



REQUEST FOR BOARD ACTION

ITEM NO. 14.

DATE OF MEETING: October 4, 2010

REQUESTED BY: Rick Benton, County Manager

SHORT TITLE: Resolution Authorizing Execution of Agreements with Integra Water LLC for the Provision of Construction, Ownership and Operation of Wastewater Facilities to be located in the Rocky Point Topsail Water and Sewer District

BACKGROUND: Rocky Point Topsail Water and Sewer District (District) staff and representatives of Integra Water LLC have been working over the past year to develop an agreement providing for the construction, ownership and operation of wastewater facilities (transmission lines and treatment facilities) to be located in the District. The initial facilities to be constructed are proposed to include approximately 18 miles of wastewater transmission line along the US 17 and NC 210 corridors. Discussions have resulted in the development of two agreements, a Facilities Construction and Contribution Agreement and a Master Services Agreement.

The Facilities Construction and Contribution Agreement provides that Integra Water LLC will design, permit and construct initial facilities (and future facilities), and will convey them to the District at no cost to the District, free and clear of all liens and encumbrances. The agreement provides for the execution of a Master Services Agreement providing for Integra Water LLC to operate the facilities, and provides for the opportunity for the District to terminate the agreement and to acquire the facilities from Integra Water LLC.

The Master Services Agreement provides that Integra Water LLC will provide the services necessary to operate the facilities including but not limited to operations and maintenance, system development and engineering, accounting and compliance monitoring/permitting. The agreement provides for compensation to be paid by the District to Integra Water LLC for these services, and for the provision of system replacement and utilization of reserves.

A copy of the proposed Facilities Construction and Contribution Agreement and Master Services Agreement is attached. The District employed the services of the Municipal and Financial Services Group to review the terms and conditions of the agreements, to conduct a due diligence review of the financial condition and resources of Integra Water LLC, and to review the financial model. Recommendations of the Group for the benefit of the District have been incorporated into the agreement.

SPECIFIC ACTION REQUESTED: To consider a resolution authorizing execution of the Facilities Construction and Contribution Agreement and Master Services Agreement providing for the construction, ownership and operations of wastewater facilities to be located in the Rocky Point Topsail Water and Sewer District, subject to final approval of the County Manager and County Attorney.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

RTB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby authorizes the Chairman to execute the Facilities Construction and Contribution Agreement and Master Services Agreement with Integra Water LLC in substantially the same form provided to the Board attached hereto, subject to the final approval of the County Manager and County Attorney. The Chairman/County Manager are authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Tate ___ Blanchard ___ Brown ___ Rivenbark ___ Williams ___

Jimmy T. Tate, Chairman Date

ATTEST Date

SUMMARY OF ROCKY POINT DISTRICT-INTEGRA WATER LLC AGREEMENTS

Facilities Construction and Contribution Agreement

- Provides for the construction by Integra of 18 miles of wastewater transmission and 250,000 gallons per day of treatment facilities along the US 17 corridor, and conveyance to the District at no cost, and free and clear of liens.
- Provides District review and approval of system plans and specs, and developer contribution agreements.
- Provides for the expansion of the original facilities by Integra, or District; with Integra operating-maintaining original system and expansions.
- Provides for minimum threshold of \$3 million or 750 EDUs to start construction of original facilities; and requires Integra to post performance guarantee for balance.
- Provides for system purchase by District during term of agreement (30 years), initially at 15 year anniversary, then 20, 25, 28 and 29. Payment is capital account and expansion account balance, plus a multiple of preceding 12 months aggregate amounts of monthly fees
- Provides for default, remedies, mediation, etc.
- Provides for a Master Services Agreement providing for Integra's operational services to the facility.

Master Services Agreement

- Provides that all fees paid by District to Integra are paid exclusively out of District revenues resulting from this agreement.
- Provides for a term of 30 years.
- Provides that System Development Fees and Developer Contributions are put into a capital account to pay for initial system construction; and in an expansion account to pay for future expansions.
- Provides for compensation to Integra for their risk investment of capital for the initial system, and expansions, at a rate of return of 9% per annum on the costs actually incurred to construct the system.
- Provides for default, remedies, mediation, etc.; provides for liquidated damages against District for default.
- Provides for reservation of capacity for commercial/industrial development; District must pay to reserve upon election to do so.
- Provides for operations and maintenance standards; customer service standards.
- Provides that Integra is responsible for repairs and maintenance, and District is responsible for future replacements of system; and provides that District must set aside a minimum of \$5 per EDU per month in a "replacement" fund.
- Provides for an initial monthly fee per EDU to Integra by District of \$44 per EDU (represents 6,000 gallons per month). \$5 replacement fee (or what is set by District) is added to the monthly fee for the total customer monthly cost.
- Provides that District sets customer rate annually, rate will include monthly fees to Integra, replacement reserves, and costs of administration of agreement (billing, etc.).

FACILITIES CONSTRUCTION AND CONTRIBUTION AGREEMENT

This Facilities Construction and Contribution Agreement (“Agreement”) is made and entered into this ____ day of _____, 2010, by and between Rocky Point/Topsail Water and Sewer District (hereinafter “Rocky Point”), and Integra Water LLC (hereinafter “Integra”).

WHEREAS, Integra intends to construct certain sewer main and sewage treatment facilities in Pender County, North Carolina suitable for the collection, transportation, treatment, and disposal of wastewater and sewage in the Topsail township portion of Pender County (“Integra Facilities”); and

WHEREAS, such Integra Facilities shall be located appurtenant to and connected to the existing sewer facilities of Rocky Point; and

WHEREAS, Rocky Point intends to hire Integra to provide certain services associated with the Integra Facilities (“Integra Services”) pursuant to a Master Services Agreement between Integra and Rocky Point (“Master Services Agreement”); and

WHEREAS, upon execution of the Master Services Agreement and construction of the Integra Facilities, Integra intends to transfer to Rocky Point, at no cost to Rocky Point, ownership of the Integra Facilities as provided for in this Agreement; and

WHEREAS, Integra and Rocky Point desire to define their respective obligations with regards to the Integra Facilities and the Integra Services pending the construction and transfer of ownership of the Integra Facilities and the effectiveness of the Master Services Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set out herein, the parties agree as follows:

execute such additional and further documents as may be necessary to affect such transfer of ownership from Integra to Rocky Point.

4. **Expansion of Services/Facilities.** No expansion of the Integra Facilities shall be made without the written approval of Integra and Rocky Point, which approval shall not be unreasonably withheld. Integra shall have a right of first refusal with respect to any potential expansion of the Integra Facilities. For purposes of this Section 4, any proposed expansion of sewer and treatment facilities that connects directly to the Integra Facilities shall be considered a proposed expansion of the Integra Facilities. All expansions of the Integra Facilities by Integra shall be economically~~commercially~~ reasonable in nature and Rocky Point shall ~~have the right to~~ review and approve, in the exercise of its reasonable discretion, all engineering and construction plans and specifications with respect thereto. With respect to any proposed expansion of the Integra Facilities, whether proposed by Rocky Point or Integra, Integra shall have no less than 90 days from receipt of written notice of such proposed expansion, to consider such expansion and to inform Rocky Point as to its election with respect to the exercise of its right of first refusal to construct such facilities. Upon the exercise by Integra of its right of first refusal with respect to any proposed expansion of the Integra Facilities, Integra shall proceed to design and construct such facilities. Integra's design of such facilities shall provide for the additional service reasonably anticipated by the expansion and shall be subject to review and approval by Rocky Point, such approval not to be unreasonably withheld. Upon completion of construction of the expansion facilities, and the contribution thereof to Rocky Point, as provided in Section 3 hereof, the expansion facilities shall become part of the Integra Facilities for all purposes of this Agreement and the Master Services Agreement. In the event Integra declines to design and construct such new facilities, Rocky Point may undertake such construction provided that the

in form and substance satisfactory to Integra in the exercise of its sole discretion, with the developers of each of the following developments: _____;

- d. The determination by Integra that construction of the Integra Facilities and entry into the Master Services Agreement will yield acceptable economic returns as determined by Integra in the exercise of its sole discretion.
- e. The completion of construction of the Integra Facilities and the issuance of a Notice of Readiness for Service by Integra, as provided by Section 6 hereof.
- f. The enactment by Rocky Point and/or Pender County of an ordinance requiring all new construction to connect to the Integra Facilities where such service can be provided on an economically feasible basis.

Integra shall be the sole party entitled to waive each of the conditions precedent specified above.

Conditions precedent applicable to Rocky Point:

- a. The review and approval by Rocky Point, in the exercise of Rocky Point's reasonable discretion, of the form and substance of Contractor/Developer Agreements associated with the original Integra Facilities.
- b. The review and approval by Rocky Point, in the exercise of Rocky Point's reasonable discretion, of the engineering and construction plans and specifications associated with the original Integra Facilities.
- c. The posting by Integra of performance guarantees, in the form of cash, letters of credit, or other security reasonably satisfactory to Rocky Point, in the amount of the entire projected construction costs for the original Integra Facilities less commitments from developers.

shall not be issued by Integra until all required approvals, permits and authorizations necessary to operate the Integra Facilities have been obtained from appropriate governmental authorities and the Integra Facilities are in compliance with all rules, regulations, standards, or permits of such governmental authorities applicable to the Integra Facilities. The issuance of such Notice of Readiness shall constitute a waiver of any unsatisfied conditions precedent provided under Section 5.

8. **Term and Termination.** This Agreement shall become effective and binding on the parties as of the date of execution hereof and shall remain in full force and effect for a period extending until 24 months following termination of the Master Services Agreement; provided, however, that the early termination, reimbursement, and other rights set forth in Sections 6, 9, and 12 hereof shall survive any such termination and shall remain binding upon the parties hereto for so long as necessary to protect Integra's interests in the Master Services Agreement and the Integra Facilities. Subject to events of force majeure and rights to notice and cure as provided in Sections 11 and 17 below, work on and related to the Integra Facilities during the term hereof shall be conducted pursuant to the milestone schedule set forth on Exhibit D hereto. The failure of Integra to meet any one or more of the milestones established above shall not constitute an event of default under this Agreement.

9. **Acquisition of Easements and Rights of Way.** The parties acknowledge that this Agreement, as well as the related Master Services Agreement, is being entered into in order to facilitate the long-term expansion and provision of wastewater services by Rocky Point to the public. A necessary component of this arrangement and the construction of the Integra Facilities is the procurement, upon terms reasonably acceptable to Integra, of access to rights-of-way and/or easements along public roads and/or private rights-of-way sufficient for the installation

non-defaulting party may have. Notwithstanding the foregoing, no default shall be deemed to have occurred hereunder with respect to the actions or inaction of a Party during the pendency of a good faith dispute as to the compliance of those actions or inaction with that Party's obligations hereunder; provided, however, that if such dispute regards the payment of money owed (or allegedly owed) by one Party to the other, the amount in dispute shall be deposited in an escrow account with a national or state chartered banking institution pending resolution of the dispute.

For purposes of this Agreement, any failure of a Party to abide by the respective obligations established in Paragraphs 1 through 7, 9 through 10, and 13-16 hereof shall constitute a default of a material obligation hereunder.

12. Damages on Default and Reimbursement by Rocky Point. The parties agree that a non-defaulting party's remedies upon default of the other party shall include, without limitation, the recovery of such monetary damages as may directly and proximately result from such event of default. In the event that Rocky Point shall default on its material obligations hereunder, prior to the effectiveness of the Master Services Agreement, then Rocky Point agrees to reimburse Integra for one hundred percent (100%) of the costs of constructing the Integra Facilities incurred or required to be incurred by Integra as of the date of such default as well as any costs or expenses reasonably required to safely and prudently abandon construction of the Integra Facilities, to the extent such abandonment costs are actually incurred by Integra.

13. Benefit of Contractor/Developer Contributions and Agreements. Integra has negotiated certain Contractor/Developer Agreements which provide for the contribution of monies or other consideration to Integra in exchange for a commitment to provide various levels of sewer service and sewage treatment service for developments to be served by the Integra Facilities. Rocky Point and Integra agree that all such Contractor/Developer contributions under

extent permitted by law, any and all rights of Sovereign Immunity and Governmental Immunity in connection with all matters relating to this Agreement, including without limitation the right to raise such immunity as a defense to a claim by Integra hereunder. The waiver of immunity set forth in this Section 14 is limited solely to Integra and under no circumstances will it apply to any third-party.

15. Representations and Warranties of Rocky Point. Rocky Point hereby warrants and represents as follows:

15.1 Existence; Compliance with Law. Rocky Point (a) is a duly organized water and sewer district validly existing and in good standing under the laws of the State of North Carolina, (b) has the requisite power and authority and the legal right to own and operate all its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged and has taken all actions necessary to maintain all rights, privileges, licenses and franchises necessary or required in the normal conduct of its business, (c) is duly qualified to conduct business and in good standing under the laws of the State of North Carolina, and (d) is in compliance with all requirements of law, its organizational documents, government permits and government licenses.

15.2 Power; Authorization; Enforceable Obligations. Rocky Point has full power and authority and the legal right to make, deliver and perform this Agreement and the Master Services Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of each of these Agreements. This Agreement has been duly executed and delivered on behalf of Rocky Point. This Agreement constitutes a legal, valid and binding obligation of Rocky Point, enforceable against Rocky Point in accordance with its terms.

16.3. No Legal Bar; No Default. The execution, delivery and performance by Integra of this Agreement and the Master Services Agreement (a) will not violate any requirement of law or any contractual obligation of Integra, and (b) will not conflict with, result in a breach of or constitute a default under its organization documents or any material agreement or other material instrument to which Integra is a party or by which any of its properties may be bound or any material approval or material consent from any governmental authority relating to Integra.

17. Force Majeure. Neither Integra nor Rocky Point shall be liable for any delay in or inability to complete the performance of the Agreement because of unforeseen circumstances beyond the parties' respective control, such as acts of God; industrial conflicts (including without limitation strikes, lockouts and work interruptions); fires; casualties or accidents, directives of governmental entities having jurisdiction over the parties, or the effect of any environmental, archaeological, or similar rule, regulation or condition; provided that any party impacted by such event of force majeure shall take commercially reasonable actions to mitigate the effect thereof. Either party affected by a force majeure event shall promptly upon learning of such event give notice to the other party, stating the nature of the force majeure event, its anticipated duration, and all actions being taken to avoid or minimize its effect.

18. Governing Law and Jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to the choice-of-law rules that may require the application of the laws of another jurisdiction. Any action brought to enforce the parties obligations or rights hereunder shall be brought solely in North Carolina. The venue for any action brought in the North Carolina General Court of Justice with respect to this Agreement shall lie in Pender County. The venue for any action brought in

affiliate or successor entity without first obtaining such written consent. Upon any such assignment, absent the agreement of the parties to the contrary, the assignor shall remain liable for the performance of its obligations hereunder.

22. **Regulatory Compliance.** This Agreement and the parties respective obligations hereunder are subject to all necessary regulatory and governmental approvals and permits including all necessary authorizations from governmental entities having jurisdiction over the subject matter hereof.

23. **WAIVER OF WARRANTIES/LIMITATIONS OF DAMAGES.** INTEGRA DISCLAIMS AND EXCLUDES ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PERFORMANCE HEREOF. INTEGRA SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

24. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

25. **Severability.** Should any term, covenant, condition or provision of this Agreement be held to be invalid or unenforceable, the balance of this Agreement shall remain in full force and shall stand as if the unenforceable provision did not exist.

26. **Waiver.** Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver

INTEGRA WATER, LLC

By: _____

Name: _____

Title: _____

**ROCKY POINT/TOPSAIL WATER
AND SEWER DISTRICT**

By: _____

Name: _____

Title: _____

EXHIBIT B

DESCRIPTION OF INTEGRA FACILITIES

The Integra Facilities shall be constructed in a phased approach allowing the most cost effective manner and approach to implementing a wastewater system. In total the facilities shall consist of approximately 18 miles of low pressure ___ inch force mains, an initial treatment plant size of 250,000 gallons per day tertiary treatment quality effluent, and associated equipment, lift stations, and combined gravity and low pressure collection systems. The initial service territory and trunk line network shall extend south from the County Boundary with Onslow County, along US 17 to Hampstead, and then northerly along NC 210.

EXHIBIT D

MILESTONE SCHEDULE

on Generally Accepted Accounting Principles ("GAAP") governing the definitions of those terms. In the event the Parties are unable to agree as to whether particular work constitutes a repair or a replacement of facilities after applying the GAAP definitions to such work, the Parties agree to arrange for a consultation between engineers representing both Parties to resolve such issues. In the event the consultation of engineers is unsuccessful in resolving such issue, the Parties' engineers shall jointly select an independent engineer knowledgeable and in good standing in the industry to render a determination as to whether the work in question constitutes, in whole or in part, a repair or replacement and such independent engineer's determination shall be final and binding on the Parties.

2. **Fees and Payment.** Compensation shall be paid by Rocky Point to Integra for the Services as provided on Exhibit B attached hereto and incorporated herein by reference. All fees paid to Integra under this Agreement shall be for services rendered as Rocky Point's agent and contractor. Rocky Point shall retain complete discretion as to amounts billed to end users for services provided by Integra as Rocky Point's agent. Rocky Point and Integra further agree that all fees paid to Integra under this Agreement shall be paid exclusively from the Capital Account, Expansion Account, and operating revenues of Rocky Point and that no obligation of the taxing authority of any municipal or quasi-governmental entity is intended or created by this Agreement. *& Issue to be clarified* To the extent that any fees paid to Integra under this Agreement are calculated based upon the number of customers attached to and/or served by the Integra Facilities or the water usage of such customers, Rocky Point agrees to provide Integra, on a monthly basis and as reasonably necessary for Integra to calculate amounts due from Rocky Point, a report showing the number of customers attached to and/or served by the Integra Facilities, including any gains or losses in such customers since the last report, as well as the water usage of each customer

pursuant to Exhibit B. Such Contractor/Developer fees attributable to developments or properties served by any expansion of the Integra Facilities which is constructed by Integra shall be ~~deposited~~ credited to the Expansion Account established pursuant to Exhibit B. During the Term of this Agreement, Rocky Point agrees to make such funds available in the Capital Account established by Exhibit B to compensate Integra for its investment in the original Integra Facilities or any replacements thereof (plus the return on investment specified on such investment in Exhibit B). During the Term of this Agreement, Rocky Point further agrees to make funds available in the Expansion Account established by Exhibit B to compensate Integra for its investment in any expansion of the Integra Facilities or replacements thereof which is constructed by Integra (plus the return on investment specified on such investment in Exhibit B). The payment or reimbursement of labor and materials costs associated with any such replacements shall be accomplished through the operation of the Capital Account and Expansion Account as provided for in Exhibit B hereof. Rocky Point further agrees not to divert any reserves collected or established for the replacement of the Integra Facilities to any other purpose other than the operation of the Capital Account and Expansion Account without the express written consent of Integra

5. **Default and Termination for Default.** If an order for relief is entered against a party in any bankruptcy proceeding; or if a party makes a general assignment for the benefit of creditors; or if a receiver is appointed for all or a portion of a party's property; or if a party otherwise defaults in the performance of its material obligations under this Agreement, then the non-defaulting party may, upon thirty (30) days written notice and the defaulting parties failure to cure such default, terminate the Agreement without prejudice to any other right or remedy the non-defaulting party may have. Notwithstanding the foregoing, no default shall be deemed to

forth in this Section 7 is limited solely to Integra and under no circumstances will it apply to any third-party.

8. **Representations and Warranties of Rocky Point.** Rocky Point hereby warrants and represents as follows:

8.1 **Existence; Compliance with Law.** Rocky Point (a) is a duly organized water and sewer district validly existing and in good standing under the laws of the State of North Carolina, (b) has the requisite power and authority and the legal right to own and operate all its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged and has taken all actions necessary to maintain all rights, privileges, licenses and franchises necessary or required in the normal conduct of its business, (c) is duly qualified to conduct business and in good standing under the laws of the State of North Carolina, and (d) is in compliance with all requirements of law, its organizational documents, government permits and government licenses.

8.2 **Power; Authorization; Enforceable Obligations.** Rocky Point has full power and authority and the legal right to make, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement. This Agreement has been duly executed and delivered on behalf of Rocky Point. This Agreement constitutes a legal, valid and binding obligation of Rocky Point, enforceable against Rocky Point in accordance with its terms.

8.3 **No Legal Bar; No Default.** The execution, delivery and performance by Rocky Point of this Agreement (a) will not violate any requirement of law or any contractual obligation of Rocky Point, and (b) will not conflict with, result in a breach of or constitute a default under its organization documents or any material agreement or other material instrument

which Integra is a party or by which any of its properties may be bound or any material approval or material consent from any governmental authority relating to Integra.

10. **Commitment of Capacity.** Upon reaching utilization of seventy percent (70%) of the capacity of the Integra Facilities, as such facilities may be expanded from time-to-time, Rocky Point may elect to reserve up to 25,000 gallons per day of wastewater treatment capacity for commercial and/or industrial development. Upon such election, Rocky Point shall pay Integra the Monthly Service Fees provided for in Exhibit B with respect to such capacity until such time as the reserved capacity is actually utilized and paid for by a commercial or industrial customer.

11. **Force Majeure.** Neither Integra nor Rocky Point shall be liable for any delay in or inability to complete the performance of the Agreement because of unforeseen circumstances beyond the parties' respective control, such as acts of God; industrial conflicts (including without limitation strikes, lockouts and work interruptions); fires; casualties or accidents; directives of governmental entities having jurisdiction over the parties, or the effect of any environmental, archaeological, or similar rule, regulation or condition; provided that any party impacted by such event of force majeure shall take commercially reasonable actions to mitigate the effect thereof. Either party affected by a force majeure event shall promptly upon learning of such event give notice to the other party, stating the nature of the force majeure event, its anticipated duration, and all actions being taken to avoid or minimize its effect.

12. **Governing Law and Jurisdiction.** The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to the choice-of-law rules that may require the application of the laws of another jurisdiction. Any action brought to enforce the parties obligations hereunder shall be brought solely in North

15. **Assignment.** Neither party shall assign this Agreement or the rights hereunder without having first obtained the written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that either party may assign this Agreement to an affiliate or entity succeeding to all or substantially all of the assets underlying this Agreement without first obtaining such written consent.

16. **Regulatory Compliance.** This Agreement and the parties respective obligations hereunder are subject to all necessary regulatory and governmental approvals and permits including all necessary authorizations from governmental entities having jurisdiction over the subject matter hereof.

17. **WAIVER OF WARRANTIES/LIMITATIONS OF DAMAGES.** Integra warrants that the Services will be performed in a professional manner by qualified individuals who are legally permitted to work in the United States (the "Limited Warranty"). OTHER THAN THE LIMITED WARRANTY MADE IN THIS SECTION 17, INTEGRA DISCLAIMS AND EXCLUDES ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PERFORMANCE HEREOF. INTEGRA SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

the Parties' rights to pursue resolution of any disputed matters in any forum having jurisdiction shall be preserved.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by an authorized officer or agent, all as of the date first above written.

INTEGRA WATER, LLC

**ROCKY POINT/TOPSAIL WATER
AND SEWER DISTRICT**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Integra shall comply with the service performance standards attached to this Exhibit A and shall be liable for any damages, costs, or claims proximately arising from its failure to comply with such standards. A persistent failure to comply with such standards may result in the declaration of an event of default by Rocky Point pursuant to Section 5 of the Agreement.

In addition to the Capital Account provided above, Rocky Point agrees to collect from its customers and maintain in a Replacement Account a monthly charge of no less than \$5.00 per customer in order to fund any necessary replacements of the Integra Facilities during the Term of the Agreement. Such Replacement Account shall be owned by and under the sole control of Rocky Point.

System Fees payable by Rocky Point to Integra are as follows:

1. General. Rocky Point shall at its cost be responsible for setting rules and regulations for use of the Integra Facilities and instituting a program and implementing procedures for establishing and collecting Impact Fees from new users of the Integra Facilities and billing and collecting Monthly User Fees from new and existing users of the Integra Facilities.

2. Sewer Service Agreement. Consistent with Sections 4 and 13 of the Facilities Construction and Contribution Agreement, and in conjunction with the negotiation or execution of any Contractor/Developer Agreement, Integra shall be authorized to impose such requirements on Contractors or Developers seeking service from the Integra Facilities with respect to the usage or service sought to be provided by Integra as Integra, in the commercially reasonable exercise of its discretion deems necessary and/or appropriate.

3. Contractor/Developer/System Development Fees. As provided above, any compensation received directly from Contractors or Developers seeking connection with the Integra Facilities shall be deposited into the Capital Account or Expansion Account, as appropriate. In addition, Rocky Point shall collect and deposit into the Capital Account and Expansion Account, as applicable, system development fees (herein called "System Development Fees") for each user of the Sewer System, with such System Development Fees to be determined as follows for the period from the effective date of the Master Services Agreement until July 1, 2030, and thereafter to be determined as provided in paragraph 5(a) of this Exhibit B:

(a) The System Development Fee for a user connecting the Sewer System in 2010 is \$4,000 for each residence or Equivalent Dwelling Unit (as defined in paragraph 4(a) of this Exhibit B) connecting to the Sewer System.

(b) The System Development Fee will be adjusted annually each Rate Year (i.e., July 1 through June 30) according to the following formula:

New System Development Fee = (Current Fee) x (1 + the increase in the national average Engineering News-Record ("ENR") construction cost index (or equivalent publication if ENR ceases publication or materially changes its calculation methods) as of the preceding December 31st. No adjustments to the System Development Fee shall be made in any year where the ENR construction cost index does not increase.

have the right to increase the Monthly Service (in addition to the other adjustments provided for herein) by an amount that allocates such incremental cost among the then current Equivalent Dwelling Units for the Integra Facilities.

(f) In the event of any changes in laws or regulations (or the policies concerning the enforcement or administration thereof) that result in required capital expenditures by Integra with respect to the Integra Facilities (other than capital expenditures occurring during the period governed by subsection (f)), Integra shall have the right to increase the Monthly Service Fee (in addition to the other adjustments provided for herein) by an amount determined by the following formula:

Required Capital

Expenditure Adjustment = a divided by (12 x b)

where a = the capital expenditures made by Integra with respect to the Integra Facilities as a consequence of such change in law or regulations, and

b = the number of Equivalent Dwelling Units ("EDUs") for the Integra Facilities, determined by the average monthly number of EDUs of the Integra Facilities during such Reference Year.

(g) Any expenditure that Integra is required to make at its cost to relocate utility lines to accommodate road construction or other governmental requirement will be deemed to be a capital expenditure falling within the scope of the preceding subsection (d) or (f), as the case may be, for purposes of making the adjustments provided for in such subsections.

5. Duration and Applicability.

(a) Anything contained herein to the contrary notwithstanding, System Development Fees and Monthly Service Fees shall be determined as provided in paragraphs 3 and 4 of this Exhibit B until July 1, 2030. Six months prior to July 1, 2030, the Parties agree to meet for the purpose of reviewing existing System Impact Fees and Monthly Service Fees and establishing the levels of such fees for the remainder of the term of this Agreement. Such fees for the remaining term of the Agreement shall be established by the agreement of the Parties at a rate commensurate with fees then prevailing for comparable services in the region but in no event shall be lower than the fees that would be payable if the mechanisms set forth in Paragraphs 3 and 4 above continued to operate during such remaining term of the Agreement.