

October 26, 2023

Electronically Filed in TPUC Docket
Room on October 26, 2023 at 4:17 p.m.

VIA ELECTRONIC FILING

Hon. Herbert H. Hilliard, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
TPUC.DocketRoom@tn.gov

**RE: *Application of Limestone Water Utility Operating Company, LLC for:
(1) Authority to Expand its Certificate of Convenience and Necessity to Include
the Laurel Creek Subdivision and (2) Motion to Waive Commission Rule 1220-
04-13-.17(c)(3), TPUC Docket No. 22-00059***

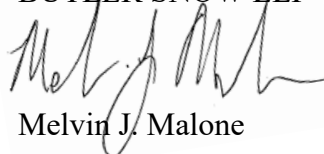
Dear Chairman Hilliard:

Please find enclosed the revised and fully executed Utility Services Agreement between Limestone Water Utility Operating Company, LLC, and Westpark Laurel Creek, LLC, in response to the data requests from the TPUC Commission Staff, dated October 11, 2023. Specifically, this revised Utility Services Agreement is being filed in response to data request #3.

As required, the original plus four (4) hard copies will be mailed to your office. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

clw

Attachment

cc: Russ Mitten, Limestone Water Utility Operating Company, LLC
Vance L. Broemel, Consumer Advocate Division
Karen H. Stachowski, Consumer Advocate Division
David Foster, TPUC Utilities Division

UTILITY SERVICES AGREEMENT

This agreement to provide sewer utility services ("Agreement") is entered into this 25th day of October, 2023 between **LIMESTONE WATER UTILITY OPERATING COMPANY, LLC** ("Utility") and **WESTPARK LAUREL CREEK, LLC** ("Developer") (each a "Party" and jointly "the Parties").

WHEREAS, Utility is a limited liability company, organized and existing under the constitution and the laws of the State of Tennessee, with all the requisite power necessary to enter into the Agreement;

WHEREAS, Developer is a limited liability company, organized and existing under the constitution and the laws of the State of Tennessee, with all the requisite power necessary to enter into the Agreement;

WHEREAS, Developer has acquired or will acquire property in the State of Tennessee, County of Sevier, being known as Laurel Creek (hereinafter "the Property"), as set out herein on **EXHIBIT A**, attached hereto and incorporated herein; and

WHEREAS, Developer desires to develop the Property as a residential subdivision in accordance with applicable state and local zoning and development regulations and provide all dwellings within the Property with central sewer service; and

WHEREAS, Utility is authorized to provide sewer service to the area where the Property is located and desires to own and operate sewer facilities and equipment constructed or installed by Developer to serve structures within the Property;

WHEREAS, Utility and Developer previously entered into a Utility Services Agreement dated 6-21, 2023, which is hereby terminated and superseded by this Agreement;

NOW THEREFORE, for the consideration expressed in the Agreement and subject to all its terms and conditions, the sufficiency of which is hereby acknowledged, the Parties contract and agree as follows:

1. DEFINITIONS

- 1.1 "Accepted Sewage"** means domestic sewage such as sewage from residences, office buildings, motels, restaurants and other commercial uses, but expressly excludes: (i) all substances that will damage, clog, or adversely affect lines and facilities owned or operated by Utility, (ii) industrial or toxic wastes, (iii) any other wastes that Utility (or any governmental agency) determines Utility's sewage treatment facilities (and its lines or other facilities) cannot handle, and (iv) storm and rain water.
- 1.2 "Environmental Regulator"** means all state or local governmental agencies regulating the construction of Infrastructure (herein defined) within the Property.
- 1.3 "Final Property Plan"** means the as-recorded official and fully-approved (if governmental approvals are required) map and plat of the Property.
- 1.4 "Infrastructure"** means:

Sewer infrastructure including but not limited to, lines, pipes, conduit, tubing, systems, pumps, lift stations, tanks and structures, mechanical apparatus, and facilities constructed, placed, or located by Developer for the receipt and transmission of sewage from the Property.

- 1.5** **"Services"** means:
Sewer services, which is the receipt and treatment of Accepted Sewage by Utility from structures within the Property.
- 1.6** **"User"** means a customer utilizing Services within the Property.
- 1.7** **"Utility Construction Requirements"** means Utility's construction specifications, notes and details for Infrastructure for the Property.

2. SEWER SYSTEM

- 2.1** Developer shall design and construct, at its sole expense, all Infrastructure within the Property in accordance with engineering plans and specifications of the Developer's engineer prepared in accordance with all applicable governmental standards and regulations and Utility's Utility Construction Requirements. Plans and specifications shall be submitted to Utility for review, and must have received Utility's written approval before construction begins, which approval shall not be reasonably withheld or delayed.
- 2.2** All Infrastructure shall be constructed by a contractor that is selected by Developer and approved by Utility prior to beginning construction, which approval shall not be unreasonably withheld or delayed. The contractor must hold all required state and local licenses and, if required by Utility, must produce a valid Certificate of Insurance showing Utility as an additional insured during construction of the Infrastructure.
- 2.3** Developer must submit, at no charge to Utility, all construction plans and specifications for the Infrastructure. The plans submitted in accordance with this section shall be Developer's plans which have received all required governmental approvals.
- 2.4** Upon completion of the Infrastructure, Developer must submit to Utility, at no charge, three (3) sets of "As Built" construction plans and specifications as well as an electronic copy of all plans in a format acceptable to Utility.

3. EASEMENTS/SERVITUDES AND REAL PROPERTY

- 3.1** By its execution of the Agreement, Developer grants, conveys, sets over, and assigns unto Utility a non-exclusive easement/servitude of use and passage within all utility easements/servitudes, rights of ways, and streets within the Property as shown on the final subdivision plan or similar document. The easement/servitude of passage shall be used by Utility exclusively in connection with the maintenance, construction, and operation of the Infrastructure within the Property. Notwithstanding the foregoing, Developer further

agrees to execute assignments, easements/servitudes, and any additional documents requested by Utility in order to memorialize this grant of easement/servitude.

- 3.2** Developer agrees to add the following wording to the final subdivision plan or similar document as recorded in the official real estate records of each county/parish where the Property is located: "Limestone Water Utility Operating Company, LLC its successors and assigns, is hereby granted the right to construct, maintain, and provide sewer services within the street rights of way, both public and private, and easements and servitudes set forth herein and/or hereafter granted and is further granted the exclusive right to provide sewer services as a non-public, investor-owned utility. No single structure sewage treatment may be constructed while sewer service is available from Limestone Water Utility Operating Company, LLC."
- 3.3** Upon completion and acceptance by Utility of the facilities to be constructed and installed by Developer in accordance with the Agreement, all Infrastructure shall become the property of Utility, as installed and without the requirement of written documents of transfer. Utility shall own, operate, and maintain such facilities at its sole cost and responsibility and shall have all right, title, and interest as sole owner of those facilities. Notwithstanding the foregoing, Developer shall execute a deed(s), bill of sale and/or other documents reasonably requested by Utility as necessary or desirable, in its sole opinion, to convey to Utility and ensure Utility's ownership of, ready access to, and operations and maintenance of the Infrastructure.

4. WARRANTIES AND REPRESENTATIONS

- 4.1** Upon final acceptance and transfer to Utility of the Infrastructure at Closing (hereinafter defined), Utility will provide Services to Users within the Property.
- 4.2** Upon final acceptance and transfer to Utility of the Infrastructure at Closing, Utility agrees to indemnify and hold harmless Developer from all liability for Services provided to Users.
- 4.3** Developer represents that the Infrastructure is free of real property tax liens, federal or state tax liens, judgment liens, utility liens, assessment liens and that Utility take the Property free of any liens, mortgages, pledges, leases, options, rights of first refusal, conditional sales agreements, encumbrances or other charges. Developer further agrees to indemnify and hold harmless Utility from any and all liability related to construction and transfer of the Infrastructure, including but not limited to all liens and encumbrances that may be filed and/or attached to the Infrastructure at the time of their transfer to Utility in accordance with the Agreement and agrees to cure any title issues related to the same, at the sole cost of Developer.

5. RIGHTS & OBLIGATIONS OF UTILITY AND DEVELOPER

- 5.1** Following final transfer of the Infrastructure at Closing, Utility shall be entitled to charge monthly user fees and connection fees for Services within the Property as set and established by state utility regulatory authorities.

- 5.2 Prior to Closing, Developer or Developer's engineer shall inspect the Infrastructure within the Property during construction and shall be responsible for notifying Utility of any and all deviations from the plans and specifications approved by Utility for construction of the Infrastructure.
- 5.3 Prior to Closing, Developer or Developer's approved contractor shall lamp test or smoke test the Infrastructure related to the sewer system at the cost and expense of Developer. A field supervisor from Utility must be present for all testing.
- 5.4 Prior to Closing, Developer shall deliver to Utility a certification from its approved contractor that the Infrastructure related to the sewer system and its connection to Utility's sewer system has been performed in accordance with the approved plans and specifications and is ready for domestic use.
- 5.5 Prior to Closing, and upon substantial completion of the Infrastructure within the Property, Developer or Developer's approved contractor shall provide a notice of completion to Utility that all work has been substantially completed in accordance with the approved plans and specifications, and further certifying the Infrastructure have been tested in accordance with this section and are approved for use. Utility shall have a period of **fourteen (14) days** from the date of such notice and receipt of the as-built drawings from Developer's approved contractor to provide Developer a written list of any objections or defects of the Infrastructure. In the event Utility provides a notice and listing of objections and defects within the time specified, then Developer shall have a reasonable period of time within which to take such corrective measures as may be necessary to remove such objections and defects. The standard for any review of objections and defects of the Infrastructure shall be the plans and specifications for Infrastructure approved by Utility. Developer shall provide notice to Utility of completion of work required to remove all objections and defects set forth in Utility's notice, and thereafter Utility shall have **seven (7) days** within which to provide notice of any additional defects or objections to the Infrastructure. This process of notification by Utility and corrective action by Developer shall continue until all defects and objections have been remedied or corrected to the reasonable satisfaction of Utility.
- 5.6 Upon the transfer from Developer to Utility in accordance with this section, all warranties Developer may have from vendors, manufacturers, contractors, or subcontractors in connection with construction of the Infrastructure shall be assigned and transferred to Utility. Developer further agrees to execute an assignment and any additional documents requested by Utility in order to memorialize this transfer and assignment of warranty.
- 5.7 Each Party agrees to provide reasonable support and assistance required by the other Party to secure governmental approvals, authorizations, and certificates necessary to effectuate the objectives of this Agreement.

6. RATES AND CHARGES

- 6.1 In accordance with its approved rates and tariffs, Utility will charge a water tie-in fee, a monthly water rate, and any other authorized fees and charges to each builder or User

within the Property. Monthly service charges shall begin when the User connects to the Infrastructure.

- 6.2 If necessary (as determined by Utility), Developer agrees to pay Utility a sum equal to the cost of purchasing and installing upgraded pumps and/or components necessary for the receipt of Accepted Sewage into facilities owned and operated by Utility. This sum shall be payable by Developer immediately upon receipt of invoice from Utility.
- 6.3 If Developer fails to timely render any payments mentioned in this Section 6, Utility shall have the right to cease all activities undertaken on Property in furtherance of this Agreement in addition to all other remedies provided in Section 8.
- 6.4 In accordance with its approved rates and tariffs, Utility will charge a sewer tie-in fee, a monthly sewer rate, and any other authorized fees and charges to each builder or User within the Property. Monthly service charges shall begin when the User connects to the Infrastructure.
- 6.5 Utility shall be entitled to charge each builder or User a deposit for sewer tap fees in accordance with its approved tariff.

7. REGULATORY APPROVAL; CLOSING

- 7.1 Upon receipt of all regulatory approvals, in a form satisfactory to Utility in Utility's sole and absolute discretion, and approval of the Infrastructure by Utility, pursuant to Section 5.6, the Parties shall schedule a Closing on a mutually agreed-upon date and place ("Closing"). At the Closing, Developer shall execute and deliver instruments of conveyance, transferring to Buyer the and any real property interests, including but not limited to easements/servitudes, required Infrastructure for Utility to provides Services to the Property, free of any and all liens and encumbrances.

8. SPECIFIC PERFORMANCE; DAMAGE; VENUE

- 8.1 If Developer fails to perform its obligations under the Agreement, Utility shall be entitled, at its option, to exercise one or more of the following remedies: (i) specific performance, (ii) compensatory damages, and (iii) rescission and cancellation of this agreement. If Utility elects to exercise its rights under this Section 8, Developer shall pay all costs, attorneys fees, consulting fees and engineering fees, if Utility prevails.
- 8.2 Any and all disputes hereunder shall be exclusively heard in a federal or state court located in St. Louis County, Missouri.

9. NOTICES

- 9.1 Any notice required or permitted to be given or served by any Party to the other Party shall be deemed given in accordance with the provisions of this Agreement upon the addressee's receipt by the addressee by certified mail, return receipt requested, addressed as follows:

If to Utility: **[NAME OF CSWR AFFILIATE]**

c/o Josiah Cox, President
1630 Des Peres Road, Suite 140
St. Louis, Missouri 63131

With a Copy to: James A. Beckemeier
Beckemeier LeMoine Law
13421 Manchester Road, Suite 103
St. Louis, MO 63131
Facsimile: (314) 965-0127
Email: jim@bl-stl.com

If to Developer: WESTPARK LAUREL CREEK, LLC
Doug Hodge
6001 Headwaters Drive
Franklin, TN 37064
Phone: 865-755-8066

- 9.2** Any Party may change its address by delivering written notice of such change to the other Party in the manner specified above, with the effective date of the change being **ten (10) days** from the date of the receipt of the notice of change.

10. CAPTIONS; HEADINGS

- 10.1** The paragraph headings or captions appearing in this Agreement are for convenience and direction only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

11. ENTIRE CONTRACT MODIFICATION

- 11.1** This written Agreement constitutes the entire and complete agreement among the Parties and supersedes any prior oral or written agreements, letters, or correspondence between the parties regarding matters covered by the Agreement. It is expressly agreed that there are no verbal understandings or agreements that in any way change the terms, covenants, and conditions set forth here, and no modification of this Agreement or waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by all Parties.

12. ASSIGNMENT

- 12.1** This Agreement shall not be assigned by Developer to any third party without the prior written consent of Utility, which consent shall not unreasonably be withheld. Any assignment must include the express written assent by assignee to assume all obligations of Developer and to be bound by all terms and conditions of this Agreement. Utility shall be permitted to assign its rights in this Agreement to an affiliated entity that Utility controls without need of consent by the Developer by providing written notice to the Developer of such assignment.

13. WARRANTIES

- 13.1** All covenants, agreements, warranties, representations, and other provisions of the Agreement shall be binding upon and inure to the benefit of the Parties and also to their respective heirs, executors, administrators, representatives, successors, and permitted assigns.

14. SEVERABILITY

- 14.1** If any of the terms or conditions of this Agreement shall for any reason be held to be invalid, unlawful, or unenforceable in any respect, such invalidity, unlawfulness, or unenforceability shall not affect the other terms and conditions, and thereafter the terms and conditions of the Agreement shall thereafter be construed as if such invalid, illegal or unenforceable terms or conditions had never been included.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

UTILITY:

LIMESTONE WATER UTILITY
OPERATING COMPAN, LLC

By: 
Josiah Cox, President

DEVELOPER:

WESTPARK LAUREL CREEK, LLC

By: 

Name: Edward LaCivita

Title: Director

EXHIBIT A

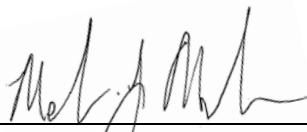
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Vance L. Broemel, Esq.
Senior Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Advocate Division
P.O. Box 20207
Nashville, TN 37202-0207
Vance.Broemel@ag.tn.gov

Karen H. Stachowski, Esq.
Deputy Attorney General
Office of the Tennessee Attorney General
Consumer Advocate Division
P.O. Box 20207
Nashville, TN 37202-0207
Karen.Stachowski@ag.tn.gov

This the 26th day of October 2023.



Melvin J. Malone