

*Draft dated 10/14/2010*

**WASTEWATER CAPACITY SALE  
AND PURCHASE AGREEMENT**

**between**

**THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY**

**and**

**THE BOARD OF COUNTY SUPERVISORS OF PRINCE  
WILLIAM COUNTY**

**Dated \_\_\_\_\_, 2010**

## **Wastewater Capacity Sale and Purchase Agreement**

THIS AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body politic and corporate, hereinafter referred to as "Fairfax" and the BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA, a body politic and corporate, hereinafter referred to as "Prince William" (collectively referred to as the "Parties").

### **WITNESSETH:**

WHEREAS, Fairfax, Prince William, the City of Manassas, and the City of Manassas Park (with such Political Subdivisions being collectively referred to as the "Participants") have entered into a UOSA Service Agreement which provides for the delivery and treatment of wastewater at the UOSA Millard H. Robbins, Jr. Regional Water Reclamation Plant ("UOSA Plant"); and

WHEREAS, the UOSA Service Agreement provides, among other things, for the wastewater delivery and treatment capacity allocable to each respective Participant; and

WHEREAS, Fairfax has contracted with UOSA pursuant to the UOSA Service Agreement for 27.5999 million gallons per day of wastewater delivery and treatment capacity in the UOSA System; and

WHEREAS, Fairfax has determined that it has an available and unused wastewater Capacity Allocation in the UOSA Delivery System and the UOSA Plant that can be made available and used by the Participants using such facilities to meet the wastewater service area flow demands of such respective Participants; and

WHEREAS, Fairfax wants to offer its available unused wastewater delivery and treatment capacity to Prince William to assist Prince William in meeting the wastewater capacity needs of its respective service area; and

WHEREAS, the Parties realize the economic benefit of utilizing existing available wastewater treatment capacity to meet the wastewater treatment capacity requirements of the respective Participants' wastewater service areas to defer the construction of new wastewater treatment capacity; and

WHEREAS, Prince William desires to secure a portion of the available unused wastewater delivery and treatment capacity that is currently allocated to Fairfax and which is an obligation of Fairfax with respect to the funding or payment of such capacity to UOSA; and

WHEREAS, Fairfax has the authority to enter into an agreement to sell a portion of the available unused wastewater delivery and treatment capacity to Prince William; and

WHEREAS, Prince William has the authority to enter into an agreement to purchase from Fairfax a portion of its available unused wastewater delivery and treatment capacity offered by Fairfax; and

WHEREAS, UOSA has advised the parties that it will approve a reallocation of capacity consistent with Section 2.2 herein; and

WHEREAS, in 2007, the Parties entered into a Wastewater Capacity Sale and Purchase Agreement whereby Fairfax sold 2 MGD of its available unused wastewater and treatment capacity to Prince William (the "2007 Capacity Agreement"); and

WHEREAS, the terms of the 2007 Capacity Agreement, except as to price, were substantially consistent with the terms of this Agreement, and in 2007, UOSA approved a reallocation of capacity consistent with the 2007 Capacity Agreement;

NOW, THEREFORE, in consideration of the aforementioned premises, and of the mutual benefits to be derived therefrom, and of the respective undertakings, promises, and covenants of the Parties hereto as hereinafter contained, and that the above recitals are true and correct and

incorporated herein by reference, the Parties hereto mutually covenant, undertake, promise, and agree as follows:

ARTICLE I  
SHORT TITLE AND DEFINITIONS

SECTION 1.1        SHORT TITLE. This Agreement between Fairfax and Prince William shall be referred to as the "2010 Capacity Agreement" or this "Agreement".

SECTION 1.2        DEFINITIONS. The terms in this Section, for all purposes of this 2010 Capacity Agreement and any amendments or other changes thereto, shall have the following meanings:

1. "Act" means the Virginia Water and Waste Authorities Act (§ 15.2-5100, et seq., Code of Virginia of 1950, as amended, and as it may be amended from time to time).
2. "Adjusted Capacity Allocation Percentage" means the Capacity Allocation Percentage adjusted for purposes of this Agreement to recognize the sale and purchase of the Purchased Capacity, including the 2007 Purchased Capacity.
3. "Capacity" means the total capacity permitted by DEQ in the Certificate to Operate for the UOSA Plant expressed as the highest average of any 30 consecutive day flow.
4. "Capacity Allocation" means the allocation of Capacity in the UOSA Plant to which each Participant has the exclusive use and entitlement pursuant to the UOSA Service Agreement.
5. "Capacity Allocation Percentage" means the Capacity Allocation expressed on a percentage basis that is calculated using a Participant's respective Capacity Allocation as the numerator and the Capacity as the denominator.
6. "Capital Cost per Gallon of UOSA Capacity" means the acquisition price paid by Prince William for the purchase of one gallon of the Capacity Allocation from Fairfax, calculated as prescribed in Section 2.4 and Attachment B of this Agreement.
7. "DEQ" means the Virginia Department of Environmental Quality and / or the State Water Control Board or any other agency or agencies of the Commonwealth of Virginia or the United States that may succeed to their duties.

8. "Excess Flow" means the amount of wastewater flow delivered by Prince William to UOSA as metered at the Point of Delivery by UOSA that is greater than the sum of (a) the Prince William Capacity Allocation, plus (b) the Purchased Capacity, including the 2007 Purchased Capacity, as determined by the highest average of any 30 consecutive day flow ending during the month.
9. "Fairfax Capacity Allocation" means the Capacity Allocation to which Fairfax is entitled under the UOSA Service Agreement.
10. "Fiscal Year" means the twelve consecutive months beginning July 1<sup>st</sup> and ending June 30<sup>th</sup>.
11. "Force Majeure" includes, but is not limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of armed forces, epidemics, delays by carriers, inability to obtain materials or rights-of-way on reasonable terms, acts or failures to act by public authorities not under the control of any party to this Agreement, or acts or failures to act by regulatory authorities.
12. "Meters" means any device for measuring the flow of wastewater delivered to the UOSA System by the Participants.
13. "MGD" means millions of gallons per day.
14. "Occoquan Policy" means the DEQ State Water Control Board's Policy for Waste Treatment and Water Quality Management in the Occoquan Water shed, dated July 26, 1971, as the same has been or may be revised from time to time.
15. "Participants" means the parties having a Capacity Allocation in the UOSA System in accordance with the UOSA Service Agreement, which parties include Fairfax County, Prince William County, the City of Manassas, the City of Manassas Park, and any other unit of local government which may be added in the future due to amendment, restatement, or modification of the UOSA Service Agreement.
16. "Permitted UOSA Plant Capacity" or "Plant Capacity" means the then current capacity permitted by DEQ pursuant to the issuance of a Certificate to Operate.
17. "Points of Delivery" means the location of the connections made by the Participants at any point along the UOSA Delivery System for the Participants' delivery of wastewater to UOSA for treatment and disposal.

18. "Purchased Capacity" means the amount of Fairfax Capacity Allocation that is purchased by Prince William in accordance with this Agreement. "2007 Purchased Capacity" means the amount of Fairfax Capacity Allocation (2 MGD) that was purchased by Prince William in accordance with the 2007 Capacity Agreement.
19. "System Capacity" means the Capacity at the UOSA Plant and the Participants' implied capacity in the UOSA Delivery System necessary to deliver wastewater from the Point of Delivery to the UOSA Plant.
20. "Transfer Date" means the date that the Purchased Capacity is sold and made available by Fairfax and purchased by and transferred to Prince William for its exclusive use.
21. "UOSA" means the Upper Occoquan Sewage Authority, a public body politic and corporate duly created pursuant to the Act by the Councils of the Cities (then Towns) of Manassas and Manassas Park and the Boards of Supervisors of Fairfax and Prince William Counties and a certificate of Incorporation issued by the State of Corporation Commission of Virginia on April 1, 1971, as may be amended, restated, or modified from time to time.
22. "UOSA Bonds" means notes, bonds, bond anticipation notes or other debt obligations of UOSA whether now outstanding or to be issued in the future.
23. "UOSA Delivery System" means the regional delivery system of trunk or interceptor sewers now existing or to be expanded, constructed or modified, owned, operated and managed by UOSA for the transmission of wastewater from the respective Participant's sewer sheds or service areas to the UOSA Plant including, but are not limited to, power supplies, pumping facilities, force mains, flow metering and measuring devices, storage facilities, and other related utility plant that is necessary to convey wastewater. Such facilities are in addition to the facilities that comprise the UOSA Plant that is owned, operated, or managed by UOSA.
24. "UOSA Existing Bonds" means the outstanding principal amount of the Regional Sewer System Bonds, Series 1995A Bonds, Regional Sewer System Revenue Refunding Bonds, Series 1995B Bonds, Regional Sewer System Revenue Refunding Bonds, Series 2003 Bonds, Regional Sewer System Refunding Bonds, Series 2004 Bonds, Regional Sewer System Refunding Bonds, Series 2005 Bonds, Regional Sewer System Refunding Bonds, Series 2007A Bonds, Regional Sewer System Bonds, Series 2007B Bonds, and any other

- notes, bonds, bond anticipation notes or other debt obligations of UOSA issued prior to the Transfer Date, and any bonds issued to refund any of the bonds included in this definition.
25. "UOSA Existing Bonds Component" means the outstanding principal amount of the UOSA Existing Bonds that is allocable to the Capacity Allocation that is sold by Fairfax to Prince William.
  26. "UOSA Liability" means the amount of existing and future UOSA Bonds and other related financial obligations for which the Participants are responsible for payment in accordance with the Capacity Allocation Percentage as referenced in the UOSA Service Agreement.
  27. "UOSA Plant" means UOSA's Millard H. Robbins, Jr. Regional Water Reclamation Plant, now existing or as it may be expanded, constructed, re-rated or modified that is owned, operated or managed by UOSA, including administration buildings, plant offices, laboratory building, retention and ballast basins, power supplies, and necessary appurtenances and equipment, for the treatment of wastewater and the utilization and / or disposal of residuals and by-products in conformance with the requirements of the Occoquan Policy and DEQ.
  28. "UOSA Service Agreement" means the UOSA Service Agreement dated as of the 15<sup>th</sup> day of May, 1972, as amended, restated, or modified from time to time, which, among other things, contractually obligates UOSA to provide wastewater delivery and treatment capacity and service to the Participants. A copy of the version of the UOSA Service Agreement in effect as of the date of this Agreement is included in Attachment A for reference.
  29. "UOSA System" means the combination of the UOSA Plant and the UOSA Delivery System.

## ARTICLE II SALE OF CAPACITY

SECTION 2.1      CAPACITY ALLOCATION TRANSFER. Fairfax agrees to sell and Prince William agrees to purchase 2.0 MGD of the Fairfax Capacity Allocation with respect to the expansion of the UOSA Plant from 27.0 to 54.0 MGD, including the associated UOSA Delivery System. As between these parties, and subject to Section 2.7, the purchase of 2.0 MGD

of the Fairfax Capacity Allocation is considered as being permanent in nature and, as between these Parties, Prince William assumes all future responsibility for the UOSA Liability, except for the liability associated with the UOSA Existing Bonds Component, as it relates to the acquisition of Purchased Capacity, as of and subsequent to the Transfer Date. As between these Parties, Fairfax will be relieved of all UOSA Liability, except for the liability associated with the UOSA Existing Bonds Component, with respect to the sale of the Purchased Capacity as of and subsequent to the Transfer Date. As of the Transfer Date, the Parties will request UOSA to bill in accordance with the Adjusted Capacity Allocation Percentages as if the Capacity Allocations had been correspondingly revised in accordance with the UOSA Service Agreement. The Parties agree that for the 2.0 MGD of Capacity Allocation that is transferred from Fairfax to Prince William as of the Transfer Date, the Adjusted Capacity Allocation Percentage will be calculated as follows:

- A. For Fairfax's share of the total Permitted UOSA Plant Capacity:  
(Fairfax Capacity Allocation [27.5999 MGD] minus 3.0 MGD sold in 2007 minus 2.0 MGD sold in 2010) / Permitted UOSA Plant Capacity [54.0 MGD]
- B. For Prince William's share of the total Permitted UOSA Plant Capacity:  
(Prince William Capacity Allocation [15.7971 MGD] plus 2.0 MGD purchased in 2007 plus 2.0 MGD purchased in 2010) / Permitted UOSA Plant Capacity [54 MGD]

With respect to the cost apportionment of the UOSA Liability exclusive of the liability associated with the UOSA Existing Bonds Component, the Parties agree that the purchase and sale of the Purchased Capacity will only affect the charges for the facilities that are currently installed and in place and which correspond to the UOSA Service Agreement. The parties hereto acknowledge that the purchase and sale of the Purchased Capacity will not affect the Capacity Allocations or Capacity Allocation Percentages under the UOSA Service Agreement.

SECTION 2.2            NOTIFICATION OF TRANSFER. Execution of this Agreement will serve as notification by Fairfax and Prince William to UOSA of the intent to sell a portion of the

Fairfax Capacity Allocation to Prince William. Upon execution of this Agreement, the Parties will provide a copy of this Agreement to UOSA and request, pursuant to Section 5.4 of the Service Agreement that UOSA approve the reallocation of capacity set forth herein. Pursuant to Section 5.4 of the Service Agreement, the Parties will further request UOSA to change the UOSA Plant capacity allocations on its books and records for billing purposes and bill in accordance with the transfer of capacity set forth in this Agreement. However, the Parties acknowledge that this Agreement does not in any way alter the Parties' underlying obligations under the Service Agreement. The Parties affirm that this Agreement is not an assignment or novation of the Service Agreement and does not reduce, change or modify either Party's obligations under the Service Agreement.

SECTION 2.3        TRANSFER DATE. The Transfer Date for the Purchased Capacity shall occur on the first day of the calendar year quarter (January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, or October 1<sup>st</sup>) subsequent to the execution of this Agreement by all Parties.

SECTION 2.4        ACQUISITION PRICE OF PURCHASED CAPACITY AND PAYMENT. The acquisition price to be paid by Prince William for the purchase of 2.0 MGD will be based on all costs incurred by Fairfax with respect to the expansion of the UOSA Plant from 27.0 MGD to 54.0 MGD. The price per gallon of such UOSA Plant component of the UOSA System Capacity is calculated to be \$ 15.765 per gallon. The determination of per unit cost of the UOSA Plant component of the total UOSA System Capacity is shown on Attachment B, which is made a part of this Agreement. The price per gallon of the Delivery System component of such UOSA System Capacity is calculated to be \$ 4.139 per gallon. The determination of the unit cost of the Delivery System component of the UOSA System Capacity is shown on Attachment B, which is made a part of this Agreement. Based on the foregoing, the acquisition price for the Purchased Capacity for 2.0 MGD, which includes the sum of the UOSA Plant component and the Delivery System component of the expanded UOSA System Capacity from 27 MGD to 54 MGD and other UOSA System needs supported by the 2007B Series Bonds,

to be paid by Prince William is \$39,807,586 as calculated in Attachment C, which may be further adjusted as provided in this section.

The payment for the Purchased Capacity by Prince William will be due in total prior to the Transfer Date, except as maybe adjusted within this section.

Fairfax reserves the right to seek a change in the Service Agreement which reflects the sale of capacity set forth in this Agreement.

Fairfax has the option pursuant to Section 6.4 (g) of the Service Agreement to prepay in full to the UOSA Trustee an amount that will fully fund the outstanding principal, if necessary the interest and financing costs, of the UOSA Bonds associated with the Purchased Capacity. The prepayment of the UOSA Bonds must meet the requirements of Section 6.4(g) of the UOSA Service Agreement and will result in no change in the payment of the outstanding UOSA Bonds for the remaining Participants of the UOSA Service Agreement.

As between these parties, subject to Section 2.2, after the prepayment of the UOSA Existing Bonds allocable to the Purchased Capacity by Fairfax derived from the proceeds of the sale of Purchased Capacity, Fairfax will no longer have any future obligation to pay that portion of the principal amount of such UOSA Bonds associated with the Purchased Capacity. In no event will Prince William incur a debt repayment obligation associated with the UOSA Existing Bonds Component.

To the extent that UOSA does not adjust the Capacity Allocation and Capacity Allocation Percentage for billing purposes following the sale of the Purchased Capacity as presented in the current UOSA Service Agreement, then Prince William agrees that it will be responsible for all future costs and charges invoiced by UOSA to Fairfax pursuant to §§ 6.1(b) and (c) and 6.3 and 6.4 of the UOSA Service Agreement, as may be amended from time to time, that are allocable to the Purchased Capacity. Specifically, Fairfax will charge Prince William for, and Prince William agrees to pay, all costs allocated and invoiced to Fairfax by UOSA for the Purchased

Capacity. The amount to be charged by Fairfax to Prince William will be based on the following formula:

Capacity Costs multiplied by (Prince William Purchased Capacity / Current Fairfax Capacity Allocation)

Whereby:

Capacity Costs - refers to all costs invoiced by UOSA to Fairfax pursuant to §§6.1(b) and (c) and §§ 6.3 and 6.4 of the UOSA Service Agreement, as may be amended from time to time, that are based on the Capacity Allocation Percentage as referenced in the UOSA Service Agreement;

Prince William Purchased Capacity - equates to 4.0 MGD which is the amount of Capacity Allocation sold by Fairfax to Prince William in 2007 and under this Agreement; and

Current Fairfax Capacity Allocation – shall equal the Capacity Allocation that is used by UOSA for the billing of obligations as set forth in § § 6.1(b) and (c) and §§6.3 and 6.4 the UOSA Service Agreement, as may be amended from time to time. As of the date of this Agreement, the Current Fairfax Capacity Allocation is 27.5999 MGD. This capacity figure does not take into account the sale of 2.0 MGD in 2007 to Prince William and 1.0 MGD to the City of Manassas or the sale of 2.0 MGD contemplated by this Agreement.

Unless and until an amendment to the UOSA Service Agreement is executed which recognizes the sale of capacity in 2007 and the sale of capacity set forth herein, based on the cost allocation formula shown above, Prince William will be responsible for 14.4928% (4.0 MGD / 27.5999 MGD) of all future costs associated with the issuance of additional bonds that are allocable to such capacity, the payment of the Cost of Replacements and Necessary Improvements (sometimes referred to and invoiced by UOSA as "reserve maintenance"), and any other costs that are invoiced by UOSA to Fairfax based on the Current Fairfax Capacity Allocation. Until a

change in the invoicing of costs by UOSA based on the Capacity Allocation occurs which recognizes the sale of Capacity Allocation to Prince William, Fairfax will bill Prince William quarterly for all such future costs invoiced by UOSA to Fairfax that are attributable to the Purchased Capacity. This billing provision will be in effect until the Purchased Capacity by Prince William is reflected in the quarterly billing for capacity by UOSA to Prince William.

Prince William agrees that, subsequent to the Transfer Date, it will be liable for all future costs invoiced by UOSA that are attributable to the Purchased Capacity and agrees to pay Fairfax for such costs. Fairfax will invoice Prince William within 30 days after receipt of the quarterly UOSA invoice for such costs attributable to the Purchased Capacity. To the extent that Prince William does not compensate Fairfax for the future costs invoiced to Fairfax for the Purchased Capacity, then Fairfax shall have the right to impose reasonable penalties and fees for the late payment of any unpaid balance.

**SECTION 2.5**        OPERATING COSTS ASSOCIATED WITH CAPACITY ALLOCATION. All costs associated with operating the UOSA System as defined in the UOSA Service Agreement (includes cost of operation and maintenance, including indirect costs of administration and overhead, all as determined by UOSA), which are referred to in this Agreement as the Operating Costs, shall be the responsibility of the Participants based on metered wastewater flow measured by metering at the Point of Delivery. Accordingly, all Operating Costs corresponding to the wastewater flow associated with the Purchased Capacity will be measured by metering at the Point of Delivery by UOSA and will be billed directly by UOSA to Prince William. In no event will Fairfax be responsible for the payment of any Operating Costs associated with the Purchased Capacity.

**SECTION 2.6**        COMPLIANCE WITH UOSA SERVICE AGREEMENT. Subject to Section 2.2, with respect to the Purchased Capacity acquired by Prince William and transferred by Fairfax, Prince William agrees to be in compliance with all its responsibilities as provided for in the UOSA Service Agreement as it relates to the operation and financing of the UOSA System. These compliance provisions include, but are not limited to, the payment of the allocated debt service payments on the UOSA Bonds, payment of rates for service, delivery of

wastewater flows in accordance with the capacity and strength limits, and any other requirements as defined in the UOSA Service Agreement. It is acknowledged by the Parties that any default by Prince William with respect to the UOSA Service Agreement relating to the Purchased Capacity shall be, as between Fairfax and Prince William, the sole obligation and responsibility of Prince William. Fairfax retains all legal rights and remedies against Prince William to recover any and all monies Fairfax is obligated to pay to UOSA as a result of such default.

SECTION 2.7. REPURCHASE OPTION. Fairfax shall have the right of first refusal to repurchase the Purchased Capacity and the 2007 Purchased Capacity if Prince William decides to sell it for any reason in the future. The pricing methodology used in this Agreement to determine the acquisition price will be used to determine the repurchase price.

### ARTICLE III EXCESS FLOWS

SECTION 3.1 EXCESS FLOW ABOVE CAPACITY ALLOCATION. As a condition of this Agreement and in order to meet the service area wastewater requirements, Prince William has agreed to purchase a portion of the Fairfax County Allocation for its specific use as discussed in Article II and has agreed not to utilize any additional amount of Fairfax Capacity Allocation on a temporary basis. Prince William and Fairfax recognize that in order to maintain equity and to provide fair compensation among the Participants, any Participant that has an Excess Flow occurrence, as defined in the UOSA Service Agreement, should compensate the Participant(s) that has(have) the available and unused Capacity Allocation which is effectively being used to meet Excess Flow demands.

Any Excess Flow occurrence shall result in an additional charge to the Party that uses in excess of its respective Capacity Allocation as set forth in § 3.2. For purposes of determining Excess Flow, Prince William's Capacity Allocation shall include its Capacity Allocation and Purchased Capacity. For purposes of this Article, Purchased Capacity also includes the 2007 Purchased Capacity.

SECTION 3.2. PAYMENT FOR EXCESS FLOW. To the extent that for any month, as determined by the highest average of any 30 consecutive day flow ending during the calendar month, the Prince William flow exceeds its then existing Capacity Allocation including the Purchased Capacity, as defined in § 3.1 of this Agreement, Fairfax may charge, and Prince William agrees to pay Fairfax, an amount equal to the Fairfax pro rata share of the amount to be calculated in accordance with § 3.3; provided, however, that Fairfax agrees not to impose charges under this section for any period that UOSA imposes charges pursuant to § 6.6 of the UOSA Service Agreement payable to Fairfax for Prince William Excess Flow. Fairfax will rely on UOSA data to determine the Prince William flows. Additional charges imposed by Fairfax, and paid by Prince William, in accordance with this section do not purchase any capacity for Prince William in addition to the amounts purchased under this Agreement or the 2007 Capacity Agreement, nor do they condone such Excess Flows.

SECTION 3.3 CALCULATION OF PAYMENT FOR EXCESS FLOW. To the extent that for any month, as determined by the highest average of any 30 consecutive day flow ending during the calendar month, the Prince William flows exceed its Capacity Allocation plus the Purchased Capacity, as defined in § 3.1 of this Agreement, the payment for Excess Flow shall be calculated by multiplying the cost per mgd, based on UOSA's total annual Debt Service and total Capacity (currently 54 mgd), by the amount of exceedance in mgd. To the extent that other Participants also have available and unused Capacity Allocation, Fairfax would only bill Prince William under this Agreement for the Fairfax pro rata share of the Excess Flow payment.

Fairfax will notify Prince William of the amount of the Excess Flow and will invoice Prince William for the Fairfax pro rata share of the additional charges required in connection with the Excess Flow.

Attachment D outlines the methodology which UOSA and/or Fairfax would use to determine whether an exceedance occurred and to calculate applicable additional charges.

ARTICLE IV  
MODIFICATION OF UOSA SERVICE AGREEMENT

SECTION 4.1        COMPLIANCE. Both Fairfax and Prince William, as Participants to the UOSA Service Agreement, shall continue to adhere to all terms, conditions, covenants, and requirements as outlined in the UOSA Service Agreement that are applicable to such Participants. While the Parties between themselves have altered their responsibilities for i) the change in the respective Capacity Allocation in the UOSA System for Fairfax and Prince William and the obligations associated with such changes in Capacity Allocation; and ii) the recognition of Excess Flows and the compensation to all Participants that provide the necessary Capacity Allocation to meet such Excess Flow conditions, nothing in this Agreement shall modify, change, or adjust the responsibilities of the specific Participants as it relates to the UOSA Service Agreement and the ability to meet the policies and intent as defined in the Occoquan Policy.

SECTION 4.2        UOSA SERVICE AGREEMENT AMENDMENT. Fairfax and Prince William agree to seek an amendment to the UOSA Service Agreement as it relates this Agreement, provided that any such amendment shall not change their respective obligations under the Service Agreement.

ARTICLE V  
MISCELLANEOUS PROVISIONS

SECTION 5.1        NO PARTNERSHIP. It is not the purpose or the intention of this Agreement to create, and this Agreement shall not be construed as creating a joint venture, partnership, or other relationship whereby either Party hereto would be liable for the omissions, commissions, or performance of the other Party hereto.

SECTION 5.2        WAIVER. The failure of any Party to this Agreement to insist on the performance of any of the terms and conditions of this Agreement, or waiver of any breach of

any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

SECTION 5.3        ENTIRE AGREEMENT; AMENDMENT. This Agreement including the recitals, which are incorporated by this reference, contains the entire Agreement between the Parties regarding the 2010 purchase of 2.0 MGD of the Fairfax Capacity Allocation by Prince William. No change or modification of this Agreement shall be valid unless the same is an amendment, in writing, signed by the parties hereto.

SECTION 5.4        GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.

SECTION 5.5        SEVERABILITY. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by all Parties subsequent to the expungement of the invalid provision.

SECTION 5.6        FURTHER ASSURANCE. The Parties hereto shall execute and deliver such further instruments and do further acts and things as may be required to carry out the intent and purposes of this Agreement as may be reasonably requested by any Party hereto.

SECTION 5.7        HEADINGS. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

SECTION 5.8        COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

SECTION 5.9        ASSIGNMENT. Neither Fairfax nor Prince William may assign its rights under this Agreement to any person, entity, or other governmental or quasi-governmental body without the prior written consent of the other Party and UOSA.

SECTION 5.10       FORCE MAJEURE. With respect to the matters contemplated by this Agreement, neither party shall be liable or responsible to the other as a result of any injury to property or as a result of inability to provide capacity, which was caused by any Force Majeure event.

SECTION 5.11       NOTICE. All notices or requests shall be in writing and shall be given by hand delivery or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Fairfax, to:

Wastewater Planning and Monitoring Division  
12000 Government Center Parkway, Suite 358  
Fairfax, Virginia 22035  
ATTN: Shahram Mohsenin, Director

With a copy to:

Office of the County Attorney  
12000 Government Parkway, Suite 549  
Fairfax, Virginia 22035  
ATTN: David P. Bobzien, County Attorney

Or such persons and places as Fairfax may specify by notice. The date of the notice or request shall be the date of receipt, if delivered by hand, or the postmarked date thereof.

If to Prince William County, to:

1 County Complex Court  
Prince William, Virginia 22192  
ATTN: County Executive

With a copy to:

4 County Complex Court  
PO Box 2266  
Woodbridge, Virginia 22195  
ATTN: General Manager

Or such persons or places as Prince William may specify by notice. The date of the notice or request shall be the date of receipt, if delivered by hand, or the postmarked date thereof.

The use of electronic means of notification (e-mail) will not be considered as a method of providing notice for the purposes of this Agreement. Any Party may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or three days after the date mailed. Each Party to this Agreement shall have a continuing duty to promptly notify the other party of any change to any of this information.

SECTION 5.12 EFFECTIVE DATE. This Agreement shall become effective upon the last date of the parties executing this Agreement, as set forth here below.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be restated, amended, and executed, and their seals to be affixed and attested by their duly authorized officers, all as of the date appearing next to their signatures.

ATTEST:

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

\_\_\_\_\_  
Clerk

BY: \_\_\_\_\_  
Chairman

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

ATTEST:

BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VIRGINIA

\_\_\_\_\_  
Clerk

BY: \_\_\_\_\_  
Chairman

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

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RESTATED AND AMENDED SERVICE AGREEMENT

THIS AGREEMENT, made as of the 15th day of May, 1972, and restated and amended herein, by and between the UPPER OCCOQUAN SEWAGE AUTHORITY (UOSA), a public body politic and corporate duly created pursuant to the Virginia Water and Waste Authorities Act, and the CITY OF MANASSAS and the CITY OF MANASSAS PARK, municipal corporations of the Commonwealth of Virginia, and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY and the BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, acting for and on behalf of said counties and the sanitary districts thereof, which are located in whole or in part within the Service Area (hereinafter defined) (such four parties being called collectively the Political Subdivisions and individually a Political Subdivision), provides that:

WHEREAS, the parties entered into a Service Agreement dated as of the 15th day of May, 1972 (the Service Agreement), providing for the treatment of sewage at a regional sewage treatment plant; and

WHEREAS, the Service Agreement has been amended and restated from time to time; and

WHEREAS, the parties desire to restate and amend their Service Agreement and to change the same as follows:

## ARTICLE I

## Definitions and Warranties

Section 1.1. The following words as used in this Agreement shall have the following meanings:

**"Act"** shall mean the Virginia Water and Waste Authorities Act (§15.2-5100, et seq., Code of Virginia of 1950, as amended, and as it may be amended from time to time).

**"Authority"** shall refer to any entity other than UOSA formed in accordance with the Act.

**"Auxiliary Facility"** shall mean any sewage treatment facility other than the UOSA Plant and the UOSA Delivery System, which is 1) limited to the treatment and/or disposal of Industrial Wastewater, 2) sponsored by a Political Subdivision, and 3) to remain at all times under the exclusive operation and control of UOSA.

**"Auxiliary Facility Agreement"** shall mean a written contract between UOSA and a sponsoring Political Subdivision(s) with respect to an Auxiliary Facility as set forth herein.

**"Auxiliary Facility Expense"** shall mean all expenses, obligations, damages, costs of whatever nature, including charges by UOSA for indirect costs of administration and overhead, whether directly or indirectly relating to an Auxiliary Facility, its construction, operation, maintenance, de-mobilization and consequential cost, expenses, and damages.

**"Bonds"** wherever used, shall include notes, bonds, bond anticipation notes or other debt obligations of UOSA whether now outstanding or to be issued in the future.

**"Cost"** when used with respect to the UOSA Plant and the UOSA Delivery System, shall mean the purchase price of any sewage treatment system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in UOSA, the Cost of Replacements and Necessary Improvements, the cost of all lands, properties, rights, easements, franchises and permits acquired, the cost of all machinery

and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, any deposit to any Bond interest and sinking fund reserve account, cost of engineering and legal services, plans, specifications, surveys, estimates of costs and of revenues, other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvements, or construction, administrative expenses, and such other expenses as may be necessary or incident to the financing herein authorized, to the acquisition, improvements, construction or expansion of the UOSA Plant and the UOSA Delivery System. Any obligation or expense incurred by UOSA in connection with any of the foregoing items of cost and any obligation or expense incurred by UOSA prior to the issuance of Bonds by UOSA for engineering studies and for estimates of cost and of revenues and for other technical or professional services which may be utilized in the acquisition, improvement or construction or expansion of such system, may be regarded as a part of the cost of such system.

**"Cost of Replacements and Necessary Improvements"** when used with respect to the UOSA Plant and the UOSA Delivery System, shall mean the cost of acquiring, installing or constructing replacements and necessary improvements which do not increase the capacity or scope of the UOSA Plant and the UOSA Delivery System, and shall embrace the cost of all labor and materials, the cost of all lands, property, rights, easements, franchises and permits acquired which are deemed necessary for such acquisition, installation or construction, interest during any period of disuse during such acquisition, installation or construction, the cost of all machinery and equipment, financial charges, cost of engineering and legal expenses, plans, specifications, and such other expenses as may be necessary or incident to such acquisition, installation or construction.

**"DEQ"** shall mean the Virginia Department of Environmental Quality and/or the State Water Control Board or any other agency or agencies of the Commonwealth of Virginia or the United States, which may succeed to their duties.

**"Industrial Wastewater"** shall mean any water which, during manufacturing, processing or assembling operations, comes into direct contact with or results directly from the processes of production or use of any raw material, intermediate product or finished product. As used herein, the word sewage shall include Industrial Wastewater.

**"Meters"** shall mean any device for measuring the flow of sewage.

**"mgd"** shall mean million gallons per day based on the highest average of any 30 consecutive day flow.

**"Occoquan Policy"** shall mean the DEQ State Water Control Board's Policy for Waste Treatment and Water Quality Management in the Occoquan Watershed, dated July 26, 1971, as the same has been or may be revised from time to time.

**"Points of Delivery"** shall mean the location of the connections made by Political Subdivisions at any point along the UOSA Delivery System for the delivery of sewage to UOSA. Connections may be added or changed to other locations along the UOSA Delivery System only by agreement between UOSA and the Political Subdivisions making such connection.

**"Political Subdivisions"** shall mean the Cities of Manassas and Manassas Park, as municipal corporations of the Commonwealth of Virginia, and the Counties of Fairfax and Prince William, as counties of the Commonwealth, as they now or may be hereafter constituted.

**"Project"** shall mean UOSA's advanced waste treatment system, consisting of the UOSA Delivery System, the UOSA Plant, and Auxiliary Facilities approved and undertaken at the discretion of UOSA pursuant to the terms of this Agreement, including any replacements, modifications, improvements or authorized expansions.

**"Reserves"** shall mean (unless modified with the approval of all Political Subdivisions) all amounts held by UOSA as reserves which shall not exceed (1) an amount equal to the next year's estimated expenditures for operation and maintenance; (2) depreciation in a minimum amount required by law and the Trust Agreement; (3) funds necessary to pay principal (whether at maturity or by required sinking fund payment), premium, if any, and interest on the Bonds as they become due and payable; and (4) a margin of safety for making debt service payments not to exceed the highest year's payments for principal (whether at maturity or by required sinking fund payment), premium, if any, and interest on the Bonds.

**"Septage Receiving Facility"** shall mean that portion of the UOSA Plant, which accepts septage for treatment.

**"Service Area"** shall mean that portion of the watershed of Occoquan Creek and its tributaries lying above the confluence of Occoquan Creek and Bull Run, save and except the Cedar Run Watershed and that portion of the Occoquan Creek Watershed in Prince William County lying generally to the south of the centerline of Occoquan Creek, and being within the geographic boundaries of the Political Subdivisions. These geographic boundaries of the Service Area shall be determined more exactly from time to time by UOSA.

**"Trust Agreement"** shall mean, collectively, any resolution, trust agreement or indenture authorizing and securing Bonds to which UOSA is a party.

**"Trustee"** shall mean the trustee designated in any Trust Agreement.

**"UOSA"** shall mean the Upper Occoquan Sewage Authority, a public body politic and corporate duly created pursuant to the Act by the Councils of the Cities (then Towns) of Manassas and Manassas Park and the Boards of Supervisors of Fairfax and Prince William Counties and by a certificate of Incorporation issued by the State Corporation Commission of Virginia on April 1, 1971.

**"UOSA Delivery System"** shall mean the regional delivery system of trunk or interceptor sewers now existing or to be expanded, constructed or modified, owned and/or operated by UOSA, including power supplies, pumping facilities, force mains, flow measurement devices and retention basins, to transport sewage from Points of Delivery to the UOSA Plant, all as shown on Exhibit A attached hereto.

**"UOSA Plant"** shall mean the advanced waste treatment plant now existing and as it may be expanded, constructed, or modified, owned and operated by UOSA, including administration buildings, plant offices, laboratory building, retention and ballast basins, power supplies and necessary appurtenances and equipment, for the treatment of sewage and the utilization and/or disposal of residuals and by-products in conformance with requirements of the Occoquan Policy and DEQ.

**"VPDES Permit"** shall mean the Virginia Pollution Discharge Elimination System permit or any permit of a different name which may hereafter authorize what is now permitted by a VPDES permit.

Section 1.2. UOSA and the Political Subdivisions each represent and warrant that they have full power and authority to enter into and perform this Agreement.

## ARTICLE II

### Term of Agreement

Section 2.1. This Agreement shall remain in full force and effect until December 31, 2049, and thereafter as may be provided by concurrent resolution of the member Political Subdivisions, which are then parties thereto. This Agreement may not be terminated by or as to any party until December 31, 2012 and thereafter until all Bonds have been paid or provision made for their payment.

Section 2.2. Subject to the limitation of Section 2.1, and the fulfillment of all conditions therein, any party to this Agreement may withdraw from UOSA and terminate all of its obligations under this Agreement. No sponsoring Political Subdivision of an Auxiliary Facility may withdraw from UOSA so long as the Auxiliary Facility Agreement is in effect. No such termination shall become effective until three years after written notice thereof shall have been given to each of the other parties hereto. Withdrawal and termination by one Political Subdivision shall not terminate this Agreement as to any other Political Subdivision.

## ARTICLE III

### Financing, Construction and Operation of Facilities

Section 3.1. UOSA is authorized and directed to proceed with the expansion of the capacity of the UOSA Plant to 54 mgd and sewerage system improvements identified as Phases I, II, and III of the CH2M HILL Preliminary Engineering Report, dated July 1987

(PER) that are part of the UOSA Delivery System, the CH2M HILL "Cub Run Gravity Delivery System Evaluation", dated March 2004, and the Hazen and Sawyer "Flat Branch Delivery System Study", dated May 2005, and such other improvements as are necessary or beneficial to expand the UOSA Plant and Delivery System to 54 mgd.

Section 3.2. UOSA is authorized and directed to proceed with the expansion of the UOSA Flat Branch Delivery System from 54 mgd to 64 mgd as identified in the Hazen and Sawyer "Flat Branch Delivery System Study", dated May 2005, and such other improvements as are necessary to make related improvements to the UOSA Delivery System.

Section 3.3. UOSA is authorized and directed to proceed with the construction, alterations and improvements required by DEQ to install nutrient reduction facilities and systems in the UOSA Plant and such other improvements as are necessary or beneficial to ensure compliance with DEQ regulations.

Section 3.4 UOSA is authorized and directed to proceed with the construction, alterations and improvements referred to as "hydraulic improvements", which are only those improvements that are specifically identified in the CH2M HILL Technical Memorandum: "Basis for Hydraulic Improvements to the UOSA Regional Water Reclamation Plant", dated July 13, 2006, and such beneficial changes as are necessary to carry out the project identified therein and comply with regulatory requirements.

Section 3.5. UOSA has acquired approximately 210 acres of additional land in anticipation of its future needs. Such acquisition cost and/or debt shall be charged to the Political Subdivisions as may be necessary as an item specified in Section 6.1(c).

Section 3.6. UOSA shall direct the Trustee to deposit any balance of construction funds remaining from any issue of Bonds after completion of the improvements for which such Bonds were issued in a separate account pursuant to the Trust Agreement. Such funds shall be used and credited by UOSA as set forth in Section 6.4 (h).

Section 3.7. A Political Subdivision shall have the right to approve additional locations and capacity of sewer lines forming a part of the UOSA Delivery System, which are located within its boundaries and are not authorized by the expansion referenced in Section 3.1. UOSA shall not construct additional lines within a Political Subdivision without prior authorization of that Political Subdivision.

Section 3.8. UOSA shall expand (as herein authorized), operate and maintain the UOSA Plant and the UOSA Delivery System in an efficient and economical manner, making all necessary and proper repairs, improvements, replacements and renewals, consistent with good business and operating practices for comparable facilities and in accordance with applicable standards of DEQ and the Occoquan Policy.

#### ARTICLE IV

##### Obligations of Political Subdivisions

Section 4.1. The Political Subdivisions shall deliver to UOSA at Points of Delivery all sewage collected by them in the Service Area and, except as expressly permitted by this Agreement, shall not permit or provide for the treatment of sewage collected by them in the Service Area in any other manner. The Political Subdivisions shall be responsible for delivering sewage collected by them in the Service Area to UOSA at Points of Delivery and

for financing, construction, operation and maintenance of all facilities for the collection and delivery of sewage to Points of Delivery.

Section 4.2. The Political Subdivisions recognize that the capacity of the UOSA Plant will be regulated by DEQ and that allocations of UOSA Plant capacity will have to be made to avoid overloading. Each of the Political Subdivisions covenants and agrees not to exceed its UOSA Plant capacity as allocated from time to time. Each Political Subdivision has the primary responsibility for the necessary actions to insure that its wastewater flows to the UOSA Plant remain within such Political Subdivision's allocated share of DEQ certified flow capacity for the UOSA Plant.

Section 4.3. At such time as any Political Subdivision is advised by UOSA that its average flow for any consecutive thirty-day period during the past 48 months has reached 95% of its allocated capacity in the UOSA Plant, such Political Subdivision shall temporarily terminate the issuance of permits which allow start of construction on projects in that portion of the UOSA Service Area in the Political Subdivision until UOSA Plant capacity is increased by reason of reallocation, arrangements are made for sewage from the Service Area in excess of its allocation to be treated outside the Occoquan Watershed, or it is advised by UOSA that it may deliver additional sewage to UOSA.

Section 4.4. Each of the Political Subdivisions covenants and agrees to pay promptly, when due, charges of UOSA as determined pursuant to Article VI and billed to it from time to time; provided, however, that all such charges shall be payable solely from revenues received by each Political Subdivision (or transferee or Authority or other legal entity created thereby as described in Section 4.8) from the charges to be paid by the

users of its sewerage system and available to it for such purposes including availability fees, connection fees, service fees or any other fees, and other system revenues.

Section 4.5. Each of the Political Subdivisions covenants and agrees to fix and collect (or cause to be fixed and collected) from the users of its sewerage system charges sufficient to make the payments required of it under this Agreement. UOSA will provide each Political Subdivision with information as to the minimum charge necessary for such Political Subdivision's required payments.

Section 4.6. Each of the Political Subdivisions will endeavor to observe all applicable administrative and technical requirements contained in the Occoquan Policy or legally required by any authorized regulatory body, including UOSA. Upon receipt of a notice of violation by an authorized regulatory body, the Political Subdivision shall proceed to comply with such rules or regulations within a reasonable time considering the exigencies of the circumstances.

Section 4.7. Each of the Political Subdivisions covenants and agrees (subject to provisions of its charter, if applicable) that it will not enter into any contract providing for sewage treatment with any party having sewage flows originating within the geographic boundaries of other Political Subdivisions that are members of UOSA without the prior approval of such other Political Subdivision; provided, however, that such right of approval shall not be construed to limit the power of DEQ to fulfill its function under the law.

Section 4.8. (a) Each Political Subdivision agrees not to sell, transfer or dispose of its sewerage system unless:

(i) Such transfer is to another governmental unit within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended;

(ii) The transferee agrees to comply with the terms of this Agreement to the extent applicable to sewage delivered to UOSA;

(iii) The transferee agrees to fix and collect rates and charges sufficient to satisfy the obligation of the transferring Political Subdivision under Section 4.5;

(iv) The transferee agrees to make the payments to UOSA required to be made by the transferring Political Subdivision to the extent such payments are not made by the Political Subdivision; and

(v) The sale, transfer or disposition is approved by UOSA.

Notwithstanding the foregoing, no such sale, transfer or disposition will release the transferring Political Subdivision from any obligation or liability under this Agreement or affect any agreement or understanding between the Political Subdivision and the transferee.

(b) In the event that a Political Subdivision creates or has created an Authority or other legal entity to act as its agent, for the purposes of collecting sewage in the Service Area and/or for billing and collecting fees or charges to be paid by the users of a sewerage system located in the Service Area, such Political Subdivision shall not be relieved of its obligations under this Agreement. Such Political Subdivision shall require any Authority or other legal entity it creates to comply fully with this Agreement with respect to all sewage collected within the Service Area and shall nonetheless remain responsible for any noncompliance. The Political Subdivision shall cause such Authority or other entity to covenant and agree to fix and/or collect from the users of its sewerage system charges sufficient to make the payments required under this Agreement. A Political Subdivision

which creates or has created such an entity shall ensure that UOSA has the same rights as that Political Subdivision to enforce the setting and collecting of rates and the payment of charges to UOSA. To the extent that any such Authority or other legal entity agrees to charge, collect and pay all or any part of Political Subdivision's obligations to UOSA, such agreement shall supplement and not be in lieu of the Political Subdivision's covenant and agreement to charge, collect and pay UOSA as provided in this Agreement.

Section 4.9. All parties hereto and any Authority or other entity described in Section 4.8.(b) will pursue diligently the abatement of inflow and infiltration.

Section 4.10. (a) Notwithstanding anything to the contrary in this Agreement, UOSA may contract with a Political Subdivision(s) to undertake the operation and (with the agreement of UOSA and the sponsoring Political Subdivision(s)) ownership of an Auxiliary Facility sponsored by that Political Subdivision(s) pursuant to an Auxiliary Facility Agreement, when authorized and approved by unanimous consent of the UOSA Board, with all eight members present and voting, in its sole discretion after having confirmed by resolution that:

(i) UOSA has determined that such alternative disposal of Industrial Wastewater to the Auxiliary Facility shall not violate the Occoquan Policy; and

(ii) the Auxiliary Facility shall not be detrimental to UOSA, the water supply, the Project or the operation thereof.

(b) Notwithstanding any other provision of this Agreement, all Auxiliary Facility Expenses shall be the sole and full responsibility of the Political Subdivision(s) proposing and sponsoring such Auxiliary Facility. Any payment UOSA is

required to make as a consequence of its undertaking, ownership or operation of the Auxiliary Facility shall be conclusively deemed an expense chargeable to the sponsoring Political Subdivision(s) only and no other Political Subdivisions shall be responsible or required to reimburse UOSA for any expenses, obligations, damages, costs or liabilities whatsoever that are directly or indirectly associated with such Auxiliary Facility.

(c) In addition to such other terms as the Board may decide upon, the Auxiliary Facility Agreement shall include, and if not there set out shall be deemed to include, the following provisions:

(i) that any required VPDES permits shall be issued to UOSA and UOSA shall have all necessary authority to ensure compliance with such permits, relevant laws and regulations and the efficient operation and control of such Auxiliary Facility;

(ii) that the Political Subdivision(s) which sponsor(s) an Auxiliary Facility shall have the sole and full responsibility for all Auxiliary Facility Expenses, and neither UOSA shall be caused a diminution of revenue, nor the other Political Subdivisions be burdened with any Auxiliary Facility Expenses;

(iii) that the Political Subdivision(s) which sponsors(s) such Auxiliary Facility shall, to the full extent permitted by law, provide indemnification to, and hold harmless, UOSA and the other Political Subdivisions for all such expenses, obligations, damages, costs and liabilities, including attorney fees, court costs and litigation expenses in any way associated with claims or causes of actions arising out of the Auxiliary Facility or the enforcement of the hold harmless obligation and the right to indemnification;

(iv) that UOSA, in addition to all other rights by law or contract, shall have the right to terminate the operations of the Auxiliary Facility, upon reasonable notice to the sponsoring Political Subdivision, if any of the requirements of this Agreement or the Auxiliary Facility Agreement are breached by the sponsoring Political Subdivision;

(v) that the Political Subdivision(s) which sponsor(s) an Auxiliary Facility shall be responsible for financing, construction, operation and maintenance of all facilities for the collection and delivery of Industrial Wastewater to that Auxiliary Facility and for the conveyance of the treated effluent to the VPDES permit approved point of discharge.

(d) Any Political Subdivision, whether or not a party to an Auxiliary Facility Agreement, may sue to enforce the terms of such Auxiliary Facility Agreement. The party substantially prevailing in such litigation shall be awarded its reasonable attorneys fees and costs incurred with respect to the issues upon which it prevailed.

(e) Any Authority created by a Political Subdivision may be a party to any Auxiliary Facility Agreement to which the Political Subdivision is a party, with such rights, duties and obligations as the parties shall agree. In no event shall such an Auxiliary Facility Agreement be assignable without the written consent of UOSA and such assignment shall be only to another Political Subdivision.

(f) Delivery of Industrial Wastewater by a Political Subdivision to an Auxiliary Facility pursuant to this Section shall be deemed delivery to UOSA as required in Section 4.1 herein.

## ARTICLE V

### Obligations of UOSA

Section 5.1. Subject to the provisions of this Agreement, UOSA shall accept and treat all sewage delivered by the Political Subdivisions at Points of Delivery up to their respective allocated (or reallocated per Section 5.4) UOSA Plant capacities. UOSA shall also accept and treat septage delivered to the Septage Receiving Facility in accordance with Section 5.7. UOSA shall be under no obligation to treat sewage at the UOSA Plant delivered by any Political Subdivision in excess of its allocated (or reallocated per Section 5.4) UOSA Plant capacity. Subject to the other provisions of this Agreement, UOSA shall accept and treat Industrial Wastewater at any Auxiliary Facility in accordance with the terms of the respective Auxiliary Facility Agreement.

Section 5.2. UOSA shall not request DEQ certification for any additional UOSA Plant capacity for a specific Political Subdivision unless so requested by the governing body of such Political Subdivision. Any increase in certified UOSA Plant capacity shall be subject to UOSA and the Political Subdivisions meeting all applicable requirements of the Occoquan Policy. Any increase in certified UOSA Plant capacity shall be allocated to and paid for by Political Subdivisions requesting such increases in certification (to include reimbursement to the other Political Subdivisions for any capital contributions previously made in excess of the revised percentage allocations).

Section 5.3. Prior to DEQ issuing a Certificate to Operate the UOSA Plant at a capacity greater than 27 mgd, the capacity allocation was as follows:

Fairfax County	9.9149 mgd
Prince William County	8.6781 mgd
City of Manassas	6.6813 mgd
City of Manassas Park	1.7257 mgd
	27.0000 mgd

Section 5.4. Any Political Subdivision may reallocate any portion of its allocated UOSA Plant capacity to any other Political Subdivision on such terms as may be mutually agreeable, subject to approval of UOSA. The Political Subdivisions shall give UOSA written notice of any such transfer and UOSA shall change the UOSA Plant capacity allocations on its books and records. However, these reallocations shall not alter the obligations of each Political Subdivision as set forth in Sections 6.1(b) and (c) and Sections 6.3 and 6.4.

Section 5.5. At such time that DEQ issued a Certificate to Operate the UOSA Plant at a capacity greater than 27 mgd but less than 54 mgd, the allocation of the first 27 mgd was as set forth in Section 5.3 and the allocation of capacity above 27 mgd to 54 mgd was in the following percentages:

	<u>Percentage of Additional Capacity</u>
Fairfax County	65.5%
Prince William County	26.4%
City of Manassas	3.7%
City of Manassas Park	<u>4.4%</u>
	100.0%

Section 5.6 As of January 3, 2005, the date DEQ issued a Certificate to Operate the UOSA Plant at a capacity of 54 mgd, the allocation of capacity became as follows:

	<u>Total Capacity Allocation</u>	<u>Percentage of Total Capacity</u>
Fairfax County	27.5999 mgd	51.1109%
Prince William County	15.7971 mgd	29.2539%
City of Manassas	7.6893 mgd	14.2395%
City of Manassas Park	<u>2.9137 mgd</u>	<u>5.3957%</u>
	54.0000 mgd	100.0000%

Section 5.7. UOSA may, with the consent of the appropriate Political Subdivision and in accordance with rates lawfully established by UOSA, contract with and license any person, corporation or association operating a septic tank cleaning or similar service for the treatment of septage collected in a Political Subdivision. UOSA may also so contract with a Political Subdivision or an Authority which licenses septage haulers for the treatment of septage collected in a Political Subdivision and delivered to the septage Receiving Facility as long as such contract is in accordance with rates lawfully established by UOSA. All such septage shall be counted against the allocated UOSA Plant capacity of the appropriate Political Subdivision. Notwithstanding any provision in this Agreement to the contrary, UOSA shall allocate the costs of operating the Septage Receiving Facility in proportion to the amount of septage received from each Political Subdivision. All revenues derived from the use of the Septage Receiving Facility paid to UOSA from septage hauls originating in a Political Subdivision shall be deducted from that Political Subdivision's costs.

Section 5.8. UOSA covenants and agrees that it will endeavor to observe all applicable administrative and technical requirements contained in the Occoquan Policy or legally required by any authorized regulatory body. Upon receipt of a notice of violation by

any authorized regulatory body, UOSA shall proceed to comply with such rules and regulations within a reasonable time considering the exigencies of the circumstances.

## ARTICLE VI

### Rates and Charges

Section 6.1. UOSA shall fix and determine from time to time charges for the use of the UOSA Plant and UOSA Delivery System. Such charges shall be established by UOSA at such levels as may be necessary to provide funds, together with other available funds, sufficient at all time to pay:

- (a) the cost of operation and maintenance of
  - (1) the UOSA Plant, including reasonable reserves for such purposes, and
  - (2) the UOSA Delivery System, including reasonable reserves for such purposes;
- (b) the Cost of Replacements and Necessary Improvements of
  - (1) the UOSA Plant, including reasonable reserves for such purposes, and
  - (2) the UOSA Delivery System, including reasonable reserves for such purposes; and
- (c) the principal of, premium, if any, and interest on the Bonds, the Cost of the UOSA Plant and UOSA Delivery System not paid with Bond proceeds, or any

other monies due under the Trust Agreement, as the same become due, and required reserves therefore on Bonds issued to finance the Cost of

- (1) the UOSA Plant, and
- (2) the UOSA Delivery System.

Reserves accumulated by UOSA may be used to the extent permitted by the Trust Agreement to meet the reasonable Cost of Replacements and Necessary Improvements, which do not increase the capacity or scope of the UOSA Plant and UOSA Delivery System. The Political Subdivisions recognize that reserves may not be available at all times, and they may be billed for the Cost of Replacements and Necessary Improvements as needed.

Section 6.2. The total charges determined pursuant to Section 6.1(a) shall be paid by each Political Subdivision in proportion to the ratio, which its annual flow as metered through the Points of Delivery bears to the total annual flow received at the UOSA Plant. Indirect costs of administration and overhead shall be allocated on the same basis as Section 6.1(a) charges.

Section 6.3. Prior to the time DEQ issued a Certificate to Operate the UOSA Plant at a capacity greater than 27 mgd, the total charges determined pursuant to Section 6.1(b) were paid by each Political Subdivision in accordance with the following percentages:

Fairfax County	30.83%
Prince William County	33.03%
City of Manassas	21.19%
City of Manassas Park	14.95%

At such time as DEQ issued or will issue in the future a Certificate to Operate the UOSA Plant at a capacity greater than 27 mgd, the total charges determined pursuant to Section

6.1(b) shall be paid by each Political Subdivision in proportion to the ratio its maximum capacity allocation bears to the total maximum capacity allocation of all Political Subdivisions.

Section 6.4. The total charges determined pursuant to Section 6.1(c) shall be paid by each Political Subdivision in accordance with the following percentages:

(a) For all charges due or incurred under 6.1(c) for the construction and expansion of the UOSA Plant and Delivery System up to 27 mgd:

Fairfax County	30.83%
Prince William County	33.03%
City of Manassas	21.19%
City of Manassas Park	14.95%

(b) For all charges due or incurred under 6.1(c) for expanding the UOSA Plant and Delivery System from 27 mgd to 54 mgd:

	I Plant <u>Expansion</u>	II Delivery System <u>Expansion *</u>
Fairfax County	65.5%	51.1109%
Prince William County	26.4%	29.2539%
City of Manassas	3.7%	14.2395%
City of Manassas Park	4.4%	5.3957%

\* Identified as Sewerage System Improvements Phases I, II and III in the CH2M HILL Preliminary Engineering Report dated July 1987 (PER), the CH2M HILL "Cub Run Gravity Delivery System Evaluation", dated March 2004, and the Hazen and Sawyer "Flat Branch Delivery System Study", dated May 2005, and related Costs.

(c) For all charges due or incurred under 6.1. (c) for expanding the UOSA Flat Branch Delivery System from 54 mgd to 64 mgd:

Prince William County	90%
City of Manassas	10%

The Flat Branch Delivery System costs for expanding from 54 mgd to 64 mgd shall be calculated as 9.3 percent of the total costs for the projects identified in the Hazen and Sawyer engineering analysis, dated July 12, 2005. The remainder, or 90.7 percent, of the total costs identified in that analysis are associated with expanding the Flat Branch Delivery System from 27 mgd to 54 mgd and shall be charged based on the UOSA Delivery System percentage shown in Section 6.4. (b).

(d) For all charges due or incurred under 6.1 (c) for incorporating nutrient reduction facilities and systems into the UOSA Plant authorized by Section 3.3:

Fairfax County	45.5554%
Prince William County	32.9576%
City of Manassas	16.0913%
City of Manassas Park	5.3957%

(e) For all charges due or incurred under 6.1. (c) "Hydraulic Improvements" authorized by Section 3.4:

Fairfax County	28.52%
Prince William county	57.13%
City of Manassas	12.44%
City of Manassas Park	1.91%

Pursuant to the CH2M HILL Technical Memorandum: "Basis for Hydraulic Improvements to the UOSA Regional Water Reclamation Plant", dated July 13, 2006, the Section 3.4. Hydraulic Improvements are based on peak flows of 95 mgd from UOSA's Flat Branch Pump Station and peak flows of 68.5 from pump stations within Fairfax County, for a total

peak flow of 163.5 mgd. The Political Subdivisions agree that should additional peak flows necessitate additional hydraulic capacity improvements beyond those identified in the Technical Memorandum, the cost of such additional hydraulic capacity improvements shall be borne by the Political Subdivision(s) which generates the necessity for such additional improvements.

(f) All charges due or incurred under 6.1. (c) for any Cost of Replacements and Necessary Improvements (including repairs and renewals) for which Bonds are issued shall be paid by each Political Subdivision in proportion to the ratio its maximum capacity allocation bears to the total maximum capacity allocation, as set forth in the then current Certificate to Operate, of all the Political Subdivisions.

(g) A Political Subdivision may pre-pay its debt service obligations so long as such pre-payment does not affect adversely the tax status of any Bonds. UOSA, at its option, may apply all or a portion of any such pre-payment and any earnings therefrom (1) to the subsequent debt service obligations of the pre-paying Political Subdivision as they become due, or (2) to effect a redemption of all or a portion of such Political Subdivision's share of outstanding Bonds. In the event of any such redemption, the pre-paying Political Subdivision's share of debt service obligations (with respect to the Bond issue of which the redeemed Bonds were a part) shall be reduced correspondingly by the amount of the redemption.

(h) Subject to the provisions of the Trust Agreement, residual funds from past or future Bond offerings shall be applied to authorized expansions or Costs of Replacements or Necessary Improvements and shall be credited toward each Political

Subdivision's obligation in proportion to the Political Subdivision's obligations in Article VI on the project or projects from which the funds are derived.

Section 6.5. Should DEQ certify additional capacity in the UOSA Plant after a request from a Political Subdivision or Political Subdivisions upon approval by UOSA, the total charges for Section 6.1(c) shall be adjusted as outlined in Section 5.2. The charges determined pursuant to Section 6.1(c) for any additional UOSA Plant capacity added in the future shall be paid in accordance with the maximum capacity allocation specified by the amendment to this Agreement which authorize such additions, or as otherwise provided in such amendments.

Section 6.6. The charges pursuant to Section 6.1(c) to be paid by a Political Subdivision shall be increased for each month the actual quantity of sewage from such Political Subdivision, as determined by the highest average of any 30 consecutive day flow ending during the calendar month, exceeds its UOSA Plant capacity allocation (or reallocation pursuant to Section 5.4 or Section 6.5). In such an event, a Political Subdivision shall pay additional charges ("Additional Charges") pursuant to Section 6.1(c) as if the UOSA Plant capacity had been available and allocated, provided that such Additional Charges shall not purchase any additional rights for the use of the UOSA Plant by such Political Subdivision and in no way condones such excess flows. These Additional Charges shall be applied to the reimbursement, on a pro rata basis, to such other Political Subdivisions to the extent their highest average of any 30 consecutive day flow ending during that calendar month was less than their allocated capacity . To the extent the Additional Charges exceed such reimbursement, they shall be deposited in an escrow account to be used for the purposes of defraying the Cost of expansion, capital

improvements or studies of future expansions of the UOSA Plant and UOSA Delivery System. Any reimbursements under this section shall not alter the Political Subdivision's obligation to pay its share of the charges required by Section 6.1. (c).

Section 6.7. No Political Subdivision shall discharge sewage to UOSA which exceeds its allocated share (or reallocated share pursuant to Section 5.4 or Section 6.5) by weight or concentration of the total design capacity of the UOSA Plant or cause UOSA to exceed any lawful limitations imposed upon its discharge. A Political Subdivision's allocated share of the total designed UOSA Plant loadings shall be the same percentage as its allocated percentage of total UOSA Plant design flow (mgd). At such time as any Political Subdivision is advised by UOSA that its pollutant discharge exceeds its allocated share of total designed UOSA Plant loadings, such Political Subdivision shall proceed to take such measures as may be necessary to bring its discharges into compliance and shall temporarily terminate the issuance of permits which would result in any increase in the excessive loading in that portion of the UOSA Service Area in the Political Subdivision until its allocated share of total UOSA Plant loadings is increased by reason of reallocation or it is advised by UOSA that it may deliver additional sewage to UOSA. During the period of noncompliance, UOSA may assess the Political Subdivision costs for the treatment of the excess loading. All monitoring costs during the noncomplying period shall be borne by the noncomplying Political Subdivision.

Section 6.8. UOSA may present charges (including charges with respect to Auxiliary Facilities) based on budget estimates, subject to adjustment on the basis of an independent audit at the end of each fiscal year. All charges of UOSA shall be payable upon presentation. In the event any Political Subdivision shall fail to make payment in full

within 30 days after presentation, interest on such unpaid amounts shall accrue at the highest rate of interest payable by UOSA on any of the Bonds then outstanding until such amounts and interest thereon have been paid in full. UOSA may enforce payment by any remedy available at law or in equity.

Section 6.9. UOSA shall provide Meters where necessary to determine and record on a continuing basis the quantities of sewage delivered by each Political Subdivision. Meters shall be tested by UOSA for accuracy not less than once every two years. At the request of any Political Subdivision, UOSA shall test any Meter for accuracy at any time; provided, however, that should such Meter prove to be accurate within a range of plus or minus 2%, the cost of the Meter test shall be borne by the requesting Political Subdivision. In the event any Meter shall fail to record correctly the flow of sewage for any period of time, UOSA shall estimate the amount of flow on the basis of prior experience.

Section 6.10. Notwithstanding anything in this Agreement to the contrary:

(a) Industrial Wastewater delivered to and treated at an Auxiliary Facility shall not be considered as flows to the UOSA Plant for the determination of allocated capacity in the UOSA Plant or as annual flows received at the UOSA Plant for the determination of rates and charges under Section 6.2; and

(b) All Auxiliary Facility Expenses, which are the full responsibility of the Political Subdivision(s) proposing and sponsoring such Auxiliary Facility, shall be budgeted, presented and collected by UOSA from the sponsoring Political Subdivision separate from and in addition to the other charges established by this Article VI.

## ARTICLE VII

### Miscellaneous

Section 7.1. This Agreement restates and amends the prior Service Agreement.

Section 7.2. It is recognized by the parties hereto that this Agreement constitutes an essential part of UOSA's financing plan and that this Agreement cannot be amended, modified, or otherwise altered in any manner that will impair or adversely affect the security afforded hereby for the payment of the principal of, premium, if any, and interest on the Bonds, except as provided in the Trust Agreement. The obligations of the Political Subdivisions hereunder or the issuance of the Bonds shall not be deemed to constitute a pledge of the faith and credit of the Commonwealth or of any Political Subdivision thereof. The Bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any county, city or town of the Commonwealth are pledged to the payment of the principal of or the interest on such Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the Commonwealth or any county, city or town of the Commonwealth to levy any taxes whatever therefor or to make any appropriations for their payment.

Section 7.3. This Agreement can be modified or amended only with the consent of UOSA, the Political Subdivisions and the Trustee.

Section 7.4. UOSA shall keep proper books and records in accordance with accepted accounting practices which shall be available for inspection at all reasonable times by the Political Subdivisions through their duly authorized agents. UOSA shall cause an annual audit of its books and records to be made by an independent certified public

accountant at the end of each fiscal year and a certified copy thereof to be filed promptly with the governing body of each of the Political Subdivisions.

Section 7.5. The provision of sewer service to the screened area shown on the plat, dated April, 1981, attached hereto as Exhibit B and made a part hereof, by an entity other than UOSA shall not be considered a violation of this Agreement, such area being more particularly described as follows:

Beginning at the southeast corner of the property located on Fairfax County Tax Map 68-1 ((1)) parcel 13, then running along the western right-of-way of Route 123 in a northerly direction approximately 1,900 feet to the centerline of Route 620-Braddock Road, then continuing along the western right-of-way line of Route 123 in a northeasterly direction approximately 2,600 feet to the northeast corner of property located at tax map No. 57-3 ((1)) parcel 7A; then following from said corner for approximately 1,400 feet in a northwesterly direction, then 600 feet in a southwesterly direction and 550 feet in a northerly direction to a corner common to George Mason University [tax map 57-3 ((1)) parcel 7A] and Richlynn Development, Inc. (University Square Subdivision) then along the George Mason University property line as follows: for approximately 1,900 feet in a northwesterly direction, approximately 2,750 feet in a southwesterly direction to the northern right-of-way line of Route 620-Braddock Road, then along said right-of-way line in a southeasterly direction for approximately 1,400 feet to the East Fork of Popes Head Creek; then across Braddock Road in a southeasterly direction along the property line of Hazel [tax map No. 68-1 ((1)) parcel 16] for approximately 2,000 feet; then in a southeasterly direction along the properties of Hazel and others for approximately 2,100 feet to the point of beginning, containing approximately 360 acres.

At such time as the UOSA Delivery System is extended to serve the above-described area, such area shall be served by UOSA.

Section 7.6. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors.

Section 7.7. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect any other provision hereof.

Section 7.8. This Agreement shall be executed in several counterparts, any of which shall be regarded for all purposes as one original.

Section 7.9. This Agreement shall become effective upon the last date of the parties executing this Agreement, as set forth here below.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be restated, amended and executed, and their seals to be affixed and attested by their duly authorized officers, all as of the date appearing next to their signatures.

UPPER OCCOQUAN SEWAGE AUTHORITY

Date: 12-6-7

BY: Frederick A. Jatz

(SEAL)  
ATTEST:

CITY OF MANASSAS

\_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_  
Mayor

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

Section 7.9. This Agreement shall become effective upon the last date of the parties executing this Agreement, as set forth here below.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be restated, amended and executed, and their seals to be affixed and attested by their duly authorized officers, all as of the date appearing next to their signatures.

UPPER OCCOQUAN SEWAGE AUTHORITY

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

BY: \_\_\_\_\_

(SEAL)  
ATTEST:

CITY OF MANASSAS

*Christine M. Elgart, Deputy*  
City Clerk

BY: *[Signature]*  
Mayor

Date: September 25, 2007

(SEAL)  
ATTEST:

CITY OF MANASSAS PARK

\_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_  
Mayor

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

(SEAL)  
ATTEST:

Lana A. Conner  
City Clerk

Date: 11-20-07

CITY OF MANASSAS PARK

BY: [Signature]  
Mayor

(SEAL)  
ATTEST:

\_\_\_\_\_  
Clerk

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

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

BY: \_\_\_\_\_  
Chairman

(SEAL)  
ATTEST:

\_\_\_\_\_  
Clerk

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

BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VIRGINIA

BY: \_\_\_\_\_  
Chairman

(SEAL)  
ATTEST:

CITY OF MANASSAS PARK

\_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_  
Mayor

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

(SEAL)  
ATTEST:

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

*Nancy Velus*  
\_\_\_\_\_  
Clerk

BY: \_\_\_\_\_  
Chairman

Date: October 29, 2007

(SEAL)  
ATTEST:

BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VIRGINIA

\_\_\_\_\_  
Clerk

BY: \_\_\_\_\_  
Chairman

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

(SEAL)  
ATTEST:

CITY OF MANASSAS PARK

\_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_  
Mayor

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

(SEAL)  
ATTEST:

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

\_\_\_\_\_  
Clerk

BY: \_\_\_\_\_  
Chairman

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

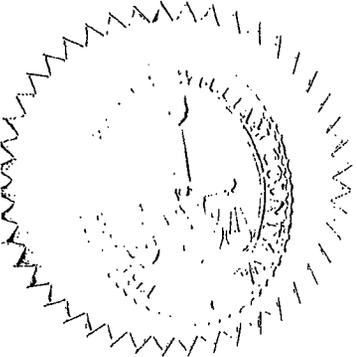
(SEAL)  
ATTEST:

BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VIRGINIA

*Phillip J. Campbell*  
\_\_\_\_\_  
Clerk

BY: *[Signature]*  
\_\_\_\_\_  
Chairman

Date: 12/04/07



APPROVED AS TO FORM  
COUNTY ATTORNEY  
*[Signature]*  
DATE: 12/7/07

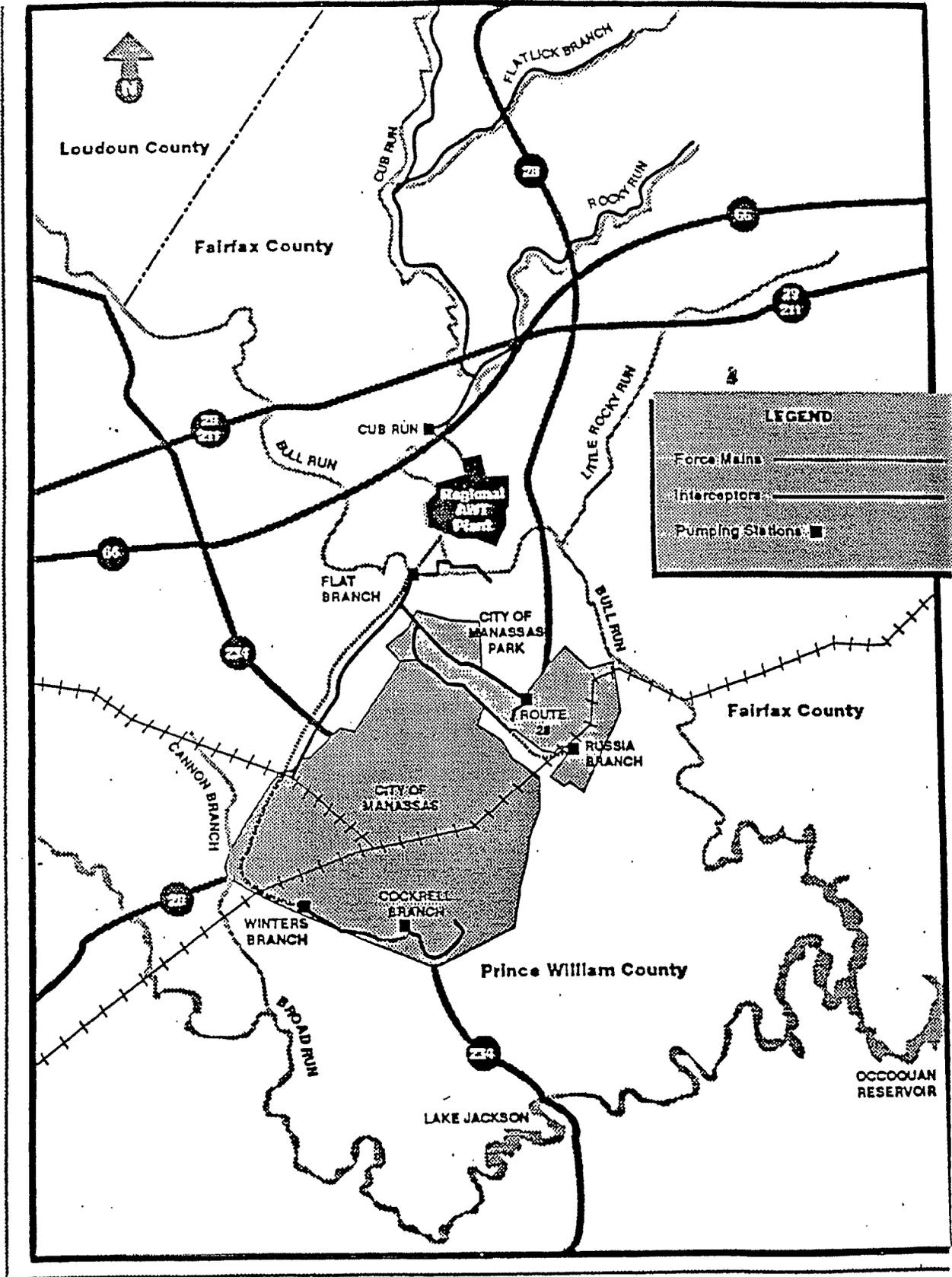
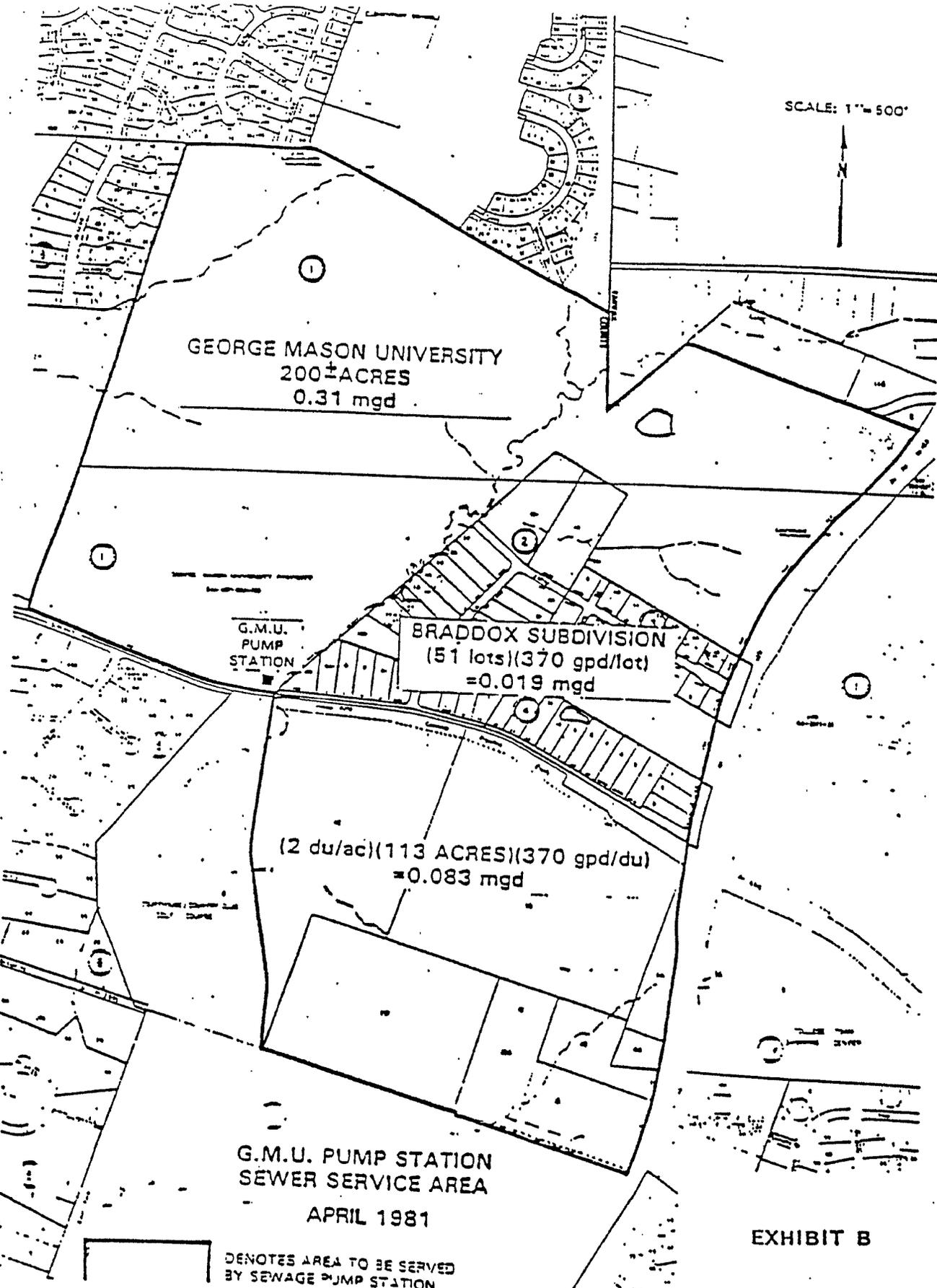


EXHIBIT A

General Location Map  
UOSA Delivery System

SCALE: 1" = 500'



GEORGE MASON UNIVERSITY  
200± ACRES  
0.31 mgd

G.M.U.  
PUMP  
STATION

BRADDOX SUBDIVISION  
(51 lots)(370 gpd/lot)  
=0.019 mgd

(2 du/ac)(113 ACRES)(370 gpd/du)  
=0.083 mgd

G.M.U. PUMP STATION  
SEWER SERVICE AREA

APRIL 1981

□ DENOTES AREA TO BE SERVED  
BY SEWAGE PUMP STATION

EXHIBIT B



**ATTACHMENT B**  
**Determination of the Capital Cost per Gallon of UOSA Capacity**

	<u>Total</u>	<u>Treatment</u>	<u>Delivery</u>
<b>Bond Funded Projects</b>			
<b>Series 1991 Bonds</b>			
Project Cost	\$ 67,238,640	\$ 56,480,458	\$ 10,758,182
BAN Retirement (Land Purchase)	6,500,000	6,500,000	
Issuance Cost	2,343,582	1,968,609	374,973
Debt Service Reserve	5,866,738	4,928,060	938,678
<b>Total Series 1991 Bonds</b>	<b>\$ 81,948,960</b>	<b>\$ 69,877,127</b>	<b>\$ 12,071,833</b>
<b>Series 1995A Bonds</b>			
Project Cost	\$ 260,000,000	\$ 220,000,000	\$ 40,000,000
BAN Retirement		-	-
Issuance Cost	20,646,103	17,469,779	3,176,324
Debt Service Reserve	-	-	-
<b>Total Series 1991 Bonds</b>	<b>\$ 280,646,103</b>	<b>\$ 237,469,779</b>	<b>\$ 43,176,324</b>
Capacity in MGD		27	27
<b>Combined Total 1991 &amp; 1995A Series</b>	<b>\$ 362,595,063</b>	<b>\$ 307,346,906</b>	<b>\$ 55,248,157</b>
Capacity Constructed		27.0	27.0
Total of Cost for 1991 & 1995A Series			
Cost Per Million Gallons	\$ 13,429,447	\$ 11,383,219	\$ 2,046,228
<b>Series 2007B Bonds <sup>1</sup></b>			
Project 54-Plant	\$ 25,910,980	\$ 25,910,980	\$ -
Reserve Maintenance	4,382,004	4,382,004	-
Hydraulic Improvements	1,075,888	1,075,888	-
Nutrient Cap	5,928,594	5,928,594	-
<b>Plant Total</b>	<b>37,297,466</b>	<b>37,297,466</b>	<b>-</b>
Project 54 (Delivery Systems)	74,183,625	-	74,183,625
Project 64 (Delivery Systems)	8,233,909	-	8,233,909
<b>Delivery System Total</b>	<b>82,417,534</b>	<b>-</b>	<b>82,417,534</b>
<b>Total Series 2007B Bonds</b>	<b>\$ 119,715,000</b>	<b>\$ 37,297,466</b>	<b>\$ 82,417,534</b>
Capacity in MGD		Various	Various
Cost Per Million Gallons - 2007B Series	\$ 3,135,457	\$ 1,233,505	\$ 1,901,952
Total of All Cost Components			
Cost Per Million Gallons	\$ 16,564,904	\$ 12,616,723	\$ 3,948,180
Cost/MGD w/o expenses funded w/interest	\$ 16,564,904		
<b>Interest Earning Spent on Project:</b>			
Total	\$90,150,010	84,992,936	5,157,073
Per MGD	\$3,338,889	3,147,887	191,003
<b>Cost per MGD</b>	<b>\$ 19,903,793</b>	<b>\$ 15,764,610</b>	<b>\$ 4,139,183</b>

<sup>1</sup> See Attachment B-1 for Costing Details

## ATTACHMENT C

### Determination of the Acquisition Price of Purchased Capacity by Prince William

	<u>Amount</u>
<b>UOSA Plant Component:</b>	
Capacity Allocation Acquired	2.0 MGD
Capital Cost per Gallon of Capacity Allocation	\$15,764,610
Total Cost of Acquired Capacity Allocation	\$31,529,220
<b>UOSA Delivery System Component:</b>	
Capacity Allocation Acquired	2.0 MGD
Capital Cost per Gallon of Capacity Allocation	\$4,139,183
Total Cost of Acquired Capacity Allocation	\$8,278,366
<b>Total Acquisition Price of Acquired Capacity Allocation</b>	<b>\$39,807,586</b>



## upper occoquan sewage authority

14631 COMPTON ROAD, CENTREVILLE, VIRGINIA 20121-2506 (703) 830-2200

Charles P. Boepple  
Executive Director

Michael D. Reach  
Deputy Executive Director

### MEMORANDUM

**Subject:** Implementation of Additional Charges Pursuant to Section 6.6  
of the UOSA Service Agreement

**To:** UOSA Board of Directors

**From:** Charles P. Boepple *Charles P Boepple*

**Date:** August 15, 2007

Section 6.6 of the UOSA Service Agreement provides for additional charges to be assessed for each month in which a Political Subdivision exceeds its allocated capacity. The examples below are intended to provide for the Board's consideration the methodology the staff proposes to utilize to A) determine whether an exceedance has occurred; and B) calculate the applicable additional charges.

#### A. Exceedance Analysis

UOSA's capacity allocations are based on thirty consecutive day average flows. Consistent with past monthly calculations and exceedance determinations, if there are one or more days during a calendar month in which the average of the preceding thirty consecutive days of flow exceeds a Political Subdivision's allocation, that Political Subdivision will be deemed to have exceeded its capacity for that month, and Section 6.6 additional charges may be assessed.

Exhibit 1 provides two sets of flow data for hypothetical Jurisdiction A with a capacity allocation of 10.650 mgd. The two sets of data each have a column containing the average flow for each individual day and a second column showing the thirty day consecutive or "rolling" averages for the preceding thirty day period.

The first set of data depicts with yellow highlights the period (5/13/2007 – 5/24/2007) in which Jurisdiction A exceeded its capacity allocation. The highest thirty consecutive day average flow during the month of May was 10.869 mgd. Consequently, Jurisdiction A's additional charges for an exceedance in the month of May 2007 will be based on the difference between the actual highest

consecutive thirty day flow for the month (10.869 mgd) minus the allocated thirty consecutive day average flow of 10.650 mgd, or 0.219 mgd.

The second set of data also depicts with yellow highlights the period (3/30/2007 – 4/16/2007) in which Jurisdiction A exceeded its capacity allocation. However, this example illustrates that certain wet weather events using the above methodology may generate an exceedance determination for two subsequent months. In this set of data the rolling thirty day average began exceeding 10.650 mgd on March 30, 2007 and reached a high thirty consecutive day average (11.013 mgd) for the month of March on March 31, 2007. Consequently, Jurisdiction A's additional charges for an exceedance in the month of March 2007 will be based on the difference between the actual highest consecutive thirty day flow for the month (11.013 mgd) minus the allocated thirty consecutive day average flow of 10.650 mgd, or 0.363 mgd.

Further, the 30 consecutive day averages continued to exceed the 10.650 mgd allocation during the April 1, 2007 to April 16, 2007 time frame. The highest thirty consecutive day average during April (11.141 mgd) occurred on April 2, 2007. Consequently, Jurisdiction A's additional charges for an exceedance in the month of April 2007 will be based on the difference between the actual highest consecutive thirty day flow for the month (11.141 mgd) minus the allocated thirty consecutive day average flow of 10.650 mgd, or 0.491 mgd.

Consequently, the above methodology for the second data set would generate an additional charge for a 0.363 mgd exceedance in March and a 0.491 mgd exceedance in April.

There are other methodologies that could be considered for purposes of implementing Section 6.6 and these alternative methodologies could be explored if the Board so desires.

#### B. Calculation of Payment for Excess Flow

Below are three examples of the determination of Excess Flow charges and credits. The first two examples correspond to the data sets discussed above. The methodology is based on calculating the cost per mgd based on UOSA's total annual Debt Service. This cost per mgd is then multiplied by the amount of the exceedance in mgd to yield an excess flow charge amount. The charge is then allocated as a credit to the jurisdictions with unused capacity. The billing for the excess flow and the associated credits to other jurisdictions would be noted on each jurisdiction's invoice during the quarterly billing cycle.

## Example 1 – (Dataset 1)

### Example 1 Assumptions:

1. Jurisdiction A's Excess Flow for a thirty-day period equals 0.219 mgd.
2. UOSA Debt Service is equal to \$24,465,792 (Total annual Debt Service in fiscal year of exceedance)

### The payment for Excess Flow should be determined as follows:

1. Calculate Monthly Debt      \$24,465,792 / 12 months = \$2,038,816
2. Calculate cost per mgd      \$2,038,816 / 54 mgd = \$37,756
3. Calculate payment      \$37,756 X 0.219 = \$8,269 (Cost X excess flow)

### 4. Allocate credits to jurisdictions

Jurisdictions	Unused Capacity	% Unused Capacity	Payment Allocation
Jurisdiction A	0.0	0.00%	\$0
Jurisdiction B	1.0	71.43%	\$5,907
Jurisdiction C	0.2	14.29%	\$1,181
Jurisdiction D	0.2	14.29%	\$1,181
UOSA Unallocated Exceedances	<u>0.0</u>	<u>0.00</u>	<u>\$0</u>
<b>Total</b>	<b>1.4</b>	<b>100.00%</b>	<b>\$8,269</b>

**Example 2 – (Dataset 2)**

**Example 2 Assumptions – March:**

1. Jurisdiction A's Excess Flow for March equals 0.363 mgd.
2. UOSA Debt Service is equal to \$24,465,792 (Total annual Debt Service in fiscal year of exceedance)

**The payment for Excess Flow should be determined as follows:**

1. Calculate Monthly Debt  $\$24,465,792 / 12 \text{ months} = \$2,038,816$
2. Calculate cost per mgd  $\$2,038,816 / 54 \text{ mgd} = \$37,756$
3. Calculate payment  $\$37,756 \times 0.363 = \$13,705$  (Cost X excess flow)
4. Allocate credits to jurisdictions

**Example 2 Assumptions - April:**

1. Jurisdiction A's Excess Flow for April equals 0.491 mgd.
2. UOSA Debt Service is equal to \$24,465,792 (Total annual Debt Service in fiscal year of exceedance)

**The payment for Excess Flow should be determined as follows:**

1. Calculate Monthly Debt  $\$24,465,792 / 12 \text{ months} = \$2,038,816$
2. Calculate cost per mgd  $\$2,038,816 / 54 \text{ mgd} = \$37,756$
3. Calculate payment  $\$37,756 \times 0.491 = \$18,538$  (Cost X excess flow)
4. Allocate credits to jurisdictions

Jurisdictions	March Unused Capacity	% Unused Capacity	March Payment Allocation	April Unused Capacity	% Unused Capacity	April Payment Allocation
Jurisdiction A	0.0	0.00%	\$0	0.0	0.00%	\$0
Jurisdiction B	1.1	78.57%	\$10,768	1.0	71.43%	\$13,242
Jurisdiction C	0.1	7.14%	\$979	0.2	14.29%	\$2,648
Jurisdiction D	0.2	14.29%	\$1,958	0.2	14.29%	\$2,648
UOSA Unallocated Exceedances	<u>0.0</u>	<u>0.00%</u>	<u>\$0</u>	<u>0</u>	<u>0.00%</u>	<u>\$0</u>
<b>Total</b>	<b>1.4</b>	<b>100.00%</b>	<b>\$13,705</b>	<b>1.4</b>	<b>100.00%</b>	<b>\$18,538</b>

NOTE: If the capacity exceedance had been larger than the sum of unused capacity from the jurisdictions that did not exceed their capacity, the proportional charge associated with the same would be deposited in an escrow account pursuant to Section 6.6 of the Service Agreement.

### Example 3

#### Example 3 Assumptions – March:

1. Jurisdiction A's Excess Flow for March equals 1.800 mgd.
2. UOSA Debt Service is equal to \$24,465,792 (Total annual Debt Service in fiscal year of exceedance)

#### The payment for Excess Flow should be determined as follows:

1. Calculate Monthly Debt  $\frac{\$24,465,792}{12 \text{ months}} = \$2,038,816$
2. Calculate cost per mgd  $\frac{\$2,038,816}{54 \text{ mgd}} = \$37,756$
3. Calculate payment  $\$37,756 \times 1.800 = \$67,961$  (Cost X excess flow)
4. Allocate credits to jurisdictions

#### Example 3 Assumptions - April:

1. Jurisdiction A's Excess Flow for April equals 0.491 mgd.
2. UOSA Debt Service is equal to \$24,465,792 (Total annual Debt Service in fiscal year of exceedance)

#### The payment for Excess Flow should be determined as follows:

1. Calculate Monthly Debt  $\frac{\$24,465,792}{12 \text{ months}} = \$2,038,816$
2. Calculate cost per mgd  $\frac{\$2,038,816}{54 \text{ mgd}} = \$37,756$
3. Calculate payment  $\$37,756 \times 0.491 = \$18,538$  (Cost X excess flow)
4. Allocate credits to jurisdictions

Jurisdictions	March Unused Capacity	% Unused Capacity	March Payment Allocation	April Unused Capacity	% Unused Capacity	April Payment Allocation
Jurisdiction A	0.0	0.00%	\$0	0.0	0.00%	\$0
Jurisdiction B	1.1	61.11%	\$41,531	1.0	71.43%	\$13,242
Jurisdiction C	0.1	5.56%	\$3,779	0.2	14.29%	\$2,648
Jurisdiction D	0.2	11.11%	\$7,550	0.2	14.29%	\$2,648
UOSA Unallocated Exceedances	<u>0.4</u>	<u>22.22%</u>	<u>\$15,101</u>	<u>0</u>	<u>0.00%</u>	<u>\$0</u>
<b>Total</b>	<b>1.8</b>	<b>100.00%</b>	<b>\$67,961</b>	<b>1.4</b>	<b>100.00%</b>	<b>\$18,538</b>

NOTE: The assumptions for March were amended to create the scenario where Jurisdictions B, C and D did not have enough excess capacity to offset the Jurisdiction A exceedance. In this instance \$15,101 would be deposited in an escrow account as a result of the 0.4 mgd unallocated exceedance.

<u>Jurisdiction A</u> 10.650 mgd Limit			<u>Jurisdiction A</u> 10.650 mgd Limit		
Day	ADF	30-d RA	Day	ADF	30-d RA
4/1/2007	12.870		2/1/2007	8.750	
4/2/2007	10.100		2/2/2007	8.010	
4/3/2007	8.900		2/3/2007	8.021	
4/4/2007	9.230		2/4/2007	8.032	
4/5/2007	8.550		2/5/2007	8.043	
4/6/2007	8.640		2/6/2007	8.054	
4/7/2007	8.460		2/7/2007	8.065	
4/8/2007	8.650		2/8/2007	8.076	
4/9/2007	8.660		2/9/2007	8.087	
4/10/2007	8.980		2/10/2007	8.098	
4/11/2007	7.980		2/11/2007	8.109	
4/12/2007	7.991		2/12/2007	8.120	
4/13/2007	8.560		2/13/2007	8.131	
4/14/2007	8.660		2/14/2007	9.220	
4/15/2007	8.671		2/15/2007	9.231	
4/16/2007	8.682		2/16/2007	9.242	
4/17/2007	8.540		2/17/2007	9.253	
4/18/2007	8.210		2/18/2007	9.264	
4/19/2007	8.030		2/19/2007	9.275	
4/20/2007	8.540		2/20/2007	14.650	
4/21/2007	8.880		2/21/2007	13.550	
4/22/2007	9.250		2/22/2007	12.880	
4/23/2007	9.560		2/23/2007	11.990	
4/24/2007	9.571		2/24/2007	11.550	
4/25/2007	9.582		2/25/2007	10.990	
4/26/2007	9.593		2/26/2007	11.001	
4/27/2007	9.604		2/27/2007	10.990	
4/28/2007	9.615		2/28/2007	9.890	
4/29/2007	9.626		3/1/2007	9.560	
4/30/2007	9.637	9.061	3/2/2007	9.571	9.590
5/1/2007	10.220	8.972	3/3/2007	9.582	9.618
5/2/2007	10.880	8.998	3/4/2007	9.593	9.671
5/3/2007	11.560	9.087	3/5/2007	9.604	9.723
5/4/2007	11.571	9.165	3/6/2007	9.615	9.776
5/5/2007	11.582	9.266	3/7/2007	9.626	9.829
5/6/2007	11.593	9.365	3/8/2007	9.637	9.882
5/7/2007	11.604	9.469	3/9/2007	9.648	9.934
5/8/2007	12.560	9.600	3/10/2007	9.659	9.987
5/9/2007	13.850	9.773	3/11/2007	9.550	10.036
5/10/2007	14.870	9.969	3/12/2007	9.561	10.085
5/11/2007	15.680	10.226	3/13/2007	9.572	10.134
5/12/2007	15.691	10.482	3/14/2007	9.583	10.182
5/13/2007	13.800	10.657	3/15/2007	9.594	10.231
5/14/2007	9.880	10.698	3/16/2007	9.605	10.244
5/15/2007	8.950	10.707	3/17/2007	9.616	10.257
5/16/2007	8.640	10.706	3/18/2007	9.627	10.270
5/17/2007	9.880	10.750	3/19/2007	9.638	10.282
5/18/2007	9.981	10.809	3/20/2007	9.649	10.295
5/19/2007	9.902	10.872	3/21/2007	9.660	10.308
5/20/2007	8.450	10.869	3/22/2007	9.671	10.142
5/21/2007	8.290	10.849	3/23/2007	9.682	10.013
5/22/2007	7.990	10.807	3/24/2007	9.900	9.914
5/23/2007	7.650	10.743	3/25/2007	10.260	9.856
5/24/2007	7.661	10.680	3/26/2007	14.870	9.967
5/25/2007	7.672	10.616	3/27/2007	16.150	10.139
5/26/2007	7.683	10.552	3/28/2007	18.740	10.397
5/27/2007	7.694	10.489	3/29/2007	17.540	10.615
5/28/2007	7.705	10.425	3/30/2007	16.880	10.848
5/29/2007	7.716	10.361	3/31/2007	14.520	11.013
5/30/2007	7.727	10.298	4/1/2007	12.870	11.123
5/31/2007	7.950	10.222	4/2/2007	10.100	11.141
			4/3/2007	8.900	11.118
Avg ADF	9.651		4/4/2007	9.230	11.105
			4/5/2007	8.550	11.070
			4/6/2007	8.640	11.037
			4/7/2007	8.460	10.998

← month peak

← month peak

← month and event peak

4/8/2007	8.650	10.964
4/9/2007	8.660	10.931
4/10/2007	8.980	10.912
4/11/2007	7.980	10.859
4/12/2007	7.991	10.807
4/13/2007	8.560	10.772
4/14/2007	8.660	10.741
4/15/2007	8.671	10.710
4/16/2007	8.682	10.679
4/17/2007	7.890	10.621
4/18/2007	8.210	10.574
4/19/2007	8.030	10.520
4/20/2007	8.540	10.482
4/21/2007	8.880	10.456
4/22/2007	9.250	10.441
4/23/2007	9.560	10.430
4/24/2007	9.571	10.407
4/25/2007	9.582	10.231
4/26/2007	9.593	10.012
4/27/2007	9.604	9.708
4/28/2007	9.615	9.444
4/29/2007	9.626	9.202
4/30/2007	9.637	9.039
Avg ADF	9.884	

Key
ADF Average Daily Flow
30-d RA 30-day Rolling Average