# ON SITE SEWAGE TREATMENT CONTRACT AND AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

## CONTRACT FOR INSPECTION AND MAINTENANCE GROUND ABSORPTION SEWAGE TREATMENT AND DISPOSAL SYSTEM LOT NUMBER 1012, PHASE 10 ('THE LOT') THE POINT ON LAKE NORMAN

(I), (WE), as the owners of Lot(s) Number 1012, Phase 10 of the subdivision known as The Point on Norman, have certain duties and responsibilities for the maintenance of any ground absorption sewage treatment and disposal system as regulated and set out in N.C.G.S. Article II, Chapter 130A; T15A-C18-S18A.1961 "Maintenance of Sewage Systems"; and under the "Declaration of Covenants, Conditions and Restrictions-The Point", (the "Declaration") as recorded in the Register of Deeds of Iredell County, North Carolina, in Book 1095, Page 1206, and under the Bylaws of The Point Owners Association, Inc.

The Point Owners Association, Inc. ("The Association") in order to provide for uniform inspection, maintenance, and repair and operation of sewage treatment and disposal systems within The Point on Norman, has entered into a Master Agreement dated the 1st day of January, 2014, which Master Contract with Tri-County Wastewater Management, Inc., a memorandum of which is recorded in Deed Book #2381, Pages #1581-1591 in the office of the Register of Deeds for Iredell County, North Carolina and is incorporated fully by this reference thereto.

The undersigned lot(s) owner(s) hereby agrees and contracts with Tri-County Wastewater Management, Inc. and with The Point Owners Association, Inc. as follows:

1. The Master Contract referred to above is hereby accepted, agreed, and is binding upon the undersigned with Tri-County Wastewater Management, Inc. and its successors and assigns. The undersigned lot owner(s), their successors, and assigned agree to be bound by this Master Contract and any further or future contracts in substitution thereof.

2. The undersigned lot owner(s) further acknowledge and agree that The Point Owners Association, Inc. acting by and under it's Declaration of Covenants, Conditions, and Restrictions-The Point, has recorded in Book 1095 at Page 1206 et seq. in the office of the Register of Deeds for Iredell County, North Carolina has and is hereby granted the full power and authority to assess the undersigned for fees, expenses, and costs associated with the inspection, maintenance, and or repair of septic disposal systems on the lot.

This agreement is binding upon the undersigned, their heirs, administrators, personal representatives, successors, and assigns, and the transfer and assignment of the duty and responsibility to contract with a qualified maintenance contractor (operator) is a covenant running with the land ("The Lot"). This agreement will terminate: (1) when The Association is dissolved or liquidated; or (2) when the undersigned has no legal duty to maintain a sewage disposal system on "The Lot", or (3) when the Master Contract referred to above has been cancelled or terminated.

Witness our hands and legal seals, this 20th day of August, 2018.

William C. Niblock (SEAL)
Signature

Niblock Homes LLC
Owners Printed Name

_____ (SEAL)
Signature

_____
Owners Printed Name

Type: CRP
Recorded: 09/28/2015 at 12:30:50 PM
Fee Amt: $26.00 Page 1 of 11
Iredell County, NC
Matthew J. McCall Register of Deeds
BK 2381 PG 1581-1591

Prepared by & return to:
Tim Bannister
TCW Wastewater Mgmt., Inc.
P. O. Box 1830
Indian Trail, NC 28079

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

TCW WASTEWATER – THE POINT
10 PAGES TO FOLLOW THIS PAGE

**AMENDMENT TO THE**
**MASTER CONTRACTS FOR INSPECTION AND MAINTENANCE OF SEWAGE SYSTEMS**
**FOR THE POINT SUBDIVISION, PHASES 1 THROUGH 9 AND 12 AND 13**
**Dated August 4, 2000, Recorded September 21, 2000, in Book 1219 at Pages 0582-0589, and 0590-0597, and 0598-0605, and 0606-0613, and 0614-0621,**
**AND Dated October 1, 2001, Recorded November 29, 2001, in Book 1301at Pages 2458-2465, and 2474-2481, and 2466-2473,**
**AND Dated July 1, 2003, Recorded December 8, 2003, in Book 1508 at Pages 2100-2106,**
**AND Dated December 1, 2003, Recorded December 8, 2003, in Book 1508 at Pages 2086-2092,**
**AND Dated December 1, 2003, Recorded November 10, 2004, in Book 1599 at Pages 2185-2191,**
**AND Dated December 1, 2006, Recorded April 5, 2007, in Book 1838 at Pages 1776-1784 IN THE OFFICE OF THE IREDELL COUNTY REGISTER OF DEEDS**

**MASTER CONTRACT FOR INSPECTION AND MAINTENANCE OF SEWAGE SYSTEMS**
**FOR PHASES I THROUGH AND INCLUDING 13 THE POINT ON NORMAN**

# THE POINT OWNERS ASSOCIATION, INC.
# AGREEMENT FOR SERVICES

This AGREEMENT FOR SERVICES ("Agreement") is made and entered into by and between THE POINT OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association") and TCW WASTEWATER MANAGEMENT, INC., a North Carolina corporation located in Union County, North Carolina ("TCW").

## RECITALS

1. The Association is a homeowners association formed for the benefit of the property owners in The Point, a residential subdivision located in Iredell County, North Carolina.

2. The Association has responsibility for the common area maintenance of The Point community, pursuant to the covenants and restrictions recorded in Book 1095, page 1206 of the Iredell Public Registry.

3. All homes in The Point community have private septic systems.

4. The Association on behalf of itself and its home owners, desires to provide for the inspection of the private septic systems on the individual residential lots and the off-site systems located in Septic Easement areas in The Point community to insure the private septic systems are being properly maintained.

5. TCW is a qualified inspection and maintenance contractor for private septic systems, has provided septic system inspection and maintenance services for the Association and its members since 2000, and, desires to continue their relationship and to enter into this Agreement to update and extend the terms of that relationship.

Based on the preceding Recitals and the Terms contained below, which the parties agree constitute sufficient legal consideration to make this Agreement legally binding and enforceable, the parties agree as follows.

## TERMS

1. Duration of Agreement. This Agreement shall be in full force and effect for the period commencing on January 1, 2014 and ending on December 31, 2018, unless sooner terminated under the provisions of this Agreement.

2. Scope of Services to be Performed by TCW. TCW shall perform the services described in Attachment A, which is incorporated by reference. "Services" shall consist of Base Services and Additional Services as further described in Attachment A. TCW shall comply with all federal, state, and local laws and regulations applicable to the performance of such Services. TCW shall perform the Services diligently and completely in a good and workmanlike manner in accordance with professional industry standards of conduct and performance (with the skill, knowledge and judgment required or reasonably expected of providers of comparable services for comparable properties).

3. Compensation and Method of Payment.

a) Payment for the Base Services will be made according to the following fee schedule for the calendar service years.

2014 - $240.00 per inspected/serviced lot, per calendar year
2015 - $245.00 per inspected/serviced lot, per calendar year
2016 - $250.00 per inspected/serviced lot, per calendar year
2017 - $250.00 per inspected/serviced lot, per calendar year
2018 - $250.00 per inspected/serviced lot, per calendar year

b) The Association and TCW shall agree on the number of lots to receive Base Services for the calendar year. The annual amount due TCW shall paid in twelve (12) equal installments due the first day of each month beginning January 1st of each year. Additional Services shall be invoiced in accordance with the terms and conditions of the respective Additional Services Work Request. The Association shall pay TCW for Additional Services requested by Association within thirty (30) days after receipt by the Association of TCW's invoice. The Association will not be responsible for payment for Additional Services requested by home owners.

c) The number of lots to receive Base Services for each calendar year shall include all lots identified in Attachment B that have an occupied house and a septic system installed on it, except the Association will not be required to pay for any lot with a new house occupied and septic system installed within 9 months of the beginning of service year.

d) Base Services for a new septic system installation for the initial service year of occupancy shall be paid by the initial homeowner or the building contractor and TCW shall bill them directly.

4. Obligations of the Association. The Association shall require its property owners and members to specifically adopt the terms of this Agreement, to provide for a qualified maintenance contractor to inspect and perform maintenance in order that their on-site waste systems comply with applicable laws, codes, and regulations.

5. Independent Contractor. The Association and TCW agree that TCW is an independent contractor with respect to the Services provided pursuant to this Agreement. TCW will be solely responsible for its acts and for the acts of its agents, employees, subcontractors, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties.

6. Indemnification.

a) TCW agrees to indemnify, save harmless and, at Association's sole option, defend Association and Association's directors, officers, members and agents from and against all claims, demands, damages, costs, losses, liabilities, causes of action, suits, fines, penalties and expenses (including reasonable attorneys' fees through the final appeal), whether at law, in equity, or administrative in nature, to the extent arising out of, resulting from, caused by or in connection with (i) any acts, errors or omissions of TCW in the performance of this Agreement, (ii) personal injury, death, or property damage resulting from TCW's acts, errors or omissions, or (iii) any violation of federal, state or local law, regulation, rule or ordinance by TCW.

b) The Association agrees to indemnify, save harmless and, at TCW's sole option, defend TCW and TCW's directors, officers, shareholders and agents from and against all claims, demands, damages, costs, losses, liabilities, causes of action, suits, fines, penalties and expenses (including reasonable attorneys' fees through the final appeal), whether at law, in equity, or administrative in nature, to the extent arising out of, resulting from, caused by or in connection with (i) any acts, errors or omissions of the Association in the performance of this Agreement, (ii) personal injury, death, or property damage resulting from the Association's acts, errors or omissions, or (iii) any violation of federal, state or local law, regulation, rule or ordinance by the Association.

7. Insurance. TCW shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by TCW, its agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by TCW. Insurance shall meet or exceed the following unless otherwise approved by the Association.

a) Minimum Scope of Insurance

1. Broad Form Comprehensive General Liability in policy form approved by the North Carolina Department of Insurance.

2. Automobile Liability activities involving other than incidental personal auto usage in policy form approved by the North Carolina Department of Insurance.

3. Workers' Compensation coverage as required under the laws and regulations of the State of North Carolina.

4. Consultant's Errors and Omissions or Professional Liability applying to all professional activities

b) Minimum Levels of Insurance

1. Comprehensive or Commercial General Liability: $1,000,000 per occurrence / $2,000,000 aggregate combined single limit for bodily injury, personal injury and property damage.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation coverage as required under the laws and regulations of the State of North Carolina.

4. Consultant's Errors or Omissions or Professional Liability: $1,000,000 per occurrence and as an annual aggregate.

c) Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Association. In the event the deductibles or self-insured retentions are not acceptable to the Association, the Association reserves the right to negotiate with TCW for changes in coverage deductibles or self-insured retentions; or alternatively, require TCW to provide evidence of other security guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d) Other Provisions

Wherever possible, the policies are to contain, or be endorsed to contain, the following provisions:

1. Comprehensive General Liability and Automobile Liability Coverage

i. The Association, its officials, employees and members are to be covered as named additional insured's as respects: liability arising out of activities performed by or on behalf of TCW; products and completed operations of TCW; premises owned, leased or used by TCW; or automobiles owned, leased, hired or borrowed by TCW. The coverage shall contain no "special" limitations on the scope of protection afforded to the Association, its officials, employees or members.

ii. TCW's insurance shall be the primary insurance as respects the Association, its officials, employees and members. Any insurance or self-insurance maintained by the Association, its employees or members shall be in excess of TCW's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Association, its officials, employees or members.

iv. Coverage shall state that TCW's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Wavier of Subrogation

TCW and Association mutually waive any and all rights of subrogation claims against any of the other parties insurance coverage.

e) All Coverages

Each insurance policy required by this clause shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the Association.

f) Acceptability of Insurers

Insurance is to be placed with insurers with a current Bests' rating of A+ or greater.

g) Verification of Coverage

TCW shall furnish the Association with certificates of insurance affecting coverage required hereunder. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind the specified coverage and received and approved by the Association.

h) Subcontractors

TCW shall include all subcontractors as insured's under its policies or shall require subcontractors to provide their own coverage. All coverage for subcontractors shall be subject to all of the requirements stated herein. Upon request by the Association, TCW shall provide insurance certificates evidencing all insurance required of its subcontractors.

8. Record Keeping and Reporting.

a) TCW shall maintain accounts and records, which sufficiently and properly reflect all direct costs of any nature expended for the Services performed pursuant to this Agreement. TCW shall also maintain such other records as may be deemed necessary by the Association to ensure proper accounting of all amounts paid by the Association for performance of this Agreement. The foregoing records shall be maintained for a period of three (3) years after termination of this Agreement.

b) TCW shall maintain service records of all Services performed on each individual septic system pursuant to the specifications of this Agreement and shall provide the respective septic system owner a written report within 15 days of the inspection that explains, as a minimum, the overall condition of the system, whether the septic tank needs to be pumped out and recommendations for correcting any adverse conditions noted.

9. Audits and Inspections. The records and documents of TCW, with respect only to inspection matters covered by this Agreement, shall be subject at all times to inspection, review or audit, at the sole expense of the Association, during the term of this Agreement.

10. Termination.

a) This agreement may be terminated by either party, with or without cause, upon no less than 90 days notice to the other party, without penalty.

b) The Association may terminate this Agreement in the following circumstances:

1) immediately, if TCW's insurance coverage is cancelled for any reason or any other material breach of TCW's obligations under this Agreement has occurred and has not been cured within ten (10) days following TCW's receipt of written notice from the Association of such breach; or

2) upon thirty (30) days notice, if TCW fails to perform any of TCW's obligations hereunder, and such failure continues for ten (10) days following TCW's receipt of written notice from the Association of such failure; or

3) upon thirty (30) days notice, at any time after the Association has sent more

than three (3) notices of default to TCW pursuant to subparagraph 2) above.

4) immediately, for any reason, upon the mutual written agreement between both parties for any reason. A written letter of termination must be agreed upon and signed by both parties to this Agreement.

c) TCW may terminate this Agreement upon thirty (30) days notice if the Association fails to perform any of the Association's obligations hereunder and such failure continues for ten (10) days following the Association's receipt of notice from TCW of such failure.

d) This Agreement also terminates if Operation Permits for the systems are revoked and all revocation appeals are exhausted or waived.

d) In the event this Agreement is terminated or suspended, TCW shall be entitled to payment for all Services performed and reimbursable expenses incurred to the date of termination.

e) This provision shall not prevent either party from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. Discrimination Prohibited. TCW shall not discriminate against any employee, applicant for employment, or any person seeking the services of TCW under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental or physical handicap.

12. Assignment and Subcontract. TCW shall not assign or subcontract any portion of the Services contemplated by this Agreement without the prior written consent of the Association.

13. Conflict of Interest. TCW represents to the Association that it has no conflict of interest in performing any of the Services. In the event that TCW is asked to perform Services for a project with which it may have a conflict, TCW will immediately disclose such conflict to the Association.

14. Confidentiality. All information regarding the Association obtained by TCW in performance of this Agreement shall be considered confidential and shall not be disclosed without the prior written consent of the Association. All information regarding TCW obtained by the Association in performance of this Agreement shall be considered confidential and shall not be disclosed without the prior written consent of TCW.

15. Limited Warranty. TCW's SOLE DUTIES AND RESPONSIBILITIES UNDER THIS AGREEMENT ARE TO PROVIDE INSPECTION AND ROUTINE MAINTENANCE ONLY AS SPECIFIED IN THIS AGREEMENT. INSPECTIONS WILL COMPLY WITH APPLICABLE CODES, LAWS, AND REGULATIONS IN FORCE AT THE TIME OF THE INSPECTION AND REPORT. WORK AND MATERIALS USED IN REPAIRS ARE WARRANTED ONLY TO BE OF GOOD WORKMANSHIP, FREE OF DEFECTS, AND CONFORM TO THE SYSTEMS SPECIFICATIONS AND EQUAL TO THE ORIGINAL PARTS AND EQUIPMENT. THE OWNER'S SOLE REMEDY UNDER THIS EXPRESS WARRANTY IS REPAIR OR REPLACEMENT AND CONSEQUENTIAL DAMAGE OR DAMAGES FOR DELAY ARE LIMITED TO TOTAL SUMS PAID TCW UNDER THISAGREEMENT FOR THE PARTICULAR LOT OR PARCEL FOR THE THEN CURRENT YEAR. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ARE EXPRESSLY AND SPECIFICALLY EXCLUDED. REPAIRS, REPLACEMENTS,

ADDITIONS AND CHANGES BY OTHERS TO THE SYSTEMS COVERED BY THIS AGREEMENT WITHOUT PRIOR NOTICE TO TCW OR ACCEPTANCE OF THE WORK BY TCW DURING THE TERM OF THIS AGREEMENT VOIDS ANY WARRANTY GRANTED HEREIN AS TO TCW.

16. Entire Agreement. This Agreement, including its attachments, contain the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. Notices.

a) Notices to the Association shall be sent to the following address:

The Point Owners Association, Inc.
c/o Hawthorne Management Company
4530 Park Road, Suite 201
Charlotte, NC 28209
Attn: Kristi Alexander

b) Notices to TCW shall be sent to the following address:

TCW Wastewater Management, Inc.
P.O. Box 187
Wingate, NC 28174
Attn: Mr. Tim Bannister

18. Applicable Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. In the event any suit or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in Iredell County, North Carolina. The prevailing party in any such action shall be entitled to its attorneys fees and costs of suit, which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.

19. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Association and TCW, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

20. Survival. Neither completion of the Services nor any termination or cancellation of this Agreement shall be deemed to relieve a party of any obligations hereunder that by their nature survive completion of the Services, including but not limited to all warranties, guarantees, promises of indemnity, and confidentiality obligations.

IN WITNESS, the parties have executed this Agreement as provided below, pursuant to authority duly given.

THE POINT OWNERS ASSOCIATION, INC.

Date: AUG 6, 2014

By: GP Doyle

Title: PRESIDENT, POA

SEAL -STAMP

NORTH CAROLINA, IREDELL COUNTY

I, a Notary Public for the County and State aforesaid, certify Gerald P. Doyle, personally appeared before me this day and acknowledged that he/she is President of The Point Owners Association, Inc. a corporation, and that he/she as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation. Witness my hand and official stamp or seal, this 6TH day of August, 2014.

My commission expires: July 14 2018

Gloria T. Monahan

Notary Public

Gloria T. Monahan, Notary Public

GLORIA T MONAHAN NOTARY PUBLIC IREDELL COUNTY, NC MY COMMISSION EXPIRES JULY 14 2018

TCW WASTEWATER MANAGEMENT, INC.

Date: 9-4-2014

By: Tim Bannister

Title: President

MILDRED AUTREY ATKINSON NOTARY PUBLIC UNION North Carolina 09/22/2009 - 09/21/2014

SEAL -STAMP

NORTH CAROLINA, Union COUNTY

I, a Notary Public for the County and State aforesaid, certify Tim Bannister, personally appeared before me this day and acknowledged that he is President of TCW Wastewater Management, Inc., a corporation, and that he as President being authorized to do so, executed the foregoing instrument on behalf of the corporation. Witness my hand and official stamp or seal, this 4 day of September, 2014.

My commission expires: 09/21/2014

Mildred Autrey Atkinson

Notary Public

# ATTACHMENT A

## Services to be Performed by TCW

1. Base Services. TCW shall provide Base Services according to the minimum schedule of inspections/services required by regulations for septic systems as described below.

   a) Conduct inspections of septic systems two (2) times per 12 month period using a detailed checklist, testing all components for their proper operation, adjusting flow imbalances to systems through the distribution devices, cleaning components, flushing system distribution pipes, and report to the system owner any deficiencies that are detected at the time of the inspection or any detected potential issues that may affect the integrity of the system.

   b) Recommend to the system owner that their septic tank and/or their pump tank requires pumping or cleaning based on specific measurements of the solids levels in the tanks.

   c) Add bacterial product into the septic tank, as needed, to assist in maintaining the proper levels of bacteria at no additional charge.

   d) Provide up to three (3) system "Drainfield Malfunction" or "Component Repair" consultations at no additional charge, unless continued visits are required at the request of the homeowner that may come from neglecting to act on a repair recommendation. If more than three visits within any calendar year are required to perform consultation on the same problem, fees or charges at TCW's current billing rates may apply.

   e) Provide up to three (3) consultations to odor problems at no additional charge, except for requests for repeat problems non-related to the septic system. TCW will offer assistance with tracking "non-related" malodors at their current billing rates.

   f) Provide an Inspection Report to the system owner for each inspection. Reports will be offered electronically by email or by hard copy through USPS. Copies are sent to the Health Department as applicable whenever violations are detected.

   g) Provide technician response 24-hours a day, 7 days a week for emergency contact.

   h) Report non-compliant or malfunctioning systems to the Homeowners Association.

i) Provide a New Homeowner Package with educational material about their septic system to all new septic system installations and new home owners. Package consists of introductory letter from TCW Wastewater Management explaining the services provided, helpful hints of taking care of the system, and contact information.

j) Provide inspection reports to local health department or other regulatory agencies having jurisdiction as required by applicable laws or regulations. If inspections indicate the need for system repairs:

1) Provide notice to the local health department within 48 hours
2) Provide notice to the Association
3) Provide notice to system owners of needed repairs, and, if the necessary repairs are outside the scope of Base Services, then at the owner's request and option, TCW will provide an estimate and will perform the necessary repairs at TCW's then current billing rates and charges for materials.

k) Inspect and approve new septic system installations in accordance with applicable local health department and other regulatory agencies having jurisdiction as required by applicable laws or regulations.

l) During the first year of a new system, conduct inspections two (2) times using a detailed checklist, testing all components for their proper operation, adjusting flow imbalances to systems through the distribution devices, cleaning components, flushing system distribution pipes, and report to the system owner any deficiencies that are detected at the time of the inspection or any detected potential issues that may affect the integrity of the system.

m) TCW shall receive a fee of $325 directly from the system owner or building contractor for Base Services described in k) and l) above during the first year and shall not be included in the calculation of the number of lots to be billed to the Association per Paragraph 3 of the Agreement.

n) Review and approve Architectural Change Requests from homeowners to insure that any changes contemplated do not cause damage to their septic system at no additional charge, except that TCW will receive a $75 fee for reviewing and approving requests for major construction projects that change the building footprint, e.g. patios, outdoor kitchens and/or fireplaces, and swimming pools.

2. Additional Services. Any other services performed by TCW for owners or the Association not specified above shall be considered Additional Services and shall be charged at TCW's then current billing rates and charges for materials.