

WASTEWATER TREATMENT AGREEMENT

This Wastewater Treatment Agreement (“**Agreement**”) is made and entered into on this day of _____, 2021 (“**Effective Date**”), by and among Indian River County Solid Waste Disposal District, a special dependent district of Indian River County, Florida (the “**District**”), and the Indian River Sustainability Center, LLC (the “**Company**”), a Delaware limited liability company which is qualified to do business in Florida. The Company’s members include Indian River EcoDistrict, LLC, a [Florida] limited liability company (“**IRED**”), Heartland Water Technology, Inc. (“**Heartland**”) and Proximo Energy, LLC (“**Proximo**”).

WHEREAS, on May 19, 2021, the District approved the proposal from Heartland, IRED and Proximo to build and operate, and maintain a 30,000 gallons per day (“**GPD**”) Wastewater Treatment Facility to be located on the Indian River County Landfill site at 1325 74th Avenue SW, Vero Beach, FL 32968 (the “**Landfill**”); and

WHEREAS, the Company, IRED and the District have agreed on the terms and conditions under which the Company will provide Landfill Wastewater treatment services to the District as more fully described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual obligations, benefits and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Company agree that they shall be bound by and shall comply with the following provisions of this Agreement:

ARTICLE 1 - DEFINITIONS

1.1 When the following words and phrases are used in this Agreement, they shall be defined and construed as follows:

Aggregate Annual Monthly Services Fees – means the aggregate Monthly Services Fees to be charged under Section 4.2(b) during a full Calendar Year.

Aggregate Annual Services Fees - means the Services Fee that would have been charged by the Company to the District based on the Pricing Matrix if based on actual volumes of Wastewater processed across a full Calendar Year versus on a quarterly or monthly basis.

Aggregate Monthly Services Fees – means the (i) the Monthly Services Fees charged for the first two months of a Calendar Quarter plus (ii) the Services Fees to be charged for the third month of a Calendar Quarter as contemplated in Section 4.2(b) based on the amount of Wastewater actually processed during the third month per the Pricing Matrix.

Aggregate Quarterly Services Fees – means Services Fee that would have been charged by the Company to the District based on the Pricing Matrix if based on

actual volumes of Wastewater processed across a full Calendar Quarter versus on a monthly basis.

Article – means the primary headings set forth throughout this Agreement made up of Sections.

BTU – means a British Thermal Unit, which is the amount of heat required to raise the temperature of one avoirdupois pound of pure water from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at standard temperature and standard pressure.

Business Day – means every day other than a Saturday, Sunday or a day on which banks are required or authorized by law or executive order to close in the State of Florida.

Calendar Quarter – has the meaning set forth in Section 4.2(c) hereof.

Calendar Year – has the meaning set forth in Section 4.2(c) hereof.

Change-in-Funding – means the reduction or cessation in allocated funding of or to the District for payment for the Services contracted for hereunder.

Change-in-Law - Defined as voting, coming into force or cancellation, repeal, amendment, definitive change in interpretation by any governmental authority of any law, regulation or ordinance (collectively, “**Law**”) affecting the Company or performance of the Services after the Effective Date, including but not limited to laws regarding the environment, construction, tax, but excluding any Change-in-Funding.

Change Proposal – has the meaning set forth in Section 5.2 hereof.

Commercial Operations Date or COD – means the date that the Company notifies the District that the Facility is ready to commence commercial operations.

Company Event of Default – has the meaning set forth in Section 6.2(a)(iii) hereof.

Company Indemnified Person – has the meaning set forth in Section 7.2(b) hereof.

Company Parties – has the meaning set forth in Section 3.3(d) hereof.

Company’s Representatives – has the meaning set forth in Section 7.2(a) hereof.

Contract Year – means each twelve (12) month period beginning on October 1 and ending on the following September 30, except (a) the first Contract Year shall begin on the Effective Date and end on the following September 30 and (b) the last Contract Year shall end upon the expiration of the Term of this Agreement or the date of its earlier termination (if any).

County – means the geographical area contained within Indian River County, Florida.

County Government – means the government of Indian River County, acting through the Board of County Commissioners.

Credit Analysis – has the meaning set forth in Section 4.2(c) hereof.

District Assets – means collectively, the District Storage Tank and other equipment and infrastructure providing inputs to the Facility including without limitation to the pumps and piping to bring Wastewater from the Landfill to the District Tank to the Heartland Concentrator™ System.

District Default Fee – has the meaning set forth in Section 6.2(c) hereof.

District Event of Default – has the meaning set forth in Section 6.2(a)(ii) hereof.

District Indemnified Person – has the meaning set forth in Section 7.2(a) hereof.

District's Representative – has the meaning set forth in Section 7.2(b) hereof.

District Storage Tank – means the District's existing CROM 500,000-gallon storage tank located on site at the Landfill in close proximity to the Evaporation Plant site.

DOR – means the detailed Division of Responsibilities between the Parties as attached to this Agreement as Appendix C – Part 2.

Easement – has the meaning set forth in Section 3.3(d) hereof.

Effective Date – has the meaning set forth in the introductory clause of this Agreement.

Evaporation Plant – has the meaning set forth in Section 2.1(a) hereof.

Evaporation Plant Site – has the meaning set forth in Section 3.3(d) hereof.

Facility – means the Evaporation Plant located at the Evaporation Plant Site on the Landfill property as well as the District Storage Tank and any other equipment and infrastructure that supports the Evaporation Plant operations which are included in the District Assets (other than the RNG Facility).

Financiers – means the lending institution(s) providing credit facilities to the Company for the development and execution of the Project.

Force Majeure Termination Amount – has the meaning set forth in Section 6.1(c) hereof.

GPMo - means Gallons per Month.

Heartland Concentrator™ System - means the evaporation technology solution developed by Heartland which the Company will be designing, building, owning and operating for the Evaporation Plant.

Initial Setup Fee – has the meaning set forth in Section 4.1 hereof.

Landfill – means the District’s FDEP permitted Class I landfill located at 1325 74th Avenue SW in Vero Beach, Florida.

Landfill Fluids – means water and other wastewater (including landfill leachate) that has percolated through the Landfill and leached out some of the Landfill constituents.

Landfill Gas or LFG – means biogas generated in the Landfill.

Major Event of Default – has the meaning set forth in Section 6.2(a) hereof.

Merchant Wastewater – has the meaning set forth in Section 3.2(e) hereof.

Metering – means the meters, instruments and/or processes used by the Company to measure the quantity of the Wastewater delivered from the District to the r Evaporation Plant site.

Minimum Services Fee – means the Services Fee that will be payable by the District in any month where the volume of Wastewater processed by the Company is less than 547,500 gallons per month which will equal \$76,100.

MMBTU – means one million BTUs.

Monthly Services Fee – means the actual amount of the Services Fee due in any month as set forth in a Monthly Services Fee Statement and Invoice.

Monthly Services Fee Statement and Invoice – means the invoice prepared by the Company on a monthly basis and submitted to the District showing the total amount of Wastewater treated by the Company, as measured by the Metering, and the dollar amount owed to the Company from the District as more fully described in Section 4.2(b). The Monthly Services Fee Statement and Invoice in the third month of any Calendar Quarter will incorporate a Quarterly Credit if applicable.

Operating Parameters – has the meaning ascribed to it in Appendix E attached hereto.

Operating Term - has the meaning ascribed to it in Section 5.1(a) hereof.

Party – means either the Company or the District. The Company and the District

are collectively referred to herein as the “**Parties**”.

Permit - means any local, state, or federal permit, license, franchise, registration, certification, authorization or other governmental approval required for the performance of a Party’s obligations under this Agreement.

Permit Receipt Date – has the meaning set forth in Section 3.2(a) hereof.

Person – means any and all persons, natural or artificial, including any individual, firm, partnership, joint venture, or other association, however organized; any municipal or private corporation organized or existing under the laws of the State of Florida or any other state; any county or municipality; and any governmental agency of any state or the federal government.

Pricing Matrix – refers to the pricing matrix set forth in Section 4.2(a) hereof.

Processed Residual or Residual – means the residual concentrate that is the by-product coming out of the Heartland Concentrator™ System which is the responsibility of the District to remove from the Facility as contemplated in the DOR.

Project - has the meaning set forth in Section 2.1(a) hereof.

Quarterly Credit – has the meaning set forth in Section 4.2(c) hereof.

RNG Facility – means a facility to be built for the District at a separate location on the Landfill near the Evaporation Plant Site (adjacent to the Landfill) that converts LFG to renewable natural gas that can be injected into the natural gas pipeline and/or used as a vehicle fuel in accordance with the Renewable Fuel Standard Program under the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and its implementing regulations.

SCFM – means standard cubic feet per minute.

Section – means a numbered and/or lettered (as the case may be) clause or sub-clause of an Article of this Agreement.

Services – has the meaning set forth in Section 2.2(b) hereof.

Services Fee – means the monthly services fee to be paid by the District to the Company which is calculated based on the volumes actually processed during each month during the Operating Term and applying the tiered monthly pricing schedule set forth in Section 4.1. The Services Fee as defined will be subject to adjustment quarterly as outlined in Section 4.2 hereof.

Start-Up Phase – has the meaning set forth in Section 3.2(b) hereof.

Term – has the meaning set forth in Section 5.1(b) hereof.

Volume Reduction Requirement – has the meaning set forth in Section 2.2(c) hereof.

Wastewater –means Landfill Fluids and other industrial wastewaters that may be identified from time to time for processing at the Evaporation Plant.

- 1.2 As used in this Agreement, (A) the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa, (B) unless expressly stated otherwise, references to a governmental authority includes any government authority succeeding such authorities functions and capacities, (C) “days” shall mean calendar days, unless the term “Business Days” is used (if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day), (D) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words “herein,” “hereunder,” “hereof” and this “Agreement” refer to this Agreement, taken as a whole, and not to any particular provision of this Agreement; (E) “including” means “including, for example and without limitation,” and other forms of the verb “to include” are to be interpreted similarly, and (F) all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.

ARTICLE 2 - OVERVIEW OF THE PROJECT AND SERVICES

2.1 The Project.

- (a) Overview. The Company will be responsible for developing a “turn-key” project (the “**Project**”) to finance, design, construct, install, operate and maintain a 30,000 GPD Wastewater evaporation plant featuring a Type 3 LM-HT® Heartland Concentrator™ System, with a rated processing capacity of up to 30,000 GPD (the “**Evaporation Plant**”) to be located at the Landfill as more fully depicted on the visual representation attached as Appendix A to this Agreement. A process flow diagram (PFD) of the proposed Evaporation Plant is attached hereto as Appendix B. The Company shall have title to and bear the risk of loss with respect to the Evaporation Plant during the Term. The Evaporation Plant shall at all times remain the property of the Company until it is transferred to the District at the end of the Term as contemplated in Section 5.1(c).
- (b) Flexibility of Thermal Energy Fuel Source. To provide additional process flexibility, the Evaporation Plant will be designed to utilize the thermal energy generated by an enclosed flare with a dual-fuel burner configuration allowing it to operate on 100% natural gas, or 100% raw landfill gas (LFG) or a combination of both simultaneously. The Parties anticipate that:

- (i) The Evaporation Plant will operate on LFG up until the time which a portion of the LFG from the Landfill gets allocated to the RNG Facility project currently in development with the IRED at a site adjacent to the Landfill.
- (ii) When the RNG Facility is ready to use LFG, the first 1,150 SCFM of LFG from the Landfill may be directed to the RNG Facility. If there is insufficient LFG to fully support the Facility's needs at any time, then the District will supply the Facility with supplemental natural gas in sufficient quantities to operate the Evaporation Plant.
- (iii) The District will always, in its sole discretion, have the ability to send all of the Landfill's LFG to the RNG Facility plant and supply natural gas to the Evaporation Plant, should this be in the District's economic interest.

2.2 The Services.

- (a) Processing Prior to COD. The Company will process such amounts of the District's Wastewater as needed to complete the start-up and commissioning of the Evaporation Plant. The District will pay the Company for such services as more fully described in Article 4 of this Agreement.
- (b) Processing Wastewater During the Operating Term. During the Operating Term, the Company will process (by evaporation) the District's Wastewater (up to a maximum of 30,000 GPD) at the Facility and such other items that are described on the DOR; provided that the District provides sufficient quantities of Wastewater and other required inputs as required herein (collectively, the "**Services**").
- (c) Volume Reduction Requirement. Assuming the Wastewater provided by the District falls within the Operating Parameters set forth on Appendix E attached hereto, during the Operating Term, the Company will deliver a minimum volume reduction of 95% or more (the "**Volume Reduction Requirement**") which will result in approximately 5% or less of the volume treated being left in Processed Residual which will be removed from the Facility by the District as more fully described in the DOR.

ARTICLE 3 - DIVISION OF RESPONSIBILITIES

3.1 Division of Responsibilities. A detailed DOR is attached to this Agreement as Appendix C – Part 2.

3.2 The Company's Responsibilities and Obligations.

- (a) From the Effective Date to the date on which the District has secured the required Permits for the Project which are more fully described in the Appendix D (the "**Permit Receipt Date**"), the Company will be responsible for putting in place any financing arrangements, providing technical support as reasonably requested

by the District in connection with its effort to secure the Permits, designing the Evaporation Plant and ordering certain long lead time parts and equipment.

- (b) From the Permit Receipt Date until the COD, the Company shall complete fabrication, ship the Evaporation Plant equipment to the Facility, install, commission, and test of the Evaporation Plant equipment. The period during which the Company is installing, commissioning and testing the Evaporation Plant will be referred to herein as the “**Start-Up Phase**”). During the Start Up Phase, the Company will also be completing certain extensions of and/or upgrades to existing District utility and other service infrastructure at or adjacent to the Evaporation Plant on the Evaporation Plant Site necessary for operation of the Facility, in order to achieve COD.
- (c) From the commencement of the Operating Term through the expiration of the Term, the Company will provide the District with the Services contemplated by this Agreement and operate the Facility in compliance with the District’s Permits and treat the District’s Wastewater in accordance with the terms hereof.
- (d) Perform any other obligations described in this Agreement or in the DOR.
- (e) Company is registered with and will use the Department of Homeland Security’s E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this Agreement, as required by Section 448.095, F.S. Company is also responsible for obtaining proof of E-Verify registration and utilization for all subcontractors and member companies.

3.3 The District’s Responsibilities and Obligations.

- (a) As between the Parties, the District has the sole responsibility for securing and maintaining the Permits required for the operation of the Facility by the Company but such permitting process shall be completed with technical support from the Company as reasonably requested by the District to ensure the Permits contemplate the anticipated operation of the Evaporation Plant.
- (b) The District will also be responsible for monitoring air emissions coming from the Facility throughout the Term (per the FDEP Permit requirement) and will provide reports to the Company detailing the results of such monitoring.
- (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. If the District has failed to secure the required Permits within twelve (12) months of the Effective Date, the District will be required to start paying the Company the Services Fee on an ongoing basis, unless such failure is caused by the Company’s failure to provide the District with requested technical assistance as contemplated in Sections 3.2(a) and 3.3(a).
- (d) Within thirty (30) days from the Effective Date, the District will grant the

Company a formal easement (irrevocable during the entire Term) (the “**Easement**”); such Easement being assignable to Financiers and being sufficient to allow the Company, Company’s parent company, employees, officers, subcontractors, Financiers and consultants (collectively, “**Company Parties**”) access to and control of the Evaporation Plant Site and the Facility thereon at all times throughout the Term. Specifically, the Easement will contemplate that the Company expects to maintain activity on the Facility between 6 am and 6 pm daily but if there is a need for off hour’s access, the Company will adhere to all District site access protocols. The Parties agree that the cost of the easement to the Company will be de minimis. The Evaporation Site shall at all times remain the property of the District which shall also be solely responsible for any environmental conditions which exist on the Evaporation Site at any time during the Term. Prior to the start of the Operating Term, the Parties will agree on a reasonable process for ensuring that the persons having access to the Facility are properly credentialed.

- (e) Commencing at the time the Evaporation Plant is started up and commissioned through the end of the Term, the District will purchase Wastewater treatment services from the Company as more fully described in this Agreement and pay the Company for its Services hereunder based on volumes of Wastewater being treated as more fully described in Article 4 of this Agreement.
- (f) During the Operating Term, the District will be responsible for the following as more fully described in the DOR: (i) supplying to the Evaporation Plant (a) Wastewater for treatment that is substantially similar to the Wastewater chemistry described on the attached Appendix E which will be stored in the District Storage Tank, (b) natural gas and/or LFG in sufficient quantities and quality for the Company to treat the Wastewater as contemplated below, (c) electricity required to support operation of the Facility as contemplated below, (d) service water required to support operation of the Evaporation Plant; and (ii) removing all Processed Residual from the Facility on a reasonable schedule to be agreed to by the Parties in order to ensure smooth operation of the Facility. The District shall also be required to supply (a)-(d), above, as directed by the Company, at times and in the quantities required and agreed in advance, prior to COD to allow the Company and/or any required Company Parties during the Start-up Phase.

Specifically, the District shall provide the following utilities necessary for the operations of the Facility:

- LFG: Up to 579 scfm @ 45% CH4
- Natural Gas: Up to 249 scfm
- Electricity: 78 kW Draw, 1,800 kWh/day
- Service Water: 30 gallons per minute at 30 pounds per square inch

- (g) The District shall have title to and risk of loss for the District Assets at all times during the Term of this Agreement.

ARTICLE 4 - PRICING FOR THE SERVICES

4.1 Initial Set-up Fee. Within thirty (30) days of the Effective Date, the District shall pay an initial, non-reimbursable fee of \$300,000 to the Company which will be used by the Company to fund initial activities to build the Evaporation Plant (the “**Initial Set-up Fee**”). The initial tasks to be conducted by the Company using the Initial Set up Fee will include those listed on Appendix C- Part 1.

4.2 Pricing Levels.

(a) The Services Fee will be determined using the gallons per month pricing described in the following Pricing Matrix (subject to the provisions of this Section 4.2 and Section 4.3 hereof):

Tiers	Capacity ^(a, b)	Pricing ^(c) (per gallon)	Landfill Gas ^(d) (scfm)	Natural Gas (scfm)	Electricity ^(e) (mWhr/yr)
1	Up to 18,000 gpd	\$0.1390	346	149	415
2	18,001 gpd to 24,000 gpd	\$0.1321	461	199	553
3	24,001 gpd to 30,000 gpd	\$0.1250	579	249	691
<p>(a) These volume requirements to be reviewed on a quarterly basis to allow for variability in daily flows; however, they are presented in gallons per day in this table for simplicity.</p> <p>(b) The base minimum capacity of 18,000 gpd is used to establish a minimum monthly fee of approximately \$75,000. In the case whereby the volumes of leachate generated by the landfill are substantially lower than usual, the minimal monthly fee will be charged instead of the normal processing fees resulting from the number of gallons processed. During normal operating months when the normal processing fees exceed the minimum monthly fee, solely the normal processing fees will apply. This Agreement provides for quarterly and annual “true-up” credit such that price paid is adjusted to account for total volumes treated.</p> <p>(c) For illustration purposes only, the lower pricing of Tiers 2 and 3 do not apply to lower volumes. For example, for a treatment of 20,000 gpd, the first 18,000 gpd is charged at \$0.1390 per gallon, and the remaining 2,000 gpd is charged at a rate of \$0.1321 per gallon. See table below for monthly, quarterly and annual tiers/volumes.</p> <p>(d) At a methane content of 45%.</p> <p>(e) mWhr/yr is megawatts per hour per year.</p>					

Volume Based Tiers	Tier Pricing (\$/gal treated)	Gallons per Month	Gallons per Quarter	Gallons per Year
Tier 1 Volume: 0 to 18,000 gpd	\$0.1390/gal	< 547,500	< 1,642,500	< 6,570,000
Tier 2 Volume: 18,001 to 24,000 GPD:	\$0.1321/gal	547,500 – 730,000	1,642,500 - 2,190,000	6,570,000 – 8,760,000
Tier 3 Volume: 24,001 – 30,000 gpd	\$0.1250/gal	730,000 – 912,500	2,190,000 - 2,737,500	8,760,000 – 10,950,000

(b) The pricing of Tiers 2 and 3 will only apply to volumes processed in excess of 547,500 GPMo.

4.2 Payment and Quarterly Credit Process.

- (a) Payment During the Start-up Phase. During the Start-up Phase, the District will pay the Company for the actual amount of the District's Wastewater processed. At the end of the Start-up Phase, the Company will deliver to the District an accounting of the amount of Wastewater processed and an invoice detailing the cost of such processing based on the pricing levels outlined in Section 4.2 (the "**Start-Up Invoice**"). The District will pay such amounts within thirty (30) days of its receipt of the Company's Start-up Invoice.
- (b) Payment for Services Throughout the Operating Term.
 - (i) The Company will submit to the District an invoice on a monthly basis (the "**Monthly Services Fee Statement and Invoice**"), applying the "Gallons per Month" Tier parameter that is applicable for the volumes processed during each month. The invoice will delineate (i) the total amount of Wastewater treated by the Facility (by volume); and (ii) the total amount owed by the District for that month based on the Pricing Levels outlined above. The Services Fee pricing charged in a given month as reflected in each Services Fee Statement and Invoice will be referred to herein as a "**Monthly Services Fee**").
 - (ii) The District will pay the Monthly Services Fee each month; payment will be due within thirty (30) days of its receipt of such monthly Services Fee Statement and Invoice. In any month where the District's Wastewater actual volume processed by the Company is less than 547,500 GPMo, the Monthly Fee will be equal to the Minimum Services Fee regardless of the volume of Wastewater actually processed.
- (c) Most Favorable Pricing Mechanism. At the conclusion of each 3-month period (each a "**Calendar Quarter**"), the Company will provide the most favorable quarterly pricing to the District by (i) calculating the Aggregate Monthly Services Fee (ii) calculating the Aggregate Quarterly Services Fee, (iii) selecting the lower of the two from (i) and (ii), and (iv) submitting the month-three invoice for that Calendar Quarter to reflect the most favorable pricing as determined in subsection (iii). At the conclusion of each twelve month period (the "**Calendar Year**"), the Company will also provide the District the most favorable annual pricing by computing (x) the Aggregate Annual Monthly Services Fee and the Aggregate Annual Quarterly Services Fee, selecting the lower of the two, and adjusting the final invoice of the calendar year to reflect the most favorable annual pricing.

4.3 Escalation Mechanism. The annual pricing for the Services as described herein will be subject to annual inflation-adjustments, per the Consumer Price Index starting at the commencement of the second year of the Operating Term. This will allow the Company to maintain the promised level of operations and maintenance support over the length of this Agreement. As shown in Appendix F, the calculation of the One Hundred Percent (100%) rate

adjustment, if approved, shall be based on seventy-five percent (75%) of the change in the Consumer Price Index (CPI) between the month of January in the prior year (CPI1) and the month of January in the current year (CPI2). The CPI shall be the South Urban Region, All Items – All Urban Consumers, published by the United States Department of Labor, Department of Labor Statistics (Series ID = CUUR0300SA0). If the designated index is discounted or substantially altered, the Company may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices. The total rate adjustment is rounded to the nearest hundredth of a percent and in any given year shall not exceed three percent (+/- 3.0%) of the previous rate. Annual Rate Adjustment may be positive or negative and is subject to the approval of the County Administrator or his designee. In no event shall the rate be decreased from the original contract rate due to changes in the Consumer Price Index.

4.5 [Intentionally Deleted]

4.6 Procedure if Payment Delay. If the District fails to make payments in accordance with the terms of the Agreement or to comply with any provisions hereunder, the Company will communicate the issue in writing to the District while making reasonable efforts to continue to operate the Facility.

4.7 Firm Commitment. The District shall not take any action during the Term to modify or limit the District's ability to satisfy its payment obligations hereunder including, without limitation, limiting the availability of budgeted funds due to the Company under this Agreement. Nothing herein shall be deemed to be an obligation or debt of the District payable from ad valorem taxes. Nor shall any obligation under this Agreement be deemed a direct or indirect pledge of District's property, credit or general taxing power.

ARTICLE 5 - TERM; CHANGES

5.1 The Term.

- (a) The operational term of the Agreement shall be twenty (20) years from the Commercial Operation Date of the Evaporation Plant (the "**Operating Term**").
- (b) The "**Term**" of the Agreement shall be the period commencing upon the Effective Date and ending upon the expiry of the Operating Term, unless the Agreement is earlier terminated in accordance with its terms.
- (c) At the expiry of the Term (not caused by an Event of Default), the ownership of and risk of loss for the Evaporation Plant and all related Heartland Concentrator™ System equipment shall be transferred to the District for a nominal fee of \$1, at which time the District may choose to continue operating the Facility directly.

5.2 Changes in Work. If either Party finds it necessary to make a change in the scope of the obligations of the Parties under the Agreement and or the Services to be provided thereunder, such Party shall timely notify the other Party in writing stating the reason for requesting such change and proposing with particulars any changes to pricing, schedule

or terms or conditions of the Agreement as they may deem applicable (a “**Amendment to the Agreement**”) Any amendment to the agreement will require approval of both the Company and the County Government.

ARTICLE 6 - FORCE MAJEURE, TERMINATION AND REMEDIES

6.1 Force Majeure.

- (a) Force Majeure Defined. As used herein, “**Force Majeure**” means an act, event or condition that actually and proximately prevents or hinders a Party from performing any of its obligations (other than an obligation to make payments of money when due) under this Agreement, but (a) only if such act, event or condition is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any requirement of such Party under this Agreement; (b) the Force Majeure is not the result of the fault or negligence of the Party claiming Force Majeure; and (c) only to the extent the Party claiming Force Majeure is unable to prevent, avoid or overcome the Force Majeure through the exercise of commercially reasonable efforts. Such acts, events or conditions shall include, but not be limited to:
- (i) acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, terrorism, wars, blockades, explosions, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, tropical storms, floods, tornadoes, restraints of governments and people, and civil disturbances;
 - (ii) with respect to the District, any Change-in-Law (other than a Change-in-Funding of the County Government) that imposes a constraint on the District which materially reduces the ability of or prevents the District from providing Wastewater or other inputs to the Company under this Agreement, and/or or prevents the Company and/or the Facility from accepting such Wastewater (but not a Change-in-Law that limits the District’s ability to pay its obligations hereunder);
 - (iii) with respect to the Company, any Change-in-Law (other than a law that results in a Change-of-Funding);
 - (iv) acts of civil or military authority (including, but not limited to, orders, judgments or decrees of any federal, state or local courts or administrative or regulatory agencies), and the passage of new regulations or legislation that make the Facility illegal to operate;
 - (v) in those instances where either Party is required to obtain servitudes, rights of way, grants, Permits or licenses to enable such Party to fulfill its obligations hereunder, the inability of such Party to acquire, or the delays on the part of such Party acquiring, at reasonable cost (defined by industry standards at the

time), such servitude, rights of way, grants, Permits or licenses; and

- (vi) in those instances where either Party is required to furnish materials and supplies for the purpose of constructing, operating, or maintaining facilities or is required to secure grants, Permits or permissions from any governmental agency (other than the County Government with respect to the District claiming Force Majeure) to enable such Party to fulfill its obligations hereunder, the inability of such Party to acquire, or delays on the part of such Party in acquiring, at reasonable cost (defined by industry standards at the time), such materials and supplies, grants, Permits and permissions.

- (b) Effects of Force Majeure Events: The Company and the District shall be relieved from performing their obligations to the extent prevented or delayed by Force Majeure events.

6.2. Default and Termination.

(a) Events of Default.

- (i) An event of default (a “**Major Event of Default**”) shall occur if a Party shall (1) suspend or liquidate its business, (2) become insolvent (and such insolvency is not cured within thirty (30) days) or subject to a petition of involuntary bankruptcy and the appointment of a trustee or receiver, or (3) make an assignment for the benefit of creditors, other than as permitted in Section 10.6.
- (ii) Each of the following shall be considered a “**District Event of Default**” provided that they did not arise from (1) a Company Event of Default, or (2) an Event of Force Majeure; or (3) a Change-in-Law:
- Failure to secure necessary Permits as set forth in the DOR and Appendix D for the installation and operation of the Evaporation Plant as contemplated herein within eighteen (18) months following the Effective Date, or to maintain such Permits throughout the Term (unless such failure is caused by the Company’s failure to provide the District with requested technical assistance);
 - Non-payment of the Monthly Services Fee including without limitation due to a decision by the District or Indian River County to modify the budgeted funds available to support payments hereunder, which non-payment is not rectified within thirty (30) days of due date;
 - Total or partial assignment of the Agreement without consent of the Company;
 - Change of control or reorganization, which materially affects District’s financial capacity.
- (iii) Each of the following shall be considered a “**Company Event of Default**” provided that they did not arise from (1) a District Event of Default, or (2) from an Event of Force Majeure, or a (3) Change-in-Law:

- Failure of the Company to fabricate, install and commission the Evaporation Plant to achieve COD by twelve (12) months from the Effective Date but only if (i) such failure is due exclusively to matters within the Company’s control, (ii) is not driven by an issue with the site works for the plant (e.g., an environmental condition that is discovered during planning or construction), and/or (iii) there is no feasible plan in place to ensure the Evaporation Plant is completed within a reasonable time thereafter.
 - Material failure to perform the Services, meet the Minimum Volume Requirement, or comply with applicable Permits throughout the Term), which material failure is not rectified within sixty (60) days of the District’s delivery of notice of such failure and there is no practicable plan in place to rectify the failure.
 - Failure of the Company to provide the technical support requested by the District in connection with their efforts to secure the Permits as set forth in the DOR.
- (b) Effect of a Major Event of Default. Either Party may immediately terminate this Agreement on written notice to the other Party for cause, without prejudice to any other rights or remedies the terminating Party may have under applicable law, except as provided herein, when there is a Major Event of Default by the other Party.
- (c) Effect of a District Event of Default.
- (i) A District Event of Default shall give the Company the right:
- to extend the time to perform its own reciprocal obligations, and/or to receive reimbursement of any additional costs incurred as a result thereof; and/or
 - to terminate the Agreement if such District Event of Default is not cured by the District within an additional sixty (60) days after receiving written notice thereof from the Company.
- (ii) In addition to the rights provided by the Company under (i) above, in the event the Agreement is terminated by the Company due to a District Event of Default as defined above, the District shall be required to pay Company a “**District Default Fee**” equal to 50% of the remaining Services Fees through the end of the Term as of the effective date of termination.
- (d) Effect of a Company Event of Default
- (i) A Company Event of Default shall give the District the right:
- If the Company Event of Default occurs prior to COD, to terminate the Agreement in which event the District will be entitled to get the Initial

Setup Fee of \$300,000 reimbursed and will have no further obligation hereunder except as otherwise provided in this subsection (ii) with respect to the removal of the Evaporation Plant equipment.

- If the Company Event of Default occurs during the Operating Term, to (x) cease payments of the Services Fee; (y) require the Company to pay for the actual cost it incurs to haul away the Wastewater that is not being processed for up to a sixty (60) days following the District's delivery of formal notice of a Company Event of Default; and (z) receive a refund within ninety (90) days for the amount of actual Services fees paid to the Company during the time which the Company was materially failing to perform the Services.
- If such Company Event of Default occurs during the Operating Term and continues beyond ninety (90) days, the District will have the right terminate the Agreement; if the District terminates the Agreement due to a Company Event of Default, the Company will not be entitled to recover any of its equity investment in the project from the District.

(ii) Following termination of the Agreement by the District based on a Company Event of Default, the Company shall have the right to remove the Evaporation Plant equipment from the Landfill within ninety (90) days at its sole cost and the District will provide the Company with reasonable access to do so. Following removal of the Evaporation Plant Equipment, the Company will leave the site "broom clean".

6.3. Remedies. Except as otherwise set forth herein with respect to a Major Event of Default, the remedies delineated in this Article 6 shall be the exclusive remedies available to the Parties hereunder with respect to such Events of Default for such matters.

6.4 Survival of Obligations. Notwithstanding the expiration or the termination of this Agreement pursuant to its terms, any duty or obligation of a Party which has not been fully observed, performed and/or discharged and any right, unconditional or conditional, which has been created for the benefit of a Party and which has not been fully enjoyed, enforced and/or satisfied (including but not limited to the duties, obligations and rights, if any, with respect to secrecy, indemnity, warranty, and guaranty) shall survive such expiration or termination until such duty or obligation has been fully observed, performed or discharged and such right has been fully enjoyed, enforced and satisfied.

6.5 Termination In Regards To F.S. 287.135: The Company certifies that it and those related entities of the Company as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, Company certifies that it and those related entities of the Company as defined above by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes

and are not engaged in business operations in Cuba or Syria. The District may terminate this Contract if the Company is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes. The District may terminate this Agreement if the Company, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes. Each calendar year on or before January 15, the Company will, upon request of the District, certify that they are in compliance with this provision.

- 6.6 Upon the expiry or earlier termination of the Agreement, each Party shall within thirty (30) days provide the other Party with a written claim for any amounts that it considers are due and owing under this Agreement. If a Party disputes any claim for payment, a written objection must be filed with the other Party within thirty (30) days of receiving the claim. The written objection must identify the specific reasons for the objection, and it must be accompanied by full payment for all undisputed amounts. After an objection is filed, the Parties shall initiate the dispute resolution process in this Agreement.
- 6.7 Notwithstanding any other provision contained in this Agreement, any Change-in-Law of the County Government shall not entitle the District to obtain relief from the requirements of this Agreement (e.g., by Force Majeure, termination or otherwise) based on that Change-in-Law.
- 6.8 Any Change-in-Law after the Effective Date which results in increased/decreased costs or lower/higher revenues (other than a Change-in-Funding) will be taken into account via a mutually agreed adjustment to the pricing hereunder from the date of the Change-in-Law.

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

- 7.1 The Parties acknowledge and agree that in performing the Services hereunder, the Company are merely acting as a service providers to the District and they assume no environmental liability related to the Landfill, LFG, natural gas, the Wastewater being processed at the Facility or the Processed Residual concentrate that will be removed from the Facility by the District. LFG, natural gas, Wastewater from the Landfill and Processed Residuals from the Facility shall at all times remain the property of the District. The Company will be responsible to the extent that any environmental liability occurs as a direct result of the Company's gross negligence in handling the District's Wastewater, provided that such liability is not directly or indirectly a consequence of a change in the chemical composition of such Wastewater that falls outside the Operating Parameters described in Appendix E.
- 7.2 Indemnification.
- (a) To the extent permitted by Law, the Company shall defend, protect, hold harmless

and indemnify District, its commissioners, directors, officers, employees, and agents and contractors (the “**District Indemnified Persons**”) from and against any cost, expense, loss, claim or liability whatsoever, including the reasonable cost of attorneys’ fees and appeals, for injury to any person or loss or damage to any property arising out of: (a) the gross negligence or wrongful misconduct of Company, its directors or partners (as applicable), officers, employees, other agents or contractors of any tier (collectively, the “**Company’s Representatives**”); (b) the failure of or by the Company or any of the Company’s Representatives to comply with applicable material Laws of federal, state or local governments; (c) in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon or at the Facility, occasioned wholly or in part by any act or omission of the Company or any of the Company’s Representatives in the performance of the Company’s obligations under this Agreement, but excluding any such loss, injury or damage caused by the District’s failure to perform its obligations under this Agreement or by the District’s Wastewater or Processed Residual at any point before, during or after the treatment process; and (d) any material breach by Company of any representation or warranty made in this Agreement. The Company is not required to hold harmless or indemnify any District Indemnified Person for any cost, expense, loss, claim or liability to the extent caused by any District Indemnified Person's negligence or reckless misconduct.

- (b) Subject only to the limits set forth in Section 768.28(5), Florida Statutes with respect to tort claims (except to the extent that insurance policies held by the District cover amounts in excess of limitations provided in F.S. 768.28(5)), the District shall defend, protect, hold harmless and indemnify the Company, its directors or partners (as applicable), officers, employees, other agents or contractors (the “**Company Indemnified Persons**”) from and against any cost, expense, loss, claim or liability whatsoever, including without limitation, the cost of attorneys’ fees and appeals and any penalties associated with the violation of environmental Laws; and, for injury to any person or loss or damage to any property arising out of: (a) the gross negligence or wrongful misconduct of the District, its commissioners, directors, officers, employees, and agents and contractors of any tier (collectively the “**District’s Representatives**”); (b) the failure of or by the District, its commissioners, directors, officers, employees, and agents and contractors of any tier to comply with applicable material Laws of federal, state or local governments; (c) in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon or at the Landfill (outside of the boundaries of the Evaporation Plant) or with respect to the District’s Wastewater or Processed Residual, occasioned wholly or in part by any act or omission of the District or any of the District’s Representatives but excluding any such loss, injury or damage caused by the Company’s performance or failure to perform its obligations under this Agreement and (d) any material breach by District of any representation or warranty made in this Agreement. The District is not required to hold harmless or indemnify any Company Indemnified Person for any cost, expense, loss, claim or liability to the extent caused by any Company Indemnified Person's negligence or reckless misconduct.

7.3 Insurance. The Company and the District each shall obtain and maintain throughout the Operating Term at its expense the following insurance coverage from insurers who are licensed in the State of Florida and have a current rating of B+ or better in “Best's Key Rating Guide” and be named additional insured on each party’s respective policies:

- (a) Workers’ Compensation Insurance. Workers’ compensation coverage must be maintained in accordance with current statutory requirements;
- (b) Employer's Liability Insurance. Employer’s liability coverage shall have a minimum limit of liability of \$100,000 per occurrence, \$100,000 by disease, and \$500,000 aggregate by disease;
- (c) Liability Insurance. Commercial general liability insurance and automobile liability shall have a minimum combined single limit of liability of \$1,000,000 for personal bodily injury, including, without limitation, death, and property damage.
- (d) Excess Coverage. Umbrella or excess liability coverage in the amount of \$2,000,000 shall be maintained.

7.4 Environmental Impairment Insurance. The Company shall procure environmental impairment insurance and maintain such insurance in full force and effect at all times during the Term of this Agreement. The environmental impairment insurance shall provide coverage with minimum limits of \$2,000,000 per occurrence, if an occurrence form is available, or with a “claims made” form with “tail coverage” extending three (3) years beyond the termination or expiration of this Agreement. Proof of insurance shall be provided to the District at least fifteen (15) days before the COD. Proof of tail coverage shall be submitted by the Company to the District when it sends the Company’s invoice for its final payment. In lieu of tail coverage, the Company may submit annually to the Company a current certificate of insurance proving that claims made insurance remains in force throughout the same three (3) year period. Such insurance shall provide coverage for pollution and environmental remediation. The form and content of the insurance coverage, as well as the financial stability of the company issuing the insurance, shall be subject to the prior review and approval of the District. The District shall be added as a named insured on the insurance policy, but only with regard to liability arising as a result of any occurrence that impacts the operation by the Company of the Evaporation Plant during the Term.

7.5 Limitation of Liability: NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT AND each Party waives all claims against the other Party (and against the affiliates of each, and their respective members, shareholders, officers, directors, agents and employees) for any such consequential, incidental, indirect, special, or punitive damages arising out of this Agreement regardless of whether any such claim arises out of breach of contract, guaranty or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory. For the avoidance of doubt, except as expressly provided herein, the Company will not be liable for any loss of profit or revenue, loss of business, downtime costs, cost of capital, or for any indirect and/or consequential losses whatsoever. The Company’s liability for torts

hereunder will be limited to the same extent that the District's under Section 768.28(5), Florida Statutes (except to the extent that Company's policies of insurance cover amounts in excess of limitations provided in F.S. 768.28(5)); the Company's total aggregate liability under or in connection with this Agreement shall be limited to the proceeds from the insurance policies provided by the Company hereunder.

ARTICLE 8 - TAXES

- 8.1 Pricing hereunder does not include any federal, state, or local sales, use, property, excise, customs/duty or other similar taxes applicable to or imposed upon the equipment or Services. The District shall provide Company with a tax exemption certificate acceptable to all applicable taxing authorities.
- 8.2 The Company shall be responsible for any taxes assessed on the Company's assets. Company shall have no responsibility for any taxes that may be assessed on the Landfill, Landfill operations or the District Assets. The Parties shall cooperate, acting reasonably and in good faith, to minimize any taxes payable hereunder.

ARTICLE 9 - CERTAIN RESTRICTIONS

- 9.1 Non-Solicitation; Non-Hiring. During the Term, and for a period of one (1) year thereafter, neither Party will solicit the employment of, employ, any personnel of the other Party without such Party's prior written consent.
- 9.2 Limitation on Use of Evaporation Plant Equipment. Following the expiry of the Term, the District agrees not to sell, lease, or license the Evaporation Plant equipment to a competitor of Heartland's without Heartland's prior written consent.

ARTICLE 10 - GENERAL TERMS

- 10.1 Any term, condition, covenant, or obligation in this Agreement that requires performance by a Party subsequent to termination of this Agreement shall remain enforceable against such Party subsequent to such termination.
- 10.2 In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate changes as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein and all other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.
- 10.3 Dispute Resolution.

- (a) The Parties shall attempt to resolve any and all disputes to the mutual satisfaction of both Parties by good faith negotiations. Whenever a Party desires to initiate the dispute resolution process set forth in this section, it shall do so by delivering a dispute notice to the other Party. Within ten (10) days after the delivery of a dispute notice, the Parties shall meet for the purpose of negotiating a resolution of the dispute. The Parties will use their best efforts to informally resolve the dispute within forty-five (45) days after the date of the written notice. If the dispute has not been resolved to either Party's satisfaction during this time period, the requirement for informal negotiations shall be satisfied. The Parties may, by mutual agreement, extend the Resolution Period.
- (b) Following the expiration of the Resolution Period, any unresolved controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

10.4 Representations and Warranties of Parties.

- (a) The Parties represent and warrant to each other that upon execution of this Agreement: (A) each Party is duly organized and existing and in good standing under the laws of the state of their creation; (B) the Parties have the power and authority to enter into this Agreement and to carry out their respective obligations hereunder; (C) the Parties have taken all legal actions necessary to authorize them to enter into and perform their respective obligations hereunder; (D) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency, or governmental body or violate any agreement by which a Party is bound; (E) this Agreement has been duly entered into by the Party and constitutes a legal, valid, and binding obligation of the Party; (F) there is no litigation or proceeding pending or threatened against a Party which could materially or adversely affect the performance of this Agreement; and (G) the Parties shall obtain all Permits and approvals as may be required to authorize their respective performance of the obligations of this Agreement prior to the COD. Except as expressly provided herein, the Parties make no representations or warranties and waive no rights or remedies.
- (b) This Agreement, which has been duly authorized, executed and delivered by the respective Parties, constitutes a legal, valid and binding obligation enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, or by general equitable principles concerning remedies.

10.5 Assignment. This Agreement shall not be assigned by either Party without the prior express written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, except that Company may assign this Agreement for the benefit of Financiers or in connection with the sale of substantially all of the

Company's equity or assets to a third party that directly or indirectly assumes the Company's obligations hereunder.

10.6 Relationship of the Parties; Beneficiaries.

- (a) This Agreement reflects an arms-length transaction. Nothing herein shall create a fiduciary, partnership, joint venture or employment or other agency relationship between the Parties.
- (b) This Agreement is not entered into for the benefit of, nor are any rights granted to, any third party.
- (c) It is recognized that the District will discharge some of its responsibilities through contractors. The District shall be solely responsible for executing any necessary contracts with contractors. Any such contract shall be entered into by the District as an independent contractor and not as a representative of Company.
- (d) It is recognized that the Company may discharge some of its responsibilities through subcontractors. The Company shall be solely responsible for executing any necessary contracts with subcontractors. Any such contract shall be entered into by the Company as an independent contractor and not as a representative of the District.

10.7 Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any action that may be necessary or reasonably requested in order to give full effect to this Agreement. Each Party shall use all reasonable efforts to provide such information, execute such further instruments and documents, and take such action as may be reasonably requested by the other Party, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement, to carry out the intent of this Agreement.

10.8 Notices. Any notices or communications required or permitted under this Agreement shall be in writing and may be either delivered in person, transmitted by telecopy followed by a mailed confirmation copy, or sent by recognized express mail or courier service, postage prepaid, at the following addresses of the Parties. Notices sent under this Agreement shall be deemed received upon actual receipt. Facsimile is acceptable notice and is effective when received; however, facsimiles received (i.e., printed) after 5:00 P.M. will be deemed received on the next Business Day. Email is acceptable notice and is effective when properly addressed and sent without receipt by the sender of a failure to deliver error; however, emails received after 5:00 P.M. will be deemed received on the next Business Day. The original of a notice must still be mailed as required herein. Changes in the telephone numbers through which telecopy may be transmitted or the address to which notices are to be delivered may be made by written notice given in accordance with this Subsection.

As to District:

County Administrator
Indian River County Administration Building

1801 27th St.
Vero Beach, FL 32960
Phone: (772) 226-1408

Email: jbrown@ircgov.com

and a copy to the County Attorney at the same address

Phone: (772) 226-1424
Email: dreingold@ircgov.com

As to Company:

Indian River Sustainability Center, LLC
C/O Heartland Water Technology, Inc. (its Managing Partner)
Attn: Earl Jones (CEO)
Tel: 978-549-8444
Email: ejones@heartlandtech.com

and copies to:

Alain Castro, Managing Partner, IRED and Proximo
Phone: 312-767-7723
Email: acastro@irecodistrict.com

Susan C. Portin
Phone: 617-953-0189
Email: sportin@heartlandtech.com

- 10.9 Waivers. No provision of this Agreement shall be deemed waived without the express written consent of the Party granting the waiver. The waiver by either Party of a default or a breach of any provision of this Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.
- 10.10 Entire Agreement; Modifications; Appendices. The provisions of this Agreement (except captions), including the exhibits annexed hereto, shall (a) constitute the entire agreement between the Parties, superseding all prior or contemporaneous negotiations, understandings or agreements and (b) not be modified in any respect except by express written agreement executed by the Parties. The appendices attached hereto are incorporated by reference. In the event of any conflict between the text of this Agreement and such appendices, the text of this Agreement shall govern.
- 10.11 Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement. Captions and headings shall not be deemed to

affect the meaning or construction of any of the terms or provisions hereof.

- 10.12 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original.
- 10.13 Venue. The venue for any and all arbitration proceedings arising under this Agreement shall be in Indian River County..
- 10.14 Governing Law and Construction. This Agreement and any questions concerning its validity, construction and performance shall be governed by the laws of the State of Florida, without giving effect to any conflicts-of-law rules requiring the application of the substantive laws of other jurisdictions. The language of this Agreement shall be construed according to its fair meaning, not strictly for or against the Company or District, and not against either Party as its drafter, because both Parties agree they had an equal hand in drafting this Agreement.
- 10.15 Reasonableness Standard. All determinations, consents, reviews and approvals to be granted and conducted by the Parties under this Agreement and any other acts calling for the exercise of discretion shall be performed in good faith and, unless otherwise so specified, under a standard of reasonableness that is consistent with normal industry practices for the type of work involved. Where time periods are not specified, a reasonable period of time shall be allowed.
- 10.16 Cooperation and Release of Information. District shall cooperate with Company's requests for public information and District shall release public records concerning the District, when such documents are requested by Company in compliance with Chapter 119, Florida Statutes.
- 10.17 Sovereign Immunity. Nothing in this Agreement is or shall be construed as a waiver of the District's sovereign immunity or the limitations on liability set forth in Section 768.28, Florida Statutes. Notwithstanding the foregoing, District shall deliver to Company an opinion of counsel reasonably acceptable to Company confirming that this Agreement is enforceable against the District in accordance with the terms hereof.
- 10.18 Records Retention. All records required to be prepared or maintained by the Company or District shall be retained by the Company or District, respectively, for at least five (5) years after the date when the records are prepared.

[EXECUTIONS CONTINUED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have authorized the execution of this Agreement by their respective officials on the day, month and year below given.

ATTEST: Jeffrey R. Smith, Clerk

**INDIAN RIVER COUNTY SOLID
WASTE DISPOSAL DISTRICT**

By: _____
Deputy Clerk

By: _____
Joseph E. Flescher, Chairman

District Approved: _____

APPROVED:

By: _____
Jason E. Brown
County Administrator

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

By: _____
Dylan Reingold
County Attorney

INDIAN RIVER SUSTAINABILITY CENTER, LLC

By: _____

Name: _____

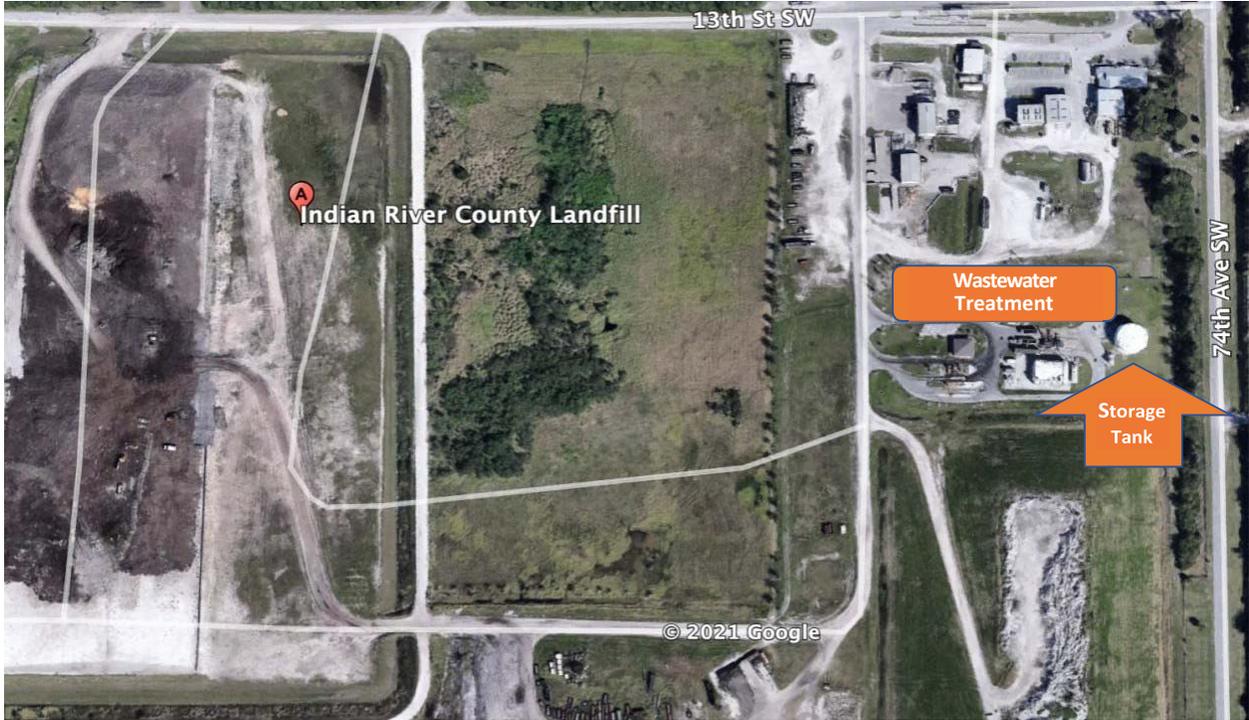
Title: _____

Dated _____

WITNESSES:

APPENDIX A

Planned Location of System

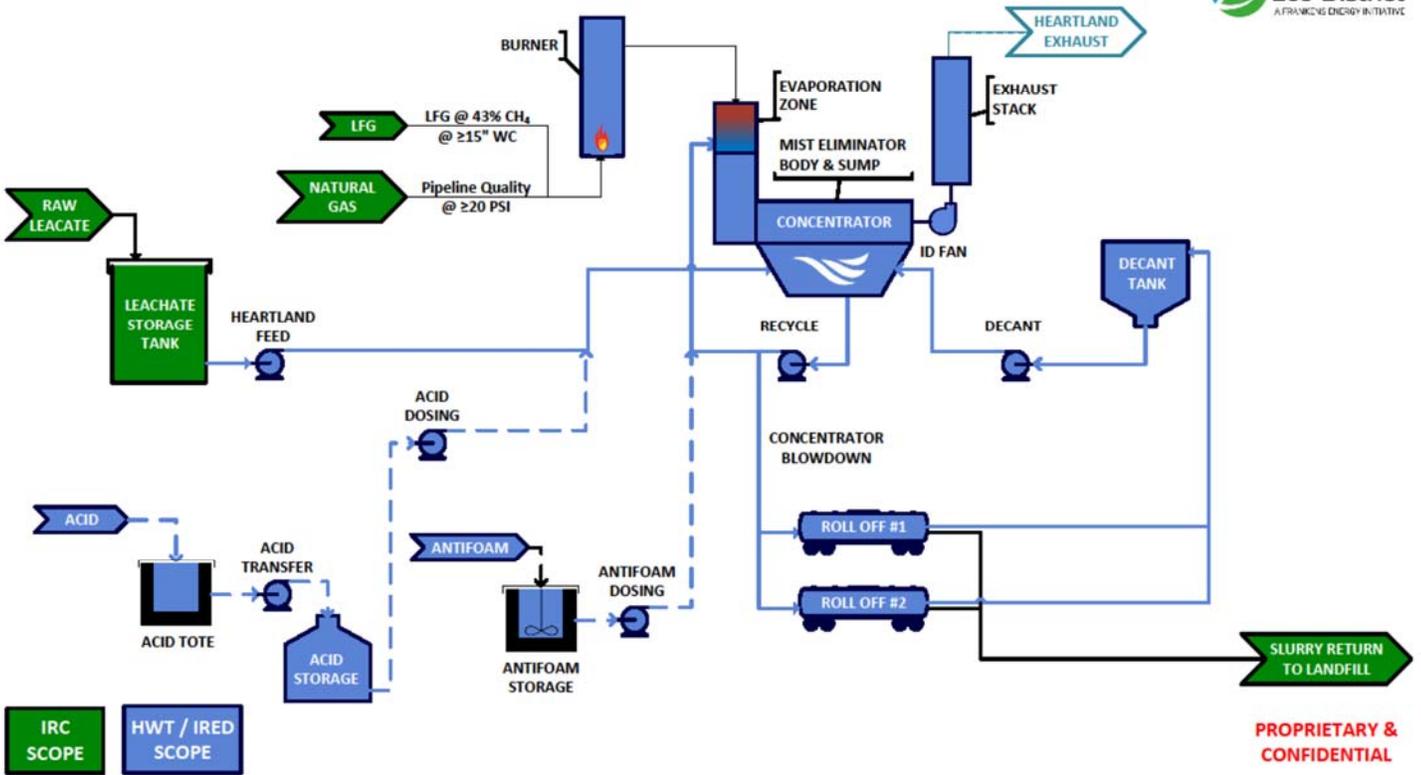


APPENDIX B

Preliminary Process Flow Diagram



INDIAN RIVER PFD



**APPENDIX C:
DIVISION OF RESPONSIBILITIES**

PART 1: INITIAL SET-UP FEE SCOPE

The Company anticipates that the Initial Set-up Fee payment will be used by the Company to fund detailed design and engineering work for the Heartland Concentrator™ System, site work for the Evaporation Plant and related activities as more fully described below.:

	Milestones
I. Design and Planning	<ul style="list-style-type: none"> • The Company will create a Project Design Basis document which will set forth the requirements for the Project. Among other things, the Design Basis Document will specify and finalize key process equipment, balance of plant equipment, installation and site works requirements, utility requirements including landfill gas, natural gas, electricity, and service water, chemicals requirements, spares, controls architecture, interfaces to the landfill. • Based on final scope of the Design Basis Document, the Company will (i) complete detailed designs for the Facility (including without limitation Final PFD, General Arrangement and layout drawings, P&IDs, Electrical Drawing including single line diagram; Site works specifications); and (ii) select contractors and vendors to develop a detailed implementation plan for readying the Facility and routing required utilities to the Evaporation Plant where the Heartland Concentrator™ System will be located. • The Company will provide reasonable technical support to IRC for permitting activities. • The Company will develop a detailed integrated project plan and schedule for all activity through commissioning.
II. Site Surveys	<ul style="list-style-type: none"> • Subsurface utility Engineering (SUE) and Survey • Geotechnical Engineering including appropriate set-back from existing utilities and structures
III. Procurement	<ul style="list-style-type: none"> • The Company will place orders for long lead time items.

PART 2: DIVISION OF RESPONSIBILITIES

Division of Responsibilities			
Scope of Work Description		Company	District
Concentrator & Flare, Hot Gas Transfer Equipment (HGTE)- Design & Fabrication		X	
Infeed Tank & Pump (s)			X
Processed Residual Tank(s) - Design & Supply		X	
Concentrator & Flare, HGTE, Processed Residual Tank(s)- Transportation to Site, CIP per Incoterms 2010		X	
Landfill Gas (LFG) and Nat Gas supply for thermal energy, [LFG Blower] and Controls (if needed)- Supply and Installation	(a) & (b)		X
Wastewater Storage Tank(s), Wastewater Supply Pump(s), Electrical & Utilities Connection	(a) & (c)		X
Infeed Wastewater			X
Chemical Storage Tanks	(a)	X	
Site Works: Site Preparation (Earthworks, Foundations, Containment)	(b)	X	
Containment Sump and Sump Pump	(b)	X	
Project Management and Detailed Engineering		X	
Concentrator System- Installation, Mechanical & Electrical Site Works		X	
Crane/Manlift Rental for Equipment Unloading & Installation		X	
Heat Trace & Insulation (as needed)		X	
Other miscellaneous site M&E interconnecting materials	(e)	X	X
On-site Technical Advisory Support during equipment installation critical milestones		X	
Remote monitoring and control system		X	
Utility Supply (LFG/ Nat Gas, Electricity, Service Water)	(a)		X
Processed Residual Handling & Disposal	(b)		X
Permitting, Emissions Monitoring			X
Site Safety Equipment		X	
Concentrator System Commissioning & Start-up		X	
Day-to-day Operation and Maintenance of Concentrator System, Including Consumables	(d)	X	
Other Miscellaneous Items	(e)	X	X

(a) Major items include mainly: Processed Residual management and disposal, chemical storage tanks, utility supply.

(b) Company will provide the Residual Tank(s) as part of its scope of work. Earthworks, foundation, secondary containment, containment sump and sump pump, routing of Landfill Gas (LFG) and Nat Gas to Company flare. During operation, Developer will notify IRC SWDD when Residual Tank(s) must be emptied, and IRC SWDD (via its on-site logistics partners will transport the Processed Residual to the top of landfill and dispose in landfill.

(c) The point of connection is the Concentrator skid; electrical includes 480VAC service.

(d) Developer plans to have 1-2 fully trained site engineers at site full-time. Consumables include antifoam, CIP, lubricant, etc.

(e) Such as site engineering services, permitting, Processed Residual disposal, construction tools, power & consumables, equipment rentals, etc.

APPENDIX D

LIST OF PERMITS

- 1. Solid Waste Permit Modification**
- 2. Title V Air Construction Permit (New Emission Unit)**
- 3. Preliminary Title V Air Operations Permit¹**
- 4. Final Title V Air Operations Permit (once Evaporation Plant is operational)**
- 5. Modify Landfill Operations Plan to include Residual Disposal**

¹ The Final Air Permit will not be issued until after the Evaporation Plant is operational. Consequently, the final Permit will not be considered a Permit for the purpose of the Permit Receipt Date definition in the Agreement.

APPENDIX E

WASTEWATER CHEMISTRY OPERATING PARAMETERS

Note: the table below is the Design Basis Water Chemistry for incoming Wastewater. The Evaporation Plant will be able to process Wastewater as contemplated in the Agreement if it meets these specifications plus or minus 20% (the “Operating Parameters”). If the Wastewater falls outside these Operating Parameters, the Company will be able to process the Wastewater, but it may not meet volume and concentration targets and the Company may need to charge the District for additional required OpEx.

Major Constituents		Average
pH	S.U.	7.9
Chemical Oxygen Demand COD	mg/L	5,565
Biological Oxygen Demand BOD	mg/L	1,390
Total Alkalinity as CaCO ₃	mg/L	5,663
Ammonia as Nitrogen	mg/L	1,170
Alkalinity, Bicarbonate as CaCO ₃	mg/L	33
Alkalinity, Carbonate as CaCO ₃	mg/L	35
Iron [Fe]	mg/L	3
Manganese [Mn 2+]	mg/L	0.1
Aluminum [Al 3+]	mg/L	
Ammonium [NH ₄ +]	mg/L	1,421
Potassium [K +]	mg/L	1,055
Sodium [Na +]	mg/L	2,113
Magnesium [Mg 2+]	mg/L	70
Calcium [Ca 2+]	mg/L	125
Strontium [Sr 2+]	mg/L	1
Barium [Ba 2+]	mg/L	
Nitrate [NO ₃ -]	mg/L	
Chloride [Cl -]	mg/L	2,547
Flouride [F -]	mg/L	6
Sulfate [SO ₄ 2-]	mg/L	60
Boron [B]	mg/L	
TDS	mg/L	10,550
TSS	mg/L	24

APPENDIX F

CALCULATION OF RATE ADJUSTMENT

One Hundred Percent (100%) of the rate adjustment shall be based on seventy-five percent (75%) of the change in the Consumer Price Index (CPI) between the month of June in the prior year (CPI1) and the month of January in the current year (CPI2). The CPI shall be the South Urban Region, All Items – All Urban Consumers, published by the United States Department of Labor, Department of Labor Statistics (Series ID = CUUR0300SA0)

If the designated index is discounted or substantially altered, SWDD may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

The total rate adjustment is rounded to the nearest hundredth of a percent and in any given year shall not exceed three percent (+/- 3.0%) of the previous rate.

FORMULA FOR CALCULATING ANNUAL RATE ADJUSTMENT

$$\begin{aligned} \text{Annual Adjustment (as a Percentage) AA} &= (((\text{CPI2} - \text{CPI1}) / \text{CPI1}) * 0.75)); \\ \text{New Rate} &= \text{Round} ((\text{Current Rate} + \text{AA} * \text{Current Rate}), 2) \end{aligned}$$

Where:

“CPI1” = published CPI average for the month of January of the prior year

“CPI2” = published CPI average for the month of January of the current year

SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENT INCREASE

Assumptions: Current Rate = \$10.00 CPI1 = 226.618
CPI2 = 227.955

Annual Rate Adjustment = $((227.955 - 226.618) / 226.618) * 0.75 = 0.44\%$

Annual Rate Adjustment of 0.44% is less than 3.0%, the maximum allowed.

New Rate = $\text{ROUND} (\$10.00 * (1 + 0.0044), 2) = \10.04

SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENT DECREASE

Assumptions: Current Rate = \$10.00 CPI1 = 226.618
CPI2 = 225.618

Annual Rate Adjustment = $((225.618 - 226.618) / 226.618) * 0.75 = -0.33\%$

New Rate = $\text{ROUND} (\$10.00 * (1 + (-0.0033)), 2) = \9.97

Annual Rate Adjustment is subject to the approval of the County Administrator or his designee.