

OPERATION AND MAINTENANCE AGREEMENT FOR WASTEWATER TREATMENT FACILITIES

This OPERATION AND MAINTENANCE AGREEMENT (the "Agreement"), dated as of April 23, 2009, between the TOWNSHIP OF GRATTAN, a Michigan general law Township, whose address is 12050 Old Belding Road, Belding, Michigan 48809 (the "Township"), and INFRASTRUCTURE ALTERNATIVES, INC., and its successors and assigns (the "Operator"), whose address is 7888 Childsdale Avenue, Rockford, Michigan 49341.

Recitals

WHEREAS, the Township is the owner of two sanitary sewer collection, transmission and treatment systems, these being the Grattan/Vergennes Sanitary Sewer System and the Grattan Sanitary Sewer System, including the respective sanitary sewer collection and transmission systems and the respective wastewater treatment plants, all being designed to receive and treat the sanitary sewage of properties served, respectively, by the sanitary sewer systems and which are located within the sewer service districts described in the Township Sewer Collection, Use and Rate Ordinance, and as it may be amended from time to time (the "Facilities"); and

WHEREAS, the Township desires to engage the Operator to operate and maintain the Facilities on behalf of the Township, and the Operator desires to accept such engagement: and

WHEREAS, the Township is authorized by law to enter into this Agreement.

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

Article 1 Standard Services

1.1 Operation and Maintenance. Commencing on May 7, 2009, or such other date mutually acceptable in writing to the Operator and the Township (the "Effective Date"), the Operator will provide all routine operation and maintenance of the Township's Facilities on a 7 day per week basis within the System Capabilities of the Facilities as specified in the original plans for the system, and to include subsequent structural changes (the "System Capabilities"). For purposes of this Agreement, routine operation and maintenance shall include all activities necessary to satisfy the requirements imposed on the Township by the existing Discharge Permit (the "Discharge Permit"), currently applicable to the Facilities and described further in Sections 1.2 through 1.8 below as well as in Attachment I.

1.2 Routine Operations and Preventive Maintenance Services. The Operator will perform routine and/or repetitive activities required to operate the Facilities and to maximize the service life of the equipment, vehicles, and Facilities. These services include the Operator's personnel, vehicle costs, and basic tools. In general, these services are to be provided Monday

through Friday, from 9:00 am to 5:00 pm excepting Holidays, except as otherwise stated herein. At a minimum these services will include those in the “Standard Operating Procedures” in Appendix A.

1.3 Corrective Maintenance Services. The Township contracts with others for specialized mechanical, electrical, and other specialized maintenance services, and in doing so assumes responsibility for replacement parts, materials, and associated component costs. The Operator will identify the need for corrective maintenance during its routine operation and either perform the corrective maintenance as needed or flag the item for attention by a third party electrical or mechanical contractor. The Operator shall consult with and obtain approval from the Township on any single maintenance expenditure expected to exceed \$500.00; provided, however, that the Township Sewer Administrator may approve maintenance or other expenditures exceeding \$500.00, without other Township approval, if in the reasonable judgment of the Sewer Administrator such expenditures are necessary to prevent or alleviate an emergency situation. Otherwise, the Operator shall have the authority to charge lesser items to the maintenance budget as necessary and appropriate to maintain the system.

1.4 Emergency Callout Services. The Operator shall provide personnel to respond to emergency callouts from power outages, storm response, and alarm callouts on a 24/7 basis. Emergency callout services may be provided at anytime.

1.5 Laboratory Services. The Operator will be responsible for collection of all system and groundwater samples in accordance with the frequency and parameter requirements of the Discharge Permit.

1.6 Staffing. The Operator will provide employees of the Operator for the staffing of the Facilities both for routine operations and on an emergency callout basis. The Operator shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws.

1.7 Liaisons. The Operator’s primary liaison regarding decisions and other matters related to the operation of the Facilities shall be with the Township Sewer Administrator. If requested, or necessary, the Operator will also communicate with the Township Engineer. The Operator shall serve as the Township’s liaison to regulatory agencies and industrial users in matters related to the operation of the Facilities.

1.8 Regulatory Compliance. Subject to the limitations of the System Capabilities, the Operator shall operate the Facilities in compliance with current state and federal regulatory requirements and the Discharge Permit. The Operator will pay all fines imposed on the Township for any process upsets, violation of discharge limits, or violation of the Discharge Permit (including all reasonable attorney fees and expenses for contesting any fine or penalty), provided such failure or upset resulted from the acts, errors, or omissions of the Operator.

1.9 Reports and Records. The Operator will prepare and co-sign, as appropriate, all reports required by state and federal regulatory agencies, and will maintain other records deemed useful by the Operator and Township to monitor and control the operation of the Facilities. The Operator will cooperate with the Township in providing records and reports in the format

deemed by the Township to be most suitable to its needs, and to include all pertinent information held by the Operator. The Operator shall prepare and timely submit to the Township monthly activity reports including a summary of routine preventive maintenance, corrective maintenance, and emergency call-outs. The Operator shall also, semi-annually (October 1st and April 1st), compile a general summary of significant events, including weekly reports, alarm call-outs with the answering service log, maintenance cost reports, results of any tests, and any other concerns or situations affecting the Facilities.

1.10 Sewer Systems Asset Database and Preventative Maintenance Records. The Operator shall develop, utilize and operate a mutually agreed upon software program to monitor all of the assets in the Grattan and Grattan/Vergennes collection, lagoon and irrigation systems. This will include all of the assets listed in Appendix B. It is expected that the Operator shall utilize this program to schedule routine maintenance of the systems and to also make recommendations to the Township as to the replacement, and/or upgrading, of components in the future. A report shall be submitted to the Township January 1st of each calendar year listing recommended equipment and capital expenditures for the Township fiscal year (April 1st to March 31st).

Article 2 Responsibilities of the Operator

2.1 Non-Routine Services. Additional services, including the cost of labor, parts and subcontractors, not considered routine under this Agreement or required as a result of flood, fire, Act of God or other force majeure, civil disturbance, or other event or circumstance beyond the Operator's control (collectively, "Non-Routine Services"), are not included in the Standard Services as defined in Article 1. The Operator will assist the Township in obtaining or providing, or the Operator will obtain and provide, any such services so required, and the Operator will be paid for such Non-Routine Services in accordance with Section 4.4. If such services are provided by subcontractors or other third parties, the contractors or other third parties shall bill the same directly to the Township, except as to incidental or minor purchases.

2.2 Performance of Duties and Obligations. The Operator shall perform the services and duties under this Agreement in accordance with the standard of care and diligence normally provided by other professional firms providing similar contract services.

2.3 Insurance Coverages. The Operator will provide and maintain at all times during the term of this Agreement the following minimum insurance coverages:

(a) Workers Compensation Insurance in compliance with the statutes of the State of Michigan with a limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000);

(b) General Liability Insurance of ONE MILLION DOLLARS (\$1,000,000) with an aggregate limit of TWO MILLION DOLLARS (\$2,000,000),

(c) Pollution and Professional Errors and Omissions Liability insurance of ONE MILLION DOLLARS (\$1,000,000) with an aggregate limit of TWO MILLION DOLLARS (\$2,000,000),

(d) Automobile Liability Insurance (owned, non-owned, or hired units) with an aggregate limit of ONE MILLION DOLLARS (\$1,000,000).

The Operator will furnish the Township with Certificates of Insurance as evidence that policies providing the required coverages and limits are in full force and effect, and shall update such certificates within thirty (30) days of any change on the policies and coverages such that the Township shall file a copy of current and effective certificates in the township office on an ongoing basis. Such policies shall provide that no less than thirty (30) days advance notice of cancellation, termination, or material alteration shall be sent directly to the Operator and the Township.

2.4 Proprietary Rights. All facility records, data, software, and information, including, but not limited to, operation reports, laboratory data, and budgetary and financial information shall remain the property of the Township. All operating procedure guidelines, preventive maintenance programs, and plant evaluation reports shall, upon termination of this Agreement, remain the property of the Township.

2.5 Indemnification of Township. The Operator shall indemnify, protect, and hold the Township, its employees, and agents harmless from and against all liability, claims, demands losses, damages costs, or expenses caused by malfunction or failure of the Facilities or any components hereof or other liability or loss, including injury, death, or damages to any person or property, related in any way to the performance of this Agreement to the extent such liability, claims, , demands losses, damages costs, or expenses are caused by the acts, errors, or omissions, or other misconduct of the Operator. This provision shall survive the termination of this Agreement.

2.6 The Operator's Equipment. Any temporary or portable equipment which is provided by the Operator during the term of this Agreement and which is not deemed part of the Facilities shall remain the property of the Operator upon termination of this Agreement. Any temporary or portable equipment that is part of the Facilities or, which is purchased with Township funds, shall remain the property of the Township upon termination of this Agreement. The Operator shall not make any capital replacements of the Facilities or any component thereof without the prior written approval of the Township.

2.7 Responsibility for Testing and Monitoring. It shall be the responsibility of the Operator to collect effluent, groundwater and soil samples and arrange for the analysis thereof as follows:

(a) collect effluent samples, submit such samples to a state-certified laboratory approved by the Township, for analysis, and prepare written reports of such analysis and submit the same to the Township, all as required by the discharge permit;

(b) conduct monitoring of groundwater, including the collection of samples thereof, and submit such samples for analysis by a state-certified laboratory as required by the discharge permit;

(c) collect soil samples and submit the same for analysis on at least an annual basis or as otherwise may be required by the discharge permit.

2.8 **Ancillary Services.** The Operator shall maintain the current level of ancillary services (snowplowing, mowing, etc) at system facilities, or as mutually agreed to by the Township and the Operator; provided, however, that the Township shall have the option, in its sole discretion, to contract out to other parties the mowing and/or snowplowing. Except as the Township may otherwise determine, the Operator shall provide mowing at pump station sites, but the mowing at both wastewater treatment sites shall continue to be conducted by the Township employee who performs this service, until such time as the Township may direct otherwise.

2.9 **Services.** The Operator shall submit invoices for services hereunder on a monthly basis, following the end of each preceding month.

Article 3 Responsibilities of the Township

3.1 **Basic Township Responsibilities.** As part of this Agreement, the Township agrees to perform all functions and retain all responsibilities and obligations related to the Facilities not expressly assumed herein by the Operator, including, without limitation, the following:

(a) The Township shall obtain and maintain in full force and effect all warranties, easements, permits, licenses, and other approvals and consents necessary to operate and maintain the Facilities received by or granted to Township as owner of all Facilities and component parts thereof:

(b) The Township shall be responsible for prompt payment to the Operator for any and all services rendered. Any billing adjustments shall be credited to the next billing cycle, and shall not be the basis for delay or withholding of payment.

(c) The Township shall be responsible for expenditures for all capital and/or replacement, corrective maintenance, and for all repairs and replacement of the Facility's assets.

(d) The Township shall enforce all Township ordinances, including those pertaining to user pretreatment standards and provide for the billing and collection of all user fees and rates pertaining to the Facilities.

(e) The Township shall, at all times, provide access to the Facilities for the Operator, its agents, and employees.

(f) The Township shall provide security at the Facilities including keyed-alike locks or other mechanisms to secure the Facilities.

(g) The Township shall pay for phone service for automatic alarm systems, in addition to the Operator's quoted standard services.

(h) The Township shall provide the Operator the use of all existing equipment owned by the Township necessary for the operation and maintenance of the Facilities.

(i) The Township shall be responsible for damage and liability to the Facilities or components thereof caused by flood, fire, Acts of God or other force majeure, civil disturbance, Acts of War, terrorism or misuse of property caused other than by the acts, errors or omissions of the Operator.

(j) The Township shall be responsible for all fines and penalties imposed for process upsets, violation of discharge limits, and violation of Discharge Permits attributable to the operation and maintenance for the Facilities together with related costs and expenses, except as caused by the acts, errors or omissions of the Operator.

(k) The Township shall designate a person (Sewer Administrator) to act as liaison with the Operator in connection with the performance of services by the Operator under this Agreement.

(l) The Township shall be responsible for all claims, damages and liability resulting from the back up of wastewater in the collection system except as caused by the acts, errors or omissions of the Operator.

(m) The Township shall maintain and repair sewers, cleanouts, outfalls, and other appurtenances not constituting the Facilities.

Article 4 Compensation

4.1 Routine Operations and Preventive Maintenance Services. As compensation for Services, as outlined in Section 1.2, the Township shall pay the Operator on a Time and Materials basis at a base rate of \$60.00 per man-hour for Licensed Operator services and \$40.00 per man-hour for Assistant, non-licensed Operator services.

4.2 Corrective Maintenance Services. As compensation for Services as outlined in Section 1.3, Township shall pay the Operator on a Time and Materials basis at a base rate of \$60.00 per man-hour for Licensed Operator services, \$40.00 per man-hour for Assistant, non-licensed Operator services and \$75.00 per man-hour for mechanical specialist (maintenance).

4.3 Emergency Callout Services. As compensation for Services as outlined in Section 1.4, Township shall pay the Operator on a Time and Materials basis at the following base rates:

- (a) \$40.00 per man-hour between 9 am and 5 pm, including weekends
- (b) \$60.00 per man-hour between 5 pm and 9 pm, including weekends
- (c) \$60.00 per man-hour between 9 pm and 9 am, including weekends

(d) \$60.00 per man-hour for major holidays including: New Years Eve/New Years Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas eve/Christmas Day.

4.4 **Non-Routine Services.** Cost for Non-Routine Services provided by the Operator pursuant to Section 2.1 shall be paid by the Township to the Operator separately on a time and expense basis, including overtime. Time shall be billed either in accordance with the Operator's standard published rates at the time services are rendered, or by lump sum, or by project-specific quote.

4.5 **Other Contractors.** Any services provided by directly to the Township by others are not covered under this agreement.

4.6 **Rates Frozen.** The Operator agrees to freeze the base rates outlined in Section 4.1, 4.2 and 4.3 for the term of this agreement.

Article 5 Term of Agreement; Initial Trial Period

5.1 **Term.** This Agreement shall remain in full force and effect for 24 months from the Effective Date; provided, however, that the Township shall have the right, in its sole and unqualified discretion, to terminate this Agreement for any reason or for no reason, upon the expiration of six months after the Effective Date. If the Township desires so to terminate this Agreement, it shall do so by a writing directed to the Operator at its address as stated in this Agreement, prior to the end of such six-month period. If, however, the Township determines not to terminate this Agreement at the end of said six-month period, it shall give notice by means of a writing directed to the Operator at its address, at or prior to the end of such six-month period, to that effect, in which case this Agreement shall then continue, subject to all of the terms hereof, for the above-stated period of 24 months from the Effective Date. Not less than six months prior to the expiration of 24 months after the Effective Date, the Operator may present a proposal to the Township to extend or renew this Agreement, for the Township's consideration, in the Township's sole discretion.

Article 6 Termination

6.1 **Termination by Township.** In addition to the six-month discretionary termination stated in Section 5.1, this Agreement may be terminated upon 30 days written notice given by Township to the Operator for either a default by the Operator or in the event that the Operator is obligated to pay a Federal or State regulatory fine imposed on the Township pursuant to Section 1.8 of this Agreement. In the event of a default by the Operator, this Agreement shall not be terminated if the Operator fully cures the default within such 30 day period.

6.2 **Termination by the Operator.** This Agreement may be terminated upon 30 days written notice given by the Operator to the Township for default by Township. In the event of default by Township, this Agreement shall not be terminated if Township cures the default within such 30 day period.

6.3 **Termination Without Cause.** This Agreement may be terminated by either the Operator or the Township for any reason by giving 90 days written notice to the other party; provided, however, that the Township may also terminate this Agreement without cause after the six months' initial trial period as stated in Section 5.1.

Article 7 Miscellaneous

7.1 **Assignment.** This Agreement may not be assigned by either party hereto except with the written consent of the other party.

7.2 **Previous Agreements.** This contract shall be the only agreement between the parties for the services described herein, and this agreement shall supersede and replace any previous agreements for similar services.

7.3 **Entire Agreement.** This Agreement represents the entire agreement of the parties and may only be modified or amended in writing signed by both parties.

7.4 **Notices.** Written notices required to be given under this Agreement shall be deemed given when mailed by first class mail to the Operator, Attention: John Rydeck, and to Township, Attention: Franklin Force, Township Supervisor at the addresses set forth for each in the opening paragraph of this Agreement.

7.5 **Claims and Rights.** No waiver, discharge, or renunciation of any claim or right of the Operator arising out of breach of this Agreement by Township shall be effective unless in writing signed by the Operator and supported by separate consideration.

7.6 **Captions.** The captions or headings of the various articles and sections of the Agreement are for convenience only and they shall be ignored in interpreting the Agreement.

7.7 **Governing Law.** This Agreement shall be deemed to have been made in Kent County, Michigan, and shall be governed by, and construed in accordance with, the laws of the State of Michigan.

7.8 **Third Party Liability.** Except as specifically stated in this Agreement, this Agreement does not create any rights or benefits to parties other than Township and the Operator.

7.9 **Disputes.** With respect to any dispute arising under this Agreement, the parties shall have all rights and remedies available by law, including but not limited to the submission of a dispute to arbitration if both parties agree to do so and agree to be bound by the decision of the arbitrator.

7.10 **Authority to Contract.** Each party warrants and represents that it has authority to enter into this Agreement.

7.11 **Modifications.** This Agreement may not be modified or amended except in writing, signed by both parties and which expressly states that is intended to modify or amend this Agreement.

IN WITNESS WHEREOF, the Township, by its duly authorized representative, and the Operator, by its duly authorized officer, have executed this Agreement as of the date and year first above written.

WITNESSES:

[Signature]
Yvonne Freeman

TOWNSHIP OF GRATTAN

By: Franklin J. Force
(Name)

Its: Supervisor
(Title)

WITNESSES:

Monica Burt 4/27/09
Mary Kay Groening 4/27/09

INFRASTRUCTURE ALTERNATIVES, INC.

By: Neil Funnell 4/27/2009
(Name)

Its: VICE PRESIDENT
(Title)