

Wastewater - Contracts
V-F

KARL F. DEAN
MAYOR



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF WATER AND SEWERAGE SERVICES
1600 SECOND AVENUE, NORTH
NASHVILLE, TENNESSEE 37208-2206

Hand Delivered
12/4/09

December 4, 2009

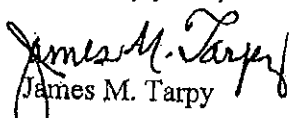
City of La Vergne
Ronnie Erwin, Mayor
5093 Murfreesboro Road
LaVergne, TN. 37086

**RE: Agreement between the Metro &
The City of LaVergne**

Dear Mr. Erwin:

Please find enclosed herewith, (1) executed agreement between Metro and the City of LaVergne to accept and treat sewage flows. This agreement was filed in the Metro Clerk's Office on December 1, 2009.

Should you have any questions, please contact Metro Legal at 862-6341.

Very truly yours,

James M. Tarpy

JMT/dbs
Enclosure

CC: Scott A. Potter, Director

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AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of December, 2009, by and between the Metropolitan Government of Nashville and Davidson County ("Metro") and the City of La Vergne, Tennessee ("Customer").

WHEREAS, Metro owns and operates a sewage transportation and treatment system (the "Metro System"); and

WHEREAS, Customer owns and operates a sewage collection system (the "Customer System"); and

WHEREAS, the Metro System has or will have sufficient capacity to safely and effectively accept and treat sewage flows from the Customer System as contemplated herein.

THE PARTIES AGREE AS FOLLOWS:

1. **Customer Points of Connection.** All points of connection ("POC") at which flow from Customer's System ("Customer Flows") enters Metro's System, except those exempted in writing for good cause by the Director of the Metropolitan Department of Water and Sewerage Services (the "Metro Director"), shall include metering facilities approved by the Metro Director. All of the currently authorized POCs are listed in the document attached and incorporated into this Agreement as Exhibit A. Customer may request, and Metro shall have the discretion to approve, the construction of additional POCs of Customer's System to Metro's System. No POC may be added without the Metro Director's written consent. For each POC, unless exempted by the Metro Director, Customer, at Customer's sole expense, shall install a metering device approved by the Metro Director for the purpose of measuring Customer Flows.
2. **Metro Points of Connection.** All points of connection ("POC") at which flow from the Metro system ("Metro Flows") enters Customer's System for transmission back into the Metro System for treatment, except those exempted in writing for good cause and by the City Administrator of the City of La Vergne (the "La Vergne Administrator") shall include metering facilities approved by the La Vergne Administrator. All of the currently authorized POCs are listed in the document attached and incorporated into this Agreement as Exhibit B. Metro may request, and Customer shall have the discretion to approve, the construction of additional POCs of Metro's System to Customer's system. No POC may be added without the La Vergne Administrator's written consent. For each POC, unless exempted by the La Vergne Administrator, Metro, at Metro's sole expense, shall install a metering device approved by the La Vergne Administrator for the purpose of measuring Metro Flows.
3. **Operation and Maintenance of Meters.** All maintenance, upkeep, repair and replacement of meters and other metering station components contemplated by paragraph 1 of this Agreement shall be performed by Customer or its agents or contractors at Customer's expense. All maintenance, upkeep, repair and replacement of meters and other metering

station components contemplated by paragraph 2 of this Agreement shall be performed by Metro or its agents or contractors at Metro's expense.

4. Maximum Flows at Customer Metered Points of Connection. For each of Customer's POCs listed in Exhibit A, Metro agrees to accept into the Metro System sewage flows from the Customer System for treatment at rates not exceeding the number of gallons per hour ("Maximum Rate") shown in Exhibit A to apply to that POC. In the event of the performance of engineering studies showing that flow characteristics have changed since the Effective Date, the parties shall in good faith consider whether changes in the Maximum Rate should be made. As used in this paragraph, an hour shall be measured from the top of one hour to the top of the next hour (for example, from 1:00 PM until 2:00 PM on the same day). The flow meters shall be capable of reporting flow volumes by hour. If reported in any units other than gallons per hour, flow volumes shall be converted into gallons per hour for purposes of determining compliance with Maximum Rate limitations. Metro agrees to accept and treat for Customer these contracted sewage flows except in emergency situations and agrees to give Customer notice when such contracted sewage flows cannot be accepted and treated due to an emergency.

5. Maximum Flows at Metro Metered Points of Connection. For each of Metro's POCs listed in Exhibit B which are metered, Customer agrees to accept into the Customer's System sewage flows from the Metro System at rates not exceeding the number of gallons per hour ("Maximum Rate") shown in Exhibit B to apply to that POC. In the event of the performance of engineering studies showing that flow characteristics have changed since the Effective Date, the parties shall in good faith consider whether changes in the Maximum Rate should be made. As used in this paragraph, an hour shall be measured from the top of one hour to the top of the next hour (for example, from 1:00 PM until 2:00 PM on the same day). The flow meters shall be capable of reporting flow volumes by hour. If reported in any units other than gallons per hour, flow volumes shall be converted into gallons per hour for purposes of determining compliance with Maximum Rate limitations. Customer agrees to accept and transport for Metro these contracted sewage flows except in emergency situations and agrees to give Metro notice when such contracted sewage flows cannot be accepted and transported due to an emergency.

6. Calibration of Meters. At least once every six months, the metering stations contemplated in this Agreement shall be calibrated both hydraulically and electronically by a qualified commercial entity approved by both parties at the expense of the party owning the metering station. In the event a meter maintained by either party ceases to register flow for any reason or a calibration test indicates that a particular metering system is inaccurate, the amount billed for the preceding month's services will be adjusted to reflect an estimated flow quantity based on the average of the flow quantity data from the corresponding month of the preceding year for which data are available and flow quantity from the immediately preceding billing period, and an appropriate credit or debit will appear on Metro's next bill to Customer. In the event a meter fails to accurately measure flow to reasonable engineering standards for three consecutive months, the party owning that meter shall replace it promptly upon the written request of the other party. Both parties agree to continue to make available all flow metering data which might be of benefit to the other party from all points of connection between the parties set forth in this Agreement.

7. Metro Treatment Utility Price. This Agreement shall become effective (the "Effective Date") upon its filing with the Metropolitan Clerk after its approval by the Metropolitan Council. Customer shall make monthly payments to Metro for each gallon of flow from Customer's System into Metro's System, excluding Metro Flows, at the prices in force at the time of billing. As of the Effective Date, for each gallon of flow through a POC that does not exceed the Maximum Rate applicable to that POC, the price (the "Utility Price") shall be one dollar and seventeen cents (\$1.17) per hundred cubic feet. For each hundred cubic feet, or fraction thereof, of flow, excluding Metro Flows, through a POC that exceeds the Maximum Rate, the price shall be one hundred and twenty-five percent of the Utility Price.
8. Flow Limits. For purposes of this Paragraph, precipitation shall be measured at the Metro rain gauge ("Rain Gauge") nearest the POC at issue. A "Rainfall Event" occurs when, following a period of ten or more hours without measurable precipitation, 0.01 or more inches of precipitation is measured in the Rain Gauge. An "Excessive Flow Event" occurs when flow through a POC from Customer's System into Metro's System exceeds the Maximum Rate either: (1) resulting from a Rainfall Event; or (2) for at least one hour when no Rainfall Event has occurred. Each hour during which an Excessive Flow Event occurs when no Rainfall Event has occurred shall be considered a separate Excessive Flow Event. If there are six or more Excessive Flow Events in any 12-month period during the term of this Agreement, upon written notice from Metro, Customer shall within 90 days commence development of a corrective action plan, submit such plan to Metro for review when completed, and within 36 months complete implementation of such measures as are necessary to prevent further Excessive Flow Events. Customer's failure or refusal to comply with the terms of this paragraph shall be a material breach of the Agreement and shall entitle but not require Metro, in addition to its other rights under law and contract, to do either or both of the following: (1) terminate the Agreement immediately and without further notice; or (2) restrict in whole or part further flows from Customer's System to the Maximum Rate by mechanical or other means. In the event any fine, charge or penalty is levied by any regulatory authority or any judgment rendered by a court of competent jurisdiction on account of overflows from Metro's System or Customer's System occurring as a result of one party's breach of or exercise of a right created by this Agreement, then each party shall pay that portion of such fine, charge or penalty in proportion to that party's responsibility for such overflows.
9. Annual Metro Treatment Rate Adjustments.
- (a) Each year during the term of this Agreement, the Utility Price shall be adjusted on the anniversary of the filing of this Agreement with the Metropolitan Clerk (the "Effective Date.") Each Utility Price adjustment shall become effective on the first day of the month following the anniversary of the Effective Date and shall remain in effect for the following year. For years two through five of this Agreement, the annual Utility Price shall increase or decrease by a percentage equal to the percentage increase or decrease from the previous calendar year in the Service Charge Index (the "Index") compiled and published by the National Association of Clean Water Agencies. For years seven through ten of this Agreement, the annual Utility Price shall increase or decrease by a percentage equal to the percentage increase or decrease from the previous calendar year in the Service Charge Index (the "Index") compiled and published by the National Association of Clean Water Agencies.

In the event that the Index ceases to be published, another index with comparable characteristics shall be used instead, such index to be selected jointly and in good faith by the parties.

(b) The Utility Price for the sixth year of this Agreement shall be set by using the utility approach method used by Metro and its wholesale customers, including Customer, to establish the rate set forth in paragraph 7. In establishing the rate set forth in paragraph 7, the parties used the following parameters and methodology in using the utility approach in this paragraph and agree to use the same parameters and methodology in setting the Utility Price for future years of this Agreement.

(c) The operating cost component shall be calculated using Metro's then current fiscal year budgeted costs for operation and maintenance of joint facilities divided by the total treated flow through all Metro facilities expressed as an average annual flow for the three previous fiscal year periods. Joint facility costs are defined as Metro's budgeted operations and maintenance costs for wastewater services only, exclusive of debt service costs, capital outlay, capital improvements plan (CIP) and stormwater costs. Joint facility costs include costs for the operation of facilities that provide benefit to both wholesale and retail customers. Typically, joint facility costs would include costs associated with the operation of all core system assets, including wastewater treatment plants, wastewater interceptors and pump stations. Joint facility costs do not include retail costs, such as costs for the operation of system components that generally do not benefit wholesale customers. Retail costs would include costs associated with the local service wastewater collection lines, as well as customer service and billing and collection costs.

(d) The capital cost component includes both a return on assets calculation and an allocated portion of depreciation expense.

(1) The return on assets calculation considers the original cost less depreciation of Metro's capital assets that benefit both wholesale and retail customers. Capital assets include wastewater treatment plant assets, including sludge management and odor control facilities, pump station assets, wastewater interceptors and large force mains that are determined to benefit both wholesale and retail customers. This return on asset base shall not include construction work in progress. The capital allocation to wholesale customers, as a class, shall be based on their proportionate share of treated flows. The resultant capital allocation shall be multiplied by a capital cost return component based on Metro's weighted cost of debt, plus 200 basis points (two percentage points). Metro's weighted cost of debt shall be based on outstanding bond issues for wastewater debt listed in the most recent official statement for Metro bonds.

(2) The allocated portion of depreciation expense shall be based on the annual depreciation of wastewater assets that benefit both wholesale and retail customers. The allocated portion of depreciation expense to wholesale customers, as a class, shall be based on their proportionate share of treated flows.

(3) The sum of the return on assets calculation and the allocated portion of depreciation expense shall be divided by the total treated flow of all wholesale customers, as a class, expressed as an average annual flow for the three previous fiscal year periods.

(4) For the fiscal year beginning July 1, 2008, the undepreciated value of the joint use assets is \$46,000,000.

(5) Metro will update the rate base to reflect the retirement and addition of joint use assets since the valuation point used to establish the rate set forth in paragraph 7 which was Metro's July 1, 2008 – June 30, 2009 fiscal year.

(6) Depreciation amounts will be based upon the depreciation policies and procedures used by Metro, provided such depreciation policies and procedures are consistent with generally accepted accounting principles and policies applicable to municipal water and sewer utilities.

10. Selection of Rate Consultant. No later than October 1, 2014, Metro and Metro's wholesale customers, including Customer, shall mutually agree upon a qualified rate consultant to develop the rate for year six in accordance with the provisions of Paragraph 9 of this Agreement. The costs for the development of the Utility Price by the qualified rate consultant for year six shall be borne jointly by customers, including Customer, and Metro. The rate-development work contemplated in Paragraph 9 of this Agreement shall be undertaken and completed as specified in this paragraph even if the Effective Date is not the same in all of Metro's wholesale agreements.
11. Customer Transportation Price and Capital Component Surcharge for Carothers Crossing. To the extent that Metro's System and Customer's System are interconnected in such a way that flow from Metro Flows enter Customer's System before reentering Metro's System, Metro shall pay Customer for the transportation of such Metro Flow through Customer's system by paying the utility price and capital component surcharge as provided in the Interlocal Agreement between Metro and Customer dated November 20, 2007.
12. Mutual Modification of Metro Treatment Rate Methodology. By mutual agreement the parties may modify the parameters and methodology used to re-establish the Utility Price in the sixth year of this Agreement.
13. Additional Capacity. The parties recognize and acknowledge that neither has any ownership rights to additional capacity in the sewage collection, transportation or treatment systems of the other. Neither party shall have any right to compel the acceptance of flows into the other party's system in excess of the limits specifically stated in this Agreement. Disputed issues relating to the provision of additional sewage collection, transportation or treatment capacity by one party to the other shall not be subject to mediation under this Agreement. In the event either party desires additional capacity in the sewage collection, transportation or treatment systems of the other party in excess of the Maximum Rates in this Agreement during the term of this Agreement, the terms and conditions for obtaining such additional capacity shall be mutually agreed upon by the parties and shall be set forth in a separate agreement.

14. Retroactive Payment from July 1, 2007. Within 15 days after the Effective Date, Customer shall pay Metro: (a) for wholesale sewer treatment service rendered from July 1, 2007, through June 1, 2009 at the rate of \$0.83 per 1,000 gallons of flow; and (b) for wholesale sewer treatment service rendered from June 1, 2009 through the Effective Date at the rate of \$1.17 per hundred cubic feet of flow. This payment shall be made in a lump sum amount by taking the total amount due to Metro by Customer during those time periods and subtracting from that amount the amount actually paid by Customer to Metro during those time periods for wholesale sewer service.
15. Billing.
- Billing shall be on a calendar month basis. Customer shall be billed from Customer's total flows into the Metro System. Customer shall not be billed for Metro's Flows. Metro shall render bills directly to Customer monthly, and Customer shall make payment to Metro not later than the 15th day after receipt of each bill. Interest shall accrue on the balance of any late payment at the rate of 1.5% per month until paid in full.
16. Industrial Pretreatment. Metro shall operate an industrial pretreatment program ("IPP") within Customer's service area in accordance with the provisions of Metropolitan Code of Laws §15.60.010 et seq. (the "Industrial Pretreatment Ordinance"). Customer shall require compliance with the Industrial Pretreatment Ordinance by its sewer customers and shall cooperate with Metro in enforcement of the Industrial Pretreatment Ordinance. Metro shall recover the costs of administering the IPP through user, permit and other fees in accordance with the same policies and procedures applicable to Metro's own sewer customers, provided, however, that Customer shall reimburse Metro for reasonable actual costs of administering the IPP not so recovered.
17. Term of Agreement. The term of this Agreement shall be 10 years beginning on the Effective Date and may be extended by the parties on such terms as they may then agree. Neither party shall be entitled to a refund of any payment made under this Agreement upon the termination or expiration of this Agreement. The parties agree that no notice shall be necessary in order for the Agreement to terminate by expiration at the end of its term.
18. Reselling of Service Prohibited. The service provided to Customer under the terms of this Agreement shall not be resold to any other governmental or other entity other than Customer's retail customers.
19. Assignment of Agreement. Customer shall not assign its rights under this Agreement to any entity without Metro's written consent.
20. Modifications to Agreement. All of the terms of agreement and understandings of the parties are set forth in this document. No modification of this Agreement shall be effective unless in writing and signed by authorized representatives of both parties.
21. Dismissal and Release of Claims in Pending Litigation. Upon the execution of this Agreement and the payment of the amount set forth in paragraph 14 the pending case styled Metropolitan Government of Nashville and Davidson County, Tennessee v. City of Brentwood *et al.*, Davidson County Chancery Court No. 07-1558-I shall be dismissed as to

La Vergne with prejudice and any and all claims between the parties related to the provision of sewer transportation treatment services provided by Metro to Customer prior to the Effective Date are hereby released.

22. Filing of Agreement with Metropolitan Clerk. This Agreement shall not be binding upon Metro until approved by the Metropolitan Council and filed in the office of the Metropolitan Clerk.

23. Mediation. In the event a dispute arises between the parties concerning a matter other than one arising under Paragraph 13 of this Agreement, the dispute shall be submitted to mediation in accordance with the terms of this paragraph before any complaint can be filed in a court of law or equity for a breach of this Agreement. In the event the dispute concerns calculation of the Utility Price or Transportation Rate, if applicable, the parties shall mutually agree upon a qualified mediator with experience in performing utility rate cost of service studies. If the parties cannot agree upon a qualified mediator, a qualified mediator shall be appointed by the Clerk and Master of the Davidson County Chancery Court upon application by the parties certifying their inability to agree upon a qualified mediator. The mediator shall establish the procedures for the mediation.

24. Governing Law, Forum Selection and Attorney Fees. This Agreement shall be governed by the laws of the state of Tennessee, and any action relating to this Agreement shall be brought only in a court of competent jurisdiction in Davidson County, Tennessee. The prevailing party in any action relating to this Agreement shall recover reasonable attorney fees and litigation costs from the other party.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

By: 

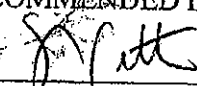
Karl Dean
Metropolitan County Mayor

ATTEST:

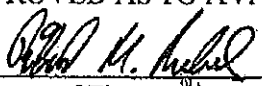
By: 

Marilyn B. Boring
Metropolitan Clerk R56009-1063

RECOMMENDED BY:


Director Department of Water Services

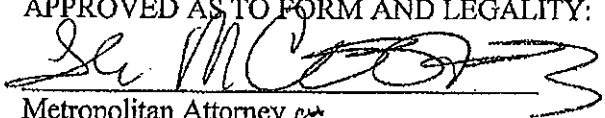
APPROVED AS TO AVAILABILITY OF FUNDS:


Director of Finance

APPROVED AS TO RISK AND INSURANCE:


Director of Insurance

APPROVED AS TO FORM AND LEGALITY:


Metropolitan Attorney

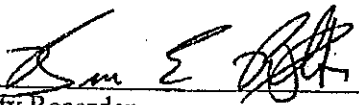
CITY OF LA VERGNE, TENNESSEE

APPROVED:



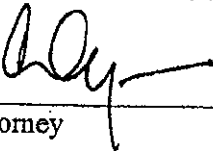
Mayor

ATTEST:



City Recorder

APPROVED AS TO FORM AND LEGALITY:



City Attorney

Exhibit A to Metro / La Vergne Agreement

Approved Points of Connection

<u>Name / Location</u>	<u>Maximum Rate (gallons per hour)</u>
1. Hurricane Creek	229,100
2. Bridgestone Pkwy	36,500* 61,100
3. International Boulevard	10,000
4. Builders Transport (Firestone Blvd)	5,650

* The Bridgestone Pkwy flow is net flow (only considering flow from the City of La Vergne).

Exhibit B to Metro / La Vergne Agreement

Approved Points of Connection

<u>Name / Location</u>	<u>Maximum Rate (gallons per hour)</u>
1. Blakemoore / Cane Ridge Park*	NA
<p>*Flows are too small to be measured through the existing Flume. Water consumption on a monthly average minus any irrigation will be used to generate the sewer volume. Once the northern part of the Carothers Crossing subdivision is built, the flows from the park will be disconnected from this POC and moved to the Carothers Crossing POC.</p>	
2. Carothers Crossing	As defined in Interlocal Agreement between Metro and La Vergne, 20 November 2007 (L-1959)