

REGIONAL WASTEWATER SYSTEM DEVELOPMENT AGREEMENT
among
ALABAMA GULF COAST REGIONAL SEWER SUPPLY DISTRICT,
THE BOARD OF WATER AND SEWER COMMISSIONERS
OF THE CITY OF MOBILE
and
THE UTILITIES BOARD OF THE CITY OF CHICKASAW

THIS AGREEMENT IS MADE by and among the Alabama Gulf Coast Regional Sewer Supply District (“Sewer District”); the Board of Water and Sewer Commissioners of the City of Mobile, d/b/a Mobile Area Water & Sewer System (“MAWSS”); and the Utilities Board of the City of Chickasaw (“UBCC”), these three entities collectively sometimes referred to as “the parties.”

FOR AND IN CONSIDERATION of the mutual promises herein set forth, and other good and valuable consideration, the parties agree as follows:

A. PURPOSE OF THIS AGREEMENT, RECITALS, AND GOALS:

The purpose of this Regional Wastewater System Development Agreement is to set forth the goals of the parties as to future regional sewer collection and treatment services, and to outline the parameters of their plans for achieving these goals.

Sewer District is a public entity created pursuant to Sections 11-89-1, et seq., Code of Alabama (1975), as amended to provide regional sewer supply services authorized thereby. Pursuant to Section 11-89-1, MAWSS and UBCC are the Participants of the Sewer District and sometimes referred to as such herein.

MAWSS is a public entity created under Sections 11-5-340 et seq., Code of Alabama (1975), as amended, to provide water and sewer services to the citizens of Mobile, Alabama, and certain surrounding areas.

UBCC is a public entity created under Title 37, Chapter 7, Section 402(15) et seq., Code of Alabama (1940), as amended, to provide wastewater utility services to the citizens of Chickasaw, Alabama.

Sewer District was formed as a means for MAWSS, UBCC, and other public sewer service providers to join together into one regional entity to obtain federal grant funding and other available grant funding for planning, design, engineering, construction, and related services for a new regional sewer system. The Sewer District’s sewage collection, conveyance, and treatment facilities will be capable of providing services to a large geographic area in compliance with the standards of water quality established by the Federal Water Pollution Control Act (Clean Water Act), the Alabama Water Pollution Control Act, and other state and federal laws and regulations.

The parties envision that Sewer District’s regional sewer system will be capable of receiving treated wastewater from other utilities and treatment plants, receiving untreated wastewater from

other utilities and treating it, and discharging treated wastewater from a central outfall permitted by the Alabama Department of Environmental Management (“ADEM”) and any other agency with jurisdiction thereof.

The parties intend that the Sewer District funding and operations be conducted in a manner fair to all Participants and Customers, each sharing responsibility proportionally related to their established peak hourly flow for capital improvements and average daily flow for operations and maintenance of Sewer District’s Sewer System as described in this Agreement.

No Participant or Customer shall be required to fund or otherwise support any part of the Sewer System or Sewer District’s operations not in keeping with proportional use by that Participant or Customer, and the Sewer District shall not charge a use fee to any Participant or Customers except as may be specifically provided for in this Agreement.

The parties anticipate that Sewer District will further benefit its participating utilities, customers, local communities, and the environment by providing centralized, modern sewage collection and treatment services with the benefits of economy of size associated with centralized facilities.

The parties intend that Sewer District be developed with federal and state grant money instead of private funds, loan monies, or other funds creating repayment and security obligations for the Sewer District and/or its Participants (as defined below). The parties acknowledge that some grant opportunities may require matching funds, and that circumstances may arise where the parties want to consider helping to fund the Sewer District with non-grant funds. However, the parties agree that any such non-grant funding will only occur with formal agreement of each Participant’s board, in accordance with the budget provisions of this Development Agreement.

The Sewer District and Participants will meet monthly, or as otherwise agreed upon, to review the Sewer District’s progress in meeting the Initiatives set forth in this Agreement, obtaining additional Participants and/or customers, securing grant funding for regional development, and achieving other goals and objectives established by the Sewer District and its Participants.

B. DEFINITIONS. For the convenience of the parties, the following definitions are provided, for the following terms used in this Agreement, unless the context clearly indicates otherwise:

“**ADEM**” means the Alabama Department of Environmental Management.

“**Agreement**” means this Regional Wastewater System Development Agreement and all its Exhibits and Tables, as well as any amendments hereto subsequently approved by the parties through resolution of their governing boards.

“**Collection Facility**” means a system or other facility which provides for the collection, transport, and storage of sewage and Wastewater.

“**Customer**” means a public or non-profit Sewer District member who is not a Participant and has elected to pay higher rates to the Sewer District in lieu of reimbursement to Participants for the capital cost of Sewer District facilities shared with that Customer. Customers shall not have

representation on the Sewer District Board.

“**Fiscal Year**” means the then current annual accounting period of Sewer District for its general accounting purposes.

“**Founding Participant**” means one of the original entities that caused or enabled Sewer District to come into existence as provided by Ala. Code Section 11-89-1, MAWSS and UBCC.

“**MAWSS**” means the Mobile Area Water & Sewer System operated by the Board of Water and Sewer Commissioners of the City of Mobile.

“**Outfall Diffuser**” means the portion of piping immediately between the Mobile River shore and where treated wastewater enters and mixes with water in Mobile River.

“**Participant**” means a member entity which has joined the Sewer District, including both Founding Participants and other public sewer service provider entities which join the Sewer District after the execution of this Agreement.

“**Person**” means a natural person, municipality, political subdivision, cooperative or public or private corporation, partnership, association, or other entity.

“**Port Authority**” means the State of Alabama Port Authority.

“**Regional Sewer System**” means the sewer system to be developed and operated by Sewer District.

“**Service Area**” means an area presently served by a sewer service provider in connection with the collection and treatment of wastewater, and areas where a sewer service provider is authorized to operate its collection and disposal facilities.

“**Sewer District**” means the Alabama Gulf Coast Regional Sewer Supply District.

“**Sewer Service**” or “**Sewer Services**” means services involved in collecting, transporting, treating, and disposing of sanitary sewage or wastewater, and functions and activities reasonably incident to the operation of a sewer system.

“**Sewer System**” means a sanitary sewer system including mains, laterals, pumping stations, sewage disposal plants and sewage treatment plants, and all appurtenances to such a system; as well as all lands, properties, rights, easements and franchises deemed necessary or desirable by a sewer service providing entity for use in rendering services. “Sewer system” shall also include facilities, buildings, trucks, compactors, motor vehicles, equipment, incinerators, compost plants, chemicals, uniforms, supplies, offices, and office equipment reasonably required for operation of a sewer system.

“**Treatment Plant**” means a facility capable of treating wastewater to a condition in which it can be safely discharged in compliance with applicable permit requirements and other laws.

“**State**” means the State of Alabama.

“UBCC” means the Utilities Board of the City of Chickasaw.

“USACE” means the United States Army Corps of Engineers (COE).

“Wastewater” means water containing sewage, industrial wastes, and other substances which may pollute or tend to pollute any waters of the State.

C. STAGES OF DEVELOPMENT OF REGIONAL SEWER SYSTEM.

The parties intend that the Sewer District shall ultimately own and operate the regional Sewer System, including sewer collection lines, real property and easements, outfall diffuser, associated facilities, and the new sewage treatment plant. The parties shall work together in the planning, design, and construction of the components of the regional Sewer System as set forth in the Initiatives described in this Agreement. The parties acknowledge that ownership of real property, easements, outfall, and other parts of the system shall remain with Participant entities providing funding therefore, until Sewer District is fully capable of providing treatment services and Participant entities have been repaid for their investments, or until said Participant entities vote by resolution of their governing Boards to make said conveyances to Sewer District.

Nothing in this Agreement shall prevent any Participant from receiving proportional reimbursement for any part of the system which the Participant has funded in behalf of other or future Participants, regardless of whether the facility is owned by the Participant or by the Sewer District.

The parties recognize that the regional Sewer System will be acquired, developed, constructed, and upgraded in stages, that Sewer District will not be capable of providing any Sewer Services immediately, and that Sewer District will not provide complete Sewer Services to the Participants until a future date.

To move toward the regional goals, upon execution of this Agreement the Founding Participants and Sewer District will begin working on the first three of the four Initiatives listed below:

Initiative I. Discharge Line I and Outfall Diffuser - (for MAWSS’ Smith Wastewater Treatment Facility, UBCC, and other future Sewer District Participants).

Initiative IA. Discharge Line IA - (for UBCC Treatment Facility and other future Sewer District Participants).

Initiative II. Acquisition and Development of the Blakely Island Site - (to serve as the location for the Regional System’s future wastewater treatment plant).

Initiative III. Development and Construction of a Regional Wastewater Treatment Facility on the Blakely Island site.

D. DETAILS OF INITIATIVES.

1. Initiative I –Discharge Line and Outfall Diffuser.

The Sewer District and MAWSS will each direct part of this Initiative, consisting of a

discharge line, outfall diffuser, and lift station to meet the short-term needs of MAWSS' Smith Wastewater Treatment Facility for discharge of treated wastewater to the Mobile River. The discharge point will be located on the west side of the Mobile River. This project may include partial, interim, or temporary outfall diffuser construction as may be permitted by regulatory agencies. UBCC will connect to and use part of this line once the Initiative IA Discharge Line is completed.

(a) Completion of Discharge Line and Outfall Diffuser Design. The Sewer District has employed an engineering firm to complete the design and permitting of part of Initiative I, including the discharge line and outfall diffuser, consistent with the most economical and cost efficient means available. Sewer District's engineering consultant who is completing the design of the discharge line and outfall diffuser shall coordinate the project with the engineering firm employed by MAWSS to design the lift station at the Smith wastewater treatment facility (Smith WWTF) (see paragraph (b) below). To keep construction costs as low as possible, as part of this design, the Sewer District shall investigate the potential for the outfall diffuser to be located on the west side of the Mobile River, which may be temporary, or for the outfall diffuser to serve as only a portion of the permanent outfall diffuser needed for the duration of the Regional Sewer System.

The parties agree that, except for the effort that may be needed for permitting and pH adjustment of Alcoa pond waste discharge as described in Paragraph 3.(d), no design or other work will be done relating to facilities on the east side of the Mobile River until after an agreement among the Sewer District, MAWSS, and the Alabama State Port Authority or State of Alabama, securing the wastewater treatment site on Blakely Island, has been executed, which the parties agree to pursue as soon as possible.

(b) Completion of Smith Lift Station Design. MAWSS has contracted with an engineering firm not part of the Sewer District's engineering firm's team to complete the lift station design for the Smith WWTF, and to coordinate this design with the work of Sewer District's engineering consultant relative to the discharge line and outfall diffuser (see paragraph (a) above). This pumping station will transfer treated wastewater to the discharge line and outfall diffuser.

(c) Construction of Discharge Line, Outfall Diffuser, and Lift Station. The Sewer District will bid and construct the Initiative I discharge line and outfall diffuser. MAWSS will bid and construct the Smith lift station. Unless the Sewer District receives applicable federal or state grants, costs associated with the permitting, design, construction, and operation of all of these facilities will be borne by MAWSS. MAWSS will acquire the easements for all Initiative I projects. MAWSS will own the easements as well as the discharge line and outfall diffuser until such time as MAWSS transfers them to Sewer District in accordance with the provisions of this Agreement. UBCC and other Participants shall have the right to use these facilities as provided in paragraph (g.) below. MAWSS will own and retain ownership of the lift station.

(d) Discharge Line and Outfall Diffuser Capacity. These improvements on the east side of the Mobile River (as well as the West side) will be sized and designed to a capacity capable of accepting wastewater of MAWSS' Smith WWTF, from UBCC's WWTF, as well as future discharges of other Sewer District Participants as presented in the 2008 Facility Plan, or in any revised version of the Facility Plan accepted by each party's governing board. The parties anticipate that, until such time that all MAWSS costs and debt for these improvements have been

satisfied and MAWSS has been reimbursed for proportional over-sizing costs, MAWSS will lease portions of this new discharge line to the Sewer District and/or its Participants. (See paragraph (g) below.)

Priority of assignment of the 4.5 peak hourly flow capacity for un-named "Other Facilities" in the Facility Plan shall be determined by the Sewer District after release of that capacity by MAWSS.

(e) Conveyance of Discharge Line and Outfall Diffuser to Sewer District

MAWSS anticipates issuing funding documents no earlier than November 1, 2010 for financing the Discharge Line and Outfall Diffuser. Prior to MAWSS executing funding documents for this project, should the Sewer District obtain 100% grant funds, requiring no repayment, the Sewer District will have the option of funding 100% of the construction of the Discharge Line (from the point of use UBCC shares with MAWSS) to and including the Outfall Diffuser. If this occurs, the Sewer District would then own that portion of the Discharge Line and the Outfall Diffuser.

In the event 100% grant funds are not obtained before MAWSS executes funding documents for this project, MAWSS will proceed with construction of this project and own this part of the regional system. After the term of MAWSS' original construction bond issue and completion of proportional reimbursement to MAWSS as further described herein, and when Sewer District's new wastewater treatment plant is operational and can accept MAWSS' wastewater discharges which would otherwise go to the Smith WWTF, and as part of the consideration for the Sewer District's agreement to collect, treat, and discharge MAWSS' wastewater, MAWSS will convey ownership of the aforementioned discharge line, outfall diffuser, and related easements to the Sewer District, subject to MAWSS's rights of reversion as set forth in this Agreement, and provide to the Sewer District all information available to MAWSS describing their condition.

(f) Ownership of Initiative I Components. Until these conditions are met, the Initiative I discharge line, the outfall diffuser, easements, and related facilities will be owned, operated, and maintained by MAWSS and recorded as assets on MAWSS' books. The conveyance instruments for transfer of these facilities and easements from MAWSS to the Sewer District will include provisions for their reversion to MAWSS, as further described in this Development Agreement.

(g) Lease of Discharge Line and Outfall Diffuser by MAWSS to Sewer District; Connection Fees from New Participants to Reimburse MAWSS.

(1) While MAWSS owns the Initiative I discharge line and the outfall diffuser, MAWSS will lease these facilities to the Sewer District. As long as MAWSS is the only Participant to benefit from this discharge line and outfall diffuser, the rent charged to the Sewer District by MAWSS will be zero.

(2) The parties agree that as UBCC and other Participants connect to the Initiative I discharge line and outfall diffuser, MAWSS shall be reimbursed for its costs incurred for permitting, easements, design, and construction of that portion of the discharge line used by the connecting Participants. Therefore, when a Participant connects to the Initiative I discharge line, the Participant will pay the Sewer District a

connection fee (so the Sewer District can reimburse MAWSS), and the amount of the lease charge will be renegotiated by MAWSS and Sewer District. The new lease charge will be in an amount sufficient to provide MAWSS proportional reimbursement for the beneficial use of the discharge line by the Participant. Table 1, illustrates the procedure for establishing various amounts due for a sample discharge line segment.

(3) The connection fee to be paid by each Participant to Sewer District for the Participant's share of the reimbursement due MAWSS may be paid by the Participant as a lump sum. Alternatively, the Participant, the Sewer District, and MAWSS may negotiate and agree on an installment payment plan for the Participant to pay the connection fee in an amount to reimburse MAWSS, to include interest. In either event, Regional District will collect the connection fee amounts from each Participant and forward the reimbursement due to MAWSS.

(4) In no case shall MAWSS, or any Participant providing funds for any of the Initiatives and subsequently seeking reimbursement as provided in this Agreement, be allowed reimbursement greater than actual costs, other than the interest. Actual costs shall be verified by Sewer District from information provided by the funding Participant.

(5) The parties agree that the ability of a potential new Participant to pay its full share of all costs associated with Sewer District participation will be demonstrated to the Sewer District's satisfaction prior to allowing such participation, and that there shall be no forgiveness of debt among Participants.

(h) Use of NPDES Permit during Lease of Discharge Line and Outfall Diffuser. The discharge permit will be applied for and requested to be issued in the name of the Sewer District and any pending application shall be assigned and transferred to the Sewer District. The parties agree that the NPDES discharge permit to be issued by ADEM to Sewer District is intended to benefit all Participants, with the understanding that the permit will revert to MAWSS and any other Participants using Discharge Line I and the diffuser outfall, should the Sewer District fail, unless otherwise provided by law.

(i) Obtaining Grants for Initiative I. The Sewer District and, to the extent they can do so, the Participants will cooperate to seek grants to construct the discharge line and outfall diffuser. Simultaneously, the Sewer District and MAWSS will seek regulatory approval from ADEM of a one year delay in enforcement of revised NPDES discharge limits applicable to the Smith WWTF or a one-year extension of the existing MAWSS NPDES permit. If approved, the delay or extension will enhance the Sewer District's opportunity for obtaining grant funds to construct the Initiative I projects. During this one year delay, the construction completion date for Initiative I will be extended to October, 2013. Unless grants are received, MAWSS will fully fund Sewer District's design and permitting activities in accordance with the budgets attached as Exhibits 1, 2 and 3, which are fully incorporated herein by reference. If grants are not received, MAWSS will issue bonds to cover its costs for construction of the Initiative I discharge line and diffuser. MAWSS and UBCC will also proportionally fund Sewer District's lobbyist activity to obtain grants (see D 2. (a) below and Exhibits 1 and 2 attached hereto and incorporated herein). The parties agree that if

grant funding is not received by February, 2011, the Sewer District must proceed with construction of Initiative I, with project funding to come solely from MAWSS. The parties agree that in any event, MAWSS will be reimbursed for the proportional cost of jointly used facilities and services not paid by grant funds.

2. **Initiative IA – Discharge Line to Initiative I.** This Initiative will be administered by the Sewer District in phases, funded with grants or funds provided by UBCC and new Participants as provided herein. Initiative IA consists of additional discharge lines, pumping stations and other necessary facilities to transfer treated wastewater from UBCC and potentially other new Participants to an intersection or junction with the discharge line of Initiative I. Construction and completion of the first phase of Initiative IA, for use by UBCC, will occur concurrent with or after completion of Initiative I.

(a) **Obtaining Grants for this Initiative.** The Sewer District will seek grants to design and construct all or portions of these discharge lines to be used by UBCC and potential new Sewer District Participants. MAWSS and UBCC will fund proportionate shares of the pre-approved costs of a lobbyist to help seek these funds for the Sewer District.

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Table 1 – Reimbursement Calculation Sheet for Segment _____ of Regional System, having \$8,000,000 Local Share Capital Cost, Interest of 5% (1), and Available Beneficial Use in January, 2013 (2)

Participant Using Regional Facilities	Estimated 2027 Peak Hourly Flow (PHF) (mgd)	% of Total PHF	% of Capital Segment to Eventually be Used by Participant	Date of Actual Beneficial Use of Capital Segment	Capital Cost Paid by Participants at Time of Construction	Responsible Distribution of Total Capital Cost of Segment	Interest between Available and Actual Beneficial Time Use	Amount Due to/(from) Participant on Mar, 2015	Amount Due (to/from) Participant on Nov, 2016
A	20	13.89	17.54	Mar, 2015		\$1,403,200	\$160,148.71	(\$1,563,348.71)	
B	70	48.61	61.40	Jan, 2013	\$7,000,000	\$4,912,000		\$1,563,348.71	\$829,559.23
C	10	6.94	not use this segment						
D	24	16.67	21.06	Nov, 2016	\$1,000,000	\$1,684,800	\$144,759.23		(\$829,559.23)
E	20	13.89	not use this segment						
Totals	144	100.00	100.00			\$8,000,000			

- (1) Interest rate shall be the rate applicable in the bond issue or loan from which the Participant pays the segment construction cost. If the Participant pays a local share without bonds or loans, then the interest rate will be negotiated with the Sewer District prior to project construction. For this example, the interest rate is 5% compounded semi-annually.
- (2) A separate reimbursement calculation sheet will be needed for each segment of the regional system that has a unique beneficial use date and/or combination of Participant users. Cost of construction projects that may involve more than one segment will be proportionally divided among those segments.

(b) Design and Construction Funding. The Sewer District will be responsible for the design, easements, and construction of the Initiative IA discharge line segments as necessary, with all funding for Initiative IA coming from grants, UBCC, and/or new Participants. This Agreement does not require MAWSS to provide funding for Initiative IA, and Sewer District will not include charges for any costs related to Initiative IA on its billings to MAWSS without specific additional approval of the MAWSS Board.

If, at the Sewer District's request, any portion of this Initiative is oversized in order to accommodate future Participants and the over-sizing portion is funded by UBCC or any new Participant, the cost of such over-sizing shall be reimbursed when future Participant(s) connect to this Initiative and begin benefiting from its use. The details of the reimbursement method identified in Table 1 shall be agreed upon at the time of the Sewer District's funding request. The proportional reimbursement shall include the costs of permitting, easements, design, and construction and shall include interest. In no case shall any Participant be allowed reimbursement greater than the actual proportional costs comparing estimated 2027 peak hourly flows. The parties recognize that Participants may be required to reimburse more than one Participant.

3. **Initiative II – Acquisition and Development of Blakely Island Site.**

The acquisition portion of this Initiative II will be managed by the Sewer District and MAWSS and will proceed immediately upon approval of this Agreement. All Sewer District Participants will assist Sewer District in other aspects of the Initiative, including pursuing federal grants, by paying for lobbyists to pursue grants, and by providing information and expertise as requested. This Initiative will include:

(a) Property Swap. MAWSS, the Port Authority, and Sewer District have executed a Statement of Intent dated December 31, 2008, a copy of which is attached as Exhibit 4. To the extent necessary, MAWSS will develop a further Memorandum of Understanding or agreement with the Sewer District and the Port Authority for the future use of approximately one hundred twenty (120) acres on Blakely Island (“the Blakely Island site”) for a new regional wastewater treatment plant and associated facilities, including access for influent piping and effluent piping between the treatment plant area and an acceptable outfall location at the Mobile River. The parties intend that the agreement for future use of the Blakely Island site will include the following:

- The Port Authority will agree to exchange and convey the Blakely Island site property to MAWSS and the Sewer District, upon MAWSS' agreement to abandon and exchange the approximate twenty-eight (28) acre Williams Wastewater Treatment Plant (“the Williams Plant”) site on McDuffie Island, reserving a pumping station site and pipeline easements and facilities, when Sewer District's new regional treatment plant is fully operational and able to treat the Williams Plant wastewater in accordance with permit requirements.
- The proposed abandonment will allow the Port Authority (State of Alabama) to regain use of the McDuffie Island property, with the exception of the MAWSS pumping station site and easement in locations agreeable to the Port Authority.

- When Sewer District begins construction of a regional waste treatment facility capable of treating wastewater from the Williams Plant, MAWSS will construct, or authorize the Sewer District to construct, a wastewater pumping station and transmission line from the McDuffie Island Williams Plant site to the Blakely Island site.
- When MAWSS receives written notification from Sewer District that the new regional plant and related facilities are completed and able to accept, treat, and discharge wastewater from the Williams Plant, MAWSS will affect the transfer of wastewater, abandon the Williams Plant, and vacate the McDuffie Island Property.

(b) **Grant funds.** The Sewer District will seek federal and state grants and other assistance for Blakely Island site development which do not require reimbursement from Participants and which do not encumber the Participants' or the future treatment plant's real property and rights therein, facilities, or equipment. If any Participants provide funds for Blakely Island site development in accordance with this Agreement, each such Participant will retain rights of reversion in real property, exchanged assets, or rights therein, facilities, and/or equipment purchased with the Participant's funds, unless the Participant, through vote of its board, formally agrees to waive such rights in order to meet grant requirements or as otherwise deemed necessary by the Participant. Efforts to obtain grants will include seeking funds and other assistance for relocation of dredged material to the site by the USACE.

(c) **Dredge Spoils Relocation.** Upon obtaining grant funds or other assistance, the Sewer District will facilitate actions by the USACE and/or other public agencies to achieve a suitable site by relocating dredged materials and preparing the Blakely Island site to accommodate construction of the new regional treatment facility.

(d) **Handling of High pH Wastes.** The parties estimate and acknowledge that Blakely Island site development may take five to fifteen years or longer to complete. As required by possible USACE dredged material relocation program or other site development phasing, MAWSS will evaluate, obtain required permits for, and execute disposition of high pH wastes currently being discharged from the site under an ADEM permit held by the Port Authority. MAWSS will prepare a budget showing the annual cost of the most efficient and economic means for evaluation, treatment (pH adjustment), and disposal of these high pH wastes and provide this information for the Sewer District's inclusion in annual budgets. Upon approval of the budgeted expenditures by the Participants, the costs will be apportioned among the Participants.

4. **Initiative III - Development and Construction of New Regional Wastewater Treatment Facility on the Blakely Island Site.** This Initiative will proceed only after substantial completion of Initiatives I, IA, and II and may be accomplished in phases.

(a) **Report Addressing Participant Needs and Recommended Construction Phases.** After the Blakely Island site development is completed sufficiently to allow construction of the new regional wastewater treatment plant and associated facilities, the Sewer District, with approval of its Participants, shall reevaluate wastewater treatment needs of all Participants. The Sewer District shall then prepare a feasibility report detailing these needs and the Sewer District's

recommendations for phasing construction of Sewer District treatment facilities on the Blakely Island site. The report shall include detailed schedules and costs of the recommended construction phases determined to be appropriate for meeting the needs of the Participants. The Report shall also detail the grants and other sources of funding which have been obtained as well as plans for grants and funding to be sought to construct the phases.

(b) Payment for Regional Sewer District Facilities. Costs of phased placement of facilities on the Blakely Island site and on the west side of the Mobile River will be paid for by grants and other such funding which does not require repayment by the Sewer District or its Participants. The parties intend that capital funds for the Regional Sewer System come from grant money, not from public or private loans, or private sector agreements. If Sewer District does not obtain grants or other funding not requiring repayment, the Participants may decide, by vote of their governing boards, to provide the funds, approve other means for the Sewer District to obtain the funds in accordance with the annual budgeting process, delay the project to construct the new regional sewage treatment plant and associated facilities, or cancel the project.

In the event that new Participants wish to join the Regional District during or after the achievement of the Initiative III objectives, these new Participants will also be required to reimburse all Participants who provided funding for Initiatives I, IA, II, and III. The ability of each such potential new Participant to pay its full share of all costs associated with Sewer District participation must be demonstrated to the Sewer District's satisfaction prior to allowing such participation. Reimbursement shall be made through a capacity fee as described in section F of this Agreement. There shall be no forgiveness of debt among Participants.

In the event a new entity wishes to become a Customer of the Sewer District (and not pay a capacity fee), as opposed to a new Participant that does pay a capacity fee (as set forth in Section F of this agreement), the Sewer District shall increase the use rate for the Customer sufficient to recover the capacity fee in a time period to be negotiated among other funding Participant/s and the Sewer District.

5. **Progress Reviews.** At their periodic meetings, the Sewer District and its Participants will exchange information as to scheduling of Initiative events. The Sewer District and the Participants will review the Sewer District's progress in meeting these schedules as well as any specific issues which may arise.

E. BUDGET FOR SEWER DISTRICT.

1. **Sewer District Budget, Approval by Participants, and Travel Expenses.** Sewer District shall not incur any expenses of any nature which have not been pre-approved by the Participants, through their governing boards' approval of budgets submitted to them by Sewer District. Sewer District shall bill Participants monthly for proportional reimbursement of its costs. The sole purpose of Sewer District billings to Participants shall be to recover documented budgeted expenses. Sewer District shall provide each Participant with an annual budget of Sewer District's projected expenses at least six (6) months prior to the beginning of the Participant's fiscal year. Each Sewer District budget must be approved by resolution of the governing boards of all Participants. To accommodate a potential variety of fiscal year beginning and ending dates, as

Participants join the Sewer District, the Sewer District shall adjust the budget schedule to what may eventually require a detailed 2-year budget by quarters, to be delivered to each Participant. The Sewer District's budget shall identify projects and activities in sufficient detail for all Participants' full understanding of the purpose of each expense and the proposed allocation of cost percentages of each line item. If convenient for Sewer District, it may submit separate budgets for administrative expenses and for capital costs, each to be approved by Participants as set forth herein. The Sewer District shall not charge Participants a user fee until the new regional plant provides wastewater treatment on Blakely Island.

In addition to the detailed 2-year budget, the Sewer District shall maintain a 5-year budget for the benefit of Participants' financial planning. Unless specifically provided for in this Development Agreement, in no event shall any Participant be obligated to pay the costs of another Participant or future Participants. Also, only with agreement of Participants through resolution of their governing Boards may the amount of expenditures per calendar year by Sewer District exceed the approved budget for that period.

Travel expenses of Sewer District Board members representing Participants shall be in accordance with each Participant's travel policy. Travel of Sewer District employees or Community-at-Large Board members shall be in accordance with the Sewer District's travel policy. Direct costs of travel and trip-related expenses of each Participant's Sewer District member shall be borne by that Participant. Direct costs, including travel, shall be included in the Sewer District Budget and billed periodically to the Participant as provided for by the Participant's travel policy. The Sewer District budget shall reflect direct costs for each Sewer District Participant.

2. **Budget through December 31, 2009, and for 2010.** The parties agree that the Sewer District budget attached hereto as Exhibit 1 identifies all Sewer District costs expended or scheduled to be expended through the end of 2009. The parties agree that the Sewer District administrative and capital budgets attached hereto as Exhibits 2 and 3 identify all Sewer District's expected costs through the end of 2010, for all Initiative I work as well as funds needed for grant acquisition and other early-stage work applicable to the other Initiatives described herein.

By approval of this Agreement, the Participants approve the Sewer District budget and administrative allocations through the end of 2009 and for 2010 as shown on Exhibits 1, 2, and 3 respectively, and acknowledge their agreement with the indicated allocation of payment responsibility. Only with agreement of the governing Boards of the Participants may the amount of Sewer District's expenditures for these periods exceed the approved amounts. The Sewer District's assignment of work in the 2010 budget shall be made consistent with requirements of paragraph H of this Agreement, unless precluded by grant stipulations or not allowed by law.

3. **Sewer District Budget for Period of Achieving Initiatives I, IA and II.** The Sewer District will provide Participants with a detailed schedule of project events and budgeted future cash outlays beyond 2010. The Sewer District budget shall include itemization of anticipated expenses of every nature, including but not limited to labor costs, consultants, other contractors and subcontractors, services to the Sewer District to be provided by each Participant (such as clerical and engineering costs), lobbyists, legal costs, costs for facilities and equipment, and direct costs (travel and like expenses) incurred by the Community-at-Large member of the Sewer District. No costs or

expenses shall be incurred by Sewer District without advance approval of budgets by Participants' boards as provided for herein.

4. **Budgeting for Future Needs of the Sewer District.** When the new regional treatment plant on the Blakely Island site commences treatment operations with wastewater from more than one Participant, operating costs for the Sewer District shall be shared proportionately among Participants, based on flow allocation of annual average daily flows (ADF), as related to each cost item. ADF shall be based on actual measurements whenever possible. Because wastewater projects are typically sized based on peak hourly flows, capital expense distribution shall be based on the ratio of estimated 2027 peak hourly flow of the Participants. This ratio establishes the capacity of the wastewater facilities that each Participant reserves for its future use or for the future use of others (as each Participant may decide). Initial average daily flows and peak hourly flows are established in the 2008 Facility Plan Report and included below as Table 2 and Table 3 respectively. Payment requirements for new Participants not included in the Report and possible adjustments to payments of current Participants shall be established using the same allocation methods.

The Sewer District may conduct a study to re-evaluate and possibly re-distribute estimated peak hourly flows of all Participants after every 10-year anniversary of this Agreement. Unless every Participant agrees, such redistribution shall be limited to the original total peak hourly flow of 144 million gallons per day and no more than 5% greater or less than the current peak hourly flow of each Participant. The new distribution of responsibility shall take effect for capital payments after the redistribution and shall not involve reimbursement for past payment responsibility.

Table 2 – Wastewater Treatment Facility Average Flow Information from NPDES Permit

Facility	Permit No.	Effective Date	Expiration Date	Permitted Capacity (MGD)(a)	2005 ADF (MGD) (b)
Chickasaw Lagoon	AL0020885	29-Sep-04	31-Oct-09	1.5	0.76
CC Williams WWTP	AL0023086	15-Jul-04	31-Jul-09	28.0	23.5
Wright Smith WWTP	AL0023094	15-Jul-04	31-Jul-09	12.8	10.4
Carlos Morris WWTP	AL0023205	7-Mar-05	31-Mar-10	4.0	2.4
Stanley Brooks WWTP	AL0055204	4-Jan-05	31-Jan-10	1.5	0.78
Satsuma WWTP	AL0063002	1-May-07	30-Apr-12	0.995	0.65
Total					38.49

(a) MGD = million gallons per day

(b) ADF = average daily flow

Table 3 – 2027 Peak Hourly Flow Projections

Facility	Average Daily Flow (MGD)	Peak Factor	Peak Hourly Flow (MGD)
Chickasaw Lagoon	1.5	3.0	4.5
CC Williams WWTP	30.0	2.5	75.0
Wright Smith WWTP	15.0	2.5	37.5
Carlos Morris WWTP	4.5	3.0	13.5
Stanley Brooks WWTP	1.7	3.0	5.1
Satsuma WWTP	1.3	3.0	3.9
Other Facilities	1.4	3.0	4.5
Totals	55.4	--	144.0

5. **Participants' Assistance with Sewer District Budget.** Participants will share pre-approved, budgeted Sewer District costs for operating services and capital projects not covered by state or federal funds. The relationship of cost participation shall be based on the category of service provided which shall be classified by the Sewer District as either a capital expense or an operating expense.

UBCC will fund the portion of capital costs of the Sewer District based on 100% participation of others considered in the 2008 Facility Plan Report. From Table 3 above, this establishes UBCC proportion of Sewer District capital costs at 3.13% (4.5/144.0). MAWSS will fund the remaining portion of facilities containing MAWSS flow.

Sewer District operating costs will be distributed among Participants based on actual average daily flow, and this distribution shall be recalculated annually. Until the first year of operating flows are established for each Participant, average daily flows in Table 2-4 of the 2008 Facility Plan Report and included above as Table 2 or other established flow documentation, shall be used.

Using Table 2, with the current two Participants, for Sewer District operating budget items not involving the Williams WWTF, the MAWSS proportion will be 93.19% (10.4/(10.4+0.76)) and the UBCC proportion will be 6.81% (0.76/(10.4+0.76)). For operating budget items involving the Williams WWTF, the MAWSS proportion would be 97.81% (10.4+23.5)/(10.4+0.76+23.5) and the UBCC proportion would be 2.19% (0.76/(10.4+0.76+23.5)). All Sewer District costs shall be considered to be capital costs until wastewater flows to the Mobile River via completion of Initiative I.

In recognition of the cost of capital facilities funded by MAWSS or UBCC or another Participant on behalf of future Participants, as additional Participants join the Sewer District or as/if estimated peak hourly flow of existing Participants exceed their stipulated peak hourly flow, the Sewer District budget shall provide that MAWSS, UBCC, and/or another Participant be reimbursed for past capital payment, including interest, made on behalf of accommodating the new Participant or peak daily flow exceedance of existing Participants. Future capital payment percentages will be re-calculated

upon any Participant's request, but no more frequent than annually.

MAWSS and UBCC will document the capital costs expended by MAWSS and UBCC on behalf of future/other Participants and submit this information annually to the Sewer District. In no case shall: a.) any Participant be responsible for capital cost of any facility or item not used by that Participant, b.) reimbursements for past capital payments exceed actual costs plus interest verified by MAWSS and by UBCC, respectively, and c.) any Sewer District operating costs be eligible for reimbursement. Table 1 illustrates the calculation procedure for determining reimbursement costs.

6. **Sewer District Budget for Initiative III.** This Budget will include the information and items referenced above. In addition, this Budget will include a description of any grant funds the Sewer District is to receive in the coming budget year, along with any matching amounts which the Sewer District will need from its Participants.

7. **Approval of Sewer District Budget when additional Participants Join Sewer District.** When a new Participant contemplates joining the Sewer District, Sewer District will provide past budget information for that entity to make budgeting decisions relevant to becoming a Participant. Once the Participant has officially joined, and all required documents recorded, the new Participant will pay its pro rata share of Sewer District costs for the balance of the current budget year and thereafter communicate with the Sewer District as any other Participant. (Also see Section F.)

8. **Apportioning of Williams Wastewater Treatment Plant Costs.** The Sewer District shall maintain its costs in a manner suitable to distinguish whether the Sewer District service is applicable to future inclusion of the Williams WWTF. This will allow Participants other than MAWSS to avoid additional costs when MAWSS abandons the Williams WWTF operations and pumps the wastewater to the regional Blakely Island wastewater treatment plant. It also allows accurate proportioning of Sewer District costs that do not involve MAWSS, or that do not involve any other individual Participant.

9. **Billing and Documentation of Expenses.** Subject to the budgeting provisions and funding limits noted elsewhere in this Agreement, the Sewer District will provide monthly bills for reimbursement of actual expenses of budgeted items to Participants, itemized in a manner that will facilitate clear understanding of each expense. Monthly bills shall include original invoices or copies of original invoices, Sewer District Board's authorization to pay, and the method of proportional payment distribution among Participants. Absent disagreement with invoice amounts or descriptions, Participants will pay Sewer District within 30 (thirty) days of receipt of bill.

In some instances, particularly in the start-up years, it may be necessary, appropriate, or advantageous to project efficiency for Participants to directly pay Sewer District costs which shall only be done with prior approval of the Sewer District's Board. In such cases the Participant shall provide the Sewer District with all information necessary for the Sewer District to have a complete record of existing or future Sewer District costs, facilities, and services.

F. COST RECOVERY FOR SITE DEVELOPMENT AND CONSTRUCTION. When a new Participant joins the Sewer District, the Sewer District shall assess a capacity fee to that

Participant and proportionately reimburse the Founding Participant/s who funded the original, oversized Sewer District pumping stations, discharge lines, outfall diffuser and other facilities used by the new Participant. The amount of the capacity fees shall be such that new Participant pay their fair share of all prior capital costs including interest but excluding grants. Only with the original funding Participant's approval of terms may the new Participant pay the capacity fee over time.

G. REVERSION/ DISTRIBUTION OF PROPERTY

1. In the event that the Sewer District fails as defined herein, is dissolved, or no longer provides services to MAWSS, UBCC and its other Participants, then after debts and expenses are paid, all assets, real and personal, shall be distributed to those Participants who contributed property and/or funding to the District for capital costs, and who have used and need to continue to use the facilities and properties.

2. Upon dissolution or failure of the Sewer District as defined below, the District's property shall be apportioned and distributed among the Participants such as the Board of Water and Sewer Commissioners of the City of Mobile [which does business as MAWSS], the Utilities Board of the City of Chickasaw, and any other Participant at the date of dissolution, in the following manner:

(a) In the event that a Participant provides funding to the District for capital costs of improvements for which the Participant has not been reimbursed, then part of each Participant's dissolution interest shall be expressed as a fraction in which the numerator is the dollars paid to the District by that Participant for capital costs and/or retiring capital debt of any portion of the property held by the District, and the denominator is the aggregate dollars paid jointly with other Participants to the District for capital costs or retiring capital debt for the same portion of property, excluding grants.

(b) Any District property 100% paid for by grants shall be apportioned and distributed (1) to that Participant using that portion of the property exclusively (such as a portion of the discharge line), and (2) if there are multiple Participants using a particular portion of the property, then to those Participants based on their relative dissolution interest percentage determined as a fraction in which the numerator is the dollars paid to the District by the Participant for all capital costs and/or retiring debt of property held by the District and used by those Participants, and the denominator is the aggregate dollars paid jointly by those Participants.

(c) Any property or interest in property conveyed to, or swapped for, the District by any Participant shall revert to the conveying/swapping Participant; for example, if a Participant owns or has an interest in a parcel of land, now or in the future that is subsequently conveyed or transferred to the District for construction and placement of improvements, the real property or interest therein (not the improvements) shall revert; and

(d) All other properties, tangible personal property, cash on hand and in banks, accounts receivable, and any other items of value shall be divided among Participants based on their relative dissolution interest percentage calculated as in 2. (a) above.

3. Notwithstanding the foregoing, any Participant using any portion of the discharge

line, outfall diffuser, pumping stations and associated easements and rights of way at the time of dissolution may continue this use following dissolution, provided that each such Participant shall have paid or will pay the other Participants such amounts to reimburse their capital costs corresponding to their percentage interests, or agrees to pay such other Participant or Participants a reasonable fee for such use.

4. Any portion of the Blakely Island storage and collection and treatment facility (or similar facilities at any other location) shall be apportioned based on use or their relative dissolution interest percentage as described above; provided, however that each Participant shall have paid or will pay the other Participants such amounts to reimburse their corresponding capital costs related to such percentage interest or agrees to pay such other Participant or Participants a reasonable fee for such use.

5. In no event will the Sewer District enter into any agreement or arrangement at any time which may encumber the discharge lines, outfall diffuser, pumping stations, or any other facilities, or the real property and easements where these are located, or otherwise limit or adversely affect any Participant's reversionary rights or other rights to distribution of property set forth in this Development Agreement, without express approval of the affected Participant by resolution of its governing board.

6. Failure of the Sewer District shall be if the Sewer District ever has less than two (2) Participants and the remaining Participant requests dissolution and liquidation, or if all Participants unanimously agree failure has occurred, or if either of any two remaining Participants fails to pay its share of Sewer District budget or reimbursement expenses. Immediately upon failure, the Sewer District shall provide records to assist the remaining Participant's or Participants' determination of ownership, help effect ownership transfer, and take prompt, necessary actions to dissolve the Sewer District.

H. PARTICIPANT RIGHT OF FIRST REFUSAL FOR PROVIDING SERVICES. At least until site preparation of Initiative II is completed and a treatment facility is under construction on Blakely Island site, the Sewer District will offer Participants the right of first refusal to provide services for the Sewer District, including secretarial, accounting, engineering, public relations, clerical, operation and maintenance, treatment personnel, etc., and shall not hire an employee without formal approval of Participants.

Each Participant will be responsible for identifying to Sewer District the services that the Participant wishes to provide along with the costs of those services. Selection of services to Sewer District from competing Participant proposals shall be based on lowest cost meeting specified service requirements. The purpose of this right of first refusal is to reduce costs Sewer District must pass on to the Participants. Therefore, Sewer District is not obligated to accept services from any Participant when those same services can be obtained from other service providers at less cost. Services to be provided by Participants shall be identified and agreed upon in the Sewer District's annual budget development and approval process before assignments are given to other Sewer District service providers.

While Participants may provide services or in-kind services to the Sewer District as related to

projects associated with Federal or State funding, in no case shall services or potential services of Participants interfere with the ability of the Sewer District to seek, obtain, or expend Federal or State funding.

I. FINANCING LIMITATIONS. Opportunities for obtaining funding shall be conveyed to the Sewer District by its Participants. Since the Sewer District was established with the intention that its regional Sewer System would be funded with public grant money, Sewer District shall not enter into any agreement or arrangement for funding which will incur repayment obligations, which will require payment of any matching funds by Participants, which will encumber any properties or facilities which are part of the Sewer System (whether then owned by Sewer District or by a Participant), or which will otherwise require repayment by or obligate any Participant to any degree, unless and until all Participants have approved the agreement or arrangement through resolution of their governing boards. In no event shall the Sewer District borrow money or incur any repayment obligation without formal consent of all Participants.

J. OBTAINING NEW PARTICIPANTS. The Sewer District shall use its best efforts to enlist new Participants. The Sewer District shall develop a written plan for seeking new Participants and shall present this plan to the Founding Participants at meetings of their Boards. The Sewer District shall develop a reporting mechanism to periodically update each Participant on the outcome of these efforts. New Participants will be required to sign an agreement similar to this Agreement and expressly certifying their acceptance of all conditions in this Agreement.

K. INFORMATION SHARING.

1. So long as the operations of Sewer District are not unreasonably interfered with or disrupted, duly authorized representatives of Participants shall be permitted to enter Sewer District premises at all reasonable times to inspect Sewer District's books and records. If Sewer District's books and records are located off premises, Sewer District will make arrangements for Participants to review them at reasonable times and places.

2. Participants shall likewise make their books and records, related to Sewer District activities, available for inspection at reasonable times and places by duly authorized representatives of Sewer District.

3. Participants shall, upon request, furnish to Sewer District such information and reports as are reasonably necessary for attainment of the Initiatives described herein and for the operations of the regional Sewer System as the Initiatives are achieved.

L. COMPLIANCE WITH FLOW AND WATER QUALITY REQUIREMENTS.

1. The parties agree that the operational performance of treatment facilities provided by Sewer District and the proportional payments required by Sewer District of each Participant for various services are based on water quality and quantity criteria of each Participant. It is the parties' intent that these criteria are not intended to limit growth in any area of the Sewer District and that revisions of the criteria of each Participant shall be considered whenever appropriate.

2. Water quality requirements of each Participant shall be no less stringent than the EPA or ADEM permitted National Pollution Discharge Elimination System (NPDES) discharge requirements of the Participant would be if that Participant were the only discharger. The requirements shall be clearly stipulated and agreed upon in a Membership Report, including all NPDES requirements, submitted by each Participant prior to the Sewer District accepting discharge flow from any Participant. Each Participant shall update its Membership Report to the Sewer District at least every five (5) years or more often as may be requested by the Sewer District.

The Sewer District shall measure discharge water quality for each Participant in the Participant's wastewater flow before mixing with flow from any other Participant. Dilution or mixing of wastewater flow with that from other Participants shall not be considered when evaluating acceptability of discharge water quality. Should water quality from any Participant exceed the stipulated provisions in the Membership Report provided by the Participant and accepted by the Sewer District, the Sewer District will take immediate steps to cause corrective measures to be taken by the exceeding Participant. The Report, showing exceedances, and corrective measures shall be made available to all Participants.

3. Each Participant shall maintain its wastewater flow to the Sewer District at levels not exceeding the peak hourly and average daily amounts indicated in the 2008 Facility Plan Report or in the Membership Report. Should flow rates from any Participant exceed the provisions, the Sewer District will take immediate steps necessary to cause corrective reduction of such flows. If, after three (3) accumulated months of exceedances, a satisfactory solution and schedule is not approved for eliminating such exceedances, the Sewer District is authorized to progressively or otherwise increase the rates charged to the exceeding Participant and to take any other measure to encourage prompt, effective compliance with the values agreed to in the Membership Report.

Any Participant may transfer flow and other allowances of their Membership Report to any other Participant/s with 180 days written notification to the Sewer District by each of Participants involved in the transfer.

M. GENERAL/MISCELLANEOUS PROVISIONS.

1. **Amendment of Contract.** This Agreement shall not be amended, modified or otherwise changed except by mutual agreement of the parties, reflected by resolution of their governing boards. In no event will this Agreement be changed to allow public or private financing or any other agreement or arrangement for use of non-grant funds, or any encumbrance of properties or property rights granted by a Participant, or any other obligation for which Participants may be held responsible, without the vote of all Participant governing boards, set forth in resolutions of each.

2. **Transfer of Contract.** Neither this Agreement, nor any interest herein, nor any right in any contract between Sewer District and its Participants, shall be transferable or assignable by the Sewer District or by the Participants, without the prior written consent of the others, reflected in resolution of their governing boards.

3. **Termination/Opt Out.** Participants and the Sewer District recognize that

circumstances may arise that prevent or cause a Participant to determine that it cannot continue to participate in this Agreement, or that it cannot or will no longer use the Sewer District's Sewer System, and that it desires to terminate relations with the Sewer District. In that event, except for the provision below, the Participant may terminate this Agreement and opt out of the Sewer District and its sewer system. Such a Participant must provide ninety (90) days written notice prior to the date the Participant desires to terminate the Agreement. The Participant must also provide the Sewer District with specific reasons and causes for doing so, although the requirement to provide this information is not to be construed as limiting a Participant's right to terminate this Agreement as to itself. Participant's previous approval of Sewer District's annual budget shall require Participant to fund the Sewer District for that year, even if Participant later determines to discontinue participation in the Sewer District before the end of the budgeted year. Termination of this Agreement by a Participant will not affect that Participant's reversionary rights as provided herein.

In no case shall a Participant be allowed to opt out of the Sewer District during any time period after the Sewer District has received federal assistance for a capital project and before the local share of that capital project has been fully satisfied. Each Participant must pay its share of any matching local costs of federal grants before that Participant can opt out.

4. **Notices.** All notices required to be given hereunder shall be in writing and delivered personally or by certified mail, return receipt requested, and addressed as follows:

Sewer District:	Alabama Gulf Coast Regional Sewer Supply District P.O. Box 2368 Mobile, AL 36652-2368 ATTN: AGCRSSD Chair
MAWSS:	Mobile Area Water & Sewer System P.O. Box 2368 Mobile, AL 36652-2368 ATTN: MAWSS Board Chair (or Director)
UBCC:	Utilities Board of the City of Chickasaw 224 N Craft Highway Chickasaw, AL 36611 ATTN: Mayor of Chickasaw

New Participants shall provide the Sewer District and its current Participants their contact information, in the manner set forth in this provision.

5. **Severability; Amendment of Sewer District Articles.** If any provision of this Agreement shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain valid and enforceable. Should the Sewer District determine that any provision hereof is in conflict with its Certificate of Incorporation, then the Certificate shall be revised to conform with this Agreement. Sewer District covenants that it will not amend its Certificate of Incorporation in any way that will create a conflict or ambiguity with this Agreement.

6. **Remedies.** This Agreement shall be specifically enforceable by any party hereto in

accordance with law.

7. **Choice of Law, Jurisdiction, and Venue.** This Agreement shall be construed and enforced pursuant to the laws of the State of Alabama. Jurisdiction and venue for any action or proceedings brought hereunder shall be proper only in the state and federal courts located in Mobile County, Alabama.

8. **Term of Agreement.** This Agreement shall become effective as of the date all three parties have signed, and shall continue in effect for ninety-nine (99) years from said date. This provision is also subject to the right of a Participant to terminate its participation in this Agreement, as specifically provided for in paragraph M.3. Provisions, which by their nature are continuing (such as but not limited to reversion rights), will survive this agreement.

9. **Awareness of Contents/Legal Effect.** The parties expressly acknowledge that they have read this Agreement and that they have consulted with their respective legal counsel regarding the meaning of its terms and conditions. The parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept all its terms and conditions.

10. **Contract Binding on All; Benefit is for Parties.** This Agreement shall be binding upon each of the parties, and each of their respective directors, officers, board members, employees, engineers, other consultants, contractors and subcontractors, successors, and assigns. This Agreement is made for the express benefit of the Sewer District and its Participants. This Agreement is not intended to confer any rights upon any person or entity which is not a named party hereto.

11. **Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when signed by all parties, shall be considered an original.

12. **Captions.** The captions or headings contained herein are included solely for convenience and shall not be of any effect in determining the meaning of any provision of this Agreement.

13. **Authority to Enter into This Agreement.** Each party represents and warrants that its respective obligations herein are legal and binding obligations of such party, that it is fully authorized to enter into this Agreement, and that the person signing this Agreement on its behalf has been duly authorized to sign this document on behalf of such party.

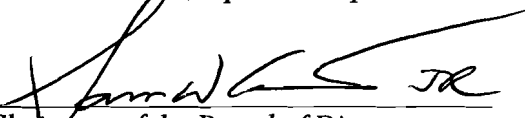
14. **Entire Agreement.** This Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto, both written and verbal, relating to the four Initiatives described herein, budgeting matters, funding, and all other subjects contained herein, and constitutes the entire agreement among these parties in respect thereof.

The rest of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers, as of the day and year first above written.

ALABAMA GULF COAST REGIONAL SEWER
SUPPLY DISTRICT, a public corporation

(SEAL)

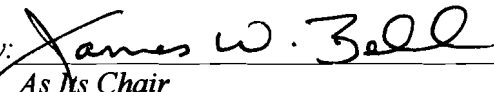
By: 
Vice-Chairman of the Board of Directors

ATTEST:

By: 
Secretary of the Board of Directors
Member

Board of Water & Sewer Commissioners of the City of
Mobile, dba MOBILE AREA WATER AND SEWER
SYSTEM

(SEAL)


By: 
As Its Chair

ATTEST:

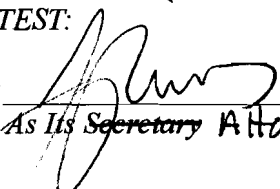
By: 
As Its Secretary-Treasurer

UTILITIES BOARD OF THE CITY OF CHICKASAW

(SEAL)

By: 
As Its Chair

ATTEST:

By: 
As Its Secretary Attorney

[Notary acknowledgements are on following pages.]

STATE OF Alabama :
COUNTY OF Mobile :

I, the undersigned Notary Public, in and for said County in said State, hereby certify that Sam Covert, whose name as ^{vice} Chairman of the Board of Directors of ALABAMA GULF COAST REGIONAL SEWER SUPPLY DISTRICT, a public corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his capacity as said officer and with full authority, executed the same voluntarily on the day the same bears date as and for the act of said public corporation.

Given under my hand and official notarial seal this 22nd day of March, 2010.

(AFFIX NOTARIAL SEAL)

Mildred M. Hartzog
NOTARY PUBLIC, County of Mobile,
State of Alabama
My Commission Expires: 10-1-2013

STATE OF Alabama :
COUNTY OF Mobile :

I, the undersigned Notary Public, in and for said County in said State, hereby certify that Henry S. Cree, whose name as ^{member} Secretary of the Board of Directors of ALABAMA GULF COAST REGIONAL SEWER SUPPLY DISTRICT, a public corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his capacity as said officer and with full authority, executed the same voluntarily on the day the same bears date as and for the act of said public corporation.

Given under my hand and official notarial seal this 22nd day of March, 2010.

(AFFIX NOTARIAL SEAL)

Mildred M. Hartzog
NOTARY PUBLIC, County of Mobile,
State of Alabama
My Commission Expires: 10-1-2013

STATE OF Alabama :
COUNTY OF Mobile :

I, the undersigned Notary Public, in and for said County in said State, hereby certify that James W. Bell, whose name as Chair of Board of Water and Sewer Commissioners of the is signed to the City of Mobile

foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his capacity as said officer and with full authority, executed the same voluntarily on the day the same bears date as and for the act of said corporation.

Given under my hand and official notarial seal this 22nd day of March, 2010.

(AFFIX NOTARIAL SEAL)

Mildred M. Hartzog
NOTARY PUBLIC, County of Mobile,
State of Alabama
My Commission Expires: 10-1-2013

STATE OF Alabama :
COUNTY OF Mobile :

I, the undersigned, Notary Public, in and for said County in said State, hereby certify that Bryan Pittman, whose name as Chair of Utilities Board of the City of Chickasaw, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his capacity as said officer and with full authority, executed the same voluntarily on the day the same bears date as and for the act of said corporation.

Given under my hand and official notarial seal this 22nd day of March, 2010.

(AFFIX NOTARIAL SEAL)

Mildred M. Hartzog
NOTARY PUBLIC, County of Mobile,
State of Alabama
My Commission Expires: 10-1-2013

EXHIBIT 1

SEWER DISTRICT 2009 EXPENDITURES AND EXPENSES

	Site	3.13%	96.87%
	Other	6.52%	93.48%
EXPENSES	<u>TOTAL</u>	<u>UBCC</u>	<u>MAWSS</u>
1 Start up Sewer District Funding by MAWSS	\$ 200,000	\$ -	\$ 200,000
2 Add'l Sewer District Start-up Costs as of 10/27/09	47,971	3,128	44,843
3 Add'l est. S. D. Start-up Costs through end of 2009	15,000	978	14,022
4 Pirnie bill for 2009	62,592	4,081	58,511
5 Lobbyist - Callahan (DC) (2 months)	18,333	1,195	17,138
6 Lobbyist - (State of Alabama) (\$2000/mo.) (2 months)	<u>4,000</u>	<u>261</u>	<u>3,739</u>
Total Est. 2009 Expenses and Proportional Shares	<u>\$ 347,896</u>	<u>\$ 9,643</u>	<u>\$ 338,253</u>

EXHIBIT 2

SEWER DISTRICT 2010 ADMINISTRATIVE BUDGET

		Site	3.13%	96.87%
		Other	6.52%	93.48%
ADMINISTRATIVE BUDGET				
<u>Acct</u>		<u>TOTAL</u>	<u>UBCC</u>	<u>MAWSS</u>
<u>#</u>				
EXPENSES				
41010	Labor-MAWSS-provided	10,000	652	9,348
42000	Audit Fees	1,000	65	935
42120	Engineering – District	see Exhibit 3	-	-
42150	Insurance Expense - D&O Policy	3,500	228	3,272
42190	Legal Fees (District & MAWSS)	100,000	6,520	93,480
42191	Lobbyist - Callahan			
	A. Callahan - Federal	110,000	7,172	102,828
	B. State of Alabama lobbyist	24,000	1,565	22,435
42230	Misc Outside Services:			
	A. FEMA (Tidal Basin Gov't Consultants)	15,000	978	14,022
	B. Galbraith & Associates	15,000	978	14,022
42233	Other Administrative costs			
	A. Project Management (MAWSS)			
	a. Grant Administration (Sewer District)	40,000	2,608	37,392
	b. Admin. Assistance (Project) - MAWSS	40,000	2,608	37,392
	B. ASPA - Admin. Assistance - MAWSS	60,000	3,912	56,088
	a. Land acquisition (swap)			
	b. Leachate ponds - treatment			
	c. USACE Coordination (site issues, outfall, nav.)			
44310	Professional Development (Travel)	<u>25,000</u>	<u>10,326</u>	<u>14,674</u>
	Total Administrative Expenses	<u>\$ 443,500</u>	<u>\$ 37,612</u>	<u>\$ 405,888</u>

EXHIBIT 3

SEWER DISTRICT 2010 CAPITAL BUDGET

	Site		3.13%	96.87%
	Other		6.52%	93.48%
CAPITAL BUDGET				
	<u>TOTAL</u>		<u>UBCC</u>	<u>MAWSS</u>
A. NPDES Permits				
a. NPDES Permit Application Prep./Submittal	\$ 20,000	\$	626	\$ 19,374
b. DIZ Report Sampling/Report Prep/Submittal	40,000		1,252	38,748
c. Modeling (Assimilation)	25,000		783	24,218
d. Modeling (Coremix)	25,000		783	24,218
c. Permitting Administration/coord./ ADEM	10,000		313	9,687
B. Construction Permits				
a. ADEM Permit	10,000		-	10,000
b. USACE Permit	50,000		-	50,000
c. USFW Permit	10,000		-	10,000
d. ALDOT Permit	5,000		-	5,000
Discharge Line to Mobile River (West) Engineering				
C. Design (complete, through project bidding)				
a. Design	621,000 (1)		-	621,000
b. R/W and Easements (description by District, negotiation & purchase by MAWSS)	300,000		-	300,000
c. Route Selection	35,000		-	35,000
d. Geotechnical testing (design & construction)	<u>100,000</u>		<u>-</u>	<u>100,000</u>
 Total capital projects	 <u>\$ 1,251,000</u>	 <u>\$</u>	 <u>3,756</u>	 <u>\$ 1,247,244</u>
 OTHER CONSIDERATIONS FOR POSSIBLE MID-2010 CAPITAL BUDGET ADDITION				
D. Mobile River Outfall Diffuser				
a. Route Selection	\$ 15,000	\$	-	\$ 15,000
b. Design	<u>309,000 (1)</u>		<u>-</u>	<u>309,000</u>
	<u>\$ 324,000</u>	<u>\$</u>	<u>-</u>	<u>\$ 324,000</u>

(1) Actual design fees to be based on percentage of project const. cost using percentage figures from the latest contract between MAWSS & Volkert & Associates.

EXHIBIT 4

STATEMENT OF INTENT

This statement of intent is made by the Alabama State Port Authority ("Port Authority"), the Alabama Gulf Coast Regional Sewer Supply District, Inc. ("Sewer District"), and the Board of Commissioners of the Mobile Area Water and Sewer System ("MAWSS"):

(a) Sewer District:

The Sewer District has been incorporated for the purpose of locating and operating a regional collection and treatment system, outfall, storage and treatment facility. The Sewer District will work with local water and sewer utilities and accept their collected and treated wastewater for storage, treatment and discharge through a central discharge point on Blakeley Island (the "Outfall").

The initial utilities participating with the Sewer District are the Utilities Board of the City of Chickasaw and MAWSS.

(b) Port Authority:

The Alabama State Port Authority owns approximately 120 acres consisting of the former Alcoa disposal property on Blakeley Island presently used by the Port Authority and the U. S. Army Corps of Engineers as a disposal site for material dredged from the Mobile River ("Facility Site").

The Port Authority has recently agreed to allow MAWSS to conduct exploration, soil tests and soil borings on the Facility Site for possible locations suitable for construction of a regional wastewater storage and treatment facility.

To facilitate the Sewer District's provision of services, the Port Authority is agreeable to entering negotiations with MAWSS for MAWSS's acquisition of the Facility Site from the Port Authority. The Port Authority is also agreeable to entering negotiations with MAWSS for the granting of appropriate easements on Port Authority property as needed to connect the Facility Site to the Outfall.

(c) MAWSS:

MAWSS has negotiated and executed an agreement with the Port Authority to conduct engineering and soil tests and borings on the Facility Site to determine the suitability of a location for a regional wastewater storage and treatment facility by the Sewer District.

MAWSS, along with the Utility Board of the City of Chickasaw, is a participant with the Sewer District. MAWSS will deliver wastewater collected from its customers through its collection system, and treated in its plants, to the regional facility to be owned and operated by the Sewer District.

EXHIBIT 4

MAWSS owns and operates the Williams wastewater treatment plant located on 28 acres on McDuffie Island ("McDuffie Plant") and plans to close and move such treatment operations when funds are available to do so. MAWSS thereafter intends to deliver collected wastewater to the Sewer District for treatment and discharge.

MAWSS is agreeable to enter into negotiations with the Port Authority for the Swap of the McDuffie Plant to the Port Authority in return for the Facility Site and necessary easements.

(d) Sewer District Intent:

The Sewer District, Port Authority and MAWSS, by signing this Statement of Intent, acknowledge each other's desires as expressed generally herein, and intend to move forward with discussions with each other to reach agreements on terms satisfactory to implement such intent.

The provisions of this statement are intended only as an expression of intention on behalf of the Port Authority, the Sewer District and MAWSS, are not intended to be legally binding and are expressly subject to the execution of definitive agreements. No past or future action, course of conduct or failure to act relating to the foregoing proposed transactions, or relating to the negotiation of the terms of proposed transactions, will give rise to or serve as a basis for any obligation or other liability on the part of the Port Authority, the Sewer District or MAWSS.

Done in Mobile Alabama, this 31st day of December, 2008.

SEWER DISTRICT:

By: Wesley A. James
Rev. Wesley A. James
Chairman

**ALABAMA STATE
PORT AUTHORITY:**

By: James K. Lyons
James K. Lyons
As # Director
J.K.L.

MAWSS:

By: Wesley A. James
As A Director