

Subdivision/Developer

THIS AGREEMENT, is made and entered into this day by and between the Utility Board of the Metropolitan Government of Lynchburg, Moore County, Tennessee, hereinafter referred to as “Department”, and _____, hereinafter referred to as “Developer”.

(Name/Names)

WITNESSETH:

THAT FOR AND IN CONSIDERATION OF the sum of money hereinafter mentioned, and the mutual promises of the parties herein contained and particularly taking into consideration the fact that the Department has installed large storage reservoirs and large trunk mains, all at great expense, in order that the area involved, among other areas, might be developed by the Developer and the community permitted thereby to expand, and in consideration of the Department assuming responsibility for the utility system improvements to be installed by the Developer, as well as to maintain the total system, and other good valuable consideration, the receipt of all of which is hereby acknowledged, the parties have entered into the following agreement:

1. LOCATION OF CONNECTION OF DEPARTMENT TO DEVELOPER’S INSTALLATION

The Department hereby agrees to and will permit the Developer to connect on to the Department’s water/sewer main at _____ and to install the water/sewer mains, valves, fittings, and other necessary connections for water/sewer service to _____ (“the Development”).

(Location of Main Line)

At its own expense, the Developer will furnish, install, lay, and construct all mains, valves, fittings, pipes, appurtenances, and other utility system improvements for the requested water and/or sewer service to the Development (hereinafter, “utility system improvements”), including all labor and material. The construction and installation of the utility system improvements will be in strict accordance with the Plans and Specifications attached hereto (**Attachment 1**), all of which are incorporated herein by reference, and will be subject to inspection and approval by the District.

2. SUBSEQUENT EXPANSION OF DEVELOPMENT

If and when future sections of this Development are planned, the Developer or subsequent Developer shall resubmit a plan to the Department for approval as herein provided.

The Developer understands that the Department does not have an unlimited supply of water/sewer and can only allocate a limited amount of water/sewer for this type of Development. The Developer understands that if water/sewer is available, the

Developer may be required to do certain off-site improvements, which will insure that, not only his Development, but also existing customers will have adequate system capacity.

3. CONSTRUCTION AND INSTALLATION

The Developer will obtain at its own cost and expense all the licenses and permits necessary for the construction of the utility system improvements.

4. CONSTRUCTION AND INSTALLATION

Upon completing the installation of the utility system improvements as required herein, the Developer will provide the Department with an affidavit stating the construction costs for the utility system improvements. The form of such affidavit is attached hereto (**Attachment 2**) and incorporated herein by reference.

The **Start Date** for the commencement of work is _____ and expected **Completion Date** is _____.

*Developer is responsible to submit any change of completion in writing to the Department with viable explanations.

5. WARRANTY

The Developer warrants the construction of the utility system improvements for one year after the Department accepts the utility system improvements. The Developer will timely repair the utility system improvements during the warranty period. To secure this warranty, the Developer will post a maintenance bond in the amount of fifteen percent (15%) of the construction costs for the utility system improvements or such other amount as is acceptable to the Department. The maintenance bond will be secured with an irrevocable letter of credit from a bank with offices in Metropolitan Lynchburg, Moore County, Tennessee, or other surety as specifically approved by the Department. The form and content of both the maintenance bond and the security must be approved by the Department. If the Developer fails to timely repair the utility system improvements, as determined by the Department, then the Department may elect, in its sole discretion, to make the needed repairs, and the Developer will reimburse the Department on demand for all costs the Department incurs to make the repairs. If the Developer fails to pay for the repairs, the Department will draw upon the maintenance bond or the security to pay for the repairs.

6. RIGHT OF INSPECTION OF INSTALLATIONS

All construction begun, continued, or completed hereunder shall be subject to the supervision of the Department's Engineer and/or Department personnel who shall have a continuous right of inspection through the progress of the work. No pipe, fittings or connections shall be covered until inspected and approved by the Department.

7. COST OF INSTALLATION

It is specifically understood and agreed that all installation costs for utility system improvements, including but not limited to pipes, valves, and fittings, shall be paid by the Developer.

8. CHANGES IN PLANS AND SPECIFICATIONS

The Plans and Specifications for the Development may only be changed by express written agreement of the Department and the Developer. In the event of an agreed change in the Plans and Specifications, and prior to actual installation of the facilities provided for in the Plans and Specifications, then such changes shall be deemed incorporated into this Agreement as though set out verbatim herein, and a copy of such Plans and Specifications shall be attached to this Agreement and made a part hereof.

9. REPAIRS, SCHEDULED OBLIGATIONS AND PRIVILEGE FEES

The Developer further agrees:

- (a) The Developer will pay to the Department all rates, charges, and fees applicable under the Department's Schedule of Rates and Charges in effect at the date such obligations arise. Payments to the Department are not refundable.
- (b) All service connections will be installed and purchased by the Developer during construction of the Development.
- (c) All meters will be purchased by the Developer, per Department specifications, and installed by the Department.
- (d) All fees must be paid before any water/sewer is provided to the Development, and only after the lines have been tested and approved by the Tennessee Department of Environment and Conservation; provided, however, that the Department may furnish water/sewer only to designated sections of the Development upon the Developer paying appropriate fee for lots therein and after testing and approval of the lines by the Tennessee Department of Environment and Conservation.

10. NUMBER OF LOTS IN SUBDIVISION

There will be _____ lots in this Development.

11. METER AND APPLICATION FOR SERVICE

The Department will install meters in the service connections of the Development on lots where service fees have been paid. Any other applications for service within the

Development will be accepted under normal policies and procedures of the Department.

12. EASEMENT BY DEVELOPER

The Developer will convey to the Metropolitan Government of Lynchburg, Moore County, Tennessee, any easements on the Developer's property required by the Department for the construction, operation, and maintenance of the Department's utility system for the Development and for any future utility system improvements for the Department's service area. If the Department or the Metropolitan Government of Lynchburg, Moore County, Tennessee, must institute eminent domain proceedings to acquire any easements from third parties in which utility system improvements are to be installed to serve the Development, the Developer will reimburse the Department or the Metropolitan Government of Lynchburg, Moore County, Tennessee, as applicable, for all costs incurred, including, but not limited to, deposits in court, damage awards, attorney fees, court costs, and appraisal, surveying, and engineering expenses.

13. PLAT SUBMISSIONS

A final plat shall be submitted to the Department by the Developer at completion of project.

14. FREEDOM FROM LIENS AND ENCUMBRANCES

The Developer warrants that title to the utility system improvements will be free from any liens or other encumbrances at the time the Department accepts the utility system improvements. The Developer will take all actions necessary to remove liens or encumbrances from the utility system improvements before they are accepted by the Department.

15. AS-BUILT DRAWINGS

The Developer will deliver to the Department as-built drawings for all facilities it constructs. As-built drawings shall be stamped by a registered engineer or surveyor in the State of Tennessee. Drawings shall be submitted in a pdf (portable document file) and in AutoCAD "dwg" format in the following coordinate system:

NAD83 TENNESSEE STATE PLANE

16. TITLE AND CONVEYANCE

Upon installation, testing, disinfection, approval, and acceptance by the Department, all water system improvements leading from the Department's system to the discharge side of each meter, including without limitation, mains, equipment, pump stations, water storage tanks, meter boxes, and connections, and all sewer system

improvements leading from the Department's system to each Utility Access Cleanout, including mains, lift stations, and service lines, will become the property of the Metropolitan Government of Lynchburg, Moore County, Tennessee, without the necessity of a formal conveyance from the Developer. Upon demand, the Developer will execute, acknowledge, and deliver a deed or other instrument formally conveying title to the utility system improvements to the Metropolitan Government of Lynchburg, Moore County, Tennessee.

17. THIRD PARTIES

The Department only agrees with the Developer, not any other party, to provide utility service to the Development under the terms of this Agreement. This Agreement is not assignable to or for the benefit of any other person or entity without the consent of the Department.

18. SUCCESSORS AND ASSIGNS

Except as otherwise limited herein, the terms, covenants and conditions of the Agreement shall insure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns.

19. PERFORMANCE BY DEVELOPER

The Department is under no obligation to furnish utility service to the Development until the Developer has fully and satisfactorily performed this Agreement.

20. FAILURE OR INTERRUPTION OF SERVICE

The Developer recognizes that there may be failures of water pressure, water supply, or sewer service due to line breaks, power failure, flood, or other causes. While the Department will endeavor to serve the Development satisfactorily in the same manner as it serves other areas and customers, it cannot and does not warrant or guarantee that there will be adequate utility service at all times. The parties agree that the Department will not be responsible or liable for such failures or interruptions of utility service.

21. PARAGRAPH HEADINGS

The paragraph headings contained herein are inserted only for convenience of reference and are in no way to be constructed as a part of this Agreement or limitation on the scope of the paragraphs to which they refer.

22. CHOICE OF LAW

This Agreement is governed by the laws of Tennessee without regard to conflict of

law principles, and any dispute or legal action arising out of or related to this Agreement must be filed in the courts of Metropolitan Lynchburg, Moore County, Tennessee.

23. GRAMMATICAL USAGE

In construing this Agreement, masculine or feminine pronouns shall be substituted for those neuters in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

24. ENFORCEMENT OF AGREEMENT

If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. INDEMNIFICATION

To the fullest extent permitted by law, the Developer and its successors and assigns will protect, indemnify, hold harmless, and defend the Metropolitan Government of Lynchburg, Moore County, Tennessee, the Department, and their employees, engineers, and agents from all claims, demands, suits, proceedings, loss, costs, and expenses, including attorney fees and court costs, and from any damages that may be asserted, claimed, or recovered, arising out of or in any way connected or associated with this Agreement or the construction of the utility system improvements for the Development.

26. ATTORNEY FEES

If the Developer breaches any provision of this Agreement, the Developer shall pay all the expenses incurred by the Department or the Metropolitan Government of Lynchburg, Moore County, Tennessee, to enforce this Agreement by negotiation, litigation, or otherwise, including attorney's fees and other expenses.

27. RULES AND REGULATIONS

The Department's Rules and Regulations are incorporated into this Agreement. In the event of a conflict between this Agreement and the Rules and Regulations, the Rules and Regulations will control.

28. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties hereto, and no

terms or provisions hereof may be changed, waived, discharged, or terminated unless the same is in writing and signed by all parties hereto.

29. COUNTERPARTS

This Agreement may be executed for the convenience of the parties in several counterpart originals, each of which is in all respects identical to the others and complete.



Russell Sells – General Manager
Ronnie Cunningham- Assistant Manager
Brooke Fanning – Office Manager

P.O. Box 503
705 Fayetteville Highway
Lynchburg, TN 37352

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931.759.4297 Phone

IN WITNESS WHEREOF, the parties have entered into this agreement this _____ day of _____, 20__.

DEVELOPER

METROPOLITIAN UTILITY DEPT.

By: _____

By: _____

General Manager

Title: _____

Address: _____

ATTEST: _____