

**Revised draft: June 21, 2013**

AMENDED AND RESTATED AGREEMENT FOR OPERATION  
AND MAINTENANCE OF WASTEWATER COLLECTION AND  
TREATMENT FACILITIES AND WATER DISTRIBUTION AND  
WASTEWATER REUSE SYSTEM

BETWEEN

SEVERN TRENT ENVIRONMENTAL SERVICES, INC.

AND THE

RIVERWOOD COMMUNITY DEVELOPMENT DISTRICT

June 30, 2013

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## AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT is made and entered into this 30th day of June, 2013, by and between the Riverwood Community Development District, (hereinafter the "District"), a Community Development District organized under the laws of the State of Florida, and Severn Trent Environmental Services Inc., a Texas corporation, with its principal place of business at 16337 Park Row, Houston, Texas 77084 (hereinafter the "Operator").

WHEREAS, on June 25, 2003, the parties entered into an Operation and Maintenance Agreement for the District's Facilities; and

WHEREAS, on June 30, 2008, the parties entered into an Amended and Restated Operation and Maintenance Agreement which expanded Operator's scope of service to include operations and maintenance of the District's water distribution infrastructure, meter reading, and utility billing and customer services; and

WHEREAS, the Amended and Restated Operation and Maintenance Agreement is scheduled to expire on June 30, 2013; and

WHEREAS, in lieu of automatically extending such Amended and Restated Operation and Maintenance Agreement in accordance with its terms, the District and the Operator are desirous of entering into this new Amended and Restated Agreement, which adjusts Operator's scope of service and compensation in accordance with the terms set out below; and

WHEREAS, the District has the authority under the laws of the State of Florida to enter into this Agreement; and

WHEREAS, the parties now desire to amend and restate the Amended and Restated Operation and Maintenance Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties hereby agree as follows.

### ARTICLE 1 — DEFINITIONS

*"Abnormal or Biologically Toxic Material"* is defined as any substance or combination of substances contained in the water or influent wastewater received or treated at any of the Facilities in sufficient concentrations or amounts so as to either:

- (i) interfere with the biological processes necessary for the removal of organic and chemical constituents in a manner required to meet the requirements in the District's Environmental Permits; or
- (ii) cause a failure to meet the requirements of the District's Environmental Permits; or
- (iii) create effluent, sludges, or other material classified as a hazardous waste under RCRA.

Abnormal or Biologically Toxic Materials may include, but are not limited to, concentrations of heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, or any substance that violates the local or USEPA standards for finished water after the routine processing of the influent wastewater.

*"Adjustment Date"* shall mean June 30<sup>th</sup> of every Agreement Year.

"*Affiliate*" shall mean "related parties" to Operator within the meaning of Section 144(a)(3) of the Internal Revenue Code.

"*Agreement*" is defined as this Amended and Restated Operation and Maintenance Agreement.

"*Agreement Year*" is defined as any consecutive twelve (12) month period during the term of the Agreement (including the renewal options) that begins on the Commencement Date and subsequently ends on each anniversary of that date.

"*Applicable Law*" is defined as those laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the foregoing in each case that pertain to the (a) parties' respective responsibilities under this Agreement (b) operation or maintenance of the Facilities, (c) health and welfare of individuals working at or visiting the Facilities, and (d) the collection, delivery, treatment and disposal of the District's wastewater, water and/or related wastes. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or, judicial settlement or enforcement related, in any way, to the Facilities, to the collection, delivery or treatment of the District's water and/or wastewater and to the District's Environmental Permits issued for the Facilities.

"*Authorized Representative*" is defined in Section 9.1.

"*Base Compensation*" is defined in Section 10.1(a).

"*Baseline Wastewater Conditions*" shall mean the maximum hydraulic influent flow of wastewater received and/or processed at the WWTP and the maximum wastewater influent loading limits contained in such influent wastewater, all as outlined in Exhibit B. Baseline Wastewater Conditions shall be calculated as specified in Exhibit B for each and every month during the term of this Agreement for the purpose of determining whether Operator is allowed additional compensation during any given month pursuant to Section 10.4.

"*Baseline Water Production*" shall mean the maximum monthly hydraulic flow of water received or distributed by the water distribution system, as outlined in Exhibit C. Baseline Water Production shall be calculated for each and every month during the term of this Agreement for the purpose of determining whether Operator is allowed additional compensation during any given Agreement Year pursuant to Section 10.4.

"*Basic Services*" is defined in Section 4.1.

"*Capital Expenditure(s)*" is defined as any expenditure for the acquisition, repair and/or replacement of equipment, vehicles or structure that extends service life, or represents maintenance obligation other than the maintenance obligation for which Operator is responsible pursuant to Section 4.4.

"*Capital Improvement(s)*" means changes, modifications and/or upgrades to the Facilities made from Capital Expenditures and constructed or implemented by the District or with the District's prior written approval.

"*Change of Law*" shall mean the occurrence of any of the events listed in (i) through (iv) below, which results or can reasonably be expected to result in either (a) the need to make a Capital Improvement at any of the Facilities in order for Operator to operate the Facilities in accordance with this Agreement and Applicable Law and/or (b) an increase to the cost of operating or maintaining the Facilities in accordance with this Agreement and Applicable Law:

- (i) there is passed or promulgated any federal, state, or other local law, statute, ordinance, rule

or regulation different from those existing on the date of execution of this Agreement;

- (ii) there is passed or promulgated any amendment to, or change in, any federal, state, or other local law, statute, ordinance, rule or regulation following the date of this Agreement;
- (iii) following the execution of this Agreement, there comes into existence an order or judgment of any federal, state, or local court, administrative agency or other governmental body following the execution of this Agreement, containing interpretations of any federal, state, or other local law, statute, ordinance, rule or regulation relating to the operation or maintenance of the Facilities or the health and safety of Operator's employees that is inconsistent with generally accepted interpretations in effect on the date of execution of this Agreement; provided that an order or, judgment of any federal, state, or local court, administrative agency or other governmental body after the date of execution of this Agreement which determines that the Facilities have been operated in a manner inconsistent with Operator's obligations hereunder shall not constitute a "Change of Law"; and
- (iv) there is imposed any condition different from those existing on the date of execution of this Agreement on the issuance or renewal, or (b) there shall be a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than Operator fault or failure by Operator to comply with the terms of this Agreement), of any official permit, license or necessary approval, including without limitation such of the foregoing as are issued or approved by the USEPA, the Occupational Safety and Health Administration or the State Department of Environmental Protection

"*Commencement Date*" is defined in Section 11.1(a).

"*District*" is defined in the Preamble to this Agreement.

"*Environmental Compliance Guarantee*" is defined in Section 7.1.

"*Environmental Permit(s)*" refers to all necessary environmental permits and licenses required for ownership and operation of the Facilities including, without limitation, the District's water supply permits, those permits issued by the State (or a department or agency of the State) or Federal Government, and any amendments or modifications thereto. Copies of all Environmental Permits are attached as Exhibit D to this Agreement.

"*Facilities*" is defined as the currently existing water distribution system, WWTP and all appurtenant facilities including lift stations, sewer lines and force mains, effluent reuse storage and distribution described in Exhibit A to this Agreement.

"*Force Majeure*" is defined as any act, event or condition to the extent that it materially and adversely impacts the cost of performance of, or materially and adversely affects the ability, of either party to perform any obligation under this Agreement (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or a lack or reasonable diligence of either party.

- (a) Inclusions subject to the foregoing, such acts, events or conditions may include, but shall not be limited to, the following:

- i. an act of God (but not including reasonable anticipated weather conditions for the geographic area of the Facilities as of the Commencement Date), landslide, earthquake, fire, explosion, flood, sabotage, or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection riot or civil disturbance;
  - ii. the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
  - iii. a Shutdown;
  - iv. any failure of title to any of the Facilities or any placement or enforcement of any lien, charge or encumbrance on any of the Facilities or on any improvements thereon that is not consented to in writing by, or arising out of any action or agreement entered into by, either party to the Agreement;
  - v. the preemption, confiscation, diversion, destruction, or other interference in the possession or performance of materials located at or Services performed at any of the Facilities and necessary for any such Facility to operate in accordance with the requirements of District's Environmental Permits or other permits, on behalf of or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Facilities;
  - vi. the presence at any of the Facilities of (i) subsurface structures, materials or conditions, having historical, geological, archeological, religious or similar significance; (ii) any habitat of an endangered or protected species; or (iii) functioning subsurface structures used by utilities on, underneath, near or adjacent to such Facility;
  - vii. the inability of Operator and its subcontractors to gain and maintain access to all areas of any of the Facilities and/or adjoining any of the Facilities where Operator is required to provide services or perform any work hereunder;
  - viii. strikes, work stoppages, or labor disputes affecting Operator and any subcontractor of Operator; and
  - ix. with respect to the Operator, damage to the Facilities caused by third parties not related to or under the control of the Operator including, but not limited to, other contractors and subcontractors for the District;
  - x. the failure of any subcontractor or supplier to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute Force Majeure if it affected the Operator directly, and the Operator is not able after exercising all reasonable efforts to timely obtain substitutes; and
  - xi. the breach of this Agreement by one of the parties to the extent that it adversely impacts the non-breaching party's cost of performance under this Agreement or adversely affects the ability of the non-breaching party to perform any obligation under this Agreement.
- (b) Exclusions. None of the following acts, events or conditions shall constitute an event of Force Majeure:
- i. general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
  - ii. changes in the financial condition of the District, Operator, or any of their Affiliates or subcontractors;



- iii. union work rules that increase Operator's operating cost for the Facilities;
- iv. any impact of prevailing wage laws on Operator's costs;
- v. the consequence of Operator error, including any errors of Operator Affiliates or subcontractors;
- vi. failure of any subcontractor or supplier to furnish labor, Services, materials or equipment on the dates agreed to; and
- vii. litigation against the District and/or Operator.

"*Independent Engineer*" refers to a nationally recognized independent consulting engineering firm experienced in the design and/or the operation of water and/or wastewater treatment facilities as selected in accordance with the procedures set forth in Article 13 herein.

"*Meter and Inspection Services*" is defined in Section 6.1.

"*Non-Processible Influent*" is defined as influent water or wastewater (i) which contains Abnormal or Biologically Toxic Materials, or (ii) which is otherwise detrimental to the operation and performance of the Facilities, or (iii) which exceeds the design capabilities of the Facilities as either defined by the District's operations and maintenance manuals for the Facilities or provided in submissions made to regulatory agencies in connection with the construction and/or the permitting of the Facilities.

"*Operator*" is defined in the Preamble to this Agreement.

"*Price Index*" shall mean the Consumer Price Index for all Urban Consumers (CPI-U) for the US City Average for all Services, 1982-84=100 as published monthly by the U.S. Department of Commerce, Bureau of Labor Statistics. In the event that this Price Index is changed, or if a substantial change is made in the terms or number of items contained in the Price Index, then the Price Index shall be adjusted to the figure that would have been arrived at had the manner of computing the Price Index in effect as of the Commencement Date not been altered. In the event such Price Index (or a successor or substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information therefore used in determining the Price Index shall be used. No adjustments or re-computations, retroactive or otherwise, shall be made due to any revision that may later be made in the first published figure of the Price Index for any year.

"*Price Index Increase*" shall mean the percentage increase between the Price Index in effect on each and every Adjustment Date over the Price Index in effect as of the immediately preceding Adjustment Date. The Price Index Increase shall be calculated as of each and every Adjustment Date for the purpose of adjusting the Base Compensation and the labor and equipment rates in Exhibits E and F.

"*Prime Rate*" is defined as a rate per annum equal to the lesser of (a) a varying rate per annum that is equal to one percentage point over the "prime rate" reported from time to time by *The Wall Street Journal*, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by Applicable Law.

"*Process Residue*" is defined in Section 4.6.

"*RCRA*" is defined as the Resource Conservation Recovery Act, as same may be amended from time to time, 42 USC §8921 et seq.

"*R&R Services*" is defined in Section 7.1.

"Shutdown" is defined as the cessation or substantial interruption of normal operations at any of the Facilities due to failure of operating equipment or interruption of the processes of any of the Facilities for reasons other than the negligence of Operator or its employees, agents or subcontractors.

"State" is defined as the State of Florida.

"Technical Services Group" shall mean Operator's specified team of wastewater treatment and water system operators, health and safety personnel, compliance and regulatory personnel and engineers who service and monitor Operator's projects.

"USEPA" refers to the United States Environmental Protection Agency.

"WWTP" is defined as the District's wastewater treatment plant, described in Exhibit A, and related facilities.

## **ARTICLE 2 — PURPOSE**

During the term of this Agreement, the District agrees to engage Operator as an independent contractor to manage, operate and maintain the Facilities, and Operator agrees to manage, operate, and maintain the Facilities in accordance with the terms and conditions of this Agreement, Applicable Law, and all permits, licenses, manufacturer's protocols, and specifications applicable to the operation and maintenance of the Facilities. Each party hereto agrees that it will cooperate in good faith with the other and its agents, employees, representatives, officers, contractors, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement.

## **ARTICLE 3 — REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

### *Section 3.1 — Representations and Warranties of the District*

District hereby represents and warrants that, as of the date hereof:

(a) It is Community Development District duly organized, validly existing and in good standing under Chapter 190 of the laws of the State, with full power and authority to enter into this Agreement, to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform this Agreement.

(b) This Agreement, District's execution and delivery of this Agreement, and District's performance of its obligations hereunder, have been duly and validly authorized by District by all necessary action, This Agreement has been validly executed and delivered by District and constitutes a legal, valid and binding obligation of District, enforceable in accordance with its terms.

(c) District's execution, delivery and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice of lapse of time, or both, would constitute a default under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind District or any of its assets and properties located at the Facilities.

(d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material

adverse effect upon District's ability to execute this Agreement or otherwise to consummate and perform its respective obligations hereunder.

(e) District's representatives are fully familiar with this Agreement and the obligations set forth herein, including all the exhibits attached to this Agreement, if any, and District is fully capable of performing and complying with the same.

(f) To the best of the District's knowledge, the District is in compliance with all permits and regulations associated with the operation of the Facility.

### *Section 3.2 — Representations and Warranties of Operator*

Operator hereby represents and warrants to the District that, as of the date hereof:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and qualified to conduct business in the State of Florida with full corporate power and authority to enter into this Agreement, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform under this Agreement.

(b) This Agreement, Operator's execution and delivery of this Agreement, and Operator's performance of its obligations hereunder, have been duly and validly authorized by Operator by all necessary corporate action. This Agreement has been validly executed and delivered by Operator and constitutes a legal, valid and binding obligation of Operator, enforceable in accordance with its terms.

(c) The execution, delivery and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice of lapse of time, or both, would constitute a default, under the organizational documents of Operator nor under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind, Operator or any of its assets or properties.

(d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material adverse effect upon Operator's ability to execute this Agreement or otherwise to consummate and perform its respective obligations hereunder.

(e) Operator is fully familiar with this Agreement and the obligations set forth herein, including all exhibits attached to this Agreement, if any, and Operator is capable of performing and complying with the same.

(f) Operator further represents that it has the requisite knowledge, skill and expertise to perform the services and obligations under this Agreement and the legal obligations of the Environmental Permits and all other applicable permits and approvals.

### *Section 3.3 - Disclosure of Information*

The District and Operator each represent and warrant to the other that each has disclosed, and will in the future disclose, any and all information it now has, or may have in the future, relating to the Facilities that may be relevant

to the other in performing its duties and obligations.

## **ARTICLE 4 — BASIC SERVICES AND OPERATOR'S RESPONSIBILITIES**

### *Section 4.1 — General*

Subject to the limits provided herein, Operator shall provide the labor, hand tools, materials and supplies (excluding chemicals) necessary for the management, operation and maintenance and repair of the Facilities to the extent specifically set forth in this Article 4 (hereinafter the "Basic Services"). The Basic Services include:

- (a) The operation of the Facilities in accordance with Applicable Law;
- (b) Routine and preventive maintenance of the Facilities, including water distribution and sewer collection system maintenance, as described in Section 4.4., on a timely basis;
- (c) The timely preparation and prompt delivery of all applicable and required filings to District and to regulatory agencies as prescribed by Applicable Law as described in Section 4.13;
- (d) Providing fuel for the emergency generator at the WWTP;
- (e) Refuse disposal;
- (f) Laboratory supplies for process control and laboratory analysis for Environmental Permit compliance parameters as further described in Section 4.7;
- (g) Weekly inspection of wastewater pumping stations;
- (h) Annual flow meter calibrations at the WWTP; and
- (i) Customer service items, including meter reading, utility billing services, initiation of water service and discontinuing water service to new customers, as described in Article 5 and Article 6.

### *Section 4.2 — Standard of Care*

(a) The services provided under this Agreement are of a professional nature and shall be performed in accordance with the degree of skill and care ordinarily exercised by members of Operator's profession and wastewater treatment and drinking water system operators in similar localities at the time the Basic Services are performed. Upon notice to Operator, and by mutual agreement between the parties, Operator will correct those services not meeting such a standard without additional compensation, in as expeditious a manner as possible.

(b) In the event that any portion of the services require Operator to retain subcontractors with disciplines beyond the skill and capability of Operator's staff assigned to the operation and maintenance of the Facilities, Operator shall retain such subcontractors and be ultimately responsible for the work of such subcontractors and manage all work and services performed by such subcontractors to the reasonable satisfaction of the District.

### *Section 4.3 — Process Control*

Subject to the District's obligations and duties under this Agreement, the goal of Operator is to manage and operate the Facilities in a manner designed to meet all the requirements of the Environmental Permits, safe drinking water

standards, and any other provision of Applicable Law.

*Section 4.4 — Routine Preventive Maintenance of the Facilities and Equipment*

Operator shall provide the labor, hand tools, materials, equipment and supplies necessary to: (i) perform routine maintenance consisting of predictive and preventative maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities; (ii) clean and lubricate equipment; (iii) make equipment inspections and needed adjustments; (iv) maintain all of the Facilities' instrumentation, including instrumentation provided to Operator by the District pursuant to this Agreement; (v) flush dead end water mains at least monthly or as required to maintain water quality in compliance with Applicable Law; (vi) exercise all water distribution system valves on an annual basis; and (vii) provide annual maintenance of all system fire hydrants; (viii) inspect all manholes and inspect and clean twenty percent (20%) of the sewer collection lines on an annual basis. Operator shall schedule and track all preventive and corrective maintenance and perform spare parts inventory control in accordance with standard industry practice and as approved by the District Engineer of Record, whose approval shall not be unreasonably withheld or delayed.

*Section 4.5 — Staffing*

(a) Operator shall use its professional judgment to determine and provide a sufficient number of qualified and, where required, certified staffing, with demonstrated experience necessary to operate and maintain the Facilities, for all positions associated with the operation and maintenance of the Facilities.

(b) Operator shall staff the Facilities for at least six (6) hours per day, seven (7) days per week or the minimum as required by Applicable Law, whichever is greater. Operator shall also provide for a Operator Trainee/Utility Technician who shall be assigned to the District as his/her primary work location based upon the current approved scope of services in the agreement.

(c) In addition to normal staffing, Operator agrees to maintain at least one (1) qualified employee on an on-call status, twenty-four (24) hours per day, seven (7) days a week to respond to and address emergency situations that may occur at any time at the Facilities.

(d) Operator shall refrain from unlawful discrimination in employment and shall undertake appropriate affirmative action in performing its obligations under this Agreement.

*Section 4.6 — Disposal of Process Residue*

(a) As the agent for the District, Operator shall arrange for the disposal of screenings, grit and wastewater sludges generated from the operation of the Facilities ("Process Residue").

(b) Operator shall provide for the disposal of Process Residue either at a State approved landfill or at a State approved land application site designated and made available by the District. Title and ownership of Process Residue shall remain with the District notwithstanding such services by Operator.

(c) Upon the receipt of a written invoice from Operator, the costs of transportation and disposal of Process Residue shall be paid directly by the District without any mark up of this price. Operator shall use best efforts to optimize the operation of the Facilities in order to minimize the quantity of Process Residue transported, and minimize the number of occurrences when Process Residue needs to be transported.

*Section 4.7 – Testing and Laboratory Analysis*

(a) Operator shall cause the performance of all sampling and laboratory analysis required by the Environmental Permits, Applicable Law and necessary for process control, including distribution system routine bacteriological sampling (twice per month) and lead and copper sampling.

(b) Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater and shall be in accordance with testing requirements of the Environmental Permits.

(c) Operator shall prepare the data for all permit monitoring and operating reports and shall deliver and certify such results to the District, the District Engineer and to all required regulatory agencies. Operator shall monitor the current status of all applicable permits and will notify the District at least ninety (90) days in advance of the renewal date of these permits. The District, however, shall at all times be responsible for maintaining all Environmental Permits for the Facilities.

*Section 4.8 – Technical Services*

At no additional cost to District, Operator's Technical Services Group shall provide backup advice in process control, management, maintenance, engineering and plant repair as necessary to ensure performance of District's obligations under this Agreement. Although members of the Technical Services Group may be engineers and may be professionally registered, the Technical Services Group will not perform work that requires the seal or certification of a Professional Engineer or otherwise constitutes the practice of engineering.

*Section 4.9 – Training and Safety Program*

Operator shall provide an appropriate level of training for its personnel in areas of operation, maintenance, safety, supervisory skills, and laboratory and energy management. A proper safety program shall be implemented by Operator prior to beginning its services under this Agreement. Such safety program shall comply with Applicable Law and Operator agrees that it will adhere to all portions of that safety program.

*Section 4.10 – Odor and Noise Control*

(a) Operator shall operate the Facilities within the limits and capabilities of the Facilities' equipment to effectively control odor and noise and insure that there is no avoidable disruption of adjacent neighborhoods.

(b) Odor complaints received by Operator shall be reported to the District within forty-eight (48) hours and contain the name, address, phone number, date and time, Operator contact person, nature of odor, probable origin of the odor and the action Operator will implement or has implemented to remedy and/or mitigate said odor.

*Section 4.11 – Communications*

(a) To keep the District informed about the status of the Facilities, Operator shall implement an informational communications program, subject to District's approval, which shall include a written monthly report to District on the operational status and maintenance of the Facilities.

(b) Operator may interface with regulatory agencies without District's request in matters related to the Environmental Permit(s) and/or with respect to matters required under Operator's staff certification and licensing requirements and/or as otherwise necessary to comply with Applicable Law, including communication during

emergency situations. Operator shall, as soon as practicable and in reasonable detail, inform the District's Engineer of Record of the subject matter of such communications with regulatory agencies. All other communications with regulatory agencies, the media, or community groups may only occur upon District's request or with District's prior approval, which shall be confirmed in writing. If Operator is requested by the District to address individuals, regulators, media or community groups concerned with any aspect of the operation of the Facilities, Operator shall engage in communications with such third parties in a professional manner.

(c) During any District-approved construction or other modification of any of the Facilities, the District and Operator will work together to maintain Operator's access to any of the Facilities and to minimize disruption and outages to the Facilities' existing equipment and components. The District and Operator will jointly develop a "Plan of Action" that will address protection to the Facilities' equipment and processes during any such construction and/or other rehabilitation period while providing for the continued operation of the Facilities as much as possible.

(d) Upon the reasonable request of the District, Operator shall coordinate with the District's other consultants, such as attorneys, engineers, auditors, bookkeepers, tax assessors, and financial advisors as necessary to maintain efficient operation of the Facilities.

(e) Operator shall respond to routine inquiries or correspondence from the District's directors, customers or consultants in a prompt and professional manner.

(f) At no cost to the District and upon request of the District, Operator's Project Manager, or other duly authorized representative shall regularly attend meetings of the District's Board of Supervisors. Operator's representative at such meeting shall have direct knowledge of the District's ongoing water and wastewater operations and/or the applicable agenda items, as appropriate.

(g) Upon adequate notice, Operator shall provide speakers qualified to make presentations to citizen groups, civic associations, and schools within the District. The Subjects of the presentations may include utility regulations, water and wastewater facilities operations and the District's budgeting and operations functions.

(h) Operator shall render reasonable assistance in the promotion of good relations with the District's customers.

#### *Section 4.12 — Management Information Systems*

Operator shall install, to the extent necessary in the reasonable opinion of Operator and upon approval of the District, computer hardware and software to provide a preventative maintenance management system and a computerized process control system for the Facilities. Upon termination of this Agreement, any computer hardware and software purchased by Operator will remain the property of Operator, but all relevant records and data shall remain the property of the District as specified in Section 4.13(d).

#### *Section 4.13 — Reports*

(a) Operator shall maintain all necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit to the District a monthly report, delivered to the District not later than twenty-one (21) days following the end of each month, including a narrative summary of operations, maintenance, repair and replacement activities and all data required for monthly reporting to local, state and federal agencies. The monthly report shall also include the following items: (i) copies of waste and sludge manifests; (ii) insurance claims that are filed or pending; and (iii) copies of all reports and correspondence made by Operator to

local, State and federal regulatory agencies on behalf of the District.

(b) Operator shall prepare all reports required by the District's Environmental Permits and local, state and federal regulatory agencies. Prior to submitting such reports to regulatory agencies, Operator shall provide the same to District for its review, approval and signature. Operator shall certify the results of all permit monitoring and operating reports to the District and to all regulatory agencies as required by law or permit

(c) Once each year, at a time to be determined in advance by the District, Operator shall prepare and submit to the District an annual report that identifies: (i) significant events of the past year, including all permit excursions and other non-compliance events; (ii) describes the status of operations at the Facilities; (iii) compares the status to planned activities and expected performance of the Facilities; (iv) itemizes expenditures; (v) sets out recommended Capital Improvements; (vi) describes the estimated quantity of chemicals, the cost of chemicals, and the estimated utility costs required for the next Agreement Year; (vii) describes any recommended changes in the scope of Services; and (viii) includes other information as reasonably requested by the District.

(d) The Facilities' records and data, including but not limited to operation reports, laboratory reports and monitoring documentation, but excluding Operator's budgetary and financial information, are the sole property of the District and cannot be destroyed by Operator without written consent of the District. All site-specific operating procedure guidelines, preventative maintenance and safety programs and plant evaluation reports will, upon termination of this Agreement, become and remain the property of the District.

#### *Section 4.14 — Emergency Response*

(a) Operator shall provide emergency response when required. Emergencies include situations in which, absent Operator's action, there is a risk of: (i) the Facilities' noncompliance with Applicable Law; (ii) failure of any of the Facilities to operate; (iii) circumstances affecting the safety of persons or property; (iv) extreme weather conditions and other natural or man-made disasters; and (v) the occurrence of an event of Force Majeure or the threat of Shutdown.

(b) Operator shall provide said emergency response as promptly as possible, but, absent extraordinary circumstances, within no longer than two (2) hours of being notified of the existence of the emergency and the need to respond thereto.

(c) All costs incurred by Operator in responding to emergencies shall be borne by the District, except where specifically provided otherwise, and where such emergency, production stoppage or failure of any of the Facilities to operate is a direct result of Operator's failure to operate and maintain any of the Facilities in accordance with the terms of this Agreement. The cost charged by Operator in responding to emergencies shall be in accordance with the fee schedule in Exhibit F.

(d) In the event of sudden damage or destruction of any portion of the Facilities, or in the event of an emergency which in the reasonable judgment of Operator is likely to result in material loss or damage to any portion of the Facilities, or constitute a threat to human health or safety, Operator may suspend operations of those portions of the Facilities which are reasonably determined to be affected by the emergency and may make such emergency repairs as are necessary to mitigate or reduce such loss, damage or threat. Operator shall provide prompt notice to the District of any such damage, destruction or threat and of any emergency repairs that have or will be taken, The District and Operator shall cooperate in good faith in pursuing reasonable measures to mitigate any threats to human health or safety, or the environment.



*Section 4.15 — Litigation Support*

(a) At the request of the District, Operator will provide or arrange for legal, regulatory or technical assistance in connection with the District's defense or prosecution of any actions, claims, suits, administrative or arbitration proceedings or investigations relating to the Facilities, whether pending, threatened or newly initiated.

(b) For such Services the District shall pay Operator its total costs incurred in its performance of such additional Services multiplied by 1.15 in the event that Operator is not in any way responsible for the underlying reasons giving rise to such actions, claims, suits, administrative or arbitration proceedings or investigations as a result of Operator's negligence or otherwise as a result of Operator's failure to comply with the terms of this Agreement.

*Section 4.16 — Accounting Records*

Operator shall maintain up-to-date financial and accounting records as they apply to the Basic Services rendered by Operator under the terms of this Agreement including all bills, receipts, and invoices. All records must be kept in accordance with Operator's standard accounting practices and made available to the District within thirty (30) working days of District's written request.

*Section 4.17 — Inventory*

(a) Within ninety (90) days of the Commencement Date, Operator shall submit a written inventory of the equipment, tools, materials, consumables and expendable supplies and spare parts at each of the Facilities. Within ninety (90) days of the Commencement Date, Operator shall also submit a written inventory of any and all Process Residue stockpiled or contained at the Facilities. District agrees and shall take all necessary measures to ensure that the volume or quantity of all Process Residue stockpiled or contained within the Facilities as of the Commencement Date shall not exceed the volume or quantity of Process Residue typically generated from the operation of the Facilities in an average month. The District shall have twenty (20) days to verify and accept Operator's written inventories submitted pursuant to this Section 4.17(a).

(b) At the termination of this Agreement, Operator shall provide the District with inventory in quantity and/or value equal to or greater than the initial inventory, reasonable wear and tear excepted. Operator shall be permitted to leave only an amount of sludge at the Facilities that is less than or equal to the amount of sludge listed in the inventory prepared by Operator and accepted by the District pursuant to Section 4.17(a) above.

*Section 4.18 — Manufacturers' Warranties*

Operator shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by the District after the Commencement Date and Operator shall assist the District in enforcing existing warranties and guarantees for equipment used in connection with the operation of the Facilities.

*Section 4.19 — Landscaping*

Operator shall provide services to maintain the landscape appearance of the WWTP site compatible with the surrounding neighborhood with routine trimming and lawn mowing as necessary.

*Section 4.20 - Reuse System Operation and Maintenance*

(a) In addition to the Basic Services, Operator shall provide the labor, hand tools, materials, equipment and supplies necessary to: (i) perform routine maintenance consisting of predictive and preventative maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Reuse Pump Station; (ii) check station daily and record operation data, (iii) clean and lubricate equipment; (iv) remove inline filters monthly and pressure wash; (v) maintain all of the instrumentation; (vi) exercise all reuse water distribution system valves on an annual basis.

(b) Operator will add the Reuse Pump Station equipment to the Computerized Maintenance Management system to schedule and track all preventive and corrective maintenance and perform spare parts inventory control in accordance with standard industry practice and as approved by the District Engineer of Record, whose approval shall not be unreasonably withheld or delayed.

(c) Operator shall read the reuse meters on a monthly basis using hand held meter reading devices and upload readings to the billing office. Operator shall confirm exceptions noted on the preliminary report prior to each monthly billing cycle.

*Section 4.21 – Compliance with Public Records Laws*

Operator shall comply with the requirements of Florida's Public Records laws, specifically including the following:

(a) Operator shall keep and maintain public records that ordinarily and necessarily would be required to perform the services described in this Agreement.

(b) Operator shall provide the public with access to public records on the same terms and conditions as specified in the District's lawfully enacted Rules and policies, or as otherwise provided by law, and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Operator shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Operator shall meet all requirements for retaining public records, and shall, upon termination of the Agreement, transfer at no cost to the District all public records in the possession of the Operator and destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements.

(e) All records stored electronically shall be provided by Operator to the District in a format that is compatible with the District's information technology systems.

**ARTICLE 5 — UTILITY BILLING AND CUSTOMER SERVICE**

District authorizes Operator to perform the services delineated in Sections 5.1 and 5.2 of this Agreement, at the rates and charges shown, without the necessity of any further authorization from the District. The Operator shall be compensated for all services identified in this Article for the rates and fees stipulated in this Article and Section 10.3 of this Agreement.

*Section 5.1 — Base Billing, Bill Printing, and Customer Service*

Operator shall prepare and render all monthly utility bills to District's customers in accordance with District's approved tariffs including the following services:

- (a) Maintenance, storage and history of customer accounts on Operator's CIS/Billing system. Includes adding customers, deleting customers, making miscellaneous changes to customer master records, including input of customer meter readings;
- (b) Include laser printed bill, #9 return envelope, #10 mailing envelope mailed using first class U.S. postage;
- (c) Prepare handheld meter reading device monthly for meter reader and ensure readings are inputted into the Operator billing system for billing;
- (d) Receiving payments thru US Mail, opening of customer return envelopes, preparation of deposit ticket and deposit into District's bank account;
- (e) Manual input of customer payments from remittance advices into Operator CIS/Billing system within 24 hours of receipt;
- (f) District customer access to Operator customer service center and phone lines for account inquiry, establishment of new accounts, closing accounts, and finalization of accounts;
- (g) Return of remittance advances, deposit slips, etc. to District;
- (h) Prompt response on behalf of District to inquiries from District's customers; and
- (i) Contractor shall provide the District with e-commerce feature for providing electronic bill payment to customers via a website. Services will include credit card payments via a 3<sup>rd</sup> party vendor, on-line payments, and e-billing.
- (j) There will be a separate charge of \$0.70 per bill to prepare and mail late-payment reminders and/or final bills, laser printed form, return envelope, including first class postage for U.S addresses.

*Section 5.2 — Reports*

Operator shall prepare the following reports and available to district upon request:

- (a) Daily Transaction Journal - a documentation of all monetary and non-monetary transactions that have been posted to a customer's account (available daily or as transactions occur).
- (b) Preliminary Meter Reading Report - a report indicating the meter readings entered for each account prior to billing. Error in readings and/or consumption will be indicated for correction.
- (c) Account Balance Report - a report indicating each customer's current and past due balance.
- (d) Alpha-Cross Reference - report listed in alphabetic order by customer's last name with a cross-reference index to the customer's account number.

(e) Aged Trial Balance - a report listing each customer's account with total balance, current, 30, 60, 90 and 120-day balances (available once monthly).

(f) Delete Report - a report listing all accounts, which should be deleted from District's file (available once monthly).

(g) Past Due Report - a report indicating all delinquent accounts that have a balance other than current.

(h) Meter Aging Report - a report that lists every account that had a meter installed between ranges of dates that you select.

(i) Consumption History Report - a report listing meter usages for up to twenty four (24) months past by rate classification and meter size.

(j) Monthly Billing Register - a report indicating each customer account billed with all pertinent information contained on the customer bill.

(k) Monthly Activity Report - a report indicating a summary of all billings, adjustments and payments recorded during a particular calendar month. Specifically, it indicates:

- (1) billing by rate class by service,
- (2) charges/adjustments by rate class,
- (3) total payments received, and
- (4) total bills printed.

### *Section 5.3 — Special Billing Services*

The following additional billing services will be provided upon District's request:

(a) Special Customer Notices. Prepare and/or print special notices or "bill inserts" - charge quoted for each notice. Stuff "bill insert" with bills — charge \$0.05 per insert page.

(b) Mail Special Customer Notices. Mail notices separately (not included with a utility bill) to District's customers - charge quoted for each mailing.

(c) Mailing Labels - print mailing labels from District's database. Charge - \$0.10 per each.

Rate Analysis Report - a report using historical usage information to analyze periods of 1-36 months past and consolidates totals by rate class and meter size. Charge - \$0.05 per customer record .

(d) Proposed Rate Billing Register - produces a billing register with proposed rates instead of current rates. This report is generated at time of normal billing; thus providing the District with "side by side" registers. Charge - \$0.05 per customer record .

(e) Rate Change - changes to rates and charges applicable to customer billing as requested by District. Charge - \$125.00 per hour (programmer).

(f) Customer Message - adding or changing a special "customer message" on the customer bill form

as requested by District Charge - \$25.00 per each addition or change.

*Section 5.4 — Technical Support*

The Operator shall provide the District with the following technical support:

(a) Technical Support. Diagnose, repair, replace, service hardware; diagnose and correct software defects; and install new hardware and software (or change software), Charge - \$125.00 per hour per technician including travel.

(b) Computer Consulting Services. Consult with District on matters related to computer hardware and software. Charge - \$125.00 per hour or as quoted per assignment.

(c) Programming Services. Develop and/or modify Computer System and PC software programs for District's special requirements. Charge - \$125.00 per hour or as quoted per assignment.

*Section 5.5 — Supplemental Provisions Applicable to Rates and Charges*

(a) All charges for preparing and mailing customer bills and notices include bulk mail automated pre-sorted first class postage for U.S. addresses. An extra charge for postage for non-U.S. mailed bills and notices will be applicable to bills and notices mailed to non-U.S. addresses and will be the full amount of the postage related to non-U.S. addresses.

(b) Computer system program and report format changes as well as special query reports requested by District's requiring less than one half (1/2) hour programmer time will be \$65.00 per 1/2 hour; however, extra charges will be applicable to changes to Operator's standard programs and formats requiring more than one half (1/2) hour programmer time (see rates above for Programming Services).

(c) The rates and charges shown herein are exclusive of any sales or use taxes which may be applicable to the services provided by Operator and are subject to increases in the amount of any such taxes.

(d) All handling and delivery charges pertaining to reports and other documents are at District's expense.

(e) Bill form and envelopes will be prepared using Operator standard specifications. Customer data conversion is normally billed at \$125.00 per programmer hour. District is responsible for all third party chargers in converting existing data for another billing system to a format that is acceptable to Operator. These charges will be determined in advanced and communicated to the District.

(f) All travel costs are billed at actual charges.

(g) Operator shall provide the District with the following E-Commerce features:

(1) Direct Debit payments, whereby customers sign up for EZ-PAY, which takes money directly from customer's checking/savings account automatically three (3) days prior to due date and money is deposited into District's commercial bank account.

(2) A link from District's current website to Operator website for customers to sign-on and view their accounts online. The Operator website will provide all billings, payments, adjustments and current account balances. Customers can make secure payments thru this website via a 3rd party company

using credit or debit cards as well as checks. Data is validated instantly via 3rd party and posted to customer's account on STS CIS/billing system immediately upon validation. This feature is available 23 hours/day and 7 days/week (1 hour per night is used for backup).

(3) E-Billing where customers may elect to not receive paper bill and would receive an email indicating their utility bill is available via the Operator website. A link would be provided in the email where the customer can sign-on to view their bill and can then make payment as described in subsection (2) above. A customer will not be able to receive both a paper bill and an e-bill. Cost of this service is \$.10/customer to send emails at time of billing.

*Section 5.6 — Additional Performance Criteria*

(a) If any data, instructions or information submitted by District to Operator for processing is incorrect or incomplete, District agrees to pay Operator the rates in effect at that time for the additional work and time required by Operator to correct or complete such data or otherwise prepare it for processing. District assumes the entire responsibility for such losses or damages which may be occasioned as a result of errors in output resulting from submission of incorrect data by District.

(b) If no special procedures or techniques for validating the resultant output are specified by District and accepted by Operator in writing, it is understood that the results accomplished are accepted as satisfactory upon completion of the assignment.

(c) All deliveries to and pick up of receipts from Operator's office, if any, shall be the responsibility of District and shall be accomplished at District's expense.

(d) Operator agrees to exercise normal and reasonable precautions to protect the work and all property placed under its control or in its custody against the loss and/or damage resulting from theft, fire, vandalism, the elements or otherwise.

(e) During the term of this Agreement, source data contained on magnetic tapes, disk packs, or other documents, material or property relating to Services may be stored by Operator for an interim processing period at District's sole risk. In storing same, Operator assumes no obligation or liability of any kind, nature or description in connection with said items, except for acts on the part of Operator, which are shown to be negligent.

(f) The parties agree that this Agreement is non-exclusive and that Operator has the right, at its discretion and at any time, to contract with other parties to perform services or work of a similar nature and make agreement on any terms whatsoever with said other parties to perform said services.

**ARTICLE 6 — METER INSTALLATION AND INSPECTION SERVICES**

*Section 6.1 — General*

Subject to the limits provided herein, Operator shall provide the labor, hand tools, materials and supplies necessary for the installation of potable water meters for the District's customers and the inspection of connections to the District's wastewater treatment system and related equipment to the extent specifically set forth in this Article 6 (hereinafter the "Meter and Inspection Services"). The Meter and Inspection Services include:

- (a) Installation of residential, non-residential, commercial and special meter connections;
- (b) Inspection of new sanitary sewer connections to the District's wastewater treatment system;

(c) Such other inspections as may be requested by the District, including, but not limited to, grease traps, sample wells, cross connections or new commercial or industrial facilities prior to acceptance of such facilities' wastewater by the District; and

(d) Site inspections of the District's wastewater system prior to the start of building activity; and Inspection and/or testing of backflow prevention devices.

*Section 6.2 — Quality Standards*

All meters and installation materials provided by Operator pursuant to this Agreement shall meet all applicable American Water Works Association quality standards and be in compliance with Applicable Law.

*Section 6.3 — Recordkeeping*

In order for Operator to accurately account for all meter installations and sanitary sewer inspections provided pursuant to Sections 6.1(a) and (b), Operator shall maintain permanent records of (i) all meter installations, including a plat or map illustrating the location of each meter installed, and (ii) each sewer inspection performed. Such records will be provided to the District, at no cost, upon written request.

*Section 6.4 — Compensation*

(a) The Meter and Inspection Services are not included in the Base Compensation and Operator shall be compensated for the Meter and Inspection Services in accordance with the schedule of rates set out in Exhibit E. The amount of these rates shall be increased on each Adjustment Date in accordance with the Price Index Increase. In no event shall the rates for Meter and Inspection Services be reduced by virtue of this Section.

(b) District shall pay the Operator for the Meter and Inspection Services within thirty (30) days of receipt of Operator's itemized invoice consistent with the authorization received from the District.

**ARTICLE 7 — MAINTENANCE, REPAIR, REPLACEMENT AND CAPITAL IMPROVEMENTS**

*Section 7.1 — Repair, Replacement and Corrective Maintenance Services*

(a) Operator will provide the personnel and equipment to perform the following repair and replacement services (hereinafter the "R&R Services"): For individual items with a total cost of less than Five Thousand (\$5,000) Dollars, the Operator is hereby authorized to undertake R&R Services without the prior approval of the District. For individual R&R items with a total cost of Five Thousand (\$5,000) Dollars or greater, the Operator shall receive written approval of the District before commencing such work. Operator shall provide the District a written monthly summary of R&R Services provided and the cost per item.

(i) Repairs on the Facilities' equipment, plants, collection and distribution systems including, but not limited to, service line leaks, leaks at water meters, water main breaks, repairs to valves and fire hydrants, manhole repairs, and sewer line repair and cleaning, as needed.

(ii) Replacement of equipment at the Facilities. Operator shall not be responsible to the District for any guarantees or warranties offered by others in connection with such equipment. Operator agrees to make reasonable efforts to obtain for and assign to the District the normal guarantees or warranties associated with

any replacement equipment.

(b) Notwithstanding the foregoing, Operator shall have the right to take the necessary action in an emergency in the event it is not reasonably possible to obtain prior written approval of the District of the need to perform the services specified in subsections 7.1(a)(i) and (ii) above. For purposes of this Section 7.1 only, the term "Emergency" includes, but is not limited to, the threat of the immediate Shutdown of; or substantial reduction in the operational capacity of any of the Facilities, or the life, health or property of the District and/or Operator, their employees and/or agents or others, water leaks, water line breaks, loss of water pressure, degradation of water quality, blockage in the sewage collection system, wastewater pump station failures, WWTP malfunctions that could result in regulatory or permit excursions, and any response requested by the District or its representative or response to insistent resident concerns when necessary to maintain good District relations, When Operator determines that a condition constitutes an Emergency, Operator shall begin making such repair within three (3) hours of the determination. If Operator estimates that the Emergency will cost more than Five Thousand (\$5,000.00) Dollars, Operator shall promptly inform the District of the item. Any costs for R&R Services incurred during an Emergency shall be subject to the District's subsequent review and approval. Any such cost unnecessarily incurred in an Emergency shall be borne by Operator without reimbursement by the District, but only to the extent it is subsequently determined that Operator's actions in incurring such cost were not consistent with good and prudent engineering practice given the information available to Operator at the time the decision to incur such cost was made.

(c) All labor and equipment fees for work performed by Operator under this Section 6.1 shall be compensated by the District in accordance with the schedule of rates attached as Exhibit F hereto. The amount of these rates shall be increased on each and every Adjustment Date, on an annual and compounded basis, by the Price Index Increase. In no event shall the rates and fees set out in Exhibit F be reduced by virtue of this Section. No later adjustments or re-computations, retroactive or otherwise, may be made to any annual increase due to revision of the Price Index subsequently made in the first published figure of the Price Index for any year.

(d) In an effort to reduce costs, Operator shall attempt to schedule and perform this work during normal business hours, excluding holidays and weekends. R&R Services performed on a non-Emergency basis shall not be billed on an overtime rate unless prior written approval is obtained from the District,

(e) The District shall be responsible for the cost of all R&R Services. Upon the furnishing of a written invoice to District, Operator shall be paid at cost plus ten percent (10%) for all subcontractor's, materials and supplies used to provide the R&R Services. Operator shall use its best efforts to obtain reasonable prices on quality materials and supplies.

(f) On such invoices that the District pays directly, the Operator will not be due any markup. The Operator's responsibility in such case will be limited to the ordering and receiving of the materials or services, and not include warrantees, restocking etc.,

#### *Section 7.2 — Capital Improvements*

(a) Operator, in cooperation with the District Engineer of Record, shall on an annual basis provide to District a listing of recommended Capital Improvements and the corresponding proposed Capital Expenditures in order to ensure that the operation of the Facilities will continue to conform with Applicable Law and/or in order to improve the reliability of operations.

(b) Operator may propose and/or make, with District written approval, Capital Improvements in order to comply with a Change of Law, reduce costs, increase energy efficiency, or improve the Facilities' operations. Any savings resulting from the construction of such Capital Improvements shall be shared by the parties



in accordance with Section 7.5. Any Capital Improvements that, in the District's reasonable opinion, negatively impact, on either a short-term or long-term basis, effluent quality, the margin of safety necessary to ensure compliance with Applicable Law, or service levels will not be approved.

(c) Operator may, but shall not be obligated to, finance or arrange financing and/or provide for the design and construction/installation of Capital Improvements requested by the District, subject to mutually agreeable terms and conditions.

(d) Prior to any Capital Improvement undertaken by Operator, Operator shall submit detailed plans for each Capital Improvement project to the District for review, approval and inclusion in the District's Capital Improvement Plan, which approval shall not be unreasonably withheld or delayed.

(e) Operator will not be relieved of its responsibilities to perform under this Agreement if its recommendations in Sections 7.2(a) and (b) are not approved and/or implemented by District unless the District's failure to implement such recommendations prevents Operator from complying with its obligations hereunder.

(f) During any District-approved construction or other modification of the Facilities, the District and Operator will work together to maintain Operator's access to the Facilities and to minimize disruption and outages to the Facilities' existing equipment and components. The District and Operator will jointly develop a "Plan of Action" that will address protection to Facilities' equipment and processes during any such construction and/or other rehabilitation period while providing for the continued operation of the Facilities as much as possible.

(g) Any Capital Improvements or portions thereof funded by Operator, including any equipment permanently installed or which replaces equipment existing on the Commencement Date, will become the property of Operator until such time as all unamortized costs reflected on Operator's financial statement are paid by the District. However Operator shall not remove any such improvement or equipment necessary for maintaining Facilities operations.

#### *Section 7.3 — Subcontractors*

The employment of subcontractors by Operator involving expenditures in each instance of Five Thousand (\$5,000.00) Dollars or more under Section 7.2 must first be approved by the District. Such approval shall not be unreasonably withheld or delayed. Operator shall require its subcontractors to provide the District with bonds and/or insurance and meet all requirements necessary for compliance with the District's standards and Applicable Law.

#### *Section 7.4 — Record Drawings*

Upon the completion of any approved Capital Improvement, Operator shall provide the District, at no additional charge, two (2) sets of reproducible record drawings and two (2) sets of operation and maintenance manuals for the constructed components, and one (1) set of each in an electronic format that is compatible with the District's information technology systems. Any changes to the District's operations and maintenance manual must be approved, in writing, by the District. Such approval shall not be unreasonably withheld or delayed.

#### *Section 7.5 — Operational Savings*

Operator shall strive to operate and maintain the Facilities effectively and efficiently Any operational cost

reductions attained as a result of a reduction in the utilization of utilities, consumables or labor derived from either District approved operational changes or District approved Capital Improvements shall be shared among the District and Operator by adjusting the Base Compensation in an amount equal to each party's proportionate share of the savings allocated in accordance with the table below. Any operational changes or Capital Improvements that, in the District's reasonable opinion, negatively impact, on either a short-term or long-term basis, effluent quality, the margin of safety necessary to ensure compliance with Applicable Law, or service levels will not be approved.

Type of Cost Reduction	District Share of Actual Savings	Operator Share of Actual Savings
District approved operational change which does not lower service levels and/or effluent quality, nor require capital.	0%	100%
Operational savings attained as a result of Capital Improvements paid for by the District.	100%	0%
Operational savings attained as a result of Capital Improvements that the District does not wish to fund, but authorizes Operator to implement. Operator shall have the right to fund each Capital Improvement approved by the District to the extent that such Capital Improvement, at the time of approval, is projected to cost Operator \$50,000 or less.	0%	100%
Operational changes attained as the result of Capital Improvements paid for by both Operator and the District.	% of the Capital Improvement funded by the District	% of the Capital Improvement funded by Operator

**ARTICLE 8 — ENVIRONMENTAL COMPLIANCE GUARANTEE**

*Section 8.1 — Environmental Compliance Guarantee*

The Operator hereby guarantees (the “Environmental Compliance Guarantee”) that the operation of the Facilities will comply with the all provisions of Applicable Law, including the District’s Discharge Permits, subject to the following conditions:

- (a) The receipt at the Facilities of influent that contains Non-Processible Water; and/or
- (b) An event of Force Majeure or Shutdown; and/or
- (c) District's failure or refusal to approve or fund necessary Capital Improvements, maintenance, repair, and/or replacement activities in excess of the single expenditure repair and maintenance approval limit or the Annual Repair and Maintenance Limit; and/or
- (d) District's failure or refusal to approve operational/process changes necessary in order to allow the Operator to continue to comply with Applicable Law.

*Section 8.2 — Treatment of Non-Processible Influent*

In the event that Operator is excused from meeting the provisions of the Environmental Compliance Guarantee for any of the reasons set forth in Section 8.1 above, Operator shall provide the best treatment reasonably possible within the constraints of the Facilities' design, physical limitations and existing loadings and shall resume normal operations within a reasonable time.

*Section 8.3 — Fines and Penalties*

In the event that wastewater or water violations occur following the Commencement Date and such violations constitute a breach of Operator's Environmental Compliance Guarantee, Operator shall be responsible for any and all fines, penalties, or damages for violations that may be imposed by Applicable Law. Prior to payment of any such fines, penalties or damages, Operator, at its sole cost, reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise.

**ARTICLE 9 — RESPONSIBILITIES OF THE DISTRICT**

*Section 9.1 — District's and Operator's Representatives*

On or before the Commencement Date, the District and Operator shall each designate authorized representatives (each an "Authorized Representative") to administer this Agreement. Either party to this Agreement shall provide written notice to the other party of any change to the Authorized Representatives no less than fifteen (15) days prior to said change.

*Section 9.2 — Permits*

The District shall be responsible for obtaining and maintaining all state, federal, and local permits and licenses required for ownership and operation of the Facilities, including without limitation, the Environmental Permits. The District shall also be responsible for the payment of all regulatory and governmental fees associated with ownership and operation of the Facilities and the District's equipment used in connection with the operation and maintenance of the Facilities. Operator shall obtain the necessary certifications for its operators and personnel required by the Environmental Permits and Applicable Law, as well as all business permits that are required or appropriate in connection with the performance of the services required by this Agreement. The parties shall cooperate with and assist each other as reasonably required to submit applications for such permits and licenses.

*Section 9.3 — Utilities*

The District shall assume all responsibility and cost for obtaining utility services to the Facilities, including water, electricity and telephone services, and shall be responsible for maintaining water, electricity and telephone service to the Facilities at its sole cost and expense.

*Section 9.4 — Compliance with Laws*

The District will comply with Applicable Law pertaining to the Facilities to the extent that the responsibility of complying with those laws is not specifically assumed by Operator under the terms of this Agreement. Operator shall not be responsible for District's failure to comply with any provision of Applicable Law.

*Section 9.5 — License to Use the Facilities*

The District hereby grants to Operator, without charge, a license during the term of this Agreement for Operator's use of the Facilities exclusive of third parties, including all equipment, structures, facilities, rolling stock and vehicles under the District's ownership and assigned by the District to the Facilities. The District agrees to provide Operator with all information in the District's possession concerning the operation and maintenance of the Facilities.

*Section 9.6 — Notice of Litigation*

In the event that the District receives notice of or undertakes the defense or the prosecution of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with either the ownership, management operation and/or maintenance of the Facilities, the District shall give Operator prompt written notice of such proceedings and shall inform Operator in advance of all hearings regarding such action, claim, suit, proceeding, or investigation. In the event Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, management, operation and/or maintenance of the Facilities, Operator shall give District prompt written notice of such proceedings and inform the District in advance of all hearings regarding such action, claim, suit, proceeding, or investigation.

*Section 9.7 — Disclosure of Information*

The District represents and warrants that it has disclosed, and will in the future disclose, any and all information it now has, or may have in the future, relating to the Facilities that may be relevant to Operator in performing its duties and obligations.

*Section 9.8 — Combined Sewer Overflow and Inflow and Infiltration*

(a) The District shall be responsible for complying with applicable combined sewer overflow regulations under local, State and federal laws and Operator shall not be responsible for any such noncompliance or resulting penalties or fines.

(b) The District shall maintain all sewer lines, pipes, force mains, and all other wastewater transportation lines that are not part of the Facilities under Operator's control in a manner that will control, to the extent practicable, any leakage of wastewater from or any infiltration of storm water into any such lines to the extent that the infiltration causes damage to the operation of any of the Facilities.

*Section 9.9 — General Authority*

The District shall perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Facilities not expressly assumed by Operator pursuant to the terms of this Agreement.

*Section 9.10 — Additional Utility Billing Responsibilities of the District*

The District shall:

- (a) Notify Operator in writing at least thirty (30) days prior to effective date of change of District's return address and/or zip code, changes to rates, and any other material change. District is responsible for verifying the accuracy of any changes requested and made by Operator.
- (b) Process all property liens for collection of delinquent utility bills.
- (c) Notifications to customers for regulatory notices, including boil water notices.

**ARTICLE 10 — COMPENSATION**

*Section 10.1 — Base Compensation*

(a) For the period beginning on the Commencement Date, the District shall pay Operator an annual fee (the "Base Compensation") in the amount of Three Hundred Sixty Eight Thousand, Five Dollars and Fifty Six Cents (\$368,005.56) in consideration for Operator providing the Basic Services hereunder. The Base Compensation shall be payable in equal monthly installments of Thirty Thousand, Six Hundred Sixty Seven Dollars and Thirteen Cents (\$30,667.13), in advance, on the first day of every month for the duration of the Agreement, as adjusted pursuant to subparagraph (b) below.

(b) The amount of the Base Compensation shall be increased on each Adjustment Date, on an annual and compounded basis, in accordance with the following formula. The Base Compensation shall be adjusted by multiplying the current Base Compensation by the Price Index Increase times one plus half the percentage increase in the average number of connections during the current year to the average number of connections for the twelve (12) months prior to the Commencement Date. In no event shall the Base Compensation be reduced by virtue of this Section.

$$AAF = AFo \times [Co/C] \times [1 + .5((CN - CNo) / CNo)]$$

AAF = Adjusted Annual Fee

AFo = Base Compensation as of the Commencement Date

C = Price Index as of the Commencement Date

Co = Price Index as of each and every Adjustment Date

CN = Monthly average number of water/sewer connections during the Agreement Year immediately preceding the Adjustment Date

CNo = Monthly average number of water/sewer connections over the twelve (12) month period prior to the Commencement Date, which number shall be agreed to by the parties within ninety (90) days following the

Commencement Date.

*Section 10.2 — Payment of Meter and Inspection Services and RIR Services*

(a) The District shall pay Operator for all Meter and Inspection Services as enumerated in Section 6.1 of this Agreement, These costs and expenses shall be payable within thirty (30) days of the District's receipt of Operator's invoices for such Meter and Inspection Services.

(b) The District shall pay Operator for all R&R Services as enumerated in Section 7.1 of this Agreement. These costs and expenses shall be payable within thirty (30) days of the District's receipt of Operator's invoices for such R&R Services.

*Section 10.3 — Compensation for Utility Billing and Customer Service*

(a) For rendering Services in Article 5, District shall pay Operator rates and charges set forth in Article 5 of this Agreement.

(b) On or about the tenth (10<sup>th</sup>) day of each month, Operator will render an itemized invoice for such services performed during the preceding month. Invoices are due and payable within thirty (30) day of receipt and any amounts not paid will bear interest and penalties as provided in the Florida Prompt Payment Act.

(c) The rates and charges specified in Article 5 shall automatically increase in an amount equal to any increase in the U.S. Postal Service rates applicable to mailing customer bills upon effective date of increase.

(d) The rates and charges in Article 5 shall be increased on each Adjustment Date on an annual and compounded basis, by the Price Index Increase. In no event shall the rates and charges be reduced by virtue of this Section.

(e) The District shall pay Operator at the then current rate of compensation until such time as the Operator notifies the District that the Rates and Charges have been adjusted. In conjunction with such notification, Operator will invoice the District for any additional compensation owed retroactive to the Adjustment Date and the District shall pay such invoice within thirty (30) days.

(f) The rates and charges shall be amended upon implementation of District's requests for changes to the character of Services or procedures in connection with performing same, in which case the parties shall prepare an addendum to this Agreement setting forth such services for a mutually agreeable compensation.

*Section 10.4 — Other Costs and Expenses*

Unless specifically provided otherwise in this Agreement, and unless caused by the wrongful or negligent acts or omissions of Operator, Operator will not be required to bear the costs of the following:

- (a) Expenses resulting from a change in the scope of Basic Services or physical change(s) to the Facilities;
- (b) All repairs necessitated by the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;
- (c) Special, additional or extraordinary expenses incurred by Operator in providing an emergency response following the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;

- (d) Expenses related to municipal or private surveillance and alarm monitoring by third party vendors;
- (e) Fire protection;
- (f) Professional engineering fees and activities outside the scope of technical services to be provided pursuant to Section 4.8 herein;
- (g) Expenses resulting from hydraulic or organic loads exceeding the Baseline Wastewater Conditions;
- (h) Expenses incurred from the treatment of Non-Processible Influent, including without limitation, any penalties and fines that may be assessed as a result therefrom;
- (i) Cost of utilities, including electrical power, telephone and water services;
- (j) Capital Improvements;
- (k) Taxes as provided in Section 10.6 below
- (l) All costs attributable to the transportation and disposal of Process Residue;
- (m) Treatment for aquatic vegetation of the reuse and reject ponds;
- (n) Expenses resulting from the production of finished water in excess of the Baseline Water Production level;
- (o) Costs for all work performed by subcontractors pursuant to this Agreement; and
- (p) All costs for chemicals used by Operator in the performance of its obligations under this Agreement. The District reserves the right to designate chemical suppliers to be utilized, provided such suppliers can provide the quality, quantity and meet required delivery schedules necessary for the operations of the Facilities.

The District shall directly pay and/or reimburse and/or compensate Operator for all expenses incurred or paid by Operator for those items listed in (a) through (r) above within thirty (30) days of Operator's submission of Operator invoices, For the listed items specified above, the District shall reimburse or compensate Operator only for authorized costs incurred by Operator All costs or expenses subject to reimbursement (excluding any taxes as provided in Section 10.6 below or surcharges shall, unless covered by this Section 10.4, include an administrative fee of ten percent (10%), excluding those items paid directly by the District in accordance with Section 7.1(f), plus any finance costs incurred in connection with any Capital Improvements financed by Operator.

*Section 10.5 — Change in Base Compensation Attributable to Change of Law*

In the event that a Change of Law is expected to result in either an increase or decrease to Operator's cost of providing the Basic Services hereunder, Operator will provide notice to the District in accordance with Section 14.9 and the parties shall negotiate in good faith to adjust the Base Compensation to account for such change in Operator's costs, If the parties are unable to reach a negotiated agreement within one hundred and twenty (120) days of the date of notice, then the Agreement contract may be terminated immediately by either party.

*Section 10.6 — Taxes*

The District shall be responsible for all applicable real estate, personal property, sales, excise and utility taxes applicable to the Facilities and the Services provided by Operator to the District under this Agreement. Operator shall be responsible for Operator's income taxes, taxes on Operator's personal property onsite, and all Operator-employee related wages and taxes.

*Section 10.7 — Accrual of Interest on Late Payments*

Any and all late payments due to either party from the other party shall accrue interest at the Prime Rate from the original due date and until payment is received. In the event of an over-payment by the District due to a fault of Operator, additional credit shall accrue to the District in an amount equal to the interest calculated at the Prime Rate on such over-payment from the time in which such credit should have been provided until such time as actual credit is provided.

**ARTICLE 11— TERM AND TERMINATION**

*Section 11.1 — Term*

(a) This Amended Agreement will commence on July 1, 2013, (the "Commencement Date") and will continue until June 30, 2016, unless terminated as provided for below. Thereafter, this Agreement shall be automatically renewed for three (3) additional three (3) year periods unless cancelled in writing by either party at least ninety (90) days prior to the expiration of the then current term, Severn Trent shall provide the District at least 120 day notice of the pending expiration of each term of the Agreement.

(b) If the Agreement is automatically renewed and is not otherwise terminated, all terms and conditions of this Agreement, except the Base Compensation payable to Operator, shall remain in full force and effect unless modified in writing and signed by both parties. Modifications to the Base Compensation shall be made pursuant to Section 10.1 of this Agreement.

*Section 11.2 — Termination for Default*

(a) The failure of either party to comply with the material terms of this Agreement shall constitute a default. Upon default by one party, the other party shall send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting party ninety (90) days to cure the default. If the default is capable of being cured within ninety (90) days but is not cured within ninety (90) days, the Agreement shall terminate at midnight of the ninetieth (90<sup>th</sup>) day following receipt of the Notice. In the case of default that cannot be cured within ninety (90) days, this Agreement shall not terminate so long as the defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure. Evidence of such cure and its diligent pursuit shall be provided from the party determined to be in default to the reasonable satisfaction of the non-defaulting party.

(b) In the event of the termination of this Agreement under (a) above, the District shall pay Operator for the (i) Basic Services, R&R Services, Meter and Inspection Services, and the utility billing and customer services invoiced by Operator up to the effective date of termination; and (ii) all unamortized costs of Capital Improvements financed or paid for by Operator, less any and all reasonable costs and expenses incurred by the District resulting from Operator's default (if Operator is in default) plus any and all reasonable costs and expenses incurred by Operator resulting from the District's default (if the District is in default). Payment shall be made within thirty (30) days of the date of termination.



*Section 11.3 — Termination for Insufficient Funds*

(a) To the extent sufficient monies are not appropriated or otherwise made available by or on behalf of the District during any Agreement Year to support the operation and maintenance of the Facilities, this Agreement shall be immediately terminated.

(b) In the event of the termination of this Agreement under (a) above, the District shall pay Operator for the (i) Basic Services, R&R Services, Meter and Inspection Services and the utility billing and customer services invoiced by Operator up to the effective date of termination; and (ii) all unamortized costs of Capital Improvements financed or paid for by Operator. Payment shall be made within thirty (30) days of the date of termination.

*Section 11.4 — Termination for Convenience*

(a) At any time during the term of this Agreement, the District may terminate this Agreement for convenience in its sole discretion, whether or not reasonable, at any time by providing Operator with ninety (90) days prior notice.

(b) In the event of the termination of this Agreement under (a) above, the District shall pay Operator for the (i) Basic Services, R&R Services, Meter and Inspection Services and the utility billing and customer services invoiced by Operator up to the effective date of termination; (ii) all unamortized costs of Capital Improvements financed or paid for by Operator; and (iii) a fee equal to the number of months (and fractions thereof) remaining on the then current term of the Agreement at the date of termination multiplied by Three Thousand Two Hundred (\$3,200.00) Dollars. Payment shall be made within thirty (30) days of the date of termination.

**ARTICLE 12 — RISK MANAGEMENT**

*Section 12.1 — Indemnification*

(a) During the term of this Agreement, Operator shall defend indemnify and hold harmless the District, its officers, agents and employees against any and all liability for damages, costs, losses, penalties and expenses including reasonable attorney's fees resulting from any claim asserted by a third party for wrongful death, personal injury and/or property damage which are caused solely by Operator's breach of this Agreement or by the willful or negligent acts or omissions of Operator and its officers, agents, employees and/or subcontractors in the performance of its Services under this Agreement. However, to the extent that both District and Operator are determined by a finder of fact to be negligent and the negligence of both is a proximate cause of a claim against District for damages arising from the operation and maintenance of the Facilities, then in such event, District and Operator shall each be responsible for the portion of the liability equal to its comparative share of the total negligence. Notwithstanding the foregoing, with respect to any loss, damage, injury or other claims made against District as a result of or based upon the presence, removal, handling, storage, release, discharge, escape or other disposition of any hazardous substances, waste, pollutants or contaminants, Operator's obligations to District for indemnity shall not apply if such removal, handling, storage, release, discharge, or other disposition is not required by this Agreement, if any, or any local, state or federal law, rule or regulation, or where the loss, damage, injury or claim is not the result of Operator's gross negligence or willful misconduct in its handling, removal, disposal, storage, release, discharge, escape or other disposition of any hazardous substances, waste, pollutants or contaminants.

(b) During the term of this Agreement, the District shall defend indemnify and hold harmless Operator, its officers, agents and employees against any and all liability for damages, costs, losses, penalties and expenses including reasonable attorney's fees resulting from any claim asserted by a third party for wrongful death, personal injury and/or property damage which are caused solely by the District's breach of this Agreement

or by the willful or negligent acts or omissions of the District in the performance of its duties under this Agreement.. However, to the extent that both District and Operator are determined by a finder of fact to be negligent and the negligence of both is a proximate cause of a claim against District for damages arising from the operation and maintenance of the Facilities, then in such event, District and Operator shall each be responsible for the portion of the liability equal to its comparative share of the total negligence. Notwithstanding the foregoing, with respect to any loss, damage, injury or other claims made against District as a result of or based upon the presence, removal, handling, storage, release, discharge, escape or other disposition of any hazardous substances, waste, pollutants or contaminants, Operator's obligations to District for indemnity shall not apply if such removal, handling, storage, release, discharge, or other disposition is not required by this Agreement, if any, or any local, state or federal law, rule or regulation, or where the loss, damage, injury or claim is not the result of Operator's gross negligence or willful misconduct in its handling, removal, disposal, storage, release, discharge, escape or other disposition of any hazardous substances, waste, pollutants or contaminants.

(c) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if such party has been advised of the possibility of such damages.

#### *Section 12.2 — Operator's Insurance*

Operator shall maintain at its sole cost, the following insurance during the term of this Agreement:

- (a) General Liability Insurance in the amount of Five Million (\$5,000,000) Dollars combined single limit for personal injury and property damage.
- (b) Worker's Compensation Insurance for all Operator employees providing the Services required under this Agreement, in an amount that is consistent with Applicable Law. On or prior to the Commencement Date, Operator shall furnish the District with satisfactory proof of such insurance. These policies will be in effect on the Commencement Date. The District shall be included as an additional insured according to its interest during the term of this Agreement, and shall be provided with written notice when any changes are made with respect to such policies.

#### *Section 12.3 — District Insurance*

The District will maintain property and structures liability insurance, flood and fire insurance policies, including extended coverage plus coverage for vandalism, theft and malicious mischief, to the full insurable value of the Facilities. Operator shall be named as an additional insured according to its interest under this Agreement during the term of this Agreement.

#### *Section 12.4 — Operator's Liability*

In the event that claims(s) raised against the Operator on account of this Agreement, or on account of the Services performed hereunder, is/are covered under Operator's insurance policies required of the Operator hereunder, the Operator shall not be responsible for any loss, damage or liability beyond the policy amounts contractually required hereunder and the limits and conditions of such insurance policies. With respect to any other causes of action and/or claims raised against the Operator that are not covered by the insurance policies required of the Operator hereunder arising under this Agreement, Operator's liability shall not exceed an aggregate amount equal to Five Hundred Thousand Dollars (\$500,000).

## ARTICLE 13 — DISPUTE RESOLUTION

### *Section 13.1 — Applicability*

To effect a timely and efficient resolution of disputes that may arise during the term of this Agreement, the parties hereto agree that all claims, controversies and disputes, shall be resolved pursuant to Section 13.2.

### *Section 13.2 — Disputes*

If a dispute arises pursuant to this Agreement and is not resolved by mutual agreement within sixty (60) calendar days, upon the agreement of the parties, and the dispute involves any matter(s) primarily requiring the exercise of engineering judgment and involves an amount, if any, of Two Hundred Thousand (\$200,000) Dollars or less, the dispute shall be brought to the Independent Engineer who shall assume exclusive jurisdiction thereof. Any other dispute may be brought to the Independent Engineer mutually by the parties or shall be subject to resolution as the parties deem appropriate, including through mediation, arbitration or litigation. The determination of whether a matter primarily requires engineering judgment shall be resolved in accordance with procedures established by the American Arbitration Association. The Independent Engineer shall be required to make a final determination, not subject to appeal, within thirty (30) days from receipt of such dispute by the Independent Engineer. The District and Operator shall be bound by the terms of the Independent Engineer's final determination. The determination by the Independent Engineer shall be made in writing, shall contain written findings of fact on which the decision is based and shall be specifically enforceable by a court of competent jurisdiction. The reasonable expenses of both parties incurred in connection with the resolution of any dispute hereunder shall be borne and paid for by the party losing such dispute; except, however, that each Party shall bear the cost of its own attorney's fees, unless the Independent Engineer determines that the nature of the action or defense of the losing Party was frivolous, in which event the prevailing party's fair and equitable attorney's fees incurred will be paid by the losing party in addition to the losing party's payment of other expenses.

### *Section 13.3 — Selection of Independent Engineer*

The Independent Engineer, and any successor Independent Engineer, shall be mutually selected by the parties herein to serve in such capacity pursuant to this Agreement. The Independent Engineer shall not otherwise be affiliated with either party or associated with the transactions contemplated by this Agreement, unless otherwise agreed to by the parties hereto in writing. Such Independent Engineer shall have substantial knowledge with respect to water and wastewater treatment systems. Fees of the Independent Engineer so selected shall be paid one-half by Operator and one-half by the District. Operator and the District shall cooperate to retain the Independent Engineer upon terms and conditions mutually satisfactory to Operator and the District as soon as practicable after selection of the Independent Engineer.

### *Section 13.4 — Replacement of the Independent Engineer*

If the Independent Engineer resigns, if the parties mutually agree to terminate the services of the selected Independent Engineer or if the parties mutually agree that the Independent Engineer is subject to a conflict of interest or has committed malfeasance, then the parties shall mutually agree on a replacement. The successor Independent Engineer shall not otherwise be affiliated with either party or associated with the transactions contemplated by this Agreement, unless otherwise agreed to by the parties hereto in writing. The successor Independent Engineer shall also have substantial knowledge with respect to wastewater treatment systems. If Operator and the District have not agreed upon the selection of a successor Independent Engineer within ninety (90) days of the resignation or termination of the Independent Engineer, the parties shall arrange for a new Independent Engineer to be selected by the American Arbitration Association as expeditiously as possible. The successor Independent Engineer's fees shall be paid in the same manner as provided in Section 12.3.

*Section 13.5 Covenant to Continue Work*

During resolution of any dispute under this Article, Operator and the District shall each continue to perform all of their respective obligations under this Agreement without interruption or delay.

**ARTICLE 14 — MISCELLANEOUS**

*Section 14.1— Relationship*

The relationship of Operator to the District is that of independent contractor for all purposes under this Agreement, including for the purposes of applicable wage, tax, fringe benefit and worker compensation laws. This Agreement is not intended to create, and shall not be construed as creating, between Operator and District, the relationship of principal and agent, joint venturers, co-partners or any other similar relationship, the existence of which is hereby expressly denied.

*Section 14.2 — Construction*

In construing this Agreement, the following principles shall be followed: (i) no consideration shall be given to the captions of the articles, sections, subsections or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in construction; (ii) no consideration shall be given to the fact or presumption that any of the parties had a greater or lesser hand in drafting this Agreement; (iii) examples shall not be construed to limit, expressly or by implication, the matter they illustrate; (iv) the word "includes" and its syntactic variants mean "includes, but is not limited to" and corresponding syntactic variant expressions; (v) the plural shall be deemed to include the singular, and vice versa; (vi) each gender shall be deemed to include the other genders; (vii) each exhibit, appendix, attachment and schedule to this Agreement is a part of this Agreement; and (viii) any reference herein or in any schedule hereto to any agreements entered into prior to the date hereof shall include any amendments or supplements made thereto.

*Section 14.3 — Entire Agreement; Amendments*

This Agreement contains the entire agreement between the District and Operator and supersedes all prior or contemporaneous communications, representations, understandings or agreements. This Agreement may be modified only by a written amendment signed by both parties.

*Section 14.4 — Waiver*

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

*Section 14.5 Assignment*

This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. The District may assign this Agreement to a new owner of the Facilities if the District sells the Facilities, provided, however, that such assignee expressly and in writing assumes all obligations of the District under this Agreement. Nothing contained in this Section 14.5 shall be construed to (i) release Operator in the event of an assignment of Operator's interest; or (ii) release the District from its payment obligations in Article 5 and Article 10 of this Agreement and/or its indemnification obligations in Section 12.1.

*Section 14.6 Access and Inspection by the District*

(a) The District shall have full and unrestricted access to any and all parts of the Facilities at any and all times to review the performance of Operator and inspect the Facilities. If notice is not provided prior to any such visit or inspection, such visit or inspection must be announced immediately upon the arrival of the visiting and/or inspection party at any of the Facilities. In connection with such visits and inspections, the District agrees on behalf of itself, and further agrees to require its agents, licensees, or invitees, to comply with all reasonable safety rules and regulations adopted by Operator and/or promulgated by any governmental authority that regulates work place safety.

(b) Operator shall provide the District with access, during normal business hours and upon reasonable prior notice, to Operator's financial and operating records related to the Facilities for the purpose of auditing costs or verifying Operator's performance under this Agreement.

*Section 14.7 — Force Majeure*

A party's performance of any obligation under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure. In any such event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder.

*Section 14.8 - Governing Law and Venue*

The Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties agree that the venue of any action arising from this Agreement shall be in the appropriate State court having competent jurisdiction located in Sarasota County, Florida.

*Section 14.9 - Notices*

All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person, Notices required to be given to Operator will be addressed to:

Severn Trent Environmental Services, Inc.,  
4837 Swift Road, Suite 100  
Sarasota, FL 34231  
Attn: Richard Gardner, Regional General Manager

Notices required to be given to the District will be addressed to:

Riverwood Community Development District  
5911 Country Lakes Drive  
Fort Myers, FL 33905  
Attn: Cal Teague, District Manager

*Section 14.10 - Severability*

Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.

*Section 14.11 - Counterparts*

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

*Section 14.12 — Modification of Agreement*

No change in or modification, termination or discharge of this Agreement, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by all parties to be or their duly Authorized Representative, provided, however, that any change in or modification, termination or discharge of this Agreement expressly provided for in this Agreement shall be effective as so provided.

*Section 14.13 — Survival*

The rights and obligations of the parties hereto pursuant to this Agreement and in any certificate, agreement or instrument delivered in connection with the transactions contemplated hereby, shall survive the expiration or termination of this Agreement for a period of one (1) year.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first set forth above.

RIVERWOOD COMMUNITY DEVELOPMENT DISTRICT

By: \_\_\_\_\_

Title:

Attest:

By: \_\_\_\_\_

It's: \_\_\_\_\_

SEVERN TRENT ENVIRONMENTAL SERVICES, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and legal sufficiency this \_\_\_\_ day of \_\_\_\_\_, 2013.

**EXHIBIT A**  
**DESCRIPTION OF FACILITIES**

**EXHIBIT B  
BASELINE WASTEWATER CONDITIONS**

Mo/Yr	Influent CBOD	Influent TSS	Flow
	(mg/L)	(mg/L)	(MOD)
March	250	248	0.162
April	205	314	0.162
May	161	158	0.084
June	135	116	0.078
July	131	124	0.090
August	136	277	0.091
September	87	99	0.189
October	137	173	0.092
November	178	167	0.128
December	231	228	0.189
January	242	233	0.189
February	217	211	0.189





**EXHIBIT C  
BASELINE WATER PRODUCTION**

**Riverwood Community Development District**

Water Consumption \_\_\_\_ - \_\_\_\_ (8" Master Bulk Meter)

Month	Year	Consumption (Million Gallons)	Comments
March		14.2	
April		13.4	
May		8.81	
June		8.54	
July		3.79	
August		5.05	
September		3.70	
October		2.87	
November		4.45	
December		3.81	
January		5.18	
February		4.52	

EXHIBIT D  
ENVIRONMENTAL PERMITS

**EXHIBIT E  
METER AND INSPECTION SERVICES RATES**

(a) The following types of residential water meters shall be installed by Operator for the below listed fees, which shall include the meter, associated fittings and labor charges:

**Meter Installation (1)**

Meter Size (inches)	Total Cost (\$)
5/8	98.65
1	150.00

(b) The following types of residential water meters shall be installed by Operator for the below listed fees, which shall include the meter, meter box, associated fittings and labor charges:

<b>Meter Box and Meter Installation (1)</b>	
Meter Size (inches)	Total Cost (\$)
5/8	153.47
1	235.69

(c) The meter installation and fees described in Sections (a) and (b) above are for potable and reuse meters and are based on the assumption that the main has already been tapped by a party other than Operator. The total cost of these installations includes up to forty (40) linear feet of polyethylene tubing, which shall be provided by Operator. If a tap is necessary, Operator will provide the District with a proposal for such costs.

(d) Commercial Meters Commercial connections and other special connections will be made for a price quoted for each installation in accordance with the applicable specifications.

(e) Sanitary Sewer inspections. Operator shall inspect each new sanitary sewer connection to the District's wastewater treatment system for a fee of Fifty Five (\$55) Dollars for residential connections and Fifty Five (\$55) Dollars for commercial connections.

Backflow Prevention Inspections. Operator shall perform backflow prevention device inspections for a fee of Fifty Five (\$55) Dollars for each such inspection or rejection. Backflow prevention devices completed in bulk (minimum of 18) will be done for a fee of Thirty Five (\$35) dollars for each inspection

(g) Operator shall perform other inspections as requested or authorized by the District for a fee that is determined by the standard rates for personnel and equipment used, attached as Exhibit F to this

Agreement.

(h) Backflow Testing. Operator shall perform backflow prevention device testing for a fee of Eighty (\$80) Dollars for each such test.

**EXHIBIT F  
LABOR AND EQUIPMENT RATES**

Supervisor/Foreman	\$82.22 per hour
Licensed Operator	\$82.22 per hour
Backhoe w/operator	\$164.43 per hour
Electrician w/vehicle	\$93.18 per hour
Utility Vehicle/Service Truck w/operator	\$60.29 per hour
Crane Truck w/operator	\$82.22 per hour
Instrumentation Technician w/Service Truck	\$137.03 per hour
*Vactornet Unit (4-hour min.) including technician	\$274.05 per hour + dump fee
*Televising Unit (4-hour min.) including technician	\$197.32 per hour
Air Compressor	\$24.66 per hour

\*These units will be available on a per-foot based cost quoted by job.

Outside contractor and materials billed at cost plus fifteen percent (15%)

Overtime rates of time and one-half will apply for work performed before 7:30 a.m. and after 4 p.m., or in excess of eight (8) hours per day or forty (40) hours per week, and on weekends and holidays. Holidays are New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day and Christmas Day.