



REQUEST FOR BOARD ACTION

ITEM NO. 14.

DATE OF MEETING: June 6, 2011

REQUESTED BY: Rick Benton, County Manager

SHORT TITLE: Resolution Authorizing Execution of Facilities Construction and Contribution Agreement with Integra Water Pender, LLC

BACKGROUND: In October, 2010 the Rocky Point-Topsail WSD Board of Directors authorized execution of the agreement with Integra Water subject to final negotiations and approvals of the County Manager and County Attorney. Since that time, final changes in the agreements have been in process. More recently, Integra has requested that the Avendale Waste Treatment Facility on NC 210 be included as part of the "Integra Facilities" though acquisition. As well, the scope of the transmission line construction and service area has changed since BOCC approval. Thus, on April 16, 2011 Integra made a presentation to the Board regarding the Avendale facility and the benefit and justification for including it as a part of the project and agreement to be executed, along with the proposed project construction and service area. The BOCC consented to moving forward with including the acquisition of Avendale in final negotiations.

Changes have been made in the documents to reflect and incorporate these issues, and is now presented to the Board for approval and authorization of execution. A summary of the Facilities Construction and Contribution Agreement is attached, along with a copy of the agreement documents and a summary implementation schedule. The Facilities and Contribution Agreement includes a description of the project and facilities, a Master Services Agreement, Operator Performance Scope and Standards, and Milestone Schedule.

SPECIFIC ACTION REQUESTED: To consider a resolution authorizing execution of the Facilities and Construction Agreement with Integra Water Pender, LLC.

COUNTY MANAGER'S RECOMMENDATION

The Board authorized further negotiation of the agreement at its April 16 meeting due to the addition of the proposed Avendale acquisition requested by Integra. The agreement has been modified to incorporate the acquisition.



Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Rocky Point-Topsail Water and Sewer District that:

the Facilities and Construction Agreement with Integra Water Pender, LLC is hereby approved and execution is authorized. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

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

George R. Brown, Chairman Date

ATTEST Date

**SUMMARY OF ROCKY POINT-TOPSAIL WATER & SEWER DISTRICT
and INTEGRA WATER PENDER, LLC AGREEMENT**

Facilities Construction and Contribution Agreement

- Provides for the construction and conveyance by Integra to the District of 10 miles of wastewater transmission line along the US 17 corridor and NC 210, the Avendale Wastewater Treatment Plant (82,000 gallons per day) to be acquired by Integra, and a regional waste treatment plant with a capacity of 250,000 gallons per day. Conveyance to the District is at no cost, and free and clear of liens. A specific map of the proposed service area is referenced in the agreements.
- Provides for District review and approval of system plans and specs, acquisition agreements, 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 \$3.1 million (in cash or performance guarantees) or 750 EDUs to start construction of original facilities; and requires Integra to post performance guarantee for balance. If cost exceeds \$6.2 million, then threshold increases to 50% of the cost.
- 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, to be executed within 30 days of delivery and acceptance of Phase I improvements (10 miles of collection system and Avendale).

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. Integra waives right to capital and expansion accounts if they 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 \$43 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. Administrative costs also added to bill as determined by District-likely \$2 per account.
- Provides that District sets customer rate annually, rate will include monthly fees to Integra, replacement reserves, and costs of administration of agreement (billing, etc.).
- Provides the monthly fee to Integra is adjusted annually based on annual increase in the CPI for Southeast USA (December 31 each year) x 1.15 (to compensate for energy increases). First increase is in July, 2012.
- Provides for system development fees of \$4,000 per EDU to connect onto system
- Provides the system development fee is adjusted annually based on the increase in the Engineering-News Record construction cost index as of December 31 each year. First increase is in July, 2011.
- Provides that capital expenditures over \$10,000 for original system for the benefit of existing users are recovered through the capital account, and this threshold is adjusted annually based on the ENR index as well.

Other

- Integra agreed to reduce the monthly service fee per EDU to \$43 as requested by the BOCC in October. As well, Integra agreed to reimburse the County for its expense related to Municipal & Financial Services Group review of the agreements (\$25,000).
- The District asked Municipal & Financial Services Group (MFSG) to review the terms and conditions of the agreements, perform a due diligence review of the financial resources and condition of Integra, and review the financial model. A report has been provided to the BOCC outlining their findings. In summary, MFSG noted “it is our opinion that the construction and operation of a wastewater system by Integra is a financially and administratively reasonable option for providing wastewater collection and treatment service within the District’s service area. While there are financial and operational risks involved with entering the agreement, we believe that reasonable terms and conditions are in place to protect the District.”
- MFSC also reviewed the amended agreement (May 19, 2011 version) which included provisions to add the Avendale facility and the new phasing for Phase I and Phase II improvements. MFSC indicated the concept appeared sound, they understood the benefit of having Avendale to get into business sooner, and that the agreement draft looked good.

June 1, 2011

Implementation

- Board of Commissioners authorize execution of agreements; FCCA is executed
- (FCCA: Exhibit A (Master Services Agreement); Exhibit B (Description of Facilities); Exhibit C (Milestone Schedule); MSA: Exhibit B (Scope of Services and Operator Responsibilities))
- Integra: -initiates securing rights of way and easements (Holland)
 - initiates design and permitting of Phase I and II (in Integra's name)
 - negotiates and executes developer agreements (60 days)
 - negotiates land acquisition for regional plant
 - negotiates purchase agreement for Avendale facilities and property
- District: -assists in securing rights of way as necessary
 - reviews and approves acquisition agreement for Avendale and regional plant property
 - reviews and approves developer agreements negotiated
 - reviews and approves design plans and specs for Phase I
- Integra: -finalizes cost estimates for Phase I and II/construction documents
- District: -reviews and approves moving forward if costs estimates exceed \$6.2 million
- Integra: -to secure \$3.1 m minimum, or 50% of total costs in developer fees/guarantees if exceed \$6.2 million total cost
- Integra/District: -to establish a Capital Account for depositing developer fees and paying construction costs
- Integra/District: -jointly put out permitted plans for collection system for public bid; both approve award
- Integra: -posts performance guarantee for total estimated cost of Phase I (110%) and II (120%) (Phase I is known now)
- Integra/District -execute contract documents for collection system; and authorize notice to proceed
- Integra: -close on Avendale acquisition (hold until Phase I about ready)
- Integra: -close on regional plant property (hold until developer commitments in place)
- Integra: -finalize design and permitting for Phase II
- District: -approve plans/specifications for Phase II

- Integra: -construction of Phase I completed (August 2012)
 -notice of readiness of issued to District (when in compliance with all conditions)
 -contributes Phase I facilities to District
- District: -accepts Phase I facilities prior to executing contribution
 -releases performance guarantee for Phase I; subject to sufficient guarantee in place for Phase II
- Integra/District: -execute MSA within 30 days of notice of readiness issuance and District acceptance for Phase I

Integra/District: -jointly put out permitted-approved plans for Phase II for public bid; both approve award

- Integra/District -execute contract documents for Wastewater Treatment and Disposal and authorize notice to proceed
- Integra: -construction of Phase II completed (October, 2012)
 -contributes Phase II facilities to District
- District: -accepts Phase II facilities
 -releases performance guarantee for Phase II
- Integra/District: -on-going administration of MSA
- Integra/District: -establish expansion account
- Integra: -on-going negotiation of developer agreements, with District approval
 -on-going operation of Phase I and II facilities
 -on-going evaluation of expansions-District review and approval

FACILITIES CONSTRUCTION AND CONTRIBUTION AGREEMENT

This Facilities Construction and Contribution Agreement (“Agreement”) is made and entered into this ____ day of _____, 2011, by and between Rocky Point/Topsail Water and Sewer District (hereinafter “Rocky Point”), and Integra Water Pender, LLC (hereinafter “Integra”).

WHEREAS, Integra intends to construct and/or deliver, in two phases, 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:

1. **Commitment to Enter into Master Services Agreement.** Subject to the provisions of Sections 6 and 8 below and upon satisfaction of the requirements thereof, Rocky Point and Integra hereby agree to enter into the Master Services Agreement attached hereto as Exhibit A.

2. **Commitment to Construct the Integra Facilities.** Subject to the provisions of Section 6 below, and following the execution of this Agreement by Integra and Rocky Point, Integra agrees to take all steps reasonably necessary to design and construct and/or deliver, the initial Integra Facilities described in Exhibit B. The initial Integra Facilities will be constructed in two phases as indicated on Exhibit B hereto. Integra's target date for completion of construction of Phase I of such facilities shall be August 1, 2012 ("Phase I Target In-Service Date") and the target date for completion of construction Phase II of such facilities shall be October 27, 2013 ("Phase II Target In-Service Date"); provided, however, that Integra's failure to complete construction of either phase of the Integra Facilities by the Target In-Service Dates specified above shall not constitute a breach of this Agreement. Rocky Point agrees to take all steps reasonably necessary to facilitate such construction and not to take any steps that would obstruct or interfere with the completion of construction of the Integra Facilities. Integra agrees to provide Rocky Point with a milestone schedule for construction of the Integra Facilities which is attached hereto as Exhibit C and incorporated herein by reference. Failure to achieve any such milestone shall not constitute a breach of this Agreement unless Integra, without excuse, has (1) ceased activities toward achievement of any such milestone for a period of 180 days, or (2) is more than 180 days late in the achievement of any such milestone. Rocky Point shall have the right to review and approve all plans and specifications for the Integra Facilities prior to the construction thereof, such approval not to be unreasonably withheld.

3. **Contribution of Integra Facilities.** Subject to the provisions of Sections 5, 6 and 8 below, and in consideration of the promises made herein and in the Master Services Agreement, Integra agrees to contribute the Integra Facilities (including expansions of the Integra Facilities provided for under Section 4 hereof) to Rocky Point at no cost to Rocky Point once each Phase of such facilities are completed and ready for service. Such facilities shall be contributed by Integra to Rocky Point free and clear of all liens and encumbrances once each phase of such facilities are completed and ready for service in compliance with the provisions hereof. Integra and Rocky Point agree to execute such additional and further documents as may be necessary to affect such transfer of ownership from Integra to Rocky Point. Rocky Point's acceptance of the Integra Facilities shall be conditioned upon Integra's compliance with each of the following conditions. Integra agrees to construct the Integra Facilities in a good and workmanlike manner in accordance with the approved and permitted plans and specifications and that when delivered to Rocky Point such facilities shall be in good and working operational condition and suitable for use for the purpose intended and that 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.

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 reasonable in nature and Rocky Point shall 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 existing Integra Facilities are capable of processing any additional wastewater demands from such new facilities and Integra is compensated for operating such new facilities through the payment of Monthly Service Fees as specified in Section 4 of Exhibit B of the Master Services Agreement. Integra will be obligated to operate the new facilities. With respect to any proposed expansion of the Integra Facilities after year 15 of the term of this Agreement, Rocky Point shall have the right to decline to approve such expansion for any reason it deems proper, in the exercise of its sole discretion, and upon such rejection, and notice to Integra thereof, Rocky Point shall have no liability for the payment of any capital costs of Integra associated with such expansion, through the Capital

Account and Expansion Account mechanisms established pursuant to Exhibit B of the Master Services Agreement or otherwise. The provisions of this Section 4 are meant to work in concert with Integra and Rocky Point's respective rights and obligations with respect to Contractor/Developer Agreements specified herein.

5. **Interim Establishment and Operation of the Capital Account Pending Effectiveness of the MSA.** Pending completion of Phase I of the Integra Facilities and the effectiveness of the MSA, and consistent with its terms, Rocky Point and Integra shall jointly create and maintain a capital account ("Capital Account") into which shall be deposited Developer/Contractor fees and System Development Fees (as defined in Exhibit B to the MSA) attributable to the Integra Facilities and out of which shall be paid to Integra, on a monthly basis, the costs actually incurred to construct the Integra Facilities and an allowed return on Integra's capital investment therein of nine percent (9%) per annum. Rocky Point and Integra shall reconcile such accounts on a monthly basis and pay to Integra so much of the positive balance thereof required to reimburse Integra for its construction costs and allowed return on investment recorded in such account. Costs reflected in the Capital Account shall be reasonable and prudent in nature and shall be recorded in the month in which they are actually incurred by Integra. In the event the balance of the Capital Account is insufficient during any month to fully compensate Integra for its construction costs and allowed return on investment reflected in such account, then such costs and return shall remain a liability of the Capital Account and shall be paid to Integra in the first month in which the balance of the account is sufficient for that purpose. Notwithstanding the foregoing, Rocky Point may, at any time and in its sole discretion, elect to compensate Integra for any balance in the Capital Account owed to Integra through any source of funds available to Rocky Point for such purpose. Upon the effectiveness of the MSA, the

rights and obligations of Integra and Rocky Point with respect to such Capital Account shall be governed by the terms of the MSA.

6. **Conditions Precedent.** The respective obligations of Integra and Rocky Point hereunder and under the Master Services Agreement attached hereto as Exhibit A are expressly conditioned upon the satisfaction or waiver by Integra or Rocky Point, as indicated below, of each of the following conditions precedent:

Conditions precedent applicable to Integra:

- a. Receipt by Integra, on or before the commencement of construction of the Phase I Integra Facilities and in form and substance satisfactory to Integra as determined in the exercise of its sole discretion, of all necessary rights-of-way, easements, permits, permissions, certificates, and any and all other authorizations from any person or entity whatsoever as may be necessary for Integra to construct, own, and transfer to Rocky Point the Integra Facilities described on Exhibit B hereto except for the final operational permit for the regional wastewater treatment plant to be constructed in Phase II of the Integra Facilities.
- b. Receipt by Integra, in form and substance satisfactory to Integra as determined in the exercise of its sole discretion, on or before the commencement of construction of the Phase I Integra Facilities, of adequate financing arrangements for the construction of the Integra Facilities;
- c. The negotiation and execution, on or before the commencement of construction of the Phase I Integra Facilities, of satisfactory Contractor/Developer Agreements providing for, among other things, appropriate interconnection arrangements,

including appropriate provisions for the payment of tap fees and capacity charges, in form and substance satisfactory to Integra in the exercise of its sole discretion.

- d. The determination by Integra, on or before the commencement of construction of the Phase I Integra Facilities, 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.

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

Conditions precedent applicable to Rocky Point:

- a. Rocky Point approval, on or before the date of commencement of construction of the Phase I Integra Facilities, of any proposed acquisition agreements related to or involving the Integra Facilities.
- b. The posting by Integra of performance guarantees, on or before the commencement of construction of the Phase I Integra Facilities, in the form of cash, letters of credit, or other security reasonably satisfactory to Rocky Point, in the amount of the sum of (i) one-hundred and ten percent (110%) of the contracted construction costs for Phase I of the Integra Facilities, and (ii) one-hundred and twenty percent (120%) of the projected construction costs for Phase II of the Integra Facilities, less commitments from developers.
- c. Rocky Point's approval, on or before the commencement of construction of the Phase I Integra Facilities, of moving forward if the projected facility construction/acquisition cost exceeds \$6.2 million.

- d. The receipt of commitments from developers or contractors, on or before the date of commencement of construction of the Phase I Integra Facilities, for service from the original Integra Facilities of at least 750 EDUs or commitment of \$3.1 million in Contractor/Developer Fees in cash, letters of credit, or equivalent guarantees plus 50% of the total projected cost of construction/acquisition in excess of \$6.2 million.

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

7. **Early Termination Right.** Rocky Point shall have the right to terminate this Agreement and the Master Services Agreement exercisable upon six months written notice to Integra at each of the anniversary dates of the effective date of the Master Services Agreement specified below. Upon the exercise of any such right, and as a condition thereto, Rocky Point agrees to pay Integra an amount equal to: (1) the sum of the balances in the Capital Account and Expansion Account established pursuant to Exhibit B of the Master Services Agreement as of the date of termination, plus (2) a multiple of the aggregate Monthly Service Fees payable under the Master Services Agreement by Rocky Point to Integra during the 12 months immediately preceding termination, as specified below.

<u>Early Termination Right Date</u>	<u>Multiple of Annual Payments</u>
15 years	5
20 years	4
25 years	3
28 years	2
29 years	1

8. **Execution of Master Services Agreement.** Integra shall issue a Notice of Readiness for Service when construction of the Phase I Integra Facilities is complete and all the requirements of Section 3 hereof have been met with respect to such facilities. Rocky Point shall have 30 days from the issuance of such Notice of Readiness for Service to accept or object to the Phase I Integra Facilities. Upon Rocky Point's acceptance of such facilities, Rocky Point and Integra shall promptly execute the MSA which shall be effective as of the date of execution by both parties. If Rocky Point objects to the Phase I Integra Facilities, the parties agree to work together to resolve Rocky Point's objections. If such objections cannot be reasonably resolved by the parties, either party may resort to the rights and remedies established or reserved herein.

9. **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 7, 10, and 13 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 C 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.

10. **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 and operation of the Integra Facilities. Rocky Point, to the extent permitted by law, agrees to take all actions reasonably necessary to support the acquisition of such easements and/or rights-of-way, in Rocky Point's name or otherwise, and to facilitate the perpetual, uninterrupted, and continuous use of such easements and/or rights-of-way by Rocky Point and/or Integra.

11. Joint Public Bid. Integra and Rocky Point agree to reasonably cooperate to conduct a joint public bid process for construction of the Integra Facilities in order to comply with the requirements of N.C. Gen. Stat. § 143-129 and any other applicable requirements of North Carolina law. All contracts for the construction of the Integra Facilities shall be executed in name of Rocky Point and Integra; provided, however, that as between Rocky Point and Integra, Integra shall be ultimately responsible for the payment of all amounts due contractors thereunder. Rocky Point shall apply for reimbursement of all sales taxes associated with construction of the Integra Facilities and shall deposit such tax reimbursements, as applicable, in the Capital Account or Expansion Account established pursuant to Section 5 above and/or Exhibit B of the Master Services Agreement.

12. 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, and such default is not excused under the provisions of Section 18 hereof, then the non-defaulting party may, upon ten (10) days written notice and the defaulting party's failure to cure such default

within 30 days, (or a reasonable time thereafter if the default cannot reasonably be cured within thirty (30) days and defaulting party has commenced to cure the default and proceeds with diligence to cure), 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 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 8, 10 through 11, and 14-17 hereof shall constitute a default of a material obligation hereunder.

13. 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 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. In the event of a default by Integra of its material obligations under this Agreement, and subject to the notice, cure, and dispute provisions set forth above: (1) Integra shall waive and have no claim to any

amounts otherwise owed to it under the Capital Account and Expansion Account mechanisms established pursuant to Exhibit B of the Master Services Agreement, and (2) Integra shall convey to Rocky Point, at Rocky Point's election, the existing Integra Facilities as well as any such facilities then under construction (including the real property rights of Integra with respect to such facilities) and all materials, supplies plans, specifications, construction documents, and equipment, in the possession of Integra acquired for the purpose of such construction.

14. **Benefit of Contractor/Developer Contributions and Agreements.** Integra has negotiated the terms of 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 such Contractor/Developer Agreements, whether now existing or entered into in the future with respect to the Integra Facilities, shall be deposited into the Capital Account or Expansion Account, as applicable, provided for in Exhibit B of the Master Services Agreement and utilized to (i) reimburse Integra for its construction/replacement costs incurred with respect to the Integra Facilities, (ii) compensate Integra for its capital investment as provided in Exhibit B of the Master Services Agreement, and (iii) support Rocky Point's operations when not needed for the purposes identified in the preceding subparagraphs 14(i) and 13(ii). Rocky Point shall be provided reasonable access to and inspection rights of such agreements for purposes of performing its obligations or exercising its rights under this Agreement or the Master Services Agreement. Upon the contribution of the Integra Facilities to Rocky Point as provided in Section 3 hereof, Rocky Point agrees to assume the responsibility to provide the level of service specified in such Contractor/Developer Agreements. Integra may, in

the exercise of its discretion, agree to additional Contractor/Developer Agreements, which shall be subject to the provisions of this Section 14; provided, that the Integra Facilities are capable of providing the level of service specified in such additional Contractor/Developer Agreements, or are expanded by Integra to provide such service, without diminishing the quality of service to other customers served by the Integra Facilities. Rocky Point shall have the right to review and approve all Contractor/Developer Agreements, or amendments or modifications thereto, prior to execution by Integra, such approval not to be unreasonably withheld. In no event shall Rocky Point be required to expand the Integra Facilities to meet developer demand beyond the initial capacity set forth in the Contractor/Developer Agreements. Prior to the effectiveness of the MSA, Rocky Point shall not be liable or responsible to Integra or any other party for any breach or alleged breach of a Contractor/Developer Agreement unless such breach or alleged breach is the proximate result of Rocky Point's breach of its obligations hereunder.

15. Waiver of Sovereign/Governmental Immunity. As to Integra and Rocky Point's obligations to Integra undertaken hereunder, Rocky Point hereby waives, to the fullest 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 15 is limited solely to Integra and under no circumstances will it apply to any third-party.

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

16.1 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.

16.2 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 Rocky Point of this Agreement and the Master Services 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 organizational documents or any material agreement or other material instrument to which Rocky Point is a party or by which any of its properties may be bound or any material requirement, approval or consent from any governmental authority relating to Rocky Point.

17. Representations and Warranties of Integra. Integra hereby warrants and represents as follows:

17.1. Existence; Compliance with Law. Integra (a) is duly organized, validly existing and in good standing under the laws of the State of Georgia, (b) has the requisite power and authority and the legal right to own and operate all its property, 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, organizational documents, government permits and government licenses.

17.2. Power; Authorization; Enforceable Obligations. Integra 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 Integra. This Agreement constitutes a legal, valid and binding obligation of Integra, enforceable against Integra in accordance with its terms.

17.3. 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.

18. 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.

19. **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 the North Carolina General Court of Justice. The venue for any action brought in the North Carolina General Court of Justice with respect to this Agreement shall solely lie in Pender County.

20. **Notices.** All notices and other communications provided for in this Agreement shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) If to Rocky Point:

Mr. Rick Benton, County Manager
County of Pender
PO Box 5
Burgaw, NC 28425

And copy to:

Mr. Trey Thurman, County Attorney
County of Pender
PO Box 5
Burgaw, NC 28425

(ii) If to Integra:

Integra Water Pender, LLC
C/O Integra Water, LLC
2100 3rd Avenue North
Suite 920
Birmingham, Alabama 35203
Attn: John McDonald

with a copy to:

Moore & Van Allen
100 North Tryon St
Suite 4700
Charlotte, NC 28202-4003
Attn: Jim Jeffries

21. Amendments. No amendment regarding this Agreement shall be effective unless executed in writing by Integra and Rocky Point. No waiver or consent regarding this Agreement shall be effective unless executed in writing by the party providing such waiver or consent.

22. 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 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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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 of any subsequent breach, nor affect the binding nature of this Agreement nor any part thereof, nor prejudice either party as regards to any subsequent action.

28. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

29. **Joint Preparation.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, submittal, drafting, or execution hereof.

30. **Headings.** The paragraph headings of this Agreement are for reference only and shall not be considered in the interpretation of this Agreement.

31. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements, oral or written between Integra and Rocky Point prior to the date of this Agreement regarding the subject matter hereof.

32. **Dispute Resolution.** The Parties agree to submit to non-binding mediation any disputed matters or issues arising under this Agreement that cannot be resolved by the Parties and hereby agree to participate in such mediation in good faith. Upon completion of the mediation process, or upon the failure of the other Party to participate in such process, each of the Parties' rights to pursue resolution of any disputed matters in any forum having jurisdiction shall be preserved.

33. **Insurance Coverage.** Integra shall maintain a certificate of insurance, naming Rocky Point as an additional insured, with appropriate coverages to cover its activities under this Agreement.

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 PENDER, LLC

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

EXHIBIT A

MASTER SERVICES AGREEMENT

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is made and entered into this ____ day of _____, 2011, by and between Rocky Point/Topsail Water and Sewer District (hereinafter "Rocky Point"), and Integra Water Pender, LLC (hereinafter "Integra").

WHEREAS, Integra intends to construct and/or deliver certain 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, Integra has agreed to contribute the Integra Facilities, if constructed, to Rocky Point at no cost pursuant to that certain Facilities Construction and Contribution Agreement between Rocky Point and Integra; and

WHEREAS, Rocky Point wishes to hire Integra to provide certain services associated with the Integra Facilities under the terms and conditions set forth herein ("Services");

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

1. **Scope of Work**. Integra agrees to provide to Rocky Point, as Rocky Point's contractor, the Services described on Exhibit A attached hereto and incorporated herein by reference. The term "Services" as used in this Agreement includes all labor, materials, and equipment necessary for the completion of the Services. All such services shall be provided by Integra as Rocky Point's agent/contractor and in Rocky Point's name. Integra's obligation to provide Services hereunder and as specified on Exhibit A includes routine maintenance and repair of the Integra Facilities but does not include the replacement of malfunctioning or non-functioning portions of the Integra Facilities, which are provided for in Section 4 hereof. For

purposes of determining whether an activity is a repair or replacement, the Parties agree to rely 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 Rocky Point’s obligation to pay any amounts to Integra under this Agreement shall be limited to the revenues generated by the operation of the Integra Facilities and that no obligation of the taxing authority of any municipal or quasi-governmental entity is intended or created by this Agreement. 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 attached to and/or served by the Integra Facilities for the period of the report. Integra further agrees to provide an annual report to Rocky Point reconciling the number of customers served by the Integra Facilities during such period and all charges to Rocky Point by Integra for such period. Rocky Point further agrees to make its books and records available to Integra, during normal working hours, in order to permit Integra to periodically audit the reports provided by Rocky Point.

3. **Term.** This Agreement is effective as of the date of execution hereof and shall remain in full force and effect for a period of thirty (30) years unless earlier terminated as provided in this Agreement or by the mutual agreement of the parties. Upon the expiration of the term hereof, Rocky Point agrees to pay Integra any balance owed Integra under the Expansion Account mechanism provided for by Exhibit B hereto.

4. **System Replacement and Utilization of Reserves.** Integra and Rocky Point agree that certain System Development Fees, and other charges, as defined in Exhibit B hereto, shall be collected by Rocky Point from customers served by the Integra Facilities, as the same may be expanded pursuant to Section 4 of the Facilities Construction and Contribution Agreement, in order to provide funds for the construction and periodic replacement of the Integra Facilities. Such Fees collected from customers served by the original Integra Facilities shall be credited to the Capital Account described in Exhibit B. Such Fees collected from customers served by any expansion of the original Integra Facilities which is constructed by Integra shall be deposited to the Expansion Account described in Exhibit B. Integra and Rocky Point further agree that certain Contractor/Developer fees may be collected by Integra or Rocky Point during the Term of this Agreement and that such fees attributable to developments or properties served

by the original Integra Facilities shall be credited to the Capital Account established 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 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

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. In the event of a default by Integra of its material obligations under this Agreement, and subject to the notice, cure, and dispute provisions set forth above, Integra shall waive and have no claim to any amounts otherwise owed to it under the Capital Account and Expansion Account mechanisms established pursuant to Exhibit B of the Master Services Agreement. For purposes of this Agreement, any failure of a Party to abide by the respective obligations established in Paragraphs 1 through 4, 6 through 9 and Exhibits A and B hereof shall constitute a default of a material obligation hereunder.

6. **Damages on Default.** Upon termination of this Agreement for Rocky Point's default of its obligations hereunder, Rocky Point agrees to pay Integra an amount equal to (1) the balance in the Capital Account and Expansion Account established pursuant to Exhibit B hereof as of the date of termination of this Agreement, plus, as liquidated damages, (2) an amount equal to six times the aggregate Monthly Service Fees payable hereunder by Rocky Point to Integra during the 12 months immediately preceding termination of this Agreement. Upon termination of this Agreement for Integra's default, the parties agree that Rocky Point's remedies shall include, without limitation, the recovery of such monetary damages as may directly and proximately result from such event of default.

7. **Waiver of Sovereign/Governmental Immunity.** As to Integra and its obligations to Integra undertaken hereunder, Rocky Point hereby waives, to the fullest extent

permitted by law, any and all rights of Sovereign Immunity or 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 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 to which Rocky Point 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 Rocky Point.

9. Representations and Warranties of Integra. Integra hereby warrants and represents as follows:

9.1. Existence; Compliance with Law. Integra (a) is duly organized, validly existing and in good standing under the laws of the State of Georgia, (b) has the requisite corporate 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, organizational documents, government permits and government licenses.

9.2. Corporate Power; Authorization; Enforceable Obligations. Integra has full corporate 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 Integra. This Agreement constitutes a legal, valid and binding obligation of Integra, enforceable against Integra in accordance with its terms.

9.3. No Legal Bar; No Default. The execution, delivery and performance by Integra of this 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.

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 the North Carolina General Court of Justice. The venue for any action brought in the North Carolina General Court of Justice with respect to this Agreement shall solely lie in Pender County.

13. **Notices.** All notices and other communications provided for in this Agreement shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) If to Rocky Point:

Mr. Rick Benton, County Manager
County of Pender
PO Box 5
Burgaw, NC 28425

And copy to:

Mr. Trey Thurman, County Attorney
County of Pender
PO Box 5
Burgaw, NC 28425

(ii) If to Integra:

Integra Water Pender, LLC
C/O Integra Water, LLC
2100 3rd Avenue North
Suite 920
Birmingham, Alabama 35203
Attn: John McDonald

with a copy to:

Moore & Van Allen
100 North Tryon St
Suite 4700
Charlotte, NC 28202-4003
Attn: Jim Jeffries

14. **Amendments.** No amendment regarding this Agreement shall be effective unless executed in writing by Integra and Rocky Point. No waiver or consent regarding this Agreement shall be effective unless executed in writing by the party providing such waiver or consent.

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.

19. **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.

20. **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 of any subsequent breach, nor affect the binding nature of this Agreement nor any part thereof, nor prejudice either party as regards to any subsequent action.

21. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

22. **Joint Preparation.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, submittal, drafting, or execution hereof.

23. **Headings.** The paragraph headings of this Agreement are for reference only and shall not be considered in the interpretation of this Agreement.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements, oral or written between Integra and Rocky Point prior to the date of this Agreement regarding the subject matter hereof.

25. **Dispute Resolution.** The Parties agree to submit to non-binding mediation any disputed matters or issues arising under this Agreement that cannot be resolved by the Parties and hereby agree to participate in such mediation in good faith. Upon completion of the mediation process, or upon the failure of the other Party to participate in such process, each of the Parties' rights to pursue resolution of any disputed matters in any forum having jurisdiction shall be preserved.

26. **Insurance Coverage.** Integra shall maintain a certificate of insurance, naming Rocky Point as an additional insured, with appropriate coverages to cover its activities under this Agreement.

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 PENDER, LLC

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

SERVICES

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.

Article 1 SCOPE OF SERVICES AND OPERATOR'S RESPONSIBILITIES

Section 1.1 General

Subject to the terms and conditions provided herein, the Operator shall provide labor, tools, equipment, utilities and materials, including an on-site routine stock of chemicals necessary for the operation and maintenance of the Facilities to the extent specifically set forth in this Article 11 (hereinafter the "Services"). The Services include: (a) treatment of wastewater influent delivered to the Facilities; (b) routine preventive maintenance of the Facilities; (d) repair of the Facilities' equipment; (e) laboratory testing and analysis; and (f) preparation and prompt delivery of all applicable and required filings, including discharge reports, to Rocky Point and to regulatory agencies as prescribed by Applicable Law.

Section 1.2 Standard of Care

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 in the geographic region of the Facilities.

Section 1.3 Process Control

- (a) The Operator shall operate and maintain the Facilities and all equipment and processes contained therein in accordance with relevant operation and maintenance manuals for the Facilities, Applicable Law, and the Environmental Permits.
- (b) During any Rocky Point-approved construction or other modification of the Facilities, Rocky Point and the 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. Rocky Point and the 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 to the extent reasonably possible.

Section 1.4 Routine Maintenance of the Facilities and Equipment

Subject to the limitations set forth below, the Operator shall (i) perform routine preventive maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities; (ii) repair and/or replace equipment; (iii) clean and lubricate equipment; (iv) make equipment inspections and needed adjustments; (v) perform predictive maintenance as appropriate; (vi) perform building and grounds janitorial services for the Facilities and cleaning of all equipment and vehicles; (vii) perform plumbing and electrical maintenance; (viii) maintain vehicles and light duty service trucks necessary for daily operations; and (ix) maintain all of the Facilities' instrumentation, including instrumentation provided to the Operator by the Rocky Point pursuant to this Agreement. Operator shall schedule and track all preventive and corrective maintenance and perform spare parts inventory control in accordance with standard industry practice.

Section 1.5 Staffing

- (a) The Operator shall provide qualified and, where required, properly Licensed and Certified staffing for the operation and maintenance of the Facilities in accordance with North Carolina Department of Environment and Natural Resources Rules and Regulations.

- (b) The Operator shall provide an appropriate level of training for its personnel to comply with the requirements of Section 1.5 (a) and to meet Rocky Point Customer Service expectations.
- (c) The Operator shall comply with the requirements and policies of Rocky Point regarding minority hiring, but only to the extent same is in compliance with Applicable Law.
- (d) In addition to normal staffing, Operator agrees to maintain at least one (1) properly licensed and certified employee or third party contractor on an On-Call status, twenty four (24) hours per day, seven (7) days per week to respond to and address emergency situations that may occur within the system and at the Facilities, including non-business hours.

Section 1.6 Disposal of Process Residue

- (a) As the agent for the Rocky Point, the Operator shall dispose of Process Residue in accordance with all Federal, State, and Local Rules and Regulations.
- (b) The Operator shall dispose of Process Residue either at an approved landfill or at an approved land application site.
- (c) The costs of transportation and disposal of Process Residue shall be included in the Base Compensation.

Section 1.7 Testing and Laboratory Analysis

- (a) Operator shall perform or shall contract with a laboratory certified by the State to perform all sampling and laboratory analysis required by the Environmental Permits. Laboratory procedures and analysis shall conform to the Standards established by the North Carolina Department of Environment and Natural Resources.
- (b) Operator shall prepare and submit in a timely manner and in accordance with all rules and regulations to the appropriate Regulatory Agencies, all permit monitoring, sampling, operating reports, etc. required for the proper and compliant operation of the facilities.
- (c) Operator shall pay all costs associated with Testing, Laboratory Analysis, and reporting.

Section 1.8 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 the Operator shall be reported to Rocky Point within twenty-four (24) 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 the Operator will implement or has implemented to remedy and/or mitigate said odor. Odor complaints reported to Rocky Point shall be reported to Operator including the name, address, phone number, date and time, Operator contact person and nature of the odor.

Section 1.9 Safety

The Operator shall implement a proper safety program prior to beginning its Services under this Agreement. Such safety program shall comply with Applicable Laws and Operator agrees that it will adhere to all portions of that safety program; provided however that under all circumstances, Operator

shall not assume any obligation or incur any liability for any injury, death or damage caused by (i) unsafe site conditions not created by the Operator or by any of its agents, employees and subcontractors, (ii) work being performed by other parties not related to the Operator, (iii) the negligence of Rocky Point, and/or (iv) the negligence of any third party not related to the Operator.

Section 1.10 Communications

- (a) To keep Rocky Point informed about the status of the Facilities, the Operator shall, within thirty (30) working days of the Commencement Date, develop an informational communications program, subject to Rocky Point's approval, which shall be comprised of a written monthly report to Rocky Point on the operational status and maintenance of the Facilities.
- (b) Operator may interface with regulatory agencies in matters related to compliance with Rocky Point's Environmental Permits, including the Discharge Permits, and/or with respect to matters required under the 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 Rocky Point of the subject matter of such communications with regulatory agencies. All other communications with regulatory agencies, the media, or community groups may occur only upon Rocky Point's request or with Rocky Point's prior approval.

Section 1.11 Reports

- (a) Operator shall maintain computerized and other necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit to Rocky Point a monthly report, delivered to Rocky Point not later than thirty (30) days following the end of each month, including a narrative and itemized summary of operations, maintenance, repair and replacement activities and 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 the Operator to local, State and federal regulatory agencies on behalf of Rocky Point.
- (b) The Operator shall collect and prepare all data and reports for all permit monitoring and operating reports required by Applicable Law and all local, state, and federal regulatory agencies and shall deliver the required monitoring and operating reports to the Rocky Point and to the appropriate regulatory agencies having competent jurisdiction over same. If required pursuant to Applicable Law, the Operator shall attest as to the accuracy and completeness of the data collected for each report. Rocky Point, however, shall at all times be responsible for maintaining all required permits for the ownership and operation of the Facilities.
- (c) All 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 property of Rocky Point and cannot be destroyed by Operator without written consent of Rocky Point. All site-specific operating procedure guidelines, preventive maintenance and safety programs and plant evaluation reports will, upon termination of this Agreement, become and remain the property of Rocky Point.
- (d) Integra shall prepare and submit on a monthly basis reports including the balance and draws on the Capital Account and Expansion Account, reports detailing new customers connected, and new customer inquiries.

- (e) Rocky Point shall prepare and submit reports to Integra including number of customers with service, number of inactive accounts, customer service complaints, new developer inquiries, and emergency call reports. Also, data customer data shall be transmitted to Operator electronically and in a format compatible with Rocky Point and Operator's billing systems.
- (f) Integra Water shall prepare and submit on an annual basis reports detailing the above, and also include budgeting, tax compliance, master planning, expansion plans, etc. Such annual reports shall be submitted no later than 90 days after the end of the fiscal year. The proposed Budget for the ensuing Fiscal Year Budget must be submitted to Rocky Point no later than January 31 of each calendar year. In addition to the proposed budget, a 5-year Capital Improvement Plan (CIP) for facility expenditures shall also be submitted no later than January 31.

Section 1.12 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 the Facilities to operate; (iii) circumstances affecting the safety of persons or property; (iv) adverse impact of snow, hurricanes and other extreme weather conditions and other natural or man-made disasters; and (v) the occurrence of an event of Force Majeure or Shutdown.
- (b) Operator shall provide said emergency response as promptly as possible, but, absent extraordinary circumstances, within ninety (90) minutes of being notified of the existence of the emergency and the need to respond thereto.
- (c) All costs incurred in responding to emergencies shall be borne by Operator.
- (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 the 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, the 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. The Operator shall provide prompt notice to Rocky Point of any such damage, destruction or threat and of any emergency repairs that have or will be taken. Rocky Point and the Operator shall cooperate in good faith in pursuing reasonable measures to mitigate any threats to human health or safety, or the environment.
- (e) Within thirty (30) days of the Commencement Date, the Operator shall develop an emergency response plan that shall designate emergency team members and identify the standard operating procedures to be followed. In the event of an evacuation, the Operator will report to Rocky Point's designated emergency management location, or other site to be specified by Rocky Point's authorized representative.
- (f) The Operator shall properly respond to and report all sanitary sewer overflows and bypasses involving the Facilities within the appropriate timeframe as designated by the North Carolina Department of Environment and Natural Resources, Division of Water Quality. The Operator shall additionally notify Rocky Point of such events as soon as possible.

Section 1.13 Accounting Records

Operator shall maintain up-to-date financial and accounting records as they apply to the Annual Maintenance Expenditures, Capital Expenditures, Capital Account and the Expansion Account. The

records must be kept in accordance with the Operator's standard accounting practices and made available to Rocky Point within thirty (30) working days of Rocky Point's written request.

Section 1.14 Inventory and Condition of Facilities Equipment

- (a) At the termination of this Agreement, the Operator shall provide Rocky Point with inventory in quantity and/or value equal to or greater than the initial inventory, reasonable wear and tear excepted.

Section 1.15 Manufacturers' Warranties

The Operator shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by Integra Water, LLC. and/or Rocky Point after the Commencement Date. In addition, the Operator shall assist Rocky Point in enforcing the warranties and guarantees, if any, for existing equipment used in connection with the operation of the Facilities. Under no circumstances shall the Operator's obligations hereunder include any express or implied warranties with respect to all Facilities equipment.

Section 1.16 Customer Service

- (a) Operator shall establish a 24 hour emergency call number that can be accessed by the public in an emergency situation in order to notify the Operator of an emergency condition such as a leak, fire, burglary, damage, spills, breaks, etc.
- (b) Operator shall respond to initial connection, service transfer or shutoff requests within twenty-four (24) hours from the notification by Rocky Point. Actual connections, service transfers or shutoffs will be made within seventy-two (72) hours of the request.
- (c) Operator shall be included in Rocky Point's listing for Utility Locate Requests through the State 1-800 One-Call center or similar notification system. Operator shall respond to Utility Locate Request within forty-eight (48) hours and have the actual location accomplished within seventy-two (72) hours of the request.
- (d) Operator shall assist Rocky Point with utility relocation planning related to required modifications or necessary accommodations for customers, other utility companies, State Transportation projects, etc.

EXHIBIT B

FEES AND PAYMENTS

For Services rendered Integra shall receive compensation in accordance with the following formula:

Any fees shall be solely payable out of the revenues of the System.

In addition to the Monthly Service Fees set forth below, Rocky Point and Integra shall jointly create and maintain a capital account ("Capital Account") and expansion account ("Expansion Account") into which shall be deposited Developer/Contractor fees and System Development Fees (as adjusted below) attributable, respectively, to the original Integra Facilities and any expansions thereof, and out of which shall be paid to Integra, on a monthly basis, the costs actually incurred to construct the original Integra Facilities and any expansion facilities constructed by Integra and an allowed return on Integra's capital investment therein of nine percent (9%) per annum. Rocky Point and Integra shall reconcile such accounts on a monthly basis and pay to Integra so much of the positive balance thereof required to reimburse Integra for its construction costs and allowed return on investment recorded in each account. Costs reflected in the Capital Account and Expansion Account shall be reasonable and prudent in nature and shall be recorded in the month in which they are actually incurred by Integra.

In the event the balance of the Capital Account or Expansion Account is insufficient during any month to fully compensate Integra for its construction costs and allowed return on investment reflected in such accounts, then such costs and return shall remain a liability of the Capital Account and/or Expansion Account and shall be paid to Integra in the first month in which the balance of the account is sufficient for that purpose. Funds deposited in the Expansion Account shall be used, in the first instance, to compensate Integra for its investment (and return thereon) in expansions of the Integra Facilities; provided, however, that upon full compensation to Integra of amounts due under the Expansion Account for any discrete expansion of the Integra Facilities, any excess credit balance in the Expansion Account shall be applied to any debit balance in the Capital Account. Subject to the provisions of this Master Services Agreement and the Facilities Construction and Contribution Agreement, upon the termination of this Master Services Agreement any amounts in such accounts that are not necessary for the payment to Integra of its construction costs and allowed return shall become the property of Rocky Point.

Notwithstanding the foregoing, Rocky Point may, at any time and in its sole discretion, elect to compensate Integra for any balance in the Capital Account or the Expansion Account owed to Integra through any source of funds available to Rocky Point for such purpose.

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 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 14 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 2011 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. Said current System Development Fee shall continue through June 30, 2011 (such period being referred to herein as the "Initial System Development Fee Period").

(b) Beginning and effective for July 1, 2011, System Development Fees 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.

(c) Special adjustments in Impact Fees may be required based on new Sewer System requirements resulting in additional capital costs, imposed on the Integra by any governmental body or regulatory agency with the jurisdiction to impose such requirements and/or that will require design and construction of additional treatment processes.

4. Monthly Service Fees. Integra shall receive monthly fees (herein called "Monthly Service Fees") from Rocky Point for services provided under the Master Services Agreement calculated for each active user of the Sewer System for the use thereof, with such Monthly Service 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 initial Monthly Service Fee is \$43.00 per residence or Equivalent Dwelling Unit, which is defined as 6,000 gallons of sewage volume per month. Said current Monthly Service Fee shall continue through June 30, 2012 (such period being referred to herein as the "Initial Service Fee Period").

(b) Beginning and effective for July 1, 2012, Monthly Service Fees will be adjusted annually each Rate Year according to the following formula:

New Monthly Service Fee (per residence or Equivalent Dwelling Unit) = (Current Fee) X (1 + [the annual increase in the Consumer Price Index for the Southeast United States ("CPI") measured as of the preceding December 31st x 1.15]). By way of example, if, for the second Rate Year, the annual change in the CPI measured as of the preceding December 31st is 3%, the new Monthly User Fee will be computed as follows: $\$43.00 \times (1 + [.03 \times 1.15]) = \$43.00 \times 1.0345 = \$44.48$. No adjustments to the Monthly Service Fee shall be made in any year where the CPI measured as of the preceding December 31st does not increase.

(c) For purposes of this Agreement, the Service Fee Adjustment Date shall be the first business day of July every year.

(d) Capital expenditures made by the Integra with respect to the original Integra Facilities for the benefit of existing users during the Reference Year in excess of \$10,000 shall be recorded in and recovered through the Capital Account. The annual threshold level of \$10,000 for recovery of capital expenditures for the benefit of existing users shall be adjusted annually utilizing the national average ENR construction cost index.

(e) In the event of any changes in laws or regulations (or the policies concerning the enforcement or administration thereof) that result in an increase in the Integra's operating costs with respect to the Integra Facilities, Integra shall 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.

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.

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 initial Integra Facilities shall consist of: 1) approximately 10 miles of low pressure force mains; 2) the planned acquisition by Integra of the existing Avendale wastewater plant with a capacity of 82,000 gallons per day; and 3) a regional wastewater treatment plant with a capacity of 250,000 gallons per day tertiary treatment quality effluent; and including all associated equipment, lift stations, and combined gravity and low pressure collection systems. See attached route map. The acquisition/construction of the Integra Facilities shall be phased as follows:

- Phase I: 10 miles of low pressure force mains located as depicted on the attached map and the Avendale wastewater plant acquisition

- Phase II: Regional wastewater treatment plant and any related appurtenant facilities.

EXHIBIT C
MILESTONE SCHEDULE

INTEGRA WATER - PENDER COUNTY WASTEWATER PROJECT

