

**BOARD OF SUPERVISORS
FINANCE/GOVERNMENT OPERATIONS
AND ECONOMIC DEVELOPMENT COMMITTEE
ACTION ITEM**

SUBJECT: Willisville Community Wastewater System
Supplemental Appropriation Request

ELECTION DISTRICT: Blue Ridge

CRITICAL ACTION DATE: March 7, 2016

STAFF CONTACTS: Ernest N. Brown, Department of General Services
Alan Brewer, Department of General Services
Dan Csizmar, Transportation and Capital Infrastructure

PURPOSE: To request additional funding to complete the Willisville Community Wastewater System Project.

RECOMMENDATIONS: Staff recommends that the Finance/Government Operations and Economic Development Committee (FGOEDC) recommend that the Board of Supervisors (Board) approve a supplemental appropriation of \$100,000 to fund the completion of the Willisville Community Wastewater System project. Staff further recommends that Capital Improvement Program Contingency be used to fund the supplemental appropriation.

BACKGROUND: The Community of Willisville is located just east of the Welbourne Road (Route 743)/Willisville Road (Route 623)/Millville Road (Route 743) intersection in southwestern Loudoun County. Twelve parcels in the Willisville Community are currently served by a community wastewater treatment facility which is owned and operated by Loudoun Water. The community wastewater system was placed in service in 2007 to eliminate public health risks associated with inadequate onsite wastewater disposal systems in the community.

Subsequent to the construction of the community wastewater system, the Loudoun County Health Department identified three additional properties in the Willisville Community that have failing onsite septic systems. In July 2013, the Board voted (8-0-1, Delgaudio absent) to add those three parcels to the Willisville Sewer Service Area (CMPT-2013-0001). The Board allocated \$175,000 in Fiscal Year (FY) 2015 for that wastewater system extension as part of the Capital Improvement Program (CIP).

ISSUES: In accordance with the Willisville Sewer Service Agreement dated January 5, 2015 (Attachment 1), Loudoun Water is responsible for constructing the community wastewater system extension and the County is responsible for paying for the costs. In addition to the design

and construction costs, other project components include: additional site work related to the existing wastewater systems, replacement grinder pumps, and Loudoun Water project management. The design of the project is complete and those costs exceeded the original estimate of \$20,000 by \$29,000. In addition, the lowest qualified and responsive bid for construction of the project (including a 10 percent contingency) exceeds the original estimate of \$108,000 by \$67,000. Therefore, current figures indicate that the project will exceed the project budget of \$175,000 by \$96,000.

Table 1. Comparison: Estimated vs. Actual Costs

	Estimate	Actual / Bid	Delta
Design & engineering	\$20,000	\$ 49,000	\$29,000
Construction	\$108,000	\$175,000	\$67,000
Other Costs	\$47,000	\$47,000	\$ 0
Total	\$175,000	\$271,000	\$96,000

Staff identified two potential funding sources to cover the unexpected shortfall; CIP Contingency and the CIP Water/Wastewater Fund.

The CIP Contingency is intended to be used to cover unanticipated costs such as the overages described in this item.

The CIP Water/Wastewater Fund was created by the Board in 2015. This fund was established to assist communities with solving community water and/or wastewater problems and involves an application process, prioritization process, and potential funding based on a community's ability to pay.

Staff recommends that CIP Contingency be used for this supplemental appropriation. The CIP Water/Wastewater Fund could be used; however, the Willisville wastewater system extension project has not been through the Community Water and Wastewater Program application process. As a result, staff believes the use of CIP Contingency is a better fit for this purpose.

Loudoun Water indicates that the contract award for construction must be completed by March 7, 2016 otherwise the project may need to be re-bid. Re-bidding the project will delay the project and may result in increased project costs. Additionally, Loudoun Water will not award the contract until the supplemental appropriation is approved.

FISCAL IMPACT: Adequate funds are available in both CIP Contingency and the CIP Water/Wastewater Fund to cover the cost of the supplemental appropriation. The use of either of these funding sources will not negatively impact any other County projects.

ALTERNATIVES:

1. Recommend that the Board use CIP Contingency to cover the cost of the supplemental appropriation.

2. Recommend that the Board use the CIP Water/Wastewater Fund to cover the cost of the supplemental appropriation.
3. Recommend that the Board not approve staff's supplemental appropriation request. If this alternative is approved, the Willisville wastewater extension project will not be completed.

DRAFT MOTIONS:

1. I move that the Finance/Government Operations and Economic Development Committee recommend that the Board of Supervisors approve a supplemental appropriation of \$100,000 for the completion of the Willisville Community Wastewater System and direct staff to execute a budget adjustment to transfer \$100,000 from Capital Improvement Program Contingency to the Willisville Community Wastewater System capital project account.

OR

2. I move that the Finance/Government Operations and Economic Development Committee recommend that the Board of Supervisors approve a supplemental appropriation of \$100,000 for the completion of the Willisville Community Wastewater System and direct staff to execute a budget adjustment to transfer \$100,000 from the Water/Wastewater Fund to the Willisville Community Wastewater System capital project account.

OR

3. I move that the Finance/Government Operations and Economic Development Committee recommend that the Board of Supervisors not approve staff's request for a supplemental appropriation for completion of the Willisville Community Wastewater System.

OR

4. I move an alternate motion.

ATTACHMENT:

1. Willisville Sewer Service Agreement



Loudoun County, Virginia

www.loudoun.gov

Office of the County Administrator

1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 777-0200 • Fax (703) 777-0325

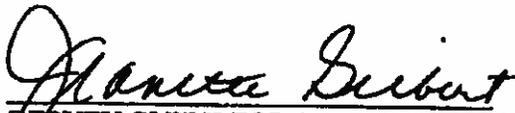
At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Wednesday, December 3, 2014 at 4:00 p.m.

IN RE: WILLISVILLE SEWER SERVICE AGREEMENT

Mr. Buona moved that the Board of Supervisors approve the Willisville Sewer Service Agreement and authorize the Chairman to sign on behalf of Loudoun County.

Seconded by Mrs. Volpe.

Voting on the Motion: Supervisors Buona, Clarke, Delgaudio, Letourneau, Reid, Volpe, Williams and York- Yes; None - No; Supervisor Higgins - Absent for the Vote.


**DEPUTY CLERK FOR THE LOUDOUN
COUNTY BOARD OF SUPERVISORS**

(2E- WILLISVILLE SEWER SERVICE AGREEMENT)

SERVICE AGREEMENT

This Service Agreement is made and entered as of the 5th day of January, ~~2014~~ ²⁰¹⁵, by and between the County of Loudoun, Virginia (the "County"); and the Loudoun County Sanitation Authority (the "Authority") and amends and supplements the Service Agreement between the County and the Authority dated September 5, 2006 (the "2006 Agreement").

RECITALS

- R-1. The Authority was created by the County for the purposes set out in its Charter, including the purpose to provide the water and sewer facilities within the unincorporated areas of the County in accordance with the provisions of Va. Code Ann. 15.2-5100, et seq., the Virginia Water and Waste Authorities Act (the "Act") and the County's comprehensive plan.
- R-2. The Willisville Community consists of approximately 20 lots, located at the intersection of Routes 623 and 743 in western Loudoun County, as particularly described in Exhibit A (the "Community"). In 2004, the Loudoun County Planning Commission approved, and the Board of Supervisors ratified, Commission Permit CMPT-2004-0001 to establish and approve the Willisville Sewer Service Area ("Service Area") and related communal wastewater treatment facilities. Eleven of the lots in the Community are located within the Service Area and are served by a community wastewater treatment and disposal system (referred to herein as the "Willisville Wastewater Treatment and Disposal System" or the "Facilities") that was installed in 2007, pursuant to the 2006 Agreement, and is currently owned, operated and maintained by the Authority.
- R-3. Of the lots in the Community not served by the Facilities, two lots have alternative onsite disposal systems in need of major repair or replacement and a third lot has been abandoned due the lack of an adequate onsite sewage disposal system. In an effort to eliminate the public health risks associated with said lack of suitable wastewater disposal systems, the County has taken action to expand the Service Area to include the aforesaid three lots through a Commission Permit CMPT-2013-0001, approved by the Planning Commission June 18, 2013, and ratified by the Board of Supervisors on July 17, 2013, extending the boundaries of the Service Area to include parcel PIN#'s 642-35-4345, 658-30-8643, and 642-35-3622 (the "Additional Lots") as more particularly shown on Exhibit A and designated as "PARCELS ADDED TO SEWER SERVICE AREA (APPROVED UNDER CMPT-2013-001)".
- R-4. The County has requested the assistance of the Authority in extending the Willisville Wastewater Treatment and Disposal System to the Additional Lots (the "Project"). In particular the Project includes, and the County has requested that the Authority perform, the design and construction and extension of the necessary wastewater infrastructure from the Facilities to the Additional Lots. The Project would include:
- a. Designing and constructing the extension of the wastewater infrastructure to the Additional Lots; and
 - b. Securing the required easements from the affected property owners; and

- c. Connecting the Additional Lots to the Facilities and including the Additional Lots in the service and operation of the Willisville Wastewater Treatment and Disposal System; and
- d. Properly abandoning existing onsite sewage disposal systems serving the Additional Lots; and
- e. Notifying the affected property owners of the Additional Lots in writing of the monthly charges for sewer service.

R-5. In exchange for the undertaking of the Authority to perform the foregoing actions described in paragraph R-4 to provide sewage service to the Additional Lots, the County will pay for the Authority's costs incurred thereby up to a maximum of \$175,000.00. Payment for such costs shall be triggered by invoice requests from the Authority as work is completed during the design and construction phases of the Project.

NOW, THEREFORE, the parties agree as follows:

OBLIGATIONS OF THE AUTHORITY

1. Design and Construct the wastewater infrastructure. The Authority will design, obtain all necessary rights-of-way, easements, permits, and approvals from government authorities and shall enter into and administer a contract or contracts to construct the wastewater infrastructure necessary to add and connect the Additional Lots to the Facilities provided that the total cost does not exceed that appropriated by the County. The point of connection shall be from a point external to the home.
2. Septic Tank Abandonment. The Authority will be responsible for ensuring all of the existing Alternative Onsite Sewage Systems serving the Additional Lots are abandoned according the Virginia Department of Health rules and regulations.
3. Rates. The Authority shall fix, charge and collect from all customers who connect to the Facilities a continuing monthly service charge for monthly service and maintenance of the Facilities. The customers are to be provided the rates in writing prior to connection and notified prior to any rate change during the continued operations of the Facilities by the Authority. The Authority shall not charge a sewer availability fee to owners of property for connections to the Facilities.
4. Accounting. Upon completion of the wastewater infrastructure, the Authority will provide a final accounting of its costs incurred and shall present the same to the County.

OBLIGATIONS OF THE COUNTY

5. Payments to Authority. .
 - a. The County will make payment to the Authority triggered by invoice requests from the Authority as work is completed during the design and construction of the Project up to a maximum of \$175,000.00. Such funds have been appropriated by the Board of Supervisors and are available to reimburse the Authority for Project costs as described herein.

- b. Included in the estimated total cost are estimated reimbursable expenses of the Authority as follows:
 - i. Direct labor costs for services for contract engineering, surveying, and plats; and
 - ii. Direct labor costs for internal project/contract management; and
 - iii. Direct labor costs for easement acquisition, permit/regulatory approvals and utility service acquisition; and
 - iv. Other direct Authority costs such as legal costs, vehicle mileage, and other minor project expenses as approved by the County; and
 - v. First cycle grinder pump replacement.
 - c. In the event it is determined that the anticipated total costs to be incurred by the Authority for the Project shall exceed the aforesaid appropriation amount, the Authority shall notify the County before any design or construction contract award is executed. A supplemental appropriation shall be required for any expenditure in excess of \$175,000.00.
6. Assistance with Approvals. In recognition of the fact that design and construction of the wastewater infrastructure is intended to address public health and safety of the Willisville Community, the County will assist the Authority to obtain all necessary governmental consents, permits, and approvals associated with construction, ownership and operation of the wastewater infrastructure.

MISCELLANEOUS PROVISIONS

7. Termination of Agreement by the Authority. While the County, with the assistance of the Authority, has provided an estimated maximum cost of the Project resulting in the establishment of the maximum reimbursement specified in R-5, the Authority reserves the right to terminate this Agreement in the event that it determines the anticipated actual cost will exceed the said maximum reimbursement and the County determines not to approve a supplemental appropriation to cover such anticipated excess cost. The Authority shall provide prompt written notice to the County that it is terminating this Agreement. If the Authority terminates this Agreement, the Authority shall have no obligations to construct the Project, and the County shall have no obligation to make payment to the Authority. Notwithstanding the foregoing, the Authority may not terminate this Agreement after the County has made any payments pursuant to the terms of this Agreement.
8. Suspension of Agreement by the County. In the event a legal challenge is made to the boundaries of the expanded Service Area or this Agreement, the County may suspend performance of this Agreement. The County will promptly inform the Authority of any legal challenge and the suspension of this Agreement. During the period of the suspension, the Authority will not be required to incur any cost, enter into any contract or otherwise undertake construction of the Project, and the County will be under no obligation to make payments pursuant to this Agreement. The County will notify the Authority when the suspension of this Agreement is lifted, and the parties shall thereafter resume their respective obligations and undertakings under this Agreement.
9. Notices. Any notice required or permitted hereunder shall be valid when delivered or mailed, postage prepaid,

If to the County:

Loudoun County Administrator
1 Harrison Street S.E.
P.O. Box 7000
Leesburg, Virginia 20177-7000

With a copy to:

Loudoun County Attorney
County of Loudoun
1 Harrison Street, S.E.
P.O. Box 7000
Leesburg, Virginia 20177-7000

If to the Authority:

Chief Executive
Loudoun County Sanitation Authority
PO Box 4000
44865 Loudoun Water Way
Ashburn, Virginia 20146

With a copy to:

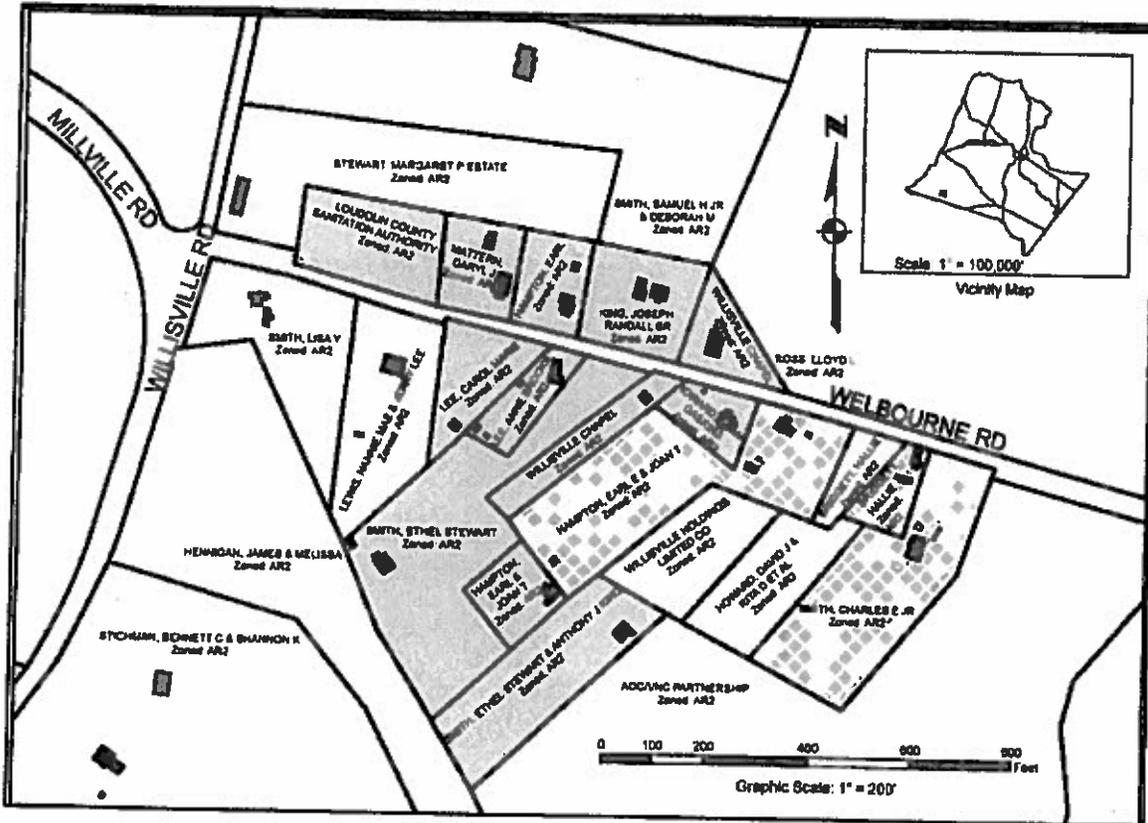
Jonathan Rak, Esq.
McGuire Woods LLP
1750 Tysons Boulevard, #1800
Tysons Corner, VA 22102

10. **Entire Agreement.** This Agreement together with the 2006 Agreement states the entire and only agreement between the parties. No oral statements or representations or prior written matter not contained or referred to in this Agreement or the 2006 Agreement shall be deemed to have been made, unless it be in writing and signed by both parties hereto.
11. **Amendment of Agreement.** This Agreement may be amended at any time by mutual agreement of the parties hereto.
12. **Counterpart Documents.** This Agreement may be executed in several counterparts, any of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument.
13. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, but it is not otherwise intended to be for the benefit of any party not a signatory hereto.
14. **Miscellaneous.** The captions inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of any provision hereof.
15. **Survivability.** If any clause or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable under the present or future laws in effect during the term of this Agreement, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed the day and year first above written.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT A



Legend

-  BUILDINGS
-  PARCELS CURRENTLY WITHIN SEWER SERVICE AREA (APPROVED UNDER CMPT-2004-0001)
-  PARCELS ADDED TO SEWER SERVICE AREA (APPROVED UNDER CMPT-2013-001)