

**AGREEMENT BETWEEN
THE CITY OF FRANKLIN, TN AND BERRY'S CHAPEL UTILITY, INC.
FOR THE COLLECTION OF SEWER SERVICE CHARGES**

This Agreement is made this the ____ day of _____, 2011, by and between Berry's Chapel Utility, Inc., hereinafter called "BCU" and the City of Franklin, Tennessee, hereinafter called "CITY", which in consideration of mutual promises and covenants made herein, agree as follows:

WHEREAS, CITY entered into a contract with Lynwood Utility Company, Inc. dated December 14, 1999 as amended June 19, 2007, to bill and collect Lynwood's sewer service charges from Lynwood's customers who also receive water service from the City, and

WHEREAS, Lynwood merged with Berry's Chapel Utility, Inc. with Berry's Chapel Utility, Inc being the surviving corporation; and

WHEREAS, CITY and BCU wish to continue the relationship previously established by CITY and Lynwood.

NOW THEREFORE, in light of the recitals, which are incorporated herein by reference, and the promises herein contained that CITY and BCU, in consideration of the premises and of the mutual covenants herein set forth, do mutually agree as follows:

1. BCU operates a Central Sewerage and wastewater collection system within an area in which CITY provides water service. BCU has requested and CITY has agreed to bill and collect sewer service charges for BCU from its customers who receive water service from CITY.
2. BCU will provide its sewer service rate schedule to CITY in writing, as amended from time to time, thirty (30) days in advance of its effective date to allow CITY time to modify its computer billing system.
3. CITY will supply to BCU any changes to CITY's billing policies or related fees that would affect BCU's sewer customers sixty (60) days in advance of the effective date to allow BCU time to modify its rules and regulations and fees and charges, if necessary.
4. Upon request, CITY will provide to BCU a listing of BCU's customers who receive water service from CITY, together with each customer's monthly water consumption, for purposes of establishing and monitoring BCU's sewer service rates.
5. BCU's sewer service rate schedule shall in all cases be multiplied by the quantity of water billed by CITY in the current billing cycle for water service, inclusive of any meter adjustments or other adjustments for current or prior billing cycles, consistent with CITY's normal policies and procedures for such adjustments, and exclusive of any sales taxes on such water service. Water provided by the City through a separately metered "irrigation" meter is excluded for purposes of applying the sewer service charge. CITY shall compute and bill to each of BCU's sewer customers for the resulting sewer service charge.
6. CITY will render combined statements for its water service charges and BCU's sewer service charges in accordance with CITY's normal billing cycle(s). CITY will cause to be printed on its billing statement the name, address and telephone number of the BCU office and BCU's sewer

customers will be instructed to contact BCU directly concerning complaints and maintenance of the sewer system.

7. In the event a BCU sewer customer does not pay its sewer service charges when due, CITY agrees to enforce the collection of the sewer charges in the same manner as CITY enforces the collection of its water service charges. Such enforcement of collection shall include mailing of late notices, assessing late charges (or disallowing discounts) and, when appropriate, cutting off water service to that customer until such time as full payment is made by that customer. CITY shall be entitled to retain one hundred (100%) of all water cut off and reconnection charges assessed and collected from BCU's sewer customers as a result of non-payment or other breach of contract.
8. On or before the twentieth (20th) day of each month, CITY will deliver to BCU the gross amount CITY has collected from BCU's sewer customers for BCU sewer services through the last day of the previous month, less a service fee equal to seven and one-half percent (7.5%) of the gross amount collected, which sum shall be retained as the sole and separate property of CITY for providing the services agreed upon in this Agreement.
9. CITY will provide to BCU with its monthly remittance one or more monthly reports which show for each BCU customer the customer's account number, the customer's name, the service address and the amounts billed and/or collected on behalf of BCU for sewer service charges. The totals per this report(s) shall equal the gross amount due BCU in accordance with this contract. It shall be the responsibility of BCU to reconcile the monthly report to its records and to notify CITY of any billing discrepancies discovered on a timely basis.
10. BCU shall pay to CITY the full cost for setup and programming of CITY's billing system necessary to implement this agreement.
11. CITY will refer to BCU any inquiries regarding new sewer service in BCU's area of service. BCU will determine if a new sewer customer will be accepted for connection to its sewer and wastewater collection system. If accepted, BCU will collect the appropriate sewer tap fees, connection fees and/or inspection fees and will provide the new sewer customer with a receipt and authorization form.
12. CITY and BCU may establish a combined application and contract form for water and sewer service. CITY may accept applications and contracts on behalf of BCU for any transfers of existing sewer service. CITY may accept applications and contracts for new sewer service only upon presentation of a valid receipt and authorization form for new sewer service. CITY shall maintain in its files copies of all such applications and contracts for new & transferring customers. Upon termination of this contract, or upon request from time to time by BCU, CITY will supply BCU with copies of such applications and contracts. CITY shall retain one hundred percent (100%) of its application & connection fees for new & transferring customers.
13. CITY shall have no duty to repair or maintain any portion of BCU's sewer system except by separate agreement between the parties.
14. The parties agree to cooperate fully in exchanging information and implementing procedures to fully implement the intent of this contract. BCU shall have access to the books of CITY concerning the administration of this contract from time to time as BCU sees fit upon reasonable notice to CITY of its intent to do so.

15. Before CITY incorporates BCU'S sewer service rates, rules and regulations in its billing as contemplated herein, BCU shall obtain the approval of the Tennessee Regulatory Authority ("TRA") of a revised tariff incorporating such rates, rules and regulations and shall notify CITY in writing upon receipt of such approval provided BCU is subject to regulation by the TRA.
16. If BCU is subject to regulation by the TRA, and in the event CITY receives an order and notice from the TRA that the Authority has suspended or revoked BCU's certificate of public convenience and necessity to operate sewer utility pursuant to Authority Rule 1220-4-13-.09, CITY shall withhold administrative fees and charges authorized by this Agreement, then pay all remaining sewer service charges collected for BCU after the receipt of the order and notice to the TRA, a court appointed receiver or other entity or person whom the TRA directs which entity or person shall be responsible for continuing the operation of BCU's sewer system.
17. BCU shall indemnify and hold harmless CITY from and against any and all claims related to the CITY'S obligation to pay sewer charges to the TRA, a court appointed receiver or other entity or person to whom the TRA directs which entity or person shall be responsible for continuing the operation of BCU'S sewer system.
18. This Agreement may be terminated by either party by the giving of ninety (90) days written notice to the other party.

WITNESS the execution hereof this day and date first above written.

BERRYS CHAPEL UTILITY, INC

By: 

Tyler L. Ring
President

CITY OF FRANKLIN, TENNESSEE

By: _____

Dr. Ken Moore
Mayor
109 3rd Avenue South
Franklin, TN 37064

ATTEST:

By: _____

Eric Stuckey
City Administrator

Approved as to form:

By: 

Shauna R. Billingsley
City Attorney



HISTORIC
FRANKLIN
TENNESSEE

ITEM #5
WRKS 04/12/2011

MEMORANDUM

April 5, 2011

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
Russ Truell, Assistant City Administrator/CFO
Steve Sims, Assistant City Recorder

SUBJECT: Agreement with Berry's Chapel Utility, Inc. to perform utility billing services

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider an agreement to modify the existing contract with Lynnwood Utility District to recognize change in organizational name to Berry's Chapel Utility, Inc. due a change in corporate structure and to make minor revisions in text.

Background

The City of Franklin has been issuing sewer utility bills for Lynnwood (now Berry's Chapel Utility, Inc.) under an agreement originally approved December 14, 1999 and modified in an agreement dated June 19, 2007. Those agreements provided that the City would issue sewer bills for Lynnwood in the City of Franklin water district using water consumption measured by City water meters. These sewer bills are issued as a line item on our water bills. The City collects monies due and remits revenue due to the sewer utility (Lynnwood/Berry's Chapel) on a monthly basis less a 7.5% commission for performing the billing and collection services.

Financial Impact

There is no financial impact resulting from this as the primary change is to reflect the change in name of the utility to Berry's Chapel Utility, Inc. The City is expected to receive about \$25,000 this fiscal year from issuing and collecting these bills.

Options

Options available are to (1) not agree and direct Berry's Chapel to seek an alternative billing and collection option or (2) agree to the change and continue with the existing relationship.

Recommendation

It is recommended that the City agree to this change and continue the existing relationship.