

Wastewater Treatment System

Operations, Maintenance, and Management Services

Agreement

Between

**The Water Pollution Control Authority
for the City of Bridgeport, CT**

And

Inframark LLC

Initial Agreement Term: _____ January 1, 2024 through _____ June 30, 2034
Renewal Option: Up to _____ two (2) additional _____ year ~~five-year~~ (5) terms

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**WASTEWATER TREATMENT SYSTEM
OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES
AGREEMENT**

THIS WASTEWATER TREATMENT SYSTEM OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES AGREEMENT (this "Service Agreement" or this "Agreement") is made and entered into as of this ___th day of _____, 20____-December 2023, between the Water Pollution Control Authority for the City of Bridgeport, CT, a municipal water pollution control authority organized and existing under the laws of the State of Connecticut (the "WPCA"), and _____, ~~a corporation~~ Inframark LLC, a limited liability company organized and existing under the laws of the State of _____-Texas (the "Company").

RECITALS

(A) The WPCA is the custodian of and responsible for the wastewater collection system and wastewater treatment system owned by the City of Bridgeport, Connecticut (the "City").

(B) The WPCA determined that it is in the WPCA's best interests to contract with a qualified third-party operator on a long-term basis to operate and maintain the WPCA's wastewater treatment and collection systems.

(C) The Company is in the business of operating wastewater treatment and collection systems and has been selected by the WPCA to provide wastewater treatment system operations, maintenance, and management services under the terms of this Service Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

SECTION 1.1. DEFINITIONS.

As used in this Service Agreement, the following terms shall have the meanings set forth below:

"Acceptable Disposal Site" means either a sewage Biosolids incinerator, a municipal solid waste incinerator, a sanitary landfill or other lawfully authorized waste disposal or management facility (other than land application of Biosolids), which: (1) is operated in accordance with Good Industry Practice and Applicable Law (as applicable to waste disposal facilities disposing of such waste materials); (2) is located in the United States; (3) is not listed on or proposed for listing on any federal or State list of sites, such as but not limited to the National Priority List under CERCLA, maintained for the purpose of designating landfills or other sites which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Materials; (4) is being operated at the time of disposal or delivery in accordance with Applicable Law as evidenced by the absence of any unresolved regulatory¹-sanctions or any significant

enforcement actions with respect to material environmental matters; (5) has committed by written agreement of the owner or operator to receive Biosolids or Residuals originating at the System; and (6) is not under any executive or judicial order barring receipt of Residuals from any region which includes the WPCA.

"AAA" means the American Arbitration Association as that term is used in Section 11.10 hereof.

"Affiliate" means any person directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

"Annual Engineering Review" has the meaning and requirements of the City of Bridgeport, Connecticut Ordinance No. 13:04.170.

"Annual Settlement Statement" has the meaning specified in Section 10.5 (Annual Settlement Statement).

"Appendix" means any of the Appendices attached to this Service Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

"Applicable Law" means:

- (1) any federal, state or local law, code, ordinance, regulation or the like;
- (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction;
- (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented in writing by such Governmental Body and generally applicable;
- (4) any Governmental Approval applicable to the System or the Contract Services, including the NPDES Permit; and
- (5) any consent order or decree, settlement agreement or other similar agreement between the WPCA and any Governmental Body, each case having the force of law and applicable from time to time:
 - (a) to the permitting, equipping, financing, ownership, possession, start-up, testing, operation, maintenance, repair, replacement or management of wastewater facilities or systems, including the System;
 - (b) to the conveyance, delivery, treatment, storage, supply or discharge of wastewater to and from the Managed Assets;
 - (c) to the air emissions from the Managed Assets;

(d) to the transfer, handling, processing (including incineration), transportation or disposal of Residuals and WWTP Biosolids produced by the Managed Assets; and

(e) to any other transaction or matter contemplated by the Service Agreement (including any of the foregoing which pertain to wastewater treatment, WWTP Biosolids, Residuals, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination).

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended from time to time, and any successor statute thereto. “Bankruptcy Code” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Base Service Fee” has the meaning specified in Section 10.2 (Components of Monthly Service Fee).

“Baseline Inventory” has the meaning set forth in Section 8.5 (Managed Assets Evaluations).

“Baseline Asset Evaluation Procedures” has the meaning set forth in Section 8.4 (Managed Assets Evaluations (Initial and Exit)).

“Billing and Collection Services” has the meaning as set forth in Section 6.5.

“Billing Period” means each calendar month, except that (1) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of the month in which the Commencement Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Service Agreement. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Biological Toxic Substances” means Influent containing a biologically toxic substance or combination of substances (that individually may or may not be biologically toxic substances but which collectively qualify as a biologically toxic substance) in sufficiently high concentrations so as to materially interfere with the biological processes necessary for the removal of the organic and chemical Constituents of the Influent required to meet the Performance Guarantees or that create Contaminated Biosolids, effluent, or other material classified as Hazardous Waste under the RCRA. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides, herbicides and priority pollutants as listed in 40 C.F.R. Part 122, Appendix D, Tables II, HI and IV by EPA, or otherwise listed by the EPA.

“Biosolids” means the biosolids generated by or through the operation of the Managed Assets, excluding Residuals.

“Capabilities of the System” means the capability of the System to (i) receive wet weather flows of at least 90 MGD at the West Plant and 30 MGD at the East Plant and to process and treat flows of at least 58 MGD at the West Plant and 24 MGD at the East Plant through full treatment.

“Capital Modification” means any installation of new structures, equipment, systems or technology made with the WPCA’s prior approval to (i) advance or improve the operation or efficiency of the System, (ii) correct an Uncontrollable Circumstance, or (iii) to modify the System to comply with a Change in Law occurring during the Operation Period, the costs of which are properly accounted for as capital expenses rather than operating expenses.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance therewith materially increases or decreases the cost of performing or materially increases or decreases the scope of a party’s obligations hereunder:

(a) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Contract Date, unless such Applicable Law was on or prior to the Contract Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

(b) the order or judgment of any Governmental Body issued on or after the Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of the WPCA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(c) the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the Contract Standards in effect as of the Contract Date in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Company or of the WPCA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

It is specifically understood, however, that none of the following shall constitute a “Change in Law”:

~~(i) Changes in Law made by the City or the WPCA, other than Changes in Law required by federal or State Changes in Law or due to a manifest danger to public health or the environment, shall not constitute a Change in Law with respect to the WPCA, but may constitute a Change in Law with respect to the Company;~~

~~(ii)(i)~~ acts, events, and circumstances with respect to which and to the extent that the Company has assumed the permitting risk under this Service Agreement;

~~(ii)~~ a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Contract Date; or

(ivii) any act, event, or circumstance that would otherwise constitute a Change in Law but that does not change the requirements imposed on the Company by the Contract Standards in effect as of the Contract Date.

“Change of Control” of the Company or the Guarantor means any transaction or series of transactions which results in a change in the ownership, subsequent to the Contract Date, of more than fifty percent (50%) of the issued and outstanding securities of the Company or the Guarantor, as applicable, or of the interests entitled to vote for the election of directors of the Company or the Guarantor, as applicable, or of any of the direct or indirect parent entit(ies) of the Company or the Guarantor.

“Change Order” means a written order or approval of the WPCA signed by the WPCA’s Contract Representative authorizing and approving a change to any Capital Modification pursuant to Section 9.1 (Capital Modifications Generally).

“City” means the City of Bridgeport, Connecticut a municipality organized and existing under the laws of the State of Connecticut.

“City Attorney” means the Corporation Counsel of the City of Bridgeport or such other attorney or firm of attorneys designated by the City.

“Clean Water Act” means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) 33 U.S.C. 1251 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor statute of similar import, and the rules and regulations promulgated thereunder, in each case in effect from time to time.

“Collection System” shall mean all pipes, manholes, appurtenances, metering stations, siphons, the intercept sewer system, catch basins, force mains and lines connected to the sanitary system, and all other ancillary facilities and property utilized for the conveyance of stormwater and/or sanitary sewage, including combined storm and sanitary systems as described in Appendix I owned by the WPCA and not including laterals owned by the respective property owners.

“Collection System Equipment” means all Equipment to be provided by the WPCA, as set forth in Appendix 1.

“Collection System Repair and Replacement Fund” or “CSRRF” has the meaning given to it in Section 8.2(E) hereof.

“Collection System Sites” means the real property located within the City within which the Collection System is located as described on Appendix 1 hereto.

“Commencement Date” means January 1st, 2024 (at 12:00 am) or such earlier date on which the Company begins its obligation to provide Contract Services under this Service Agreement.

“Commencement Date Conditions” has the meaning specified in Section 4.2 (Commencement Date Conditions).

“Company” means ~~_____~~, ~~a corporation~~ Inframark LLC, a limited liability company organized and existing under the laws of the State of ~~_____~~ Texas, and its permitted successors and assigns.

“Company Breach” means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, nonperformance or non-compliance by the Company in any material respect with respect to its obligations under this Service Agreement to the extent not directly attributable to any Uncontrollable Circumstances.

“Computerized Maintenance Management System” or “CMMS” has the meaning specified in Section 8.6 (Computerized Maintenance Management System).

“Consent Agreement” means the Consent Agreement by and among the Connecticut Coastal Fishermen's Association, the Connecticut Fund for the Environment, the Town of Fairfield, Leslie Carothers, CTDEEP and the City, dated February 9, 1994, and all amendments thereto. A copy of the Consent Agreement is included as Attachment F to the RFP.

“Consumables” means those materials, supplies and similar consumables used in connection with the operation and management of the System, which may include fuel oil, diesel fuel, liquid defoamant, quick lime, sand, activated carbon, gravel, lubricants, polymers, citric acid, phosphoric acid, sodium hydroxide, office supplies and other chemicals, fuels, materials, supplies and similar consumables used in connection with the operation of the System.

“Consumer Price Index” or “CPI” means the Consumer Price Index for all Urban Consumers (CPI-U) Northeast Region, for all Items 1982-1984=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Series ID# CUUROIOOSAO. In the event such CPI (or a successor or substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information therefor Used in determining the CPI shall be used, as mutually agreed to by the WPCA and the Company, No adjustments or recomputations, retroactive or otherwise, shall be made due to any revision that may later be made in the first published figure of the CPI for any year.

“Contaminated Biosolids” is defined as Biosolids which either (a) exhibits any of the Hazardous Waste characteristics specified in either 40 C.F.R. Part 261, or any equivalent State law, or (b) is restricted from land disposal in accordance with either 40 C.F.R. Part 268, or any equivalent State law.

“Contract Administration Memorandum” has the meaning set forth in Subsection 14.2(B).

“Contract Date” means the date this Service Agreement is executed and delivered by the parties hereto.

“Contract Representative” has the meaning set forth in Section 14.3 (Contract Representatives).

“Contract Services” means everything required to be furnished and done for and relating to the System by the Company pursuant to this Service Agreement during the Term hereof. Contract Services include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Company’s operation, maintenance, repair, replacement, management, WWTP Biosolids and Residuals processing and storage, Billing and Collection Services and other obligations under this Service Agreement, and all of the Company’s administrative, accounting, record-keeping, reporting, notification and similar responsibilities of every kind whatsoever under this Service Agreement pertaining to such obligations.

“Contract Standards” means the terms, conditions, methods, techniques, practices and standards imposed or required by: (1) Applicable Law; (2) Good Industry Practice; (3) the Operation requirements set forth in Appendix 2 and Appendix 3, and the Operation and Maintenance Plan, including the Operation and Maintenance Manuals; (4) applicable equipment manufacturers’ recommendations; (5) applicable Insurance Requirements; and (6) any other standard, term, condition or requirement provided in this Service Agreement or the Appendices to be observed by the Company; provided, however, that any performance related Contract Standard that exceeds the applicable Capabilities of the System shall be deemed modified to be equal to the applicable Capabilities of the System. Section 1.2 shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

“Contract Year” means the WPCA’s fiscal year commencing on July 1 in any year and ending on June 30 of the following year; provided, however, that the first Contract Year shall commence on the Commencement Date and shall end on June 30, 2024. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 days.

“Convenience Termination” has the meaning described in Section 11.4 (WPCA Convenience Termination).

“Cost Substantiation” has the meaning described in Section 14.7 (Cost Substantiation).

“Critical Equipment” means the Equipment identified in Appendix 1.

“CT DEEP” means the Connecticut Department of Energy and Environmental Protection and any predecessor or successor agencies thereto.

“Design Capacity” means 90 MGD headworks capacity and 58 MGD full secondary waste water treatment for the West Plant and 30 MGD headworks capacity and 24 MGD full secondary waste water treatment for the East Plant.

“Effluent” means wastewater discharged from the Managed Assets into Long Island Sound, Ash Creek, and Bridgeport Harbor.

“Effluent Requirements” means the most stringent of the requirements pertaining to the discharge of Effluent established by Applicable Law and the Contract Standards,

“Emergency” means any situation threatening the immediate substantial reduction in the operating capacity of any portion of the Managed Assets or which threatens the immediate safety of the life, health or property of the WPCA, the City, the City’s residents or others, of violating environmental, health and safety standards.

“Encumbrance” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, stop-notice, attachment, or encumbrance of any kind with respect to the Managed Assets.

“EPA” means the United States Environmental Protection Agency and any predecessor or successor agency.

“Equipment” means City or WPCA-owned equipment, including operating and processing equipment, tools in use as of the Commencement Date or procured and/or provided pursuant to this Service Agreement for use at or associated with the System.

“Equipment Baseline Evaluation” has the meaning set forth in Section 8.4 (Managed Assets Evaluations).

“Escrow Accounts” means the CSRRF described in Section 8.2(E) and the Major Repair or Replacement Fund, each of which shall be segregated accounts maintained in the name of and in trust for the WPCA and administered as set forth herein.

“Event of Default” means, with respect to the Company, those items specified in Section 11.2 (Events of Default by the Company), and with respect to the WPCA, those items specified in Section 11.3 (Events, of Default by the WPCA).

“Excessive Influent” means (1) Toxic Substances, (2) Hazardous Material, (3) influent in excess of the Design Capacity, and (4) influent that is outside of the Capabilities of the System.

“Exit Evaluation” and “Exit Inventory” have the meanings set forth in Section 8.4 (Managed Assets Evaluations).

“Extraordinary Items Component” has the meaning set forth in Section 10.2 (Extraordinary Items Charge or Credit).

“Facility Manager” has the meaning set forth in Subsection 6.8(A) (Company’s Facility Manager).

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending, or otherwise appropriately responding to any Legal Proceeding.

“General Manager” has the meaning specified in Subsection 14.3(B) (WPCA’s General Manager).

“Good Industry Practice” means those methods, techniques, standards, and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the wastewater treatment industry as observed in the United States.

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings, entitlements, and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services, including, but not limited to, the NPDES Permit.

“Governmental Body” means the WPCA, the City and any federal, State, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Guarantor” means ~~_____~~, a corporation Inframark (DE), LLC, a limited liability company organized and existing under the laws of the State of ~~_____~~ Delaware, and its permitted successors and assigns.

“Guaranty Agreement” means the Guaranty Agreement entered into concurrently with this Service Agreement from the Guarantor to the WPCA in the form set forth in Attachment C in the RFP, as the same may be amended from time to time in accordance therewith.

“Hazardous Material” means any waste, substance, object or material deemed hazardous under any Applicable Law.

“Hazardous Residuals and Biosolids” means any portion of the Biosolids or Residuals which: (1) constitutes a “hazardous waste” (as defined in RCRA or counterpart state environmental laws); or (2) contains “hazardous substances” (as defined in CERCLA or counterpart state environmental laws) or other Regulated Substances in such concentrations or volumes as to render WWTP Biosolids or Residuals that would normally be handled at an Acceptable Disposal Site unacceptable for treatment or disposal at such Acceptable Disposal Site.

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“Index Rate” means the average of Interbank offered rates for six-month US dollar denominated deposits, as published in the *Wall Street Journal*; plus two percent (2%).

“Inflation Adjustment” means the product of applicable initial year contract amount multiplied by the AIA, calculated as set forth in Section 10.2(C).

“Influent” means all flows reaching the Managed Assets through the WPCA’s Wastewater Treatment System from all connected sources, including residential, commercial, municipal, and industrial sources. “Influent” includes Septage, wastewater, infiltration, and inflows.

“Initial Term” has the meaning specified in Section 3.1 (Effective Date and Initial Term).

“Insurance Requirement” means the requirements set forth in Appendix 6 together with any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy of Required Insurance under this Service Agreement, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

“Inter-municipal Agreements” means municipal agreements regarding the treatment of Influent from other municipalities and any other similar agreements entered into by the WPCA and/or the City.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Service Agreement, and all appeals therefrom.

“Lien” means any and every stop-notice or lien against the Managed Assets or against any monies due or to become due from the WPCA to the Company under this Service Agreement, for or on account of the Contract Services, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Loss-and-Expense” means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, Tax, cost or expense, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Service Agreement.

“Major Repair or Replacement” has the meaning set forth in Section 8.1(C) (Payment for Maintenance, Repair and Replacements).

“Managed Assets” means the WPCA’s Wastewater Treatment Plants and property located at 695 Seaview Avenue, and 205 Bostwick Ave. Bridgeport, Connecticut the Managed Sites and the Managed Pump Stations, as identified in Appendix 1.

“Managed Sites” means the parcels of real property described or referred to in Appendix 1 on which the Managed Assets are located.

“Managed Pump Stations” means the wastewater and stormwater pump stations owned by the WPCA, all of which are identified in Appendix 1.

“Material Adverse Impact” shall be deemed to have occurred if the Company’s costs included in the Annual Base Service Fee increases by more than Ten Thousand Dollars (\$10,000.00).

“Monthly Service Fee” has the meaning set forth in Section 10.1 (Service Fee Generally).

“MRR Plan” has the meaning set forth in Section 8.4 (Maintenance, Repair and Replacement Plan).

“Nitrogen Discharge Permit” means the General Permit for Nitrogen Discharges (as same may change from time to time) issued by the CT DEEP on January 1, 2019 governing the discharge of nitrogen into the waters of Connecticut.

“NPDES Permit” means permit ID: CT 0101010, and permit ID: CT 0100056, issued by CTDEEP relating to the discharge of Effluent from the WPCA’s Wastewater Treatment Plants, and attached as attached to the RFP as Attachment D and Attachment E, respectively-.

“Odor Standards” has the meaning set forth in Section 7.3.

“Off-Site” means elsewhere than on or at the Managed Assets.

“On-Site” means on, at, or within the Managed Assets.

“Operation and Maintenance Manuals” means the manuals and related computer programs prepared by the Company containing detailed Equipment and unit process specific Standard Operating Procedures, operation and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the System, including the WWTP, the Collection System and Managed Pump Stations, maintained and updated as required by Article VI (Management and Operation) and the Operation and Maintenance Plan

“Operation and Maintenance Plan” means the Company’s plan for operation and maintenance of the System, as submitted by the Company as part of the RFP process and accepted by the WPCA, as amended and updated from time to time in accordance with this Service Agreement. The Operation and Maintenance Plan shall include the Operation and Maintenance Manuals, the Safety and Security Plan and the CMMS.

“Operation Period” means the period from and including the Commencement Date to and including the last day of this Service Agreement.

“Overdue Rate” means the lower of the (i) rate of interest permitted to be paid by municipal governments under the laws of the State of Connecticut, in effect from time to time, and (ii) 1.0% per month. This rate shall also be applied to amounts owed by the Company pursuant to this Service Agreement.

“Pass-Through Cost Component” has the meaning set forth in Section 10.2 (Pass- Through Cost Component).

“Performance Bond” has the meaning set forth in Section 13.2 (Performance Bond).

“Performance Standards” means the requirements to achieve compliance with the Effluent, Odor and Environmental standards set forth in sections 7.2, 7.3, and 7.4.

“Pollutant” has the meaning specified in the federal Clean Water Act of 1972.

“Predecessor Operator” means Inframark, LLC.

“Preventive Maintenance” means those repetitive, routine or scheduled activities required or recommended by the Contract Standards and by equipment warranty maintenance standards, to maximize the service life of equipment, and other components of the Managed Assets.

“Prime Rate” means the “prime” rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in *The Wall Street Journal* (Eastern Edition) or the method of computation thereof is substantially modified.

~~“General Manager” has the meaning specified in Subsection 14.3(B) (WPCA’s General Manager).~~

“Rating” shall mean the investment grade rating issued by Moody's Investors Service, Inc. on any business day for any Person or the investment grade rating issued by Standard & Poor's Rating Group on any Business Day for any Person.

“RCRA” means the Resource, Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, toxic substance, toxic pollutant, solid waste, municipal waste, or industrial waste that is defined as such by and is subject to regulation under any Applicable Law.

“Renewal Term” has the meaning specified in Section 3.1 (Effective Date and Initial Term).

“Required Insurance” has the meaning specified in Appendix 6.

“Residuals” means grit, scum, screenings, catch basin debris, trash and other solid or semi-solid waste produced or generated from the operation of the System, excluding Biosolids and sludge.

“RFP” means the Request for Proposals for WPCA Operations, Maintenance and Management Services issued on or about June 1, 2023.

“Safety and Security Plan” means the plan developed by the Company and included in the Operation and Maintenance Plan, which such addresses (1) all reasonable precautions for the safety of, and all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Managed Assets to (a) all employees working at the Managed Assets and all other persons who may be involved with the operation or maintenance of the Managed Assets, (b) all visitors to the Managed Assets, (c) all machinery, materials and equipment under the care, custody or control of the Company on the Managed Sites, and (d) other property on the Managed Sites; (2) all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) all notices and compliance with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss; (4) designation of a qualified and responsible employee at the Managed Assets whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State and WPCA officials; (5) operation of all equipment in a manner consistent with the manufacturer’s safety recommendations; (6) provision, for safe and orderly vehicular movement; and (7) development and carrying out of a site-specific safety program, including employee training and periodic inspections, designed to implement the requirements of the plan.

“SCADA” means, in the context of automated electronic data, gathering, “Supervisory Control and Data Acquisition.”

“Scheduled Commencement Date” means January 1, 2024.

“Security Instruments” means the Guaranty Agreement and the Performance Bond, and if applicable, any credit enhancements required to be provided by Guarantor pursuant to Section 13.1(C) (Credit Enhancements).

“Senior Supervisors” has the meaning specified in Section 6.8(C) (Service Coordination);

“Septage” means the liquid and solid material pumped from a septic tank, cesspool or similar domestic sewage treatment system, or a holding tank, during cleaning, which contains only domestic sewage.

“Service Agreement” or “Agreement” means this Wastewater Treatment System Operations, Maintenance, and Management Services Agreement between the Company and the WPCA, and includes the Appendices, each of which is incorporated herein as if fully set forth herein, together with the Transaction Documents, in each case as the same may be amended or modified from time to time in accordance herewith.

“Service Fee” means the total of all fees to be paid to the Company by the WPCA hereunder in any given Billing Year.

“Service Fee Fixed Component” means the base annual fee set forth in Proposal Form 4 of the RFP, as completed by the Company, payable in equal monthly increments as adjusted by CPI for each annual period thereafter pursuant to Section 10.2 hereof.

“Staffing Plan” means the Staffing Plan described in Appendix 7.

“State” means the State of Connecticut.

“Subcontract” means an agreement or purchase order by the Company or a Subcontractor to the Company, as applicable.

“Subcontractor” means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly in privity with the Company (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

“System” means all of the Equipment, machinery, systems, structures, improvements, individual components, property and elements that comprise the wastewater treatment system owned by the WPCA, consisting of the Managed Assets and the Collection System, all as described in Appendix 1.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax assessed or imposed by any Governmental Body.

“Term” has the meaning set forth in Article III (Term).

“Termination Date” means the last day of the Term of this Service Agreement.

“Toxic Substance” means any toxic, hazardous, chemical, industrial, explosive, flammable, volatile, reactive, corrosive or radioactive waste, material or substance that, alone or in combination with other substances, is contained in sufficiently high concentrations or volumes in Influent received at the Managed Assets so as to:

- (1) interfere with the biological or other processes necessary for the removal of the organic and chemical contents of the Influent required to meet the Effluent Requirements;
- (2) endanger human health or safety; or
- (3) cause Effluent or Residuals to become a Hazardous Material.

“Transaction Document” means the Performance Bond and the Guaranty Agreement, together with any other agreements entered into by the Parties and identified as a Transaction Document to this Service Agreement.

“Transition Period” means the period from the Contract Date to, and including, the day preceding the Commencement Date, during which the parties will carry out their transition obligations under Article IV (Transition Period).

“Transition Plan” means the transition plan submitted by the Company and accepted by the WPCA as part of the RFP process.

“Uncontrollable Circumstance” means any act, event or condition beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Service Agreement, and which materially interferes with or materially increases the cost of performing its obligations hereunder, to the extent such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Service Agreement on the part of such party.

Inclusions. Subject to the foregoing, Uncontrollable Circumstances may include, but shall not be limited to, the following:

- (a) a Change in Law, except as provided in Section 6.20(C);
- (b) the occurrence of an Upset, if Section 7.12(B)(1) and (2) are satisfied with respect to such Upset;

(c) contamination of the Managed Assets from groundwater, soil or airborne Hazardous Material migrating from sources outside the Managed Assets to the extent not caused by Company Breach;

(d) naturally occurring events (except weather conditions normal for, or experienced periodically by, Bridgeport, Connecticut) such as landslides, underground movement, earthquakes, lightning, fires, tornadoes, hurricanes or floods, pandemics, epidemics, and other acts of God;

(e) acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance, sabotage or similar occurrence by a third party;

(f) labor disputes, except labor disputes involving employees of the Company, its affiliates, or subcontractors;

(g) the failure of any Subcontractor (other than the Company, the Guarantor, or any affiliate thereof) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute an Uncontrollable Circumstance if it affected the Company directly, and the Company is not able after exercising all reasonable efforts to timely obtain substitutes;

(h) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Wastewater Treatment System is located to provide and maintain Utilities to the Wastewater Treatment System required for the performance of the Contract Services;

(i) any failure of title to the Managed Assets or any placement or enforcement of any Encumbrance on the Managed Assets not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;

(j) the preemption, confiscation, diversion or destruction of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Managed Assets;

(k) with respect to the Company, any WPCA Breach;

(l) with respect to the WPCA, any Company Breach; or

(m) any surface or subsurface geotechnical or hydrological conditions, including the existence of compressible soil layers, masses, unstable soils, manmade deposits, and water table fluctuations not caused by the Company; ~~or~~

(n) The receipt of Excessive Influent, if Section 7.12(B)(1) and (2) are satisfied with respect to such Excessive Influent; or

(o) Changes to union or labor work rules, requirements or demands that have the effect of increasing the number of employees employed at the Managed Assets or otherwise increasing the cost to the Company of performing the Contract Services, other than changes that are the result of a Change in Law.

Exclusions. It is specifically understood that none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

(a) any act, event or circumstance that would not have occurred if the affected party had complied with its obligations hereunder;

(b) changes in interest rates, inflation rates, wage rates, insurance costs, costs for services, transport or disposal costs, commodity prices, currency values, exchange rates or other costs or general economic conditions;

(c) changes in the financial condition of the WPCA, the Company, the Guarantor, or their affiliates or subcontractors affecting the ability to perform their respective obligations;

(d) the consequences of error, neglect or omissions by the Company, the Guarantor, any subcontractor, any of their affiliates or any other person in the performance of the Contract Services;

~~(e) union or labor work rules, requirements or demands that have the effect of increasing the number of employees employed at the Managed Assets or otherwise increasing the cost to the Company of performing the Contract Services;~~

(f) weather conditions normal for, or experienced periodically by, the service area;

(g) any surface or subsurface geotechnical or hydrological conditions, including the existence of compressible soil layers, masses, unstable soils, manmade deposits, and water table fluctuations caused by the Company;

(h) any act, event, circumstance or Change in Law occurring outside of the United States;

(i) mechanical failure or lack of preventative maintenance of equipment, or negligent or careless operation of equipment;

(j) failure of the Company to secure patents and Government Approvals necessary for the performance of the Contract Services;

(k) a Change in Law pertaining to Taxes; or

(l) any Change in Law (including the issuance of any Governmental Approval, the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Company than are imposed by the Contract Standards.

“Upset” has the meaning set forth in 40 C.F.R. 122.41(n)(l).

“Utilities” means any and all utility services and installations whatsoever (including water, natural gas, propane gas, electricity, telephone, internet and other telecommunications), and all

pipng, wiring, conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“WPCA” means the Water Pollution Control Authority for the City of Bridgeport, Connecticut, a municipal water pollution authority organized and existing under the laws of the State of Connecticut.

“WPCA Breach” means any breach (including the untruth or breach of any WPCA representation or warranty herein set forth), failure, nonperformance or non-compliance by the WPCA with respect to its obligations under this Service Agreement to the extent not directly attributable to any Uncontrollable Circumstance, and which materially and adversely affects the Company’s rights, obligations or ability or costs to perform under this Service Agreement.

“WPCA Indemnitee” has the meaning specified in Section 12.3 (Indemnification by the Company).

“WPCA Property” means any structures, improvements, equipment, fire alarm systems, wastewater and water mains, valves, pumping systems, hydrants, hydrant connections, duct lines, streets, lamps, lampposts, monuments, sidewalks, curbs, trees or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by the WPCA.

“Wastewater Treatment Plants” or “WWTP” means the WPCA’s Wastewater treatment plants and the real property located at 695 Seaview Ave, Bridgeport, Connecticut, facility ID 015-001 and 205 Bostwick Ave. Bridgeport, Connecticut, facility ID 015-002 as referred to in the NPDES Permit, described in Appendix 1, consisting generally of that separate and contiguous part of the Wastewater Treatment System comprising buildings, structures and equipment, and the roads, grounds, fences and landscaping appurtenant thereto, utilized for treatment of Influent and Biosolids, laboratory functions and administration and management of the WWTP, including any Capital Modifications made thereto from time to time.

“Wastewater Treatment System” means the WPCA’s wastewater treatment system and the real property on which the structures and equipment constituting part of such system are located, as described in Appendix 1, consisting generally of the WWTP, treatment equipment and pump stations identified in Appendix 1, together with all improvements thereto acquired, installed, constructed or reconstructed from time to time.

SECTION 1.2. INTERPRETATION.

In this Service Agreement notwithstanding any other provision hereof:

(A) Headings.

The table of contents and any headings preceding the text of the Articles, Sections and Subsections of this Service Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(B) Entire Service Agreement.

This Service Agreement together with the Appendices and, the Transaction Documents, together with those sections of the RFP and proposal submitted by the Company in response that are specifically referenced in this Service Agreement, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Service Agreement. Without limiting the generality of the foregoing, this Service Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those otherwise contained in the WPCA's RFP, the proposal the Company submitted in response thereto, and any amendments or supplements to the RFP or the proposal.

(C) Standards of Workmanship and Materials.

Any reference in this Service Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Company to furnish the same in accordance with the grades and standards therefor indicated in this Service Agreement. Where this Service Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials in accordance with Good Industry Practices.

(D) Technical Standards and Codes.

References in this Service Agreement to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, all such professional and technical standards, codes and specifications shall apply as if incorporated herein.

(E) Causing Performance.

A party shall itself perform, or shall cause to be performed, the obligations affirmatively undertaken by such party under this Service Agreement, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise.

(F) Party Bearing the Cost of Performance.

All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly or by reimbursement to the other party or through an adjustment to the Base Service Fee.

(G) Assistance.

The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performing their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

(H) Interpolation.

If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(I) Good Industry Practice.

Good Industry Practice shall be utilized hereunder, among other things, to implement, and in no event displace or lessen the stringency of, the Contract Standards.

(J) Applicability and Stringency of Contract Standards.

Where more than one Contract Standard applies to any particular performance obligation of the Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

(K) Delivery of Documents in Digital Format.

In this Service Agreement, the Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Company agrees that all such documents shall be submitted to the WPCA both in printed form (in the number of copies indicated) and, at the WPCA's request, in digital form. Electronic copies shall consist of computer readable data submitted in any standard interchange format which the WPCA may reasonably request to facilitate the administration and enforcement of this Service Agreement.

(L) Severability.

If any clause, provision, Subsection, Section or Article of this Service Agreement shall be ruled invalid by any court of competent Jurisdiction, then the parties shall: (1) promptly negotiate a substitute for such clause, provision, Subsection, Section or Article that shall, to the greatest extent legally permissible, effectuate the intent of the parties in the invalid clause, provision, Subsection, Section or Article; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Service Agreement; and (3) negotiate such changes, in substitution for or addition to the remaining provisions of this Service Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, Subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Service Agreement shall be construed and enforced as if such invalid portion did not exist.

(M) Drafting Responsibility.

Notwithstanding the WPCA's having assumed primary drafting responsibility for the main body and certain Appendices to this Service Agreement, or the Company's having assumed primary drafting responsibility for certain Appendices to this Service Agreement, neither party

shall be held to a higher standard than the other party in the interpretation or enforcement of this Service Agreement as a whole or any portion hereof as a result of having assumed such drafting responsibility.

(N) No Third Party Rights.

This Service Agreement is exclusively for the benefit of the City and the WPCA, on the one hand, and the Company, on the other hand, and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

(O) Counterparts.

This Service Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Service Agreement.

(P) References.

(1) Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words importing the singular number mean and include the plural number and vice versa.

(2) Words importing persons include firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(3) All references to days herein are references to calendar days.

(4) All references to “including” herein shall be interpreted as meaning “including without limitation.”

(5) All references to “knowledge,” “knowing,” “know” or “knew” shall be interpreted as references to a party having actual knowledge, after reasonable inquiry.

(Q) Actions of the WPCA in its Governmental Capacity.

Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the City or the WPCA in their respective governmental or regulatory capacity.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE WPCA.

The WPCA represents and warrants that:

(A) Conditions Precedent.

The WPCA has fully satisfied all of the following conditions precedent relating to the WPCA's obligations as of the Commencement Date:

(1) Prior to the execution and delivery of this Service Agreement, the WPCA shall have delivered to the Company:

a. a certified record of the proceedings of the WPCA and the City approving the execution and delivery of this Service Agreement;

b. a certificate of incumbency for the officers of the WPCA executing this Service Agreement; and

c. such other certificates and documentation as the Company shall reasonably request in connection with the execution and delivery of this Service Agreement and the transactions contemplated hereby.

(B) Existence and Powers.

The WPCA is a municipal water pollution control authority, formed under the laws of the State, validly existing under the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Service Agreement.

(C) Due Authorization and Binding Obligation.

This Service Agreement has been duly authorized, executed and delivered by all necessary action of the WPCA and constitutes a legal, valid and binding obligation of the WPCA, enforceable against the WPCA in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

(D) No Conflict.

Neither the execution and delivery by the WPCA of this Service Agreement nor the performance by the WPCA of its obligations hereunder or the fulfillment by the WPCA of the terms or conditions hereof: (1) conflicts with, violates or results in a material breach of any constitution, law or governmental regulation applicable to the WPCA; or (2) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the WPCA is a party or by which the WPCA or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(E) No Additional Approvals Required.

No additional approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body other than the WPCA, is required for the valid execution and delivery by the WPCA of this Service Agreement or the performance by the WPCA of its obligations hereunder, except as such have been duly obtained or made.

(F) Claims and Demands.

Except as disclosed in writing to the Company, to the best of its knowledge, there are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against the WPCA with respect to the System.

(G) Applicable Law Compliance.

To the best of its knowledge (1) the WPCA is not in material violation of any Applicable Law pertaining to the System, and (2) the WPCA has not received notice of a violation or an alleged violation of any such Applicable Law.

(H) Title to System.

The WPCA retains custody, control, and management of, and has all rights to the System, without material encumbrances to the System, necessary for the Company to perform its obligations pursuant to the terms and provisions of this Service Agreement.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants that:

(A) Conditions Precedent.

The WPCA has fully satisfied all of the following conditions precedent relating to the WPCA's obligations as of the Commencement Date:

(1) a copy of all Legal Entitlements, if any, necessary for the Company to perform its obligations pursuant to the terms and provisions of this Service Agreement, excluding the NPDES Permit and approval of this Service Agreement by CTDEEP, provided, however, that the Company shall provide certificates of good standing and a certificate of authority to do business in Connecticut on or before March 1, 2024;

(2) a Guaranty executed by the Guarantor;

(3) on or before March 1, 2024, the Operations Performance Bond, executed and delivered by the Operations Performance Bond Issuer, for the benefit of the WPCA, effective as of the Commencement Date;

(4) on or before March 1, 2024, copies of certificates of insurance, if any, required pursuant to Section 12.1 hereof;

(5) a certified copy of the resolutions of the boards of directors of the Company and the Guarantor, approving the execution and delivery of this Service Agreement and the Guaranty, respectively or certificate from the President of the Company that each of the Company and the Guarantor approved the execution and delivery of this Service Agreement and the Guaranty through their duly authorized review and signature authority policies and process;

(6) certificates of incumbency for the officers of the Company and the Guarantor executing this Service Agreement and the Guaranty, respectively;

(7) opinions of counsel to the effect that

a. the Company and the Guarantor is duly authorized and existing under the laws of the jurisdiction of its respective incorporation the Company is qualified to do business in the State;

b. the Service Agreement has been duly authorized, executed and delivered by the Company and constitutes the legally binding obligation of the Company enforceable against the Company in accordance with its terms;

c. the Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes a legally valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms;

d. the Company has obtained all Legal Entitlements necessary to perform its obligations pursuant to the terms and provisions of this Service Agreement; and

e. to counsel's knowledge after due inquiry, there is no litigation pending or threatened against the Company or the Guarantor preventing any of them from performing their respective obligations pursuant to the terms and provisions of this Service Agreement or the Guaranty; and

(8) such other opinions, certificates, and documentation as the WPCA shall reasonably request in connection with the execution, performance and delivery of this Service Agreement, the Guaranty and the transactions contemplated thereby.

(B) Existence and Powers.

The Company is a ~~corporation~~ limited liability company duly organized, validly existing and in good standing under the laws of the State of , Texas, with the full legal right, power and authority to enter into and perform its obligations under this Service Agreement.

(C) Due Authorization and Binding Obligation.

This Service Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and. by equitable principles of general application.

(D) No Conflict.

Neither the execution and delivery by the Company of this Service Agreement nor the performance by the Company of its obligations hereunder or the fulfillment by the Company of the terms or conditions hereof: (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Company; or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which

the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(E) No Approvals Required.

No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Service Agreement by the Company or the performance of its obligations hereunder except such as have been duly obtained or made.

(F) No Litigation.

There is no Legal Proceeding before or by any Governmental Body pending or, to the best of the Company's knowledge, overtly threatened or publicly announced against the Company or the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Service Agreement by the Company, or the validity, legality or enforceability of this Service Agreement against the Company or the Guarantor or any other agreement or instrument entered into by the Company or the Guarantor herewith, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

(G) Governmental Approvals.

The Company has obtained or will obtain in the course of its performance hereunder the Governmental Approvals that the Company must obtain to provide the Contract Services.

(H) Applicable Law Compliance.

Neither the Company, the Guarantor nor any Affiliate is in material violation of any law, order, rule or regulation applicable to any wastewater plant providing service to the general public operated, maintained or managed by the Company, the Guarantor or any Affiliate.

(I) Information Supplied by the Company.

The information supplied and representations and warranties made by the Company and the Guarantor in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Company and the Guarantor (and to the best of its knowledge after due inquiry, all information supplied in such submittals with respect to any Subcontractor), including without limitation, all financial information and insurance policy copies, are true, correct and complete in all material respects.

(J) Guaranty Agreement.

Concurrently with the execution of this Service Agreement, the Company has provided the WPCA with the Guaranty Agreement as security for the faithful performance and payment of its

obligations hereunder. The Guaranty Agreement is in the form set forth in Attachment C of the RFP and is in compliance with the requirements of Section 13.1 (Guarantor).

(K) Technical Knowledge.

The Company has, or will have as of the Commencement Date, adequate capacity, technical knowledge, and employees to fulfill all of its obligations, covenants and agreements pursuant to the terms of this Service Agreement.

(L) Subcontractors.

The Company shall maintain direction and control of all Subcontractors, and shall promptly pay all amounts owing and due to all Subcontractors retained, engaged, employed or directed by the Company to provide materials or services to the System. With respect to any disputes between the Company and the WPCA, the Company shall ensure all Subcontractors are bound by the dispute resolution provisions contained within this Service Agreement.

(M) Licenses and Permits.

Based solely on information included in the RFP, the execution, delivery and performance of this Service Agreement and the consummation of the transactions contemplated hereby will, to the best knowledge of the Company, not result in the revocation, cancellation, suspension, modification, or limitation of any of the Permits and will not give any Person any right to revoke, cancel, suspend, modify, or limit any of the Permits. Renewal of each of the Permits (exclusive of the NPDES Permits or other permits issued to the City or the WPCA) has been or shall be timely applied for to the extent required under all Applicable Laws, and to the extent appropriate to protect renewal rights thereunder. To the best of the Company's knowledge based solely on information included in the RFP, there is no fact or event which is likely to prevent the renewal of any of the Permits under Applicable Laws or which, with the passage of time or the giving of notice or both, is likely to constitute a violation of the terms of any of the Permits, Applicable Laws or of any applications or agreements made in connection therewith. No action or proceeding is pending against the Company or, to the best of the Company's knowledge, threatened against the Company which could result in the revocation, cancellation, suspension, modification, or limitation of any of the Permits.

(N) Financial Condition.

Neither the Company or the Guarantor has filed, nor have creditors of the Company or the Guarantor filed, any type of proceeding under the United States Bankruptcy Code.

(O) Prior Experience.

The Company has trained personnel who will be assigned to this project and the Company personnel have experience operating and maintaining facilities similar to the System in accordance with Good Industry Practice.

ARTICLE III TERM

SECTION 3.1. EFFECTIVE DATE AND INITIAL TERM.

The term of this Service Agreement shall become effective on the Commencement Date, and shall continue in effect for the approximately ten and one half (10.5) year period following the Commencement Date ending at midnight, June 30, 2034, (the period from the Commencement Date to June 30, 2034 constituting the “Initial Term”) or, if renewed at the option of the WPCA as provided in Section 3.2 (WPCA Renewal Option), until the last day of the renewal term (the “Renewal Term”: the Initial Term and any Renewal Term being referred to herein as the “Term”), unless earlier terminated pursuant to the termination provisions of Article XI (Breach, Default, Remedies, and Termination) hereof, in which event the Term shall be deemed to have ended as of the effective date of such termination. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. At the end of the Term of this Service Agreement, all other obligations of the parties hereunder shall terminate, except as provided in Sections 11.5 (Obligations of the Company Upon Termination or Expiration) and 11.7 (Survival of Certain Provisions Upon Termination).

SECTION 3.2. WPCA RENEWAL OPTION.

Not less than 18 months prior to the expiration of the Initial Term or First Renewal Term (as defined herein), as applicable, the WPCA in its sole discretion may extend this Service Agreement, under the same terms and conditions, by written notice to the Company extending (i) the Initial Term by an additional 5 years (the “First Renewal Term”), or (ii) the First Renewal Term, if any, by an additional 5 years (the “Second Renewal Term”). The Company shall acknowledge in writing, within 15 days of receipt of notification from the WPCA of its intent to extend the Service Agreement, to the WPCA that this Service Agreement shall be extended under the same terms and conditions, for the First Renewal Term or the Second Renewal Term.

ARTICLE IV TRANSITION PERIOD

SECTION 4.1. COMPANY TRANSITION PERIOD RESPONSIBILITIES

(A) Obligation to Proceed.

Subject to the Company being granted access to the System, the current operator, and its records and data, as set forth in Section 4.1(B) below, the Company shall satisfy the following Company responsibilities as soon as practicable after the Contract Date and in any event prior to the Scheduled Commencement Date, time being of the essence, each of which shall be a condition precedent to the occurrence of the Commencement Date.

(1) Transition. The Company shall take all actions necessary to carry out and complete the orderly transfer of management responsibility to the Company in accordance with this Article and the Transition Plan set forth in Appendix 7, including hiring and/or assigning all necessary management, technical, administrative engineering, labor relations, and other personnel. The Company shall demonstrate and certify such compliance to the satisfaction of the WPCA.

(2) Governmental Approvals. The Company shall submit complete applications and take all other steps necessary under Applicable Law to obtain all Governmental Approvals required to be obtained by the Company before the Commencement Date for the performance of the Contract Services, or certify to the WPCA that no such Governmental Approvals are required.

(3) Performance Bond. The Company shall obtain and deliver to the WPCA the Performance Bond in accordance with Section 13.2 (Performance Bond). The Performance Bond shall be in a form acceptable to the WPCA.

(4) Confirmation of Guaranty Agreement. The Guarantor shall execute and deliver confirmations to the WPCA that the Guaranty Agreement as executed on the Contract Date remains in full force and effect.

(5) Safety and Security Plan. At To the extent the Company wishes to amend its existing Safety and Security Plan, at least 60 days prior to the Scheduled Commencement Datesuch amendment, the Company shall submit to the WPCA for its review and comment, a final-an amended Safety and Security Plan, which shall include the Company Safety/OSHA Compliance Plan. The Company shall incorporate, to the extent reasonably satisfactory to both partiescommercially reasonable, comments provided by the WPCA. If such incorporated comments have a Material Adverse Impact, the Company shall be entitled to an equitable increase to the Annual Base Service Fee.

(6) Training. The Company shall be responsible for training the Facility Manager and all other Company personnel. At To the extent the Company wishes to amend its existing personnel training program, at least 30 days prior to the Scheduled Commencement Datesuch amendment, the Company shall submit to the WPCA for its review and comment the personnel training program the Company proposes to institute in order to ensure that the System is managed and operated in accordance with this Service Agreement. The Company shall incorporate, to the extent reasonably satisfactory to both partiescommercially reasonable, comments provided by the WPCA. If such incorporated comments have a Material Adverse Impact, the Company shall be entitled to an equitable increase to the Annual Base Service Fee. Such personnel training program shall include the personnel training guidelines, policies and procedures established in accordance with Contract Standards: (1) by the EPA or by CTDEEP; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

(7) Operation and Maintenance Manuals. The Company shall complete a preliminary review of the operation and maintenance procedures contained in the WPCA's existing Operation and Maintenance Manuals, and shall notify the WPCA in writing of areas, if any, which need to be modified or added in light of the contract provisions to be performed hereunder.

(8) Maintenance Plan. The To the extent the Company wishes to amend its existing Maintenance Plan, the Company shall prepare an initial-amended Maintenance Plan for the Managed Assets and Collection System and provide it to the WPCA not less than 90 days prior to the Scheduled Commencement Date-such amendment for the WPCA's review and comment. The Company shall incorporate, to the extent commercially reasonable, comments provided by the

WPCA. If such incorporated comments have a Material Adverse Impact, the Company shall be entitled to an equitable increase to the Annual Base Service Fee.

(9) Contact Information and Emergency Response Plan. The Company shall submit to the WPCA the contact information specified in Subsection 14.3(A) (Company's Contract Representative), and the Emergency Response Plan, as described in Section 6.17 (Emergencies), covering both the Managed Assets and the Collection System, and including necessary Equipment and Subcontractors.

(10) Required Insurance. The Company (or its insurer) shall make available to the WPCA and/or its representatives for review at such mutually agreeable locations, full and correct policies for all Required Insurance specified in Appendix 6 (except copies of the policies shall not be required for the Workers Compensation and Automobile insurance policies), together with satisfactory certificates of insurance including the WPCA and the City of Bridgeport, and the officers, officials and employees of each, as an "additional insured" for all Required Insurance specified in Appendix 6,

(11) Guarantor and Company Law Compliance. The Guarantor and the Company shall be in substantial compliance with all laws, regulations, rules and orders applicable to their businesses, non-compliance with which would have a material adverse effect upon their businesses or their ability to perform their respective obligations under this Service Agreement or the Guaranty Agreement.

(12) Financial Condition. The Company and the Guarantor shall provide consolidated balance sheets and income statements for the Company and the Guarantor for the most recently completed fiscal year and quarterly period. Since the Contract Date, there shall not have occurred any change, financial or otherwise, in the condition of the Company or the Guarantor that would materially and adversely affect the ability of the Company to perform its obligations under this Service Agreement or the Guarantor's ability to perform its obligations under the Guaranty Agreement. The WPCA shall treat any information that is provided to it under this section as confidential business information as that term is defined under the Freedom of Information Act, Conn. Gen. Stat. section 1-200, et seq. Should the WPCA receive a request for such information under the Freedom of Information Act, the WPCA shall notify the Company and provide the Company with the ability to challenge, at the Company's sole cost and expense, any request for such information. Documents Evidencing Required Activities. The Company shall have provided to the WPCA copies of all filings and reports conducted, prepared or obtained with respect to or evidencing the Company's activities pursuant to this Section.

(13) ~~(14)~~ Representations. The representations of the Company set forth in Section 2.2 (Representations and Warranties of the Company) and of the Guarantor set forth in the Guaranty shall be true and correct in all material respects as of the Commencement Date as if made on and as of the Commencement Date, and the Company shall deliver to the WPCA a certificate of an authorized officer of each to that effect.

(14) ~~(15)~~ The Company's plan for implementation of the Billing and Collection Services, including staffing requirements, utilization of Computil LLC for the computerized billing of

WPCA users, implementation of receipt management system, and audit and reporting system for the WPCA

(B) Access to System During Transition Period.

~~Upon execution of this Service Agreement, the Company shall be granted a right of access to the System, records and data, together with the cooperation of the current operator, for the purposes of performing further inspections, engineering, analysis and such additional studies or tests as reasonably deemed necessary by the Company to satisfy its responsibilities set forth in Section 4.1(A) above. Such right of access shall be subject to the WPCA's prior approval, which shall not be unreasonably withheld, as to time and scope, and shall be exercised in a manner which does not interfere with the operation of the System. The Company shall comply with all safety procedures and policies required by the existing operator of the System, and shall notify the WPCA promptly to the extent such right of access is not being duly granted or cooperation not being provided by the current operator. The Company shall assume all risks associated with such activities, and to the full extent of its liability under Applicable Law, shall indemnify the WPCA and the WPCA Indemnitees against all Loss and Expense resulting from any Legal Proceeding arising out of such activities.~~

Reserved.

(C) Notice of Default.

The Company shall provide to the WPCA, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval or Subcontract pertaining to the Transition Period.

SECTION 4.2. COMMENCEMENT DATE CONDITIONS.

(A) Commencement Date Conditions Defined.

The obligations of the Company and the WPCA to proceed with their respective obligations hereunder during the Operation Period shall not commence until all of the Company's Transition Period Responsibilities, set forth in Section 4.1 (Company Transition Period Responsibilities), have been achieved. In addition, the WPCA shall have the right to postpone the Commencement Date, but not further than the Scheduled Commencement Date, until all of the following conditions have been achieved, which together with the achievement of all of the Company's Transition Period Responsibilities, shall constitute the "Commencement Date Conditions."

(1) Governmental Approvals. All Governmental Approvals required for the commencement of the Contract Services shall have been issued or obtained and shall be in full force and effect.

(2) Inventory and Assessment. An inventory and condition assessment of the Managed Assets shall have been conducted as required by Section 8.4 (Managed Assets Evaluation), and the parties shall have agreed on such inventory and condition assessment in accordance with such Section.

(3) Acceptability and Effectiveness of Documents. All of the documents and instruments identified in this Section shall be in form and substance reasonably satisfactory to both parties, and shall be valid, in full force and effect and enforceable against each party thereto on the Commencement Date. It is understood that any such document, instrument or agreement, the form of which is set forth in an Exhibit, that is executed and delivered in substantially such form, is and shall be deemed to be, in form and substance, satisfactory to the parties. No such document, instrument or agreement shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Commencement Date. No party to any such document, instrument or agreement shall have repudiated or be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested.

(4) Legal Proceedings. There shall be no Legal Proceeding pending before or by any Governmental Body that: (a) challenges, directly or indirectly, (i) the authorization, execution, delivery, validity or enforceability of this Service Agreement, or (ii) the interest of the WPCA in the System; (b) seeks to enjoin or restrict the use of the System in the manner or for the purposes contemplated by this Service Agreement; or (c) seeks damages, fines, remediation or any other remedy in connection with the environmental condition or any other matter pertaining to the System, in any such case under (a) through (c) which can reasonably be expected to materially and adversely affect the WPCA's or the Company's ability to comply with its obligations hereunder.

(5) No Change in Law Affecting Service Agreement. No Change in Law shall have occurred after the Contract Date and before the Commencement Date that would cause the authorization, execution, delivery, validity, enforceability or performance of this Service Agreement to violate Applicable Law in any material respect.

(B) Commencement Date Conditions for which Both Parties Have Responsibility.

The WPCA and the Company shall each use all reasonable efforts in taking such actions as may reasonably be under their control in order to satisfy the Commencement Date Conditions set forth in items (1), (2), (3) and (4) of Subsection (A) of this Section as soon as practicable.

(C) No Payment to Either Party for Transition Period Expenses of the Other.

All costs and expenses incurred by each party in performing its obligations during the Transition Period shall be for the account of such party and shall not be reimbursable by the other party except upon the occurrence of an Event of Default by the other party.

SECTION 4.3. CLOSING THE TRANSITION PERIOD.

(A) Scheduled Commencement Date.

The Company shall give the WPCA prompt notice when each Commencement Date Condition has been achieved. Upon the satisfaction or waiver by the WPCA of all of such Commencement Date Conditions, the parties shall execute such documents as necessary to acknowledge such satisfaction and effectuate the Commencement Date, and deliver copies of all relevant documents. All Commencement Date Conditions should be satisfied at least 7 days in advance of the Scheduled Commencement Date in order to ensure an orderly transition. On the Commencement Date, the Operation Period shall commence. Written documents or instruments constituting or evidencing satisfaction of the Commencement Date Conditions shall be furnished to each party for review prior to the Commencement Date to the extent practicable.

(B) Failure of Conditions.

If by the Scheduled Commencement Date (as such date may be extended day-for-day by any third party Legal Proceeding or Uncontrollable Circumstance, that has a material bearing upon the ability of the parties to proceed with the transactions contemplated hereby), or such later date upon which the WPCA and the Company may agree, any of the Commencement Date Conditions are not satisfied due to Company Breach or Company fault, the Company shall pay \$150,000 to the WPCA for each day that the Commencement Date occurs beyond the Scheduled Commencement Date.

(C) Event of Default.

Without limiting the provisions of subsection (B) above or otherwise contained in this Service Agreement, if the Commencement Date Conditions have not been satisfied by the Scheduled Commencement Date and such failure is due to a Company Breach or other Company fault, such failure shall constitute an Event of Default as set forth in Subsection 11.2(A) (Events of Default Not Requiring Previous Notice or Cure Opportunity).

**ARTICLE V
PERMITTING AND REPORTING RESPONSIBILITIES**

SECTION 5.1. COMPANY PERMITTING RESPONSIBILITIES.

The Company shall be responsible (at its own cost, including annual or periodic fees, but excluding the cost of any Capital Modification required pursuant to a Government Approval) for identifying, obtaining and maintaining in force all Government Approvals as are required from time to time for the operation of the System, even though such Governmental Approvals may be in the name of the WPCA or City of Bridgeport. The WPCA shall provide the Company reasonable assistance in the permitting process at its own cost. The Company shall bear the cost of (including permit fees) and risks associated with maintaining and complying with such Governmental Approvals. The Company shall be responsible for assisting with the completion of all permit efforts in progress at the time of commencement of this Service Agreement. The Company will be responsible for providing all data, reports, plans, designs, test results and other information necessary to obtain such permits, provided, however, the WPCA shall be responsible for incurring the costs of outside services not routinely necessary to obtain such permits, including but not limited to legal counsel, expert witnesses and non-routine engineering. Any such outside service providers will be selected by WPCA, or if selected by the Company, subject to the WPCA's

approval prior to retention. The Company shall not be responsible for obtaining permits or approvals necessary for the implementation of Capital Modifications initiated by the WPCA (unless the parties mutually agree otherwise); provided, however, that the Company shall provide the WPCA all data, reports, test results and other information and support that may be necessary to obtain such permits and approvals.

SECTION 5.2. OTHER REPORTING REQUIREMENTS.

The Company shall be responsible (at its own cost, including annual or periodic fees) for identifying and providing all data, reports, plans, designs, test results and other information to a Governmental Body necessary for the WPCA to comply with applicable reporting requirements, including those contained in the NPDES Permits 015-001 and 015-002 even though such responsibilities may be in the name of the WPCA or City of Bridgeport. The WPCA shall provide the Company reasonable assistance in the reporting process at its own cost.

**ARTICLE VI
MANAGEMENT AND OPERATION**

SECTION 6.1. OWNERSHIP AND USE OF THE FACILITIES.

(A) WPCA Ownership.

The System and all Capital Modifications are and shall be owned by the WPCA throughout and following the Term of this Service Agreement, and the Company shall have no ownership interest therein by virtue of this Service Agreement. The Company shall perform the Contract Services as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the System, or any Capital Modification by virtue of this Service Agreement.

(B) Use.

During the Operation Period hereof, the Company may enter upon, occupy and use the Managed Assets to operate, maintain, repair, replace and manage the System, and to design, construct, install and start-up any Modifications approved by the WPCA, all to provide the Contract Services in accordance herewith, and for no other purpose. The WPCA shall provide administrative offices for the use by Company employees for purposes of its obligations under this Agreement. The administrative offices, located on the first floor of 695 Seaview Avenue, will be provided free of charge to the Company. The Company shall keep the System in good working order and condition fit for their intended use hereunder.

(C) WPCA Access to System.

The WPCA shall have the right at any time, on a 24-hour per day, 7 day per week, 365/366-day per year basis, to visit and inspect the System and observe and assess the Company's performance of the Contract Services. The Company shall permit and facilitate access to the System for such purposes by WPCA and City personnel and by agents and contractors designated by the WPCA shall comply with the Company's reasonable operating and safety procedures and rules, and shall not interfere with the Company's operation of the System. The Company also shall

allow supervised access to the System to WPCA-designated third parties, including but not limited to persons affiliated with, EPA, CTDEEP, and WPCA consultants and contractors. The parties agree that the WPCA and City shall have immediate access to the System, and no Company rule or procedure shall impede, impair or delay such access.

(D) Liens and Encumbrances.

At all times during the Term of this Service Agreement, the Company shall keep the System free from any and all Liens and other Encumbrances arising out of or in connection with (1) the Contract Services, or (2) any acts, omissions or debts of the Company, its Affiliates and its Subcontractors. Without limiting the foregoing, the Company shall obtain Lien waivers from all Subcontractors doing work or providing services on the System prior to such Subcontractor commencing any such work or service.

(E) Company Prohibitions.

In addition to any other provision set forth herein and the limitations set forth under Applicable Law, the Company shall not:

- (1) change the nature of the operation of the System as currently conducted;
- (2) enter into any contract, commitment or transaction on behalf of the WPCA unless expressly authorized in writing by the WPCA;
- (3) utilize the System for any purpose other than the continued operation of the System;
- (4) share System staff with other non-WPCA facilities; or
- (5) distribute, dispose of (except as authorized in writing by the WPCA), transfer, convey, pledge, mortgage or encumber any of the assets of the WPCA or the System.
- (6) use of the System, including any Equipment, for any purposes other than those for the treatment of Influent collected within the City, the town of Trumbull, Connecticut, the town of Stratford, Connecticut or the existing customers in the town of Fairfield, Connecticut, or otherwise pursuant to Inter-municipal Agreements which have been disclosed to the Company, for the treatment of septage delivered by haulers holding valid tickets issued by the City or such assignee of the City or such other treatment of Influent that may be agreed upon by the WPCA and the Company pursuant to a separate agreement.

SECTION 6.2. COMPANY ACCESS AND USE

At all times during the Term, the Company may enter upon, occupy and use the Managed Sites and every part of the System, to perform the Contract Services for the benefit of the WPCA, all in accordance with this Service Agreement, and for no other purpose. Except as provided herein, the Company shall prohibit access to the System to all unauthorized personnel and third parties. Upon notice by the WPCA, the Company shall allow supervised access to the System to WPCA designated third parties. Such third parties shall comply with the Company's Safety and Security Plan, and shall not interfere with the operations of the System.

SECTION 6.3. WPCA'S RIGHTS WITH RESPECT TO BENEFICIAL RE-USE OF EFFLUENT.

The WPCA shall have the sole right to beneficially re-use treated Effluent, or sell such treated Effluent, for the beneficial re-use thereof by third parties, at any time during the Term. In addition, the WPCA retains the right to issue any permits related to the beneficial re-use of such treated Effluent by third parties.

SECTION 6.4. OWNERSHIP OF EQUIPMENT.

All equipment used or installed at any of the Managed Assets by the Company during the Term of the Service Agreement shall be owned by and be the property of the WPCA, except with respect to equipment that is (i) leased by the Company for the WWTP and (ii) specialized equipment borrowed from other operations or otherwise supplied for non-routine circumstances. Any leases for Equipment to be part of the System shall be assignable to the WPCA, which assignment right may be exercised by the WPCA in its sole discretion upon expiration or termination of this Service Agreement. The Company shall maintain a list of all such leased or non-WPCA owned equipment, which list shall be provided to the WPCA.

SECTION 6.5. COMPANY OBLIGATIONS GENERALLY.

(A) Management Responsibility.

Commencing on the Commencement Date and for the Term of this Service Agreement, the Company shall operate, maintain, repair, replace and manage the System on a 24-hour per day, 7-day per week, 365/366-day continuous basis, and shall treat all Influent, treat and discharge all Effluent, treat and manage storage of all WWTP Biosolids and Residuals, provide all information necessary to secure Governmental Approvals, and otherwise manage, maintain, repair, replace and operate the System so as to comply with the Contract Standards, and the other terms and conditions of this Service Agreement, including:

- (1) the Operation and Maintenance Manual;
- (2) the terms and conditions of the NPDES Permits, the Consent Agreement and the Orders as set forth on Attachments D, E, F, and G in their entirety, as well as the Nitrogen Discharge Permit (except with respect to such provisions of the NPDES Permits, Nitrogen Discharge Permit, Consent Agreement and the Consent Order for which the WPCA has assumed responsibility as specified herein);
- (3) Good Industry Practices;
- (4) Maximizing the removal of nitrogen in order to participate in the Connecticut Nitrogen Credit Exchange Program codified under Sections 22a-430-1 through 22a-430-7 of the Regulations of Connecticut State Agencies, as same may be amended from time to time;
- (5) manufacturer's recommendations; and

(6) compliance activities in response to all future orders or requirements of the CTDEEP regarding the System.

(B) Quality Assurance and Quality Control.

The Company shall establish, have in effect and implement during the Operation Period, an effective quality assurance and quality control (QA/QC) program relative to the System. Such program shall be designed to assure accuracy and precision of all testing, maintenance and repairs and wastewater treatment operations of the System. The program shall include the use of EPA or other approved protocol and participation in EPA's biannual performance evaluation surveys. A copy of such QA/QC program shall be prepared in accordance with the RFP and the Operation and Maintenance Plan and shall be provided to the WPCA within 30 days after the Commencement Date as part of the Operation and Maintenance Plan, and any commercially-reasonable amendment thereto shall be promptly incorporated into the Operation and Maintenance Plan and forwarded to the WPCA, each subject to review and comment by the WPCA.

(C) Septage.

The Company shall receive, control, monitor, sample, collect and maintain manifests and analyze all Septage delivered by registered trucks that utilize the System's septic receiving station. The Company shall perform visual and pH tests, and manifest reviews to check the quality of the incoming Septage. If the Company suspects that such Septage contains abnormal or Hazardous Materials that cannot be treated by the System's processes or might adversely impair the ability of the WWTP or the System to comply with Applicable Law, the Company shall reject such Septage and notify the WPCA, in writing, of the circumstances surrounding such rejection and reasons thereof. The Company shall insure that all Septage haulers follow the WPCA rules and regulations and payment procedures. The Company shall insure that the septage receiving area is kept neat and does not present a nuisance to adjacent properties, residences, or businesses.

(D) Biosolids.

The Company shall manage, transport and dispose, on a timely basis, all Biosolids in a manner consistent with Applicable Law. The Company shall maintain a longterm contract for the transportation and disposal of Biosolids at a permit facility. The Company's Biosolids contract shall have a provision for assignment to the WPCA in the event of termination of this Service Agreement for any reason. Notwithstanding any services provided hereunder, title and ownership of the Biosolids shall remain at all times with the City.

(E) Vehicles.

For the term of the Agreement the WPCA shall provide all necessary Collection System Equipment for the Company to maintain and service the Collection System. The Company, during the Operation Period, shall be responsible, at its sole cost and expense, to operate and maintain the Collection System Equipment provided by the WPCA. Vehicles shall be operated and maintained by the Company in a cost-effective manner and in accordance with industry standards and manufacturer's warranties. All Collection System Equipment capital replacements and major maintenance, including vehicle overhauls, shall be at the expense of the WPCA. Major vehicle maintenance in excess of \$20,000 per occurrence will be managed as part of the MRR account as

outlined in Section 8.1. The Company shall be responsible for providing insurance for all vehicles including the WPCA as additional insured in accordance with Appendix 6.

(F) Transfer and Application of Industry Experience.

The Company shall use all reasonable efforts to transfer to and apply at the System the benefit of the advances and improvements in technology, management practices and operating efficiencies developed by the Company and its Affiliates through the operation of their wastewater treatment businesses and industry research and development activities conducted over the full Term of this Service Agreement, that are useful and appropriate in the good faith judgment of the Company for carrying out the Contract Services in a manner that complies with and improves upon the Contract Standards.

(G) Customer Billing and Collections

The Company shall, during the Operation Period, be responsible for the preparation, maintenance, issuance of all bills and invoices to the users of the system as well as process the sewer billing statements, process and collect user fees, sewer use and benefits assessments, and provide accepted accounting practices to properly account for all monies and billings (the “Billing and Collection Services”).

SECTION 6.6. WPCA OBLIGATIONS GENERALLY.

The WPCA shall:

- (1) Make available to the Company upon request all information relating to the System in the readily available possession of the WPCA and material to the Company’s performance hereunder;
- (2) Grant the Company access to the System for the performance of its obligations hereunder, but for no other purpose;
- (3) Make available for the Company’s use hereunder all Consumables and spare parts in inventory at the Managed Assets as of the Commencement Date;
- (4) Obtain and maintain any Governmental Approvals required of the WPCA that are not the responsibility of the Company hereunder;
- (5) Pay the Monthly Service Fees and any other amounts due the Company in accordance with the terms and conditions of this Service Agreement;
- (6) Administer, enforce and modify the Sewer Use Ordinance as allowed by Applicable Law; and
- (7) Otherwise perform its obligations specified in this Service Agreement.
- (8) Provide all Collection System Equipment, for use by the Company, necessary to maintain and service the Collection System.

The WPCA's obligations with respect to the System shall be limited to those set forth in above.

SECTION 6.7. SYSTEM CONDITION CONFIRMATION.

(A) Familiarity with System.

The Company acknowledges, confirms and agrees that: (1) the Company's agents and representatives have visited, inspected, observed and are familiar with the System including the Managed Assets and the Collection System, their design, and their physical condition relevant to the obligations of the Company pursuant to this Service Agreement, including structural and operating conditions, roads, Utilities, and topographical conditions; (2) the Company is familiar with all current local conditions that may be material to the Company's performance of its obligations under this Service Agreement (including transportation; seasons, climate and ambient air; access, availability, handling, storage and disposal of materials, supplies and equipment, and availability and quality of labor and Utilities, and historical Influent conditions and on-going capital modifications); (3) the Company has received and reviewed the background documents provided in the RFP and all other records and information pertaining to the System that it has deemed necessary to receive and review for the purposes of entering into and performing this Service Agreement, and assumes the risk of incompleteness or inaccuracy in any information provided to it by the WPCA or third parties in the process of entering into this Service Agreement; and (4) based on the foregoing, the Company can manage, operate, maintain, repair and replace the System, so as to comply with all Contract Standards and terms and conditions of the Agreement.

(B) "As-Is" Condition of Managed Assets.

Based on its review of the design drawings, plans and specifications pertaining to the Managed Assets, its inspections of the System, and other inquiries and investigations made by the Company prior to the Contract Date, which the Company acknowledges to be sufficient for this purpose, the Company assumes the risk of the adequacy and sufficiency of the design of the System and the existing, "as-is" condition of the System as such design or condition may affect the ability of the Company to comply with Contract Standards, meet its maintenance, repair and replacement obligations or perform any of its other obligations hereunder and for the compensation provided for herein. The Company agrees that any latent or patent defect, flaw, error, inoperability, inadequacy or other condition or aspect of the design or existing condition of the System that exists as of the Contract Date or which may be revealed during the performance hereof shall not be an Uncontrollable Circumstance. The Company's assumption of risk under this Subsection is subject to the limitations provided in Subsection (C) of this Section.

(C) Limitations on the Company's Assumption of "As-Is" Risk.

It is specifically understood that the Company's assumption of the "as-is" risk of the condition of the System as provided in Subsection (B) of this Section shall not extend to the actual condition of structures and equipment which could not have been verified by the Company prior to the Contract Date without cutting through such equipment or structures, draining or removing material therefrom or unreasonably materially interfering with the operation of the System,

SECTION 6.8. SERVICE COORDINATION.

(A) Company's Facility Manager

The Company shall appoint a Facility Manager for the performance of the Contract "Facility Manager") who shall be trained, experienced and proficient in the management and operation of advanced tertiary wastewater treatment systems comparable to the WPCA's System and appropriately familiar with the day-to-day operation, maintenance, repair and replacement activities of the System (unless otherwise approved by WPCA). The Facility Manager shall (1) be responsible for the management and provision of the Contract Services provided to the WPCA, hereunder, (2) be responsible for the day-to-day management of the System, and (3) serve as the business representative of the Company in the performance of this Service Agreement. The initial Facility Manager shall be Richard Lavoie. The Company shall replace the Facility Manager at the request of the WPCA, after notice and a reasonable opportunity or corrective action, in the event the WPCA determines, in its sole discretion, that an unworkable relationship has developed between the Facility Manager and the WPCA. Within 90 days after the Commencement Date, the Facility Manager and thereafter any WPCA-approved successor, shall reside within 40 miles of the WWTP.

(B) WPCA Approval of Replacement Facility Manager.

The Company acknowledges that the performance of the Facility Manager serving from time to time will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the WPCA and the Facility Manager will be essential to effectuating the intent and purposes of this Service Agreement. Accordingly, not fewer than 30 days prior to the date on which any candidate for Facility Manager from time to time during the Term of this Service Agreement is proposed by the Company to assume managerial responsibility for the System, the Company shall: (1) provide the WPCA with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and (2) afford the WPCA an opportunity to interview the candidate with respect to such matters. The WPCA shall have the right within 15 days following such interview to disapprove the assignment of the proposed candidate as Facility Manager under this Service Agreement, which right of disapproval shall not be exercised unreasonably. In the event that the WPCA disapproves of the proposed candidate, and the Company and the WPCA are unable to agree as to a candidate for Facility Manager within 30 days hereafter, then they shall escalate the matter throughout their respective organizations, each acting in good faith. During any absence of the Facility Manager, for any period of time over 14 days, the Company shall provide a qualified interim manager assuming all the responsibilities of the Facility Manager under this Service Agreement.

(C) Company's Senior Supervisors.

The Company shall appoint and inform the WPCA of the identity of the corporate officials of the Company with senior supervisory responsibility from time to time for the System and the performance of this Service Agreement (the "Senior Supervisors"). The Company shall promptly notify the WPCA in writing of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the WPCA in any reviews of the performance of the Facility Manager which the WPCA may undertake from time to time, and shall give full consideration to any issues raised by the WPCA in conducting such performance reviews.

(D) Communications and Meetings.

Not less than 10 days prior to the Commencement Date, the Company shall provide the WPCA of all business telephone, fax and 24 hour contact information, e-mail address and other means by which the Facility Manager and Senior Supervisors may be contacted and shall update such information as needed thereafter. The WPCA shall furnish to the Company comparable communications information with respect to the General Manager. The Facility Manager and, if requested in advance by the WPCA, the Senior Supervisors, each shall personally attend the weekly and monthly operations meetings with the WPCA, and all public WPCA meetings that the WPCA may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Managed Assets and this Service Agreement. The Company, on a daily basis will keep the General Manager informed and abreast of all critical or material events occurring within the System including, but not limited to the Collection System (e.g. spills, blocked lines, customer issues, Subcontractor repairs and emergency conditions), and Managed Assets (process issues, effluent quality issues, Equipment downtime, critical repairs and inspections by regulators), and Billing and Collection Services issues and such other matters as the General Manager may reasonably request.

SECTION 6.9. STAFFING.

(A) Predecessor Operator Employees.

On or before the Commencement Date, the Company shall complete its interviewing of all current employees of the Predecessor Operator who have expressed an interest in and have applied for a position with the Company. Subject to any union or City requirements, the Company, shall offer all current Predecessor Operator employees employment with the Company on terms which shall be equal to or better than current employment contracts in terms of wages and benefits.

(B) Staffing Requirements.

The Company shall staff the System during the Operation Period with qualified personnel who meet the licensing and certification requirements of the CTDEEP, under a staffing plan consistent with the Contract Standards and Appendix 3. The Company shall notify the WPCA promptly of all hiring decisions. In no event shall such staffing level be less than eighty-eight (88) qualified and appropriately trained full-time employees, including, (i) a minimum of two (2) licensed Class IV operators (unless a lower number of such employees is allowed pursuant to the Contract Standards), (ii) each shift operator shall be licensed and certified as a Class I licensed operator, and (iii) the Chief Operator shall be licensed and certified as a Class IV licensed operator. The Company shall provide billing, administrative and support personnel totaling at least six (6) full time individuals in accordance with the Company's organization staffing level set forth in Appendix 3. The Company shall not incur any liability to the WPCA for vacancies created as a result of the normal turnover of employees, so long as the Company utilizes commercially reasonable efforts to fill such vacancies, and such vacancies are filled within 60 days of vacancy. In the event that the Company fails to maintain the minimum staffing level in accordance with the Contract Standards and this Agreement, the WPCA shall offset the Service Fee Fixed Component by an amount equal to (i) 100% of Operator's labor costs (direct salary, benefits and payroll taxes) associated with the non-complying staffing level plus (ii) an additional 5% of such labor costs

which the parties agree shall serve as a calculation of Operator's non-payroll cost of such staffing and overhead and profit.

(C) Changes in Staffing Plan.

Changes in the Staffing Plan or refusal by the appropriate Governmental Body to approve proposed changes in the Staffing Plan shall not constitute a Change in Law unless such changes are required in order for the Company to provide the Contract Services as a result of a separate and identified Change in Law event. In the case of such a separate and identified Change in Law event, the Staffing Plan as approved and in effect as of the date of such event shall be the baseline for measuring the effect of any such Change in Law event that affects required staff levels. Such changes to staffing may reduce or increase overall staffing. The Parties shall agree on an appropriate adjustment to the Base Service Fee based on the increase or decrease in staffing.

SECTION 6.10. OPERATION AND MAINTENANCE MANUALS.

(A) Development.

~~The~~If the Company wishes to update its existing Operation and Maintenance Manual for the Facility, the Company shall provide to the WPCA five copies of the draft updated Operation and Maintenance Manuals (and a full digital copy) within 90 days following the Commencement Date. The Company shall use and follow the procedures set forth in the WPCA's existing Operation and Maintenance Manuals for the System. The content of the Operation and Maintenance Manuals provided by the Company shall be consistent with the Contract Standards and EPA's guidance document, "Considerations for Preparation of Operation and Maintenance Manuals." The Operation and Maintenance Manuals shall contain a detailed description and control of the means and methods of properly operating the System and all sampling, testing and measurement procedures, shall document predictive, preventive and corrective maintenance procedures, practices and schedules, and shall otherwise be sufficiently detailed to permit the System to be operated and maintained by a third party reasonably experienced in wastewater treatment; and shall be subject to any required review and approval by the appropriate Governmental Body in accordance with Applicable Law. The Operation and Maintenance Manuals shall be developed and maintained in a manner fully consistent with the CMMS utilized by the Company pursuant to Section 8.6 (Computerized Maintenance Management System).

(B) WPCA Review and Comment.

~~The~~If the Company wishes to update its existing Operation and Maintenance Manual for the Facility, the Company shall review and discuss in good faith with the WPCA any aspect of the ~~draft updates to the~~ Operation and Maintenance Manuals, and shall deliver the final Operation and Maintenance Manuals to the WPCA within 45 days following completion of review and comment by the WPCA.

(C) Updates and Revisions.

At all times during the Term the Company shall keep the Operation and Maintenance Manuals current and in accordance with Contract Standards, and shall supply the WPCA with appropriate updates, supplements or revisions thereto annually or at any earlier time that a material

change to the Operation and Maintenance Manuals is made, to be reviewed and subject to WPCA comment in accordance with the procedures described in this Section. Such updates shall preserve the standards set forth in the initial Operation and Maintenance Manuals. Notwithstanding any such review by and discussion with the WPCA, the Operation and Maintenance Manuals shall remain at all times the responsibility of the Company. Neither the review of, nor the failure of the WPCA to review or comment on the Operation and Maintenance Manuals shall: (1) relieve the Company of any of its responsibilities under this Service Agreement; (2) be deemed to constitute a representation by the WPCA that operating the System pursuant to the Operation and Maintenance Manuals will cause the System to be in compliance with this Service Agreement or Applicable Law; or (3) impose any liability upon the WPCA.

SECTION 6.11. ENERGY SUPPLY AND CONSUMPTION.

During the Operation Period, the Company shall be responsible to arrange for and supply fuel for vehicles, building heat and backup generators, water, telephone, and all other Utilities (except electricity and natural gas) to the System, and to negotiate and establish rates and terms of service with the respective suppliers. The Company shall pay all Utility (except electricity and natural gas) bills in a timely manner. The Company acknowledges that the Base Service Fee, as escalated, includes all compensation to which the Company is entitled on account of Utility service. The WPCA during the Operation Period, shall arrange and directly pay for all electricity and natural gas usage for the System. The Company shall use its commercially reasonable efforts with respect to reducing electricity and natural gas consumption at the System, to maximize efficiency, use conservation measures consistent with Good Industry Practices, and take all other actions to reduce electricity and natural gas consumption at the System.

SECTION 6.12. CHEMICALS, SUPPLIES, SPARE PARTS AND CONSUMABLES.

(A) The Company, during the Operation Period, shall be responsible at its sole cost and expense for the supply of all ~~chemicals,~~ supplies, maintenance materials, spare parts and Consumables of every nature required for the operation of the System in accordance with Contract Standards.

(B) The chemicals, during the Operation Period, shall be the responsibility of and paid for by, the Company, subject to the Chemical Allowance Limit, which is part of the Service Fixed Component, and shall be annually Eight Hundred Thousand dollars, (\$800,000.00), except for the initial contract year, where the Chemical Allowance Limit shall be Four Hundred Thousand dollars, (\$400,000.00) The Chemical Allowance Limit will adjusted each contract year in the same manner as the Base Service Fee per Section 10.2(C). All Chemical purchases will be tracked each month against the Chemical Allowance Limit and reported to the WPCA on a monthly basis. At the end of each agreement year, any unused amount will be reimbursed to the WPCA. If annual chemical costs exceed the Chemical Allowance Limit, the WPCA shall reimburse the Company for actual excess costs. The Company shall provide the WPCA invoices for the applicable chemical purchases.

SECTION 6.13. SAFETY AND SECURITY.

(A) Safety.

The Company shall maintain the safety of the System in accordance with Applicable Law, Insurance Requirements, the Safety and Security Plan, and Good Industry Practice. Without limiting the foregoing, the Company shall: (1) maintain the security of the System, take all reasonable actions to prevent vandalism to and trespass or terrorism at the System, and take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the System to, (a) all employees working at the System and all other persons who may be involved with the operation, Capital Modifications, maintenance, repair and replacement of the System, (b) all visitors to the System, (c) all materials and equipment under the care, custody or control of the Company on the System, (d) other property constituting part of the System, and (e) WPCA Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the System whose duty shall be the supervision of System safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State, City and WPCA officials; (5) operate all Equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movement and shall conduct inspections to ensure that each vehicle possesses the required safety equipment; and (7) implement and carry out a System-specific safety program, including developing and implementing a health and safety manual for the System.

(B) Security.

The Company shall be responsible for the security of the System, and shall at all times maintain suitable fences, gates and locks at the System in accordance with the Safety and Security Plan. The Company shall guard against and be responsible for performing the repair of all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties. The Company shall report breaches in security and threats of such breaches to the WPCA immediately upon discovery and when reasonably warranted, the Bridgeport Police Department. The Company will conduct an annual review of the System's security with the WPCA to identify areas of risk and measures for improving security. The Company will provide information, as requested, to the federal Department of Homeland Security or other designated agencies.

SECTION 6.14. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation.

The Company shall perform the Contract Services in accordance with Applicable Law including, but not limited to, all Governmental Approvals, and shall cause all Subcontractors to comply with Applicable Law. The Company shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the System, the discharge of Effluent, and the disposition of Residuals, notwithstanding the fact that the Company may not be a permittee or co-permittee with respect to some or all of such Governmental Approvals.

(B) Sampling, Testing and Laboratory Work.

The Company, at its sole cost and expense during the Operation Period, shall perform and provide all System sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards and Applicable Law. The Company shall use CTDEEP or EPA certified laboratories, as required for the applicable test, and such laboratories shall be operated in accordance with Applicable Law and Good Industry Practice, and shall be monitored by the Company for compliance with applicable CTDEEP or EPA standard test methods. All sampling and test data shall be recorded and available for review by, and reported to, the WPCA. The Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Company shall permit the WPCA, at the WPCA's expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the System or otherwise.

(C) Investigations of Non-Compliance.

The Company shall furnish the WPCA with prompt written notice (and immediate oral notice for emergencies) describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or non-compliance to the extent the Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. In connection with any actual or alleged event of non-compliance with Applicable Law, the Company shall, in addition to any other duties which Applicable Law may impose: (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body; (2) attend all meetings and hearings required by any Governmental Body; (3) provide all corrective action plans, reports, submittals and documentation required by any Governmental Body; (4) with prior authorization from the WPCA, communicate in a timely and effective manner with the general public as to the nature of the event, the impact on the public, and the nature and timetable for the planned remediation measures; and (5) upon receipt thereof, provide the WPCA with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

(D) Fines, Penalties and Remediation.

Except to the extent excused by Uncontrollable Circumstances or as otherwise excused in this Agreement, in the event that the Company or any agent of the Company fails at any time to comply with Applicable Law with respect to the Contract Services, the System, or other environmental or operating conditions, the Company shall, at Company expense and without limiting any other remedy available to the WPCA upon such an occurrence and notwithstanding any other provision of this Service Agreement: (1) take all necessary steps to correct such failure and resume compliance with Applicable Law; (2) ~~indemnify, defend and hold harmless the WPCA from all Loss and Expense of the Company and the WPCA resulting therefrom;~~ (3) pay or reimburse the WPCA for its proportionate share of any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all ~~Capital Modifications and~~ changes in operating and management practices necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or

mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law.

(E) No Nuisance Covenant.

The Company shall keep the System neat, clean and substantially litter-free at all times, and ensure that the operation of the System does not create any odor, substantial litter, noise, fugitive dust, vector or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur, the Company shall take all necessary steps to remedy the condition, pay any regulatory fines or penalties relating thereto, make all changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, ~~and, to the full extent of its liability under Applicable Law, indemnify, defend and hold the WPCA harmless, from any Loss and Expense resulting from such nuisance condition.~~

(F) Reports to Governmental Bodies.

The Company shall prepare all assigned periodic and annual reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the System, including sampling and testing results and monthly discharge monitoring or operating reports. Such reports shall contain all information required by the Governmental Body, ~~and~~ may be identical to comparable reports prepared for the WPCA, if such are acceptable to the Governmental Body. The Company first shall provide the WPCA with copies of such regulatory reports and relevant written correspondence for review, ~~comment and signature~~, as applicable, at least 5 days before their filing with the Governmental Body, except such shorter period as practical in the event, of exigent circumstances.

(G) Potential Regulatory Change.

The Company and the WPCA shall keep each other regularly advised as to potential changes in regulatory requirements affecting the System, and provide recommended responses to such potential changes so as to mitigate any possible adverse impact on the WPCA should a Change in Law actually occur. The Company, at the request of the WPCA, shall participate in performance evaluation surveys conducted by CTDEEP and the EPA.

SECTION 6.15. ASSET AND FINANCIAL RECORDS.

(A) System Records.

The Company, on and after the Commencement Date, shall establish and maintain computerized information systems with respect to the System for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Service Agreement and demonstrate compliance with the Contract Standards. The Company shall promptly provide the WPCA, upon request, with copies of all operations and maintenance data and other information kept by the Company in its performance of the Contract Services.

(B) Availability of System Records to WPCA.

The Company shall make available to the WPCA all operations, maintenance, performance, complaint tracking, Effluent discharge, Residuals tracking, process, control and similar records, videos, and data as are available to or created by the Company. The WPCA shall have computer-based, real time, read only, remote cloud access to such records, videos and data, and hardcopy reproduction capability, through information systems installed and maintained at a location designated by the WPCA.

(C) Record Documents and Mapping.

The Company shall maintain at the System and make available to the WPCA by computer-based, real-time, read only, remote cloud access all designs, drawings, blueprints, plans, specifications and “as-built” or record drawings and documents relating to any Capital Modifications performed by the Company, together with all CCTV video and pipe inspections for the Collection System. The Company shall: (1) keep current all such System records to show any changes to the System (including valves, pipes, pumps, meters and other assets) made by the Company in the performance of the Contract Services; (2) maintain a current and accurate record of maintenance and replacement of Equipment in accordance with the CMMS; and (3) provide advice and assistance to the WPCA, based on such records, in establishing and maintaining any WPCA geographic mapping and information systems. The Company shall identify issues, monitor and make necessary corrections with respect to such mapping and information systems to improve the accuracy of such mapping and information systems so as to insure that a fully accurate mapping and information system is in place within the Initial Term of this Agreement. Upon the termination of this Agreement (i) ownership to the computerized maintenance management system hardware shall be owned by the WPCA and the Company shall execute all necessary documentation to evidence such ownership (at no cost to the WPCA); and (ii) all related software (including documentation and related object and source codes, if available, at no cost to the WPCA) shall be licensed or sublicensed to the WPCA on a royalty-free basis as feasible and appropriate under the Company's existing agreements with its vendors and/or Affiliates.

(D) Financial Records.

The Company shall prepare and maintain proper, accurate, complete and current financial books, records and accounts, in accordance with generally accepted accounting principles, with respect to all aspects of the System, Contract Services, and Billing and Collection Services, including direct and indirect personnel expenses, Subcontractor costs, the costs of material, equipment and supplies, maintenance, repair and replacement items, operating expenses and overhead, and aspects of customer billing and collection accounting. These financial records shall be in form and substance sufficient to support all financial reporting, including Cost Substantiation, required hereunder. In the event the Company fails to prepare or maintain any books, records or accounts as required under this Section, the Company shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Company shall keep the relevant portions of the books, records and accounts maintained with respect to each Contract Year until at least the seventh anniversary of the last day of each such Contract Year (or such longer period as may be appropriate to account for any dispute then pending). The Company shall make such books and records available to the WPCA for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the WPCA to determine to its reasonable satisfaction the

accuracy, completeness, currency and propriety of any charge or request for payment hereunder. The Company shall also be required to provide the WPCA with monthly budget performance reports. The WPCA shall treat any information that is provided to it under this section as confidential business information as that term is defined under the Freedom of Information Act, Conn. Gen. Stat. section 1-200, et seq. Should the WPCA receive a request for such information under the Freedom of Information Act, the WPCA shall notify the Company and provide the Company with the ability to challenge, at the Company's sole cost and expense, any request for such information.

(E) Inspection, Audit and Adjustment.

The WPCA shall have the right to perform or commission an inspection or an independent audit of the financial information required to be kept under this Section, subject to possible reimbursement as provided in this Section. If an inspection or audit reveals that the WPCA has overpaid the Monthly Service Fee or other amounts payable by the WPCA hereunder, then the Company shall, at the election of the WPCA, either immediately reimburse to the WPCA or offset against future Monthly Service Fee payments, as a Service Fee adjustment, the overpaid amount, in addition to interest, from the time such amount was initially overpaid until reimbursed or credited to the WPCA, at the Prime Rate. If an inspection or audit contemplated by this Section discloses an overpayment of the Service Fee to the Company of 1% or more of the total amount that should have been properly paid by the WPCA during the period audited, then the Company shall, in addition to the reimbursement or credit of such overstated amount, with interest, reimburse the WPCA for any and all Fees and Costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the WPCA may have, including remedies for an Event of Default by the Company.

SECTION 6.16. PERIODIC REPORTS.

(A) Monthly Operations.

During the Commencement Period, the Parties shall develop a mutually agreeable initial monthly report format, substantially in the format as the monthly report attached hereto as Appendix 8. The Monthly report shall contain all pertinent information enabling the WPCA to be informed of the operation of the contract and facilities. Within 15 days after the end of each month, the Company shall provide the WPCA with (i) a monthly Operations Summary for the WPCA Board of Directors, and a (ii) monthly detailed operations report, including the following operating data. At anytime during the Contract period, the monthly report may be revised and/or modified as mutually agreed upon by the Company and the WPCA.

~~(1) — a summary of all notices and laboratory, test and other reports filed with or received from all Governmental Bodies pursuant to the Governmental Approvals;~~

~~(2) — A summary of the quantities and characteristics of Influent received during the prior month;~~

~~(3) — a summary of the quantities and characteristics of Effluent discharged during the prior month;~~

- ~~(4) — a summary of the quantities and characteristics of the WWTP Biosolids processed;~~
- ~~(5) — a summary of quantities of Biosolids transported and disposed of by disposal facility;~~
- ~~(6) — a summary of quantities and types of chemicals and other agents used in the treatment of Influent and Residuals;~~
- ~~(7) — a summary of the Residuals disposed of Off-Site during the prior month, including method of disposal, location of disposal, and quantity of Residuals;~~
- ~~(8) — monthly Key Performance Indicators (KPI's) agreed to by the Parties in tabular and/or graphic form;~~
- ~~(9) — the quantities of electricity, water and other Utility services used during such month;~~
- ~~(10) — a summary of staffing levels, job positions and workforce turnover;~~
- ~~(11) — a statement of any complaints received by the Company in relation to the Contract Services and of how each complaint was addressed by the Company;~~
- ~~(12) — a description of the maintenance activities performed by the Company during the prior month and anticipated during the current month;~~
- ~~(13) — a list of machinery and equipment that was out of service during the prior month, and a timetable for repair or replacement;~~
- ~~(14) — an inventory of spare parts in stock and Consumables in storage at the end of the prior quarter;~~
- ~~(15) — any adverse conditions that may reasonably be expected to arise during the current month and affect the ability of the Company to receive and treat Influent, treat and dispose of Residuals, or discharge Effluent accordance herewith;~~
- ~~(16) — the results of any regulatory or insurance inspections conducted during the prior month and all activities performed to comply with such inspections;~~
- ~~(17) — information on any Utility outages occurring during the prior month;~~
- ~~(18) — any failure to meet permit standards;~~
- ~~(19) — a statement of any issues or violations related to regulatory compliance;~~
- ~~(20) — a list and description of any accidents and near misses that occurred at the System during the prior month;~~
- ~~(21) — monthly discharge monitoring reports;~~

~~(22) — the results of any environmental, health or safety tests or monitoring procedures conducted by any Governmental Body during the prior month, and copies of any reports or other submittals made to or received from any such Governmental Body;~~

~~(23) — any notices of violations of any Governmental Approval received during the prior month;~~

~~(24) — a description of the repairs and Capital Modifications performed by the Company during the prior month and anticipated during the current month; and~~

~~(25) — any other data or information required to be furnished under the Operation and Maintenance Plan.~~

~~(26) — Information on the billing and collection of sewer user fees as required by the WPCA~~

(B) Annual Operations and Maintenance Reports.

The Company shall furnish the WPCA, within ~~—45—~~forty-five (45) days after the end of each Contract Year, an annual summary of the information contained in the monthly operations reports. The Company shall also perform and report to the WPCA, as part of its annual operations report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the management of the System. Such report shall include summaries of Monthly Service Fee payments and any necessary reconciliations.

(C) Annual Engineering Review.

The Company shall be responsible for all fees, costs and expenses associated with the Annual Engineering Review subject to a maximum of thirty-five thousand dollars (\$35,000) (subject to annual adjustment based on CPI and exclusive of all costs for correction action plan items) each Billing Year during the Term. The WPCA has the sole right to select the engineering firm to conduct the Annual Engineering Review as well as specify and approve any specific requirements or tasks of the Annual Engineering Review. The WPCA and Company shall agree upon a mutually acceptable time period annually to conduct the Annual Engineering Review as well as specify their respective participants in the review process.

Within 45 days after the issuance of a final report of the Annual Engineering Review the WPCA and Company will review the findings and agree upon a corrective action plan. The corrective action plan shall include milestones for the correction of items identified in the Annual Engineering Review. Any disagreement by the Company with the findings of the Annual Engineering Review shall be resolved in accordance with Section 11.10.

(D) Default Reports.

The Company shall provide to the WPCA, upon receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any material contract entered into by the Company in connection with the Contract Services.

SECTION 6.17. EMERGENCIES.

Prior to the Commencement Date, the Company shall provide ~~an its existing~~ Emergency Response Plan, including the necessary contact information, to the WPCA ~~for review,~~. To the extent the Company wishes to amend its Emergency Response Plan, it shall provide such amendments to the WPCA for the WPCA's review and ~~comment and approval.~~ The Company shall incorporate, to the extent ~~reasonably satisfactory to both parties~~ commercially reasonable, comments provided by the WPCA. Within 30 days subsequent to the Commencement Date, the Company shall prepare and complete emergency procedures to be implemented in the event of an emergency at the System. Prior to implementation of the Company's Emergency Response Plan, the Company shall adopt and comply with the existing emergency plan applicable to the System. Such plan shall conform to the WPCA's existing plans, Good Industry Practice, and all Applicable Laws. It shall also provide for the Company's provision of standby employees ready to address any emergency in an expeditious manner. The Emergency Response Plan shall further address and include spill prevention and response measures. The Emergency Response Plan shall be reviewed and updated by the Company as frequently as necessary to comply with Applicable Law and Good Industry Practice, but at least annually.

If, during the Operation Period, the Company knows or shall become aware of any Emergency arising out of the operation, management, repair or maintenance of the System that threatens, or may threaten, the environment, public health, safety or welfare or the integrity of the System, of other land in close proximity or adjacent thereto, which activity, problem or circumstance by its nature requires an immediate or emergency response the Company shall immediately:

- a. take all necessary and appropriate corrective, mitigation, notification and monitoring actions required by Applicable Law;
- b. implement the Emergency Response Plan;
- c. notify the WPCA orally of the Emergency as soon as possible, followed by a written confirmation of such notice delivered to the WPCA within 24 hours; and
- d. make such necessary and reasonable expenditures to comply with its obligations.

To the extent the Company makes expenditures pursuant to this Section to correct, mitigate or avoid an Emergency, and so long as and to the extent such Emergency results from an Uncontrollable Circumstance or does not result from the Company's failure to properly perform the Services or comply with the terms and provisions of this Service Agreement, the WPCA shall reimburse the Company for all expenditures, subject to Cost Substantiation.

Should the Company, due to Uncontrollable Circumstances or any other reason whatsoever, fail, refuse or be unable to operate the System in accordance with the Service Agreement for a period of more than 24 hours or for such shorter time period so as to endanger the public health, safety or welfare in the opinion of a Governmental Body or the WPCA, then the WPCA, upon notice, may (but shall not be obligated to) take possession of the System and perform the Company's operations obligations. The WPCA may operate by engaging Company personnel,

using WPCA employees or hiring a subcontractor. Payment of the Service Fee shall be suspended during any such emergency takeover. The Company shall reimburse the WPCA for any costs and expenses incurred, unless such failure to perform is determined to have been due to an Uncontrollable Circumstance. The WPCA shall reimburse the Company for any costs or expenses incurred during any such emergency takeover, less any reimbursement proceeds received by the Company from insurance proceeds, to the extent the failure is determined to have been due to Uncontrollable Circumstances. The WPCA may require the Company to resume its operating obligations at any time.

SECTION 6.18. RESIDUALS DISPOSAL GENERALLY.

(A) Residuals Plan of Disposal

The Company shall manage, transport and dispose, on a timely basis to prevent nuisance issues, all Residuals in a manner consistent with Applicable Law and at Company's expense. In no event shall the Company store or warehouse Residuals within the System in a manner that is contrary to Applicable Law and Good Industry Practice. All such materials shall be removed from the System at a minimum on a weekly basis or more frequently as deemed reasonably appropriate by the WPCA. The disposal method and ultimate disposal facility shall be subject to the reasonable approval of the WPCA. Notwithstanding the provision of such transportation and disposal services by or on behalf of the Company, title to and ownership of the Residuals shall remain at all times with the WPCA except and to the extent that the Residuals become contaminated with Hazardous Materials arising out of acts by the Company, its contractors, employees, tenants, guests or invitees.

(B) Avoiding Generation of Hazardous Residuals.

Except as excused by Uncontrollable Circumstances, the Company shall operate the System by using all reasonable efforts so as to avoid the generation of Hazardous Residuals under any Applicable Law.

(C) Storage and Loading.

The Company shall store Residuals at the WWTP in designated areas. The Company shall load Residuals from the WWTP for transportation and disposal in a timely manner to prevent nuisance conditions at all times.

(D) Indemnity.

The Company shall indemnify, defend and hold harmless the WPCA in accordance with Section 12.3 (Indemnification by the Company) from all arising from the failure by the Company to properly test and characterize any Residuals in accordance with the Contract Standards, which failure results in the transportation and delivery of such Residuals to storage, treatment or disposal facilities that are not qualified to accept, treat or dispose of such Residuals.

SECTION 6.19. PROCESSING OF BIOSOLIDS.

(A) Biosolid Generally.

The Company, in accordance with Applicable Law and Good Industry Practices shall process, transport and dispose of all Biosolids from the WWTP in a timely manner to prevent back up of solids in the WWTP, seasonal impacts on final settling tank efficiency and potential adverse effects on Effluent water quality. The Company shall keep and maintain logs, records, manifests, bills of lading or other documents pertaining to Biosolids as required by Applicable Law, this Service Agreement and as the WPCA may reasonably deem necessary and shall collect and promptly provide the WPCA with a copy of all weights and measures data and information relating to quantities of Biosolids generated, transported, and disposed of hereunder.

(B) Biosolid Processing Disposal Sites and Contracts.

Biosolids from the System shall be processed and disposed of by the Company at the Company's sole cost and expense and only at properly licensed and permitted disposal site(s) or beneficial use sites identified by the Company and approved by the WPCA, such approval not to be unreasonably Withheld. All disposal sites or beneficial use sites used by the Company shall be permitted and licensed in accordance with all Applicable Law. At all times during the Term, the Company shall engage only such Subcontractors that maintain such permits, approvals and agreements in accordance with all Applicable Laws necessary to utilize the designated site(s) for processing and disposal of Biosolids generated by the System. The Company shall obtain long term contracts for transportation and disposal of Biosolids. Each contract shall not restrict or prohibit the assumption of the agreement by the WPCA in the event of termination of this Service Agreement for any reason. The Company shall provide evidence to the WPCA of the assignability of any Biosolids transportation and disposal contract, and amendments, to the WPCA.

(C) Included Costs.

The Company acknowledges that the Base Service Fee has been established based on inclusion of the Company's obligation to handle, transport- and dispose of all Biosolids generated during the Term at its sole cost and expense except as provided in Subsection 6.20(D) below. In undertaking to perform this obligation, the Company has assumed the economic and performance risks, ~~including Change in Law associated with~~ related to the availability and cost to ~~the~~ Company from time to time of acceptable disposal sites for Biosolids, the availability and cost to the ~~Company~~ Company from time to time of the transportation services for Biosolids, the transportation distance to the disposal site, the performance or non-performance by any subcontractors for Biosolids handling, the obligation to complete all necessary paperwork and forms required by a Governmental Body related to the transportation and disposal of Biosolids, and the business terms, conditions and practices which may prevail at available sites in the transportation and disposal market; however, the Company does not assume the risk due to Change in Law associated with the availability and cost to Company of acceptable disposal sites for Biosolids, the availability and cost to the Company of transportation services for Biosolids, the transportation distance to the disposal site. If the Company's costs to handle, transport and dispose of all Biosolids generated during the Term increase due to Change in Law associated with the availability and cost to Company from time to time of acceptable disposal sites for Biosolids, the availability and cost to the Company from time to time of transportation services for Biosolids, the transportation distance to the disposal site, the Company and WPCA shall negotiate in good faith to adjust the Base Service Fee.

(D) Maximum Dry Ton Disposal.

The maximum annual dry tons of Biosolids processed, transported and disposed of from the System that the Company shall be responsible for all costs of, in accordance with Subsection 6.20(C) above, shall be limited ~~to 5600~~ to 5600 dry tons per year, based on three year rolling average. Reimbursement by the WPCA shall only be for the direct transportation and disposal costs at the fixed rate of ~~_____~~ \$868.15 per dry ton incurred by the Company above the three year rolling average dry ton limit. The first payment, if any, for transportation and disposal costs for dry tons in excess of the three year rolling average shall be after completion of the third Contract Year. Within 60 days after June 30, 2027, and each year thereafter, the Company shall calculate the prior three year rolling average and bill the WPCA in accordance with Section 10.5 (Billing and Payment). The amount, if any, to be invoiced by Company for that period shall be determined by taking the numerical value of the prior three year rolling average of dry tons transported and disposed by the Company and subtracting 5600. If the result is a positive number, it shall be multiplied by ~~_____~~ \$868.15 and the result shall be the amount billable by the Company to the WPCA.

(E) Thickening and Dewatering Equipment.

The System as of the Commencement Date shall include thickeners, pumps and holding tanks that the Company may utilize and maintain throughout the Operation Period for the purposes of transporting and disposal of Biosolids in slurry form. The cost to maintain and operate the gravity belt thickeners during the Operation Period shall be included in the Base Service Fee.

SECTION 6.20. HAZARDOUS RESIDUALS AND BIOSOLIDS.

(A) Notification and Reporting.

In the event Hazardous Residuals and Biosolids are identified, the Company shall notify the WPCA, shall fulfill all notification and reporting requirements established by Applicable Law, and shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the WPCA, along with any documents provided to the relevant Governmental Body regarding such Hazardous Residuals and Biosolids. The WPCA shall have the right to witness and to document any action taken by the Company with respect to Hazardous Residuals and Biosolids;

(B) Investigation, Management and Disposition of Hazardous Residuals and Biosolids.

The Company shall cooperate with the WPCA in investigating and attempting to identify the source of any material that caused Residuals to become Hazardous Residuals and Biosolids, and cooperate with the WPCA and all appropriate Governmental Bodies in effectuating the proper management, treatment and disposal of such Hazardous Residuals and Biosolids. The Company, in the most expeditious manner possible, shall cause any Hazardous Residuals and Biosolids to be removed from the WWTP and transported to, treated and disposed of at an Off-Site disposal facility authorized to receive, treat and dispose of such Hazardous Residuals and Biosolids under Applicable Law, and shall take all necessary on-site remediation steps. The cost of performing any additional identification, testing, removal, temporary storage, on-site remediation, and Off-Site transportation, treatment and disposal measures with respect to such Hazardous Residuals and Biosolids shall be borne by the WPCA, except to the extent that the Residuals and Biosolids

become contaminated with Hazardous Materials arising out of acts (or failure to act) by the Company, its contractors, employees, tenants, guests, or invitees, in which case all such costs will be borne by the Company,

(C) Off-Site Remediation.

In the event that Hazardous Residuals and Biosolids are transported, treated and disposed of Off-Site, the costs associated with any such necessary Off-Site response actions shall be borne by the WPCA, and the WPCA shall indemnify, defend and hold harmless the Company from all Loss-and-Expense with respect to the transport, treatment and disposal Off-Site of such Hazardous Residuals and Biosolids, including any liabilities for Off-Site response actions related to such Off-Site transport, treatment and disposal of Hazardous Residuals and Biosolids, except to the extent that the Residuals and Biosolids become contaminated with Hazardous Materials arising out of acts (or failure to act) by the Company, its contractors, employees, tenants, guests, or invitees, in which case all such costs will be borne by the Company. The obligations of this Subsection shall survive termination of this Service Agreement.

(D) Reimbursement of Costs.

Any costs payable by the WPCA under this Section shall be reimbursed to the Company as an Extraordinary Item Component of the Monthly Service Fee.

SECTION 6.21. INSPECTIONS BY GOVERNMENTAL BODY

The Company shall notify the General Manager of any scheduled inspection of the System by a Governmental Body, promptly upon scheduling and in any event no less than 5 days in advance of the inspection. The Company shall, as promptly as possible, notify the General Manager orally of unannounced inspections of the System by a Governmental Body and shall not discuss the System with such inspector(s) until such notification has been made (by phone, but if voicemail, then also by text) to the General Manager. The Company shall notify the General Manager of any unscheduled CTDEEP inspection within 2 hours of receiving notice of such inspection.

SECTION 6.22. CUSTOMER SERVICE

(a) The Company shall ensure formal procedures and protocols are established to receive and respond to all consumer complaints and comments relative to the ongoing performance of the System. The Company shall utilize and maintain as necessary, the current data management and response system, “Cityworks”, for tracking, and cataloguing complaints and comments. The Company shall respond to all consumer complaints and comments relative to the System within in no more than four hours including sewerage spills and odor complaints. Updates to ongoing complaints and comments shall be documented by the Company in Cityworks during the same day the complaint or comment is received, and thereafter updated and closed out on a timely basis. All complaints and responses in Cityworks shall be available for public review either electronically or at the customer service department. A copy of such complaints and responses shall be filed with the WPCA within 5 days after the end of each month.

SECTION 6.23. SEWER USE AND BILLING COLLECTION

The Company shall provide and maintain a computerized Billing and Collections System that, at a minimum, provides the same functionality and data on accounts tracked by the WPCA's current system, and new accounts added after the Commencement Date. As of the Commencement Date, the Company shall utilize the WPCA's billing vendor, Computil LLC, and billing system pursuant to a separate agreement (the "Billing Services Agreement") with Computil LLC. The Company shall have the right to replace the billing vendor (Computil LLC) or to perform the billing services itself, subject to the reasonable approval of the WPCA.

Under the Company's management, the Company shall process the sewer billing statements, process and collect all user fees, collection fees, sewer use and benefits assessments and provide accepted accounting practices to properly account for all monies and billings. The Company will make all reasonable efforts to collect delinquent and past due amounts from delinquent account holders, following agreed upon protocols for the notification of delinquent account holders, including providing delinquent account holders notices upon the thirtieth, sixtieth and ninetieth day of delinquency to ensure that all monies owed to the WPCA are collected in a timely manner. However, the Company shall have no obligation to retain lawyers or any other third parties to pursue collections and delinquencies exceeding 120 days, which shall be submitted to the City Attorney for collection. All cost associated with collection of delinquent fees after 120 days and out right failure to collect fees are at the WPCA's sole cost and expense.

The Company shall be responsible for the preparation, maintenance, and issuance of all bills and invoices to the users of the System and all costs and expenses associated therewith. The Company shall ensure that no interruption of billing and collection services occurs throughout the Term. The Company shall at all times use a billing format and content consistent with the bills historically provided to users of the System or as otherwise reasonably directed by the WPCA.

All costs, of any nature, to operate and maintain the Billing and Collection System incurred by the Company including but not limited to labor, Computil LLC fees, administrative and banking costs, data management and delinquent account management through 120 days, are included in the Base Service Fee.

ARTICLE VII
CONTRACT STANDARDS AND COMPLIANCE

SECTION 7.1. FACILITIES PERFORMANCE GENERALLY.

(A) Reliance.

The Company acknowledges that the WPCA, in serving the wastewater treatment needs of its citizens, is providing an essential public service, and in complying with its obligations under Applicable Law is relying on the performance by the Company of its obligations hereunder. Except to the extent relieved by Uncontrollable Circumstances, the Company shall operate the System on a continuous, uninterrupted 24-hour per day, 7-day per week, 365/366 day year basis.

(B) Maximum Utilization.

The Company shall utilize the capabilities of the System to their maximum reasonable extent in order to treat Influent. The Company shall not intentionally reduce the level of wastewater treatment capable of being achieved by the Managed Assets in an effort to reduce its operating and maintenance expenses.

(C) Curtailments and Shutdowns.

If the operation of the System is temporarily reduced, curtailed or shut down so that the Company is unable to collect, receive, treat Influent, dispose of Residuals, or to treat and discharge Effluent, in accordance herewith, the Company shall immediately advise the WPCA as to the nature and probable duration of such reduction, curtailment or shutdown and the expected effect on the operation of the System, and take all steps necessary to remedy the reduction, curtailment or shutdown and to resume full performance hereunder as soon as possible.

(D) Limitations on Company Rights.

The Company shall not use the Managed Assets for any purpose other than the purposes contemplated hereby. The only compensation payable by the WPCA to the Company for providing the Contract Services shall be the Base Service Fee payable by the WPCA hereunder, and any adjustment thereto expressly provided for in this Service Agreement.

(E) Change in Law

The parties acknowledge that a Change in Law may affect compliances with Contract Standards or impose more stringent Effluent Requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law occurs, the Company shall not be entitled to performance relief or additional compensation under Section 12.2 (Uncontrollable Circumstances) unless: (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Effluent characteristic or parameter that is more stringent or burdensome to comply with than the Contract Standards applicable to such characteristic or parameter, or requires equipment or processes not then in place or practiced at the Managed Assets; and (2) the Company is unable, after taking all mitigation measures required under Section 12.2 (Uncontrollable Circumstances) with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation

SECTION 7.2. EFFLUENT REQUIREMENTS COMPLIANCE.

(A) Compliance with Effluent Requirements

The Company shall operate the System so as to receive and treat all Influent flowing to the Managed Assets and discharge Effluent from the Managed Assets into Long Island Sound, Ash Creek, and Bridgeport Harbor in accordance with Applicable Law, including the conditions of all Governmental Approvals. The Companies requirement to operate the WWTPs in accordance with all Applicable Laws to meet Effluent Requirements shall apply, except to the extent excused by Uncontrollable Circumstances, without any allowance for scheduled or unscheduled downtime or Managed Assets maintenance, repair or replacement;

SECTION 7.3. ODOR CONTROL COMPLIANCE

The Company shall operate and maintain the System so as to prevent any odors off the Managed Sites, and at a minimum comply with all Applicable Laws. The Company shall comply with the odor control measures set forth in the Odor Control Plan included in the Operations and Maintenance Plan, including but not limited to such measures as ensuring all odor control devices are fully operational at all times. The Company's specific "Odor Standards" at a minimum include the following:

- 1) The Company shall have no recordable and verified odor complaints from the Managed Sites, as defined by CT DEEP air regulation Section 22a-174-23.
- 2) The maximum Hydrogen Sulfide (H₂S) limit of .0045 parts per million (ppm) as measured at the Managed Assets fence line and Off-Site monitoring locations specified in the odor control plan set forth in the Operation and Maintenance Plan.
- 3) A minimum of 99% removal efficiency for H₂S or other malodorous constituents of all mechanical odor control Equipment.

WPCA staff or appointed subcontractor shall be notified upon the occurrence of an odor issue/complaint and participate with the Company in surveying the Managed Sites and surrounding areas for detectable odors. In the event of a disagreement on odor detection or odor source the WPCA's opinion shall take precedence.

SECTION 7.4. ENVIRONMENTAL COMPLIANCE

(A) General.

The Company shall do all things reasonably necessary to assure that the System adequately and in compliance with Applicable Law controls noise, fugitive dust, traffic, litter, lighting, vectors, negative visual impacts of the System and other adverse environmental effects on the surrounding community (including residential areas) so as to prevent community complaints.

(B) Pump Station Releases, Leaks or Spills to the Environment.

The Company shall operate and maintain the Managed Pump Stations so as to prevent any releases, leaks or spills from the Managed Pump Stations. The Company shall comply with all measures set forth in the Operation and Maintenance Plan, including but not limited to such measures as ensuring all control devices are fully operational at all times and backup systems and alarms are sufficient and operational.

SECTION 7.5. WPCA REMEDIES FOR NON-COMPLIANCE.

(A) Remedies.

If the Company fails to comply with any requirements as set forth in Contract Standards the Company shall, without relief under any other performance standard, and in addition to any

other requirement or remedy provided herein, by Applicable Law or required by a Governmental Body:

(1) promptly notify the WPCA as soon as safely possible but no later than 8 hours of the Company's having knowledge of any such non-compliance;

(2) promptly provide the WPCA with copies of any notices sent to or received from the EPA, CTDEEP or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law as soon as possible but no later than 24 hours of the Company's having knowledge of any such non-compliance;

(3) if such failure is caused by the Company's breach of any of the terms or provisions of this Agreement, pay any and all penalties, losses or liquidated damages assessed by or on the WPCA as a consequence of such failure, ~~and indemnify the WPCA pursuant to the terms of this Agreement; to the extent directly resulting from such a breach; provided, however, that Company's responsibility for such penalties, losses or liquidated damages, other than penalties, losses or liquidated damages that result from Company's recklessness or gross negligence, shall not exceed an aggregate amount equal to One Million, Five Hundred Thousand Dollars (\$1,500,000.00) during any Billing Year, subject to an annual Inflation Adjustment, as provided for in Section 10.2(C) of this Agreement.~~

(4) pay any other resulting third party damages, fines, levies, assessments, impositions, penalties or other charges, judgments or awards, ~~and to the full extent of its liability under Applicable Law, hold harmless, indemnify and defend the WPCA and its officers, agents and employees from all related liabilities and damages resulting therefrom,~~ unless and to the extent that such failure is due to an Uncontrollable Circumstance;

(5) at its own cost and expense take any action (including making all repairs and replacements and operating and management practices changes) necessary in order to comply with Inter-municipal Agreements, or Performance Standards under this Service Agreement, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent the recurrence of non-compliance with such Performance Standards and Applicable Law, all at Company's costs and expense, unless and to the extent that such failure is due to an Uncontrollable Circumstance; and

(6) assist the WPCA with and manage all public notice or public relations matters necessary to adequately address any public concern caused by such non-compliance, including all public notifications required by Applicable Law, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings and handle all public inquiries. The Company shall give the WPCA advance notice of all such public notice and activity by the Company.

(7) reimburse the WPCA for all penalties assessed by the CTDEEP for failure to meet the Effluent Nitrogen standards established for the WPCA WWTP's under the CTDEEP Long Island Sound Nitrogen Credit Exchange. Such amounts shall be reimbursed to the WPCA as part of the Extraordinary Items Component in accordance with Section 10.2(E). The Effluent nitrogen penalty reimbursement by the Company shall apply, except to the extent excused by

Uncontrollable Circumstances, without any allowance for scheduled or unscheduled downtime or Managed Assets maintenance, repair or replacement.

(B) Performance Testing.

The WPCA, at any time, may require a performance test to be conducted by the Company, at the WPCA's cost and expense (excluding Company labor and supplies), to demonstrate that the Managed Assets are operating in compliance with Applicable Law and the Performance Standards. The performance tests shall be conducted in a manner as to not unduly interfere with the Company's performance obligations hereunder. If the test is not successfully passed, the Company shall reimburse the WPCA for its costs incurred in association with the first performance test, and, at its own cost and expense, make all necessary repairs and replacements and the test shall be re-performed at the Company's sole cost until the test is successfully passed by the Company. The WPCA will conduct or verify each test and inspection.

(C) Conditions to Relief.

In the event and for any period during which the Company is unable to comply with the Contract Standards due to an Uncontrollable Circumstance, the Company shall use its commercially reasonable best efforts to minimize the amount and duration of non-compliance with the Effluent Guarantee.

SECTION 7.6. NO WAIVER OF PERFORMANCE STANDARDS.

Non-enforcement of any Performance Standard or other performance obligation contained herein for whatever reason shall not constitute a waiver of the WPCA's right to enforce or in any way restrict the WPCA in determination of or action regarding future occurrences.

SECTION 7.7. BYPASSES, RELEASES, DISCHARGES, LEAKS AND SPILL.

(A) Unauthorized Releases Prohibited.

The Company shall operate the System in such a manner that Influent, Effluent, Residuals, Biosolids, Hazardous Materials, chemicals and Pollutants will not contaminate, or be bypassed, released, discharged, leaked or spilled on or into, the environment, other than as permitted by the most stringent of any of the Contract Standards or to the extent due to the occurrence of an Uncontrollable Circumstance.

(B) Locate and Identify Requirements.

The Company shall take all necessary and appropriate steps to locate and identify the source or cause of any unauthorized bypass, release, discharge, leak, or spill of Influent, Effluent, Residuals, Biosolids, Hazardous Materials, chemicals or Pollutants entering the environment or entering the System. The Company shall utilize resources, such as smoke and dye testing, CCTV, water sampling and testing, to locate and identify the source or cause of the bypass, release, discharge, leak or spill as necessary. All costs associated with locating and identifying such

contamination shall be borne by the ~~Company~~WPCA unless: 1) such contamination is the result of the Company's negligent acts or willful misconduct; or 2) the direct result of the Company's omissions.

(C) Notification and Reporting.

The Company, while contemporaneously notifying the WPCA, shall be responsible for fulfilling all notification of and reporting requirements established by Applicable Law related to any unauthorized bypass, release, discharge, leak or spill of Influent, Effluent, Residuals, Biosolids, Hazardous Materials, chemicals or Pollutants into the environment from or in connection with its operation and management of the System. The Company shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the WPCA for review, ~~comment and as applicable, approval~~ by the WPCA, prior to filing with the Governmental Body, along with any reporting documentation provided or to be provided to the relevant Governmental Body.

(D) Cleanup and Costs.

The Company shall coordinate with the WPCA and all appropriate Governmental Bodies to ensure the prompt remediation of any unauthorized bypass, release, discharge, leak or spill. The Company shall, in the most expeditious manner possible under the circumstances, cause any Influent, Effluent, Residuals, Biosolids, Hazardous Materials, chemicals or Pollutants released without authorization to be cleaned up and remediated in accordance with Applicable Law. All costs associated with performing any such cleanup and remedial measures shall be borne by the Company, except to the extent the unauthorized release of Influent, Effluent, Residuals, Biosolids, Hazardous Materials, chemicals or Pollutants resulted from an Uncontrollable Circumstance.

SECTION 7.8. METERING AND WEIGHING.

(A) Metering and Weighing.

The Company shall maintain in good working order, and repair and replace when necessary, devices at the Managed Assets capable of (1) metering the instantaneous and daily total volume of Influent, Effluent, (2) metering or weighing the amount of Residuals, leaving the Managed Assets for disposal, (3) metering the continuous and daily total amount of flow at the Pump Stations, and (4) any other metering or weighing requirement imposed by Applicable Law or otherwise required by the Contract Standards. The WPCA shall have full access to such meters, instruments, controls, recorders, scales and other metering and weighing devices. All Operating data produced by such metering and weighing devices shall be subject to audit, and shall be summarized in the monthly operations reports delivered to the WPCA pursuant to Section 6.16. (Periodic Reports) All such metering and weighing devices shall be calibrated to the accuracy required by, and shall be operated and maintained in accordance with the requirements of, the Contract Standards. To the extent any metering or weighing device is incapacitated or is being tested, the Company shall estimate as accurately as practicable the data required by the Company to perform the Contract Services. This estimate and methodology shall, upon notice to and approval of the WPCA, be used as the basis for determining the operating data required hereunder during the outage. The WPCA shall have the right to monitor, inspect and test such metering and

weighing devices that are part of the Managed Assets at any time and for any purpose and to take measurements regarding Influent, Effluent, Residuals, and air quality without unreasonably interfering with the Company's ordinary operations.

(B) Quality of Chemicals.

The Company shall be responsible for any necessary testing of chemicals at delivery to ensure that such chemicals meet appropriate quality standards relating to type, concentration, foreign materials and all other factors necessary to verify their suitability for use in the System. Use of a chemical by the Company for application at the Managed Assets is de facto acceptance by the Company of the quality and suitability of the chemical for such use. Use of inappropriate, incorrect or contaminated chemical stock shall not constitute an Uncontrollable Circumstance and shall not relieve the Company of the Performance Guarantees or other requirements contained in this Service Agreement.

SECTION 7.9. CTDEEP Nitrogen Credit Incentive.

The CTDEEP established the Long Island Sound Nitrogen Credit Exchange in 2002 to reduce the Nitrogen loading on the Long Island Sound. As part of this program, the WPCA can receive Nitrogen trading credits for reducing the Nitrogen Effluent concentration below the standard set by the CTDEEP for the WPCA. During the Operation Period, the WPCA and Company shall equally share in any Nitrogen Trading credit due to the WPCA from the CTDEEP. Such amounts shall be credited as part of the Extraordinary Items Component in accordance with Section 10.2(E).

In the event that the CTDEEP nitrogen credit program is materially modified or discontinued, the parties shall mutually agree as to such changes in the nitrogen credit as reasonably necessary to preserve the relative incentives and risks to the Company with respect to reducing nitrogen levels.

SECTION 7.10. NON-COMPLIANCE CHARGES NOT EXCLUSIVE REMEDY.

All non-compliance cost and charges born by the Company, in this Article VII, are non-exclusive and do not limit or prevent the WPCA from exercising any other rights or remedies available to it, including without limitation, with respect to any defaults by the Company and rights to indemnification.

SECTION 7.11. UPSETS AND EXCESSIVE INFLUENT AFFECTING COMPANY COMPLIANCE WITH CONTRACT STANDARDS.

(A) Relief Generally.

The Company shall be relieved of its obligation to comply with a Performance Standards to the extent that, and for any period during which, the inability of the Company to comply with such Performance Standards in its operation of the Managed Assets is caused by the occurrence of an Upset, the receipt of Excessive Influent or any other Uncontrollable Circumstance.

(B) Upsets and Excessive Influent.

The occurrence of an Upset or the receipt of Excessive Influent shall not be considered to be an Uncontrollable Circumstance, and the Company shall not be entitled to relief from a Performance Standards due to the occurrence of an Upset or the receipt of Excessive Influent, except to the extent that the Company affirmatively demonstrates that:

- (1) an Upset actually occurred or Excessive Influent was actually received; and
 - (2) the occurrence or receipt thereof could not have been prevented by compliance with the Contract Standards.
- (C) Response Measures to Upsets and Excessive Influent.

If an Upset occurs or the System receive Excessive Influent, the Company shall, without limiting its obligations under the Contract Standards: (1) use all reasonable efforts Consistent with Good Industry Practice to maintain the System performance as if the Upset had not occurred or Excessive Influent had not been received; (2) advise the WPCA of the situation and the Company's planned course of action within twenty-four (24) hours of the Company's first knowing of the occurrence of an Upset or the receipt of Excessive Influent; (3) submit any notice thereof required by Applicable Law; and (4) use all reasonable efforts consistent with Good Industry Practice to return the Effluent in compliance with the requirements of Applicable Law and the Performance Standards as soon as reasonably possible, but, in any event, within 14 days after the System has ceased receiving Excessive Influent.

ARTICLE VIII
ROUTINE, PREVENTATIVE AND CORRECTIVE MAINTENANCE, REPAIR AND
REPLACEMENT; END OF TERM REPLACEMENT

SECTION 8.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY

(A) Maintenance, Repair and Replacement of Managed Assets.

During the Operation Period, the Company shall perform all maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other property constituting the Managed Assets required under the Contract Standards. The Company shall keep the Managed Assets in good working order, condition and repair, in a neat and orderly condition and maintain their aesthetic quality, in accordance with the Contract Standards to optimize the performance, utility, and reliability, at a level adequate for efficient, long-term reliability, and preservation of the capital investment. The Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, Consumables and services necessary for the maintenance, repair or replacement of the Managed Assets and shall conduct predictive, preventive and corrective maintenance of the Managed Assets as required by the Contract Standards and the predictive and preventative maintenance detailed in the Operation and Maintenance Plan and Appendix 3. The obligations of the Company hereunder are intended to assure that the Managed Assets are fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency which does not require the WPCA to undertake a significant overhaul or immediate replacements in order to continue to provide reasonably priced and efficient treatment services. The Company, at a minimum, shall return the Managed Assets to

the WPCA in a condition equal to or better than that established in the Equipment Baseline Evaluation provided for in Section 8.4.

(B) Maintenance and Repair of Buildings and Grounds

The Company, in accordance with the Contract Standards, shall keep the buildings and grounds of the Managed Assets in a reasonably neat and orderly condition including the cleanup of litter and debris on a regular basis or more frequently as required by the Contract Standards. The Company shall also maintain, repair or replace all signage, fencing and other security systems at the Managed Sites, and shall provide snow removal, lawn mowing, landscape maintenance (including the replacement of all dead or dying plants), leaf raking, and brush cutting services for the Managed Assets. The Company shall maintain and paint periodically as necessary all painted surfaces including all buildings (interior and exterior) and surfaces of the Managed Assets and all Equipment and process lines during the Term of this Service Agreement, and shall in any event, paint all surfaces and areas prior to the expiration of the Initial Term and expiration of all subsequent Renewal Terms, provided however that if more frequent painting is required, it will be done by the Company on an as-needed basis as part of the Contract Services.

(C) Payment for Maintenance, Repair and Replacements.

On and after the Commencement Date and for the duration of the Term, the Company at its sole cost and expense shall be responsible for all maintenance, repair and replacement as detailed in Sections 8.1(A) and 8.1(B) which costs shall be included in the Base Service Fee except for Major Repairs or Replacements. A “Major Repair or Replacement” means any repair or replacement of any Managed Asset in excess of twenty thousand dollars (\$20,000). The Company shall establish an Escrow Account for Major Repair or Replacements in a separate banking account in the name of the WPCA, which shall be an interest-bearing bank account. The eCompany shall contribute three hundred thousand dollars (\$300,000) per Contract Year in a Major Repair or Replacement fund, which shall be included as part of the Base Service Fee and shall be subject to annual CPI adjustment. The Company shall make equal monthly deposits in the Major Repair or Replacement fund. The Major Repair or Replacement fund shall be established to provide for fifteen (15) Major Repair or Replacements of twenty thousand dollars (\$20,000) per item annually. Any cost in excess of twenty thousand dollars (\$20,000) for a Major Repair or Replacement shall be at the cost of the WPCA. The Company shall obtain the WPCA’s advance approval for any single individual Major Repair or Replacement item of the Managed Assets—; however, if the WPCA rejects such a Major Repair or Replacement, the Company will not be liable for any loss, damage or liability arising from or related to the WPCA’s failure to approve said Major Repair or Replacement, including any loss, damage, or liability for (a) failure of the Managed Assets, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification. For purposes of this section, if the WPCA does not approve the Major Repair or Replacement within one hundred and twenty (120) days of the WPCA’s receipt of a proposal of a Major Repair or Replacement from the Company, the Major Repair or Replacement shall be deemed to be rejected by the WPCA. The Company shall make best efforts to use Company personnel to complete any such Major Repair or Replacement. 7

The Company may not seek reimbursement for such Major Repair or Replacement costs to the extent due to the Company’s failure to perform its obligations under this Service Agreement.

The Company shall make a commercially reasonable effort to obtain a minimum of three (3) quotes for materials or services unless the requirement is waived by the WPCA as impracticable. If the Company utilizes outside vendors to complete such work, the Company may not charge more than five-seven and a half percent (7.5%) of markup in excess of vendor charges. In the event that the WPCA does not approve the Major Repair or Replacement, the Company may appeal such result by providing the WPCA with a written statement setting out the case for such Major Repair or Replacement, including available alternatives. If the Company and the WPCA representatives are unable to resolve such appeal within fourteen (14) days of submission by the Company to the WPCA, then they shall escalate the matter throughout their respective organizations, each acting in good faith. The WPCA may approve or reject such requests for a Major Repair or Replacement in its sole discretion, and in the absence of WPCA written approval such request will be deemed rejected.

The Company shall provide the WPCA a monthly accounting of the Major Repair and Replacement fund providing details of funding, expenditures and balances. For the avoidance of doubt, Major Repairs or Replacements applies to the Managed Assets only, costs associated with the Collection System shall be governed by the provisions of Section 8.2 below.

Any moneys remaining in the Major Repair or Replacement Fund at termination or expiration of the Agreement shall revert and be immediately transferred to the WPCA. Upon the expiration or earlier termination of this Agreement all amounts advanced by the Company if any which has not been repaid by the WPCA will be immediately payable by the WPCA.

(D) Emergency Major Repair or Replacements.

The Company may undertake a Major Repair or Replacement without the WPCA's prior approval in the case of an emergency. Any Major Repair or Replacements undertaken by the Company during an Emergency shall be subject to the WPCA's subsequent review and reasonable approval. Any costs or other expenses unnecessarily incurred in connection with a Major Repair or Replacement undertaken as a result of an Emergency shall be borne by the Company without reimbursement by the WPCA, but only to the extent it is subsequently determined that the Company's actions and implementing such Major Repair or Replacements are not consistent with Good Industry Practices given the information available to the Company at the time the decision to implement Major Repair or Replacement was made.

(E) Removal Of Obsolete Equipment.

The Company shall be responsible for removal and disposition of all obsolete items and equipment as requested by the WPCA from time to time to the extent such removal can readily be accomplished by the Company staff assigned to the System. Such removal shall be at the Company's sole cost and expense and risk, provided however that the WPCA shall be responsible for the costs of any specialized equipment and/or subcontractor expense agreed by the WPCA in advance. The Company will not be responsible for removal of any items or equipment that are contaminated with Hazardous Materials. The Company shall be responsible for all decommissioning of such obsolete equipment, ~~and making appropriate arrangements for its safe disposition in accordance with Applicable Law. The Company shall be entitled to retain any scrap value or other proceeds from such disposition.~~

SECTION 8.2. COLLECTION SYSTEM GENERALLY

(A) ~~(A)~~ Collection System Operation and Maintenance.

The Company shall review and update the WPCA's current Collection System Operation and Maintenance Manual to include its obligations hereunder. During the Operation Period, the Company shall respond to all customer maintenance, repairs, and replacement of structures (including replacing manhole lids and frames), improvements, and all other property constituting the Collection System required under the Contract Standards at its cost and expense (other than as set forth for in 8.2 (D) and (E) below). Company shall keep the Collection System in good working order, respond to emergency conditions, oversee and manage On Call Contractors utilized for sewer line repairs and maintain the aesthetic quality in accordance with the Contract Standards to optimize the utility and reliability, at a level that maintains efficient, long-term reliability, and preservation of the capital investment. The Company shall provide all labor, materials, supplies, spare parts, Consumables and services necessary for the maintenance, repair or replacement of the Collection System, all as required by the Contract Standards.

The Company, at a minimum, shall be required to provide sufficient staff and personnel to satisfy the Company obligations set forth in this Section 8.2, including but not limited to 24-hour per day, 7 day per week, 365/366-day per year emergency services. For emergency situations, the Company shall dispatch maintenance crews within ~~24~~ two (2) hours of the complaint and within ~~24~~ twenty-four (24) hours for non-emergency situations. The Company shall perform such obligations at its sole cost and expense.

The WPCA, at its sole discretion, shall annually approve a list of On Call Contractors to be utilized for Collection System repairs and replacements. On Call Contractors shall only be utilized, at WPCA sole discretion, for point repairs or replacements exceeding one length of pipe or any repair or replacement at depths below 10 feet. All cost of repairs approved by the WPCA shall be in accordance with 8.2 (E) below. All other line repairs are at the sole cost and expense of the Company.

(B) Collection System Inspection and Cleaning.

The Company at its sole cost and expense will perform the Collection System inspection and will use the data from such inspections to plan effective cleaning and determine needs for further inspections or repair. The Company at its sole cost and expense, for the Term of the Service Agreement, shall provide all labor, materials and Equipment and shall perform all cleaning, of the Collection System in accordance the Collection System Operation and Maintenance Manuals, the Operation and Maintenance Plan and the Contract Standards. The Company, at a minimum, must: (1) clean and inspect 30 miles of the sanitary and combined sewer pipelines, and (2) clean 8,500 catch basins each Billing Year and repair 100% of pipe breaks in the Collection System as set forth in Appendix 2.

(C) Collection System CCTV Inspection

The Company, at its sole cost and expense shall perform and provide all labor, materials during the Operation Period and shall use closed circuit television (CCTV) to inspect thirty (30) miles of the Collection System annually in accordance with the Collection System Operation and

Maintenance Manual as set forth in the Operation and Maintenance Plan. If at any time the WPCA deems the Company is failing to meet its Collection System CCTV inspection obligation, the WPCA may, after written notice to the Company, exercise any legal rights it has under this Service Agreement, to address any short fall in the Company's CCTV inspection. The Company shall be responsible for and shall coordinate with the WPCA to locate manholes, sewer location, materials of construction and priority cleaning locations. In the event that the City implements a GIS system, Company will be required to provide all relevant data related to these inspections into the City's GIS system.

(D) Collection System Repair and Replacement.

The Company shall coordinate and oversee all activities for repairs and replacement performed on the Collection System including the On Call Contractors. Payment for Collection System repair and replacement work performed including but not limited to On Call Contractors is provided in Section (E) below. The Company shall commence the repair work within 24 hours of notification and use reasonable efforts to complete same expeditiously but no later than 7 days following commencement of repair, or in conformance with a WPCA reasonably approved schedule.

(E) Collection System Repair and Replacement Fund.

The Company shall establish an Escrow Account for the CSRRF in a separate banking account in the name of the WPCA, which is an interest-bearing bank account. From the Commencement Date through June 30, 2024. During the first Contract Year, the Company shall make an annual deposit of three hundred and twenty-five thousand dollars (\$325,000), which shall be made in six (6) equal monthly installments into the CSRRF. Beginning on the Contract Year commencing on July 1, 2024 and continuing annually thereafter, the annual CSRRF deposit shall be \$650,00 adjusted by the Consumer Price Index to account for inflation, and the resulting number shall be paid in twelve (12) monthly installments. The Company shall not make any repair or replacement of the Collection System requiring CSRRF funds without the prior express written consent of the WPCA, which consent may be granted or withheld in the WPCA's sole discretion, provided however, if any such expenditure is required in order for the WPCA to comply in all material respects with any applicable Permit requirement, the WPCA shall use its reasonable discretion in granting or withholding such consent, and the Company may undertake a repair or replacement without the WPCA's prior approval in the case of an Emergency. If the WPCA rejects such a repair or replacement of the Collection System requiring CSRRF funds, the Company will not be liable for any loss, damage or liability arising from or related to the WPCA's failure to approve said any repair or replacement of the Collection System requiring CSRRF funds, including any loss, damage, or liability for (a) failure of the Managed Assets, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification. For purposes of this section, if the WPCA does not approve such a repair or replacement of the Collection System requiring CSRRF funds within one hundred and eighty (180) days of the WPCA's receipt of a proposal of a Major Repair or Replacement from the Company, the Major Repair or Replacement shall be deemed to be rejected by the WPCA. Any repair or replacement undertaken by the Company during an Emergency shall be subject to the WPCA's subsequent review and reasonable approval. Any moneys remaining in the CSRRF at the end of any fiscal year shall be retained in such fund or immediately transferred to the WPCA in the sole

and absolute direction of the WPCA. Any moneys remaining in the Collection System Replacement Fund at termination or expiration of the Agreement shall revert and be immediately transferred to the WPCA. Upon the expiration or earlier termination of this Agreement all amounts advanced by the Company if any which has not been repaid by the WPCA will be immediately payable by the WPCA.

Upon the earlier of (i) the occurrence of an Event of Default by the Company and expiration of any applicable cure period, or (ii) the termination or expiration of this Service Agreement (including any accrued interest), the CSRRF and any monies remaining in the CSRRF shall be immediately disbursed to the WPCA in accordance with written instructions provided by the WPCA. Upon the expiration or earlier termination of this Service Agreement, all amounts advanced by the Company, if any, pursuant to this Section that have not been repaid by the WPCA as part of the Monthly Service Fee or otherwise shall be immediately due and payable by the WPCA to the Company.

SECTION 8.3. MAINTENANCE, REPAIR AND REPLACEMENT PLAN

By May 1st of each Contract Year, the Company shall provide the WPCA with a written maintenance, repair and replacement plan for the upcoming Contract Year (a "MRR Plan"). The MRR Plan shall be subject to the WPCA's approval. The MRR Plan must contain the standards to be followed by the Company in developing its plan and schedules for the maintenance, repair and replacement of the Managed Assets. The standards are intended to establish a minimum standard by which to measure the Company's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs with respect to the Managed Assets. Each MRR Plan shall at a minimum include the following: (MRR Plan is not in defined terms)

- Overall maintenance strategy for the upcoming year
- Assessment and corrective action plan for all Equipment of the Managed Assets and the Collection System
- Specific details for Critical Equipment predictive maintenance plans and schedule (and inclusion in the CMMS)
- Planned updates or additions to the CMMS
- Recommended changes in spare parts (requirements and current inventory)
- Maintenance specific training for mechanics and electricians
- Update emergency response plans for the Managed Pump Stations and the Collection System, including required Equipment and Subcontractors
- Performance of an annual spare parts inventory and variance analysis, together with a make-up plan for addressing any shrinkage

The Company shall adhere to the MRR Plan, except where it can demonstrate to the WPCA that changes are reasonable under Good Industry Practice, subject to the limitations set forth in this Section. The Company shall also perform any additional maintenance, repair and replacement work necessary in order to comply with the Contract Standards.

SECTION 8.4. MANAGED ASSETS EVALUATIONS (INITIAL AND EXIT).

An initial evaluation of the Equipment and structures of the Managed Assets shall be performed prior to the Commencement Date for the purpose of establishing the baseline schedule of the condition of the structures and the quantity and condition (including functionality and in service date) of equipment (the "Equipment Baseline Evaluation"), using Baseline Asset Evaluation Procedures that shall be provided by the Company to the WPCA, for the WPCA's review and approval ("Baseline Asset Evaluation Procedures"). As part of the Equipment Baseline Evaluation, the Company shall digitally photograph and prepare an itemized inventory of all Equipment, assets and property constituting the Managed Assets and shall review all relevant information. All information collected and developed by the Company, in regard to the Equipment Baseline Evaluation, shall be committed in a formal report to the WPCA prior to the Commencement Date. The WPCA shall have 45 days to review the Company's Equipment Baseline Evaluation of the Managed Assets and shall provide the Company a list of any specific Equipment or asset conditions or inventories of the Baseline Evaluations with which it does not agree. The Parties shall, within 45 days from notice from the WPCA, meet to review outstanding items and agree on a resolution to each. Any disputes with respect to the results or resolution to the items in the Equipment Baseline Evaluation not resolved to the mutual satisfaction of the parties, shall be determined as provided for in Section 11.10 (Forum for Dispute Resolution).

An initial evaluation and inventory of the chemicals, spare parts, Consumables and supplies of the Managed Assets shall be performed by the Company, with a representative from the WPCA present, not less than 15 days prior to the Commencement Date for the purpose of establishing the baseline schedule of the quantity and condition of the chemicals, spare parts, Consumables and supplies (the "Baseline Inventory"). As part of the Baseline Inventory, the Company shall prepare an itemized inventory of all chemicals, spare parts, Consumables and supplies of the Managed Assets and shall review all relevant information. All information collected and developed by the Company, in regards to the Baseline Inventory, shall be committed in a formal report to the WPCA prior to the Commencement Date. The WPCA shall have 14 days to review the Company's Baseline Inventory of the Managed Assets and shall provide the Company a list of any specific items of the Baseline Inventory it does not agree with. The Parties shall, within 7 days from notice from the WPCA, meet to review outstanding items and agree on a resolution to each. Any disputes with respect to the results or resolution to the items in the Equipment Baseline Evaluation, not resolved to the mutual satisfaction of the parties, shall be determined as provided for in Section 11.10 (Forum for Dispute Resolution).

For the purpose of determining if the Company has maintained, repaired and replaced the Equipment and structures of the Managed Assets in a manner that will result in the Managed Assets being returned to the WPCA properly maintained and in a condition, reasonable wear and tear excepted, equal to or better than the condition established in the Equipment Baseline Evaluation, the Company shall conduct an evaluation (the "Exit Evaluation") 180 days prior to the termination of this Service Agreement (or in the event of a termination for convenience or due to default, as

promptly as reasonably possible after the termination notice). Such Exit Evaluation shall be conducted on the same basis as the Equipment Baseline Evaluation and using the Baseline Asset Evaluation Procedures Provided in Section 8.4. All information collected and developed by the Company, in regards to the Exit Evaluation, shall be committed in a formal report to the WPCA 120 days prior to the termination. The WPCA shall have 30 days to review the Company's Exit Evaluation of the Managed Assets and shall provide the Company a list of any specific Equipment, asset conditions of the Exit Evaluation it believes does not meet or exceed the standard of the Equipment Baseline Evaluation. The parties shall, within 10 days from notice from the WPCA, meet to review outstanding items and agree on a resolution to each. Any disputes with respect to the results or resolution to the items in the Exit Evaluation, not resolved to the mutual satisfaction of the parties, shall be determined as provided for in Section 1f1.10 (Forum for Dispute Resolution).

For the purpose of determining if the Company has maintained and replaced the chemicals, spare parts, Consumables and supplies levels of the Managed Assets equal to or greater than the levels, established in the Baseline Inventory, the Company shall conduct a final inventory (the "Exit Inventory") on the same basis as the Baseline Inventory 21 days prior to the termination of this Service Agreement. All information collected and developed by the Company, in regards to the Exit Inventory, shall be committed in a formal report to the WPCA 14 days prior to the termination. The WPCA shall have 7 days to review the Company's Exit Inventory and shall provide the Company a list of any specific items of the Exit Inventory it believes does not meet or exceed the standard of the Baseline Inventory. The Parties shall, within 2 days from notice from the WPCA, meet to review outstanding items and agree on a resolution to each. Any disputes with respect to the results or resolution to the items in the Exit Inventory, not resolved to the mutual satisfaction of the parties, shall be determined as provided for in Section 11.10 (Forum for Dispute Resolution). In the event that the Company does not make such repairs and replacements, the WPCA shall have the right to setoff any remaining Service Fee and if the Service Fee is not sufficient, the Performance Bond, for the cost of such repairs and replacements as well as resort to all other rights and remedies allowed pursuant to this Agreement.

SECTION 8.5. ANNUAL AND PERIODIC INSPECTIONS.

(A) Periodic System Inspections.

The WPCA may, upon reasonable written notice, perform an inspection of the System, Managed Assets, Managed Sites and the Collection System and relevant records of the Company at any time to determine compliance with the Contract Standards generally. The Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services. The WPCA shall be responsible for all fees, costs and expenses associated with the inspections.

(B) Annual Engineering Review and Inspection.

The WPCA and Company shall agree upon a mutually acceptable time period annually to conduct the Annual Engineering Review as well as specify their respective participants in the review process. The Annual Engineering Review will assess the condition and performance capabilities of the equipment and assets of the System. The Company shall include as part of its

Base Service Fee the costs and expenses associated with the Annual Engineering Review subject to a maximum of thirty-five thousand dollars (\$35,000) (subject to annual adjustment based on CPI and exclusive of all Company costs for correction action plan items) each Billing Year during the Term. The WPCA has the sole right to select the engineering firm to conduct the Annual Engineering Review as well as specify and approve any specific requirements or tasks of the Annual Engineering Review. Additionally, the WPCA shall be responsible for Annual Engineering Review costs in excess of \$35,000 (CPI adjusted).

Within 45 days after the issuance of a final report of the Annual Engineering Review the WPCA and Company will review the findings and agree upon a corrective action plan. The corrective action plan shall include milestones for the correction of items identified in the Annual Engineering Review. The Company at its sole cost and expense shall complete corrective action plan items according to the milestones agreed upon. Should the Company fail to comply in any material respect with the corrective action plan, the WPCA after 30 days written notice, may elect to notify Company of its plans to follow remediation process in (C) below.

(C) Remediation.

Based on the operations and maintenance reports submitted by the Company pursuant to Section 6.16 (Periodic Reports), and periodic inspection of the System of the System, the WPCA may submit a statement to the Company detailing any deficiencies found and requiring the Company to submit a plan of remediation. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Managed Assets will be promptly brought into compliance with the requirements of this Article VIII and Article XI. If the WPCA accepts the remediation plan, the Company shall thereupon correct all deficiencies noted in accordance therewith. Failing such corrective action, the WPCA may exercise any legal rights it has under this Service Agreement including but not limited to reducing the Monthly Service Fee by the amount of the WPCA's incurred costs of remediation in accordance with Section 10.2 (E) Extraordinary Items Charge or Credits. Any disputes with respect to the cause or amounts specified in the WPCA's statement, not resolved to the mutual satisfaction of the parties, shall be determined as provided in Section 11.9 (Forum for Dispute Resolution).

(D) Unscheduled Inspections.

Nothing in this Section shall limit the WPCA's right, on an unscheduled basis, at any time to inspect the Managed Assets and relevant records of the Company to determine compliance with this Article.

(E) Weekly and Monthly Inspections by the Company.

The Company's Managers (as defined in Section 6.9 above) shall jointly on a weekly basis conduct a housekeeping and equipment condition inspection of the Wastewater Treatment Plants. The Company will develop and document a list of findings and corrective actions planned from each weekly inspection. The Company's Project Manager and Maintenance Manager on a monthly basis will conduct a housekeeping and equipment condition inspection of the Managed Pump Stations. The Company will develop and document a list of findings and corrective actions planned from each monthly inspection. The WPCA General Manager will be invited to each of the weekly

and monthly inspections and will receive a copy of the findings and corrective actions from each such inspection.

SECTION 8.6. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.

The Company, at its sole cost and expense, shall maintain, upgrade, repair and replace, provide for all program fees and licenses, as appropriate throughout the Operation Period, for a computerized maintenance management system (“CMMS”) capable of providing: a record of repair and replacement of the Managed Assets on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; monitoring routine operations within the Managed Assets; issuing work orders and purchase orders; maintaining a spare parts inventory; and issuing exception, equipment status and repair priority reports. The CMMS shall be modified as and when appropriate during the Operation Period to take account of removals from and additions to the Managed Assets. The Company shall utilize the CMMS to provide the WPCA with documentation that allows it to efficiently monitor compliance by the Company with its maintenance obligations hereunder. The WPCA shall have computer-based real time, read only, remote cloud-based access to such CMMS. The Company shall permit all electronic data to be replicated and provided to the WPCA. Database entry and maintenance for Managed Asset items shall be the responsibility of the Company. The Company and the WPCA shall agree upon a maximum number of back log items in the CMMS at any time to ensure the proper care of the Managed Assets. Should the number of back log items exceed the agreed upon limit for more than two (2) consecutive months, the Company shall provide a corrective action plan to the WPCA to reduce the CMMS back log to agreed upon acceptable levels. Should the failure of the Company to reduce the CMMS back log to agreed upon levels continue for more than four (4) months, the Company shall provide all additional resources and labor necessary to correct the back log within two (2) months at the Company’s sole expense. Failing such corrective action, the WPCA may exercise any legal rights it has under this Service Agreement including but not limited to reducing the Monthly Service Fee by the amount of the WPCA’s incurred costs of remediation in accordance with Section 10.2 (E) Extraordinary Items Charge or Credits. Any disputes with respect to the cause or amounts specified in the WPCA’s statement, not resolved to the mutual satisfaction of the parties, shall be determined as provided in Section 11.9 (Forum for Dispute Resolution).

SECTION 8.7. SCADA SYSTEM.

(A) Maintenance, Improvement and Use of the SCADA System.

The Company shall maintain, and utilize the SCADA system for the purpose of managing and improving operational monitoring, operational performance and efficiency during the Term of this Agreement. Should the SCADA System be replaced or upgraded, the Company shall be responsible for the maintenance and utilization of the new or improved SCADA system. The Company shall maintain, repair and replace all equipment, hardware and software during the Operation Period, including maintaining all necessary software registrations and licenses in effect, at its sole cost and expense which costs shall be included in the Base Service Fee except for any costs for SCADA system maintenance, repairs, or replacements in excess of \$20,000 per occurrence will be managed as part of the MRR account as outlined in Section 8.1. Without limiting the foregoing, the Company’s obligations regarding the SCADA system shall include:

(1) Routine/Periodic Maintenance: The Company shall be responsible for all routine and periodic maintenance of the SCADA system including but is not limited to backups, firmware revisions, security patches, any other software updates and any routine hardware/software maintenance recommended by equipment manufacturer. Firmware revisions shall be implemented within 2 years of firmware release and only after compatibility verifications with SCADA and no known security vulnerabilities recorded. The Company shall work with the WPCA to stage upgrades starting with lowest-risk locations. The Company shall only implement stable releases of software revisions that have been fully tested and validated by the software manufacturer. Once a firmware upgrade has been identified for implementation, the Company shall have a schedule to place all components of like type and manufacturer on the same firmware within 6 months.

(2) Emergency Maintenance/Failures: For emergencies requiring immediate attention the Company shall initiate investigation and troubleshooting efforts within 2 hours and complete repairs, replacement of hardware or software modifications as soon as possible.

(3) Spare Parts: The Company, at its sole cost and expense, shall maintain a spare parts inventory as recommended by the equipment manufacturer.

(4) Work Authorization and Report System: For any configuration modifications to the SCADA System or its components, including the controller logic, graphical interfaces, and databases, the Company shall provide and make use of a rigorous work authorization and reporting system to track work assignments and their resolutions. No work should be undertaken without proper work authorization and approval. All work orders must be updated and documented as a part of completion.

(5)

SECTION 8.8. WARRANTIES.

During the Term of this Service Agreement, the Company shall be responsible for meeting the WPCA's maintenance obligations under all manufacturer's written warranties on new equipment purchased and installed in the Managed Assets by the WPCA or by the Company, and shall be the agent of the WPCA in enforcing any written equipment warranties and guarantees. To the extent necessary for enforcement purposes, the WPCA shall assign enforcement of such warranties to the Company, subject to reassignment to the WPCA thereafter. The Company shall not commence any litigation with respect to such warranties or guarantees without the expressed, written, consent of the WPCA. The Company shall cooperate with and assist the WPCA if the WPCA seeks to enforce warranties and guarantees through litigation.

SECTION 8.9. LOSS, DAMAGE OR DESTRUCTION TO THE FACILITIES.

(A) Prevention and Repair.

The Company shall use care and diligence, and shall take all appropriate precautions, to protect the System from loss, damage or destruction. The Company shall report to the WPCA and the insurers, upon obtaining knowledge thereof, any loss, damage or destruction to the System and as soon as practicable thereafter shall submit a full report to the WPCA. The Company shall also submit to the WPCA within 24 hours of receipt copies of all accident and other reports filed with,

or given to the Company by, any person, insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Managed Assets to at least the character and condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Article IX (Capital Modifications) and Article XII (Insurance, Uncontrollable Circumstances, and Indemnification), as applicable. The WPCA shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company.

(B) Insurance and Other Third Party Payments.

To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each party shall assist the other in exercising such rights as it may have to effect such recovery. Each party shall provide the other with copies of all relevant documentation at no cost to the other party, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims.

(C) Uninsured Costs.

The WPCA shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Managed Assets following a loss, damage, or destruction in accordance with this Section and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Managed Assets shall be for the account of the WPCA, provided, however, that such costs not covered by insurance proceeds or third party payments shall be borne by the Company to the extent the loss, damage or destruction was not caused by Uncontrollable Circumstances.

(D) Repair of WPCA and Private Property.

The Company, at its own cost, shall promptly repair or replace all WPCA Property and all private property damaged by the Company or any officer, director, employee, representative, subcontractor or agent of the Company in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements, to the maximum extent reasonably practicable, shall restore the damaged property to its character and condition existing immediately prior to the damage.

**ARTICLE IX
CAPITAL MODIFICATIONS**

SECTION 9.1. CAPITAL MODIFICATIONS GENERALLY.

(A) Purpose.

The parties acknowledge that it may be necessary or desirable from time to time during the term of this Service Agreement to modify, alter or improve the System or Managed Assets in their then-current condition, either at the request of the Company or at the request of the WPCA due to growth, expansion or otherwise, or as a result of a Change in Law, under circumstances not covered

by Article VIII. Such additional Capital Modifications shall be the general responsibility of the WPCA, however the Company shall be responsible for identifying any such Capital Modifications reasonably necessary for continuing compliance with Law or for maintaining the overall operations and efficiency of the System and the Managed Assets. The Company shall provide a reasonable level of input regarding any modifications proposed by the WPCA. Capital Modifications may be financed by the WPCA through the issuance of bonds or such other method as may be determined by the WPCA.

(B) WPCA Approval and Change Orders Proposed by the Company.

The WPCA shall have the right, in its sole discretion, to approve or reject all Capital Modifications. The WPCA's approval shall be given by means of a Change Order, which shall contain all material information required by this Article. All Capital Modifications shall be made and implemented in accordance with this Article. The WPCA shall have the express right to condition its approval of a Capital Modification upon the sharing of net cost savings expected, if any, to result therefrom as provided in Subsection (D) of this Section. The WPCA shall retain all planning responsibility for Capital Modifications and all other capital facilities related to the Managed Assets. If the WPCA rejects such a Capital Modification, the Company will not be liable for any loss, damage or liability arising from or related to the WPCA's failure to approve said Capital Modification, including any loss, damage, or liability for (a) failure of the Managed Assets, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification. For purposes of this section, if the WPCA does not approve the Capital Modification within one hundred and eighty (180) days of the WPCA's receipt of a proposal of a Capital Modification from the Company, the Capital Modification shall be deemed to be rejected by the WPCA.

(C) Party Responsible for Costs.

The WPCA shall bear the cost and expense of all Capital Modifications and related operation, maintenance, repair and replacement costs (other than as part of an enforcement action taken in response to a breach hereof), unless the Capital Modification is requested by the Company, financed by the Company pursuant to Subsection 9.1(D) (Cost Savings), or necessary due to Company fault.

(D) Cost Savings.

In the event any Capital Modification is reasonably expected to result in a net cost Savings to the Company, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the WPCA, and the Base Service Fee shall be reduced accordingly, as follows: (1) In the event any Capital Modification that is reasonably expected to result in a net cost savings to the Company is proposed and funded by the WPCA, then sixty percent (60%) of the savings will be retained by WPCA, and the Base Service Fee shall be reduced accordingly; and (2) In the event any Capital Modification that is reasonably expected to result in a net cost savings to the Company is proposed and funded by the Company, the net cost savings will be retained by the Company until such a time that the Capital Modification has been paid for. Once such

Company-funded Capital Modification has been paid for, the WPCA will generally propose that ongoing savings be split by the WPCA and the Company at a sixty percent (60%) split of such savings accruing to the Company with forty percent (40%) accruing to the WPCA, with the duration of the split to be negotiated for each such Capital Modification.

SECTION 9.2. CAPITAL MODIFICATIONS AT COMPANY REQUEST.

The Company may request that a Capital Modification be undertaken either at its cost or the WPCA's cost by giving the WPCA written notice of, and reasonable opportunity to review and comment upon, any such Capital Modification proposed to be made at the Company's request. The notice shall contain sufficient information for the WPCA to determine that the Capital Modification (1) does not diminish the Design Capacity of the System to be operated so as to meet the Contract Standards, (2) does not impair the quality, integrity, durability and reliability of the System, (3) is reasonably necessary for the Company to fulfill its obligations under the Service Agreement, and (4) is feasible. The implementation of any such Capital Modification shall be subject to the WPCA's prior written approval, which may be withheld in its sole discretion. The Company shall not be entitled to any adjustment in the terms of this Service Agreement as a result of any such Capital Modification unless such adjustment is approved by the WPCA or made a condition of approval by the WPCA pursuant to Subsection 9.1(D) (Cost Savings). If the WPCA rejects such a Capital Modification, the Company will not be liable for any loss, damage or liability arising from or related to the WPCA's failure to approve said Capital Modification, including any loss, damage, or liability for (a) failure of the Managed Assets, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification. For purposes of this section, if the WPCA does not approve the Capital Modification within one hundred and eighty (180) days of the WPCA's receipt of a proposal of a Capital Modification from the Company, the Capital Modification shall be deemed to be rejected by the WPCA.

SECTION 9.3. ~~CAPITAL MODIFICATIONS—REMEDIAL ACTIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES~~

Upon the occurrence of an Uncontrollable Circumstance, the Company shall propose to the WPCA all ~~Capital Modifications—remedial action~~ reasonably necessary to address the Uncontrollable Circumstance and to permit the Company to lawfully perform its obligations under this Service Agreement. The Company shall consult with the WPCA concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and the WPCA shall cooperate in order to minimize any delay, lessen any additional cost and modify the System so as to permit compliance with the requirements resulting from the Uncontrollable Circumstance. The ~~design and construction~~ costs of any such ~~Capital Modification~~ remedial action, and any related operation, maintenance, repair and replacement costs, shall be borne by the WPCA, unless such Uncontrollable Circumstance is due to the Company's breach, in which case such costs shall be borne by the Company. The To the extent that such costs shall be borne by the WPCA, the implementation of any such ~~Capital Modification—remedial actions~~ shall be subject to the WPCA's prior written approval.

SECTION 9.4. CAPITAL MODIFICATIONS AT WPCA DIRECTION.

The WPCA shall have the right to make Capital Modifications at any time and for any reason whatsoever, whether and however the exercise of such rights affects this Service Agreement or the Managed Assets, so long as the Company's rights are protected as provided in Section 9.8 (Company Non-Impairment Rights). The design and construction costs of any such Capital Modification made at the WPCA's direction under this Section, and any related operation, maintenance, repair and replacement costs, shall be borne by the WPCA. The WPCA shall have no obligation to direct the Company to make any Capital Modification.

SECTION 9.5. AVAILABLE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS.

The WPCA may, in its sole discretion, utilize any procedure available to it or required under the Applicable Law in order to implement a Capital Modification, Implementation procedures may include, without limitation and to the extent permissible under Applicable Law, (1) contracting with third parties for the implementation of the Capital Modification on a traditional design/bid/build basis, with the WPCA rather than the Company responsible for the design and construction of the Capital Modification, or with the Company acting as the WPCA's agent in the design/bid/build process; (2) contracting with the Company to manage a competition for design/build services to implement the Capital Modification; and (3) contracting with the Company on a sole source basis to implement the Capital Modification on a design/build basis. While the WPCA may have the Company operate, maintain, repair, replace and manage Capital Modifications on an integrated basis with the Managed Assets, the WPCA is not obligated to do so and may contract for such services with a third party, so long as any such third-party contract does not impair the Company's rights under Section 9.8 (Company Non-Impairment Rights).

SECTION 9.6. FINANCING CAPITAL MODIFICATIONS.

The WPCA shall provide financing for any Capital Modification for which it is financially responsible under this Article, and, in the event the Company is selected to implement the Capital Modification, shall make the proceeds of the financing available to the Company to pay the negotiated price on the milestone schedule and subject to any retainage or other conditions negotiated by the parties pursuant to this Section.

SECTION 9.7. COMPANY NON-IMPAIRMENT RIGHTS

(A) Company Non-Impairment.

No Capital Modification, other than a Company-requested Capital Modification, shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the Company hereunder, including operating, maintenance, repair and replacement costs related to such Capital Modification. The Company shall have no right to object to any such Capital Modification, however, and such Capital Modification shall become part of the Managed Assets upon passing the tests for Acceptance, so long as the WPCA affords the Company appropriate price, schedule, performance and other relief necessary to avoid any such material effect.

(B) WPCA Operating Rights.

The WPCA shall have the right, notwithstanding any other provision hereof, at its own cost and expense to operate, maintain, repair, replace and manage any Capital Modification made to the System as a result of an Uncontrollable Circumstance or at the direction of the WPCA, provided that any such operation, maintenance, repair, replacement and management work performed by the WPCA does not materially impair any right, materially impair the ability to perform, impose any material additional obligation or liability, or materially increase the costs of the Company hereunder.

ARTICLE X
SERVICE FEE AND OTHER PAYMENTS

SECTION 10.1. SERVICE FEE GENERALLY.

The Company shall be paid the Monthly Service Fee, of an amount specified in Appendix 5, as compensation for the Company’s performing the Contract Services during such month during the Operation Period under this Service Agreement. The Monthly Service Fee shall be calculated in accordance with the following formula:

$$\text{MSF} = \text{MBSF} + \text{EIC}$$

where,

MSF = Monthly Service Fee

MBSF = Monthly Base Service Fee

EIC = Extraordinary Items Component

Each of the above components of the Monthly Service Fee shall be determined in accordance with Section 10.2.

SECTION 10.2. COMPONENTS OF MONTHLY SERVICE FEE.

(A) Base Service Fee.

The “Base Service Fee” shall be compensation for all Contract Services to be provided by the Company under the Service Agreement except where otherwise noted herein.

(B) Monthly Base Service Fee.

The Monthly Base Service Fee shall equal one-twelfth of the Current Annual Base Service Fee (CABSF), as adjusted, subject to the Inflation Adjustment provided in (C) below. For each full month from the Commencement Date through June 30, 2024 the CASF shall equal one twelfth (1/12th) of the Base Service Fee specified in (A) above.

(C) Inflation Adjustment of the Annual Base Service Fee.

The first adjustment to the Base Service Fee shall be made on July 1, 2024, and continue in effect to the following June 30. The Annual Base Service Fee shall be adjusted annually thereafter on each July 1st and be in effect through the following June 30. The yearly CPI is calculated by using Bureau of Labor Statistics Chart CUUR0100SDA0. The WPCA takes the change in CPI from July 1 of a calendar year to June 30 of the following calendar year.

1) If the annual adjustment is greater than five percent (5%), then the increase would be limited to five percent (5%), plus fifty percent (50%) of the difference between the CPI and five percent (5%). For example, if the annual CPI increase were to be calculated at six percent (6%), the Service Fee adjustment would be calculated as follows:

Current Service Fee x $1+0.05+((0.06-0.05)/2)$ or Current Service Fee x 1.055.

2) The annual CPI escalation shall be a minimum of two percent (2.0%) on an annual basis.

(D) Extraordinary Items Charge or Credit.

The Extraordinary Items Component (“EIC”) of the Monthly Service Fee, which may be a charge or a credit, shall be equal to the sum of (1) the amounts payable by the WPCA for increased operation, maintenance or other costs incurred on account of the occurrence of Uncontrollable Circumstances chargeable to the WPCA hereunder, net of any operation and maintenance cost savings achieved by the Company in mitigating the effects of the occurrence of such an Uncontrollable Circumstance, plus or minus (2) the adjustments to the Monthly Service Fee for increased operation and maintenance costs resulting from any Capital Modifications the costs of which are payable by the WPCA, or credits reflecting the benefits of Capital Modifications or other improvements to the System which accrue to the WPCA under the provisions of this Service Agreement, plus or minus (3) any noncompliance charges, liquidated damages or other Service Fee offsets due from the Company or credits due to Company specifically provided for under Article VII (Performance) or any other provision hereof, minus (4) any indemnification payments owed by the Company pursuant to Section 12.3 (Indemnification by the Company) or any other provision hereof, plus or minus (5) any other increase or reduction in the Monthly Service Fee provided for under any other Article of this Service Agreement.

SECTION 10.3. BILLING AND PAYMENT.

The Monthly Service Fee shall be on account of the Contract Services rendered during the prior month. If the Company provides the WPCA with an invoice by the ~~_____~~ fifth (5th) day of each month that sets forth the Monthly Service Fee for the prior month and such other documentation or information as the WPCA may reasonably require to determine the accuracy and appropriateness of the invoice, then the WPCA shall pay the invoice within 30 days of receipt (which may be by ACH transfer). Such ~~thirty-day~~ period shall not begin to run until the Company complies, to the satisfaction of the WPCA, with the provisions of this Section; provided, however that undisputed amounts shall be paid within the ~~_____~~ thirty (30) day period following the WPCA’s receipt of the Company’s invoice.

SECTION 10.4. ESTIMATES AND ADJUSTMENTS.

(A) Pro Rata Adjustments.

Any computation made on the basis of a stated period shall be adjusted on a pro rata basis to take into account any initial or final period which is a partial period. For purposes of this Subsection, a month shall be taken as a month containing 30 days and a year shall be taken as containing 360 days.

(B) Budgeting.

For WPCA budgeting purposes, no later than March 1 preceding each Contract Year, the Company shall provide to the WPCA a written statement setting forth for such Contract Year its reasonable estimate of the aggregate Monthly Service Fees, and each component thereof. The estimate shall not be binding on the Company but shall establish the basis for monthly billing for such Contract Year, subject to annual settlement pursuant to this Article.

(C) Adjustment to Base Service Fee.

If any adjustment to the Base Service Fee is required pursuant to any express provision of this Service Agreement, the party requesting the adjustment shall submit to the other party a written statement setting forth the cause of the adjustment, the anticipated duration of the adjustment, and the amount of the adjustment, as appropriate. Except to the extent that a longer period is otherwise specifically provided for in this Service Agreement, any request for adjustment of the Base Service Fee hereunder shall be accepted or rejected by the party receiving the request within 30 days of receipt. If the receiving party does not notify the requesting party of its rejection and the reasons therefor within such 30-day period, the request shall be deemed rejected.

(D) Set-off.

Upon an Event of Default by the Company, or in circumstances where the WPCA is entitled to but not provided with indemnity by the Company pursuant to the terms hereunder, the WPCA shall have the right, upon the giving of written notice, to offset against amounts then owing or to become owing by the WPCA to the Company an amount reasonably necessary to protect the WPCA and make it whole for and against all losses, damages and deficiencies associated with same. Notwithstanding the foregoing, the WPCA shall not set off against or delay payments due the Company as a result of, or based on, any failure of the WPCA to receive payment properly billed to users of the System, bad debt reserves, and/or the inability of the WPCA to collect monies owed the WPCA, provided the Company has fulfilled all its obligations with regard to billing and collection services as set forth in Section 10.3 of this Agreement. The rights of the WPCA under this Section shall be in addition to, and not in limitation of, any other rights, which it may have. In the event that an Event of Default has occurred entitling the WPCA to withhold monies hereunder, the WPCA shall provide written notification of its intent to offset and/or withhold portions of the Service Fee to the Company and/or of its intent to remedy such non-performance, including a good faith cost estimate to perform such remedy. Should the WPCA take action to remedy the condition

giving rise to the Event of Default, the WPCA shall deduct an amount not to exceed the cost of such remedy from the Service Fee, subject to cost substantiation by the WPCA.

SECTION 10.5. ANNUAL SETTLEMENT OF EXCESS CHARGES.

The Company shall, within 120 days after the end of each Contract Year, calculate if any amount owed to the Company under Section 6.20(D) for excess Biosolids disposal. Additionally, the Company will provide a detailed account of the amount, if any, owed the WPCA in accordance Section 6.9(B). WPCA or the Company, as appropriate, shall pay any undisputed amount within forty-five (45) days of receipt thereof. Any amounts owed by the Company to the WPCA as set forth in the annual settlement statement may be offset by the WPCA pursuant to the provisions of Section 10.4(D) hereof.

SECTION 10.6. BILLING STATEMENT DISPUTES.

In addition to the WPCA's setoff rights for an Event of Default as provided in Section 10.4 above, if the WPCA disputes any amount billed by the Company, the WPCA may either (1) pay the disputed amount when otherwise due, and provide the Company with a written objection indicating the amount that is being disputed and providing all reasons then known to the WPCA for its objection to or disagreement with such amount, or (2) withhold payment of the disputed amount and provide the Company with written objection as aforesaid within the time when such amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the WPCA to the Company of amounts withheld or reimbursement to the WPCA by the Company of amounts paid under protest is required, such payment or reimbursement shall be made within 45 days of the date of resolution, with interest at the Index Rate.

SECTION 10.7. PRIVATE BUSINESS USE RESTRICTIONS.

It is the intent of the WPCA and the Company that this Service Agreement shall be construed and applied so as to constitute a management contract that does not result in private business use of property financed by the WPCA within the meaning and intent of the applicable regulations and rulings of the Internal Revenue Service. In particular, the WPCA and the Company agree that, notwithstanding any provision of this Service Agreement to the contrary, the WPCA shall be under no obligation to, and shall not, pay compensation for services to the Company for any Contract Year, if such payment, or any portion thereof, would result in less than 80% of the Company's compensation for services for such Contract Year being based on a periodic fixed fee or would result in any portion of the Company's compensation being based on net profit, as such terms are defined in Internal Revenue Service Revenue Procedure 97-13 (as modified by Rev. Proc. 2001-39 and amplified by Notice 2014-67 and superseded by Rev. Proc. 2016-44 and Rev. Proc. 2017-33, "Rev. Proc. 97- IS"). The WPCA and the Company further agree that any such payment or portion thereof that is not made by virtue of this Subsection shall be paid to the Company, without interest, during the next annual period in which such payment will not result in less than 80% of the Company's compensation being based on a periodic fixed fee or in which such payment will not be based on net profit, all as defined by Rev. Proc. 97-13. The Company acknowledges that the System has been financed with tax exempt obligations and that under no circumstances shall the provisions of this Agreement, including the compensation to be paid to the Company, be permitted to violate applicable provisions of the Code, Treasury Regulations, rulings

or other guidance promulgated by the IRS, including Revenue Procedures 97-13, which could affect the exclusion of interest on any tax-exempt obligation financing the System. In connection therewith, the WPCA, in its reasonable discretion, shall have the right to modify the terms of this Agreement, including, without limitation, the Service Fee payable over the Term of the Agreement, as necessary, to comply with the Code and/or Revenue Procedure 97-13. In no event shall such adjustments entitle the Company to any additional compensation. In the event the WPCA is unable to modify the Agreement in order to comply with the Code and/or Revenue Procedure 97-13, the WPCA may, in its reasonable discretion, terminate the Agreement. In the event of a termination by the WPCA pursuant to this Section 10.7, such termination shall be treated as a WPCA Termination for Convenience pursuant to Section 11.5 of this Agreement.

SECTION 10.8. TAX EXEMPTION.

(A) It is the intent of the parties that the System shall be municipally owned property and not subject to real property or possessory interest taxation. If the Company is nonetheless required to pay any real property or possessory interest tax on account of the System, the Company shall be entitled to recover the amount paid as an Extraordinary Item charge pursuant to Section 10.2(E) (Extraordinary Items Charge or Credit).

(B) The WPCA/City holds a State of Connecticut Sales Tax Exemption Certificate. All sales made directly to the WPCA are exempt, provided that the WPCA makes payments directly to the seller. The Company shall be authorized as an agent of the WPCA during the Term for the sole purpose of and allowing the Company use of the WPCA's tax-exempt eligibility for qualifying purchases pursuant to this Agreement and under Connecticut law.

SECTION 10.9. TAXES AND FEES.

Except as provided in Section 10.8 (Tax Exemption), the Company shall be responsible for all federal, State, county and municipal Taxes and any other tax or fee imposed in connection with its performance of the Contract Services, including all City Taxes and business license fees. The Company acknowledges that these Taxes have been priced into the Base Service Fee, as applicable, and agrees to pay all such Taxes without reimbursement from the WPCA.

ARTICLE XI BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 11.1. REMEDIES FOR BREACH.

The parties agree that, except as otherwise provided in Sections 11.2 (Events of Default by the Company) and 11.4 (Events of Default by the WPCA) with respect to termination rights, in the event that either party breaches this Service Agreement, the other party may exercise any legal rights it has under this Service Agreement, the Security Instruments and Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Service Agreement for cause except upon the occurrence of an Event of Default.

SECTION 11.2. EVENTS OF DEFAULT BY THE COMPANY.

(A) Events of Default Not Requiring Previous Notice, or Further Cure Opportunity for Termination.

Each of the following shall constitute an Event of Default by the Company upon which the WPCA, by notice to the Company, may terminate this Service Agreement without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Company to obtain or maintain in full force and effect the Performance Bond required by Article III (Term) as security for the performance of this Service Agreement;

(2) Failure to Perform a Material Obligation. The failure or refusal of the Company to perform a material obligation hereunder, such that the failure or refusal constitutes a material malfeasance of duty and such failure is not due to an Uncontrollable Circumstance;

(3) Failure to remedy, after dispute resolution, if any, any notification of deficiencies resulting from the periodic inspection or audits of the System undertaken pursuant to Section 8.6.

(4) Abandonment. The abandonment or failure to operate all or a substantial portion of the System for a period of 24 hours (unless due to Uncontrollable Circumstances);

(5) Failure to Meet the NPDES Permit requirements. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Company to meet the NPDES Permit requirements on a trailing 4-month basis;

(6) Insolvency. The insolvency of the Company or the Guarantor as determined under the Bankruptcy Code;

(7) Voluntary Bankruptcy. The filing by the Company or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor under the Bankruptcy Code; or the filing by the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code;

(8) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or the Guarantor or of a major part of the Company's or the Guarantor's property, respectively, or the filing against the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively;

(9) Failure to Complete Transition Period Responsibilities. The failure of the Company to complete its Transition Period Responsibilities by the Scheduled Commencement Date;

(10) Default of Guarantor. The failure of the Guarantor to make any payment or perform any other obligation under the Guaranty Agreement in a timely manner, or the attempted termination or revocation by the Guarantor of the Guaranty, or the failure of the Company or the Guarantor to comply with the terms and conditions of Section 13.1 (Guarantor);

(11) Guarantor Credit Standing. The failure of the Company to provide credit enhancement when and as required by Subsection 13.1(C) (Credit Enhancement);

(12) General assignment by the Company or its successors for the benefit of any of its creditors;

(13) If any representation or warranty made in writing by or on behalf of the Company or the Guarantor in this Agreement or the Guaranty, as applicable, or in any certificate or other document delivered pursuant hereto or otherwise in connection with any of the transactions contemplated hereby, shall prove to have been false, misleading or incorrect in any material respect when made or deemed made;

(14) If any representation or warranty made in writing by or on behalf of the Company or the Guarantor in this Agreement or the Guaranty, as applicable, or in any certificate or other document delivered pursuant hereto or otherwise in connection with any of the transactions contemplated hereby, shall prove to have been false, misleading or incorrect in any material respect when made or deemed made; or

(15) Placement of a lien or other encumbrance on the System as a result of the action of, or failure to act by, the Company, the Guarantor, an Affiliate or a Subcontractor, which is not discharged or fully bonded by the Company within 30 days of notice demanding such by the WPCA, provided such lien was not filed on account of an action of the WPCA.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination.

It shall be an Event of Default by the Company upon which the WPCA may terminate this Service Agreement, by notice to the Company, if: (1) any representation or warranty of the Company hereunder or the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made (or for continuing representations and warranties, was or becomes false or inaccurate at any time); or (2) the Company fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the WPCA under this Service Agreement by the due date for such payment, or (b) to perform any material obligation under this Service Agreement (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein), except that no such default (other than those set forth in Subsection (A) of this Section) shall constitute an Event of Default giving the WPCA the right to terminate this Service Agreement for cause under this Subsection unless:

(1) The WPCA has given prior written notice to the Company stating that a specified default exists and describing the default in reasonable detail; and

(2) The Company has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence; except that if the Company shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions (which completion in any event shall not be more than 120 days from the initial default notice), the default shall not constitute an Event of Default such period of as the Company shall continue with due diligence to carry out to completion all such actions.

(C) Other Remedies Upon Company Event of Default.

The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. If this Service Agreement is terminated by the WPCA for an Event of Default by the Company, the WPCA shall have the right to pursue a cause of action for actual damages and to exercise all other remedies available to it under this Service Agreement, under the Security Instruments and under Applicable Law. Without limiting the foregoing, upon any termination of the Company for an Event of Default the damages payable by the Company to the WPCA shall include the costs of (1) making all repairs and replacements to the System, (2) completing any applicable Capital Modifications which the Company agreed to perform, if any, then under construction, (3) remediating any public health, environmental and safety problems, and (4) paying all unpaid fines and penalties payable to any Governmental Body, in each case to the extent such actions are necessitated or costs incurred as a result of the breach of this Service Agreement by the Company. Such termination damages shall also include, without limitation, a one-time payment equivalent to the sum of (1) the excess, if any, of (a) the reasonable costs of System operations and maintenance (including funding the Escrow Accounts (ETRF and CSRRE)) by the WPCA, if the System is to be operated and maintained by the WPCA, or under any new Service Agreement with a replacement operator chosen as result of a competitive selection process, if the System is to be operated and maintained pursuant to such an agreement, in either case for a period equal to the balance of the Initial Term or Renewal Term, whichever is in effect at the time of termination, over (b) the aggregate Base Service Fee for the balance of the Initial Term; plus (2) all reasonable costs incurred by the WPCA in procuring, negotiating and implementing a new Service Agreement with a replacement operator, if any. The Company shall ~~not~~ be entitled to ~~any~~ compensation for services satisfactorily provided subsequent to receiving any notice of termination for an Event of Default under this Section.

SECTION 11.3. EVENTS OF DEFAULT BY THE WPCA.

(A) Events of Default Permitting Termination.

Each of the following shall constitute an Event of Default by the WPCA upon which the Company, by notice to the WPCA, may terminate this Service Agreement:

(1) Representations and Warranties. Any representation or warranty of the WPCA hereunder was false or inaccurate in any material respect when made, and the legality of this Service Agreement or the ability of the WPCA to carry out its obligations hereunder is thereby materially and irreparably adversely affected; or

(2) Failure to Pay or Perform. The failure, refusal or other default by the WPCA in its duty: (1) to pay the undisputed amount required to be paid to the Company under this Service Agreement by the due date for such payment; or (2) to perform any other material obligation under this Service Agreement (unless such default is excused by an Uncontrollable Circumstance or Company Breach).

(B) Notice and Cure Opportunity.

No such default described in subsections (A)(1) or (A)(2) of this Section shall constitute an Event of Default giving the Company the right to terminate this Service Agreement for cause under this Subsection unless:

(1) The Company has given prior written notice to the WPCA stating that a specified default exists which gives the Company a right to terminate this Service Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The WPCA has not initiated within a reasonable amount of time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence; except that if the WPCA shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions (which completion in any event shall not be more than 120 days from the initial default notice), the default shall not constitute an Event of Default during such period of time as the WPCA shall continue with due diligence to carry out to completion all such actions.

(C) Liquidated Damages for Termination for Event of Default by the WPCA.

If this Service Agreement is terminated by the Company for cause as a result of an Event of Default by the WPCA, the WPCA shall pay the Company, One Million Five Hundred Thousand Dollars (\$1,500,000.00) as liquidated damages upon any such termination, ~~the same amount payable under Subsection 11.5 (Termination Right and Fee) if this Service Agreement were terminated at the election of the WPCA for convenience and without cause, as of the effective~~ . In addition, the WPCA shall pay the Company any actual costs, damages, losses, and expenses incurred by the Company as a result of the WPCA's Event of Default and pay the Company for all Services performed through the date of termination. Such payment by the WPCA shall be the Company's sole and exclusive remedy for a termination for cause by the Company as a result of an Event of Default by the WPCA. The Company acknowledges and agrees that its actual damages in such circumstance would be difficult or impossible to ascertain, that the liquidated damages provided for herein with respect to such circumstance are intended to place it in the same economic position as it would have been in had the circumstance not occurred, and that such liquidated damages shall constitute its only remedy, regardless of legal theory, for an Event of Default by the WPCA that results in a termination by the Company of this Service Agreement.

SECTION 11.4. WPCA CONVENIENCE TERMINATION.

~~(A) Termination Right and Fee.~~

~~The WPCA shall have the right at any time during the Term, exercisable in its sole discretion, for its convenience and without cause, to terminate this Service Agreement upon 90 days' written notice to the Company (the "Convenience Termination"). If the WPCA exercises its right to terminate the Service Agreement pursuant to this Section following the Commencement Date, the WPCA shall pay the Company any outstanding amounts due to the Company pursuant to subsection (D) below, plus a Convenience Termination fee equal to \$1.5 million.~~

(A) ~~(B)~~ Voluntary Termination by the WPCA Following a Sale or Change of Control.

In the event of (i) an assignment by the Company of this Service Agreement pursuant to a sale of all or substantially all of the business or assets of the Company or (ii) a "Change of Control" of the Company or the Guarantor (other than an internal restructuring of the Company or its Affiliates), the WPCA shall be permitted to approve such assignment or change of control, at its sole option to voluntarily such approval shall not be unreasonably withheld, conditioned, or delayed. If the WPCA does not approve such assignment or change of control, it may terminate this Service Agreement hereunder within 90 days following any such assignment or Change of Control and any, such termination by the WPCA shall be treated as a termination for convenience and, in such an instance, the WPCA shall pay the Company Five Million Dollars (\$5,000,000) as a termination payment, but shall not be liable to the Company for any demobilization costs, termination fees or any other costs or expenses except for that portion of the Service Fee due to the Company pursuant to the terms of this Service Agreement through the date of termination. For purposes of this Service Agreement, a "Change of Control" of the Company or the Guarantor shall mean any transaction or series of transactions which results in a change in the ownership, subsequent to the Contract Date, of more than fifty percent (50%) of the issued and outstanding securities of the Company or the Guarantor, as applicable, entitled to vote for the election of directors.

(B) ~~(C)~~ Uncontrollable Circumstances.

In the event an Uncontrollable Circumstance causes a total constructive loss of the Managed Assets, or in the event an Uncontrollable Circumstance causes an extraordinary increase in WPCA costs, and thereupon the WPCA elects to exercise its right of Convenience Termination under this Section, the amount specified in item (1) of Subsection (A) of this Section shall be excluded from the termination fee payable by the WPCA. A "total constructive loss" for this purpose shall be deemed to have occurred: (1) if so determined by the casualty insurance carrier; or (2) if the System is substantially inoperable for a period of at least three (3) months following the occurrence of the Uncontrollable Circumstance. "An extraordinary increase" in WPCA costs shall be deemed to have occurred for this purpose if costs proposed to be paid to the Company resulting from the Uncontrollable Circumstance would cause an increase of more than \$3 million from the prior Contract Year or an increase of more than \$10 million in the aggregate of the total Service Fee payable under this Service Agreement when compared to such amounts that would have been payable during the comparable periods had no Uncontrollable Circumstances occurred.

(C) ~~(D)~~ Payment of Amounts Owing Through the Termination Date.

Upon any termination pursuant to this Section, the WPCA shall pay the Company all amounts then due but not yet paid for the Contract Services, including the applicable portion of the Monthly Service Fee to the date of termination, and all outstanding reimbursable amounts due to the Company) as of the date of termination.

~~(E) Termination Fee Payment Contingent Upon Surrender of Possession.~~

~~The WPCA shall have no obligation to pay the applicable termination fee provided for under this Section except concurrently with the surrender of possession and control by the Company of the System to the WPCA.~~

~~(F) Adequacy of Termination Payment.~~

~~The Company agrees that the applicable termination fee provided in this Article shall fully and adequately compensate the Company and all Subcontractors for all foregone potential profits, Loss and Expense, and charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Company's right to perform this Service Agreement.~~

~~(G) Consideration for Convenience Termination Payment.~~

~~The right of the WPCA to terminate this Service Agreement for its convenience and in its sole discretion in accordance with this Article constitutes an essential part of the overall consideration for this Service Agreement, and the Company hereby waives any right it may have under Applicable Law to assert that the WPCA owes the Company a duty of good faith dealing in the exercise of such right.~~

(D) (H) Completion or Continuance by WPCA.

After the date of any termination under this Section, the WPCA may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including entering into contracts with other operators and contractors.

SECTION 11.5. OBLIGATIONS OF THE COMPANY UPON TERMINATION OR EXPIRATION.

(A) Company Obligations.

Upon a termination of the Company's right to perform this Service Agreement under Sections 11.2 (Events of Default by the Company), 11.4 (Events of Default by the WPCA), or 11.5 (WPCA Convenience Termination), or upon the expiration of this Service Agreement under Section 3.1 (Effective Date and Initial Term), the Company shall, as applicable:

- (1) stop the Contract Services on the date and to the extent specified by the WPCA;
- (2) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;
- (3) subject to any right of the WPCA to purchase equipment or take an assignment of lease of equipment, promptly remove from the System all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including sheds, trailers, workshops and toilets), and repair any damage caused by such removal;

- (4) leave the System in a neat and orderly condition;
- (5) subject to Subsection (B) of this Section, promptly remove all employees of the Company and any Subcontractors and vacate the System;
- (6) with respect to Capital Modifications, promptly deliver to the WPCA a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Managed Assets;
- (7) deliver to the WPCA the Operation and Maintenance Manuals and all database files used at the Managed Assets in the performance of Contract Services, including all revisions and updates thereto. For data requiring software systems, Contractor shall provide the WPCA with one Client license in order to read the information during the Term of this Service Agreement period plus one year;
- (8) deliver to the WPCA a copy of all books and records in its possession relating to the performance of the Contract Services;
- (9) provide the WPCA with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;
- (10) advise the WPCA promptly of any special circumstances that might limit or prohibit cancellation of any Subcontract;
- (11) promptly deliver to the WPCA copies of all Subcontracts, together with a statement of:
 - a. the items ordered and not yet delivered pursuant to each agreement;
 - b. the expected delivery date of all such items;
 - c. the total cost of each agreement and the terms of payment; and
 - d. the estimated cost of canceling each agreement;
- (12) assign to the WPCA any Subcontract for goods or services exclusively provided for the WPCA's benefits where permitted in such Subcontract that the WPCA elects in writing, at its sole election and without obligation, to have assigned to it. The WPCA shall assume, and the Company shall be relieved of its obligations under, any Subcontract so assigned;
- (13) terminate all Subcontracts for goods or services exclusively provided for the WPCA's benefits which the WPCA has not directed the Company to assign, and make no additional agreements with Subcontractors;
- (14) as directed by the WPCA, transfer to the WPCA by appropriate instruments of title, and deliver to the Managed Assets (or such other place as the WPCA may specify), all special

order items pursuant to this Service Agreement for which the WPCA has made or is obligated to make payment;

(15) promptly transfer to the WPCA all warranties given by any manufacturer or Subcontractor with respect to particular components of the Contract Services;

(16) notify the WPCA promptly in writing of any Legal Proceedings against the Company by any Subcontractor or other third parties relating to the termination of the Contract Services (or any Subcontracts);

(17) give written notice of termination, effective as of date of termination of this Service Agreement, promptly under each policy of Required Insurance (with a copy of each such notice to the WPCA);

(18) provide the WPCA with keys, codes, user names and passwords associated with the System with identification of what each key, code, user name and password is used for;

(19) arrange its dealings with employees such that no accrued benefit liability will bind the WPCA in the event the WPCA determines to offer employment to the Company's employees at the Managed Assets following the Termination Date; and

(20) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the WPCA's costs and facilitate the smooth transition of the System to the WPCA or its designated successor operator, and take no action which shall increase any amount payable to the WPCA under this Service Agreement.

(21) transfer and return the Escrow Amounts and all monies therein.

(B) Continuity of Service and Technical Support.

Upon the termination of the Company's right to perform this Service Agreement under Sections 11.2 (Events of Default by the Company), 11.4 (Events of Default by the WPCA), or 11.5 (WPCA Convenience Termination), or upon the expiration of this Service Agreement under Section 3.1 (Effective Date and Initial Term), the Company, at the request and direction of the WPCA, shall provide for an effective continuity of service and the smooth and orderly transition of management back to the WPCA or any replacement operator designated by the WPCA. Such service shall be for a period of up to 90 days after the effective date of the termination and shall include providing technological advice and support, or other information useful or necessary for the WPCA or any replacement operator designated by the WPCA to perform the Contract Services. To the extent that the WPCA or such replacement operator requests that the Company also provide operating, maintenance and management services, the Company shall be paid a reasonable pro rata amount based on the Monthly Service Fee for such period that the Company is providing such requested operating, maintenance and management services.

(C) Company Payment of Costs.

Upon the termination or expiration of this Service Agreement, the Company shall be obligated to pay the costs and expenses of undertaking its obligations under Subsection 11.6(A) (Company Obligations). If the Company fails to comply with any obligation under this Section, the WPCA may perform such obligation and the Company shall pay on demand all reasonable costs thereof.

SECTION 11.6. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION.

All representations and warranties of the parties hereto contained in Article II (Representations and Warranties) hereof and the rights and obligations of the parties hereto pursuant to Sections 1.2(H) (Liquidated Damages), 4.3(B) (Failure of Conditions), 7.2(D) (Indemnity for Loss-and-Expense from Non-Complying Effluent), 11.2 (Events of Default by the Company), 11.4 (Events of Default by the WPCA), 11.5 (WPCA Convenience Termination), 11.6 (Obligations of the Company Upon Termination or Expiration), 11.7 (Survival of Certain Provisions Upon Termination), 11.8 (No Waivers), 11.9 (No Consequential or Punitive Damages), 11.10 (Forum for Dispute Resolution), 12.1 (Insurance), 12.2 (Uncontrollable Circumstances), Section 12.3 (Indemnification by the Company), 13.2 (Performance Bond), 14.4 (Property Rights), and 14.8(D) (Indemnity for Subcontractor Claims) hereof shall survive the termination of this Service Agreement. No termination of this Service Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination, or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third party as to any matter occurring during the Term of this Service Agreement.

SECTION 11.7. NO WAIVERS.

No action of the WPCA or the Company pursuant to this Service Agreement (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Service Agreement. No course of dealing or delay by the WPCA or the Company in exercising any right, power or remedy under this Service Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the WPCA or the Company under this Service Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy,

SECTION 11.8. NO CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall either party be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under this Service Agreement, or the material falseness or inaccuracy of any representation made in this Service Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory, The waiver of the foregoing damages under this Section is intended to apply only to disputes and claims as between the WPCA and the Company, and specifically is not intended to limit the scope of the indemnity provision herein, which indemnification includes all claims by third parties irrespective of the nature thereof or the relief sought thereby.

SECTION 11.9. GOVERNING LAW; FORUM FOR DISPUTE RESOLUTION.

The Parties shall work to resolve any dispute arising under this Agreement through good faith discussion and negotiation by representatives who have full authority to fully and finally resolve the dispute.

No party may commence litigation to resolve such dispute unless the Parties have been unable to mutually resolve such dispute within 90 days after commencement of such dispute resolution process by a disputing party.

This Agreement and all matters arising under it shall be governed by the substantive laws of the State of Connecticut. All Legal Proceedings related to this Service Agreement or to the System or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the courts of the State located in Fairfield County, Connecticut. The Company and the WPCA each irrevocably consent to the exclusive jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to jurisdiction of such courts in any such action or proceeding.

ARTICLE XII INSURANCE, UNCONTROLLABLE CIRCUMSTANCES, AND INDEMNIFICATION

SECTION 12.1. INSURANCE.

(A) Company Insurance.

At all times during the Term of this Service Agreement, the Company shall obtain and maintain or cause to be obtained and maintained the Insurance Requirements in accordance with the requirements of Appendix 6, including listing the City and the WPCA as additional insureds, and shall pay all premiums with respect thereto as the same become due and payable. The WPCA shall remain responsible for obtaining and maintaining all property insurance relating to the Managed Assets and shall pay all premiums with respect thereto as the same become due and payable. The Company shall obtain a \$100,000 Commercial Crime insurance policy, which shall be continually maintained as security for all employees of the Company involved in the billing and collection process

(B) Insurers, Deductibles and WPCA Rights.

All insurance of the Company required by this Section shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in Appendix 6. The insurers shall be selected by the Company with the consent of the WPCA, which consent shall not be unreasonably withheld, and shall be authorized to write such insurance in the State. ~~The insurance coverage shall be written with deductible amounts approved by the WPCA, and the WPCA shall be responsible for paying all such approved deductible amounts unless such loss is due to the Company's or its Subcontractor's negligence or willful misconduct or Company Breach.~~ The Company shall be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Company hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to the WPCA and to the Company as their respective interests may appear; (2) at least 30 days' prior written notice of the cancellation thereof to the Company and the WPCA (except with respect to cancellation for non-payment of premiums to which a 10-day

written notice shall be required), and (3) waiver of subrogation. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the WPCA. The WPCA shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

(C) Certificates, Policies and Notice.

Not later than 60 days prior to the beginning of each Contract Year throughout the Term, the Company shall furnish the WPCA with certificates of insurance regarding the policies of insurance naming the City, the WPCA, its officers, officials and employees as "additional insureds" (except with respect to Workers' Compensation Insurance and Errors and Omissions/Professional Liability Insurance) and providing the Required Insurance. Whenever a Subcontractor is utilized, the Company shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 6. ~~The WPCA shall have the right, upon request made to the Company by the WPCA and at any time during the Term, to review the full, original policies of insurance for all Required Insurance.~~

(D) Maintenance of Insurance Coverage.

If the Company fails to pay any premium or self-insured retention for Required Insurance, or if any insurer cancels any Required Insurance policy and the Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the WPCA's election (but without any obligation to do so), the WPCA, following notice to the Company, may pay such premium or self-insured retention or procure similar insurance coverage from another company or companies and upon such payment by the WPCA the amount thereof shall be immediately reimbursable to the WPCA by the Company. The Company shall comply with all applicable Required Insurance and take all steps necessary to assure the Managed Assets remain continuously insured in accordance with the requirements of this Service Agreement during the Term hereof. The failure of the Company to obtain and maintain any Required Insurance shall not relieve the Company of its liability for any losses intended to be insured thereby. ~~Should any failure to provide continuous insurance coverage occur, the Company shall, to the full extent of its liability under applicable law, defend, indemnify and hold harmless the WPCA against any Loss and Expense arising out of such failure.~~ The purchase of insurance to satisfy the Company's obligations under this Section shall not be a satisfaction of any Company liability under this Service Agreement or in any way limit, modify or satisfy the Company's indemnity obligations hereunder.

SECTION 12.2. UNCONTROLLABLE CIRCUMSTANCES.

(A) Relief from Obligations.

Except as expressly provided under the terms of this Service Agreement, neither party to this Service Agreement shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The parties

agree that the relief for an Uncontrollable Circumstance described in this Section shall apply to all obligations in this Service Agreement, except to the extent specifically provided otherwise, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Service Agreement but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Service Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance. The WPCA shall pay the Monthly Service Fee during the continuance of any Uncontrollable Circumstance, adjusted to account for any cost reductions achieved through Company mitigation measures required by Subsection (B) of this Section, as well as for any cost increases to which the Company is entitled under Subsection (C) of this Section.

(B) Notice and Mitigation.

The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone, confirmed facsimile or email, within 24 hours after the date the party experiencing such Uncontrollable Circumstance first knew of the occurrence thereof, followed within 5 days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the affected party shall also provide the other party with a description of: (1) the amount, if any, by which the Monthly Service Fee is proposed to be adjusted as a result of such Uncontrollable Circumstance; (2) any areas where costs might be reduced and the approximate amount of such cost reductions; and (3) its estimated impact on the other obligations of such party under this Service Agreement. The affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever an Uncontrollable Circumstance occurs, the party claiming to be adversely affected thereby shall, as promptly as practicable, use all commercially reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom, mitigate and limit damage to the other party, and resume full performance under this Service Agreement. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by an Uncontrollable Circumstance shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

(C) Conditions to Performance, Service Fee and Schedule Relief.

If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost of the Company's performing the Contract Services in accordance herewith, the Company shall be entitled to relief from its performance obligations, an increase in the Monthly Service Fee, or an extension of schedule which properly reflects the interference with performance, the amount of the increased cost, or the time lost as a result thereof, in each case only to the minimum extent reasonably forced on the Company by the event, and the Company shall perform all other Contract Services. The proceeds of any Required Insurance available to meet any such increased cost, and

the payment by the Company of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the WPCA under this Section.

Any cost reduction achieved through the mitigating measures undertaken by the Company pursuant to Subsection (B) of this Section upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Service Fee would have otherwise been increased or shall serve to reduce the Service Fee to reflect such mitigation measures, as applicable. In the event that the Company believes it is entitled to any performance, price or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the WPCA written notice of the specific relief requested and detailing the event giving rise to the claim within 15 days after the giving of notice delivered pursuant to Subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed within such 15 day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Company the WPCA shall issue a written determination as to the extent, if any, it concurs with the Company claim for performance, price or schedule relief, and the reasons therefor.

The Company acknowledges that its failure to give timely notice pertaining to an Uncontrollable Circumstance as required under this Section may adversely affect the WPCA. To the extent the WPCA asserts that any such adverse effect has occurred and that the relief to the Company or the additional cost to be borne by the WPCA under this Subsection should be reduced to account for such adverse effect, the Company shall have the affirmative burden of refuting the WPCA's assertion. Absent such refutation, the reduction in relief to the Company and the reduction in additional cost to the WPCA asserted by the WPCA in such circumstances shall be effective.

In the event of a casualty loss to the System or other Uncontrollable Circumstance causes a material reduction in the costs incurred by the Company in providing the Services and performing its obligations under this Agreement, then the WPCA and the Company shall negotiate an appropriate reduction in the Base Service Fee payable by the WPCA during the continuance of such casualty loss or other Uncontrollable Circumstance.

(D) Capital Modifications.

Before proposing any adjustment to the Service Fee in its notice of requested relief under this Section, the Company shall determine whether any increased costs of operation and maintenance of the Managed Assets resulting from an Uncontrollable Circumstance can reasonably and prudently be reduced by the undertaking of a Capital Modification. In the event that the Company makes such a determination, the Company shall so advise the WPCA in accordance with Article IX (Capital Modifications). The WPCA shall thereupon determine, in its sole discretion, whether such a Capital Modification shall be undertaken and shall so advise the Company within 60 days of receipt of such notice by the Company. In no event shall the Company undertake such a Capital Modification except at the express written direction of the WPCA.

SECTION 12.3. INDEMNIFICATION BY THE COMPANY AND LIMITATION.

(A) Indemnification.

~~To the fullest extent permitted under Applicable Law, the Company shall indemnify, defend and hold harmless the WPCA, and its officials, officers, employees, representatives, agents and contractors (each, a “WPCA Indemnitee”), from and against (and pay the full amount of) any and all Loss and Expense incurred by a WPCA Indemnitee to third parties arising from or in connection with (or alleged to arise from or in connection with) any activity arising from this Service Agreement or in connection with use of the System. The Company shall also to the fullest extent permitted under Applicable Law indemnify the WPCA as and to the extent provided elsewhere in this Service Agreement. The Company’s indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Company which is intended to respond to such events. The Company shall not, however, be required to reimburse or indemnify any WPCA Indemnitee for any Loss and Expense to the extent caused by the gross negligence or willful misconduct of any WPCA Indemnitee. A WPCA Indemnitee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Company shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. The Indemnifying Party shall be obligated to pay the reasonable attorneys’ fees and expenses of the party seeking indemnification to the extent that such fees and expenses related to claims as to which indemnification is payable under this Section, as such expenses are incurred. The Indemnified Party shall have full rights to dispose of such action and enter into any monetary compromise or settlement, provided, however, that in settling any action in respect of which indemnification is payable, it shall act reasonably and in good faith. These indemnification provisions are for the protection of the WPCA Indemnitees only and shall not establish, of themselves, any liability to third parties. This indemnification obligation shall include, but is not limited to, all claims against the WPCA by a current or former officer, director, employee, representative or agent of the Company, or any subcontractor, and the Company expressly waives all immunity and limitation on liability under any workers’ compensation act, disability benefit act, employee benefit act or any other Applicable Law of any jurisdiction which would otherwise be applicable in the case of such a claim.~~

During the term of this Agreement, the Company shall defend, indemnify and hold harmless the WPCA and its respective successors and assigns (each is referred to herein as an “Indemnified Party”) against any and all claims, liabilities, damages, costs, losses, and expenses, including reasonable attorney’s fees, resulting from any claim asserted by a third party against the Indemnified Party for wrongful death, bodily injury and/or property damage, but only to the extent caused by the willful or negligent acts or omissions of the Company, breach of this Agreement by the Company, or violation of Applicable Law by the Company. To the extent that both WPCA and Company are determined by a finder of fact to be a proximate cause of the damages assessed by such finder of fact, then in such event, WPCA and Company shall each be responsible for their respective portions of the damages assessed in direct proportion to their comparative shares of the total negligence. Notwithstanding any of the foregoing, any loss, damage, injury or other claims made against the WPCA as a result of or based upon the presence, removal, handling, storage, release, discharge, escape or other disposition of any hazardous substances, wastes, pollutants or contaminants shall be addressed in accordance with section 12.3(B)..

The provisions of this Section shall survive termination of this Service Agreement.

(B) Environmental Indemnification.

The Company shall not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the System, by the Company, its agents, employees, contractors, subcontractors or invitees, except in compliance with all Applicable Laws and with the prior written consent of the City and the WPCA (which the City and the WPCA shall not unreasonably withhold as long as the Company demonstrates to the City's and the WPCA's reasonable satisfaction that such Hazardous Substance is necessary or useful to the Company's business and will be used, kept and stored in a manner that complies with all Applicable Laws regulating any such Hazardous Substance so brought upon or used or kept in or about the System). If the Company breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Substances within the System caused or permitted by the Company results in contamination of the System or the environment, or if contamination of the System or the environment by Hazardous Substances otherwise occurs for which the Company is responsible to the City and the WPCA for damage resulting therefrom, in addition to and not in limitation of Section ~~9.1-12.1~~ hereof, the Company shall indemnify, defend and hold the WPCA Indemnitees harmless from and against any and all losses, (including, without limitation, diminution in value of the System and sums paid in settlement of claims, attorneys' fees, court costs, consultant fees and expert fees) which arise during or after the Term as a result of such contamination, but only to the extent that such contamination is caused by the negligence of the Company. This indemnification of the WPCA and the City by the Company includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Governmental Body and to the extent required by Applicable Law because of Hazardous Substance present in the soil or ground water on, under or within the System or the environment resulting from the Company's breach of its obligations pursuant to this Agreement, or the presence of Hazardous Substances within the System caused or permitted by the negligence of the Company or contamination of the System or the environment by Hazardous Substance caused by the Company's negligence. Without limiting the foregoing, if the presence of any Hazardous Substances on under or within the System or the environment caused or permitted by the Company's negligence results in any contamination of the System or the environment, the Company shall promptly take all actions at its sole cost and expense as are necessary to return the System to the condition required by Applicable Law and shall promptly take all actions at its sole cost and expense as are necessary to remediate the environment in accordance with all Applicable Laws; provided that the City's and the WPCA's approval of such action shall first be obtained, which approval shall not be unreasonably withheld.

Notwithstanding any provision to the contrary contained in this Section ~~9.312.3~~, and provided that the Company is otherwise in compliance with the terms and provisions of this Agreement in all material respects, including without limitation, Section 5.17 of this Agreement, the Company shall not be liable to the WPCA (i) for any Biologically Toxic Influent contained in the Influent, or (ii) Hazardous Substances anywhere within the subsurface of the System which existed prior to the Commencement Date to the extent the Company has not aggravated or exacerbated such pre-existing environmental conditions. In addition, the Company's clean-up and remedial obligations as set forth above shall not extend beyond those clean-up and remedial obligations required by any Governmental Body pursuant to Applicable Law or as otherwise required pursuant to Applicable Law.

(C) Limitation of Liability.

In the event that claims(s) raised by the WPCA against the Company on account of this Agreement, or on account of the Services performed hereunder is/are covered under the Company's insurance policies, the Company shall not be responsible to the WPCA for any loss, damage or liability beyond the amounts contractually required hereunder and actually paid pursuant to the limits and conditions of such insurance policies. With respect to any causes of action and/or claims raised against the Company by the WPCA that are not covered by the Company's insurance policies, the Company's liability to the WPCA shall not exceed an aggregate amount equal to the Annual Base Service Fee in effect during the Agreement Year in which such cause of action and/or claim is raised. The limitations set forth in this Section 12.3(C) shall not apply to claims due to the Company's gross negligence, intentional misconduct, criminal acts, or fraud.

ARTICLE XIII SECURITY FOR PERFORMANCE

SECTION 13.1. GUARANTOR.

(A) Guaranty Agreement.

The Company shall cause the Guaranty Agreement to be provided on or before the Contract Date and maintained by the Guarantor during the Term in the form attached as Attachment C to the RFP.

~~(B) Material Adverse Change to the Financial Condition of the Guarantor.~~

~~For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if the Guarantor no longer has an investment grade rating from any one of the following (the "Credit Agencies"): Moody's Investors Service Inc., Standard & Poor's Rating Services, or Fitch Ratings, or if one or more of such Credit Agencies no longer exist, the parties agree to a comparable successor. The Company immediately shall notify the WPCA of any Material Decline in the Guarantor's Credit Standing.~~

(B) ~~(C)~~ Credit Enhancement.

If a Material Decline in Guarantor's Credit Standing occurs, the Company shall cause to be provided credit enhancement of its obligations hereunder within 15 days after such occurrence. Such The Company, in its sole discretion, shall have the option of providing such credit enhancement ~~shall be~~ in the form either of: (1) an unconditional guarantee of all of the Company's obligations hereunder provided by a corporation or financial institution whose long-term senior debt is or would be rated investment grade by one of the Credit Agencies; or (2) a letter of credit securing the Company's obligations hereunder provided by a financial institution whose long-term senior debt is or would be rated investment grade by one of the Credit Agencies, in a face amount equal to fifty percent (50%) of the required amount of the Performance Bond at the time of issuance of the letter of credit. The Guarantor shall maintain such credit enhancement until its credit rating has been restored to investment grade. For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if the Guarantor no longer has an investment grade rating from any one of the following (the "Credit Agencies"): Moody's Investors Service Inc., Standard & Poor's Rating Services, or Fitch Ratings, or if one or more of such Credit

Agencies no longer exist, the parties agree to a comparable successor. The Company immediately shall notify the WPCA of any Material Decline in the Guarantor's Credit Standing.

(C) ~~(D)~~ Annual Reports.

The Company shall furnish the WPCA, within 30 days after the end of the Guarantor's fiscal year, consolidating balance sheets and income statements for the Guarantor independent public accountant. The Company shall also furnish the WPCA with copies of audited financial statements, the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission (or any other similar regulatory agency) within 15 days of the Company's receipt or filing of such documents.

SECTION 13.2. PERFORMANCE BOND.

(A) Terms and Purpose.

On or before the Commencement Date, the Company shall provide to the WPCA an annual Performance Bond, equal to the total of the Monthly Base Service Fee payments payable for the first full 12-month Contract Year for operations of the Managed Assets, in a form acceptable to the WPCA. The Performance Bond shall secure the faithful performance of the Contract Services and the payment of labor, outside services, and supplies required for the Contract Services. The Performance Bond shall be provided on an annual basis in the amount ~~of _____~~ equal to the total of the Monthly Base Service Fee payments payable for the first full 12-month Contract Year for operations of the Managed Assets and the liability to the surety for each period shall not be cumulative. The Performance Bond shall: (1) be provided by a surety company approved by the WPCA having a minimum rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) be properly registered and licensed to conduct business in the State. The initial Performance Bond shall be provided to the WPCA not later than 15 days after the Contract Date. Each subsequent Performance Bond shall be provided to the WPCA not later than 15 days prior to the commencement of the next Contract Year. The failure by the Company to provide such bond by such date shall constitute an immediate Event of Default as provided in Section 11.2 (Events of Default by the Company), without notice or further cure opportunity.

(B) Monitoring of Sureties.

The Company shall be responsible throughout the Term of this Service Agreement for monitoring the financial condition of any surety company issuing bonds under this Service Agreement and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, the Company shall promptly notify the WPCA of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the WPCA agrees to accept the surety company or agrees to an

alternative method of assurance. Upon such notice by the Company of such an event, the WPCA shall not unreasonably withhold its approval of such assurance.

ARTICLE XIV MISCELLANEOUS PROVISIONS

SECTION 14.1. RELATIONSHIP OF THE PARTIES.

The Company is an independent contractor of the WPCA and the relationship between the parties shall be limited to performance of this Service Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Service Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party, except as explicitly provided hereunder. No liability or benefits, such as workers' compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer /employee relationship shall arise or accrue to any party's agent or employee as a result of this Service Agreement or the performance thereof.

SECTION 14.2. CONTRACT ADMINISTRATION.

(A) Administrative Communications.

The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term of this Service Agreement. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications (except to the extent that the resolution of any such matter requires an amendment to this Service Agreement pursuant to Subsection (E) of this Section), once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Service Agreement.

(B) Contract Administration Memoranda.

The principal formal tool for the administration of matters arising under this Service Agreement between the parties shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the WPCA and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) the determination of the specific relief to be given the Company under Section 12.2 (Uncontrollable Circumstances) on account of an Uncontrollable Circumstance; (2) the determination of the specific amount of any increase or decrease of the Service Fee to which the Company is entitled under any provision of this Service Agreement (including the parties' agreement as to the treatment and designation of the payment of any Extraordinary Item under Section 10.2(E) (Extraordinary Item Charge or Credit); (3) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (4) agreements for additional services under Section 14.12 (Further Agreements); (5) notices, waivers,, releases, satisfactions, confirmations, further assurances, consents and approvals given

hereunder, other than those, non-material notices, confirmations, further assurances, consents, and approval, given at the operational level in the ordinary course; and (5) other similar contract administration matters.

(C) Procedures.

Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the WPCA reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed by the Contract Representative of each party, and co-signed by a Senior Supervisor for the Company and by the Director of Public Works for the WPCA. The WPCA and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Service Agreement.

(D) Effect.

Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation, application and performance of this Service Agreement.

(E) Assignment.

This Agreement may be assigned by the Company only with the prior written consent of the WPCA and such consent may be withheld by the WPCA in its reasonable discretion. Any assignment in violation of this Agreement shall be null and void. This Agreement may, in the sole and absolute discretion of the WPCA, be assigned by the WPCA to any entity, including without limitation, any regional water pollution control authority created pursuant to the Connecticut General Statutes, provided, however, that: (i) if the WPCA assigns this Agreement to any direct competitor of the Company, then the WPCA must obtain the prior written consent of the Company, which consent may not be unreasonably withheld or delayed by the Company, before assigning this Agreement to such direct competitor; and (ii) in all other cases, the WPCA shall meet with the Company prior to affecting an assignment of this Agreement solely for the purpose of informing the Company of the WPCA's intent to affect such an assignment.

(F) Subcontractors.

The WPCA shall have the right to approve all Subcontractors hired by the Company for performing services on behalf of the Company in carrying out its obligations hereunder (other than administrative, financial, accounting or legal services) with respect to such contracts with an aggregate annual value in excess of \$50,000, such approval not to be unreasonably withheld.

(G) Service Agreement Amendment.

Notwithstanding the foregoing, any material change, alteration, revision or modification of this Service Agreement shall be effectuated only through a formal Service Agreement amendment authorized, approved or ratified by the WPCA and otherwise in accordance with Applicable Law.

(H) Publicity.

Neither the Company, nor any of its directors, officers, employees, agents or representatives will, without the prior written consent of the WPCA, make any public announcement concerning the transactions contemplated hereby.

(I) Confidentiality.

Throughout the Term of this Agreement and following its expiration or earlier termination, the WPCA, the Company and the Guarantor shall maintain in confidence and not disclose to any Person or use to the detriment of the other party any written, oral or other information obtained in confidence from the other party, unless disclosure of such information (i) is required by Applicable Law, (ii) was publicly known at the time of disclosure (other than through improper disclosure by the recipient), (iii) is available from another source that had permission to release it, and (iv) is ordered by a court of competent jurisdiction. The Company acknowledges that the WPCA is subject to the provisions of the Connecticut Freedom of Information Act ("FOIA") and, as such, may be required to disclose information, which, although the Company deems confidential, does not fall into an exclusion under FOIA. The Company also acknowledges that, pursuant to FOIA, the WPCA's ability to limit the use of information disclosed under FOIA is limited and therefore the WPCA may not be able to preserve the confidentiality of Confidential Information once in the hands of a governmental authority or other Person. Any FOIA requests received by the Company or the Guarantor regarding the System, the WPCA or this Agreement, shall be forwarded to the City Attorney by facsimile and/or hand delivered within 24 hours of receipt by the Company so that a response may be issued by that office, or under the direction of that office. The WPCA shall use its commercially reasonable efforts to provide notice to the Company as to any FOIA requests received by the WPCA as to Confidential Information of the Company; provided, however, the WPCA's failure to give such notice to the Company shall not be treated as an Event of Default pursuant to Section 11.2.

(J) Agreement to Provide Documents, Inventory and Licenses.

The Company shall, at the end of the Term, or earlier expiration of the Agreement, turn over all design documents and any spare parts inventory to the WPCA. In addition, subject to any licensing agreements entered into by the Company and the WPCA, the Company shall, for the purpose of allowing the WPCA to utilize similar technology to the technology utilized by the Company in providing its services hereunder (i) grant to the WPCA a perpetual, royalty free license to use technology brought to the System, by the Company; and (ii) use all reasonable efforts to require its Subcontractors to grant a similar perpetual, royalty free license to use technology brought to the System by such Subcontractors. The Service Fee shall be deemed payment for all proprietary and technology license rights that the Company holds with respect to the System, whether or not the WPCA operates the System.

SECTION 14.3. CONTRACT REPRESENTATIVES.

(A) Company's Contract Representative.

The Company shall identify an individual (the "Contract Representative") who may be contacted by the WPCA immediately at any time on a 24-hour per day, 7-day per week, 365/366-day per year basis, for emergency response, information, or any other purpose hereunder. The

Company shall provide the WPCA at all times with current communication information (business telephone, mobile telephone, fax, beeper, e-mail) for the individual serving as the Contract Representative. The Company's Contract Representative may also be the Company's Facility Manager.

(B) WPCA's General Manager.

The WPCA shall designate an individual or firm to administer the day-to-day operations of this Service Agreement and act as the WPCA's liaison with the Company in connection with the Contract Services (the "General Manager"). The Company understands and agrees that the General Manager has only limited authority with respect to the implementation of this Service Agreement, and cannot bind the WPCA with respect to any Service Agreement amendment or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Company shall be entitled to rely on the written directions of the General Manager.

(C) WPCA Approvals and Consents.

When this Service Agreement shall require any approval or consent by the WPCA to a Company submission, request or report, the approval or consent shall be given by the General Manager in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the WPCA with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Service Agreement, and except for requests, reports and submittals made by the Company that do not, by their terms or the terms of this Service Agreement, require a response or action, if the WPCA does not find a request, report or submittal acceptable, it shall provide written response to the Company describing its objections and the reasons therefor within 30 days' of the WPCA's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected and the Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the WPCA pursuant to some specific term of this Service Agreement shall be deemed acceptable to the WPCA if the WPCA shall not have objected thereto within 30 days of the receipt thereof.

(D) Notices

All notices required under Section 11 of this Agreement shall be sent as designated below, either by U.S. Mail, return receipt requested or by overnight delivery. The Company and the General Manager shall designate other forms of written notice in connection with the general administration of this Agreement, by mutual consent.

For the WPCA:

General Manager
Bridgeport Water Pollution Control Authority
695 Seaview Avenue
Bridgeport, CT 06607

With a copy to:

City of Bridgeport
Office of the City Attorney
999 Broad St.
Bridgeport, CT 06604

For the Company:

Richard Lavoie
Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, PA 19044

With a copy to:

Legal Department
Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, PA 19044

SECTION 14.4. INTELLECTUAL PROPERTY RIGHTS.

(A) Protection from Infringement.

The Company shall pay all royalties and license fees payable in connection with the performance of the Contract Services. The Company shall protect, and to the full extent of its liability under applicable law, indemnify, defend and hold harmless the WPCA, and any of the WPCA Indemnitees, from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent; trademark, copyright or trade secret relating to, or, for the performance of, the Contract Services or at its option, shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe. The Company shall not, however, be required to reimburse or, to the full extent of its liability under applicable law, indemnify any person for any Loss-and-Expense to the extent due to the gross negligence or willful misconduct of such person, the provisions of this Section shall survive termination of this Service Agreement.

(B) Intellectual Property Developed by the Company.

All intellectual property developed by the Company at or through the Use of the Managed Assets or otherwise in connection with the performance of the Contract Services shall be owned by the Company subject to the terms and conditions of this Section, and is hereby licensed to the WPCA on a nonexclusive cost free, perpetual basis for use by the WPCA and any successor operator of the Managed Assets (but, with respect to any successor operator, only in connection with the operation of the Managed Assets). Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as

proprietary information, trade secrets, or patents. The Company shall have an irrevocable, perpetual and unrestricted right to use such intellectual property at any installation where the Company is performing services similar to the Contract Services. Neither the WPCA nor the Company shall license, transfer or otherwise make available such intellectual property to any third party for remuneration except with the consent of the other, which consent may be conditioned Upon mutual agreement as to the sharing of any such remuneration.

SECTION 14.5. INTEREST ON OVERDUE OBLIGATIONS.

Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365/366-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 14.6. NEGOTIATED FIXED PRICE WORK.

(A) Monthly Base Service Fee Component.

The Monthly Base Service Fee Component has been fixed and agreed to by the parties based on the Company's proposal submitted in response to the RFP, and is not subject to Cost Substantiation.

(B) Negotiated Lump Sum Pricing of Work for which the WPCA is Financially Responsible.

This Service Agreement obligates the WPCA to pay for certain costs resulting from Uncontrollable Circumstances, WPCA Breach and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the WPCA will pay for such costs on a negotiated, lump sum basis, and that the lump sum price will be negotiated in advance, of the Company's performance of the work. For example, if a Change in Law occurs, as required under Section 12.2. (Uncontrollable Circumstances) the parties will assess the impact of the Change in, Law, take all appropriate mitigation steps, determine any necessary Capital Modifications and operating changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Company shall furnish the WPCA with all information reasonably required by the WPCA regarding the Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Company's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Company's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 14.7. COST SUBSTANTIATION.

(A) Cost Substantiation Generally.

The Company shall provide Cost Substantiation for the costs for which the WPCA is financially responsible hereunder, other than the Monthly Base Service Fee Component, and costs for which the parties have negotiated a lump sum price, all as provided in Section 14.6 (Negotiated Fixed Price Work). In incurring costs which are or may be subject to Cost Substantiation, the Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable and except with respect to costs of the Company to which the Service Fee applies, obtaining three (3) competing quotes or estimates), and shall enter into subcontracts on commercially reasonable terms and prices in light of the work to be performed and the WPCA's potential obligation to pay for it.

(B) Costs Requiring Cost Substantiation.

Cost Substantiation shall be provided as soon as reasonably practicable after the costs that require substantiation have been incurred by the Company. Examples of costs which require substantiation include (1) Corrective Maintenance, (2) work done on an emergency basis to respond to an Uncontrollable Circumstance, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work, and (3) work done as a Change Order authorized by the WPCA. Cost Substantiation shall also be required where the parties agree that the Company shall perform work on a cost-plus basis.

(C) Cost Substantiation Certificate.

Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Service Agreement under which such cost is properly chargeable to the WPCA, shall describe the competitive or other process utilized by the Company to obtain the fair market price, and shall state that such services and materials are reasonably required pursuant to this Service Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the WPCA and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work, (1) the amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes; (2) a statement of the equipment used and any rental payable therefor; (3) Company employee hours, duties, wages, salaries, benefits and assessments; and (4) Company profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The Company's entitlement to reimbursement of Cost Substantiated costs of the Company shall be subject to the limitations set forth in this Section.

(D) Technical Services.

Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and

scope to the Contract Services. The Company shall use commercially reasonable efforts to undertake such technical services.

[Remainder of page is blank; signature page to follow]

This Agreement is executed this _____ day of December, 2023 by the following:

THE WATER POLLUTION CONTROL AUTHORITY FOR THE CITY OF BRIDGEPORT

By _____
Lauren McBennett Mappa
General Manager

INFRAMARK, LLC

By _____
Richard Lavoie
Facility Manager

Summary Report	
Title	pdfDocs compareDocs Comparison Results
Date & Time	12/19/2023 10:03:51 AM
Comparison Time	3.49 seconds
compareDocs version	v5.1.600.2

Sources	
Original Document	WPCA RFP Attachment A - Agreement(11104342.1).docx
Modified Document	Execution Copy - WPCA Operator Agreement(15026645.2).docx

Comparison Statistics	
Insertions	88
Deletions	69
Changes	254
Moves	14
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	425

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	True
Include Comments	Word	False
Include Field Codes	Word	True
Flatten Field Codes	Word	True
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
Show Moves	Word	True
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	False
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print