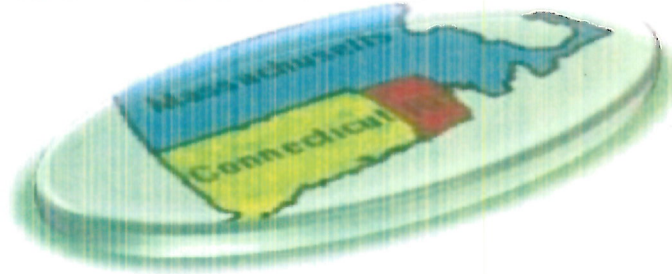


TRI-STATE WASTEWATER



**Operations and Maintenance Agreement**

Between

**Tri-State Wastewater, LLC.  
103 Thrush Rd Warwick, RI 02886**

And

**Tiverton Wastewater District  
400 Fish Rd.  
Tiverton R.I. 02878**

**June 30, 2023**

This Operations and Maintenance Agreement (“Agreement”) is effective as of the 1st day of July, 2023 (“Effective Date”), by and between., a corporation organized and existing under the laws of the State of Rhode Island and having its principal place of business at 103 Thrush Rd., Warwick, Rhode Island 02886 (“Tri-State”) and Tiverton Wastewater District (TWWD), 400 Fish Road, Tiverton, Rhode Island and existing under the laws of the State of Rhode Island.

**RECITALS**

**DEFINITIONS**

For purposes of this Agreement, the following definitions shall apply:

- 1.1. “Owner” means the Tiverton Wastewater District located at 400 Fish Road Tiverton, RI 02878
- 1.2. “Tri-State” means Tri-State Wastewater LLC located at 103 Thrush Road Warwick, RI 02886
- 1.3. “Agreement Price” means the sum of (1) the Base Monthly Fee and (2) the Additional Services Fees and Costs.
- 1.4. “Emergency Call-Out” means services provided by Tri-State pursuant to this Agreement outside of Normal Business Hours
- 1.5. “Maintenance” means those routine or repetitive activities, including preventive and predictive activities required by the equipment guidelines or manuals and those activities recommended by Tri-State to maximize the service life and performance of the Facility’s equipment and the components thereof.
- 1.6. “Normal Business Hours” means the hours between 8:00 AM and 4:00 PM, Monday through Friday, excluding holidays.
- 1.7. “Repair” means those unplanned, non-routine and non-repetitive activities required for operational continuity, safety, and performance, generally due to failure, or to avert a failure of, equipment, structures, and the Facility or a component thereof.
- 1.8. “Replacement” means the complete substitution of a piece of equipment, a component of a piece of equipment, vehicles, structures, or a component of the Facility due to wear, breakage, or other failure in order to return the equipment, vehicle, structure, Facility or some component thereof to designed functionality.

**2. TERM OF AGREEMENT**

2.1. The term of this Agreement shall be for a period of thirty-six (36) months commencing July 1st, 2023 (“Commencement Date”), and continuing until 11:59 p.m. on June 30, 2026.

**3. SCOPE OF SERVICES**

3.1. Basic Services

Throughout the Term of this Agreement, Tri-State shall, in accordance with Applicable Law, provide the basic services set forth below, as may be amended in writing from time to time by mutual agreement of the Parties (“Basic Services”):

- (a) Make one visit to each Station, not to exceed four (4) hours per day, (1) days per week, during Normal Business Hours.
- (b) Perform the following routine operations at each of the four (4) pump Stations. Mill St., Blackbird Ct., Schooner Dr., Industrial Way.
  - b.1. Inspect the pump station, record pump run hours, inspect floats, and ensure pumps are operating properly, and recommend cleaning to the Owner;
  - b.2. Check mechanical equipment (e.g., motors, pumps, etc. and recommend preventive maintenance of equipment (e.g., change oil, grease, wet well cleaning) to the Owner’s staff;
  - b.3. Inspect the emergency generator weekly, record test run hours, check oil and fuel levels and inform the Owner’s staff when oil and fuel levels need replenishing.
- (c) Perform the following routine operation at the Foote Street and Lee Way Metering Stations.
  - c.1. Inspect the metering station, record the flow totalizer reading, and recommend cleaning to the Owner.
  - c.2. Check mechanical equipment and recommend preventive maintenance of equipment to the Owner’s staff;

- (d) Provide an answering service twenty-four (24) hours per day, seven (7) days per week, which will include monitoring of the Owner's Mission Communications pump station alarm/monitoring system and notify Tri-State's operator of any alarm conditions at the Facility.
- (e) Update Preventative Maintenance Schedule Based on Manufactures requirements, and costs to carry out the service.
- (f) Maintain a site visit journal and record operation activities and note general observations of the Station conditions, including equipment serviced, and noticeable concerns with the control building and grounds.
- (g) Submit a monthly status report of the Stations via electronic means, addressing unusual conditions of equipment, process, building, and grounds, and recommend to the Owner any necessary repairs, upgrades, maintenance, process or Station improvements.

3.2. Additional Pump Station and Sewer System Services

In addition to the Basic Services, Tri-State shall be responsible for providing the goods and services more particularly set forth below, as may be required or as requested by the Owner ("Additional Services"):

- (a) Provide an answering service, twenty-four (24) hours per day, seven (7) days per week, which will receive sewer system overflow notifications from the Tiverton Police or the Owner.
- (b) Notify the Owner of pump station alarm condition or sewer system overflow notification received from the Tiverton Police (prior to responding if so requested). Within two (2) hours of an alarm or notification, arrive at the pump station or overflow location and:
  - b.1. Notify the Owner of the Facility's condition if the situation requires work or may result in possible violation and take immediate action,

if conditions warrant, to prevent loss of limb, life, property or unpermitted discharge (during normal business hours).

- b.2. If there is an equipment malfunction or failure that does not threaten loss of limb, life, property or un-permitted discharge, notify the Owner and request authorization to take reasonable actions to restore Facility to normal operation or arrange for contingency operation, such as “pump and haul”. The costs of such restorative actions shall be borne by the Owner. If the Owner or the Owner’s representative cannot be reached or refuse to authorize this corrective action and a permit violation occurs, it shall be deemed an Uncontrollable Circumstance and the Owner shall indemnify Tri-State for all loss and expense incurred by Tri-State. The Owner shall supply Tri-State with twenty-four (24) hour emergency numbers for the Owner representatives.
  - b.3. Tri-State shall not be responsible for fines or penalties from the RIDEM as a result of the Owner delaying approval or impeding the progress of Repairs or Replacement of failed equipment.
- (c) Attend meetings with the Owner to report on the Stations operation and maintenance or to provide general recommendations regarding Facility operations and maintenance, when requested by the Owner.
  - (d) Inspection of sewer service connections for compliance with TWWD Sewer Connection Permits and providing written reports and as built sketches.

### 3.3. Excluded Services

The Owner shall be solely responsible for the arrangement and implementation of those services and items set forth below (“Excluded Services”):

- (a) Pay the cost for vendor and repair shops costs for spare parts, equipment or the cost accrued by Tri-State to Schedule and carry out.
- (b) Maintenance, Repair and Replacement of all Stations equipment or the cost accrued by Tri-State to Schedule and carry out.

- (c) Pay contractor cost for hauling and disposal of all grease and solids. Or the cost accrued by Tri-State to Schedule and carry out.
- (d) Provide and pay for all Capital Improvements at the Facility.
- (e) Pay the costs for annual calibration of flow meter(s), or the cost accrued by Tri-State to Schedule and carry out.
- (f) Pay the costs for annual servicing of emergency generator(s), including replenishing of fuel or the cost accrued by Tri-State to Schedule and carry out.
- (g) Perform building maintenance, lawn mowing, snow removal, and leaf and weed removal, trimming, and removal of trees and shrubbery or the cost accrued by Tri-State to Schedule and carry out.
- (h) Maintain sewer collection system, including cleaning, unclogging blockages, and repairs.
- (i) Pay all utility costs, including, but not limited to, natural gas, propane, water, sewer, electric, telephone, electronic monitoring and trash associated with Tri-State's operation of the Facility.

3.4. Certified Personnel and Subcontractors.

Tri-State shall provide the Basic Services and Additional Services under the direct supervision of Tri-State personnel who possess valid wastewater operator certifications as required by Applicable Law; or if no such certification is required, by personnel Tri-State deems qualified to perform the Basic Services. The Owner acknowledges and agrees that Tri-State may retain subcontractors to assist Tri-State in the performance of the Basic Services and the Additional Services, who will be bound to the same duties and obligations for performance of the services as Tri-State. The use of subcontractors shall not relieve Tri-State of its responsibility or obligations under this Agreement.

3.5 Safety Standards

All work carried out by Tri-State and its subcontractors shall be performed in accordance with Federal Occupational Health and Safety standards as well as any applicable state regulations.

#### **4. CAPITAL IMPROVEMENTS**

During the term of this Agreement, Tri-State may, without obligation, provide the Owner with a listing of recommended Capital Improvements, identifying the Capital Improvements that are necessary to improve the performance or increase the capacity of the Pump Stations, to address or anticipate the obsolescence of portions of the Pump Stations, to reduce the cost to Tri-State of performing this Agreement, to produce cost savings or efficiency innovations to the Pump Stations, or are necessary to comply with existing or anticipated changes to Applicable Law (each, “Capital Improvement Project” and collectively, “Capital Improvement Projects”). The decision to proceed with construction and implementation of any such Capital Improvement Project shall be at the sole discretion and decision of the Owner. If the Owner decides not to proceed with construction and implementation of a Capital Improvement Project recommended by Tri-State that is necessary to address or anticipate the obsolescence of portions of the Pump Stations or comply with existing or anticipated changes to Applicable Law, then that decision may be considered an Uncontrollable Circumstance as defined herein. If the Owner implements a Capital Improvement Project, such implementation may be considered or lead to an Uncontrollable Circumstance, as more particularly set forth hereunder.

#### **5. COMPENSATION**

- 5.1. Commencing on the Effective Date, the Owner shall pay a monthly fee to Tri-State for performing the Basic Services, as more particularly set forth in Schedule A (“Base Monthly Fee”), for which Tri-State will invoice the Owner on a monthly basis. The Owner shall pay Tri-State for any increase in costs or expenses attributable to (1) a change in the scope of services to be provided by Tri-State, including any Capital Improvements.
- 5.2. Tri-State will invoice the Owner for Additional Services upon completion of the work at the rates set forth in Schedule B (“Additional Services Fees and Costs”), or such other rate mutually agreed upon by the Owner and Tri-State.
- 5.3. The Owner shall be responsible for providing all Excluded Services at its sole cost and expense.
- 5.4. All invoices submitted by Tri-State shall be paid by the Owner no later than thirty (30) days after the date of the invoice (for each invoice, “Due Date”). If the Owner disputes any portion of an invoice in good faith, the Owner shall pay the undisputed

portion to Tri-State by the Due Date and shall provide Tri-State with written notice of the disputed amount and basis therefore by the Due Date.

5.5. If Tri-State pursues a collection action for unpaid fees, the Owner will be liable for all costs in connection with the collection procedures, including reasonable collectors' fees, attorneys' fees and court costs.

(a) Tri-State is authorized to do business and are in good standing under the laws of the state in which they are formed and the state in which the Facility is located;

(b) The persons signing this Agreement on behalf of Tri-State and the Owner have the power and authority to execute and deliver this Agreement pursuant to the Party's respective by-laws and organizational documents,

## **6. DEFAULT**

6.1. The following shall constitute an "Event of Default" hereunder:

(a) The failure of the Owner to make any undisputed payment by the Due Date;

(b) The failure of either Party to perform any material term, covenant, or condition of this Agreement ("Defaulting Party") and the default continues for more than thirty (30) days following the other Party ("Non-Defaulting Party") giving notice of such default to the Defaulting Party; provided, however, that if the default cannot reasonably be cured within such thirty (30) day period and the Defaulting Party has attempted to cure the default within such thirty (30) day period and thereafter continues to diligently attempt to cure the default, then the cure period provided for herein shall extend up to, but in no case more than sixty (90) days.

6.2. If an Event of Default occurs, the Non-Defaulting Party may terminate this Agreement upon written notice to the Defaulting Party. The Non-Defaulting Party may enforce any and all rights and remedies it may have against the Defaulting Party under Applicable Law



**7. TERMINATION**

7.1. The Owner may terminate this Agreement for its convenience at any time upon providing thirty (30) days written notice to the Contractor. In such case, the Contractor shall be entitled to receive as full compensation for all services performed hereunder payment for all Work performed prior to the date of termination. Payment of such compensation is the sole and exclusive remedy of the Contractor for termination of this Agreement by Owner hereunder and the Contractor shall not be entitled to, and hereby waives, claims for lost profits and all other damages and expenses.

**8. INDEMNIFICATION**

8.1. Tri-State shall indemnify and hold the Owner, its employees, officers, directors, agents, consultants, contractors, and representatives harmless from and against all liability, including attorneys' fees and costs, for all damages of any nature whatsoever, including employee related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the fault, failure, error, omission, negligent, or wrongful act of Tri-State, its employees, officers, directors, agents, consultants, subcontractors, and representatives for which it may be responsible in the performance or purported performance of its obligations under this Agreement, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of Tri-State, its employees, officers, directors, agents, consultants, subcontractors, and representatives.

8.2. The Owner shall indemnify and hold Tri-State, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives harmless from and against all liability, including attorneys' fees and costs, for all damages of any nature whatsoever, including employee related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the fault, failure, error, omission, negligent, or wrongful act of the Owner, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives for which it may be responsible in the performance or purported performance of its obligations under this Agreement, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of the Owner, its employees,

officers, directors, agents, consultants, contractors, subcontractors, and representatives.

- 8.3 Tri-State shall not be responsible or liable for any casualty loss to the Facility unless the casualty loss is due to Tri-State's or its employees', officers', directors', agents', consultants', subcontractors' and representatives' fault, failure, or negligence, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of Tri-State, its employees, officers, directors, agents, consultants, subcontractors, and representatives.

## **9. LIMITATION OF LIABILITY**

Notwithstanding any other term in the Agreement, in no event shall tri-State's total liability to the Owner and any of the Owner's officers, directors, employees, agents, contractors, or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Agreement from any cause or causes, including, but not limited to, Tri-State's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed an amount equal to \$2,000,000.00.

## **10. CONSEQUENTIAL DAMAGES**

In no event shall the Parties be liable to each other, and each Party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special, or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or any other theory of legal liability.

## **11. INSURANCE**

- 11.1. **General Liability/Excess Liability Umbrella** - Tri-State and its subcontractors will procure and maintain, in full force and effect during the term of this Agreement, Commercial General Liability Insurance with limits of liability of \$2,000,000 each occurrence and in the aggregate, along with an excess liability umbrella policy with

limits of liability of \$2,000,000 each occurrence and in the aggregate, protecting Tri-State and its subcontractors from liability resulting from bodily injury, death and property damage arising out of the acts of Tri-State or its subcontractors. Such acquired insurance shall extend to liability risks relating to this Agreement

- 11.2. **Auto** - The Contractor will maintain in full force at all times during this engagement Auto Liability insurance covering all owned vehicles, hired vehicles, or non-owned vehicles in the minimum amount of \$1,000,000 per occurrence for all damages on account of personal injuries and/or property damage. The Contractor will provide evidence of its Auto Liability policy to the Tiverton Wastewater District naming the Tiverton Wastewater District as an additional insured to the policy.
  
- 11.3. Tri-State shall not be required to carry, and will not carry, any property insurance covering the Pump Stations and such property insurance shall be the responsibility of the Owner at its expense.
  
- 11.4 **Workers Compensation** - Tri-State will maintain in full force at all times Workers' Compensation insurance for all labor employed on the project. Workers' Compensation coverage must meet the statutory obligations of the State and Employer's Liability coverage shall be provided at \$500,000/\$500,000/\$500,000. Tri-State will provide proof of worker's compensation insurance coverage for all of its employees and will indemnify and hold Owner harmless from any claim for injury brought by its subcontractor's under the Workman's Compensation Act.

**IN WITNESS WHEREOF** the Owner and Tri-State have hereto executed this Agreement under their respective corporate seals, and by the hands of their proper officers duly authorized as of the day and year first above written.

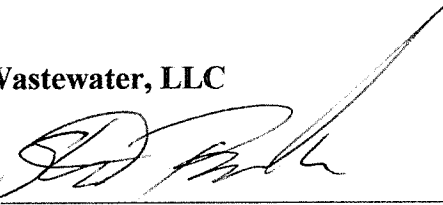
**TIVERTON WASTEWATER DISTRICT**

By: 

Name: LEROY E KENDRICKS

Title: CHAIRMAN

**Tri-State Wastewater, LLC**

By: 

Name: STEVE BOYNTON

Title: OWNER / OPERATOR

**SCHEDULE A**

**BASE MONTHLY FEE**

**Monthly term from July 1, 2023 to June 30, 2024: \$1050.00**

**Year 2 - July 1, 2024 to June 30, 2025: \$1100.00**

**Year 3 - July 1, 2025 to June 30, 2026: \$1150.00**

**SCHEDULE B**

**ADDITIONAL SERVICES FEES AND COSTS (July 1, 2023 – June 30, 2026)**

<b>CLASSIFICATION</b>	<b>STANDARD HOURLY RATE</b>	<b>EMERGENCY HOURLY RATE</b>
Operator	\$ 65.00	\$ 97.50
Mechanic	\$100.00	\$150.00 (\$200 on Sundays and Holidays)
Painting	\$30.00	
Mileage (when it applies)	0.625 per mile	0.625 per mile
Landscape and Snow Removal	25.00 (per employee)	
Sewer Connection Inspection and Report (3 hour max)	\$140 per inspection (per tie-in card)	

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