

## PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into by and between The Metropolitan Government of Nashville and Davidson County and Tennessee Stadium, LLC ("TNS").

WHEREAS, TNS has entered into an agreement with the Sports Authority of the Metropolitan Government of Nashville and Davidson County to design and build a new enclosed stadium (the "New Stadium") on the east bank of the Cumberland River to serve as the venue for NFL games played by a TNS affiliate; and

WHEREAS, the conveyance of sewage flow from the New Stadium to an appropriate treatment facility will require the construction of a new sewage pumping station (the "Pump Station") and related piping and equipment; and

WHEREAS, after completion, the Pump Station will also serve nearby properties expected to be redeveloped; and

WHEREAS, the parties have estimated the total cost of designing and constructing the Pump Station and related trunk sewer and force main segments and connections (the Pump Station and related elements being the "Project") to be approximately \$32,500,000; and

WHEREAS, the parties have estimated the portion of total Project costs associated with accommodating sewage flow from the New Stadium to be approximately \$6,500,000; and

WHEREAS, pursuant to the terms hereof, the Metropolitan Government proposes to pay towards the cost of the Project an amount equal to the difference between actual project design and construction costs and the TNS Total Share, as defined herein, and TNS proposes to design and construct the Project and convey it to the Metropolitan Government upon completion without further charge.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Effective Date. This Agreement shall become effective only after its approval by the Metropolitan Council and upon the date of its filing (the "Effective Date") with the Metropolitan Clerk.
2. Project Site; Temporary Easement. The Pump Station will be located (the "Pump Station Site") approximately as shown on the drawing attached to this Agreement as Exhibit 2. The Metropolitan Government will provide to TNS such survey and geotechnical records as it may have bearing on the Pump Station Site. The Metropolitan Government hereby grants TNS a temporary access easement for the purpose of designing and constructing the Pump Station and performing such other preliminary and related work as may be necessary to carry out the responsibilities of TNS hereunder. The temporary easement will expire upon completion of the Pump Station and on the date that the Metropolitan Government accepts the conveyance of the Pump Station from TNS.
3. Compliance with Law. In performing its duties under this Agreement, TNS shall fully comply with all applicable laws, rules, and regulations.
4. Project Design. The parties have agreed upon a general scope of work ("Scope"), which is attached to this Agreement as Exhibit 1. TNS will engage a qualified design-build contracting firm by written contract consistent with the design-build construction method referenced in paragraph 5 of this Agreement to prepare plans and specifications ("Design Documents") for the Project. The Pump Station shall be designed with sufficient firm capacity with the largest pump out of service to safely receive and transmit, at a minimum, 10,000,000 gallons per day, and shall have the capability of adding additional capacity in the future. For design purposes, peak flows from the New Stadium will be assumed to be 1,400 gallons per minute. The Project will be designed in accordance with the State of Tennessee Design Criteria for Sewage Works, Chapter 2 and the Metropolitan Government's typical design standards for similar facilities, including, without limitation, all pumps, controls, piping, connections, and equipment. Within 180 days after the Effective Date, TNS will provide to the Metropolitan Government's Department of Water and Sewerage Services (the "Department") electronic copies of initial plans and specifications (the "Initial Plans") for the Project consistent with the Scope, and the Department shall have 30 days to review the Initial Plans and notify TNS of any changes required thereto. Any such changes shall then be incorporated into the designs, and revised plans and specifications shall be prepared and submitted to the Department for consideration within 30 days. This iterative process shall continue until final and unconditional approval of the plans and specifications by the

Department, and such unconditionally approved plans and specifications shall then be the "Final Plans."

5. Construction. TNS shall engage a qualified design-build contractor (the "Contractor") by written contract (the "Project Contract") to design and construct the Project. TNS shall utilize the existing Contractor engaged for the force sewer main relocation associated with the New Stadium. The Project Contract shall be subject to approval by the Metropolitan Department of Law. It shall be in form and substance typical for projects of a similar size and shall, without limitation:

- (a) provide for a fixed price not exceeding \$30,000,000;
- (b) require the Contractor to submit properly supported monthly payment applications, which the Metropolitan Government shall have the right to review and approve;
- (c) require the Contractor to furnish evidence of insurance insuring the Metropolitan Government and its officer, agents, and employees from all claims resulting from injury or damage related to construction of the Project;
- (d) require the Contractor to provide separate payment and performance bonds having a penal sum in the full amount of the Construction Contract sum and naming the Metropolitan Government as an additional obligee;
- (e) provide that the Metropolitan Government shall not be responsible for costs associated with any change order necessitated by or associated with errors or omissions in the Final Plans;
- (f) provide that no change in the Construction Contract sum or time for performance shall be made without the approval of the Metropolitan Government;
- (g) warrant all work performed for a minimum of one year after substantial completion;
- (h) require the Contractor to indemnify the Metropolitan Government and its officers, agents, and employees for any damages, losses, or expenses incurred by them for failure of the Contractor to complete the Project or before the date specified in the Construction Contract for substantial completion; and
- (i) require the Contractor and any subcontractor, upon written request from the Metropolitan Government, to furnish the Metropolitan Government with certified copies of payroll records.

6. Cost Allocation. As used in herein,

"Initial Construction Price" means the Construction Contract fixed price before any changes.

"Initial Project Cost" shall mean the sum of design costs plus the Initial Construction Price.

"TNS Change" means a change to the Final Plans requested by TNS.

"Metro Change" means a change to the Final Plans requested by Metro.

"Cost Increase" means the sum of all costs associated with changes to the Construction Contract other than TNS Changes or Metro Changes.

"TNS Initial Share" means an amount equal to the product of 0.20 and the Initial Project Cost.

"Cost Ratio" means 0.20.

"TNS Additional Share" means an amount equal to the product of the Cost Ratio and the Cost Increase.

"Total TNS Share" means the sum of the TNS Initial Share and the TNS Additional Share."

TNS shall pay all design and construction costs incurred on the Project until the Initial TNS Share has been exhausted. Thereafter, the Metropolitan Government will assume responsibility for payment of design and construction costs through completion of the Project except for costs attributable to TNS Changes, for which TNS shall be solely responsible. Metro shall be solely responsible for the costs attributable to Metro Changes. After the Project has been fully completed, TNS shall pay to the Metropolitan Government an amount equal to the TNS Additional Share. TNS shall not approve any change order to the Construction Contract without the Metropolitan Government's express written approval. Under no circumstances shall the Metropolitan Government or any of its affiliate agencies be liable to TNS on account of delays in construction of the Project not willfully or negligently caused by Metropolitan Government employees.

7. Project Construction. TNS shall cause the Contractor to promptly begin and thereafter diligently pursue the Pump Station to completion on or before July 1<sup>st</sup>, 2026, subject to reasonable extension on account of force majeure or material delays caused by the Metropolitan Government's unjustified failure to approve the Final Plans, issue necessary permits, or respond to submittals. TNS shall cause the Contractor to complete fully all improvements shown on the approved Final Plans or reasonably

inferable therefrom. All Work shall be completed in a good and workmanlike manner using new materials.

8. Access to Project Site; Inspection; Rejection of Unacceptable Work. The Metropolitan Government and its representatives and contractors shall be given unrestricted access to the Pump Station Site and all other areas where Project work is taking place for the purpose of inspecting the ongoing construction work. The Metropolitan Government shall have the right to reject work not conforming to the Final Plans, and in such event TNS shall cause the Contractor to replace such unacceptable work without cost to the Metropolitan Government.
9. Maintenance of Records. TNS shall maintain all records relating to the Project for 36 months after substantial completion, and such records shall be available for inspection, copying, and auditing upon the reasonable request of the Metropolitan Government.
10. Changes. Either party may request changes to the Final Plans. No such change shall be made without the approval of the other party, such approval not to be unreasonably withheld. The party requesting the change shall bear all additional costs incurred in modifying the Final Plans and in performing the changed work. Any change in the work, and all other modifications of this Agreement, shall be in writing and signed by authorized representatives of both parties. Without limiting the foregoing, no change that could result in a Cost Increase may be made without the written approval of the Metropolitan Government.
11. Property Not To Be Used As Security. TNS shall not permit the Pump Station Site or the site of any other Project work to be used as security for any debt or other purpose. In the event any lien is filed against the Pump Station Site or Project work site on account of the performance of the Project, TNS shall promptly cause the removal of such lien by bond or otherwise.
12. Transfer/Ownership of Improvements. Upon completion of the Project, and upon approval by the Metropolitan Government, TNS will convey ownership of all completed improvements to Metro by bill of sale at no cost. TNS will provide reasonable evidence that all contractors and suppliers having performed work or supplied materials in connection with the work have been paid in full at the time of the conveyance. TNS also shall convey to the Metropolitan Government a full set of as-built record drawings, operating manuals, warranties and other relevant project documents within 60 days after substantial completion.

13. Environmental Matters. TNS shall not cause, or negligently or knowingly permit, any hazardous materials (as defined under any applicable law) to be generated, used, released, stored or disposed of at, in, on, or under the Pump Station Site or any other Project work site by TNS or any of its contractors or subcontractors in violation of any applicable law and shall use commercially reasonable efforts to prevent the generation, use, storage, or disposal of any hazardous material in violation of applicable law. Provided, however, that TNS and its contractors and subcontractors may use and store reasonable and necessary quantities of hazardous materials as may be required for TNS to perform its obligations under this Agreement so long as such hazardous materials are used and stored in compliance with applicable law. If during construction of the Project an unforeseen environmental hazard or condition associated with the Pump Station Site is discovered, the parties agree to negotiate an amendment to this Agreement in good faith to address the remediation of such unforeseen environmental hazard or condition and the allocation of costs associated therewith.
14. Merger, Venue, Choice of Law. This Agreement contains all the understandings of the parties with respect to the Work. The exclusive forum of any dispute arising from this Agreement shall be the Chancery or Circuit Court of Davidson County, Tennessee, and the laws of Tennessee shall apply.
15. Assignment. TNS may not assign this Agreement without the Metropolitan Government's written consent.
16. Notices. Notices required under this Agreement shall be sent as follows:

If to the Metropolitan Government:

Director,  
Metropolitan Department of Water and Sewerage Services  
1600 Second Avenue North  
Nashville, TN 37208  
with a copy to:

Director of Law  
108 Metro Courthouse  
Nashville, Tennessee 37201

If to TNS:

Dan Werly  
Chief Operating Officer  
Tennessee Titans  
460 Great Circle Road  
Nashville, Tennessee 37228

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

**METROPOLITAN GOVERNMENT:**

**TENNESSEE STADIUM, LLC**

Recommended By:

  
\_\_\_\_\_

Metropolitan Department Water and  
Sewerage Services

By:   
\_\_\_\_\_

Name: Dan Werly

Title: Chief Operating Officer

Approved as to Availability of Funds:

  
\_\_\_\_\_

Metropolitan Department of Finance

Approved as to Form and Legality:

  
\_\_\_\_\_

Metropolitan Department of Law



## Exhibit 1

### Project Scope

The proposed regional sanitary sewer lift station serving the redevelopment occurring along East Bank, including the proposed stadium of the Tennessee Titans, incorporates the following major components:

- Design and construction of a new 10 million gallons per day (MGD) sanitary sewer lift station serving the area generally bounded by the Cumberland River, Interstate 24, and Main Street. The design shall allow expansion of the facility to 15 MGD to accommodate continued redevelopment as part of Metro Planning Commission's Imagine East Bank vision plan.
- Design and construction of a new gravity interceptor sized to convey 15 MGD of domestic wastewater to the proposed sanitary sewer lift station. The depth of the interceptor shall be designed to accommodate gravity flow from development occurring within the East Bank.
- Design and construction of a new sanitary sewer force main sized to convey 15 MGD to the existing 60-inch Brown's Creek force main.

The design and construction of the regional lift station shall be delivered by a Design-Builder responsible for providing all professional engineering services including surveying, geotechnical, civil, process mechanical, mechanical, electrical, plumbing, structural, and instrumentation and controls. The station design shall also incorporate the services of an architect and landscape architect to address aesthetics and incorporate the built infrastructure into the overarching vision for the East Bank.

The lift station is to be constructed on parcel 09302006800 generally described as Parking Lot F, Nissan Stadium. The lot is bounded by Main Street, S 1st Street and Woodland Street, with approximate dimensions of 210' by 575'. The proposed lift station will be manifolded into the existing 60-inch Prestressed Concrete Cylinder Pipe (PCCP) force main referred to as the Browns Creek Force Main. Discharge piping from the lift station shall be arranged such that only a single connection to the existing PCCP is required. Final force main sizing, routing, and connection type shall be determined by the station designer in consultation with Metro Water.

Dry-pit submersible pumps shall be arranged in self-cleaning, trench-style wetwells. Multiple pumps of varying capacities shall be provided to meet the range of expected flows and comply with TDEC requirements for redundancy while minimizing operational

complexity. Dry weather pumps shall handle influent flows up to approximately 5.0 MGD. Wet weather pumps shall handle flows above 5 MGD and up to the rated capacity of the station (i.e. 10 MGD/15 MGD). Final pump selections shall be determined by the station designer in consultation with Metro Water.

Other considerations that are to be incorporated into the design of the new lift station include influent grinder(s), odor control, standby emergency power housed in hospital-grade sound attenuating outdoor enclosure, overhead bridge crane, and integration with Metro Water's existing telemetry and control system. All critical pieces of equipment that are not rated for submergence shall be designed and constructed at two feet higher than the flood of record elevation or the 500-year flood elevation, whichever is higher.

Equipment and materials incorporated into the design and construction of the lift station, gravity interceptor, and force main pipelines shall be of first manufacture, high quality, and listed on Metro Water's Acceptable Manufacturer List.

Design-Builder shall provide all labor, materials, consumables and construction oversight to construct, test and place into operation the approved lift station, interceptor, and force main designs within the project deadlines. Following construction, testing, and acceptance, Metro Water shall receive complete record documents for its permanent records.

**Exhibit 2**  
**Pump Station Site**

