

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of January 2022 between The Metropolitan Government of Nashville and Davidson County ("METRO") and the City of Brentwood, Tennessee ("CITY").

THE PARTIES AGREE AS FOLLOWS:

1. METRO agrees to sell CITY water in amounts not exceeding the maximum daily (midnight to midnight) volume of 1,000,000 gallons ("Maximum Daily Volume") and at a rate not exceeding the maximum instantaneous rate of 700 gpm ("Maximum Flow Rate").
2. All flow from METRO's water system shall be metered. Total instantaneous flow rate shall be computed from the total flow passing through all points of connection. CITY shall purchase a minimum of 320,000 gallons of flow daily. To assist in meeting unusual peak daily water demand, METRO, upon request by CITY, will make available any water capacity not otherwise obligated, subject to the conditions set forth in paragraph 5.
3. CITY shall make monthly payments to METRO for water services provided under this Agreement at METRO's Non-Residential Rate, including applicable taxes imposed by state law or contract, in force at the time of billing. The CITY shall follow and be subject to billing rules, and rate changes, that govern all non-residential customer. METRO shall provide CITY notice of any increase in the Non-Residential Rate in the same manner and according to the same schedule as METRO's other non-residential customers. All meters required by this Agreement shall be the appropriately sized meters and the installed size will be used for billing.
4. Billing shall be on a calendar month basis. METRO shall render bills directly to CITY monthly and CITY shall make payment to METRO not later than the 20th day after receipt of each bill. CITY 's failure to pay any bill when due shall constitute a violation of this agreement and METRO shall have the absolute right to discontinue service. Interest shall accrue on the balance of any late payment shall be at the rate of 1.5% per month until paid in full. If CITY fails to pay the bill for a second time, the CITY will be notified of potential disconnect by letter and/or phone call advising that service will be discontinued if payment is not received in five days. If the CITY does not pay the delinquent account within five days following the notice, the account is subject to immediate discontinuation of water and sewer service unless METRO has received notice of billing dispute by CITY. To have service restored the CITY must then pay the total delinquent amount plus a reconnection fee. The parties shall attempt to resolve any billing dispute by mutual agreement. CITY may pay a bill or part of a bill under protest in order to maintain water service but reserve the right to challenge the bill in an appropriate forum. METRO will operate its water system in such a manner as to meet Federal and State requirements concerning drinking water.
5. In addition to the charges specified in paragraph 3, CITY also shall make monthly payments to METRO at two times the Non-Residential Rate in force at the time of billing for the volume of CITY's withdrawal from the METRO water system on any

day (midnight to midnight) for the amount that exceeds 100% of the applicable Maximum Daily Volume. Metro shall have the right but not the obligation to increase the Maximum Daily Volume. Any such increases shall be affected by a modification to this Agreement executed in accordance with paragraph 19.

6. CITY shall own the meter and associated equipment located at East Park Drive. In the event that, METRO consents to the addition of new points of connection into METRO's water system, additional meters and backflow preventers, which may include pumping facilities at points approved by METRO, shall be added at CITY's expense and otherwise pursuant to the terms of this Agreement. CITY shall then own, operate and maintain the prescribed equipment.
7. All maintenance, upkeep, repair and replacement of meters specified in this Agreement shall be CITY's obligation and performed at CITY's sole cost and expense. Should CITY fail to promptly comply with any written request by METRO to perform the obligations contemplated by this paragraph, the Director may arrange for their performance by other parties, and CITY shall then pay METRO for all associated direct and indirect costs within 30 days of demand.
8. Both agencies shall have access to the metering output signal at the metered location for the purposes of transmitting meter flow data to their own respective site.
9. In the event CITY requests an increase to its maximum capacity/draw, METRO will either provide a list of capital improvements and costs that will need to be made by CITY in order for METRO to deliver the flow, or if capital improvements have already been made, METRO will provide a list of the prorated share of those past costs to be paid by CITY.
10. In the event that the meters measuring flow into CITY's water system becomes inoperative during any billing period, METRO may issue, and CITY shall pay, an estimated bill based on the service provided during the corresponding month of the preceding year for which such data is available, or at METRO's election, an estimated bill based on the immediately preceding billing period. CITY may have a representative present to participate in the monthly flow meter readings.
11. The water provided to CITY under the terms of this Agreement shall not be resold to any other governmental entity or to any entity other than CITY's retail customers.
12. CITY will calibrate the meter contemplated by this Agreement at least once every year at CITY's sole expense and, in the event that a metering station is determined to be inaccurate, the amount billed for the preceding month's services will be adjusted to reflect flow quantities, and a credit or debit will appear on METRO's next bill to CITY. The Director, in his sole discretion, may order the performance, at CITY's sole cost and expense, of more frequent calibration tests of the meters contemplated by this Agreement. Such calibration test shall be made by an authorized manufacturer representative of the CITY and METRO. City will furnish METRO any documentation from such representative detailing calibration results and any modifications made necessary to the meter including but not limited to replacement when calibration is performed.

13. The term of this Agreement shall be ten (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.
14. Neither party to this Agreement shall assign, market or sell its rights or obligations under this Agreement to any entity without written notice to the other. If any water is transferred out of the basin, as defined by the State of Tennessee, then CITY shall notify METRO as to the volume and period. Should any charges be assessed by any agency to METRO, then CITY will reimburse METRO for its actual costs.
15. Force Majeure. METRO shall exercise diligence in the operation and maintenance of its equipment and facilities so as to furnish CITY continuous water service during the requested periods, consistent with the type and level of service specified herein. Neither party shall be liable for damages, breach of contract, or otherwise by reason of the failure, suspension, diminution or other variance in water services as the result of injunction, fire, strike, riot, explosions, flood, accident, curtailment, interruption, failure or depletion of METRO's water supply, failure or breakdown of equipment or facilities, acts of God, or other acts or conditions beyond the control of METRO or CITY, respectively. Furthermore, neither party shall be liable for damages resulting from interruption of service, when such interruptions are necessary to make repairs, changes or adjustments in equipment and facilities.
16. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof
17. This Agreement shall not become binding upon the parties until it has been approved by both parties and approved by the Metropolitan Council and filed in the office of the Metropolitan Clerk.
18. This Agreement shall be governed by the laws of the state of Tennessee, and any action relating to this Agreement shall be brought in a court of competent jurisdiction in Tennessee.
19. All of the terms of this 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above-written.


THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

CITY OF BRENTWOOD:

John Cooper, Mayor

By: 

RECOMMENDED BY:

DocuSigned by:


Scott Potter, Director
Department of Water and Sewerage Services

APPROVED AS TO FORM AND LEGALITY:

APPROVED AS TO AVAILABILITY OF FUNDS:


DocuSigned by:


Kelly Flannery, Director
Department of Finance



City Attorney

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:


Metropolitan Attorney

Metropolitan Clerk

Date: