

LATE FILED

RECEIVED

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

2011 DEC 15 PM 4:25

IN RE Petition of King's Chapel Capacity, )  
LLC for Certificate of Convenience and )  
Necessity to Serve an Area in Williamson, )  
County, Tennessee Known as Ashby Community )

Docket No. J.04A00335

CLERK'S OFFICE

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**RESPONSE TO PETITIONER'S FIRST SET OF DISCOVERY REQUESTS**

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**REQUESTS FOR ADMISSIONS**

a. Admit or Deny that the wastewater facility identified in KCC's Petition for a ("CCN") is adequate for the purposes, service and needs of the community identified in KCC's Petition for a CCN.

**RESPONSE:** TWS admits that the wastewater facility it owns, which is also the facility "identified in KCC's Petition," is adequate, or will be adequate upon completion, to serve the needs of the community identified in the Petition.

b. Admit or Deny that Tennessee Wastewater Systems, Inc. ("TWS"), together with ON Site Capacity Development Company, ("OCDC") asserts a contract for the construction, inspection, repair and maintenance of the wastewater plant identified and attached by TWS (to the Petition to Intervene) to these proceedings.

**RESPONSE:** TWS does not understand this question. TWS admits that it is a party to a contract regarding the construction and operation of the facilities described above. The language of the contract, which TWS has filed with the TRA, speaks for itself.

c. Admit or Deny that the wastewater plant identified in KCC's petition for a CCN was build in strict compliance with the SOP granted in this matter by TDEC.

**RESPONSE:** Admit. See response to "a." above regarding the "plant identified" in the petition.

d. Admit or Deny that the process and/or design of the wastewater plant which is the subject of this matter is substantially the same as commonly used within the industry.

**RESPONSE:** Deny.

**PETITIONER'S FIRST SET OF DATA REQUESTS**

1. Please provide the name and business address for each individual who prepared or assisted in preparing the answers to these data requests.

**RESPONSE:** Charles Pickney, Tennessee Wastewater, 7638 River Road Pike,  
Nashville, TN 37209

Robert Pickney, Tennessee Wastewater, 7638 River Road Pike,  
Nashville, TN 37209

Henry M. Walker, Boulton Cummings Connors Berry, PLC, 1600 Division  
Street, Suite 700, P.O. Box 340025, Nashville, TN 37203

Anne Martin, Bone McAllester Norton PLLC, 511 Union Street, Suite  
1600, Nashville City Center, Nashville, TN 37219

2. For Tennessee Wastewater Systems, ("TWS") and any and all of its affiliated entities or individuals, please provide the following.

- a. all current and previously used trade names;
- b. type of business organization or structure;
- c. the names of all individuals and/or entities with an ownership interest and the nature and extent of the ownership interest; and
- d. a description of the services or products offered by each such entity.

**RESPONSE:** Tennessee Wastewater Systems, Inc.

Previous name: On-Site Systems, Inc.

Type of business: Corporation  
Owners: Charles Pickney, Robert Pickney, William Pickney, Thomas Pickney, each with 25% interest  
Services: Public utility

On-Site Capacity Development Company

No previously used trade names

Type of business: Tennessee general partnership  
Owners: Charles Pickney, Robert Pickney, William Pickney, Thomas Pickney, each with 25% interest  
Services: Develop and finance opportunities for TWS to provide wastewater treatment systems in Tennessee within the areas for which it is an approved TRA service provider

Pickney Brothers, Inc.

No previously used trade names

Type of business: Corporation  
Owners: Charles Pickney, Robert Pickney, William Pickney, Thomas Pickney, each with 25% interest.  
Services: General contractor licensed by the State of Tennessee

Effluent Collection Supply LLC

No previously used trade names

Type of business: Limited liability company  
Owners: Charles Pickney, Robert Pickney, William Pickney, Thomas Pickney, each with 25% interest.  
Services: Distributes Orenco products for on-site sewer systems in Tennessee

Jarrett Concrete Products & Supply, Inc.

No previously used trade names

Type of business: Corporation

Owners: Thomas Jarrett family owns 50% and  
Pickney Brothers owns 50%

Services: Provides water tight tanks for on-site sewer  
systems

3. Please identify and describe the specific geographic boundaries of each service area for which TWS presently holds a certificate of public convenience and necessity ("CCN") to provide wastewater treatment services in Williamson County, Tennessee.

**RESPONSE:** See attached maps.

4. If TWS currently holds a CCN for the area in Williamson County in which King's Chapel Subdivision is located, please identify the basis for any right, privilege, or obligation that TWS asserts in regard to providing wastewater treatment services to King's Chapel Subdivision.

**RESPONSE:** See T.C.A. § 65-4-201 through 203. By statute and case law, TWS is the only entity legally authorized to construct or operate the facilities described in response to the First Request for Admission. By law, TWS is obligated to provide service to any customer within its service area where it is reasonable and feasible to do so. No other entity has the right to construct or operate facilities within that service area without a certificate from the TRA. The TRA may not issue such a certificate unless it first finds that TWS is unwilling or unable to provide the requested service. TWS is both willing and able to provide that service under the terms and conditions of its contract.

5. Please provide a detailed itemization of any and all investments made by TWS in its wastewater treatment service areas located in Williamson County, Tennessee.

**RESPONSE:** As this party understands this interrogatory, it has no investments in wastewater treatment service areas located in Williamson County, Tennessee because as a matter of operational principle, TWS does not invest capital to construct wastewater treatment systems.

6. Please identify and describe the types of wastewater treatment systems and/or facilities owned, maintained, or operated by TWS in Williamson County, and for each type of system, explain its location and how it operates.

**RESPONSE:** This party objects to this interrogatory as irrelevant, unrelated to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence.

7. Has TWS received any requests to provide wastewater treatment services to the King's Chapel Subdivision? If so, please describe each specific request in detail including but not limited to the date, subject matter, and identity of the person making the request.

**RESPONSE:** As TWS understands this Interrogatory, and that the same subdivision now known as "King's Chapel Subdivision" was previously known as Meadowbrook, the response is yes. TWS has been requested by the developers of that subdivision to provide wastewater treatment services. The request is memorialized in the contract described in the Second Request for Admission.

8. If your answer to the preceding question is anything other than an unqualified "no," please describe, without limitation, the response by TWS to any and all such requests including but not limited to any and all terms and conditions required by TWS to provide such service.

**RESPONSE:** As TWS understands this Interrogatory, and that the same subdivision now known as "King's Chapel Subdivision" was previously known as

Meadowbrook, the response is that the developers requested TWS to agree to construct and operate a wastewater system. The terms of that agreement are set forth in the contract previously described.

9. For any and all wastewater treatment systems owned and/or operated by TWS in the state of Tennessee, please provide a detailed description of all services provided by TWS during the construction of such systems. If compensation for these services was charged by TWS, please provide all amounts and describe the basis for calculating the compensation

**RESPONSE:** This party objects to this interrogatory as irrelevant, unrelated to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence.

10. If TWS contends that King's Chapel Capacity, LLC should not be granted a CCN to provide wastewater treatment services to King's Chapel Subdivision, please explain in detail the basis for this contention including, without limitation, all facts and circumstances which serve as the basis for this contention.

**RESPONSE:** King's Chapel Capacity should not be granted the requested certificate because King's Chapel have not complied with the statutory criteria set forth in T.C.A. § 65-4-201 through 203. TWS already has a certificate to serve the area which King's Chapel requests to serve. TWS stands ready to provide service as soon as the developers who requested the service fulfill their contractual obligations.

#### **PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Produce any and all contracts or memoranda of understandings by and between TWS or its affiliates, agents, entities, and individuals, development companies or local governmental agencies pertaining to the following subdivisions

a. Saddle Springs

- b. Watkins Creek (Lewis Gardens)
- c. Clay Estates
- d. Tom Moon's subdivision

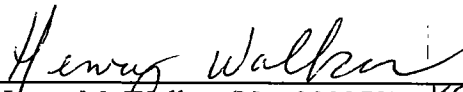
**RESPONSE:** This party objects to this production request as irrelevant, unrelated to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence.

2. Produce any and all documents, correspondence, memoranda, agreements, and/or any other written or oral documentation prepared by TWS, or its affiliated entities, in conjunction with the construction, operation, and/or maintenance of a wastewater treatment system/facility at the King's Chapel Subdivision

**RESPONSE:** As TWS understands this Interrogatory, and that the same subdivision now known as "King's Chapel Subdivision" was previously known as Meadowbrook. Given that understanding, TWS has attached responsive documents.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry M. Walker (No. 000272) KG  
1600 Division Street, Suite 700  
P.O. Box 340025  
Nashville, Tennessee 37203  
(615) 252-2363

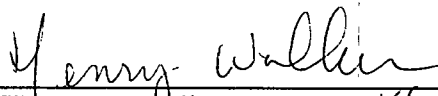
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, postage prepaid, to:

Richard Militana  
Militana & Militana  
5845 Old Highway 96  
Franklin, TN 37064

Charles B. Welch, Jr.  
Farris, Mathews, Branan, Bobango, Hellen & Dunlap, PLC  
Historic Castner-Knott Building  
618 Church Street, Suite 300  
Nashville, TN 37219

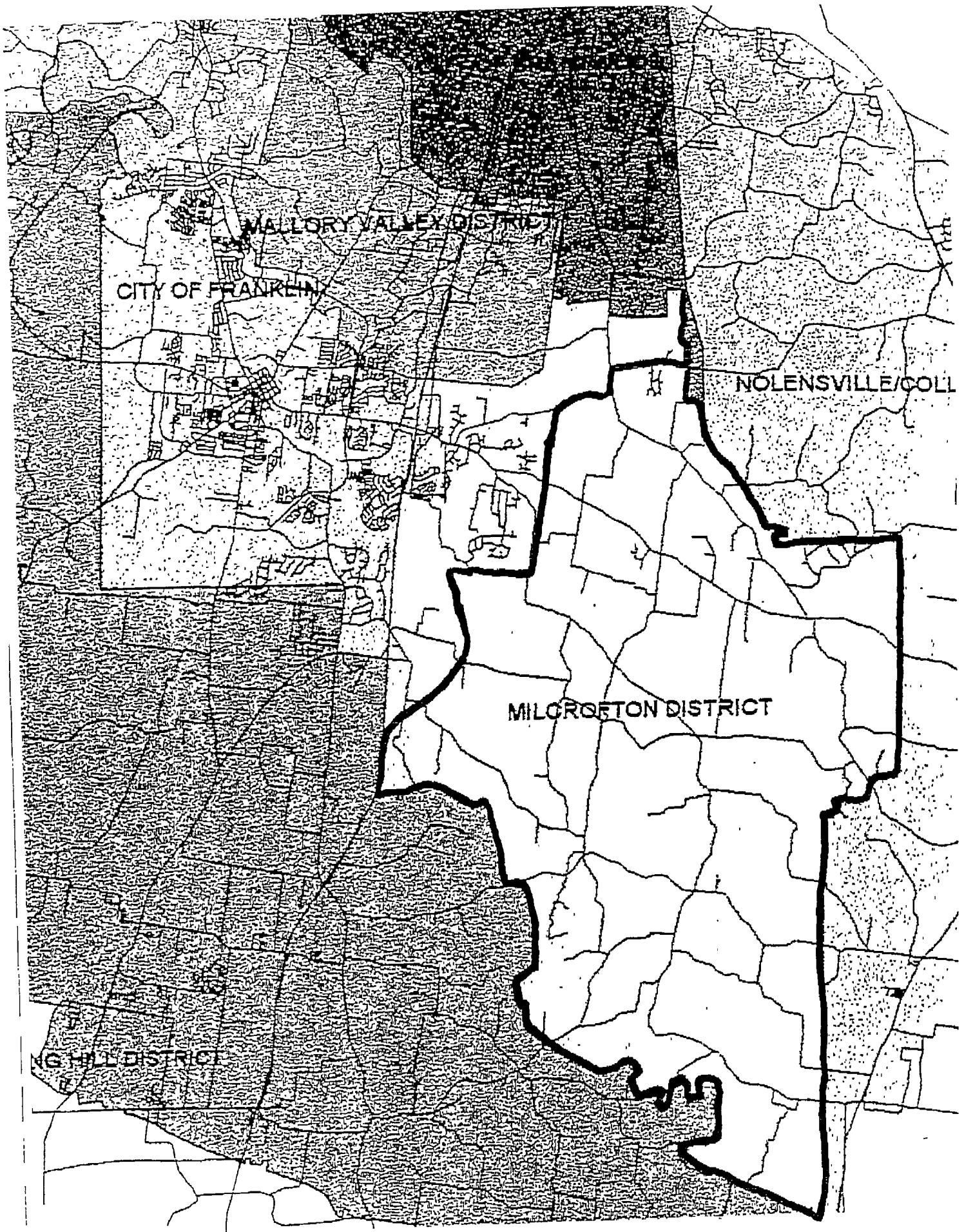
on this the 15<sup>th</sup> day of December 2004.

  
Henry M. Walker      KH



## **ATTACHMENTS**





# **ONSITE CAPACITY DEVELOPMENT COMAPNY**

Pay Request - December 10, 2003

Percent Complete as of 12/10/03

Item Description	Unit	% Compl.	Total	Comp to Date
Site Prep	LS	90	\$ 30,000	\$ 27,000
Sand Filter-Control System	LS	65	745,000	484,250
Drip Disposal System	LS	90	110,250	99,225
Final Grading/Clean-up	LS	0	35,000	0
<b>Total</b>			<b>\$920,250</b>	<b>\$ 610,475</b>

Total Complete to Date: \$610,475

As per Contract - \$250,000 Currently Due  
 Remainder due when lots are closed



Robert J. Pickney P.E

7635 River Road Pike Nashville TN 37209-5733  
 (615) 356-7294 Fax (615) 356-7295

## SEWER CONTRACT FOR MEADOWBROOK SUBDIVISION

This AGREEMENT made and entered into this 3rd day of November 2003, by and between Onsite Systems, Inc., hereinafter referred to as "Utility", Onsite Capacity Development Company hereinafter referred to as contractor, and J.Powell Development LLC, hereinafter referred to as "Developer".

### WITNESSETH

For and in consideration of the construction costs hereinafter mentioned and the mutual promises of the parties hereinafter contained, particularly that Developer will be responsible for construction of collection system upstream of the pump station, the Contractor will be responsible for the design, and construction of collection system, pump station, force main from pump station to treatment system, the recirculating gravel filter and drip irrigation disposal system; the Utility will be responsible for repair, maintenance and replacement of said sewers herein provided for, and to maintain the total system as required by the Tennessee Department of Environment and Conservation, Water Pollution Division and the Tennessee Regulatory Authority; the developer to pay for cost of construction and other cost as specified herein, and other good and valuable considerations, the receipt of all which is acknowledged, the parties hereto have entered into the following agreement:

The developer is to install collection system, etc. in accordance with drawings, plans, and specification as shown on the plat of subdivision which is attached hereto, and the plans and specification as approved by the Utility's engineers, the State of Tennessee and the Williamson County Planning Commission which said plans and specifications are attached hereto and made a part of this contract.

The contractor is to perform all of the necessary work for the design and installation of treatment and disposal systems, completely install the same at no cost whatsoever to the Utility, all in accordance with plans and specifications hereinabove referred to, and for that purpose has entered into a contract for completion of this work.

All construction begun, continued and completed hereunder shall be subject to the supervision and approval of the Utility's engineers and representatives who shall have a continuous right of inspection throughout the progress of the work. No pipe, fittings, or connection shall be covered until inspected and approved by the Utility. It is specifically understood and agreed that all installation costs, for said installation of the sewer collection system main lines, filter system and drip irrigation system will be paid for by the Developer. The homebuilder will pay for the cost of installing the tanks, pumps and associated equipment at each house

In the event of a change in the drawings or plat of the subdivision by agreement of the parties, prior to the actual installation of the facilities provided for in the plans and specifications, then such change shall be deemed incorporated in this contract, as though set out verbatim herein, and a copy of said changed plans shall be attached to this contract and made a part hereof. It is further understood that such changed plans, if any, may be looked to for a total description of the properties conveyed to the Utility by the Developer.

The Developer further agrees:

That the Developer will immediately repair at its own cost and expense all breaks, leaks or defects of any type whatsoever arising in the collection system from any cause whatsoever occurring within one (1) year from the date of acceptance by "Utility" of said lines, mains, valves, fittings, etc., which are constructed by Developer.

The developer will pay a \$550,000 for the construction of the sand filter, drip irrigation system as construction progresses. Payments will be made on monthly basis no later than 5 days after bank has funded to developer that portion of completed work. Developer will pay an additional \$3366 per lot, when lot is sold to end user (homeowner) for all lots located in the property owned by Hang Rock, LLC and Arrington Meadows LLC.

Developer will be responsible for posting all performance bonds and cost relating to such bonds, required by Williamson County concerning Meadowbrook Wastewater System.

The developer as a part of his construction contract shall install Service connections for all service sewers to the property line of each lot in said subdivision.

Upon the completion of the installations contracted for herein, the Developer and contractor hereby represents and warrants that no liens or encumbrances shall remain for the installation of said work and that Utility will be held harmless for any claims arising from the construction of said system.

The Utility has contracted with Jarrett Concrete Products and Supply (Hereinafter Jarrett) of Ashland City (792-9332) and Effluent Collection Supply of Smyrna- 793-1291 (Hereinafter ECS) to supply most of the materials for the septic tank installation

Jarrett will supply all Septic Tanks required for each lot. All houses six bedrooms or less will require a 1500-gallon tank with a four-inch Orenco gravity filter. Larger house will be considered on a case by case basis. The price for 1500-gallon tanks delivered and set will be \$850 each. Prices for tanks are guaranteed not to increase more than 5% per year. ECS or Jarrett may supply Effluent filters, risers and lids. ECS prices are as follows:

Four-inch gravity filters -\$68 00  
24" - DIA x 24 tall riser - \$59.00  
24" - DIA Lid - \$52 72

If pumps and controls are needed, they will be supplied at the usual contractor price.  
Sales tax not included in above prices.

By the execution of this agreement, the Developer hereby represents and warrants that said sewerage system will be installed in accordance with the foregoing provisions and the plans and specifications, and that written easements will be provided five feet (5') in width on each side of the center line of all sewers installed hereunder other than sewers installed along the public right-of-way.

IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of the day and date first above written.

By: [Signature] Date: 10-3-03  
Onsite Systems, Inc  
Robert Pickney, Vice President

By: [Signature] Date: 11-8-03  
Developer - \_\_\_\_\_

By: [Signature] Date: 10-3-03  
Onsite Capacity Development Company  
Robert Pickney - Managing Partner

Sharon O. Jacobs  
(615) 238 6306 Direct Line  
(615) 238 6302 Fax Line  
[sjacobs@bonelaw.com](mailto:sjacobs@bonelaw.com)

October 21, 2004

VIA FACSIMILE AND U.S. MAIL

Paul Davis, Director  
Tennessee Department of Environment and Conservation  
Division of Water Pollution Control  
401 Church Street,  
L&C Tower, 6<sup>th</sup> Floor  
Nashville, TN 37243-1534

Edward M. Polk, Jr., P.E.  
Manager, Permit Section  
Division of Water Pollution Control  
401 Church Street  
L&C Tower, 6<sup>th</sup> Floor  
Nashville, TN 37243-1534

RE: NPDES Permit Tracking No. SOP-03032

Dear Gentlemen,

This letter is to officially inform you by and through counsel that On-site Systems, Inc. has filed an official corporate name change with the Tennessee Secretary of State's office. See attachment confirming the name change. The new name of the corporation is Tennessee Wastewater Systems, Inc. Please be aware the name of the company is the only thing that has changed with regard to the corporation.

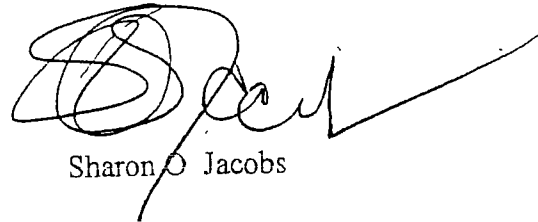
This letter is not a request for a transfer to another "person by the permittee" as provided in the permit and statute. This letter is to put the Department on official notice of a corporate name change. Please make the appropriate changes to your files. If a new permit cover sheet is necessary please feel free to mail that directly to our clients Robert J. Pickney, P.E., Charles Pickney, Tennessee Wastewater Systems, Inc., 7638 River Road Pike, Nashville, Tennessee 37209.



Paul Davis, Director  
Edward M Polk, Jr., P.E  
October 21, 2004  
Page 2

As always if you have any questions, please do no hesitate to call me

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharon O. Jacobs', with a long horizontal flourish extending to the right.

Attachments  
cc: Charles Pickney  
Ken Larish, Esq.



Department of State  
Corporate Filings  
312 Eighth Avenue North  
6th Floor, William R. Snodgrass Tower  
Nashville, TN 37243

ARTICLES OF AMENDMENT  
TO THE CHARTER  
(For-Profit)

For Office Use Only

FILED  
JUL -7 PM 2:31  
HILL JARVIS  
SECRETARY OF STATE

CORPORATE CONTROL NUMBER (IF KNOWN) 0263854

PURSUANT TO THE PROVISIONS OF SECTION 48-20-106 OF THE TENNESSEE BUSINESS CORPORATION ACT THE UNDERSIGNED CORPORATION ADOPTS THE FOLLOWING ARTICLES OF AMENDMENT TO ITS CHARTER.

1 PLEASE INSERT THE NAME OF THE CORPORATION AS IT APPEARS OF RECORD

ON-SITE SYSTEMS, INC.

IF CHANGING THE NAME, INSERT THE NEW NAME ON THE LINE BELOW

Tennessee Wastewater Systems, Inc

2. PLEASE MARK THE BLOCK THAT APPLIES

☒ AMENDMENT IS TO BE EFFECTIVE WHEN FILED BY THE SECRETARY OF STATE.

☐ AMENDMENT IS TO BE EFFECTIVE, \_\_\_\_\_ (MONTH DAY, YEAR)

(NOT TO BE LATER THAN THE 90TH DAY AFTER THE DATE THIS DOCUMENT IS FILED) IF NEITHER BLOCK IS CHECKED, THE AMENDMENT WILL BE EFFECTIVE AT THE TIME OF FILING

3 PLEASE INSERT ANY CHANGES THAT APPLY

A PRINCIPAL ADDRESS

STREET ADDRESS

CITY

STATE / COUNTY

ZIP CODE

B REGISTERED AGENT

C REGISTERED ADDRESS

STREET ADDRESS

CITY

TN  
STATE

ZIP CODE

COUNTY

D OTHER CHANGES

4 THE CORPORATION IS FOR PROFIT

5. THE MANNER (IF NOT SET FORTH IN THE AMENDMENT) FOR IMPLEMENTATION OF ANY EXCHANGE, RECLASSIFICATION, OR CANCELLATION OF ISSUED SHARES IS AS FOLLOWS.

6 THE AMENDMENT WAS DULY ADOPTED ON Jun 30, 2003 (MONTH DAY, YEAR)  
BY (Please mark the block that applies)

☐ THE INCORPORATORS WITHOUT SHAREHOLDER ACTION, AS SUCH WAS NOT REQUIRED.

☒ THE BOARD OF DIRECTORS WITHOUT SHAREHOLDER APPROVAL, AS SUCH WAS NOT REQUIRED.

☐ THE SHAREHOLDERS.

PRESIDENT

SIGNER'S CAPACITY

SIGNATURE

Charles L. Pickney, Jr  
NAME OF SIGNER (TYPED OR PRINTED)

DATE

Secretary of State  
Division of Business Services  
312 Eighth Avenue North  
4th Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243

DATE: 07/07/03  
REQUEST NUMBER: 4848-1792  
TELEPHONE CONTACT: (615) 741-2286  
FILE DATE/TIME: 07/07/03 1434  
EFFECTIVE DATE/TIME: 07/07/03 1630  
CONTROL NUMBER 0263854

0:  
N SITE SYSTEMS INC.  
638 RIVER ROAD PIKE

ASHVILLE, TN 37209

Davidson County CHARTER  
Recvd 08/01/03 13 07 2pgs  
Fees 7 00 Taxes 0 00



20030801-0109351

3:  
TENNESSEE WASTEWATER SYSTEMS, INC.  
ARTICLES OF AMENDMENT TO THE CHARTER

THIS WILL ACKNOWLEDGE THE FILING OF THE ATTACHED DOCUMENT WITH AN  
EFFECTIVE DATE AS INDICATED ABOVE.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR  
FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE.

PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE  
OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A CORPORATION HAS ITS  
PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

ARTICLES OF AMENDMENT TO THE CHARTER

ON DATE: 07/07/03

M:  
SITE SYSTEMS INC  
8 RIVER RD PK

ASHVILLE, TN 37209-0000

RECEIVED:	FEES	
	\$20 00	\$0.00
TOTAL PAYMENT RECEIVED:		\$20.00

RECEIPT NUMBER: 00003325340  
ACCOUNT NUMBER: 00315804



*Riley C Darnell*

RILEY C DARNELL

TNWaste-Powell 00008

October 22, 2004

**HAND DELIVERY**

Paul Davis, Director  
Tennessee Department of Environment and Conservation  
Division of Water Pollution Control  
401 Church Street,  
L&C Tower, 6<sup>th</sup> Floor  
Nashville, TN 37243-1534

Edward M Polk, Jr, P E  
Manager, Permit Section  
Division of Water Pollution Control  
401 Church Street  
L&C Tower, 6<sup>th</sup> Floor  
Nashville, TN 37243-1534

**Re: Permit No: SOP-03032  
Tennessee Waste Water Systems, Inc.  
f/k/n/a On Site Systems Inc.  
College Grove, Williamson County, Tennessee**

Dear Paul Davis and Mr. Polk:

On behalf of this firm's clients, Pickney Brothers Inc and Tennessee Wastewater Systems, Inc. f/k/n/a Onsite Systems Inc. ("the Utility"), this letter shall serve as the official response to your letter dated October 15, 2004, wherein you have informed our clients that Mr. John Powell of Kings Chapel Community Association Inc has submitted a permit application to operate the wastewater treatment and disposal system ("the System"), which is solely owned by our clients. Please be advised of the following three (3) critical facts: (1) the Utility owns the System, (2) the System was created under the terms of a contract with Powell, and (3) the contract is currently under dispute subject to a final disposition in a Tennessee court.

Further, Pickney Brothers, Inc is the author and co-owner with Tennessee Wastewater Systems, Inc of the copyright in the System and in the Engineering Report dated October 9, 2003 (which was reviewed and approved by Mr. Mike Thornton), all technical drawings dated October 9, {00096596 1}

2003 (submitted to the Division for approval), and the Design Development Reports and the Detailed Soil Investigation Report dated July 10, 2003 ("the Reports") The Utility has made all the proper applications to the U.S. Copyright Office to register the copyright in the System and the Reports. Therefore, any use by a party, other than the Utility, of the System or of the Reports is an infringement of the Utility's copyrights and is a violation of the U.S. Copyright Law, pursuant to 17 U.S.C. §§ 106, 501.

Pursuant to your letter, you requested a copy of the contract between our clients and John Powell. The contract provides the terms for the ownership, operation and maintenance of the sewer services for the Arrington Meadows Chapel subdivision located in Williamson County. Attached for your files is an additional copy of the contract, I understand our clients provided a copy of the contract previously to Mr. Wade Murphy with your Division Exhibit 1. The contract clearly provides that in addition to being the sole owner of the system and provider of all utility services to the subdivision, the Utility is solely responsible for all permitting from TDEC and the Tennessee Regulatory Authority. TDEC correctly issued the above referenced permit to the correct entity. Mr. Mike Thornton has inspected the system and may attest to its completion. In addition, you may consult with Mr. Thornton as he is familiar with the Utility's operations and the Systems it owns across the State of Tennessee. The Utility currently owns and operates over 20 facilities virtually identical to the System it owns in Williamson County.

Based on your letter, it appears that you have been given incorrect information. Enclosed is a copy of the legal Memorandum from Williamson County with regard to Powell's request to circumvent the Utility. Powell's proposal to the County was for Kings Chapel Community Association, Inc. to operate the Utility's System. See Exhibit 2. The legal memorandum issued by the County's attorney, Ms. Christie D. Earwood, Esq. addresses Powell's attempt to circumvent the Williamson County Subdivision Regulations which prohibit any homeowners association from owning and operating a wastewater treatment and disposal system. See Page 3. Further evidence of our clients' ownership rights may be found on page 5 of the legal opinion which confirms all reports and easements are in the name of the Utility. In addition, the letter identifies that the real issue between the two private entities is merely a contractual dispute. Thus, the County found that Kings Chapel Community Association would not be recognized as an entity for the operation of the Utility's System.

Please be aware, Mr. Powell has also filed a request with the Tennessee Regulatory Authority. If the Division desires a copy of the application and/or the objection filed before the Tennessee Regulatory Authority please let me know as I would be happy to provide you with copies. Enclosed for your file is proof the TRA granted a certificate of convenience and necessity to the Utility as the private utility holding the certificate as the owner. The certificate provides that the Utility "shall provide public sewer services to the Arrington Meadows Chapel Subdivision" Exhibit 3. Clearly, if you refer to the contract between our clients and Mr. Powell, our clients are in compliance with the contract, as they are responsible for all permitting for the Utility's System.

It has recently come to my attention that you officially informed Mr. Powell that intend to terminate our clients' permit. Please inform me in writing the evidence and grounds upon which you rely to terminate the permit. Our client will appeal any termination of the permit to the Board if the Division intends to proceed with termination of the permit. In addition any attempted infringement upon our clients' copyright shall be pursued. Thus, please provide copies to me of all engineering reports, technical drawings and maps that have been submitted by Mr. Powell to ensure no infringement has occurred. Thank you in advance for your cooperation in this regard.

On behalf of our clients, we respectfully request that any future documents and/or communication with regard to our clients' permit include myself. If you have any questions and/or concerns with regard to this permit, please do not hesitate to contact me. Once you have had the opportunity to review the enclosed materials, I welcome the opportunity to discuss your comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharon O. Jacobs', with a large, stylized initial 'S'.

Sharon O. Jacobs

Attachments

cc: Ken Larish, Esq.  
Charles Pickney

## SEWER CONTRACT FOR MEADOWBROOK SUBDIVISION

This AGREEMENT made and entered into this 3rd day of November 2003, by and between Onsite Systems, Inc., hereinafter referred to as "Utility", Onsite Capacity Development Company hereinafter referred to as contractor, and J.Powell Development LLC, hereinafter referred to as "Developer".

### WITNESSETH

For and in consideration of the construction costs hereinafter mentioned and the mutual promises of the parties hereinafter contained, particularly that Developer will be responsible for construction of collection system upstream of the pump station, the Contractor will be responsible for the design, and construction of collection system, pump station, force main from pump station to treatment system, the recirculating gravel filter and drip irrigation disposal system; the Utility will be responsible for repair, maintenance and replacement of said sewers herein provided for, and to maintain the total system as required by the Tennessee Department of Environment and Conservation, Water Pollution Division and the Tennessee Regulatory Authority, the developer to pay for cost of construction and other cost as specified herein, and other good and valuable considerations, the receipt of all which is acknowledged, the parties hereto have entered into the following agreement:

The developer is to install collection system, etc. in accordance with drawings, plans, and specification as shown on the plat of subdivision which is attached hereto, and the plans and specification as approved by the Utility's engineers, the State of Tennessee and the Williamson County Planning Commission which said plans and specifications are attached hereto and made a part of this contract.

The contractor is to perform all of the necessary work for the design and installation of treatment and disposal systems, completely install the same at no cost whatsoever to the Utility, all in accordance with plans and specifications hereinabove referred to, and for that purpose has entered into a contract for completion of this work.

All construction begun, continued and completed hereunder shall be subject to the supervision and approval of the Utility's engineers and representatives who shall have a continuous right of inspection throughout the progress of the work. No pipe, fittings, or connection shall be covered until inspected and approved by the Utility. It is specifically understood and agreed that all installation costs, for said installation of the sewer collection system main lines, filter system and drip irrigation system will be paid for by the Developer. The homebuilder will pay for the cost of installing the tanks, pumps and associated equipment at each house.

TNWaste-Powell 00012

In the event of a change in the drawings or plat of the subdivision by agreement of the parties, prior to the actual installation of the facilities provided for in the plans and specifications, then such change shall be deemed incorporated in this contract, as though set out verbatim herein, and a copy of said changed plans shall be attached to this contract and made a part hereof. It is further understood that such changed plans, if any, may be looked to for a total description of the properties conveyed to the Utility by the Developer.

The Developer further agrees.

That the Developer will immediately repair at its own cost and expense all breaks, leaks or defects of any type whatsoever arising in the collection system from any cause whatsoever occurring within one (1) year from the date of acceptance by "Utility" of said lines, mains, valves, fittings, etc., which are constructed by Developer

The developer will pay a \$550,000 for the construction of the sand filter, drip irrigation system as construction progresses. Payments will be made on monthly basis no later than 5 days after bank has funded to developer that portion of completed work. Developer will pay an additional \$3366 per lot, when lot is sold to end user (homeowner) for all lots located in the property owned by Hang Rock, LLC and Arrington Meadows LLC.

Developer will be responsible for posting all performance bonds and cost relating to such bonds, required by Williamson County concerning Meadowbrook Wastewater System.

The developer as a part of his construction contract shall install Service connections for all service sewers to the property line of each lot in said subdivision.

Upon the completion of the installations contracted for herein, the Developer and contractor hereby represents and warrants that no liens or encumbrances shall remain for the installation of said work and that Utility will be held harmless for any claims arising from the construction of said system.

The Utility has contracted with Jarrett Concrete Products and Supply (Hereinafter Jarrett) of Ashland City (792-9332) and Effluent Collection Supply of Smyrna- 793-1291 (Hereinafter ECS) to supply most of the materials for the septic tank installation.

Jarrett will supply all Septic Tanks required for each lot. All houses six bedrooms or less will require a 1500-gallon tank with a four-inch Orenco gravity filter. Larger house will be considered on a case by case basis. The price for 1500-gallon tanks delivered and set will be \$850 each. Prices for tanks are guaranteed not to increase more than 5% per year. ECS or Jarrett may supply Effluent filters, risers and lids. ECS prices are as follows.

Four-inch gravity filters - \$68.00

24" - DIA x 24 tall riser - \$59.00

24" - DIA Lid - \$52.72



If pumps and controls are needed, they will be supplied at the usual contractor price.  
Sales tax not included in above prices.

By the execution of this agreement, the Developer hereby represents and warrants that said sewerage system will be installed in accordance with the foregoing provisions and the plans and specifications, and that written easements will be provided five feet (5') in width on each side of the center line of all sewers installed hereunder other than sewers installed along the public right-of-way.

IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of the day and date first above written.

By: [Signature] Date: 12-3-03  
Onsite Systems, Inc.  
Robert Pickney, Vice President

By: [Signature] Date: 11-8-03  
Developer - \_\_\_\_\_

By: [Signature] Date: 10-3-03  
Onsite Capacity Development Company  
Robert Pickney - Managing Partner

BUERGER, MOSELEY & CARSON, PLC  
Williamson County Attorneys  
306 Public Square  
Franklin, TN 37064  
(615) 794-8850  
(615) 790-8861 Fax



KRISTI D. EARWOOD

MEMORANDUM

**TO:** Honorable Rogers Anderson, Williamson County Mayor  
Honorable John Lackey, Chairman, Williamson County Planning Commission  
and Water and Wastewater Authority

**xc:** Mr. Joe Horne, Community Development Director  
Mr. Greg Langeliers, Planning Director  
Mr. Richard Militana, Counsel for John Powell  
✓ Mr. Ken Larrish, Counsel for On-Site Systems, Inc.

**FROM:** Kristi D. Earwood *KDE*

**DATE:** October 8, 2004

**RE:** Kings Chapel Subdivision - Wastewater Treatment and Disposal Proposal

---

As you know, on September 27, 2004, we met with John Powell, one of the developers of Kings Chapel Subdivision, his attorneys, Richard Militana and Joe Baugh and his consultant, Hal Novak. Mr. Powell read a statement and presented additional information concerning a proposal for the treatment and disposal of wastewater for Kings Chapel Subdivision. In this memorandum, I will attempt to provide sufficient background on this subdivision, a statement of the current circumstances and my legal conclusions and recommendations regarding Mr. Powell's proposal.

A site plan was provided for Meadowbrooke subdivision containing an alternative wastewater treatment and disposal system. Along with the site plan, a Design Development Report and Detailed Soils Investigation Report was also submitted. The system proposed was a closed sand filtration system with individual septic tanks on each lot and disposal by drip irrigation. Based upon this site plan, a preliminary plat was approved on October 9, 2003, and then a final plat was approved on June 10, 2004 for the first section containing the alternative wastewater treatment and disposal system.

The plats showed at all times that the owner and operator of the system would be On-Site Systems, Inc. I have since learned that On-Site Systems, Inc. is now called Tennessee Wastewater, Inc. It is my understanding that the Tennessee Regulatory Authority (TRA) previously approved

TNWaste-Powell 00015

**EXHIBIT**

Honorable Rogers Anderson  
October 8, 2004  
Page 2

On-Site Systems, Inc. to service the area within which Kings Chapel is situated, along with the subdivision across the highway called Blackhawk. The TRA granted a certificate of convenience and necessity for On-Site Systems, Inc., a private utility, to provide public sewer services to this area.

The original bonding amount required for both the primary and back-up wastewater system was incorrectly stated at the time of final plat approval. Therefore, as a matter of Old Business and with the concurrence of the applicant and the recommendations by Williamson County's consultant, the Williamson County Planning Commission approved the proper bond amounts for the wastewater system for Kings Chapel on August 12, 2004. For the sake of continuity, all bond amounts were re-approved on the same date as well. The Williamson County Subdivision Regulations state that the required bonds shall be posted within sixty days after approval of the final plat. Williamson County Subdivision Regulations Section 3.2(4)(i). The plat must then be registered within thirty days after the bonds have been posted. Williamson County Subdivision Regulations Section 3.2(4)(i). Since the bond amounts were approved on August 12, 2004, Kings Chapel has until October 11, 2004 to post its bonds and then the final plat must be recorded by November 10, 2004 or it becomes void. If these deadlines are not met, re-approval of the final plat by the Williamson County Planning Commission is required.

Mr. Powell contacted me by telephone on July 29, 2004 regarding the re-approval of all bonds for consistency. In the course of this conversation, he indicated his desire to obtain a new operator for his wastewater system. It was my opinion then that if Mr. Powell was merely substituting one operator for another with the written approval of the TRA and the transfer of the State Operating Permit by the Tennessee Department of Environment and Conservation (TDEC) and that nothing else about the plat would change, then such may be considered a minor change and may not require a re-review by Williamson County Planning Commission; however, I expressed my doubt that same could be accomplished by the final plat deadline. I was assured by Mr. Powell that it could.

During the course of these reviews by the Williamson County Planning Commission for Kings Chapel, the subdivision across the street, Blackhawk, sought approval to utilize the Kings Chapel treatment system and its own land for disposal, despite the fact that Blackhawk had a previously approved subdivision final plat utilizing subsurface sewage disposal on individual lots. Blackhawk was approved for same. Mr. Powell has indicated that his proposal would encompass again providing wastewater treatment and disposal for Blackhawk; however, Blackhawk has re-submitted a final plat for the October, 2004 Planning Commission meeting with lots again containing individual subsurface sewage disposal systems. As a result, for purposes of this memorandum, any opinions offered or legal conclusions reached only address the proposal by Mr. Powell for Kings Chapel Subdivision.

It is my understanding that Mr. Powell and the owner of On-Site Systems, Inc. (now Tennessee Wastewater) have become embroiled in a contractual dispute. I have heard the positions

of both parties as a courtesy, but have maintained to both parties that my sole responsibility is to my client, Williamson County and its Planning Commission, and offering my client my opinion on what is permitted according to State law and regulations and local ordinance and regulations.

The proposal from Mr. Powell, as I understand it, is for the following to occur:

1. The Homeowners' Association (HOA) of Kings Chapel will own the land and facilities required and designated for the alternative wastewater treatment and disposal system.
2. The HOA will contract with an approved operator.
3. The HOA will post required bond amounts for the primary and backup systems.
4. The HOA's covenants and restrictions will be amended to permit same and will automatically transfer authority to own and operate the system to an entity approved to do so by TDEC and the TRA within twelve months.
5. The HOA will obtain a State Operating Permit from TDEC.
6. The HOA is not required to obtain approval from the TRA.
7. Mr. Powell has the authority to transfer ownership in the land upon and within which the wastewater system is constructed as well as the septic facility to the HOA.
8. The final plat is not required to return to the Williamson County Planning Commission for re-approval.
9. The HOA president will sign the final plat in lieu of On-Site Systems, Inc. as the wastewater operator.

I have a number of concerns about this proposal and will address each one in turn:

A Homeowners' Association (HOA) is prohibited by the Williamson County Subdivision Regulations from owning and operating a wastewater treatment and disposal system

Section 5.6(1)(a) says that "[n]o subdivision shall be approved until provisions are made for the adequate disposal of wastewater for the site."

Section 5.6(1)(b) states that "[a]ll public sanitary sewer systems shall be approved by . . . the appropriate State authority . . ."

Section 5 6(2) only anticipates that a "governmental entity or utility company" will provide sewer service and it must issue written intent to service this subdivision. The Williamson County Regulations for Wastewater Treatment and Land Disposal Systems require that the system be owned and operated by the same entity. Section 1.11 Additionally, Section 1 6 requires that where another regulation, law or statute differs, then the more restrictive or higher standards shall control.

Clearly the Subdivision Regulations supplement the wastewater regulations in this case and are more restrictive. Furthermore, to even demonstrate that a HOA is eligible to serve Kings Chapel, it must be in existence legally, it must have a State Operating Permit from TDEC and it must have approval from the TRA. I have received no proof that the HOA has been or will be granted a State Operating Permit to operate the system currently being operated by On-Site Systems, Inc (Tennessee Wastewater). It is my understanding that On-Site Systems, Inc will oppose any attempts by TDEC to transfer its State Operating Permit to another entity and that it will assert any right it may have in the engineered plans and designs upon which its State Operating Permit application was based. Regardless, again, because of those assertions by both parties, I cannot recommend that my client approve a proposal where there are so many unanswered questions.

Further, although Mr. Powell and his consultant, Mr. Novak, indicated that the TRA does not regulate HOA's, my research indicates otherwise. The TRA is statutorily charged with regulating public utilities, most importantly in this context, public utilities that provide "water . . or other like systems . . ." Tenn. Code Ann § 65-4-101(a). The TRA has chosen to extend its authority to those private companies providing public sewer utility services by granting a certificate of convenience and necessity. It is my understanding that On-Site Systems, Inc. (Tennessee Wastewater) has been granted such certificate for an area that encompasses the location of Kings Chapel. Tennessee Code Annotated Section 64-4-101(b) specifically excludes "nonprofit homeowners' associations or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, contract, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the association or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee Regulatory Authority "

It is my opinion that the HOA in this proposal by Mr Powell is not exempt from TRA regulations because it is proposing to operate a wastewater system. The definition of public utility found in Tennessee Code Annotated Section 65-4-101(a) includes "water . . or other like systems." The exemption in Tennessee Code Annotated Section 65-4-101(b) has no such language. The exemption is limited to water, street lights and park maintenance. Mr. Powell's proposal encompasses none of these. The General Assembly specifically exempted a few services. The

intent is clear. Where a HOA is providing wastewater treatment, the TRA supervision and control governs. I have no proof that the TRA has approved this HOA to operate in an area previously designated for another public utility nor do I have any formal information of its declination to regulate same.

Mr. Powell has proposed an amendment to the HOA covenants and restrictions previously recommended for approval by me and confirmed by the Williamson County Planning Commission. Any major change to the substantive provisions of the documents such as proposed must be considered by the Williamson County Planning Commission. Williamson County Zoning Ordinance § 9503 (c)(3).

Mr. Powell has proposed merely substituting the HOA for On-Site Systems, Inc. (Tennessee Wastewater) as the utility provider on the approved final plat. I cannot recommend the approval of such proposal without reconsideration by the Williamson County Planning Commission. In fact, it is my recommendation that the site plan of Kings Chapel be resubmitted along with amended design development reports and detailed soil investigation reports, because the proposal is of such significant change as to require re-review. The ownership of the system has changed. The maintenance responsibility of pumping the septic tanks is no longer addressed. The design development reports and detailed soil investigation reports were submitted by On-Site Systems, Inc. How will another entity propose to complete and operate this system? The easements on the plat indicate they will be granted to On-Site Systems, Inc. Both the Preliminary Plat and Final Plat were approved based upon a set of conditions and assertions in the site plan that have significantly changed. The Williamson County Planning Commission has a duty to the public to carefully consider the effects a new development will have. I cannot recommend an amendment as significant as that proposed to proceed on staff approval alone. At a minimum, a minor revision to a plat is only defined as an "adjustment that will not impact proposed or existing public improvements involving two or fewer building lots." Williamson County Subdivision Regulations 3.2(5). Since this revision involves all building lots, the common area and the easements for the lots, as well as the area to be owned for the wastewater treatment and disposal system, such change is more than a minor revision of the final plat, but a revision of the entire plan of service to the subdivision.

Even assuming TDEC grants the State Operating Permit to the HOA and even assuming TRA chooses not to regulate the HOA, and even assuming a HOA can own and operate in Williamson County, I cannot recommend that a HOA be granted authority to operate this wastewater treatment and disposal system because the current utility has expressed an ownership interest in the facilities in the ground. There appears to exist a conflict between Mr. Powell and On-Site Systems, Inc. (Tennessee Wastewater) over who owns the actual system, which is, for the most part, already installed and constructed. Mr. Powell asserts he has ownership in the real property upon and within which this system is installed and constructed, yet On-Site Systems, Inc. (Tennessee Wastewater) by and through its counsel, asserts an ownership interest in the facilities. Where no clear ownership is evident, I cannot recommend to the Williamson County Planning Commission that a clear utility provider is even available. The Regulations for Wastewater Treatment and Land Disposal Systems

Honorable Rogers Anderson  
October 8, 2004  
Page 6

in Williamson County requires both ownership and operation of the system. See Section 111. This conflict between Mr. Powell and On-Site Systems, Inc. provides a direct violation of this Section.

Furthermore, I am concerned that there seems to be many entities involved with no proof of who has the clear authority to bind any one of them. As previously indicated, the utility provider is listed on the Final Plat as On-Site Systems, Inc. It is my understanding now that it is called Tennessee Wastewater. Who holds the State Operating Permit for Kings Chapel? Who is granted the certificate of convenience and necessity for this area by the TRA? If there was a name or change of entity, was it filed with the Secretary of State? Approved by the TRA? TDEC? Mr. Powell indicates he can bind the land in Kings Chapel, however, the Final Plat evidences four different entities: Hang Rock, LLC, Over-the-Branch, LLC, King's Camp and Arrington Meadows, LLC. Again it has been suggested that a HOA also exists. Are all of those entities still in existence? Who has the authority to bind same? These issues must be clarified.

In conclusion, I cannot recommend that the Williamson County Water and Wastewater Authority and the Williamson County Planning Commission recognize a HOA as an entity permitted to own and operate an alternative wastewater treatment and disposal system in Williamson County. Regarding this particular system, as I have outlined, there are too many unanswered questions to even place a proposal on a docket for consideration by the Williamson County Planning Commission for another operator who is not a HOA at this time. I will be happy to revisit this issue once some of the questions are answered, but in the meantime, I cannot advise the Williamson County Planning Commission staff to approve the final plat as is where no utility provider exists.

As a separate issue, Mr. Powell had requested of the County Mayor a letter indicating that Williamson County does not intend to serve sewer to the area of Kings Chapel at this time. Although Williamson County does not currently provide public sewer, it is my opinion that a letter would be premature without consultation with the Williamson County Wastewater Authority. Furthermore, the County Mayor may wish to conduct public hearings in the area where two or more entities seek to serve a certain area. For these reasons, at this time I cannot recommend providing such correspondence.

Should you desire any additional information or wish to discuss the above, please do not hesitate to contact me.



## STATE OF TENNESSEE

## FAX TRANSMITTAL

TO	Bob Pickney	FROM	Wade Murphy
AGENCY/COMPANY	Pickney Bros. Inc.	DATE	10/15/04
FAX NUMBER	356-7295	TOTAL NUMBER OF PAGES INCLUDING COVER	3
PHONE NUMBER	356-7294	SENDER'S PHONE NUMBER	532-0646
SUBJECT	SOP-03032	SENDER'S FAX NO	532-0686

Arrington Meadows, Williamson Co,

☐ URGENT ☐ FOR REVIEW ☐ PLEASE REPLY

## MESSAGE

The orig. letter is being mailed. I am faxing a copy to expedite your receipt of the info. WPC wishes to public notice some action ASAP to formally get all relevant issues on the table. We believe we owe you <sup>the court</sup> an opportunity to provide information prior to our taking any action. WDM

The information contained in this message is confidential and is intended solely for the use of the person or entity named above. This message may contain individual identifiable information that must remain confidential and is protected by state and federal law. If the reader of this message is not the intended recipient, the reader is hereby notified that any dissemination, distribution or reproduction of this message is strictly prohibited. If you have received this message in error, please immediately notify the sender by telephone and destroy the original message. We regret any inconvenience and appreciate your cooperation.





STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

401 CHURCH STREET  
L & C ANNEX 6TH FLOOR  
NASHVILLE TN 37243-1534

October 15, 2004

Mr Robert J Pickney, P E  
Vice President of Pickney Brothers, Inc  
Tennessee Wastewater Systems, Inc  
7638 River Road Pike  
Nashville, TN 37209

Subject NPDES Permit Tracking No. SOP-03032  
Onsite System, Inc. - Arrington Meadows  
College Grove, Williamson County, Tennessee

Dear Mr Pickney

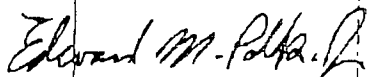
Pursuant to T.C.A. 1200-4-5-.05(1), Kings Chapel Community Association, Inc., herein referred to as the applicant, has applied for a state operating permit to operate a wastewater treatment and disposal system for the referenced subdivision. The division is aware that the applicant had originally planned to utilize your privately owned public utility, now doing business as Tennessee Wastewater Systems, Inc., for sewer services. The applicant is now saying those plans have changed. Additionally, the applicant has stated in the application that the treatment system has not been deeded over to your utility company and that no contract for operation and maintenance has been established between the applicant and your utility.

If in fact your utility neither owns the site nor has any contractual arrangement to operate the treatment system, the division must consider terminating your permit coverage and issuing coverage to the "person" planning to operate the treatment system. Should the division propose to terminate your permit, SOP-03032, you will be afforded the opportunity to comment on that action prior to a final decision being made, and you will then have the usual right of appeal of the final action. Prior to proposing any such action, the division is affording you an opportunity to challenge the allegations regarding treatment system ownership and operation. The division requests that some evidence of ownership or contractual obligation for operating services be received no later than October 22, 2004.

Robert Pickney, P E  
Tennessee Wastewater Systems, Inc  
SOP-03032  
Page 2 of 2

If you have questions, please contact the Division of Water Pollution Control at your local Environmental Assistance Center at 1-888-891-TDEC, or, at this office, please contact Mr Wade Murphy at (615) 532-0666 or by E-mail at [Wade.Murphy@state.tn.us](mailto:Wade.Murphy@state.tn.us)

Sincerely,



Edward M. Polk, Jr, P E  
Manager, Permit Section  
Division of Water Pollution Control

EMP/wdm

cc Darlene Standley, Tennessee Regulatory Authority, 460 James Robertson Pkwy  
John Powell, Kings Chapel Community Association, Inc  
Division of Water Pollution Control, Permit Section  
Division of Water Pollution Control, EAC- Nashville



Fax to  
Shirley Jacob  
615-238-6302



RECEIVED 04-335

2004 OCT 21 AM 9:36

STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
401 CHURCH STREET  
L & C ANNEX 6TH FLOOR  
NASHVILLE TN 37243-1534

October 15, 2004

Mr. John Powell  
Vice President  
Kings Chapel Community Association, Inc.  
1413 Plymouth Drive  
Brentwood, TN 37027

Subject: NPDES Permit Tracking No. SOP-04056  
Kings Chapel Community Association, Inc.  
Williamson County, Tennessee

Dear Mr. Powell:

The Division of Water Pollution Control acknowledges receipt on September 28, 2004, of your application for a state operating permit to operate a wastewater treatment and drip irrigation disposal system for the Arrington Meadows Subdivision doing business as a homeowners association.

As my staff has already discussed with you, state regulatory agencies prefer, whenever possible, to issue permit coverage for systems serving private residences to entities with accountability to the served public. Such entities include governments, governmental agencies, or public or private utility districts and commissions. The division is now aware via correspondence with the Tennessee Regulatory Authority (TRA) that you have applied for authorization from the TRA to operate as a privately owned public utility doing business as Kings Chapel Capacity, LLC (ID # 04-00335). Furthermore, the division understands that application by the association was only meant as a temporary permitting measure while authorization via the TRA is pending.

Please be advised that since the non-profit LLC has been established and it has made application with the TRA, the division can consider permit action with the privately owned public utility if the current application is amended. This may be done by letter. The letter need only reference the tracking number SOP-04056 and state the applicant name and address and signatory as appropriate. You are further advised that a permit (SOP-03032) was previously issued to Tennessee Wastewater Systems, LLC for the operation of this wastewater disposal system. We intend to pursue termination of this permit. The issuance of your permit cannot be finalized until the termination process is complete.

John Powell  
Kings Chapel Community Association  
SOP-04056  
Page 2 of 2

If you have questions, please contact Wade Murphy in the Division of Water Pollution Control at (615) 532-0666 or by E-mail at [Wade.Murphy@state.tn.us](mailto:Wade.Murphy@state.tn.us).

Sincerely,



Edward M. Polk, Jr., P.E.  
Manager, Permit Section  
Division of Water Pollution Control

EMP/wdm

cc: Darlene Standley, Tennessee Regulatory Authority, 460 James Robertson Parkway  
Division of Water Pollution Control, Municipal Facilities Section  
Division of Water Pollution Control, Permit Section  
Division of Water Pollution Control, Environmental Assistance Center - Nashville



PICKNEY BROS. INC.  
ENGINEERS - CONTRACTORS  
7638 RIVER ROAD PIKE  
NASHVILLE, TN 37209  
PH: 615.356.7294 FAX: 615.356.7296  
Email: onkita@pickneybro.com

**FAX**

To: John Powell

From: Keith Townsend

From: 370-3096

Pages (incl. attach): 6

Project:

Date: 28 MAY 2003

Re: DOR agreement/contract

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Encycle

☐ Comments

John,

Following are two documents for your consideration. The first document (2 pages) is a professional services agreement for PBI to proceed with the DOR. One half of the fee will be required prior to commencing the DOR.

The second document (pages 4, 5, and 6) is a typical contract for subdivision in Williamson County. You do not need to sign the contract for subdivision at this time. Bob Pickney asked that I send you something so that you would have an idea when the time comes.

If you have any questions, please call me at this office.

Keith Townsend

# ON-SITE CAPACITY DEVELOPMENT COMPANY

## PROFESSIONAL SERVICES AGREEMENT

This agreement is made as of May 20, 2003, between Artisan Meadows, LLC (Client) and On-site Capacity Development Company (OCDC) to perform professional services for the assignment described as follows:

Project: John Powell Property - Artisan Meadows Subdivision

Location: Williamson County, TN

Description of Project: Design Development Report (DDR) and Detailed Site Investigation Report (DSIR) for residential subdivision in Williamson County, TN.

I. **PROFESSIONAL SERVICES:** OCDC agrees to perform the following Basic Services under this contract:

A. Design Development Report for Williamson County Planning Commission

B. Detailed Site Investigation Report for Williamson County Planning Commission

II. **COMPENSATION:** The compensation to be paid to OCDC for providing the requested services shall be:

Cost Plus in accordance with the rate schedule attached as Exhibit "A" including applicable reimbursables.  
Estimated Fee \_\_\_\_\_ or Minimum Fee \_\_\_\_\_

☒ Lump Sum \$30,000.00 (DDR and DSIR)

☐ Percentage of Construction Cost \_\_\_\_\_ % Estimated Fee \_\_\_\_\_

☒ Other (specify) Williamson County Permit fee - \$1,500.00

III. **PAYMENTS:** Payments for services rendered will be made as follows: 50% of fee prior to commencing the investigation and the remaining 50% when reports are approved by the Williamson County Planning Commission. Final payment is due within ten (10) days of receipt of invoice. Unless special arrangements are made, a finance charge of 1 1/2% per month will be added to unpaid balances more than thirty (30) days old.

County review fee to be paid before County Engineer will review the reports.

IV. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated without cause by either party upon ten (10) days written notice. On termination by either Client or OCDC, Client shall pay OCDC with respect to any service performed to the date of termination (including all reimbursable expenses incurred).

V. **RELEASE OF DOCUMENTS:** All documents including Drawings and Specifications prepared by OCDC pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Client, or others, on extensions of the Project or on any other project. Any reuse without written verification or adaptation by OCDC for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to OCDC, and Client shall indemnify and hold harmless OCDC from all claims, damages, losses and expenses.

including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will require OCDC to further compensation at rates to be agreed upon by Client and OCDC.

- VI. **ACCESS TO THE SITE/ON-SITE SAFETY:** Unless otherwise stated, OCDC will have access to the site for activities necessary for the performance of the services. The Client understands that OCDC is not responsible, in any way, for the means, methods, sequence, procedures, techniques, scheduling of construction, or job site safety. OCDC will not be responsible for any losses or injuries that occur at the Project site.
- VII. **INDEMNIFICATION:** If any claim is brought against either the Client or OCDC by any third party, resulting in whole or in part to the negligence of the Client or OCDC, each party shall indemnify the other against any loss or judgment, including attorneys' fees and cost, to the extent that such loss or expense is caused by the party's negligence.
- VIII. **RISK ALLOCATION:** In recognition of the relative risks, rewards and benefits of the project to both the Client and OCDC, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, OCDC's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement from cause or causes, shall not exceed the amount of our fee. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.
- IX. **DISPUTES RESOLUTION:** It is agreed by both parties that all unsettled claims, counterclaims, disputes or other matters in question arising out of or related to this Agreement shall first be attempted to be resolved by mediation. This provision can be waived by the mutual consent of the parties, or by either party if its rights would be irrevocably prejudiced by a delay in initiating arbitration or the right to file a lawsuit.
- X. **OPINIONS OF CONSTRUCTION COST:** Any opinion of probable construction cost prepared by OCDC represents OCDC's judgment as design professionals and is supplied for general guidance of the Client. Since OCDC has no control over the construction marketplace, OCDC does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to Client.
- XI. **GOVERNING LAW:** Unless otherwise specified within the Agreement, this Agreement shall be governed by the Law of the State of Tennessee.

Winston McMass  
Owner/Developer  
By: J. Powell  
Title: Owner  
Address: 143 Plymouth A  
Brown TN

On-site Capacity Development Company  
By: Keith Townsend  
Title: Project Manager  
Address: 7625 River Road Pike  
Memphis Tennessee 38209

Arrington Meadows Sub Division

June 11, 03

ARRINGTON MEADOWS LLC 1413 PLYMOUTH DR PH 815-370-4432 BENTWOOD, TN 37027		1033 87-129 Ser
DATE <u>June 11 03</u>		
PAY TO THE ORDER OF <u>City of Davidson County</u>		\$ <u>15,000.00</u>
<u>fifteen Thousand and no/100</u>		DOLLARS
FIRST TENNESSEE www.firsttennessee.com FOR CHECK VERIFICATION CALL 1-800-764-6731		
Memo <u>Arrington Meadows LLC</u>		<u>E. Powell</u>
⑆064101998⑆1033 101989473⑆		



# ONSITE CAPACITY DEVELOPMENT COMAPNY

## Addendum #1

### Arrington Meadows Wastewater System

#### Schedule of Items.

Item Description	Quantity	Total
Site Prep	LS	\$ 30,000
Sand Filter-Control System	LS	745,000
Drip Disposal System	LS	110,250
Final Grading/Clean-up	LS	35,000
Total Project Cost		\$920,250

7638 River Road Pike Nashville TN 37209-5733  
(615) 356-7294 Fax (615) 356-7295

October 22, 2004

**HAND DELIVERY**

Paul Davis, Director  
Tennessee Department of Environment and Conservation  
Division of Water Pollution Control  
401 Church Street,  
L&C Tower, 6<sup>th</sup> Floor  
Nashville, TN 37243-1534

Edward M. Polk, Jr., P.E.  
Manager, Permit Section  
Division of Water Pollution Control  
401 Church Street  
L&C Tower, 6<sup>th</sup> Floor  
Nashville, TN 37243-1534

**Re: Permit No: SOP-03032  
Tennessee Waste Water Systems, Inc.  
f/k/n/a On Site Systems Inc.  
College Grove, Williamson County, Tennessee**

Dear Paul Davis and Mr. Polk:

On behalf of this firm's clients, Pickney Brothers Inc. and Tennessee Wastewater Systems, Inc. f/k/n/a Onsite Systems Inc ("the Utility"), this letter shall serve as the official response to your letter dated October 15, 2004, wherein you have informed our clients that Mr. John Powell of Kings Chapel Community Association Inc. has submitted a permit application to operate the wastewater treatment and disposal system ("the System"), which is solely owned by our clients. Please be advised of the following three (3) critical facts: (1) the Utility owns the System, (2) the System was created under the terms of a contract with Powell, and (3) the contract is currently under dispute subject to a final disposition in a Tennessee court.

Further, Pickney Brothers, Inc is the author and co-owner with Tennessee Wastewater Systems, Inc of the copyright in the System and in the Engineering Report dated October 9, 2003 (which was reviewed and approved by Mr. Mike Thornton), all technical drawings dated October 9, {00096596 1}

2003 (submitted to the Division for approval), and the Design Development Reports and the Detailed Soil Investigation Report dated July 10, 2003 ("the Reports") The Utility has made all the proper applications to the U.S Copyright Office to register the copyright in the System and the Reports. Therefore, any use by a party, other than the Utility, of the System or of the Reports is an infringement of the Utility's copyrights and is a violation of the U.S Copyright Law, pursuant to 17 U.S.C. §§ 106, 501.

Pursuant to your letter, you requested a copy of the contract between our clients and John Powell. The contract provides the terms for the ownership, operation and maintenance of the sewer services for the Arrington Meadows Chapel subdivision located in Williamson County. Attached for your files is an additional copy of the contract, I understand our clients provided a copy of the contract previously to Mr. Wade Murphy with your Division Exhibit 1. The contract clearly provides that in addition to being the sole owner of the system and provider of all utility services to the subdivision, the Utility is solely responsible for all permitting from TDEC and the Tennessee Regulatory Authority. TDEC correctly issued the above referenced permit to the correct entity. Mr. Mike Thornton has inspected the system and may attest to its completion. In addition, you may consult with Mr. Thornton as he is familiar with the Utility's operations and the Systems it owns across the State of Tennessee. The Utility currently owns and operates over 20 facilities virtually identical to the System it owns in Williamson County.

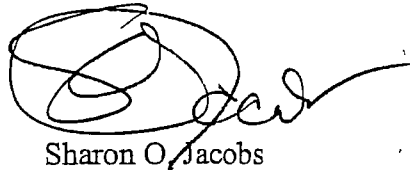
Based on your letter, it appears that you have been given incorrect information. Enclosed is a copy of the legal Memorandum from Williamson County with regard to Powell's request to circumvent the Utility. Powell's proposal to the County was for Kings Chapel Community Association, Inc. to operate the Utility's System. See Exhibit 2. The legal memorandum issued by the County's attorney, Ms. Christie D. Earwood, Esq. addresses Powell's attempt to circumvent the Williamson County Subdivision Regulations which prohibit any homeowners association from owning and operating a wastewater treatment and disposal system. See Page 3. Further evidence of our clients' ownership rights may be found on page 5 of the legal opinion which confirms all reports and easements are in the name of the Utility. In addition, the letter identifies that the real issue between the two private entities is merely a contractual dispute. Thus, the County found that Kings Chapel Community Association would not be recognized as an entity for the operation of the Utility's System.

Please be aware, Mr. Powell has also filed a request with the Tennessee Regulatory Authority. If the Division desires a copy of the application and/or the objection filed before the Tennessee Regulatory Authority please let me know as I would be happy to provide you with copies. Enclosed for your file is proof the TRA granted a certificate of convenience and necessity to the Utility as the private utility holding the certificate as the owner. The certificate provides that the Utility "shall provide public sewer services to the Arrington Meadows Chapel Subdivision". Exhibit 3. Clearly, if you refer to the contract between our clients and Mr. Powell, our clients are in compliance with the contract, as they are responsible for all permitting for the Utility's System.

It has recently come to my attention that you officially informed Mr. Powell that intend to terminate our clients' permit. Please inform me in writing the evidence and grounds upon which you rely to terminate the permit. Our client will appeal any termination of the permit to the Board if the Division intends to proceed with termination of the permit. In addition any attempted infringement upon our clients' copyright shall be pursued. Thus, please provide copies to me of all engineering reports, technical drawings and maps that have been submitted by Mr. Powell to ensure no infringement has occurred. Thank you in advance for your cooperation in this regard.

On behalf of our clients, we respectfully request that any future documents and/or communication with regard to our clients' permit include myself. If you have any questions and/or concerns with regard to this permit, please do not hesitate to contact me. Once you have had the opportunity to review the enclosed materials, I welcome the opportunity to discuss your comments.

Sincerely,



Sharon O. Jacobs

Attachments

cc: Ken Larish, Esq.  
Charles Pickney

## SEWER CONTRACT FOR MEADOWBROOK SUBDIVISION

This AGREEMENT made and entered into this 3rd day of November 2003, by and between Onsite Systems, Inc., hereinafter referred to as "Utility", Onsite Capacity Development Company hereinafter referred to as contractor, and J.Powell Development LLC, hereinafter referred to as "Developer".

### WITNESSETH

For and in consideration of the construction costs hereinafter mentioned and the mutual promises of the parties hereinafter contained, particularly that Developer will be responsible for construction of collection system upstream of the pump station, the Contractor will be responsible for the design; and construction of collection system, pump station, force main from pump station to treatment system, the recirculating gravel filter and drip irrigation disposal system; the Utility will be responsible for repair, maintenance and replacement of said sewers herein provided for, and to maintain the total system as required by the Tennessee Department of Environment and Conservation, Water Pollution Division and the Tennessee Regulatory Authority; the developer to pay for cost of construction and other cost as specified herein, and other good and valuable considerations, the receipt of all which is acknowledged, the parties hereto have entered into the following agreement:

The developer is to install collection system, etc. in accordance with drawings, plans, and specification as shown on the plat of subdivision which is attached hereto, and the plans and specification as approved by the Utility's engineers, the State of Tennessee and the Williamson County Planning Commission which said plans and specifications are attached hereto and made a part of this contract.

The contractor is to perform all of the necessary work for the design and installation of treatment and disposal systems, completely install the same at no cost whatsoever to the Utility, all in accordance with plans and specifications hereinabove referred to, and for that purpose has entered into a contract for completion of this work.

All construction begun, continued and completed hereunder shall be subject to the supervision and approval of the Utility's engineers and representatives who shall have a continuous right of inspection throughout the progress of the work. No pipe, fittings, or connection shall be covered until inspected and approved by the Utility. It is specifically understood and agreed that all installation costs, for said installation of the sewer collection system main lines, filter system and drip irrigation system will be paid for by the Developer. The homebuilder will pay for the cost of installing the tanks, pumps and associated equipment at each house.

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In the event of a change in the drawings or plat of the subdivision by agreement of the parties, prior to the actual installation of the facilities provided for in the plans and specifications, then such change shall be deemed incorporated in this contract, as though set out verbatim herein, and a copy of said changed plans shall be attached to this contract and made a part hereof. It is further understood that such changed plans, if any, may be looked to for a total description of the properties conveyed to the Utility by the Developer.

The Developer further agrees:

That the Developer will immediately repair at its own cost and expense all breaks, leaks or defects of any type whatsoever arising in the collection system from any cause whatsoever occurring within one (1) year from the date of acceptance by "Utility" of said lines, mains, valves, fittings, etc., which are constructed by Developer.

The developer will pay a \$550,000 for the construction of the sand filter, drip irrigation system as construction progresses. Payments will be made on monthly basis no later than 5 days after bank has funded to developer that portion of completed work. Developer will pay an additional \$3366 per lot, when lot is sold to end user (homeowner) for all lots located in the property owned by Hang Rock, LLC and Arrington Meadows LLC.

Developer will be responsible for posting all performance bonds and cost relating to such bonds, required by Williamson County concerning Meadowbrook Wastewater System.

The developer as a part of his construction contract shall install Service connections for all service sewers to the property line of each lot in said subdivision.

Upon the completion of the installations contracted for herein, the Developer and contractor hereby represents and warrants that no liens or encumbrances shall remain for the installation of said work and that Utility will be held harmless for any claims arising from the construction of said system.

The Utility has contracted with Jarrett Concrete Products and Supply (Hereinafter Jarrett) of Ashland City (792-9332) and Effluent Collection Supply of Smyrna- 793-1291 (Hereinafter ECS) to supply most of the materials for the septic tank installation.

Jarrett will supply all Septic Tanks required for each lot. All houses six bedrooms or less will require a 1500-gallon tank with a four-inch Orenco gravity filter. Larger house will be considered on a case by case basis. The price for 1500-gallon tanks delivered and set will be \$850 each. Prices for tanks are guaranteed not to increase more than 5% per year. ECS or Jarrett may supply Effluent filters, risers and lids. ECS prices are as follows:

Four-inch gravity filters - \$68.00  
24" - DIA x 24 tall riser - \$59.00  
24" - DIA Lid - \$52.72

If pumps and controls are needed, they will be supplied at the usual contractor price.  
Sales tax not included in above prices.

By the execution of this agreement, the Developer hereby represents and warrants that said sewerage system will be installed in accordance with the foregoing provisions and the plans and specifications, and that written easements will be provided five feet (5') in width on each side of the center line of all sewers installed hereunder other than sewers installed along the public right-of-way.

IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of the day and date first above written.

By: [Signature] Date: 12-3-03  
Onsite Systems, Inc.  
Robert Pickney, Vice President

By: [Signature] Date: 11-8-03  
Developer - \_\_\_\_\_

By: [Signature] Date: 10-3-03  
Onsite Capacity Development Company  
Robert Pickney - Managing Partner

**BUERGER, MOSELEY & CARSON, PLC**  
Williamson County Attorneys  
306 Public Square  
Franklin, TN 37064  
(615) 794-8850  
(615) 790-8861 Fax



KRISTI D. EARWOOD

**MEMORANDUM**

**TO:** Honorable Rogers Anderson, Williamson County Mayor  
Honorable John Lackey, Chairman, Williamson County Planning Commission  
and Water and Wastewater Authority

**xc:** Mr. Joe Horne, Community Development Director  
Mr. Greg Langeliers, Planning Director  
Mr. Richard Militana, Counsel for John Powell  
✓ Mr. Ken Larrish, Counsel for On-Site Systems, Inc.

**FROM:** Kristi D Earwood *KDE*

**DATE:** October 8, 2004

**RE:** Kings Chapel Subdivision - Wastewater Treatment and Disposal Proposal

---

As you know, on September 27, 2004, we met with John Powell, one of the developers of Kings Chapel Subdivision, his attorneys, Richard Militana and Joe Baugh and his consultant, Hal Novak. Mr. Powell read a statement and presented additional information concerning a proposal for the treatment and disposal of wastewater for Kings Chapel Subdivision. In this memorandum, I will attempt to provide sufficient background on this subdivision, a statement of the current circumstances and my legal conclusions and recommendations regarding Mr. Powell's proposal.

A site plan was provided for Meadowbrooke subdivision containing an alternative wastewater treatment and disposal system. Along with the site plan, a Design Development Report and Detailed Soils Investigation Report was also submitted. The system proposed was a closed sand filtration system with individual septic tanks on each lot and disposal by drip irrigation. Based upon this site plan, a preliminary plat was approved on October 9, 2003, and then a final plat was approved on June 10, 2004 for the first section containing the alternative wastewater treatment and disposal system.

The plats showed at all times that the owner and operator of the system would be On-Site Systems, Inc. I have since learned that On-Site Systems, Inc. is now called Tennessee Wastewater, Inc. It is my understanding that the Tennessee Regulatory Authority (TRA) previously approved

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**EXHIBIT**



Honorable Rogers Anderson  
October 8, 2004  
Page 2

On-Site Systems, Inc. to service the area within which Kings Chapel is situated, along with the subdivision across the highway called Blackhawk. The TRA granted a certificate of convenience and necessity for On-Site Systems, Inc., a private utility, to provide public sewer services to this area.

The original bonding amount required for both the primary and back-up wastewater system was incorrectly stated at the time of final plat approval. Therefore, as a matter of Old Business and with the concurrence of the applicant and the recommendations by Williamson County's consultant, the Williamson County Planning Commission approved the proper bond amounts for the wastewater system for Kings Chapel on August 12, 2004. For the sake of continuity, all bond amounts were re-approved on the same date as well. The Williamson County Subdivision Regulations state that the required bonds shall be posted within sixty days after approval of the final plat. Williamson County Subdivision Regulations Section 3.2(4)(i). The plat must then be registered within thirty days after the bonds have been posted. Williamson County Subdivision Regulations Section 3.2(4)(i). Since the bond amounts were approved on August 12, 2004, Kings Chapel has until October 11, 2004 to post its bonds and then the final plat must be recorded by November 10, 2004 or it becomes void. If these deadlines are not met, re-approval of the final plat by the Williamson County Planning Commission is required.

Mr. Powell contacted me by telephone on July 29, 2004 regarding the re-approval of all bonds for consistency. In the course of this conversation, he indicated his desire to obtain a new operator for his wastewater system. It was my opinion then that if Mr. Powell was merely substituting one operator for another with the written approval of the TRA and the transfer of the State Operating Permit by the Tennessee Department of Environment and Conservation (TDEC) and that nothing else about the plat would change, then such may be considered a minor change and may not require a re-review by Williamson County Planning Commission; however, I expressed my doubt that same could be accomplished by the final plat deadline. I was assured by Mr. Powell that it could.

During the course of these reviews by the Williamson County Planning Commission for Kings Chapel, the subdivision across the street, Blackhawk, sought approval to utilize the Kings Chapel treatment system and its own land for disposal, despite the fact that Blackhawk had a previously approved subdivision final plat utilizing subsurface sewage disposal on individual lots. Blackhawk was approved for same. Mr. Powell has indicated that his proposal would encompass again providing wastewater treatment and disposal for Blackhawk; however, Blackhawk has re-submitted a final plat for the October, 2004 Planning Commission meeting with lots again containing individual subsurface sewage disposal systems. As a result, for purposes of this memorandum, any opinions offered or legal conclusions reached only address the proposal by Mr. Powell for Kings Chapel Subdivision.

It is my understanding that Mr. Powell and the owner of On-Site Systems, Inc. (now Tennessee Wastewater) have become embroiled in a contractual dispute. I have heard the positions

of both parties as a courtesy, but have maintained to both parties that my sole responsibility is to my client, Williamson County and its Planning Commission, and offering my client my opinion on what is permitted according to State law and regulations and local ordinance and regulations.

The proposal from Mr. Powell, as I understand it, is for the following to occur:

1. The Homeowners' Association (HOA) of Kings Chapel will own the land and facilities required and designated for the alternative wastewater treatment and disposal system.
2. The HOA will contract with an approved operator.
3. The HOA will post required bond amounts for the primary and backup systems.
4. The HOA's covenants and restrictions will be amended to permit same and will automatically transfer authority to own and operate the system to an entity approved to do so by TDEC and the TRA within twelve months.
5. The HOA will obtain a State Operating Permit from TDEC.
6. The HOA is not required to obtain approval from the TRA.
7. Mr. Powell has the authority to transfer ownership in the land upon and within which the wastewater system is constructed as well as the septic facility to the HOA.
8. The final plat is not required to return to the Williamson County Planning Commission for re-approval.
9. The HOA president will sign the final plat in lieu of On-Site Systems, Inc. as the wastewater operator.

I have a number of concerns about this proposal and will address each one in turn:

A Homeowners' Association (HOA) is prohibited by the Williamson County Subdivision Regulations from owning and operating a wastewater treatment and disposal system.

Section 5.6(1)(a) says that "[n]o subdivision shall be approved until provisions are made for the adequate disposal of wastewater for the site."

Section 5.6(1)(b) states that "[a]ll public sanitary sewer systems shall be approved by . . . the appropriate State authority . . . ."

Section 5.6(2) only anticipates that a "governmental entity or utility company" will provide sewer service and it must issue written intent to service this subdivision. The Williamson County Regulations for Wastewater Treatment and Land Disposal Systems require that the system be owned and operated by the same entity. Section 1.11. Additionally, Section 1.6 requires that where another regulation, law or statute differs, then the more restrictive or higher standards shall control.

Clearly the Subdivision Regulations supplement the wastewater regulations in this case and are more restrictive. Furthermore, to even demonstrate that a HOA is eligible to serve Kings Chapel, it must be in existence legally, it must have a State Operating Permit from TDEC and it must have approval from the TRA. I have received no proof that the HOA has been or will be granted a State Operating Permit to operate the system currently being operated by On-Site Systems, Inc. (Tennessee Wastewater). It is my understanding that On-Site Systems, Inc. will oppose any attempts by TDEC to transfer its State Operating Permit to another entity and that it will assert any right it may have in the engineered plans and designs upon which its State Operating Permit application was based. Regardless, again, because of those assertions by both parties, I cannot recommend that my client approve a proposal where there are so many unanswered questions.

Further, although Mr. Powell and his consultant, Mr. Novak, indicated that the TRA does not regulate HOA's, my research indicates otherwise. The TRA is statutorily charged with regulating public utilities, most importantly in this context, public utilities that provide "water . . . or other like systems . . ." Tenn. Code Ann § 65-4-101(a). The TRA has chosen to extend its authority to those private companies providing public sewer utility services by granting a certificate of convenience and necessity. It is my understanding that On-Site Systems, Inc. (Tennessee Wastewater) has been granted such certificate for an area that encompasses the location of Kings Chapel. Tennessee Code Annotated Section 64-4-101(b) specifically excludes "nonprofit homeowners' associations or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, contract, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the association or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee Regulatory Authority."

It is my opinion that the HOA in this proposal by Mr. Powell is not exempt from TRA regulations because it is proposing to operate a wastewater system. The definition of public utility found in Tennessee Code Annotated Section 65-4-101(a) includes "water . . . or other like systems." The exemption in Tennessee Code Annotated Section 65-4-101(b) has no such language. The exemption is limited to water, street lights and park maintenance. Mr. Powell's proposal encompasses none of these. The General Assembly specifically exempted a few services. The

intent is clear. Where a HOA is providing wastewater treatment, the TRA supervision and control governs. I have no proof that the TRA has approved this HOA to operate in an area previously designated for another public utility nor do I have any formal information of its declination to regulate same

Mr. Powell has proposed an amendment to the HOA covenants and restrictions previously recommended for approval by me and confirmed by the Williamson County Planning Commission. Any major change to the substantive provisions of the documents such as proposed must be considered by the Williamson County Planning Commission. Williamson County Zoning Ordinance § 9503 (c)(3).

Mr. Powell has proposed merely substituting the HOA for On-Site Systems, Inc. (Tennessee Wastewater) as the utility provider on the approved final plat. I cannot recommend the approval of such proposal without reconsideration by the Williamson County Planning Commission. In fact, it is my recommendation that the site plan of Kings Chapel be resubmitted along with amended design development reports and detailed soil investigation reports, because the proposal is of such significant change as to require re-review. The ownership of the system has changed. The maintenance responsibility of pumping the septic tanks is no longer addressed. The design development reports and detailed soil investigation reports were submitted by On-Site Systems, Inc. How will another entity propose to complete and operate this system? The easements on the plat indicate they will be granted to On-Site Systems, Inc. Both the Preliminary Plat and Final Plat were approved based upon a set of conditions and assertions in the site plan that have significantly changed. The Williamson County Planning Commission has a duty to the public to carefully consider the effects a new development will have. I cannot recommend an amendment as significant as that proposed to proceed on staff approval alone. At a minimum, a minor revision to a plat is only defined as an "adjustment that will not impact proposed or existing public improvements involving two or fewer building lots." Williamson County Subdivision Regulations 3.2(5). Since this revision involves all building lots, the common area and the easements for the lots, as well as the area to be owned for the wastewater treatment and disposal system, such change is more than a minor revision of the final plat, but a revision of the entire plan of service to the subdivision.

Even assuming TDEC grants the State Operating Permit to the HOA and even assuming TRA chooses not to regulate the HOA, and even assuming a HOA can own and operate in Williamson County, I cannot recommend that a HOA be granted authority to operate this wastewater treatment and disposal system because the current utility has expressed an ownership interest in the facilities in the ground. There appears to exist a conflict between Mr. Powell and On-Site Systems, Inc. (Tennessee Wastewater) over who owns the actual system, which is, for the most part, already installed and constructed. Mr. Powell asserts he has ownership in the real property upon and within which this system is installed and constructed, yet On-Site Systems, Inc. (Tennessee Wastewater) by and through its counsel, asserts an ownership interest in the facilities. Where no clear ownership is evident, I cannot recommend to the Williamson County Planning Commission that a clear utility provider is even available. The Regulations for Wastewater Treatment and Land Disposal Systems

Honorable Rogers Anderson  
October 8, 2004  
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in Williamson County requires both ownership and operation of the system. See Section 1.1.1. This conflict between Mr. Powell and On-Site Systems, Inc provides a direct violation of this Section.

Furthermore, I am concerned that there seems to be many entities involved with no proof of who has the clear authority to bind any one of them. As previously indicated, the utility provider is listed on the Final Plat as On-Site Systems, Inc. It is my understanding now that it is called Tennessee Wastewater. Who holds the State Operating Permit for Kings Chapel? Who is granted the certificate of convenience and necessity for this area by the TRA? If there was a name or change of entity, was it filed with the Secretary of State? Approved by the TRA? TDEC? Mr. Powell indicates he can bind the land in Kings Chapel; however, the Final Plat evidences four different entities: Hang Rock, LLC, Over-the-Branch, LLC, King's Camp and Arrington Meadows, LLC. Again it has been suggested that a HOA also exists. Are all of those entities still in existence? Who has the authority to bind same? These issues must be clarified.

In conclusion, I cannot recommend that the Williamson County Water and Wastewater Authority and the Williamson County Planning Commission recognize a HOA as an entity permitted to own and operate an alternative wastewater treatment and disposal system in Williamson County. Regarding this particular system, as I have outlined, there are too many unanswered questions to even place a proposal on a docket for consideration by the Williamson County Planning Commission for another operator who is not a HOA at this time. I will be happy to revisit this issue once some of the questions are answered, but in the meantime, I cannot advise the Williamson County Planning Commission staff to approve the final plat as is where no utility provider exists.

As a separate issue, Mr. Powell had requested of the County Mayor a letter indicating that Williamson County does not intend to serve sewer to the area of Kings Chapel at this time. Although Williamson County does not currently provide public sewer, it is my opinion that a letter would be premature without consultation with the Williamson County Wastewater Authority. Furthermore, the County Mayor may wish to conduct public hearings in the area where two or more entities seek to serve a certain area. For these reasons, at this time I cannot recommend providing such correspondence.

Should you desire any additional information or wish to discuss the above, please do not hesitate to contact me.

BRANSTETTER, KILGORE, STRANCH & JENNINGS

ATTORNEYS AT LAW

227 SECOND AVENUE NORTH

FOURTH FLOOR

NASHVILLE TENNESSEE 37201-1631

TELEPHONE  
(615) 254-8801

FACSIMILE  
(615) 255-5419

CECIL D. BRANSTETTER, SR.  
C. DEWEY BRANSTETTER, JR.  
RANDALL C. FERGUSON  
R. J. JENNINGS\*  
CARROL D. KILGORE  
DONALD L. SCHOLES  
JAMES C. STRANCH III  
JANE B. STRANCH

August 25, 2004

MARK A. MAYHEW  
J. GERARD STRANCH IV  
JOE P. LENISKI JR.

\*ALSO ADMITTED IN CA

Mr. Charles B. Welch, Jr.  
Farris, Matthews, Branan, Bobango & Hellen, PLC  
618 Church Street, Suite 300  
Nashville, TN 37219

Re Provision of Sewer Service to Hang Rock Subdivision (formerly known as Meadowbrook Subdivision) in Williamson County, Tennessee

Dear Chuck

I am writing you at the request of Charles Pickney, Jr. regarding the provision of sewer service by Tennessee Wastewater Systems, Inc. to a subdivision known as Hang Rock Subdivision, formerly known as Meadowbrook Subdivision, being developed by J. Powell Development, LLC in Williamson County, Tennessee.

Tennessee Wastewater Systems, Inc. (the Company) received a certificate from the Tennessee Regulatory Authority several years ago to provide sewer service within the boundaries of the Milcrofton Utility District in Williamson County. The Hang Rock Subdivision is located within this certificated area. The Company entered into a Sewer Contract for Meadowbrook Subdivision with J. Powell Development, LLC dated November 3, 2003 to provide sewer service to this development. I have enclosed a copy of this contract. I understand that the recirculating gravel filter and drip irrigation system has been completed by the contractor, Onsite Capacity Development Company. The Company has inspected the installation of these improvements as construction has progressed in anticipation of providing sewer service. Under the terms of the contract, the developer and the contractor must represent and warrant that no liens or encumbrances remain on the installation work before the Company can takeover the system and begin providing sewer service. I have been advised that the developer owes the contractor a substantial amount of money for its installation work. Until the system and the real property associated with the sewer system can be conveyed to the Company free of liens and encumbrances, the Company cannot provide sewer service to the development.

Mr. Pickney has been advised by Mr. Powell that Mr. Powell has contacted other sewer providers about providing sewer service to this development. Mr. Powell told Mr. Pickney that he has met with several people at the TRA about obtaining service from someone other than the

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Mr Charles B Welch, Jr  
August 25, 2004  
Page 2

Company Mr Pickney recently met with Hal Novak at the TRA about this issue. Mr. Novak informed Mr. Pickney that one of the companies Mr Powell has contacted about providing service is IRM Utility, Inc

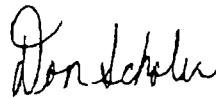
The Company is the authorized sewer provider for this geographic area. The Company has a contract with the developer to serve this subdivision. The sewer treatment system has been installed. Under these circumstances I am unsure that IRM Utility, Inc. or any other company who may be authorized by the TRA to provide sewer service in the area of this development will be able to serve this development should a certificate be granted. The Company believes that it has a contractual commitment from the developer to provide sewer service to this development. Should the TRA grant a certificate to a competing utility, any attempt by such a certificated utility would unlawfully interfere with an existing contractual relationship.

More importantly, a new utility will not be able to provide sewer service to the development without the developer removing all liens and encumbrances on the sewer system and the real property connected to the sewer system. The contractor has a lien for the value of work done on the system which remains unpaid. If the developer is going to have to remove all liens from the system before sewer service can be provided by another provider, it simply makes no sense for developer not to remove the liens for the Company.

The Company will intervene in any case filed by another utility to provide sewer service to the development at the TRA. A contested case hearing will have to be conducted by the TRA. The staff investigation of the application, the scheduling of the hearing and the eventual issuance of an order will significantly delay the provision of sewer service to the development. Such a delay does not appear to be in the best interest of the developer or the public.

If you desire to discuss this issue further, please let me know.

Sincerely yours,



DONALD L. SCHOLES

Enclosure

c Charles Pickney, Jr ✓

BKSI File No 99-217

# Rochelle, McCulloch & Aulds, PLLC

109 Castle Heights Avenue North • Lebanon, TN 37087 • 615/443-8787 • Fax 443-8775 • [sroberts@rma-law.com](mailto:sroberts@rma-law.com)

## ATTORNEYS AT LAW

*Robert Rochelle  
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Gregory S. Gill  
Julie Robinson Rowland  
Stephen V. Roberts*

*Jessica Dawn Dugger  
Of Counsel*

September 3, 2004

## VIA FACSIMILE # 615-799-6358

Mr. Richard Militana, Esq.  
Militana & Militana  
5845 Old Hwy 96  
Franklin, TN 37064

RE: John Powell, et al./Tennessee Wastewater Systems, Inc.

Dear Mr. Militana.

This office is in receipt of your fax of September 3, 2004. In an effort to clarify for you the representation of Tennessee Wastewater Systems, Inc. by the various attorneys, be advised that Branstetter, Kilgore, Stranch & Jennings had been representing Tennessee Wastewater Systems, Inc. in this matter before the Tennessee Regulatory Authority, and their representation was limited to that scope. This office has been retained by Tennessee Wastewater Systems, Inc. to secure payment of the outstanding balance owed to TWS for the installation of a STEP sewage treatment system serving property owned by Arrington Meadows, LLC and Hang Rock, LLC. Upon information and belief, your client, John Powell, is a principal in those entities, and has dealt directly with TWS in this matter.

Further, until Mr. McCulloch's trial is completed in Atlanta, the lead attorney and point of contact at this office is Greg Gill, who you have dealt with on another matter involving Mr. Powell. If he is not available, please ask for me. Greg's wife gave birth to their first child this week, so he is working from home through September 7, 2004.

We too are interested in a quick and amicable resolution to this matter. The foregoing notwithstanding, TWS stands ready to take whatever steps may be required to secure the outstanding payment for the services rendered and in place. We do not wish to litigate this matter, but are prepared to do so if need be. Our client has fully and faithfully installed the sewage treatment system to the benefit of you client, and is entitled to payment therefore.



If you have any questions, please feel free to contact Greg Gill at (615) 443-8761.

Sincerely yours,

ROCHELLE, McCULLOCH & AULDS, PLLC

A handwritten signature in black ink, appearing to read "S.V. Roberts", with a large, stylized initial "S" and a horizontal line extending to the right.

Stephen V Roberts

cc Charles Pickney  
Don Scholes

# Rochelle, McCulloch & Aulds, PLLC

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## ATTORNEYS AT LAW

Robert Rochelle  
Jere N McCulloch  
Jo Ann "Jody" Aulds  
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Alan Poindexter  
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Julie Robinson Rowland  
Stephen V Roberts

Jessica Dawn Dugger  
Of Counsel

August 31, 2004

VIA FACSIMILE # 615-799-6358

Mr. Richard Militana, Esq.  
Militana & Militana  
5845 Old Hwy 96  
Franklin, TN 37064

RE: John Powell, et al./Tennessee Wastewater Systems, Inc.

Dear Mr. Militana:

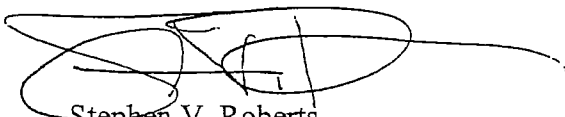
Our firm represents the interests of Tennessee Wastewater Systems, Inc. in this dispute. Yesterday, I received a copy of the fax sent to you by Don Scholes regarding the above matter. It appears that the parties have discussed meeting together to attempt an amicable resolution to the issues.

If this is the case, we must wait until Jere McCulloch returns from an out of state trial. As mentioned by Mr. Scholes, Jere is familiar with the facts and history of this dispute. Therefore, before we can arrange a meeting, Jere needs to return to Tennessee so that he can be available when a meeting is set.

If you have any questions or concerns, please do not hesitate to contact me. Otherwise, we will contact you when Jere returns to the office to discuss a meeting.

Sincerely yours,

ROCHELLE, McCULLOCH & AULDS, PLLC



Stephen V Roberts

cc: Charles Pickney – Tennessee Wastewater Systems, Inc

TNWaste-Powell 00047

September 14, 2004

**VIA FACSIMILE and U.S. MAIL**

Richard Militana, Esq  
Militana & Militana  
5845 Old Hwy 96  
Franklin, Tennessee 37064

**Re: Meadowbrook Wastewater System**

Dear Richard:

I have reviewed the letter that you faxed to me Friday evening concerning the above-referenced matter. Likewise, I have reviewed your most recent letter to me which was faxed this morning. While I continue to appreciate the urgency with which you are pursuing this matter, please understand three things clearly:

1. This firm has been engaged to represent the interests of certain parties whose interests are directly adverse to the interests of your client, and this firm will continue to serve the interests of its clients zealously in all respects. Specifically, we will take as much time and expend as much effort as we deem necessary to investigate this matter's background and the relative legal positions of our respective clients. If the time we deem necessary to handle this does not suit you, we will respectfully ask you to proceed as you see best, but you can expect that your continued unreasonable demands and deadlines will bear little fruit. Ken Larish informed you on Friday that you would have our written response regarding the potential of settling this matter (along the lines you have outlined) after we had had ample time to consult with our clients (one of whom was out of town over the weekend). This letter bears that response.
2. While I understand the significance of this matter to you and your client, I will not tolerate your continued unreasonable allegations concerning the conduct of Ken Larish or any other member of this firm. On his behalf, and on behalf of this firm, I categorically reject your loose accusations of misconduct and demand that they cease immediately. Because of the tenor of your conversations with Ken Larish and the caustic nature of your dealings with other attorneys who have been involved in this matter, we will no longer communicate with you verbally and insist that future communications be limited to writing until further experience gives us reason to believe that verbal communication with you will be more productive than it has been, and that – at a minimum – you will suspend your abusive and unprofessional tactics.

- 3 Notwithstanding the statements contained in your most recent letter to me, Ken Larish is still very much involved in this matter, and I would ask that you refrain from further mischaracterizations concerning the statements of this firm's clients and from continued commentary concerning this firm's staffing of this case (or any other case for that matter)

As promised, we have consulted with our clients, and our response to the series of conversations and communications that we have had with you and that our clients have had with your clients is as follows

- A Tennessee Wastewater Systems, Inc ("TWS"), f/k/a On-Site Systems, Inc , and On-Site Capacity Development Company ("OCDC") have performed properly under the terms of the agreement that they reached with your clients, and expect – and hereby demand – that your client comply with the terms of said agreement in like fashion. Specifically, but without limitation, OCDC has caused the construction of the sand filter and drip irrigation system (among other places, referenced in the eighth (8<sup>th</sup>) paragraph of the written contract by and among our clients dated November 3, 2003) to be completed, and is entitled to payment of \$550,000.00 for the same. To date, OCDC has been paid \$250,000.00 for said system (which partial payment was itself made late), and has long since been owed the remaining \$300,000.00. Please arrange for said \$300,000.00 sum to be paid to OCDC immediately. Please note that, while we have chosen not to ask for interest on this delinquent sum, if said sum is not paid in full immediately, we will reconsider the charging of interest.
- B We recognize that there has been some confusion on your client's part regarding the terms and provisions of the written contract referenced in the immediately preceding paragraph, and our clients would like to ensure that such confusion does not continue. Our clients remain ready to meet with your clients to discuss all matters outstanding between them. Specifically, but without limitation, we propose that our clients and yours (including both John Powell and Dr. C. Wright Pinson) meet as soon as possible to discuss (i) the steps that will be undertaken in order to ensure that the tract of land upon which the wastewater system is situated is free from all liens, encumbrances and clouds on title, (ii) the steps that will be taken to convey title of said tract to TWS (including, without limitation, the form and timing for the delivery of the necessary warranty deed), (iii) the procedures required for allowing for the recording of the plat at issue, and (iv) the appropriate way to memorialize all of the foregoing. With respect to item (iv), we are willing

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to consider entering into a letter agreement of understanding to outline the steps that each party is obligated to take under the terms of the agreement that has been reached between the parties. In other words, if an additional written agreement will be helpful in allowing us to avoid future conflict – and to lessen the level of anxiety between the parties currently – we are amenable to working toward putting such an agreement in place

Please let us know at your earliest convenience whether we should look forward (1) to immediate payment of the outstanding sums discussed above in paragraph A and (11) to scheduling an all-hands meeting as discussed above in paragraph B

We have refrained from placing a specific time deadline on the payment of the \$300,000.00 discussed above, but given the long-term delinquency involved, I am sure that you will understand that we are looking for an answer in the very near future. If payment of said amount will not be immediately forthcoming, we will have to consider our legal options.

Lastly, as I mentioned in paragraph 2 above, please limit your communications with this firm to writing until further notice. Correspondence should be sent to my attention or to the attention of Ken Larish.

Thank you for your consideration of these matters.

Sincerely,



Charles W. Bone

cc Tennessee Wastewater Systems, Inc.  
On-Site Capacity Development Company  
Anne C. Martin, Esq  
Kenneth M. Larish, Esq.

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Richard Militana, Esq  
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bcc: Jere N McCullough, Esq.  
Henry M Walker, Esq

TNWaste-Powell 00051

September 15, 2004

**VIA FACSIMILE and U.S. MAIL**

Richard Militana, Esq.  
Militana & Militana  
5845 Old Hwy. 96  
Franklin, Tennessee 37064

**Re: Meadowbrook Wastewater System**

Dear Richard:

I have reviewed the letter that you faxed to me earlier today, which appears to have been sent in response to the letter I sent to you yesterday concerning the above-referenced matter. Before addressing your most recent letter generally, I must ask for clarification on two points:

1. In paragraph A on page 2 of my letter, I made specific demand for immediate payment by your clients to On-Site Capacity Development Company ("OCDC") of the delinquent sum of \$300,000.00. Although I believe I can discern from your statements in the last two paragraphs of page ten of your letter that you are rejecting said demand, your response is less than clear. Please inform me in writing at your earliest convenience whether your clients are finally and irrevocably refusing to make payment under the terms of the contract at issue.
2. In paragraph B on page 2 of my letter, I offered on behalf of OCSC and Tennessee Wastewater Systems, Inc. ("TWS"), f/k/a On-Site Systems, Inc., to set up an all-hands meeting with you and your clients to address all currently outstanding matters. No where in your ten-page letter did you accept, reject or otherwise comment this offer. Although such a meeting is offered less for the benefit of OCSC and TWS than for the benefit of your client, we still believe such a meeting would be advisable. Please inform me in writing at your earliest convenience whether you and your clients are refusing such a meeting.

As for the remainder of your letter, first, I regret that you have chosen to continue communicating in what is an unhelpful tone. I also regret that for the second time in two days I am compelled to waste time responding to your loose and unsupportable accusations. I told you that we would not tolerate your continued ugliness, and I again ask you to cease this type of conduct forthwith – as you have cited, attorneys have a duty to carefully to avoid baseless statements, particularly those intended to injure or gain advantage.

TNWaste-Powell 00052

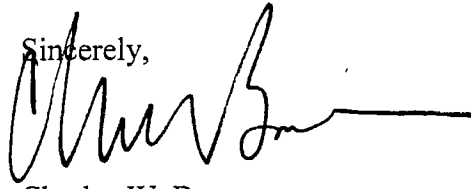
Richard Militana, Esq.  
September 15, 2004  
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Second, you have repeatedly complained that we have presented you with no law or facts in dispute of your position(s). I assume that you need not be reminded that we are under no obligation to share with opposing counsel our litigation strategy, but suffice it to say that our demand and offer of a meeting were (as I pointed out in my letter) the result of a lengthy consideration of the facts of the case and applicable law.

Third, I resent your lectures on legal ethics. We will continue to represent our clients in a manner which is consistent with our ethical and professional duties, and we trust that you intend to do the same. To that end, please respond to the two questions set forth above at your earliest convenience, after you have had an opportunity to consult with your clients.

Lastly, while you are clearly entitled to choose your own course of action and your own litigation methods, I strongly encourage you to avoid additional diatribes. Your communications with us are increasingly unproductive, and any communication from you unrelated to answering the two questions clearly posed above will add to an already unfortunate waste of time. If your clients are refusing both the demand and the offer outlined above, please simply let us know. Also, please note that until further notice, this firm will not feel compelled to respond to any additional loose allegations and complaints you may put forth – you can consider the same rejected without response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles W. Bone', with a long horizontal flourish extending to the right.

Charles W. Bone

cc: Tennessee Wastewater Systems, Inc.  
On-Site Capacity Development Company  
Anne C. Martin, Esq.  
Kenneth M. Larish, Esq.

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Richard Militana, Esq  
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bcc Jere N McCullough, Esq  
Henry M Walker, Esq

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