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WASTEWATER TREATMENT SYSTEM  
OPERATION AND MAINTENANCE AGREEMENT

between

THE BOROUGH OF WASHINGTON, NEW JERSEY

and

VEOLIA WATER NORTH AMERICA  
OPERATING SERVICES, LLC

Dated

October 9, 2018

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WASTEWATER TREATMENT SYSTEM  
OPERATION AND MAINTENANCE AGREEMENT

THIS WASTEWATER TREATMENT SYSTEM OPERATION AND MAINTENANCE AGREEMENT is made and dated October 9, 2018 between the Borough of Washington, a body politic and corporate of the State of New Jersey (the “Borough”), and Veolia Water North America Operating Services, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Company”).

RECITALS

The Borough owns a wastewater treatment facility (the “Facility”) and sewer collection system (the “Collection System”) and together with the Facility (the “Wastewater System”) provides Borough citizens with an environmentally sound manner of treating wastewater.

The Borough desires to contract with a qualified and experienced operator to operate and maintain the Wastewater System for a period of at least 10 years.

Pursuant to the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-19 et seq. (the “Public-Private Contracting Act”), the Borough issued a Request For Proposals for Operation and Maintenance of the Borough’s Wastewater System, dated January 26, 2018, as amended by Addenda Nos. 1 and 2, inclusive (the “RFP”) seeking proposals from private companies and public authorities to, among other things, operate and maintain the Borough’s Wastewater System.

Notice of RFP availability was published in local and regional newspapers in accordance with the Act (NJSA 58:27-23).

Following review and evaluation of proposals, in accordance with the provisions of the RFP and the Public-Private Contracting Act, the Borough’s Project Team proceeded with negotiations with the Company for a Wastewater System Operation and Maintenance Agreement (the “Agreement”) based upon the proposal submitted by the Company.

The Borough’s Project Team and the Company have negotiated and agreed upon the terms and conditions of the Agreement.

Veolia North America, Inc. (the “Guarantor”) will unconditionally guarantee the obligations of the Company under the Agreement pursuant to a Guaranty Agreement executed concurrently herewith.

By Resolution #2018-112, dated August 14, 2018, the Borough authorized the execution and delivery of this Agreement and authorized the Borough Manager to make application to the Division of Local Government Services as required by the Public-Private Contracting Act and to make all filings and submissions, hold all hearings and records, print all reports, and do or cause to be done any and all other acts and things which may be required or advisable under the Act for approval of the Agreement.

The Borough has held a public hearing on the Agreement and provided due notice thereof, all in accordance with the Act (NJSA 58:27-24).

The Borough desires to receive, and the Company desires to provide, wastewater treatment services under the terms of this Agreement.

The Local Finance Board has granted unconditional approval of the Agreement as required by N.J.S.A. §58:27-25.

The execution and delivery of this Agreement by the Company has been duly authorized by all necessary corporate action.

It is, therefore, agreed as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

“Affiliate” means any person, corporation or other entity 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.

“Agreement” means this Wastewater System Agreement between the Company and the Borough, including the Appendices hereto, as the same may be amended or modified from time to time in accordance herewith.

“Annual Settlement Statement” has the meaning specified in Section 7.5 hereof.

“Appendix” means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

“Applicable Law” means any law, rule, code, standard, regulation, requirement, consent order, permit, guideline, ordinance, action, determination or order of, or Legal Entitlement issued or deemed to be issued by, any professional or industry organization or society or any Governmental Body having jurisdiction, applicable from time to time to any activities associated with the operation, maintenance, repair or replacement of the Facility, or any part of the Wastewater System, any other obligations of the parties under this Agreement or any other transaction or matter contemplated hereby (including, without limitation, any of the foregoing which concern health, safety, environmental protection and non-discrimination.

“Base Rate” means the interest rate announced from time to time by Citibank, N.A. or any successor thereto as its “base rate” based on a 365-day year.

“Billing Period” means each calendar month in each Contract Year, 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, (2) the last Billing Period shall end on the last day of the Term of this 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.

“Billing Statement” has the meaning specified in subsection 7.4(A) hereof.

“Biologically Toxic Substances” means any chemical, industrial, hazardous, toxic, corrosive or radioactive waste or substance, as defined by Applicable Law, contained in Influent, which alone or in combination with other substances, causes a material and adverse effect on the operation of the Wastewater System (including any substance or combination of substances contained in the Influent in a sufficiently high concentration and for a sufficient period of time so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the Influent required to meet the discharge requirements of the NJPDES Permit from time to time or the requirements of any other Applicable Law).

“BOD5” means 5-day biological oxygen demand.

“BOD Adjustment” has the meaning set forth in Appendix 9 hereto.

“Borough” means the Borough of Washington, New Jersey.

“Borough Breach” means (a) any breach or failure of compliance by the Borough with its obligations hereunder or (b) any negligent or willful misconduct by the Borough, its officials, agents, employees, representatives, independent contractors or subcontractors of any tier, in each case, that materially and adversely affects the Company’s performance or the Company’s rights or obligations under this Agreement.

“Borough Indemnified Parties” has the meaning specified in subsection 10.2(A) hereof.

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

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 et seq., as amended or superseded, and the regulations promulgated thereunder.

“Change in Law” means any of the following events or conditions having a material and adverse effect on the performance by a party of its obligations under this Agreement

(except for payment obligations), or on the operation, maintenance, repair or replacement of components of the Wastewater System:

(1) the adoption, promulgation, issuance, modification, amendment or written change in administrative or judicial interpretation on or after the Contract Date of any Applicable Law, unless such Applicable Law was on or prior to the Contract Date proposed and published in the Federal or New Jersey Registers or was duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in final form, to become effective without any further action;

(2) the order or judgment of any federal, State or local court, administrative agency or governmental officer or body, on or after 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 Borough, 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

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a term, condition or requirement which is more stringent or burdensome in connection with the issuance, renewal or failure of issuance or renewal on or after the Contract Date of, any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Company or of the Borough, 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 denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful misconduct or negligent action or omission or lack of reasonable diligence.

A “Change in Law” shall not include a change in any tax or similar law regarding taxes or similar charges. Notwithstanding any other provisions of this Agreement, the parties specifically acknowledge that (a) none of the conditions set forth in any Legal Entitlements issued with respect to the Wastewater System which are not more burdensome than those set forth in the Environmental Guarantee or other obligations contained herein, (b) no requirement of the NJDEP to modify the Facility as a result of an inability to stay in compliance with any Applicable Law, including any condition of a Legal Entitlement, which was identified or in effect on the Contract Date, and (c) no failure or delay of a Governmental Body to issue a Legal Entitlement due to the inadequacy or incompleteness of the Company’s design or submittal, will constitute a Change in Law. The parties further acknowledge that (i) any changes in Applicable Law regarding the frequency or timing of testing of Influent or Effluent may constitute a Change in Law for purposes of the recovery of increased costs, but shall not constitute a Change in Law with respect to the Company’s obligation to comply with Applicable Law and to meet any obligation under this Agreement and (ii) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law shall not constitute a Change in Law.

“Claims Statement” means a verified written statement of each and every alleged claim of any kind whatsoever of the Company (and all persons claiming by, through, or under the Company) in any way connected with, or arising out of the Operation Services or this Agreement, which sets forth in detail with respect to each such claim:

1. the total amount of the claim;
2. a specific and detailed description of all the Company’s grounds for the claim, relating the dollar amount claimed to the events giving rise to the claim;
3. an itemized and detailed statement of the dates, costs, and quantities of labor, material, and other elements included in the claim; and
4. all other information which the Company deems relevant to the alleged claim.

“Collection System” means the sewer lines, interceptors, pumping stations, force mains, and the rest of the collection system described in Appendix 1 hereto. For purposes of

maintenance, repair and replacement responsibilities, buried piping and conduits (yard piping) on the Facility Site shall be treated as though it is a component of the Collection System as set forth in Section 5.8.

“Commencement Date” means the date the Borough issues the notice-to-proceed after all of the Commencement Date Conditions set forth in Section 4.2 hereof shall be satisfied or waived, as agreed to in writing by the parties pursuant to subsection 4.3(A) hereof.

“Commencement Date Conditions” has the meaning set forth in Section 4.2 hereof.

“Company” means Veolia Water North America Operating Services, LLC and its successors or assigns permitted hereunder.

“Company Breach” means (a) any breach or failure of compliance by the Company with its obligations hereunder or (b) any negligent or willful misconduct by the Company, its officials, agents, employees, representatives or independent contractors or Subcontractors of any tier, in each case, that materially and adversely affects the Borough’s performance or the Borough’s rights or obligations under this Agreement.

“Company Indemnified Parties” has the meaning specified in subsection 10.2(B) hereof.

“Consulting Engineer” means a consulting engineer or firm of consulting engineers, having experience with respect to the design, construction, testing, operation and maintenance of wastewater treatment systems, which is designated as the Consulting Engineer for the Borough for the purposes of this Agreement from time to time in writing by the Borough.

“Consumer Price Index” has the meaning specified in Appendix 10 hereto.

“Contract Administration Memorandum” has the meaning set forth in subsection 10.3(B).

“Contract Date” means the date of delivery of this Agreement as executed by the parties hereto.

“Contract Year” means the calendar year commencing on January 1 in any year and ending on December 31 of that year; provided, however, that the first Contract Year shall

commence on the Commencement Date and shall end on December 31 of that year, and the last Contract Year shall commence on January 1 prior to the date this Agreement expires or is terminated, whichever is appropriate, and shall end on the last day of the Term of this Agreement or the effective date of any termination, whichever is appropriate. 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 365/366 days.

“Cost Substantiation” or “Cost Substantiated” means, with respect to any cost reasonably incurred or to be incurred by the Company which is directly or indirectly chargeable in whole or in part to the Borough hereunder, delivery to the Borough of a certificate signed by an authorized representative of the Company, setting forth the amount of such cost and the provisions of this Agreement under which such cost is properly chargeable to the Borough, stating that such cost is a fair market price for the service or materials supplied or to be supplied and that such services and materials are reasonably required pursuant to this Agreement, and 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 or will be paid or incurred. Such documentation shall include reasonably detailed information concerning (1) all Subcontracts, (2) the amount and character of materials furnished, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property taxes, (3) a statement of the equipment used and any rental payable therefor, (4) Company and Subcontractor worker hours, name of salaried worker of the Company or a Subcontractor of the first tier, job title, chargeout rates (which shall be the same as those included in Appendix 11 hereto), which rates shall include the general and administrative expenses set forth in Appendix 11, the work performed, and ratesheets for Subcontractors of the first tier for materials, labor and equipment, and (5) Company markup not to exceed the applicable levels set forth in Appendix 11 hereto. Any Cost Substantiation required with respect to costs reasonably incurred by the Borough which are directly or indirectly chargeable in whole or in part to the Company hereunder shall include similarly detailed information, and shall be certified by an authorized representative of the Borough.

“Design Influent” means Influent which meets the applicable Influent Design Parameters.

“Disposal Site” means either a sanitary landfill or other residuals or sludge disposal or management facility, selected by the Company subject to the Borough’s approval, which may be withheld in the Borough’s sole discretion, which (1) is operated in accordance with prudent industry practices (as applicable to waste disposal facilities disposing of such waste materials), (2) is located in the United States, (3) does not appear on any federal or State list of sites, such as but not limited to the National Priority List or the CERCLIS list under CERCLA, maintained for the purpose of designating landfills which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Wastes, and (4) is being operated at the time of disposal or delivery in accordance with Applicable Law as evidenced by the possession of applicable Legal Entitlements and the absence of any significant regulatory sanctions or any significant enforcement actions of record.

“Effluent” means discharged wastewater from the Facility.

“Effluent Requirements” means the most stringent of the requirements pertaining to the discharge of Effluent established by the Operating Standards.

“Encumbrances” means any lien, lease, mortgage, security interest, charge, judgment, judicial award or encumbrance with respect to the Wastewater System.

“Environmental Guarantee” means the Company’s guarantee that, during the Term of the Agreement, the Facilities and the Wastewater System as a whole will meet odor, noise, dust, air quality, traffic, run-off and other environmental requirements (including, but not limited to, Applicable Law including permit conditions), including the Odor Guarantee, as further described in Appendix 4 hereto.

“Environmental Performance Obligations” has the meaning specified in subsection 5.4(G) hereof.

“Event of Default” has the meaning specified in Sections 8.2 and 8.3 hereof.

“Excluded Infringement” has the meaning specified in Section 10.4 hereof.

“Exit Evaluation” has the meaning set forth in Section 3.3 hereof.

“Facility” means the wastewater treatment facility, including those structures, offices, roadways, appurtenant structures, landscaping facilities and equipment constructed or installed on the Facility and rolling stock used for the transportation or disposal of Sludge or

Non-Sludge Residuals. For purposes of maintenance, repair and replacement responsibilities, buried piping and conduits on the property of the Facility Site shall be treated as though it is a component of the Collection System as set forth in Section 5.8.

“Facility Equipment” means all of the manufactured equipment, property or assets, whether or not constituting personal property or fixtures, constituting part of the Facility, including pumps, bar screens, grit handling equipment, sludge handling equipment, chemical feed storage equipment, and tank covers.

“Facility Manager” has the meaning specified in Section 5.6 hereof.

“Facility Site” means the real property described in Appendix 1 hereto located in the Borough upon which the Facility is located.

“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 of any Legal Proceeding.

“Flow Adjustment” has the meaning specified in Appendix 9 hereto.

“Governmental Body” means any federal, State, borough, city, town or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body or any official thereof having jurisdiction with respect to any matter which is a subject of this Agreement.

“Guaranteed Maximum Electricity Utilization” has the meaning set forth in Appendix 19 hereto.

“Guarantor” means Veolia North America, Inc. and its successors and assigns permitted under the Guaranty Agreement.

“Guaranty Agreement” or “Guaranty” means the Guaranty Agreement to be entered into concurrently herewith from the Guarantor to the Borough in the form provided in Appendix 15 hereto, as the same may be amended from time to time in accordance therewith.

“Hazardous Substance” has the meaning given such term in CERCLA, the New Jersey Spill Compensation and Control Act and the regulations promulgated thereunder.

“Hazardous Waste” means (a) any waste which by reason of its composition or characteristics is defined or regulated as a hazardous waste, under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) N.J. Admin. Code, tit. 7, section 26.1 et seq.; (3) future additional or substitute federal, State or local laws pertaining to the identification, treatment, storage or disposal of hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

“Independent Engineer” means an engineer or firm of engineers having experience with respect to the design, construction, testing, operation and maintenance of wastewater treatment systems, which is selected by the parties for mediation purposes pursuant to Section 8.10 hereof.

“Influent” means all wastewater flowing into the headworks of the Facility.

“Influent Design Parameters” means those parameters set forth in Appendix 6.

“Initial Term” has the meaning set forth in Section 3.1 hereof.

“Insurance Requirement” means 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 Operation Period Insurance under this Agreement, as in effect during the term hereof.

“IPP” means the Borough’s industrial pretreatment program, including its rules, regulations and ordinances, established and maintained pursuant to 40 CFR Part 403, N.J.A.C. Section 7:14A-1 et seq. and the Borough’s Sewer Use Ordinance.

“IPP User” means those users of the Wastewater System that are required to comply with the Borough’s IPP, including BASF Corporation, Albea, the USEPA, and other users required by the Borough or Applicable Law to comply with the IPP in the future.

“Legal Entitlement” means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Wastewater

System or the performance of any obligation under this Agreement or the matters covered hereby.

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

“Letter of Credit” means a letter of credit obtained by the Company, in the form set forth in Appendix 16 pursuant to Section 9.3 hereof.

“Lien” means any and every lien against the Wastewater System or against any monies due or to become due from the Borough to the Company under this Agreement, for or on account of the Operation Services.

“Loss-and-Expense” means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, suit, charge, or tax, and including all Fees-And-Costs.

“Maintenance Plan” means the Company’s corrective, preventive and predictive maintenance plan and schedule, updated annually, to provide for prudent and preventive maintenance of the Wastewater System in accordance with Applicable Law, generally accepted industry standards, equipment manufacturer’s instructions, and operating and maintenance manuals so as to obtain, for each piece of equipment and for each component, a useful life that corresponds to or exceeds in duration industry standards and expectations. This shall include a major maintenance, repair and replacement plan as set forth in Appendix 7 and shall take into account aesthetic concerns, including keeping the Wastewater System in a clean and orderly condition, all as set forth more fully in this Agreement.

“Maintenance, Repair and Replacement Account” or “MRRA” means the separate bank account described in subsection 5.8(E) of this Agreement for funding all maintenance and repairs of the Collection System (other than cleaning and blockage removal and the maintenance, repair and replacement of the non-structural components of the pump stations).

“MGD” means million gallons per day.

“Minimum Financial Criteria” has the meaning set forth in Appendix 14 hereto.

“NJDCA” means the New Jersey Department of Community Affairs.

“NJDEP” or “DEP” means the Department of Environmental Protection of the State of New Jersey.

“NJPDES Permit” means the Final NJPDES Renewal Permit for Borough of Washington Wastewater Treatment Facility, NJPDES Permit No. NJ0021113, dated December 15, 2017, on file at the offices of the Borough Manager.

“Non-Design Influent” means Influent which is not Design Influent.

“Non-Sludge Residuals” means grit, scum and screenings from the Wastewater System, including clean outs of the Collection System.

“Notice to Proceed” has the meaning specified in Section 5.2 hereof.

“Odor Guarantee” means the Company’s guarantee that it shall use its best efforts to ensure that there shall be no detectable odors under any meteorological conditions at the property line of the Facility Site and the pumping stations, including making adjustments to its operating and maintenance practices (including using masking or neutralizing or oxidizing agents and alternative sludge storage and disposal practices) at the Company’s expense.

“Operating Assets” means all equipment, accessories, structures, items and appurtenances necessary for the Wastewater System to be complete and fully operational.

“Operating and Maintenance Charge” has the meaning set forth in subsection 7.1(B) hereof.

“Operating Standards” means the terms, conditions, requirements, methods, techniques, standards and practices of (1) Applicable Law in effect as of the Contract Date, (2) Prudent Industry Practices, (3) the Performance Guarantees, (4) the Operation and Maintenance Manual and the Maintenance Plan, (5) applicable equipment manufacturer’s specifications, (6) applicable Insurance Requirements, and (7) any other standard, term, condition or requirement provided in this Agreement to be observed by the Company.

“Operation and Maintenance Manual” has the meaning set forth in subsection 5.7(A) hereof.

“Operation Services” means everything required to be furnished and done for and relating to the Wastewater System by the Company pursuant to the Agreement subsequent to the

Commencement Date. Operation Services shall include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transfer, transportation, insurance, marketing, sales, delivery and other things and services of every kind whatsoever necessary for the full performance and completion of the Company's operation, maintenance, repair, replacement, treatment, and related obligations under this Agreement, and all of the Company's administrative, accounting, record-keeping, notification and similar responsibilities of every kind whatsoever under this Agreement pertaining to such obligations. A reference to "Operation Services" shall mean "any part and all of the Operation Services" unless the context otherwise requires.

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State, if applicable, or the Base Rate plus 1%, whichever is lower.

"Performance Guarantees" has the meaning set forth in Section 5.3 hereof.

"Performance Liquidated Damages Credit" has the meaning set forth in subsection 7.1(F) hereof, as applicable.

"Predictive and Major Maintenance Report" has the meaning set forth in Section 5.17(F).

"Preventive Maintenance" means those repetitive, routine or scheduled activities required or recommended by the Operating Standards, to maximize the service life of equipment, vehicles and the Wastewater System.

"Prudent Industry Practices" means those methods, techniques, standards and practices which, at the time they are to be employed hereunder and in light of the circumstances known or reasonably believed to exist at such time, are generally accepted as prudent in the municipal wastewater treatment industry as practiced in the northeast United States region.

"Public-Private Contracting Act" means the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. §58:27-20 et seq.

"Renewal Term" has the meaning specified in Section 3.1 hereof.

"Reporting Guarantee" has the meaning set forth in subsection 5.3(B) hereof.

"Required Insurance" has the meaning specified in Appendix 3 hereto.

“Resource Conservation and Recovery Act” or “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq., as amended or superseded.

“RFP” means the Borough of Washington, New Jersey, Request for Proposals for Operation and Maintenance of the Borough’s Wastewater System, issued January 26, 2018, as amended.

“Routine Maintenance” means ordinary and usual maintenance and care of grounds, buildings, roadways, walkways, support systems and other general maintenance activities, including but not limited to, mowing, trimming, cleaning, spot painting, janitorial duties, snow removal, trash removal, spot seeding, replacing landscaping bushes and flowers, and cleaning of walls, windows and piping.

“Service Coordinator” means the service coordinator for the Borough designated pursuant to subsection 5.6(B) hereof.

“Service Fee” has the meaning set forth in Section 7.1 hereof.

“Service Territory” means the Borough of Washington, New Jersey and all other territory in which customers are served by the Wastewater System during the Term hereof.

“Sewer Use Ordinance” means the Borough’s Sewer Use Ordinance, set forth in Appendix 12 hereto.

“Significant Non-Compliance Event” means a violation or exceedance described in the definition of “Significant Noncomplier” as defined in N.J.A.C. 7:14A-1.2.

“Sludge” means sludge generated at the Wastewater System through the operation thereof pursuant to the terms of this Agreement.

“Sludge Management Plan” means the Borough of Washington Sludge Management Plan approved by the NJDEP on June 11, 1997.

“State” means the State of New Jersey.

“Subcontract” means an agreement between the Company and a Subcontractor, or between two Subcontractors, 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, and includes every sub-subcontractor of whatever tier, for any portion of the Operating Services, whether for the furnishing of labor, materials, equipment, services, or otherwise.

“Term” has the meaning set forth in Section 3.1 hereof.

“Termination Date” has the meaning set forth in Section 8.4 hereof.

“TSS” means total suspended solids.

“TSS Adjustment” has the meaning specified in Appendix 9 hereto.

“Uncontrollable Circumstance” means any act, event or condition affecting the Wastewater System, the Borough, the Company, or any of the Borough’s subcontractors or any of the Company’s Subcontractors to the extent that it materially and adversely affects the ability of either party to perform any obligation under this Agreement (except for payment obligations) as long as such act, event or condition is beyond the reasonable control and is not a result of the willful misconduct or negligent action or omission or failure to exercise reasonable diligence (including a failure to mitigate) on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party.

(A) Inclusions. Subject to the foregoing, such acts or events may include, but shall not be limited to, the following:

(1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Wastewater System), landslide, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(2) a Change in Law;

(3) any failure of title to the Facility Site or any enforcement of any lien, charge or encumbrance on the Facility Site or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the

party relying thereon as a justification for not performing an obligation or complying with any condition required of such party under this Agreement;

(4) the receipt of Biologically Toxic Substances or Non-Design Influent (subject to the provisions in Appendix 17 hereto), not due to Company fault;

(5) violations of the IPP to the extent the Company demonstrates that it has administered and implemented the IPP in accordance with Applicable Law and the requirements of this Agreement; and

(6) strikes, work stoppages or labor disputes by employees of a person other than the party (or such party's Subcontractors or suppliers) relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement; and

(7) failure or delay of a Governmental Body to issue a Legal Entitlement for any reason other than due to the timeliness, inadequacy or incompleteness of the Company's design or submittal.

(B) Exclusions. Notwithstanding the foregoing, the following acts shall not constitute Uncontrollable Circumstances:

(1) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;

(2) financial conditions of the Company, the Guarantor, or any of their Affiliates or Subcontractors;

(3) union work rules which increase the Company's operating cost for the Wastewater System;

(4) any impact of prevailing wage laws on the Company's costs;

(5) the consequence of Company error, including any errors of Company Affiliates or Subcontractors;

(6) failure of the Company to secure applicable patents;

(7) failure of any Subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to except as otherwise expressly set forth in item 6 of paragraph (A) immediately above;

(8) all strikes, work stoppages or labor disputes except as otherwise expressly set forth in item 6 of paragraph (A) immediately above;

(9) reasonably anticipated weather conditions;

(10) power outages, unless emergency and back-up power is also not available due to an Uncontrollable Circumstance;

(11) equipment failure;

(12) blockages;

(13) overflows, unless due to the receipt of Non-Design Influent;

(14) failure or delay of a Governmental Body to issue a Legal Entitlement due to the inadequacy or incompleteness of the Company's design or submittal; and

(15) any act, event, circumstance or Change in Law occurring outside the United States.

“Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with the Effluent Requirements because of Uncontrollable Circumstances materially and adversely affecting the Company's ability to perform under this Agreement. An “Upset” does not include noncompliance to the extent caused by storm conditions (unless Non-Design Influent is received as a result of such storm conditions), or by operational error, improperly designed or constructed treatment facilities, inadequate treatment facilities, lack of maintenance, or careless or improper operation, each as determined by the NJDEP under N.J.A.C. 7:14-8.3(i).

“USEPA” or “EPA” means the United States Environmental Protection Agency.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, electricity, telephone, other telecommunications of every kind and sewer), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Wastewater System” means the Facility and the Collection System, including the pumping stations, owned by the Borough and used for the collection and conveyance of wastewater to the Facility for treatment, and including the real property upon which such structures and equipment is located. A reference to “Wastewater System” shall mean “any part and all of the Wastewater System” unless the context otherwise requires.

“Wastewater System Modification” means any improvement, alteration, addition or other modification to the Wastewater System. Wastewater System Modifications do not include any item of ordinary, extraordinary, minor or major maintenance, repair or replacement required to be undertaken by the Company pursuant to Article V hereof.

“Wastewater System Modification Costs” means the cost of any Wastewater System Modification which the Company reasonably incurs hereunder and proves by Cost Substantiation including, without limitation, expenditures for materials, equipment, labor, and services supplied by architects, engineers and Subcontractors, expenses related to managing and administering the Wastewater System Modification, and an allowance for overhead, profit and contingency as set forth in Appendix 11 hereto and any related interest or other financing costs.

SECTION 1.2. INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the Contract Date.

(B) Gender and Plurality. 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.

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

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of

reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement and nothing in this Agreement is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the Borough's RFP, the proposal of the Company submitted in response thereto, and any amendments or supplements to such request or to such proposal.

(F) Costs and Cost Substantiation. The Service Fee has been negotiated by the parties and fixed by the terms of this Agreement. Any other cost proposed or incurred by the Company which is directly or indirectly chargeable to the Borough in whole or in part hereunder shall be the fair market price for the good or service provided, or, if there is no market, shall be a just and reasonable price. The Company shall provide Cost Substantiation for all such other costs, except agreed upon fixed prices, invoiced to the Borough hereunder, and for all estimates and quotations furnished to the Borough hereunder for the purpose of negotiating a price for Wastewater System Modifications, additional operation services or other additional work necessitated on account of Uncontrollable Circumstances or Borough Breach.

(G) Liquidated Damages. This Agreement provides for the payment by the parties of liquidated damages in certain circumstances of nonperformance, breach and default. Each party agrees that the damaged party's actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstances not occurred. Except as otherwise specifically provided herein, such liquidated damages shall constitute the only remedy in such circumstances by the nonperforming, breaching or defaulting party, regardless of legal theory. Nothing in this subsection shall be construed to limit any remedies, including termination,

specifically provided for herein with respect to any nonperformance, breach or default by a party in all circumstances in which liquidated damages are not provided for.

(H) Actions Taken Pursuant to Agreement. The parties acknowledge that this Agreement sets forth procedures and intended results with respect to various circumstances which may arise during the Term hereof. Such circumstances include, without limitation, the issuance of permits with conditions at variance with the Environmental Guarantee; Changes in Law and other Uncontrollable Circumstances; Wastewater System Modifications; the preparation of operating plans and schedules; Wastewater System operational directives; and the assignment, transfer and renewal of this Agreement. Unless otherwise agreed to by the parties, any such correspondence, report, submittal, consent or other document or communication given pursuant hereto on account of such a circumstance shall be considered as between the parties to be an action taken pursuant to this Agreement and not an amendment hereto.

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

(J) Applicable Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New Jersey.

(K) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (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 Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this 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 Agreement shall be construed and enforced as if such invalid portion did not exist.

(L) Defined Terms. The definitions set forth in Section 1.1 hereof shall control in the event of any conflict with the definitions used in the recitals hereto.

(M) Days. Reference herein to “day” or “days”, shall mean a calendar day or calendar days, respectively, unless specifically noted otherwise.

(N) References to Treatment of Influent. The terms “treat,” “treated,” “treatment,” “treating” or any similar terms, when used with respect to Influent, shall mean and refer to the operation of the Wastewater System to receive and treat Influent and discharge Effluent, all in accordance with this Agreement.

(O) Prudent Industry Practices. Prudent Industry Practices shall be utilized hereunder, among other things, to implement and in no event displace, the other Operating Standards. In no event shall any evolution of Prudent Industry Practices relieve the Company of its obligations hereunder.

(P) Delivery of Documents in Digital Format. In this Agreement the Company is obligated to deliver reports, records, drawings, 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 Borough both in printed form (in the number of copies indicated) and in digital form. Electronic copies shall consist of computer readable data submitted in any standard interchange form to facilitate the administration and enforcement of this Agreement.

(Q) Reference to Including. Reference herein to the term “including” shall mean “including but not limited to”, except as otherwise expressly provided.

(R) Consent. Unless otherwise expressly stated in this Agreement (e.g., in a party’s “sole discretion”) all consents and approvals to be given by a party hereunder are not to be unreasonably withheld, conditioned or delayed.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE BOROUGH. The Borough represents and warrants that:

(A) Existence and Powers. The Borough is a body politic and corporate of the State of New Jersey validly existing under the Constitution and laws of the State, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. The Borough has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Borough and, subject to regulatory approvals required after the execution of this Agreement in accordance with Applicable Law, constitutes a legal, valid and binding obligation of the Borough, enforceable against the Borough in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by the Borough of this Agreement nor the performance by the Borough of its obligations hereunder nor the consummation by the Borough of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Borough or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Borough is a party or by which the Borough or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Borough's best knowledge, threatened against the Borough which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the Borough in connection with the transactions contemplated hereby, or which would materially and adversely

affect the performance by the Borough of its obligations hereunder or under any such other agreement or instrument.

(E) No Legal Prohibition. The Borough has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Borough of this Agreement and the transactions contemplated hereby.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants that:

(A) Existence and Powers. The Company is duly organized and validly existing as a corporation under the laws of Delaware, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. The Company has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Company and, subject to regulatory approvals required after the execution of this Agreement in accordance with Applicable Law, constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by the Company of this Agreement nor the performance by the Company of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Company, (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Company) 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 such judgment, decree, agreement or instrument or (3) will result in the creation or imposition of any lien, lease, mortgage, security interest, charge, judgment, judicial award or encumbrance of any nature whatsoever upon any of the properties or assets of the Company.

(D) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Company's best

knowledge, threatened against the Company which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Company of its obligations hereunder or by the Company under any such other agreement or instrument.

(E) Wastewater System Condition. Based on its Wastewater System investigations, inspections, records review and other inquiries 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 existing condition of the Wastewater System as it may affect the suitability of the Wastewater System for the purposes of this Agreement and the Company's operation, maintenance, repair or replacement costs or schedules, except to the extent that any such existing condition may be affected by an Uncontrollable Circumstance or Borough Breach.

(F) No Legal Prohibition. The Company has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Company of this Agreement and the transactions contemplated hereby.

(G) Information Supplied by the Company. The information supplied by the Company in all submittals made in response to the RFP and all post-proposal submittals is correct and complete in all material respects to the best of the Company's knowledge.

## ARTICLE III

### TERM

SECTION 3.1. EFFECTIVE DATE AND INITIAL TERM. This Agreement shall become effective on the Contract Date, and shall continue in effect for 10 years following the Commencement Date (the period from the Contract Date to the tenth anniversary of the Commencement Date constituting the “Initial Term”) or, if renewed as provided in Section 3.2, 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 VIII (Default, Termination for Cause and Dispute Resolution) hereof, in which event the Term shall be deemed to have ended as of the 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 Agreement, all other obligations of the parties hereunder shall terminate, except as provided in Sections 8.6 and 3.4.

SECTION 3.2. BOROUGH RENEWAL OPTION. This Agreement may be renewed and extended for up to one additional five-year renewal term in the Borough’s sole discretion and one subsequent five-year renewal term upon the mutual agreement of the Borough and the Company.

SECTION 3.3. EXIT EVALUATION. One year prior to the expiration (but not an earlier termination pursuant to Article VIII hereof) of the Initial Term and/or the Renewal Term, as applicable, and at the Borough’s discretion and cost, at any time after such applicable time (but during the Term), the Company will be subject to an exit evaluation (the “Exit Evaluation”) to show that all necessary maintenance, repair and replacements have been completed, that all management systems, records and information are satisfactorily maintained, that the Wastewater System is operating in compliance with Applicable Law and this Agreement, and that the buildings, grounds, equipment, vehicles and all other facilities are in good operating condition and appearance. The Exit Evaluation will include the review and inspection of all components and elements of the Wastewater System including, without limitation, records, reports, files, design records, software programs, contractual obligations including subcontracts, maintenance, operations, management systems including training, grounds, buildings,

equipment, instrumentation, and vehicles. The Exit Evaluation will also include thorough predictive maintenance evaluations twelve months prior and just prior to the end of the Initial Term and/or the Renewal Term, as applicable. The Borough reserves the right to use the predictive maintenance evaluations the Company is required to conduct each year and/or predictive maintenance evaluations that the Borough conducts at the Borough's expense. The Company shall be responsible for correcting, improving, repairing or replacing any component of the Wastewater System, records, software, equipment, instrumentation or other items or requirements found deficient, at its own expense, based on the Operating Standards and predictive maintenance evaluation findings; provided, however, that with respect to such predictive maintenance evaluation findings, the Company shall correct, improve, repair or replace only such items as such findings indicate are predicted to require correction, improvement, repair or replacement (a) within the Initial Term and/or the Renewal Term, as applicable, or (b) within a period, not to exceed 90 days, commencing within the Initial Term and/or the Renewal Term, as applicable. If the findings contained in any predictive maintenance evaluation conducted by the Company conflict with the findings in any predictive maintenance evaluation conducted by the Borough, or at the Borough's request, an additional predictive maintenance evaluation will be conducted by an independent expert selected by the parties. The findings of such expert shall be conclusive as to the matters with respect to which the predictive maintenance evaluation findings conflict. The fees and expenses of such expert shall be shared equally by the parties. Inventories of parts, tools, equipment, vehicles, chemicals, Sludge and other major consumable supplies will be taken by the Borough with the full cooperation of the Company just prior to the end of the Term. At the Borough's option, inventory items found to be deficient will be replaced, or equivalently adjusted for by payment by the Company as necessary. Exit inventory levels of Sludge shall be similar to those which are typical during the Term. Chemicals and other consumables shall be at a 45-day supply, subject to storage limitations, unless otherwise established by mutual agreement.

**SECTION 3.4. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION.** Notwithstanding any other provision of this Agreement, this Section and the following provisions hereof shall survive the expiration or any earlier termination of this Agreement:

- (1) Article II (Representations and Warranties);

- (2) Section 5.16 (Books and Records);
  - (3) Article VIII (Default, Termination for Cause, and Dispute Resolution), as applicable to the obligations of the parties following the Termination Date;
  - (4) Section 10.2 (Indemnification), including all of the indemnities referred to therein;
  - (5) Section 10.4 (Property Rights);
  - (6) Appendix 3 (Required Insurance);
  - (7) All provisions of this Agreement with respect to payment obligations of the Company or the Borough accrued prior to the Termination Date; and
  - (8) Any other provision of this Agreement providing for survival by its express terms;
- together with any provisions necessary to give effect to the above provisions.

## ARTICLE IV

### TRANSITION PERIOD

#### SECTION 4.1. COMPANY TRANSITION PERIOD RESPONSIBILITIES.

(A) Obligation to Proceed. The Company shall satisfy the following Company responsibilities as soon as practicable after the Contract Date, each of which shall be a condition precedent to the occurrence of the Commencement Date.

(1) Letter of Credit. The Company shall obtain and deliver to the Borough the Letter of Credit in accordance with Section 9.3. The Letter of Credit shall be in the form set forth in Appendix 16.

(2) Safety and Security Plan. The Company shall submit, subject to Borough review, an updated Safety and Security Plan.

(3) Operation and Maintenance Manual. The Company shall submit an updated Operation and Maintenance Manual.

(4) Contact Information. The Company shall submit to the Borough the contact information specified in subsection 5.6(B).

(5) Required Insurance. The Company shall submit to the Borough certificates of insurance naming the Borough as an “additional insured” for all Required Insurance specified in Appendix 3.

(6) 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 effect upon their businesses or their ability to perform their respective obligations under this Agreement or the Guaranty.

#### SECTION 4.2. COMMENCEMENT DATE CONDITIONS.

(A) Commencement Date Conditions Defined. The obligations of the Company and the Borough to proceed with their respective obligations hereunder regarding Operation Services shall not commence until all of the Company’s Transition Period

Responsibilities, set forth in Section 4.1, have been achieved. In addition, the Borough shall have the right to postpone the Commencement Date until all of the following conditions have been achieved, which together with the achievement of all of the Company's obligations under Section 4.1, shall constitute the "Commencement Date Conditions."

(1) Legal Entitlements. All Legal Entitlements required for the commencement of the Operation 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 Wastewater System shall have been conducted as required by Section 5.15, and the parties shall have agreed on such inventory and condition assessment for purposes of 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 Appendix hereto, that is executed and delivered in 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 which: (a) challenges, or might challenge, directly or indirectly, (i) the authorization, execution, delivery, validity or enforceability of this Agreement, or (ii) the interest of the Borough in the Wastewater System; or (b) seeks to enjoin or restrict the use of the Wastewater System in the manner or for the purposes contemplated by this Agreement.

(5) No Change in Law Affecting Agreement. No Change in Law shall have occurred after the Contract Date and before the Commencement Date that would make the authorization, execution, delivery, validity, enforceability or performance of this Agreement a violation of Applicable Law.

(B) Commencement Date Conditions for which Both Parties Have Responsibility. The Borough 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), (4) and (5) 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 set forth in Section 4.1 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.

#### SECTION 4.3. CLOSING THE TRANSITION PERIOD.

(A) Scheduled Commencement Date. The Company shall give the Borough prompt notice when each Commencement Date Condition has been achieved. Upon the satisfaction or waiver by the Borough of all of such Commencement Date Conditions, the parties shall hold a formal closing on a date and at a location determined by the Borough (such formal closing may be held by telephone at the election of the Borough) acknowledging such satisfaction, and delivering copies of all relevant documents. The parties shall use good faith efforts to satisfy all Commencement Date Conditions as soon as reasonably practicable following the Contract Date. 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. The Borough shall issue a notice-to-proceed to the Company upon satisfaction of the Commencement Date Conditions setting forth the date on which the Company shall commence Operation Services (the “Commencement Date”).

(B) Event of Default. If by the 30th day following the Contract Date, the Commencement Date Conditions have not been satisfied and such failure is due to a Company Breach or other Company fault, such failure shall constitute an Event of Default on the part of

the Company for which the Borough may terminate this Agreement without any requirement of notice or cure opportunity.

## ARTICLE V

### WASTEWATER SYSTEM OPERATION AND PERFORMANCE

#### SECTION 5.1. WASTEWATER SYSTEM GENERALLY.

(A) Reliance. The Company acknowledges that the Borough, in meeting the wastewater treatment requirements of the Service Territory, in providing an essential public service, and in complying with Applicable Law, will rely on the performance by the Company of its obligations hereunder.

(B) Limitations on Company Rights. The Company shall not treat wastewater other than Influent flowing to the Wastewater System from the Service Territory (or septage, if approved by the Borough) and shall not use the Wastewater System for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than the Borough and its customers in the Service Territory. The Company shall not impose a fee or charge on any person for the treatment of Influent. The only compensation to the Company for providing the Operation Services shall be the Service Fee payable by the Borough hereunder.

(C) Curtailments and Shutdowns. If the operation of the Wastewater System is temporarily reduced, curtailed or shut down for any reason so that the Company is unable to collect, receive and treat any quantity of Influent or discharge Effluent in accordance herewith, the Company shall at the earliest possible time advise the Borough as to the nature and probable duration thereof and the expected effect thereof on the operation of the Wastewater System.

(D) Borough Access. The Borough and its officials and representatives shall have access to the Wastewater System at all times, without notice, including nights, weekends and holidays. All visitors shall comply with the Company's reasonable safety policies for visitors.

SECTION 5.2. OPERATION GENERALLY. Commencing on the Commencement Date, the Company, shall operate, maintain, manage, repair and replace the Wastewater System and perform all other Operation Services under this Agreement in accordance with the Operating Standards. The Company will be responsible for providing all vehicles and rolling stock necessary to perform the Operating Services, provided, however, that

the Borough will make available to the Company certain vehicles and rolling stock as described in Appendix 1 in “as is” condition.

SECTION 5.3. PERFORMANCE GUARANTEES.

(A) Effluent Guarantee. The Company shall operate the Wastewater System on a continuous 24-hours per day, 7 days per week basis so as to receive and treat all Influent flowing to the Facility and discharge Effluent in accordance with Applicable Law (the “Effluent Guarantee”).

(B) Reporting Guarantee. The Company shall complete and submit all reports required under this Agreement in the manner and at the time required hereby.

(C) Sludge and Non-Sludge Residuals Guarantee. The Company shall transport and dispose of, or cause to be transported and disposed of, all Sludge and Non-Sludge Residuals in accordance with the terms and conditions set forth in Section 5.21 hereof.

(D) Environmental Guarantee. The Company shall comply with the Environmental Guarantee set forth in Appendix 4 hereto.

(E) Emergency Response Guarantee. The Company shall promptly respond to all threats to the public health, safety or welfare or to property caused by or related to the Wastewater System.

(F) Performance Guarantees. The obligations of the Company under this Section shall constitute the “Performance Guarantees” hereunder.

SECTION 5.4. NONCOMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Compliance and Remedies. Commencing on the Commencement Date, the Company shall at all times comply with the Performance Guarantees, except to the extent excused by Uncontrollable Circumstances or Borough Breach. If the Company fails to comply with any Performance Guarantee, subject to the provisions of subsections 5.4(B) and 5.4(C) hereof, the Company shall at its own cost and expense, without relief under any other Performance Guarantee under this Agreement, (1) promptly notify the Borough of any such noncompliance, (2) promptly provide the Borough with copies of any notices sent to or received from the USEPA, the NJDEP or any other Governmental Body having regulatory jurisdiction

with respect to any violations of Applicable Law, (3) pay any applicable liquidated damages provided for herein, and any other resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom, and (4) take any action (including without limitation making all repairs, replacements and operating changes) necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrence of noncompliance with such Performance Guarantee. Such obligations are the “Performance Obligations.”

(B) Conditions to Performance Guarantee Relief. The Company shall be relieved of its obligation to comply with a Performance Guarantee to the extent and for any period during which the operation of the Wastewater System is affected by the occurrence of an Uncontrollable Circumstance or Borough Breach. Should any such circumstances occur, the Company shall nonetheless (1) in accordance with the Operating Standards, promptly mitigate any noncompliance with such Performance Guarantee and, subject to the provisions of this Agreement, restore Facility performance to comply with this Agreement as rapidly as practicable, and (2) promptly, and in any case within 24 hours, advise the Borough upon becoming aware of such circumstances and the Company’s planned course of action. In addition to such obligations, the Company shall not be entitled to relief from the Effluent Guarantee due to an Upset unless it affirmatively demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) an Upset occurred and that it can identify and demonstrate an Uncontrollable Circumstance as the cause of the Upset;
- (2) the Wastewater System was at the time of the Upset being properly operated;
- (3) the Company submitted notice of an Upset as required under Applicable Law and submitted any appropriate affirmative defenses, and
- (4) the Company complied with any remedial measures required of the Company or the Borough under Applicable Law.

(C) Receipt of Non-Design Influent. If Non-Design Influent is received at the Facility which causes a non-compliance of a Performance Guarantee, the Company shall be

entitled to relief from appropriate Performance Guarantees except to the extent such receipt is due to Company Breach, including, without limitation, failure to administer the IPP in accordance with this Agreement. In the event Non-Design Influent is received, the Company shall:

- (a) use its best efforts consistent with best industry practice to return the Effluent to full compliance with the Effluent Requirements as soon as practicable (but in no event later than required by Applicable Law), and to limit harm to the Wastewater System and to third parties;
- (b) as soon as possible, but no later than 8 hours from the time noticed, notify the Borough of such an occurrence and of the planned course of action;
- (c) identify the source of the violation of the IPP, if applicable; and
- (d) notify the Borough of the identity of the violator and cooperate with the Borough in imposing applicable fines and penalties, which shall be retained by the Borough.

To the extent incurred due to an Uncontrollable Circumstance or Borough Breach, the Company's Cost Substantiated costs of complying with this subsection, beyond those which would ordinarily have been incurred in connection with the operation of the Wastewater System or the administration of the IPP, shall be reimbursed by the Borough.

(D) Applicability of Performance Guarantees. The Performance Guarantees shall apply, except to the extent excused by Uncontrollable Circumstances or Borough Breach, without any allowance for scheduled downtime or Wastewater System repair, maintenance or replacement, which the Company acknowledges has been factored into the Performance Guarantees.

(E) Liquidated Damages for Discharge of Non-Complying Effluent. The Company shall pay the Borough liquidated damages for each occurrence as set forth below to the extent such occurrence did not result from Uncontrollable Circumstances or Borough Breach: (1) for each violation of an Effluent Requirement for non-hazardous pollutants (as defined in N.J.A.C. 7:12A-1.2), \$200; (2) for each "serious violation" (as defined in N.J.A.C. 7:14A-1.2) of an Effluent Requirement for non-hazardous pollutants, \$400; (3) for each violation of an Effluent

Requirement for hazardous pollutants (as defined in N.J.A.C. 7:14A-1.2), \$500; (4) for each “serious violation” of an Effluent Requirement for hazardous pollutants, \$1000; (5) \$1,000 for each overflow resulting from the malfunction of a pump station or any other treatment facility; and (6) \$2,500 for (a) each pass-through of pollutants which causes, or the DEP determines or alleges has the potential to cause, a water quality problem (e.g. fish kills, oil sheens) or health problems (e.g. beach closings, fishing bans, or other restrictions of beneficial uses), and (b) each unauthorized treatment plant bypass or overflow.

All dollar amounts in this subsection shall be adjusted in accordance with the Consumer Price Index at the beginning of each Contract Year.

(F) Liquidated Damages for Failure to Comply with Reporting Guarantee. In the event the Company fails to comply with the Reporting Guarantee, the Company shall, in addition to taking the actions set forth in subsection (A) of this Section, pay to the Borough as liquidated damages an amount equal to \$500 for each failure to comply with the Reporting Guarantee..

(G) Performance Obligations for Failure to Comply with Environmental Guarantee. The Company shall do all things necessary to comply with the Environmental Guarantee and shall immediately respond to and properly investigate all odor complaints and shall use its best efforts to modify its operation and maintenance practices in response to odor complaints about the Wastewater System including, without limitation, the application of neutralizing or masking agents or other chemicals to eliminate odors, or the implementation of alternative Sludge treatment and storage procedures at its expense (the “Environmental Performance Obligations”).

(H) Change in Law Affecting Effluent. The Company shall comply with all requirements of Applicable Law and this Agreement in the collection, receipt and treatment of Influent and the discharge of Effluent. The parties acknowledge that a Change in Law may affect Effluent standards or Wastewater System equipment, processes or operations. In the event of any such Change in Law the Company shall not be entitled to any relief or additional compensation (subject to Cost Substantiation) hereunder unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Effluent characteristic or parameter which is more stringent or burdensome to comply with than the

Operating Standards applicable to such characteristic or parameter, and (2) the Company is unable, after taking all mitigation measures required hereunder with respect to such a Change in Law, to avoid the necessity for such relief or additional compensation.

SECTION 5.5. TESTING AND METERING.

(A) Testing. The Company shall conduct all tests of Influent and Effluent and other emissions required under the Operating Standards. Such tests shall be made at State certified laboratories or at the on-site laboratory, as described in this Section, and shall be conducted at the Company's sole cost and expense. The Company shall conduct, at its own expense, all regulatory monitoring, sampling and analysis and shall prepare and submit all regulatory reports and correspondence with regulatory agencies. The Company shall also develop and undertake a regular sampling and monitoring program for the purpose of process control and optimization, detection of Non-Design Influent and detection of Biologically Toxic Substances including the daily monitoring of the mixed liquor biological activity/health and Influent TSS, BOD5 or COD5, PO4, NH3 and Total Fe.

(B) Laboratory. The Company, at its own expense, shall obtain a license and, as needed, certifications to operate and maintain an environmental laboratory including the purchase of equipment, instrumentation and supplies, disposal of wastes, and the implementation of a computerized laboratory information management system that includes sample tracking and QA/QC. The laboratory shall support the operation of the Facilities and the IPP, and shall conduct, at a minimum, those certified analytical tests required in connection with periodic regulatory reporting, including pH, temperature, chlorine residual (if needed), TSS, and COD5 as a substitute for BOD5 for Influent analysis. The Company may subcontract certified laboratory testing. The Company may conduct non-certified analysis at its discretion. The Facility Manager (as defined in Section 5.6 below) and the certified employee who conducted the test and recorded the data into the laboratory notebook shall review and, if found satisfactory, sign every laboratory notebook page. The Company shall also record the chain of custody for certified analytical tests conducted in the laboratory by Company personnel, which shall be acknowledged and signed by the Facility Manager. Each full time employee who operates the Facility shall become certified to conduct the periodic analytical tests required for regulatory reporting.

(C) Treatment and Supply Data, Metering and Records. The Borough shall have reasonable access to all Wastewater System meters and operating data. All meters, instruments, controls and recorders at the Wastewater System shall be calibrated to the accuracy required by, and shall be operated and maintained in accordance with the Operating Standards. To the extent such meters, instruments, controls and recorders are incapacitated or are being tested, the Company shall make reasonable estimates of usage, which shall with the Borough's approval be used as the basis for measurements during the outage. The Borough shall have the right to monitor, inspect and test all Wastewater System meters, instruments, controls and recorders at any time and for any purpose, provided that such action does not interfere with the Company's ordinary operations. The Company shall keep, and make available for Borough inspection, appropriate operation and maintenance logs, including a separate log for equipment maintenance, in accordance with the Operating Standards.

#### SECTION 5.6. FACILITY MANAGER.

(A) Appointment Procedures. The Company shall train the system manager (the "Facility Manager") and other necessary operating staff of the Wastewater System at its expense and in accordance with Section 5.9 hereof. The Facility Manager shall be hired prior to the Commencement Date. The Facility Manager shall be appropriately trained and experienced in the management and operation of wastewater treatment plants and systems including, without limitation, being certified to operate wastewater treatment systems in accordance with Applicable Law, and shall be appropriately familiar with the day-to-day operation, maintenance, repair and replacement activities of the Wastewater System so as to knowledgeably interact and communicate with the Borough regarding the Wastewater System and to perform and oversee the performance of the Operating Services.

(B) Communications. The Company shall inform the Borough of the telephone and fax numbers and other means by which the Facility Manager may be contacted at the Facility, together with the emergency number at which a responsible Company official can be contacted in the event of an emergency. The Borough shall furnish to the Company comparable communications information with respect to its service coordinator, who shall coordinate all service matters arising pursuant to this Agreement for the Borough (the "Service Coordinator"). The Company and the Guarantor shall also designate from time to time and

inform the Borough of the identity of officials of the Company and the Guarantor with senior supervisory responsibility for the performance of this Agreement (the “Senior Supervisors”), and of the telephone and fax numbers and other means by which such person may be contacted. The Facility Manager shall coordinate all service matters arising pursuant to this Agreement for the Company and shall attend all meetings with the Borough which the Borough may request from time to time to review operational, performance and planning matters arising with respect to this Agreement. The Senior Supervisors shall be made available for consultation regarding all matters related to this Agreement, when reasonably requested by the Borough, and shall cooperate with the Borough in any reviews of the performance of the Facility Manager, including giving full consideration to any issues raised by the Borough in conducting such performance reviews.

SECTION 5.7. OPERATION AND MAINTENANCE MANUAL.

(A) Development, Review and Finalization. The Company shall provide to the Borough a maintenance plan (the “Maintenance Plan”) and an updated operation and maintenance manual (the “Operation and Maintenance Manual”) in accordance with this section. The Company shall provide to the Borough three copies of (1) a draft updated Operation and Maintenance Manual for the Wastewater System within 90 days following the Contract Date for review and comment, (2) a final Operation and Maintenance Manual within 30 days following the receipt of Borough comment, (3) a Maintenance Plan for the Facility at least 30 days prior to the Commencement Date. The Maintenance Plans and the Operation and Maintenance Manuals shall be consistent with the terms and provisions of this Agreement, shall contain a detailed description of the means and methods of properly operating the Wastewater System, and shall document predictive and preventive maintenance procedures, practices and schedules. The Operation and Maintenance Manual shall also address all aspects of process control and unit process operation including start-up, shutdown, troubleshooting and safety, Upset recovery, and mitigative and corrective procedures for reasonably anticipated Uncontrollable Circumstances, for the presence of foaming or Biologically Toxic Substances and for the receipt and treatment of Non-Design Influent. The Company shall review and discuss in good faith with the Borough any aspect of the draft and final Operation and Maintenance Manual and the Maintenance Plan. Neither the review of or comment upon, nor the failure of the Borough to comment upon, the Operation and Maintenance Manual and the Maintenance Plan shall relieve the Company of any

of its responsibilities under this Agreement, be deemed to constitute a representation by the Borough that operating the Wastewater System pursuant to the Operation and Maintenance Manual and the Maintenance Plan will cause the Wastewater System to be in compliance with this Agreement or Applicable Law, or impose any liability upon the Borough.

(B) Compliance and Upgrades. Unless otherwise provided herein, the Company shall bear all costs and expenses of preparing the updated Operation and Maintenance Manual and the Maintenance Plan. The Company shall keep the Operation and Maintenance Manual and the Maintenance Plan current and shall supply the Borough with any updates, supplements, revisions or other changes thereto which are required due to the design, construction and installation of all Wastewater System Modifications and consistent with the procedures applicable to the initial Operation and Maintenance Manual and the Maintenance Plan.

(C) Delivery of Manual on Termination. If this Agreement is terminated due to an Event of Default by the Company, the Company shall deliver to the Borough the current Operation and Maintenance Manual and Maintenance Plan for its use in conjunction with subsequent operation of the Facility.

(D) Emergency Response Manual. The Company shall prepare and deliver to the Borough, prior to the Commencement Date, and regularly update (and provide such updates to the Borough), an emergency response manual, consistent with the Operating Standards, local or regional emergency response plans and the requirements of emergency response institutions, relating to fire, weather, environmental, health, safety, and other potential emergency conditions. The emergency response manual shall set forth appropriate notifications to be made to all Governmental Bodies having jurisdiction with respect to the emergency, and appropriate actions to be taken to effectively handle any such emergency. The emergency response manual shall include concise, easy-to-read flow charts of the emergency notification process with names and phone numbers, including one chart to address public notification and a second chart to address notification within the Company. The Company shall update such flow charts as appropriate and provide copies of updated charts with the next monthly report given to the Borough. The emergency response manual shall include response actions and standard operating procedures. The Company shall maintain an on-call system for its employees and, to the extent necessary,

other qualified, trained licensed operators that live in proximity of the Borough in case of problems or emergencies, including for weekends and holidays. The Company shall maintain an emergency notification phone number that is staffed 24 hours per day, every day, for contacting an operations supervisor who is known to be available (on call) for emergency support specifically for the Borough's Wastewater System. The Borough shall reimburse the Company for any incremental increased costs, subject to Cost Substantiation, due to an emergency caused by an Uncontrollable Circumstance.

SECTION 5.8. MAINTENANCE, REPAIR AND REPLACEMENT.

(A) Company Responsibility. The Company shall maintain, repair and replace the Wastewater System throughout the Term hereof in accordance with the Operating Standards and Appendix 7 hereto and shall keep the Wastewater System in good working order and good repair. Such obligations shall be performed at the Company's cost and expense, subject to the following provisions. The Company, at its own expense, will be responsible for undertaking, managing and completing all maintenance, repairs and replacements for the Facility and equipment, (except that while the Company shall be responsible for maintenance and repair, and the cost thereof, of the emergency generator, it shall not be responsible for the cost of replacement of such generator unless such replacement is due to the improper maintenance by the Company) instrumentation and other non-structural components of the pump stations during the Term, including as required by the results of the Exit Evaluation. The Company, at its own expense, will be responsible for undertaking, managing and completing all routine and non-routine cleaning and blockage removal from the yard piping, collection mains and pump stations. The Company will also be responsible for undertaking, managing and completing all other maintenance and repair of the Collection System (other than cleaning and blockage removal as stated above and the maintenance, repairs and replacements of the non-structural components of the pump stations), but such costs, for events in excess of \$500, shall be paid to the Company through the MRRA, as further described in subsection (E) of this Section. The Borough retains responsibility for sewer connections and collection main replacement and extension. At the end of each Contract Year, the Company shall undertake, manage and complete, at its own expense, a thorough predictive maintenance evaluation for the Facility and pump stations. No such maintenance, repair or replacement performed shall constitute a Wastewater System Modification for which the Borough shall be financially responsible hereunder. The Borough

shall have the right to conduct inspections and an annual audit and full day walk-through at the Borough's sole expense and risk at any time in order to assure that the Wastewater System is being properly maintained, repaired and replaced in accordance with this Agreement.

(B) Substantive Compliance with Maintenance Repair and Replacement Plan.

The maintenance, repair and replacement plan set forth in Appendix 7 hereto contains the basic principles under which the Company shall carry out its maintenance, repair and replacement program required by this Section. The Company shall make and complete all maintenance, repairs and replacements to the Wastewater System which are necessary to achieve such standard of repair and replacement by, among other things, performing all such listed activities within the timeframe indicated, as applicable. The parties acknowledge that, in light of the long term nature of the Agreement and the practical limitations on predicting with specificity the useful life of any particular asset, the Company shall have the right from time to time, except as otherwise set forth in subsection (G) below, to alter such maintenance, repair and replacement plan provided that such alteration is in accordance with Prudent Industry Practice and is consistent with the Operating Standards. The Borough shall have the right at any time to review such plan and any alterations and the Company shall duly consider any comments by the Borough concerning such plan and alterations.

(C) Prevention and Repair of Damage to the Wastewater System.

(1) Obligation to Protect. During the Operation Period the Company shall use care and diligence consistent with the Operating Standards to protect the Wastewater System from damage or destruction.

(2) Obligation to Rebuild. In the event the Wastewater System is damaged or destroyed from any cause, in whole or in part, the Company in all circumstances (except as otherwise provided in item (7) below) shall repair, replace and restore the Wastewater System in accordance with the provisions of this subsection. Insurance deductibles and costs in excess of available insurance proceeds shall be borne as follows:

(a) Company Breach. If due to Company Breach the Wastewater System is damaged or destroyed in whole or in part, the Company shall bear the deductible and any costs of repair, replacement or restoration in excess of Required Insurance proceeds paid. If the Required Insurance has been canceled

due to Borough Breach, or Required Insurance proceeds are not available for repair, restoration or replacement due to actions or failures to act of the Borough, then the Company shall have no obligation to rebuild, replace or restore.

(b) Borough Breach. If due to Borough Breach the Wastewater System is damaged or destroyed in whole or in part, the Borough shall bear the deductible and any costs of repair, replacement or restoration in excess of Required Insurance proceeds made available to the Company for such repair, replacement or restoration. If the Required Insurance has been canceled due to Company Breach, or Required Insurance proceeds are not available for repair, restoration or replacement due to actions or failures to act of the Company, the Borough shall be relieved of its payment obligations under this paragraph (b) to the extent such proceeds would otherwise have been available for such repair, replacement or restoration and the Company shall be responsible for the payment of such costs.

(c) Uncontrollable Circumstances. If due to Uncontrollable Circumstances the Wastewater System is damaged or destroyed in whole or in part, the Borough shall bear the deductible and any costs of repair, replacement or restoration in excess of Required Insurance proceeds made available to the Company for such repair, replacement or restoration. If the Required Insurance has been canceled due to Company Breach, or Required Insurance proceeds are not available for repair, restoration or replacement due to actions or failures to act of the Company, the Borough shall be relieved of its payment obligations under this paragraph (c) to the extent such proceeds would otherwise have been available for such repair, replacement or restoration and the Company shall be responsible for the payment of such costs.

(3) Availability of Proceeds of Insurance. All proceeds of any applicable Required Insurance shall be paid directly to the Borough and made available to the Company upon proper and approved requisition for the repair, replacement or restoration of the Wastewater System.

(4) Borough Payment of Costs Not Covered by Insurance. In the event any amounts are payable by the Borough to the Company for costs of repair or replacement of damage or destruction in excess of available Required Insurance proceeds, such amounts shall be paid on a percent completion basis.

(5) Standard of Repair. In those circumstances when the Company is obligated to repair, replace or restore any damage to or destruction of the Wastewater System, the Company shall do so in accordance with the Operating Standards, to at least the character and condition thereof existing immediately prior to the damage or destruction.

(6) Notices. The Company shall notify the Borough and the applicable providers of the Required Insurance of any damage or destruction to the Wastewater System, or significant accident involving personnel, occurring during the Operation Period promptly upon learning of such damage, destruction or accident, and as soon as practicable thereafter (but in no event later than 72 hours) shall submit a full report to the Borough. Such report shall be updated on a weekly basis and upon culmination of all tests, analyses and reviews, a final report incorporating all of the tests, analyses and reviews and the findings thereof shall be submitted to the Borough. The Company shall also submit to the Borough within 72 hours copies of all accident and other reports filed by the Company with, or given to the Company by, any insurance company, adjuster or Governmental Body respecting its operations thereunder. The Borough shall have the right to monitor, review and inspect the performance of the repair, replacement and restoration work by the Company.

(7) Damage to the Wastewater System. Notwithstanding anything to the contrary in this subsection 5.8(C), in the event of damage to the Wastewater System, the Company shall provide the Borough with a proposal to repair the damage, including the means and methods, schedule and lump sum price. If the Borough and the Company are unable to agree on such repair work, the Borough shall have the option to have such work performed by a third party or to have the Company perform such work on a time and materials basis subject to a guaranteed maximum price.

(D) Insurance and Other Third Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered by the Company from any insurer providing the Required Insurance, or from another third party, the Company shall exercise with due diligence such rights as it may have to effect such recovery. The Company shall give prompt written notice to the Borough of the receipt of any such recovery. The Company shall keep the Borough timely informed, including providing material documentation, regarding the status and processing of claims for recovery under the Required Insurance, shall afford the Borough a reasonable opportunity to participate in all conferences, negotiations and litigation, regarding insurance claims, and shall prosecute or settle upon reasonable and appropriate terms claims for Borough recovery thereunder with the same diligence as claims for Company recovery.

(E) MRRA. In the event the Company is eligible to receive funds from the MRRA pursuant to subsection 5.8(A) hereof, such amounts shall be available from the MRRA only upon prior authorization of the Borough, except in the case of an emergency, and shall be Cost Substantiated. In connection with emergencies, the Company shall notify the Borough of the nature and cost of the expense by the end of the next business day following the end of the emergency condition. The Company, on behalf of the Borough, shall maintain the MRRA as a separate bank account to which both parties shall have the right to remove or add funds on their singular signature. The account shall earn a competitive interest rate. The Company, as part of the monthly report required under Section 5.17 hereof, shall include an itemized accounting of the MRRA and all MRRA expenditures or Encumbrances that occurred during the applicable Billing Period. For each expenditure item over \$50, the Company shall list the name of the item, a description of the item, the name and city/state location of the vendor, the vendor's and the Company's purchase order numbers, and the amount of the expenditure. For items under \$50, the Company shall include the name of the item, a description of the item, the vendor's name and city/state location, and the amount of the expenditure. The monthly report shall also include a copy of the MRRA bank account's monthly statement, the total sum of MRRA expenditures year-to-date, the MRRA allowance for the year, the amount of the MRRA allowance remaining, and a forecast of year-end actual MRRA expenditures. The Company shall provide additional MRRA expense justification and detail as requested by the Borough in connection with individual MRRA items or monthly reports. At the end of the Term, all unspent MRRA funds

shall revert to the Borough. If justified and approved MRRA expenditures exceed the MRRA allowance, the Borough shall provide additional funds for the MRRA in sufficient time to pay the expenditure by the date the invoice is payable. The Company may not charge the MRRA for the cost of its employees assigned to the Wastewater System on a full-time basis and may only charge incremental costs for Subcontractors and part-time employees. The Company may not charge the MRRA for any other services, costs or products provided by the Company or any Affiliate without the Borough's prior approval which approval may be withheld in the Borough's sole discretion.

(F) Vehicles. As part of its maintenance, repair and replacement obligations under this Agreement, the Company shall maintain, repair and replace the vehicles listed in Appendix 1 hereto. The Borough shall have ownership of all such vehicles (including any replacements) during and after the Term hereof and, upon prior consent of the Company, the Borough may use such vehicles for emergency purposes unrelated to the Wastewater System. The condition of such vehicles shall be evaluated as part of the Exit Evaluation conducted pursuant to Section 3.3 hereof and Appendix 8.

(G) Limitations on Deviation from Scheduled Maintenance. Notwithstanding the Company's right to deviate from the maintenance, repair and replacement plan set in Appendix 7 as described in subsection (B) above, the Company, without the written consent of the Borough, shall not install the new ultra violet disinfection system or roof replacements earlier than the end of the fourth Contract Year or later than the end of the eighth Contract Year. In no event shall the Company defer ultra violet system replacement past the eighth Contract Year. In addition, the Company shall during the Initial Term, install two new aerator drive motors, two new return sludge pumps and two clarifier center drives unless (i) the Company performs a full inspection of such equipment at the end of the fifth Contract Year with Borough participation and, in accordance with Prudent Industry Practice the Company concludes that such equipment is likely to be in good working order at the expiration of the Initial Term, and (ii) the Borough accepts such conclusion. Alternatively, the parties shall agree on a reasonable alternative course of action.

SECTION 5.9. STAFFING AND PERSONNEL TRAINING.

(A) Staffing. The Company shall, at its cost and expense, staff the Wastewater System during the Term of this Agreement as necessary to operate, maintain and manage the Wastewater System, continuously, in a professional, safe, efficient and economical manner, consistent with the Operating Standards and with Appendix 7 hereto. The Company shall discipline or replace, as appropriate, any Subcontractor or any employee of the Company engaging in unlawful, unruly or objectionable conduct on the Facility Site, and consider requests of the Borough with respect thereto. The Facility Manager shall be the person identified in Appendix 7. If the Company formally or informally replaces the Facility Manager, the Borough reserves the right to interview any replacement Facility Manager and provide comments and input regarding the new Facility Manager.

(B) Training. The Company shall provide ongoing training and education for its employees involved with the Wastewater System in all necessary areas of process control, operation, maintenance, management, safety, laboratory procedures, computer operations, and management skills, including training of new personnel. Process control training shall include mitigation, notification and corrective procedures for potential violations and for each type of possible public health threat. The Company shall submit for Borough review a detailed training and education plan. The Company shall annually update its training and education plan and provides copies of such updates to the Borough.

(C) Training of Borough Personnel. The Company acknowledges that, notwithstanding the execution of this Agreement, the Borough will retain the responsibility for treating wastewater in its Service Territory and serving the public health, safety and welfare needs of its citizens and customers. The Borough accordingly shall have the right to designate three individuals for the purpose of receiving training in Wastewater System operations and maintenance and emergency conditions response from the Company. Such training shall be repeated periodically and renewed so as to be sufficient to familiarize the individuals with the equipment, supplies, processes, operations and performance of the Wastewater System so that they might properly respond to any operating or wastewater treatment emergency. The cost of such training shall be at the Company's expense.

(D) Permanent Operations Training. The Company shall, on not less than 30 days' prior written notice from the Borough, conduct a three-day training program for the Borough and its designees in order to enable the Borough to assume operating and management responsibility for the Wastewater System at the expiration or termination of this Agreement. The program shall train supervisory and operating personnel in sufficient numbers and job classifications so as to allow the Borough and its designees to operate and manage the Wastewater System in such circumstances in accordance herewith. The cost of such training shall be at the Company's expense unless the Agreement is terminated by the Company pursuant to Section 8.3 of this Agreement.

SECTION 5.10. SAFETY. The Company shall maintain the safety of the Wastewater System at a level consistent with the Operating Standards. The Company shall designate a qualified and responsible employee at the Wastewater System whose duty shall be the supervision of plant safety. The Company's safety training shall address all safety issues, including but not limited to, hazardous chemicals, confined space entry, lock-out and tag-out procedures, excavation and trenching procedures, right to know requirements, and electrical safety requirements. The Company shall make recommendations to the Borough regarding the need, if any, for the Borough to modify any existing component of the Facility in order to comply with Applicable Law including, OSHA and the Americans with Disabilities Act. Any OSHA reportable accident or injury to Company personnel or Subcontractors shall be reported to the Borough within a reasonable time following the incident. The Company shall prepare and maintain a visitors safety procedure policy, copies of which shall be prominently posted at each major entrance of the Facilities and also given to the Borough. All safety equipment required by such policy will be kept available at the primary visitor entrance in sufficient supply for at least ten persons. The Company shall maintain a visitors log at such entrance and require each visitor to provide sufficient information such that identification and notification can be made in the event of an emergency. Safety training shall be provided by the Company to all Subcontractors or other personnel working in the Wastewater System unless such personnel can prove, to the Company's reasonable satisfaction, to have had all required safety training and certification.

SECTION 5.11. COMPLIANCE WITH APPLICABLE LAW.

(A) Applicable Law. The Company shall perform all of its obligations hereunder in accordance with Applicable Law, and shall cause all Subcontractors to comply with Applicable Law. The Company shall comply with the terms of all Legal Entitlements applicable to the Wastewater System, the Influent and the Effluent, notwithstanding the fact that the Company may not be a permittee or co-permittee with respect to some or all of such Legal Entitlements. The Company shall provide the Borough (1) promptly upon receipt thereof, a true, correct and complete copy of any written notice of noncompliance with Applicable Law, and a true and accurate description of any oral notice of noncompliance with Applicable Law, issued or given by any Governmental Body, and (2) prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may reasonably be expected to result in any such noncompliance, or of any Legal Proceeding alleging such noncompliance. Except to the extent excused by Uncontrollable Circumstances or Borough Breach, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Wastewater System, the Influent or the Effluent, then the Company shall promptly remedy or cause its Subcontractor to remedy such failure at its cost and expense, and bear all Loss-and-Expense of the Company and the Borough resulting therefrom, and pay any resulting fines, assessments, levies, impositions, penalties or other charges resulting therefrom.

(B) Operating Licenses. All licenses required to be held in accordance with Applicable Law by employees of the Wastewater System shall be held by full-time, on-site employees of the Company.

(C) No Nuisance Covenant. The Company shall keep the Facility Site neat, clean and litter-free at all times, and shall avoid the creation of nuisance conditions at or due to the Wastewater System, with respect to surface litter, noise, odor, fugitive dust, or vectors inconsistent with conditions reasonably anticipated in the ordinary course of the operation of a wastewater treatment system in accordance with the Operating Standards. Should any such nuisance condition occur, the Company shall expeditiously remedy the condition. If the nuisance condition is the result of an Uncontrollable Circumstance or Borough Breach, the Borough shall compensate the Company for the cost of such remedy. If such nuisance is not due to an Uncontrollable Circumstance or Borough Breach, the Company shall bear the cost of such

remedy and the Company shall hold the Borough harmless from any Loss and Expense relating thereto, subject to and in accordance with Section 10.2 hereof.

SECTION 5.12. LEGAL ENTITLEMENTS.

(A) Applications and Submittals. The Company, at its own expense, shall make all filings, applications and reports necessary to obtain and maintain all Legal Entitlements required to be made, obtained or maintained by each in order to operate the Wastewater System, including those set forth in Appendix 5 hereto, and shall cooperate with each other with respect thereto. The Company, at its own expense, shall supply all data and information in a timely manner, which may be required by Applicable Law or to obtain a Legal Entitlement; shall completely familiarize itself with the terms and conditions of all Legal Entitlements pertaining to the Wastewater System, regardless of the identity of the permittee; and shall take all other action necessary or otherwise reasonably requested by the Borough in order to assist the Borough in obtaining, maintaining, renewing, extending and complying with the terms of all Legal Entitlements necessary subsequent to the Commencement Date in order to perform the Operation Services. All data, information and action shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the Borough as beneficial owner of the Facility and primary permittee. The data and information supplied by the Company to the Borough, or the Borough to the Company, and all regulatory agencies in connection therewith shall be correct and complete in all material respects, and the Company or the Borough, as appropriate, shall be responsible for any consequences which may result from the submission of materially incorrect or incomplete information. The Company shall not submit any data or information directly to the regulatory agencies unless required to do so under Applicable Law or by the terms of an existing Legal Entitlement, or unless requested to do so by the Borough. The Company shall report to the Borough all violations of the terms and conditions of any Legal Entitlement or Applicable Law pertaining to the Facility promptly upon learning of such violation. Notwithstanding whether a regulatory enforcement action has been undertaken by any other Governmental Body, the Company shall not be relieved of its obligation to comply with the terms and provisions of all applicable Legal Entitlements and failure to do so shall constitute a breach of this Agreement.

(B) Reports to Governmental Bodies. The Company shall prepare and submit all periodic or annual reports to all Governmental Bodies required under Applicable Law in connection with its obligations hereunder. Such reports shall contain all information required by the Governmental Body. The Company shall bear all costs and expenses of preparing and submitting such regulatory reports and shall provide the Borough with copies for review and comment at least 7 days before their submission to the Governmental Body. Upon the Company's request the Borough shall provide reasonable assistance to the Company in connection with the report process.

SECTION 5.13. REQUIRED INSURANCE. Commencing on the Commencement Date and continuing throughout the Term of this Agreement, the Company shall obtain and maintain the Required Insurance as specified in Appendix 3 hereto, which policies (except workers compensation and employer's liability) shall provide that the Borough be named as an additional insured. Insurance coverage required pursuant to this Section shall be maintained with insurers with a minimum of a Best's "A-VII" or equivalent rating reasonably acceptable to the Borough and qualified and licensed to insure risks within the State. Insurance may not be obtained or maintained with insurers prohibited from conducting business in the State. The cost of the Required Insurance shall be paid by the Company without reimbursement by the Borough. The Borough shall have the right, upon 90 days' notice to the Company, at any time at its expense to cancel or replace and obtain independently replacement coverage affording comparable protection and with similar deductibles as the Required Insurance. The Company shall bear deductible amounts with respect to events not due to Uncontrollable Circumstances or Borough Breach. The Borough shall bear deductible amounts for events caused by Uncontrollable Circumstances or Borough Breach.

SECTION 5.14. OPERATING INFORMATION SYSTEM. The Company shall on and after the Commencement Date establish and maintain a computerized information system to provide storage and ready retrieval of Wastewater System operating, maintenance and management data, including, without limitation, the information necessary to verify calculations made pursuant to this Agreement. The Company shall develop and/or supply, at its own cost, computerized programs for maintenance, regulatory report preparation and data storage, laboratory information management, word processing and cost accounting, which shall be used to administer the MRRA. The maintenance program shall be used to schedule, record, track and

monitor all maintenance activities including predictive, routine, corrective and preventive maintenance, maintenance histories of each piece of equipment, manufacturers' requirements for maintenance, warranties, costs, labor hours and inventories of spare parts and equipment. The regulatory report preparation program shall be used to generate all routine regulatory reports and to store and analyze regulatory data. The Company shall obtain and maintain all equipment, equipment components and process operation and maintenance manuals and other technical information provided by the equipment vendors or manufacturers for use with the Company's maintenance management program. The computer software that will be provided by the Company for such purposes shall be, at the Borough's election, either (i) Datastream, or (ii) the Company's proprietary software; provided, however, that (a) the Company shall update such software during the Term as the Company may deem necessary or advisable, and, if the Borough selects the Company's proprietary software, (b) the Company shall license such software to the Borough at no cost or license fee to the Borough during and after the Term and with full rights after the Term to use, transfer, update or otherwise modify such software as the Borough may determine. Any such computerized programs shall be compatible with the Borough's software and systems. The Borough shall have computer-based real time, read-only access to such system.

SECTION 5.15. INVENTORIES. Inventories of all spare parts, equipment, vehicles, chemicals, fuels and other major consumable supplies shall be conducted by the Company prior to the Commencement Date, at the end of each Contract Year, and during the Exit Evaluation. During the last three years of the Term, the Company shall also inventory Sludge and other solids throughout the Facility. Inventories shall be completed as close to the dates identified as possible but in no case more than two weeks before or after such date. The Borough shall be notified in advance of each inventory and shall have the right to conduct the inventory itself, at its own expense, or participate in the Company's inventory process. The inventory shall note the general condition of each piece of equipment or vehicle deemed to have a replacement cost in excess of \$500 and with respect to the vehicles, shall note the then existing Blue Book Value.

SECTION 5.16. BOOKS AND RECORDS.

(A) Required Financial Recordkeeping. The Company shall prepare and maintain proper, accurate and complete books, records and accounts regarding the financial transactions related to the Wastewater System to the extent necessary to verify data with respect to any matter in which the Borough has an obligation to reimburse costs or for which the Borough is otherwise entitled to Cost Substantiation. To the extent any such information is delivered or made available to the Borough, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principles. 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 provisions of this Section shall survive the termination of this Agreement.

(B) Required Operations Recordkeeping.

(1) Generally. The Borough shall have immediate access to copies of records required to be kept by the Company concerning the Wastewater System and the Company's responsibilities hereunder. Such records include all information related to the operation, maintenance and management of the Wastewater System and the requirements of this Agreement, including, without limitation, all of the following records:

- (a) names and addresses of suppliers of all chemicals, supplies, materials, utilities, and services;
- (b) residuals transportation and disposal contracts and correspondence including shipment records and weigh tickets;
- (c) all regulatory records, notes and correspondence;
- (d) operating and maintenance logs;
- (e) inventories;
- (f) certified analyses reports, chains of custody, quality control and assurance, sampling locations and times, sample storage, disposal and identification numbers;

- (g) operating and maintenance records and software programs;
- (h) reports to the Borough;
- (i) all customer service inquiries and their disposition including inquiries about odors, service quality, user fee billing and collection, if applicable;
- (j) public relations materials;
- (k) identification logs of all visitors;
- (l) training, qualifications, certifications and education of employees assigned to the Wastewater System;
- (m) a list of training programs conducted and their subject content;
- (n) plans, drawings, maps and manuals for emergency management, operations, sludge management, maintenance, repair, and replacement;
- (o) electricity bills (if applicable);
- (p) computer access and security codes;
- (q) requests for proposals or quotes, and proposals from suppliers or potential suppliers of maintenance, repair and replacement products or services; and
- (r) regulatory reports and inspections.

(2) Records Management Plan. The Company shall submit for Borough approval a records management plan prior to the Commencement Date which shall comply with the New Jersey Department of State Division of Archives and Records Management requirements. This plan shall describe the records storage systems, facilities, procedures, storage media and methods that will be used throughout the Term. The storage media used shall have a minimum storage life of ten years and hard copies shall be kept during the Term. All records shall be stored in a secure manner, be clearly identified, and be accessible to the Borough at any time including nights and weekends. The Company shall maintain and update a directory of files, copies of which shall be given to the Borough and also kept accessible to the Borough at each records storage

location. Records will be stored at one or more locations within the Facilities approved by the Borough.

(3) Ownership and Security. All except as set forth in (4) below, all records related to the Wastewater System shall be the sole property of Borough. All such records and software programs used to store, analyze or report records shall be contained in Borough-owned computer systems and storage media. The entire contents of Borough-owned storage media including any personal or Company files or programs are the property of the Borough. All access and security codes (and procedures for changing them) used for computer systems, storage facilities, and media owned by the Borough shall be the sole property of the Borough. The Company shall keep the Borough informed of all security and access codes used to access records and all other files or programs stored in Borough-owned storage media within one working day of the establishment or change of any access or security code. The Company shall supply the Borough with keys or combinations to access all records storage facilities. No records may be removed, destroyed or thrown away without prior written permission by the Borough. If the Company originates records at a location other than at the Facilities, it shall provide a copy of those records to the Facility Manager located at the Facilities for storage there.

(4) Certain Confidential Records. The Borough recognizes that certain information related to the Company's business may be confidential. A list of such files kept at the Facilities that will remain the sole property of the Company is provided in Appendix 18 hereto. In addition, certain information may be considered proprietary and although the Borough shall have access to such information, the Borough shall not disclose such information except as provided in Section 5.18 hereof. To the extent practicable, the Company shall store such confidential and proprietary information separate from other records.

(C) Inspection, Audit and Adjustment. The Borough shall have the right to commission an independent audit of the information respecting Cost Substantiation available under this Section at its sole cost and expense (recognizing that the allowance for overhead and profit are fixed by this Agreement and not subject to audit), subject to possible reimbursement as

provided in this Section. If an inspection or audit reveals that the amount of the Service Fee payments have been overstated, then the Company shall immediately reimburse to the Borough the overstated amount, in addition to interest from the time such amount was initially overpaid until reimbursed or credited to the Borough, at the Overdue Rate. If an inspection or audit contemplated by this Section discloses an overpayment of the Service Fee to the Company of 2% or more of the total amount that should have been properly paid by the Borough during the period audited, then the Company shall, in addition to the reimbursement or credit of such overstated amount, with interest, reimburse the Borough for any and all costs incurred in connection with the inspection or audit including, without limitation, reasonable accounting and attorneys' fees and other Fees and Costs. If an inspection or audit conducted pursuant to this Section establishes that the Service Fee was properly calculated, then the Borough shall reimburse the Company for any and all costs incurred by the Company in connection with the inspection and audit including, without limitation, reasonable accounting and attorneys' fees and other Fees and Costs. The foregoing remedies shall be in addition to any other remedies the parties may have including, without limitation, any remedies for an Event of Default.

(D) Record Documents. The Company shall maintain at the Site a copy of all designs, drawings, blueprints, plans, specifications and as-built or record drawings and documents pertaining to the Wastewater System which are provided by the Borough or otherwise in the possession of the Company. Similar documents relating to any Wastewater System Modifications shall also be maintained at the Site, and a copy thereof shall be delivered to the Borough for its records within 30 days after the completion of construction of each Wastewater System Modification.

#### SECTION 5.17. PERIODIC REPORTS.

(A) Information Reports. The Company shall provide the Borough with monthly operations reports, subject to Borough approval of the content, data format, and distribution list, no later than 15 days after the end of each month, (except for results of tests by independent testing laboratories, which shall be provided as soon as available), including the following operating data:

(1) a summary of all test reports prepared during the month with respect to Influent, Effluent and air residuals and other emissions quality, characteristics and

parameters, including total Influent quantity year-to-date, average Influent quantity year-to-date, monthly average flow and daily peak flow;

(2) a summary of the quantities (in wet tons, percent solids and dry tons) of Sludge and Non-Sludge Residuals generated in the month, and the nature, location and cost of its disposition;

(3) a statement of any complaints received by the Company in relation to the Operation Services, and of how each complaint was addressed by the Company;

(4) a description of all major events of the month;

(5) a description of major partial or total shutdowns for maintenance and repairs during the prior month and anticipated during the current month;

(6) an itemized list of expenditures for the month from the MRRA as required in subsection 5.8(E) hereof and also including a list of MRRA expenditures year-to-date, remaining MRRA funds and projected year-end MRRA surplus or deficit;

(7) a description of any material safety incidents;

(8) current staffing levels and modifications;

(9) a projection of the available treatment capacity of the Facility for the current month;

(10) any adverse conditions during the current month that may affect the ability of the Company to collect, receive, and treat Influent in accordance herewith;

(11) the results of any regulatory or insurance inspections conducted during the prior month;

(12) the quantities and costs of electricity, fuels and potable water used during such month;

(13) the quantities (product and active basis) for each major chemical (greater than \$2,000 per year) used by application point;

(14) a list of predictive and preventive maintenance performed on the Facility on a quarterly basis;

- (15) on a quarterly basis, an inventory of spare parts in stock at the end of the prior quarter;
- (16) information on any Utility outages occurring during the prior month;
- (17) the results of any environmental 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;
- (18) notification of any violations of Applicable Law;
- (19) notification of changes in emergency contacts or computer access or security codes, which shall be supplied confidentially);
- (20) a summary of periodic odor compliance reports;
- (21) a statement and description of newly determined possible capital improvement needs;
- (22) Company recommendations;
- (23) any other data or information agreed to be furnished under the Operation and Maintenance Manual or Appendix 7 hereto; and
- (24) any other reports or information that the Borough reasonably requests.

(B) Situation Reports. The Company shall notify the Borough of any sudden changes, serious problems or safety incidents, equipment failures, violations or occurrences which could reasonably be expected to constitute violations of Legal Entitlement requirements, inspections, environmental discharges or spills outside of the ordinary course of business in the wastewater treatment industry, health threatening situations, OSHA or any other regulatory violations, acts of sabotage, vandalism, willful misconduct, threatening conditions, or any other important event or important situation by phone and by fax followed up by a hard copy. The notification shall be made on a standardized form and may be handwritten. Notification shall be made within two hours from the time the Company becomes aware of a public health or safety threatening situation or other major problem, and as soon as practicable for non-major problems.

(C) Regulatory Reports and Correspondence. Copies of all regulatory reports and regulatory correspondence received by or sent by the Company shall be faxed, mailed or

delivered to the Borough. If the regulatory document contains a violation, notice of violation, regulatory action, liability or potential liability, the Company shall notify the Borough of the presence of such in a cover memo with the regulatory documents sent to the Borough even if notification has already occurred.

(D) Annual Reports. The Company shall furnish the Borough, within 45 days after the end of each Contract Year, an annual summary of the data provided in the monthly reports. The Company shall also provide at such time an annual operation and maintenance report which shall include, without limitation, (a) a summary of such year's data and planned activities for the then-current year, (b) any proposed updates to the Operation and Maintenance Manual, (c) updated ratings of equipment and structural life expectancy, as described in Appendix 7 hereto and (d) the final year-end statement of the MRRA. The Annual Capital Expenditure Report and the Predictive and Major Maintenance Report shall be attached to the annual report.

(E) Annual Capital Expenditure Report. The Company shall annually prepare a capital expenditure report as provided in this subsection (the "Annual Expenditure Report"). The Annual Capital Expenditure Report shall include recommended future capital expenditures the Company anticipates will be needed in the following Contract Year, including those which would be at the Company's expense and those which would be at the Borough's expense. For recommended capital expenditures that would be at the Borough's expense, the Annual Capital Expenditure Report shall include their estimated cost with the cost basis explained, and their relative importance (rank). The Annual Capital Expenditure Report shall be given to the Borough two months before the Borough's annual budget cycle begins. The Company will not be held responsible for the accuracy of the cost estimates.

(F) Predictive and Major Maintenance Report. Each year, through the use of thermal, vibration, historical and other analyses, the predicted maintenance, repair and replacement schedule of the Wastewater System's electrical, electronic and mechanical equipment will be established and reported in a report (the "Predictive and Major Maintenance Report").

(G) Default Reports. The Company shall provide to the Borough, upon receipt thereof, copies of any written notice of a material default, breach or noncompliance received

under or in connection with any Legal Entitlement, Subcontract or other agreement(s) pertaining to the Operation Period.

SECTION 5.18. PROPRIETARY INFORMATION.

(A) Company Requests. The Borough acknowledges that the Company has a proprietary interest in certain information that may be furnished pursuant to the provisions of this Agreement and certain information may be deemed confidential. The Company shall have the right to request the Borough in writing not to publicly disclose any information which the Company believes to be proprietary and not subject to public disclosure under Applicable Law, any such request to be accompanied by an explanation of its reasons for such belief. Any information which is the subject of such a request shall be clearly marked on all pages, shall be bound, and shall be physically separate from all non-proprietary information. At the Company's request, the Borough and its agents, consultants and employees (including the Consulting Engineer) given access to such information shall execute and comply with the terms of a confidentiality agreement in a mutually acceptable form.

(B) Borough Non-Disclosure. In the event the Borough receives a request for the disclosure of any information designated as proprietary by the Company pursuant to subsection (A) of this Section (except from persons who have signed confidentiality agreements), the Borough (1) shall use reasonable efforts to provide notice to the Company of the request prior to any disclosure, and (2) shall use reasonable efforts to keep in confidence and not disclose such information unless it is entitled to do so pursuant to the provisions of subsection (C) of this Section.

(C) Permitted Disclosures. Notwithstanding any confidential or proprietary designation thereof by the Company, the Borough may disclose any information, (1) which is known to the Borough without any restriction as to disclosure or use at the time it is furnished, (2) which is or becomes generally available to the public without breach of any agreement, (3) which is received from a third party without limitation or restriction on such third party or the Borough at the time of disclosure, or (4) following notice to the Company pursuant to subsection (B) of this Section, which is required to be disclosed under any Applicable Law, an order of a court of competent jurisdiction, or a lawful subpoena.

SECTION 5.19. PUBLIC RELATIONS AND COOPERATION.

(A) Interaction with Public. The Company shall develop, with the advice and consent of the Borough, a public relations plan in order to keep the Borough, citizens and users informed about the operation and maintenance of the Wastewater System. The Company will schedule and conduct tours of the Facilities, if and as requested, provided that such tours shall not interfere with the Company's responsibility to operate, maintain and manage the Wastewater System. The Company shall prepare written summaries of all formal public relations meetings with the Borough and/or community groups and provide the Borough with a copy. The Company shall give the Borough notice of any interview by or statements given to the media prior to the event, if possible, and the same day, if not possible.

(B) Cooperation and Relationships. The Company shall maintain a professional, responsive, efficient relationship with the NJDEP and all other regulatory agencies or authorities with responsibility for or an interest in the Wastewater System or the Borough. The Company shall coordinate its activities with those of any contractors retained by the Borough to upgrade, modify or expand the Wastewater System. The Company shall interact with the citizens, employees and elected officials of the Borough, the general public, the employees and representatives of the IPP industries, users of the Wastewater System, and persons inquiring or complaining about service in a professional, responsive and courteous fashion. The Company shall give the Borough notice of any contact by the media and shall issue no statements to the media without the Borough's approval.

SECTION 5.20. MUNICIPAL INDUSTRIAL PRETREATMENT PROGRAM.

(A) Program Establishment and Maintenance by Borough. The Borough shall continue to maintain in force its existing rules, regulations, ordinances and agreements constituting the IPP in accordance with Applicable Law, and shall, except as provided in subsection 5.20(B) hereof, modify the IPP to reflect the requirements of any Change in Law.

(B) Program Administration by the Company in General. It is the intent of the parties that the Company be responsible for the performance, execution and administration of the IPP, except for those aspects which the Borough must under Applicable Law perform, execute, administer and enforce in its own name, as to which the Company shall provide the assistance, support, resources and personnel reasonably necessary to enable such actions to be carried out.

The Company agrees that if Applicable Law, as modified during the Term hereof, would permit a reduction in the scope of work contained in this Section as defined as of the Contract Date, the Borough shall not be obligated to modify the IPP and the Company shall continue to perform, execute and administer the IPP as in effect as of the Contract Date, unless otherwise requested by the Borough, in which event the parties shall in good faith negotiate appropriate changes to this Section and the Service Fee.

(C) General IPP User Compliance Monitoring. The Company shall monitor all IPP Users in the Service Territory respecting compliance with all terms and conditions of their discharge permits and the Borough's Sewer Use Ordinance through sampling and inspections in accordance with approved frequencies independent of information supplied by the users. The Company shall review monthly sampling data, inspect IPP Users annually, prepare and submit inspection and monitoring reports to the Borough and any other Governmental Body requiring such reports, and prepare letters to the Borough and such other Governmental Body regarding any identified noncompliance. The Company shall maintain files of all pretreatment actions, and prepare all reports required by the NJDEP and any other Governmental Body. At least twice per year the Company shall sample at manholes or sewer lines that service primarily industrial areas in the Service Territory as determined by Company. The Company shall be responsible for the costs of the monitoring and sampling as specified in this subsection, as well as the cost of reports prepared based on this data.

(D) Transition Program Administration Duties. Prior to the Commencement Date, the Company shall, in cooperation with the Borough and the current IPP contract administrator, arrange for an orderly transition of IPP administrative responsibility. Immediately thereafter, the Company shall:

(1) Review and take possession of the existing computerized database of all businesses of known or potential significance to the pretreatment program.

(2) Review and update as necessary the Standard Industrial Classification (SIC) codes for potential IPP Users.

(3) Review and update list of industries classified as IPP Users based on pretreatment program final report and data obtained under item (2) above.

(4) Review and assume responsibility, beginning on the Commencement Date, for the computerized data storage and reporting system, which includes for each IPP User the industry name and location; name, telephone number, and address of responsible contact person; SIC classification(s), permit number, pollutant discharge limits for each facility and dates on which limits were proposed and/or promulgated; historical data on inspections, sample analyses, violations, and violation resolutions.

(5) Review the existing permit application form.

(6) Review permissible pollutant discharge limits for each new IPP User included in the IPP, which were established based on the NJPDES Permit, the Borough's Sewer Use Ordinance, EPA categorical pretreatment standards, protection of the collection system, and protection of the biological treatment processes and sludge disposal at the Facility.

(E) Ongoing Program Administration Duties. Throughout the Term hereof, as part of its IPP administration duties and in compliance with NJDEP, EPA and IPP regulations, the Company shall:

(1) Review all permit applications and make recommendations to the Borough relative to the issuance of a permit. Recommendations shall include permissible pollutant discharge limits, self-monitoring schedules where applicable, pretreatment processes, and pretreatment implementation schedules, and the establishment of sampling points by the industry, if required.

(2) Review and update permit application forms on a three-to-five-year basis.

(3) Maintain an up-to-date data base of IPP Users.

(4) Issue draft permits to the IPP Users on an annual basis to solicit comments from the IPP Users, and respond to and discuss such comments in order to finalize permits.

(5) Issue additional permit application forms as required, and take appropriate action on any permit applications received.

(6) Issue final permits to IPP Users in accordance herewith.

(7) Maintain up-to-date computerized files on all information obtained through industrial self-monitoring programs, laboratory analyses of collected samples, and on-site inspections.

(8) Monitor industrial pretreatment compliance schedules and review industrial interim and final compliance progress reports.

(9) Monitor laboratory and flow data furnished by Facility personnel for any indications of non-permitted discharges that may impair the Facility's treatment efficiency, including review of Influent and Effluent data, and attempt to ascertain the nature and origin of any non-permitted discharge that is detected.

(10) Review the monthly Discharge Monitoring Reports submitted by the IPP Users and compile data and prepare a spreadsheet of the data for long term data evaluation.

(11) Promptly notify the Borough and the IPP User of any reported or observed violations; recommend appropriate responsive actions; prepare and issue violation notices; monitor and determine whether agreed-upon corrective measures have been taken; review and approve such measures prior to installation and prior to implementation; issue follow-up reports, including without limitation, reports to the Borough as to the success or failure of such corrective measures; and recommend punitive measures for continuing or repetitive violations.

(12) Prepare periodic status reports containing sufficient data to satisfy applicable public participation requirements of the IPP, and review the reports with the Borough.

(13) Recommend sewer use surcharges and other cost recovery assessment measures for IPP Users found in violation of their permits or who exceed their proportional pollutant loadings to the Facility.

(14) Provide data required by IPP Users to assist in developing and implementing the IPP Users' pretreatment facilities.

(15) Review and attend to information, data, application and other requests submitted by existing or potential industries or NJDEP for federal, State and local permit issues, e.g. endorsement request for treatment works, stormwater discharge.

(F) Field Inspection, Flow Monitoring and Flow Sampling. A pretreatment program inspector and sample technician shall be provided as required to observe, inspect, and collect wastewater samples at IPP Users and to report on compliance with the IPP requirements. The furnishing of inspection or monitoring reports on any aspect of the IPP shall not make the Company responsible for an IPP User's failure to comply with any permit issued, compliance schedule, or violation abatement order. As part of its field inspection, flow monitoring and flow sampling duties, the Company shall:

(1) Conduct periodic routine and/or unannounced inspections to the extent permitted by Applicable Law of all IPP Users at least once per year, and of potential IPP Users as may be required and prepare an inspection report.

(2) Monitor compliance with any industrial pretreatment requirements contained in an IPP User's discharge permit or violation notice.

(3) Observe and record the operation of an IPP User with respect to chemicals or pollutants in use, stored, or produced by the IPP User.

(4) Observe and record estimated wastewater flow rates and readily noticeable wastewater characteristics such as color, odor, turbidity, noticeable solids content, oils and grease, etc.

(5) Make appropriate flow measurements or field analyses for such parameters as temperature, pH, and explosive fumes as may be deemed necessary or where apparent discrepancies exist between permitted and observed discharges.

(6) At least once per year, collect, prepare, label, preserve, and transport wastewater samples for laboratory analysis, with samples labeled in code to prohibit source identification.

(7) Investigate pollutants found in Influent that create Facility Upsets or that appear to be non-permitted discharges, and use all reasonable efforts to locate and identify sources of the discharge and recommend appropriate actions.

(8) Maintain daily and weekly reports to be used by the pretreatment program manager in analyzing permit compliance and in preparing periodic status reports for the Borough.

(G) Laboratory Analyses of Wastewater Samples. The Company shall engage a competent, certified analytical laboratory to conduct laboratory analyses and to report their findings to the Company. The laboratory will perform all required analyses in accordance with EPA protocol. The analysis of each sample may vary depending upon the IPP User being monitored, but shall include sampling parameters, which include 13 metals, organics (VOC and ABN), microtox, BOD5, TSS, COD5, TDS, TKN, P(T), O&G, pH, surfactants, turbidity, phenols, sulfide, and color.

(H) Preparation of Annual Pretreatment Report. The Company will prepare an annual pretreatment report for the Borough which will satisfy the annual reporting requirements contained in the NJPDES Permit. The annual report shall include the following:

- (1) Updated list of IPP Users, with changes from previous reports indicated;
- (2) Summary of compliance/enforcement/monitoring activities during reporting period stating number and percent of IPP Users by category in compliance with baseline monitoring reporting requirements, categorical standards, local limits (as applicable), and inspections;
- (3) List of significant noncompliance IPP Users with such list to be simultaneously published in the local newspaper having largest daily circulation;
- (4) Narrative description of program effectiveness and present and proposed changes in program, such as: funding, staffing, ordinances, regulations, rules and/or statutory authority; and
- (5) Summary of all pollutant analytical results at the Facility, not previously reported, for Influent, Effluent, Sludge and Non-Sludge Residuals, and any bioassay data.

(I) IPP Violation Investigations. In the event that the Company determines or reasonably believes that Non-Design Influent has been received at the Facility or the Company has knowledge or reasonably believes that the IPP is being or has been violated, the Company shall within 10 days after making such determination or obtaining such knowledge, and

following notice to the Borough pursuant to subsection 5.20(J), commence an investigation to reasonably determine whether a violation of the IPP has occurred and, if such a violation has occurred, the identity of the source. For purposes of this Section, the Company shall have knowledge of a violation of the IPP if it becomes aware of:

- (1) the presence of a Biologically Toxic Substance in Influent originating from the Service Territory;
- (2) violations of wastewater discharge permit limits, conditions or requirements, by any discharger;
- (3) any other violation of a pretreatment requirement; or
- (4) any discharge of a pollutant into the Collection System that has caused imminent endangerment to human health, safety or welfare or to the environment, or has resulted in the Facility's exercise of its emergency authority to halt or prevent such a discharge.

(J) Notice to Borough of Violations. The Company, prior to commencing the investigations described in subsection 5.21(I) hereof, shall notify the Borough as to its intent to undertake such investigations and the reasons therefor, and as to the estimated costs of such investigation, which estimate shall be updated throughout the investigatory process. The Company shall report to the Borough regarding the progress of any IPP violation investigation, and shall provide a written report regarding the results of such investigation within 10 days after the conclusion thereof. Should the Company determine that an IPP User has failed to comply with its permit requirements in accordance with the IPP, or that a particular waste being discharged is in violation of the IPP, then Company shall promptly notify the Borough of its determination of noncompliance and recommend appropriate enforcement actions and compliance schedules. The Borough shall determine enforcement action and thereupon promptly initiate such enforcement action in accordance with the IPP enforcement response plan to the fullest extent allowed by law against the violating entity and in accordance with the Borough's enforcement determination. Such enforcement action may include, but not necessarily be limited to, fines, penalties, appropriate injunctive relief, and, in extreme cases, revocation of the noncomplying discharger's permit to discharge into the Wastewater System and the shutting off of sewer services to the noncomplying discharger.

(K) Company Enforcement Assistance. The Company shall cooperate with and fully assist the Borough in any IPP enforcement action. The Company at its cost and expense shall provide applicable records and reports from its regular monitoring, sampling and reporting activities performed pursuant hereto. The Company shall provide other information and personnel as reasonably requested by the Borough at the Borough's cost.

(L) Costs and Expenses. The Company shall be compensated for the services performed under this Section through the Operating and Maintenance Charge of the Service Fee. The Company shall be entitled to additional compensation payable through an adjustment to the Service Fee for a particular Billing Period for extraordinary and other costs related to violation investigations and other enforcement activities undertaken pursuant to subsections (E)(11), (F)(7), (I), (J) and (K) of this Section, to the extent such costs would not have been incurred in the routine performance, execution and administration of the IPP. The parties further agree that in the event the Borough or Applicable Law requires users of the Wastewater System to comply with the IPP, other than BASF Corporation, Albea, and the USPEA (treated groundwater discharge), the parties shall in good faith negotiate appropriate changes to the Service Fee. In the event the Company's records, maintained in accordance with the Operating Standards, demonstrate noncompliance with its IPP responsibilities, the Company will be responsible for all fines and penalties and any additional costs that may be incurred as a result of such noncompliance. Any fines or penalties received by the Borough in any IPP enforcement action shall be the property of the Borough notwithstanding the Company's IPP administration responsibilities hereunder.

SECTION 5.21. DISPOSAL OF SLUDGE AND NON-SLUDGE RESIDUALS.

(A) Sludge and Non-Sludge Residuals Management. The Company shall store Sludge and Non-Sludge Residuals at the Facility in accordance with Applicable Law. The Company shall use its best efforts to operate the Facility and treat Influent so as to minimize the production of odors from Sludge and Non-Sludge Residuals. The Company shall segregate, collect and store all Sludge and Non-Sludge Residuals from treatment operations, and shall transport all Sludge and Non-Sludge Residuals to the Disposal Site, all in accordance with the Operating Standards. The initial Disposal Site shall be the Passaic Valley Sewerage Commission Sludge Disposal Facility unless the Disposal Site is modified prior to the Contract Date. The

cost and expense of Sludge and Non-Sludge Residuals transportation and disposal shall be borne by the Company. The Company shall, at its own expense, prepare, submit and update an amendment to the Borough's Sludge Management Plan incorporating the disposal option which it selects and which has been approved by the Borough.

(B) Alternative Sludge and Non-Sludge Residuals Disposal Facilities. The Company shall provide evidence satisfactory to the Borough, prior to the use of any alternative Disposal Site and from time to time as requested thereafter, that the intended disposal location conforms with the requirements hereof and such site shall be subject to Borough approval.

(C) Transportation Operations. In the event of a spill, leak or loss of Sludge or Non-Sludge Residuals during transit not caused by Uncontrollable Circumstances or Borough Breach, the Company shall immediately arrange for the clean-up and transportation of the material to the Disposal Site at the Company's sole cost and expense, pay any resulting fines, assessments, penalties or damages resulting therefrom, and indemnify, defend and hold harmless the Borough in accordance with the procedures provided in Section 10.2 hereof from all Loss-and-Expense resulting therefrom.

(D) Disposal Site Information. The Company shall keep and maintain such logs, records, manifests, bills of lading or other documents in compliance with Applicable Law, and shall provide the Borough at its request with copies of all weights and measures data and information relating to Sludge and Non-Sludge Residuals quantities generated and disposed of hereunder. The Company shall maintain records of the chain of custody of such Sludge and Non-Sludge Residuals.

(E) Beneficial Re-Use of Sludge or Non-Sludge Residuals. Nothing in this Agreement shall prohibit the Borough from developing and implementing arrangements for the beneficial re-use of Sludge or Non-Sludge Residuals and the Company shall cooperate with and assist the Borough in connection therewith. The Borough shall reimburse the Company for its Cost Substantiated increased costs, if any, due to the Borough's arrangements for such beneficial re-use.

(F) Compliance with Sludge Quality Assurance Regulations. The Company's obligation to comply with Applicable Law contained in Section 5.11 hereof, shall include the

obligation to comply with all Sludge Quality Assurance Regulations for sludge sampling, analysis and reporting.

SECTION 5.22. RELEASES.

(A) Release of Influent. The Company shall bear the cost of correcting any adverse consequences resulting from any release, leakage or spillage of Influent, sludge, grease or septage into the environment occurring at the Wastewater System or elsewhere as part of the Company's responsibilities hereunder (except to the extent caused by Uncontrollable Circumstances or Borough Breach), and shall make and file any reports with respect thereto required under this Agreement and Applicable Law.

(B) Release of Hazardous Substances or Hazardous Waste. The Company shall provide prompt written notice to the Borough of the release of any Hazardous Substance or Hazardous Waste from the Wastewater System and to all Governmental Bodies as required by Applicable Law. The Company shall prepare a memorandum evidencing such notification or reporting and provide copies thereof to the Borough, along with any documents provided to the relevant regulatory agency regarding such release.

(C) Notice, Cleanup and Costs. If the Company at any time discovers any Hazardous Substance or Hazardous Waste on, in, under or about the Wastewater System, it shall give immediate notice of such discovery to the Borough and all other appropriate Governmental Bodies as required by Applicable Law. The Company shall coordinate with the Borough in identifying the source of such Hazardous Substance or Hazardous Waste and cooperate with the Borough and all appropriate Governmental Bodies in effectuating the remediation thereof. The Company shall, in the most expeditious manner possible in the circumstances, cause any Hazardous Substance or Hazardous Waste so discovered to be cleaned up, removed from the Wastewater System and transported to and disposed of at a landfill or other disposal site which is lawfully permitted to receive and dispose of such Hazardous Substance or Hazardous Waste. Costs associated with the identification, testing, remediation, cleanup, discharge, removal, transportation and disposal of such Hazardous Substance or Hazardous Waste shall be borne by the Borough, except to the extent it is determined that such resulted from Company Breach or the negligence or willful misconduct of the Company in which event all such costs shall be borne by the Company.

SECTION 5.23. BILLING AND COLLECTION. The Company shall, at the request of the Borough and upon reasonable notice, undertake the responsibility of billing and collecting user fees associated with the use of the Wastewater System. The procedures and requirements which the Company shall undertake are included in Appendix 20 hereto.

SECTION 5.24. BOROUGH OWNERSHIP OF THE WASTEWATER SYSTEM. The Wastewater System and the Facility Site shall be owned by the Borough at all times throughout and following the Term. The Company may not treat itself as the owner of the Wastewater System or the Facility Site for federal tax purposes or any other purpose or otherwise take any federal tax position that is inconsistent with its role as service provider to the Borough with respect to the Wastewater System. 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 Wastewater System or the Facility Site.

## ARTICLE VI

### WASTEWATER SYSTEM MODIFICATIONS

#### SECTION 6.1. WASTEWATER SYSTEM MODIFICATIONS GENERALLY.

The parties acknowledge that it may be necessary or desirable from time to time during the Term hereof to modify, alter or improve the Wastewater System in its then-current condition, either at the request of the Company or the Borough or as a result of a Change in Law. Such modifications may be appropriate, by way of example, in order to increase the efficiency or capacity or improve the performance of the Wastewater System, to anticipate or address the obsolescence of any portion of the Wastewater System, or to respond to a Change in Law. All such Wastewater System Modifications shall be made in accordance with this Article. Under no circumstances shall any such Wastewater System Modification be considered to constitute maintenance, repair or replacement of the Wastewater System, all of which remain the responsibility of the Company to be performed at its cost and expense, subject to Section 5.8 hereof. The Company shall not make a Wastewater System Modification without notifying the Borough and receiving written consent (which consent, except as set forth in the next sentence, may be withheld in the Borough's sole discretion) from the Borough of such Wastewater System Modification. If the Company notifies the Borough in writing that a Capital Modification is required in order to comply with the Performance Guarantees (including due to a new permit condition) and the Borough withholds, conditions or delays consent unreasonably, unless an alternative solution is agreed to by the parties, the Company shall be held harmless from complying with such Performance Guarantee (including due to a Change-in-Law) to the extent such proposed modification was required to maintain compliance. Failure of the Company to notify the Borough as to the effect of any proposed Wastewater System Modification on any Performance Guarantee prior to the undertaking thereof shall be deemed to constitute a waiver by the Company of any claim to a revision of or relief from the Performance Guarantee resulting from such Wastewater System Modification. The requirements of then-Applicable Law relating to Borough procurement of construction services shall govern whether, to what extent and in what manner the Borough may exercise its right to contract with the Company with respect to any Wastewater System Modifications pursuant to this Article.

SECTION 6.2. WASTEWATER SYSTEM MODIFICATIONS AT BOROUGH ELECTION. The Borough may direct the Company to make Wastewater System Modifications at any time and for any reason whatsoever, whether and however any such directive revises this Agreement or affects the Wastewater System; provided, however, to the extent such Wastewater System Modification impairs the ability of the Company to meet the Performance Guarantees or comply with its other obligations hereunder, appropriate adjustments to this Agreement shall be made to account for any such impairment.

SECTION 6.3. WASTEWATER SYSTEM MODIFICATIONS AT COMPANY ELECTION. The Company shall give the Borough written notice, and reasonable opportunity to review and comment upon, any Wastewater System Modification proposed to be made at the Company's election. Any Wastewater System Modification proposed to be made at the election of the Company under this Section 6.3, whether for experimental purposes or otherwise, shall be subject to the Borough's prior written approval, which may be withheld in the Borough's sole discretion; provided, that if the proposed modification must be made in order for the Company to comply with the Performance Guarantees, such approval may not be unreasonably held (including due to Change-in Law). All such Wastewater System Modifications shall be made at the Company's sole cost and expense, and the Company shall not be entitled to any adjustment in the Service Fee or other compensation from the Borough as a result thereof.

SECTION 6.4. WASTEWATER SYSTEM MODIFICATIONS DUE TO CHANGE IN LAW. Upon the occurrence of a Change in Law, the Company shall promptly proceed, at the request of the Borough and in accordance with the terms set forth in Section 6.5 and Section 10.2 hereof, to make or cause to be made all Wastewater System Modifications reasonably necessary to permit the Company to comply therewith and to permit the Company to perform its obligations under this Agreement. The Company agrees to undertake any such Wastewater System Modifications at a mutually-agreeable fee between the Company and the Borough or, if no such fee can be agreed upon, on the terms set forth in Appendix 11 hereto.

SECTION 6.5. PROCEDURES FOR IMPLEMENTING WASTEWATER SYSTEM MODIFICATIONS FOR WHICH BOROUGH MAY BE FINANCIALLY RESPONSIBLE.

(A) Notice, Proposals and Authorization to Proceed. In the event a Wastewater System Modification is proposed or required under this Article VIII due to the request or breach of either party or the occurrence of an Uncontrollable Circumstance, the provisions, procedures, standards and payment structure (if applicable) shall be agreed to by the parties. In order to implement such provisions with respect to any Wastewater System Modification which may be required for which the Borough is partially or fully responsible pursuant to Sections 6.2 or 6.4 hereof, the Company shall give the Borough prompt written notice thereof, which notice shall include (1) a description of the Wastewater System Modification and an explanation of why the Wastewater System Modification is required by an Uncontrollable Circumstance or is due to Borough Breach, (2) an estimate of the amount of all Wastewater System Modification Costs and changes to the Operating and Maintenance Charge, if any, associated therewith and preliminary Cost Substantiation therefor, (3) a proposed drawdown schedule, (4) a projected completion schedule, (5) the anticipated adjustment to components of the Service Fee other than the Operating and Maintenance Charge, (6) the projected Billing Period when such adjustment shall first take effect and (7) any changes to the Performance Guarantees required as a result thereof. The Company shall update the notice required by this subsection from time to time to reflect any modification in the computation of the price, the Service Fee or any other material change in the information included in any previous notice, and shall provide the Borough with a description of such Wastewater System Modifications, Wastewater System Modification Costs and Cost Substantiation on a definitive basis as soon as reasonably possible. The Company shall not make a Wastewater System Modification without notifying the Borough and receiving written consent from the Borough for such Wastewater System Modification which consent shall be in the sole discretion of the Borough; provided; however, that if the Company notifies the Borough in writing that a Capital Modification is required to comply with the Performance Guarantees (including due to a new permit condition) and the Borough withholds conditions or delays consent unreasonably, unless an alternative solution is agreed to by the parties, the Company shall be held harmless from complying with a Performance Guarantee (including due to a Change in Law) to the extent such

proposed modification was required to maintain compliance with a Performance Guarantee. The Company shall consult with the Borough concerning possible remedies to any Uncontrollable Circumstance or problems caused by Borough Breach, and the Company and the Borough shall cooperate in order to minimize any delay and to restore the Wastewater System to the performance levels originally contemplated hereunder. Expenditures relating to any modification to the Wastewater System that are funded from the proceeds of the issuance of a debt instrument by the Borough shall be made in accordance with applicable public contracting statutes.

(B) Implementation of Wastewater System Modifications. On the basis of the information and proposals as furnished by the Company, the Borough shall direct, and the Company shall undertake and complete, the construction and installation of the Wastewater System Modification, and the provisions of Section 10.2 hereof shall apply to the extent the Wastewater System Modification is required by an Uncontrollable Circumstance. The Borough may also choose to elect to have the Company undertake Collection System Modifications pursuant to the schedule for such modifications included in Appendix 11. Alternatively, the Borough may elect to undertake Wastewater System Modification through its own workforce or through a third-party contractor. Any Wastewater System Modification made hereunder shall be owned by the Borough.

(C) Insurance and Other Third Party Payments. To the extent that any Wastewater System Modification Costs that are incurred pursuant to this Article can be recovered by the Company from any insurer, or from another third party, the Company shall exercise with due diligence such rights as it may have to effect such recovery. The Company shall give prompt written notice to the Borough of the receipt of any such recovery and such monies shall be immediately paid to the Borough, to be applied as appropriate to the Wastewater System Modification Costs. The Company shall provide the Borough with copies of all documentation, and shall afford the Borough a reasonable opportunity to participate in all conferences, negotiations and litigation, regarding insurance claims which materially affect the Borough's interest under this Agreement. All applicable insurance recoveries shall be applied as appropriate to the Wastewater System Modification Costs.

(D) Financing Wastewater System Modification Costs. For Wastewater System Modification Costs that are the responsibility of the Borough under this Section 6.5, the Borough may finance such costs as the Borough may determine in its sole discretion. In such event, but only if the Company is responsible for undertaking such Wastewater System Modification, the Borough shall make the proceeds thereof available to the Company to pay the costs of such work, subject to agreed upon milestone schedules, drawdown schedules and retainage. Alternatively, the Borough may require the Company to finance such costs, provided that the Company shall be entitled to a substantiated adjustment to the Service Fee to account for such financing. The parties shall negotiate in good faith to determine the structure and terms of any such financing, due consideration being given to the Borough's objective of minimizing its costs and payments and approximating, as nearly as practicable, the structure and terms that would then be available to the Borough through other financing sources, subject to such structure and terms being available to the Company through other than internal financing.

SECTION 6.6. ENERGY SAVINGS CAPITAL MODIFICATION. The Company has proposed to implement an energy savings Capital Modification consisting of the installation of variable frequency drive capability. The proposed principles associated with such improvement are set forth in Appendix 21. The Borough shall have the option to implement the improvement on such principles within 12 months from the Contract Date.

ARTICLE VII

SERVICE FEE

SECTION 7.1. SERVICE FEE.

(A) Formula. Commencing with the first Billing Period after the Commencement Date and for each Billing Period thereafter, the Borough shall pay the Company Service Fee for the Operation Services provided by the Company under the terms of this Agreement in accordance with the following formula:

$$SF = OMC + VC + BSC \text{ (if applicable)} \pm UCC - PLD \pm SA$$

where

SF	=	Service Fee
OMC	=	Operating and Maintenance Charge
VC	=	Variable Charge
BSC	=	Billing Service Charge
UCC	=	Uncontrollable Circumstances Charge
PLD	=	Performance Liquidated Damages
SA	=	All Other Service Fee Adjustments

Each component of the Service Fee shall be computed in accordance with this Article and may be adjusted from time to time as provided in this Agreement. Although calculated by components, the Service Fee is and shall be considered to be a single fee. The Borough shall pay the Company the Service Fee with respect to each Billing Period as stated above, as adjusted pursuant to this Agreement including those Billing Periods during which an Uncontrollable Circumstance has occurred or is occurring.

(B) Operating and Maintenance Charge. The Operating and Maintenance Charge for any Billing Period in the first Contract Year shall be an amount equal to one-twelfth of \$805,146.97. The Operation and Maintenance Charge for any Billing Period in the second Contract Year (i.e., beginning January 1, 2019), shall be an amount equal to one-twelfth of \$850,195.00. At the beginning of each subsequent Contract Year beginning on January 1, 2020, the Operating and Maintenance Charge for any Contract Year shall be adjusted in accordance with Appendix 10, subject to a maximum adjustment in any Contract Year of 10%, and the Operation and Maintenance Charge for each Billing Period shall be one-twelfth of such amount. Estimates of the Consumer Price Index shall be used where necessary for purposes of estimating

the Operating and Maintenance Charge in each Billing Period. Any necessary adjustment in the Operating and Maintenance Charge will be made in the Billing Period following the Billing Period when the final index is published. Such adjustments will be made without interest. The Company acknowledges that if as a result of union work rules, demands or requirements, the number of employees required to be employed at the Wastewater System causes its projected or actual cost of operating the Wastewater System to be increased, the Operating and Maintenance Charge shall not be affected, such event shall not constitute an Uncontrollable Circumstance and the costs related to such additional employees shall be borne solely by the Company.

(C) Variable Charge. The Variable Charge for a specific Contract Year shall be payable at the end of the first month subsequent to such Contract Year. The Variable Charge in any Contract Year is equal to the sum calculated pursuant to Appendix 9 hereto. The Company shall comply with all IRS Rules and Revenue Procedures in accordance with Section 7.7.

(D) Billing Service Charge. For any Billing Period in the first Contract Year which the Company is required to provide sewer rate billing and collection services pursuant to Section 5.23, the Company shall be paid an amount equal to two times the billing services employee's raw salary, not to exceed \$65,000, which not-to-exceed dollar amount shall be adjusted at the beginning of each Contract Year following the first Contract Year in the same manner as the Operation and Maintenance Charge, subject to a maximum adjustment in any Contract Year of 10%. Estimates of the index shall be used where necessary for purposes of estimating the Billing Service Charge in each Billing Period. Any necessary adjustment in the Billing Service Charge will be made in the Billing Period when the final Consumer Price Index is published.

(E) Uncontrollable Circumstance Credit or Charge. The Uncontrollable Circumstance Credit or Charge in each Contract Year shall be the net amount of any (1) amounts payable by the Borough for increased operation and maintenance costs incurred during such Billing Period on account of Uncontrollable Circumstances (but not any costs due to delays caused by Uncontrollable Circumstances) which are chargeable to the Borough hereunder and (2) the net aggregate operation and maintenance cost savings achieved by the Company in

mitigating the effects of the occurrence of an Uncontrollable Circumstance pursuant to Section 10.2 hereof.

(F) Performance Liquidated Damages Credit. Performance Liquidated Damages Credit shall be an amount equal to any amount the Company is required to pay as damages as set forth in Article V hereof for its failure to achieve its Performance Guarantees.

(G) All Other Service Fee Adjustments. The All Other Service Fee Adjustments shall be the amount of any other adjustments to the Service Fee required by this Agreement.

SECTION 7.2. UNCONTROLLABLE CIRCUMSTANCES - IMPACT ON OPERATING AND MAINTENANCE CHARGE. If due to the occurrence of an Uncontrollable Circumstance, there shall be an increase in the Company's costs of operation and maintenance of the Wastewater System, the amount of the cost increase shall be borne in accordance with Section 10.1 hereof. The Company shall give the Borough prompt written notice of the occurrence of any Uncontrollable Circumstance, including in such notice as and to the extent known (1) the amount of any increase in the Company's operation and maintenance costs and Cost Substantiation therefor and (2) the anticipated adjustment to the components of the Service Fee over the term of the Agreement resulting therefrom. Before making any adjustment pursuant to this subsection, the Borough shall determine whether the increased costs of operation and maintenance of the Wastewater Treatment Facility resulting from an Uncontrollable Circumstance can reasonably and prudently be reduced by the undertaking of a Wastewater System Modification. In the event that the Borough makes such a determination, the Borough shall make or cause to be made such Wastewater System Modification in accordance with Article V hereof.

SECTION 7.3. BOROUGH NON-PERFORMANCE.

(A) Impact of Borough Breach on Costs of Operation and Maintenance. If subsequent to the Commencement Date, due to a Borough Breach, there shall be an increase in the Company's cost of Operation Services, the amount of any such incremental cost increase shall be borne by the Borough. The Company shall give the Borough and the Consulting Engineer prompt written notice of the occurrence of any event constituting the Borough Breach, including in such notice as and to the extent known (1) a description in reasonable detail of the

reasons why such increase is due to a Borough Breach, (2) the projected amount of any increase in the Company's cost of Operation Services, including Cost Substantiation therefor, and (3) the resulting adjustment in the any components of the Service Fee resulting therefrom. The Borough may object to any adjustment to the Service Fee due to any such increase in the Company's cost of operation and maintenance for any reason under this Agreement, including the grounds that such adjustment was improperly computed, that such costs are unreasonable for the work performed, that such costs or the manner in which the work was carried out was not a reasonable response to the event of Borough Breach, or that no Borough Breach has occurred. Notification and resolution of any such dispute shall be made in accordance with the provisions of Section 8.10 hereof.

(B) Wastewater System Modifications to Repair Damage Caused by Borough.

If at any time the Wastewater System is damaged or destroyed due to a Borough Breach, the Borough shall pay, in addition to and not in substitution for the payments required under subsection 7.4(A) hereof, all Wastewater System Modification costs and adjustments as are required to be made by the Borough pursuant to Section 6.5 hereof.

SECTION 7.4. BILLING OF THE SERVICE FEE.

(A) Billing Statements. For each Billing Period the Company shall render a statement (a "Billing Statement") to the Borough by the 15th day of the following Billing Period, which shall set forth each component of the Service Fee. Each Billing Statement shall also include, for such Billing Period, (1) all other amounts payable by the Borough to the Company hereunder, (2) all amounts payable by the Company to the Borough hereunder, and (3) with respect to items (1) and (2) above the balance due to or from the Borough (the "Other Payments Balance"). The Company shall provide all information required pursuant to subsection 5.17(A) with each Billing Statement. The Borough shall pay the Service Fee and any Other Payments Balance due to the Company within 30 days of the date of the Billing Statement. Any Other Payments Balance due to the Borough shall be paid to the Borough within 30 days of the date of the Billing Statement showing such balance due.

(B) Billing Estimates and Adjustments. To the extent that the actual value of any item in any Billing Statement cannot be accurately determined at the Billing Statement date, such item shall be billed on an estimated basis and an adjustment shall be made to reflect the

difference between such estimated amount and the actual amount of such item on the Billing Statement following the date on which the Company learns the exact amount of such item.

(C) Annual Estimates. 90 days prior to the end of each Contract Year, the Company shall provide to the Borough a written statement setting forth its reasonable estimate of the aggregate Service Fee for the next Contract Year, which statement shall not be binding on the Company.

SECTION 7.5. ANNUAL SETTLEMENT. Within 60 days after the end of each Contract Year, the Company shall deliver to the Borough an annual settlement statement (the "Annual Settlement Statement") setting forth the actual aggregate Service Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the Borough pursuant to the Billing Statements with respect to such Contract Year, including, without limitation, all adjustments to the Service Fee made pursuant to Section 6.5 hereof, this Article VII, and any other amounts payable by the Borough or the Company pursuant hereto. If any amount is then in dispute, the Annual Settlement Statement shall set forth the Company's estimate of such amount and a final reconciliation of such amount shall be made in the Billing Statement for the Billing Period immediately following the resolution of such dispute.

SECTION 7.6. BILLING DISPUTES. If the Borough disputes any amount billed by the Company in any Billing Statement, the Borough shall pay that portion of the billed amount which is not in dispute and shall provide the Company with written objection within 15 days of the receipt of such Billing Statement indicating the portion of the billed amount that is being disputed and providing all reasons then known to the Borough for its objection to or disagreement with such amount. If the Borough and the Company are not able to resolve such dispute within 30 days after the Borough's objection, either party may refer such dispute to the Independent Engineer for non-binding mediation in accordance with Section 8.10 hereof. If any such amount is adjusted in the Company's favor pursuant to agreement, mediation or otherwise, the Borough shall pay the amount of such adjustment to the Company, with interest thereon at the Base Rate from the date such disputed amount was due the Company to the date of payment in full of such amount. Nothing contained in this subsection shall limit the authority of any authorized officer of the Borough or any other governmental agency to raise a further objection

to any amount billed by the Company pursuant to an audit conducted pursuant to Applicable Law.

SECTION 7.7. PRIVATE BUSINESS USE RESTRICTIONS.

(A) Payments to the Company. It is the intent of the Borough and the Company that this 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 Borough within the meaning and intent of the applicable regulations and rulings of the Internal Revenue Service. The Company shall comply with all IRS Rulings and Revenue Procedures necessary to effectuate such intent.

(B) Retesting of the Service Fee. If, at any time or from time to time, during the Term, (1) the scope of the Operation Services is increased or reduced pursuant to the terms of this Agreement and (2) there is an adjustment to the Operating and Maintenance Charge due to such increase or reduction in the Operation Services, the parties shall retest, as of the date of such adjustment, the Service Fee for compliance with the private business use restrictions imposed by the IRS. Any such adjustment of the Operating and Maintenance Charge and retesting of the Service Fee shall, at the Borough's cost, be subject to the review and approval of the Borough's legal department or legal counsel with expertise in public finance tax matters for confirmation that such adjustment will not adversely affect the tax-exempt status of any obligations issued by the Borough with respect to the Wastewater System.

## ARTICLE VIII

### DEFAULT, TERMINATION FOR CAUSE AND DISPUTE RESOLUTION

SECTION 8.1. REMEDIES FOR BREACH. The parties agree that, except as otherwise provided in Sections 8.2(A), 8.3(A) and 8.5 hereof with respect to termination rights, (1) in the event that the Company fails to meet the Performance Guarantees hereunder, the Performance Obligations provided for in Article V hereof shall be the only remedies available against the Company with respect to such failure to perform (except with respect to third party claims brought against the Borough arising out of such failure to perform for which the Company is obligated to indemnify the Borough pursuant to the provisions of this Agreement) and (2) in the event that either party breaches any other obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages or the performance of such other obligation hereunder and such right to recover damages or to be reimbursed as provided herein will ordinarily constitute an adequate remedy for any breach of such other obligation or any material untruth in any such representation. Neither party shall have the right to terminate this Agreement for cause except after an Event of Default determined in accordance with the provisions of this Article X shall have occurred and be continuing.

#### SECTION 8.2. EVENTS OF DEFAULT BY THE COMPANY.

##### (A) Events of Default.

(1) Events of Default Not Requiring Notice or Cure Opportunity for Termination. Each of the following shall constitute an Event of Default on the part of the Company for which the Borough may terminate without any requirement of notice or cure opportunity:

(i) Certain Performance Standards. The occurrence of any Significant Non-Compliance Event.

(ii) Abandonment of Operations. The abandonment by the Company of the Wastewater System.

(iii) Failure to Operate for 24 Hours. The failure of the Company to operate the Wastewater System or any major component thereof for 24 hours.

(iv) Emergencies. The occurrence of emergencies not due to Borough Breach or Uncontrollable Circumstances resulting in Borough takeover of all or any major component of the Wastewater System.

(v) Reports. The intentional falsification of regulatory reports or laboratory results.

(vi) Repeated Material Breaches. Three or more Company Breaches in any Contract Year that are not excused by a Borough Breach or Uncontrollable Circumstance, or one or more permit non-compliance events that constitute Significant Non-Compliance events under NJDEP regulations in any Contract Year, as set forth in (i) above.

(vii) Liability Limitation. The failure of the Company to increase, pursuant to subsection 8.13(C), its liability limitation set forth in Section 10.13 hereof by a stated dollar amount, within 5 business days' receipt of notice from the Borough that the Company has paid money damages to or on behalf of the Borough at the Borough's direction equal to 90% of the liability limitation contained in Section 8.13.

(viii) Voluntary Bankruptcy. The written admission by the Company or the Guarantor that it is bankrupt, or the filing by the Company or the Guarantor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Company or the Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Company or the Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Company's or the Guarantor's property or business.

(ix) Involuntary Bankruptcy. The final adjudication of the Company or the Guarantor as bankrupt after the filing of an involuntary petition under the

Bankruptcy Act, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by the Company or the Guarantor nor until the order of the adjudication shall be regarded as final unless and until the same is no longer being contested by the Company or the Guarantor nor until the order of the adjudication is no longer appealable.

(2) Events of Default Requiring Notice or Cure Opportunity for Termination.

The failure or refusal by the Company to perform any other obligation under this Agreement (other than those obligations contained in subsection 8.2(A)(1) above), the failure of the Company to provide credit enhancement as required by subsection 9.1(B) hereof, the failure of the Company to pay or credit undisputed amounts owed to the Borough under this Agreement within 60 days following the due date for such payment or credit (including the payment or crediting of any liquidated damage amounts due the Borough in connection with the Performance Obligations), or the failure of the Guarantor to comply with any of its obligations under the Guaranty, shall constitute an Event of Default on the part of the Company for which the Borough may terminate this Agreement; except that no such other failure or refusal shall constitute an Event of Default giving the Borough the right to terminate this Agreement for cause under this subsection unless:

(a) The Borough has given prior written notice to the Company or the Guarantor, as applicable, stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a Company Breach of this Agreement or a material breach of the Guaranty on the part of the Guarantor and which will, in its opinion, give the Borough a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

(b) The Company or the Guarantor, as applicable, has neither challenged in an appropriate forum the Borough's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than 60 days, from receipt of the notice given

pursuant to clause (a) of this subsection (but if the Company or the Guarantor shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Company or the Guarantor is continuing to take such steps to correct such default).

(B) 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 Agreement is terminated by the Borough for an Event of Default by the Company, the Borough shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement, under the Article IX and under Applicable Law.

### SECTION 8.3. EVENTS OF DEFAULT BY THE BOROUGH.

(A) Events of Borough Default Defined. Each of the following shall constitute an Event of Default on the part of the Borough for which the Company may terminate this Agreement:

(1) Failure to Pay or Otherwise Comply with Agreement. The failure or refusal by the Borough to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance or Company Breach, including the failure of the Borough to pay undisputed amounts owed to the Company under this Agreement within 60 days following receipt of a Company invoice therefor; except that no such failure or refusal shall constitute an Event of Default giving the Company the right to terminate this Agreement for cause under this Section unless:

(a) The Company has given prior written notice to the Borough stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Borough and which will, in its opinion, give the Company a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

(b) The Borough has neither challenged in an appropriate forum the Company's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than 60 days from the date of the notice given pursuant to clause (a) of this subsection (but if the Borough shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Borough is continuing to take such steps to correct such default).

(2) Bankruptcy or Insolvency. The filing by the Borough of a petition seeking relief, a final adjudication of insolvency or bankruptcy, or an assumption by a cognizant regulatory body of supervision of the Borough's finances, in any case under the Federal Bankruptcy Code or any federal or State statute intended to provide relief or otherwise become effective for political subdivisions which are insolvent, financially unsound or unable to meet their obligations as they mature.

It is specifically understood that the provisions of Article VII hereof are intended to constitute an adequate remedy for non-performance by the Borough but that, upon the occurrence of an Event of Default by the Borough, the Company shall have the right to terminate this Agreement and to receive damages as and to the extent provided in this Article VIII.

(B) Termination Liquidated Damages During the Term. If this Agreement is terminated by the Company for cause as a result of an Event of Default by the Borough, the Borough shall pay the Company, as liquidated damages upon any such termination, the same amount which would be payable under subsection 8.5(A) if this Agreement were terminated during the Initial Term, according to the month of termination, at the election of the Borough for convenience and without cause.

SECTION 8.4. PROCEDURE FOR TERMINATION FOR CAUSE. If any party shall have a right of termination for cause in accordance with Sections 8.2 or 8.3, the same may be exercised by notice of termination given to the party in default at least 60 days prior to (or, in the case of a bankruptcy default, simultaneously with) the date of termination specified in such notice (the "Termination Date").

SECTION 8.5. BOROUGH CONVENIENCE TERMINATION ELECTION.

(A) Convenience. The Borough shall have the right to terminate this Agreement, in its sole discretion, for convenience and without cause at any time upon 60 calendar days' notice. If the Borough exercises its right to terminate the Agreement pursuant to this subsection 8.5(A), the Borough shall pay to the Company on the termination date, the applicable amount listed below if termination occurs following the Commencement Date:

<u>Termination in Contract Year</u>	<u>Termination Payment</u>
1	\$150,000
2	150,000
3	150,000
4	150,000
5	150,000
6	150,000
7	150,000
8	150,000
9	150,000
10	150,000

In addition to the amount listed above, the Borough shall pay the Company the unrecovered portion of the Company's investment in the new ultra violet disinfection system which amount shall be calculated by multiplying (1) the difference between (a) 120 and (b) the number of months of the Initial Term that have expired as of the date of the Termination, times (2) the quotient of (1) the cost of the system (not to exceed \$500,000) divided by (b) 120.

(B) Adequacy of Termination Payment. The Company agrees that the applicable termination payment provided in this Section will fully and adequately compensate the Company for all profits, costs, expenses, losses, liabilities, damage, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to such termination of the Company's right to perform this Agreement. The obligation to pay such amounts shall not impair or limit the obligation of the Borough to the Company under any other provision of this Agreement which expressly survives termination hereunder, including, but not limited to, Section 10.3 hereof.

SECTION 8.6. CERTAIN OBLIGATIONS OF THE COMPANY UPON TERMINATION.

(A) Obligations on Default Termination or a Convenience Termination. Upon a termination of the Company's right to perform this Agreement under Sections 8.2 or 8.5 hereof, the Company at its cost and expense shall:

(1) stop the Operation Services on the date and to the extent specified by the Borough;

(2) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;

(3) promptly remove from the Facility Site all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including, but not limited to, sheds, trailers, workshops and toilets), and repair any damage caused by such removal;

(4) and leave the Facility Site and Wastewater System same in a neat and orderly condition; and

(5) promptly remove all employees of the Company and any Subcontractors and vacate the Facility Site.

(6) promptly deliver to the Borough 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 cancelling each agreement;

(7) deliver to the Borough promptly a list of:

(a) all special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Operation Services; and

(b) all other supplies, materials, machinery, equipment and other property previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Operation Services;

(8) advise the Borough promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(9) unless the Borough directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

(10) as directed by the Borough, transfer to the Borough by appropriate instruments of title, and deliver to the Facility Site (or such other place as the Borough may specify), all special order items;

(11) promptly transfer to the Borough all warranties given by any manufacturer or Subcontractor with respect to particular components of any repairs or replacements of any part of the Wastewater System;

(12) notify the Borough promptly in writing of any Legal Proceedings against the Company by any Subcontractor relating to the termination of the Operation Services (or any Subcontracts);

(13) deliver to the Borough a copy of all books and records in its possession relating to the performance of the Operation Services;

(14) provide the Borough with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;

(15) 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 Borough's costs, and take no action which will increase any amount payable by the Borough under this Agreement; and

(16) upon the request of the Borough, assign and transfer any equipment or vehicle leases.

(B) Additional Obligations. Upon termination of the Company's right to perform this Agreement under Sections 8.2 and 8.5 hereof, the Company at its cost and expense shall provide, and shall use its best reasonable efforts to cause its Subcontractors to provide, technological and design advice and support to the Borough (or, except in the event of a termination pursuant to Section 8.5 hereof, any replacement operator designated by the Borough). Such advice and support shall be for a period of six months and shall include providing any information useful or necessary for the Borough or, except in the event of a termination pursuant to Section 8.5 hereof, any replacement operator designated by the Borough to complete and carry out the Operation Services.

(C) Company Payment of Certain Costs. If termination is pursuant to Section 8.2 hereof and the Company fails to comply with any obligation under this Section, the Borough may, with reasonable notice to the Company, perform such obligation; and the Company shall pay the entire substantiated cost (or any portion thereof) upon demand, notwithstanding that any other person may have defaulted in taking similar action or occupied the same areas or otherwise had any responsibility for the condition involved.

(D) Borough Payment of Certain Costs. If termination is for the convenience of the Borough under Section 8.5 hereof, the Borough shall pay to the Company within 60 days of the date of the Company's invoice all cost and expenses incurred by the Company in satisfying the requirement of subsections 8.6(A) and 8.6(B) hereof, subject to Cost Substantiation.

(E) Hiring of Company Personnel. Upon the termination or expiration of this Agreement under any provision hereof, the Borough or any successor operator of the Wastewater System designated by the Borough shall have the right to offer employment on any terms it may choose to any Company employee employed full time at the Wastewater System. No Company employment agreement, job offer, letter or similar document may contravene this right. The Borough or its designated successor operator shall extend any such job offer within 30 days of the expiration or termination of this Agreement. The Company shall assist and cooperate with any such employee transition.

SECTION 8.7. NO WAIVERS. No action of the Borough or Company pursuant to this Agreement (including, but not limited to, 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 Agreement. No course of dealing or delay by the Borough or Company in exercising any right, power or remedy under this 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 Borough or Company under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 8.8. NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other, except with respect to indemnification of Loss-and-Expenses arising from third party claims for which one party is obligated to indemnify the other pursuant to the provisions of this Agreement, any special, incidental, consequential, punitive or similar damages (but not actual or direct damages) based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 8.9. FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Wastewater System or to any rights or any relationship between the parties arising therefrom shall be governed solely by the laws of the State of New Jersey and shall be solely and exclusively initiated and maintained in courts of the State of New Jersey. The Company irrevocably consents to the jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to the laying of the jurisdiction of any such action or proceeding. The Company and the Borough hereby waive their rights to a trial by jury.

SECTION 8.10. NON-BINDING MEDIATION. Either party hereto may give the other party written notice of any dispute with respect to the Company's satisfaction of any Performance Guarantee, any technical matter or any other matter specified herein for resolution by mediation. Such notice shall specify a date and location for a meeting of the parties hereto at

which such parties shall attempt to resolve such dispute. In the event that such dispute cannot be resolved by the parties hereto within 30 days, such dispute shall be referred to an Independent Engineer for advice and non-binding mediation. The Borough and the Company shall mutually agree on the Independent Engineer. In the event the Borough and the Company cannot agree, the following procedure shall be used to select the Independent Engineer: the Borough and the Company shall have each submit to the other the names of five (5) potential Independent Engineers which each believes are qualified, and from such submitted names, at least two (2) and not more than three (3) shall participate in an evaluation and selection procedure mutually agreed to by the Company and the Borough. The services of the Independent Engineer shall be paid for on a retainer basis with the fee to be shared equally by the Borough and the Company. If the Independent Engineer is unable, within 30 days, to reach a determination as to the dispute that is acceptable to the parties hereto, the matter may be referred by either party to Legal Proceedings.

SECTION 8.11. WAIVER OF CERTAIN DEFENSES. The Company acknowledges that it is solely responsible for the operation and maintenance of the Facility and agrees that it shall not assert (i) impossibility or impracticability of performance, (ii) lack of fitness for use of the Wastewater System, (iii) the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Company, (iv) commercial frustration of purposes, or (v) contract of adhesion, as a defense against any claim by the Borough against the Company.

SECTION 8.12. SUSPENSION UPON COMPANY FAILURE TO PERFORM FOR ANY REASON. Should the Company, due to Uncontrollable Circumstances or any other reason other than Borough Breach, fail, refuse or be unable to receive and treat Influent which it is obligated to receive and treat, for a period of more than twenty-four (24) hours, or if in any time period the Borough should find that danger or menace to the public health, safety or welfare, then, in any of those events, the Borough shall have the right, upon notice to the Company, during the period of such emergency, to take possession of any or all of the Operating Assets necessary in the conveyance, receipt and treatment of Influent and the discharge of Effluent and to use such property to do that which the Company would otherwise be obligated to do. The Company agrees that in such event it will fully cooperate with the Borough to effect such a transfer of possession of the Operating Assets for Borough's use of the same for such purposes. The Company agrees that, in such event, the Borough may take possession of and use

all of the Operating Assets for the above-mentioned purposes without paying the Company or any other person any Service Fee, rental or any other charges or compensation whatsoever for such possession and use. The Borough may in such circumstances operate the Operating Assets with municipal employees, or cause the Operating Assets to be operated by subcontractors to the Borough or through the use of the Company's employees. It is further agreed that the Borough may at any time, at its discretion, relinquish possession of any or all of the Operating Assets to the Company and thereupon demand that the Company resume the operations as provided in the Agreement. It is specifically understood and agreed that the Borough's exercise of its rights under this Section: (1) does not constitute a taking of private property for which payment must be made; (2) shall not create any liability on the part of the Borough to the Company; and (3) that the indemnity provisions of the Agreement are meant to include circumstances arising under this Section. The Borough's right under this Section hereof to retain temporary possession of the Operating Assets, and to operate the Facility, shall terminate at the earlier of: (1) the time when such services can, in the judgment of the Borough, be resumed by the Company, or (if earlier) (2) the time when the Borough no longer reasonably requires such Operating Assets, as determined by the Borough.

SECTION 8.13. LIMITATION OF LIABILITY.

(A) General Limitation. Notwithstanding anything else herein, the aggregate liability of the Company with respect to money damages, including liquidated damages, paid to the Borough or on behalf of the Borough at the Borough's direction, by the Company arising under or in connection with this Agreement, whether based on contract, tort, strict liability or any other legal theory, and whether resulting from litigation, alternative dispute resolution, settlement of litigation or by operation of this Agreement, shall not exceed (i) \$5,000,000, as set forth in subsection 8.13(B).

(B) Exclusions From Limitation. The following matters shall be excluded from the limitation of liability set forth in subsection 8.13(A): (i) amounts paid or incurred by or on behalf of the Company through insurance policies; (ii) other payments, costs or expenses for which the Company is reimbursed or compensated by the Borough or a third party (other than the Guarantor); (iii) amounts paid or incurred in connection with any claims which should have been covered by insurance or bonds required to be provided by the Company under the terms of

this Agreement but which were not so covered due to the Company's negligent or willful failure to obtain or maintain such insurance or bonds; (iv) any amounts in connection with fraud or other intentional torts; (v) amounts paid or incurred with respect to third party claims against which the Company is obligated to indemnify the Borough under the provisions of this Agreement (including fines); and (vi) amounts paid or incurred with respect to claims made directly by third parties against the Company (including fines) (but not claims of third parties asserting claims of or on behalf of the Borough). Nothing in this Section 8.13 is intended to create additional liabilities for the Company under any provision of this Agreement.

(C) Termination Event. If the Company has at any time paid money damages to the Borough or on behalf of the Borough at the Borough's direction, equal to 90% of the limitation contained in this Section 8.13, the Borough shall so notify the Company, whereupon the Company may, within 5 business days of receipt of such notice, certify to the Borough in writing that it will increase the applicable liability limitation by a stated dollar amount. Upon such certification, the Company's liability limitations shall be permanently increased for all purposes under this Agreement. The failure to so certify shall constitute an Event of Default by the Company pursuant to Section 8.2 hereof.

## ARTICLE IX

### SECURITY FOR PERFORMANCE

SECTION 9.1. Guarantor. The Company, prior to or concurrent with the execution of this Agreement, shall cause a guaranty agreement to be provided by the Guarantor in the form attached hereto as Appendix 15 and maintain such guaranty agreement for the Term of this Agreement.

(A) Material Decline in the Guarantor's Credit Standing. For purposes of this Section, a "Material Decline in Credit Standing" shall be deemed to have occurred if neither the Company nor Guarantor maintain the Minimum Financial Criteria set forth in Criteria I or Criteria II contained in Appendix 14 hereto. The Company immediately shall notify the Borough of any Material Decline in Credit Standing.

(B) Credit Enhancement. If, at any time during the Term hereof, a Material Decline in Credit Standing occurs, the Company shall immediately notify the Borough thereof and, within 30 days after such occurrence, shall provide credit enhancement of its obligations hereunder to comply with Criteria III of the Minimum Financial Criteria, as set forth in Appendix 14 hereto.

SECTION 9.2. Letter of Credit. The Company shall provide, prior to issuance of a notice-to-proceed and shall continuously renew, extend or replace for the Term, a letter of credit substantially in the form contained in Appendix 16 hereto issued by a financial institution whose long term senior debt is rated investment grade in the amount of \$500,000 to secure the performance of the Company's obligations.

## ARTICLE X

### GENERAL PROVISIONS

#### SECTION 10.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the Borough nor the Company shall be liable to the other for any failure or delay in performance of any obligation under this Agreement (other than any payment at the time due and owing) if such failure is solely due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by hard copy telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be affected, (3) the estimated amount, if any, by which the Service Fee may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such party under this Agreement and (5) potential mitigating actions which might be taken by the Company or Borough and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best reasonable efforts to eliminate the cause therefor, mitigate the effect thereof, reduce costs and resume performance under this Agreement. The Company shall furnish promptly (if and to the extent available to the Company) any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the Consulting Engineer or the Borough.

(C) Conditions to Service Fee Relief. If and to the extent that Uncontrollable Circumstances interfere with or increase the cost of the Company's performing the Operating Services in accordance herewith, and the Company has given timely notice as required by subsection 10.1(B) hereof, the Company shall be entitled to an increase in the Service Fee equal to the amount of the increased cost as a result thereof. In the event that the Company believes it

is entitled to any Service Fee or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the Borough written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection 10.1(B) hereof. Within 30 days after receipt of such a timely submission from the Company, the Borough shall issue a written determination as to the extent, if any, it concurs with the Company's claim for relief, and the reasons therefor. 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.

(D) Acceptance of Relief Constitutes Release. The Company's acceptance of any Service Fee or other relief under this Section shall be construed as a release of the Borough by the Company (and all persons claiming by, through, or under the Company) for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed.

## SECTION 10.2. INDEMNIFICATION.

(A) Indemnification by the Company. The Company agrees that it will indemnify and hold harmless the Borough, and its representatives, officers, employees and subcontractors (as applicable in the circumstances), (the "Borough Indemnified Parties") from and against (and pay the full amount of) all liabilities, obligations, delays, penalties, charges, taxes, Fees-and-Costs, deposits, actions, damages, claims, demands, judgments, losses, costs, expenses, and suits (collectively, "Loss-and-Expense") incurred by a Borough Indemnitee to third parties, and will defend the Borough Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of or in connection with (or alleged to arise out of or be in connection with) (1) the negligence or wrongful conduct of the Company or any of its officers, members, employees, agents, representatives or Subcontractors in connection with its obligations or rights under this Agreement, (2) any Company Breach; (3) any Company non-compliance with Applicable Law; (4) any nuisance condition described in subsection 5.11(C); and (5) any other matter identified as requiring indemnification by the Company under this Agreement. The Company shall not, however, be required to reimburse or indemnify any Borough Indemnified Party for any Loss-

and-Expense to the extent any such Loss-and-Expense is due to (a) any Borough Breach, (b) the negligence or other wrongful conduct of any Borough Indemnified Party, (c) any Uncontrollable Circumstance, (d) any act or omission of any Borough Indemnified Party responsible for or contributing to the Loss-and-Expense, or (e) any matter for which the risk has been specifically allocated to the Borough hereunder. A Borough Indemnified Party shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Company the opportunity to defend such claim, and shall not settle the claim without the approval of the Company which approval shall be in the Company's sole discretion. These indemnification provisions are for the protection of the Borough Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection 10.2(A) shall survive termination of this Agreement.

(B) Indemnification by the Borough. The Borough agrees that to the extent permitted by law, it will indemnify and hold harmless the Company and its Affiliates and their respective officers, directors, Subcontractors (as applicable in the circumstances) and employees (the "Company Indemnified Parties") from and against (and pay the full amount of) all Loss-and-Expenses incurred by a Company Indemnitee to third parties, and will defend the Company Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of or in connection with (or alleged to arise out of or be in connection with) (1) the negligence or wrongful conduct of the Borough, or any of its respective officers, employees, agents, representatives, contractors or subcontractors in connection with its obligations or rights under this Agreement, (2) Borough Breach, or (3) any other matter identified as requiring indemnification by the Borough, to the extent permitted by Applicable Law, under this Agreement. The Borough shall not, however, be required to reimburse or indemnify any Company Indemnified Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (a) any Company Breach, (b) the negligence or other wrongful conduct of any Company Indemnified Party, (c) any Uncontrollable Circumstance, (d) any act or omission of any Company Indemnified Party responsible for or contributing to the Loss-and-Expense, (e) any matter for which the risk has been specifically allocated to the Company hereunder. A Company Indemnified Party shall promptly notify the Borough of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Borough the opportunity to defend such claim, and shall not settle the claim without the

approval of the Borough which approval shall be in the Borough's sole discretion. These indemnification provisions are for the protection of the Company Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 10.2(B) shall survive termination of this Agreement.

### SECTION 10.3. CONTRACT ADMINISTRATION.

(A) Administration Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term of this 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 Borough Council approval and an amendment to this Agreement pursuant to subsection (D) 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 Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this 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 Borough 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 10.1 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 Agreement; (3) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (4) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; 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 Borough 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 Borough Manager for the Borough. The Borough 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 Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation, application and performance of this Agreement.

(E) Agreement Amendment. Notwithstanding the foregoing, any material change, alteration, revision or modification of this Agreement shall be effectuated only through a formal Agreement amendment authorized, approved or ratified by the Borough Manager or designate and/or the Borough Council in accordance with Applicable Law and properly authorized by the Company.

SECTION 10.4. PROPERTY RIGHTS. The Company shall pay all royalties and non-governmental license fees relating to the operation, maintenance, repair or replacement of the Wastewater System. The Company agrees that it will protect, indemnify and hold harmless the Borough and any of the Borough Indemnified Parties from and against all Loss-and-Expenses, and will defend the Borough Indemnified Parties in any suit, including appeals, arising out of or related to infringement of such patent, trademark or copyright relating to, or for the unauthorized use of trade secrets by reason of the operation, maintenance, repair or replacement of the Wastewater System, or at its option, will 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 indemnify any person for any Loss-and-Expense relating to an unauthorized infringement of any patents, trademarks or copyrights or the unauthorized use of trade secrets solely due to (i) the negligence or wrongful conduct of such person, (ii) any infringement relating to the Facility or the Collection System arising prior to the date of this Agreement, (iii) the alteration of the Facility, or any component thereof, unless undertaken by the Company or at the Company's

recommendation or direction, or (iv) the use, operation or maintenance of the Facility, or any component thereof, in any manner materially inconsistent with the recommendations of the Company set forth in the Operation and Maintenance Manual or the Maintenance Plan, unless such use, operation or maintenance is by the Company or at the Company's recommendation or direction (collectively, "Excluded Infringements"). The provisions of this Section 10.4 shall survive termination of this Agreement, but only for a period of time equal to the unexpired statute of limitations applicable to any claim for which indemnification might be required.

SECTION 10.5. RELATIONSHIP OF THE PARTIES. Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party hereto, and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties. The Company shall not lease or otherwise have a possessory interest in the Wastewater System and shall only have a right to be on the Facility Site and on the Wastewater System to perform its obligations under this Agreement, subject to the terms and conditions of this Agreement.

SECTION 10.6. ASSIGNMENT AND TRANSFER. This Agreement may be assigned by either party hereto only with the prior written consent of the other party, except that (A) without the consent of the Company (1) the Borough may make such assignments, create such security interests in its rights hereunder and pledge such monies receivable hereunder as may be required in connection with the issuance of bonds to finance any Wastewater System Modification; and (2) the Borough may assign this Agreement to a public entity; and (B) without the consent of the Borough, (1) the Company may make such assignments to any person, firm, corporation or other business entity which, at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all of the assets or business of the Company; provided that such entity is qualified to perform the Operation Services, has all necessary licenses to perform the Operation Services and the Guaranty remains in effect or is replaced by a guaranty and guarantor acceptable to the Borough.

SECTION 10.7. INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount

outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by law, be deemed added to the amount due, as accrued.

SECTION 10.8. NO DISCRIMINATION. The Company shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex or, with respect to otherwise qualified individuals, handicap. The Company will take all actions reasonably necessary to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, handicap. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Company shall impose the non-discrimination provisions of this Section 10.8 by contract on all Subcontractors hired to perform work related to the Facility and shall take all reasonable actions necessary to enforce such provisions. The Company will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Company agrees to comply with the Affirmative Action Rules and ADA provisions. The Company and its Subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) and the rules and regulations promulgated pursuant thereto, including but not limited to N.J.A.C. 17-27. In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the Company and its Subcontractors shall comply with all of the provisions of N.J.A.C. 7:22-9. The Company shall include in all subcontracts a similar statement.

SECTION 10.9. BOROUGH APPROVAL OF SUBCONTRACTORS.

(A) General. The Borough shall have the right to approve all Subcontractors engaged to perform any work related to the Facility Site, or any portion of the Operation Services that has a contract value equal to or greater than \$100,000. Any such approval under this subsection shall not be unreasonably withheld. The Company shall furnish the Borough written notice of its intention to request proposals from such Subcontractors, together with all

information requested by or otherwise available to the Company pertaining to the proposed Subcontractor and subcontract pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest, (2) any record of felony criminal convictions or pending felony criminal investigations, (3) any final judicial or administrative finding or adjudication of illegal employment discrimination, and (4) any final judicial or administrative finding or adjudication of non-performance in contracts with the Borough. In the event the Borough fails to respond to any such notice of intention within 10 business days of receipt thereof, the Borough shall be deemed to have approved the proposed Subcontractor. The approval or withholding thereof by the Borough of any proposed Subcontractor shall not create any liability of the Borough to the Company, to third parties or otherwise. In addition, if a Subcontractor provides any part of the Operation Services, the Borough, for reasonable cause as determined by the Borough, may require the Company to terminate such Subcontractor and replace it with one reasonably satisfactory to both parties.

SECTION 10.10. ACTIONS OF THE BOROUGH IN ITS GOVERNMENTAL CAPACITY. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the Borough in its governmental or regulatory capacity, or as limiting the right of the Company to bring any legal action against the Borough, not based on this Agreement, arising out of any act or omission of the Borough in its governmental or regulatory capacity.

SECTION 10.11. BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 10.6 hereof.

SECTION 10.12. AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties.

SECTION 10.13. NOTICES. Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if transmitted by hard copy telecommunication or delivered in person (including, but not limited to, by mail), or by overnight courier to the following:

If to the Company: Veolia North America  
53 State Street, 14<sup>th</sup> Floor  
Boston, Massachusetts 02109  
Attn: General Counsel

If to the Borough:

Borough of Washington  
100 Belvidere Avenue  
Washington, New Jersey 07882  
Attn.: Borough Manager

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other party. Notices and communications given by mail hereunder shall be deemed to have been given no later than 5 days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

SECTION 10.14. FURTHER ASSURANCES. Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement. Specifically, upon reasonable request of the Borough, the Company shall supply an affidavit that the Facility and the Wastewater System are free of all Encumbrances, including liens for any taxes which are due and required to be paid by the Company (other than liens required or contemplated by this Agreement). The Borough further agrees not to remove or transfer equipment (or any part or interest therein) manufactured or furnished by the Company or an Affiliate from the Facility Site or the Wastewater System without providing prior written assurance satisfactory to the Company that such removal or transfer will not increase the Company's liability under this Agreement.

SECTION 10.15. NO THIRD PARTY BENEFICIARIES. Unless specifically set forth herein, neither party to this Agreement shall have any obligation to any third party as a result of the agreements contained herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

BOROUGH OF WASHINGTON, NEW JERSEY

By: \_\_\_\_\_  
Title:

VEOLIA WATER NORTH AMERICA  
OPERATING SERVICES, LLC

By:  \_\_\_\_\_  
Title: *SVP-ENR*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

BOROUGH OF WASHINGTON, NEW JERSEY

By:  \_\_\_\_\_  
Title: **BOROUGH MANAGER**

VEOLIA WATER NORTH AMERICA  
OPERATING SERVICES, LLC

By \_\_\_\_\_  
Title:

EXECUTION COPY

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APPENDICES  
TO THE  
WASTEWATER TREATMENT SYSTEM  
OPERATION AND MAINTENANCE AGREEMENT

between

THE BOROUGH OF WASHINGTON, NEW JERSEY

and

VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC

Dated

October 9, 2018

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**APPENDIX 1**  
**DESCRIPTION OF WASTEWATER SYSTEM**

**APPENDIX 1**  
**DESCRIPTION OF WASTEWATER SYSTEM**  
**SITE RELATED DOCUMENTS**

*The following documents are on file at the offices of the Borough Manager.*

1. Interceptor Sewer Replacement document, prepared by Killam Associates
2. Sanitary Sewer System, Find It, Fix It Rehabilitation Program document prepared by Killam Associates
3. N.J. State Loan Project No. S340706-03, dated February, 1997, prepared by Killam Associates
4. Sanitary Sewer Project Evaluation Survey Project Report No. 1, dated March, 1995, prepared by Killam Associates
5. Wastewater Management Plan - Revised, September, 1995 and August, 1996 by Killam Associates
6. Wastewater Treatment Facility Upgrade Expansion Project Report - January 1, 1990 - December 31, 1995, prepared by Peter Kowalick, RMA
7. Discharge Allocation Certificate - Environmental Statement - Revised October, 1995, prepared by Killam Associates
8. Sewer Treatment Plant Site Evaluation, dated July, 1995, prepared by Killam Associates
9. Appraisal Report, prepared for Killam Associates by C. Beyer Associates as of July 13, 1995
10. Sanitary Sewer Evaluation Survey Project Report No. 2, dated January, 1996, prepared by Killam Associates, including separately bound Appendix B, Vol. 1 and Appendix B, Vol. 2
11. Sanitary Sewer Evaluation Survey Project Report No. 3, dated May, 1997, prepared by Killam Associates
12. Legal Notification of Proposed Activities - Borough of Washington Outfall Extension and Bridge Expansion - Sewage Treatment Plant, dated February 4, 1997, prepared by Killam Associates
13. Legal Notification of proposed activity of Borough of Washington Interceptor Sewer Project, dated February 4, 1997, prepared by Killam Associates

14. Request for Freshwater Wetland Statewide General Permits 1 & 2 for Borough of Washington Interceptor Sewer Replacement and Construction, dated February 3, 1997, prepared by Killam Associates
15. Response to comments on Project Report/Facilities Plan ST Upgrade/Expansion, dated January 31, 1997, prepared by Killam Associates
16. Omni Environmental Corporation Report Nutrient Study - Wastewater Treatment Facility, dated July, 1993
17. Wastewater Management Plan, dated October, 1988, prepared by Killam Associates
18. Omni Environmental Corporation Wasteload Allocation Study for Borough of Washington - Wastewater Treatment Facility
19. A list of Drawings in conjunction with the Interceptor Sewer Replacement marked T-1, P-1 through P-7 and D-1 through D-3, showing Soil Erosion and Sediment Control Plans and Details, Construction Details and Traffic Plan
20. Report of Subsurface Study-Stabilization Pond, Borough of Washington, Warren Borough, New Jersey, dated June, 1966, prepared by Welch and Malinofsky
21. Report of Subsurface Exploration and Geotechnical Engineering Evaluation, Washington Borough Wastewater Treatment Plant Facility, Washington Borough, Warren Borough, New Jersey, dated February 18, 1997, prepared by French & Parrello Associates, P.A.
22. Metes and bounds property survey of the Facility Site.
23. Portions of Project Report that pertain to the Facility Site
24. Portions of Technical Design Report that pertain to the Facility Site
25. Maps of Collection System, Pumping Stations and Facility Site, contained in this Appendix 1
26. Letter to Frank Mangravite from Killam Associates, dated August 14, 1997, transmitting letter report from Killam Associates to Alan Fisher, Borough Manager, dated May 3, 1990, regarding influent flow meter, review of meter records
27. Those portions of the Borough of Washington, New Jersey, Request for Proposals, as amended by Addenda 1-6, that pertain to the Facility Site
28. Known Contaminated Sites in New Jersey Municipal Report, dated September, 1997
29. Administrative Consent Oder dated February 17, 1998.

## **FACILITY SITE LOCATION**

The Facility Site is located on Block 101, Lots 1, 1.01 and 8, off of New Jersey Route 57. The site is approximately 20 acres, bounded by Shabbecong Creek on the north, the Borough-Township line to the west, the Washington Garden Apartment Complex private road to the east and a train rail and the Washington Garden Apartment Complex to the south. A bridge connects the wastewater treatment plant via an right of way opposite Christine Place off of Route 57.

The Facility Site slopes towards Shabbecong Creek from a high elevation of approximately 416 feet above sea level at the southeast corner of the site to a low elevation of approximately 390 at the northwest corner of the site. A complete topographical survey of the site is shown on the Killam Associates engineering drawings listed in Appendix 1.

## **COLLECTION SYSTEM DESCRIPTION**

The Collection System was originally built in 1910 and has been expanded concurrent with land development projects. The Collection System consists of about 5,600 linear feet (“LF”) of force mains and about 116,000 LF of pipes ranging from six to thirty inches in diameter of which about 2,750 LF were Township of Washington Borough sewers. Most of the flow arrives at the treatment plant by gravity. There are six pump stations, of which one serves about 125 homes and the rest serve about fifteen or fewer homes/buildings each. Only one pump station has its own emergency generator. Another pump station is run off the plant generator. In 1997, there were about 2,100 service connections serving a population of 6,662 persons. Since 1997, some new, mostly small developments and have been added to the system. Currently, there are 2,294 sewer service connections. In 2010, the population was 6,461. One of the two industrial customers may cease operations within the next twelve months.

The Collection System contains a network of primarily 4 inch diameter pipes which connect sewer buildings to the municipal sewer pipes. The 4 inch diameter pipes are known by several designations: building laterals, building connections and service connections are some typical designations. These sewers are designated as service connection piping. Most service connections extend through municipal and private property with the municipal property length being the distance in the municipal roadway from the municipal sewer location to the property line and the private property length being the distance from the sewer building to the property line. The total length of the service connection piping network is unknown. An approximate length of 91,760 LF was projected by assuming approximately 2,294 service connections and an average service connection length of 40 LF. This projected length is probably conservative in that it assumes all service connections exit the front of every building and travel the most direct path to the municipal sewer.

In addition, the Collection System contains some force main piping which conveys wastewater from both municipal and private pumping stations to the gravity sewer system. The total length of force main piping within the Borough is estimated to be approximately 5,600 linear feet, consisting of 1-1/2 inch to 4 inch diameter force mains.

In summary, the total length of the Collection System has been estimated to be approximately 213,360 linear feet of pipe.

Notwithstanding the description of six existing pump stations found in paragraph one of this section, the Borough recently completed construction of a seventh pump station, South Prospect Pump Station. South Prospect Pump Station replaces an inverted siphon and pumps through a force main under Shabbecong Creek at the end of South Prospect St. The station consists of a wet well, pumping equipment, control panel and a permanent natural gas fueled generator.

## VEHICLES

The Company will have the use of the following vehicles and rolling stock owned by the Borough prior to the Commencement Date, in "as is" condition:

1. 1990 Sewer Flusher, SRECO-Flexible (1,273.1 hours)
2. 1995 Trailer-Mounted 4" Trash Pump, Goodwin (93.8 hours)
3. 1996 B2500 Ram Utility Truck, Dodge (26,594 miles)
4. Kubota tractor (823 hours)
5. 1 MTD push lawn mower
6. 1 Cub cadet lawn tractor (101.5 hours)

**MAPS OF COLLECTION SYSTEM, PUMPING STATION AND FACILITY**

*Maps of the Collection System, Pumping Station and Facility are on file at the offices of the Borough Manager*

## LEGAL DESCRIPTION OF SITE

The Facility Site consists of Block 101, Lot 8 The Facility Site consists of two tracts:

The First Tract is butted and bounded as follows: Beginning at a point in the middle of the Shabbecong Creek on the property line between the estate of William G. Dufford, deceased, and other lands of the party of the first part, said line being marked by a stake fourteen feet south of the point of beginning in the direction of the first course; thence (1) along the lands of William G. Dufford, deceased, south thirteen degrees east four hundred and eighteen feet to a stake for a corner in said line; thence (2) north seventy-seven degrees east four hundred and seventy-five feet to a stake for a corner in the lands of the part of the first part; thence (3) along the lands of the party of the first part north ten degrees and thirty-three minutes west five hundred and eleven feet more or less to a point in the middle of the Shabbecong Creek, the line being marked by a stake on the south bank of the creek and six feet from the fourth corner of the tract; thence (4) down the several courses of the brook of the point of beginning. Being a tract situated and lying along the south side of the Shabbecong Creek and along and extending eastward from the property line between the lands of the party of the first part and William G. Dufford's estate, and containing four and eighty-three hundredths acres, strict measure.

The second of said tracts is butted and bounded as follows: Beginning at a point in the middle of the Shabbecong Creek on the property line between the estate of William G. Dufford and the party of the first part, being the part of beginning of the first tract above mentioned and running thence (1) along the lands of William G. Dufford, deceased, north thirteen degrees west four hundred and thirty-one feet to the south side of West Washington Avenue, said point being a corner of the lands of the party of the first part and of William G. Dufford, deceased; thence (2) along the south side of West Washington Avenue north seventy-two degrees thirty-four minutes east sixteen feet to a stake for a corner thence (3) south thirteen degrees east along the lands of the party of the first part; and paralleling the first course four hundred and twenty-eight feet to the middle of the Shabbecong Creek; thence (4) down the middle of the Shabbecong Creek the several courses thereof sixteen feet more or less, to the point of beginning, being a strip of land sixteen feet wide adjoining the first tract and extending from the south side of West Washington Avenue to the middle of the Shabbecong Creek, and containing sixteen hundredths of an acre, strict measure.

**SURVEY OF FACILITY SITE**

*The Survey of Facility Site is on file at the offices of the Washington Borough Manager.*

**APPENDIX 2**  
**OPERATIONS REVIEW PROTOCOL**

## APPENDIX 2

### OPERATIONS REVIEW PROTOCOL

#### Periodic Reports During Operations

Monthly Service Fee-related reports and MRRA reports (with Billing Statement)	No later than 15 days after end of each month
Monthly operation reports	No later than 15 days after end of each month
Annual Reports	Within 45 days after end of each Contract Year
Annual Settlement Statement	Within 60 days after end of each Contract Year
Reasonable Estimate of Aggregate Service Fee for the next Contract Year	90 days prior to the end of each Contract Year
Any supplemental compliance testing report for the purpose of demonstrating permit condition compliance	As soon as available

**APPENDIX 3**  
**REQUIRED INSURANCE**

## APPENDIX 3

### REQUIRED INSURANCE

1. Insurance Coverage. The Company shall obtain, pay for and maintain the insurance coverages listed in paragraphs (a) through (f) below with respect to the operation of the Wastewater System. The Company shall be responsible for premiums, fees and other costs associated with obtaining and maintaining such Required Insurance and the Borough shall have no obligation to reimburse the Company therefor.
  - (a) workers' compensation insurance required by law covering all of the employees of the Company;
  - (b) employer's liability insurance with limits of \$1,000,000 per accident or employee disease;
  - (c) comprehensive general liability and property damage insurance, with contractual liability and products completed operations coverage, with limits of liability of \$2,000,000 general aggregate, \$2,000,000 products and completed operations aggregate, \$1,000,000 personal injury and advertising injury, \$1,000,000 per occurrence for bodily injury and for property damage and \$100,000 fire damage legal liability;
  - (d) comprehensive automobile liability insurance, including owned, non-owned and leased or hired vehicles, with limits of \$1,000,000 combined single limit, with a deductible amount to be determined by the Company;
  - (e) excess liability insurance above the required comprehensive general, automobile and employer's liability insurance in the amount of \$10,000,000;
  - (f) contractor's pollution liability insurance with limits of \$5,000,000 per loss and an annual aggregate limit of \$10,000,000.
2. Additional Insureds. The Company shall include the Borough and its officers, elected officials, agents, volunteers and employees as additional insureds (the "Additional Insureds") on all insurance policies required pursuant to this Appendix (other than paragraphs 1(a) and (b) hereof).
3. Insurance Certificates. Insurance, and any renewals thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Borough for its approval 30 days prior to the Commencement Date or, in the case of a renewal, as reasonably provided by the insurer. The Company shall provide 30 days written notice to the Borough of cancellation, intent not to renew, or reduction in its coverage by the insurance company.
4. Non-Recourse Provision. All insurance policies shall provide that the insurers shall have no recourse against the Additional Insured for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required hereunder shall be the primary source of any restitution or other recovery for any injuries to or death of

persons or loss or damage to property incurred as a result of an action or inaction of the Company or its Subcontractors, of their respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by the Borough.

5. Subcontractors. The Company shall be responsible for ensuring that all Subcontractors which are working at the Wastewater System secure and maintain all insurance coverages (including workers' compensation insurance) and other financial sureties required by New Jersey law in connection with their presence and the performance of their duties at or concerning the Wastewater System.
6. Specific Provisions for Comprehensive General Liability Insurance. Comprehensive General Liability insurance, as required under paragraph 1(c) of this Appendix, shall include premises-operations, blanket contractual, products and completed operations, personal injury and advertising, host liquor liability, explosion, collapse, underground hazards, broad form property damage including completed operations, fire damage legal and independent contractors coverages.
7. Specific Provisions for Workers' Compensation Coverage. Workers' Compensation insurance shall be in accordance with the requirements of New Jersey law, as amended from time to time. The required workers' compensation insurance shall include other states' coverage, voluntary compensation coverage, and federal longshoreman and harborworkers coverage.
8. Specific Provisions for Pollution Legal Liability Insurance. Coverage for pollution legal liability required by paragraph 1(f) of this Appendix shall include coverage for bodily injury sustained (including death) property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed; defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims; and losses that directly arise from the Company's operation of the Wastewater System. Coverage shall apply to sudden and accidental non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury and property damage. Coverage shall not apply to any pre-existing conditions.
9. Changes in Insurance Coverage. The Company shall use its best efforts to obtain such additional insurance as the Borough may request from time to time, and the costs of such additional insurance shall be a borne by the Borough. The Borough may decrease or omit the coverages specified in paragraphs 1(e) and 1 (f) of this Appendix at any time in its sole discretion, and may decrease the coverage specified in paragraph 1(c) hereof to the extent it is not available on commercially reasonable terms.
10. Qualifications of Insurers. The Company is required to obtain the insurance set forth herein with insurance companies that carry a Best's "A- VIII" or equivalent rating. In addition,

insurance may be obtained or maintained with insurers which are prohibited from conducting business in the State of New Jersey.

11. Cost of Insurance. If the Borough chooses to arrange for the insurance outlined in this Appendix, the Borough may elect to obtain such insurance, provided that
  - (a) written notice is received by the Company at least 90 days prior to the Contract Year during which the Borough will assume this responsibility or 90 days prior to the expiration date of the insurance placed by the Company;
  - (b) the Borough may at any time during the term of the Agreement, upon 90 days written notice prior to any Contract Year, require the Company to assume the responsibility to obtain the Required Insurance;
  - (c) the Borough names the Company and the Guarantor as additional insureds upon assumption of such responsibility; and
  - (d) the Borough pays any cancellation penalty (or short-rate) arising out of cancelling the Company provided coverage required by this Appendix prior to its expiration date and
  - (e) the Borough pays any premiums, fees and other costs associated with obtaining and maintaining such insurance.

**APPENDIX 4**  
**ENVIRONMENTAL GUARANTEE**

## **APPENDIX 4**

### **ENVIRONMENTAL GUARANTEE**

The Wastewater System shall be operated in an environmentally sound manner in accordance with Applicable Law including, but not limited to, the NJPDES Permit, the Occupational Safety and Health Act, the New Jersey Public Employees Organizational Safety and Health Act and all Legal Entitlements issued with respect to the Wastewater System. The Company shall be provided relief pursuant to the provisions of the Agreement pertaining to Uncontrollable Circumstances for meeting such requirement only to the extent limitations or requirements are imposed by Applicable Law, including the Legal Entitlements, which are more burdensome than the most stringent limitations or requirements: (i) required by Applicable Law on the Contract Date; (ii) agreed to by the Borough and the Company in any applications for Legal Entitlements for the Facility; or (iii) contained in this Agreement.

In addition, the Company shall at all times use its best efforts to ensure that there shall be no detectable odors under any meteorological conditions at the property line of the Facility Site, including making adjustments to its operation and maintenance practices including, without limitation, the application of neutralizing or masking agents or other chemicals to eliminate odors at its expense (the "Odor Guarantee").

The Company agrees that in the event of a Change-in-Law requiring new or more stringent effluent limitations, including for example nitrate concentrations, it will thoroughly analyze potential methods (including process changes) to achieve such limitations with the objective of identifying the most cost effective strategy to achieve the required limitation.

**APPENDIX 5**  
**LEGAL ENTITLEMENTS**

## **APPENDIX 5**

### **LEGAL ENTITLEMENTS**

The Company shall be responsible for obtaining, maintaining, and paying any fees associated with any Legal Entitlements necessary for the operation of the Wastewater System. The Company shall not be reimbursed for any associated costs aside from the Service Fee.

**APPENDIX 6**  
**INFLUENT DESIGN PARAMETERS**

## APPENDIX 6

### INFLUENT DESIGN PARAMETERS

The following table contains the Influent Design Parameters for the Facility.

<u>Wastewater Flow (MGD)</u>	
Design (monthly average)	1.5
Extreme (instantaneous)	6.5
<u>BOD<sub>5</sub> Loading</u>	
Total, pounds/day (maximum monthly average)	2763
<u>Suspended Solids Loading</u>	
Total, pounds/day (maximum monthly average)	3684
<u>Ammonia Nitrogen Loading</u>	
Total, pounds/day (maximum monthly average)	378

## **APPENDIX 7**

### **MAINTENANCE PLAN AND OPERATIONAL REQUIREMENTS**

## **APPENDIX 7**

### **MAINTENANCE PLAN AND OPERATIONAL REQUIREMENTS**

The Company shall comply with the existing Operation and Maintenance Manual and adhere to the MR&R schedule set forth below subject to Section 5.8 of the Agreement:

**Washington Borough WWTP - MR&R Schedule**

**LEGEND:**  
 PM/CM Preventive/Corrective Maintenance  
 OH Overhaul  
 RPL Replacement

Unit or Equipment Functional Description	Qty	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
201A - blower/grit	2	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
Air compressor - Effluent Water System	1	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM
Screw Screen - Head Works	1	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	OH	RPL	PM/CM	PM/CM
Polymer Feed Pump at Orbal	1	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM						
Pump 1, Plant Main PS	2	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
Plant Generator	1	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
Goodwin Trash Pump	1	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
101(A) Mixer Sludge	2	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM							
102(A) Mixer Sludge	2	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM							
202A Post-aeration blowers	2	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH
3E Isolation Gates	4	PM/CM	PM/CM	OH	PM/CM	OH	PM/CM									
301(A) Tow-bro h30Ht Final Clarifiers	2	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM
305 Check Valve	1	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM									
4A Mud Valves	3	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM									
601A Scum Pumps	2	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM						
602A Return Sludge Pump (See Note 1)	3	OH	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	RPL	PM/CM	PM/CM
603 Sump Pump	1	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
604A Non-potable Pumps, Effluent	2	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM
605 Washwater Booster Pump	1	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH
606 Sludge Feed Pump	1	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
607 Thick Sludge Discharge Pump	1	PM/CM	PM/CM	OH	PM/CM	RPL	PM/CM	PM/CM	PM/CM	OH	PM/CM	OH	PM/CM	RPL	PM/CM	PM/CM
608A Submersible Pump	2	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	OH	PM/CM
609A Drain Pumps	2	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM							
610A Waste Sludge Pump	2	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
703A Bypass Gate	2	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM									
705A Aerator Drive Motors	2	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	OH	PM/CM	OH	PM/CM	PM/CM
705C Aerator Drive Motors	2	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	OH	PM/CM	OH	PM/CM	PM/CM
7A Isolation Gates	7	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM									
801 Influent Sampler	1	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM						
802A Disinfection UV System	1	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
804 Effluent Sampler	1	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM						
805 Polymer Feed Pump, Stanco	1	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM						
807 Belt Thickener	1	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	OH	OH	PM/CM
808 In-line Grinder	1	PM/CM	PM/CM	RPL	PM/CM	OH	PM/CM	RPL	PM/CM	PM/CM						
809 Odor Control	2	PM/CM	PM/CM	OH	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM						
820 Auto-backwash Strainer	1	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH
MCCS	5	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	OH
Elec dist	1	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
Transfor switch	1	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM							
UPS	2	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM
VFD's	4	PM/CM	OH	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM							
Building and grounds	20	PM/CM	OH	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	OH	PM/CM
Control panels/systems	2	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM
Transformer	1	PM/CM	OH	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	PM/CM	RPL	PM/CM	PM/CM	OH	PM/CM	PM/CM	PM/CM
Note 1: Subject to Section 5.8(G) of the Operation and Maintenance Agreement																

**APPENDIX 8**

**EXIT EVALUATION STANDARDS AND PROCEDURES**

## APPENDIX 8

### EXIT EVALUATION STANDARDS AND PROCEDURES

The standards, procedures and approaches outlined in this Appendix 8 shall be used in accordance with Section 3.3 of the Agreement.

#### 1. PLANT STRUCTURES

As part of this evaluation, a detailed inspection shall be made of all buildings to ascertain their overall condition, estimated remaining life, estimated cost of repairs required (if needed), compliance to all building codes, compliance to OSHA requirements, etc. The inspection shall also include the examination of records pertaining to the maintenance and repair histories as they apply to the plant buildings. The various building components to be inspected shall include but not be limited to:

Plumbing. An inspection shall be made of the condition and operability of all supply and drain piping; the condition of all faucets and hose bibs to determine if they are functioning properly and if they leak; the condition of all backflow preventers, check valves, and antisiphon devices if present to ensure that they been routinely tested, inspected, and certified per all plumbing or other codes; the condition of external pipe markings to ensure that all pipes are properly color coded and labeled (primarily for pipes that may have been replaced since the contract inception date).

Doors and Windows. All doors (interior and exterior) and windows shall be checked for broken or cracked glass panes, leaking or missing weather stripping, intact screens, function and condition of hinges, locks and other hardware, proper operation (do the doors and windows open and close properly), and overall condition (do they require sandblasting~ and/or painting).

Roofing. Building roofs shall be checked for cracks, punctures, or tears, missing shingles, signs of puddling due to low spots (for flat roofs), and any visible signs of existing leaks. The condition and operation of all down spouts and gutters shall be checked.

Paved Areas and Floors. The condition of all interior and exterior walkways shall be checked for cracks, stains, pitting, and unusual wear to ensure that they have been properly maintained, waxed, sealed~ or coated.

Walls & Ceilings. All interior walls and ceilings shall be checked to ensure that they are being properly maintained and painted, as needed; all exterior walls shall be checked for unusual signs of settling or cracks; exterior bricks (if applicable) shall be checked for repointing requirements.

Electrical. All wall receptacles shall be checked to ensure that they are properly grounded, improperly installed extension cords and outlets will be noted; all circuit breaker panels and equipment breakers and disconnect switches shall be inspected to

ensure that they are properly labeled to indicate what equipment is controlled by the individual breakers and/or disconnects.

HVAC. The heating, ventilating, and air conditioning (HVAC) systems shall be inspected in every building to ensure that they function properly. The control schemes for all louvers (open/close function), fans (on/off function), and timers shall be checked for proper sequencing and operation. Air change per hour requirements for each HVAC system shall be verified. The physical condition of all component parts shall be checked for corrosion, proper maintenance, leaking air ducts, etc. The proper operation of all air conditioners and heating units shall be verified.

Lighting. All interior and exterior lights as well as photo cells and timers shall be checked for proper operation. All panel mounted equipment indicator lights shall be checked to ensure that the proper lights are illuminated for both the equipment "on" and equipment "off" states.

Safety. All facilities shall be inspected to ensure that all fire extinguishers are properly mounted with current inspection tags, that all atmospheric monitoring systems (for oxygen deficiency, toxic gases, and explosive gases) operate properly, that all equipment guards are in place, that all cranes and hoists are properly labeled and that they are properly certified and routinely load tested, that all fire and smoke alarms operate satisfactorily, that all applicable safety signs (such as confined spaces) are present, that a material safety data sheet (MSDS) book is present and properly updated, that confined space entry equipment is available and properly inspected, and that all portable tri gas meters are operable.

Office Equipment. The condition of all desks, chairs, and tables shall be checked to determine if any equipment requires replacement due to either age or abuse; all computer hardware & software shall be evaluated for possible upgrade (if process control computers are utilized, they shall also be evaluated for upgrading), and the condition of any fax and/or copy machines shall be checked.

Communications. All telephones, 2 way radios (if applicable), and public address systems (if applicable) shall be examined to ensure that they are present and operable.

## **2. MAINTENANCE RECORDS & EQUIPMENT CONDITION REPORTS**

Written records shall be provided to the Borough by the Company showing the following information for the most recent twelve months, unless otherwise noted:

Lists of all major and minor plant equipment noting the condition of the equipment and the estimated remaining operating life for the equipment. Cost estimates shall be provided by the Company for the repair or replacement of all equipment that is not in good operating condition.

Description of preventive maintenance (PM) tasks and list of scheduled frequencies for PM tasks by equipment.

Actual completion dates for the PM tasks by equipment to show that the PM tasks are being completed in a timely manner.

Calibration dates and calibration task descriptions for all flow meters and other critical instrumentation devices.

Predictive maintenance results for all applicable equipment, such as:

Oil analysis/trending

Infrared scans/trending (motor control centers, switchgear)

Vibration testing/trending

Ultrasonic analysis/trending

Motor current analysis/trending

A list of all equipment that was replaced or upgraded during the most recent 5 year evaluation period and the reason for the replacement.

Operation and maintenance records for all portable and stationary sewage samplers showing that the samplers have been routinely cleaned and inspected.

A list of all equipment that has been abandoned in place or taken out of operation due to a change in the plant process control scheme.

The Company shall demonstrate to the Borough that all equipment is operating in accordance with the Operating Standards. This demonstration shall include all rotating equipment such as blowers, pumps, gear drives, compressors, portable equipment, etc. as well as all sluice and slide gates, valves, or other wastewater treatment plant equipment. For all equipment that is not operating in accordance with the Operating Standards, documentation shall be provided showing that provisions (such as copies of purchase orders for repair parts, etc.) have been made to repair the equipment. Documentation shall also be provided to show that standby or support equipment is being periodically operated.

The Borough reserves the right to perform its own predictive analysis evaluation on the treatment plant equipment at the Borough's expense. Such predictive analysis evaluation may include vibrational analysis, oil analysis or historical replacement analysis. Any equipment found deficient (defined as needing major repairs or replacement within a year of the analysis) as a result of the predictive analysis evaluation (performed by either the Company or the Borough) shall be repaired or replaced at the Company's expense in accordance with Section 3.3 of the Agreement.

### **3. OPERATION RECORDS**

All plant operation records (including process control and laboratory data) shall be available for review. Documentation shall be provided by the Company for any sewage spills, chemical

releases, effluent violations, etc. to indicate that the appropriate environmental and legal authorities were properly notified in accordance with all applicable laws.

Plant process data shall be reviewed to ensure that the wastewater treatment plant is being operated in accordance with the plant's original design criteria. If the Borough determines that excessive levels of biosolids are present in any of the individual treatment plant processes, the excess biosolids shall be reduced by the Company to the proper levels in accordance with the plant's design criteria and at the Company's expense. If underground storage tanks are present, the Company shall provide documentation showing that all monitoring and reporting requirements are being met.

Documentation shall be provided showing that all laboratory equipment is being maintained and calibrated on a routine basis and in full compliance with all Federal and State requirements.

#### **4. TRAINING PROGRAMS**

Documentation shall be provided listing all training topics, dates and duration of all training sessions, and names of employees attending the training sessions. Furthermore, documentation shall be provided showing that all minimum OSHA, Federal, State and Local training requirements for the wastewater treatment plant employees have been met.

#### **5. RESIDUALS HANDLING**

Records shall be provided showing that all wastewater treatment plant residuals such as sludge, grit, scum, screenings, and ash are being managed and disposed properly. At the time of the evaluation, the maximum volume of residuals present on the treatment plant grounds shall not be greater than the maximum volumes listed below:

Sludge - Maximum volume shall not exceed a typical one week's production based on average influent flows and loadings. Individual plant processes shall be evaluated for the presence of greater than normal inventories that would otherwise be detrimental to the efficient operation of the treatment plant process.

Solids – The mixed liquor suspended solids shall not exceed the average of the previous twelve monthly-averages.

Grit, Scum, Screenings, and Ash - Maximum volume shall not exceed a typical one week's production based on normal operating procedures.

Wastes such as trash (paper goods), scrap (old parts), etc. should normally not be allowed to accumulate on site. At the time of the evaluation, no more than one week's supply of this waste, such as that described above, shall be present.

#### **6. SPARE PARTS, SUPPLIES, & TOOLS**

There shall be a review of spare parts and tools at the time of the evaluation. This review shall compare the spare parts and tools that are present to a normal four-month supply.

## **7. CHEMICALS & SUPPLIES**

At the time of the evaluation, a minimum 45 day supply of all chemicals, lubricants, and supplies required for the normal operation and maintenance of the wastewater treatment plant shall be on site. A minimum 15 day supply of other consumables such as cleaning supplies, restroom supplies, office supplies, etc. shall be present, subject to storage limitations, unless otherwise established by mutual agreement.

## **8. VEHICLES**

All vehicles and rolling stock shall be visually inspected and records shall be reviewed. A determination shall be made as to whether the vehicles and rolling stock are equivalent to the vehicles and rolling stock assigned to the Company at the Commencement Date. Equivalency shall be determined on the basis of functionality, physical condition and useful life. Useful life shall be based on mileage and hours of use unless the Borough agrees otherwise. If the Exit Evaluation of the vehicles reveals that one or more of the vehicles has less useful life or functionality and or is in worse physical condition than its equivalent vehicle at the Commencement Date, the Company shall at the Company's election replace the vehicle with another having the required functionality and useful life, or make necessary repairs or improvements to the vehicle, or compensate the Borough financially for the difference in functionality, condition or useful life, or reach some other agreement with the Borough. Such compensation for useful life shall be based on the retail "Blue Book" value of the vehicle unless the Borough agrees to a different arrangement. The Borough has no obligation to financially compensate the Company for any vehicle functionality, condition or useful life that is in excess of that possessed by the vehicles at the Commencement Date.

## **9. GROUNDS**

A visual inspection of the property shall be undertaken to determine whether the sidewalks, roadways, fencing, trees, scrubs and grass have been maintained in accordance with the Operating Standards.

## **10. SUBCONTRACTS**

Documentation shall be provided that indicates any subcontracting work that has been performed. Included in the documentation shall be a list of the work performed and the date(s) that the work was performed. Documentation shall also be provided for any repair work that was performed off site. This documentation shall include but not be limited to repairs to plant equipment, vehicles, or plant buildings; plant grounds maintenance; landscaping services; etc.

## **11. REGULATED MATERIALS DISPOSAL**

Waste manifest forms shall be provided to show that all regulated wastes have been disposed of in a proper manner.

## **12. VENDOR RECORDS/INVOICES**

Documentation shall be provided showing that all vendor invoices are being paid in a timely manner.

**APPENDIX 9**  
**VARIABLE FEE ADJUSTMENT**

## **APPENDIX 9**

### **VARIABLE FEE ADJUSTMENT**

For every net increase in EDUs connected to the Collection System above a baseline of 4,363 EDUs, the annual Service Fee shall be increased by \$100.00, as escalated in accordance with Appendix 10 on an annual basis, subject to a maximum adjustment in any Contract Year of 10%. EDUs shall be as defined in Section 70-28 of the Borough's Administrative Code in effect as of the Contract Date. No further compensation will be made for increases in Flow, BOD or TSS loadings that do not result from the addition of new service connections as defined by the Sewer Use Ordinance.

**APPENDIX 10**  
**ESCALATION INDEX**

## APPENDIX 10

### ESCALATION INDEX

The annual adjustment applicable to an existing Annual Operation and Maintenance Charge to reflect cost of living increases pursuant to subsection 7.1(B) is based upon the following formula:

Existing Operation and Maintenance Charge multiplied by the Operation and Maintenance Charge Adjustment Factor (O&MCAF)

Where,

O&MCAF = The amount equal to the sum of (rounded to two decimal places) (i) sixty percent (60%) of the increase (expressed as a percentage) in the CPI-U U.S. City Average (CUU R000SA0) for the twelve months ending with the preceding October as published by the U.S. Department of Labor, Bureau of Labor Statistics, plus (ii) forty percent (40%) of the increase (expressed as a percentage) in the CPI-U Water Sewer & Trash Collection Services (CUUR0000SEHG) for the twelve months ending with the preceding October as published by the U.S. Department of Labor, Bureau of Labor Statistics, plus (iii) one hundred percent (100%).

**APPENDIX 11**  
**COST SUBSTANTIATION**

## APPENDIX 11

### COST SUBSTANTIATION

In connection with the provisions of the Agreement respecting Cost Substantiation, the following shall apply with respect to work performed for all circumstances requiring Cost Substantiation, and the Company shall not be entitled to compensation for Company personnel other than the 15% mark-up set forth below.

#### Reimbursable Costs

<u>Company Cost Category</u>	<u>Reimbursable Amount</u>
Subcontractors and Materials	Cost plus 15% markup
Lodging and Meals	Cost
Travel	Cost

#### Mark-up

Mark-up of 15% will be added to the first-tier Subcontractor costs as listed above, except for costs related to an Uncontrollable Circumstance, for which mark-up of 7.5% will be added. No mark-up will be added to costs of lodging and meals or travel.

#### Sewer Improvements Cost Schedule

The Borough may require that the Company make Capital Modifications to the Collection System based upon the pricing schedule set forth in Attachment A to this Appendix. The pricing schedule shall be adjusted every 2 years based upon the lowest quote received by the Company at such time.

#### Miscellaneous

Normal reproduction (3 prints plus 1 reproducible) has been included in base fee structure. Reproduction in excess of this or unusual requirements will be charged at cost plus mark-up for profit.

Normal postage, telephone and computer time is included in the base rate and will not be charged unless due to specific request requiring the Company to incur added cost.

ATTACHMENT A  
SEWER IMPROVEMENTS COST SCHEDULE

## Sewer Improvements Cost Schedule\*

**Table 1 - Cost Schedule**

Description	Unit Cost
Sanitary Sewer, 4-foot diameter manhole, less than 12 feet deep	\$2,703 per Vertical Linear Foot
Furnish and Install 8-inch diameter gravity sewer, PVC, SDR 35, 0-8 ft deep	\$863 per Linear Foot
Furnish and Install 8-inch diameter gravity sewer, PVC, SDR 35, >8-10-ft deep	\$1,024 per Linear Foot
Furnish and Install 8-inch diameter gravity sewer, PVC, SDR 35, >10-12-ft deep	\$1265 per Linear Foot
Temporary Pavement Repair per Borough and County requirements	\$52 per Square Yard
Final Pavement Repair per Borough and County requirements	\$58 per Square Yard

\*Exclusions from the Above:

1. Rock Excavation.
2. Handling, Transport, or Disposal of Hazardous or Contaminated Materials (including soil and groundwater).

### *Measurement and Payment of Items in Table 1*

#### Sewer Manholes

##### A) Measurement

- 1) The number of manholes to be paid for shall be the number actually furnished and installed in the completed project and accepted by the Engineer. Measurement of payment for depth shall be from the rim elevation to the lowest invert elevation

##### B) Payment

- 1) Payment for furnishing and installing manholes will be made for each manhole installed at the unit price bid in the Cost Schedule which price and payment shall be full compensation for all unclassified excavation, backfill, grouting, mortar, frames and covers, manhole rungs, precast concrete manhole sections, safety platforms, concrete, bracing, encapsulation, traffic control including permits, coordination, barricades, detours and flagmen, fill, riser ring work, pipe extensions and connectors necessary to the installation, cleaning and testing, disposal of excess materials, surface restoration, bedding, dewatering, sheeting, shoring, all constructed in accordance with the manhole standards shown on the detail and all work required for a full, operable and complete installation. This payment shall fully compensate the Contractor for furnishing all labor, materials, equipment and incidentals required to complete the work.

- 2) Payment shall also fully compensate the Contractor for any other work as approved by the Engineer which is not shown on the general detail but which is required to install the sewer as required to complete the work.

### Sewer Installation

#### A) Measurement

- 1) Measurement for payment of gravity sewer in the size and at the depth required, when furnished and installed, excavated and backfilled, and tested and accepted, will be measured for payment by the Borough.
- 2) For gravity sanitary sewer, measurement for length shall be along the centerline from manhole centerline to manhole centerline.

#### B) Payment

- 1) Payment will be made for the quantities measured at the unit price for each linear foot of sanitary sewer installed.
- 2) Payment for furnishing and installing the gravity sewer pipe as outlined in the Cost Schedule will be made for the respective quantities as determined above, at the applicable price per linear foot bid in the Cost Schedule, which price and payment shall be full compensation for:
  - i) supply and installation of new pipe, fittings and materials;
  - ii) saw cutting, removal and disposal of sidewalks, driveways, curbs, curbs and permanent pavement;
  - iii) unclassified excavation, sheeting, shoring, bracing, dewatering;
  - iv) tunneling under/through tree roots;
  - v) trench dams, pipe, fittings, pipework;
  - vi) installation and removal of plugs and bulkheads;
  - vii) installation and removal of service lateral pipe, if applicable;
  - viii) protection, repair and replacement of utilities and house services;
  - ix) temporary and permanent fence restoration;
  - x) lawn and landscaping replacement;
  - xi) maintenance of traffic including permits and maintaining access across driveways along the line of the work;
  - xii) protection, trimming and replacement of culverts and other storm drainage facilities;

- xiii) reconstruction and regrading of road shoulders and ditches;
  - xiv) sidewalk and curb replacement;
  - xv) removal and disposal of surplus excavated material and debris;
  - xvi) protection of existing structures and utilities;
  - xvii) relocation of underground or overhead utilities;
  - xviii) construction of temporary utilities;
  - xix) removal and disposal of abandoned pipelines;
  - xx) soil erosion and sedimentation control;
  - xxi) crossing of storm ditches, streams and waterways;
  - xxii) seeding and mulching;
  - xxiii) restoration and repairs; and
  - xxiv) all work required for a full, operable and complete installation. This payment shall fully compensate the Contractor for furnishing all labor, materials, equipment and incidentals required to complete the work associated with the sewer installation.
- 3) Payment shall also fully compensate the Contractor for any other work as approved by the Engineer which is not shown on the general detail but which is required to install the sewer as required to complete the work.

Temporary and Permanent Pavement

A) Measurement

- 1) Measurement for payment (temporary and permanent) over trenches will be in square yards as actually placed.

B) Payment

- 1) Payment for temporary pavement will be made for the quantity as above determined measured in square yards, at the price in the Cost Schedule, which price and payment shall be full compensation for the cleaning and preparing the surface of the subbase, furnishing, placing and maintaining the temporary pavement, including labor, materials, and all else incidental thereto for which payment is not provided under other items. Temporary pavement shall include subbase and stabilized base course as indicated by enforcing regulatory agencies.
- 2) Payment for driveway and apron pavement and permanent pavement will be made for the quantity as above determined measured in square yards, at the price in the Cost Proposal, which price and payment shall be full compensation for removing and disposing of temporary pavement, and preparing the surface of the subbase, furnishing, placing and

maintaining the pavement, including labor, materials, and all else incidental thereto for which payment is not provided under other items. Base pavement shall include temporary pavement removal, disposal, preparation and placement of the prime coat and the stabilized base course. Top pavement shall include the tack coat and surface course. Payment shall include providing striping and markings on pavement as required for specific roadway.

- C) Payment of the pavement restoration items shall include all costs of furnishing, storing and applying calcium chloride as required for dust control.
- D) Payment for saw cutting, removal and disposal of existing pavement is not included in this item.

**APPENDIX 12**

**BOROUGH SEWER ORDINANCE**

*The Borough Sewer Ordinance is on file at the offices of the Borough Manager*

**APPENDIX 13**

**AFFIRMATIVE ACTION PROVISIONS, ADA PROVISIONS**

## **EQUAL EMPLOYMENT OPPORTUNITY (CONSTRUCTION)**

With respect to all public works activities, the Company or Subcontractor, where applicable, agrees to comply with the following:

### **MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

***N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)***

***N.J.A.C. 17:27***

### **CONSTRUCTION CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction

EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the Public Agency Compliance Officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Dept. of LWD, Construction EEO Monitoring Program pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the

construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or woman worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the Public Agency Compliance Officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall

not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract the contractor shall submit to the Public Agency Compliance Officer and the Dept. of LWD, Construction EEO Monitoring Program an Initial Project Workforce Report (Form AA 201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the Public Agency Compliance Officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (NJAC 17:27)**.

**EQUAL EMPLOYMENT OPPORTUNITY (NON-CONSTRUCTION WORK)**

**WITH RESPECT TO ALL NON-CONSTRUCTION WORK UNDER THE SERVICE CONTRACT, THE COMPANY OR SUBCONTRACTOR, WHERE APPLICABLE, AGREES TO COMPLY WITH THE FOLLOWING:**

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

*N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)*

*N.J.A.C. 17:27*

**MAINTENANCE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval
- Certificate of Employee Information Report
- Employee Information Report Form AA302 (electronically provided by the Division of Purchase & Property, CCAU, EEO Monitoring Program and distributed to the public agency through the Division of Purchase & Property, CCAU, EEO Monitoring Program's website at [www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance))

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

## **AMERICANS WITH DISABILITIES ACT**

### **EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES**

The Contractor and the Owner do hereby agree that the provisions of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. §12101, *et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the Owner pursuant to this contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the Contractor shall defend the Owner in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the Owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the Owner's grievance procedure, the Contractor agrees to abide by any decision of the Owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the Owner or if the Owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

The Owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the Owner or any of its agents, servants, and employees, the Owner shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading, or other process received by the Owner or its representatives.

It is expressly agreed and understood that any approval by the Owner of the services provided by the Contractor pursuant to this contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the Owner pursuant to this paragraph.

It is further agreed and understood that the Owner assumes no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of the Agreement. Furthermore, the Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the Contractor from any liability, nor preclude the Owner from taking any actions available to it under any other provisions of this Agreement or otherwise at law.

**APPENDIX 14**  
**MINIMUM FINANCIAL CRITERIA**

## APPENDIX 14

### MINIMUM FINANCIAL CRITERIA

The term "Minimum Financial Criteria" as used in the Agreement means the following with respect to the Company, the Guarantor or other entity as applicable:

#### Criteria I:

Investment grade rating by Standard & Poor's Ratings Services and/or Moody's Investor's Service on long term debt.

#### Criteria II:

- Organization and existence for at least three full years prior to the Contract Date.
- Shareholders' equity at the end of each of the three most recent fiscal years of at least \$15 million.
- Pre-tax earnings for two of the three most recent fiscal years of at least \$4 million.
- A ratio of current assets divided by current liabilities of at least 1.10 for two out of the three most recent fiscal years.
- Cash and cash equivalents of at least \$5 million as of the date of its most recent audited annual financial statements.
- No material adverse changes in its financial position since the end of its most recent fiscal year that would affect the Company's or the Guarantor's or other applicable entity's ability to meet any of the above criteria.
- A current debt ratio of no more than 1:1.
- Debt service coverage of 110%.

#### Criteria III:

Obtain a \$2 million letter of credit for each year during the Term of the Agreement, to secure the performance of the Company's obligations under the Agreement, all in the forms contained in Appendix 16.

All letters of credit must be from a bank whose long-term debt is rated at least "A-" by Standard & Poor's Ratings Services and/or Moody's Investor's Services.

**APPENDIX 15**  
**FORM OF GUARANTY AGREEMENT**

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FORM OF

GUARANTY AGREEMENT

from

VEOLIA NORTH AMERICA, INC.

to

THE BOROUGH OF WASHINGTON, NEW JERSEY

Dated

[\_\_\_\_\_], 2018

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## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of [\_\_\_\_\_], 2018, between Veolia North America, Inc., a corporation organized and existing under the laws of the State of Delaware (together with any permitted successors and assigns hereunder, the “Guarantor”), and the Borough of Washington, New Jersey, a political subdivision of the State of New Jersey (the “Borough”).

### RECITALS

The Borough and Veolia Water North America Operating Services, LLC (the “Company”), a corporation organized and existing under the laws of the State of Delaware, have entered into an Operation and Maintenance Agreement for the operation of the Borough of Washington’s Wastewater System, dated [\_\_\_\_\_], 2018 (the “Agreement”), whereby the Company has agreed to operate and maintain the Wastewater System and other related and ancillary responsibilities, as more particularly described in the Agreement.

The Borough will enter into the Agreement only if the Guarantor guarantees the performance by the Company of all of the Company’s responsibilities and obligations under the Agreement as set forth in this Guaranty Agreement (the “Guaranty”).

In order to induce the execution and delivery of the Agreement by the Borough and in consideration thereof, the Guarantor agrees as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

SECTION 1.1.DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any capitalized word or term used but not defined herein is used as defined in the Agreement.

“Obligations” means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of the Agreement.

“Transaction Agreement” means any agreement entered into by the Company or the Borough in connection with the transactions contemplated by the Agreement, including, but not limited to, the Agreement, and any supplements thereto.

SECTION 1.2.INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. 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.

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

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the Borough and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the Applicable Laws of the State of New Jersey.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR. The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is duly organized and validly existing as a corporation under the laws of the State of Delaware with full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(2) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, or moratorium or by general equity principals of reorganization and other similar laws affecting creditors' rights generally and general principals of equity.

(3) No Conflict. Neither the execution or delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (a) to the Guarantor's knowledge conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, (b) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (c) to the Guarantor's knowledge will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby or by any Transaction Agreement.

(4) 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 Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to the Borough, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

## ARTICLE III

### GUARANTY COVENANTS

**SECTION 3.1. GUARANTY TO THE BOROUGH.** The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the Borough for the benefit of the Borough (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Agreement (including all amendments and supplements thereto) to, or for the account of, the Borough, when the same shall become due and payable pursuant to the Agreement, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, (i) the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty; and (ii) the combined liability of the Guarantor under this Guaranty and the Company under the Agreement shall be subject to the applicable limitations set forth in Section 8.3 of the Agreement.

**SECTION 3.2. RIGHT OF BOROUGH TO PROCEED AGAINST GUARANTOR.** This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the Borough shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the Borough may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the Borough (1) file suit or proceed to obtain a personal judgment against the Company or any other person that may be liable for the Obligations or any part of the Obligations, (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Agreement or required to be given to the Company under Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the Borough is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company or Guarantor as may be required in connection with such Obligation or this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the Borough's right to proceed directly against the Guarantor, the Borough (or any successor) shall not be entitled to more than a single full performance of the obligations in regard to any breach or non-performance thereof.

**SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL.** The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms, and except as provided in Section 3.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and

strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the Borough or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Agreement up to the specified Terms of each agreement;
- (2) any exercise or failure, omission or delay by the Borough in the exercise of any right, power or remedy conferred on the Borough with respect to this Guaranty or the Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under the Agreement or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Wastewater System or in, to or under any of the Transaction Agreements;
- (4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the Borough or any other person in any Transaction Agreement or in the Wastewater System;
- (5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;
- (6) any failure of title with respect to all or any part of the respective interests of any person in the Wastewater System;
- (7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against, the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification had occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);
- (8) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly,

by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

(9) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the Borough to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the Agreement;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Agreement. To the extent that any of the matters specified in subparagraphs (1) through (5) and (7) through (13) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

**SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS.** The Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Agreement or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Agreement or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Agreement if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the Borough of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof except to the extent that notice is required to be given as a condition to the enforcement of Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Agreement or Applicable Law as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Company) or security;
- (7) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;
- (8) the requirement of, or the notice of, the filing of claims by the Borough in the event of the receivership or bankruptcy of the Company; and
- (9) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the Borough on demand all reasonable costs and expenses, legal or otherwise (including counsel fees), incurred by or on behalf of the Borough in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the costs and expenses that the Borough incurs in performing any of its obligations under the Agreement, or other applicable Transaction Agreement, where such obligations are a condition to performance by the Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the Borough

hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

**SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT.** The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor and (3) apply irrespective of any indulgence granted from time to time by the Borough. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by the Borough, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Agreement, or any applicable Transaction Agreement, or the Company's enforcement of such terms under Applicable Law.

**SECTION 3.9. TERM.** This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

## ARTICLE IV

### GENERAL COVENANTS

#### SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor entity (if other than the Guarantor) (a) obtains the written consent of the Borough, which consent shall not be unreasonably withheld, (b) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of New Jersey, and (c) delivers to the Borough an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (2) any such transaction does not result in a Material Decline in Credit Standing, as defined in Section 9.1(A) of the Agreement, or if such transaction results in a Material Decline in Credit Standing, as defined in Section 9.1(A) of the Agreement, the successor Guarantor provides credit enhancement as required by Section 9.1(B) of the Agreement.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section, and if such transaction results in a Material Decline in Credit Standing, as defined in Section 9.1(A) of the Agreement, the successor Guarantor shall provide credit enhancement as required by Section 9.1(B) of the Agreement.

SECTION 4.2. ASSIGNMENT. Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of the Borough, which consent shall not be unreasonably withheld. The parties acknowledge and agree that the Borough's withholding of consent to the assignment of this Guaranty Agreement shall not be deemed unreasonable if the assignment would result in a Material Decline in Credit Standing, as defined in Section 9.1(A) of the Agreement.

SECTION 4.3. QUALIFICATION IN NEW JERSEY. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of New Jersey.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably:  
(1) agrees that any Legal Proceeding arising out of this Guaranty shall be brought in the courts of

the State of New Jersey located in the Borough or, when circumstances allow for federal jurisdiction (based on diversity of citizenship or otherwise), federal court having jurisdiction over the Borough; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any of such courts; and (4) waives its right to a trial by jury in any Legal Proceeding in any of such courts.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of the Borough and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the Borough and of the Guarantor.

SECTION 4.7. NOTICES.

(A) Procedure. All notices, demands, requests and other written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

Veolia North America, Inc.  
53 State Street, 14<sup>th</sup> Floor  
Boston, Massachusetts 02109  
Attn: General Counsel

(C) Borough Notice Address. Notices required to be given to the Borough shall be addressed as follows:

Borough of Washington  
100 Belvidere Avenue  
Washington, New Jersey 07882  
Attn.: Borough Manager

(D) Revisions to Notice Addresses. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

Veolia North America, Inc.  
as Guarantor

By \_\_\_\_\_  
Printed Name:  
Title:

Accepted and Agreed to by:  
THE BOROUGH OF WASHINGTON, NEW JERSEY

By: \_\_\_\_\_  
Printed Name:  
Title: [Borough Manager]

**APPENDIX 16**  
**FORM OF LETTER OF CREDIT**

**IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_**

[Date]

Beneficiary:

Borough of Washington  
Attn: Borough Manager  
100 Belvidere Avenue  
Washington, New Jersey 07882

Ladies and Gentlemen:

1. At the request and for the account of a limited liability company, [Name and address] (the "Company"), MUFG Bank, Ltd., New York Branch (the "Bank") hereby establishes in your favor our Irrevocable Standby Letter of Credit No. \_\_\_\_ (the "Letter of Credit"), in the amount of U.S.\$500,000.00 (United States Dollars Five Hundred Thousand and 00/100) (the "Stated Amount"), effective immediately.

2. We hereby irrevocably authorize you to draw drafts on us at sight in accordance with the terms and conditions hereinafter set forth. The aggregate amount drawn hereunder shall not exceed the Stated Amount.

3. Unless extended by the Bank, this Letter of Credit will expire on \_\_\_\_\_, \_\_ (the "Stated Termination Date"). It is a condition of this Letter of Credit that it shall be deemed automatically extended, without amendment, for one (1) year periods from the present or any future expiration date hereof, unless at least thirty (30) days prior to any such expiration date we shall notify you in writing that we elect not to consider this Letter of Credit extended for any such additional period.

4. Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you by presentation to us of your sight draft, accompanied by: (i) your written and completed certificate, signed by you, in the form of Annex A hereto (such certificate being your "Agreement Certificate"), in an amount not exceeding the Stated Amount, representing amounts payable to you by the Company under and pursuant to the Operation and Maintenance Agreement, dated \_\_\_\_\_, 2018, between the Company and you (the "Agreement"); or (ii) your written and completed certificate, signed by you in substantially the form of Annex B hereto (such certificate being your "Final Certificate"), in an amount not exceeding the Stated Amount representing the maximum amount available to be drawn hereunder due to the termination of this Letter of Credit.

5. Each sight draft drawn under this Letter of Credit must bear on its face the clause "Drawn under MUFG Bank, Ltd., New York Branch Irrevocable Standby Letter of Credit No. \_\_\_\_."

6. Demand for payment may be made by you under this Letter of Credit prior to the expiration hereof at any time during the Bank's business hours at its address at MUFG Bank, Ltd., New York Branch, 1251 Avenue of the Americas, New York, New York 10020, Attn.

Trade Service Operations/ Standby LC Section, on a Business Day (as hereinafter defined). As used herein the term "Business Day" means a day on which the Bank at our aforesaid office is opened for the purpose of conducting commercial banking business. We hereby agree that all sight drafts drawn under and in strict conformity with the terms of this Letter of Credit will be duly honored by us upon delivery of the sight drafts and certificates. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit, at our aforesaid office not later than 11:00 A.M. (Eastern Time) on a Business Day on or before the Stated Termination Date hereof, we will honor the same by 5:00 P.M. (Eastern Time) on the same day in accordance with your payment instructions. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit at such office after 11:00 A.M. (Eastern Time) on a Business Day, on or before the Stated Termination Date hereof, we will honor the same not later than 5:00 P.M. (Eastern Time) on the next succeeding Business Day in accordance with your payment instructions. If requested by you, payment under this Letter of Credit may be made by Federal Reserve Wire Transfer of funds to your account in a bank on the Federal Reserve Wire Facility or by deposit of same day funds into a designated account that you maintain with us.

7. The Stated Amount shall be reduced automatically by the amount of each drawing hereunder.

8. This Letter of Credit is transferable in its entirety (but not in part) to your successor which you certify to us has succeeded you as beneficiary and may be successively so transferred. Transfer of this Letter of Credit to such transferee shall be requested by presentation to us at our presentation office specified herein, of this Letter of Credit and all amendments, if any, accompanied by a certificate in the form of Annex C attached hereto. Transfers to designated foreign nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Controls Regulations. Any transfer fees are for the Beneficiary's account. The Issuing Bank is under no obligation to transfer this Letter of Credit until all transfer fees are paid.

9. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Agreement) or to which this Letter of Credit relates, except for the certificates and sight drafts referred to herein which are incorporated herein by reference; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such sight drafts.

10. Only you (or a transferee as provided in paragraph 8 hereof) may make a drawing under this Letter of Credit. Upon the payment to you or your account of the amount specified in a sight draft drawn hereunder, we shall be fully discharged of our obligation under this Letter of Credit with regard to that payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with regard to that payment to you.

11. This Letter of Credit shall be governed by the Uniform Customs and Practices for Documentary Credits (2007 Revision) International Chamber of Commerce Publication 600 (the "UCP") and, to the extent not inconsistent with the UCP, the Uniform Commercial Code in

effect in the State of New Jersey. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at our address at MUFG Bank, Ltd., New York Branch, 1251 Avenue of the Americas, New York, New York 10020, Attn. Trade Service Operations/ Standby LC Section, specifically referring to the number of this Letter of Credit.

Very truly yours,  
MUFG Bank, Ltd., New York  
Branch By: \_\_\_\_\_  
Authorized Officer

ANNEX A TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING  
IN CONNECTION WITH  
PAYMENT OF AMOUNTS  
UNDER THE AGREEMENT

Irrevocable Standby Letter of Credit No. \_\_

To: MUFG Bank, Ltd., New York Branch  
1251 Avenue of the Americas, New York, NY 10020  
Attn: Trade Service Operations/ Standby LC Section

The undersigned, a duly authorized representative of the Borough of Washington, New Jersey (the "Beneficiary"), hereby certifies to MUFG Bank, Ltd., New York Branch (the "Bank"), with reference to Irrevocable Letter of Credit No. \_\_ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Beneficiary is a party to the Operation and Maintenance Agreement, dated \_\_\_\_\_, 2018 (the "Agreement") by and between the Beneficiary and [\_\_\_\_\_] (the "Company").

2. The Beneficiary is making a demand for payment under the Letter of Credit in the amount of U.S. \$\_\_\_\_\_ and such amount does not exceed the Stated Amount.

3. The Beneficiary hereby certifies as follows (insert in this Certificate for Drawing those statements which are applicable):

- (a) The Company has materially breached the Agreement and, in accordance with the procedures and requirements of Section \_\_\_\_\_, the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.
- (b) The Beneficiary has terminated the Agreement pursuant to Section \_\_\_\_ of the Agreement in accordance with the procedures and requirements of such Section, Section \_\_\_\_ and the other applicable provisions of the Agreement. The Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.
- (c) The Letter of Credit will expire within 30 days, and the Letter of Credit has not been extended, renewed or replaced in accordance with Section \_\_\_\_ of the Agreement.
- (d) The Company has filed a petition of voluntary bankruptcy under the Bankruptcy Code, the Company has consented to the filing of any

bankruptcy or reorganization petition against the Company, or the Company has filed a petition to reorganize the Company pursuant to the Bankruptcy Code, and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

- (e) A court of competent jurisdiction has issued an order appointing a receiver, liquidator, custodian or trustee of the Company or of a major part of the Company's property, respectively, or a petition to reorganize the Company pursuant to the Bankruptcy Code has been filed against the Company, and such order has not been discharged or such filing has not been dismissed within 90 days after such issuance or filing, and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

5. Payment of the amount described hereby shall be made by wire transfer to the following account: [wire transfer instructions].

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized representative as of this \_\_ day of \_\_\_\_\_, 2018.

BOROUGH OF WASHINGTON,  
NEW JERSEY

By: \_\_\_\_\_

Title: \_\_\_\_\_

ANNEX B TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING  
IN CONNECTION WITH  
THE TERMINATION OF  
THE LETTER OF CREDIT

Irrevocable Standby Letter of Credit No. \_\_

To: MUFG Bank, Ltd., New York Branch  
1251 Avenue of the Americas, New York, NY 10020  
Attn: Trade Service Operations/ Standby LC Section

The undersigned, a duly authorized representative of the Borough of Washington, New Jersey (the "Beneficiary"), hereby certifies to MUFG Bank, Ltd., New York Branch (the "Bank"), with reference to Irrevocable Standby Letter of Credit No. \_\_ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Letter of Credit expires at the close of business on \_\_\_\_\_, \_\_\_\_\_ (the "Stated Termination Date"), which date is not more than 30 days after the date on which this certificate and accompanying sight draft are being presented.
2. The Beneficiary has not received written notice of an extension of the Stated Termination Date.
3. The amount of the sight draft accompanying this certificate does not exceed the Stated Amount of the Letter of Credit.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized representative as of this \_\_ day of \_\_\_\_\_, \_\_.

BOROUGH OF WASHINGTON,  
NEW JERSEY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX C TO LETTER OF CREDIT  
TRANSFER CERTIFICATE

To: MUFG Bank, Ltd., New York Branch  
1251 Avenue of the Americas, New York, NY 10020  
Attn: Trade Service Operations/ Standby LC Section

RE: Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

For value received, the undersigned Beneficiary hereby irrevocably transfers to:

[Name of Transferee]  
[Address of Transferee]  
(hereinafter called the "transferee")

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole right as the Beneficiary thereof, including sole rights to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

Such transferee is a permitted transferee under such Letter of Credit.

The Letter of Credit is returned herewith along with all amendments, if any, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

We also  
 ( ) enclose our certified check or cashier's check  
 ( ) authorize you to debit our account No. \_\_\_\_\_ with you.

For an amount not exceeding (subject to arrangement) to cover your fee.

We certify that this Transfer request is not in violation of any federal or state laws and further confirm our understanding that the execution of this Transfer request by you is subject to compliance with all legal requirements and related procedures implemented by your bank under applicable laws of the United States of America and Japan.

BOROUGH OF WASHINGTON,  
NEW JERSEY

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Telephone Number)

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

The signature of the beneficiary with title as stated  
conforms with that on file with us and is authorized  
for the execution of such instruction.

\_\_\_\_\_  
(Bank)

\_\_\_\_\_  
(Authorized Officer)

Title: \_\_\_\_\_

\_\_\_\_\_  
(Telephone Number)

**APPENDIX 17**  
**BIOLOGICALLY TOXIC SUBSTANCES**

## APPENDIX 17

### BIOLOGICALLY TOXIC SUBSTANCES

In the event that Influent contains Biologically Toxic Substances ("BTS"), such that their presence causes the biological treatment facilities ("BTF") within the Facility or the Facility to discharge greater concentrations of BOD<sub>5</sub> or TSS, which in turn causes an effluent violation, or otherwise causes an effluent violation (in all events, not due to Company Breach) such event shall be considered an Uncontrollable Circumstance, provided that the Company has fully complied with and completed the following:

1. Previously developed preventive, corrective and defensive actions and procedures for detecting, reporting, responding to, and recovering from the presence of BTS, subject to Borough review and comment;
2. Trained all operators and managers in all such actions and procedures;
3. Correctly carried out all regulations, requirements or procedures for such conditions and violations as required by Applicable Law and this Agreement;
4. Carried out all reasonable preventive and corrective operation, maintenance or management procedures in a timely fashion;
5. Demonstrated that its actions or omissions did not directly or indirectly cause the presence of the Biologically Toxic Substance or the increased concentrations of BOD<sub>5</sub> or TSS in the effluent;
6. Correctly carried out all required sampling and certified analytical analyses;
7. Demonstrated that it has properly administered the IPP in accordance with Applicable Law and the terms of this Agreement or demonstrated, by an Independent Engineer's determination if required by the Borough in the Borough's sole discretion, that any improper administration of the IPP in no way contributed to the presence of the BTS; and
8. Implemented daily programs to sample and monitor the biological health of the BTF, to sample and determine the level of each nutrient in the Influent and to test the Influent for the continued presence of BTS.

Effluent quality shall be brought within permit requirements as soon as possible. Notwithstanding the determination that an Uncontrollable Circumstance has occurred, the Company shall become liable for any continued violation longer than 30 days after the cause of the violation is no longer found in the Influent at the Facility; provided that if a catastrophic Uncontrollable Circumstance destroys the BTF, such time limit shall be 45 days.

**APPENDIX 18**  
**COMPANY CONFIDENTIAL RECORDS**

## **APPENDIX 18**

### **COMPANY CONFIDENTIAL RECORDS**

1. The following documents and information will remain the sole property of the Company, but the Borough shall have access to such documents and information:
  - a. Sales or other promotional or public relations material relating to the Company or any of its Affiliates.
  - b. Any material protected by patent or copyright of the Company or any of its Affiliates.
  
2. The following documents and information will remain the sole property of the Company and the Borough shall not have access to such documents and information unless the Company and any third party with an interest therein consent:
  - a. Proprietary or otherwise confidential information of third parties supplied to the Company under obligation of confidentiality, provided, that the Company used reasonable efforts to have such third party agree to Borough access to such information and upon such third party's denial the Borough either (a) consented to allow the Company to receive such information, nonetheless or (b) unreasonably withheld such consent.

**APPENDIX 19**

**GUARANTEED MAXIMUM ELECTRICITY UTILIZATION**

**APPENDIX 19**

**GUARANTEED MAXIMUM ELECTRICITY UTILIZATION**

1. Electricity Usage (kWh/yr)	1,000,000
2. Maximum Demand (kW)	160
3. Incremental usage (kWh) for:	
a. increases in flow on a per gallon annual average basis	0 kWh
b. increases in BOD <sub>5</sub> on a per pound annual average basis	0 kWh
c. increases in TSS on a per pound annual average basis	0 kWh
4. Minimum decrease in usage for:	
a. decreases in flow on a per gallon annual average basis	0 kWh
b. decreases in BOD <sub>5</sub> on a per pound annual average basis	0 kWh
c. decreases in TSS on a per pound annual average basis	0 kWh

**APPENDIX 20**  
**BILLING AND COLLECTION SERVICES**

## APPENDIX 20

### BILLING AND COLLECTION SERVICES

If the Borough elects to require the Company to provide billing and collection services in connection with the Wastewater System, the Company shall perform normal and customary customer services in a manner designed to achieve the highest level of customer service. All expenses shall remain the responsibility of the Borough and are not included in the Company's fee (print/mail, lockbox, etc.). The Company shall provide such services in accordance with the following provisions.

- (a) Sewer bills shall be sent annually to all users (residential, commercial and industrial) in envelopes.
- (b) Payments received by mail shall be via a bank lock box.
- (c) Payments received in person shall be through an arrangement with a local commercial financial institution such as a bank.
- (d) Deposits shall be transferred to a Borough account within two business days.
- (e) Collection procedures shall be established by the Borough. Subject to the foregoing, the Company shall use best efforts to collect on a timely basis all amounts due the Borough for service provided to customers. At the Borough's direction, the Company shall investigate and implement checking account debit payment procedures for payment of customer bills. The Company's responsibilities shall also include, consistent with the Borough's procedures, the institution of legal proceedings in the Borough's name to collect utility billings and other monies owned the Borough related to the Wastewater System. All monies collected by the Company, or its Subcontractors shall be the property of the Borough and shall be deposited by the Company daily in the account of the Borough specified by the Borough. In collecting such monies, the Company and any Subcontractor shall act solely as an agent for the Borough and shall have no right or claim to such moneys and, without limiting the generality of the foregoing, shall have no right to assert a claim of set-off, recoupment, abatement, counterclaim or deduction for any amounts which may be owned to the Company hereunder or with respect to any other matter in dispute hereunder. The Company is unconditionally and absolutely obligated to pay or deposit all such monies as directed by the Borough.
- (f) Information, such as pamphlets, etc., shall be mailed out with the bills and are expected to not require additional postage. The Company shall not include any inserts without prior Borough approval.
- (g) The Borough shall be informed of any address or other changes to the data base that originate through the utility billing within five business days.
- (h) Changes in addresses, owners, etc. originated through the Borough shall be incorporated into the utility billing database every ten business days.

- (i) The computer software used to manage the billing and collection shall be provided by the Borough.
- (j) The Borough shall be given a complete print out and/or computerized copy of the entire (all information) database quarterly and on demand.
- (k) A customer service phone number shall be established and placed on the bills which shall be staffed continuously from 9:00 a.m. to 5:00 p.m. on each business day to answer inquiries regarding bills. A separate phone number shall be listed on the bills for inquiries regarding service or system problems. Such service phone lines shall be directed to the Facility and supported by the Facility staff during working hours and supported by an answering service during all other times that is capable of taking long messages and storing multiple messages amounting to at least 1.5 hours of time and directing the caller to a manned 24 hour emergency phone number.
- (l) The database shall remain the property of the Borough at all times.
- (m) At the cessation of billing and collection services, the entire database and all hard copies and all computerized copies of the database shall be returned to the Borough.
- (n) Response time and disposition time for customer inquiries shall be quick, responsive and efficient. For each inquiry that the Company fails to respond to within two business days and for each report required in this Appendix that is incomplete or late, the Borough has the right to charge the Company liquidated damages of \$250.00 by deducting that amount from Company's next monthly Service Fee payment.
- (o) All service complaints and billing complaints will be directed to the Company. Copies of all complaints shall be given to the Borough upon request. The Company shall record all complaints, including date and time, complainant name and address, and nature and date and time of resolution of complaint, in a log. This log shall be available for inspection by the Borough upon request and copies shall be given to the Borough upon request. The Company shall also provide the Borough with a monthly report summarizing the status of any complaints in such month. The Company shall take such reasonable actions as may be warranted in response to customer complaints to remedy the cause of the customer's complaint and provide service in accordance with the Operating Standards and Borough billing and collection procedures.

**APPENDIX 21**

**ENERGY SAVINGS CAPITAL MODIFICATION**

## APPENDIX 21

### ENERGY SAVINGS CAPITAL MODIFICATION

#### Description of Proposed DO Control Project:

The aeration system at the Washington Borough facility is an Orbal™ system. The system provides simultaneous nitrification and denitrification to remove both BOD and nitrogen. There are three concentric rings in the tank with each ring equipped with two horizontal shafts fitted with aeration discs. The discs are rotated in the water by motors to create turbulence and impart oxygen to the water. The two shafts in the outer ring are each powered by a 20 hp motor. The middle and inner ring have two assemblies: each has a 40-hp motor driving a shaft that spans both rings. So in total, there are 2 20-hp motors, and 2 40-hp motors. After an initial process evaluation, it is Veolia's opinion that the delivery of oxygen can be reduced to the biological system, while still performing the required levels of treatment and meeting regulatory requirements. After evaluating several methods for reducing oxygen delivery to the system (including removing discs, putting aerator motors on timers to create a stop/start operation, etc.), Veolia has defined an approach that involves installing variable frequency drives (VFDs) on the motors to reduce their speed. Speed of the motors will be modulated by the VFDs, and controlled based on meeting a dissolved oxygen set point in the treatment system. Actual oxygen and oxygen/reduction potential readings from the system will be measured by probes deployed in the reactor rings. This information will be fed back to the existing SCADA system, which will be updated to include programming to control VFD speed based on delivering the correct amount of air to the water to meet the dissolved oxygen set point, as measured by the probes.

In the event that the Borough and the Company agree to implement Dissolved Oxygen (DO) Control for the Aeration System as described above, the following principles would apply:

1. Veolia to pay capital for project implementation (\$93,360) and shall be paid back (principal and interest) by the Borough out of the energy savings realized by the Borough.
2. Borough to pay Company a fixed payment of \$15,560/year for first six years following implementation; provided, however, that if Borough does not realize energy savings in excess of \$15,560 during a year, Company to rebate back to Borough the difference between the actual amount of savings and \$15,560 and the payment schedule will be extended to allow for full payment to the Company provided that if the Initial Term expires and the Company has not been fully repaid, the Borough shall have no payment responsibility. Any rebate payable by the Company will be paid as part of the annual true-up to occur at the end of each Contract Year.
3. In the event the energy savings are greater than \$15,560 per year in any of the first six years following implementation, the Borough shall pay the Company the difference of such savings as part of the annual true-up at the end of each Contract Year and the payment schedule or amount required to be paid in future years will be adjusted (i.e. reduced) accordingly.
4. Once Company's initial investment is paid back, energy savings moving forward shall be shared 50/50 between the Company and the Borough.

5. If savings do not cover Company’s investment, or it takes longer than expected, the Borough shall have no obligation to repay Company for full investment.

6. Protocol for how to determine annual energy savings to be developed by the Borough and Veolia.

7. The Convenience Termination Schedule set forth in subsection 8.5(A) will be modified to include the recovery of the unrecovered investment by the Company in the Energy Savings Capital Modification.

8. Once DO project is implemented, Appendix 19 shall be replaced with the following:

**APPENDIX 19**

**GUARANTEED MAXIMUM ELECTRICITY UTILIZATION**

1. Electricity Usage (kWh/yr)	900,000
2. Maximum Demand (kW)	145
3. Incremental usage (kWh) for:	
a. increases in flow on a per gallon annual average basis	0 kWh
b. increases in BOD <sub>5</sub> on a per pound annual average basis	0 kWh
c. increases in TSS on a per pound annual average basis	0 kWh
4. Minimum decrease in usage for:	
a. decreases in flow on a per gallon annual average basis	0 kWh
b. decreases in BOD <sub>5</sub> on a per pound annual average basis	0 kWh
c. decreases in TSS on a per pound annual average basis	0 kWh