AGREEMENT

Between
SHELBY COUNTY GOVERNMENT
And
THE TOWN OF COLLIERVILLE

THIS AGREEMENT entered into this _____ day of _____ , 2009 by and between the Shelby County Government (hereinafter referred to as "County") and The Town of Collierville, Tennessee (hereinafter referred to as "Town").

WHEREAS, the County has received reports from residents that septic systems are failing in the Cotton Creek area of southeast Shelby County located in the Town of Collierville Annexation Reserve Area; and

WHEREAS, the County has performed an engineering study that confirms the existence of septic system failures; and

WHEREAS, the County has determined that a low pressure sewer system (LPSS) collecting solid material in individual septic tanks and conveying the liquid waste to the Town of Collierville Publicly Owned Treatment Works at Shelton Road by connection to the sewer lift station operated by Spring Creek Ranch, LLC is the most efficient and cost effective system to alleviate the environmental problems associated with these failing septic tanks; and

WHEREAS, the County and Town recognize the benefits of having a publicly-owned sanitary sewer treatment system; and

WHEREAS, the Town agrees to accept and treat the wastewater and operate and maintain the collection system at a sewer rate approved by the Town; and

NOW, THEREFORE, in consideration of these premises the parties agree as follows:

1. The County will undertake engineering design and construction of the LPSS for the Cotton Creek area (the "Project"). The Project will consist of construction of low pressure sewer pipes, pumps, and replacement septic tanks, as necessary. The County will provide one hundred percent (100%) of the up front funding for design and construction.

2. The LPSS will transport the liquid waste to the Spring Creek Ranch sewer lift station wet well. From this point, it will be carried by the existing Collierville-Arlington Road force main line to the Town of Collierville Publicly Owned Treatment Works on Shelton Road. The Town agrees to process all liquid waste from the LPSS that is transported to the Spring Creek Ranch sewer lift station wet well from and after the date upon which at least thirty (30) System Users [defined hereinafter] have elected to have their respective lots connected to the System [defined hereinafter] and have each paid the one-time development fee of Three Thousand Dollars ($3,000.00) and the one-time connection fee of Two Hundred Twenty-Five Dollars ($225.00) as provided for in Section 6 hereof. The

Town consents to the LPSS being connected to the Spring Creek Ranch sewer lift station wet well subject to the County obtaining the approval of Spring Creek Ranch, LLC. The transport and process of the waste described herein is referred to as the System.

3. One Hundred Two (102) residential lots will be eligible for connection to the System ("System User(s)") of which ninety-two (92) residential lots are occupied as of the date of this agreement. The parties acknowledge an unoccupied lot may in time become occupied (by a single user) and will be subject to the various fees included herein. A list of the initial lot addresses and initial System Users is attached hereto as Exhibit "A" and incorporated fully herein by reference. A layout drawing of the 102 lots/System Users is attached hereto as Exhibit B. A maximum of 102 service connections are authorized with only one service connection per identified lot/System User allowed. Service connections in excess of 102 in the aggregate and more than one per identified lot/System User shall not be allowed. Copies of this Agreement will be sent to each identified lot owner/System User by Shelby County prior to their connection to the System.

4. The County will provide engineering plans to the Town for review and approval prior to approval of the plans by the County Engineer. The Project will be designed to protect all infrastructure from degradation due to System effluent quality and will be subject to Town of Collierville's design approval. Odor control measures will be incorporated in the design and built with the System if the design team deems them necessary or if problems are detected after the Project is in use. During construction, Town personnel will be authorized to access the construction site of the Project to perform quality assurance inspections of the Project.

5. Upon completion of construction and acceptance of the Project and all improvements thereto in writing by the County and the Town, the Project, including the LPSS, will become active and the Town, at the time that at least thirty (30) System Users have elected to have their respective lots connected to the System and have paid the one-time fees provided for in Section 6 hereof, will assume responsibility, for operation and maintenance, of the Project as described herein, to include the LPSS from and including the ball valve in the road right-of-way to and including the Spring Creek Ranch Pump Station upon said written acceptance. After the System has been accepted by the Town and the County, the contractor will provide a one year warranty for the Town evidenced by an irrevocable Letter of Credit from an issuer and in a customary form acceptable to the Town. After such acceptance, the installation and maintenance (including any periodically necessary pump outs of solid materials) of any septic tank pump, basin assembly, pump controls and /or other System components shall be the responsibility of the respective System User.

6. System Users will pay a one-time development fee, a one time connection fee, a monthly sewer fee and an amortized lift station fee based on the administrative and lift station permit fees disclosed herein below and usage to the Town in amounts and in such a manner as determined by the Collierville Board of Mayor and Aldermen for collection and treatment of the wastewater. One-time fees charged will be the fees that are in place and approved by the Collierville Board of Mayor and Aldermen as of the date of this Agreement and will be due prior to when treatment commences for any of the lots. The fees as of the date of this Agreement are as follows: development fee - $3000.00 and

connection fee - $225.00. The County shall pay the Town a sewer lift station license fee per station of $15,000.00. The fees charged pursuant to this Agreement and the increases therein shall be consistent with and proportionate to similar fees and increases therein charged by the Town to its citizens, taking into consideration specific and identifiable additional costs if any, incurred by the Town in providing sewer services to the System Users.

7. The County will, during the first four (4) years of billing of fees to System Users, collect from each occupied and served lot an administration and lift station permit fee in the amount of nine dollars and fifty cents ($9.50) per month or such other amount as may be determined by the Shelby County Board of County Commissioners. Thereafter the County will collect an administration fee of two dollars ($2.00) per month or such other amount as may be determined by the Shelby County Board of County Commissioners. Said administration fees shall be paid by System Users (of occupied lots) on monthly water/sewer bill payments as disclosed above.

8. Upon annexation of the Cotton Creek area by the Town, the County will cease billing of the administration fee. Following annexation, the Town agrees to continue maintenance and operation of the LPSS from and including the ball valve in the road right-of-way to and including the Spring Creek Ranch Pump Station.

9. Term. The term of this Agreement (the "Term") will commence upon the execution of this agreement and continue through annexation by the Town of the Cotton Creek area.

10. The County will be responsible for making all arrangements with MLGW, the billing agent for the Town of Collierville, to bill the System Users for sewer service usage, County administrative fees and any other fees involved. Neither the Town nor the County shall pay or be responsible to pay for fees charged by MLGW in connection with collecting fees for the Town and the County. The arrangements with MLGW should include the remittance to the Town of the sewer service fees due it directly from MLGW and access to MLGW's accounts and records of these customers. The remittance of the administrative fees should be directly to the County. The arrangements are subject to the approval of the Town. Past due and/or delinquent fees shall be collected by the County in accordance with the policies of MLGW, the policies of the County Code of Shelby County and other governing policies, rules and laws. The County shall take those actions to collect past due and delinquent fees from System Users as it determines to be lawful, reasonable, warranted and appropriate.

11. Notices. Any notices required or permitted to be given under the provisions of this Agreement shall be effective only if in writing and delivered either in person to the County's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Engineering Department
160 N. Main Street, Suite 350

Memphis, Tennessee 38103
Attn.: Michael Oakes, Shelby County Engineer

And

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

TOWN: Town of Collierville
500 Poplar View Parkway
Collierville, Tennessee 38017
Attn.: Bill Kilp, Director of Public Services

12. Subject to Funding and Termination. This Agreement is subject to annual appropriations of funds by the Shelby County Government and 100% funding from Shelby County Government. In the event sufficient funds for this Agreement are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then the Project and this Agreement will be terminated. Additionally, the County shall obtain one hundred percent (100%) participation of potential System Users (of occupied lots). The County shall have adequate opportunity to encourage or force 100% participation of the occupied lots by completion of litigation, legal procedure, legal process, negotiation or otherwise.

13. Relationship of Parties. In the exercise of their respective rights and obligations under this Agreement, each Party acts in an independent capacity, and neither is to be considered the agent of any other.

14. Miscellaneous.

    A. This Agreement shall not be assigned by the County or the Town without the consent of both Parties.

    B. Wherever the singular or masculine is used in this Agreement, it shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.

    C. If any section or lesser portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the invalidity of such section or portion shall not affect the validity of the remainder.

    D. This Agreement shall inure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and permitted assigns.

E. This Agreement may be executed in any number of counterparts, all of which shall together be deemed to be an original and together such counterparts shall constitute one agreement. Execution of this Agreement may be made on copies transmitted by facsimile transmission and executed copies may be sent by facsimile transmission, and transmission of an executed copy shall be deemed to constitute communication of execution and acceptance of this Agreement.

F. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, the Town agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. All terms of this Agreement are contingent upon approval by the Shelby County Board of County Commissioners and the Town of Collierville Board of Mayor and Aldermen.

APPROVED AS TO LEGAL FORM,
EFFICACY AND PROPRIETY

By: _____
Shelby County Contract Administrator /
Assistant County Attorney

By: _____
Michael E. Oakes, P.E.
Shelby County Engineer

FOR THE COUNTY

By: _____
A C Wharton, Jr., Mayor
Shelby County Government

By: _____
Ted Fox, Director
Shelby County Public Works

FOR COLLIERVILLE

By: _____
Stan Joyner, Mayor
Town of Collierville

By: _____
Tom Cates, Town Attorney