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February 21, 2018

VIA EMAIL AND OVERNIGHT MAIL

Ms. Carrie Scarlata
Assistant County Counsel
County of Yolo
625 Court Street, Room 201
Woodland, CA 95695

Re: National O&M Agreement & Related Disputes

Dear Ms. Scarlata:

This letter is on behalf of National O&M, Inc. (“National”) in response to your February 5, 2018 Letter (“Letter”). Needless to say, National vigorously disputes the representations made in your Letter. Either you have been misinformed by County officials or the County does not understand the facts at hand, as your Letter is simply inaccurate and incorrect.

We take this opportunity to explain the reality of the underlying operation and maintenance issues and to again request that the County promptly make full payment of all outstanding invoices (See, our prior February 7, 2018 letter regarding Notice of Default). There is no justification for withholding payment on the basis of performance – as explained below, National inherited numerous undisclosed preexisting system problems for which the County and its other third party contractors have responsibility (not National). Further, National has diligently performed to industry standards, and the facts and law support prompt full payment.

Indeed, we note that most of the invoices that the County is apparently refusing to pay reflect basic reimbursable “costs” incurred by National which, in any event, are not subject to a “damages” offset, even if there were any such damages incurred by the County (which there are not). Not reimbursing expenses incurred in the performance of the contract was neither contemplated under the contract nor reasonably foreseeable as a form of damages. See, e.g., *Erlich v. Menezes*, 21 Cal. 4th 543, 550 (1999).

Overdue expenses, at minimum, should be immediately reimbursed pending any further dispute resolution. We also note the County simply sent its Letter accusing National of a failure to perform, but did not timely dispute the subject invoices (see Notice of Default), did not allow or offer National any opportunity to cure, did not apparently invoke the Dispute Resolution process of the Agreement (by sending the matter to the Department Director as required), and instead simply chose to unilaterally withhold significant amounts owed. As you know, National is a relatively small company and the over

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\$200,000 now owed is significant to it, and harm and continuing harm has been done by the County's actions.

Accordingly, we reserve all rights to seek all due relief in Court and otherwise, and request that you kindly consider this letter, in conjunction with the Notice of Default, as triggering the formal Dispute Resolution mechanisms under the Agreement. In any event, we look forward to resolution and full payment as soon as possible.

I. The County Fails to Understand the Facts

National O&M, Inc. (National) assumed operations of the Wild Wings Water and Wastewater project on April 1, 2016, with a transition/shadowing period of March 23, 2016 to March 31, 2016. Be advised that pre-existing conditions were not communicated to National by the County prior to the start date, and the procurement was misleading in regards to the amount of effort required to operate the facilities in such poor condition. During the transition period, National first learned about the overwhelming equipment repairs/needs and operational challenges associated with the wastewater treatment facility, sewage collection lines, Pintail water system, Canvass Back water system, water distribution system and particularly the high flows coming into the wastewater treatment plant. Prior to National's takeover, many major pre-existing conditions included:

- 98% solids in the wastewater treatment plant- the facility needed immediate sludge removal to treat the flows.
- SCADA system not properly working
- False alarms throughout the day and night requiring callbacks
- Sludge in the storm pond
- Spent filter media on the ground from a prior tertiary filter repair
- Severely corroded wastewater treatment plant infrastructure
- 24-hour Emergency storage pond full
- High flows coming to wastewater plant exceeding the design capacity and capability
- Odor issues and complaints from residents
- Various equipment and pumps not operating
- No evidence of preventive maintenance performed on the equipment and no records available
- No previous test results
- No previous monthly reports on-site
- Lift stations full of grease requiring immediate cleaning
- Lift station floats needing replacement
- Sewer collection lines with influent/infiltration (I/I)
- All solar batteries in golf course ponds dead needed replacement
- Generator at Pintail water system not operating properly
- Pintail jockey pump and air compressor needing repair
- Water tank inspections not performed
- Canvass Back Water system off-line due to high Arsenic levels
- Canvass Bank disinfection equipment removed
- Customer water meter reading equipment not operable

- Majority of customer meter vaults in the system flooded
- Vendors that grossly overcharged the previous contractor for chemicals and services passed on to County

The County had years of lack of oversight and mismanagement for the facility conditions to get to a point of requiring such excessive repairs and attention, particularly for a facility of this size. During the first year of National's operations there was a lack of continuity with the County; National's County point of contact changed three times in the first eight months including transferring from one county department to another with the statement to National that the County had internal problems that were under Grand Jury investigation. Furthermore, the County has brought in multiple consultants to handle the numerous facility deficiencies and needed upgrades with little to no communication or coordination with National as the operator. In many instances, the consultants have apparently provided misinformation and actions which violate the permit.

There have been numerous and continuous influent flows that have exceeded the facility design capacity and capabilities that are in direct violation of National's contract section XV. The LEE & RO facility Condition Assessment identifies many system deficiencies and flow limitations of the wastewater treatment facility. (See, December 15, 2017 report provided to the County by LEE & RO, Inc.).

The repairs below reflect an abnormal number of repairs and needed upgrades for a small utility serving 340 homes. This reflects many years of neglect and lack of County oversight. The following list includes just some of the major repairs National performed:

- Replaced aeration lines
- Replaced RAS and WAS lines
- Replaced the on-line chlorine residual analyzer with a new Hach CL-17
- Replaced the on-line Turbidity Meters
- Emergency generator repairs
- Replaced well transducers in the water wells
- Replaced an aeration blower
- Replaced lift station pumps
- Replaced EQ pumps
- Replaced all water meter encoders throughout the Wild Wings development
- Several SCADA system repairs and trend enhancements
- Performed water storage tower internal inspections
- Replaced the chlorine system at the Canvas back water tower
- Replaced the cathodic protection at both the Pintail and Canvas Back water storage towers
- Corrected pressure issues within the water distribution system
- Flushed distribution system of sediment which may never have been done prior
- Replaced the PLC at Canvas Back that failed
- Repair the electrical failure of the electrical system at Pintail

In short, National in fact added great value to the operations and the evidence reflects that others are either responsible for the County's now-stated claims or in fact no such claims exist against National. We further take this opportunity to respond to each of the core allegations in your Letter (and are happy to provide additional supporting material and evidence to you, the Director and/or County Supervisors).

II. Your Letter is Incorrect that National Provided Defective Work

We address the claims made in your Letter in the order listed.

1. "National bypassed the wastewater facility's tertiary filter. As a result, secondary effluent bypassed the filters and proceeded unfiltered to the chlorine contact tank and then into the recycled water pond, thereby fouling the recycled water pond. Having done so, discharging this water to the golf course would constitute a violation of the discharge permit. Alternative methods to dispose of the effluent generated from the wastewater treatment plant to adequately treat over 5-million gallons of contaminated recycled water, and then to clean the pond, will be costly for the County."

Response: National did not bypass the tertiary filter and contaminate the recycle storage pond, rather the gross negligence and actions of the County and EEI, County hired contractor, caused the fouling of the recycled pond. EEI was hired to perform the tertiary filter repairs, on December 20, 2017, they cut the line from secondary clarifier and directed all flow, unfiltered and unchlorinated, directly into the recycle pond.

Prior to the secondary effluent diversion into the recycle pond, National collected all pertinent and required laboratory samples which are run by a certified laboratory. In no circumstance did the treated water exceed any required permit limits. Even though the filter was not performing as designed, National did not experience any adverse effluent results. Once the County and EEI recklessly decided to bypass the secondary effluent directly to the recycle pond instead of bringing in portable storage tanks. In so doing, the County and EEI clearly violated Title 22 regulations and discharged solids directly to the recycle water pond.

Pictures taken by Lachi Richards on December 20, 2017 (and which were contained in her email dated December 21, 2017) reflect the actions of the County and EEI in discharging solids directly into the pond. National had no involvement, nor were they included in the communication with EEI and the County in their process to repair the tertiary filter. These pictures were not shared with the Central Valley Regional Water Quality Control Board. The County then proceeded to allow the inspector Brendan Kenny on December 28, 2017 to believe that the condition he noted in his report of solids in the pond was caused prior to December 20, 2017. This is simply not accurate. The County is responsible and liable for the cost of this cleanup.



The white PVC pipe installed by EEI on December 20, 2017 runs directly from the secondary clarifier into the recycled pond, eliminating the tertiary filter and chlorine contact chamber completely. This pipe was installed without prior plans or approval by the Central Valley Regional Water Quality Control Board. The solids flowing directly into the pond contaminated it causing the state to require it to be cleaned. The County received an NOV in regard to three items they are fully responsible for, 1) Secondary treated wastewater being discharged into the recycled water pond, (EEI directed secondary effluent into the pond, see picture above) 2) Spent filter media from the tertiary filters on the ground, (The County has admitted in their weekly updates to the Water Quality Control Board that this was a pre-existing condition, prior to National taking on the plant), and 3) Solids/sludge associated with discharges of wastewater into the storm water basin. See picture below to response number 4, showing solids in the pond prior to National's contract start date. The county is now trying to shift responsibility and blame to National after the County's gross negligence caused this condition.

On December 5, 2017, the tertiary filter was partially diverted momentarily while National was working in concert with the County's consultant (Lee and RO) to demonstrate the lack of filter performance which would contribute to the source of hydraulic limitations through the plant. National temporarily diverted flow around the failed filter to the chlorine contact chamber to demonstrate the hydraulic limitations of the tertiary filter to the engineer. This action in no way could be construed as the cause of fouling the recycled water pond. Bac-T analysis, which indicate the presence of bacteria in the water, are taken on a daily basis and are run by a certified lab. The Bac-T for December 5, 2016 which is the alleged date National "contaminated the recycle pond" was <1.8 MPN/100 mls. The Turbidity of the treated water on the alleged filter bypass date of December 5, 2017 was 1.8 NTU.

Brendan Kenny, Engineering Geologist of the Central Valley Regional Water Quality Control Board, wrote in his inspection report dated December 28, 2018, that he observed solids on the liner of the recycled water pond below the effluent discharge pipe. These solids came from newly installed diversion pipe that EEI installed. See picture above.

Mr. Kenny has required the County to provide weekly status update reports. An excerpt from the first weekly status update sent to Mr. Kenny: *"EEI/WSD, who were the original installers of the WWT package plant were contacted and hired to inspect the filter, clear well, mud well, and chlorine contact chamber and rebuild the filter system. EEI/WSD contracted with Yolo County on 12-15-17 & began work on 12-20-17. A major obstruction was found on the first day of work in the clarifier/floc chamber piping which had been contributing to high levels in the upstream processes in the WWTP. The secondary effluent was then diverted from the filter skid to the recycled water basin on 12-20-17 so that dewatering and cleaning of the tertiary system could begin. The tertiary system was cleaned and inspected by 12-26-17. Repair work began on the cracked steel filter plate, the diffusers and scour piping were all replaced, and filter media was bedded by 01-04-18."* We can provide copies of Mr. Kenny's full status update, if you would like.

2. "Without the use of the recycled water pond, alternatives for irrigating the golf course are required and will involve the installation and management of temporary transducers, automatic control valves, temporary piping of raw water to the irrigation wet well, and temporary piping of tertiary recycled water to the irrigation wet well.

These measures are costly and will need to remain in place for several months until the recycled water pond can be treated, drained, cleaned and returned to service for the golf course. All of the preceding work and costs are due to National's actions of bypassing the filters and putting secondary treated water into the recycled water pond. These flows should have been diverted to the emergency storage pond."

Response: As identified above, EEI is the contractor who directed secondary effluent into the recycle pond. National was left out of all planning discussions and was not consulted on any operational issues, necessary repairs or suggestions. For the record, National would have never recommended the actions taken by the County's consultants and contractors to diverting secondary effluent directly into the pond. They should have brought temporary storage in which to store the water while repairs to the filter were being made. The County and their contractor's actions proved gross negligence in contaminating the recycled water pond. Further the County never notified or received approval from the state prior to discharging directly to the pond.

Since the beginning of National's operation, the Canvas Back Water system (not permitted for public use because of high arsenic levels) has been utilized to supplement the irrigation of the golf course by blending with the wastewater effluent in the recycle pond. The actions of the County and EEI contaminating the recycled pond has now required alternative methods of delivering the Canvas Back water to the golf course. This clearly is the County's cost responsibility.

3. "The wastewater treatment plant, from the equalization basin to the clarifier, has been operating above normal plant water levels, even on days with low flows. Incoming influent has been flowing uncontrolled from the equalization tank through the rest of the plant. The clarifier was flooded and the high flows then carried solids over the clarifier weirs into the filter area, and as the filters were being bypassed, out into the recycled water pond. The County brought in another contractor to fix the filters and, within one day, the contractor determined that there was a plug in the pipeline causing the constantly elevated levels in the tank. The contractor then located and cleared the plug the same day. Plant levels then returned to normal. National did not adequately Investigate the cause of the high levels in the system and therefore failed to correct the problem."

Response: Due to poor design, lack of redundancy or the ability to divert flow around the affected pipe, it was not possible to identify the partially plugged line. The Engineer from LEE & RO commented to National that there was not sufficient pipe size or elevation drop that would allow the pipe to properly gravity flow. EEI found the partially plugged line during their installation of the bypass line which diverted all secondary treated effluent into the recycle water pond. The County hired James Jetton, with LEE & RO to provide a facilities condition report in early December 2017. Please see December 15, 2017 LEE & RO report.

4. "During high flows events, the wastewater filled the wastewater treatment plant and spilled over the top, onto the ground, flowed over the driveway and parking area, and into the unlined storm water pond where it soaked untreated into the ground. This is a violation of the County's discharge permit. There is a significant volume of

dried biosolids in the unlined pond implying this has happened numerous times. Outside observers have reported that this has been a frequent occurrence during National's tenure and they witnessed sewage overflowing the plant and flowing onto the ground on multiple occasions in 2017. National should have diverted high flows to the emergency storage pond and/or deployed septage haulers."

Response: National has gone on record several times to recommend the County hire an Engineering firm that specializes in Infiltration & Inflow (I&I) studies in order to identify excessive flows to the treatment plant. Prior to National taking over operational responsibility of the facilities, the storm pond was full of sludge, the picture below taken on March 24, 2016 clearly shows an abundance of sludge solids in the pond which was a pre-existing condition.



Furthermore, the contract specifically provides applicable limitations in Section XV and provides for reimbursement of National costs ("A. County shall only discharge, or permit the discharge of, sanitary sewage to the water recycling facilities that can reasonably be treated within the design capacity and capability of the water recycling facilities. In the event that County discharges, or permits the discharge of, Biologically Toxic Substances (as defined below), heavy metals, or any other substances that the water recycling facilities are not reasonably capable of treating and discharging in compliance with applicable regulatory requirements, or which result in the need for extraordinary maintenance or repair of the water recycling facilities, then County shall reimburse Operator for all costs incurred in treating, or attempting to treat, such impermissible discharges, including Operator labor and benefits. B. Operator shall not be responsible for meeting the applicable effluent quality requirements of the water recycling facilities, or for any fines or legal action as a result of discharge violations, for any period, including any subsequent recovery period. during which one or more of the following occurs: (1) the influent to such facilities does not contain Adequate Nutrients to support operation of such facilities' biological processes and/or contains

Biologically Toxic Substances which cannot be removed by the existing process and facilities;(2) discharges into the County's wastewater collection system violate any applicable federal, state, and local laws, rules, and regulations; (3) the flow or influent BOD5 and/or suspended solids exceeds the design parameters of such facilities which are TBO; or (4) if such facilities are inoperable or can operate only at a reduced capacity on account of construction activities, adverse weather conditions, or an Event of Force Majeure.”).

The CSA Board directed and approved National to obtain quotes for the cleanout of the storm pond. There was some conversation as to whether a liner should be installed per Lachi Richards recommendation. However, the State Water Quality Control Board recommended no liner so storm water run-off could be filtered into the soil of an unlined pond. The County and CSA Board had already approved the cost to clean out the storm water pond in the summer of 2017, and it makes no sense to now claim National is responsible for this cost of a pre-existing condition.

5. “There was a leak in the secondary treatment portion of the wastewater treatment plant between the clarifier chamber and the aeration tank. The appearance of the area around the leak suggests that the leak had been active to some degree for some time, yet not resolved by National. As this release of partially treated sewage is in violation of the discharge permit, the County has now resolved the issue.”

Response: This is not accurate; the County has not resolved this issue. The leak resulted from excessive flows the plant was not designed to handle and the angular space between the two tanks leaked a small amount of secondary treated water to the asphalt in the immediate area. National hired Eaton Pumps to install oakum in the angular space to help stop any future leaks.

6. “National has not been operating the wastewater treatment plant's flash/floe tank as required by the discharge permit. The chemical feed pump has been removed and there is no polymer tank hooked up to the floe/flash tank. The permit requires that the system be capable of automatically activating chemical addition or be able to divert the wastewater when turbidity exceeds 5 NTU for more than 15 minutes. This is a violation of the discharge permit.”

Response: The SCADA system was never designed to be capable of automatically activating chemical addition. National did not remove the flash tank, or chemical feed system. The County's contractor EEI removed the system during their Secondary effluent diversion project.

7. “The permit requires that if the turbidity rises above 10 NTU at the clarifier that the effluent be automatically diverted to the emergency storage pond. As the automatic valve that controls that diversion had at some point been removed from the system and was left lying on the ground, that condition of the permit was also violated.”

Response: There have been many days where the flow coming into the treatment plant is above the designed plant capacity and capability. The emergency storage pond has never had any kind of automation or level indication. Without level indication or communication to the SCADA system, the pond could fill up and raw sewage would overflow onto the ground and

end up in the storm water pond or potentially into the recycle pond. Because of the lack of level indication in the emergency storage pond, the automatic valve that controls diversion is rendered useless.

The table below represents the number of days in 2017 where the flow was higher than the designed plant capacity:

| Date | Flow in MG |
|------------|------------|
| 1/8/2017 | 125,900 |
| 1/10/2017 | 118,500 |
| 1/15/2017 | 105,800 |
| 1/17/2017 | 108,100 |
| 1/18/2017 | 123,800 |
| 1/22/2017 | 104,400 |
| 1/30/2017 | 105,300 |
| 1/31/2017 | 110,800 |
| 2/19/2017 | 104,800 |
| 2/20/2017 | 102,700 |
| 2/27/2017 | 145,800 |
| 4/16/2017 | 129,000 |
| 5/9/2017 | 112,500 |
| 5/19/2017 | 120,800 |
| 5/20/2017 | 105,100 |
| 5/21/2017 | 112,100 |
| 8/3/2017 | 141,900 |
| 8/31/2017 | 124,200 |
| 9/7/2017 | 134,700 |
| 9/12/2017 | 110,200 |
| 10/31/2017 | 124,200 |

The following is an excerpt from the December 15, 2017 LEE & RO, Inc. Report pgs. 2-3, indicates the plant's true capacity and capability:

“Plant Rated Capacity: The treatment plant is reported to have a capacity of 101,000 gpd (discharge specification 1, page 16, Waste Discharge Order R5-2002-0077). This rating appears to have been based on the maximum 70 gpm forward flow as shown on sheet 7 of the As-Built drawings.

A) Unfortunately, this rating does not account for the real-world issues at a treatment plant as it does not allow for the system to catch up with flows. Flooded secondary process tanks stored temporarily in the emergency basin or collection system whether from an emergency or a temporary shutdown for maintenance.

B) Miscellaneous return streams such as the filter backwash and solids underflows have not been accounted for in this rating.

C) Sprays, on-site storm water, and other miscellaneous additive streams have also not been accounted for in this rating.

Given these seeming omissions, the true capacity of the treatment plant is likely significantly less than the reported 100K gallons per day permitted rating.”

8. “National has not provided necessary standby pumps and equipment for critical components for both the wastewater and water facilities. For example, as recently as January 2018, the wastewater treatment plant was operating with only 1 of the 2 Influent lift pumps and no standby, 1 of the 2 eq pumps and no stand by, and only 1 of the 2 Lift Station B pumps and no standby, If any other lift station pump goes out in the system, the plant will become critical in about 2 hours and will start overflowing into the streets. There was recently no operable standby chlorine pump for the wastewater treatment plant and so one was taken from the Canvas Back water facility which now has no operational chlorine pump. The booster pumps at Canvas Back were recently low on oil and there was no oil on site. The 3-man pump repair crew and equipment that was on hand all had to stand down and wait for National to drive to the store to buy oil. The County was billed for the pump repair crews stand by time and extra equipment fees.”

Response: National’s contract does not obligate it to provide for shelf spares of equipment. National is responsible for the operation and maintenance of the facilities, and there is no provision in the contract that states the contractor is responsible for stocking additional standby pumps. Furthermore, all the pumps mentioned in this paragraph have redundant pumps in the event one or the other require maintenance or repair. The influent pump stations both have one lead pump and one standby. The same holds for the Equalization Basin pumps. As far as the chlorine pump, parts were on order, so the operator made use of an installed pump that was not being used.

9. “National failed to pay sub-contractors in a timely manner resulting in 5 of which the County is aware unwilling to do business with National. County time and money is now being spent contracting directly for basic and emergency services required for both the water and wastewater systems.”

Response: This is inaccurate. National discontinued service with three previous contractors and replaced them with more cost effective vendors to save the County significant money.

10. “National has been reluctant to make purchases required to maintain and operate the facilities and has hamstrung the onsite operator with limited purchasing authority. For example, the County recently discovered that the onsite operator had purchased an ineffective but less expensive fish tank pump rather than the appropriate pump for the job.”

Response: There have been numerous sample pumps installed at the facility evaluating efficiency and reliability. Further, the onsite operator does not have purchase authority without prior management approval.

11. “National has failed to record, and/or to accurately record data related to the operations in a permanent log, as required. Title 22 requires that operating records shall be maintained at the plant and shall include all analyses specified in the permit, records of operational problems, plant and equipment breakdowns, diversions to emergency storage, all corrective or preventive action taken. In particular, National has not been recording all operational problems such as pumps out of commission, flooded clarifiers, overtopping and spills, filter failure, partial or full bypassing of the filters, or diversions to the emergency storage pond. Title 22 also requires National to record and maintain as

a separate record file process or equipment failures that trigger an alarm. The recorded information shall include the time and cause of failure, and corrective action taken. National has not been keeping an alarm log with cause of failure and corrective actions noted. This lack of documentation is a permit violation.”

Response: To imply that National has not kept records is inaccurate. The County is given a monthly operations report that outlines each operational problem, maintenance activities, plant breakdowns, recommendations, etc., on both the wastewater and water systems. The County also receives all analysis required by the Title 22 permit and uploads those to their web-site that are submitted monthly to the Central Valley Water Resources Control Board.

Just recently, paperwork and records have inexplicably gone missing from the plant office (despite National’s safeguarding). Perhaps County representatives have taken these records. Indeed, it is unknown how many people the County has given keys to the facilities. Historic log books have been removed as have the daily operational data logs for the water system are nowhere to be found. The SCADA system logs all alarms. There is information on the “Alarm” SCADA screen that will show all alarms that have gone out, so this is also misleading and incorrect.

12. “Although National is required to provide a sufficient number of certified, qualified, capable and experienced personnel, it has not regularly done so. At one point, National provided temporary personnel who was unaware they were responsible for a water system as well as a wastewater treatment plant.”

Response: National has provided sufficiently certified and qualified personnel during the life of the contract. The Operator of Record filed with the Central Valley Water Resources Control Board has a Calif Grade 5 WW certificate, Grade 2 water treatment and distribution. The Saturday weekend coverage person is also a Grade 5 WW, and Grade 2 water operator. The weekday plant operator is a Grade 2 WW and Water Treatment and distribution certification as well. State Resources Water Quality Control Board classifies the WW system as a Grade 3 plant. In the first month of National’s service, April 2016, it had a certified WW operator and a separate part-time water operator who worked in the afternoons. The WW operator was not responsible for the water system. The County is incorrect in assuming the wastewater operator should have been responsible for the water as well; these were two separate individuals.

13. “National has not been properly sampling or monitoring as required by the discharge permit. The permit requires that National continuously monitor turbidity and chlorine residual. The SCADA records show that continuous monitoring of either turbidity or chlorine has not been taking place for any appreciable length of time. During some timeframes last year, the meters recorded for periods of a couple of weeks and then were off-line for months. In some cases, National’s equipment is broken, not maintained and/or not properly calibrated (required to be done yearly under the Agreement). National has been reluctant to replace such equipment as needed. Title 22 as cited by the permit states that if turbidity meters or SCADA recording fail, then the operator can substitute grab samples at a minimum frequency of every 1.2 hours for a period of up to 24 hours. National did not provide either a standby meter or the grab sampling at a 1.2-hour frequency.”

Response: The claim that National has not been properly sampling is incorrect. The records provided to the County, and the State Water Resources Control Board reflect that this allegation is inaccurate and misleading. There have been periodic equipment failures such as the analyzer feed pumps and the chlorine analyzer itself was replaced in June, 2017. The permit requires a continuous monitoring of Free Chlorine residual which is being monitored. We further disagree that National's equipment is broken, or not maintained or properly calibrated.

14. "National has been reluctant to make recommendations for facility improvements, follow through with recommendations if they are made, or at a minimum alert the County to issues so that the County can proceed with an investigation and solution. For example, National first recognized the need to repair the tertiary filter on the March 22, 2017 Capital Improvement Plan. After much prodding by the County, National finally provided a quote for the work on October 27, 2017, seven months later. The County could not immediately act on the quote because National then became aware of an additional problem with the filter that would not have been fixed as part of the work included in the quote. It became apparent in December 2017 that the filter was already completely inoperable resulting in National completely bypassing the filter and shutting out the golf course for water. This resulted in a significant, upcoming cost for the County to provide water to the golf course and to clean the 5-million gallons in the contaminated recycled water pond."

Response: National has made many recommendations to the County including a recommendation to hire an Engineering firm to perform an in-depth I&I study, abandoning the WW treatment plant, installing a lift station and pump to the City of Woodland for treatment, along with many other recommendations. Due to the design of the package wastewater plant, it could not be known the extent of equipment failure due to not having any redundancy to divert flow to evaluate the equipment. National provided a quote to perform tertiary filter repairs on October 27, 2017. The County did not approve the repairs to go forward and hired an alternative contractor to perform the repair on December 20, 2017. The statement that "The County could not immediately act on the quote because National then became aware of an additional problem with the filter that would not have been fixed as part of the work included in the quote" is simply incorrect. National as part of its quote would inspect the filter drain system for any additional necessary repairs, however in no case is that a valid excuse for the County not approving National's quote for over six weeks. The claim that National completely bypassed the filter is also not accurate and is discussed above in response to items 1 & 2.

15. "The Agreement requires National to have developed a Preventative Maintenance Inspection plan within the first 30 days of the Agreement effective date, National has yet to develop an adequate plan, perform routine preventative maintenance or keep adequate records. Evaluation of the facilities indicate that National has not been doing even the most basic maintenance required, and a number of expenses incurred this year are a direct result of National's negligence, For instance, according to the repair vendor, Eaton Pump, the nuts/screws need to be tightened on the MCC panel breakers routinely. National failed to do so, which resulted in a short in the system,

rendered the well inoperable and resulted in a cost to the County of \$12,927 for repairs.”

Response: National did in fact develop a thorough preventative maintenance plan and that plan is in use. As far as negligence on electrical maintenance, what is described here is a specialized discipline performed by a high voltage certified electrician that takes place usually every 5 years. The nuts/screws described here are on the main bus bar in the electrical cabinet. This kind of specialized task are not part of National’s “routine” operations and maintenance. This claim is therefore misleading and inaccurate.

16. “National's operator identified aeration as the number one issue with the wastewater facility in the fall of 2016. This issue was raised by the County Service Area advisory board at a meeting in February 2017, which asked National to obtain 3 quotes to perform the work. National presented 1 quote for itself to do the work and, even after much prodding, no additional quotes. National needed to wait for the rain to stop, which it did in late March, but the work was not actually accomplished until June 2017 after the plant had experienced a major upset. The major upset was due in part to the lack of aeration, which resulted in another violation of the permit by discharging partially treated sewage to the golf course irrigation pond in May 2017.”

Response: This statement is inaccurate. A lack of aeration did not cause an upset of the plant; that would be due to high flows. National was in direct communication with Brendan Kenny of the Central Valley Regional Water Quality Control Board in regard to high flows causing the plant to be hydraulically overloaded. However, all flow went through the tertiary filter and chlorine contact chamber.

No formal Notice of Violation was ever received from the Central Valley Regional Water Quality Control Board resulting from May, 2017.

Flows for that period in May are as follows:

May 18th 87,600 gals.
May 19th 120,800 gals.
May 20th 105,600 gals.
May 21st 112,100 gals.
May 22nd 98,600 gals.

17. “National charged the County \$45,000 to fix the aeration system, which fix was inadequate and improperly Installed, Correcting National’s fix will cost the County \$75,000. Partially a result of National's defective work, the plant is now considered "dead" in that it does not have the right ratio of active bugs and oxygen to properly operate. National appears not to have been tracking low aeration in the system for some months as its equipment is no longer calibrated/operational. The outside vendor that the County hired to fix the tertiary filter helped National obtain a more easily calibrated and operating meter, Lack of monitoring this portion of the plant lead to another upset at the plant which again put partially treated sewage into the recycled water pond, and which will increase the cost to remove solids from the bottom of the pond. ”

Response: To say that the aeration system fix was inadequate or defective is incorrect. Prior to installation of new PVC headers and diffuser pipes, the system had visible dead spots and low DO's throughout the system, as well as, audible leaking air lines due to the corroded metal pipes. The aeration basin is now mixing very well and there is ample DO throughout the system. To say the plant is "Dead" is incorrect. The plant is performing well, as indicated by all laboratory data, both certified lab results as well as internal process control testing. There are no upsets or lack of monitoring that lead to partially treated water going into the recycled storage pond. Most recently the vendor the County hired (EEI) to fix the tertiary filter sent an email that cautioned National about adding too much air. We can provide you photos showing a well aerated, well-mixed biological treatment system.

18. "National stated that its problems in handling the wastewater facility were due to high flows in the system and that an I&I study was needed as soon as possible. Starting in March 2017, the County asked National several times to provide quotes for that work, National still has not provided a quote even though National continues to state that the problem is high I&I. Regardless of high flows, National should have diverted excess flows to the emergency storage pond and then run the flows either back through the plant at times of lower flows, or have the effluent hauled from the emergency storage pond, rather than allow sewage to spill out the top of the facility and onto the ground. If the emergency pond was deemed of insufficient size, then Baker Tanks should have been brought on site to expand capacity as needed."

Response: Inflow and Infiltration Studies are done by specialized engineering firms. To state that the County asked National for a quote to perform such a study is incorrect. National has numerous times recommended that the County directly hire an Engineering firm to perform a complete and comprehensive I&I study. It was National's understanding that with the numerous consultants that the County has hired over this past year that they would perform this task.

The emergency storage pond is 100,000 gallons, one day of storage capacity. It is standard operating practice to return all water from the emergency storage pond to the head of the plant as soon as plant capacity allowed. National actions did not allow sewage to spill out of the top of the facility. This condition was found by our operator one morning during a heavy rain period, where the facility clearly could not handle the excessive flow. This has been explained in detail in previous sections herein as well as documented by the LEE & RO condition report. See also, Agreement Section XV. A and B cited above.

19. "On December 18, 2017, the County notified National that it had become aware of a number of conditions at the wastewater treatment plant constituting potential violations of the County's waste discharge permit that required reporting to the Central Valley Regional Water Quality Control Board (Board). Although legally and contractually required to report those conditions to the state all the time the violations occurred, National failed to do so."

Response: National reports violations on their monthly reports that are submitted to the Central Valley Regional Water Quality Control Board as well as direct communication with the state. As described in previous sections above, it is the County's actions and decisions which caused the recent Notice of Violation which was based on the site inspection of

December 28, 2017 from the Central Valley Regional Control Board. The County has responsibility for all costs associated with the cleanup of the ponds.

III. Your Letter Then Incorrectly Attributes certain County “expenses” to National

Your Letter then states “A preliminary assessment of the total direct costs incurred by the County as a result of National's actions or inactions is \$378,886”. This is inaccurate. As of this date the County owes National in excess of \$200,000 for routine operations and approved equipment repairs, with much of that now overdue and improperly withheld (see February 7, 2018 Notice of Default as to the overdue amount of \$156,431.69; additional January and February amounts have been incurred and will be billed shortly).

The County and its representatives have, in addition, made numerous incorrect and defamatory public comments. National requests the County refrain from such further comments, especially given that National has disputed all liability. National will hold all such persons responsible for past and current trade or other disparagement. National also continues to suffer damages to its business reputation and otherwise. Accordingly, be advised National reserves all rights in this regard.

A. Your Letter improperly asserts a refusal to reimburse expenses as follows:

1) Aeration Piping and RAS & WAS Lines (\$45,000)

Response: National submitted separate quotes approved by the County to replace the corroded aeration lines (\$23,800) as well as the RAS (\$11,000) and WAS lines (\$10,200). The header and diffuser lines have greatly enhanced the aeration of the activated sludge treatment system.

EEI in an effort to obtain more work from the County has recommended they change the piping material from the PVC National installed to a metal material. They falsely claim that the Dissolved Oxygen is was cut in half and is too low in the aeration basin. This is simply not true. DO levels have been optimal since National was able to reduce the MLSS concentration in the aeration basin. Mixing in the plant is thorough with absolutely no dead spots as they allege. Installing metal pipe comes at a much higher price and is more prone to corrode than PVC. This change in pipe material is not necessary and in no way will provide any additional aeration to the facility.

2) Cleaning Storm Pond (\$19,600)

Response: This is a pre-existing condition. The pond was full of sludge prior to National taking over operation and maintenance responsibilities of the Wild Wings utility systems. Please see picture below in which is dated March 24, 2016.

There was a minor overflow due to extremely high flows to the wastewater treatment plant caused by wet weather in January 2017. Early one morning our operator discovered a minor overflow had occurred that prior evening from the aeration basin which was caused by high flows from the intrusion of rain water into the sewer collection system. He cleaned it up

immediately, amount was unknown. Flows for that month were well above the design capacity and capability of 101,000 gallons per day:

| <u>Date</u> | <u>Flow in Gallons</u> |
|-------------|------------------------|
| 1/8/2017 | 125,900 |
| 1/10/2017 | 118,500 |
| 1/15/2017 | 105,800 |
| 1/17/2017 | 108,100 |
| 1/18/2017 | 123,800 |
| 1/22/2017 | 104,400 |
| 1/30/2017 | 105,300 |
| 1/31/2017 | 110,800 |

Please see contract section XV regarding flows exceeding the design capacity and capability of the water recycle facility.

Further, the CSA Board directed and approved National to obtain quotes for the cleanout of the storm pond. There was conversation as to whether a liner should be installed per Lachi Richards recommendation. However, the State Water Quality Control Board recommended no liner so storm water run-off could be filtered into the soil of an unlined pond. The County and CSA Board had already approved the clean out of the storm water pond in the summer of 2017, thus it makes no sense that to now claim National is responsible for this cost of a pre-existing condition.

3) Clean Recycled Holding Pond (\$230,000)

Response: The County elected to use EEI for the tertiary filter repairs. On December 20, 2017, EEI contaminating the pond by cutting the line from the secondary clarifier and ran secondary treated effluent directly into the recycle storage pond with no chlorine disinfection through the PVC line they installed. The County did not submit a detailed work plan to the Central Valley Water Quality Control Board prior to beginning work or sought approval to discharge directly to the recycle pond, Mr. Brendan Kenny of the Water Quality Control Board came in for an unannounced inspection on December 28, 2017 and noted that he observed sludge on the liner of the recycle storage pond which was a direct result of the County and EEI actions. See picture date stamped of December 20, 2017.

The State is now requiring the County to develop a plan for cleanup of the pond based on the presence of solids on the pond liner and below the discharge line. The County, and under the advice of their consultants, made the decision with EEI without submitting a plan to the State for approval prior to conducting the work. These decisions will cost the County considerable money. In an transparent effort to transfer blame, the County is now claiming National contaminated the pond. National believes the County is trying to use National as a scapegoat for their own inadequate decisions and actions which caused the need to clean out the pond and the costs thereof.

4) Costs Related to John Honea not working overtime (\$3,000)

Response: National was not included in any meetings, planning sessions, nor had any knowledge of the decisions the County and their consultants were making in regard to plant repairs or upgrades. Beginning in December 2017, National was not invited to any discussions or meetings regarding the planned repairs or upgrades and cannot be liable for actions that were taken by others. These repairs were done and planned without the involvement of National (the Operator of Record with the State Water Quality Control Board).

Without being involved in the planning discussions, and having no knowledge of planned repairs or upgrades, there was no agreement or understanding that National would be responsible for providing any labor and paying our on-site operator overtime for work that was being done by others. EEI does not control the management of National's employees.

5) Alternate water Source to Irrigate Golf Course (\$79,286)

Response: This is inaccurate. Since the beginning of the operation, the Canvas Back Water system (not permitted for public use because of high arsenic levels) has been utilized to supplement the irrigation of the golf course by blending with the wastewater effluent in the recycle pond. The actions of the County and EEI contaminating the recycled pond has now required alternative methods of delivering the Canvas Back water to the golf course. This is the County's cost responsibility.

6) Increased Power Costs (\$2,000)

This is without basis. Any assumed additional power cost would be the responsibility of the County's based on the actions listed above.

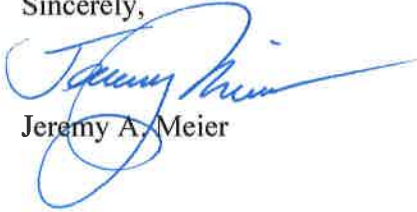
IV. Demand For Payment

In sum, the County failed to adhere to the Contract, has refused payment and improperly set off expenses owed to National, is mistaken as to the underlying facts, and National has acted in good faith and within industry standards. National prefers to resolve any issues amicably, but we must reserve all rights as to any and all claims for relief, including but not limited to breach of contract, misrepresentation, trade libel, and otherwise.

National again requests payment of at least \$156,431.69 in outstanding invoices (#11010, 11007, 11009, 11006, 11011 11008 and 10969), and expects prompt payment for additional amounts incurred for January and February, 2018 (which will total another \$100,000 at minimum).

We look forward to hearing from you. Thank you.

Sincerely,



Jeremy A. Meier

cc: Taro Echiburu, Director
Beth Gabor, Manager of Operations & Strategy
Yolo County Board of Supervisors
Scott Picanso, Wild Wings CSA