

**An Intergovernmental Agreement
For the Construction of the Behrens Street Sanitary Sewer**

This Intergovernmental Agreement for the construction of the Behrens Street Sanitary Sewer situated in St. Clair County, Illinois, including any exhibit attached hereto (collectively, this "**Agreement**"), is made and entered into this _____ of _____, 2008, by and between the City of O'Fallon, St. Clair County, Illinois (the "**City**") and the O'Fallon Township Road District (the "**Road District**").

WITNESSETH:

WHEREAS, the City and the Road District have the authority, pursuant to Article VII, Section 10 of the Constitution of the State of Illinois and Section 220/3 of the Intergovernmental Cooperation Act (5 ILCS 220/3), to enter into an intergovernmental agreement for any purpose not prohibited by law; and

WHEREAS, Section 11-85-1 of the Illinois Municipal Code (65 ILCS 5/11-85-1) provides further authority for the City and Road District to enter into an Intergovernmental Agreement for the construction of a sanitary sewer; and

WHEREAS, the proposed Behrens Street sanitary sewer lies complete within the jurisdiction of the Road District, but will be completely owned by the City; and

WHEREAS, the City and Road District believe it to be less costly for each of them and more efficient to construct the sanitary sewer jointly rather than independent of the other, including the use of the same engineering firm; and

WHEREAS, Gonzales Companies, LLC is licensed by the State of Illinois pursuant to the professional Engineering Practice Act of 1989 and is well qualified to provide the necessary engineering services for the design and construction of the Behrens Street sanitary sewer.

NOW, THEREFORE, in consideration of the matters set forth above, the agreements, covenants, representations and undertakings made and contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Road District hereby agree, covenant and undertake as follows:

**ARTICLE I
In General**

Section 1.1. The parties agree to jointly hire Gonzales Companies, LLC as the engineering firm to provide the necessary services for the design and construction

portions of the Behrens Street sanitary sewer project pursuant to the terms of the contract attached hereto and made part hereof as **EXHIBIT A**.

Section 1.2. The parties agree to jointly place the construction project out for bid according to the project specifications as approved by the City and Road District upon completion of the specifications at the end of the design period.

Section 1.3. The parties agree to jointly enter into a construction contract with the successful bidder, a copy of the contract being part of the aforementioned project specifications.

ARTICLE II

Notices

Section 2.1. All notices hereunder shall be sent by overnight delivery service or mailed by registered or certified mail, postage pre-paid, return receipt requested, in each case addressed as follows:

If to the City:

City of O'Fallon
225 S. Lincoln
O'Fallon, IL 62269
Attn: Clerk

If to the Road District:

O'Fallon Township Road District
813 E. State Street
O'Fallon, IL 62269
Attn: William Peach, Commissioner

ARTICLE III

Mediation and Arbitration

Section 3.1. The procedures of this Article shall apply to any and all disputes which arise from or in any way or related to the, this Agreement, including but not limited to the interpretation of this agreement, the enforcement of its terms, any acts, errors, or omissions of the City or Road District in the performance of this agreement. These procedures shall be mandatory and binding on the parties.

Section 3.2. No request for arbitration may be filed unless the parties first negotiate and, if necessary, mediate their disputes as set forth on this Article. If timely

Notice is given under Article 3.3 but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by any party to a court of proper jurisdiction, until the procedures in Article 3.4 have been complied with.

Section 3.3. The party seeking relief shall serve the other party with a written notice after the occurrence of any incident or action upon which claim is based. The notice shall be given within 30 days of the occurrence upon which the claim is based.

Section 3.4. Within 7 days of receipt of the notice the parties through their respective representatives shall confer in an effort to resolve the dispute. If the parties are unable to resolve the dispute, then any party may request the matter be submitted to mediation before a mediator mutually agreed upon. If the parties cannot agree on a mediator, then the American Arbitration Association shall appoint a mediator upon request. Any administrative or mediator fees shall be split equally between the parties.

Section 3.5. Should the parties be unable to resolve their dispute through mediation they shall submit the dispute to arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association. Any award rendered by the Arbitrator or Arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Section 3.6. The notice of demand for arbitration shall be filed in writing with the other party involved in the dispute and also with the American Arbitration Association.

Section 3.7. Demand for arbitration for any claim may not be made earlier than 10 days after the decision of the mediator or, if the decision is made not to mediate the dispute, no earlier than 10 days after the decision not to mediate the dispute.

Section 3.8. The demand for arbitration shall not be made after the date when institution of legal or equitable procedures based on such dispute or claim would be barred by the applicable statute of limitations.

Section 3.9. A party who files a notice of demand for arbitration must assert in the demand all claims then known to that party in which arbitration is permitted to be demanded. When a party fails to include a claim through oversight, inadvertence or excusable neglect or when a claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit an amendment.

Section 3.10. No arbitration arising out of this agreement shall include, by consolidation or joinder or in any other manner parties other than the City and Road District, unless both parties agree. Consent to arbitration involving an additional party

or entity shall not constitute consent arbitration of dispute not described therein or with a person or entity not named or described therein.

Section 3.11. The decision of the arbitrators shall be non-binding. However should either party institute post-arbitration litigation by appealing the arbitrators' decision, said party shall pay the attorneys fees and costs incurred by the other party(s) should a court of law rule against the party initiating the post-arbitration litigation.

ARTICLE IV
Miscellaneous

Section 4.1. This Agreement shall be deemed to be an intergovernmental agreement made under and construed according to the laws of the State of Illinois.

Section 4.2. Neither this Agreement nor any provisions hereof may be changed, revised, modified, waived, discharged, terminated or otherwise abrogated or impaired other than by an instrument in writing duly authorized and executed by both the City and the Road District.

Section 4.3. This Agreement shall become effective upon its execution and delivery by both the City and Road District and shall be and remain in full force and effect thereafter until the project is finished.

Section 4.4. This Agreement constitutes the entire agreement of the City and the Road District on the subject matter hereof and supersedes all letters of intent, there being no other terms, conditions, promises, understandings, statements of representations, expressed or implied concerning the same.

Section 4.5. This Agreement shall bind and inure to the benefit of all of the respective heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the City and Road District have each caused this Agreement to be executed by proper officers duly authorized to execute the same as of the date set forth beneath the signatures of their respective officers set forth below.

CITY OF O'FALLON

By: _____
Mayor

_____ Date

Attest: _____ Date _____
Clerk

O'FALLON TOWNSHIP ROAD DISTRICT

By: _____ Date _____
Highway Commissioner

Attest: _____ Date _____
Clerk