

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TN

IN RE:

PETITION OF TENNESSEE

WASTEWATER SYSTEMS, INC., FOR

APPROVAL OF A SPECIAL CONTRACT

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DOCKET NO. 18-00037

**PETITION OF TENNESSEE WASTEWATER SYSTEMS, INC.,
FOR APPROVAL OF A SPECIAL CONTRACT**

Tennessee Wastewater Systems, Inc. ("TWS") petitions the Tennessee Public Utility Commission ("TPUC") to approve, pursuant to Rule 1220-04-01-07, the attached "special contract" between TWS and ABS Properties, LLC ("ABS") regarding the provision of wastewater service to a commercial property in Williamson County, Tennessee. An executed copy of the contract is attached (Exhibit A).

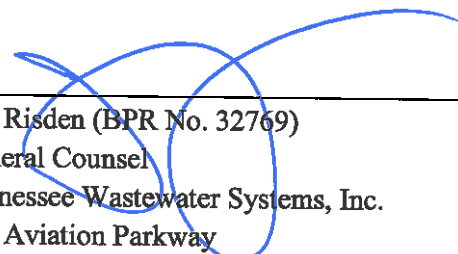
ABS is developing a commercial gas station and convenience store along Wilson Pike in Franklin, Tennessee (the "Property") and has requested that TWS provide sewer service to the Property. TWSI is willing and able to serve the Property which is situated in its Milcrofton service territory. To that end, the Parties have entered into a Sanitary Sewer Service Agreement. Because the commercial property lacks the land necessary to construct an on-site wastewater treatment system and due to its proximity with an existing system, TWS will tie the Property onto its Clovercroft Treatment Facility (the "System") which serves the Chardonnay subdivision.

To tie the Property onto the System, a connection line must be installed under a CSX railroad line. CSX has granted permission to TWS to install this line, however CSX requires TWS to maintain a five million-dollar (\$5,000,000.00) commercial general liability insurance policy as a condition of allowing the easement and line installation (see attached Exhibit B). TWS currently holds a general

liability policy for two million dollars (\$2,000,000.00). The difference in premium cost between TWSI's current policy and the five-million-dollar policy required by CSX is presently \$1,400.00. TWS does not believe it is fair to its customer base to underwrite this cost given it is specific to one customer and location, so TWS and ABS have agreed that ABS will be responsible for paying the difference in cost of the annual insurance premium. The arrangement is addressed in Paragraph 2b of the developer agreement as the CSX Insurance Premium Pass Through.

Aside from the inclusion of the CSX Insurance Premium Pass Through and a few immaterial changes to the contract language relating to this deal, this agreement is the standard TWSI developer agreement with which the Commission is already familiar. TWSI respectfully requests that the Commission approve this contract.

Respectfully submitted,

By: 

Jeff Riden (BPR No. 32769)
General Counsel
Tennessee Wastewater Systems, Inc.
851 Aviation Parkway
Smyrna, TN 37169
615-220-7171
jeff.riden@adenus.com

SANITARY SEWER SERVICE AGREEMENT

This Sanitary Sewer Service Agreement (the "Agreement") is made and entered as of this 22nd day of March, 2018, by and between TENNESSEE WASTEWATER SYSTEMS, INC., a Tennessee corporation ("TWS") and ABS Properties, LLC, a Tennessee Limited Liability Company ("Developer").

W I T N E S S E T H:

WHEREAS, TWS operates a decentralized sewer treatment facility known as the Clovercroft Treatment Facility for the disposal and processing of wastewater in Williamson County, Tennessee;

WHEREAS, Developer plans and intends to develop a commercial gas station and convenience store (the "Development"), at 1982 Wilson Pike, Franklin, TN, identified as Parcel ID 080 02402 00014080, Williamson County, TN (the "Property");

WHEREAS, Developer has completed the plans for the Development and the same have been approved by the appropriate authorizing entity;

WHEREAS, Developer has requested TWS to commit to serve the Development; and,

WHEREAS, Adenus Solutions Group owns the excess capacity at the Clovercroft Treatment Facility and has verified capacity is available to serve the Development; and

WHEREAS, TWS is willing and able to serve said Development upon the terms, provisions and conditions hereinafter set out, all of which are acceptable to the Developer.

NOW, THEREFORE, for and in consideration of the mutual covenants of the parties, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **Definitions.** In addition to the terms defined in the text of this Agreement, for purposes hereof, the following terms shall have the meaning ascribed to them below:
 - (a) "Applicable Laws" means all applicable constitutions, treaties, statutes, rules, regulations, ordinances, orders, directives, codes, judgments, decrees, injunctions, writs and determinations of any governmental or quasi-governmental authority.
 - (b) "Certified Installer" means a person who is certified by Adenus Technologies to construct and install the watertight tanks and service line connections within a Lot(s) of the development.
 - (c) "Development" means that certain commercial building development owned and developed by Developer upon the Property .
 - (d) "Effective Date" means the date the last of the parties hereto executes this Agreement.

- (e) "Event of Force Majeure" means a strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance, riot, act of sabotage or terrorism, restraint by court order or order of another governmental authority, or any other occurrence beyond the reasonable control of the party in question; provided lack of necessary funds shall not be considered an "Event of Force Majeure" for purposes hereof.
- (f) "GSPD" means average gallons of sewage per day, calculated on a monthly basis. For example, if a customer of TWS released 300 gallons of sewage into the Sewer System in a thirty (30) day month, such customer would have released 10 GSPD during such month.
- (g) "Lot" or "Lots" shall mean a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as a residence, as well as vacant land intended for development as such, all as may be developed and used. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Lots designated for such parcel on the Plat or the site plan approved by the applicable local governmental entity having jurisdiction, until such time as a certificate of occupancy is issued on all or a portion thereof by the applicable local government entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Lot or Lots as determined above and the number of Lots on the remaining land, if any, shall continue to be determined in accordance with this definition.
- (h) "Lot Owner" or "Lot Owners" shall mean and refer to one or more persons who hold the record title to any platted Lot, including, but not limited to the Developer, which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.
- (i) "Property" shall mean and refer to the real property described on Exhibit A, attached hereto.
- (j) "TPUC" means the Tennessee Public Utility Commission and any successor thereto.
- (k) "Sewage Facility" shall mean and refer to the Clovercroft Treatment Facility .
- (l) "Sewage Facility Land" means that land described on Exhibit B upon which the Sewage Facility is located.
- (m) "Sewer System" means the Sewage Facility Land, the Sewage Facility, including, but not limited to all lines, pipes, meters, lift stations, equipment, machinery, fixtures, trade fixtures, easements and personal property used in connection with the operation thereof, whether or not located on the Sewage Facility Land or the Property, as the same may be altered, improved, modified, expanded or relocated from time to time.
- (n) "Sewer System Construction" means the construction of improvements for the Sewer System necessary to accommodate the Development.

2. **Compensation.**

(a) *Pipe Upsize Reimbursement.* TWS will reimburse Developer for the increased cost (of pipe and labor) to run 3" pipe instead of 2" pipe from the tie-in point of the Sewage Facility to the Development's service connection. Developer must submit to TWS for its approval quotes from his contractor for laying both 2" and 3" line. TWS reserves the right to solicit quotes from other contractors if TWS believes supplied quotes are unreasonable.

(b) *CSX Insurance Premium Pass-Through.* Sewer service to the Development requires an encroachment across a railroad line owned by CSX Transportation (CSX). The encroachment agreement with CSX requires TWS to maintain an insurance policy in the amount of \$5 million for the benefit of CSX. Developer agrees to reimburse TWS annually for an amount equal to the difference between TWS' current insurance premium and the premium required to provide this \$5 million in coverage. That amount is currently \$1,400.00. Payment will be due thirty (30) days after being invoiced. Non-payment will result in disconnection of sewer service. Developer acknowledges that this insurance premium may increase over time. Developer agrees to pay the CSX Insurance Premium Pass-Through as long as Developer owns the property and sewer service is available to the Property. Developer agrees that any sale or transfer of the Development will include this obligation to reimburse TWS. TWS reserves the right to terminate the CSX easement in the event Developer or any subsequent owner terminates service to the Property.

TWS will withhold signing the final plat for the development until capacity has been acquired by the Developer and proof provided to TWS.

(c) *Final Plat.* TWS will assume ownership of the collection system once inspections are approved and accepted by TWS.

3. **Sanitary Sewer Service.**

(a) *Usage.* Lot Owner(s) will be required to sign a Commercial Sewer Service Agreement and shall only have the right to discharge sanitary sewage into the Sewer System, and the Lot Owner(s) agree to use the Sewer System in a manner that complies with the "User Manual Do's and Don'ts for Effluent Collection Systems" attached hereto as Exhibit D. If sewer service to the Property is temporarily interrupted due to an Event of Force Majeure, TWS shall have no liability to the Developer or any Lot Owner on account of such interruption. In such event of temporary interruption, TWS shall use its best efforts to restore sewer service to the Property as quickly as possible. Developer represents and warrants that its contract of sale with each third-party purchaser or third-party builder of each Lot shall include in it the requirement that such person or entity must enter into a Sewer Service Agreement, in form and substance attached hereto as Exhibit E, by TWS.

(b) *Acceptance by TWS.* TWS shall be under no obligations to furnish sewer service for the Development until the Developer has fully and satisfactorily performed under and pursuant to this Agreement.

(c) *Sewer Service Billing Rate.* The monthly billing rate that Developer will be charged for sewer service is based upon two (2) EDUs (600 GPD). This number of EDUs was calculated based on water usage records supplied by the Developer from facilities similar to that being proposed to be built. Actual wastewater flows from the Development will have to be verified and, if higher than the designed 600 gallons per day, billing rates and infrastructure requirements will be adjusted to match the increase in wastewater flows.

4. **Permits.** TWS shall obtain and pay for all permits, licenses and other approvals necessary to allow TWS to deposit the applicable GSPD into the Sewer System, including, but not limited to, any regulatory approvals that must be obtained from the TPUC or any other governmental or quasi-governmental authority.

5. **Sewer System Construction.**

(a) *Installation.* At its own expense and at no cost or expense to TWS, Developer shall furnish, install, lay and construct any infrastructure required by TWS to be installed to serve the Development, including labor and material. TWS shall inspect the construction of the improvements upon intervals determined by TWS. All Sewer System improvements shall be located as approved by TWS.

(b) *Development Responsibility.* Developer understands and agrees that no third party shall obtain any benefits or rights under this Agreement with respect to sewer privileges, and no connection shall be made to any other customer site until all necessary arrangements have been made in accordance with TWS's Wastewater System Specifications.

(c) *Delegation by Developer.* Developer must install a watertight tank and service connection line at the Development in accordance with the Plans and Specifications, at Developer's expense. Should Developer authorize a third-party builder to construct such watertight tanks and service connection lines at the Development, Developer represents and warrants that it will require such person or entity to comply with the Plans and Specifications and bear all expense of compliance and insure that the installation work is performed by a Certified Installer. Developer must submit, prior to construction, for TWS' approval, plans and a list of materials to be used in connecting to the Sewer System.

(d) *No Liens.* Developer shall complete the development and construction of the Sewer System in accordance with the Plans and Specifications and the Sewer System shall be free of any laborers', materialmen's, mechanics', or other liens on any part of the Sewage Facility Land or the Sewer System and Developer shall not permit any such lien to be filed or otherwise imposed on any part of the Sewage Facility. In the event any such lien is filed against the Sewage Facility the Sewage Facility Land, or the System, Developer shall promptly cause such lien to be discharged

or in lieu thereof file a bond or other security for the payment of such lien in form and amount satisfactory to TWS.

6. **Conveyance and Transfer.** Upon completion, Developer shall:

- (a) grant TWS a non-exclusive sewer line easement, in the form attached hereto as Exhibit G, across those portions of the Property lying within five (5) feet of either side of the sewer line within the Property.

All costs, fees and expenses related to the foregoing within this Section 6 shall be the sole responsibility of Developer, including, without limitation, recording fees, transfer taxes, title premiums, title endorsement charges and survey costs.

7. **Developer Warranty.** The Developer hereby warrants all Sewer System improvements installed pursuant to the provisions of this Agreement against defects in workmanship and materials for a period of one (1) year from the date of acceptance thereof in writing by TWS. The Developer shall reimburse TWS upon demand for all costs and expenses incurred by TWS to repair all breaks, leaks or defects of any type whatsoever arising from any cause whatsoever occurring within one (1) year from the date the Sewer System improvements are accepted in writing by TWS. The Developer hereby warrants that the Sewer System improvements shall be paid for in full and that no liens or encumbrances shall remain in regard to the Sewer System improvements.

8. **Representations and Warranties.**

- (a) TWS represents, warrants and covenants to Developer that:

- (i) (A) TWS is a corporation duly organized and validly existing and in good standing under the laws of the State of Tennessee and is duly qualified to transact business in the State of Tennessee, (B) TWS has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder, (C) the execution, delivery and performance of this Agreement by TWS does not conflict with or result in a violation of its organizational documents or Applicable Laws, and (D) the execution, delivery and performance of this Agreement by TWS does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument by which the TWS is bound; and

- (iii) (A) TWS has not received notice of any litigation, administrative action, investigation or other governmental or quasi-governmental proceeding which would or could have an adverse effect upon its ability to fulfill all its obligations under this Agreement, and (B) the execution, delivery and performance of this Agreement by TWS will not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court or governmental instrumentality; and

- (iv) TWS is not a party to any voluntary or involuntary proceedings under any law relating to insolvency, bankruptcy, moratorium or creditors' rights.

(b) Developer represents, warrants and covenants to TWS that:

(i) (A) Developer is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Tennessee and is duly qualified to transact business in the State of Tennessee, (B) Developer has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder, without the consent or approval of any governmental authority, (C) the execution, delivery and performance of this Agreement by Developer does not conflict with or result in a violation of its organizational documents or Applicable Laws, and (D) the execution, delivery and performance of this Agreement by Developer does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument by which Developer is bound; and

(ii) (A) Developer has not received notice of any litigation, administrative action, investigation or other governmental or quasi-governmental proceeding which would or could have an adverse effect upon its ability to fulfill all of its obligations under this Agreement, and (B) the execution, delivery and performance of this Agreement by Developer will not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court or governmental instrumentality; and

(iii) Developer is not a party to any voluntary or involuntary proceedings under any law relating to insolvency, bankruptcy, moratorium or creditors' rights and;

(iv) Developer warrants and represents that all necessary permits as required by the State, County, and any other governing or regulatory authority have been applied for and obtained.

9. **Default and Termination.**

(a) Notwithstanding anything to the contrary herein, TWS may, at all times prior to the completion of the Sewer System connection, terminate this Agreement in the event that:

(i) Developer has materially failed to perform or has been negligent in the performance of its construction of the Sewer System connection pursuant to the terms of this Agreement and has failed to cure said failure or negligence within fifteen (15) calendar days after receiving written notice from TWS specifying in detail the nature of such failure or negligence; provided if such failure or negligence cannot reasonably be cured within said fifteen (15) calendar day period, then TWS may not terminate this Agreement if Developer has commenced to cure the failure or negligence within said fifteen (15) calendar day period and thereafter prosecutes such cure to completion with reasonably acceptable diligence; or

(ii) Developer has defaulted in the performance of its obligations under this Agreement, including without limitation, payment to TWS of the Sewer System Fees as and when required and failed to cure such default within fifteen (15) calendar days after notice from TWS thereof; or

(iii) A receiver, liquidator, or trustee of Developer shall be appointed by court order, or a petition to liquidate or reorganize Developer shall be filed against Developer under any bankruptcy, reorganization or insolvency law and such order or petition is not vacated or dismissed within sixty (60) calendar days, or Developer shall voluntarily file a petition in bankruptcy or request for reorganization under any provision of the bankruptcy reorganizational insolvency laws unless such petition is dismissed within sixty (60) calendar days after the filing thereof, or if Developer shall make an assignment of all or substantially all of its assets for the benefit of creditors, or if Developer is adjudicated bankrupt.

(b) Developer may terminate this Agreement, at any time during the term of this Agreement prior to completion of the Sewer System connection, if a receiver, liquidator, or trustee of TWS shall be appointed by court order, or a petition to liquidate or reorganize TWS shall be filed against TWS under any bankruptcy, reorganization or insolvency law and such order or petition is not vacated or dismissed within sixty (60) calendar days, or TWS shall voluntarily file a petition in bankruptcy or request for reorganization under any provision of the bankruptcy reorganizational insolvency laws unless such petition is dismissed within sixty (60) calendar days after the filing thereof, or if TWS shall make an assignment of all or substantially all of its assets for the benefit of creditors, or if TWS is adjudicated bankrupt.

In the event this Agreement is terminated for any of the above reasons, TWS shall be entitled to all fees to be paid pursuant to the terms of this Agreement through the effective date of such termination and there shall thereafter be no further obligation owed by TWS to Developer. In the event that this Agreement is terminated by the Developer, TWS shall retain the initial amount paid to TWS by Developer as set forth in Section 2 above as well as be reimbursed by Developer for all expenses incurred in pursuit of this project.

10. **Indemnification.**

- (a) Each party agrees to indemnify and hold harmless the other from, against and/or with respect to:
 - i) Any loss, expense, liability, damage, or deficiency resulting from any material misrepresentation, breach of warranty, or nonfulfillment of any covenant or agreement on the part of such party made or given in or with respect to this Agreement, or from any material misrepresentation in or omission from any certificate, schedule, exhibit or other document or instrument furnished or to be furnished to the other in connection with the transactions provided for in this Agreement, or from any gross negligence or willful misconduct of the other party; and/or
 - ii) Any and all costs and expenses (including reasonable attorneys' fees) arising in connection with any of the foregoing.
- (b) In addition to the above, Developer shall indemnify and hold TWS harmless of, from, against and in respect of:

- i) Any tax lien, levy, assessment, payment, liability, penalty or other deficiency, whether disputed or not, suffered or incurred by TWS as a result of or arising out of Developer's ownership of the Property;
 - ii) Any judgment, award, payment, settlement, cost or expense arising out of Developer's ownership of the Property, and rendered against or suffered or incurred by TWS as a result of or with respect to any lawsuit or cause of action against or involving the Property;
 - iii) Any and all liabilities, whether disputed or not, suffered or incurred by TWS as a result of or arising out of Developer's ownership of the Property; and/or
 - iv) Any and all costs and expenses (including reasonable attorneys' fees) arising in connection with any of the foregoing.
 - v) Any violation of any permit requirement of the State of Tennessee, Williamson County, and any other governing or regulatory authority with jurisdiction over the construction of the sanitary sewer connection.
- (c) The provisions of this section shall survive completion of the Project and/or expiration or termination of this Agreement.
11. **Environmental Indemnity.** In addition to the above, Developer represents, warrants and covenants to, for and with TWS that there are no Hazardous Materials which have been generated and disposed of by Developer or which have been generated and disposed of by Developer and have migrated to the Property (including the ground water thereon) from any adjacent real estate owned, leased, or otherwise controlled by Developer, (except for those Hazardous Materials which may be stored on or about the Property in accordance with the Applicable Environmental Laws), as such terms are defined in the Applicable Environmental Laws, or in any regulations promulgated pursuant thereto, (ii) Developer has not received any notice and to the best knowledge of Developer no notice has been given to any party in the chain of title to the Property, by any person claiming any violation of, or requiring compliance with, any Applicable Environmental Laws, demanding payment or contribution for environmental damage; and (iii) to the best knowledge of Developer no investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Materials located, on about or under all or a portion of the Property or contiguous or adjacent to the Property (provided that such contiguous or adjacent property is owned or controlled by Developer) is pending, or, to the knowledge of Developer, proposed, threatened or anticipated. To the extent that Developer breaches any of the aforementioned representations and TWS is required by law to undertake any remedial or removal actions in connection therewith, as defined in the Applicable Environmental Laws, or to the extent that TWS is otherwise liable to incur costs or may otherwise be held liable to any third party in connection with such breach or for any removal or remedial actions taken with respect thereto, then, within a reasonable period of time following receipt of notice thereof from TWS, Developer shall indemnify TWS and hold TWS harmless from all liabilities, damages and costs incurred by TWS with respect to such breach

including, without limitation, all claims, liabilities, loss, costs or expenses arising from the incurrence of any penalties, charge or expenses with respect thereto in defending itself against any suit or action brought by such third party, and in paying or satisfying any judgment obtained by such third party against TWS. The obligations of Developer under this section and the indemnity given hereunder shall survive the Closing.

12. **Developer Obligations.** The Developer shall pay an annual wastewater capacity reservation fee of \$120.00, or as may be amended from time to time by the TPUC, in the event the Development is not attached to the Sewer System. Should the Developer sell the Development, the Developer agrees to include in the sales contract with the purchaser the requirement to pay to TWS an annual wastewater capacity reservation fee at the current TPUC established rate to defray the cost of testing and reporting to the State of Tennessee. The fee shall be payable each year by December 15th for the owners of record as of December 1. When the Lot Owner attaches to the Sewer System and accepts service with the Sewer System, such Lot Owner shall pay a prorated fee for that year and the fee shall not be charged thereafter so long as the Lot Owner maintains service.
13. **Operation, Maintenance and Improvements.**
 - (a) TWS shall, (i) perform all repairs, maintenance and replacements necessary to keep the Sewer System in a good working order, and (ii) operate the Sewer System in compliance with Applicable Laws, including, but not limited to, all Applicable Laws related to human health, safety and the environment. To the extent reasonably possible, TWS shall perform all repairs, maintenance and replacements to the Sewer System in a manner that does not interfere with its ability to provide sewer service to the Property. In the event any repairs, maintenance or replacements to the Sewer System will result in an interruption of sewer service to the Property, TWS shall notify Developer thereof and use its best efforts to minimize the interference caused thereby, which efforts shall include, but not be limited to, working with Developer to schedule the repairs, maintenance and replacements so as to avoid or lessen the disruption. Service by TWS will be provided in compliance with its established tariff in effect at the TPUC.
 - (b) Developer further agrees to execute, acknowledge and deliver to TWS any and all easements that may be necessary or appropriate as determined by TWS for the construction, operation and maintenance, or expansion of TWS's Sewer System, or portion thereof. The location of said easement(s) shall be mutually agreed upon by Developer and TWS.
14. **Water Valve Requirements.** Developer is required to install a water shut off valve with an appropriate valve box in the water line on the customer's side of the water meter at the development. If the Developer sells the lot to allow another party to build on the lot, they must insure that the purchaser is notified of the water valve requirements.
15. **Assignment.** Neither Developer nor TWS shall have the right to sell, assign, transfer, lease or convey all or a portion of its rights hereunder without the prior written consent of the other party. Developer and TWS shall have the right to assign all of its rights under this Agreement to any party purchasing the Sewer System or the Property so long as such party assumes all of Developer or TWS's obligations hereunder. It is agreed that as used herein, "Developer" shall mean

Developer and its respective successors, assigns, transferees and tenants, and "TWS" shall mean TWS and its respective successors and assigns.

16. **Miscellaneous.**

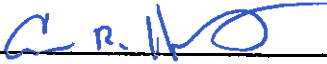
- (a) *Entire Agreement.* This Agreement (i) constitutes the entire agreement and understanding of Developer and TWS with respect to the subject matter hereof, and (ii) may be amended only by a written instrument executed by Developer and TWS.
- (b) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Tennessee.
- (c) *Successors and Assigns.* This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.
- (d) *No Waiver.* No waiver of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party charged therewith. No delay or omission in the exercise of any right or remedy accruing upon the breach of this Agreement shall impair such right or remedy or be construed as a waiver of such breach. The waiver by Developer or TWS of any breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.
- (e) *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid or unenforceable, Developer and TWS will work in good faith to add a provision as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- (f) *Prior Drafts.* All negotiations, considerations, representations and understandings between Developer and TWS are incorporated herein. No inference shall be drawn from the addition, deletion or modification of any language contained in any prior draft of this Agreement.
- (g) *Attorneys' Fees.* If any legal proceeding is commenced to (i) enforce the terms of this Agreement or (ii) interpret the provisions contained herein, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees, court costs and litigation expenses from the non-prevailing party.
- (h) *Exhibits.* TWS and Developer hereby acknowledge and agree that all exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.
- (i) *Relationship Between the Parties.* This Agreement shall not be deemed or construed to create a partnership or joint venture between Developer and TWS or cause Developer or TWS to be liable or responsible in any way for the agreements, actions, liabilities, debts or obligations of the other.

- (j) *Counterparts.* This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed as original documents and all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.


TWS

TENNESSEE WASTEWATER SYSTEMS
a Tennessee corporation

By: 
Name: Charles R. Hyatt
Title: President

Developer

ABS PROPERTIES, LLC
a Tennessee Limited Liability Company

By: 
Name: Manish Patel
Title: Member

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF RUTHERFORD

Personally appeared before me, Suzanne M. Christman, Notary Public, Charles Hyatt, whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the President of Tennessee Wastewater Systems, Inc., the within named bargainor, a Tennessee corporation, and is authorized to execute this instrument on behalf of Tennessee Wastewater Systems.

WITNESS my hand, at office, this 23 day of march, 2018.



Suzanne M. Christman
Notary Public
My Commission Expires: 12/1/2020

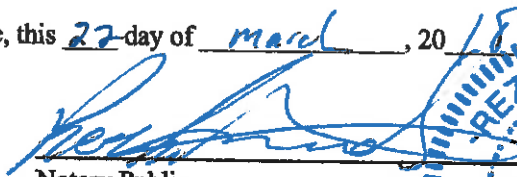
AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF _____

Personally appeared before me, Manish Patel, Notary Public, _____, with whom I am personally acquainted and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he/she is the _____ of **ABS PROPERTIES, LLC**, the within named bargainor, a Tennessee limited liability company, and is authorized to execute this instrument on behalf of **ABS PROPERTIES, LLC**.

WITNESS my hand, at office, this 22 day of march, 2018



Notary Public
My Commission Expires: Dec 31, 2021

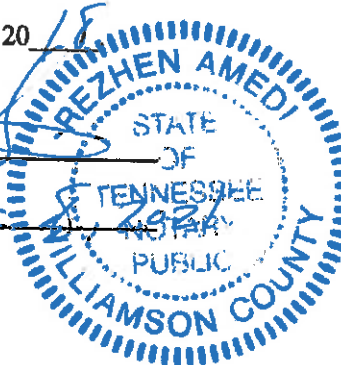


Exhibit A

Property

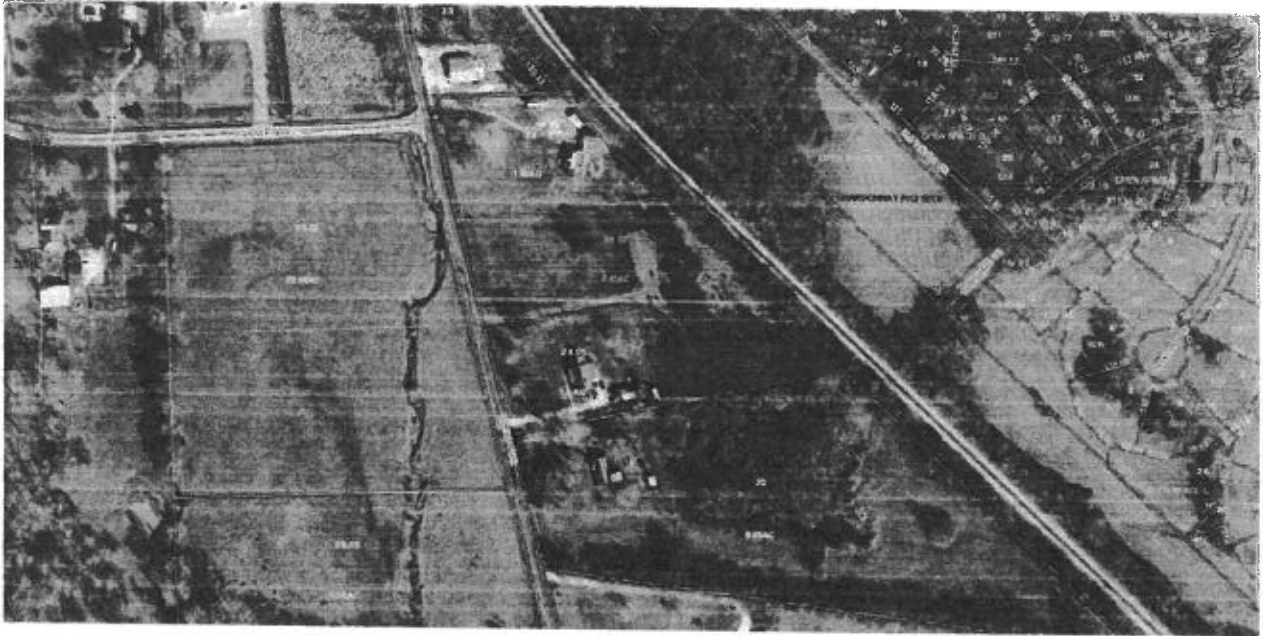
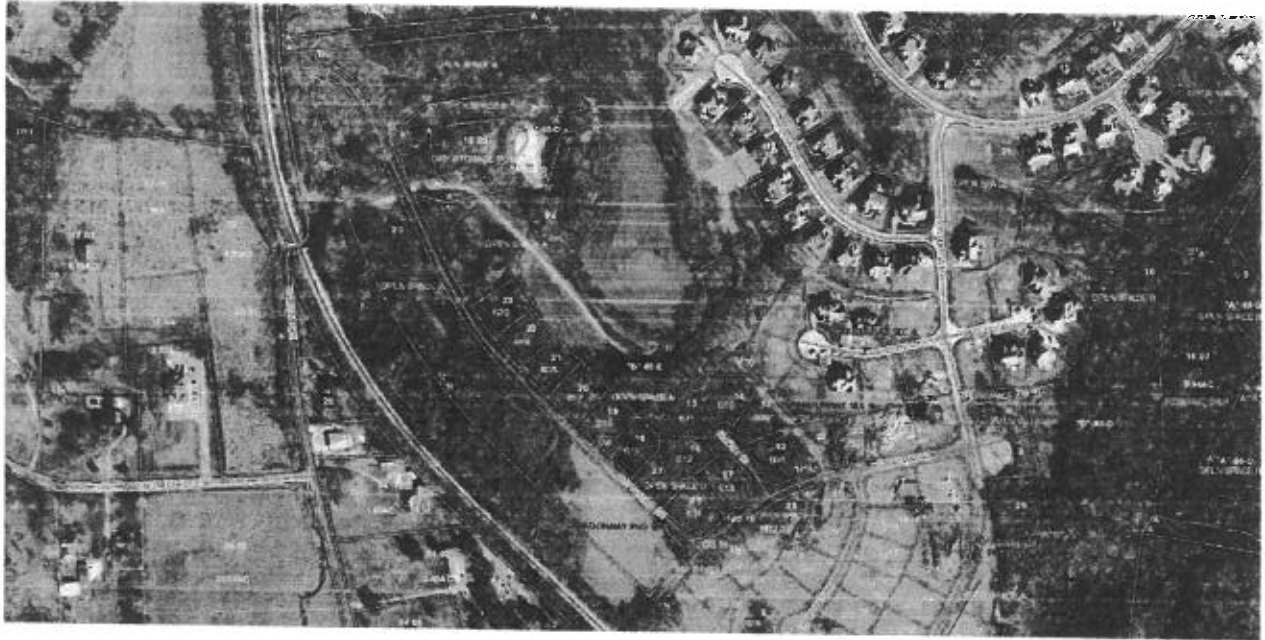


Exhibit B
Sewage Facility Land



10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against CSXT and its Affiliates;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;

(iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured,