

**AGREEMENT FOR OPERATIONS, MAINTENANCE AND MANAGEMENT
SERVICES OF WASTEWATER SYSTEM**

THIS AGREEMENT is entered into as of the _____ day of _____, 2010, by and between the City of Blaine, Tennessee, a municipality created and existing pursuant to T.C.A. § 6-1-101 et seq. (hereafter the "City"), and the Luttrell-Blaine-Corryton Utility District of Union, Grainger and Knox Counties, Tennessee, a utility district organized pursuant to the provisions of the Utility District Law of 1937 (hereafter the "District").

FACTS

1. City has received a grant from the Economic Development Administration (EDA), funding approval from USDA Rural Development and anticipates getting a Community Development Block Grant for the construction of a wastewater treatment and collection system to provide sanitary sewer service for approximately 249 residential and commercial customers in the City.

2. District currently owns and operates a water utility system in Union, Grainger and Knox Counties, a portion of which includes the corporate limits of City in the southwestern part of Grainger County.

3. District filed a Supplemental Petition pursuant to T.C.A. § 7-82-302 to obtain authority to provide sanitary sewer service within Grainger County which was approved by the County Mayors on May 12, 2010.

4. City desires to hire District to operate and manage City's new wastewater treatment and collection system (the "City Wastewater System") under the terms and conditions of this agreement.

5. District is willing to provide certain wastewater operations, maintenance and management services to City for its new wastewater treatment and collection system under the terms and conditions of this agreement for the fees recited herein.

6. The parties are fully authorized to enter into this agreement under T.C.A. §§ 7-82-304, 12-9-108, 7-35-416, 7-34-104 and other applicable laws of the State of Tennessee.

AGREEMENTS

In consideration of the premises and mutual covenants contained in this agreement, the parties to this agreement agree as follows:

Section 1. Provision of Service

1.1 Subject to the terms and conditions of this agreement, District agrees to operate, maintain and manage the City Wastewater System to properly collect and treat wastewater from City and its customers and to perform the other duties and responsibilities relating to the City Wastewater System required under this agreement (collectively, the "Work"). District shall provide its services to City under this agreement pursuant to the rates and charges provided for under Section 3 of this agreement.

1.2 The Work shall include the following District duties and responsibilities:

(a) manage, operate, monitor, repair and maintain the City Wastewater System;

in accordance with the City's ordinances, rules, regulations and policies and the terms of this agreement;

(b) provide and train personnel as necessary to perform the Work;

(c) conduct all billings and collection of revenue for the City Wastewater System in accordance with this agreement;

(d) assist in maintaining, renewing or modify all necessary permits and licenses, as required or necessary in order to perform the Work;

(e) answer and respond to all customer complaints and requests for service in accordance with the City's ordinances, rules, regulations and policies;

(f) prepare and recommend an annual budget and updated five year capital plan for the City Wastewater System and present to the City Council of City on or before April 1 of the year preceding the budget year;

(g) provide a written monthly report to the City on the operations of the City Wastewater System ;provide prompt notice to the City of any major operational problems, issues or potential adverse claims relative to the system; and

(h) perform such administrative and other additional duties as are more specifically prescribed in this agreement.

1.3 In maintaining and operating the City Wastewater System, District shall not expend any funds for the necessary parts, materials, supplies or equipment to repair, maintain or replace City's equipment or facilities; District shall not expend any funds for capital improvements to the City Wastewater System. Such expenditures and obligations

shall remain the City's responsibility. City shall pay the expenses of all utilities to operate the City Wastewater System.

Section 2. Term and Termination

2.1 The term of this agreement shall be five (5) years (the "Initial Term") commencing from the effective date of this agreement and shall automatically continue in effect thereafter for one or more one year renewal periods (the "Renewal Terms"), unless either party hereto gives a written termination notice of the agreement to the other party at least one year prior to the end of the Initial Term or at least six months prior to the end of the applicable Renewal Term.

2.2 The effective date of this agreement shall be the date the City Wastewater System is complete and ready to provide sewer service to City residents according to the City engineer administering the City Wastewater System construction project.

2.3 Notwithstanding the above, this agreement may be terminated by either party for a material breach or default under the agreement not cured in accordance with Section 2.4 during the Initial Term by giving written notice to the other party which shall take effect six (6) months from the date of said notice during the Initial Term, and this agreement may be terminated by either party for a material breach or default not cured in accordance with Section 2.4 under the agreement during a Renewal Term by giving written notice to the other party which shall take effect three (3) months from the date of said notice or at the end of the Renewal Term whichever occurs first. Any unpaid bills for services rendered prior to the termination of this agreement shall remain the obligations of the responsible party.

2.4 If either party should breach any provision of this agreement, the complaining party shall serve the party committing such breach with a written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. Any such breaching party shall, within the period of time stated in the notice from the complaining party, cure the breach cited in the complaining party's notice.

2.5 The parties may terminate this agreement at any time by mutual agreement or in accordance with the provisions of Section 3.2 on account of their failure to agree to increase in the charges for service allowed under this agreement.

Section 3. Charges for Service

3.1 District shall provide the operation, maintenance and management services required under this agreement to City for an annual fee of \$30,000.00 which shall be paid in twelve monthly installments. The first monthly payment shall be made on the effective date of the agreement. All subsequent monthly payments shall be made on or before the first business day of the month.

3.2 The charges for service provided by Section 3.1 shall be subject to modification on the anniversary date of the effective date each year during the Initial Term and any Renewal Term. If District desires a modification of these charges, the District shall request the modification at least ninety (90) days before the end of each contract year. The parties shall negotiate in good faith to determine the charges for service to be paid to District for the following contract year. If the parties to this agreement are unable to negotiate an acceptable price increase before the end of the contract year for the following contract year, either party may terminate this agreement by giving sixty (60) days written notice of termination to the other party.

3.3 City agrees to pay District a billing and collection fee of \$1.05 per bill per month for every City sewer customer billed by District under this agreement. If District desires a modification of these charges, the District shall request the modification at least ninety (90) days before the end of each contract year. The parties shall negotiate in good faith to determine the charges for service to be paid to District for the following contract year. If the parties to this agreement are unable to negotiate an acceptable price increase before the end of the contract year for the following contract year, either party may terminate this agreement by giving sixty (60) days written notice of termination to the other party.

3.4 City agrees to pay District a “new customer” application fee of \$20.00 per customer. This fee shall be deducted from the City’s “new customer” fee with all remaining funds be paid to the City. The “new customer” fee shall be set by the City in its Rates and Charges.

3.5 City agrees to pay District a “new customer sewer tap fee” of \$500.00 for each new service system installed on the line side by the District. The District will provide installation service for the new customer including repair, seeding, etc. required for the installation of the new customer system. The District shall be paid an additional fee when a new customer requires a road crossing for a new service tap. This fee shall be determined on an individual basis as determined by the City’s Rates and Fees Structure. The City shall pay for all materials required for a new customer sewer tap which shall also be covered under the City’s Rates and Fees Structure.

Section 4. Customer Billings and Termination of Sewer Service

4.1 District shall perform the monthly billing and collection of the City’s sewer service fees and charges for its customers served by the City Wastewater System at the rates set by the City. City shall give District timely written notice of any changes to its sewer rates and charges to enable the District to incorporate the new rates and charges into the District’s billing system by the effective date of any new rates and charges. District shall collect all revenues from the City’s sewer customers collected in a month and shall remit the same to City before the tenth business day of the month first following its collection, less the billing and collection fees District is entitled to be paid pursuant to Section 3.3 of this agreement.

4.2 District agrees to terminate its water service to any District customer who fails to pay for sewer service provided by the City or which is available to the customer and charged to the customer under City's governing ordinances in accordance with the District's rules and regulations governing utility service termination for non-payment. Any disconnection fee or reconnection fee charged by District related to the termination of water service for non-payment of the City's sewer service charges shall belong to District.

Section 5. Other Operational Requirements

5.1 District agrees to operate and maintain City's collection system in accordance with good and accepted engineering standards and practices and agrees to comply with all applicable laws, permits, standards, and regulations as may be promulgated or applied by the State of Tennessee, the Environmental Protection Agency, or any other regulatory agency relative to the operation of the City's sewage system and the collection and treatment of the City's sewage.

5.2 District shall operate and maintain the City Wastewater System under the terms of this agreement and in financial compliance with the annual budget approved by City for City Wastewater System and shall not incur any charge or obligation that is to be paid by City that exceeds the amounts provided for in the approved annual budget unless prior approval of such charge or obligation is received by and approved by the City governing body. In the event of an emergency requiring District to incur charges or obligations related to the City Wastewater System that are not authorized in or exceed the annual budget authority, District shall obtain the approval of the City's Mayor before incurring such charge or obligation. District shall also endeavor at all times to obtain the best pricing for equipment, materials, supplies and labor in the operation and maintenance of the City Wastewater System as is practical under the circumstances.

5.3 All commercial customers, specifically including but not limited to Food Service Facilities ("FSF's) contributing to the City Wastewater System, shall meet City's wastewater standards as provided in the City's Pretreatment Program and the Grease Control Program, as may be adjusted from time to time. All FSF's to be served by the City Wastewater System shall install interceptors that conform to the City's requirements before connecting to the City Wastewater System.

5.5 City shall adopt strict policies regarding the handling of delinquent accounts, new developments, subdivisions, and mobile home parks per the requirements of City's grant and loan obligations with the USDA. District agrees to operate the City Wastewater System in accordance with the requirements of these programs and policies, as they may be changed from time to time.

5.6 District shall assign personnel to properly operate and maintain the City Wastewater System as may be reasonably required to assure a smooth and efficient operation. District must employ the necessary personnel to obtain and maintain all

legally required certifications and comply with all other legal or regulatory requirements. District shall file with City the names, addresses and telephone numbers of District's general manager and any other authorized representatives of District who can be contacted at any time regarding District's operation and maintenance of the City Wastewater System.

5.7 District shall provide its employees involved with the Work with adequate training to perform the job responsibilities assigned to them and to assure their safety in the performance of their work activity. District's employees shall be required to wear a clean uniform bearing the District's name. Such employees shall additionally bear some means of individual identification as a name tag or identification card. At no time shall a District's employee in any way identify or represent himself or herself as an employee of City.

5.8 District shall provide good customer service to City's wastewater customers in accordance with generally accepted standards for the operation of a municipal wastewater system but in no event less than the standard that District maintains for its own utility customers. District shall notify City monthly of complaints received from City customers or others regarding the City Wastewater System.

5.9 District shall provide customer service to City wastewater customers during its regular business hours for District's other customers.

5.10 City shall be responsible, at its expense, for procuring all permits, and licenses required for the City Wastewater System to be fully operational as of the startup of the system except that District will provide the necessary licensed employees to operate and maintain the City Wastewater System. All permits, and licenses applicable to the City Wastewater System shall be issued in the name of the City except for the licenses of any employee of District necessary to operate the system. District shall materially comply with the provisions of all such permits, orders, and licenses. City shall supply to District a copy of all permits, and licenses including NPDES discharge requirements for the City Wastewater System.

5.11 At all times hereunder, title to the City Wastewater System and all applicable permits shall remain in the name of the City.

5.12 During the term of this agreement, District shall routinely inspect and monitor the City Wastewater System as necessary to ensure the proper operation of the system and in conformance with any applicable laws, state regulations or permits and all other requirements or orders of TDEC.

5.13 City, or its designated agent, shall have the right to inspect the City Wastewater System during all operating hours and at such other times as may be deemed necessary to protect the interests of City.

5.14 All proposed design, construction and operational plans, permit applications or other documents that are submitted to regulatory authorities, including requests for modifications, addenda or other additions, shall be submitted in City's name, and City shall pay any fees required to be paid with any such submissions.

Section 6. Indemnities

6.1 To the extent permitted by law, District agrees to indemnify and hold harmless City, and its officers, agents, servants, and employees, from, against, and with respect to any and all third-party suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incurred by or asserted against City arising due to any negligence or intentional misconduct of District or any of its officers, agents, servants, employees in the performance of the Work, or the failure of District to comply with any applicable environmental laws or other laws in performing the Work, except for those claims directly caused by the negligence or intentional misconduct of City or their officers, agents, servants, or employees.

6.2 To the extent permitted by law, City agrees to indemnify, hold harmless and reimburse District, and its officers, agents, servants, and employees, from, against and for any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incurred by or asserted against District, arising due to any negligence or intentional misconduct of City or any of its officers, agents, servants or employees or which is assessable against City because of its ownership of the City Wastewater System; but such indemnity shall specifically exclude without limitation those claims directly caused by the negligence or intentional misconduct of (i) District in the performance of Work or (ii) third parties using or accessing the City Wastewater System during the term of this agreement.

6.3 Notwithstanding any other term of this agreement, claims that give rise to indemnity rights in favor of both City and District under this Section 6 shall be apportioned between District and City under a theory of comparative negligence.

Section 7. Miscellaneous Provisions

7.1 **Successors and Assigns.** This agreement shall inure to the benefit and be binding upon the parties named herein and their respective successors and assigns. Nothing in this agreement, expressed or implied, is intended to confer upon any person other than District and City any right or remedy under or by reason of this agreement.

7.2 **Further Assurances.** Each of the parties further agrees to do any act or thing and execute any and all instruments that are reasonably necessary and proper to make effective the provisions of this agreement.

7.3 **Notices.** All notices hereunder from District to City shall be sufficient if personally delivered to the Mayor of City, or if sent to said officer by registered or certified mail, return receipt requested, addressed to the then current Mayor of the City, 220 Indian Ridge Road, Post Office Box 85, Blaine, Tennessee 37709-0085. All notices hereunder from City to District shall be sufficient if personally delivered to District's General Manager, or if sent to said officer by registered or certified mail, return receipt requested, addressed to the District's General Manager, Luttrell-Blaine-Corryton Utility District, 100 Main Street, Post Office Box 27, Luttrell, Tennessee 37779. If either party shall notify the other in writing of a change in the mailing address stated herein, such changed mailing address shall thereafter be used in lieu of that address stated herein.

7.4 **Entire Agreement.** This agreement is the entire agreement and understanding of the parties with respect to the subject matter of this agreement and supersedes all prior written or oral agreements, commitments, arrangements or understandings, between the parties with respect thereto. There are no restrictions, agreements, promises, warranties, covenants or undertakings with respect to the subject matter of this agreement other than those expressly set forth in this agreement.

7.5 **Amendments and Waivers.** No amendment, modification or waiver of any provision of this agreement shall be effective or binding upon the parties unless the same shall be in writing and signed by the parties to this agreement. The waiver of any party of a breach of any provision in this agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

7.6 **Specific Enforcement.** Each of the parties recognizes that any breach of the terms of this agreement may give rise to irreparable harm for which money damages would not be an adequate remedy, and accordingly agree that, in addition to injunctive relief and all other remedies available to the other party, which shall be cumulative, the non-breaching party shall be entitled to enforce the terms of this agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy.

7.7 **Severability.** If any one or more of the provisions of this agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this agreement shall not be affected thereby.

7.8 **Captions and Terms.** Section headings in this agreement are set forth for convenience of reference only and should not define or limit the provisions of this agreement.

7.9 **Expenses and Attorneys' Fees.** Each party shall bear its own expenses, including fees of any attorneys, accountants or others engaged by the party, in connection with the development, negotiation and execution of this agreement. The parties further agree that in the event that either party shall be required to engage legal counsel for the enforcement of any of the terms of this agreement as a result of a breach of or default under this agreement by the other party, the breaching party shall be responsible for and

shall promptly pay to the party engaging said legal counsel the reasonable amount of such party's attorneys' fees, all court costs and collection costs, and any other expenses incurred by the party engaging counsel that result from such breach or default.

7.10 **Cooperation.** The parties hereto agree that they will cooperate with each other in all matters that are reasonable, necessary or desirable to facilitate the performance of their respective obligations under this agreement with a minimum of expense, trouble and interference with service, and each party hereto agrees to comply with the reasonable requests of the other party in connection therewith.

7.11 **Authority.** Each party agrees, when requested by the other party, to furnish to the requesting party a certified copy of the minutes of its board signifying the approval of this agreement and demonstrating the authority of officer(s) to execute and deliver the same, or where applicable, other documentation of the delegation of authority to the party's officer(s) to approve, execute and deliver this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed in duplicate by their respective officers as of the day and year first above written, each party hereto retaining an executed copy hereof.

CITY OF BLAINE, TENNESSEE

By: _____
Patsy McElhaney, Mayor

**LUTRELL-BLAINE-CORRYTON
UTILITY DISTRICT OF UNION,
GRAINGER AND KNOX COUNTIES,
TENNESSEE**

By: _____
Jimmy Langley, General Manager

STATE OF TENNESSEE)

COUNTY OF GRAINGER)

Before me, the undersigned authority, a Notary Public of the State and County aforesaid, personally appeared Patsy McElhaney, with whom I am personally acquainted, and who, upon oath, acknowledged herself to be the Mayor of the City of Blaine, Tennessee, one of the within named bargainors, a municipality created under the laws of Tennessee, and that she as such Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said municipality by herself as such Mayor.

WITNESS, my hand and seal at office, this the __ day of _____, 2010.

Notary Public

My commission expires: _____

STATE OF TENNESSEE)

COUNTY OF _____)

Before me, the undersigned authority, a Notary Public of the State and County aforesaid, personally appeared Jimmy Langley, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the General Manager of the Luttrell-Blaine-Corryton Utility District of Union, Grainger, and Knox Counties, Tennessee, one of the within named bargainors, a public corporation, and that he as such General Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said public corporation by himself as such General Manager.

WITNESS, my hand and seal at office, this the __ day of _____, 2010.

Notary Public

My commission expires: _____