

Issue Analysis Form

Date: April 11, 2017

Item: A-3

Lead Department(s): Utilities

Contact Person(s): C. England



Description and Current Status

AUTHORITY TO EXECUTE A WASTEWATER CONTRACT BETWEEN LUCA ITALIAN RESTAURANT AND THE COUNTY OF PRINCE GEORGE

Government Path

- Does this require IDA action? Yes No
- Does this require BZA action? Yes No
- Does This require Planning Commission Action? Yes No
- Does this require Board of Supervisors action? Yes No
- Does this require a public hearing? Yes No
- If so, before what date? Yes No

Fiscal Impact Statement

None. Luca's will construct and install, or have constructed and installed, at its sole expense, an extension of the County wastewater system

County Impact

None.

Notes

Upon satisfactory completion, such wastewater line extension shall become the property of the County and thereafter be operated and maintained by the County.

April 11, 2017

RESUME

RESOLUTION; AUTHORITY TO EXECUTE A WASTEWATER CONTRACT BETWEEN LUCA ITALIAN RESTAURANT AND THE COUNTY OF PRINCE GEORGE

Request Board approval to allow the County Administrator to execute a Wastewater Contract between Luca Italian Restaurant, a Virginia Corporation (“Developer”) and the County of Prince George, Virginia.

Luca Italian Restaurant proposes to expand the public sewer system by extending a gravity sewer line located in new public easements behind the Bank of Southside Virginia (6401 Courthouse Road) across the properties owned by Dennis Sebera and Thomas Buren, et al., in order to serve the new Luca Italian Restaurant site at 6411 Courthouse Road. Luca’s will construct and install, or have constructed and installed, at its sole expense, an extension of the County wastewater system in accordance with plans and specification prepared by a registered professional engineer licensed to practice in the Commonwealth of Virginia. Upon satisfactory completion, such wastewater line extension shall become the property of the County and thereafter be operated and maintained by the County. A copy of this water agreement is attached. With the Board’s approval, the County Administrator will execute this agreement and the Director of Engineering and Utilities will administer this agreement.



Board of Supervisors
County of Prince George, Virginia

Resolution

At the regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, this 11th day of April, 2017:

Present:

Vote:

William A. Robertson, Jr., Chairman
Jerry J. Skalsky, Vice-Chair
Alan R. Carmichael
Donald Hunter
T. J. Webb

A-3

On motion of _____, seconded by _____, which carried a vote the following Resolution was adopted:

RESOLUTION; AUTHORITY TO EXECUTE A
WASTEWATER CONTRACT BETWEEN LUCA ITALIAN
RESTAURANT AND THE COUNTY OF PRINCE GEORGE

NOW, THEREFORE, BE IT RESOLVED That the Board of Supervisors of the County of Prince George this 11th day of April, 2017, does hereby authorize the County Administrator to execute a wastewater contract between Luca Italian Restaurant and the County of Prince George for extension of the County sewer system to provide wastewater service to the new Luca Italian Restaurant property.

A Copy Teste:

Percy C. Ashcraft
County Administrator

WASTEWATER CONTRACT

THIS AGREEMENT, made this 25 day of, January by and between Luca Italian Restaurant a Virginia Corporation hereinafter referred to as " Owner", party of the first part, and the County of Prince George, Virginia hereinafter referred to as "county," Party of the second part; and

WHEREAS, Owner is seized in fee simple of 6.10 acres more or less, of land within the Bland Magisterial District of Prince George County, Virginia, reference being made to Deed Book 13, Page 906, Clerk's Office of the Circuit Court of Prince George, Virginia, and identified by County Tax Assessor's Parcel No. 240(OA) 00-023-0, and is desirous of providing an adequate wastewater collection system for the project and,

WHEREAS, Owner is willing to construct and install, or have constructed or installed, at Owner's expense a wastewater collection system to serve the herein described property in accordance with schedules, plans and specifications to be prepared by a registered professional engineer licensed to practice in the Commonwealth of Virginia and to be approved by the County Engineer and said Owner, upon completion of the said wastewater collection system, will convey to the County such system which will thereafter operate and maintain same; and,

WHEREAS, the County is willing to cooperate with Owner for and during the construction of said wastewater collection system and, upon satisfactory completion thereof, to take title to and to operate and maintain said system, except building sewers, subject to the provisions of the "Code of Prince George County" and the following terms and conditions:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: that for and in consideration of the premises and the mutual covenants and undertakings of the parties of this agreement, the parties hereto agree with the other as follows:

ARTICLE I

It is expressly understood and agreed between the parties hereto that the following obligations of the Owner are conditions precedent to any obligation of the County under this agreement: Owner agrees that it will simultaneously construct and install, or have constructed and installed at the Owner's expense, a public wastewater collection system to service the land described herein. The wastewater system shall be approved by the Commonwealth of Virginia Department of Environmental Quality and by the County.

ARTICLE II

Sec. 1. Owner agrees to construct, or cause to be constructed at Owner's expense, a complete wastewater collection system including but not limited to the necessary

wastewater lines, laterals, pipes, and other appurtenances for the collection of wastewater originating in the Owner's herein described real property and for the transmission of said wastewater to a point of discharge in the County's existing wastewater lines to be shown on the utility plans as defined in Article II, Section 2 below. The expense of a complete wastewater collection system shall be construed to cover all construction costs, including all necessary labor, materials, engineering and inspection fees, and other costs incident to such project. Construction costs shall in no way be construed to include connection fees.

Sec. 2. The Owner will submit to the County four copies of plans and specifications for the wastewater system prepared by a registered professional engineer licensed to practice in the Commonwealth of Virginia. Upon approval of the County Engineer, the plans and specifications shall become a part of this agreement, as well as all approved changes and amendments thereto. No changes shall be made in the plans and specifications after approval by the County Engineer without the further approval of the County. It is understood and agreed that it is, and shall remain, the responsibility of Owner and the Owner's engineer to develop, design and install the wastewater collection system in full compliance with all of the provisions of the County Code and all applicable State and Federal regulations governing wastewater collection systems. The system shall include a service connection for each lot adjoining a public right-of-way or easement containing the wastewater collection system.

Sec. 3. The Owner shall prior to the commencement of Construction of any phase of the wastewater collection system furnish to the County a performance bond in an amount equal to 110 percent of the cost of such phase of the wastewater collection system to assure completion of such phase of wastewater collection system. The amount of the bond shall be based on the Owner's contract cost for such phase of the wastewater collection system or on the estimated cost of the system if an actual contract cost is not available. Estimated cost shall be subject to review and approval by the county and shall be substantiated by a detailed schedule of quantities. Upon completion of a phase of the system, the Owner shall furnish the County the total actual final cost of such phase of the system.

Sec. 4. Not less than forty-eight hours prior to the undertaking of any additional construction of the wastewater collection system, Owner will notify the County Engineer of the date that construction will commence in order that the County can provide adequate inspection service on facilities to be constructed. The County will be permitted to inspect such construction during any stage of the project, and before service is furnished. If for any reason such construction is provided, the County may cause such construction to be uncovered at Owner's expense, so that inspection can be made. If inspection reveals that construction does not comply with terms of this agreement, the Owner as his expense, shall make such correction as may be necessary to bring the project into compliance. Costs for inspection shall be charged to the Owner at the actual cost of inspections incurred by the County, in accordance with Section 82-400 of the County Code. Inspection reports and time records shall be available for review by the Owner at the County Engineer's Office.

Sec. 5. Owner agrees that actual construction will be accomplished in accordance with the approved plans and specifications and amendments thereto as approved by County in Section 2 above. Owner further agrees that prior to tentative acceptance of any phase of the wastewater collection system, such phase shall be tested for infiltration in the presence of the County's inspector. The quantity of infiltration for any section of the pipe lines shall not exceed 200 gallons per inch of diameter per mile of pipe in 24 hours for all sizes up to and including 23 inches in diameter. The infiltration test will be run during periods when maximum infiltration is likely to occur. The lines in areas where ground water stands above the crown of the pipe may be tested whenever finally assembled. Should the system be ready for testing during the time of an extended dry season, an exfiltration test must be performed in accordance with County standards and specifications. If the system does not meet the infiltration requirement, the Owner shall correct the system to eliminate such infiltration. The Owner further agrees that all gravity lines shall be cleaned with a high power water jet and tested for deflection by use of a mandrel of size approved by County Engineer. Cleaning shall be performed prior to acceptance. The Owner further agrees to furnish the County with one complete set of record drawings showing the location and depth of all service connections as well as other changes made during construction. These "as-built" drawings will be in electronic format in accordance with the County Engineer's specifications.

Sec. 6. Upon the completion of the construction and installation of each phase of the wastewater collection system by the Owner, and the final inspection and acceptance by the County of said construction and installation, the County shall, without cost, become, and will be vested with all of Owner's rights, title and interest therein to so much of such phase of the wastewater collection system as is within public rights of way. At that time, the Owner will convey to the county any portion of such phase of the system, except connections, that is not within public rights of way along with an easement along said phase of the system sufficiently wide, not less than 16 feet, to enable the County to maintain such phase of the system. All easements and property transfer shall be clear of all Liens and title objections, and, in furtherance thereof, Owner shall at the time of acceptance by the County, execute, acknowledge, record and deliver to County such instruments as may be requisite to conform such title to the County, all without cost to the county.

Sec. 7. Owner shall not permit under any circumstances the discharge of wastewater originating on any other property or premises, either directly or indirectly, into said wastewater collection system.

Sec. 8. Owner covenants and agrees that after acceptance of each phase of the wastewater collection system, the County shall have the right to collect the appropriate connection fee for a lot before any dwelling on such lot is connected to the wastewater line. No discharge of any kind shall be permitted to the wastewater line until the appropriate phase of the system has been tentatively accepted and required connection fees paid.

Sec. 9. Owner covenants and agrees that the County shall have the exclusive right to establish and, from time to time, may re-establish wastewater service rates charged to the customers within said area, which rates shall be fixed by County in accordance with law.

Sec. 10. Owner will indemnify, keep and hold the County free and harmless from any contractual liability of Owner and from all claims resulting from injury to Owner, lessee, purchaser, or any other person, firm, or corporation, or damage to the property of Owner, lessee, purchaser, or any other person, firm, or corporation arising from or growing out of the construction and/or installation of the said wastewater collection system unless due to fault of County. If a suit is brought against the County, either independently or jointly with such Owner, lessee or purchaser or account hereof, such Owner will defend the County, subject to County concurrence, in any such suit at the expense of the Owner, and if a final judgment is awarded against the County, either independently or jointly with the Owner, lessee or purchaser, the Owners, lessees or purchasers shall, except to the extent such judgment is a result of the fault of County, pay such judgment with all cost thereby holding the County harmless therefrom.

Sec. 11. It is hereby understood and agreed that the Owner, lessee, or purchaser of any or all real property waives any and all claims which may arise against the County because of personal injury or damage to property, directly or indirectly resulting from unavoidable delays in construction by the County resulting from acts of God, strikes, contractor's defaults, delays caused by governmental regulatory agencies, or other unavoidable causes or delays in completion of the wastewater collection system to be constructed by the County.

Sec. 12. Owner will not discharge into said wastewater collection system any air conditioning coolant, storm water, surface or sub-surface water, waste, effluent, or other matter prohibited by appropriate ordinance, resolution, rule or regulation heretofore or hereinafter adopted by the County or any other appropriate governmental agency having jurisdiction thereover.

Sec. 13. Owner agrees that no premise shall be connected to, and that no effluent shall be discharged into the wastewater collection system prior to tentative acceptance of said phase of the system by the County as provided in Article II, Section 14 below. Tentative acceptance will under no circumstances be given prior to the complete installation and satisfactory testing of such phase of said system, according to the aforesaid specifications and requirements mentioned in Sections 2 and 5 above. After tentative acceptance and before final acceptance any damage to the lines caused by other utilities or builders will be the responsibility of the Owner to repair. If construction by other utilities or builders causes damages which allow inflow or infiltration into the collection system; the Owner will be assessed such charges at the time of billing for inspection services.

Sec. 14. Owner will request in writing that the County make an inspection of a phase of the system for tentative acceptance. Tentative acceptance means the phase of the

system has been installed according to approved specifications and plans, and that such phase of the system can be operated in a safe manner.

Sec. 15. The Owner shall, with respect to each phase of the system, guarantee all materials and workmanship against defects for a period of one year following final acceptance of such phase. Owner agrees that he will request in writing final inspection and acceptance of each phase of the system after all final adjustments necessary to bring the site and facilities into compliance are made. The Owner will repair and/or correct any deficiencies of each phase of the system at the Owner's expense for a period of one year after the date of final acceptance of that phase of the system being accepted. Should the Owner fail to make corrections within a reasonable time (not to exceed 60 days) the County will perform the work and charge the cost of such corrective work to the Owner.

Sec. 16. Subject to the provisions hereof, the County shall have the right at any and all times to make, connect, or permit the connection of any other wastewater lines or wastewater connections or extensions to said wastewater connection system in the area referred to herein, at any point of points, and shall have the right at any and all times to take and dispose of wastewater through the said extension in the area, from properties beyond the herein described property and originating on properties other than that described in this agreement. The County shall have the right to make connection and service charges for connections provided for in this section.

Sec. 17. The Owner shall obtain a permit from the Virginia Department of Transportation before any construction is performed in roads in the State Highway System, and shall replace any roads disturbed by such construction to the satisfaction of the Virginia Department of Transportation. The Owner shall apply for and obtain a Land Disturbing Permit from the Planning Department before any clearing, grading, excavating, or other land disturbing activity is begun in conjunction with construction of the wastewater system.

Sec. 18. The Owner agrees that, when necessary to comply with orders of Federal or State agencies having appropriate jurisdiction, or when subject to limitations outside of the control of the County and imposed by other municipalities providing wastewater treatment under contract to the County, the County may limit, or prohibit connections to the County system.

ARTICLE III

Sec. 1. Upon execution of this contract by the County and the Owner, the County will proceed as expeditiously as practicable to provide and maintain the necessary transport facilities within the County to receive the discharge of the wastewater from the Owner's herein described real property. The connection to the County system shall be made at the existing sanitary sewer main as shown on the utility plans as provided by Article II, Section 2 above.

Sec. 2. The County Engineer will notify the Owner in writing when the County will receive wastewater originating in the development area and will specify the date on which Owner may discharge the wastewater into any phase of the system. Such notifications will not be given prior to tentative acceptance of a phase of the Owner's system by the County and the receipt of connection fees as required by Article II, Section 8 above.

Sec. 3. The County agrees to accept, operate, and maintain the aforesaid wastewater collection system, or a phase thereof, except for installation of sewers, and the Owner shall be released from any further liability for the system of such phase after such acceptance, provided all terms and conditions of this agreement are complied with by Owner including but not limited to the following:

(1) Such system or phase thereof has been constructed and installed according to plans and specifications as provided herein; (2) The County has given notice pursuant to Article III, Section 2 above, that it is able to receive wastewater; (3) Appropriate instrument or instruments approved by the County Engineer pursuant to Article II, Section 6 of this agreement have been tendered by Owner; and (4) Evidence satisfactory to the County Attorney is provided by Owner that such system or phase thereof has been paid for in full by Owner.

ARTICLE IV

Sec. 1. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, heirs and assigns.

Sec. 2. Failure of the Owner, his successors, heirs, or assigns to comply with any of the provisions of this agreement shall be good and sufficient cause for termination of this agreement by the County.

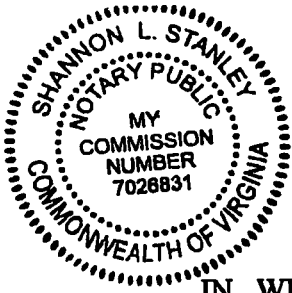
IN WITNESS WHEREOF, Luca Italian Restaurant has caused its name to be hereunder signed by Jose Luis Pedraza, its owner, and attested by Shannon L. Stanley.

WITNESS the following signature and seals:

BY  _____
Owner

Attest :

Subscribed and sworn to before me Shannon L. Stanley, Notary Public, this 1 day of February by Jose Luis Pedraza Owner.



Notary Public Shannon L. Stanley

My commission expires 11-30-18

IN WITNESS WHEREOF, The County of Prince George has caused its name to be hereunder signed by _____, its County Administrator, and its seal to be hereunto affixed and attested by _____, the said action being authorized by a resolution adopted at a duly called meeting of the Board of Supervisors on the ___ day of _____, 20__.

WITNESS the following signatures and seals :

COUNTY OF PRINCE GEORGE, VIRGINIA

BY _____ (SEAL)

County Administrator

Approved as to form _____, County Attorney

STATE OF VIRGINIA

COUNTY OF PRINCE GEORGE, to wit:

The foregoing instrument was acknowledged before me I my County and State aforesaid, by Percy C. Ashcraft, County Administrator and Steven L. Micas, County Attorney, this ___ day of _____, 20__.

Notary Public

My commission expires: _____