

## AMENDMENT NO. 2 TO WASTEWATER TREATMENT AGREEMENT

This Amendment No. 2 (“**Amendment**”) to Wastewater Treatment Agreement (the “**Wastewater Treatment Agreement**”) is made and entered into this \_\_\_\_\_ of April 2023 (the “**Effective Date**”) by and between the Indian River County Solid Waste Disposal District, a special dependent district of Indian River County, Florida (the “**District**”) and Indian River Sustainability Center, LLC (“**IRSC**” or the “**Company**”). All capitalized terms used herein but not otherwise defined will have the meanings ascribed to them in the Wastewater Treatment Agreement.

**WHEREAS**, on July 13, 2021, the District and IRSC (collectively, the “**Parties**”) entered into the Wastewater Treatment Agreement which governs the interaction, rights and responsibilities of the District and IRSC with respect to designing, furnishing and operating a wastewater treatment plant (collectively, the “**Evaporation Plant**”) to treat landfill leachate from the District’s landfill located in Vero Beach FL (the “**Landfill**”); and

**WHEREAS**, on March 31, 2023, the members of the IRSC have been amended to include solely Heartland Water Technology, Inc. (“**Heartland**”) and Proximo Energy, LLC (“**Proximo**”).

**WHEREAS**, the Parties now desire to make three (3) changes to the Wastewater Treatment Agreement (collectively, the “**Changes**”) as more fully described in this Amendment (as contemplated in Section 5.2 of the Wastewater Treatment Agreement):

**WHEREAS**, the Changes fall within the following categories: (i) reimbursement for costs and expenses incurred by Heartland on behalf of the District related to certain scope changes (collectively, “**Costs Related to Certain Scope Changes**”); (ii) reimbursement for costs and expenses which will be incurred by IRSC due to certain Temporary Fixes (as defined below) which the District now plans to implement (collectively, “**Costs Related to Temporary Fixes**”); and (iii) certain language relating to a release requested by the District in connection with the approved design of the roll-off boxes (the “**Roll-off Box Modification**”).

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, it is agreed between the District and IRSC as follows:

### I. COSTS RELATED TO CERTAIN SCOPE CHANGES

#### A. Background

There are three (3) scope changes included in this Section relating to the following provisions in the Wastewater Treatment Agreement:

- (a) Under the terms of Section 3.3(c), “The District shall obtain all necessary Permits to allow for installation and operation of the Evaporation Plant at the Evaporation Plant Site including without limitation the Permits that are listed on Appendix D hereof.” One such permit required to be secured was a building permit.
- (b) The Division of Responsibilities that is found in Appendix C Part 2 of the Wastewater Treatment Agreement as amended by the First Amendment (the “**DOR**”) contemplates that the District is responsible for supply and installation of the Landfill Gas (LFG) and Natural Gas supply for thermal energy.
- (c) The Wastewater Treatment Agreement did not contemplate the need for IRSC to integrate with

a site-wide SCADA system.

As to item (a) above, although IRSC had committed to provide technical assistance to the District in securing permits, the District representatives asked IRSC to take on more responsibility to secure the building permit than originally contemplated. Specifically, the District asked IRSC to take the lead to complete the work necessary to secure the Building Permit on its behalf as soon as possible. As a result, IRSC devoted unexpected internal engineering time and incurred costs from outside consultants (e.g., Carlson) in order to meet the District’s needs in this regard.

As to item (b) above, the District asked IRSC to take over responsibility for preparing the site, completing the design and pouring the concrete for the natural gas pad foundation on its behalf.

As to item (c) above, due to permitting requirements surrounding the Crom tank, the District now needs IRSC to integrate with the District’s site wide SCADA system.

**B. Breakdown of Costs Related to Certain Scope Changes**

The following is a breakdown of the costs and expenses incurred by IRSC in this regard on behalf of the District and includes both third party costs and internal engineering time:

COST TOTAL	COST EACH	UNITS	MANUFACTURER	DESCRIPTION
<b>Permit Related Costs</b>				
\$5,360.46	\$5,360.46	1	CEC	Permit fee's related to building permit tasks
\$21,047.50	\$21,047.50	1	CEC	CEC engineering hours related to building permit tasks
<b>NG Pad Costs</b>				
\$1,000.00	\$1,000.00	1	Broadway	Broadway Engineering
\$1,512.00	\$1,512.00	1	Belmore	Belmore Concrete Construction
\$251.00	\$251.00	1	CEC	CEC 10% markup on Belmore and Broadway
<b>SCADA Integration</b>				
\$477.19	\$477.19	1	HWT	HWT electrical hardware for fiber conversion
\$120.00	\$120.00	1	Dahlen	Update prints due to SCADA change

The total value of Costs Related to Certain Scope Changes as described above is **\$29,768.15** (the **“Scope Change Amount”**).

**C. Payment Terms**

In the First Amendment to the Wastewater Treatment Agreement, the District received a credit of \$240,000 (the **“Credit”**) related to some scope changes agreed to at the time the First Amendment was executed. IRSC will invoice the District for the Scope Change Amount and then apply it to reduce the Credit. The remaining amount of the Credit after this deduction is \$210,231.85 (the **“Remaining Credit”**).

**II. COSTS RELATED TO TEMPORARY FIXES**

**A. Background**

Section 3.2 of the Wastewater Treatment Agreement and the DOR provide that both during the Start-up Phase and during the Operating Term, the District will be responsible for supplying to the Evaporation Plant: (a) Wastewater for treatment which will be stored in the District Storage Tank; and, (b) landfill gas that needs to be routed into the Evaporation Plant in sufficient quantities and quality for the Company to treat the Wastewater.

For reasons outside of IRSC’s control, the District informed IRSC that (i) it will not be ready to make the District Storage Tank available to IRSC during the planned Start Up Phase and for some time following COD (the “**Tank Issue**”); and, (ii) it will not complete the work for the landfill gas transfer system during the Start Up Phase or for some time following COD (the “**Gas Line Issue**”). As a result, IRSC has worked with the District to develop a plan to complete certain temporary fixes to the Tank Issue and the Gas Line Issue in order not to further delay the Start Up Phase or COD (collectively, the “**Temporary Fixes**”). These Temporary Fixes will be paid for and implemented by the District in accordance with the Parties’ mutually agreed to plan for the Temporary Fixes; putting them in place will give the District time to complete work as contemplated originally under the Wastewater Treatment Agreement (the “**Originally Planned Work**”).

**B. Breakdown of Costs Related to Temporary Fixes**

Unfortunately, installation by the District of the Temporary Fixes and completion of the Originally Planned Work as contemplated will result in the need for IRSC to devote certain previously unbudgeted engineering time and complete two separate recommissioning exercises (each an “**Occurrence**” and collectively, the “**Additional IRSC Work**”).

The time spent by IRSC engineers to support the District in development of the Temporary Fixes, and to validate and confirm the workability of the proposed Temporary Fixes was extensive. That said, IRSC proposes charging the District for only 22 hours or **\$2,640 (“Supplemental Engineering Cost”)**.

The following is a cost breakdown for the Additional IRSC Work per Occurrence that will be required each time Evaporation Plant is ready to be recommissioned:

- 1. Engineering Support..... **\$960 per day**
- 2. Site Installation and Support by Heartland Field Crew.....**\$840 per day**
- 3. Travel and Per Diem (Lodging, Food & local transportation), .....**Billed at Cost**

If due to circumstances on the ground, additional time is needed for IRSC to complete the required work of any Occurrence beyond that described above, IRSC will charge the District on a T&M basis at the rates listed below:

- Service Manager: \$150 per hour
- Engineering: \$120 per hour
- Service Technician: \$105 per hour
- Travel and Per Diem (Lodging, Food & local transportation): Billed at Cost

During the period while IRSC is operating the Evaporation Plant with the Temporary Fixes in place, any rights of the District (under the Wastewater Treatment Agreement or otherwise) to penalize IRSC for failure

to meet its contractual performance requirements or claim a Company Event of Default will be suspended; such rights will be reinstated once the Originally Planned Work is fully completed by the District and the Evaporation Plant has been fully and finally re-commissioned.

### **C. Payment Terms**

IRSC will invoice the District for Supplement Engineering Cost promptly after execution and approval by the District of this Second Amendment.

IRSC will invoice the District for Additional IRSC Work relating to the Tank Issue promptly following completion of the portion of the Additional IRSC Work relating to the Tank Issue.

IRSC will invoice the District for the portion of the Additional IRSC Work relating to the Gas Line Issue promptly following completion of the portion of the Additional IRSC Work relating to the Gas Line Issue.

Each amount invoiced will be applied to the Remaining Credit until it is exhausted, after which any amounts remaining due and payable by the District for Costs Related to Temporary Fixes will be due and payable within thirty (30) days of receiving the applicable invoice.

## **III. ROLL-OFF BOX MODIFICATION**

### **A. Background**

The design basis for IRSC's Evaporation Plant being built by IRSC to treat the District's leachate contemplated the installation of metal stands to hold the roll-off boxes where residual will be collected following leachate processing. Under the Wastewater Treatment Agreement, the District is the party who is solely responsible for disposal of all residual material collected in the roll-off boxes.

The District plans to have that activity performed by its subcontractor, Republic Services ("**Republic**") once the Evaporation Plant is operational. Republic has asked the District for some contractual protection in the event that it damages the roll of boxes or the stand while removing residual. Since IRSC has no direct legal relationship with Republic, IRSC has proposed that the District and IRSC amend the Wastewater Services Agreement to address this concern.

### **B. Modifications to the Wastewater Treatment Agreement to Address Roll Off Box Issue**

1. Section 3.2 of the Wastewater Treatment Agreement is hereby amended to add the following as a new subsection (f) as follows:

"(f) The Company will work with the District and its vendor Republic Services ("**Republic**") to develop standard operating procedures for Republic to use when removing residual from the Evaporation Plant ("**Residual Removal SOPs**") and a process to ensure that personnel charged with removing residual from the Plant have been properly trained and certified by IRSC ("**Certified Operators**"). IRSC has already modified certain aspects on the Evaporation Plant to reduce the risk that the roll off boxes or stands will be damaged in the ordinary course of business (e.g., adding a concrete barrier in front of the stands holding the roll-off boxes)."

2. Section 7.2 of the Wastewater Treatment Agreement is hereby amended to add the following

as a new subsection (c) as follows:

“(c) Claimable Damages for Certain Roll Off Box Issues.

- (i) Except as otherwise provided in this Section 7.2(c), the Company hereby agrees to release the District from liability for the cost of repairing or replacing the stands or the roll-off boxes in the event the stands or roll-off boxes themselves are damaged by the District or Republic (or other Certified Operator) while residual is being loaded or offloaded from the roll-off boxes (“**Claimable Damages**”).
- (ii) A given damage will only be deemed to be a Claimable Damage if the cause of such damage is not due to Republic or the District’s negligence, willful misconduct, use of personnel who are not Certified Operators or failure to follow the Residual Removal SOPs. This release will mean that if any such Claimable Damages occur, the Company will forgo its rights hereunder to seek recourse or reimbursement, directly or indirectly, from the District for the cost of such repair or replacement of the roll off boxes or stands.
- (iii) Any other claims that the Company may have that relate to damages that don’t constitute Claimable Damages (e.g., the cost of cleaning up a leachate spill that occurred as a result of such damage to the roll-off-boxes or stands) will continue to be governed by the terms of this Agreement.
- (iv) Notwithstanding anything to the contrary contained herein, nothing in this letter is intended to modify any of the obligations of the parties under the Agreement or release the District or Republic in the event any of their actions or omissions causes damage to any other property, processes or persons or prevents the Company from timely performance of its obligations under the Agreement.”

*The rest of this page is left intentionally blank.*

This Amendment is effective on the date first written above. Except as expressly modified by this Amendment, all other terms of the Wastewater Treatment Agreement remain in full force and effect.

**ATTEST:** Jeffrey R. Smith, Clerk

**INDIAN RIVER COUNTY SOLID  
WASTE DISPOSAL DISTRICT**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Joseph H. Earman, Chairman

**District Approved:** \_\_\_\_\_

**APPROVED:**

By: \_\_\_\_\_  
Michael C. Zito  
Interim County Administrator

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

**APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY:**

By: \_\_\_\_\_  
Dylan Reingold  
County Attorney

**INDIAN RIVER SUSTAINABILITY CENTER, LLC**

By: Heartland Water Technology, Inc.,  
its Managing Member

**WITNESSES:**

\_\_\_\_\_  
Name: Susan C. Portin  
Title: EVP, Business and Legal Affairs

Date: \_\_\_\_\_

**APPROVED:**

By: \_\_\_\_\_  
Name: Alain Castro  
Title: Managing Partner, Proximo Energy

Date: \_\_\_\_\_