

AMENDED AND RESTATED AGREEMENT BETWEEN PASCO COUNTY AND THE CITY OF NEW PORT RICHEY FOR OPERATION AND MAINTENANCE IN CONNECTION WITH WASTEWATER TREATMENT SERVICE FOR COUNTY'S PORTION OF NEW PORT RICHEY WASTEWATER TREATMENT PLANT AND THE WATER SUPPLY RATE FOR THE FGUA/LINDRICK AREA

THIS AGREEMENT, made and entered **as of the Effective Date**, by and between the CITY OF NEW PORT RICHEY, a municipal corporation organized and existing under the laws of the State of Florida, acting by and through its City Council, the governing body thereof, hereinafter referred to as "CITY" and PASCO COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as "COUNTY."

W I T N E S S E T H

WHEREAS, the CITY and COUNTY entered into an agreement on October 9, 1984, for the joint expansion of the New Port Richey Wastewater Treatment Plant in order to provide for wastewater treatment services to customers of both the CITY'S and COUNTY'S utility systems; and

WHEREAS, paragraph 8 of that agreement for joint expansion provides that the CITY would agree to operate and maintain for the benefit of the COUNTY any expansion to the New Port Richey Wastewater Treatment Plant paid for by the COUNTY; and

WHEREAS, paragraph 8 further provides that the COUNTY would reimburse the CITY for the actual costs of such operation and maintenance as a result of the COUNTY'S use plus a limited percentage of such actual costs; and

WHEREAS, prior to the award of a construction contract for the expansion of the plant for the COUNTY'S use, the CITY and the COUNTY are to enter into an agreement for the

maintenance and operation of the plant and responsibilities for each party regarding the same;
and

WHEREAS, the COUNTY and the CITY are desirous of amending and restating an operation and maintenance agreement which equitably apportions the COUNTY'S share of such operation and maintenance cost to the COUNTY and also authorizes the COUNTY or CITY to utilize, on an interim basis, additional unused wastewater treatment capacity at the New Port Richey Wastewater Treatment Plant; and

WHEREAS, the changes called for in this Agreement are contingent upon and will not take effect until the County closes on the acquisition of the Lindrick System from the Florida Governmental Utility Authority (FGUA).

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto hereby agree as follows:

1. Operation and Maintenance Services – The CITY agrees to provide to the COUNTY operation and maintenance services for wastewater treatment in connection with any expansion of the New Port Richey Wastewater Treatment Plant for that portion of the plant expansion which is paid for by the COUNTY or is otherwise allocated to the COUNTY. Such operation and maintenance includes all services necessary to effectively treat all wastewater delivered to the plant pursuant to the terms of this Agreement and the Inter-local Agreement between the parties dated October 9, 1984, as amended. Such operation and maintenance services, including all wastewater treatment services, must comply with all requirements heretofore and hereinafter imposed by the Florida Department of Environmental Regulation, the United States Environmental Protection Agency or other governmental authority having jurisdiction over wastewater treatment activity. In addition, the operation and maintenance

services provided by the CITY to the COUNTY hereunder must, at a minimum, be equivalent to the services performed by the CITY in connection with the operation of its portion of the New Port Richey Wastewater Treatment Plant. For purposes of this Agreement, the New Port Richey Wastewater Treatment Plant consists of a 7.5 million gallon per day facility as contemplated by the **current status of the Inter-Local Agreement**, and any subsequent expansions thereto.

Furthermore, **as of this Agreement**, the assigned capacity to the COUNTY is 3.0 million gallons per day, the assigned capacity to the CITY is 4.5 million gallons per day. Contingent upon the event of the COUNTY'S acquisition of FGUA Lindrick Utility the assigned capacity to the COUNTY will adjust to 3.7 million gallons per day, the assigned capacity to the CITY shall be 3.8 million gallons per day. Upon any future expansion of the plant over and above the 7.5 million gallons per day, the assigned capacity of the CITY or COUNTY will be increased to reflect the additional capacity funded by the CITY or the additional capacity funded by the COUNTY.

2. Term – This Agreement will continue in effect so long as the COUNTY either jointly or separately owns or is responsible for, any portion of the treatment capacity at the New Port Richey Wastewater Treatment Plant or transmits sewage for treatment at the New Port Richey Treatment Plant. For purposes of the Agreement the COUNTY'S ownership, either jointly or separately, will be determined in accordance with paragraph 11 of the Inter-Local Agreement of October 9, 1984.

3. Quantity of Service Provided – The CITY agrees to provide operation and maintenance services to the COUNTY for wastewater treatment capable of adequately providing for the capacity at the New Port Richey Wastewater Treatment Plant constructed, or funded, by or on behalf of the COUNTY, including any subsequent additions constructed, or funded, by the

COUNTY pursuant to the Inter-Local Agreement of October 9, 1984. Furthermore, in order to minimize operation and maintenance costs, the CITY agrees that it will operate the plant at all times using cost-efficient, generally accepted engineering methods of operations. Additionally, in the event there exists available, unused excess treatment capacity at the New Port Richey Wastewater Treatment Plant as further defined herein, and the COUNTY utilizes the same on an interim basis pursuant to paragraph 11 herein, the CITY agrees to provide operation and maintenance services for such wastewater treatment in accordance with the terms and conditions of this Agreement.

Within forty five (45) days of closure of the COUNTY'S purchase of the FGUA/Lindrick system, the COUNTY shall pay to the CITY the sum equal to the remaining impact fee balance owed to the CITY pursuant to the Third Amendment to Bulk Wastewater Treatment Agreement Between the City of New Port Richey and the Florida Governmental Utility Authority (FGUA), as Successor to Lindrick Corporation, dated December 4, 2012.

4. Permits – Any regulatory permits required by the Florida Department of Environmental Regulation, United States Environmental Protection Agency or other appropriate governmental agencies, necessary to operate the New Port Richey Wastewater Treatment Plant will be obtained by the CITY in the name of the CITY and as agent for the COUNTY, and the CITY shall be responsible for implementation of all applicable permit conditions. Furthermore, the CITY shall be responsible for implementing any corrective actions or improvements required as a result of any enforcement action by the above mentioned regulatory agencies; provided, however, that the cost of capital facilities required as a result of any enforcement action or mandate will be shared on a pro-rata basis by the CITY and the COUNTY according to respective capacity assigned to each (including any expansion), and the increased cost of

operation and maintenance required as a result of any enforcement action or mandate will be allocated in accordance with the rate formula established in paragraph 7 of this Agreement. Any fines levied against New Port Richey Wastewater Treatment Plant will be shared equitably based upon flows between the CITY and COUNTY, however, when the responsible party is determined, the party determined responsible will reimburse the other party for its portion of such fine.

5. Connections and Easements – The COUNTY shall be responsible for making all required connections from its Wastewater Treatment Collection System to the New Port Richey Wastewater Treatment Plant and the CITY agrees to allow the COUNTY to use those CITY easements or rights-of-way to locate lines necessary for the South COUNTY inter-tie to transmit wastewater to the New Port Richey Wastewater Treatment Plant. Any additional CITY easements needed by the COUNTY will be subject to the CITY’S right-of-way use permitting procedures and the CITY agrees its approval will not be unreasonably withheld. The COUNTY agrees to restore any easements or rights-of-way so utilized to existing conditions prior to use by the COUNTY.

6. Budget Review by County – The CITY further agrees to segregate only the direct cost and expenses associated with the operation and maintenance of the New Port Richey Wastewater Treatment Plant within its budget in order to appropriately identify that portion of the operation and maintenance expenses attributable hereunder to the COUNTY. For purposes of this Agreement, the term “direct cost and expenses” includes, but is not limited to, personal services, chemicals, supplies, communications, contracted services, parts for repairs, meter calibration and maintenance expenses, regular maintenance, and insurance. The CITY agrees to grant the COUNTY the right of review of the operation and maintenance budget for the New

Port Richey Wastewater Treatment Plant and shall submit the proposed budget along with a schedule of tangible personal property for the Plant depicting associated depreciation expenses to the COUNTY for review and comment at least forty-five (45) days prior to the first required public hearing on the budget by the City Council. Nothing contained herein grants the COUNTY the right of approval over the CITY’S budget, or portion thereof, provided this provision will not be read as precluding or limiting any right or remedy of the COUNTY hereunder.

7. Payment for Operations and Maintenance Services – Prior to October first of each year, the COUNTY and the CITY shall determine an estimated rate, hereinafter referred to as “ER,” to be used for the subsequent fiscal year. That rate must be determined by the following formula:

$$ER = \frac{OM \times 1.10 \times 1000}{C \times 365}$$

Where:

OM = the budgeted amounts for direct cost and expenses as set forth in paragraph 6 directly attributable to the cost of the operation of the New Port Richey Wastewater Treatment Plant, including depreciation on existing and subsequently acquired tangible property.

C = the estimated average daily flow in gallons at the New Port Richey Wastewater Treatment Plant for the subsequent fiscal year.

This formula will be utilized by the CITY and the COUNTY to depict an estimated rate in dollars per thousand gallons. The CITY will invoice the COUNTY on a monthly basis using readings from master meters and the estimated rate as set forth above. The COUNTY will make payment within thirty (30) days after receipt of invoice.

Within ninety (90) days following the end of the fiscal year, the CITY'S auditors shall certify the actual expense for the operation and maintenance directly attributable to the New Port Richey Wastewater Treatment Facility, including depreciation on tangible personal property. The actual expenses will be substituted for OM in the formula above and the actual average daily flow during the year must be substituted for C in the formula above to calculate the actual rate of operation and maintenance provided in connection with the wastewater treatment services. In the event the actual rate is higher than the estimated rate, the CITY will prepare an invoice for the difference between the actual and estimated rates multiplied by the actual flow for the COUNTY for the previous fiscal year. The COUNTY shall pay said invoice within forty-five (45) days from receipt. In the event the actual rate is lower than the estimated rate, the CITY will refund to the COUNTY (by paying within forty-five (45) days or crediting on the next billing) the amount equal to the difference between the actual and estimated rates multiplied by the actual flow for the COUNTY for the previous fiscal year. The rate determined herein shall be applicable to the COUNTY'S actual use of its assigned capacity.

In addition, for the wastewater flows from the former FGUA/Lindrick system for one year following the COUNTY'S closure on the purchase of the FGUA/Lindrick system, the COUNTY will pay 50% of the existing Lindrick wastewater treatment rate; currently \$4.156/1000 gallons. After that first year, the COUNTY will pay for treatment of the FGUA/Lindrick flow per the formula as the rest of the COUNTY'S flow is billed.

8. Adjustment for Indirect Cost – If either the City or County feel that the existing indirect cost factor included in the O & M rate is insufficient or inflated to account for indirect operating costs, the CITY or COUNTY may complete a study to determine the new rate. The CITY and COUNTY agree to equally fund the cost of the study. The CITY will provide for a “third party contractor” to perform the work in accordance with federal standards surrounding indirect costs. Upon completion of the cost allocation study and appropriate identification of the indirect cost attributable to the New Port Richey Wastewater Treatment Plant, the COUNTY and the CITY agree that indirect cost, for each fiscal year and each year thereafter, will be included in the formula as “OM” as set forth in paragraph 7 above. However, upon inclusion of such indirect cost the estimated rate referred to as “ER” will be determined by the following formula:

$$ER = \frac{OM \times 1000}{C \times 365}$$

$$C \times 365$$

Additionally, within two hundred, forty (240) days following the fiscal year end, when the CITY’S auditors certify the actual expenses of the operations and maintenance directly attributable to the New Port Richey Wastewater Treatment Facility, including depreciation of tangible personal property, such certification must also include the indirect cost as set forth in the cost allocation study. Notwithstanding the foregoing, the rate paid by the COUNTY may never exceed 110% of the COUNTY’S direct costs and expenses.

9. Measurement of Flows – All wastewater delivered to the facility, regardless of source, must be measured by master meters which will be read by the CITY on a daily basis and reported to the COUNTY on a monthly basis. The COUNTY is hereby granted that the right to read all such meters in conjunction with the CITY at any time. A calibration and maintenance schedule for all such master meters will be mutually agreed upon by the CITY and the COUNTY

on a annual basis; however, the COUNTY shall retain the right, on its own and at its own expense, to provide for the calibration or maintenance of any meters used pursuant hereto for the measurement of flows to the New Port Richey Wastewater Treatment Plant. The CITY will be responsible for the purchase, installation, repair, maintenance and calibration of all master meters entering the New Port Richey Wastewater Plant other than the COUNTY'S . The COUNTY will be responsible for the purchase, installation, maintenance and calibration of all master meters measuring flow in the COUNTY'S system before entering the New Port Richey system. The COUNTY will purchase and install a meter to measure the wastewater flow from the Lindrick system into the County system. The COUNTY will then provide monthly readings to the CITY for the purpose of the special billing for one year after the purchase of Lindrick Utility as stated at the bottom of paragraph 7, with the CITY granted the right to read the meter in conjunction with the COUNTY. A map (Exhibit A) attached shows the existing locations, ownership and responsible party of the meters connected to the system as well as any known future connections. At the end of each billing period the CITY shall provide a comparison of the total flow to the facility with the total quantity of effluent discharged from the facility. The amount billed to the COUNTY for treatment must be based on the metered flow through the COUNTY'S connection to the facility unless a discrepancy of more than two percent (2%) occurs between the measurements of flow to and effluent from the facility. In any case that the discrepancy in measured flows exceeds two percent, then the meter measuring effluent flow from the plant shall be assumed to be correct and flows measured by all other meters shall be proportionately adjusted to agree with the effluent flow measurement. The adjusted influent flows shall then be used for calculation of the amount of treatment provided to the COUNTY by the CITY.

10. Wastewater Quality – It is further agreed that the sewage delivered by the COUNTY and the CITY to the New Port Richey Wastewater Treatment Facility will meet the requirements heretofore and hereinafter imposed by the Florida Department of Environmental Regulation, the United States Environmental Protection Agency or other governmental authority having jurisdiction over wastewater treatment activity.

11. Excess Capacity and Rate for Excess Capacity – In the event either the CITY or the COUNTY owns or controls excess wastewater treatment capacity at the New Port Richey Wastewater Treatment Plant which will not be needed by the owner or controller thereof for a period of two (2) years or more, then the other party who desires to utilize such excess capacity may, upon agreement of the owner or controller, make use of such excess treatment capacity until such time as the same is needed by the owning or controlling party. The CITY agrees to allow the COUNTY to utilize up to a maximum of 5% of the CITY'S assigned capacity, and the COUNTY agrees to pay the CITY 115% of the "ER" in paragraph 7 for each one thousand gallons of such excess capacity used by the COUNTY. For any excess capacity the CITY allows the COUNTY to use over and above the 5%, the COUNTY agrees to pay the CITY one hundred and fifty percent (150%) of the "ER" determined in paragraph 7 for each 1,000 gallons of such excess capacity used by the COUNTY. In the event the CITY utilizes excess capacity owned or controlled by the COUNTY then the CITY agrees to pay the COUNTY 115% of the "ER" in paragraph 7 for each one thousand gallons of excess capacity used by the CITY up to 5% of the assigned capacity per day; and, 150% of the "ER" established in paragraph 7 for excess capacity over and above the 5% per day. For purposes of this paragraph the amount of payments for excess capacity will be adjusted in the same manner as the "ER" is adjusted in paragraph 7 above. Utilization of excess capacity shall be determined by reference to the average monthly

daily flow during the billing cycle to the extent that such flow exceeds the assigned capacity for the respective parties. The average monthly daily flow shall be determined by the sum of the total flow for a given billing month divided by the number of days within the billing month. In the event the owner or controller of such excess capacity needs the same for the purpose of providing service to its own customers, it shall notify the using party in writing and the using party shall then have 180 days from receipt of such notice to reduce its use of excess capacity to the extent requested by the controlling or owning party. For the purpose of section, the COUNTY agrees upon receiving such notice from the CITY that it would within the 180 days period divert its excess flows to another available wastewater treatment plant within the COUNTY'S system.

12. Improvements to Plant – The cost of any capital improvement for the New Port Richey Wastewater Treatment Plant which is not otherwise charged to the COUNTY in the rate formula set forth in paragraph 7, will be shared on a pro-rata basis by the CITY and COUNTY according to the respective capacity assigned to each (including any expansion) in accordance with the provisions hereof. The cost of any capital improvements totaling less than \$10,000 will be so apportioned upon certification of the CITY'S consulting engineer that such capital improvements are necessary for the efficient or environmentally sound operation of the plant. The cost of such capital improvements in excess of \$10,000 must be so apportioned upon agreement of need by both the CITY and the COUNTY or, failing such agreement, upon determination of need by an independent consulting engineer retained by the CITY and COUNTY for such specific purpose. The cost of retaining said third party engineer will be shared equally by the CITY and COUNTY. Capital improvements will include any addition to

the wastewater treatment plant costing in excess of \$5,000. which has a useful life in excess of 2 years.

13. Insurance – The CITY agrees to maintain both loss and liability insurance coverage on the New Port Richey Wastewater Treatment Plant in amounts sufficient to protect the COUNTY’S interest in the facility.

14. Conditions – In the event that the performance of the Agreement is prevented or interrupted by consequence of an act of God, or of the public enemy, or national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, sink holes, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, governmental rules or acts or orders or restrictions or regulations or requirements, acts or actions of any government, except the COUNTY and CITY, or public or governmental authority or commission or board or agency or agent of official or officer, or judgment or a restraining order or injunction of any court, said party whose performance is impaired shall not be liable for such non-performance, and the time of performance shall be extended for such time period that such party is diligently attempting to perform. Notwithstanding the above, such party or parties shall be liable for non-performance and untimely or improperly executed performance of the terms of this Agreement due to its willful misconduct or negligence (including, but not limited to, misfeasance or nonfeasance).

15. Chlorides - The COUNTY acknowledges the former FGUA/Lindrick system has elevated chloride levels and is committed to addressing any concerns regarding any irregular levels in order to maintain full compliance with all regulatory agencies. To reduce the chloride

level the COUNTY shall develop a plan to investigate via electronic surveillance equipment (such as CCTV or other video methods) the whole FGUA/Lindrick system over the first 36 months following acquisition for discovery of the type and amount of work required to address infiltration. Following the completion of the investigative work, the COUNTY shall commit to repairing 20% of the identified work per year for a period of 3 years. Subject to the foregoing, the County shall use its best efforts to reduce chlorides to acceptable standards. If chloride levels in the former FGUA/Lindrick system wastewater results in any enforcement action or fines, the parties will address the matter pursuant to section 4 above.

16. The provisions of this Agreement shall be interpreted in accordance with the intent and purpose of the original Inter-Local Agreement between the parties dated October 9, 1984, including any amendments thereto including the most recent ninth amendment dated April 24, 2007, and in the event of any direct conflict, the terms of the original Inter-Local Agreement and amendments thereto shall control.

17. Potable Bulk Water Supply Rate –The CITY and the COUNTY have mutually agreed upon a bulk water rate of \$3.61 per thousand gallons of metered usage for the CITY to provide treated potable water to the COUNTY.

18. Future Negotiations – The parties agree to enter into negotiations following the closure of FGUA/Lindrick purchase on the following topics: (a) To help reduce potential nutrient loadings to natural waterbodies, the CITY and COUNTY agree that providing sanitary sewer service and replacing existing residential septic systems in East Gate Estates, Barbara Anne Acres, Silver Oaks, Lakewood Villas neighborhoods, and the Town and County (Southgate) area would improve public health, safety, and welfare, and thus, will discuss the waiver the requirement imposed by the January 7, 1992 Agreement Between Pasco County and

the City of New Port Richey Which Establishes Designated Service Areas For Water And Wastewater Services (“Service Area Agreement”) that at least fifty-one percent (51%) of the affected property owners approve a sanitary sewer special assessment project; (b) the CITY’S request to amend the Service Area Agreement Section V. regarding the rate charges to align with Chapter 180.191, Florida Statutes; and (c) pursuant to the 1994 Reclaimed Agreement between the CITY and the COUNTY, the CITY is supposed to pay the COUNTY for disposal of all reclaimed water delivered to the COUNTY that comes from the CITY’S wastewater flow to the plant, and the parties wish to renegotiate these payment terms.

19. Condition Precedent. The changes called for in this Agreement are contingent upon and will not take effect until the County closes on the acquisition of the Lindrick System from the FGUA.

20. This Interlocal Agreement, or amendments hereto, shall be executed on behalf of each participating jurisdiction by its duly authorized representative and pursuant to an appropriate motion, resolution, or ordinance of each participating jurisdiction. This Interlocal Agreement, or any amendment thereto, shall be deemed effective upon the date of execution by each authorized representative and filing in the official records of Pasco County, Florida.

IN WITNESS WHEREOF the parties hereto have affixed their hands and seals as of the Effective Date.

ATTEST:

NIKKI ALVAREZ-SOWLES, ESQ.
CLERK & COMPTROLLER

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

RONALD E. OAKLEY, CHAIRMAN

Date: _____

ATTEST:

CITY OF NEW PORT RICHEY:

JUDY MEYERS, CMC
CITY CLERK

ROBERT MARLOWE, CITY MAYOR

Date: _____

Approved as to Form

City Attorney

DRAFT