

FILED

Reply to: 0005

Rec'd 12/14/06
W/S Dept
DJG

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MWLSJ

Missouri Public
Service Commission

DRAFT: June 15, July 14, 2006

**UTILITY OPERATION, MAINTENANCE AND CAPITAL IMPROVEMENT
AGREEMENT**

This Utility Operation, Maintenance and Capital Improvement Agreement ("Agreement"), is entered into as of the ___ day of _____, 2006 ("Effective Date"), by and between Jefferson County Public Sewer District, a public sewer district of the State of Missouri ("JCPSD"), with a place of business at _____, and Environmental Management Corporation, a Missouri corporation ("EMC") with its principal place of business at 1001 Boardwalk Springs Place, O'Fallon, Missouri 63366; EMC and JCPSD are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, pursuant to that certain (i) Letter of Intent between JCPSD and EMC dated as of May, 15, 2006 and (ii) Tri-Party Purchase and Sale Agreement dated as of July _____, 2006 among EMC, JCPSD and Central Jefferson County Utilities, Inc. ("Utility Assets Acquisition Agreement"), EMC shall have caused ownership of the utility described in Exhibit A attached hereto to be transferred to JCPSD ("Raintree Utility" or "Utility") as of the Commencement Date (defined below); and

WHEREAS, EMC is engaged in the business of providing contract operations, maintenance, management, capital improvements and related services and systems for water and wastewater utility systems; and

WHEREAS, JCPSD wishes EMC to: (1) operate and maintain the Raintree Utility; and (2) provide and finance certain initial capital improvements for the Raintree Utility as described in paragraphs 1.a and 1.b of Exhibit B attached hereto ("Utility Asset Improvements"), all as more specifically described in this Agreement; and

WHEREAS, each of JCPSD and EMC has full power and authority under the laws of the State of Missouri to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. EMC SERVICES AND TERM

a. JCPSD engages EMC, as an independent contractor, and as described further herein, to provide the following (collectively, the "EMC Services")

(1) operate and maintain the Raintree Utility for JCPSD in accordance with Exhibit C attached hereto, commencing on the Commencement Date ("Operations & Maintenance Services") and as further described herein; and

(2) provide and finance the Utility Asset Improvements after the Commencement Date as described in Exhibit B and as further described herein.

OPC Exhibit No. 5
Date 12/19/06 Case No. SO-2007-0011
Reporter [Signature]

b. The "Commencement Date" shall be the date upon which ownership of the Raintree Utility is transferred to JCPSD pursuant to the Utility Assets Acquisition Agreement referenced above.

c. This Agreement shall expire twenty years from the date upon which EMC certifies to JCPSD that the Utility Asset Improvements are substantially complete ("term"), unless renewed or earlier terminated pursuant to the terms of this Agreement.

2. **EMC INSURANCE.** EMC shall maintain the following insurance during the term of this Agreement:

Property Insurance (Builder's Risk):

Full Replacement cost value for Entire Raintree Utility, Utility Asset Improvements and a waiver of subrogation to JCPSD to the extent of coverage. Property insurance will be provided by EMC for the period from the Commencement Date until it is to be provided by JCPSD.

Commercial General Liability:

Bodily Injury, Personal Injury, and Property Damage \$1,000,000 Occurrence
\$2,000,000 Aggregate

Commercial Automobile Liability (any auto):

Hired and Non-Owned Liability \$1,000,000 Per Accident

Worker's Compensation:

Statutory

Employers Liability:

Bodily Injury By Accident \$500,000 Each Accident
Bodily Injury By Disease \$500,000 Policy Limit
Bodily Injury By Disease \$500,000 Each Employee

Pollution Liability:

Bodily Injury and Property Damage \$1,000,000 Each Loss
\$1,000,000 Aggregate

Professional Liability:

Damages from performance of or failure to perform professional services as required by law. \$1,000,000 Occurrence
\$1,000,000 Aggregate

EMC shall furnish JCPSD with satisfactory evidence of the aforesaid insurance. At all times during the terms of this Agreement, EMC shall keep in effect the aforesaid insurance coverage.

Neither failure to comply nor incomplete compliance with the insurance requirements of this Section 2 shall limit or relieve EMC of its obligations hereunder. If EMC fails to purchase or maintain the insurance required under this Section 2, JCPSD may, but will not be obligated to, purchase such insurance on EMC's behalf, and JCPSD shall be reimbursed for any premiums paid by JCPSD on behalf of EMC.

All of the above policies, except Worker's Compensation and Professional Liability, shall name JCPSD as an additional insured, but only to the extent of EMC's performance and indemnification obligations pursuant to this Agreement.

3. RESPONSIBILITIES OF JCPSD

a. Raintree Utility. JCPSD shall be responsible to perform all actions necessary for the proper administration of the Utility in accordance with good public utility practice and the laws of Missouri, and to ensure that the Utility continues to be regulated by JCPSD. JCPSD hereby agrees that it shall not limit the number of customers served by the Raintree Utility to a number less than the maximum number of customers the Raintree Utility is able to accommodate based upon the maximum design parameters of the Raintree Utility following completion of the Utility Asset Improvements.

b. Permits. JCPSD shall obtain and maintain all required governmental licenses, permits and authorizations required to own, operate and maintain the Raintree Utility. JCPSD is responsible for obtaining all necessary permits and licenses or other approvals from regulatory authorities (collectively "permits"), which are required to be in the name of JCPSD and necessary to construct and install the Utility Asset Improvements or otherwise required for EMC to perform the EMC Services contracted for in this Agreement. EMC shall assist and fully cooperate with JCPSD in this regard and provide all information related to the Utility Asset Improvements or EMC's operation of the Raintree Utility that is required in order for JCPSD to obtain such permits. The foregoing notwithstanding, EMC is responsible for ensuring that the Utility Asset Improvements as installed meet all regulatory and legal requirements. JCPSD agrees to assist and fully cooperate with EMC in this regard and provide all information related to its operations at the Raintree Utility that is required in this regard. EMC shall pay for all required permit fees for the period between the Commencement Date through completion of the Utility Asset Improvements.

c. Utility Rates. JCPSD shall set the following rates (collectively, the "Rates") for customers of the Raintree Utility (the "JCPSD Raintree Utility Customers") and enforce payment of such Rates as follows:

- (1) A wastewater and sewer service fee (the "Wastewater and Sewer Service Fee");
- (2) A water service fee (the "Water Service Fee") which shall be based upon water usage by each JCPSD Raintree Utility Customer; and
- (3) A new customer tap service fee (the "New Customer Tap Service Fee") which shall be a one-time fee charged to new JCPSD Raintree Utility Customers for access to the Raintree Utility.

d. Setting Utility Rates. The Rates described in Section 3(c) above shall be set by JCPSD as follows:

(1) The Wastewater and Sewer Service Fee shall be set at a level which shall be adequate to pay the EMC Service Fees set forth in Section 4(a)(1) and any adjustments thereto as set forth in Section 4(c).

(2) The Water Service Fee shall be set at a level which shall be adequate to pay the EMC Service Fees set forth in Section 4(a)(2) and any adjustments thereto as set forth in Section 4(c) and shall include an incremental amount of not less than \$0.50 per thousand gallons of water ("kgal") used by JCPSD Raintree Utility Customers in order to cover the amounts described in Section 3(d)(4) below.

(3) The New Customer Tap Service Fee shall be set at a level which shall be adequate to pay the EMC Service Fees set forth in Section 4(a)(3) and any adjustments thereto as set forth in Section 4(c) and shall include an incremental amount of not less than \$1,000 in order to cover the amounts described in Section 3(d)(4) below.

(4) The Rates shall be set such that there is sufficient revenue after payment of the EMC Service Fees to fund (x) the Reserve Account described in (and as defined in) Section 3(l) below, and (y) JCPSD management and administration activities.

e. Rate Enforcement. JCPSD shall take such actions as appropriate and/or reasonably requested by EMC and which are permitted under applicable law, to enforce collection of payments from JCPSD Raintree Utility Customers.

f. Sewer & Water Use Regulations & Enforcement. JCPSD shall adopt and enforce sewer use regulations as appropriate and/or reasonably requested by EMC to protect the Raintree Utility wastewater treatment plant and to help ensure the effluent from the plant meets all permit requirements. JCPSD shall adopt and enforce sewer and water service tap on regulations and requirements consistent with this Agreement.

g. Lien Rights. JCPSD assigns to EMC all of its rights and delegates its powers to enforce collection of payments from JCPSD Raintree Utility Customers, including but not limited to the right to terminate service, and the right to place liens on the property of JCPSD Raintree Utility Customers.

h. Cooperation. JCPSD agrees to cooperate with EMC and to execute such further and additional documents as reasonably requested to facilitate EMC's completion of the Utility Asset Improvements and Operations & Maintenance Services.

i. Representations. JCPSD represents and warrants to EMC that JCPSD has, or shall have or hold as of the date hereof, and shall continue to have or hold throughout the term of this Agreement, all approvals, licenses, permits and certifications necessary to own and operate the Raintree Utility and the Utility Asset Improvements.

j. Other Utilities. JCPSD shall cooperate with EMC to help ensure that the utilities and services needed for the EMC Services are available including, but not limited to,

electricity, natural gas, telecommunications, trash, and mail. EMC shall be responsible to pay for the utilities and services provided to EMC.

k. Security Interest. In consideration of EMC financing the acquisition of the Raintree Utility and Utility Asset Improvements, JCPSD grants to EMC a first-priority security interest in the Raintree Utility and Utility Asset Improvements to secure payment of all amounts owed by JCPSD under this Agreement. JCPSD shall join EMC in executing, and hereby authorizes EMC to file, one or more financing statements pursuant to the Uniform Commercial Code or at law or in equity or any other documents reasonably requested to reflect or perfect this security interest. In the event JCPSD fails to make any payment required under this Agreement or breaches any other material obligation under this Agreement, EMC may declare all secured obligations immediately due and payable and may exercise any and all remedies available under the Uniform Commercial Code or at law or in equity. Except as otherwise indicated in this Agreement, JCPSD shall take no action which would cause title to the Raintree Utility or Utility Asset Improvements supplied under this Agreement or any component thereof to be encumbered by levies, liens, security interests or other encumbrances (collectively "Liens"). JCPSD shall notify EMC in writing of any Liens against the Utility or Utility Asset Improvements or its components no later than ten (10) days after it becomes aware of such Liens and shall, at its expense, extinguish such Liens as soon as possible but in no event later than sixty (60) days after it becomes aware of such Liens.

l. Reserve Account. JCPSD shall maintain a reserve account (the "Reserve Account") sufficient to fund the costs of M&R Items (defined below) in accordance with Section 5(b) below and costs incurred in connection with capital replacement and improvements in accordance with Section 5(c) below. JCPSD in consultation with EMC, shall from time to time determine the appropriate minimum amount to be maintained on deposit in the Reserve Account.

m. Insurance. JCPSD shall maintain the following insurance commencing upon the earlier of (i) the date on which it is able to pay for such insurance and (ii) the date which is not later than one year after completion of the Utility Asset Improvements, and through the remaining term of this Agreement:

<u>Property Insurance (All risks):</u>	Full Replacement cost value for Entire Raintree Utility, Utility Asset Improvements and a waiver of subrogation to EMC to the extent of coverage
<u>Commercial Auto Liability (any auto):</u>	\$1,000,000 Combined single limit
<u>Worker's Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury By Accident	\$500,000 Each Accident
Bodily Injury By Disease	\$500,000 Policy Limit

Bodily Injury By Disease \$500,000 Each Employee

Commercial General Liability:

Bodily Injury, Personal Injury, and Property Damage \$1,000,000 Occurrence
\$2,000,000 Aggregate

JCPSD shall furnish EMC with satisfactory evidence of the aforesaid insurance. At all times during the terms of this Agreement, JCPSD shall keep in effect the aforesaid insurance coverage. Neither failure to comply nor incomplete compliance with the insurance requirements of this Section 3 shall limit or relieve JCPSD of its obligations hereunder. If JCPSD fails to purchase or maintain the insurance required under this Section 3, EMC may, but will not be obligated to, purchase such insurance on JCPSD's behalf, and EMC shall be reimbursed for any premiums paid by EMC on behalf of JCPSD.

All of the above policies, except Worker's Compensation, shall name EMC as an additional insured, but only to the extent of JCPSD's performance and indemnification obligations pursuant to this Agreement.

4. COMPENSATION

a. Service Fees. In consideration of transfer of the ownership to JCPSD of the Raintree Utility, and obligations assumed by EMC in this regard, the Utility Asset Improvements and the Operations & Maintenance Services set forth on Exhibit C attached hereto, JCPSD shall pay EMC, effective upon the Commencement Date, through the remainder of the term, the following "EMC Service Fees":

- (1) EMC shall be entitled to \$37.00 of the Wastewater and Sewer Service Fee charged to each JCPSD Raintree Utility Customer per month;
- (2) EMC shall be entitled to a portion of the Water Service Fee charged to each JCPSD Raintree Utility Customer per month in an amount equal to \$5.80 per thousand gallons of water ("kgal") used by each JCPSD Raintree Utility Customer; and
- (3) EMC shall be entitled to \$1,500.00 of the New Customer Tap Service Fee charged to each JCPSD Raintree Utility Customer added after the Commencement Date.

b. Payments & Accounting. JCPSD hereby agrees that EMC shall provide all billing and collection services in respect of the Utility (as more fully described in Exhibit C) and that all JCPSD Raintree Utility Customers will be instructed to remit all payments in respect of the services provided by the Utility to an account maintained by EMC. Each monthly billing cycle for JCPSD Raintree Utility Customers, EMC shall (i) compute the EMC Service Fees to which it is entitled pursuant to the terms of this Agreement based on amounts billed to the JCPSD Raintree Utility Customers for such monthly billing cycle, (ii) retain from the foregoing collections the amount of EMC Service Fees owing in respect of such billing cycle, (iii) remit the balance of such collections to JCPSD, and (iv) provide JCPSD with an accounting of the amounts billed, collected, deducted for EMC Service Fees, and the balance to be remitted to JCPSD. EMC hereby agrees that JCPSD shall have the right, following thirty (30) days prior written notice to EMC, to

audit the books and records of EMC with respect to the billing and collection services described in this Section 4(b). EMC further agrees that at any time, JCPSD shall have the right to take over the billing and collection services performed by EMC hereunder upon not less than ninety (90) days' prior written notice. In the event JCPSD exercises its right to take over the billing and collection services, EMC and JCPSD shall negotiate in good faith a reduction in the EMC Service Fees to reflect the reduced cost incurred by EMC in providing the EMC Services. Furthermore, from and after the date on which JCPSD takes over the billing and collection services in respect of the Raintree Utility, EMC shall submit to JCPSD on a monthly basis, a statement of the EMC Service Fees that EMC is entitled to with respect to the calendar month immediately preceding the date on which such statement is submitted to JCPSD, and JCPSD shall pay to EMC the amount of EMC Service Fees reflected in such statement within thirty (30) days following its receipt thereof.

c. Adjustments to Service Fees Based on Changes to Utility Requirements. In the event that any changes in the scope of the operations of, or regulations applicable to, the Raintree Utility shall occur from and after the Effective Date, including, but not limited to, the addition of industrial users, influent flows and loadings exceeding the operational and parameters of the Utility Asset Improvements specified in Exhibit B, violations of sewer use regulations, unlawful dumping of chemicals or other harmful substances into the wastewater collection and treatment system, changes in governmental regulations or reporting requirements, effluent quality standards, monitoring requirements, equipment or plant failures that are not caused by or the responsibility of EMC, level of treatment, personnel qualifications, staffing rules or other changes in the scope of the EMC Services which increase the cost of the Utility Asset Improvements or the Operation and Maintenance Services, then, in that event, EMC's Services Fees shall be equitably adjusted for any increased costs retroactive to the date of such notification by EMC (which shall include a reasonably detailed explanation for the increase to the EMC Services Fees).

d. Statement of Amortization of Utility Asset Improvements. EMC hereby agrees to provide to JCPSD upon its written request therefor, a statement as to the unamortized amount of the costs incurred in connection with the Utility Asset Improvements (such costs, the "Improvement Costs"). The parties hereby agree that the ~~EMC Service Fees received by EMC shall be applied first to the costs incurred by EMC in connection with providing the EMC Services (including a reasonable market profit), and that the excess, if any, of the EMC Service Fees over the foregoing amount shall be applied to reduce the unpaid balance of the Improvement Costs together with Improvement Costs shall be amortized at a per annum interest thereon rate of 6.0% over a twenty (20) year term.~~

5. MAINTENANCE & REPAIR, CAPITAL REPLACEMENT & IMPROVEMENTS.

a. Costs up to \$3,500. EMC shall pay the costs of all individual repair parts, maintenance materials, supplies, and outside maintenance service items (collectively, "M&R Items") for the Raintree Utility under \$3,500 per event, excluding EMC labor costs, during the term of this Agreement. An M&R Item may include multiple invoices or repairs that relate to the maintenance and repair of a system or a systematic

replacement, all of which shall be aggregated for purposes of the immediately preceding sentence. For purposes of this Agreement, a maintenance or repair event is the occurrence of an individual incident at the Raintree Utility which causes EMC to service, or repair the Raintree Utility or any component thereof. Each individual incident described in the immediately preceding sentence shall constitute a separate "event" as such term is used in the first sentence of this Section 5.a.

b. Costs \$3,500 and above. Each M&R Item for the Raintree Utility that costs in excess of \$3,500 per event, excluding EMC labor costs, shall be approved by JCPSD and paid for in its entirety either out of amounts on deposit in the Reserve Account or directly by JCPSD. Notwithstanding anything to the contrary in this Section 5, EMC shall have the right, in emergency situations, to authorize the expenditure of monies for M&R Items where the failure to do so would have an adverse effect, as reasonably determined by EMC, on the Raintree Utility, environment or safety. If JCPSD refuses to approve any reasonably required M&R items, EMC shall be relieved of any resulting liability and JCPSD shall be responsible for any and all increased operating or other costs caused thereby.

c. Capital Replacement & Improvements. JCPSD shall be solely responsible for all capital improvement expenditures (not included in the Utility Asset Improvements to be provided by EMC). For purposes of this Agreement, a capital improvement expenditure shall be defined to be the cost of adding new equipment (accessory, appurtenances, or components thereof), or new structures (as opposed to replacing, maintaining, repairing, or rebuilding the existing structures) which satisfy any of the following criteria:

- a. increases its efficiency and capacity for which it was designed and constructed; or
- b. has a service life of at least five (5) years; or
- c. costs in excess of \$3,500 per occurrence, exclusive of any EMC personnel labor costs.

For purposes of this Section 5.c. the replacement, maintenance, repair or rebuilding of existing structures shall not constitute capital improvements, but shall be subject to the provisions of Sections 5.a and 5.b. EMC shall submit, for JCPSD's approval, capital improvement requests prior to incurring any capital improvement expense. Each request for approval will identify the reason and estimated costs for the expenditure. Notwithstanding anything to the contrary to this Section 5, EMC shall have the right, in emergency situations, to authorize the expenditure of monies for capital improvements where the failure to do so would have an adverse effect, as reasonably determined by EMC, on the Raintree Utility, environment or safety. If JCPSD refuses to approve any reasonably required capital improvement request, EMC shall be relieved of any resulting liability and JCPSD shall be responsible for any and all increased operating or other costs caused thereby. The Parties hereby agree that amounts on deposit in the Reserve Account shall be available for capital improvement expenditures subject to the approval of JCPSD as provided in this paragraph.

6. **REPRESENTATIVE.** No later than the Commencement Date, JCPSD shall designate in writing to EMC, the name and title of JCPSD's authorized representative(s) for all purposes of this Agreement.

7. **TERMINATION.**

a. Either Party to this Agreement may terminate this Agreement upon material breach by the other Party; provided, however, that the terminating Party first provides written notice of such breach to the other Party and such breach is not cured within the period commencing on the date on which the foregoing notice is given and ending on the earlier of (i) ninety (90) days from the date of the notice following the date of such notice or (ii) the date on which the applicable breach is required to be cured under applicable law (such period, the "Cure Period") or, in the event that a cure is not capable within such ~~ninety (90) day period~~ Cure Period, such cure is not commenced within such ~~ninety (90) day period~~ Cure Period.

b. If JCPSD wrongfully terminates this Agreement before the end of the Term or any Renewal Term, EMC shall be entitled to compensation for all services performed through the date of termination, expenses directly attributable to the termination for which EMC is not otherwise compensated, reimbursement of all capital expenditures made by EMC pursuant to the Utility Assets Acquisition Agreement and in respect of the Utility Asset Improvements, plus an equitable amount for EMC's anticipated profit on the value of services which would have otherwise been performed but for the wrongful termination.

c. Upon the expiration of the initial Term of this Agreement, this Agreement shall continue for additional one-year periods (the "Renewal Terms") unless terminated by either Party giving written notice to the other Party no later than twelve months before the end of the Term or the end of any Renewal Terms.

8. **HOLD HARMLESS.** EMC and JCPSD agree to and shall hold the other Party, its respective elected and appointed officers, and its employees harmless from any liabilities, claims, damages or fines (including attorney's fees) for personal injury or property damage caused by, or arising from, (i) the negligence of either Party- or (ii) the breach by either party of any of its respective obligations under this Agreement (including the Exhibits attached hereto and incorporated herein). In addition to the foregoing, EMC agrees to and shall hold JCPSD, its elected and appointed officers, and its employees harmless from any liabilities, claims, damages or fines (including attorney's fees) incurred as a result of the wrongful termination by EMC of any employee of EMC employed in the performance of the EMC Services.

9. **COMPARATIVE RESPONSIBILITY.** In the event that both EMC and JCPSD are found by an independent fact finder to be negligent, and the negligence of both Parties is the proximate cause of such claim for damage for personal injury or property damage, then, in that event, each Party shall be responsible for the portion of the liability equal to such Party's comparative share of the total negligence.

10. **LIABILITIES NOT ASSUMED.** Each Party agrees that it shall not assert any claim for indirect, incidental, consequential, special, punitive or exemplary damages whether based in tort or contract. Each Party, however, reserves the right to claim direct damages up to the insurance limits specified in this Agreement for insured claims or for the total amount of payments to be made pursuant to this Agreement for uninsured claims.

11. **MISCELLANEOUS.**

a. **Waiver.** The failure on the part of either Party to insist in any one or more cases upon the strict performance of any of the provisions of this Agreement, or to exercise any right, remedy or option herein contained, shall not be construed as a waiver of such provision, right, remedy or option in any other case or similar cases. Any waiver shall be in writing, and signed by the Party to be charged, in order to be enforceable.

b. **Assignments.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party, unless such assignment shall be to a parent, subsidiary, affiliate or successor by operation of law of either Party; provided, however, any such assignment shall not relieve the assigning Party of its responsibility for its obligations under this Agreement. Any sale, assignment or transfer by JCPSD of its rights in, or right to use, the Raintree Utility shall be subject to EMC's right to manage, operate, and maintain the Raintree Utility as set forth in this Agreement.

c. **Nondiscrimination.** EMC shall refrain from unlawful discrimination in employment.

d. **Relationship & Confidentiality.** It is understood that the relationship of EMC to JCPSD is that of an independent contractor and that none of the employees or agents of EMC shall be considered employees of JCPSD. JCPSD agrees that JCPSD shall not talk to any employee of EMC regarding employment with JCPSD without having received the prior permission of EMC, which permission shall not be unreasonably withheld, conditioned or delayed. ~~Except as otherwise required by applicable law, the terms of this Agreement shall be confidential and not disclosed to third parties absent mutual consent, which shall not be unreasonably withheld.~~

e. **Force Majeure.** Each Party's performance under this Agreement shall be excused if the Party is unable to perform its obligations, other than making payments, because of actions due to causes beyond its reasonable control, including, but not limited to, Acts of God, the acts of civil or military authority, any act of national or international terrorism or bioterrorism, floods, epidemics, quarantine restrictions, riots and strikes. In the event of any incident of such force majeure, the Party unable to perform shall notify the other Party within twenty-four (24) hours of the existence of such force majeure and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned force majeure.

f. **Authority to Contract.** Each Party warrants and represents that it has authority to enter into and perform this Agreement.

g. Severability. If any of the terms and conditions of this Agreement are held by any court of competent jurisdiction to contravene or to be invalid under the laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not invalidate the entire Agreement, but instead, the Agreement shall be construed as if not containing the particular provision or provisions held to be illegal or invalid, the rights and obligations of the Parties shall be construed and enforced accordingly, and this Agreement shall thereupon remain in full force and effect as so construed.

h. Notices. Notice under this Agreement shall be deemed to have been properly given when addressed as provided below, and shall be deemed effective (except as otherwise provided in this Agreement) (i) upon receipt or receipt and refusal if sent by first class mail, return receipt requested, registered or certified; (ii) one (1) business day after being sent by an overnight courier service; or (iii) when received if sent by facsimile as confirmed by an electronically generated facsimile confirmation. Each Party shall have the right to change its address by giving the other Party written notice thereof.

Notices required to be given to JCPSD shall be addressed to:

Jefferson County Public Sewer District
P.O. Box 100
Hillsboro, MO 63050
Attention: Martin Toma

With copies to:

Thurman, Howald, Weber, Senkel & Norrick, LLC
PO Box 800
One Thurman Court - 301 Main St.
Hillsboro, MO 63050
Attention: Floyd T. Norrick

Notices required to be given to EMC shall be addressed to:

Environmental Management Corporation
1001 Boardwalk Springs Place
O'Fallon, MO 63366
Attention: Contract Administrator

With a copy to:

The BOC Group, Inc.
575 Mountain Avenue
Murray Hill, NJ 07974

Attention: Vice President & General Counsel

i. Entire Agreement, Counterparts and Amendments. This Agreement, together with the Exhibits and Appendices as incorporated herein, shall constitute the entire Agreement between the Parties pertaining to the subject matter hereof and supercedes all other prior agreements, representations and understandings, both written and oral, except to the extent incorporated in this Agreement. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but which together shall constitute a single instrument. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the Parties hereto, except that any of the terms or provisions of this Agreement may be waived in writing at any time by the Party which is entitled to the benefits of such waived terms or provisions. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar). No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

j. No Third Party Beneficiaries. This Agreement is not intended to and shall not confer upon any other person, other than the Parties hereto, any rights or remedies with respect to the subject matter hereof including.

k. Taxes. JCPSD shall take such actions as are necessary or reasonably requested by EMC to qualify for all applicable tax exemptions (e.g. property tax). Upon EMC's request, JCPSD shall provide EMC with properly completed exemption certificates for any tax from which JCPSD claims exemption. EMC Service Fees do not include, and shall be equitably adjusted for, any federal, state and local taxes, however denominated (except taxes on EMC's net income or for its general privilege to conduct business in the State of Missouri), arising in connection with the production, sale or delivery of EMC Services hereunder, including, without limitation, all real and personal property taxes (and any payments associated with such taxes), and sales and use taxes and ad valorem taxes applicable to the construction and ownership of the Raintree Utility.

l. Compliance with Laws. EMC and JCPSD shall abide by all applicable laws, ordinances and regulations as they relate to EMC Services and the Raintree Utility.

m. Exhibits. The following Exhibits are attached hereto and made a part of this Agreement:

- Exhibit A – Description of Raintree Utility
- Exhibit B - Utility Asset Improvements
- Exhibit C - Operations & Maintenance Services
- Exhibit C-1 – Existing WWT Plant Maximum Design Parameters
- Exhibit C-2 – Improved WWT Plant Maximum Design Parameters
- Exhibit C-3 – Improved Water Plant Maximum Design Parameters

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written by their duly authorized officers or representatives.

JEFFERSON COUNTY PUBLIC SEWER DISTRICT

By: _____

Name: _____

Title: _____

ENVIRONMENTAL MANAGEMENT CORPORATION

By: _____

Name: _____

Title: _____

**EXHIBIT A
Raintree Utility**

[insert description of Utility]

EXHIBIT B

UTILITY ASSET IMPROVEMENTS

1. EMC shall provide Utility Asset Improvements for the following up to a cost of \$1.8 million less amounts paid by EMC in connection with the transfer of the Raintree Utility to JCPSD pursuant to the Utility Assets Acquisition Agreement as provided in paragraph 3 below ("Improvement Cost Allowance"):
 - a. Wastewater. EMC will provide investment to complete upgrades and improvements necessary to the Raintree wastewater system to increase its capacity to a design flow of .4 MGD as specified in Exhibit C-2 and to meet all state and local regulatory requirements.
 - b. Water. EMC will provide investment to complete upgrades and improvements necessary to the Raintree water system to resolve lead contamination issues, storage capacity issues as further specified in Exhibit C-3 and to meet all state and local regulatory requirements.
2. The Utility Asset Improvements will comply with all applicable codes and be completed in a good and workmanlike manner. EMC shall coordinate the design and construction of the Utility Asset Improvements with JCPSD and provide regular reports on progress. Both parties agree to cooperate to expedite the completion of the Utility Asset Improvements.
3. The Improvement Cost Allowance shall be reduced by all amounts incurred by EMC in the acquisition of the Raintree Utility including, but not limited to, any amounts paid by EMC at closing of the Utility Assets Acquisition Agreement to acquire the Raintree Utility, and any amounts paid to third parties prior to such closing. EMC shall be permitted to include a customary and reasonable fee of 10% for its costs associated with the design, engineering, project management, procurement, construction management, permitting, insurance, general conditions and other costs associated with the Utility Asset Improvements.

EXHIBIT C
Operations & Maintenance Services

The Operations & Maintenance Services to be provided by EMC during the term of this Agreement shall include and be limited to the following:

1. Operation & Maintenance of Wastewater Treatment Plant

a. Existing WWT Plant. Until the Utility Asset Improvements are completed, EMC shall use commercially reasonable efforts to operate and manage the existing Raintree Utility wastewater treatment plant ("Existing WWT Plant") so that the effluent discharge meets or exceeds the wastewater effluent requirements established by the State of Missouri under the permits issued to JCPSD by such authority so long as the influent does not exceed the WWT Plant Design Limitations set forth in Exhibit C-1 ("Existing WWT Plant Maximum Design Parameters"). EMC shall comply with all applicable local, state, and federal laws and regulations as they pertain to the Existing WWT Plant. JCPSD and EMC acknowledge and agree that the Existing WWT Plant is not capable of meeting the current influent and effluent requirements and that therefore, EMC shall not be responsible for any fines and surcharges which may be imposed with respect to the Existing WWT Plant. EMC shall, however, pay all costs of EMC employees, chemicals, utilities, services, additional spare parts, materials, maintenance, safety supplies/training, environmental monitoring/training and expendable supplies required in the normal operation of the Existing WWT Plant, except to the extent any such expenses are limited in the Agreement or identified as being the responsibility of JCPSD.

b. Improved WWT Plant. Upon completion of the Utility Asset Improvements, EMC shall use commercially reasonable efforts to operate and manage the improved Raintree Utility wastewater treatment plant ("Improved WWT Plant") so that the effluent discharge meets or exceeds the wastewater effluent requirements established by the State of Missouri under the permits issued to JCPSD by such authority so long as the influent does not exceed the WWT Plant Design Limitations set forth in Exhibit C-2 ("Improved WWT Plant Maximum Design Parameters"). EMC shall comply with all applicable local, state, and federal laws and regulations as they pertain to the Improved WWT Plant. EMC shall pay all fines and surcharges resulting solely from the negligence or intentional acts of EMC which may be imposed by the regulatory agency having jurisdiction for effluent quality violations associated with the permits issued with respect to the Improved WWT Plant; provided, however, that EMC shall have no such obligation in the event that such violations are a result of influent violations of the Improved WWT Plant Maximum Design Parameters or the presence of hazardous substances in the influent. EMC shall pay all costs of EMC employees, chemicals, utilities, services, additional spare parts, materials, maintenance, safety supplies/training, environmental monitoring/training and expendable supplies required in the normal operation of the Improved WWT Plant, except to the extent any such expenses are limited in the Agreement or identified as being the responsibility of JCPSD.

c. Odor Control. EMC shall operate and maintain the wastewater treatment plant to minimize the generation of odors. In the event of an odor generating event from the

Facilities, EMC shall assist JCPSD in the development and implementation of a corrective action plan to mitigate the odor generation. EMC shall work with JCPSD to deal in a concerned, professional manner with any individuals or community groups concerned with odors.

d. Hazardous Substance. In the event that any hazardous substance is received at the wastewater treatment plant, EMC shall notify JCPSD of such event and assist JCPSD in the treatment or removal of such hazardous substance. In the event that any hazardous substance cannot be treated or removed by the wastewater treatment plant, and if wastewater effluent parameter(s) affected by any hazardous substance listed in the permits are exceeded, then, in that event, EMC shall not be responsible for regulatory non-compliance or additional operational costs until the hazardous substance is removed from the wastewater treatment plant, and it is completely recovered and capable of generating wastewater effluent quality within design parameters. For all purposes of this Exhibit C and the Agreement to which it is attached, "hazardous substance" shall mean (a) any petroleum, petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls; (b) any chemical, material or substance defined or regulated as hazardous or as a pollutant, contaminant or waste under any statute, law, ordinance, by-law, decree, regulation, code, order, rule or judgment of any governmental authority having the force of law; (c) any chemical, material or substance not identified or exceeding the limits specified in the Existing WWT Plant Maximum Design Parameters or Improved WWT Plant Maximum Design Parameters, as appropriate; or (d) any chemical, material, substance or combination contained in the influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater. The rebuttable presumption shall be that any hazardous substance present in the wastewater treatment plant entered with the influent.

e. Residual Management and Disposal. EMC shall be responsible for scheduling the hauling and disposal of sludge and other residuals (collectively, "residuals") generated by the wastewater treatment plant. EMC will perform all services and testing required in the Agreement and under current laws and regulations but EMC will not otherwise be responsible for the content of the residuals. EMC will not be considered, nor be required to represent itself as, the owner or generator of the residuals. Rather, EMC will be acting as a contractor and agent of JCPSD for the residuals disposal. EMC is responsible for performing its services in accordance with the Agreement and current laws and regulations. EMC is not responsible for liability imposed by future changes in laws or regulations without an amendment to the Agreement. However, during the term of the Agreement, EMC shall be responsible to monitor and advise JCPSD of any changes in laws or regulations that might require an amendment to the contract in this regard. JCPSD will hold EMC harmless from liabilities that are inconsistent with the foregoing.

f. Testing and Laboratory Analysis. EMC shall perform the sampling and analysis of the appropriate influent and effluent as outlined in JCPSD's permit(s), and as required for the proper operation of the wastewater treatment plant. EMC shall prepare all permit monitoring and operations reports, and submit them to JCPSD for final review and sign-

off prior to submission to the appropriate regulatory agency having jurisdiction over the wastewater treatment plant.

2. Operation & Maintenance of Wastewater Collection System.

a. EMC shall use commercially reasonable efforts to operate and maintain the wastewater collection systems to: extend its useful life; provide maximum capacities; minimize inconveniences by handling interruptions in service; prevent public health hazards; and prevent unnecessary damage to public and private property.

b. The Wastewater Collection System will be operated and managed in a manner to:

- Identify sources of problems with the system through inspection, monitoring and investigation, including assisting builders and homeowners in locating, making and inspecting connections;
- Implement a preventative maintenance program to clean, maintain and repair the system for safe transportation and storage of wastewater in compliance with all applicable laws and regulations;
- Develop programs for public education, information distribution and community relations; and
- Implement a customer service program.

c. EMC shall develop a preventative maintenance program for the collection system, submit a copy to JCPSD, and perform preventative maintenance in accordance with such program. EMC shall not be responsible for damages caused by back-ups and failures of the collection systems unless and except to the extent EMC is shown the damages were caused by EMC's negligence or failure to perform preventative maintenance as required by the preventative maintenance program. JCPSD agrees to protect and hold EMC harmless from claims and damages that are inconsistent with the foregoing.

3. Operation & Maintenance of Water Treatment Plant.

a. Existing Water Plant. Until the Utility Asset Improvements are completed, EMC shall use commercially reasonable efforts to operate and manage the existing Raintree Utility water treatment plant ("Existing Water Plant") so that the water supply meets or exceeds the requirements established by the State of Missouri under the permits issued to JCPSD by such authority. EMC shall comply with all applicable local, state, and federal laws and regulations as they pertain to the Existing Water Plant. JCPSD and EMC acknowledge and agree that the Existing Water Plant is not capable of meeting the current water supply requirements and that therefore, EMC shall not be responsible for any fines and surcharges which may be imposed with respect to the Existing Water Plant. EMC shall, however, pay all costs of EMC employees, chemicals, utilities, services, additional spare parts, materials, maintenance, safety supplies/training, environmental monitoring/training and expendable supplies required in the normal operation of the Existing Water Plant, except to the extent any such expenses are limited in the Agreement or identified as being the responsibility of JCPSD.

b. Improved Water Plant. Upon completion of the Utility Asset Improvements, EMC shall use commercially reasonable efforts to operate and manage the improved Raintree Utility water treatment plant ("Improved Water Plant") so that the water supply meets or exceeds the requirements established by the State of Missouri under the permits issued to JCPSD by such authority subject to the limitations set forth in Exhibit C-3 ("Improved Water Plant Maximum Design Parameters"). EMC shall comply with all applicable local, state, and federal laws and regulations as they pertain to the Improved WWT Plant. EMC shall pay all fines resulting solely from the negligence or intentional acts of EMC which may be imposed by the regulatory agency having jurisdiction for violations associated with the permits issued with respect to the Improved Water Plant subject to the limitations in Exhibit C-3. EMC shall pay all costs of EMC employees, chemicals, services, additional spare parts, materials, maintenance, safety supplies/training, environmental monitoring/training and expendable supplies required in the normal operation of the Improved Water Plant, except to the extent any such expenses are limited in the Agreement or identified as being the responsibility of JCPSD.

4. Operation & Maintenance of Water Distribution System.

a. EMC shall use commercially reasonable efforts to operate and maintain the water distribution system to: extend its useful life; provide maximum capacities; minimize inconveniences by handling interruptions in service; prevent public health hazards; and prevent unnecessary damage to public and private property.

b. The Water Distribution System will be operated and managed in a manner to:

- Identify sources of problems with the system through inspection, monitoring and investigation, including assisting builders and homeowners in locating, making and inspecting connections and meter change-outs;
- Implement a preventative maintenance program to clean, maintain and repair the system for safe transportation and storage of water in compliance with all applicable laws and regulations;
- Develop programs for public education, information distribution and community relations; and
- Implement a customer service program.

c. EMC shall develop a preventative maintenance program for the distribution system, submit a copy to JCPSD, and perform preventative maintenance in accordance with such program. EMC shall not be responsible for damages caused by failures of the distribution system unless and except to the extent EMC is shown the damages were caused by EMC's negligence or failure to perform preventative maintenance as required by the preventative maintenance program. JCPSD agrees to protect and hold EMC harmless from claims and damages that are inconsistent with the foregoing.

5. **Billing & Collection.** EMC shall perform all billing and collection for the Utility. EMC shall not be liable for uncollected payments or associated costs.
6. **Management, Administration & Reporting**
 - a. **Project Management and Staffing.** EMC shall staff the Utility with a Facilities Manager experienced in the areas of water treatment, wastewater treatment, process control, laboratory analysis, operations and maintenance procedures for water and wastewater treatment facilities.
 - b. **Project Support.** EMC shall, as required and determined by EMC, provide on-call, backup expertise in operations, management and maintenance applications to ensure compliance with this Agreement.
 - c. **Records of Operation.** Records maintained by EMC shall be in compliance with all applicable law and regulations. EMC shall maintain these records at the Utility site, available during the term of this Agreement for inspection by authorized JCPSD personnel. EMC agrees to provide JCPSD officials with access to the Utility at any time, upon reasonable prior notice.
 - d. **Training.** EMC shall implement an ongoing training program, with classroom and hands-on training for all Utility personnel. Training shall include Utility operations and maintenance, laboratory operations and maintenance, supervisory skills and energy management.
 - e. **Capital Budget Submission.** On an annual basis, EMC shall provide a formal report to JCPSD on EMC's projection of capital needs and assist JCPSD with the preparation of JCPSD's annual budget. EMC shall also, if requested, annually submit its recommendations regarding additions to or deletions from JCPSD's long-term capital program. EMC shall submit detailed rationale for any changes or additions, along with related preliminary cost estimates. Review and approval of these capital expenditures shall remain the responsibility of JCPSD.
 - f. **Maintenance Management.** EMC shall institute a preventive maintenance program for the Utility. Records maintained by EMC shall include the history of maintenance and the schedule of programmed maintenance throughout the term of this Agreement. Standard operating and maintenance procedures shall be established by EMC, consistent with industry-wide practices.

g. Information Systems. EMC shall install, at the Utility, computer software effective in the management of scheduled and preventive maintenance and process control.

h. Operational Costs and Expenses. EMC shall pay all costs of EMC employees, fuels, electricity, natural gas, chemicals, services, spare parts, materials, maintenance, sludge disposal, repairs, safety supplies / training, environmental monitoring / training and expendable supplies required in the normal operation and maintenance of the Utility, except, and in the event, such expenses are further limited within this Agreement.

i. Reporting. EMC shall submit internal reports relating to the operations of the Utility to JCPSD and assist JCPSD in JCPSD's reporting requirements to local, state and federal regulatory agencies, all in accordance with the mutually agreed upon procedures. EMC shall be responsible for representing JCPSD with the relevant regulatory agencies and advise JCPSD of all meetings, hearings and relevant related information for the W/WWT Systems. Upon request by EMC, JCPSD shall participate in such meetings of regulatory or governmental agencies, as EMC deems necessary.

j. Safety. EMC shall administer a site-specific safety program to include training, record keeping and safety meetings, all in conformance with JCPSD safety program and any requirements of the State of Missouri.

k. Emergency Response Plan. EMC shall develop, maintain, and implement, if necessary, an emergency response plan for the Utility that shall be in compliance with all applicable regulations and good industry practice.

EXHIBIT C-1

Existing WWT Plant Maximum Design Parameters

Subject to the terms and conditions of this Agreement, EMC will provide the EMC Services such that the effluent meets the requirements of the ~~the [identify permit by issuing authority and date of expiration]~~ permit number MO-099473.

The Existing A A T Plant Maximum Design Parameters are as follows:

Average Flow		0.28 MGD
Maximum Hourly Flow		0.56 MGD
Influent BOD	145 mg/L	
Influent TSS	145 mg/L	
Influent TKN	20 mg/L	

Exhibit C-2

Improved A A T Plant Maximum Design Parameters

Subject to the terms and conditions of this Agreement, EMC will provide the EMC Services such that the effluent meets the requirements of the ~~[identify permit by issuing authority and date of expiration]~~ permit number MO-099473.

The Improved A A T Plant Maximum Design Parameters are as follows:

Average Flow	0.4 MGD
Maximum Hourly Flow	0.8 MGD
Influent BOD	61 mg/L
Influent TSS	61 mg/L
Influent TKN	10 mg/L

Exhibit C-3

Improved Water Plant Maximum Design Parameters

Subject to the terms and conditions of this Agreement, EMC will provide the EMC Services such that the water supply meets the following requirements:

1. Permit Requirements: ~~[identify permit by issuing authority and date of expiration]~~
MO-6036271.

2. Water Quality meeting the requirements of the Safe Drinking Water Act.

3. ~~Fluoride water composition of between ___ and ___ mg/L and water hardness of less than or equal to ___ mg/L.~~ EMC shall not be responsible to meet the foregoing finished water quality requirements if one or more of the following occurs:

- a) Raw water contains a hazardous, toxic or radioactive substance which cannot be removed by the then existing processes;
- b) Hazardous, toxic or radioactive discharges into the water distribution system;
- c) The peak production, influent turbidity, or influent constituents are greater than the following design parameters:

Peak Production:	<u>0.345</u> MGD	
Manganese:		<u>0.05</u> mg/L
Iron:		<u>0.30</u> mg/L
Lead:		<u>15</u> ug/L
Copper:		<u>1300</u> ug/L
Total Hardness:	<u>280</u> mg/L	

- d) The presence of chemicals or substances not listed above.
- e) The water plant or distribution system can operate only at reduced capacity due to construction activities, flood, adverse weather conditions, terrorism, or other causes beyond EMC's reasonable control.

EXHIBIT A
Raintree Utility

Water system currently operating under Missouri DNR permit MO-6-36271 and a Wastewater collection and treatment system currently operating under Missouri DNR permit MO-099473 consisting of:

1. Two permitted wells and related equipment, piping and buildings associated with each well.
2. The waste water treatment plant and all equipment of any type whatsoever associated with the waste water treatment plant.
3. All water and waste water mains and collector lines, pumps, valves, fittings and other equipment associated therewith used in operation of the water and waste water treatment facilities.
4. All service lines connected with the water and waste water treatment system to curb stop and box.
5. One fifty thousand (50,000) gallon elevated storage tank and one stand pipe.
6. 680, or the current number at the time of closing, customer accounts for water and waste water service; the customer account for water and waste water service to the Raintree Plantation Country Club facility; and, the customer service account for water and waste water service to the retail building not located in Raintree Plantation subdivision but located along Highway B at the entrance to Raintree Plantation subdivision. There are approximately 3,162 platted residential lots in Raintree Plantation subdivision. As of the date of preparation of this exhibit, there were approximately 680 paying customers. Some customers have homes constructed on more than one lot. Additionally, there are several customers receiving service now platted as a residential lot.