

Wilmington, Delaware  
May 5, 2022

#0166

Sponsor:

Council  
Member  
Oliver

**WHEREAS**, City Charter Section 5-404 provides that the Department of Public Works “may enter into contracts for supplying the services of city water, sewer, and sewage disposal facilities to users outside the limits of the city” when authorized by City Council to do so; and

**WHEREAS**, the City of Wilmington (the “City”) owns, operates, and maintains a major wastewater treatment system, including the Wilmington Wastewater Treatment Plant and the Renewable Energy Biosolids Facility (collectively known as the “System”), and for decades has received and treated wastewater from adjacent areas of New Castle County (the “County”); and

**WHEREAS**, throughout the years, the City and County have entered into agreements pertaining to the City’s management and expansion of the System, the County’s payment for services received therefrom, and the County’s share of capital costs (the “Sewer Agreements”); and

**WHEREAS**, the last Sewer Agreement was dated June 1, 2010 (the “2010 Sewer Agreement”) and covered the period of Fiscal Years 2008 through 2012; and

**WHEREAS**, after several contract extensions, the 2010 Sewer Agreement expired on November 30, 2014; and

**WHEREAS**, since the expiration of the 2010 Sewer Agreement, the City and the County engaged in discussions in an attempt to reach a new agreement; and

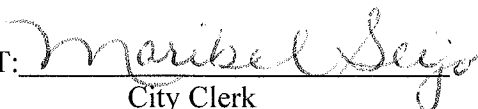
**WHEREAS**, failing to reach a new agreement, on March 19, 2019, the City filed for arbitration, and the County filed a counterclaim, in a matter captioned *City of Wilmington v. New Castle County*, AAA File No. 01-19-000-8779 (the “Arbitration”); and

**WHEREAS**, on November 5, 2021, the City and the County reached an agreement in principle to resolve all issues in the Arbitration; and

**WHEREAS**, the Agreement Between the City of Wilmington and New Castle County Concerning Wastewater Treatment, attached hereto and incorporated herein as Exhibit “A”, documents the aforementioned agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the “Agreement Between the City of Wilmington and New Castle County Concerning Wastewater Treatment”, a copy of which, in substantial form, is attached hereto as Exhibit “A”, is hereby approved, and the Mayor and the City Clerk, or their respective designees, are hereby authorized to execute as many copies of the Agreement, as well as to take all additional undertakings related thereto, as may be necessary.

Passed by City Council,  
May 5, 2022

ATTEST:   
City Clerk

**SYNOPSIS:** This Resolution approves a ten-year agreement for the period of Fiscal Year 2022 through Fiscal Year 2032 between the City of Wilmington and New Castle County for the continued treatment of County sewage at the Wilmington Wastewater Treatment Plant (the “Plant”) and the Renewable Energy Biosolids Facility (the “REBF”). The agreement provides for, among other things, the allocation between the City and the County of operations and maintenance costs, capital costs, and debt service costs for both the Plant and the REBF. The agreement also resolves the City’s claims against the County for certain prior fiscal years, including a true-up owed by the County for Fiscal Year 2021 and the payment of \$6,657,360.00 by the County for Fiscal Years 2017 through 2020.

W0117151

# **EXHIBIT A**

**AGREEMENT BETWEEN**  
**THE CITY OF WILMINGTON AND NEW CASTLE COUNTY**  
**CONCERNING WASTEWATER TREATMENT**

**RECITALS**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), by and between THE CITY OF WILMINGTON, a municipal corporation of the State of Delaware, (the “City”), and NEW CASTLE COUNTY, a political subdivision of the State of Delaware, (the “County”) (each, a “Party” and jointly, the “Parties”).

**WHEREAS**, the City owns, operates, and maintains a major wastewater treatment system, including the Wilmington Wastewater Treatment Plant (the “Plant” or “WWTP”), and the Renewable Energy Biosolids Facility (“REBF”) (collectively known as the “Wilmington Wastewater Treatment System” or “System”), and for decades has received and treated wastewater from adjacent areas of the County; and

**WHEREAS**, the City has a Professional Services Agreement dated July 1, 2020 with Operations Management International, Inc. (“Jacobs”) to operate the System (the “Jacobs Contract”); and

**WHEREAS**, throughout the years, the City and County have entered into agreements pertaining to the City’s management and expansion of the System, the County’s payment for services received therefrom, and the County’s share of capital costs (“Sewer Agreements”); and

**WHEREAS**, failing to reach a new agreement upon the expiration of the April 1, 2003 Sewer Agreement, the City and the County engaged in an arbitration proceeding, *City of Wilmington v. New Castle County*, American Arbitration Association (“AAA”) File No. 180 Y

01101 08, which resulted in a Sewer Agreement dated June 1, 2010 (“2010 Sewer Agreement”);  
and

**WHEREAS**, the 2010 Sewer Agreement covered the period of Fiscal Years 2008  
through 2012; and

**WHEREAS**, after several contract extensions, the 2010 Sewer Agreement expired on  
November 30, 2014; and

**WHEREAS**, since the expiration of the 2010 Sewer Agreement, the Parties engaged in  
discussions in an attempt to reach a new agreement;

**WHEREAS**, failing to reach a new agreement, on March 19, 2019, the City filed for  
arbitration, and the County filed a counterclaim, in a matter captioned *City of Wilmington v. New  
Castle County*, AAA File No. 01-19-000-8779 (the “Arbitration”); and

**WHEREAS**, after the City instituted the Arbitration, the Parties continued to engage in  
discussions with the hope of resolving the matter; and

**WHEREAS**, the Parties engaged in discovery, including expert discovery, and the  
Arbitration hearing was scheduled to take place over the course of eight days from November 8-  
18, 2021; and

**WHEREAS**, on November 5, 2021, the Parties reached an agreement in principle to  
resolve all issues in the Arbitration.

**NOW, THEREFORE**, the City and County, in consideration of the mutual promises and  
covenants set forth herein, agree that the County’s use of the System shall be governed by, and in  
accordance with, the terms and conditions herein set forth.

## ARTICLE I

### **STANDARDS AND REGULATIONS**

1. The Recitals set forth above are incorporated herein and made a part hereof.
2. The City owns and operates the System to which the City and County discharge wastewater. The City's wastewater flows to the System through its collection and transmission network ("City Network"). The City operates, maintains, and administers the System and the City Network through its own employees and by contract. The County's wastewater flows to the System through a collection and transmission network to the County's Christina River and Edgemoor Force Mains (the "County Force Mains") and the County's Brandywine Interceptor (collectively, the "County Network"). The County Force Mains flow directly to the Plant and the Brandywine Interceptor flows to the City's 11<sup>th</sup> Street Pump Station, through the City's 11<sup>th</sup> Street Force Main to the Plant.
3. The City agrees to receive in the System the wastewater discharged from the County and to thereafter treat this wastewater in the System subject to the terms and conditions stated herein as well as any terms and conditions set forth in a separate Multijurisdictional Agreement consistent with this Agreement.
4. The County shall not receive sanitary sewage, industrial wastewater, or other matter in its sewer system from: (A) any jurisdiction outside of the State of Delaware, other than those jurisdictions currently served; and (B) outside of the Delaware River Basin, unless permitted by the rules and regulations of the Delaware River Basin Commission.
5. The Plant, as it currently exists, has been designed to treat an annual average daily flow of one hundred five million gallons per day (105 mgd). The County's allocation of such flow on an annual average daily flow basis shall be seventy (70) mgd or two-thirds (2/3) of

the Plant's annual average daily flow. The County agrees that it shall not, under any circumstances, exceed its annual average daily flow allocation of 70 mgd unless agreed upon in advance by both the City and the County in writing.

6. The County shall review with the City any proposed increases in its pumping capacity to the Plant or the addition of any proposed industrial users who would discharge to the Plant. The City agrees to notify the County of any proposed increases in the City's pumping capacity to the Plant.

7. The City and the County shall each maintain programs to control hydrogen sulfide within their respective sewer systems. Upon request, the City and County shall share with each other any measurements taken of hydrogen sulfide levels, including those taken by outside vendors employed by the City or County. The Parties agree to discuss and study the effectiveness of hydrogen sulfide control in the City Network and County Network as part of their Wastewater Treatment Committee meetings. As part of these discussions, consideration shall be given to measurements of dissolved sulfides, vapor and other factors indicative of hydrogen sulfide control. If warranted, the Parties will discuss development of alternative programs to control hydrogen sulfide.

8. The Parties shall properly operate and maintain all sewers presently under their respective jurisdictions or in their control.

## **ARTICLE II**

### **FLOW AND STRENGTH**

The County's respective share of Operation and Maintenance ("O&M") costs is based on a method that accounts for the County's relative contributions of metered sewage flow and the strength parameters of biochemical oxygen demand ("BOD") and total suspended solids ("TSS")

to the System as detailed in Article VI. The County's relative contributions of metered sewage flow, BOD, and TSS to the System form the basis for calculating the County's share of O&M costs set forth in Article III.

### **ARTICLE III**

#### **BASIS OF CHARGE**

##### **1. Definitions**

A. "Eligible Wastewater Treatment Plant Operator O&M Costs" shall be defined as the Annual Service Fee contemplated in Article V of the Jacobs Contract but excluding, solely to the extent separately accounted for by Jacobs using commercially reasonable efforts<sup>1</sup>, costs for:

- i. Major Maintenance Account;
- ii. Extraordinary Items Component;
- iii. Wastewater pumping stations, consisting of the 11<sup>th</sup> Street Pump Station, 12<sup>th</sup> Street Pump Station, 7<sup>th</sup> Street Pump Station, and Justison Street Pump Station, provided, however, that the portion of the O&M costs of the 11<sup>th</sup> Street Pump Station that are attributable to County flow, which is currently 8.5%<sup>2</sup> (subject to modification in accordance with Article V), shall be included in the County's fee;

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<sup>1</sup> The City acknowledges that the County should not be charged for these costs.

<sup>2</sup> This number was calculated by taking the ratio of the Brandywine Interceptor Flow (1.8 MGD) to the total 11th Street Pump Station Flow (21.3 MGD) as reported in the Kleinfelder Report. This number does not include Unmetered Flow. The Parties agree to discuss this issue as part of the Wastewater Treatment Plant Committee meetings and to update this number, if appropriate, to capture any County sanitary sewer flow entering the City Network, whether metered or not.

- iv. Combined sewer overflow (“CSO”) mitigation facilities listed in Table 1A of the Jacobs Contract;
- v. City’s Realtime Control System; and
- vi. CSO site locations as listed in Table 1B of the Jacobs Contract.

B. “Eligible Other City O&M Costs” shall be defined as the portion of the City’s budget costs, excluding debt service and depreciation costs, associated with currently defined<sup>3</sup> Fund 421 – Water/Sewer Fund for Department 130 (Audit/Administration), Department 150 (Finance/Administration), Department 152 (Finance/Accounting) and Division 229 (Public Works/Wastewater Treatment) attributable to the System that are as defined in the City’s Fiscal Year 2022 Budget and that are not incurred under the Jacobs Contract.

C. “Ineligible Other City O&M Costs” shall be defined as those budget costs of all other Departments associated with currently defined Fund 421 – Water/Sewer Fund, and excluding those Departments included in the “Eligible Other City O&M Costs.”

D. “Operator Capital Costs” shall be defined as the System related Major Maintenance Account costs that are attributable to capital cost allocation and Extraordinary Items Component costs referred to in Article V of the Jacobs Contract.

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<sup>3</sup> All references to specific accounting categories in this Agreement refer to those costs currently included in those categories as of the Effective Date of this Agreement. To the extent cost categories change or costs are allocated to different cost categories, the intent of these references is to include the same group of costs currently included in these categories regardless of future changes.

E. “Capital Item” shall be defined as a major cost for a Plant asset, REBF, or 11<sup>th</sup> Street Pump Station asset, that is either a capital improvement, replacement, or major maintenance item that is capitalized in accordance with City accounting practices.

F. “County O&M Share” shall be defined as eighty percent (80%), unless modified by Articles V and VI.

G. “City O&M Share” shall be defined as twenty percent (20%), unless modified by Articles V and VI.

H. “County Capital Share” shall be defined as sixty-six and sixty-seven hundredths percent (66.67%), except that for the 11<sup>th</sup> Street Pump Station the County’s percentage shall be the percentage of flow attributable to the County, which is currently 8.5% (subject to modification in accordance with Article V).

I. “REBF Costs” shall be defined as all costs, including O&M, Capital Items, and debt service, related to the REBF. REBF Costs shall be charged to the County at the County O&M Share. As contemplated in the Jacobs Contract, any revenue and cost savings generated by the REBF will be used to offset REBF Costs and Eligible Other City O&M Costs.

J. “Outstanding Plant Debt Service” shall be defined as the principal and interest payments due on outstanding bonds and loans associated with the Plant in each Fiscal Year and for additional future debt, if any, incurred during the term of this Agreement.

K. “REBF Debt Service Costs” shall be defined as the principal and interest payments due on the outstanding loan, associated with the REBF, in each Fiscal Year and for additional future debt, if any, incurred during the term of this Agreement.

## 2. Settlement of Past Cost Claims

A. For Fiscal Years 2017-2020, the County shall pay the City, within thirty (30) calendar days of the Effective Date of this Agreement, a sum of Six Million Six Hundred Fifty-Seven Thousand Three Hundred Sixty Dollars and Zero Cents (\$6,657,360), in addition to the payments the County has already made for these Fiscal Years.

B. The City is currently negotiating a claim with Honeywell, the former operator of the REBF, that may result in a payment to the City. The City shall credit the County for its share of any net recovery from Honeywell at the same O&M allocation at which the County paid the Honeywell fees. By way of example, should the City receive a payment from Honeywell for performance guarantees for FY 2020 or earlier, the County's share shall be 81%. By way of further example, should the City receive a payment from Honeywell as a result of repairs made in FY 2021 or later, the County's share shall be 80%. By net recovery, the Parties mean that the City will deduct the County's proportionate share of documented legal fees it incurred in its dispute with Honeywell from the total payment to the City by Honeywell prior to calculating the credit to the County. The legal fees deducted from the Honeywell payment shall not include any legal fees included in any prior true-up or invoice, nor shall the legal fees deducted from the Honeywell payment be eligible to be included in any future true-up cost. The credit shall be applied in the true-up for the Fiscal Year in which the reimbursement from Honeywell is received by the City. Although it is not anticipated that the City shall be making any payment to Honeywell, the County shall have the opportunity to engage in good faith discussions with the City about the proposed settlement with Honeywell if any proposal

would result in any additional REBF or Honeywell payment by the County in excess of \$500,000.

C. For Fiscal Year 2021, the County paid the City all amounts that the City invoiced the County. However, the City estimates that there shall be an additional amount due based on actual costs having exceeded the City's estimated annual budget for Fiscal Year 2021, which is the basis for the City's monthly invoices to the County. The City shall utilize a County rate of eighty percent (80%) for Plant O&M, eighty percent (80%) for REBF Costs, including REBF Debt Service Costs, and sixty-six and sixty-seven hundredths percent (66.67%) for all Plant capital and Plant debt service costs (other than REBF Debt Service Costs) in calculating the County's true-up for Fiscal Year 2021. The City shall include Eligible Wastewater Treatment Plant Operator O&M Costs and Eligible Other City O&M Costs but shall not include in the Fiscal Year 2021 true-up any Ineligible Other City O&M Costs. The County has the right to conduct an Audit of the Fiscal Year 2021 true-up in accordance with Article III, Paragraph 6.

### 3. Annual Base Fee.

The County shall pay to the City an annual base fee ("Annual Base Fee"), which shall include WWTP O&M Costs (comprised of Eligible Wastewater Treatment Plant Operator O&M Costs, Eligible Other City O&M Costs, REBF Costs, and required increases to the 60-Day Operating Reserve); Outstanding Debt Service; Operator Capital Costs; and Capital Items.

#### A. Fiscal Year 2022.

The County shall pay the City at eighty percent (80%) for Plant O&M, eighty percent (80%) for REBF Costs, including REBF Debt Service Costs, and sixty-six and sixty-seven hundredths percent (66.67%) for any Capital Item and any

Outstanding Plant Debt Service (other than REBF Capital Items and REBF Debt Service Costs). The City shall include Eligible Wastewater Treatment Plant Operator O&M Costs and Eligible Other City O&M Costs but shall not include in the Annual Base Fee or True-Up any Ineligible Other City O&M Costs. For purposes of calculating Eligible Other City O&M Costs, the City shall calculate such costs in the same manner described for FY 2023-2032 below. The City shall credit the County in the Fiscal Year 2022 True-Up for any amount the County may have overpaid as the result of paying the City's monthly invoices at a higher percentage than the allocation set forth in this paragraph. The County agrees to pay the City \$531,357.96, subject to verification that the City has paid this amount, which represents the County's share of the Fiscal Year 2020 Veolia Dispute Settlement amount of \$655,997.48, which the City paid to Veolia during Fiscal Year 2022 per the Veolia Settlement Agreement (the "County Veolia Share"). The County also agrees, subject ultimately to the Audit of the True-Up in accordance with Article III, Paragraph 6, that the costs identified in Article III, Paragraph 1(A)(iii) for Fiscal Year 2022 shall also be paid by the County (the "County Pumping Costs"). The County Veolia Share and the County Pumping Costs shall be included as part of the FY 2022 Annual Statement and shall be paid within 60 days.

B. Fiscal Years 2023-2032.

As soon as possible after January 1, but no later than February 15 prior to the commencement of Fiscal Year 2023 and all other future Fiscal Years subject to the terms of this Agreement, the City shall provide the County with a statement showing the good faith estimate

of the Annual Base Fee for the upcoming Fiscal Year, which shall include all of the categories identified below. With respect to Eligible Other City O&M Costs, the estimate shall be based on the City's most recently available budget detail. The Parties shall discuss the estimated Annual Base Fee during the next meeting of the Wastewater Treatment Plant Committee created pursuant to Article V of this Agreement (where a representative of Jacobs shall be present), or earlier if the County requests. For Fiscal Years 2023-32, the County shall pay to the City an Annual Base Fee established prior to the beginning of each Fiscal Year as set forth herein, consisting of the following elements, each separately described and accounted for in sufficient detail for meaningful County review:

i. Wastewater Treatment System O&M Costs:

(a) Eligible Wastewater Treatment Plant Operator O&M Costs. The County shall pay to the City the County O&M Share of the Eligible Wastewater Treatment Plant Operator O&M Costs.

(b) Eligible Other City O&M Costs.

(i) The Eligible Other City O&M Costs paid by the County shall include the County's O&M Share of City costs that are appropriately allocated to wastewater treatment. The Parties agree that the calculations performed in FY 2021 shall serve as an example of the calculation methodology and have further described the methodology in Appendix A for illustration purposes only. The City agrees that it will not modify Appendix A to include any new costs not already captured in the cost categories or modify the process set forth therein prior to discussing with the Wastewater

Treatment Plant Committee. Any new costs must relate to the provision of wastewater treatment services to the County.

(c) REBF Costs. The County shall pay REBF Costs at the County O&M Share.

(d) 60-Day Operating Reserve.

(i) In accordance with the 2010 Sewer Agreement, the County has previously paid its contribution to the 60-day operating reserve attributable to the Eligible Wastewater Treatment Plant Operator O&M Costs and to the Eligible Other City O&M Costs through Fiscal Year 2021.

(ii) For Fiscal Years 2022-2032, the County shall pay the County O&M Share of any increase in the 60-day operating reserve attributable to the Eligible Wastewater Treatment Operator O&M Costs (inclusive of REBF Costs (other than Capital Items)), and Eligible Other City O&M Costs.

(iii) The City shall separately account for the 60-day operating reserve attributable to the Plant, including separately accounting for the contributions made to the 60-day operating reserve by both the County and the City. In the event the City is required to use funds from the 60-day operating reserve to pay for attributable Eligible Wastewater Treatment Plant Operator O&M Costs or Eligible Other City O&M Costs, it shall notify the County of: (1) the amount of funds expended and (2) the reason for the

expenditure. Such amounts paid for by the City with the 60-day operating reserve shall not be included in the true-up amounts described in Article III, Paragraph 5. The County shall pay its proportionate share of the cost of replenishing the 60-day operating reserve at the conclusion of each Fiscal Year, provided, however, that if the cost to the County in any given year of replenishing its proportionate share of the reserve is \$500,000 or greater, the County may elect to replenish its share of the operating reserve over a period of six (6) months with equally divided monthly payments.

(iv) In the event the 60-day reserve needs to be replenished, it shall be computed as  $60/365$  times the Eligible Wastewater Treatment Plant Operator O&M Costs and Eligible Other City O&M Costs.

ii. Outstanding Plant Debt Service. The County shall pay the County Capital Share of the total actual principal and interest payments due on outstanding bonds and loans, associated with the Plant in each Fiscal Year and for the annual principal and interest payments due on additional debt associated with the Plant in each Fiscal Year, if any, incurred during the term of this Agreement. For the avoidance of doubt, Outstanding Plant Debt Service shall not include REBF Debt Service Costs, which shall be calculated at the County O&M Share. The County shall pay the REBF Debt Service Costs at the County O&M Share in

recognition of the unique circumstances surrounding the REBF which was initially modeled as an Energy Savings Performance Contracting (ESPC) project.

iii. Operator Capital Costs. The County shall pay its share of the Operator Capital Costs for the Plant at the County Capital Share. However, such allocation of costs shall be reviewed and adjusted in connection with the True-Up to determine whether such Operator Capital Costs should be calculated at the County Capital Share or County O&M Share.

iv. Capital Items. Capital Items at the Plant shall be paid at the County Capital Share. Capital Items at the REBF shall be paid at the County O&M Share.

4. Debt Refinancing.

If the City proposes to refinance the debt service on a Bond or State Revolving Fund loan associated with wastewater treatment project financing, it shall review its proposal with the County during the Wastewater Treatment Plant Committee meetings. The County may provide comments on any such proposal, which shall be submitted promptly following such meeting. The City agrees to allow the County to submit proposals in writing to the City for consideration that would allow the County to take advantage of refinancing opportunities, which the City shall consider in good faith, but the City shall have the sole discretion to accept or reject any County request. If the City moves forward with refinancing the debt service on a Bond or State Revolving Fund loan, the City and the County shall share in the savings or costs generated via an adjustment to annual debt service payments proportional to the debt service allocation in place for the loan that has been adjusted.

##### 5. True-Up.

Within thirty (30) days of the issuance of the City's Comprehensive Annual Financial Report ("CAFR"), the City shall send the County a true-up statement detailing any amounts owed by the County or credits due to the County based on the City's actual payments of Eligible Wastewater Treatment Plant Operator O&M Costs, Eligible Other City O&M Costs, REBF Debt Service Costs, Outstanding Debt Service, Operator Capital Costs and Capital Items (the "True-Up"), including any items from the major Maintenance Account or Extraordinary Items Component that should be reallocated as O&M expenses. The City shall perform any adjustments that are needed in the determination of the actual Eligible Wastewater Treatment Plant Operator O&M Costs as a result of Jacobs providing the City with an annual reconciliation statement and related documentation under Article V of the Jacobs Contract. The City shall document in detail such annual statements, showing the computation of all amounts owed or payable to Jacobs by the City under the Jacobs Contract, all amounts paid by the City to Jacobs under the Jacobs Contract, and all amounts paid by Jacobs to the City under the Jacobs Contract for the True-Up Fiscal Year, including details related to corrections and reconciliations to actual values of all cost components defined in the Definitions under Article III of this Agreement. The City shall also adjust the 60-Day Operating Reserve amount as a result of changes to the Eligible Wastewater Treatment Plant Operator O&M Costs and Eligible Other City O&M Costs. The True-Up shall also include the cost of preparing the estimated Annual Base Fee and True-Up, which shall be paid by the County at its O&M share. To the extent the True-Up indicates a payment owed by the County, the County shall pay the True-Up amount within sixty (60) days or later if agreed to in writing by the Parties. To the extent the True-Up indicates an over

payment by the County, the City shall issue payment to the County for the amount of the over payment within sixty (60) days.

6. Audit

Upon receipt of the True-Up during any Fiscal Year during the term of this Agreement, the County shall have the right to conduct an audit in good faith to inspect and review the documents supporting the City's charges to the County and to verify the calculations performed to calculate the actual amounts contained in any True-Up and the City's payment of its share of any charges (the "Audit"). Any such Audit shall be completed within seventy-five (75) days of receipt of the True-Up, or later if agreed to in writing by the Parties. The City shall make its books, records, and documents related to the Plant and the REBF available to the County or its representative for examination or review in response to reasonable requests from the County, which shall include items such as invoices from the Contract Operator and the City's Level 5 budget detail. The Audit is intended to verify for the County that the City has paid all costs charged to the County and that all costs charged to the County are related to the City's provision of wastewater treatment services to the County.

The County shall have the right to employ a third party at its own expense to conduct such an Audit, and the City shall promptly respond to all reasonable requests for documents and information ordinarily provided for such audits of a similar nature. To the extent the Audit indicates a discrepancy with the City's True-Up, the City and County shall engage in an expedited dispute resolution process including Executive Level Communications meetings under Article V of this Agreement. If the dispute resolution process fails to resolve the matter, the Parties may resolve the dispute in accordance with Article VIII, Paragraph 6. Notwithstanding any such Audit or dispute, the County shall pay the City the amount invoiced in the True-Up

during the pendency of any such dispute, as required by Article III, Paragraph 5 unless the Parties have agreed in writing to extend the time for payment.

#### **ARTICLE IV**

##### **BILLING AND PAYMENT**

1. Beginning with execution of this Agreement and continuing during the term of this Agreement, the City shall bill the County by sending a monthly invoice to the Office of Finance Accounts Payable with a copy to the Public Works General Manager for the payment of 1/12 of the Annual Base Fee and any additional charges incurred under the Jacobs Contract that exceeded what had been estimated or for Capital Items not included in the Annual Base Fee in the prior month. The County shall pay the invoice within thirty (30) days of receipt, or the next business day if the 30<sup>th</sup> day falls on a weekend or County holiday, except that to the extent that Capital Items or any additional charges incurred under the Jacobs Contract exceed \$500,000 in the aggregate for that Fiscal Year, any such amount in excess of \$500,000 shall be paid in connection with the Annual Statement discussed below.

2. The City shall provide the County within sixty (60) days after the end of each Fiscal Year an annual statement (the "Annual Statement"), which shall show for such Fiscal Year the computation of all amounts owed or payable by the City to the City's Contract Operator, all amounts owed or payable to the City by the City's Contract Operator, all amounts paid by the City to the City's Contract Operator, and all amounts paid by the City's Contract Operator to the City under the Jacobs Contract, and any Capital Items. To the extent the Annual Statement shows an amount owed by the County, such amount shall be paid within sixty (60) days. To the extent the Annual Statement shows an amount to be paid to the County as a result of over payment by the County, the amount of overpayment shall be

paid or credited to the County within sixty (60) days. The information contained in the Annual Statement shall also be contained in the True-Up set forth in Article III, Paragraph 5 and shall be subject to audit as part of the Audit of the True-Up. By paying the Annual Statement, the County does not waive any right to contest a cost contained in the Annual Statement when reviewed at the time of the True-Up.

3. If the County disputes any monthly invoice received from the City, it shall notify the City in writing, within thirty (30) days of the receipt of the invoice, as to the amount that is disputed and the basis of the dispute. To the extent the County disputes any monthly invoice received from the City, the County shall, during the pendency of such dispute, pay the amount due to the extent that the City certifies that the City has paid the City's share of such costs and expenses.

4. To the extent the County fails to timely make any payments invoiced by the City, the County shall be assessed and pay interest as set forth in the City's Sewer Ordinance for such applicable year. Upon request by the County, the Parties shall discuss the matter at the Executive Level Communications meetings set forth in Article V prior to the County being required to pay interest.

5. The City shall respond to any billing inquiries from the County within a reasonable time, which shall generally be within seven (7) business days.

## **ARTICLE V**

### **WASTEWATER TREATMENT COMMITTEE AND COMMUNICATIONS**

#### **1. Wastewater Treatment Committee**

A. To ensure greater communication and coordination on wastewater treatment issues, the Parties shall create a Wastewater Treatment Committee

(“Committee”) that shall meet for the first time no later than sixty (60) days after the Effective Date of this Agreement. The Committee shall be charged with facilitating the timely sharing of information regarding System operations, planning, capital expenditures, O&M costs, finances, regulatory compliance, and other relevant System information. The Committee shall be comprised of the following members:

- i. Three representatives from the City, which shall include the City’s Commissioner of Public Works;
- ii. Three representatives from the County, which shall include the County’s General Manager of Public Works; and
- iii. One representative from Jacobs.

B. Within thirty (30) calendar days of the Effective Date of this Agreement, the City and County shall provide written notice of their respective representatives to the other Party. For each such Fiscal Year thereafter, to the extent either Party seeks to change one or more of its representatives, it shall provide written notice to the other Party of any such change within thirty (30) calendar days after the start of the Fiscal Year; provided, however, that the Commissioner of Public Works and the General Manager of Public Works shall remain members of the Committee at all times. In addition, for specific issues to be addressed at a meeting, each Party may invite as many as two (2) additional representatives (which may include outside consultants) to join a meeting. Unless jointly agreed by the Parties, neither the City nor the County shall have inside or outside counsel attend the Committee meetings or be members of the Committee.

C. Meetings of the Committee shall take place on mutually agreed upon dates. The City Commissioner of Public Works shall be the Chairperson of the

Committee and the County's General Manager of Public Works shall serve as the Vice Chairperson. The Chairperson shall produce the agenda and any other documents supporting the agenda items, and prepare summary minutes of the meetings. The City shall provide the agenda to the County five (5) calendar days prior to the meeting (or such other time as agreed by the Parties) and the County shall be allowed to request additions or modifications to the agenda. A final agenda shall be distributed to all members of the Committee two (2) calendar days prior to the meeting (or such time as agreed by the Parties). One (1) calendar day prior to the meeting, the Parties shall identify any additional representatives that will be in attendance in accordance with Article V, Paragraph 1(B). Summary meeting minutes of any regular meeting shall be distributed to the members prior to the next regular meeting.

D. Should the Committee reach an impasse on any issue, it shall be presented to the City of Wilmington Mayor ("Mayor") and the New Castle County Executive ("County Executive") pursuant to Article V, Paragraph 3(C).

E. The Committee shall meet at least every other month to coordinate on, to the extent requested by either Party, issues relating to the System, including the following: capital expenditures, the City's proposed capital program, operational issues in the System, other issues that affect the System including discharges that occur in the County Network and are treated at the Plant, issues arising under the Parties' Multijurisdictional Agreement, any item referred to the Committee by a term of this Agreement, and any other item in the agenda proposed by the Parties. The City shall share with the Committee the annual report on the REBF provided by the City to Jacobs pursuant to the Jacobs Contract. The City shall allow the County representatives of the Committee to participate

in the five (5) year review of the REBF that it will conduct with Jacobs pursuant to the Jacobs Contract. Unless specifically required to be submitted in a particular format elsewhere in this Agreement, the City and the County members of the Committee may present written and verbal recommendations to the Committee as desired.

F. The City shall make the County members of the Committee aware of any upcoming decisions that the City reasonably believes will result in the County's share of the costs increasing by \$500,000 or more in any given Fiscal Year during the term of this Agreement. The County members of the Committee shall be given a reasonable opportunity to review and provide written input with respect to any such upcoming decisions prior to the City making such decisions. This includes, but is not limited to, any proposed revision to the Jacobs Contract. The City shall provide written notification to the Committee of any such proposed revisions as soon as practicable. In making a decision whether or not to move forward with any such Capital Item, project or revision to the Jacobs Contract, the City shall consider input from the County in good faith. Should the City decide to move forward with any Capital Item, project or revision to the Jacobs Contract that it reasonably anticipates would result in an additional charge to the County of more than \$500,000 and the County disagrees with any such expenditure, the County shall notify the City promptly in writing of the basis for its disagreements. The City shall promptly respond in writing, providing its reasons for moving forward. Either Party can then request further discussion of the matter with the Mayor and County Executive during an Executive Level Communications meeting as described in Article V, Paragraph 3, or through a special meeting with the Mayor and the County Executive. If the County requests an Executive Level Communications meeting regarding a particular Capital Item,

project, or revision to the Jacobs Contract that the City reasonably believes would result in an additional charge to the County of more than \$500,000 in any given Fiscal Year, any such meeting shall occur within ten (10) business days of the request. Until the conclusion of the Executive Level Communications meeting, the City shall not move forward with the project, Capital Item or revision to the Jacobs Contract, unless the City in good faith determines that time is of the essence and notifies the County that the Executive Level Communications meeting must take place in less than ten (10) business days. Nothing herein shall prevent the City from moving forward in good faith with respect to items considered to be an emergency.

G. In addition to changes that would result in the County's estimated Annual Base Fee increasing by more than \$500,000, the City members of the Committee will review with the County members of the Committee, allowing time for the County to submit written input, any major changes in the operation of the Plant that would necessitate a revision to the Jacobs Contract or the Plant's NPDES Permit.

H. The Committee shall review the flow and strength metering and sampling data and the Jacobs Yearly Report on Annual Operation and Maintenance Costs (the "Jacobs Yearly Report") every three (3) years in accordance with the methodology set forth in Article VI to determine if there should be a change to the County O&M Share. Should an influent meter be installed at the Plant, the Parties shall discuss during the Wastewater Treatment Plant Committee Meetings whether the three (3) year review period should be extended. The Parties agree to revise the County O&M Share during such a review should the three-year average of flow and strength contributions from the City and County, based on the methodology set forth in Article VI, indicate that any of the

Parties' relative contributions of Flow, BOD, or TSS have changed, or should the three-year average of Jacobs costs allocated to flow and strength change. The first review shall be completed no later than October 2026. By way of example, the review to be completed in October 2026 shall be based on information from Fiscal Years 2024-2026. If the Committee determines that a revision to the County O&M Share is warranted based on the information subject of the review, such change shall be implemented starting in Fiscal Year 2027. The Parties may each retain a neutral third-party to review the data. However, each Party shall be responsible for paying the fees of its neutral third-party. If the Parties are unable to agree on the conclusions from the data and have each hired a neutral third-party, such third-parties shall attend a Committee meeting to discuss their respective findings in an attempt to reach agreement. Any change to the County's O&M Share shall be memorialized in a letter agreement signed by the Mayor and the County Executive and shall be deemed incorporated into, and an amendment to, this Agreement.

2. Every three (3) years, the Committee shall also review the County's proportionate share of the O&M costs of the 11<sup>th</sup> Street Pump Station set forth in Article III(1)(A) to determine if there should be a change to the County's share. The County's proportionate share is determined based on the ratio of the prior three (3) year average of the County's average daily flow of the Brandywine Interceptor as measured by the level indicator and

Parshall Flume at the North Park Drive metering location near the Wills Pump Station<sup>4</sup> to the total average daily flow as measured at the 11<sup>th</sup> Street Pump Station.

3. Executive Level Communications

A. The Mayor and County Executive and their relevant staff shall meet quarterly to receive an update from their staff regarding wastewater treatment issues and to otherwise ensure communication and coordination between the Parties.

B. The Mayor and the County Executive shall meet in good faith, whether as part of the quarterly meetings set forth above or otherwise, to discuss any project or Capital Item that exceeds \$500,000 about which the County has expressed concerns or any other issue about which the City or County has concerns.

C. The Mayor and the County Executive shall meet with the Wastewater Treatment Committee when requested in an attempt to resolve any disputes that arise in that Committee.

4. Information and Coordination

A. The City and the County agree to provide each other with reasonable information as requested. The Parties further agree to discuss, as part of their Committee meetings, whether certain types of data should be exchanged on a regular basis which, for example, may include the City budget with Level 5 budget detail, reports from the Contract Operator required pursuant to the Jacobs Contract, capital improvement plans for

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<sup>4</sup> In the event that additional sanitary sewer flow metering information becomes available that the Parties agree should be allocated to the City or to the County, that metering information shall be incorporated for the purposes of this calculation. As provided in footnote 2 of this Agreement, the Parties shall discuss the inclusion of unmetered flow.

the System, true-up documentation and facility plans, master plans, engineer reports or major operational or infrastructure improvement plans designed to modify or improve the System or comply with regulatory requirements.

B. The City shall provide the County with its flow and strength data on a semi-annual basis. The County shall provide the City with its flow and strength data on a semi-annual basis for the first three Fiscal Years of this Agreement. Following the first three (3) years, the Committee will determine whether the County should continue to provide flow and strength data. However, regardless of the Committee's decision, data from County Pump Stations provided to the Plant through telemetry systems shall not be disrupted by the County during the term of this Agreement.

C. Each Party shall allow the other Party access to its respective pump stations and the Plant and REBF upon reasonable notice. Any access requested must be scheduled in advance with the City or County. All representatives of the City or County shall adhere to any reasonable safety instruction of the City, the County, or Jacobs in visiting any facility pursuant to this paragraph.

D. If any information is reasonably requested by the City or the County pursuant to this Agreement, the responding Party shall provide the appropriate requested information within thirty (30) calendar days of receipt of the request unless some other time period is provided for in this Agreement.

## **ARTICLE VI**

### **FLOW AND STRENGTH METHODOLOGY**

1. The County O&M Share is based on a flow and strength methodology that accounts for the County's relative contributions of metered sewage flow and the strength

parameters BOD and TSS to the Plant and the allocation of Plant O&M costs to flow, BOD, and TSS. Any review of the County O&M Share pursuant to Article V shall utilize the following method.

A. The total flow shall be the total flow measured by the effluent Parshall flumes at the Plant (“Total Flow”) expressed in millions of gallons. The City is considering installing an influent meter at the Plant. Prior to the installation of any such meter, the Parties shall discuss the installation as part of their Committee meetings. Should the City move forward with the installation of an influent meter after discussion at the Committee meeting, once installed, the City agrees to provide the County with written certification from the flow meter manufacturer that the new influent meter as installed is as accurate as the Parshall flumes, i.e., up to 5% of measured flow. To the extent a new influent meter is installed at the Plant, such new influent meter may be used in place of the effluent Parshall flumes.

B. Total BOD and TSS loads shall be the Plant’s influent BOD and TSS concentration data collected by the City as required by the Plant’s NPDES Permit multiplied by the Total Flow and a factor of 8.34 (“Total BOD and TSS Loads”)

C. The City’s share of Total Flow and Total BOD and TSS Loads shall be the sum of the flow and BOD and TSS loads measured at the (i) City’s 11<sup>th</sup> Street Pump Station, (ii) the City’s 12<sup>th</sup> Street Pump Station, (iii) the Delaware Solid Waste Authority (DSWA) discharge to the Christina River Force Main, and (iv) the Calpine discharge to the Edgemoor Pump Station minus the flow and BOD and TSS loads measured at the County’s Brandywine Interceptor (“City’s Flow and Strength Share”).

D. Any material change in the frequency, location, and method of BOD and TSS sampling at each of these locations shall be promptly communicated to the County for discussion regarding any impact on the calculation of the County O&M Share.

E. The County's share of the Total Flow and Total BOD and TSS Loads shall be calculated by subtracting the City's Flow and Strength Share from the Total Flow and Total BOD and TSS Loads.

2. The County's O&M Share shall be calculated by multiplying the County's flow, BOD, and TSS contribution percentages by the proportion of annual WWTP costs that are allocated to flow, BOD, and TSS and supported based on the Jacobs Yearly Report. The County shall have an opportunity to review the draft Jacobs Yearly Report (including any support provided by Jacobs) with the City and Jacobs and provide comments prior to Jacobs finalizing the Jacobs Yearly Report. The County shall have the right to (1) retain a consultant at its own expense to review the proportion of annual WWTP costs that are allocated to Flow, BOD, and TSS as contained in the Jacobs Yearly Report (2) discuss the Jacobs Yearly Report with the City and Jacobs, and (3) raise discrepancies through the processes in Article V, provided, however, that the County shall not be entitled to any information not required to be provided to the City pursuant to the Jacobs Contract. In any review of the County O&M Share conducted pursuant to Article V, Paragraph 1(H), the Parties shall use the Jacobs Yearly Report from the most recently concluded Fiscal Year.

3. The City shall have the obligation to calculate the County O&M Share pursuant to this Article VI in consultation with the Committee. To the extent the City determines to engage a third party to calculate the County O&M Share and requests that the County pay its proportionate share of such third party's fees and costs, the Parties may jointly select an

independent consultant. Any such third party shall be available to meet with the Committee as requested in connection with any review conducted under Article V, Paragraph (1)(H).

4. The City shall maintain in good working order any meters and samplers that it utilizes in data collection for the flow and strength methodology described in Article VI and any other meters and samplers it may use in connection with this Agreement. This includes performing maintenance and calibrations no less than once a year as practicable and reasonable. Within twelve (12) months of the Effective Date of this Agreement, if not already underway or completed by Jacobs, an independent consultant jointly selected by the Parties shall review the City's venturi meter at its 11<sup>th</sup> Street Pump Station to determine whether that meter is operating accurately and provide recommendations regarding calibration, maintenance and/or replacement. In recognition that this issue is related to the calculation of the County's flow to the Plant, the Parties shall pay for the independent consultant in accordance with the County O&M Share and City O&M Share. For the same reason, because the County considers this issue to be related to the Plant, to the extent any such consultant recommends replacement that exceeds \$50,000, any such cost shall be paid by the Parties in accordance with the County Capital Share and City Capital Share.

## **ARTICLE VII**

### **OTHER CAPITAL IMPROVEMENTS**

#### **1. Other Plant Capital Improvements.**

With respect to any Capital Item requested by the City or the County for the sole benefit of the requesting Party (including any increase in Plant capacity to accommodate the County's request), one hundred percent (100%) of that Capital Item shall be borne by the requesting Party. New debt service for mutually beneficial capital improvements (except any improvements to the

REBF, which shall continue to be pursuant to the County O&M Share and the City O&M Share), any Extraordinary Items Component (“EIC”) for Capital Items (as defined in the Jacobs Contract), or any Value Added payment (as defined in the Jacobs Contract) shall be paid by the County at the County Capital Share (sixty-six and sixty seven hundredths percent (66.67%)). Mutually beneficial capital improvements shall explicitly exclude Capital Items that solely benefit the City. Any cost savings or revenues generated from mutually beneficial capital projects shall be shared amongst the Parties in the same percentages at which the Parties contributed to that project.

2. Grant Funds.

In the event grants are provided by the state government, federal government or private industry to the City explicitly for the purpose of upgrading or rehabilitating the Plant, the County Capital Share of such grant shall be credited to the County, at the Outstanding Plant Debt Service share of sixty-six and sixty seven hundredth percent (66.67%). Should any grants be received related to the REBF, they shall be credited to the County at the County O&M Share.

**ARTICLE VIII**

**GENERAL PROVISIONS**

1. Multijurisdictional Agreement.

The City’s NPDES permit requires the City to enter into multijurisdictional agreements (“MJA”) with all major contributing jurisdictions. To that end, the County and the City shall, as soon as reasonably practicable following the Effective Date of this Agreement, but in no event more than sixty (60) days following the Effective Date, enter into an MJA. Each Party shall retain jurisdiction and enforcement over its respective collection system and any permittees

therein. In the event of a conflict between the MJA and this Agreement, the provisions of this Agreement shall control.

2. Dismissal of Arbitration.

Within five (5) business days of the Effective Date of this Agreement, the Parties shall take all necessary steps to dismiss the Arbitration.

3. Headings.

Any headings used herein are for convenience of reference only and shall not affect the construction of or be taken into consideration in interpreting this Agreement.

4. Modification.

This Agreement is the full and complete understanding between the Parties with respect to treatment of the County's wastewater at the Plant and the Arbitration and supersedes any and all other agreements, understandings, negotiations, proposals, or discussion, either oral or in writing, express or implied with respect to treatment of the County's wastewater at the Plant and the Arbitration. With the exception of modification in the manner set forth elsewhere in this Agreement, any modification, amendment or alteration of this Agreement, or any of its terms, shall be in writing and signed by all Parties to this Agreement; nothing else including, but not limited to, detrimental reliance, estoppel, oral representations or any promises whatsoever shall modify, amend, or alter this Agreement.

5. Waiver and Release of Claims.

By entering into this Agreement, the Parties agree to and do waive and release any and all claims, including legal, equitable, and for damages, interest, and penalties, that either were asserted or could have been asserted against the other or their officials, officers, employees, and attorneys in the Arbitration.

## 6. Governing Law and Dispute Resolution.

The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Delaware without giving effect to the provisions, policies, or principles thereof relating to the choice of law or conflict of laws. All claims, disputes or other matters in question between the Parties arising out of or relating to this Agreement or breach thereof shall be decided in arbitration presided over by a single arbitrator in accordance with the Rules of the American Arbitration Association unless the Parties mutually agree otherwise. In selecting the arbitrator, the Parties agree to give consideration to an arbitrator who is a former Delaware federal or state court judge with at least ten (10) years of judicial experience in complex commercial litigation preferably in the United States District Court for the District of Delaware, the Court of Chancery, or the Complex Commercial Litigation Division of the Delaware Superior Court. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other matter, any additional party not a party to this Agreement, except by written consent containing a specified reference to this Agreement and signed by the Parties hereto. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitration of any dispute not described therein or with any party not named or described herein. This Agreement to arbitrate and any agreement to arbitrate with an additional party or parties duly consented to by the Parties hereto shall be specifically enforceable under the prevailing arbitration law. The demand for arbitration shall be filed in writing with the other Party to this Agreement. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The costs of arbitration shall be split equally; provided, however,

that each Party shall bear its own fees and costs of preparing for and participating in any arbitration.

7. Cooperation.

The Parties agree to cooperate in all matters pertinent to this Agreement to the fullest extent possible. Notwithstanding any provisions of this Agreement calling for cooperation or receipt of input from the County, nothing in this Agreement is intended to limit the City's ability to operate the Plant as deemed necessary and nothing herein shall be interpreted to relieve the County of any obligation to incur the cost to provide the County wastewater treatment services at the Plant.

8. Negotiation for a New Agreement.

The City and the County shall meet with each other by January 1, 2031 to begin to negotiate the terms of a new agreement to commence on July 1, 2032. In the event the City and the County have not entered into a new agreement by June 30, 2031, they agree to engage in mediation. If mediation is not successful, they agree to proceed with binding arbitration in accordance with the provisions of Article VIII, Paragraph 6.

9. Notice.

Any notice, demand, request, consent, approval or communication required by this Agreement shall be in writing, addressed to the other Party at the addresses set forth below:

(a) If to the City, to:

City Solicitor  
City of Wilmington Law Department  
800 N. French Street, 9<sup>th</sup> Floor  
Wilmington, DE 19801

(b) If to the County, to:

County Attorney  
New Castle County Office of Law  
87 Reads Way  
New Castle, DE 19720

*[signature page follows]*

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement on the day and year aforesaid.

**CITY OF WILMINGTON**

By: \_\_\_\_\_  
Michael S. Purzycki  
Mayor

Attest: \_\_\_\_\_  
City Clerk

**NEW CASTLE COUNTY**

By: \_\_\_\_\_  
Matthew Meyer  
County Executive

Attest: \_\_\_\_\_

## APPENDIX A

### Description of Allocation of Eligible Other City O&M Costs for FY 2021

The following represents the methodology used in FY 2021<sup>5</sup> to allocate the County's O&M Share of Eligible Other City O&M Costs. While the below is intended to guide the Parties, it is recognized that changes in costs or in City budgeting could result in different or additional categories of City costs that need to be allocated, but it is agreed that no costs that are unrelated to the System will be included in calculating the County's O&M Share of Eligible Other City O&M Costs.

A. Eligible Other City O&M Costs includes the portions of the City's operating budget<sup>6</sup> costs, which are attributable to the System, and excludes debt service and depreciation costs, which are as defined in the City's Fiscal Year 2021 Budget of Fund 421 – Water/Sewer Fund, and which are not incurred under the Jacobs Contract. The Eligible Other City O&M Costs attributable to the System shall be limited to, and specifically associated with, the operating budgets of Department 130 (Audit/Administration), Department 150 (Finance/Administration), Department 152 (Finance/Accounting) and Division 229 (Public Works/Wastewater Treatment).

B. "Net Finance and Auditing Costs" shall be defined as the sum of the operating budget costs (excluding debt service and depreciation costs), of Department 130 (Audit/Administration), Department 150 (Finance/Administration), and Department 152 (Finance/Accounting).

C. "Net Wastewater System Costs" shall be defined as the sum of the operating budget costs (excluding treatment plant operator costs, debt service and depreciation costs), of Division 226 (Public Works/Sewer Maintenance) and Division 229 (Public Works/Wastewater Treatment).

D. "Net Finance and Auditing Wastewater Allocation Factor" shall be determined as the ratio of the number of retail stormwater accounts to the sum of the City's retail Water and Stormwater accounts in the City's service area, determined using the data from the Fiscal Year prior to the current budget year or the most current available data.

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<sup>5</sup> To the extent there is any discrepancy between Appendix A and the FY 2021 True-up, Appendix A shall control for future Fiscal Years.

<sup>6</sup> At the time of the True-up set forth in Article III, Paragraph 6, the costs identified in Paragraphs A through G of this Appendix will be calculated using actual costs.

E. “Net Finance and Auditing System Allocation Factor” shall be determined as the ratio of the Division 229 (Public Works/Wastewater Treatment) operating budget costs (excluding treatment plant operator costs, debt service, depreciation costs, and the portion of Division 229 costs allocated to City Collection) to the Net Wastewater System Costs, determined using operating budget data from the budget year for which the County’s fee estimate is to be determined.

F. “Non-Operator Treatment 229-Cost Allocation Factors” shall be defined as the allocation factors that the City has defined for the City Collection and System respectively, to allocate the Fiscal Year 2021 actual operating budget costs of Division 229 (excluding debt service, depreciation, and “Eligible Wastewater Treatment Plant Operator O&M Costs”), between City Collection and System. Such line item cost allocation factors shall be updated each Fiscal Year based on the proportion of costs attributable to City Collection and the Plant, respectively.

G. “Eligible Other City O&M Costs” will be determined as follows:

i. For Fiscal Years 2022 – 2032 for Departments 130, 150, and 152, the operating budget costs (excluding debt service and depreciation costs), attributable to the System, shall be determined as the product of Net Finance and Auditing Costs, Net Finance and Auditing Wastewater Allocation Factor, and Net Finance and Auditing System Allocation Factor.

ii. For Fiscal Year 2022, for Division 229, the operating budget costs (excluding treatment plant operator costs, debt service and depreciation costs), attributable to the System, shall be determined using the Non-Operator Treatment 229-Cost Allocation Factors.<sup>7</sup>

iii. For Fiscal Years 2023 - 2032, 100% of the operating budget costs of Division 229 (excluding treatment plant operator costs, debt service and depreciation costs), shall be attributable to the System.

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<sup>7</sup> It is anticipated that the City will make accounting adjustments to Division 229 to remove all non-System costs such that 100% of the costs going forward will be attributable to the System. If the City does not make accounting adjustments to Division 229 in future Fiscal Years to remove all non-System-related costs, then the allocation process described for Fiscal Year 2021 shall be applicable to such Fiscal Years.