

## **Policy for Municipal Annexations and the Transfer of Service Rights**

### **Purpose**

The purpose of this Policy for Municipal Annexations and the Transfer of Service Rights (this “Policy”) is to outline the standards by which Metropolitan Sewer Subdistrict (“Metro”) will assert certain service territory and service right protections under federal law and the process for transferring service rights for specific parcels to municipalities in appropriate circumstances. This Policy only applies to property and sanitary sewer service rights within Metro's boundaries. This Policy does not inhibit any municipality from annexing property; however, the annexation of property within Metro's boundaries does not automatically displace Metro as the sewer service provider of such property under South Carolina law. This Policy is intended to specify circumstance and process under which Metro will permit the transfer of service rights for annexed property, and ensure that any such transfer of service rights is done in accordance with South Carolina law.

### **Findings and Background**

On December 17, 2019, Metro issued its Sewer System Revenue Bond, Series 2019 (the “2019 Bond”), that is guaranteed by the United States Department of Agriculture, Rural Development and secured by a pledge of and lien upon the revenues of the System. As a consequence, Metro is subject to the rights and protections provided pursuant to 7 U.S.C. § 1926(b) (“Section 1926(b)”), which prevent any curtailment of the Metro service territory due to annexation.

Sections 5-3-310 through 5-3-315 of the Code of Laws of South Carolina 1976, as amended (the “Annexation Statutes”), provides the process by which a municipality may displace Metro as the sewer service provider with respect to any annexed property, subject, however, to the rights and protections afforded by Section 1926(b) with respect to any property for which Metro provides sewer service or may make sewer service available.

Pursuant to the Annexation Statutes, which are subject to the rights and protections afforded by Section 1926(b), a municipality may only displace Metro as the sewer service provider with respect to any property annexed by the municipality by transferring service rights pursuant to a plan formulated under the Annexation Statutes (an “Annexation Plan”). Absent an Annexation Plan those transfers service rights for property previously annexed by any municipality, or that may be annexed by such municipalities in the future, such properties remain within Metro’s boundaries.

Metro is adopting this policy to (i) provide a means for entering into an Annexation Plan; (ii) provide notice to developers, municipalities, Greenville County, Renewable Water Resources (“ReWa”), and its other partners of its position concerning Metro’s rights to provide sewer service to properties within Metro’s service territory; and (iii) provide a process to remove properties from Metro’s service territory and transfer the rights to provide sewer service to such properties to municipalities where appropriate. Metro’s goal in adopting this policy is to expeditiously resolve service territory disputes to allow development to move forward without delay, while protecting Metro’s right to provide sewer service within its service territory for the benefit of its customers and bondholders.

### **Statements of Policy**

As a matter of policy, and in compliance with Metro’s obligations and covenants under the 2019 Bond, Metro intends to serve as the sewer service provider for any property located within Metro’s boundaries for

which Metro provides sewer service or for which Metro may make sewer service available under the standards and factors described below.

Further, with respect to any property that may be annexed by a municipality for which Metro does not provide sewer service or is unable to make sewer service available, Metro will only consent to the transfer of service rights when done in accordance with South Carolina law, which requires that such transfer of service rights be done pursuant to an Annexation Plan agreed to between Metro and the applicable municipality.

### **Standard for Providing Service or the Availability of Service**

With respect to any property that is located within Metro's boundaries, Metro may determine that it does not provide sewer service and may not make sewer service available to a particular property (a "Subject Property") in the following instances and in no others:

1. **DOES NOT PROVIDE SEWER SERVICE**: Metro "Does Not Provide Sewer Service" where any customer located on the Subject Property is then provided with sewer service by a municipality; or
2. **MAY NOT MAKE SEWER SERVICE AVAILABLE**: Metro "May Not Make Sewer Service Available" where no customer on a Subject Property is then provided with sewer service by Metro or a municipality, and, through the application of best engineering practices and the lowest cost to connect the Subject Property to existing sanitary sewer collection lines, the lateral line or new sanitary sewer collection line constructed to serve the Subject Property would connect directly to sanitary sewer collection lines owned by the annexing municipality.

In all other instances with respect to any property that is within Metro's boundaries, Metro has determined that it either provides sewer service or may make sewer service available. Specifically:

1. **PROVIDES SEWER SERVICE**: Metro "Provides Sewer Service" to a Subject Property where any customer located on the Subject Property is then provided sewer service by Metro; and
2. **MAKES SEWER SERVICE AVAILABLE**: Metro "Makes Sewer Service Available" to a Subject Property where, through the application of best engineering practices and the lowest cost to connect the Subject Property to existing sanitary sewer collection lines, the lateral line or new sanitary sewer collection line constructed by Metro, a developer, or a property owner to serve the Subject Property would connect directly to sanitary sewer lines owned by Metro or ReWa.

For the avoidance of doubt, in instances where Metro Makes Sewer Service Available, Metro will apply its standard policies and procedures for the construction of developer-built sewer infrastructure under which, in most instances, developer and property owners are required to construct sewer infrastructure to connect to existing sanitary sewer lines owned by Metro or ReWa and upgrade or upsize such existing sewer lines if necessary to accommodate the increased flow generated by the Subject Property.

## **Transfer of Sewer Service Rights**

Where Metro Does Not Provide Sewer Service and May Not Make Sewer Service Available to a Subject Property that has previously been annexed by a municipality or that may in the future be annexed by a municipality, Metro may transfer sewer service rights for the Subject Property to the annexing municipality at the request of such municipality as follows:

1. In order to avoid delaying the development of property while issues concerning sewer service rights are resolved, as soon as possible after a municipality determines to annex a Subject Property and concludes that the conditions described above under which Metro Does Not Provide Sewer Service and May Not Make Sewer Service Available exist with respect to a Subject Property, the municipalities should provide Metro with a completed Annexation Plan, the form of which is attached to this Policy at **Attachment A** (which shall serve as the municipality's request to transfer sewer service rights for a Subject Property). Such written notification should include maps and specifications of the proposed new sanitary sewer collection lines or lateral lines necessary to connect the Subject Property to the annexing municipality's existing sanitary sewer collection lines.
2. Upon receipt of a draft Annexation Plan, Metro staff shall independently determine whether Metro Does Not Provide Sewer Service and May Not Make Sewer Service Available to the Subject Property, in accordance with the conditions described above.
3. If Metro determines that it Does Not Provide Sewer Service and May Not Make Sewer Service Available to the Subject Property, Metro shall place the Annexation Plan for the Subject Property on the agenda for the next available regularly-scheduled meeting of the Commission. If approved by the Metropolitan Commission, the Annexation Plan shall be executed by the appropriate Metro official and delivered to the annexing municipality.
4. If Metro determines that it Provides Sewer Service or May Make Sewer Service Available to a Subject Property, in accordance with the conditions described above, Metro shall notify the annexing municipality, ReWa, and the applicable developer or property owner of such determination, and in such event, Metro shall take such action as may be necessary to assert its rights to provide sewer service to such Subject Property.

## **Rights Under Existing Agreements and Annexation Plans Unaffected**

This Policy is not intended to affect the rights or obligations of Metro or any party under any agreement concerning service rights or annexations or any plan entered into pursuant to the Annexation Statutes prior to the approval of this Policy, and the provisions of this Policy shall be construed and applied to be in harmony with any such agreement or plan.

Adopted January 23, 2023

**Attachment A**  
**Form Annexation Plan**

**ANNEXATION PLAN**

**(Pursuant to S.C. Code § 5-3-310 et seq.)**

This ANNEXATION PLAN (this “*Annexation Plan*”) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”), by and between METROPOLITAN SEWER SUBDISTRICT (d/b/a MetroConnects) (“*Metro*”), a special purpose district, organized and existing under the laws of the State of South Carolina (the “*State*”), and the City of \_\_\_\_\_, South Carolina (the “*City*”), a municipality and political subdivision of the State, each a “*Party*” and together the “*Parties.*”

**RECITALS**

1. Metro was established pursuant to Act No. 687 of 1969, as amended (the “*Enabling Act*”) and is authorized to provide sewer collection service (“*Sewer Service*”) to properties located within the boundaries of Metro, as established pursuant to the Enabling Act and as subsequently adjusted pursuant to State law (the “*Metro Boundaries*”).

2. Metro has adopted a Policy for Municipal Annexations and the Transfer of Service Rights (the “*Policy*”) under which Metro has established conditions under which Metro Does Not Provide Sewer Service and May Not Make Sewer Service Available (as such terms are defined in the Policy) to individual properties within the Metro Boundaries.

3. The City has annexed certain property within the Metro Boundaries (as more specifically defined in Section 1, the “*Subject Property*”), and the City and Metro have mutually determined that Metro Does Not Provide Sewer Service and May Not Make Sewer Service Available to the Subject Property. The City has further determined that new or existing sewer customers located on the Subject Property are able to connect to the City’s network of sanitary sewer collection lines (the “*City System*”), and the City desires to provide Sewer Service to the Subject Property.

3. Pursuant to Sections 5-3-310 through 5-3-315 of the Code of Laws of South Carolina 1976, as amended (the “*Annexation Statutes*”), where a municipality annexes property within the boundaries of a special purpose district and desires to transfer service rights from the special purpose district to the municipality, such transfer must be undertaken pursuant to a plan formulated under the Annexation Statutes (an “*Annexation Plan*”).

4. The Parties desire to enter into this Annexation Plan in order to transfer the rights to provide Sewer Service to the Subject Property from Metro to the City.

**NOW, THEREFORE**, and in accordance with the authorization provided by the Annexation Statutes, the City and Metro agree as follows:

**Section 1 Subject Property.** The City has annexed that certain property described as follows (the “*Subject Property*”), and as shown on the map attached to this Annexation Plan as **Exhibit A**:

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[Description of Subject Property]

**Section 2 Transfer of Service Rights.** The Parties mutually represent that Metro does not provide Sewer Service and may not make Sewer Service available to the Subject Property, and have, therefore, mutually determined that it is appropriate to transfer the right to provide Sewer Service to the

Subject Property to the City in accordance with the Annexation Statutes. As of the Effective Date, the rights to provide Sewer Service to the Subject Property are hereby transferred to the City.

**Section 3 Service to New Customers on Subject Property.** The Parties acknowledge and agree that all new connections and development located on the Subject Property shall connect to the City System and shall be Sewer Service customers of the City. To the extent that privately-constructed sewer infrastructure is required in connection with the development of the Subject Property, such sewer infrastructure shall be constructed in accordance with the policies and procedures of the City and will be dedicated to the City in accordance therewith.

**Section 4 Modification of Metro's Boundaries.** Pursuant to Section 5-3-311 of the Annexation Statutes, the Metro Boundaries are hereby modified to exclude the Subject Property therefrom, and the Metro Boundaries shall otherwise be unchanged. Metro shall take such action as may be necessary to change its internal records and mapping to modify the Metro Boundaries to exclude the Subject Property. Pursuant to Section 5-3-313 of the Annexation Statutes, Metro shall deliver copies of this Annexation Plan to the Auditor and Treasurer of Greenville County who shall take such action as may be necessary to modify the Metro Boundaries to exclude the Subject Property.

**Section 5 Recitals Pursuant to the Annexation Statutes.**

(a) The provisions of this Annexation Plan do not require the divestment by the City or Metro of any physical asset.

(b) The Parties acknowledge and agree that Metro will not experience any loss of the revenues by virtue of the City providing Sewer Service to the Subject Property, and therefore no payments are required pursuant to Section 5-3-312(3) of the Annexation Statutes.

(c) This Annexation Plan does not contemplate the disconnection or reintegration of any portion of Metro's network of sewer collection lines and appurtenances, therefore, the City has no responsibility pursuant to Section 5-3-312(4) of the Annexation Statutes to bear the cost of any such disconnection or reintegration.

(d) Metro hereby represents that the provisions of this Annexation Plan do not impair the rights of its bondholders; do not impair the statutory liens of Metro's bondholders pursuant to Section 6-21-300 of the Code of Laws of South Carolina 1976, as amended; will not cause the acceleration of the requirement to repay any of Metro's bonded indebtedness; and will not violate the conditions of any of Metro's grants.

(e) The City hereby represents that the provisions of this Annexation Plan do not impair the rights of its bondholders; do not impair the statutory liens of bondholders on the City System pursuant to Section 6-21-300 of the Code of Laws of South Carolina 1976, as amended; will not cause the acceleration of the requirement to repay any of its bonded indebtedness; and will not violate the conditions of any of the City's grants.

(f) The Parties acknowledge and agree that the provisions of this Annexation Plan will not require that the residents in the annexed area be taxed or assessed by both the City and Metro for the provision of Sewer Service.

**Section 6 Term.** It is the express intention of the Parties, in accordance with the Annexation Statutes, that this Annexation Plan serve to transfer the rights to provide Sewer Service to the Subject Property to the City in perpetuity.

**Section 7 Authorization.** Each of the Parties hereto hereby represents and warrants that all appropriate action has been taken by their respective governing bodies to authorize the execution of and the performance of the obligations set forth in this Annexation Plan and that the persons executing this Annexation Plan on behalf of each Party has been duly authorized to do so.

**Section 8 Third-Party Beneficiaries.** This Annexation Plan shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties and their respective successors and assigns. There are no third-party beneficiaries of this Annexation Plan.

**Section 9 Entire Agreement and Modification.** This Annexation Plan constitutes the entire agreement between the Parties. All prior representations and discussions have been merged into this document and no provision shall survive the execution of the Annexation Plan unless it is contained herein. This Annexation Plan may not be amended except in a writing with a document signed by both Parties and with a formality of execution the same as this Annexation Plan.

**Section 10 Severability.** In the event any provision of this Annexation Plan, or the actions taken to adopt this Annexation Plan, are held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 11 Counterparts.** This Annexation Plan may be signed in counterparts by any one or more of the Parties or signatories hereto, and each such counterpart shall be deemed an original and part of a single instrument for all purposes.

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**IN WITNESS WHEREOF**, Metro has caused this Annexation Plan to be signed in its name by its duly authorized officers as of the date first hereinabove written.

**METROPOLITAN SEWER SUBDISTRICT  
d/b/a METROCONNECTS**

By: \_\_\_\_\_  
General Manager

ATTEST:

\_\_\_\_\_  
Secretary, Board of Commissioners

**IN WITNESS WHEREOF**, the City has caused this Annexation Plan to be signed in its name by its duly authorized officers as of the date first hereinabove written.

**CITY OF \_\_\_\_\_,**  
**SOUTH CAROLINA**

By: \_\_\_\_\_  
City Administrator

ATTEST:

By: \_\_\_\_\_  
Clerk to City Council

**Exhibit A**

**Map of Subject Property**