

**PROFESSIONAL OPERATING SERVICES
AND MANAGEMENT AGREEMENT**

THIS AGREEMENT made and entered into as of this 12 day of Sept 2017 by and between East Sevier County Utility District (hereinafter referred to as "Utility") and ALLIANCE WATER RESOURCES, INC., a Missouri corporation (hereinafter referred to as "Alliance"). To begin Oct 9th of 2017 ym R.M.D.

WITNESSETH:

WHEREAS, Alliance is engaged in the business of providing management, operation and maintenance services for public water supply, treatment plant and distribution systems and wastewater collection and treatment systems; and

WHEREAS, Utility owns a public utility system and is engaged in providing water and sewer service in certain areas in Sevier County, Tennessee; and

WHEREAS, Utility is desirous of retaining Alliance to perform management, operation and maintenance services in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt of which hereby is acknowledged, Utility and Alliance hereby agree as follows:

1. INTRODUCTION

- 1.1 The foregoing recitals are adopted as part of this Agreement.
- 1.2 This Agreement shall supersede and nullify, as of the effective date hereof, any and all prior agreements, amendments to agreements offers, service fees, quotations, and estimates between the parties with respect to the management, operation and maintenance of Utility's System (as that term is defined herein).
- 1.3 This Agreement, including any and all Appendices, Addenda, and Amendments hereto, constitute the entire Agreement between Utility and Alliance with respect to the management, operation and maintenance of Utility's System.

2. DEFINITIONS

- 2.1 "Benefit Plans" shall mean employee benefit programs such as health insurance, group life insurance, and paid vacation periods normally included as part of Alliance's employees' overall compensation package.
- 2.2 "Duly Authorized Representative" shall mean such person, designated by either party by written notice to the other, as specific representative of the designating party in connection with performance of this Agreement.
- 2.3 "Certified Operators" shall mean water and/or wastewater systems operation personnel who have met the applicable licensing requirements of the State of Tennessee.
- 2.4 "Capital Expenditures" shall mean any expenditure for plant or equipment items, the installation of which materially extends service life, or for replacements, or which are considered capital expenditures in accordance with generally accepted accounting principles, or which are non-routine types of expenditures on an annual basis, or expenditures which the Utility has planned or budgeted as capital expenditures.
- 2.5 "Operating Expenses" shall mean costs of every kind and nature that Alliance shall determine necessary to pay or to become obligated to pay because of, or in connection with, the management, operation and maintenance of the Utility System.
- 2.6 "Maintenance Expenditures" shall mean those Operating Expenditures incurred by Alliance to perform routine or repetitive activities required or recommended by the equipment or plant item manufacturer, or Alliance, to maximize the service life of the equipment or plant item.
- 2.7 "Equipment, Vehicle or Facility Repair Expenditures" shall mean those Operating Expenditures for labor, materials and subcontractors incurred by Alliance to perform those non-routine or non-repetitive activities required for operational continuity, safety and performance and which generally arise upon failure of equipment, a vehicle, or the facility, or some component thereof.

- 2.8 "Base Fee" shall mean direct cost plus administrative overhead expense where direct cost shall include labor, materials, supplies, equipment, subcontractor expense or operating expense of any kind necessary to operate and maintain the Utility System in accordance with the Scope of Services as defined in this Agreement.
- 2.9 "Repair Limit" is defined as the total dollar amount that Alliance will be responsible for in a twelve month period relating to Maintenance Expenditures and Equipment, Vehicle or Facility Repair Expenditures. Utility is responsible for all such expenditures that exceed the Repair Limit. If repair costs are less than the annual Repair Limit, Alliance will refund to the Utility the difference.
- 2.10 "Chemical Limit" is defined as the total dollar amount that Alliance will be responsible for in a twelve month period relating to Chemical Expenditures. Utility is responsible for all such expenditures that exceed the Chemical Limit. If chemical costs are less than the annual Chemical Limit, Alliance will refund to the Utility the difference.
- 2.11 "Utility System" shall mean the facilities owned by Utility including additions, replacements and improvements to such systems as described in Section 3 Utility System of this Agreement.
- 2.12 "Customer" is defined as any person, persons, firm, corporation or partnership using or allowing the use of water and/or sewer service(s) provided by Utility.
- 2.13 "Utility Services" means the provision by Utility of water and/or sewer services to its customers.

3. UTILITY SYSTEM

- 3.1 The Utility System to be managed, operated and maintained by Alliance shall consist of the water treatment, wastewater treatment, sewer collection, and water distribution facilities owned by the Utility including but not limited to water treatment wells, wastewater treatment plant(s), water distribution lines, collection system and lift stations. It shall include additions, replacements and improvements to such systems.

3.2 Utility System shall include all physical property, whether real, personal or mixed, comprising such systems, the land thereunder owned or leased by Utility or other city or municipal owned water or wastewater system contracting with Utility for services and easements and rights of way.

4. OWNERSHIP

4.1 Utility System shall remain the property of Utility.

4.2 All additions, replacements and improvements to Utility System, and extensions thereof, shall be and remain the property of Utility as installed.

5. SCOPE OF SERVICES

5.1 Subject to the terms and conditions of this Agreement, Alliance shall provide all management, operation and maintenance services and shall bear the cost of such operating services as necessary to enable Utility to provide adequate Utility Services to its customers, to bill and collect its charges for such service, to provide for general bookkeeping, record maintenance and reporting, to operate the Utility System, conduct meter testing, to tap water mains and connect water services lines, to perform line and utility locations in accordance with Tennessee One Call requests, to perform engineering review services and related inspections and to conduct the general business of Utility.

5.2 Within the design capacity and capability of the Utility System, Alliance shall operate and maintain the Utility System to meet the requirements of the Tennessee Department of Environment & Conservation., and any other governmental entity or agency having regulatory control over the Utility System.

5.3 All services hereunder shall be in accordance with sound management, accounting and engineering principles and the law.

5.4 Alliance shall not be responsible for payment of extraordinary utility system and equipment maintenance, repair or replacement expenses.

Extraordinary expenses shall be defined as costs in excess of the maximum annual Repair Limit and Chemical limit as specified herein. In addition, any individual project repair costs in excess of \$700 shall be considered extraordinary.

In the event that any extraordinary expenses should occur, Utility shall be promptly notified and shall be provided with an accounting of such expenses. Any extraordinary expenses must be approved by Utility in advance and payment thereof shall be the responsibility of Utility.

- 5.5 Alliance shall maintain documentation of routine maintenance to how that such maintenance was performed in accordance with manufacturer's specifications. A duly authorized representative of Utility shall have the right to inspect these records during regular business hours. Maintenance shall not include repair resulting from flood, fire or other extraordinary occurrences customarily not encountered in the operation and maintenance of the Utility System.
- 5.6 Except as stated in Section 5.7, Capital Expenditures are not included in the scope of Alliance's services under this Agreement. All capital expenditures shall be the responsibility of Utility, and if to be performed by Alliance, shall be the subject of a separate agreement and paid for by Utility.
- 5.7 Notwithstanding Section 5.6, Alliance shall make emergency Capital Expenditures if such expenditures are necessary to continue operation of the Utility System so as to provide adequate service, and prior approval of Utility reasonably cannot be obtained. Utility shall reimburse Alliance for such emergency Capital Expenditures in accordance with Section 7.
- 5.8 Alliance shall not be responsible for payment of any commissioners or directors' compensation.
- 5.9 The following expenditures are specifically excluded from Alliance's scope of work and payment obligations:
 - a. Capital Expenditures, except those described in Section 5.7

- b. Changes in scope of work which would have the effect of increasing Alliance's payment obligations, except as otherwise mutually agreed upon by Alliance and Utility.
- c. Flood and fire damages.
- d. Property damage, liability and commissioner or directors liability insurance.
- e. Utility expenses including electric, gas, telephone, water and sewer, SCADA, circuit communications and alarm expenses. (Cell phone and internet expenses excluding those related to SCADA are included in Alliance's Base Fee.)
- f. Excavations and repairs made by contractors for extraordinary or routine maintenance of mains and appurtenances.
- g. Professional services including but not limited to legal, accounting and design engineering services.
- h. Extraordinary maintenance and repair services necessary to restore newly acquired facilities to reasonable operating condition.
- i. Personal property or other taxes.
- j. Extraordinary maintenance repair or equipment replacement expense as specified in Section 5.4 or as otherwise provided for in the annual utility budget.
- k. Wholesale wastewater treatment charges or water purchase expenses.
- l. All office and field services building expense including but not limited to rent, utilities and maintenance expense.

5.10 Alliance shall provide all customer meter reading, billing, bookkeeping and collection services required by Utility in the ordinary course of the Utility's business.

- 5.11 Alliance will staff Utility System with sufficient numbers of State water and wastewater Certified Operators experienced in Utility System operation and maintenance to meet regulatory requirements.
- 5.12 Alliance has the right to use subcontractors and consultants to satisfy its obligations under this Agreement, subject to Utility's approval except in the case of an emergency.
- 5.13 Utility at any time may request Alliance to perform additional services which are outside the Scope of Services under this Agreement. Alliance shall invoice such services to Utility at actual cost plus 10%. Utility shall pay such invoices in accordance with Section 7.
- 5.14 Alliance shall prepare and provide financial and record keeping reports to Utility's auditors, meet and discuss reports with the Utility's Auditors for the purposes of streamlining and cooperating with the Auditor's work.
- 5.15 Alliance shall prepare and provide reports to the Utility's Financial Advisor and/or Bond Counsel as needed or desired by the Utility and develop special customer information and other reports as needed or requested during each fiscal year.
- 5.16 Alliance shall develop, prepare, print, mail and distribute Consumer Confidence Reports to customers in accordance with regulations, provide other Utility info and/or publications to customers as needed.
- 5.17 Alliance shall work cooperatively with and provide records and all other necessary pertinent information to Utility' Legal Counsel.
- 5.18 Alliance shall direct the work of any of the Utility's real estate and easement acquisition agents, work cooperatively with the Utility's engineers and Legal Counsel for the purposes of obtaining water and sewer easements, property acquisitions and other real estate needs as determined necessary by Utility.
- 5.19 Alliance shall develop and prepare annual budgetary proposals and recommendations for Utility's consideration and perform other financial work as directed by Utility.

- 5.20 Alliance shall prepare or assist in the preparation of governmental, official and customer correspondence including monthly, quarterly or annual reports, develop and prepare press releases, provide other information and educational materials as deemed necessary or appropriate to help perform Utility's public purpose.

6. COMPENSATION

- 6.1 Utility shall pay Alliance a Base Fee of \$ 454,589.00 (\$ 37,882.41 per month) for services rendered as described in the Agreement for the first year of service.

This monthly base fee is a fixed monthly base fee for the first year of service and includes a \$ 29,000.00 Repair Limit and a \$ 12,200.00 Chemical Limit as described in this agreement.

- 6.2 The Base Fee, Repair Limit, and Chemical Limit shall be subject to renegotiation at the end of the first year of service and annually thereafter and thus may be revised with the written consent of both parties. In the event that the parties fail to agree, the Base Fee, Repair Limit, and Chemical Limit shall be adjusted in proportion to the change in the Consumer Price Index for all urban consumers (U.S. City Average) in the most recent twelve (12) month period prior to the time of renegotiation as published by the U.S. Department of Labor. Such increase shall not be less than 3% and not more than 8% unless otherwise agreed upon.
- 6.3 The Base Fee, Repair Limit, and Chemical Limit shall be subject to renegotiation due to any substantial change in the costs of Utility System operation and maintenance, including but not limited to changes in flow, customer accounts, monitoring or reporting requirements, personnel or staffing requirements, or increased costs due to Force Majeure occurrences.
- 6.4 In the event that a change in the Scope of Service provided by Alliance occurs, and is mutually agreed upon with Utility, Alliance and Utility will negotiate a commensurate adjustment in compensation. All compensation adjustments resulting from changes in the Scope

of Services provided by Alliance shall be retroactive to the date the new or increased level of service is first provided.

7. PAYMENT OF COMPENSATION

- 7.1 The compensation described in Section 6 shall be payable monthly and shall be due and payable on the first of the month for which services were rendered.
- 7.2 All other compensation due Alliance from Utility shall be due upon receipt of Alliance's invoice and payable within thirty (30) days.
- 7.3 Utility shall pay interest at the rate of nine percent (9%) per annum on compensation not paid when due, or payments of invoices not paid within thirty (30) calendar days. Interest shall commence on the due date.

8. INDEMNITY, LIABILITY AND INSURANCE

- 8.1 Alliance shall indemnify, save harmless and defend Utility from any and all claims, liabilities, penalties, fines, forfeitures, suits and costs and expenses incident thereto, including reasonable attorneys' fees, which Utility may incur, pay in settlement, or become responsible for as result of death or bodily injury to any person, damage to any property, adverse effects on the environment, or violation of any law arising out of or relating to Alliance's material breach of any term of this Agreement, or any negligent or willful act or omission of Alliance, its employees, or subcontractors in the performance of this Agreement.

Utility shall indemnify, save harmless and defend Alliance from any and all claims, liabilities, penalties, fines, forfeitures, suits and costs and expenses incident thereto, including reasonable attorney's fees, which Alliance may incur, pay in settlement, or becoming responsible for as a result of death or bodily injury to any person, damage to any property, adverse effects on the environment, or violation of any law arising out of or relating to Utility's material breach of any term of this Agreement, or any negligent or willful act or omission of Utility, its employees, or subcontractors in the performance of this Agreement.

Utility and Alliance shall each provide the other with prompt and timely written notice of any event or proceeding of which either acquires knowledge and for which indemnification may be sought so that each shall have any opportunity which exists to take such actions as may be desirable to contain or minimize the consequences of any such event or proceeding and to defend or settle at such party's expense any such proceeding.

- 8.2 Alliance shall be liable for fines or civil penalties imposed by regulatory agencies for violation of the Utility's NPDES permits or rules or regulations of the Tennessee Department of Environment & Conservation or the United States Environmental Protection Agency which occur during the term of this Agreement and which were caused by Alliance negligence or willful conduct. Alliance shall be given full authority to contest such violations and Utility shall assist Alliance in such proceedings. Except to the extent caused by Alliance's negligence, willful conduct, or breach of its obligations under this Agreement, Alliance shall not be responsible for fines or penalties or any other liability if influent characteristics exceed Facility design parameters, influent contains biologically toxic substances, source water contains non-treatable substances or the Facility is inoperable due to circumstances beyond Alliance's control (See Exhibit B).
- 8.3 Alliance's liability under this Agreement specifically excludes any and all indirect or consequential damages arising from the operation, maintenance, and management of the Facility. Alliance shall not be responsible for damages caused by any defects or flaws inherent in the Utility System as it exists prior to Alliance beginning operations. Additionally, Alliance shall not be responsible for such damages in the event that Alliance has notified Utility of any defects and Utility fails to authorize appropriate corrective action. Alliance and the Utility agree that throughout the life of this Agreement any and all damage claims related to the Utility System shall continue to be processed and resolved in accord with current Utility practice.
- 8.4 Each party shall obtain and maintain insurance coverage of a type and in amounts described in Exhibit A. Each party, to the extent permitted by law, shall name the other party as an additional insured on all insurance policies covering the Facility and shall provide the other party with satisfactory proof of insurance upon written request.

9. TERM AND TERMINATION

2020
T.M. Dwyer
D. W. [Signature]

9.1 This Agreement shall become effective on the 9th day of Oct 20 17 and shall remain in effect through the thirtieth (30) day of Sept, 20 18, subject to annual appropriation of funds by Utility. If Utility appropriates funds for operation and/or maintenance of the Utility System this Agreement shall remain in force and effect.

9.2 This Agreement shall be automatically renewed for successive terms of Three (3) years each unless notice of cancellation is given by either party no less than ninety (90) days prior to date of expiration

9.3 This Agreement may be terminated by either party for breach of contract terms by the other. Such right of termination shall be in addition to any other claims or remedies either party may have against the other at law or in equity.

9.4 Such termination shall be effected as follows: The party declaring a breach shall give the other written notice of the breach and sixty (60) days from the date of notice to cure. In the event the other party fails to cure within that period, the party serving notice may elect to terminate and shall give written notice of its election to terminate effective not more than ninety (90) days after the date of the notice of election to terminate.

9.4 If a breach is claimed by Alliance over a disputed invoice or payment, Alliance will, at Utility's option, continue to perform under the Agreement subject to resolution of the dispute by a court or agency of competent jurisdiction, provided either party initiates such action within the sixty (60) day cure period.

10. LABOR DISPUTES

10.1 In the event labor stoppages by employee groups or unions (i.e., picketing) cause a disruption in Alliance's employees entering and working on the Utility System, Alliance, at its own option, may seek appropriate injunctive court orders or temporary, additional, qualified personnel. During the labor dispute, Alliance shall operate the Utility System on a best efforts basis until labor relations are normalized.

11. EXTRAORDINARY CIRCUMSTANCES

- 11.1 Neither party shall be liable for its failure to perform its obligations under this Agreement if performance is made extraordinarily difficult, or costly, due to any unforeseeable occurrences beyond its reasonable control, including, but not limited to, fire, abnormal flooding, riot, war, sabotage, governmental laws, ordinances, rules or regulations, except that Alliance will be responsible for failure to perform as a result of governmental action based on Alliance's failure to comply with rules, regulations and laws pertaining to the Utility System; inability to obtain electricity or other type of power, cessation of transportation, and other similar contingencies.
- 11.2 The party claiming inability to perform hereunder shall notify the other party immediately by verbal communication and in writing by certified mail, return receipt requested, of the nature and extent of the contingency within fourteen (14) days after its occurrence.
- 11.3 A declaration of inability to perform under this contract by either party does not relieve the parties from obligations not affected by the conditions claiming inability under this provision of the Agreement.

12. FUTURE CONSTRUCTION

- 12.1 Alliance, along with Utility and Utility's designated Consulting Engineering firm, will work together to maintain accessibility and minimize disruption and outages to the existing Utility System when future improvements are under construction.
- 12.2 Alliance will work with Utility and Utility's consulting engineer(s) and contractor(s) to coordinate activities. In the event a critical piece of equipment or plant must be taken out of service, a plan shall be developed and approved by all parties ten (10) working days prior to the scheduled outage, and addressing the impact on plant operations, length of outage, and methods of removing and reactivating the equipment to full service. Utility shall pay all extra costs associated with said equipment outage. Alliance shall not be responsible for regulatory violations due to such interruptions.

12.3 In the event Utility's contractor or subcontractor causes damage to the Utility System, Alliance shall immediately notify Utility's duly authorized representative and shall take all actions necessary to minimize further damage.

12.4 Utility, or Alliance on behalf of Utility, shall direct the contractor to complete all repairs within a reasonable time. In the event that contractor does not make the repairs in a timely and reasonable manner, Alliance shall notify contractor and Utility of such failure to repair, and if work is not initiated immediately to effectuate such repair, within forty-eight (48) hours of such notice, Alliance shall, with Utility's consent, make said repairs, and recover costs of the repairs from Utility.

13. AMENDMENTS

13.1 This Agreement may be modified only by written amendment signed by both parties.

14. WAIVER

14.1 A waiver on the part of either party of any term, provision, or condition of this Agreement shall not constitute precedent, nor bind either party to a waiver of any succeeding breach of the same or any other term, provision, or condition of this Agreement.

15. APPLICABLE LAW

15.1 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee.

16. ASSIGNMENT

16.1 This Agreement shall be binding upon and enure to the benefit of the respective successors and assigns of each of the parties hereof.

17. HEADINGS

17.1 Section headings used in this Agreement are inserted for convenience of reference only and shall not affect the content of its various provisions.

18. NOTICE

18.1 All notices shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid, as follows:

On Utility: East Sevier County Utility District
1529 Alpine Drive
Sevierville, TN 37876

On Alliance: Alliance Water Resources, Inc.
206 South Keene Street
Columbia, MO 65201

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized and their respective corporate seals to be herewith affixed and attested by their respective officers having custody thereof the day and year first above written.

UTILITY:

Janice Brooks Hendrick
Commissioner

Barbara Darby
Commissioner

BY: *Roy Inez*

TITLE: *president*
(SEAL)

ATTEST:

Clerk

ALLIANCE WATER RESOURCES, INC.

BY: *Deborah Wagner*

TITLE: *President*

(SEAL)

ATTEST:

Secretary *Mary Ann Parkie*

EXHIBIT A

Alliance shall maintain:

1. Statutory Worker's Compensation Insurance for all Alliance employees at the Utility as required by law.
2. Comprehensive or commercial general liability insurance for bodily injury and/or property damage as follows:

General Aggregate	\$3,000,000
Each Occurrence Limit	\$1,000,000
Umbrella Aggregate	\$4,000,000

Each Party:

1. Shall maintain adequate property insurance for its equipment and real and personal property, including but not limited to extended coverage.
2. Shall provide, with respect to its owned vehicles, Commercial Automobile Liability Insurance for bodily injury and/or property damage with \$1,000,000 per occurrence.

Utility agrees:

1. to file sewer backup claims with their insurance carrier.
2. Alliance will assist the Utility to provide information and documentation to support or deny the settlement of claims by the Utility's insurance carrier.

EXHIBIT B

FACILITY CHARACTERISTICS

WATER TREATMENT FACILITY

- A.1 Alliance shall not be responsible for fines or penalties or any other liability if there are limitations with the water treatment facility which limit adequate treatment, or the Utility System is inoperable due to circumstances beyond Alliance's control.
- A.2 In the event that water quality requirements are revised in the future, Alliance shall have the right to renegotiate the terms of Sections 5 and 6 in the Agreement by giving notice to the Utility of the revised water quality requirements.

WASTEWATER TREATMENT FACILITY

- A.3 Alliance shall not be responsible for fines or penalties or any other liability if there are limitations in the collection system design or plant design which limit adequate collection or treatment, or if the wastewater influent exceeds facility design parameters including maximum daily and instantaneous flow, does not contain adequate nutrients, contains biologically toxic substances, or the Facility is inoperable due to circumstances beyond Alliance's control.
- A.4 Alliance liability regarding payment of fines, penalties or any other related liability is restricted to effluent limitations. In the event that effluent limitations are revised in subsequent NPDES permits, Alliance shall have the right to renegotiate the terms of Sections 5 and 6 in the Agreement by giving notice to the Utility within forty-five (45) days after the effective date of the revised permit.