**TABLE 4.3 - 2030 DESIGN FLOW WORKSHEET (Based on MPCA Tech. Review # 5.30 Table 2)**

		Base Year 2010	Design Year 2030
<b>(A) For determination of peak hourly wet weather design flows (PHWW) <sup>(1)</sup>:</b>			
1	Present peak hourly dry weather flow	245,000	245,000
2	Present peak hourly flow during high ground water period (no runoff)	288,000	288,000
3	Present peak hourly dry weather flow [same as (1)]	-	245,000
4	Present peak hourly infiltration	= 43,000	43,000
5	Present hourly flow during high ground water period and runoff at point of greatest distance between Curves Y and Z	432,000	432,000
6	Present hourly flow during high ground water (no runoff) at same time of day as (5) measurement	-	230,000
7	Present peak hourly inflow	= 202,000	202,000
8	Present peak hourly inflow adjusted for a 5-year 1-hour rainfall event	202,000	202,000
9	Present peak hourly infiltration [same as (4)]	43,000	43,000
10	Peak hourly infiltration cost effective to eliminate	-	0
11	Peak hourly infiltration after rehabilitation (where rehabilitation is cost effective)	= 43,000	43,000
12	Present peak hourly adjusted inflow [same as (8)]	202,000	202,000
13	Present peak hourly inflow cost effective to eliminate	-	0
14	Present peak hourly inflow after rehabilitation (where rehab is cost effective)	= 202,000	202,000
15	Population increase 304 @ 75 gpcd x 2.5 (peaking factor) <sup>(3)</sup>	0	57,000
16	Peak hourly flow from planned industrial increase	0	37,500
17	Estimated peak hourly flow from future unidentified industries	0	20,000
18	Peak hourly flow from other future increases	0	20,000
19	Peak hourly wet weather design flow [(1)+(11)+(14)+(15)+(16)+(17)+(18)] <sup>(1)</sup>	= 490,000	625,000
		Gallons per day	Gallons per day
<b>(B) For determination of peak instantaneous wet weather design flow (PIWW):</b>			
20	Peak hourly wet weather design flow [same as (19)] <sup>(1)</sup>	490,000	625,000
21	Present peak hourly inflow adjusted for a 5-year 1-hour rainfall event [same as (8)] <sup>(6)</sup>	-	202,000
22a	Present hourly flow during high ground water period and runoff at point of greatest distance between Curves Y and Z during 25 yr storm	612,000	612,000
22b	Present hourly flow during high ground water (no runoff) at same time of day as (22b) measurement	216,000	216,000
22	Present peak inflow adjusted for a 25 year 1-hour rainfall event <sup>(7)</sup>	+	396,000
23	Peak instantaneous wet weather design flow [(20)-(21)+(22)]	= 684,000	819,000
		Gallons per day	Gallons per day
<b>(C) For determination of average dry weather design flow (ADW):</b>			
24	Present average dry weather flow <sup>(2)</sup>	129,000	129,000
25	Population increase 304 @ 75 gpcd x 2.5 (peaking factor) <sup>(3)</sup>	0	23,000
26	Average flow from planned industrial increase (10%) <sup>(8)</sup>	+	0
27	Estimated average flow from future unidentified industries (5%) <sup>(9)</sup>	+	0
28	Average flow from other future increases (5%) <sup>(10)</sup>	+	0
29	Average dry weather design flow [(24)+(25)+(26)+(27)+(28)]	= 129,000	183,000
		Gallons per day	Gallons per day
<b>(D) For determination of average wet weather design flow (30-day average for mechanical plants and 180-day average for controlled discharge ponds)(AWW):</b>			
30a	Existing maximum monthly average flow <sup>(4)</sup>	260,000	260,000
30	Present average dry weather flow [same as (24)]	129,000	129,000
31	Average infiltration & Inflow after rehabilitation (where rehabilitation is cost effective) <sup>(9)</sup>	+	131,000
32	Average inflow after rehabilitation (where rehabilitation is cost effective)	+	0
33	Population increase 304 @ 75 gpcd x 2.5 (peaking factor) <sup>(3)</sup>	+	0
34	Average flow from planned industrial increase (10%) <sup>(8)</sup>	+	0
35	Estimated average flow from future unidentified industries (5%) <sup>(9)</sup>	+	0
36	Average flow from other future increases (5%) <sup>(10)</sup>	+	0
37	Average wet weather design flow [(30)+(31)+(32)+(33)+(34)+(35)+(36)]	= 260,000	321,000
		Gallons per day	Gallons per day
<b>(E) For determination of annual average design flow (AA):</b>			
38	Present average flow	148,000	148,000
39	Population increase 304 @ 75 gpcd x 2.5 (peaking factor) <sup>(3)</sup>	0	23,000
40	Average flow from planned industrial increase (10%) <sup>(8)</sup>	+	0
41	Estimated average flow from future unidentified industries (5%) <sup>(9)</sup>	+	0
42	Average flow from other future increases (5%) <sup>(10)</sup>	+	0
43	Annual average design flow [(38)+(39)+(40)+(41)+(42)]	= 148,000	202,000

Notes: All values are in units of gallons per day

(1) Peaking Factor used of 3.5 from Figure 1 - 10 States Standards 2004 Edition

(2) Based on average of daily dry weather flows (minimum six days in a row) from May-Oct, 2004-2008

(3) See population data Table 4.1 in Appendix A

(4) Inflow & Infiltration based upon difference of maximum average monthly flow - June 2004

(5) Average annual flow from January 2004 to December 2008

(6) Average of all 5-year rainfall events 2004-2008 based on data from State Climatology Office

(7) Average of all 25-year rainfall events 2004-2009 based on data from State Climatology Office

(8) Based on assumed increase of 10% over 20 years of AA

(9) Based on assumed increase of 5% over 20 years of AA

(10) Based on assumed increase of 3% over 20 years of AA

## WASTEWATER TREATMENT CONTRACT

THIS CONTRACT made and entered into this 14<sup>th</sup> day of SEPTEMBER, 1994, by and between the City of Rushford, a municipal corporation within the County of Fillmore, State of Minnesota, hereinafter called the "City", and the City of Rushford Village, a municipal corporation within the County of Fillmore, State of Minnesota, hereinafter called the "Village". This contract is authorized by Minnesota Statutes Sections 116.19, 412.211 and 412.221 and Chapter 1, Section 1 of the Rushford City Charter to accomplish the purposes of Chapter 115 of the Minnesota Statutes concerning water pollution control.

### SECTION I - RECITALS

1.01. The City currently owns and operates a wastewater treatment facility that is licensed by the Minnesota Pollution Control Agency for the treatment of residential, commercial, and industrial sewage.

1.02. The Village is currently without a central wastewater treatment facility or public sanitary sewer collection system. The residents of the Village presently treat their wastewater through individual on-site systems.

1.03. Because of pollution problems caused by its current individual on-site systems, the Village, on behalf of South Rushford, seeks to terminate its dependence on its present individual systems. The Village desires to construct and maintain a sanitary sewer collection system and to connect said system to the City's wastewater treatment facility.

1.04. The City is presently operating its wastewater treatment facility at near design capacity. While the capacity of the system will meet the City's projected needs for the foreseeable future, the present capacity is insufficient to meet the estimated additional sewage load requirements for South Rushford in addition to the anticipated needs of the City. The Village's desire to construct and connect a sanitary sewer collection system from the South Rushford area to the City's wastewater treatment facility will require expansion of the biological treatment capacity of the wastewater treatment plant. The City will also need additional hydraulic capacity for infiltration and inflow and will need to improve sludge processing to meet new regulations.

1.05. By Agreement dated October 22, 1987, the City and Village had made certain provisions for the Village to construct and maintain a water distribution and sanitary sewer collection system and to connect those systems with the City's facilities. It is now agreed that it is in the best interests of the City and the Village that the Agreement dated October 22, 1987 be now and forever terminated and be without any legal effect.

1.05. The intent of this contract is to describe the means and methods by which the Village will be authorized to connect a sanitary sewer collection system from South Rushford to the City's wastewater treatment plant.

1.07. This contract shall be effective when signed by all parties hereto. The twenty (20) year term of the contract shall

★

2/20/14

begin when the City Council of the City of Rushford authorizes the engineers for the City to prepare plans and specifications for the expansion of the existing wastewater treatment plant. If the City has already ordered plans for an expansion to the wastewater treatment plant in anticipation of this contract when this is signed, then the contract term shall begin when this contract is signed.

\*

SECTION II - DEFINITIONS

2.01. Average daily flow - the total measured volume recorded by a properly operating and calibrated sewage meter or by some other method or procedure acceptable to both parties hereto in a given period of time divided by the number of days included in that period.

2.02. City - means the City of Rushford, its Council, officials, employees, and agents.

2.03. Septage - the wastewater or contents of septic or holding tanks, dosing chambers, seepage beds, seepage pits, seepage trenches, privies, portable restrooms, or RV or Trailer holding tanks.

2.04. Sewer System - pipeline or conduits, pumping stations, holding tanks, force mains and all constructions, devices, and appliances appurtenant thereto used for conducting sewage to a wastewater treatment plant.

2.05. South Rushford - that certain area within the Village commonly known locally as South Rushford and defined in Rushford Village Ordinance No. 3 as the South Rushford Water District described as follows:

NE1/4

N1/2 SE1/4

SW1/4 SE1/4

E1/2 SW1/4

SE1/4 NW1/4, all in Section 23,

NW1/4, Section 24, all being in Township 104 North,

Range 8 West, Fillmore County, Minnesota.

See map attached hereto as Exhibit A.

2.06. User - persons or parties whose property is connected to the sanitary sewer system of either the City or the Village.

2.07. Village - means the City of Rushford Village, its Council, officials, employees and agents.

2.08. Wastewater or Sewage - The water carried waste from residences, public buildings, institutions, businesses, industries, and other buildings, including the excrementitious or other discharge from the bodies of human beings.

2.09. Wastewater treatment plant or facility - that facility owned and operated by the City for the treatment, stabilizing and disposal of sewage including the grounds upon which it is located, the buildings and structures enclosing the treatment facilities, all goods and supplies used therein, all equipment, appliances, tools and machinery used therein, all leased equipment used therein, and all parts of the plant or other property that carry or allow the flow of or receive sewage, its by-products or results until the discharge is entirely disposed of.

### SECTION III - TERM OF CONTRACT AND GENERAL PROVISIONS

3.01. Purpose In consideration of the agreement and covenants set forth in this contract, the Village agrees to construct and thereafter maintain and operate a sanitary sewer collection system, and the City grants permission and authority to the Village to connect said collection system to the City wastewater treatment plant. The Village's sanitary sewer collection system shall convey only sewage derived from South Rushford.

3.02. City Rules and Regulations The Village agrees that in using the City's wastewater treatment facility, it shall at all times be in compliance with ordinances, rules, regulations and conditions which the City has already adopted and such future ordinances, rules, regulations, and conditions concerning wastewater treatment or amendments that may result from changes of MPCA rules and regulations and that are uniformly applicable in the City and Village. All ordinances adopted by either the City or the Village shall comply with the requirements of the Minnesota Pollution Control Agency or other entities that may have supervisory authority over the wastewater treatment plant.

3.03. Village Rules and Regulations The Village agrees to enact ordinances, rules, regulations or conditions within ninety (90) days after the plans and specifications are ordered that will enforce the requirements of the City ordinances, rules, regulations, or conditions concerning wastewater treatment and amendments thereafter adopted by the City within sixty (60) days after being notified by the City of such adoption, and to adopt suitable penalties for the violation of any such ordinance,

rules, regulations or conditions, and to strictly enforce the same. This will include a sewer use ordinance as defined in Minnesota Rules Part 7077.0105.

#### SECTION IV - RESERVED CAPACITY

4.01. Limitation on Use. The total flow of sewage from the Village's sanitary sewer collection system to the City's wastewater treatment plant shall not exceed 26,000 gallons per day, 44 pounds biochemical oxygen demand per day, or 52 pounds total suspended solids per day. These are the per day quantities produced by the approximate equivalent of 104 residential units. The Village shall notify the City in writing within ten (10) days after any user is connected to the sanitary sewer collection system in the Village. The notice shall give the street address or location of each connection. ✱

4.02. Discharge Limitations. The Village shall comply with all regulations or ordinances now in effect or hereafter enacted by the City of Rushford or the State of Minnesota Pollution Control Agency or other regulating authority regarding unacceptable waste discharges into the wastewater treatment plant. If the sanitary sewage from the Village is found to not meet the requirements in existence, then written notice shall be given to the Village describing what improper substance or substances are being delivered to the wastewater treatment plant. The Village shall forthwith determine the source of the improper substance or substances and eliminate the introduction of such substance into the City's wastewater treatment plant by whatever means are necessary. The Village will not allow septage to be

disposed of in the Village sanitary sewer collection system at any time without the prior written permission of the City.

4.03. Restriction of Discharge. If any substance enters into the City's wastewater treatment plant that causes or threatens to cause danger to or irreparable harm to the plant, then the City may immediately take whatever steps are necessary to remove such substance or to restrict the flow of wastewater from the Village as is necessary to remove the danger to the wastewater treatment plant. If the dangerous matter is determined to have come from the Village, then the Village shall be solely responsible for any costs of repair or cleanup that may result. If the dangerous matter is determined to have come from the City, then the City shall be solely responsible for any costs of repair or cleanup.

4.04. Inspection of Systems. The City may inspect the Village sanitary sewer system at any time upon written notice to the Village. The Village may inspect the City wastewater treatment plant at any time upon written notice to the City. The costs of any inspection shall be paid by the party requesting the inspection. No inspection shall interfere with the regular operation or maintenance of the facility being inspected.

4.05. Plans and Specifications.

A. The Village shall prepare and give to the City a copy of all plans and specifications for the sanitary sewer collection system for South Rushford. A copy of any plans that change or add extensions to the original system after the date of this agreement shall be given to the City before such changes are constructed.

B. The Village may request and be given a copy of all plans and specifications for the City wastewater treatment plant, together with copies of all plans for any changes or additions to the plant.

#### SECTION V - RATES AND CHARGES

5.01. Village Sewer Rate. As consideration for treatment of the South Rushford wastewater at the City's wastewater treatment facility, the Village shall pay to the City a rate equal to the portion of the sewer service charge that City sewer users pay for the operation of the wastewater treatment plant. The Village share of charges shall not include the portion of the sewer service charge attributable to the City collection system or for capital expenses attributable to the construction of the wastewater treatment facility.

5.02. Payment for substances excluded by ordinance. Where any unreasonable, abnormal, harmful substances or gases, or substance otherwise excluded by the City's sewer use ordinance enter the City's wastewater treatment facility through the Village's sewer collection system, the reasonable cost of necessary repairs or cleaning shall be billed to, and payable by, the Village in addition to other charges that are imposed by this contract.

5.03. Payment of Plant Cost.

A. At the time this contract is executed, the City's share of the cost of its existing wastewater treatment plant is \$75,488.00. The depreciation taken to date is \$39,630.00. The resulting net cost of the plant at this time is \$35,858.00. It is

hereby agreed that the Village is reserving the right to share in the use of the existing plant hereafter. The Village shall contribute \$5,297.00 to the City for this use. Payment shall be made upon execution of this contract.

B . It is anticipated that the City will increase the capacity of the wastewater treatment plant to provide capacity to serve both the City and South Rushford. The cost of the expansion is not known at the time this contract is executed, but is estimated to be approximately \$820,000.00. The formula for computing the Village proportion of the expansion shall be as follows:

Cost of expansion X Percent of Village use = Village contribution

The percent of Village use shall be determined by using the Village share of design capacity for flow, biochemical oxygen demand (BOD), and total suspended solids (TSS) and applying these factors to a unit-by-unit cost breakdown for the wastewater treatment facility improvements and additions.

C. The cost of the expansion shall include the following:

- (1) Cost of land used for expansion
- (2) Cost of construction
- (3) Cost of engineering
- (4) Legal, including bond fees
- (5) Staff time involved in expansion
- (6) Accounting and audit costs
- (7) Equipment and supplies acquired
- (8) Miscellaneous costs attributable to expansion

D. The percent of Village use of the plant shall be determined by how much use of the design capacity of the plant the Village acquires. The terms of this contract agree that the Village has reserved the right to use 26,000 GPD, which includes a maximum of 44 pounds biochemical oxygen demand (BOD) per day and 52 pounds total suspended solids (TSS) per day of wastewater.

E. (1) Payment schedule. The payment for the Village's share of any expansion, improvement or renovation of the City's wastewater treatment plant, estimated to be \$74,319.53, shall be as follows: \$40,000.00 shall be paid to the City five (5) days after construction starts on expansion of the existing City wastewater treatment plant and the balance shall be paid to the City when the plant improvement project is certified by the City Engineers as being fifty (50) per cent complete. The total amount of Village contribution shall be adjusted when all costs of the initial improvement are totaled after construction is complete. Any added payments or refunds shall be made within sixty (60) days after the amount is determined by the engineers for the project.

(2) Grant funds. If the Village does not receive a Small Cities Grant for the Village collection system in South Rushford, the Village shall have the option to withdraw from the obligation of this contract to share in the City's wastewater plant improvement costs by submitting a written notice of such withdrawal within ten (10) days of receiving notice that grant funds have not been awarded.

(3) Public Facilities Authority Loan. If a joint Public

Facilities Authority Loan (PFA) is possible at a better rate of interest for both the City and the Village than is available by applying separately, the Village shall have the opportunity to participate with the City in a PFA loan. The Village share of the loan payment shall be the same as the percent of Village costs that are included in the total of the joint PFA loan.

5.04. Monthly Billing.

A. To measure the volume of sewage discharged from the Village into the City's wastewater treatment facility, an accurate sewage meter shall be attached and maintained at the connection point. The metering device shall be equipped with a remote registering and recording mechanism housed in a suitable structure which indicates and continuously records the rate of flow, and which continuously measures the quantity of sewage passing through the meter. The flow data shall be continuously transmitted to the City's wastewater treatment plant control building.

B. The Village will provide the sewage meter at its own expense and shall maintain the meter in good working condition at all times. The flow metering facility shall include provisions for adding an automatic sampler.

C. The type and location of the sewer meter and all related plans and specifications shall be subject to approval by the City.

D. Reading of the flow meter shall be made by the City. Billings by the City shall be mailed to the Village, and the Village shall submit payment within thirty (30) days of the date

of the receipt of the billing. The Village shall pay a delinquency charge on outstanding balances not paid within the prescribed time. The delinquency charge to be paid by the Village on the outstanding balance not paid according to the terms of this section shall be the same as that paid by any other City customer of the sanitary sewer system and wastewater treatment plant.

E. Calibration and/or accuracy tests. The City may perform, upon reasonable written notice to the Village, calibration or accuracy tests of the meter at such times as the City engineer determines advisable. The cost of one such accuracy test per year and any retest if the meter is found inaccurate shall be paid for by the Village upon submission of a statement by the City to the Village. If the meter is found to be inaccurate, the City engineer shall provide an adjustment of charges for the period before the error is found which shall be paid or refunded with the next billing.

5.05 Annual Audit. The financial records concerning the operation of the wastewater treatment plant shall be audited annually by the City and a copy of each audit will be provided to the Village.

#### SECTION VI - DISPUTES

6.01. Arbitration. In the event of any dispute concerning this contract or violation of the terms and conditions of this contract, the aggrieved party, after first giving reasonable written notice and affording reasonable opportunity to correct the same, may submit the grievance to a Board of Arbitration

which shall be created as follows: The aggrieved party shall give notice of arbitration and make a written election appointing a referee upon the other party; the other party shall within ten (10) days thereafter appoint a second referee; the two (2) referees shall within ten (10) days appoint a third referee. Upon the failure to timely appoint a referee as required herein, the complying party or either party in the event of the failure to appoint the third referee, may in writing request the Judge of the District Court of Fillmore County to appoint the referee required. The parties agree to abide by the appointment of the Court.

The details of the dispute or violation shall be submitted in writing to the three (3) referees within 20 days after their appointment. The three referees shall thereafter set a time and place for a hearing and give notice to the parties. The parties may appear and be represented by counsel. Following the hearing, the referees shall render their findings and decision in writing; a majority decision shall be binding on the parties. Each party shall pay the compensation of the referees appointed by it and one-half of the compensation of the third referee. The arbitration process shall be completed and the decision made within 120 days after one party requests arbitration.

6.02. Appeals. The decision of the arbitrators may be appealed to a Court of competent jurisdiction by either party in accordance with Chapter 572 of the Minnesota Statutes.

#### SECTION VII - TERM OF CONTRACT

7.01. Beginning and Ending. This contract shall be for a

term of twenty (20) years beginning on the date the City orders plans and specifications prepared for the expansion of the existing wastewater treatment plant. This contract shall terminate at midnight on the day 20 years after the expansion plans are ordered. If the Village does not join in using and paying for the expanded plant at the time of construction, it may do so anytime within five years after completion of construction of the expanded wastewater treatment plant but it is agreed that the cost to the Village in doing so will be based upon the original construction cost to the City of the expansion without any credit for depreciation and the Village shall reimburse the City for interest paid by the City for the share of the wastewater treatment plant hereby reserved for the Village in this contract. The payment shall be made in full when the Village's sanitary sewer collection system is connected to the City's wastewater treatment facility but before any sewage is transported to the City's facility.

7.02. Extension. Upon written request by the Village and upon such terms and conditions as are agreeable to the parties, this contract may be extended for an additional ten (10) years. Notice of the Village's desire to extend this contract shall be given in writing to the City not less than one year prior to the final date of this contract. If either the City or the Village desires any changes in this contract, a copy of the proposed changes shall be submitted to the other party not less than one year prior to the final date of this contract. Any changes requested by either party shall be settled before this contract

is extended.

#### TERMINATION

8.01. Termination Date. The termination date of this contract shall be midnight on a date twenty (20) years after the date when the term of this contract begins according to Section 1.07 herein unless extended in accordance with Section 7.02 herein.

8.02. Termination Costs. The wastewater treatment facility that is anticipated to be constructed by this contract will have a design life of twenty (20) years. If the Village utilizes the facility as intended by this contract but does not continue for the full 20 years possible, there will be no refund of the Village investment in the plant expansion. Likewise, if the Village abandons the plant after the initial 20 year term, the Village will no longer be responsible for any costs incurred to operate and maintain the plant thereafter. The agreed reason for no refund of capital contribution by the Village is to compensate the City for operating a larger wastewater treatment plant than would otherwise be required if not for the Village needs.

#### MISCELLANEOUS TERMS

9.01. Village Indemnification. The Village has agreed by the terms of this contract to own, operate and maintain at no expense to the City its entire sewer collection system from the points within South Rushford to delivery at points of connection with the City's wastewater treatment plant. In addition, the Village does hereby covenant and agree to hold harmless, protect, indemnify and defend, including the payment of reasonable

attorney fees, the City and all of its officers, agents, employees and servants from any and all claims arising from, or that may be claimed to arise from, the operation, maintenance, repair or existence of the South Rushford sewer collection system.

9.02. City Indemnification. The City does hereby covenant and agree to hold harmless, protect, indemnify and defend, including the payment of reasonable attorney fees, the Village and all of its officers, agents, employees and servants from any and all claims arising from, or that may be claimed to arise from, the operation, maintenance, repair or existence of the City's wastewater treatment plant.

9.03. Amendments. Either party to this contract may propose an amendment to this contract at any time. Any amendment proposed shall be given to the other party in writing together with a written explanation of the proposal and its purpose. Each side pledges to be cooperative in the interpretation of this contract and in the consideration of any proposed amendment. No amendment will be effective until it has been set forth in writing, approved by the respective City Councils, and has been executed by the proper officials for each city.

9.04. Assignment. Neither party to this contract can assign its rights or duties to any other party or person without first obtaining the written consent of the other party to this contract.

9.05. Severability. The provisions of this contract shall be severable and the invalidity of any provision or part thereof

shall not void this contract or any part hereof.

IN WITNESS WHEREOF the parties hereto have caused this instrument consisting of 17 typed pages to be executed pursuant to resolutions by the respective councils and have caused the respective seals to be affixed and that contract is effective as of the date above written.

Dated: Sept 14, 1994

CITY OF RUSHFORD

CITY OF RUSHFORD VILLAGE

By: *J. Bunker*  
Its Mayor

By: *Donn Ramsey*  
Its Mayor

By: *Kathy Zacher*  
Its City Clerk

By: *Joan Brown*  
Its Clerk

Approved as to form by:

Approved as to form by:

*Dale Harold*  
City Attorney

*Jane Schultz*  
Village Attorney