

## **RESOLUTION OF THE JEFFERSON COUNTY COMMISSION**

### **WHEREAS,**

- A. The Jefferson County Commission (the “County Commission”) is the governing body of Jefferson County, Alabama (the “County”);

### **WHEREAS,**

- B. On November 15, 1948, the Constitution of the State of Alabama was amended by the Jefferson County Sewer Amendment (“Amendment 73”), *see* R-2067,<sup>1</sup> pertaining to the operation, repair, improvement, and management of the Jefferson County sanitary sewer system (the “Sewer System”);

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<sup>1</sup> Citations to “R-\_\_” refer to the consecutively paginated record that preceded the adoption of the *Resolution of the Jefferson County Commission* dated November 6, 2012 (the “2012 Rate Resolution”), and that has since been supplemented with the following additional materials in connection with this resolution:

- (i) the 2012 Rate Resolution, *see* R-2810-45, the *Jefferson County Sewer Use Administrative Ordinance*, Ordinance No. 1808 (the “Administrative Ordinance”), *see* R-2846-91, and the *Jefferson County Sewer Use Charge Ordinance*, Ordinance No. 1809 (the “Charge Ordinance”), *see* R-2892-2913;
- (ii) Sewer Plan Support Agreements with the JPMorgan Parties, *see* R-4294-4337, the Supporting Sewer Warrantholders and JPMorgan Chase Bank, N.A., *see* R-4338-4408, the Sewer Warrant Insurers, *see* R-4409-59, the Sewer Liquidity Banks, *see* R-4460-85, and LBSF, *see* R-4486-4500;
- (iii) the *Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated June 30, 2013)*, *see* R-3161-3262, and accompanying *Disclosure Statement Regarding Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated June 30, 2013)*, *see* R-2914-3715, which includes as an exhibit the original Financing Plan preliminarily approved by the County Commission on June 4, 2013, *see* R-3695-3700;
- (iv) the amended *Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated July 29, 2013)* (the “Plan”), *see* R-3965-4069, and accompanying *Disclosure Statement Regarding Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated July 29, 2013)*, *see* R-3716-4537, which includes as an exhibit the Amended Financing Plan preliminarily approved by the County Commission on July 23, 2013, *see* R-4517-22; and
- (iv) the sworn affidavit of Eric Rothstein, *see* R-4538-39.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan or the 2012 Rate Resolution, as applicable.

**WHEREAS,**

- C. Amendment 73 vests the County Commission, as “[t]he governing body of Jefferson county,” with “full power and authority to manage, operate, control and administer” the Sewer System, “and, to that end, [to] make any reasonable and nondiscriminatory rules and regulations fixing rates and charges, providing for the payment, collection and enforcement thereof, and the protection of its property,” R-2067;

**WHEREAS,**

- D. On September 19, 1949, Act Number 619, 1949 Ala. Acts 949, *et seq.* (“Act 619”), *see* R-2068-77, a supplement to Amendment 73, became effective by its terms;

**WHEREAS,**

- E. Act 619 restates and confirms that the County Commission has full “power to maintain and operate” the Sewer System and to levy and collect “sewer rentals or service charges” from “the persons and property whose [sewage] is disposed of or treated by the [Sewer System],” R-2069 (Act 619 §§ 2, 4);

**WHEREAS,**

- F. Act 619 provides that the County Commission “shall prescribe and from time to time when necessary revise a schedule of [sewer rates and charges] which shall . . . be such that the revenues derived therefrom will at all times be adequate but not in excess of amounts reasonably necessary [(i)] to pay all reasonable expenses of operation and maintenance of the [Sewer System], including reserves and insurance; [(ii)] to make any necessary or appropriate replacements, extensions or improvements [to the Sewer System; and (iii)] to pay punctually the principal of and interest on any bonds issued by the County pursuant to [Amendment 73],” R-2070-71 (Act 619 § 6(a));

**WHEREAS,**

- G. Act 619 directs that sewer rates and charges “shall, as nearly as may be practicable and equitable, be uniform throughout the county for the same type, class and amount of use or service of the [Sewer] [S]ystem, and may be based or computed either on the consumption of water on or in connection with the real property served, making due allowance for commercial use of water or for water not entering the [Sewer] [S]ystem, or on the number and kind of water outlets on or in connection with such real property, or on the number and kind of plumbing or sewerage [*sic*] fixtures or facilities on or in connection with such real property, or on the number of persons residing or working on or otherwise connected or identified with such real property, or on the capacity of the improvements on or connected with such real property, or on any other factors determining the type, class and amount of use or service of the [Sewer] [S]ystem, or on any

combination of any such factors, and may give weight to the characteristics of the sewerage [*sic*] and other wastes and any other special matter affecting the cost of treatment and disposal thereof . . . ,” R-2070 (Act 619 § 5);

**WHEREAS,**

H. On November 9, 2011, the County filed a petition for relief under chapter 9 of title 11 of the United States Code, thereby commencing Case No. 11-05736-TBB9 (the “Case”) before the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the “Bankruptcy Court”);

**WHEREAS,**

I. On March 4, 2012, the Bankruptcy Court entered an order for relief in the Case;

**WHEREAS,**

J. On November 6, 2012, after a series of public hearings, the County Commission enacted an interim sewer rate structure (the “Interim Rate Structure”) as set forth in the 2012 Rate Resolution, *see* R-2810-45, and adopted the Administrative Ordinance, *see* R-2846-91, and the Charge Ordinance, *see* R-2892-2913, which ordinances (as well as the Sewer System generally) are administered on a day-to-day basis by the County’s Environmental Services Department (“ESD”);

**WHEREAS,**

K. The 2012 Rate Resolution provided for implementation of the Interim Rate Structure on March 1, 2013 (or as soon thereafter as could practicably be implemented by the County’s billing partners), *see* 2012 Rate Resolution Finding ¶ X, and the Interim Rate Structure was successfully implemented on March 1, 2013, and has been duly administered thereafter in accordance with its terms;

**WHEREAS,**

L. Following the enactment and implementation of the Interim Rate Structure, the County and certain of the County’s creditors negotiated in good faith a series of arms-length, and interlocking compromises and settlements, including with respect to numerous complex and interwoven issues concerning the operation and financing of the Sewer System, and such settlements will (subject to and upon the occurrence of the Effective Date of the Plan, including but not limited to confirmation of the Plan and completion of the refinancing) fully and finally resolve more than five years of resource-consuming litigation and allow the County to exit bankruptcy by the end of 2013;

**WHEREAS,**

M. On June 4, 2013, to memorialize the settlements described in Recital L, the County Commission approved three Sewer Plan Support Agreements effective as

of June 6, 2013, with the JPMorgan Parties, *see* R-4294-4337, the Supporting Sewer Warrantholders and JPMorgan Chase Bank, N.A., *see* R-4338-4408, and the Sewer Warrant Insurers, *see* R-4409-59;

**WHEREAS,**

- N. On June 27, 2013, further pursuant to the negotiations and settlements described above, the County Commission approved a fourth Sewer Plan Support Agreement with the Sewer Liquidity Banks, *see* R-4460-85;

**WHEREAS,**

- O. On July 23, 2013, further pursuant to the negotiations and settlements described above, the County Commission approved a fifth Sewer Plan Support Agreement with LBSF, *see* R-4486-4500;

**WHEREAS,**

- P. Pursuant to the Sewer Plan Support Agreements and subject to the terms thereof (which control over the partial summary below), the County has agreed to, among other things:
- i. Expediently prosecute, confirm, and consummate the Plan, which incorporates the provisions of, and is otherwise materially consistent with, the Sewer Plan Support Agreements;
  - ii. Implement all steps necessary or appropriate to obtain from the Bankruptcy Court the Confirmation Order prior to November 25, 2013, unless such date is extended by each of the Sewer Plan Support Parties (other than LBSF) in their sole and absolute discretion; and
  - iii. Cause the Effective Date of an Acceptable Plan to occur prior to December 20, 2013, or, if extended under the Supporting Sewer Warrantholder Plan Support Agreement, prior to December 31, 2013;

**WHEREAS,**

- Q. On June 30, 2013, the County filed its initial chapter 9 plan, *see* R-3161-3262, and accompanying disclosure statement, *see* R-2914-3715, which included as an exhibit, *inter alia*, the Financing Plan preliminarily approved by the County Commission on June 4, 2013, *see* R-3695-3700;

**WHEREAS,**

- R. On July 29, 2013, the County filed its amended Plan, *see* R-3965-4069, and accompanying Disclosure Statement, *see* R-3716-4537, which included as exhibits, *inter alia*, the Amended Financing Plan preliminarily approved by the County Commission on July 23, 2013, *see* R-4517-22, and the Approved Rate

Structure, *see* R-4061-68, which details how the adjustments to Sewer System rates and charges contemplated by the Amended Financing Plan and the Plan will be implemented;

**WHEREAS,**

- S. The Amended Financing Plan and Approved Rate Structure are based on certain assumptions regarding future projected revenues, operating expenses, and capital expenditures, and future market conditions under which the New Sewer Warrants can be issued;

**WHEREAS,**

- T. The Plan incorporates the material terms of the Sewer Plan Support Agreements and represents a global compromise and settlement of, *inter alia*, hotly contested claims relating to the control of, the rates for, and the debt associated with the Sewer System, including whether and how to compromise disputes and causes of action arising from the fraud, waste, and corruption detailed in the 2012 Rate Resolution;

**WHEREAS,**

- U. Through the Plan and subject to the Effective Date, the County will achieve more than \$1.3 billion of permanent Sewer Debt Claim concessions (the largest of which will be made by the JPMorgan Parties), which concessions will substantially reduce the amount of the County's Sewer System-related indebtedness from approximately \$3.2 billion of principal and interest as of the County's chapter 9 filing to approximately \$1.835 billion post-bankruptcy – a reduction of approximately 40%;

**WHEREAS,**

- V. Through the Plan and subject to the Effective Date, the County will also achieve the elimination of approximately \$750 million of swap termination fees, *see* R-4012 (Plan § 2.3(e));

**WHEREAS,**

- W. Provided the Effective Date occurs, the Plan will enable the County to emerge from Chapter 9 expeditiously, which in turn will facilitate efforts to develop the County's economy and expand the number of business and non-business users of the Sewer System, which will have the positive effect of reducing future rate increase requirements;

**WHEREAS,**

- X. As contemplated by the Amended Financing Plan, following compliance with procedures required by state law, the County expects to distribute under the Plan

approximately \$1.835 billion to its existing creditors on account of and in full satisfaction of their Sewer Debt Claims;

**WHEREAS,**

- Y. The Amended Financing Plan is contingent on the County's compliance with the Approved Rate Structure;

**WHEREAS,**

- Z. The Approved Rate Structure contemplates that the County Commission will consider enacting the rates and charges embodied therein through an "October Resolution"; for avoidance of doubt, this resolution is the October Resolution contemplated by the Approved Rate Structure;

**WHEREAS,**

- AA. The Approved Rate Structure enumerates the various categories of rates, charges, and fees (collectively, the "User Charges") that the County currently charges for sewer service, which User Charges took effect on March 1, 2013, and are embodied in the Charge Ordinance;

**WHEREAS,**

- BB. Effective March 1, 2013, the current User Charges are as follows:
  - i. Monthly base charge (5/8" meter): \$10.00;
  - ii. Monthly base charge (3/4" meter): \$11.00;
  - iii. Monthly base charge (1" meter): \$14.00;
  - iv. Monthly base charge (1.5" meter): \$18.00;
  - v. Monthly base charge (2" meter): \$29.00;
  - vi. Monthly base charge (3" meter): \$110.00;
  - vii. Monthly base charge (4" meter): \$140.00;
  - viii. Monthly base charge (6" meter): \$210.00;
  - ix. Monthly base charge (8" meter): \$290.00;
  - x. Monthly base charge (10" meter): \$370.00;
  - xi. Non-residential block volumetric charge: \$7.60 per CCF;
  - xii. Residential block volumetric charge (first three CCF): \$4.50 per CCF;

- xiii. Residential block volumetric charge (next three CCF): \$7.00 per CCF;
- xiv. Residential block volumetric charge (additional CCF): \$8.00 per CCF;
- xv. Surcharge for BOD (300 mg/l strength): \$0.8284 per pound;
- xvi. Surcharge for COD (750 mg/l strength): \$0.4142 per pound;
- xvii. Surcharge for TSS (300 mg/l strength): \$0.2734 per pound;
- xviii. Surcharge for FOG (50 mg/l strength): \$0.1715 per pound;
- xix. Surcharge for TP (4 mg/l strength): \$3.2650 per pound;
- xx. Septage and domestic wastewater charge: \$60.00 per 1,000 gallons;
- xxi. Private meter application processing fee: \$12.00 per application;
- xxii. Sewer impact fees for new connections to the system: \$225.00 per fixture;
- xxiii. Connection fee for properties currently on septic: \$100.00;
- xxiv. Impact fee refund charge (1-10 fixtures): \$20.00;
- xxv. Impact fee refund charge (11-50 fixtures): \$30.00;
- xxvi. Impact fee refund charge (more than 50 fixtures): \$50.00;
- xxvii. Connection permit (pre-installation): \$50.00;
- xxviii. Connection permit (post-installation): \$550.00;
- xxix. Repair permit (pre-installation): \$50.00;
- xxx. Repair permit (post-installation): \$550.00;
- xxxi. Tap permit: \$550.00;
- xxxii. Disconnection permit: \$25.00;
- xxxiii. Grease trap annual inspection fee (1-5 units): \$300.00;
- xxxiv. Grease trap annual inspection fee (6-10 units): \$500.00;
- xxxv. Grease trap annual inspection fee (additional units): \$200.00 per 5 additional units;
- xxxvi. Grease trap non-compliance fee: \$400.00;
- xxxvii. Grease trap re-inspection fee: \$400.00;

xxxviii. Grease trap exemption fee: \$300.00;

xxxix. Lien recording fee: \$16.00;

xl. Lien satisfaction fee: \$16.00;

xli. Return check fee: \$30.00; and

xlii. Pay off amount: \$4.00 per sheet;

**WHEREAS,**

CC. The Approved Rate Structure provides that the County Commission will, in compliance with Amendment 73 and Act 619, consider a series of adjustments to User Charges, including an upward adjustment of \$5.00 (scaled by meter size in accordance with the AWWA M1 Manual reference for meter equivalence ratio) in the residential and non-residential monthly base charge and an upward adjustment of 3.49% in non-residential volumetric charges, both to take effect November 1, 2013;

**WHEREAS,**

DD. In addition to the changes in User Charges scheduled to take effect on November 1, 2013, the Approved Rate Structure contemplates that the County Commission will consider certain Required Percentage Increases of overall User Charges that will take effect only if the Effective Date of the Plan, including but not limited to confirmation of the Plan and completion of the refinancing, has occurred by January 1, 2014;

**WHEREAS,**

EE. The Approved Rate Structure provides that – if and only if the Effective Date of the Plan, including but not limited to confirmation of the Plan and completion of the refinancing, has occurred by January 1, 2014 – the First Required Percentage Increase shall increase the User Charges in effect as of November 1, 2013, by 7.89%, effective no later than November 1, 2014, and that such User Charges shall remain in effect through and including September 30, 2015;

**WHEREAS,**

FF. The Approved Rate Structure provides that – if and only if the Effective Date of the Plan, including but not limited to confirmation of the Plan and completion of the refinancing, has occurred by January 1, 2014 – the Second Required Percentage Increase shall increase the User Charges in effect as of September 30, 2015, by 7.89%, effective no later than October 1, 2015, and that such User Charges shall remain in effect through and including September 30, 2016;

**WHEREAS,**

GG. The Approved Rate Structure provides that – if and only if the Effective Date of the Plan, including but not limited to confirmation of the Plan and completion of the refinancing, has occurred by January 1, 2014 – the Third Required Percentage Increase shall increase the User Charges in effect as of September 30, 2016, by 7.89%, effective no later than October 1, 2016, and that such User Charges shall remain in effect through and including September 30, 2017;

**WHEREAS,**

HH. The Approved Rate Structure provides that – if and only if the Effective Date of the Plan, including but not limited to confirmation of the Plan and completion of the refinancing, has occurred by January 1, 2014 – the Fourth Required Percentage Increase shall increase the User Charges in effect as of September 30, 2017, by 7.89%, effective no later than October 1, 2017, and that such User Charges shall remain in effect through and including September 30, 2018;

**WHEREAS,**

II. The Approved Rate Structure provides that – if and only if the Effective Date of the Plan, including but not limited to confirmation of the Plan and completion of the refinancing, has occurred by January 1, 2014 – for each fiscal year starting with the fiscal year beginning October 1, 2018, and continuing through the remaining term of the New Sewer Warrants, the User Charges in effect as of September 30 of the immediately preceding fiscal year shall be increased by 3.49% for each remaining fiscal year that the New Sewer Warrants remain outstanding;

**WHEREAS,**

JJ. The Approved Rate Structure contemplates that each of the Required Percentage Increases shall be made by uniformly adjusting the fees and charges in each of the categories of User Charges by the requisite percentage (the “Uniform Method”), provided, however, that the County may elect to make the Required Percentage Increases non-uniformly by increasing, decreasing, or leaving unchanged certain of the fees and charges in each of the categories of User Charges (the “Non-Uniform Method”) upon certification (pursuant to the terms of the Approved Rate Structure and the New Sewer Warrant Indenture) that the revenues projected to be generated in the fiscal year for which the Required Percentage Increase is applicable will be greater than or equal to the revenues that would be projected to be generated in that same fiscal year if the Uniform Method had instead been used;

**WHEREAS,**

KK. To ensure that User Charges are neither too high nor too low to meet the Sewer System’s needs, the Approved Rate Structure allows the County Commission to

enact appropriate Adjusting Resolutions that: (i) modify the Required Percentage Increase for the next fiscal year; (ii) provide for the implementation of the Required Percentage Increase via the Non-Uniform Method; and (iii) modify the existing categories of User Charges;

**WHEREAS,**

- LL. Eric Rothstein, a nationally recognized water and wastewater utility consultant and strategic financial planner, has provided sworn testimony to the County Commission that, *inter alia*:
  - i. States that if the Effective Date of the Plan occurs (and the Sewer Debt Claim concessions contained in the Plan thus permanently reduce the aggregate amount of the County’s Sewer System-related indebtedness by approximately \$1.3 billion), the rates and charges embodied in the Approved Rate Structure are expected to generate sufficient revenues to pay: (a) the Sewer System’s future projected operating expenses, as such future costs are assumed in the Amended Financing Plan and the Approved Rate Structure; (b) the Sewer System’s future projected capital expenditures, as and to the extent such future costs are assumed in the Amended Financing Plan and the Approved Rate Structure; and (c) the principal and interest on the New Sewer Warrants as such principal and interest becomes due and payable, as such future costs are assumed in the Amended Financing Plan and the Approved Rate Structure;
  - ii. Compares the relative burden on customers of the Sewer System with burdens on customers of other sewer systems facing particularly challenging system financing requirements, including those imposed to achieve compliance with federal consent decrees; and
  - iii. States that, in Mr. Rothstein’s professional judgment, in the specific context presented by the combination of all of the factors outlined above, the rate adjustments contemplated by the Approved Rate Structure are reasonable, non-discriminatory, and appropriate under the circumstances;

**WHEREAS,**

- MM. Resolving more than five years of litigation concerning the operation and financing of the Sewer System and exiting bankruptcy on a consensual basis by the close of 2013 with approximately 40% less Sewer Debt is of substantial benefit to the County, its residents, ratepayers, taxpayers, creditors, and all interested parties; and

**WHEREAS,**

- NN. In addition to the County Commission’s amendment of the Charge Ordinance to embody the revised User Charges, David Denard, Director of ESD, has

recommended modifying certain language in the Charge Ordinance to clarify intent;

**THE JEFFERSON COUNTY COMMISSION FINDS AND DETERMINES THAT:**

- I. The County Commission can exercise its constitutional responsibility to make “reasonable and nondiscriminatory rules and regulations fixing rates and charges,” R-2067 (Amendment 73), for sewer service, and may appropriately do so on the basis of the record adduced to date, all of which the County Commission has carefully considered;
- II. The process by which this resolution was adopted and the rates were enacted accords with Alabama law (Amendment 73 and Act 619) and constitutional guarantees of due process, including full and fair notice and opportunity to be heard;
- III. Mr. Rothstein is an expert utility system consultant, and it is appropriate for the County Commission to rely upon his sworn testimony, which is credible and reliable and uncontradicted by any other evidence before the County Commission;
- IV. The interlocking settlements that give rise to the Plan, the Amended Financing Plan, and the Approved Rate Structure: (i) are the product of extensive arms’ length negotiations conducted in good faith over a period of many months among the County and its advisors and professionals, on the one hand, and numerous separate creditor constituencies and their respective advisors and professionals, on the other hand; (ii) represent a multifaceted, multiparty compromise of many hotly contested disputes; and (iii) are reasonable, fair, equitable, and in the best interests of the County, its residents, ratepayers, taxpayers, creditors, and all interested parties;
- V. The Amended Financing Plan was developed and the Plan was negotiated and proposed with the legitimate and honest purpose of allowing the County to adjust its debts and emerge from bankruptcy with a capital structure that will allow the County to satisfy its obligations with sufficient liquidity and capital resources while continuing to provide for the health, safety, and welfare of its citizens in accordance with applicable law;
- VI. Under the circumstances now presented, modifying the User Charges to increase the monthly base charge by \$5.00 per month (scaled by meter size in accordance with the AWWA M1 Manual reference for meter equivalence ratio) and increase the non-residential block volumetric charge by 3.49%, effective November 1, 2013, is reasonable and non-discriminatory, and is consistent with Amendment 73, Act 619, and the advice and recommendations of the County’s rate consultant;
- VII. Under the circumstances now presented and conditioned upon the occurrence of the Effective Date (including but not limited to confirmation of the Plan and completion of the refinancing) by January 1, 2014, modifying the User Charges in effect as of November 1, 2013, by the First Required Percentage Increase, *i.e.*, 7.89%, effective no later than November 1, 2014, is reasonable and non-discriminatory, and is consistent with Amendment 73, Act 619, and the advice and recommendations of the County’s rate consultant;

- VIII. Under the circumstances now presented and conditioned upon the occurrence of the Effective Date (including but not limited to confirmation of the Plan and completion of the refinancing) by January 1, 2014, modifying the User Charges in effect as of September 30, 2015, by the Second Required Percentage Increase, *i.e.*, 7.89%, effective no later than October 1, 2015, is reasonable and non-discriminatory, and is consistent with Amendment 73, Act 619, and the advice and recommendations of the County's rate consultant;
- IX. Under the circumstances now presented and conditioned upon the occurrence of the Effective Date (including but not limited to confirmation of the Plan and completion of the refinancing) by January 1, 2014, modifying the User Charges in effect as of September 30, 2016, by the Third Required Percentage Increase, *i.e.*, 7.89%, effective no later than October 1, 2016, is reasonable and non-discriminatory, and is consistent with Amendment 73, Act 619, and the advice and recommendations of the County's rate consultant;
- X. Under the circumstances now presented and conditioned upon the occurrence of the Effective Date (including but not limited to confirmation of the Plan and completion of the refinancing) by January 1, 2014, modifying the User Charges in effect as of September 30, 2017, by the Fourth Required Percentage Increase, *i.e.*, 7.89%, effective no later than October 1, 2017, is reasonable and non-discriminatory, and is consistent with Amendment 73, Act 619, and the advice and recommendations of the County's rate consultant;
- XI. Under the circumstances now presented and conditioned upon the occurrence of the Effective Date (including but not limited to confirmation of the Plan and completion of the refinancing) by January 1, 2014, for each fiscal year starting with the fiscal year beginning October 1, 2018 and continuing through the remaining term of the New Sewer Warrants, modifying the User Charges in effect as of September 30 of the immediately preceding year by the Residual Annual Required Percentage Increase, *i.e.*, 3.49% per year, is reasonable and non-discriminatory, and is consistent with Amendment 73, Act 619, and the advice and recommendations of the County's rate consultant;
- XII. Under the circumstances now presented and conditioned upon the occurrence of the Effective Date (including but not limited to confirmation of the Plan and completion of the refinancing) by January 1, 2014, the User Charges embodied in the Approved Rate Structure, and the revenues projected to be generated by such User Charges, are designed to meet the forecasted cost of operating the Sewer System in compliance with applicable law and in service to the community, and if such User Charges produce more revenue in a given year than is required to pay the costs of operating the Sewer System in compliance with applicable law, the County Commission may adopt Adjusting Resolutions that decrease rates or reduce or defer future rate increases;
- XIII. It is appropriate for the Commission to enact an amended and restated Charge Ordinance to reflect the revised User Charges that will take effect November 1, 2013, and to incorporate the technical changes recommended by ESD;

- XIV. It is appropriate for the County to agree in connection with confirmation of the Plan that the Bankruptcy Court shall have and retain exclusive jurisdiction to enforce the Approved Rate Structure and the Rate Resolution, to require the County to otherwise comply with the New Sewer Warrants and the New Sewer Warrant Indenture, and to hear and adjudicate any action or proceeding enforcing, challenging, or collaterally attacking the Approved Rate Structure or this Resolution;

**NOW, THEREFORE, BE IT RESOLVED BY THE JEFFERSON COUNTY COMMISSION, THAT:**

1. Effective November 1, 2013, the monthly base charge will be increased by \$5.00 (scaled by meter size in accordance with the AWWA M1 Manual reference for meter equivalence ratio), and non-residential block volumetric charges will be increased 3.49%;
2. If and only if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has occurred by January 1, 2014, the User Charges in effect as of November 1, 2013, will be increased by 7.89%, effective no later than November 1, 2014, and such modified User Charges shall remain in effect through and including September 30, 2015, without any further action by the County Commission;
3. If and only if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has occurred by January 1, 2014, the User Charges in effect as of September 30, 2015, will be increased by 7.89%, effective no later than October 1, 2015, and such modified User Charges shall remain in effect through and including September 30, 2016, without any further action by the County Commission;
4. If and only if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has occurred by January 1, 2014, the User Charges in effect as of September 30, 2016, will be increased by 7.89%, effective no later than October 1, 2016, and such modified User Charges shall remain in effect through and including September 30, 2017, without any further action by the County Commission;
5. If and only if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has occurred by January 1, 2014, the User Charges in effect as of September 30, 2017, will be increased by 7.89%, effective no later than October 1, 2017, and such modified User Charges shall remain in effect through and including September 30, 2018, without any further action by the County Commission;
6. If and only if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has occurred by January 1, 2014, for each fiscal year starting with the fiscal year beginning October 1, 2018, and continuing through the remaining term of the New Sewer Warrants, the User Charges in effect as of September 30 of the immediately preceding fiscal year shall be increased by 3.49% for each remaining fiscal year that the New Sewer Warrants remain outstanding, without any further action by the County Commission;

7. If and only if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has occurred by January 1, 2014, and absent a duly enacted Adjusting Resolution (consistent with the terms of the Approved Rate Structure and the New Sewer Warrant Indenture) providing otherwise, implementation of the percentage increases specified in Resolving ¶¶ 2 – 6 inclusive shall be made by uniformly adjusting the fees and charges in each of the categories of User Charges by the Uniform Method;
8. If and only if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has occurred by January 1, 2014, the County stipulates and agrees that holders of the New Sewer Warrants have a strict legal right, enforceable by mandamus, to implementation of the Required Percentage Increases (either by the Uniform Method or by the terms of any applicable Adjusting Resolution that has been duly enacted for the fiscal year in question), and that the Bankruptcy Court has and retains exclusive jurisdiction pursuant to the Plan and related confirmation order to provide such relief and to hear and adjudicate any action or proceeding in connection therewith;
9. Notwithstanding anything to the contrary herein, if the Effective Date of the Plan (including but not limited to confirmation of the Plan and completion of the refinancing) has not occurred by January 1, 2014, the provisions of Resolving ¶¶ 2 – 8 inclusive shall be null, void, and of no effect whatsoever;
10. The County’s legal counsel, consultants, and advisors are authorized and directed to take all steps necessary and appropriate to consummate the Plan;
11. The Amended and Restated Jefferson County Sewer Use Charge Ordinance (No. 1809), originally enacted November 6, 2012, is **ADOPTED** and shall take effect on November 1, 2013; and
12. The Minute Clerk shall maintain the Record, as the basis on which the County Commission has exercised its authority, *cf. Pilcher v. City of Dothan*, 93 So. 16, 19 (Ala. 1922) (“[M]unicipal governmental action, of which a record is required to be made, cannot be shown by parol; [rather,] the records themselves (unless lost or destroyed) are the best and only evidence of such governmental action.”), in the Minute Clerk’s office separate and apart from the official minutes of the County Commission;

**DONE and ORDERED** this 23rd day of September, 2013.

[INSERT AMENDED AND RESTATED CHARGE ORDINANCE]