

First Amendment to Agreement

This Amendment modifies an agreement (the "Agreement") between the Metropolitan Government of Nashville and Davidson County ("Metro") and First Suburban Utility District of Davidson County, Tennessee ("CUD"), approved by the Metropolitan Council through Substitute Resolution 94-1431.

WHEREAS, Paragraph 12 of the Agreement contemplated that the Parties would negotiate in good faith for the transfer of CUD's property and facilities relating to water treatment and distribution to Metro; and

WHEREAS, the Parties have agreed to terms governing the transfer of said property and facilities, as memorialized in this Amendment.

NOW, THEREFORE, the Parties agree as follows:

1. On or before July 1, 2003, ownership of all of CUD's operations, assets, property, facilities, duties and liabilities relating wholly to the treatment and distribution of water (Collectively, "CUD Assets") in Davidson County, alone, shall be transferred in full to Metro, subject to CUD's obligation not to change the status quo (except as related to its outstanding bonds assumed by a Municipality established and existing in Wilson County, Tennessee) from and after its Commissioners' execution of the First Amendment, and subject to Metro's obligation not to question the validity or efficacy of any official actions theretofore taken by its Board of Commissioners, in the exercise of their official discretion under the Utility District Law of 1937, as amended, T.C.A. §§ 7-82-101, *et seq.*, and any other general law of the State of Tennessee, any prior contractual provisions to the contrary notwithstanding, with "CUD assets" being transferred to Metro (1) to include the cash proceeds of any sale of CUD's Wilson County System and assets to an entity located in Wilson County, Tennessee, but (2) not to include the bank accounts containing bond funds related to CUD's outstanding bonds, which are to be assumed by a purchaser situated in Wilson County, Tennessee. In the event of apparent conflict between this Amendment and any other provisions of the Agreement as modified by this First Amendment, this Amendment shall control and shall nullify any conflicting provisions. Control over the CUD assets shall be transferred in accordance with the schedules established in the Amendment.

The parties agree that if due to oversight or inadvertence any asset or liability is overlooked the parties will immediately correct and carry out this agreement in accordance with the intentions of the parties. Neither the Board of Commissioners of CUD nor its attorneys, employees or agents make any warranties with reference to any of the assets transferred or as to the value of assets or title to assets, it being the intention of the parties that CUD, as a municipal corporation created by state law, will and does agree to transfer every asset of whatever nature or description that the District now owns or acquires prior to closing and all assets and all liabilities of the CUD as an entity will be assumed by Metro, provided that upon consummation of this transfer, no cause of action shall vest in Metro against any of CUD's officers, agents, representatives or employees. Further, if there are any claims filed

or assertions made contrary to what is contemplated herein, the officers, agents, attorneys and employees of CUD agree that they will in all good faith participate in and assist Metro in clearing up any problems that might occur. Again, it being the intention of the parties that this contract constitutes a binding agreement between Metro and CUD pursuant to the Laws of the State of Tennessee.

Both Parties agree that all of the following have been or will be provided no less than thirty (30) days prior to the closing of the Contract.

2. CUD shall provide to Metro's Accounting Division:
 - a. A listing of all assets and liabilities greater than \$5,000.
 - b. A copy of CUD's fiscal year 2001 Budget.
 - c. An audit of inventory, cash investments and all revenue sources, obligations, asserted and unasserted claims and all available information regarding outstanding bonds or other type of indebtedness.
 - d. A monthly/quarterly financial report of all banking, investment or other types of accounts containing moneys of CUD.
 - e. A monthly operating financial statement.
 - f. Complete accounting of all tap fees received and expended during the period through January 1, 2003, and subsequent changes with monthly updates thereafter.

3. CUD has provided to Metro's Human Resources Department the following information in accordance with the schedule shown:
 - a. A description of CUD's existing employee benefit packages.
 - b. A complete listing of CUD employees that are expected to become Metro employees.
 - c. Completed employment applications for every CUD employee expected to become a Metro employee.

4. CUD has provided Metro's Customer Service Division with the following:
 - a. Copies of all system data, including without limitation, all customer and account information.
 - b. Copies of all CUD Customer Service policies and procedures currently in effect.

5. CUD has provided Metro's Engineering Division with the following:
 - a. Copies of all outstanding availability letters and tap fees committed.
 - b. Copies of all plans under review, easements, tap fee and rates, construction specifications and inspections.

6. Metro will provide to CUD with the following:

- a. Answers to all civil service questions presented in writing to Metro by CUD.
 - b. Metro will prepare a listing of employee transferring to Metro showing their employment classification and rate of compensation with Metro.
7. CUD will take all reasonable measures hereafter to assure the orderly transfer of the water treatment plant, water distribution, metering operations, business and other functions to Metro. CUD agrees not to do the following unless Metro Water Services' Director agrees in writing;
 - a. Modify any of CUD's policies or procedures.
 - b. Modify the terms of any existing compensation and benefit plans with CUD's employees.
 - c. Enter into any purchases that extend beyond July 1, 2003.
 - d. Sell or purchase individual assets that exceed \$15,000.
 - e. Enter into contracts extending and/or to be completed beyond July 1, 2003.
 - f. Incur any debt that will not be paid in full by July 1, 2003 other than routine purchases relating to operation of the water system.
8. CUD further shall:
 - a. Construct all projects according to Metro specifications and provide copies of Engineering plans to Metro in CAD format.
 - b. Provide immediate written notification of claim or lawsuit asserted against CUD that have a financial impact greater than \$5,000.
 - c. CUD will transfer all of its operating rights, assets and liabilities to the Metropolitan Government of Nashville and Davidson County, Tennessee at the time of transfer of all CUD's assets pursuant to the statutory laws of the State of Tennessee hereinabove listed and in addition thereto, pursuant to the Inter-Local Government Cooperation Act. In effect merging CUD into Metro along with the assumption by Metro of all assets and liabilities of CUD.
9. Except as expressly modified herein, all of the terms and conditions of the Agreement shall remain in full force and effect.
10. This Amendment shall not become effective until approved by the Metropolitan Council and filed in the office of the Metropolitan Clerk.
11. After execution of this Agreement, CUD will transfer to Metro Government all assets to be effective on or before July 1, 2003.

RECOMMENDED BY:

Scott Potter

Scott Potter
Director, Department of
Water & Sewerage Services

David L. Manning

Director of Finance

APPROVED AS TO FORM AND
LEGALITY:

Howell

Metropolitan Attorney

APPROVED:

Bill Purcell, Metropolitan Mayor

WITNESSED:

Metropolitan Clerk

First Suburban Utility District of
Davidson County, Tennessee

Dorothy L. Sanders

Dorothy L. Sanders, President

Charles C. Hudson

Charles C. Hudson, Vice President

Hubert Wiles

Hubert Wiles, Secretary

Cecil D. Branstetter, Sr.

Cecil D. Branstetter, Sr., Attorney

APPROVED:

Thomas H. Faulk

Tom Faulk, General Manager

ATTEST:

Hubert Wiles

Hubert Wiles, Secretary

SEAL: