

WATER AND SEWER REIMBURSEMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the City of Republic, Missouri, a municipal corporation, hereinafter referred to as the "City," and the Greene County Reorganized School District No. 3, hereinafter referred to as "Republic R-III Schools."

WHEREAS, Republic R-III Schools is currently the owner of certain real property in the City of Republic, Greene County, Missouri, which is slated for immediate development as a new high school. The proposed high school lies east of Missouri State Highway ZZ and south of Missouri State Highway M and is currently in the infrastructure design approval process from the City for the development of the property, (hereinafter "High School"); and

WHEREAS, the City, and Republic R-III Schools desire to create a plan for the provision of adequate water and sewage services to the area designated as the service areas illustrated in Exhibit "A", by construction of water and sewer mains both on and off the property (hereinafter "the Project"); and

WHEREAS, Republic R-III Schools will design and construct the Project, according to plans and specifications approved by the City, and upon completion, inspection and approval by the City, will deed, convey and assign all right, title, interest and possession of the project to the City at no charge, except as otherwise set forth herein; and

WHEREAS, the City shall thereafter collect connection fees and, if applicable, interest, for the privilege of connecting or utilizing the water and sewer mains which shall be reimbursed to Republic R-III Schools.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Limitation of Agreement: Except as herein provided, Republic R-III Schools shall, at its sole cost and expense design and install all the public improvements, including street, sidewalk, storm water, municipal water and sanitary sewer facilities necessary within the High School.
2. Incorporation of Documents: The following Exhibits, attached hereto, are fully incorporated herein as express terms and conditions of this Agreement:

EXHIBIT A - Project and Service Area Map

EXHIBIT B – Preliminary project cost and connection fee estimates.

EXHIBIT C – High School Municipal Water and Sanitary Sewer Project Description (Plans and Specifications of the Project to be incorporated by Addendum after final approval by the Public Works Director).

EXHIBIT D - Certification of Project Costs (to be incorporated by Addendum after final approval by the Public Works Director).

EXHIBIT E - Public Works Director's Order to Implement the Republic R-III Schools Connection Fees (to be incorporated by Addendum after final approval by the Public Works Director).

3. General Reimbursement and Cost Arrangement: Recognizing that the Municipal Water and Sanitary Sewer Mains contemplated within this Agreement will serve in a regional capacity, the parties agree to a reimbursement arrangement in the manner detailed herein.
 - a. The cost to construct the municipal water and sanitary sewer shall be divided into two categories:
 - i. Costs proportionate to the capacity of the water and sewer mains to serve the High School, ancillary buildings and other Republic R-III School structures. The project cost associated with this category of capacity shall be borne by the Republic R-III Schools.
 - ii. Costs proportionate to the remaining capacity of the water and sewer mains which may be used by other entities within the region. The cost associated with this category shall initially be borne by Republic R-III Schools, however, Republic R-III Schools shall be reimbursed by new development or new utility connections desiring to utilize or benefit from the Project through the collection and disbursement of Connection Fees as detailed herein.
4. Design Phase: On the basis of approved preliminary design documents, Republic R-III Schools shall:
 - a. Prepare for incorporation (as Exhibit "C") detailed drawings to show the character and scope of the work to be performed by contractors on the Project (hereinafter called the "Contract Drawings"), and Bid Sheets, Special Provisions and Special Technical Specifications (all of which are hereinafter called the "Bid Documents").
 - b. Furnish to City such documents and design data as may be required for, and assist in the preparation of, the required documents so that City may secure approval of the Missouri Department of Natural Resources.
 - c. Furnish five (5) approval copies of the final Contract Drawings and Bid Documents for the Project.
 - d. All plans, specifications, estimates, drawings, and documents prepared or furnished by Republic R-III Schools shall conform to Federal, State laws and City ordinances.
5. Selection of Contractor: Republic R-III Schools shall contract for construction of the Project in compliance with laws applicable to construction by public school districts using competitive bidding. The bid will be awarded to the lowest responsible bidder

complying with the terms of the letting, provided that Republic R-III shall have the right to reject any and all bids, all as more particularly set forth in Section 177.086 of the Revised Missouri Statutes. The Contractor for the work shall be required to pay prevailing wages for public works and comply with the Prevailing Wage laws of the State of Missouri and applicable wage orders from the State Division of Labor, as required by law applicable to Missouri public school districts.

6. Construction and Dedication: Republic R-III Schools will construct the Project according to the plans and specifications, hereafter approved and incorporated as Exhibit "C", and upon completion, inspection and approval of the Project by the City, Republic R-III Schools will dedicate the Project to the City for its use, operation and maintenance.

7. Construction on City Right of Way and Easements:
 - a. Grant of License: To the extent that construction of the Project will occur on Right of Way and/or Easements managed, owned or hereafter acquired by the City, the City hereby grants to Republic R-III Schools, its employees, contractors and subcontractors working on such construction, a license to enter upon and use the Easements described within Exhibit "C", for the purposes set forth herein.
 - b. Term: The construction of the Project shall commence as soon as practicable after Republic R-III Schools has entered into a Contract with prime contractor(s), after such contract(s) is/are approved by the Director of Public Works, and the work shall be undertaken and completed in such sequence as to assure its expeditious completion, subject to the terms and conditions of the Contract and force majeure events.
 - c. Duty to Restore Right of Way and Easements: Upon completion of the construction of the Project, Republic R-III Schools or their contractor shall promptly restore easements to as good a condition as existed immediately prior to the commencement of the work.

8. Right to Terminate: If through any cause, Republic R-III Schools shall fail to fulfill in a timely and proper manner their obligations under this Agreement or if Republic R-III Schools shall violate any of the covenants or stipulations of this agreement, and in any such event Republic R-III Schools shall have continued such failure or violation for thirty (30) days after receiving notice of such failure or violation from the City, the City shall thereupon have the right to terminate this Agreement by giving at least 10 business days prior written notice of such termination, specifying the effective date thereof. Provisions with respect to indemnity shall survive, notwithstanding termination of the agreement.

9. Limitations on Work: All work done hereunder by Republic R-III Schools (or its contractor) shall be subject to the customary inspection and approval of the Director of Public Works or his authorized representative, which approval in any event shall be granted if the work complies with City regulations and specifications in effect as of

the date of construction. The Director of Public Works reserves the right to place certain restrictions on the time and manner of work, in order that the performance of that work will have the least adverse impact on traffic flow and is consistent with the public safety, provided such restrictions are reasonable and the Director of Public Works provides reasonable advance notice of such restrictions. If Republic R-III Schools (or its contractor) fails or refuses to construct or maintain the improvement, in accordance with the approved plans, prior to acceptance by the City, or fails to comply with the Director of Public Work's directions and the Director of Public Works provides Republic R-III with notice and 10 business days' opportunity to address such failure unless such failure creates an immediate health and safety risk to persons or property, then the Director of Public Works or his authorized representatives may issue a stop work order against the project.

10. Insurance and Bond Requirements: Republic R-III Schools or their contractor shall procure and maintain during the construction until the Project has been inspected, approved, and accepted by the City, insurance and bonds as hereafter specified:

- a. Contractors' public liability insurance with Contractual Liability and Property Damage Insurance with a company licensed to do business in the State of Missouri with limits of liability not less the \$2,000,000 for all claims arising out of a single occurrence or \$300,000 for any one person in a single occurrence and in an amount not less than \$2,000,000 for all claims arising out of a single occurrence and \$300,000 to any one owner for property damage.
- b. In the event blasting operations are performed, the applicable party shall be required to obtain and furnish copies to the City prior to the blasting a certificate of blasting coverage properly executed extending property damage coverage to blasting claims with limits of \$2,000,000.
- c. Automobile liability insurance with a company authorized to do business in the State of Missouri having limits of liability of not less than \$2,000,000 for all claims arising out of a single occurrence and \$300,000 for any one person in a single occurrence.
- d. Workers' Compensation Insurance, including occupational disease provisions for all employees of Republic R-III School's Contractor(s) and Subcontractor(s) engaged in work relating to construction of the Project.
- e. Owner's and Contractor's protective liability insurance naming the City as an insured. The policy shall be for the same limits as the Contractor's Public Liability and Property Damage Insurance, and shall be underwritten by the same company.
- f. Republic R-III Schools will require all contractors to provide and maintain like insurance as set forth above unless Republic R-III School's policies extend to claims made against or growing out of operations of the contractor.
- g. Performance, Labor and Materials Bond for construction of the Project and for labor and materials used. However such Bond(s) will be required only to the extent required by state law applicable to public school construction projects.

11. Condemnation or Acquisition of Easements: If deemed necessary by either the City or Republic R-III, such party shall advise the other and provided the parties are in agreement with what is proposed at that time, the requesting party may negotiate for and obtain the necessary permanent and temporary utility easement(s) by purchase or by eminent domain. The agreement shall stipulate who shall pay for the actual, reasonable costs incurred in acquiring such easement(s), including compensation paid or awarded to the landowner, plus all costs and expenses of litigation, reasonable attorney fees and court costs. If Republic R-III pays such costs, then all such costs shall be deemed reasonable and included in certified constructions costs for which Republic R-III shall receive reimbursement.

12. Republic R-III Schools Costs Reimbursed by Connection Fees:

- a. From and after the City's written acceptance of the completed Project, actual prorated expenses incurred by Republic R-III Schools towards construction of the Project, and allowed by the Director of Public Works, will be reimbursed to Republic R-III Schools by means of the collection and disbursement of connection fees, as set forth more fully below.
- b. Project costs shall be limited to the reasonable cost of construction (not to exceed actual cost of construction), the cost of right of way acquisition which is determined to be reasonable not to exceed actual cost of right of way acquisition, and contract administrative costs (blue prints, advertising, mailings and inspection expenses) not exceeding seven (7) percent of the accepted construction bid. Costs that shall be deemed included in approved costs and that accordingly shall be reimbursed will include without limitation those costs incurred by Republic –III due to the requirements set forth in Paragraphs 5, 9, 10 and 11.
- c. The Public Works Director of the City shall have the authority to determine whether or not specific costs shall be allowed in computing the Project costs which will be reimbursable by Connection Fees. All change orders in excess of five percent (5%) of the base bid may be audited by the Director of Public Works to determine if the additional costs caused by the change order are reasonable and necessary. The Director of Public Works may inform Republic R-III Schools that he has determined that the costs or a portion thereof, are not reasonable and necessary and shall meet with Republic R-III Schools to discuss any evidence or information that is relevant to showing the costs are reasonable and necessary. If Republic R-III disagrees with the determination of the Director of Public Works, it may appeal to the City Administrator by submitting its request for re-determination within thirty (30) business days after Republic R-III's receipt of the Director's final determination. The City Administrator shall review Republic R-III's request together with such evidence and information presented by Republic R-III that is relevant to showing the costs are reasonable and necessary and shall render a determination within thirty (30) business days after the City Administrator's

receipt of the request. If Republic R-III disagrees with the City Administrator's determination, it may appeal to the City Council using the same procedure as set forth above.

13. Collection of Connection Fees:

- a. In addition to all other fees and charges, the City shall require connection fees for the privilege of connecting to or benefiting from the Project water and sewer mains (the "Connection Fee") for the purpose of reimbursing to Republic R-III Schools a proportionate share of the Project costs.
- b. Sewer Connection Fees shall be required of all persons who own land in the sewer service area as shown and described on Exhibit "A" attached, and shall be computed by determining the sewer development costs per acre for the sewer service area (sewer development costs divided by total acreage in the sewer service area). The sewer connection fee shall be the product obtained by multiplying the Sewer Development Cost per acre times a property owner's total acreage to be served. Estimated project costs and preliminary connection fee calculations appear in Exhibit "B".
- c. Water Connection Fees shall be required of all persons who own land in the water service area as shown and described on Exhibit "A" attached, and shall be composed of a fee for the delivery of domestic water plus a fee for the delivery of water for fire protection.
- d. The portion of the connection fee for domestic water shall be computed by using the assigned domestic development costs per acre for the water service area (water development costs divided by total acreage in the water service area).
- e. The portion of the connection fee for fire protection water shall be a per structure rate and computed as a Base Fire Flow Rate raised to the power of x, where x is the projected needed fire flow for differing types of land use divided by a standard fire flow rate of 1,500 gallons per minute. In this instance the Base Fire Flow Rate is \$125 per structure.
- f. The Water Connection Fee shall be the sum of the Domestic and Fire Protection Rates. Estimated project costs and preliminary connection fee calculations appear in Exhibit "B".
- g. All persons owning land in water and/or sewer service area shall pay the Connection Fees to the City at the time such person connects to the City water and/or sewer, plus a late charge of six per cent per annum for each year the Connection Fee has not been paid while this agreement is in force, provided, however, that no connection shall be permitted by the City unless and until the Connection Fee is paid in full. The total Connection Fee plus late charges shall

not exceed one hundred and fifty per cent of the Connection Fee. Late charges shall not be subject to being apportioned for any part of a year.

- h. City shall act as Republic R-III Schools' agent to collect and remit to Republic R-III School, Connection Fees received by the City in a prompt and timely manner, and in any event no less than sixty (60) days after the City's receipt of the same. If or when the historical sum of Connection Fees collected equals the certified construction costs plus interest less Republic R-III School's proportionate share of expenses, the imposition of these Connection Fees shall cease. If the total fee required for a specific connection will make the historical sum of Collection Fees collected for any portion of the project exceed the original certified construction costs plus interest at an annual rate of six percent (6%) (which shall begin to accrue once such amounts are paid by Republic R-III)(hereinafter, the "Interest"), a partial fee will be required so that the original certified development costs will not be surpassed
14. Successors in Ownership: At the time a person pays the Connection Fee, the Director of Public Works shall determine what land is owned by the person in the service area for which the fee is being paid; and payment of the required Connection Fee (unless otherwise imposed by law or ordinance) shall be required pursuant to this contract it being intended that the person paying the fee shall have paid the fee for their successors in title, regardless if the property has or has not connected to the sewer line.
15. Payment Pursuant to Procedures: The Connection Fees and any Interest required to be paid to the City shall be paid to the Director of Public Works in accordance with procedures established by the Director and the Director of Public Works shall pay such fee and Interest to the District no later than sixty (60) days after receipt of such amounts.
16. City Liability: Nothing contained herein shall be construed to create any liability on behalf of the City for any failure by the City to collect such Connection Fees unless: (a) the City shall fail to use its best and diligent efforts to collect such Connection Fees; or (b) the City shall fail to collect a Connection Fee on more than two occasions.
17. Term: This contract shall be in full force and effect from the date of its execution by the parties and shall continue for a period of 20 years from the date the Public Works Director accepts said water and sewer improvements. Republic R-III Schools shall be responsible for furnishing the Director of Finance a current and correct mailing address and telephone number throughout the term of this Agreement. In the event Republic R-III Schools is no longer in existence or cannot be located by the City during a two-year period from the time each Connection Fee is collected by the city and provided the City has made reasonable efforts to locate the District, the fee shall revert to the City's Water and Sewer Fund.
18. Conflict: No salaried officer or employee of the City, and no member of the City Council, shall have a financial interest, direct or indirect, in this contract, and the City

represents and warrants to the District that no such officer, employee or member has such an interest. Any Federal regulations and applicable provisions in Section 105.450 et seq., RSMo. shall not be violated by the City.

19. Discrimination: Each party agrees, in the performance of this contract, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of such party or applicant for employment, and shall include a similar provision in all subcontracts let or awarded hereunder.
20. Independent Contractor: Republic R-III Schools is an independent contractor, and nothing contained herein shall constitute or designate Republic R-III Schools, or any of Republic R-III School's agents or employees, as agents or employees of the City of Republic, Missouri.
21. Indemnification: The parties mutually agree to the following:
 - a. In no event shall either party be liable to the other for special, indirect, or consequential damages, except those caused by the released party's gross negligence or willful or wanton misconduct arising out of, or in any way connected with, a breach of this contract.
 - b. Each party shall defend, indemnify, and hold the other harmless from any and all claims, losses and liabilities for personal injuries, including death and damages to property, which are caused by the negligence of willful misconduct of the indemnifying party, its agents, employees or contractors, and arise out of, or are in any way connected with performance of this contract.
 - c. Each party shall cause provisions to be placed in any contracts for the supply of materials or services that require the contractor to defend, indemnify and save harmless the City of Republic and Republic R-III Schools from and against any and all liability, suits, claims, damages, costs (including attorneys' fees), losses, outlays and expenses in any manner arising out or connected with the performance of this contract or any contracts related to the project which is the subject of this Agreement.
22. Waiver: If either party shall violate continuously, or otherwise any of the terms of this Agreement, which are binding upon it, the other party shall not thereby be deemed to either have waived or relinquished any term of this Agreement or to have acquiesced in any such violation thereof, unless the other party shall express their consent thereto in writing.
23. Entire Agreement: This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

24. Laws: Each Party shall comply with all applicable Federal, State, and Local laws in the performance of this Agreement and shall include a similar provision in all subcontracts awarded hereunder. This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any party of this Agreement be litigated, venue shall be proper only in the Circuit Court of Greene County, Missouri.

DEVELOPER/OWNER

Republic R-III Schools

By: _____

Printed Name and Office

Exhibit A Project and Service Area Map

Exhibit B Preliminary Project Cost and Connection Fee Estimates

Sanitary Sewer Gravity Mains A and B.

Project limits are described as beginning at Station 0+00 Main A and ending at Station XX+XX, also beginning at Station 0+00 Main B and ending at Station XX+XX, as shown on the engineering and construction plans on file in the Office of the Public Works Director, City of Republic. Said engineering and construction plans, prepared by David Bodeen, P.E. dated _____, 2007, and incorporated into this agreement by reference.

Municipal Water Main 1.

Project limits are described as beginning at Station 0+00 and ending at Station 37+83 as shown on the engineering and construction plans on file in the Office of the Public Works Director, City of Republic. Said engineering and construction plans, prepared by David Bodeen, P.E. dated _____, 2007, and incorporated into this agreement by reference.

Exhibit C High School Municipal Water and Sanitary Sewer Project Description
(Plans and Specifications of the Project to be incorporated by Addendum after final
approval).

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