

SERVICE CONTRACT FOR
ASSET MANAGEMENT AND CAPITAL IMPROVEMENTS
AT THE
ROCKLAND COUNTY
ADVANCED WASTEWATER TREATMENT PLANT

between

COUNTY OF ROCKLAND

and

ROCKLAND COUNTY SEWER DISTRICT NO. 1

and

[]

Dated

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APPENDICES

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2. Performance Guarantees
3. Spare Parts
4. Operating Plan Requirements and Supplemental Operation and Maintenance Requirements
5. Odor Control Plan
6. Insurance Requirements
7. Design and Construction of Capital Modifications
8. Example Service Fee Calculations
9. ICIs
10. Operating Requirements

TRANSACTION FORMS

Letter of Credit
Form of Operations Performance Bond
Form of Labor and Materials Payment Bond
Form of Construction Performance Bond

REFERENCE DOCUMENTS

- A. Special Legislation
- B. SPDES Permit

SERVICE CONTRACT
FOR ASSET MANAGEMENT AND CAPITAL IMPROVEMENTS AND
AT THE
ROCKLAND COUNTY
ADVANCED WASTEWATER TREATMENT PLANT

This Service Contract for Asset Management and Capital Improvements at the Rockland County Advanced Wastewater Treatment Plant (“Service Contract”) is made and entered into as of this _____ day of _____, 2025 between the County of Rockland, a municipal corporation organized and operating under the laws of the State of New York (the “County”), Rockland County Sewer District No. 1, a sewer district established pursuant to Article 5-A of the County Law of the State of New York (the “District”), and [_____, a [_____] organized and existing under the laws of the State of [_____] [and authorized to do business in the State of New York] (the “Company”).

RECITALS

WHEREAS, on [September , 2024], the District issued a Request for Proposals for Management Services and Capital Improvements at the Advanced Wastewater Treatment Plant (the “Plant”) in Hillburn, NY (the “RFP”);

WHEREAS, on [_____, 2024], the Company submitted a Proposal in response to the RFP, which the District determined was in the best interest of the District;

WHEREAS, on [_____, 2024], the District’s Board of Sewer Commissioners adopted a resolution awarding this Service Contract to the Company; and

WHEREAS, the Company will be responsible for management, operations, repair and replacement at the Plant, according to the provisions described in this Service Contract.

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

ARTICLE I.
DEFINITIONS AND INTERPRETATION

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

“Adjustment Factor” has the meaning specified in subsection 11.7 hereof.

“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.

“Annual Settlement Statement” has the meaning specified in Section 11.12 hereof.

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

“Applicable Law” means: (1) any federal, state or local law, code or regulation; (2) any adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case having the force of law and applicable from time to time to: (a) to the design, construction, equipping, financing, ownership, possession, start up, testing, operation, maintenance, repair, replacement or management of municipal wastewater treatment systems, including the Plant; (b) to the conveyance, treatment, storage or discharge of the Plant Influent thereto or the Plant Effluent thereof; (c) to the air and odor emissions therefrom; (d) to the transfer, handling, processing, transportation or disposal of sludge and other residuals produced thereby; (e) to any other transaction or matter contemplated hereby (including, without limitation, any of the foregoing which pertain to wastewater treatment, waste disposal, health, safety, fire, environmental protection, labor relations, apprentice requirements, building codes, the payment of prevailing or minimum wages and non-discrimination).

“Application for Payment” means a written submission by the Company on the form as required by the District, together with any accompanying submittals, requesting payment with respect to the Fixed ICI Design-Build Price.

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. “Bankruptcy Code” shall also include (1) any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due, and (2) in the event the Company is incorporated or otherwise organized under the laws of a jurisdiction other than the United States, any similar insolvency or bankruptcy code applicable under the laws of such jurisdiction.

“Base Fee” is comprised of a Fixed Component, a Chemicals Component, a Loadings Adjustment Element and a Flow Adjustment Element each of which is designed to recover a distinct portion of the costs associated with the operation and maintenance costs of the Plant as set forth in Section 11.4 hereof of this Service Contract.

“Biochemical Oxygen Demand” or “BOD₅” means the five-day measure of the amount of oxygen required for the stabilization of decomposable carbonaceous organic matter and the biooxidation of nitrogenous material under aerobic conditions, the analysis of which shall conform to 40 CFR 136, “Guidelines Establishing Test Procedures for the Analysis of Pollutants”, unless other test procedures have been specified by Applicable Law.

“BOD₅ Loading Adjustment” has the meaning specified in Section 11.6 hereof.

“Billing Period” means each calendar month, except that the last Billing Period shall end on the last day of the Term of this Service Contract. 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.

“Capital Modification” means any material change to the Plant including the installation of new structures, equipment, systems or technology. If a replacement of any part of the Plant

made by the Company pursuant to its obligations under Article VI results in a material change to the Plant, such replacement shall be considered to be a Capital Modification.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

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

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

(B) the order or judgment of any Governmental Body issued on or after the Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of the District, 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.

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

in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Contract Date shall not constitute a “Change in Law.”

“Chemical Cost Escalation Factor” or “CCEF” means the final not seasonally adjusted Producer Price Index-Chemicals and Allied Products, WPU06, as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

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

“Co-composting Facility” means the Rockland County Solid Waste Management Authority Co-composting Facility Located 400 Torne Valley Road in Hillburn, New York.

“Commencement Date” means, January 1, 2026, the date upon which the Company shall commence Management Services pursuant to this Service Contract.

“Company” means [], a [] organized and existing under the laws of [], and its permitted successors and assigns.

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

“Consumables” means those materials, supplies and similar consumables used in connection with the operation of the Plant, which may include fuel oil, diesel fuel, liquid chlorine,

liquid sulfur dioxide, liquid defoamant, quick lime, activated carbon, lubricants, polymers, office supplies and other chemicals, fuels, materials, supplies and similar consumables.

“Consumer Price Index” or “CPI” means the final not seasonally adjusted Consumer Price Index as reported by the U.S. Department of Labor, Bureau of Labor Statistics, for All Urban Consumers, for the Northeast Region CUUR0100SA0,CUUS0100SA0.

“Contract Administrator” has the meaning specified in Section 10.1 hereof.

“Contract Date” means July 1, 2025, the effective date of this Service Contract.

“Contract Representative” means, in the case of the Company, the individual specified in writing by the Company as the representative of the Company from time to time for all purposes of this Service Contract and, in the case of the District, the Executive Director or such other representative as shall be designated in writing by the Executive Director from time to time.

“Contract Services” means the operation, maintenance, repair and replacement services, and the ICI Design-Build Work required pursuant to the terms of this Service Contract.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) the Performance Guarantees; (3) Operating Plan Requirements; (4) Supplemental Operation and Maintenance Requirements; (5) Good Engineering and Construction Practice; (6) Good Industry Practice; (7) the Operation and Maintenance Manual; (9) applicable equipment manufacturers’ specifications; (10) applicable Insurance Requirements; (11) the ICI Design and Construction Requirements; and (12) any other standard, term, condition or requirement specifically provided in this Service Contract to be observed by the Company. Subsection 1.2(N) hereof shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

“Contract Year” means the District’s fiscal year commencing on January 1 in any year and ending on December 31 of such year; provided, however, that the first Contract Year shall commence on the Contract Date and shall end on the following December 31, and the last Contract Year shall commence on January 1 prior to the date this Service Contract expires or is terminated,

whichever is appropriate, and shall end on the last day of the Term of this Service Contract 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 or 366 days, whichever is applicable.

“Cost Substantiation” shall be applied as set forth in Section 16.4 hereof.

“County” shall mean Rockland County, New York.

“County Property” means any structures, improvements, equipment, utilities, fixtures, or real or personal property owned, leased, operated, maintained or occupied by the County.

“DEC” means the New York State Department of Environmental Conservation or any predecessor or successor agency.

“Designated Disposal Site” means the Rockland County Solid Waste Management Authority Co-composting Facility located at 400 Torne Valley Road, Hillburn, NY.

“District” means Rockland County Sewer District No. 1, or any successor or assignee, which is a sewer district established pursuant to Article 5-A of the County Law of the State of New York.

“District Engineer” means either (1) an engineer employed by the District or (2) a nationally-recognized qualified consulting engineer or firm of consulting engineers having experience with respect to the obtaining of governmental approvals for the design, construction, testing, operation, maintenance, repair, replacement and management of wastewater treatment facilities, in either case designated as the District Engineer from time to time in writing by the District.

“District Fault” means any breach (including the untruth or breach of any District representation or warranty herein set forth), failure, non-performance or non-compliance by the District under this Service Contract with respect to its obligations and responsibilities under this Service Contract to the extent not directly attributable to any Uncontrollable Circumstance or

Company Fault, and which materially and adversely affects the Company's rights, obligations or ability or costs to perform under this Service Contract.

"District Indemnatee" has the meaning specified in Section 14.3 hereof.

"District Property" means any structures, improvements, equipment, fire and intrusion alarm systems, process wastewater and valves, pumping systems, hydrants, hydrant connections, duct lines, lamps, lampposts, monuments, sidewalks, curbs, trees, lawns, roadways, utilities or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by the District.

"Diversion Force Main" means the sewer line constructed by the District between the location on the Site and the Mahwah Pump Station.

"EFC" means the New York State Environmental Facilities Corporation or any predecessor or successor agency.

"EPA" means the United States Environmental Protection Agency and any successor agency.

"Event of Default" means, with respect to the Company, those items specified in Section 12.2 hereof and, with respect to the District, those items specified in Section 12.3 hereof.

"Excessive Plant Influent" means Plant Influent that either (1) contains Toxic Substances, (2) contains Hazardous Material or (3) is in excess of the Plant capacity.

"Executive Director" means the Executive Director of Rockland County Sewer District No. 1.

"Excluded Items" means the items identified in Section 6.10(D) of this Service Contract.

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses

reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the municipal wastewater treatment industry as followed in the Northeast region of the United States.

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

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services.

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

“Gravity Outfall” means the pipe used to transport final effluent via gravity from the disinfection effluent box to the Ramapo River at a point below the Ramapo Valley well fields and above the regulating weir.

“Guaranteed Maximum Electricity Consumption” has the meaning specified in Appendix 1 hereto.

“Guaranteed Maximum Electricity Demand” has the meaning specified in Appendix 1 hereto.

“Guaranteed Maximum Electricity Utilization” means Guaranteed Maximum Electricity Consumption and Guaranteed Maximum Electricity Demand.

“Guaranteed Maximum Natural Gas Consumption” has the meaning specified in Appendix 1 hereto.

“Hazardous Material” means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, “hazardous substance” as defined under CERCLA or “hazardous waste” as defined under RCRA.

“Independent Engineer” means a nationally-recognized qualified consulting engineer or firm of consulting engineers, not otherwise associated with the transactions contemplated hereby, having experience with respect to the obtaining of governmental approvals for design, construction, testing, operation, maintenance, repair, replacement and management of wastewater treatment facilities.

“Initial Capital Improvements” or “ICIs” means those initial capital improvements to be implemented by the Company that are set forth in Appendix 9 pursuant to the terms of this Service Contract.

“ICI Design-Build Price” means the fixed price for each individual ICI, as set forth in Appendix 9.

“ICI Design-Build Work” means the employment and furnishing of all labor, materials, equipment, supplies, tools, transportation, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Company’s permitting, design, engineering, construction, and acceptance testing, and related obligations with respect to each of the ICIs under this Service Contract. A reference to ICI Design-Build Work shall mean any part and all of the ICI Design-Build Work unless the context otherwise requires, and shall include all extra ICI Design-Build Work authorized by Change Order.

“ICI Design and Construction Requirements” means the basic design principles, concepts and requirements for the ICI Design-Build Work but do not include the final, detailed design, plans, drawings or specifications or indicate or describe each and every item required for full performance of the physical ICI Design-Build Work and for achieving acceptance. The Company agrees to prepare all necessary complete and detailed designs, plans, drawings and specifications and to furnish and perform, without additional compensation of any kind, all ICI Design-Build Work in conformity with the ICI Design and Construction Requirements.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurance company which has issued a policy of Required Insurance under this Service Contract, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

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

“Letter of Credit” has the meaning specified in Section 15.2 hereof.

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

“Loss-and-Expense” means any and all actual losses, liabilities, forfeitures, obligations, damages, fines, penalties, judgments, deposits, costs, expenses, charges, Taxes, or expenses, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Service Contract. “Loss-and-Expense” for the purpose of any provision hereunder requiring indemnification of the District by the Company shall also mean and include claims or causes of action asserted by any unrelated third-party for special, consequential, punitive or similar damages against any District Indemnitee.

“Mahwah Pump Station” means the existing District pump station located in the Village of Montebello at 2A Lake Road, Suffern, NY.

“Management Services” means the Contract Services, except for the ICI Design-Build Work.

“MBE/WBE” means Minority Business Enterprise/Women’s Business Enterprise.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 12.9 hereof.

“MG” means millions of gallons.

“MGD” means millions of gallons per day.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 12.9 hereof for the resolution of technical disputes arising under this Service Contract.

“Normal Business Hours” means an eight hour period for each day, Monday through Friday, to be mutually agreed to by the parties.

“Notice to Proceed” means a notice issued by the District to the Company notifying the Company that it shall commence work on the ICI(s) identified in such Notice to Proceed, subject to the terms and conditions included in such Notice to Proceed and to this Service Contract.

“Odor Control Guarantee” means the standards described in section 2 of Appendix 5 hereto.

“Operating Plan” means the plan governing operation of the Plant, including all interface, coordination, and wastewater treatment policies, procedures and protocols established, adopted and revised.

“Operation and Maintenance Manual” means the manual and related computer programs prepared by the Company containing detailed standard operating and maintenance procedures and

other specific instructions, policies, directives, routines, schedules and other matters relating to the Contract Services, developed and maintained as required by Section 6.3 hereof.

“Operations Performance Bond” means the surety bond which guarantees the Company’s performance of the Contract Services in accordance with the Contract Standards and which shall be provided for in accordance with Section 15.1 hereof.

“Operating Plan Requirements” means the operating requirements set forth in Appendix 4 hereto.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate, whichever is lower.

“Performance Guarantees” means the guarantees of performance made by the Company specifically set forth in Article VII and Appendix 2 hereto.

“Plant” means the advanced wastewater treatment plant, including the Plant Influent Pump Station, the Gravity Outfall, and any other on-Site infrastructure, consisting generally of buildings, structures, fixtures and equipment involved in the treatment of wastewater, and all roads, grounds, fences and landscaping appurtenant thereto, utilized for preliminary treatment, primary treatment, secondary treatment and advanced biological treatment of Plant Influent, and Plant Effluent disinfection, Plant Sludge treatment, laboratory functions and administration and management of the Plant, including any Capital Modifications made thereto from time to time.

“Plant Effluent” means treated wastewater discharged from the Plant.

“Plant Effluent Quality Guarantee” means the standards described in Appendix 2 hereto.

“Plant Effluent Requirement” means the requirements pertaining to the discharge of Plant Effluent set forth in Appendix 2, as well as any effluent requirement contained in the SPDES Permit. To the extent that any Plant Effluent Requirement contained in Appendix 2 differs from any corresponding requirement contained in the SPDES permit, the stricter of the two standards shall apply.

“Plant Influent” means all flows reaching the Plant through the Western Ramapo Sewers from all connecting sources.

“Plant Influent Parameters” has the meaning specified in Appendix 10.

“Plant Influent Pump Station” means the building, equipment and systems (including the on-site force main connecting the pumps to the Diversion Force Main), that receive influent from the Western Ramapo Sewers and increase the head sufficiently to pump the Plant Influent through either the Plant or the Diversion Force Main.

“Plant Manager” has the meaning specified in Section 10.1 hereof.

“Plant Sludge” or “Biosolids” means any solid, semi-solid or liquid residue or sludge removed during the treatment of Plant Influent by the Plant.

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

“Rating Service” means Moody’s Investors Service Inc., Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc. or Fitch Ratings, or any of their respective successors and assigns and, if such corporations shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Rating Service” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the District.

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

“Reference Document” means any of the documents identified as a reference document herein.

“Required Insurance” has the meaning specified in Section 14.1 hereof.

“Residuals” means any Plant Sludge, Side Streams and solid waste generated at the Site.

“RFP” means the District’s Request for Proposals for Management Services and Capital Improvements at the Advanced Wastewater Treatment Plant (the “Plant”) in Hillburn, NY issued on [September, 2024], as amended.

“Security Instruments” means the Performance and Payment Bonds, the Operations Performance Bond, and the Letter of Credit.

“Senior Supervisors” has the meaning specified in subsection 10.1(B) hereof.

“Service Contract” means this Service Contract for Asset Management and Capital Improvements at the Rockland County Advanced Wastewater Treatment Plant between the Company and the District, including the Appendices, the Transaction Forms and the Reference Documents, as the same may be amended or modified from time to time in accordance herewith.

“Service Fee” has the meaning specified in Article XI hereof.

“Service Fee Escalation Factor” or “SFEF” means the final not-seasonally adjusted Consumer Price Index, for All Urban Consumers, for the Northeast Region CUUR0100SA0,CUUS0100SA0 as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

“Shared Responsibility” shall be as defined in Section 6.10(E) of this Service Contract.

“Side Streams” means materials such as scum, grease, and grit and screenings from the Plant, or liquid by-products and waste streams from intermediate treatment processing, which require additional treatment or handling.

“Site” means the parcels of real property containing the Plant and all appurtenant structures.

“Sludge Quality Guarantee” means the standards for sludge quality set forth in Appendix 2 hereto.

“Special Legislation” means Chapter 665, S. 7354-C of the 225th Legislature of the State of New York, approved and effective as of December 3, 2002 (attached as a Reference Document hereto), as amended, supplemented, superseded and replaced from time to time.

“SPDES Permit” means permit number NY-0270598 issued by the New York State Department of Environmental Conservation, attached as a Reference Document hereto.

“State” means the State of New York.

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

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

“Supplemental Operation and Maintenance Requirements” means the operation and maintenance requirements set forth in Appendix 4 hereto.

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

“Term” has the meaning set forth in Article XIII.

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

“Toxic Substance” means any toxic, hazardous, chemical, industrial, explosive, flammable, volatile, reactive, corrosive or radioactive waste, material or substance which, alone or in combination with other substances, is contained in sufficiently high concentrations or volumes in Plant Influent received at the Plant, and while the Plant is being operated and maintained in accordance with the provisions of this Service Contract so as:

- (A) To interfere with the biological processes necessary for the removal of the organic and chemical contents of the Plant Influent required to meet the Plant Effluent Requirements;
- (B) To endanger human health or safety; or
- (C) To cause Plant Effluent or Residuals to become a Hazardous Material, if any such result could not reasonably have been provided by the management of the Plant in accordance with the Contract Standards.

“Transaction Form” means any of the Transaction Forms appended to this Service Contract.

“Transition Period” means the period that is a maximum of six (6) months following the Contract Date during which the Company will proceed as set forth in this Article V.

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

(A) Inclusions. Subject to the foregoing, Uncontrollable Circumstances shall include the following:

1. A Change in Law;
2. The receipt of Excessive Plant Influent at the Plant, as defined in and subject to the terms of the Service Contract;
3. The occurrence of an Upset, as defined in and subject to the terms to be set forth in the Service Contract;
4. The discovery of Hazardous Material on or at the Site, to the extent not caused by the Company;
5. The existence of an Unknown Subsurface Condition, to the extent not caused by the Company;

6. Naturally occurring events (except weather conditions normal for the northeast region of the United States) such as landslides, underground movement, earthquakes, fires, tornadoes, floods, epidemics, and other acts of God;
7. Explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, terrorism, blockade or insurrection, riot or civil disturbance;
8. Labor disputes, except labor disputes involving employees of the Company, its Affiliates, or Subcontractors which affect the performance of the Contract Services;
9. The failure of any Subcontractor (other than the Company or any Affiliate of either, except as otherwise provided in the Service Contract), to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Company directly, and the Company is not able after exercising all reasonable efforts to timely obtain comparable substitutes;
10. Any failure of title to the Plant or any placement or enforcement of any encumbrance on the Plant not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;
11. The preemption, confiscation, diversion or destruction of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Plant;
12. A violation of Applicable Law by a person other than the affected party or its subcontractors;
13. With respect to the Company, any District Fault and District-requested change orders not due to Company Fault; and
14. With respect to the District, any Company Fault.

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

1. Any act, event or circumstance to the extent that it would not have occurred if the affected party had complied with its obligations hereunder;

2. Changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions;
3. Changes in the financial condition of the District, the County, the Company, or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;
4. The consequences of error, neglect or omissions by the Company, any Subcontractor, any of their Affiliates or any other person in the performance of the Contract Services;
5. Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Plant or otherwise increasing the cost to the Company of performing the Contract Services other than what is described herein for the Company to supply District employees in the event the District is unable to;
6. Any impact of prevailing wage or similar laws, customs or practices on the Company's costs;
7. Weather conditions normal for the geographic region of the District;
8. Any act, event, circumstance or Change in Law occurring outside of the United States;
9. Mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;
10. Power outages to the extent not caused by third party utilities or resulting from a condition that is listed in the "Inclusions" section of this definition;
11. Lightning;
12. Failure of the Company to secure patents which it deems necessary for the performance of the Contract Services;
13. Contamination of the Plant and the Site from groundwater, soil or airborne Hazardous Material migrating from sources outside the Plant to the extent caused by Company;
14. A Change in Law pertaining to taxes; or

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

“Unknown Subsurface Conditions” means, and is limited to, the presence at the Site of (1) subsurface conditions that materially differ from the subsurface conditions disclosed in the RFP and any Reference Document, (2) archeological finds, and (3) Hazardous Materials.

“Upset” has the meaning given such term in the Clean Water Act.

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

“Western Ramapo” means the Villages of Sloatsburg and Hillburn, along with the unincorporated area of the Town of Ramapo located in the western portion of the County.

“Western Ramapo Sewers” means the Western Ramapo collection system which conveys Plant Influent to the Plant.

“Wastewater System” means the District’s wastewater system (including all pipes, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) managed by the District, of which the Plant is a part.

SECTION 1.2 INTERPRETATION. In this Service Contract, notwithstanding any other provision hereof:

(A) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Service Contract 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, joint ventures, general partnerships, limited partnerships, limited liability companies 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 Service Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(E) Entire Agreement. This Service Contract contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Service Contract. Without limiting the generality of the foregoing, this Service Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFP, the proposal of the Company submitted in response thereto, any amendments or supplements to the RFP or the proposal and the Design Build Service Contract.

(F) Standards of Workmanship and Materials. Any reference in this Service Contract to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Company to furnish the same in accordance with the grades and standards therefore indicated in this Service Contract. Where this Service Contract does not specify any explicit quality or standard for construction materials or workmanship, the Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified in any applicable design requirements.

(G) Technical Standards and Codes. References in this Service Contract to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the date of this Service Contract. Unless otherwise specified to the contrary, all such professional and technical standards, codes and specifications shall apply as if incorporated in the design requirements.

(H) Liquidated Damages. This Service Contract provides for the payment by the Company of liquidated damages in certain circumstances of non-performance, breach and default. Each party agrees that the District's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such non-performance, breach and default of the Company), and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the District in the same economic position as it would have been had the circumstance not occurred and where provided shall constitute the sole and exclusive remedy of the District against the Company, other than the obligations of the Company to pay any fines or penalties assessed by a Government Body against the District or the Company. The allowances of liquidated damages shall not limit or alter the remedies set forth in Section 7.8.

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

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

(K) Cost of Performing Excludes Cost from Legal Proceeding. The "cost of performing" a party's obligations hereunder, when used with respect to one party's obligation to pay additional costs incurred by the other party, shall not include any Loss-and-Expense incurred by the party resulting from any third-party Legal Proceeding. Notwithstanding the foregoing, each party retains its rights to bring any Legal Proceeding or to implead the other party as to any matter arising hereunder.

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

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

(N) Applicability and Stringency of Contract Standards. The Company shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

(O) Delivery of Documents in Digital Format. In this Service Contract, the Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Company agrees that all such documents shall be submitted to the District both in printed form (in the number of copies indicated) and, at the District's request, in digital form. Digital copies shall consist of computer readable data submitted in Autocad, Microsoft Word, Microsoft Access, and Microsoft Excel or in any other similar standard interchange format which the District may reasonably request to facilitate the administration and enforcement of this Service Contract.

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

(Q) No Third-Party Rights. This Service Contract is exclusively for the benefit of the District and the Company and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

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

(S) References to Days. All references to days herein are references to calendar days.

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

(U) References to Knowledge. All references to “knowledge”, “knowing”, “know” or “knew” shall be interpreted as references to a party having actual knowledge.

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

(W) Governing Law. This Service Contract shall be governed by and construed in accordance with the applicable laws of the State of New York.

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

ARTICLE II. REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE DISTRICT. The District represents and warrants that:

(A) Existence and Powers. The District is an administrative agency of a municipal corporation organized and existing under and by virtue of the New York State Constitution and the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Service Contract.

(B) Due Authorization and Binding Obligation. This Service Contract has been duly authorized, executed and delivered by all necessary action of the District and County and constitutes a legal, valid and binding obligation of the District and County, enforceable against the

District and County in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the District and County of this Service Contract, nor the performance by the District of its obligations in connection with the transactions contemplated hereby or the fulfillment by the District of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the District or (2) conflicts with, violates or results in the breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the District is a party or by which the District or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the District of this Service Contract or the performance by the District of its payment or other obligations hereunder except otherwise as such have been duly obtained or made.

(E) No Litigation. To the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body, or proceeding for referendum or other voter initiative, pending or, to the best of the District's knowledge, overtly threatened or publicly announced against the District, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Service Contract or the validity, legality or enforceability of this Service Contract, or any other agreement or instrument entered into by the District in connection with the transactions contemplated hereby, or on the ability of the District to perform its obligations hereunder or under any such other agreement or instrument.

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

(A) Existence and Powers. The Company is a [] duly organized, validly existing and in good standing under the laws of [] and has the authority to do business in this State and in any other state in which it conducts its activities, with

the full legal right, power and authority to enter into and perform its obligations under this Service Contract.

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

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Company of this Service Contract nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Company or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

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

(E) No Litigation. Except as disclosed in writing to the District, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Company's knowledge, overtly threatened or publicly announced against the Company, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Service Contract by the Company or the validity, legality or enforceability of this Service Contract against the Company, or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) Claims and Demands. Except as disclosed in writing to the District, to the best of its knowledge, there are no material and adverse claims or demands based in environmental

law, tort law, or based on breach of contract, pending or threatened against the Company with respect to any wastewater plant providing service to the general public designed, constructed, operated, maintained or managed by the Company.

(G) Applicable Law Compliance. Except as disclosed in writing to the District, to the best of its knowledge, the Company is not in material violation of any law, order, rule or regulation applicable to any wastewater plant providing service to the general public designed, constructed, operated, maintained or managed by the Company, the violation of which may subject any of the foregoing to any significant regulatory enforcement action.

(H) Practicability of Performance. The Company assumes the risk of the practicability and possibility of performance of the Plant in the manner required hereunder, and of treating Plant Influent (other than Excessive Plant Influent) through the operation of the Plant in a manner which meets all of the requirements hereof, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or circumstances (other than Uncontrollable Circumstances) which may be different from those assumed by the Company in entering into this Service Contract, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Service Fee. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance.

(I) Patents and Licenses. The Company owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Plant without any known material conflict with the rights of others.

ARTICLE III. EXISTING SITE AND FACILITY

SECTION 3.1 SITE FAMILIARITY. The Company acknowledges that the Company's agents and representatives have visited, inspected and are familiar with the Site, its surface physical condition relevant to the obligations of the Company pursuant to this Service Contract, including surface conditions, normal and usual soil conditions, roads, utilities, topographical conditions and air and Plant Influent quality conditions; that the Company is familiar with all local and other conditions which may be material to the Company's performance of its obligations under this Service Contract (including, but not limited to transportation; seasons and climate; access,

availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); and has received and reviewed all information regarding the Site provided to it as part of the Site-related information or obtained in the course of performing its obligations hereunder; and that based on the foregoing, the Site constitutes an acceptable and suitable site for the continued operation of the Plant. The Company expressly disclaims knowledge of or responsibility for Unknown Subsurface Conditions, Hazardous Waste or Toxic Substances not brought onto the Site by the Company.

ARTICLE IV. OWNERSHIP OF THE PLANT AND FINANCING OF IMPROVEMENTS

SECTION 4.1 DISTRICT OWNERSHIP. The County and/or District shall retain ownership of the Site and all buildings and other improvements now existing and to be made thereon, including the Plant. The Company shall perform the Contract Services provided for herein as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Plant.

SECTION 4.2 COUNTY FINANCING. The Company shall cooperate with and assist the County and District in connection with obtaining financing for any ICI's. The Company shall provide the County and the District with any data and documents within its control that are necessary to obtain such financing.

ARTICLE V. TRANSITION PERIOD

SECTION 5.1 START OF TRANSITION PERIOD. The Transition Period is the period that is a maximum of six (6) months following the Contract Date during which the Company will proceed as set forth in this Article.

SECTION 5.2 COMPANY RESPONSIBILITIES DURING TRANSITION PERIOD. During the Transition Period, the responsibilities of the Company include: (1) the mobilization of staff; (2) meetings with the District and the incumbent Plant operator; (3) observation of the incumbent's Plant management and operations; (4) training from the incumbent regarding Plant operations; and (5) transfer of all necessary books, record, systems, passcodes, and manuals.

SECTION 5.3 SECURITY FOR PERFORMANCE. As a condition precedent to the execution of this Service Contract, the Company provided to the District certificates of insurance for all Required Insurance. The Company shall not be permitted to access the Plant or the Site at any time the District has not received current certificates of insurance for all Required Insurance. On or before the Contract Date and commencement of the Transition Period, the Company shall obtain and deliver to the District:

- (i) the Operations Performance Bond [Letter of Credit or parent Guarantee]; and
- (ii) the contact information specified in subsection 10.1(E) (Communications and Meetings).

SECTION 5.4 ACCESS TO PLANT DURING TRANSITION PERIOD. The execution of this Service Contract and the receipt of certificates of insurance for all Required Insurance shall be deemed to constitute the granting to the Company of a right of access to the Plant and Site for the purposes of performing all necessary onsite activities pursuant to this Section. Such right of access shall be subject to the District's prior approval, which shall not be unreasonably withheld, as to time and scope. The Company shall assume all risks associated with such activities, and shall indemnify District Indemnitees against all Loss-and-Expense resulting from any Legal Proceeding originated by any third party arising out of such activities.

ARTICLE VI. OPERATION AND MAINTENANCE

SECTION 6.1 OPERATION AND MAINTENANCE RESPONSIBILITY. Commencing on January 1, 2026, (the "Commencement Date"), the Company shall operate and maintain the Plant on a 24-hour per day, 7-day per week basis, and shall process and treat all Plant Influent and handle and transport all Residuals, and otherwise operate, maintain, manage, repair and replace the Plant so as to comply with the Contract Standards (the "Management Services").

SECTION 6.2 DISTRICT OBLIGATIONS GENERALLY. The District, in addition to the obligations it has accepted elsewhere in this Service Contract, shall:

- (A) Grant and assure the Company access to the Plant for the performance of its obligations hereunder; and

(B) Pay the Service Fee and any other amounts due the Company in accordance with the terms and conditions of this Service Contract.

SECTION 6.3 OPERATION AND MAINTENANCE MANUAL.

(A) Company Responsibility. The Contract Services shall be performed substantially in compliance with the Operating Plan, Operation and Maintenance Manual and the Company's computerized maintenance management system. The Company shall keep the Operations and Maintenance Manual current and shall supply the District with appropriate updates, supplements or revisions thereto annually or at any earlier time that a material change to the Operation and Maintenance Manual is made, to be reviewed and commented by the District. Such updates shall preserve the standards set forth in the initial Operation and Maintenance Manual. Notwithstanding any such review and comment by and discussion with the District, the Operation and Maintenance Manual shall remain, at all times, the responsibility of the Company. Neither the review of or comment upon, nor the failure of the District to comment upon, the Operation and Maintenance Manual shall: (1) relieve the Company of any of its responsibilities under this Service Contract; (2) be deemed to constitute a representation by the District that operating the Plant pursuant to the Operation and Maintenance Manual will cause the Plant to be in compliance with this Service Contract or Applicable Law; or (3) impose any liability upon the District.

(B) Supplements for Capital Modifications. The Company shall prepare supplements and revisions to the Operation and Maintenance Manual which are required due to the design, construction and installation of all Capital Modifications. Such supplements and revisions shall be provided, reviewed and approved in the same manner as provided in this Section with respect to the initial Operation and Maintenance Manual. The cost and expense of all such supplements and revisions shall be borne by the Company, except with respect to supplements and revisions necessitated by Capital Modifications directed by the District or required by a Change in Law or other Uncontrollable Circumstance.

(C) Maintenance, Repair and Replacement Plan. The Operation and Maintenance Manual shall incorporate a maintenance, repair and replacement plan that is in substantial compliance with Appendix 4 hereto. The Company shall adhere to the plan as incorporated in the Operation and Maintenance Manual, except where it can demonstrate to the District that changes are reasonable under Good Industry Practice. The timing and extent of maintenance, repair and

replacement activities performed by the Company hereunder with respect to the Plant, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 44 hereto as incorporated in the Operation and Maintenance Manual. The Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

SECTION 6.4 STAFFING.

(A) Management Staffing. The Company shall staff the Plant with two (2) Company employees during the Term of this Service Contract. One employee shall have a Grade 4A Certification issued by the State, and the other shall have a Grade 3A Certification issued by the State. The Company shall discipline or replace, as appropriate, any employee of the Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Company shall notify the District of any change in staffing. For any staffing positions that remain unfilled for longer than 110 business days, the Company shall pay the District, as liquidated damages for failure to comply with the staffing plan, \$875 per day for each day the position is unfilled.

(B) Labor and Maintenance Staffing. The District shall staff the Plant with four (4) District employees. The District shall have ultimate managerial control over the District employees; however, with respect to plant maintenance and plant operations, the Plant Manager and Assistant Plant Manager shall instruct and direct the District employees on behalf of the District. The Company shall be responsible for training the District employees. In the event that the District is unable to fill any of its four (4) positions, the District shall coordinate with the Company to have the Company staff the open position or positions. The District is solely responsible for the salary, benefits, and other compensation for work performed by District employees. The Company shall be compensated at an hourly rate that is a multiplier of 2.0 times the actual pre-tax hourly rate paid to the Company employees filling District employee positions for all hours worked by the Company employees. The Company shall not include the cost of employee benefits in the hourly rate. In the event that the Company is required to provide employees pursuant to this Section, the minimum period of time for the engagement of the employee or employees shall be no less than six months.

SECTION 6.5 TRAINING.

(A) The Company shall be responsible for training the Plant Manager, Assistant Plant Manager, other Company personnel, and the four (4) District employees in accordance with the Company's personnel training program. Such personnel training program shall include the personnel training guidelines, policies and procedures established: (1) by the District, the DEC, the EFC and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law. The Company shall also provide training and education to the four (4) District employees so that they may undertake necessary steps to qualify for advanced operator's licensure. The Company shall be responsible for the cost of training such District employees, and the District shall be responsible for all employee expenses (travel, lodging, meals, etc.) incurred while participating in such training programs.

(B) Emergency Preparedness. The Company acknowledges that the District retains the responsibility for treating Plant Influent and serving the public health, safety and welfare needs of its ratepayers. The District accordingly shall have right to designate three (3) additional officers or employees for the purpose of receiving emergency preparedness training from the Company above and beyond those District positions already described in this Service Contract. Such training shall be regularly repeated and renewed so as to be sufficient to enable any of the three (3) officers or employees to be familiar with the equipment, supplies, processes, operations and performance of the Plant at a level which will permit such employees/officials to properly respond to any operating emergency and to assume managerial responsibility for the District in the event the Company is unable to operate the Plant during the emergency and the District elects to exercise its rights in an emergency to take temporary possession of the Plant hereunder or under Applicable Law. Notwithstanding the foregoing, the Company shall not rely on the District to operate the Plant during any emergency.

(C) Ongoing Training. The District shall have the right to send an additional three (3) District employees to any Company-provided training programs. The Company shall be responsible for the cost of training such District employees, and the District shall be responsible for all employee expenses (travel, lodging, meals, etc.) incurred while participating in such training programs.

(D) Permanent Operations. The Company shall, pursuant to no less than 90 days' prior written notice from the District, conduct a training program for the District and its designees in order to enable the District to assume operating and maintenance responsibility for the Plant at the expiration or termination of this Service Contract. The program shall train operating and maintenance personnel in sufficient numbers and job classifications so as to allow the District and its designees to operate and manage the Plant in such circumstances in accordance with the Contract Standards. The training afforded to District employees or designees shall be substantially equivalent to the training afforded the Company's and Subcontractor's employees in connection with the start-up of the Plant prior to the applicable acceptance tests. In addition, the Company shall permit District supervisory and operating personnel to observe the Company's operation of the Plant for a period of up to six (6) months prior to expiration or termination of the Service Contract, which observation activities shall not interfere unreasonably with the Company's performance of the Contract Services. All costs pertaining to the observation activities of District supervisory and operating personnel shall be borne by the District.

SECTION 6.6 WATER/ELECTRICITY/GAS SUPPLY AND CONSUMPTION. The District shall have the exclusive right to arrange for the supply of electricity and natural gas to the Plant, and to negotiate and establish electric rates with the suppliers. The Company shall cooperate with and assist the District in making such arrangements, and the District shall give reasonable consideration to any requests and recommendations made by the Company as to the terms and conditions of electricity and natural gas supply. The District shall pay all water, electricity and natural gas supply bills, and the Company shall provide an annual rebate to the District as part of the Annual Settlement Statement process set forth in Section 11.12 hereof in the event that the Guaranteed Maximum Electricity Utilization or the Guaranteed Maximum Natural Gas Consumption is exceeded. The Company shall operate the Plant in a manner which minimizes, to the extent reasonably practicable in light of its obligation to provide the Contract Services, charges for water, natural gas use, electricity use, demand, transmission and distribution which are reimbursable by the District hereunder. The Company shall pay for phone and internet access, including Wi-Fi to the Plant.

SECTION 6.7 SAFETY AND SECURITY.

(A) Safety. The Company shall maintain the safety of the Plant at a level consistent with the Contract Standards. Without limiting the foregoing, the Company shall: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Plant to, (a) all employees working at the Plant and all other persons who may be involved with the operation, construction, maintenance, repair and replacement of the Plant, (b) all visitors to the Plant, (c) all materials and equipment under the care, custody or control of the Company on the Site, (d) other property constituting part of the Plant, and (e) District Property and County Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Plant whose duty shall be the supervision of Plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State, County and District officials; (5) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movements; and (7) develop and carry out a Site-specific safety program, including employee training and periodic inspections, designed to implement the requirements of this Section.

(B) Security. The Company shall be responsible for the security of the Plant, and shall maintain suitable fences, gates, locks, and intrusion and fire alarm systems at the Plant. The Company shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties. The Company shall work with the District to comply with all Applicable Law and Good Industry Practice guidelines regarding security measures for terrorist threats and activities.

SECTION 6.8 COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Company shall perform the Contract Services in accordance with Applicable Law. The Company shall also cause all Subcontractors and District employees operating under the management and direction of the Company to comply with Applicable Law. Subject to the terms of this Service Contract, the Company shall comply with

the terms of all Governmental Approvals and other Applicable Law pertaining to the Plant, the Plant Influent, the Plant Effluent, air emissions and odor, and Residuals notwithstanding the fact that the Company may not be a permittee or co-permittee with respect to some or all of such Governmental Approvals. To the extent that the Company's performance of the Contract Services violates Applicable Law, and the violation is attributable to the actions or inactions of a District employee, the Company shall not be deemed responsible or subject to liability provided: (a) the violation is unrelated to the Company's performance of Contract Services and the District employee received no instruction or authorization from the Plant Manager or Assistant Plant Manager to perform the act, or (b) the violation was caused by the District employee's gross negligence, or willful misconduct. Notwithstanding this Section or any other provision of this Service Contract, the District acknowledges its responsibility for issuing appropriate discipline to District employees so as to ensure that its employees are capable of meeting the standards and qualifications to perform the Contract.

(B) Sampling, Testing and Laboratory Work. The Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be DEC and EPA, as applicable, certified for the applicable test, shall be operated in accordance with Good Industry Practice, and shall be monitored by the Company for compliance with EPA standard test methods. All sampling and test data shall be available for review by, and reported to, the District in accordance with Section 10.4 hereof. The Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or its Subcontractors, both as to failures to detect and as to false detections. The Company shall permit the District, at the District's expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Plant or otherwise.

(C) Investigations of Non-Compliance. In connection with any actual or alleged event of non-compliance with Applicable Law, the Company shall, in addition to any other duties which Applicable Law may impose: (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body; (2) attend all meetings and hearings required by any Governmental Body; (3) (except where the event of non-compliance was due to District Fault or Uncontrollable Circumstances) provide all corrective action plans, reports,

submittals and documentation required by any Governmental Body; (4) in conjunction with the District, communicate in a timely and effective manner with the general public as to the nature of the event, the impact on the public, and the nature and timetable for the planned remediation measures; and (5) immediately upon receipt thereof, provide the District with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any verbal notice of non-compliance with Applicable Law, issued or given by any Governmental Body. The Company shall furnish the District with an immediate written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or non-compliance to the extent the Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance.

(D) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances or District Fault, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Plant, the Plant Influent, air emissions, odor, Residuals or other environmental or operating condition, the Company shall, without limiting any other remedy available to the District upon such an occurrence and notwithstanding any other provision of this Service Contract: (1) immediately correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Company and the District to the extent caused by such failure to comply with Applicable Law; (3) pay or reimburse the District for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all Capital Modifications and changes in operating and management practices which are reasonably necessary to assure that such failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law.

(E) No Nuisance Covenant. The Company shall keep the Plant neat, clean and litter-free at all times, ensure that the operation of the Plant does not create any odor (to the extent not covered by the Odor Control Guarantee), litter, noise, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur which is not caused by Uncontrollable Circumstances or District Fault, the Company shall immediately remedy the

condition, pay any fines or penalties relating thereto, make all Capital Modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, defend and indemnify and hold harmless the District from any Loss-and-Expense relating thereto in the manner provided in Section 14.3 hereof.

SECTION 6.9 OPERATING GOVERNMENTAL APPROVALS.

(A) Applications and Submittals. The Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained by or in the name of the Company or the District under Applicable Law in order to operate the Plant. With respect to Governmental Approvals which are required to be obtained in the name of the District, the Company shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions of such Governmental Approvals; (4) attend all required meetings and hearings; and (5) take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms of such Governmental Approvals. All permit and filing fees required in order to obtain and maintain Governmental Approvals for the Company's performance of the Contract Services shall be paid by the Company, regardless of the identity of the applicant, except Governmental Approvals required in connection with an Uncontrollable Circumstance. The Company shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental Body. The Company shall not disadvantage the District in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals. The final terms and conditions of any Governmental Approval shall be subject to the District's approval, exercisable in its sole discretion.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Contract Services shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the District as the legal and beneficial owner of the Plant and primary permittee. The data and information supplied by the Company to the District and all regulatory agencies in connection therewith shall be correct and complete in all material respects, and shall be submitted in draft form to the District sufficiently in advance to allow full and meaningful review and

comment by the District. The Company shall be responsible for any schedule and cost consequences which may result from the Company's submission of materially incorrect or incomplete information. The District reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by the Company pursuant to this Section.

(C) Non-Compliance and Enforcement. The Company shall report to the District, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Plant. The District shall have the right independently to enforce compliance with the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body.

(D) Reports to Governmental Bodies. The Company shall prepare all periodic and annual reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Plant, including sampling and testing results and monthly discharge monitoring reports. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the District, if such are acceptable to the Governmental Body. The Company first shall provide the District with copies of such regulatory reports for review, comment and signature, as applicable, at least three (3) business days for periodic reports and seven (7) business days for annual reports before their filing with the Governmental Body and, in any case, within twenty-eight (28) days after the end of each month, and then with the Governmental Body. To the extent that any Governmental Body shall require or permit electronic filing and the Company shall so file, the provisions of this Section shall continue to apply and additionally, the Company shall provide a minimum of one hard-copy of the report or filing to the District.

(E) Potential Regulatory Change. The Company shall keep the District regularly advised as to potential changes in regulatory requirements affecting the wastewater treatment industry and the Plant, and provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the District should a Change in Law actually occur.

SECTION 6.10 MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance. The Company shall perform all normal and ordinary maintenance of the machinery, equipment, structures, improvements and all other property constituting the Plant, shall keep the Plant in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards, and shall maintain the aesthetic quality of the Plant as originally constructed and in accordance with the design requirements. The Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, Consumables and services which are necessary for the normal and ordinary maintenance of the Plant and shall conduct predictive, preventive and corrective maintenance of the Plant as required by the Contract Standards. The Company shall keep maintenance logs in accordance with the maintenance, repair and replacement plan set forth in Appendix 4 hereto. This subsection (A) is not intended to include any major maintenance, repair and replacement responsibilities, which are separately undertaken by the Company under subsection (C) of this Section. The Company shall provide, throughout the Term hereof, the spare parts identified in Appendix 3 hereto.

(B) Company Repair and Maintenance of Site. The Company, in accordance with the Contract Standards, shall keep the grounds of the Site in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required). The Company shall maintain and repair all Site signage, fencing and other security systems.

(C) Company Responsibility for Major Maintenance, Repair and Replacements. The Company shall perform all major maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other property constituting the Plant during the Term of this Service Contract required under the Contract Standards with the exception of the items specifically mentioned in Section 6.10(D). The District's approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification in which event the District shall have the approval rights set forth in Article IX. The obligations of the Company under this Article are intended to assure that the Plant is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency, and that in any event the Plant is returned to the District at the end of the Term in a condition which does not require the District to undertake a significant overhaul or immediate

replacements in order to continue to provide reasonably priced and efficient wastewater treatment services.

(D) District Responsibility for Materials Costs of Replacements for Excluded Items. The District shall pay the materials costs for replacements of the following items, and the Company shall pay the installation costs:

- (i) Micro Filtration Membrane;
- (ii) Bio Filter Media Exchange; and
- (iii) Carbon Media (collectively, the “Excluded Items”).

(E) Shared Responsibility for Below-Grade Assets (“Shared Responsibility”). For maintenance, repair, and replacement of any below-grade piping or structure, the Company shall be liable up to the amount of the first \$50,000.00 in any given year. If in any year, the Company is not required to contribute all or a portion of the \$50,000.00 amount allotted for that year to the cost of repair or replacement under this Section 6.10(E), then the unexpended portion for that year shall be carried over to subsequent years and the Company’s obligation under Section 6.10(E) for payment of repair or replacement shall include an amount not to exceed \$50,000.00 for the year in which the repair or replacement takes place, plus the accumulated amount of any unexpended allocation from any previous years up to the amount of the repair. At the conclusion of the Term of this Service Contract, any unexpended funds under this section shall inure to the benefit of the Company and no payment shall be due to the District.

(F) Replacements Constituting Capital Modifications. The Company shall bear the cost and expense of all maintenance, repairs and replacements required under this Article, except Excluded Items (for which the Company is responsible for installation costs) and the District’s portion of Shared Responsibility, including the cost and expense of any maintenance, repair or replacement that may constitute a Capital Modification, unless otherwise provided in this Service Contract.

(G) Disposal of Surplus Equipment. The Company may, with the approval of the District, remove from the Plant and dispose of or sell, in accordance with Applicable Law, equipment constituting part of the Plant that is unused or obsolete and no longer needed. All proceeds from any sale shall be the property of the District, and the District shall reimburse the Company for its direct and actual expenses in arranging the sale (to the extent such expenses are

not included in the Fixed ICI Design-Build Price), subject to Cost Substantiation. The Company shall not store or stockpile any such removed equipment at the Plant.

SECTION 6.11 PERIODIC MAINTENANCE INSPECTIONS.

(A) Annual Maintenance Inspection. The District may, upon reasonable written notice, perform an inspection of the Plant and relevant records of the Company each Contract Year to determine compliance with the Contract Standards. The Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services.

(B) Full-Scale Inspections. Commencing upon the fourth (4th) and eighth (8th) year anniversary of the Contract Date, there shall be a full-scale inspection and review of the state of repair, working condition and performance capability of the Plant. The inspection and review shall be performed by or on behalf of the District by a District Engineer at the District's expense, and shall take place at such time as the District shall determine upon three (3) months' written notice to the Company. The principal purpose of the inspection and review shall be to permit the District to ascertain on a comprehensive and focused basis the extent to which the Plant has and is being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports. The Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services.

(C) Unscheduled Inspections. Nothing in this Section shall limit the District's right, on an unscheduled basis, at any time to inspect the Plant and relevant records of the Company to determine compliance with this Service Contract.

(D) Remediation. Based on the annual operations and maintenance reports submitted by the Company pursuant to Section 10.4 hereof or the annual or periodic inspections and reviews conducted pursuant to this Section or any unscheduled inspections provided for herein, the District may submit a statement to the Company detailing any deficiencies found and requiring the Company to submit a plan of remediation. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Plant will be promptly brought into compliance with the requirements of this Article. If the District accepts the remediation plan, the Company shall thereupon correct all deficiencies noted in accordance therewith. Failing such corrective

action, the Service Fee shall be reduced by the amount of the District's estimated cost of remediation. Any disputes with respect to the cause or amounts specified in the District's statement, not resolved to the mutual satisfaction of the parties, shall be determined by Non-Binding Mediation as provided in Section 12.9 hereof.

SECTION 6.12 COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM. The Company shall in accordance with the approved submittal for the Computerized Maintenance Management System, maintain, upgrade, repair and replace, as appropriate throughout the Term, a computerized maintenance management system. The Company shall utilize the computerized maintenance management system to provide the District with documentation which allows it to efficiently monitor compliance by the Company with its maintenance obligations hereunder. The District shall have computer-based real time, read-only access to such system. The Company shall permit all electronic data to be replicated and provided to the District for review by the District Engineer. At the end of the Term, the Company shall convert the Computerized Maintenance Management System used throughout the Term, including, but not limited to, all asset data, maintenance history/records, repair history/records, preventative maintenance activities, dates of service, operation and maintenance requirements, etc. into a real time software program for District ownership. Software programs to be considered are the latest versions of ORACLE, Infor EAM, or their equivalent.

SECTION 6.13 MAINTENANCE, REPAIR AND REPLACEMENT PLAN. Appendix 4 hereto contains the Company's plan for the maintenance, repair and replacement of the Plant. This plan is intended to establish a minimum standard by which to measure the Company's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair and replacement occurs.

SECTION 6.14 WARRANTIES. During the Term of this Service Contract, the Company shall be responsible for meeting the District's maintenance obligations under all manufacturer's warranties on new equipment purchased and installed in the Plant by the District or by the Company, and shall be the agent of the District in enforcing existing equipment warranties and guarantees. The Company shall not be required to commence or maintain any litigation with

respect to such warranties or guarantees. The Company shall cooperate with and assist the District if the District seeks to enforce warranties and guarantees through litigation.

SECTION 6.15 EMERGENCIES.

(A) Emergency Plan. The Company shall have an ongoing obligation to maintain and update, as required, a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to the District and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the District and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; and (3) assure the timely availability of all personnel required to respond to any emergency (no later than two (2) hours during nights, weekends or holidays). The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary.

(B) Emergency Action. Notwithstanding any requirement of this Service Contract requiring District approval or consent to reports or submittals, if at any time the Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Plant, or to mitigate the immediate consequences of an emergency event, then the Company shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Company shall notify the District of the event at an emergency phone number from a list supplied by the District, and the Company's response thereto. The cost of the Company's response measures shall be borne by the Company except to the extent the emergency event was caused by an Uncontrollable Circumstance, in which case the District shall bear the cost.

SECTION 6.16 ROLLING STOCK. The Company shall, at its own cost and expense, provide all transportation vehicles and rolling stock necessary in order to carry out and perform its obligations hereunder.

SECTION 6.17 COST REDUCTION AND SERVICE IMPROVEMENT. In the event either party offers the other party any idea, approach or concept for lowering the Company's cost,

reducing the District's Service Fee or total costs, or improving the Company's service, the other party shall reasonably consider and explore the development and implementation of the concept. Neither party shall be obligated to negotiate or to agree to amend this Service Contract to effectuate any such idea, approach or concept except in its sole discretion and upon terms and conditions acceptable to it.

ARTICLE VII. PERFORMANCE

SECTION 7.1 PLANT PERFORMANCE GENERALLY.

(A) Reliance. The Company acknowledges that the District, in treating Plant Influent, is providing an essential public service, and in complying with its obligations under Applicable Law is relying on the performance by the Company of its obligations hereunder.

(B) Curtailments and Shutdowns. If the operation of the Plant for any reason is temporarily reduced, curtailed or shut down so that the Company is unable to collect, receive and treat any quantity of Plant Influent or discharge Plant Effluent in accordance herewith, the Company shall immediately advise the District as to the nature and probable duration thereof and the expected effect on the operation of the Plant, and take all steps necessary to remedy the curtailment or shutdown and to resume full performance hereunder as soon as possible.

(C) Limitations on Company Rights. The Company shall not treat wastewater other than Plant Influent flowing to the Plant and shall not use the Plant for any purpose other than the purposes contemplated hereby. The Company shall not impose a fee or charge on any third party for the treatment of Plant Influent or any other waste. The only compensation payable by the District to the Company for providing the Contract Services shall be the fees payable by the District hereunder.

SECTION 7.2 PLANT EFFLUENT GUARANTEE.

(A) Applicable Law Limits. Except to the extent relieved as provided in Section 7.6 hereof, the Company shall operate the Plant on a continuous, uninterrupted 24-hour per day, 7-day per week basis so as to receive and treat all Plant Influent and discharge Plant Effluent in compliance with the requirements the SPDES Permit and Applicable Law.

(B) Enhanced Standards. In addition to its obligations to comply with the Plant Effluent limits imposed by the SPDES Permit and Applicable Law as provided in subsection (A) of this Section and except to the extent relieved as provided in Section 7.6 hereof, the Company shall receive, process and treat all Plant Influent so that Plant Effluent is discharged in compliance with the Enhanced Standards set forth in Appendix 2.

(C) Liquidated Damages for Plant Effluent Exceedances. Except to the extent the Company is relieved as provided in Section 7.6 hereof, it shall be obligated to pay liquidated damages in the amounts set forth below for the exceedances and reporting violations indicated:

Exceedance	Liquidated Damages
For each failure to comply with the Plant Effluent Requirement for any pollutant that is not a “toxic pollutant” (as defined in N.Y. Comp. Codes Rules and Regulations Title 6, §700.1)	\$175 per failure to comply with a daily Plant Effluent Requirement and \$1,600 per failure to comply with a monthly average Plant Effluent Requirement
For each failure to comply within Plant Effluent Requirement for a “toxic pollutant” (as defined in N.Y. Comp. Codes Rules and Regulations Title 6, §700.1)	\$350 per failure to comply with a daily Plant Effluent Requirement and \$4,000 per failure to comply with a monthly average Plant Effluent Requirement
For each Plant overflow or bypass resulting in an unauthorized discharge	\$8,000
For each discharge event which causes a water quality problem (such as fish kills or oil sheens) or health problems (such as beach closings, fishing bans or other restrictions on beneficial uses)	\$8,000

(D) Adjustment of Liquidated Damages. All dollar amounts specified in this Section shall be adjusted by the Adjustment Factor in accordance with Section 11.7 of this Service Contract.

(E) Indemnity for Non-Complying Plant Effluent. In the event that any Plant Effluent discharged by the Company fails to comply with the requirements of subsections (A) and (B) of this Section, except to the extent such failure of compliance is caused by an Uncontrollable Circumstance or District Fault, the Company, in addition to its obligations under Section 6.8 hereof, shall indemnify, defend and hold harmless the District and the District Indemnitees in accordance with, and subject to the limitations of, Section 14.3 hereof.

(F) Change in Law Affecting Plant Effluent. The parties acknowledge that a Change in Law may affect Plant Effluent standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law occurs, the Company shall not be entitled to performance relief or additional compensation under Section 14.2 hereof unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Plant Effluent characteristic or parameter which is more stringent or burdensome to comply with than the Contract Standards applicable to such characteristic or parameter, or requires equipment or processes not then in place or practiced at the Plant, and (2) the Company is unable, after taking all mitigation measures required under Section 14.2 hereof with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation.

(G) Diversion Force Main. Notwithstanding the foregoing, if the Company fails to comply with subsections (A) and (B) of this Section, the Company shall be obligated to discharge such Plant Effluent through the Diversion Force Main for treatment at the District's Orangeburg Plant as a mitigation measure to avoid discharging Plant Effluent to the Ramapo River which does not comply with the Plant Effluent Guarantee. The Company shall not discharge Plant Effluent through the Diversion Force Main without prior approval from the District.

(H) Recreational Vehicle Waste. The Company shall accept, process and treat at the Plant all recreational vehicle waste delivered to the Plant within Normal Business Hours.

SECTION 7.3 ODOR CONTROL GUARANTEE.

(A) Applicable Law Limits. Except to the extent relieved by Section 7.6 hereof, the Company shall, in operating and maintaining the Plant, comply with all limits and requirements established by Applicable Law with respect to odor control.

(B) Contract Limits. In addition to its obligation to comply with odor limits and requirements imposed by Applicable Law as provided in subsection (A) of this Section and except to the extent relieved as provided in Section 7.6 hereof, the Company shall operate and maintain the Plant in compliance with the Odor Control Guarantee as set forth in Appendix 2 hereto.

(C) Odor Control Practices Report and Odor Control Plan. The Company shall submit, together with the monthly operations report required by Section 10.4 hereof, a monthly odor control practices report to the District which shall include: (1) a listing of all odor complaints

received during the month, with name and address of the complaining party, and nature of complaint; (2) all investigations conducted and actions taken or planned in response to such complaints; (3) evidence showing compliance with the odor control operating practices required by this Service Contract; (4) the quantity of odor control chemicals used during the month; (5) the duration of time that each load of Residuals remained on the Site after being produced; (6) the health of the microbes in the aeration system components of the Plant; and (7) such other matters pertaining to odor control as the District may require from time to time. The Company shall at all times comply with the Odor Control Plan as set forth in Appendix 5.

(D) Preventing Recurrence of Violations. The general remedies for exceeding odor limits are set forth in this Section. With respect to odor, the parties acknowledge the extreme sensitivity of this issue to the general public and the difficulties in establishing meaningful monetary remedies for odor control violations. Accordingly, in the event the Company fails to comply with the Odor Control Guarantee set forth in Appendix 22 hereto and is not excused by Uncontrollable Circumstances or District Fault, the Company shall be obligated to implement such Capital Modifications and/or changes in operating, maintenance, repair, replacement and management practices as may be required to comply with Odor Control Guarantee at its sole cost and expense and in a timely manner, as shall be necessary, in light of the nature, extent and repetitiveness of such violation, to prevent a reoccurrence of such violation.

SECTION 7.4 DISTRICT REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Remedies. If the Company fails to comply with any Performance Guarantee and is not excused from performance as provided in this Section or Section 14.2 hereof or elsewhere in this Service Contract, the Company shall, without relief under any other Performance Guarantee, and in addition to any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body: (1) promptly notify the District within 24 hours of the Company's having knowledge of any such non-compliance; (2) promptly provide the District within 24 hours with copies of any notices sent to or received from the EPA, the DEC or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law; (3) pay liquidated damages in the amounts provided for herein; (4) pay any other resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom as

may be required hereunder; (5) take any reasonable action (including, without limitation, making all repairs and replacements and operating and management practices changes) necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent the recurrence of non-compliance with such Performance Guarantee; (6) promptly prepare all public notifications required by Applicable Law, and submit such notifications for publication; and (7) assist the District with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

(B) Performance Testing. The District, at any time, may require a performance test to be conducted by the Company, at the District's cost and expense, to demonstrate that the Plant is operating in compliance with Applicable Law and the Performance Guarantees. If the test is not successfully passed, the Company shall reimburse the District and, at its own cost and expense, make all necessary repairs and replacements, including major repairs and replacements, and the test shall be re-performed at the Company's sole cost. The District Engineer will conduct or verify each test and inspection.

SECTION 7.5 DISPOSAL OF RESIDUALS BY THE COMPANY.

(A) General Obligations. The Contract Services shall include the management of Residuals in accordance with the Contract Standards.

(B) Avoiding Hazardous Waste Classification. The Company shall operate the Plant, subject to the terms and conditions of this Service Contract, so as to assure that all Residuals meet at least the minimum quality limits and standards to avoid being classified as hazardous waste under any Applicable Law.

(C) Sludge Quality Guarantee. All Plant Sludge shall meet the requirements of the Sludge Quality Guarantee as well as the requirements for disposal of sludge at the Co-composting Facility set forth in this Service Contract.

(D) Storage and Loading. The Company shall expeditiously complete all Residuals vehicle and container loading operations and shall transport loaded vehicles and containers directly off-Site for disposal. Any on-Site storage of Residuals shall be in compliance with Section 7.3

hereof and in accordance with Appendix 4 hereto. The Company acknowledges that the primary purpose of this provision is to minimize odors.

(E) Transportation Operations. All transportation operations shall be conducted in accordance with Applicable Law and Rockland County Solid Waste Management Authority and District delivery requirements in a safe and reliable manner. In the event of a release, spill, leak or loss of Residuals during transfer or transit, the Company shall immediately arrange for the clean-up of the material and transportation to the applicable disposal site, pay any resulting fines, assessments, penalties or damages resulting therefrom, all as further provided in Section 6.8 hereof.

(F) Disposal of Plant Sludge and Side Streams. To the extent it meets the requirements of the Sludge Quality Guarantee and the Rockland County Solid Waste Management Authority's disposal requirements, Plant Sludge shall be transported to and disposed of at the Co-composting Facility. The Company shall not be required to pay any fee for the disposal of Residuals at the Co-composting Facility. The Company is responsible, at its sole expense, for transportation and disposal of Side Streams, to a location to be determined by the Company.

(G) Residuals and Side Streams Disposal Information. The Company shall keep and maintain such logs, records, manifests, bills of lading or other documents pertaining to Residuals as are necessary or appropriate to comply with Applicable Law and to monitor and confirm compliance by the Company with the requirements of this Article, and shall collect and promptly provide the District with a copy of all weights and measures data and information relating to quantities of Residuals generated, transported and disposed of hereunder.

(H) Title and Documentation. The Company shall assume title to Residuals. The District, only to the extent required by Applicable Law, shall sign all permits, manifests or similar documents required for the handling, transportation or disposal of Residuals.

(I) Non-Complying Sludge. Any Plant Sludge for disposal at the Co-composting Facility which does not meet the requirements of the Sludge Quality Guarantee shall be transported to and disposed of at a disposal facility lawfully able to accept such sludge at the Company's sole cost and expense. Any Plant Sludge which meets the Sludge Quality Guarantee but is not accepted for disposal at the Co-composting Facility shall be transported to and disposed of, by the Company, at a disposal facility lawfully able to accept such Plant Sludge with such transportation and disposal costs being paid by the District on a Cost-Substantiation basis, except that if such Plant Sludge is

unacceptable for disposal at the Co-composting Facility due to the Company's failure to perform otherwise in accordance with the Contract Standards, such transportation and disposal costs shall be borne by the Company.

(J) Indemnity. The Company shall defend, indemnify, and hold harmless the District in accordance with, and subject to the limitations of, Section 14.3 hereof from all claims, causes of action, Loss-and-Expense, and damages that may result from the generation, processing or transportation of Residuals.

SECTION 7.6 UPSETS AND EXCESSIVE PLANT INFLUENT AFFECTING COMPANY COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Relief Generally. 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 Plant is affected by the occurrence of an Upset, the receipt of Excessive Plant Influent, District Fault or an Uncontrollable Circumstance.

(B) Upsets and Excessive Plant Influent. The occurrence of an Upset or the receipt of Excessive Plant Influent shall not be considered to be an Uncontrollable Circumstance, and the Company shall not be entitled to relief from a Performance Guarantee due to the occurrence of an Upset or the receipt of Excessive Plant Influent, except to the extent that the Company affirmatively demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An Upset actually occurred or Excessive Plant Influent was actually received; and
2. The occurrence or receipt thereof could not have been prevented by compliance with the Contract Standards.

(C) Response Measures to Upsets and Excessive Plant Influent. If an Upset occurs or the Plant receives Excessive Plant Influent, the Company shall, without limiting its obligations under the Contract Standards: (1) use all reasonable efforts consistent with Good Industry Practice to maintain Plant performance as if the Upset had not occurred or Excessive Plant Influent had not been received; (2) advise the District of the situation and the Company's planned course of action as soon as reasonably possible but at least within 24 hours of the Company's first knowing of the occurrence of an Upset or the receipt of Excessive Plant Influent; (3) submit any notice thereof

required by Applicable Law; and (4) use all reasonable efforts consistent with Good Industry Practice to return the Plant Effluent to compliance with the requirements of Applicable Law and the Performance Guarantees as soon as reasonably possible, but, in any event, within ten (10) days after the Plant has ceased receiving Excessive Plant Influent.

(D) Service Fee Impact. To the extent the occurrence of an Upset or the receipt of Excessive Plant Influent constitutes an Uncontrollable Circumstance hereunder, the Service Fee shall be increased by an amount equal to the reasonable costs incurred by the Company with respect to such Uncontrollable Circumstances, including without limitation the reasonable costs incurred by the Company in responding to the effect of the Uncontrollable Circumstance on the Plant and on the treatment and disposal of Plant Effluent and Residuals but excluding any such increased costs which would have been avoided had the Company complied with any remedial measures required under Applicable Law and appropriate mitigating measures required by Section 14.2 hereof.

SECTION 7.7 TESTING AND METERING.

(A) Testing. The Company shall conduct all tests of Plant Influent, Plant Effluent, Residuals, air emissions and odor in accordance with the Contract Standards. The tests shall be made at State certified laboratories to the extent required by the Contract Standards and shall be conducted at the Company's sole cost and expense, except to the extent such tests are required by a Change in Law or any other Uncontrollable Circumstance and are not required under the terms hereof as of the Contract Date.

(B) Metering. The Company shall maintain in good working order, and repair and replace when necessary, devices capable of (1) metering the continuous and daily total volume of Plant Influent and Plant Effluent; (2) metering the daily amount of Residuals leaving the Plant for disposal; and (3) metering the continuous and daily total amount of flow at the Plant Influent Pump Station. The District shall have full access to such meters, instruments, controls, recorders, scales and other metering. All operating data produced by such metering devices shall be subject to audit and shall be summarized in the monthly operations reports delivered to the District pursuant to Section 10.4 hereof. All such metering devices shall be calibrated to the accuracy required by, and shall be operated and maintained in accordance with the requirements of the Contract Standards. To the extent any metering device is incapacitated or is being tested, the Company shall estimate

as accurately as practicable the data required by the Company to perform the Contract Services. This estimate and methodology shall, with the District's approval, be used as the basis for determining the operating data required hereunder during the outage. The District shall have the right to monitor, inspect and test such metering and weighing devices which are part of the Plant at any time and for any purpose and to take measurements regarding Plant Influent, Plant Effluent, and Residuals without unreasonably interfering with the Company's ordinary operations.

SECTION 7.8 LIQUIDATED DAMAGES. Except to the extent the Company is excused as provided in Section 7.6 hereof, the Service Fee shall be reduced by the following amounts for the failures of compliance indicated below:

	<u>Non-Compliance Event</u>	<u>Liquidated Damage Amount</u>
1.	Delay in providing the District with any report required hereunder on time (daily charge for non-compliance).	\$175
2.	Failure to report any Plant Effluent exceedance as required by the Contract Standards (charge per occurrence).	\$875
3.	Failure to comply with Residuals storage requirements as required by Section 7.5 hereof (daily charge for non-compliance).	\$175
4.	Failure to respond to a written request for information related to this Service Contract made by the Contract Administrator and designated as a "priority request" within three (3) business days (daily charge for non-compliance).	\$175
5.	Failure to provide any plan, proposal, report or other deliverable required hereunder with respect to Uncontrollable Circumstances or any regulatory matter by the deadline agreed upon by the parties with respect thereto (daily charge for non-compliance).	\$175
6.	Failure to keep maintenance logs as required by Section 6.10 hereof (charge per month of non-compliance).	\$875
7.	Failure to provide staffing as required by Section 6.4 hereof.	\$875

All dollar amounts specified in this Section shall be adjusted by the Adjustment Factor in accordance with Section 11.7 of this Service Contract.

SECTION 7.9 RELEASES, LEAKS AND SPILLS.

(A) Unauthorized Releases Prohibited. The Company shall operate the Plant in such a manner that Plant Influent, Plant Effluent and Residuals will not contaminate, or be bypassed, released, leaked or spilled on or into, the environment, other than as permitted by Applicable Law and the other Contract Standards.

(B) Notification and Reporting. The Company, after first notifying the District, shall be responsible for fulfilling all notification of and reporting requirements established by Applicable Law related to any unauthorized release of Plant Influent, Plant Effluent or Residuals

into the environment from or in connection with its operation and management of the Plant. The Company shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the District, along with any documents provided to the relevant Governmental Body regarding the release.

(C) Cleanup and Costs. The Company shall coordinate with the District and all appropriate Governmental Bodies in effectuating the prompt remediation of any unauthorized release. The Company shall, in the most expeditious manner possible under the circumstances, cause any Plant Influent, Plant Effluent or Residuals released without authorization to be cleaned up and remediated in accordance with Applicable Law. All costs associated with performing any such cleanup and remediation measures shall be borne by the Company and the Company shall defend, indemnify, and hold harmless the District in accordance with, and subject to the limitations of, Section 14.3 hereof except to the extent the unauthorized release of Plant Influent, Plant Effluent or Residuals resulted from an Uncontrollable Circumstance or District Fault, in which case the appropriate portion of such costs shall be borne by the District on a reimbursement basis.

ARTICLE VIII. INITIAL CAPITAL IMPROVEMENTS

SECTION 8.1 COMMENCEMENT OF ICIs. As noted in Section 6.1, upon the Commencement Date, the Company shall commence the Management Services and operate and maintain the Plant on a 24-hour per day, 7-day per week basis. After the Commencement Date, and upon receipt of a Notice to Proceed, the Company shall also commence each ICI as indicated in the applicable Notice to Proceed.

SECTION 8.2 ICI NOTICES TO PROCEED. The District will issue a Notice to Proceed for each ICI that details the specifics of each ICI. Before the District will issue a Notice to Proceed, the Company must comply with all of the District's requirements regarding any and all submittals.

SECTION 8.3 ICI PROCEDURE.

(A) Notice to Proceed. Upon receipt of a Notice to Proceed, the Company shall promptly proceed to undertake, perform and complete the ICI Design-Build Work. The time for completion of the Company's performance of the ICI Design-Build Work shall be as set forth in each applicable Notice to Proceed. The Company's failure to timely complete each ICI on or

before the respective completion dates may result in the assessment of delay liquidated damages as provided in Section 8.12(B).

(B) Construction Conditions. To the extent an ICI includes a construction component, the Company shall not commence or proceed with construction of any ICI until the Company has satisfied the following conditions with respect to such ICI:

(i) Plant Condition. The Company has made all tests, inspections and analyses of the condition of the Plant necessary under Good Engineering and Construction Practice as preparation for construction of the ICI hereunder in accordance with Applicable Law and to obtain any required Governmental Approvals;

(ii) Governmental Approvals. The Company has obtained, on its own behalf or behalf of the District as applicant, all Governmental Approvals necessary to commence or proceed with construction of the ICI or any stage thereof, in form and substance satisfactory to the District;

(iii) Environmental Notification Forms and Impact Reports. The Company has prepared and properly submitted any environmental notification forms and impact reports with respect to the ICI which are required under Applicable Law;

(iv) Design Drawings. The Company has provided to the District copies of all plans, technical specifications, blueprints, drawings and other design documents relating to the ICI sufficient to commence or proceed with construction of the ICI or any stage thereof, prepared by or on behalf of the Company for permitting, regulatory, financing, bonding, credit enhancement and insurance purposes.

(C) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the ICIs shall pass to the District upon payment therefor by the District. The Company shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until acceptance of the respective ICI has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(D) Elements of the ICI Design-Build Work. In performing the ICI Design-Build Work generally, the Company shall, in accordance with the Contract Standards as and to the extent applicable hereunder: (1) prepare and excavate the Plant Site; (2) demolish and remove existing improvements; (3) re-route or replace any underground Utilities; (4) remove from the Plant Site

and dispose of any demolition or construction debris resulting from the ICI Design-Build Work and any soil excavated therefrom; (5) design and construct the ICIs; (6) conduct start-up operations; (7) conduct acceptance tests, as necessary, all so that the ICIs are suitable and adequate for the purposes thereof; and (8) update Operations & Maintenance Manual and CMMS. Laydown and staging areas for construction materials shall be located on the Plant Site, or at other locations approved by the District and arranged and paid for by the Company.

(E) Subcontracts. Section 16.5 shall be applicable to the Company's use of Subcontracts and Subcontractors in connection with ICIs. No Subcontract shall contain any provision which is materially inconsistent with this Service Contract. All Subcontractors shall meet all of the County's licensing requirements to the extent such requirements are applicable to the work to be performed by such Subcontractor.

(F) Changes to ICI Design-Build Work. Any deletions from or additions or changes to the ICI Design -Build Work, whether proposed by the Company, necessitated by a Change in Law or other Uncontrollable Circumstance, or directed by the District, shall be considered to be Capital Modifications and handled in the manner provided in Article IX, as applicable

(G) Damage or Destruction to the ICI Design-Build Work. The procedures set forth in Section 14.4 shall be applicable in the event of any damage to or the destruction of the ICI Design-Build Work.

(H) Surplus Equipment. Section 6.10(G) shall be applicable to any salvage or disposal of structures, improvements, fixtures, machinery and equipment having a resale or salvage value and which are rendered obsolete or surplus by the construction of the Initial Capital Improvements.

(I) Warranties from Subcontractors. The Company shall, for the protection of the District, obtain from all Subcontractors, vendors, suppliers and other persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials such warranties and guarantees as are normally provided with respect thereto, each of which shall be assigned to the District to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Company of any obligation hereunder, and no failure of any warranted structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee or non-performance of the Contract Services unless such failure is itself attributable to an Uncontrollable Circumstance.

(J) Payment of Costs. The Company shall pay directly all costs and expenses of the ICI Design-Build Work of any kind or nature whatsoever, including without limitation all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments; payments due under the Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar taxes on building supplies, materials and equipment; general supervision by the Company of all ICI Design-Build Work; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve acceptance of an ICI.

(K) Performance of Management Services During ICI Design-Build Work. The Company shall undertake, design, construct and execute the ICI Design-Build Work in a manner which does not interfere with or impair the performance of the Management Services or adversely affect compliance with the Performance Guarantees, and the Company assumes the risk that the ICI Design-Build Work can be accomplished in such a manner.

SECTION 8.4 COMPANY DESIGN.

(A) Sole Responsibility and Liability. The Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the ICIs hereunder.

(B) Conformity of Company Design Documents with ICI Design and Construction Requirements. The Company shall prepare all plans, technical specifications, drawings, blueprints and other design documents necessary or appropriate to carry out and complete the ICI Design-Build Work. The Company shall ensure that the ICIs are constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the ICI Design and Construction Requirements. The District shall have the right to review such design documents, but shall have no right of approval with respect thereto except in order to confirm the compliance and consistency of the design documents with the ICI Design and Construction Requirements. Neither compliance by the Company with the ICI Design and Construction Requirements, nor review and approval by the District of the Company's design documents, shall in any way relieve the Company of full responsibility for the design, construction, operation and

performance of the ICIs in accordance with the Contract Standards. Architects and engineers engaged by the Company for the ICIs design services shall be experienced and qualified to perform such services and shall be licensed in the State.

SECTION 8.5 COMPANY CONSTRUCTION. The Company shall perform the ICI Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the ICI Design-Build Work as required by this Service Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Company to provide the following construction requirements: temporary offices and construction trailers; temporary construction-related odor control measures; required design certifications; quality control and testing; required approvals; weather protection; Plant clean-up and housekeeping; construction trade management; temporary parking, vehicle traffic, safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses, temporary fire protection; Plant Site security; temporary Utilities, potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

SECTION 8.6 PAYMENT OF THE ICI DESIGN-BUILD PRICE.

(A) District Financing. The District shall secure the availability of all funds necessary to pay the ICI Design-Build Price in a timely manner. Milestone payments of the ICI Design-Build Price shall be made by the District to the Company as provided in this Section.

(B) ICI Design-Build Price Generally. The District shall pay the Company the ICI Design-Build Price for the ICI Design-Build Work on a milestone progress basis in accordance with the terms of this Section and the applicable Notice to Proceed.

(C) Fixed ICI Design-Build Price. The District Fixed ICI Design-Build Price for each ICI is set forth in Appendix 9.

(D) Limitation on Payments for Initial Capital Improvement Costs. The Company agrees that the ICI Design-Build Price shall be the Company's entire compensation and reimbursement for the performance of the ICI Design-Build Work, The Company shall not be

entitled to any payment for Initial Capital Improvement costs in excess of the ICI Design-Build Price, notwithstanding any cost overruns the Company may incur. The Company shall finance and pay for any such excess costs in any manner it chooses without reimbursement from or other claim upon the District.

(E) Construction Disbursement Procedure. The Notice to Proceed will set forth milestone payments to be made with respect to each separate ICI. The Company shall be entitled to submit Applications for Payment and receive from the District the milestone payments of the Fixed ICI Design-Build Price, which: (1) shall be made only upon completion of the milestone required to be completed as the basis for such payment as set forth in the Notice to Proceed; and (2) shall be subject to the conditions of payment set forth in this Section.

(F) Certification of Applications for Payment. Each Application for Payment shall be accompanied by a certificate of an authorized officer of the Company certifying: (1) the portion of the Fixed ICI Design-Build Price which is payable to the Company, (2) that the Company is neither in default under this Service Contract nor in breach of any material provision of this Service Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (3) that all items applicable to the milestone entitling the Company to request payment under the milestone payment schedule have been completed in accordance therewith and with the ICI Design and Construction Requirements.

(G) Information Supporting Applications for Payment. The Company shall submit to the District, with a copy to the District Engineer, with each for Application for Payment:

(i) a verified statement setting forth the information required under any Applicable Law pertaining to prevailing wages;(ii) a reasonably detailed description of all ICI Design-Build Work actually completed to date;

(iii) revisions to the progress schedule (or a revised progress schedule) which shall reflect changes in the Company's construction schedule since the date of the last Application for Payment;

(v) notice of any Liens or Encumbrances which have been filed, together with evidence that the Company has bonded or discharged such Liens or Encumbrances; and

(vi) any other documents or information relating to the ICI Design-Build Work or this Service Contract requested by the District or the District Engineer as may be

required by Applicable Law, this Service Contract or generally accepted accounting principles (but, with respect to the Fixed ICI Design-Build Price, shall not include Cost Substantiation documents or information);

(H) Review and Payment. The District Engineer shall review the Company's certified Application for Payment to the District for each Fixed ICI Design-Build Price payment and if the District Engineer determines that the work has progressed to the milestone indicated in the Company's certified Application for Payment, the Company shall be entitled to payment within 30 days of such determination.

(I) Permissible Withholdings. The District may disapprove and withhold and retain all or any portion of any payment requested in any Application for Payment in an amount equal to the sum of:

- (i) any amounts which are permitted under this Section to be withheld from any payment requested in any Application for Payment;
- (ii) any delay liquidated damages;
- (iii) any indemnification or other amounts which are due and owing to the District under any provision of this Service Contract;
- (iv) any deductions which are required by Applicable Law;
- (v) any payments with respect to which the documents required to be delivered in connection therewith are not correct and complete;
- (vi) an amount equal to the cost to the District of performing any work in the event of a failure by any Subcontractor to timely perform its obligations under the warranties given pursuant to this Article;
- (vii) any payments with respect to which the ICI Design-Build Work covered by such Application for Payment (or any previous Application for Payment) does not comply with this Service Contract;
- (viii) any payments with respect to which any person has filed a Lien or Encumbrance resulting from the acts or omissions of the Company in performing the ICI Design-Build Work, where such Lien or Encumbrance remains unreleased, unbonded or undischarged; and
- (ix) all requisitioned payments, if an Event of Default of the Company has occurred and remains outstanding.

(J) Disbursement Dispute Procedures. If the District Engineer determines that the work required for any payment has not progressed to the milestone indicated, the District Engineer shall provide prompt written notice to the Company and the District as to the District Engineer's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Company may make the necessary corrections and resubmit a certified Application for Payment to the District Engineer, or the District Engineer may agree on a revised amount or estimate, as applicable, in which case the Company shall promptly notify the District of such agreement and thereupon be entitled to payment. Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if: (1) the Company demonstrates to the District Engineer that the work has proceeded to the milestone indicated in the certified Application for Payment giving rise to the dispute or that any disputed certified Application for Payment is correct; and (2) the District Engineer concurs with such demonstration. The Company shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the Company shall be entitled to all requisitioned amounts which are not in dispute. Nothing contained in this subsection shall be deemed to alter the rights of the parties, if any, under Article XII, including the right of either party to request a referral of the dispute to Non-Binding Mediation.

(K) Certification of Amounts Due. Whenever requested by the District, the Company shall certify in writing all amounts then due (or yet to become due) the Company for the ICI Design-Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Company and any Subcontractor.

(L) Prompt Payment. The Company shall, within 30 days after payment to the Company by the District, pay any amounts due any Subcontractor, whether for labor performed or materials furnished, when the labor or materials have been included in a Application for Payment submitted by the Company and paid by the District. The Company shall include in each of its Subcontracts a provision requiring each Subcontractor to pay any amounts due under any of its subcontracts, whether for labor performed or materials furnished, within 30 days after such Subcontractor receives a payment from the Company which encompasses labor or materials furnished by such Subcontractor.

SECTION 8.7 PROGRESS SCHEDULE AND REPORTS. The Company shall submit to the District a monthly progress report detailing work accomplished and an updated progress schedule which reflects any change in the Company's estimated progress schedule for completion of the ICIs. As applicable, the Company shall provide to the District, for its planning, budgeting and financing purposes, monthly estimates of the date for start-up of operations, and the date upon which the ICI acceptance tests shall commence. The Company agrees that the Company's submission of the monthly progress schedule (or any revised progress schedule) is for the District's information only, and the District's acceptance of the monthly progress schedule (or any revised progress schedule) shall not bind the District in any manner. Thus, the District's acceptance of the monthly progress report and schedule (or any revised monthly progress report and schedule) shall not imply District approval or consent to any of the matters set forth therein.

SECTION 8.8 CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF ICI DESIGN-BUILD WORK.

(A) Observation and Construction Review Program. During the progress of the ICI Design-Build Work through ICI acceptance, the Company shall at all times during normal working hours afford the District, the District Engineer and the DEC every reasonable opportunity for observing all ICI Design-Build Work. During any such observation, all representatives of the District, the District Engineer and the DEC shall comply with all reasonable safety and other rules and regulations applicable to presence in or upon the Plant or the ICIs, including those adopted by the Company, and shall in no material way interfere with the Company's performance of any ICI Design-Build Work.

(B) Company Tests. The Company shall conduct all tests of the ICI Design-Build Work or inspections required by the Contract Standards. The Company shall give the District and the District Engineer reasonable advance notice (at least five business days) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal to attend or be present of the District or the District Engineer at or during any such test or inspection delay the conduct of such test or inspection or the performance of the ICI Design-Build Work. If required by the Contract Standards, the Company shall engage a registered engineer or architect at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to

perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the District, which consent shall not be unreasonably withheld.

(C) District Tests, Observations and Inspections. The District, its employees, agents, representatives and contractors (which may be selected in the District's sole discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the District deems necessary or desirable to ascertain whether the ICI Design-Build Work complies with this Service Contract. The costs of such test, observation or inspection shall be borne by the District unless such test, observation or inspection reveals a material failure of the ICI Design-Build Work to comply with this Service Contract or Applicable Law, in which event the Company shall bear all reasonable costs and expenses of such test, observation or inspection.

(D) Certificates and Reports. The Company shall secure and deliver to the District promptly, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the ICI Design-Build Work as and when required by the Contract Standards. The Company shall provide to the District, promptly after the receipt thereof, copies of any notice of default, breach or noncompliance received by the Company under or in connection with any Governmental Approval, Subcontract, or Required Insurance.

SECTION 8.9 CORRECTION OF ICI DESIGN-BUILD WORK.

(A) Correction of Non-Conforming ICI Design-Build Work. Throughout the Term of this Service Contract, the Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any ICI Design-Build Work which does not conform with Applicable Law, the ICI Design and Construction Requirements, the Operation and Maintenance Manual, or the Performance Guarantees.

(B) Election to Accept Non-Conforming ICI Design-Build Work. The District may elect by Change Order, at the Company's request, to accept non-conforming ICI Design-Build Work and charge the Company (by a reduction in the Fixed ICI Design-Build Price) for the amount

agreed upon by the parties by which the value of the Company's services or ICI Design-Build Work has been reduced.

SECTION 8.10 PERSONNEL.

(A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company's employees and all Subcontractors. All persons engaged by the Company for ICI Design-Build Work shall have requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers, licensed surveyors and other consultants to perform all engineering and other services required for the ICI Design-Build Work. Each such engineer and consultant shall have a current professional registration or certification to practice in the State if required by Applicable Law.

(B) Prevailing Wages. The wages paid on an hourly basis to any mechanic, laborer or workman employed upon the ICI Design-Build Work (or any Capital Modifications) and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, shall be at a rate equal to the rate customary for the same work in the same trade or occupation in the District. If the Company or any of its Subcontractors are not obligated by agreement to make a payment or contribution on behalf of such employees to any such employee welfare fund, then the Company shall pay to each employee as part of his wages the amount of payment or contribution for his classification on each payday. The Company shall take all action necessary directly and through its Subcontractors to assure that all laborers performing services in connection with the ICI Design-Build Work are paid in accordance with this subsection and other Applicable Law. Certified payrolls and other relevant information shall be furnished to the District in order to permit the District to monitor compliance by the Company with this requirement.

(C) Labor Disputes. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the ICI Design-Build Work. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company or its Subcontractors, whether pertaining to organization of the ICI Design-Build Work, arrangement or subdivision of the ICI Design and Construction Requirements, employee hiring, or any other matters. The District shall have no responsibility whatsoever for any such disputes or issues.

SECTION 8.11 CONSTRUCTION BOOKS AND RECORDS. The Company shall prepare and maintain proper, accurate and complete books and records regarding the ICI Design-Build Work and all other transactions related to the permitting, design, construction, startup and testing of the ICIs, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the ICI Design-Build Work, this Service Contract, any Subcontract or any operations or transactions in which the District has or may have a financial or other material interest hereunder, in each case to the extent required to determine changes in the ICI Design-Build Price or the Service Fee. The Company shall produce such construction books and records (except financial ledgers and statements) for examination and copying in connection with the costs of Capital Modifications, Uncontrollable Circumstance costs, or other changes in or additions to the Fixed ICI Design-Build Price or the Service Fee for which the District may be responsible with respect to work performed prior to ICI acceptance. To the extent any such information is delivered or made available to the District, 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 and maintain all such construction books and records for at least seven years after ICI acceptance, or such longer period during which any Legal Proceeding with respect to the ICIs commenced within seven years of ICI acceptance may be pending.

SECTION 8.12 SUBSTANTIAL COMPLETION OF THE INITIAL CAPITAL IMPROVEMENTS.

(A) Conditions for ICI Substantial Completion. If applicable, conditions to Substantial Completion will be included in the Notice to Proceed for a particular ICI. a preliminary or temporary certificate. Alternatively, ICI Substantial Completion with respect to any particular Initial Capital Improvement shall occur on any date certified by the District, which shall have discretion to waive any of the conditions.

(B) ICI Substantial Completion Date. If included in a Notice to Proceed, the Company shall achieve substantial completion for the applicable ICI by the respective completion date included in the Notice to Proceed. If substantial completion with respect to an ICI occurs

subsequent to the date set forth in the applicable Notice to Proceed, and such delay is not due to District Fault, then the Company shall pay to the District daily delay liquidated damages for each day that ICI substantial completion falls after the date scheduled therefor, and thereafter until any termination of this Service Contract for an Event of Default. The delay liquidated damages for delays beyond substantial completion with respect to each ICI shall be \$1,500 per day. Additionally, the delay liquidated damages for delays beyond final completion with respect to each ICI shall be \$2,000 per day.

SECTION 8.13 NOTICE AND CONDUCTING OF ACCEPTANCE TESTING.

(A) Submittal of ICI Acceptance Test Plan. At least 90 days before the earlier of the date scheduled for ICI acceptance or the date upon which the Company plans to begin ICI acceptance testing, the Company shall prepare and submit to the District for its approval a detailed ICI acceptance test plan. The ICI acceptance test plan shall define a test program and shall detail all procedures to be used, specific measurements to be made, the use of permanent and temporary instrumentation, the tests schedule (including the expected date, time and duration of each test) and the operating and maintenance schedule for the Plant during testing.

(B) Notice of Commencement of ICI Acceptance Test The Company shall provide the District with at least 30 days prior written notice of the expected initiation of the ICI acceptance test in accordance with the requirements of the acceptance test plan.

(C) Conduct of ICI acceptance tests. The Company shall permit the designated representatives of the District and any Governmental Body, if required, to inspect the preparations for any ICI acceptance test and to be present for the conduct of the acceptance test for purposes of ensuring compliance with any test plan and the integrity of the ICI acceptance test results.

SECTION 8.14 ICI ACCEPTANCE.

(A) ICI Acceptance Date Conditions. The following conditions shall constitute the “ICI Acceptance Date Conditions,” each of which must be satisfied in all material respects by the Company in order for the ICI acceptance to occur with respect to each ICI.

i. Completion of ICI Acceptance Test. The Company shall have completed the ICI Acceptance Test to the District’s satisfaction;

ii. ICI Substantial Completion. The Company shall demonstrate that substantial completion for the applicable ICI has occurred;

iii. Operating Governmental Approvals. The DEC shall have issued its determination, if such determination is required by the DEC, that the ICI Design-Build Work conforms to the applicable order of approval, and all other applicable Governmental Approvals required under Applicable Law which are necessary for the routine operation of the ICI shall have been duly obtained by the Company and shall be in full force and effect. Copies of all such Governmental Approvals, to the extent not in the District's possession, certified by the Company shall have been delivered to the District;

iv. Operation and Maintenance Manual and CMMS Update. The Company has delivered to the District an update to the Operation and Maintenance Manual for the ICI and has updated the CMMS;

v. Record Drawings. The Company shall have delivered to the District a final and complete reproducible set of record drawings, together with as many copies thereof as requested by the District, in a size and form required by the District and as required by the ICI Design and Construction Requirements, and shall have certified that the ICI was constructed in accordance with the ICI Design and Construction Requirements, including any Change Orders. Such record drawings shall include one mylar copy. The Company shall also provide an electronic file in AutoCad/DXF format to the extent drawings are prepared in such format or any other format mutually agreed to between the parties;

vi. Equipment Warranties and Manuals. The Company shall be in possession of, and shall have delivered to the District, copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the ICI required to be obtained, together with copies of all related operating manuals supplied by the equipment supplier; and

vii. No Default. There shall be no Event of Default by the Company under this Service Contract or event which with the giving of notice or the passage of time would constitute an Event of Default by the Company hereunder.

SECTION 8.15 FINAL VOUCHER AND CLAIMS STATEMENT. The Company shall prepare and submit to the District as soon as practicable following the ICI acceptance test: (1) a certificate of the Company certifying (a) that all applicable ICI Design-Build Work has been

completed in accordance herewith and with the ICI Design and Construction Requirements, and (b) that ICI acceptance of the ICI has occurred; and (2) a claims statement setting forth a detailed, itemized description, related dollar amount and grounds for all claims of every kind whatsoever against the District in connection with or arising out of the applicable ICI Design-Build Work the Company may have. The District shall review the certificate and the statement and shall verify or dispute them in writing within 30 days of receipt.

SECTION 8.16 COMPLIANCE WITH CONTRACT STANDARDS NOT EXCUSED.

No delay or failure by the Company in achieving ICI substantial completion, acceptance, or final completion with respect to any ICI shall excuse the Company from its obligation to comply with the Contract Standards.

ARTICLE IX. CAPITAL MODIFICATIONS

SECTION 9.1 CAPITAL MODIFICATIONS GENERALLY.

(A) Purpose. The parties acknowledge that it may be necessary due to an Uncontrollable Circumstance, or desirable from the standpoint of either party, to make Capital Modifications. Capital Modifications may be desirable, for example, to improve the performance or increase the capacity of the Plant, to address or anticipate the obsolescence of portions of the Plant, to reduce the cost to the Company of performing this Service Contract or to reduce the Service Fee payable by the District as provided in subsection (D) of this Section.

(B) District Approval. The District shall have the right, in its sole discretion, to approve all Capital Modifications requested according to Section 9.2 hereof. All Capital Modifications shall be made and implemented in accordance with this Article. The District shall have the express right to condition its approval of Capital Modifications upon the sharing of net cost savings expected to result therefrom as provided in subsection (D) of this Section.

(C) Party Responsible for Costs. The Company shall bear the cost and expense of all Capital Modifications and related operation, maintenance, repair and replacement costs, unless the Capital Modification is directed by the District (other than as part of an enforcement action taken in response to a breach as set forth in Article XII hereof) or is necessary to address an Uncontrollable Circumstance, in each case as provided in Sections 9.5 and 9.6 hereof.

(D) Cost Savings. In the event any Capital Modification is reasonably expected to result in a net cost savings to the Company, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the District, and the Service Fee shall be reduced accordingly.

(E) Title and Risk of Loss. Title to any Capital Modifications performed during the Term of the Service Contract including the structures, improvements, fixtures, machinery, equipment and materials constituting the Capital Modifications shall pass to the District upon delivery of the Capital Modifications to the Site or upon payment therefore by the District, whichever is earlier. The Company shall, however, bear all risk of loss concerning such Capital Improvements until acceptance has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(F) Quality Assurance and Quality Control. The Company shall have full responsibility for quality assurance and quality control for the Capital Modifications.

(G) Health and Safety. All Capital Modifications under this Section shall be performed in accordance with all health and safety standards required by Applicable Law, Insurance Requirements and the Contract Standards.

(H) Subcontractors. Section 16.5 hereof shall be applicable to the Company's use of Subcontracts and Subcontractors in connection with any Capital Modifications. All Subcontractors shall meet all of the County's licensing requirements to the extent such requirements are applicable to the work to be performed by such Subcontractor.

(I) Warranties. The Company warrants to the District that all Capital Modifications that are undertaken or made by the Company or its Subcontractor, will be new, of recent manufacture, of good quality, free from faults and defects, suitable for its intended purpose and in conformity with the Contract Standards. The Company shall, for the protection of the District, obtain from all Subcontractors, vendors, suppliers and other persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials such warranties and guarantees as are normally provided with respect thereto, each of which shall be assigned to the District to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Company of any obligation hereunder, and no failure of any warranted structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee or non-performance of the Contract Services unless such failure is itself attributable to an

Uncontrollable Circumstance or District Fault. There are no warranties which extend beyond those expressed in this Service Contract.

(J) Payment of Costs. With the exception of the items noted in Sections 9.5 and 9.6, the Company shall pay directly all costs and expenses of the Capital Modifications of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments; payments due under this Service Contract, subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar taxes on building supplies, materials and equipment (unless tax-exempt due to District's tax-exempt status); general supervision by the Company of all Capital Modifications; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs.

(K) Documents at the Site. The Company shall maintain at the Site in a safe place one record copy of all drawings, specifications, addenda, change orders, graphic or written instructions, interpretations and clarifications, and all other documents related to the Capital Modifications, in good order and marked currently to record all changes made during construction, together with construction drawings approved by the applicable regulatory body, general arrangements, manufacturing and shop drawings, product data and samples, and copies of all building, electrical, plumbing and public safety codes applicable to the Capital Modifications. These documents shall be available to the District for reference, copying and use, and a complete set thereof shall be delivered to the District upon completion of the Capital Modifications.

SECTION 9.2 CONSTRUCTION PRACTICE. The Company shall perform the Capital Modifications in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Capital Modifications as required by this Service Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Company to provide the following construction requirements: temporary power and light; temporary offices and construction trailers; required design certifications; required approvals; weather protection; Site clean-up and housekeeping; construction trade management;

temporary parking; vehicle traffic; safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; Site security; temporary Utilities; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

(A) Governmental Approvals Necessary for Capital Modifications. The Company shall make all necessary filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the performance of the Capital Modifications, including the preparation of any Site-related plans. The District shall cooperate with the Company in connection with the foregoing undertaking, and shall provide the Company with such relevant data or documents as are within its control and which are reasonably required for such purpose.

(B) Designation of Acceptance Testing Procedures, Protocols or Standards. Prior to beginning any Capital Modification pursuant to this Section, the District Engineer shall issue and/or approve acceptance testing procedures, protocols, and acceptance testing standards applicable to the Capital Modification to the extent that the nature and extent of the modification, in the sole discretion of the District, requires such acceptance testing procedures, protocols, and acceptance testing standards.

SECTION 9.3 ENGAGEMENT OF DISTRICT ENGINEER.

(A) Duties. The Company shall fully cooperate with any District Engineer designated by the District to assist it in connection with the administration of this Service Contract and the performance of its duties for the District. In the performance of such services, the Company agrees that the District Engineer may, without limiting other possible services to the District: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the ICIs and Capital Modifications; review proposed changes to any design requirements for ICIs or Capital Modifications; review Plant plans, drawings and specifications for compliance with the any design requirement; monitor any required acceptance tests or procedures undertaken by the Company and review the Company's certified acceptance test report to determine whether any designated, applicable acceptance test procedures have been followed and any acceptance standards have been satisfied pursuant to this Article and any

applicable Contract Standard; review the validity of the Company's written notice that an Uncontrollable Circumstance has occurred; review the Company's submissions with respect to Capital Modifications pursuant to this Article; and provide certificates and perform such other duties as may be specifically conferred on the District Engineer hereunder. It is understood that the services intended to be provided by the District Engineer shall be of an observational and review nature only, and that the District Engineer shall not have authority to interfere with, halt or delay in any way the construction of any Capital Modification to the Plant or to require or approve changes to the any design requirements or the Company's plans and specifications made in accordance therewith.

(B) Fees. The Company also shall reimburse the District for the reasonable fees and expenses of the District Engineer and costs of District personnel for services in connection with repetition of any acceptance tests unless such additional or repeated acceptance tests are required as a result of District Fault or Uncontrollable Circumstances. Any fees of the District Engineer after acceptance of the ICIs shall be paid by the District without reimbursement by the Company except as otherwise specifically provided by this Service Contract.

SECTION 9.4 CAPITAL MODIFICATIONS AT COMPANY REQUEST. The Company shall give the District written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Company's request. The notice shall contain sufficient information for the District to determine that the Capital Modification, at a minimum: (1) does not diminish the capacity of the Plant to be operated so as to meet the Contract Standards; (2) does not impair the quality, integrity, durability and reliability of the Plant; (3) is reasonably necessary or is advantageous for the District and to the Company to fulfill its obligations under this Service Contract; and (4) is feasible. The Company shall not be entitled to any adjustment in the terms of this Service Contract as a result of any such Capital Modification unless approved by the District in its sole discretion.

SECTION 9.5 CAPITAL MODIFICATIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of an Uncontrollable Circumstance, the District shall promptly proceed, subject to the terms, conditions and procedures set forth in this Article and Section 14.2 hereof, to make or cause to be made all Capital Modifications reasonably necessary to address the Uncontrollable Circumstance. The Company shall consult with the District

concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and the District shall cooperate in order to minimize any delay, lessen any additional cost and modify the Plant so as to permit the Company to continue providing the Contract Services in light of such Uncontrollable Circumstance. The design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the District.

SECTION 9.6 CAPITAL MODIFICATIONS AT DISTRICT DIRECTION. The District shall have the right to make Capital Modifications at any time and for any reason whatsoever, whether and however the exercise of such rights affects this Service Contract. The design and construction costs of any such Capital Modification made at the District's direction under this Section, and any related operation, maintenance, repair and replacement costs will be borne by the District. The District shall have no obligation to direct the Company to make any Capital Modification.

SECTION 9.7 PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. Unless the District determines pursuant to Section 9.8 hereof that an alternative implementation procedure be employed, the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications.

(B) Preliminary Company Plan and District Review. For Company requested Capital Modifications, at the request of the District and the cost and expense of the Company, the Company shall prepare and deliver to the District a preliminary plan for the implementation of the Capital Modification. For District directed Capital Modifications, the District may request, at its cost and expense, that the Company prepare and deliver to the District a preliminary plan for the implementation of the Capital Modification. Any such preliminary plan shall include recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts, a preliminary schedule, capital and operating cost estimates, and an assessment of possible alternatives. The preliminary plan shall specifically evaluate reasonable alternatives to the Capital Modification and changed operating and management practices. The District will review the Company's preliminary plan and recommendations, and undertake

discussions with the Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the District, the Company shall submit a formal implementation proposal to the District for its consideration. The implementation proposal shall contain: (1) a Company services element; and (2) a third-party construction services element, to be implemented through third-party contracting, if appropriate for the Capital Modification. The Company services element shall contain: (i) the Company's offer to perform design, construction management and acceptance testing services with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through an acceptance test and a guaranteed maximum construction price if so requested by the District and agreed to by the Company; (ii) the Company's offer to operate, maintain, repair, replace and manage the Capital Modification following construction and acceptance for a fixed fee to be added to the Service Fee, and (iii) shall include long-term performance guarantees with respect to the Capital Modification. The third-party construction services element shall be a proposal by the Company to conduct, as allowed by Applicable Law, a bidding or competitive proposal process for the construction work as the design-build work involved in completing the Capital Modification. Any bidding process shall include an advertisement for bids and a construction contract award to the lowest responsible bidder, and shall be conducted in accordance with the requirements of Applicable Law which govern construction projects undertaken by the District. The resulting construction or design-build contract shall be held by and executed in the name of the District or the Company, as determined by the District in compliance with Applicable Law. Any competitive proposal process shall include a request for proposals/bids and a design-build or construction contract award to the most advantageous proposer. The District shall not be a party to any such construction contracts or design-build contracts pursuant to this Section unless required by Applicable Law. The District shall, however, be an intended third-party beneficiary of any such construction contracts or design-build contracts entered into pursuant to the provisions of this Section.

(D) Negotiation and Finalization of Company Implementation Proposal. The parties shall proceed, promptly following the District's review of the Company's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and

conditions of this Service Contract required under this Article. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable: (1) design requirements; (2) construction management services; (3) acceptance tests and procedures; (4) a guarantee of completion and acceptance; (5) performance guarantees; (6) any changes to the Performance Guarantees or other Contract Standards to take effect as a consequence of the Capital Modification; (7) a payment schedule for the design and construction management-related services; (8) provisions for District Engineer review; (9) any adjustments to the Service Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs; (10) a financing plan; and (11) any other appropriate amendments to this Service Contract. The Company shall not be obligated to undertake any Capital Modification under Section 9.5 or 9.6 hereof except following agreement as to such negotiated adjustments, unless otherwise required on an emergency basis. The District shall have no obligation to reimburse the Company for any costs incurred pursuant to this Section except as part of a negotiated amendment to this Service Contract.

(E) Implementation Procedures. With respect to each Capital Modification to be made by the Company, the standards for design, construction, testing, acceptance and payment shall be as defined in Appendix 7, Design and Construction of Capital Improvements.

SECTION 9.8 ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS. The District shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 9.7 hereof, and may instead, in its sole discretion, utilize any other implementation procedure available to it or required under the Applicable Law. Alternative implementation procedures may include, without limitation and to the extent permissible under Applicable Law: (1) contracting with the Company on a sole source basis to implement the Capital Modification on a design-build basis; (2) contracting with the Company to manage a competition for design-build services to implement the Capital Modification; and (3) contracting with third parties for the implementation of the Capital Modification on a traditional design/bid/build basis, with the District rather than the Company responsible for the design and construction of the Capital Modification, or with the Company acting as the District's agent in the design/bid/build process. While it is the intention of the District to have the Company operate, maintain, repair, replace and manage Capital Modifications on an

integrated basis with the Plant, the District is not obligated to do so and may contract for such services with a third-party. The District may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Company under the primary implementation procedure specified under Section 9.7 hereof. No alternative implementation procedure for Capital Modifications shall impair the Company's rights under Section 9.7 hereof.

SECTION 9.9 FINANCING CAPITAL MODIFICATIONS.

(A) County Financing. The County shall provide financing for any Capital Modification for which the District is financially responsible under this Article, and shall make the proceeds of the financing available to the Company to pay the negotiated price on the milestone schedule and subject to any retainage negotiated by the parties pursuant to this Section. The County in its sole discretion may voluntarily, if requested by the Company, provide financing for the Capital Modifications for which the Company is financially responsible hereunder, on terms and conditions established by the County in its sole discretion.

SECTION 9.10 COMPANY NON-IMPAIRMENT RIGHTS. No Capital Modification, other than a Company-requested Capital Modification, shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the Company hereunder, including operating, maintenance, repair and replacement costs related to such Capital Modification. The Company shall have no right to object to any such Capital Modification, however, if the District affords the Company any price, schedule, performance and other relief necessary to avoid any such material effect.

ARTICLE X. SERVICE COORDINATION, CONTRACT ADMINISTRATION AND RECORDKEEPING

SECTION 10.1 SERVICE COORDINATION AND CONTRACT ADMINISTRATION.

(A) Company's Plant Managers. The Company shall appoint a full-time manager of the Plant (the "Plant Manager") and Assistant Plant Manager ("Assistant Plant Manager" and collectively ("Plant Managers")) who shall be licensed, trained, experienced and proficient in the

management and operation of wastewater treatment systems comparable to the Plant, shall have the operator's certification required by Applicable Law and be otherwise appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Company's performance of the Contract Services. The Company acknowledges that the performance of the individuals serving from time to time as the Plant Managers will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the District and the Plant Managers will be essential to effectuating the intent and purposes of this Service Contract. Accordingly, not fewer than fifteen (15) days prior to the date on which any candidate for Plant Manager or Assistant Plant Manager from time to time during the Term of this Service Contract is proposed by the Company to assume managerial responsibility for the Plant, the Company shall: (1) provide the District with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and (2) afford the District an opportunity to interview the candidate with respect to such matters. The District shall have the right within fifteen (15) days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The Company shall replace one or both of the Plant Managers at the request of the District, after notice and a reasonable opportunity for corrective action, in the event the District determines, in its sole discretion, that an unworkable relationship has developed between the Plant Manager[s] and the District. The District acknowledges that the Plant Managers shall be entitled to vacations, holidays, sick leave and other excused absences. During any such absences, the Company shall provide adequate personnel to manage and operate the Plant in accordance with the Contract Standards.

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

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

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

(E) Communications and Meetings. On or before the Contract Date, the Company shall inform the District of the telephone, cellular telephone, fax numbers, e-mail address and other means by which the Plant Manager and Senior Supervisors may be contacted. The Plant Manager shall be reachable 24 hours a day, seven days a week. The District shall furnish to the Company comparable communications information with respect to the Contract Administrator. The Company shall meet with the District each month to review management, operational, performance and planning matters arising with respect to the Plant and this Service Contract. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation, as provided for in Section 12.9 hereof, and the resolution

of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum.

SECTION 10.2 CONTRACT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term of this Service Contract. 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, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Service Contract.

(B) Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this Service Contract 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 District 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) claims for an increase or decrease of the Service Fee or other demands for compensation or performance based on any provision of this Service Contract; (2) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (3) notices, waivers, releases, satisfactions, confirmations, further assurances 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 District 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 Executive Director of the District. The District and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Service Contract.

(D) Effect. The executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and performance of this Service Contract. Any material change, alteration, revision or modification of this Service Contract, however, shall be effectuated only through a formal Service Contract amendment authorized, approved or ratified by resolution of the governing body of the District and properly authorized by the Company.

SECTION 10.3 ASSET AND FINANCIAL RECORDS.

(A) Plant Records. The Company, on and after the Contract Date, shall maintain a computerized information system with respect to the Plant for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Service Contract and demonstrate compliance with the Contract Standards. The Company shall promptly provide the District, upon reasonable request, with copies of all operations and maintenance data and other information kept by the Company in its performance of the Contract Services.

(B) Availability of Plant Records to District. The Company shall make available to the District all operations, maintenance, performance, Residuals management, process control and similar records and data as are available to the Company's Plant Manager. The District shall have real time, continuous computer access to such records and data, and hard copy reproduction capability, through information systems installed in accordance with the design requirements, and maintained by the Company at a location in the District outside the Plant designated by the District.

(C) Record Documents. The Company shall maintain at the Plant and make available to the District upon request for review and copying: (1) all designs, drawings, construction drawings approved by the applicable regulatory body, plans, specifications and "as-built" or record drawings and documents pertaining to the Plant copies of which were delivered to the District by the Company pursuant to the Design Build Service Contract; and (2) similar documents relating to any Capital Modifications. The Company shall: (1) keep current all such records to show any changes to the Plant (including valves, pipes, pumps, meters and other assets) made by the Company in the performance of the Contract Services; and (2) provide advice and assistance to the District, based on such records, in establishing and maintaining any District geographic mapping and information systems.

(D) Financial Records. The Company shall prepare and maintain proper, accurate, complete and current financial books, records and accounts, in accordance with generally accepted accounting principles, with respect to all aspects of the Plant and Contract Services, including direct and indirect personnel expenses, Subcontractor costs, the costs of material, equipment and supplies, maintenance, repair and replacement items, operating expenses and overhead. These financial records shall be in form and substance sufficient to support all financial reporting, including Cost Substantiation, required hereunder. In the event the Company fails to prepare or maintain any books, records or accounts as required under this Section, the Company shall not be entitled to any requested payments or adjustment for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Company shall keep the relevant portions of the books, records and accounts maintained with respect to each Contract Year until at least the seventh anniversary of the last day of each such Contract Year (or such longer period as may be appropriate to account for any dispute then pending). For those circumstances that require Cost Substantiation under Section 16.4 hereof, the Company shall make such books and records available to the District for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the District to determine to its reasonable satisfaction the accuracy, completeness, currency and propriety of any charge or request for payment hereunder. The Company shall not be required to provide the District any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the District through the Cost Substantiation process. The provisions of this Section shall survive the termination of this Service Contract.

(E) Inspection, Audit and Adjustment. The District shall have the right to perform or commission an inspection or independent audit of the financial information required to be kept under this Section, subject to possible reimbursement as provided in this Section. If an inspection or audit reveals that the District has overpaid the Service Fee, then the Company shall, at the election of the District, either immediately reimburse to the District or offset against future Service Fee payments, as a Service Fee adjustment, the overpaid amount, in addition to interest, from the time such amount was initially overpaid until reimbursed or credited to the District, at the Prime Rate. If an inspection or audit contemplated by this Section discloses an overpayment of the Service Fee to the Company of 1% or more of the total amount that should have been properly paid by the District during the period audited, then the Company shall, in addition to the

reimbursement or credit of such overpaid amount, with interest, reimburse the District for any and all Fees and Costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the District may have, including remedies for an Event of Default by the Company.

SECTION 10.4 PERIODIC REPORTS.

(A) Monthly Operations. The Company shall provide the District with monthly operations reports no later than twenty-eight (28) days after the end of each Billing Period in a form approved by the District.

(B) Annual Operations and Maintenance Reports. The Company shall furnish the District, within sixty (60) days after the end of each Contract Year, an annual report in accordance with the provisions set forth in Appendix 4 hereto, including a summary of the information contained in the monthly operations reports. The Company shall also perform and report to the District, as part of its annual operations report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the management of the Plant.

(C) Default Reports. The Company shall provide to the District, immediately after the receipt thereof, copies of any written notice of a material default, breach or noncompliance received or sent under or in connection with any material contract entered into by the Company in connection with the Contract Services.

(D) Permit Communications and Reports. The Company shall provide to the District copies of all communications and reports furnished to any Governmental Body simultaneously with their submittal to the Governmental Body.

(E) Periodic Audits. In addition to those inspections section forth in 6.11 hereof, the District, or the District Engineer selected by the District, shall have the right, but not the obligation, to conduct periodic audits and annual inspections of the Plant to assess whether (1) the Company has performed all necessary maintenance, repairs and replacements (including major repairs and replacements); and (2) the Plant is operating in compliance with Applicable Law and the performance standards specified herein. Such inspections and audits may include, but shall not be limited to, (1) walk-through inspections of the Plant; (2) useful life engineering audits of

machinery, equipment, vehicles, and structures constituting the Plant; and (3) actual performance tests on equipment, processes, and the Plant.

SECTION 10.5 DISTRICT ACCESS. The District, the County Health Department, the DEC and the EPA shall have the right at any time, on a 24-hour per day, 365-day per year basis, to visit and inspect the Plant and observe the Company's performance of the Contract Services. The Company shall permit and facilitate access to the Plant for such purposes by District personnel and by agents and contractors designated by the District. Keys or passwords, as applicable, for the facilities or structures comprising the Plant shall be provided to the District's Contract Administrator by the Company in accordance with the Company's physical security plan and key control program. All visitors shall comply with the Company's reasonable operating and safety procedures and rules, and shall not interfere with the Company's operations of the Plant. When visiting any portion of the Plant that is staffed by the Company at the time of the visit, all District employees, agents and contractors shall announce themselves to the staff and Company employees may elect to accompany any District employees, agents and contractors during the visit. The parties agree that the District shall have immediate access to the Plant, and no Company rule or procedure shall impede, impair or delay such access. The Company shall maintain a visitors' log during the Term of this Service Contract and shall require that all visitors to the Plant (other than visitors on organized tours or Company personnel) sign in and sign out in the visitor's log.

ARTICLE XI SERVICE FEE

SECTION 11.1 SERVICE FEE GENERALLY. The District shall pay the Service Fee to the Company as compensation for the Company's performing the Management Services under this Service Contract. The Service Fee shall be calculated according to this Article.

SECTION 11.2 SERVICE FEE FORMULA. The Service Fee shall be calculated in accordance with the following formula:

$$\text{ASF} = \text{BF} + \text{EI}$$

Where

ASF = Annual Service Fee

BF = Base Fee

EI = Extraordinary Items

Each component of the Service Fee shall be determined in accordance with this Article.

SECTION 11.3 INFLUENT PARAMETER GROUPS. Four Plant Influent Parameter Groups have been established in order to establish a baseline scope of work to be performed by the Company in any Contract Year. The Influent Parameter Groups are set forth in Section 11.5(B). Biological Oxygen Demand (BOD5), Total Suspended Solids (TSS), Ammonia, Phosphorous and Nitrogen (as TKN) are each expressed as annual average pounds per day for the Contract Year and flow is expressed as average million gallons per day for the Contract Year. For each Contract Year, the Plant Influent Parameter Group which was applicable in the prior Contract Year shall be applicable in each succeeding Contract Year unless the District elects in its sole discretion, by written notice to the Company given not later than thirty (30) days prior to the beginning of any subsequent Contract Year, to change the Plant Influent Parameter Group applicable in such subsequent Contract Year.

SECTION 11.4 BASE FEE COMPONENTS.

(A) Formula. The Base Fee shall be calculated in accordance with the following formula:

$$BF = FC + VC + CC$$

$$VC = LAE + FAE$$

Where

BF = Base Fee

FC = Fixed Component

VC = Variable Component

CC = Chemicals Component

LAE = Loadings Adjustment Element

FAE = Flow Adjustment Element

(B) Influent Parameter Groups. Four Plant Influent Parameter Groups have been established in order to establish a baseline scope of work to be performed by the Company in any Contract Year. The Influent Parameter Groups are set forth in Section 11.5(B). Separate factors, the Loadings Adjustment and the Flow Adjustment have been established for each separate Plant Influent Parameter Group reflective of the scope of work involved in treating the various groups of Plant Influent parameters. For each Contract Year, the Plant Influent Parameter Group which was applicable in the prior Contract Year shall be applicable in each succeeding Contract Year unless the District elects in its sole discretion, by written notice to the Company given not later

than thirty (30) days prior to the beginning of any subsequent Contract Year, to change the Plant Influent Parameter Group applicable in such subsequent Contract Year.

(C) Basis of Fixed Component. The Fixed Component of the Base Fee in any Contract Year shall be one of the fixed amounts set forth below in Section 11.5 (B), depending upon the Plant Influent Parameter Group selected by the District as applicable in that Contract Year.

(D) Basis of Variable Component. The Variable Component consists of a Loadings Adjustment Element and the Flow Adjustment Element. The Loadings Adjustment Element and the Flow Adjustment Element have been established on a unit basis are calculated in accordance with Section 11.9 below to compensate the Company for variations in the Plant Influent flow and loadings in excess of the flow and loadings applicable in any Contract Year based on the Plant Influent Parameter Group selected by the District.

(E) Basis of Chemicals Component. The Chemicals Component of the Base Fee in any Contract Year shall be one of the fixed amounts set forth below in Section 11.5(B), depending upon the Plant Influent Parameter Group selected by the District as applicable in that Contract Year. Separate Plant Parameter Groups have been specified in order to establish a baseline scope of work to be performed by the Company in any Contract Year. Specific Chemicals Components have been established for each separate Plant Influent Parameter Group reflective of the scope of work involved in treating the various groups of Plant Influent parameters.

SECTION 11.5 FIXED COMPONENT AND CHEMICALS COMPONENT AND VARIABLE COMPONENTS.

(A) Plant Influent Parameter Groups Defined. The Fixed Component and the Chemicals Component of the Service Fee Fixed Component and the Chemicals Component shall be as follows for each of the following Plant Influent Parameter Groups:

Plant Influent Parameters: Group 1

BOD ₅ Load (lbs./day)	1000
TSS Load (lbs./day)	1000
Ammonia (lbs./day)	120
Phosphorous (lbs./day)	40
TKN (lbs./day)	200
Flow (mgd)	0.6

Fixed Component \$
Chemicals Component \$

Plant Influent Parameters: Group 2

BOD ₅ Load (lbs./day)	1250
TSS Load (lbs./day)	1250
Ammonia (lbs./day)	150
Phosphorous (lbs./day)	50
TKN (lbs./day)	250
Flow (mgd)	0.75

Fixed Component \$
Chemicals Component \$

Plant Influent Parameters: Group 3

BOD ₅ Load (lbs./day)	1500
TSS Load (lbs./day)	1500
Ammonia (lbs./day)	180
Phosphorous (lbs./day)	60
TKN (lbs./day)	300
Flow (mgd)	0.90

Fixed Component \$
Chemicals Component \$

Plant Influent Parameters: Group 4

BOD ₅ Load (lbs./day)	2500
TSS Load (lbs./day)	2500
Ammonia (lbs./day)	300
Phosphorous (lbs./day)	100
TKN (lbs./day)	500
Flow (mgd)	1.50

Fixed Component \$
Chemicals Component \$

SECTION 11.6 VARIABLE COMPONENT. The Variable Component shall be the sum of the Loadings Adjustment Element and the Flow Adjustment Element, which are discussed below in this section and are based on the adjustment fees set forth in this Section.

(A) Loadings Adjustment Element. The Loadings Adjustment Element for a Contract Year shall be equal to the sum of the following which are defined in this section below:

- i. the BOD₅ Loading Adjustment;
- ii. the TSS Loading Adjustment;
- iii. the Ammonia Loading Adjustment;
- iv. the Phosphorous Loading Adjustment; and
- v. Nitrogen (as TKN) Loading Adjustment.

These adjustment elements shall only be positive, should the formulas result in a negative value the adjustment shall be deemed to be zero.

i. BOD₅ Adjustment. The BOD₅ Loadings Adjustment shall be determined by multiplying: (a) the BOD₅ Loading Adjustment Fee applicable for that Contract Year, times (b) the difference between (i) the annual average BOD₅ loading, measured in pounds per day, in the Contract Year and (ii) the BOD₅ Plant Influent Parameter for that Contract Year.

ii. TSS Adjustment. The TSS Loading Adjustment shall be determined by multiplying: (1) the TSS Loading Adjustment Fee applicable for that Contract Year, times (2) the difference between (a) the annual average TSS loading, measured in pounds per day, in the Contract Year and (b) the TSS Plant Influent Parameter for that Contract Year.

iii. Ammonia Adjustment. The Ammonia Loading Adjustment shall be determined by multiplying: (1) the Ammonia Loading Adjustment Fee applicable for that Contract Year, times (2) the difference between (a) the annual average Ammonia loading, measured in pounds per day, in the Contract Year and (b) the Ammonia Plant Influent Parameter for that Contract Year.

iv. Phosphorous Adjustment. The Phosphorous Loading Adjustment shall be determined by multiplying: (1) the Phosphorous Loading Adjustment Fee applicable for that Contract Year, times (2) the difference between (a) the annual average Phosphorous loading, measured in pounds per day, in the Contract Year and (b) the Phosphorous Plant Influent Parameter for that Contract Year.

v. TKN Adjustment. The TKN Loading Adjustment shall be determined by multiplying: (1) the TKN Loading Adjustment Fee applicable for that Contract Year, times (2) the difference between (a) the annual average TKN loading, measured in pounds per day, in the Contract Year and (b) the TKN Plant Influent Parameter for that Contract Year.

(B) Flow Adjustment Element. If the annual average flow, measured in million gallons per day, is less than or equal to the Plant Influent Parameter relating to flow applicable for a Contract Year, then the Flow Adjustment Element shall be equal to zero. If the annual average flow, measured in million gallons per day, is greater than the Plant Influent Parameter relating to flow applicable for a Contract Year, then the Flow Adjustment Element shall be determined by multiplying: (1) the Flow Adjustment Fee applicable for the Contract Year, times (2) the difference between (a) the annual average Flow measured in million gallons per day in the Contract Year and (b) the Flow Plant Influent Parameter for the Contract Year.

(C) Flow and Loadings Adjustment Fees. The Flow and Loadings Adjustment Fees applicable to each Plant Influent Parameter Group is set forth below:

<u>Plant Influent Parameters: Group 1</u>	
BOD ₅	\$/lb-BOD/d
TSS	\$/lb-TSS/d
Ammonia	\$/lb-NH ₃ /d
Phosphorous	\$/lb- P /d
TKN	\$/lb.-TKN/d
Flow	\$/MGD

<u>Plant Influent Parameters: Group 2</u>	
BOD ₅	\$/lb-BOD/d
TSS	\$/lb-TSS/d
Ammonia	\$/lb-NH ₃ /d
Phosphorous	\$/lb- P /d
TKN	\$/lb.-TKN/d
Flow	\$/MGD

<u>Plant Influent Parameters: Group 3</u>	
BOD ₅	\$/lb-BOD/d
TSS	\$/lb-TSS/d
Ammonia	\$/lb-NH ₃ /d
Phosphorous	\$/lb- P /d
TKN	\$/lb.-TKN/d
Flow	\$/MGD

<u>Plant Influent Parameters: Group 4</u>	
BOD ₅	\$/lb-BOD/d
TSS	\$/lb-TSS/d
Ammonia	\$/lb-NH ₃ /d
Phosphorous	\$/lb- P /d
TKN	\$/lb.-TKN/d
Flow	\$/MGD

Each of the Flow and Loadings Adjustment Fees for each Contract Year shall be determined based upon the Adjustment Factor.

SECTION 11.7. ANNUAL ADJUSTMENTS.

(A) Annual Adjustment. The Fixed Component Adjustment Factor. The Fixed Component for each Contract Year shall be the amount specified in Section 11.5(B) based on the Plant Influent Parameter Group selected by the District multiplied by the following “Fixed Component adjustment factor”:

$$AF = (SFEFN \div SFEFPD)$$

where,

AF = Adjustment Factor

SFEFN = The SFEF (Service Fee Escalation Factor) value for the first month of the subject Contract Year.

SFEFPD = [], the SFEF value for the month of the Contract Date for items not related to the Fixed Component and [251.74] for the Fixed Component.

(B) The Chemicals Component Adjustment Factor. The Chemicals Component for each Contract Year shall be the amount specified in Section 11.5(B) based on the Plant Influent Parameter Group selected by the District multiplied by the following “chemicals adjustment factor”.

$$CF = (CCEFN \div CCEFPD)$$

where,

CCEFN = The CCEF (Chemical Cost Escalation Factor) value for the first month of the subject Contract Year.

CCEFPD = [] the CCEF value for the month of the Contract Date for items not related to the Chemicals Component and [261.90] for the Chemicals Component.

SECTION 11.8 FLOW ADJUSTMENT ELEMENT. If the annual average flow, measured in million gallons per day, is less than or equal to the Plant Influent Parameter relating to flow applicable for a Contract Year, then the Flow Adjustment Element shall be equal to zero. If the annual average flow, measured in million gallons per day, is greater than the Plant Influent Parameter relating to flow applicable for a Contract Year, then the Flow Adjustment Element shall be determined by multiplying: (1) the Flow Adjustment Fee applicable for the Contract Year, times (2) the difference between (a) the annual average Flow measured in million gallons per day in the Contract Year and (b) the Flow Plant Influent Parameter for the Contract Year.

SECTION 11.9 EXTRAORDINARY ITEMS CHARGE OR CREDIT. The Extraordinary Items component of the Service Fee, which may be a charge or a credit, shall be equal to the sum of (1) the amounts payable by the District for increased operation, maintenance or other costs incurred on account of the occurrence of an Upset, the receipt of Excessive Plant Influent, or the occurrence of other Uncontrollable Circumstances which are chargeable to the District hereunder, net of any operation, maintenance or other cost savings achieved by the Company in mitigating the effects of the occurrence of such an Uncontrollable Circumstance, plus (2) the adjustments to the Service Fee resulting from any Capital Modifications or the benefits of which accrue to the District, under the provisions of the Service Contract, minus (3) any Service Fee reductions due to Company non-performance specifically provided for in the Service Contract, plus or minus (4) any other increase or reduction in the Service Fee provided for under any other Article of the Service Contract, so long as such increase or reduction does not cause an adjustment in the Base Fee, and (5) minus utility costs paid by the District for utilities usage beyond the amounts guaranteed by the Company.

SECTION 11.10 BILLING AND PAYMENT.

(A) Billing. The District shall pay the Service Fee in monthly installments in an amount equal to the sum of (1) one-twelfth of the annual Fixed Component; (2) an estimated monthly Variable Component; (3) any Extraordinary Items determined on a monthly basis; (4) one-twelfth of any Extraordinary Items determined on an annual basis; and (5) any adjustments, plus or minus, to reconcile any prior monthly Variable Component or any reimbursable costs. The estimated monthly Variable Component shall be based upon the year-to-date average BOD5 TSS, Ammonia, Phosphorous and TKN measured in pounds per day, rather than the average annual loadings. Any overpayment from prior months shall be credited against the monthly Service Fee payment. Any amount due to the District on account of exceedances of either the Guaranteed Maximum Electricity Utilization or the Guaranteed Maximum Natural Gas Consumption shall be paid as part of the Annual Settlement Statement.

(B) Payment. The Service Fee for each month shall be on account of the Contract Services rendered during the prior month. If the Company provides the District with an invoice by the fifteenth (15th) day of each month which sets forth the monthly portion of the Service Fee for the prior month and which shows the annual Service Fee and each component thereof as calculated for the then current Contract Year, together with the accumulated payments for each component to the date of such invoice and such other documentation or information as the District may reasonably require to determine the accuracy and appropriateness of the invoice, then the District shall pay the invoice within thirty (30) days of receipt.

SECTION 11.11 ESTIMATES AND ADJUSTMENTS.

(A) Pro Rata Adjustments. Any computation made on the basis of a stated period shall be adjusted on a pro rata basis to take into account any initial or final period which is a partial period. For purposes of this subsection, a month shall be taken as a month containing thirty (30) days and a year shall be taken as a year containing 365/366 days as appropriate.

(B) Budgeting. For District budgeting purposes, no later than two hundred and forty (240) days preceding each Contract Year, the Company shall provide to the District a written statement setting forth for such Contract Year its reasonable estimate of the aggregate Service Fee, each component thereof, and the adjustment factors. The estimate shall not be binding on the

Company but shall establish the basis for monthly billing for such Contract Year, subject to annual settlement pursuant to this Article.

(C) Adjustment to Service Fee. If any adjustment to the Service Fee is required pursuant to any express provision of this Service Contract, the party requesting the adjustment shall submit to the other party a written statement setting forth the cause of the adjustment, the anticipated duration of the adjustment, and the amount of the adjustment, as appropriate. Except to the extent that a longer period is otherwise specifically provided for in this Service Contract, any request for adjustment of the Service Fee hereunder shall be accepted or rejected by the party receiving the request within forty-five (45) days of receipt. If the receiving party does not notify the requesting party of its rejection and the reasons therefore within such forty-five (45) day period, the request shall be deemed rejected. A rejected request may be resubmitted, with or without change, and this paragraph shall apply to such resubmitted request as it applies to an original request. Any Service Fee adjustment request which is not rejected or deemed rejected shall take effect as of the next monthly billing period thereafter, or as otherwise agreed to by the parties.

SECTION 11.12 ANNUAL SETTLEMENT. Within forty-five (45) days after the end of each Contract Year, the Company shall provide to the District 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 District with respect to such Contract Year. As part of the annual settlement process, the Company shall pay the District an amount equal to any overpayment made by the District for electricity and natural gas which would have been avoided had the Company met the Guaranteed Maximum Electricity Utilization and the Guaranteed Maximum Natural Gas Consumption, together with interest on such overpayment at the Overdue Rate computed from the time such guarantee was exceeded. The District or the Company, as appropriate, shall pay all known and undisputed amounts within sixty (60) days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Company of the amount in question. When the dispute is resolved or the amount

otherwise finally determined, the Company shall file with the District an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 11.13 BILLING STATEMENT DISPUTES. If the District disputes any amount billed by the Company, the District may either (1) pay the disputed amount when otherwise due, and provide the Company with a written objection indicating the amount that is being disputed and providing all reasons then known to the District for its objection to or disagreement with such amount, or (2) withhold payment of the disputed amount and provide the Company with written objection as aforesaid within the time when such amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the District to the Company of amounts withheld or reimbursement to the District by the Company of amounts paid under protest is required, such payment or reimbursement shall be made within forty-five (45) days of the date of resolution, with interest at the Overdue Rate.

SECTION 11.14 PRIVATE BUSINESS USE RESTRICTIONS.

(A) Payments to Company. It is the intent of the District and the Company that this Service Contract 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 District within the meaning and intent of Revenue Procedures 2017-13 the applicable regulations and rulings of the Internal Revenue Service. In particular, the District and the Company agree that, notwithstanding any provision of this Service Contract to the contrary, the District shall be under no obligation to, and shall not, pay compensation for services to the Company for any Contract Year, if such payment, or any portion thereof, would result in the Company being paid a Fixed Component amount which is less than 80% of the Base Fee or would result in any portion of the Company's compensation being based on net profit, all as defined in Internal Revenue Service Revenue Procedure 2017-13 ("Rev. Proc. 2017-13"). The payment by the District of any reimbursable costs to the Company pursuant to Section 11.9 hereof shall not constitute "compensation for services" for purposes of this Section. The District and the Company further agree that any such payment or portion thereof that is not made by virtue of the preceding sentence shall be paid to the Company, without interest, during the next annual period in which such payment will not result in the Company being paid a Fixed Component amount which is less than 80% of the Base Fee or in which such payment will be based on net profit, all as defined by Rev. Proc. 2017-13. The District determined that the

reasonably expected useful life of the Plant is at least 17.5 years from the acceptance date, based on consultation with the District Engineer.

(B) Retesting of the Service Fee. If, at any time or from time to time, during the Term, (1) the scope of the Contract Services is increased or reduced pursuant to the terms of this Service Contract and (2) there is an adjustment to the Fixed Component of the Base Fee due to such increase or reduction in the Contract Services, the parties shall retest, as of the date of such adjustment, the Service Fee for compliance with Rev. Proc. 2017-13 and the requirements of this Section. Any such adjustment of the Fixed Component and retesting of the Service Fee shall, at the District's cost, be subject to the review and approval of the District's legal counsel and the EFC's legal counsel, each 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 District with respect to the Plant.

SECTION 11.15 TAXES. Except as otherwise provided in this Service Contract, the Company shall be responsible for all federal, State, County and municipal Taxes and any other Tax imposed in connection with its performance of the Contract Services; provided that the District shall be responsible for all personal property and real property Taxes which may be assessed against the Plant or the Site by any Governmental Body.

ARTICLE XII BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 12.1 REMEDIES FOR BREACH. The parties agree that, except as otherwise provided in Sections 12.2, 12.3, 12.4 and 12.6 hereof with respect to termination rights, in the event that either party breaches this Service Contract, the other party may exercise any legal rights it may have under this Service Contract, under the Security Instruments or under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Service Contract for cause except upon the occurrence of an Event of Default.

SECTION 12.2 EVENTS OF DEFAULT BY THE COMPANY.

(A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Company upon which the District, by notice to the Company, may terminate this Service Contract without any requirement of having given notice previously or of providing any further cure opportunity:

1. Failure to Meet Plant Effluent Requirements. The failure of the Company to meet the monthly Plant Effluent Requirements for (i) any three (3) months within a six (6)-month period as to each pollutant or (ii) any six (6) months within a twelve (12)-month period as to any pollutant, unless caused by Uncontrollable Circumstances or District Fault;

2. Abandonment. The abandonment or failure of the Company to operate all or a substantial portion of Plant for a 24-hour period in any Contract Year, unless caused by Uncontrollable Circumstances or District Fault;

3. Insolvency. The insolvency of the Company as determined under the Bankruptcy Code;

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

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

6. Intentional Misrepresentation. Any intentional misrepresentation of information and facts relating and material to the Company's performance of its obligations hereunder or the performance of the Plant.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Company upon which the District may

terminate this Service Contract, by notice to the Company, if: (1) any representation or warranty of the Company hereunder was false or inaccurate in any material respect when made, and the legality of this Service Contract or the ability of the Company to carry out its obligations hereunder is thereby adversely affected; (2) the Company fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the District under this Service Contract within sixty (60) days following the due date for such payment, or (b) to perform any material obligation under this Service Contract (unless such default is excused by an Uncontrollable Circumstance or District Fault as and to the extent provided herein), except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the District the right to terminate this Service Contract for cause under this subsection unless:

1. The District has given prior written notice to the Company stating that in its opinion a specified default in its duty to pay or perform exists which gives the District a right to terminate this Service Contract for cause under this Section, and describing the default in reasonable detail; and

2. The Company has neither corrected nor diligently taken steps to correct such default and prevent its recurrence, to the District's reasonable satisfaction, but not more than thirty (30) days from the date of the notice given pursuant to the preceding paragraph).

If the Company shall have diligently taken steps to correct such default, to the District's reasonable satisfaction, then the default shall not constitute an Event of Default during such period of time.

(C) Events of Default for Failure of Security of Performance. It shall be an Event of Default by the Company upon which the District may terminate this Service Contract, by notice to the Company, if the Company has failed to renew, replenish, extend, replace or otherwise maintain any Security Instrument without excuse for Uncontrollable Circumstances or District Fault, except that no such default shall constitute an Event of Default giving the District the right to terminate this Service Contract under this subsection unless:

1. The District has given prior written notice to the Company stating that the Company has failed to renew, replenish, extend, replace or otherwise maintain any Security Instrument; and

2. The Company has not within seven (7) days of receipt of such notice renewed, replenished, extended, replaced, or otherwise caused to maintain any such Security Instrument.

(D) Other Remedies Upon Company Event of Default. The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. If this Service Contract is terminated by the District for an Event of Default by the Company, the District 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 Service Contract, under the Security Instruments and under Applicable Law.

SECTION 12.3 EVENTS OF DEFAULT BY THE DISTRICT.

(A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the District upon which the Company, by notice to the District, may terminate this Service Contract:

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

2. Failure to Pay or Perform. The failure, refusal or other default by the District in its duty: (1) to pay the amount required to be paid to the Company under this Service Contract within twenty-one (21) days following the due date for such payment; or (2) to perform any other material obligation under this Service Contract (unless such default is excused by an Uncontrollable Circumstance or Company Fault); or

3. Bankruptcy. The authorized filing by the County of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the County shall not in and of itself constitute an Event of Default hereunder.

(B) Notice and Cure Opportunity. No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Company the right to terminate this Service Contract for cause under this subsection unless:

1. The Company has given prior written notice to the District stating that a specified default which gives the Company a right to terminate this Service Contract for cause under this Section and describing the default in reasonable detail; and

2. The District has neither corrected nor diligently taken steps to correct such default within a reasonable period of time but not more than thirty (30) days from the date of the notice given pursuant to the preceding paragraph (but if the District 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 District is continuing to take such steps to correct such default).

SECTION 12.4 OBLIGATIONS OF THE COMPANY UPON TERMINATION OR EXPIRATION.

(A) Company Obligations. Upon a termination of the Company's right to perform this Service Contract hereunder, or upon the expiration of this Service Contract under Section 13.1 hereof, the Company shall, as applicable:

1. Stop the Contract Services on the date and to the extent specified by the District;

2. Promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;

3. Promptly remove from the Plant 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. Clean the Plant and the Site and leave them in a neat and orderly condition;

5. Subject to subsection (B) of this Section, promptly remove all employees of the Company [excluding District employees] and any Subcontractors and vacate the Plant;

6. Promptly deliver to the District a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Plant;

7. Deliver to the District the Operation and Maintenance Manual and all computer programs used at the Plant in the performance of the Contract Services, including all revisions and updates thereto;

8. Deliver to the District a copy of all books and records in its possession relating to the performance of the Contract Services;

9. Provide the District with a list of all files, including District employee files, and access and security codes with instructions and demonstrations which show how to open and change such codes;

10. Advise the District promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

11. Promptly deliver to the District copies of all Subcontracts, together with a statement of:

- a) the items ordered and not yet delivered pursuant to each agreement;
- b) the expected delivery date of all such items;
- c) the total cost of each agreement and the terms of payment; and
- d) the estimated cost of canceling each agreement;

12. Assign to the District any Subcontract that the District elects in writing, at its sole election and without obligation, to have assigned to it. The District shall assume, and the Company shall be relieved of its obligations under, any Subcontract so assigned except to the extent that costs or liabilities that have been incurred by the Company through the date of termination shall remain the fiscal responsibility of the Company, and the District shall incur no financial liability by virtue of assignment of the subcontract for any obligations arising prior to the date of the assignment;

13. Unless the District directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

14. As directed by the District, transfer to the District by appropriate instruments of title, and deliver to the Plant (or such other place as the District may specify), all special order items pursuant to this Service Contract for which the District has made or is obligated to make payments;

15. Promptly transfer to the District all warranties given by any manufacturer or Subcontractor with respect to particular components of the Contract Services;

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

17. Give written notice of termination, effective as of date of termination of this Service Contract, promptly under each policy of Required Insurance (with a copy of each such notice to the District), but permit the District to continue such policies thereafter at its own expense, if possible;

18. Arrange its dealings with employees such that no “successor clause” or accrued benefit liability will bind the District in the event the District determines to offer employment to the Company’s employees at the Plant following the Termination Date; and

19. 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 District’s costs, and take no action which shall increase any amount payable to the District under this Service Contract.

(B) Hiring of Company Personnel. Upon the termination or expiration of this Service Contract under any provision hereof, the District or any successor operator of the Plant designated by the District shall have the right to employ on any terms it may choose any Company employee employed full time at the Plant. No Company employment agreement, job offer, letter or similar document may contravene this right. The District or its designated successor operator shall have the right to extend any such job offer within thirty (30) days prior to the expiration or termination of this Service Contract. The Company shall assist and cooperate with any such employee transition in the manner as reasonably requested by the District.

(C) Continuity of Service and Technical Support. Upon the termination of the Company’s right to perform this Service Contract hereunder or upon the expiration of this Service Contract under Section 13.1 hereof, the Company, at the request and direction of the District, shall provide for an effective continuity of service and the smooth and orderly transition of management to the District or any replacement operator designated by the District. The Company shall be paid for such services by the District on a Cost Substantiated Basis. The Company shall provide the District with the rate/cost for such services at least one hundred and eighty (180) days prior to the termination of the Service Contract. Such service shall be for a period of up to one hundred and eighty (180) days and shall include providing technological and design advice and support and

delivering any plans, drawings, renderings, operating manuals, computer programs, spare parts or other information useful or necessary for the District or any replacement operator designated by the District to carry out and to perform the Contract Services. In addition, the Company shall provide the District and any replacement operator with a one-time training program relating to the operation of the Plant, including any Capital Modifications thereto.

(D) Company Payment of Certain Costs. If termination is pursuant to Section 12.2 hereof, or upon the expiration of this Service Contract under Section 13.1 hereof, the Company shall be obligated to pay the costs and expenses of undertaking its obligations under subsection (A) of this Section. If the Company fails to comply with any obligation under this Section, the District may perform such obligation and the Company shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

(E) District Payment of Certain Costs. If termination is due to a District Event of Default pursuant to Section 12.3 hereof, the District shall pay to the Company within sixty (60) days of the date of the Company's invoice supported by Cost Substantiation all reasonable cost and expenses incurred by the Company in satisfying its obligations under subsection (A) of this Section.

(F) Exit Test. If requested by the District not later than six (6) months prior to the Termination Date resulting from the expiration of this Service Contract or concurrently with the termination resulting from an early termination of this Service Contract, the Company shall prepare and submit to the District for its approval a plan for exit testing of the Plant. The terms and conditions of such plan shall be mutually agreed to by the parties and the cost incurred by the Company for performing such tests shall be paid to the Company by the District on a Cost Substantiated basis. The Company (or a third party at the District's option), at the request of the District and after reasonable notice to the Company, shall perform the exit test of the Plant for compliance with the exit test plan in the first month of the 3-month period preceding the end of the Term hereof. If such test shows that the Plant is operating out of compliance with the Performance Guarantees, then within fourteen (14) days of such test results, the Company shall submit to the District a plan for remediation and retesting. The District shall have fourteen (14) days to approve such plan, which approval shall not be unreasonably withheld. The Company shall make all repairs, replacements, renewals and operating changes and take all other actions which may be necessary to enable the Plant to meet the Performance Guarantees. The Plant shall

then be re-tested, at the Company's sole cost and expense, to demonstrate that the necessary corrective action has been taken and the Plant is in compliance with the exit test plan. No such testing or retesting shall relieve the Company of its obligations under this Service Contract during the performance of the test or retest.

SECTION 12.5 SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION. All representations and warranties of the parties hereto contained in Article II and the rights and obligations of the parties hereto pursuant to Sections 1.2(H), 7.2(E), 7.5(I), 7.5(J), 7.9(C), 10.3(D), 12.2, 12.3, 12.4, 12.8, 12.9, 14.1, 14.2, 14.3, 14.4, 15.1, 15.3, 16.2 and 16.5(D) hereof shall survive the termination of this Service Contract. No termination of this Service Contract shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term of this Service Contract.

SECTION 12.6 NO WAIVERS. No action of the District or Company pursuant to this Service Contract (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 Service Contract. No course of dealing or delay by the District or Company in exercising any right, power or remedy under this Service Contract 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 District or the Company under this Service Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 12.7 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 any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Service Contract, or the material falseness or inaccuracy of any representation made in this Service Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal

theory; provided, however, that nothing in this Section shall limit the obligation of the Company to indemnify the District for third party claims pursuant to Section 14.3.

SECTION 12.8 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all Legal Proceedings related to this Service Contract or to the Plant or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively filled, tried and remain in the Supreme Court of the State of New York, Rockland County. The Company and the District each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding, waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding, and waives its right to a trial by jury.

SECTION 12.9 NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Service Contract whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such Non-Binding Mediation shall be divided equally between the District and the Company.

(B) Procedure. The Mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Service Contract. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Service Contract by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

ARTICLE XIII. TERM

SECTION 13.1 EFFECTIVE DATE AND TERM. This Service Contract shall become effective on the Contract Date and shall continue in effect for ten (10) years, unless earlier terminated pursuant to the termination provisions under Article XII in which event the Term shall be deemed to have ended as of the date of such termination (the “Term”). All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. Pursuant to Article V hereof, there shall be a Transition Period commencing on the Contract Date and shall continue to the Commencement Date. Upon the Commencement Date, the Company will commence the Management Services and the ICI Design-Build Work, as set forth in this Service Contract. Upon completion of the ICI Design-Build Work, the Company will continue to provide Management Services for the remainder of the Term. This Service Contract may be renewed by the District, at the District’s sole option, for up to two (2) additional terms of five years each.

ARTICLE XIV. INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

SECTION 14.1 INSURANCE.

(A) Company Insurance. At all times during the Term, the Company shall obtain and maintain the Required Insurance in accordance with Appendix 6 hereto and shall pay all premiums with respect thereto as the same become due and payable.

(B) Insurers, Deductibles and District Rights. All insurance required by this Section shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in Appendix 66 hereto. The Company shall be responsible for any deductible amounts included in the Required Insurance. The Company shall also be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Company hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to the District, and to the Company as their respective interests may appear; and (2) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the District. All policies of insurance required by this Section shall be primary insurance without any right of

contribution from other insurance carried by the District. The District shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

(C) Certificates, Policies and Notice. The delivery by the Company to the District of certificates of insurance is required by this Service Contract as a condition prerequisite to the Contract Date. Whenever a Subcontractor is utilized, the Company shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 6 hereto.

(D) Maintenance of Insurance Coverage. If the Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the District's election (but without any obligation to do so), the District, following a fifteen (15) day written notice and seven-day cure period, which cure period shall begin on the date Company receives the notice may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the District the amount thereof shall be immediately reimbursable to the District by the Company. The Company shall not perform Contract Services during any period when any policy of Required Insurance is not in effect. The Company shall comply with all applicable Required Insurance and take all steps necessary to assure the Plant remains continuously insured in accordance with the requirements of this Service Contract during the Term hereof. The failure of the Company to obtain and maintain any Required Insurance shall not relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Company shall indemnify and hold harmless the District in the manner provided in Section 14.3 hereof, from and against any Loss-and-Expense arising out of such failure. The purchase of insurance to satisfy the Company's obligations under this Section shall not be a satisfaction of any Company liability under this Service Contract or in any way limit, modify or satisfy the Company's indemnity obligations hereunder.

SECTION 14.2 UNCONTROLLABLE CIRCUMSTANCES.

(A) Relief from Obligations. Except as expressly provided under the terms of this Service Contract, neither party to this Service Contract shall be liable to the other for any loss,

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

(B) Notice and Mitigation. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone or facsimile, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the occurrence thereof, followed within fifteen (15) days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the affected party shall also provide the other party with an description of: (1) the amount, if any, by which the Service Fee is proposed to be adjusted as a result of such Uncontrollable Circumstance; (2) any areas where costs might be reduced and the approximate amount of such cost reductions; and (3) its estimated impact on the other obligations of such party under this Service Contract. The affected party shall also 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 practicable, use all reasonable efforts to eliminate the cause therefor, reduce costs and resume performance under this Service Contract. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by an Uncontrollable Circumstance shall bear the burden of proof, and shall

furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

(C) Conditions to Performance, Service Fee and Schedule Relief. If and to the extent that Uncontrollable Circumstances interfere with or increase the cost of the Company's performance of the Contract Services, the Company shall be entitled to a reasonable and appropriate increase in the Service Fee which properly reflects the interference with performance and the amount of the increased cost and the Company shall perform all other Contract Services. If the Uncontrollable Circumstance causes a delay in but not an increase in the Company's cost of performance, the Company shall be entitled to relief as set forth in (E) below. The proceeds of any Required Insurance available to meet any such increased cost, and the payment by the Company of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the District under this Section. Any cost reduction achieved through the mitigating measures undertaken by the Company pursuant to subsection (B) of this Section upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Service Fee would have otherwise been increased or shall serve to reduce the Service Fee to reflect such mitigation measures, as applicable. In the event that the Company believes it is entitled to any Service Fee or schedule relief with respect to a Capital Modification on account of any Uncontrollable Circumstance, it shall furnish the District written notice of the specific relief requested and detailing the event giving rise to the claim within thirty (30) days after the giving of notice delivered pursuant to subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed, within such thirty (30)-day period, then within such longer with which it is reasonably possible to detail the event and ascertain such relief. Within thirty (30) days after receipt of such a timely submission from the Company the District shall issue a written determination as to the extent, if any, it concurs with the Company claim for performance, price or schedule relief, and the reasons therefore. The Company acknowledges that its failure to give reasonable and timely notice pertaining to an Uncontrollable Circumstance as required under this Section may increase the costs of the Uncontrollable Circumstances to the District. To the extent the Company's failure to give reasonable and timely notice to the District causes the District to incur additional costs related to the Uncontrollable Circumstance, the relief to the Company shall be reduced to account for such additional cost. The Company shall have the affirmative burden of refuting the District's assertion. Absent such refutation, the reduction in relief to the

Company and the reduction in additional cost to the District asserted by the District in such circumstances shall be effective.

(D) Capital Modifications. Before proposing any adjustment to the Service Fee in its notice of requested relief under this Section, the Company shall determine whether any increased costs of operation and maintenance of the Plant resulting from an Uncontrollable Circumstance can reasonably and prudently be reduced by the undertaking of a Capital Modification. In the event that the Company makes such a determination, the Company shall so advise the District in accordance with Section 9.4 hereof. The District shall thereupon determine, in its sole discretion, whether such a Capital Modification shall be undertaken and shall so advise the Company within sixty (60) days of receipt of such notice by the Company. In no event shall the Company undertake such Capital Modification except at the express written direction of the District.

(E) Acceptance of Relief Constitutes Release. The Company's acceptance of any performance, price or schedule relief under this Section shall be construed as a release of the District 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 14.3 INDEMNIFICATION BY THE COMPANY. The Company shall indemnify, defend, and hold harmless the District and County, their elected officials, appointed officers, servants, employees, representatives, the District Engineer, agents and contractors (hereinafter collectively referred to as "District Indemnatee"), from and against (and pay the full amount of) any and all Loss-and-Expense incurred by a District Indemnatee arising from or in connecting with: (1) any failure by the Company to perform its obligations under this Service Contract; (2) the negligent acts, errors or omissions or willful misconduct of the Company or any of its officers, directors, employees, agents, representatives or Subcontractors in connection this Service Contract; (3) from any and all claims, demands and causes of action, for exposure to non-complying Plant Effluent or Residuals and/or arising out of, related to, or connected with the Operation and Maintenance of the Plant; and (4) to the extent provided elsewhere in this Service Contract. The Company's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Company which is

intended to respond to such events. The Company shall not, however, be required to reimburse or indemnify any District Indemnatee for any Loss-and-Expense to the extent caused by the negligence or willful misconduct of any District Indemnatee or to the extent attributable to any Uncontrollable Circumstance. A District Indemnatee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Company shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the District Indemnatee only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Service Contract.

SECTION 14.4 LOSS, DAMAGE OR DESTRUCTION TO THE PLANT.

(A) Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the Plant from loss, damage or destruction. The Company shall report to the District and the insurers, immediately upon obtaining knowledge thereof, any damage or destruction to the Plant and as soon as practicable thereafter shall submit a full report to the District. The Company shall also submit to the District within 24 hours of receipt copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Plant to at least the character or condition thereof existing immediately prior to the loss, damage or destruction. The District shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company as if such work constituted a Capital Modification hereunder.

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

(C) Uninsured Costs. The District shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Plant in accordance with this Section and all insurance

proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Plant shall be for the account of the District; provided, however, that such costs not covered by insurance proceeds or third-party payments shall be borne by the Company to the extent the loss, damage or destruction was not caused by Uncontrollable Circumstances or District Fault.

(D) Repair of District, County and Private Property. The Company shall promptly repair or replace all District or County property and all private property damaged by the Company or any officer, director, employee, representative or agent of the Company in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

ARTICLE XV. SECURITY FOR PERFORMANCE

SECTION 15.1 BONDS.

(A) Construction, Performance and Labor and Materials Payment Bonds during ICIs and Capital Modifications. On or before a Notice to Proceed is issued on the ICIs and for any Capital Modification to be performed by the Company, and prior to the commencement of any construction undertaken by the Company, the Company shall provide the Construction Performance Bond and the Labor and Materials Payment Bond, each in an amount equal to the price of the work relating to the construction component of work as financial security for the faithful performance and payment of its obligations hereunder. Such bonds shall be written to secure the applicable Subcontractors performance to the Company. Such bonds shall be issued in the name of the District. The Construction Performance Bond and the Labor and Materials Payment Bond shall be substantially in the form set forth in the Transaction Forms, and shall be issued by a surety company: (1) approved by the District having a rating of “A” in the latest revision of the A.M. Best Company’s Insurance Report; (2) be listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies;” and (3) holding a certificate of authority to transact surety business in the State issued by the Director of the Department of Insurance.

(B) Operations Performance Bond. On or before the Contract Date, the Company shall provide an operations performance bond in an amount equal to One million Dollars (\$1,000,000.00) and in the form set forth in the Transaction Forms. Such Operations Performance Bond shall be issued by a surety company: (1) approved by the District having a rating of “A” in the latest revision of the A.M. Best Company’s Insurance Report; (2) listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies”; and (3) properly registered and licensed to conduct business in the State. Such Operations Performance Bond shall be issued in the name of the District and shall be continuously renewed, extended or replaced.

(C) Monitoring of Sureties. The Company shall be responsible throughout the Term of this Service Contract for monitoring the financial condition of any surety company issuing bonds under this Service Contract and for making inquiries no less often than annually, as applicable, to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, the Company shall promptly notify the District of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the District agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the Company of such an event, the District shall not unreasonably withhold its approval of such assurance.

SECTION 15.2 LETTER OF CREDIT.

(A) Terms and Purpose. In the event the Company is required pursuant to subsection 15.1(C) to provide the District with a letter of credit, the Company shall provide security for the performance of its obligations hereunder through an irrevocable direct pay letter of credit issued by a United States bank whose long-term debt is rated “A” or better by either Rating Service and which maintains a banking office in the State (the “Letter of Credit”). The Letter of Credit shall be in the stated amount of one half of the Base Fee adjusted each Contract Year based on the Adjustment Factor, shall be for a term of one year, shall be continuously and automatically renewed, extended or replaced so that it remains in effect until 180 days after the

Termination Date. The stated amount of the Letter of Credit shall in no way limit the amount of damages to which the District may be entitled for any Company Event of Default hereunder.

(B) Drawings for Non-Renewal or Bankruptcy. The Letter of Credit shall authorize the District to draw the full stated amount thereof: (1) in the event that any required renewal, extension or replacement thereof is not made earlier than the date which is 30 days prior to its expiration date, or (2) upon certain events of bankruptcy or insolvency of the Company described in the drawing certificate attached thereto. The proceeds of any such drawings shall be held by the District as cash collateral to secure the performance of the Contract Services and, in the event of a material breach of this Service Contract following any such drawing, may be retained by the District as payment of damages resulting therefrom.

(C) Drawings for Material Breach. The Letter of Credit shall also authorize the District to draw an amount representing the estimated damages suffered by the District in the event of a material breach of this Service Contract by the Company. It shall be a condition to the right of the District to draw on the Letter of Credit for a material breach that the District has given the Company written notice of a material breach of this Service Contract, whether or not such breach constitutes an Event of Default, and attached a copy of its good faith assessment of the damages the District has suffered as a result of such breach.

SECTION 15.3 COSTS OF PROVIDING SECURITY FOR PERFORMANCE ARE INCLUDED IN THE SERVICE FEE. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Company's obligations hereunder shall be borne by the Company without reimbursement from the District.

ARTICLE XVI. MISCELLANEOUS PROVISIONS

SECTION 16.1 RELATIONSHIP OF THE PARTIES. The Company is an independent contractor of the District and the relationship between the parties shall be limited to performance of this Service Contract in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Service Contract shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire

or employer/employee relationship, shall arise or accrue to any party's agent or employee as a result of this Service Contract or the performance thereof. Unless otherwise provided for in this Service Contract, the Company shall not be relieved of any responsibility, obligation, performance requirement or liability that it has or that shall arise under the Service Contract by virtue of the fact that any act required or occurring or any omission was attributable to a District employee managed by the Company under the terms of this Service Contract. The Company bears ultimate responsibility for each obligation or liability incurred under the terms of this Service Contract regardless of which Party employs the employee acting or responsible to act in any situation.

SECTION 16.2 PROPERTY RIGHTS.

(A) Protection from Infringement. The Company shall pay all royalties and license fees in connection with the Contract Services, any Major Maintenance and Repair, and/or any Capital Modifications. The Company shall protect, indemnify, defend and hold harmless the District, and any of the District Indemnities, in the manner provided in Section 14.3 hereof, from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Contract Services, any Major Maintenance and Repair, and/or any Capital Modifications or at its option, shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe. The Company shall not, however, be required to reimburse or indemnify any person for any Loss-and-Expense to the extent due to the negligence or willful conduct of such person. The provisions of this Section shall survive termination of this Service Contract.

(B) Intellectual Property Developed by the Company. All intellectual property developed by the Company at or through the use of the Plant or otherwise in connection with the performance of the Contract Services shall be owned by the Company subject to the terms and conditions of this Section, and is hereby licensed to the District on a non-exclusive cost free, perpetual basis for use by the District and any successor operator of the Plant (but, with respect to any successor operator, only in connection with the operation of the Plant). Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. The Company

shall have an irrevocable, perpetual and unrestricted right to use such intellectual property for any District request, whether before or following the Termination Date. Neither the District nor the Company shall license, transfer or otherwise make available such intellectual property to any third-party for remuneration except with the consent of the other, which consent may be conditioned upon mutual agreement as to the sharing of any such remuneration.

SECTION 16.3 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 16.4 COST SUBSTANTIATION.

(A) Substantiating Non-Fixed Costs. The Fixed Component of the Service Fee are fixed by the terms of this Service Contract and are not subject to Cost Substantiation as provided in subsection (B) of this Section except to the extent otherwise specifically set forth in this Service Contract. Any other cost proposed or incurred by the Company which is directly or indirectly chargeable to the District in whole or in part hereunder shall be the fair market price for the good or service provided, or, if there is no market, (including costs related to emergency actions, cost-plus work Capital Modifications, and other additional work necessitated or additional costs to be borne on account of Uncontrollable Circumstances, District Fault or District direction) shall be a commercially reasonable price. The Company shall provide certified Cost Substantiation for all such other costs invoiced to the District hereunder.

(B) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall be signed by a senior management officer of the Company, shall state the amount of such cost and the provisions of this Service Contract under which such cost is properly chargeable to the District, shall describe the competitive or other process utilized by the Company to obtain a fair market price, and shall state that such cost is a fair market price for the service or materials to be supplied (or, if there is no market, that such cost is commercially reasonable) and that such services and materials are reasonably required pursuant to this Service Contract. The certificate shall be accompanied by copies of such documentation as shall be necessary to

reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the District and shall include reasonably detailed information concerning: (1) all subcontracts; (2) the amount and character of materials and services furnished, the persons from whom purchased, the amounts payable therefore and related delivery and transportation costs and any sales or personal property Taxes; (3) a statement of the equipment used and any rental payable therefore; (4) Company and Subcontractor employee hours, duties, wages, salaries, benefits and assessments; and (5) Company and Subcontractor profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The Company's entitlement to reimbursement of Cost Substantiated costs of the Company shall be subject to the limitations set forth in this Section.

(C) Technical Services. For costs proposed or incurred by the Company that are subject to Cost Substantiation, Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and scope to the Contract Services. The Company shall use commercially reasonable efforts to use available Company personnel for additional work hereunder before using Subcontractors.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs required to be Cost Substantiated, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the District with the request for reimbursement of such costs.

SECTION 16.5 SUBCONTRACTORS.

(A) Use Restricted. The Company shall operate, maintain, and manage the Plant with its own employees, four (4) District employees, and in accordance with Article VI. Subcontractors may be used to perform other Contract Services, subject to the District's right of approval set forth in subsection (B) of this Section of all Subcontractors. All Subcontractors shall meet all of the County's licensing requirements to the extent such requirements are applicable to the work to be performed by such Subcontractor.

(B) Limited District Review and Approval of Permitted Subcontractors. The District shall have the right, based on the criteria provided below in this Section, to reasonably approve all Subcontractors which the Company is permitted to engage under subsection (A) of this

Section for Contract Services valued in excess of \$100,000 annually, except: (1) Affiliates of the Company; (2) equipment suppliers; (3) Governmental Bodies; (4) approved Subcontractors; and (5) subcontractors hired by the Company for purposes of remedying an emergency situation. The Company shall furnish the District written notice of its intention to engage such Subcontractors, together with all information reasonably requested by the District 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; (4) any unpaid federal, State, District or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the District or the State. The approval or withholding thereof by the District of any proposed Subcontractor shall not create any liability of the District to the Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State or District contracting for any services similar in scope to the Contract Services.

(C) Subcontract Terms and Subcontractor Actions. The Company shall retain full responsibility to the District under this Service Contract for all matters related to the Contract Services notwithstanding the execution or terms and conditions of any Subcontract. No failure of any Subcontractor used by the Company in connection with the provision of the Contract Services shall relieve the Company from its obligations hereunder to perform the Contract Services. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Company or inflicted on the Company or a Subcontractor by the actions of another Subcontractor.

(D) Indemnity for Subcontractor Claims. The Company shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the District for labor, services, materials or equipment furnished for the Contract Services. The Company acknowledges that its indemnity obligations under Section 14.3 hereof shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services.

(E) Notice to District of Amendments, Breaches and Defaults. The Company shall give prior written notice to the District of any material proposed and final amendments to the any

Subcontract, and shall not enter into any such amendment which is material and adverse to the rights and obligations of the District hereunder without the District's prior written consent. The Company shall notify the District promptly of any material breach or event of default occurring under any Subcontract and the probable effect on the Contract Services. The Company shall keep the District apprised of the course of the dispute and shall advise the District of its ultimate resolution.

(F) Assignability. All Subcontracts entered into by the Company with respect to the Plant shall be assignable to the District, solely at the District's election and without cost or penalty, upon the expiration or termination of this Service Contract.

SECTION 16.6 ACTIONS OF THE DISTRICT IN ITS GOVERNMENTAL CAPACITY.

(A) Rights as Government Not Limited. Nothing in this Service Contract shall be interpreted as limiting the rights and obligations of the District under Applicable Law in its governmental or regulatory capacity (including police power actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Company to bring any action against the District, not based on this Service Contract, arising out of any act or omission of the District in its governmental or regulatory capacity.

(B) No District Obligation to Issue Governmental Approvals. The District retains all issuance and approval rights it has under Applicable Law with respect to any Governmental Approval required with respect to the Plant, the Contract Services, Major Maintenance and Repair, and/or Capital Modifications and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Service Contract; provided, however, that the District shall not unreasonably withhold or delay any such issuance or approval and that any such delays may entitle the Company to time and cost relief as set forth in this Service Contract. The District shall not be deemed to be in breach of or in default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval.

SECTION 16.7 ASSIGNMENT.

(A) By the Company. The Company shall not assign, transfer, convey, sell, lease, encumber or otherwise dispose of this Service Contract, its right to execute the same, or its right, title or interest in all or any part of this Service Contract or any monies due hereunder whatsoever prior to their payment to the Company, whether legally or equitably, by power of attorney or

otherwise, without the prior written consent of the District. Any such approval given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of the District to any further assignment. Any such assignment of this Service Contract which is approved by the District shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Service Contract. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under this Service Contract unless such approval specifically provides otherwise.

(B) By the District. The District may not assign its rights or obligations under this Service Contract without the prior written consent of the Company. The District may however, assign its rights and obligations under this Service Contract, without the consent of the Company, to another Governmental Body if such assignee assumes, and is legally capable of discharging, the duties and obligations of the District hereunder.

SECTION 16.8 PLANT TOURS. The Company shall notify the District at least 24 hours in advance of any visits to the Plant. The Company shall conduct tours of the Plant during normal business hours and take visitors through such portions of the Plant as are suitable for such visitation in a manner which does not interfere with the Company's performance of its obligations hereunder.

SECTION 16.9 COMPLIANCE WITH MATERIAL AGREEMENTS. The Company shall comply with its obligations under agreements of the Company which are material to the performance of its obligations under this Service Contract. The District shall comply with its obligations under agreements of the District which are material to the performance of its obligations hereunder.

SECTION 16.10 BINDING EFFECT. This Service Contract shall inure to the benefit of and shall be binding upon the District and the Company and any assignee acquiring an interest hereunder consistent with Section 16.7 hereof.

SECTION 16.11 AMENDMENT AND WAIVER. This Service Contract may not be amended except by a written agreement signed by the parties and approved in the same manner as this Service Contract. Any of the terms, covenants, and conditions of this Service Contract may

be waived at any time by the party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 16.12 NON-DISCRIMINATION. The Company, its Subcontractor and its suppliers in performing under this Service Contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

SECTION 16.13 NOTICES.

(A) Procedure. All notices, requests, approvals and other communications required or permitted under this Service Contract shall be in writing and shall be deemed to have been duly given: (1) when delivered personally; (2) when sent by a nationally-recognized overnight courier service; (3) when mailed by certified or registered mail, return, receipt requested, postage prepaid; or (4) when sent by email, provided that a copy of the email is also sent by one of the methods listed above (except that email shall be sufficient if the recipient confirms receipt in writing, including by return email). Notice sent by email shall be deemed to have been given on the date sent if sent during normal business hours of the recipient, or on the next business day if sent after normal business hours.

(B) Party Notice Addresses. For purposes of this Service Contract, notices shall be sent to the parties at their respective addresses set forth below, or to such other address as may be designated by a party in writing to the other party in accordance with this section:

Notices required to be given to the Company shall be addressed as follows:

[COMPANY]

Notices required to be given to the District shall be addressed as follows:

Rockland County Sewer District No. 1
4 Route 340
Orangeburg, NY 10962
Attn: Executive Director

With a copy to:

Rockland County Sewer District No. 1
4 Route 340
Orangeburg, NY 10962
Attn: Assistant Director

SECTION 16.14 NOTICE OF LITIGATION. In the event the Company or District receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Plant, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings.

SECTION 16.15 FURTHER ASSURANCES. The District and Company each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Service Contract. The District and the Company, in order to carry out this Service Contract, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Service Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

SECTION 16.16 DISTRICT CORRECTIVE ACTION. The District shall have the right, but not the obligation, to perform any of the Company's obligations that the Company fails to perform after receipt of reasonable notice of the District. If the District exercises such right, the District shall be entitled to deduct the costs and expense related to its performance of such corrective action from the Service Fee, as applicable.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Service Contract to be executed by their duly authorized representatives as of the day and year first above written.

[COMPANY]

President

Dated: _____

ROCKLAND COUNTY SEWER DISTRICT
NO. 1

Michael Saber, P.E.

Executive Director

Dated: _____

Approved for signature of County Executive

County Attorney

Dated: _____

COUNTY OF ROCKLAND

Edwin J. Day

County Executive

Dated: _____

STATE OF NEW YORK, COUNTY OF ROCKLAND}ss.:

On the ____ day of _____, 2024, before me came EDWIN J. DAY, to me known, being duly sworn by me, did depose and say that he is the County Executive of Rockland County, a municipal corporation; his office address is 11 New Hempstead Road, New City, New York, and he executed the foregoing instrument on behalf of the County of Rockland.

NOTARY PUBLIC

A T T E S T A T I O N:

As Clerk to the Legislature, I hereby attest that I know the seal of the Legislature of Rockland County, and that the seal affixed to this instrument is such seal.

Laurence O. Toole
Clerk to the Legislature

STATE OF NEW YORK, COUNTY OF ROCKLAND}ss.:

On the ____ day of _____, 2024, before me came [_____], to me known, being duly sworn by me, did depose and say that [_____]; his office address is [_____], and he executed the foregoing instrument on behalf of the [_____].

NOTARY PUBLIC

APPENDIX 1
GUARANTEED MAXIMUM UTILITY USAGE

The Guaranteed Maximum Electricity Consumption, Guaranteed Maximum Electricity Demand and Guaranteed Maximum Natural Gas Consumption are set forth below.

Utility Service	GUARANTEED MAXIMUM FOR EACH INFLUENT PARAMETER GROUP			
	One	Two	Three	Four
Electricity with odor control system carbon filter blower/heaters				
Electricity – Energy (kWh/mg)				
Electricity – Demand (kW)				
Electricity without odor control system carbon filter blower/heaters				
Electricity – Energy (kWh/mg)				
Electricity – Demand (kW)				
Natural Gas (ccf)				

APPENDIX 2

PERFORMANCE GUARANTEES

The Company shall be responsible for meeting all of the following Performance Guarantees:

1.0 PLANT EFFLUENT QUALITY GUARANTEES

The Company shall operate the Plant so as to receive and treat all Plant Influent and to achieve the Enhanced Standards set forth in the table below, as well as the effluent limitations specified by the SPDES Permit. In addition, the Company shall guarantee compliance with Enhanced Standards in the table below with any unit process off-line.

Enhanced Standards		
Flow	1.5 mgd	30-day average at maximum month conditions
UOD	35.0 mg/L	Daily maximum (June – October)
UOD	120.0 mg/L	Daily maximum (November – May)
BOD ₅	<5 mg/L	30-day average
TSS	<5 mg/L	30-day average
Phosphorus	<0.2 mg/L	30-day average
Ammonia	<1 mg/L	30-day average (year round)
Total Nitrogen	<8 mg/L	30-day average
Fecal Coliform	<200/100 mg/L	Daily maximum
Giardia cysts	99.9% removal	Daily minimum
Enteric viruses	99.99% removal	Daily minimum
TRC	0.1 mg/L	Daily maximum
DO	7.0 mg/L	Daily minimum
PH	6.5-8.5 SU	Range
Settleable solids	0.1 mg/L	Daily maximum

Note: 1. The Plant shall be capable of achieving all priority pollutant (such as metals) limits established by the New York State Department of Environmental Conservation in the SPDES permit.

2. Effluent temperature shall be monitored on a daily basis.

3. Influent/Effluent TKN shall be monitored on a daily basis.

2.0 ODOR CONTROL GUARANTEE

The Company shall comply with the Odor Control Guarantee, including the on-site, off-site, and equipment components delineated below, all times the Plant is in operations. In general, the Company shall operate, maintain, and manage the Plant to eliminate or minimize off-site odor impacts.

2.1 On-Site Odor Control

Specific requirements of the on-site component are as follows:

- Operation of the Plant in accordance with the Odor Control Plan,
- An odor concentration of 7 D/T (dilution to threshold ratio) or less at the Site border,
- An odor concentration of 14 D/T (dilution to threshold ratio or less at the inlet to the administration and maintenance area HVAC system and in the visitor parking area).

2.2 Off-Site Odor Control

The Company shall operate and maintain the Plant in accordance with Appendix 5 (Odor Control Plan).

2.3 Equipment Odor Control

Specific requirements of the equipment components are as follows:

- Collect and treat odorous air to remove a minimum of 99.5 percent of hydrogen sulfide (H₂S) over the entire range of influent hydrogen sulfide concentrations, or 20 parts per billion by volume (ppbv) at the outlet, whichever is more stringent. Performance must be demonstrated by comparison of concentration of H₂S in the inlet and outlet of the odor treatment equipment, at actual and at 10 ppm inlet concentrations, as measured in ppbv and removal efficiency (%).
- Ventilate and treat odor of enclosed non-manned tank headspace, channels and/or within equipment enclosures at a rate of either six air changes per hour or sufficient to maintain a negative pressure within these spaces of at least 0.10 inches water column (not to exceed 0.25 inches).
- Ventilate and treat odor in process areas where personnel perform operations and maintenance duties at the minimum rate specified via NFPA 820 or Recommend Standards for Wastewater Facilities (10-State Standards).

3.0 SLUDGE QUALITY GUARANTEE

The Company will be required to demonstrate monthly that the dewatering system is capable of meeting the dewatering performance guarantee of 16.5% cake solids content calculated on a twelve month rolling average basis.

The Company will be required to demonstrate periodically that the dewatering system is capable of achieving the dewatering performance guarantee of 95% capture.

All Sludge processing shall meet at a minimum 40 CRF Part 503, Subparts C and D, Method 9095 Paint Filter Liquid Test as described in “Test Methods for Evaluating Solid Waste Physical/Chemical Methods” (EPA Publication No. SW-846).

APPENDIX 3

SPARE PARTS

Rockland County Sewer District # 1
Western Ramapo Advanced Wastewater Treatment Plant
Spare Parts List - April 2024

Spec. Section	Equipment Description	Manufacturer	On site (x)	Spare Parts	QTY
11206	Non-Potable Water Pumps Non-Potable Pump Controls	Flowserve	x x x x	1 set of lineshaft bearings 1 set of bowl bearings 1 set of collets 1 set of packing	1 set 1 set 1 set 1 set
11243	Liquid Polymer Make-Up Systems	Velodyne		Not applicable per Appendix 12	
11286	Adjustable Slide and Sluice Gates			Not Applicable	
11300	Influent Grinder and Screen	Parkson		None recommended by vendor	
11310	Grit Separation Equipment	Smith & Loveless	x x x x x x x	Pista Grit Chamber - Seal Gasket Priming system components One set of bearing and seals for PISTA Drive Pump mechanical seal Screw Conveyor - lower bearing, belt set and gaskets Volute Gasket Spare B Seal Assembly	1 1 set 1 set 1 1 set 1 1
11315	Progressing Cavity Pumps	Netzch	x x x x x x x x x x x x x	1 - #1999 rotor 1- #3004 Stator #7040 packing ring set # 8050 gasket # 5105 o-ring #5106 o-ring #8015 o-ring #8025 o-ring #8065 o-ring #5015 gear jnt comp #5005 Gear jnt Shell #8021 gear jnt seal 1 -#1998 Conn Rod	1 1 4 sets 2 4 4 2 4 2 2 2 2
11319	Submersible Pumps	Flowserve	X X X X X	Complete Upper Mechanical Seal Complete Lower Mechanical Seal Pump o-ring kit Bearing kit (Upper and lower) Case bearing ring Impeller wear ring ONLY	1 set each for: Site Lift Station - Delivered Low EQ (20 HP) Low EQ (7.5 HP) Low EQ (3HP) Sludg Holding Tnk
11346	Linear Polyethylene Chemical Storage Tanks			NOT APPLICABLE	

Rockland County Sewer District # 1
Western Ramapo Advanced Wastewater Treatment Plant
Spare Parts List - April 2024

Spec. Section	Equipment Description	Manufacturer	On site (x)	Spare Parts	QTY
11362	Gravity Belt Thickeners	BDP	x	75mm Direct Mount Dodge #22215C3 Bearing	2
			x	Linkbelt #PB22439E7E7CSS	2
			x	2-7/16" Pillow Block Bearing	2
			x	Linkbelt #TB22439E7E7CSS	2
			x	7/16" Take-up Bearing	10
			x	Shower Nozzles: Appleton #100944	2
			x	UHMW Discharge Blade - BDP 3-310-98 (P3)	1 set
			x	Guide Rails Seals - BDP 3-310-261 (P2) Set of 2	1
			x	Feeder Box Seals - BDP 3-310-858 (P1)	1 set
			x	Shower Box Seals - BDP 3-710-575 (P2) Set of 4	1
			x	Main Pan Extension Seals - BDP 3-310-678 (P6)	1
			x	Replacement Element Oil Filter - Vickers 573082	2
			x	15 Amp Fuse - Littlefuse CCMR-15	2
			x	3 Amp Fuse - Littlefuse CCMR-3	2
			x	2 Amp Fuse - Littlefuse FNQ-2	2
			x	6 Amp Fuse - Littlefuse KKK-R-6	2
			x	3 Pole Relay - IDEC RR38-UL-120VAC	1
			x	Limit Switch - Allen Bradley 802M-AYS	2
			x	Light Bulbs - Allen Bradley 800T-N169	1
			x	Belt Fabric: 1 Madison #HF7-7497	1
			X	HMI	1
11363	Centrifuges	Westfalia	x	#0005-0868-000 Proximity Sensor	1
			x	#0005-1226-040 Resistance feeler	1
			x	#0021-2891-890 Drive Belt	1
			x	#002102889-810 Set of Narrow V-belts	1 set
			x	#004-2124-750 Radial Gasket	1
			x	#0007-2766-750 Gaskets	2
			x	#0004-2126-750 Radial Gasket	1
			x	#0007-2153-750- Gaskets	2
			x	#0004-3018-850 Shaft sealing ring	2
			x	#0007-1739-750 Gaskets	1
			x	#0007-2433-970 Gaskets	1
			x	#8175-1065-030 Set of Wear Liners	1
			x	#0011-3222-470 Angular contact bearing	1
			x	#0004-2123-300 Nilos Gasket	2
			x	#8175-6006-000 Set of gaskets for scroll	1
			x	#0011-1026-500 Cylindrical Roller Bearing	1
			x	#0011-6026-400 Grooved Ball bearing	1
			x	#8175-6493-000 Bushing	18
			x	set of tools	1 set
11372	Positive Displacement Air Blowers		x	10 HP blower	2 sets
			x	V belt set	1 set
			x	blower bearing, seal & gasket set	5
			used	Filter elements	1
			used	Case blower oil	1
			x	Tube bearing grease	1
			x	belt tension gauge	1
			x	30 HP Blowers	2 sets
			x	V belt set	1 set
			x	Blower bearing, seal & gasket set	5
			used	Filter elements	2
			used	Case blower oil	2
			used	Tube bearing grease	2
			x	40 HP Blowers	3 sets
			x	V Belt set	1 set
			x	Blower bearing, seal & gasket set	5
			used	Filter elements	6
			x	Case blower oil	6
			x	tube bearing grease	6

Rockland County Sewer District # 1
Western Ramapo Advanced Wastewater Treatment Plant
Spare Parts List - April 2024

Spec. Section	Equipment Description	Manufacturer	On site (x)	Spare Parts	QTY
11375	Coarse Bubble Diffused Aeration System	SSI	x x	12" wideband diffuser assemblies 24" Wide band diffuser assemblies	10 5
11376	Fine Bubble Fixed-Grid Aeration Equipment Post Aeration System		x x	Diffuser assemblies Special tool kit	15 1 kit
11385	Chemical Feed System		x x	Pulsatron Kopkit #K5VTC3 Pulsatron Kopit #K4VTC1	3 1
11395	Fiberglass Baffle and Troughs			NOT APPLICABLE	
11396	Diesel Engine Driven Generator			Call Factory if needed	
11400	Influent Pumps	Flowserve	X X X X X X	Complete Upper Mechanical Seal Complete Lower Mechanical Seal Pump o-ring kit Bearing kit (Upper and lower) Case bearing ring Impeller wear ring ONLY	1 set each 1 set each 1 set each 1 set each 1 set each 1 set each
11410	Vertical Turbine Pumps	Flowserve Microfilter Feed Pumps Flowserve Final Effluent Pumps	X X X X X X X X	set of lineshaft bearings set of bowl bearings set of collets set of packing 20hp Motor (Microfeed) set of lineshaft bearings set of bowl bearings set of collets set of packing	1 set 1 set 1 set 1 set 1 1 set 1 set 1 set 1 set
11340	Microfilters	Pall	X X X X	Spare membrane set of seals and gaskets Special tools Spare PLC	1 1 set 1 set 1

Rockland County Sewer District # 1 Western Ramapo Advanced Wastewater Treatment Plant Spare Parts List - April 2024					
Spec. Section	Equipment Description	Manufacturer	On site (x)	Spare Parts	QTY
56006694-001	Odor Control	Biorem	X X X X	fan bearing and belts Impeller for fan Recirculation Pump Irrigation nozzle	1 set 1 1 1
11320	SBRs	ITT Advanced Water Treatment	X X X X X X X X X X X X X X X X X	Set of Decanter Limit Switches Decanter motor WAS Pump Fine Bubble Aeration Membranes Baseplates Retainer Rings Guide Supports Pipe Supports Header Sections Fixed Joints PVC Couplings Blowers V-Belt Set Filter Elements Case of Oil Gasket/Seal Kit Bearing Kit Control Panel Spare Parts	1 1 1 50 10 10 5 5 2 10 10 1 set 2 3 1 1 1 lot
11390	Sand Filters	Parkson Corporation	X X X X X	O-rings Screens, air lift pumps Instrument air regulator Air flow indicator Air lift pump	6 6 1 1 1
	LFEQ	Godwin	X	Sample Pump 1hp	1

APPENDIX 4
OPERATING PLAN REQUIREMENTS
AND
SUPPLEMENTAL OPERATION AND MAINTENANCE REQUIREMENTS

The Company shall maintain an Operating plan which shall focus on the overall aspects of the Company's operation of the Plant. The Operating Plan shall, in addition to the operation and maintenance requirements, include:

- A general description of how the Plant is to be operated.
- Individual equipment operation and maintenance manuals.
- An overall plant computerized operation and maintenance manual (COMM).
- A description of the Company's quality assurance (QA) and quality control (QC) procedures.
- A description of any operational procedures to be implemented in order to comply with the Performance Guarantees.
- A description of normal, startup, and shutdown operations of the Plant, including an Emergency Operations Plan to be prepared in accordance with Section 1 thereof.
- A description of the Company's staffing organization for the Plant with descriptions of the roles and responsibilities of each staff position and the timing of hiring for any unfilled positions.
- The Company's safety procedures and training program and site-specific Health and Safety Plan. The Company shall include, and coordinate with applicable District standards and the safety procedures in its site-specific Health and Safety Plan.
- A description of the chemicals to be used at the Plant, method of delivery, and procedures for safe storage and use of the chemicals.
- A description of the intended method of Residuals management. Identify the approximate amount and type of Plant By-Products that will be generated.

1.0 EMERGENCY OPERATIONS PLAN

As part of the Operating Plan, the Company shall maintain an emergency operations plan that describes emergency operating procedures and the measures to be taken to resolve emergencies at the Plant (the “Emergency Operations Plan”). The Emergency Operations Plan shall be included as Exhibit 1 to the Operating Plan. The Emergency Operations Plan shall address at a minimum the following:

- Chemical spills
- Personnel emergencies
- Fire
- Flood
- Pipe, valve, pump, or equipment failure
- Process failure
- Earthquake
- Loss of access to any of the Plant and/or Sites, both short-term (less than two days) and long-term
- Labor strikes
- Lighting or power failure
- Breach of Plant security
- Operating under a security alert mode
- Operating under an emergency mode
- Operating during a treatment upset
- Operating during a high flow condition (peak hourly flows of 50 percent greater than 4.5 mgd)

2.0 PROCESS MONITORING AND REGULATORY REPORTING PLAN

As part of the Operating Plan, the Company shall maintain a Process monitoring and regulatory reporting plan of which shall be included as Exhibit 2 to the Operating Plan (the “Monitoring and Regulatory Reporting Plan”). The plan shall be implemented to ensure that all required analyses and reports are completed fully and accurately to exacting specifications, following standard methods and procedures, in a timely manner for appropriate Governmental Bodies and in support of other performance requirements in the Service Agreement. The plan shall clearly distinguish between the monitoring required to meet Applicable Law and any additional monitoring required by the Service Agreement.

The Process Monitoring and Regulatory Reporting Plan shall describe methods for demonstrating compliance with Performance Guarantees during operations, including:

- A list of all influent and effluent parameters to be monitored and a tentative schedule of the proposed monitoring program, describing analytical methods and sampling frequencies (i.e., continuous, daily, weekly, biweekly, monthly, or other basis).
- Details of parameters to be monitored and a tentative schedule of proposed monitoring program, describing analytical methods and which additional parameters will be monitored on a continuous or other defined basis.
- Influent parameter sampling procedures and frequency approved by the District, and sufficient to support Company’s claim for relief from the Performance Guarantee. The plan shall include provisions for analyzing grab samples of effluent during unusual events to supplement or substitute for readings from continuous parameter analyzers.
- Influent sampling frequency and methods sufficient to support any Company claim for Uncontrollable Circumstances or other relief based on influent quality.
- Real-time data to be provided and consolidation of data to support the Company’s monthly and annual operations reports to the District.
- A full description of how all data collected will be arithmetically averaged for comparison with influent Parameters, water quality requirements in Applicable Law, and the Performance Guarantees, shall be provided and shall comply with District requirements and regulatory requirements, including applicable data handling requirements of DEC and EPA.

- SCADA system monitoring and control functions.
- A Plan for delivering samples to the District for the District's own testing program should the District elect to have such a program.
- A schedule for updating plans necessary for regulatory compliance.

The Company shall describe how process monitoring will measure whether process technologies are performing as intended (e.g., water quality parameters and their anticipated levels, operational set points and their anticipated levels) and provide feedback to operations staff.

The Process Monitoring and Regulatory Reporting Plan shall also include:

- A laboratory manual, which shall describe the Company's approach to attaining the highest standards of laboratory performance. The manual must outline the methods for each test to be performed. The Process Monitoring and Regulatory Reporting Plan shall identify which tests will be conducted in-house and those to be performed by contract laboratories. All laboratories performing tests must be certified by the State. In addition, the laboratory manual shall specify the type and model of all equipment to be used to perform tests to be conducted by the Company.
- Minimum experience and qualifications of individuals or contract laboratories performing testing services.
- A description of any analysis techniques that will be implemented to ensure that all regulations and standards are met. The Process Monitoring and Regulatory Reporting Plan must provide examples of any tools such as flow charts, check sheets, or any other data presentation and evaluation techniques that will be utilized.
- A description of all calibration techniques, QA/QC procedures, including those to be utilized for all equipment used for testing and measuring different parameters within the treatment process and at the in-house laboratory and contract laboratories. The description shall address the calibration practices, including the frequency and accuracy requirements. The calibration procedures shall consider intermediate spot and cross checks, in addition to the formal calibration periods.

- The Company's procedures for handling and storage all data generated during the Operation Period.

3.0 ANNUAL RENEWAL AND PERIODIC UPDATES OF OPERATING PLAN

The Company shall submit at least 60 days prior to commencement of each Contract Year for District approval, the Operating Plan for the forthcoming Contract Year. In addition, the Company shall update the Operating Plan as directed by the District from time to time in order for the document to remain current.

4.0 OPERATIONS REQUIREMENTS

4.1 Objectives

The Company shall operate and maintain the Plant in accordance with the Service Agreement and the Contract Standards. Subject to the terms of the Service Agreement, operational decision-making shall always be based on the following operating objectives in descending order of priority:

- Protection of the health, safety, and welfare of the public and operating staff;
- Compliance with the Performance Guarantees;
- Protection of the environment;
- Protection and preservation of the Plant; and
- Maximization of Plant operational efficiency and minimization of operational cost.

Except to the extent excused by the occurrence of an Uncontrollable Circumstance, wastewater shall be treated without interruption. This will be accomplished utilizing, as necessary, the Plant's reliable and redundant systems, backup power systems, and other plant and contingency plans.

4.2 Operations Generally

The Company shall operate the Plant under all conditions in accordance with the Contract Standards and as described below.

4.3 Influent Pumping Station

The Company shall operate the Plant and both outfalls (gravity and pressure). It is anticipated that the pressure outfall will be operated when the flow at the regulatory weir is below 10 mgd. All other conditions require the Company to discharge effluent through the gravity outfall. In addition, the Company shall operate the diversion portion of the influent pump station. The diversion from the Influent Pump Station to Mahwah Pump Station will be activated only upon request by the Company and approved by the District and New York State Department of Environmental Conservation.

4.4 Solids Handling/Disposal

The Company shall store and transport all dewatered sludge to the Rockland County Solid Waste Management Authority Facility. In addition, the Company shall haul screenings and grit to the Orangeburg Plant.

4.5 Operations During Power Outages

Following a primary electrical power outage from any cause, the Company shall maintain uninterrupted wastewater treatment in accordance with all Contract Standards.

5.0 ENVIRONMENTAL COMPLIANCE

Annually, the Company shall perform an environmental review of the Plant to confirm compliance with Applicable Law, Governmental Approvals and the Environmental Guarantee. The review shall also include all reports (e.g., quarterly and annual) and monitoring data, as necessary to demonstrate compliance therewith. Any non-compliance and reporting issues shall be reported to the Plant Manager and the District immediately.

The Company shall routinely conduct energy audits to ensure that equipment is running efficiently as part of its preventive maintenance program within the RCM Plan.

5.1 Regulated Substances Management

The Company shall maintain and comply with a current Regulated Substances Management Program and Emergency/Spill Response Plan meeting the requirements of the Contract.

5.2 Timing of Deliveries and Hauling Activities

Except in emergencies, the Company shall limit deliveries to the Site and truck traffic leaving the Site to normal daytime business hours, which includes Saturday.

6.0 MAINTENANCE, REPAIR AND REPLACEMENT REQUIREMENTS

The Company shall perform maintenance, repairs, and replacements of the Plant in accordance with the Service Agreement, the Contract Standards, and this Appendix.

6.1 Ongoing and Preventative Maintenance

The Company shall maintain the Plant in accordance with a reliability centered maintenance (RCM) plan (the "RCM Plan") developed by the Company specifically for the Plant. The Company's preventative maintenance plan within the RCM Plan shall reflect procedures and standards consistent with Good Industry Practice. The preventative maintenance plan shall reflect that in no event shall maintenance be less frequent and less comprehensive than that specified in manufacturers' warranties and manuals unless provided for in the RCM Plan as an alternate. It shall also address the inspection, leak testing, maintenance, and repair procedures for all water-bearing structures in accordance with Good Industry Practice.

The Company shall maintain, upgrade, repair and replace the computerized maintenance management system required by the Service Agreement. The Company shall not change the computerized maintenance management system without written approval from the District.

The Plant shall be maintained at a level adequate for the efficient, long-term reliability and preservation of the District's capital investment. The Company shall maintain the buildings and grounds as provided for in the RCM Plan.

All equipment preventative maintenance activities shall, as a minimum, meet the requirements of suppliers or alternately as defined in the RCM plan. Alternate procedures as provided by the RCM Plan shall not relieve the contractor of warranty responsibility for the equipment. As such, all equipment usage shall be logged through the SCADA system to provide the necessary input to the computerized maintenance management system. The computerized maintenance management system shall generate work orders that are specific to the item of equipment. These work orders shall outline the required preventative maintenance, describing the work to be

undertaken. The resultant preventative maintenance work shall be logged as to when the work order was issued, when completed, by whom, duration of work, and listing of consumables used in providing the required work. This information shall be continuously maintained for all equipment and presented on an annual basis to the District, as part of the annual operations report, to confirm the work is being undertaken as required so as to protect the investment in the infrastructure. The District, however, may request to review records more frequently.

The Company shall provide continuous inspection to detect any significant variance from the baseline condition of the Plant when new. Corrective action shall be taken to prevent major damage to the equipment, as well as protect warranties on new equipment.

The Company shall conduct all maintenance, repair, and replacements in a manner that does not endanger the safety of Company or District staff and visitors and residents in the vicinity of the Plant.

The Company shall provide the services of factory-trained technicians, tools, and equipment to field-calibrate, test, inspect and adjust all instruments at the Plant to their specified performance requirements in accordance with the manufacturer's specifications and instructions during commissioning and startup of the facility.

The Company shall maintain and implement a regular gate and valve exercising program. The Company shall maintain a log of its gate and valve exercising activities in its computerized maintenance management system (CMMS).

6.2 Reliability Centered Maintenance

The Company shall maintain the RCM Plan. This Plan shall be periodically updated when equipment is replaced and submitted to the District annually with a summary of new equipment in place. The Company shall comply with the RCM Plan throughout the Operation Period.

6.3 Minimum Plan Requirements

The RCM Plan shall define how the Company will achieve the District's objective of quality performance, including, but not limited to the following components of quality performance: (1) availability of consumables and spare parts; (2) ongoing maintenance and repair; (3) uninterrupted wastewater treatment; (4) appropriate and timely repair and replacement of equipment; (5) continuous good housekeeping to preserve aesthetics and protect against deterioration; and (6) cost-effective upgrades of obsolete equipment and systems.

The RCM Plan shall include an equipment inventory, schedule for shift and preventative maintenance, and related operator training. Through the use of the Company's CMMS, the Plan shall address the tracking of groups of equipment with different useful lives, and include depreciation and the appropriate repairs, replacements, and repair and replacement schedule shall be provided as part of the RCM Plan. The RCM Plan shall also describe how the Plant will be periodically taken down for maintenance, while continuously meeting the Performance Guarantees. Additionally, the RCM Plan shall describe how portions of the Plant will be operated during major annual maintenance periods.

The RCM Plan shall include all of the Company's commitments made as part of the preliminary RCM Plan, submitted in response to the RFP and set forth in Attachment A to this Appendix.

6.4 Projected Equipment Repair and Replacement

The Company shall perform its repair and replacement obligations under the Service Agreement in a manner that is consistent with the RCM Plan, the Contract Standards and its other Service Agreement obligations. The Company's obligations for all repair and replacement of equipment as needed over the Term shall not be limited in any way by the RCM Plan.

7.0 GENERAL OPERATION PERIOD REQUIREMENTS

7.1 Public Telephone Numbers

The Company shall maintain throughout the Operation Period, a telephone number for receiving calls from the county related to issues at the Plant. The Company shall provide an answering machine or answering service that shall identify the Company and the Project, as well as providing a telephone number for a Company representative that may be reached 24 hours per

day in the case of emergencies at the Sites. This phone number shall be prominently posted at the Site. The Company shall reply to all telephone calls received within one hour.

7.2 Monthly Operations Reports

The Company shall maintain, for the District's review and approval, the proposed format of the monthly operations report required to be submitted by the Company pursuant to the Service Agreement. The monthly operations report shall include, at a minimum, the following information:

1. Summary of all notices and laboratory, test and other reports filed with or received from all Governmental Bodies pursuant to the Governmental Approvals;
2. Summary of the quantities and characteristics of Influent treated and Effluent discharged during the prior month;
3. Summary of quantity and type of chemicals and other agents used in the treatment of influent;
4. Summary of all sampling and test data required by Contract Standards;
5. Quantities of electricity, natural gas, water, sewer and all other Utility services used during such month;
6. Summary of staffing levels, job positions and workforce turnover;
7. Statement of any complaints or communications received by the Company in relation to the Operation Services, and how each complaint was addressed by the Company;
8. List of equipment disposed of as surplus property;
9. Description of the maintenance, repair and replacement activities performed and Capital Modifications made during the prior month and anticipated during the current month;
10. List of machinery and equipment, which was out of service during the prior month, and a timetable for repair and replacement;

11. Inventory of spare parts and consumables in storage at the end of the prior month;
12. Description of partial or total Plant or equipment shutdowns for maintenance and repairs during the prior month and anticipated during the current month;
13. Results of any regulatory or insurance inspections conducted during the prior month;
14. Information on any Utility outages occurring during the prior month;
15. Descriptions of any failures to meet the Performance Guarantees and data required to determine performance liquidated damages under the Service Agreement, if any;
16. Results of any environmental, health or safety tests or monitoring procedures conducted by a Governmental Body during the prior month, and copies of any reports or other submittals made to or received from any such Governmental Body;
17. Notices of violations of any Governmental Approval received during the prior month;
18. List of visitors to the Plant in the prior month; and
19. Other data or information required to be furnished under the Operating Plan.
20. Monthly quantities of biosolids and grit disposal.

7.3 Public Access to Plant

The Company shall notify the District at least 24 hours in advance of any visits to the Plant scheduled by persons other than the District or the Company.

7.4 Identification Badges and Uniforms

The Company shall provide standardized identification badges and uniforms to all of its on-site employees throughout the Operation Period. The Company's employees shall wear these badges and uniforms at all times when on the Sites.

7.5 District Office Space

The Company shall designate and reserve, at a minimum, two offices in the administration area and one garage bay/office in the maintenance area located at the Plant for the District's exclusive use. The Company shall cooperate with the District if it needs additional office space at the Plant.

The Company shall also provide the District with access to the multipurpose room, conference room, and administrative areas of the building, and allow the District to use its communications facilities (i.e., copiers, facsimile machines, telephones, etc). The District shall have access to these facilities at all times. The District will coordinate its use of the multipurpose room and conference room with the Company.

8.0 REMOTE MONITORING AND CONTROL OF PLANT

The Company shall make available to the District's SCADA system all Plant operating data including alarms and status of Plant that are monitored by the Company's control system. The Company shall maintain full remote control capability by the District's SCADA system so it can be made functional upon turning the Plant over to the District.

9.0 DISTRICT REVIEW

9.1 General

The District will actively review the Company's operation, maintenance, repair and replacement of the Plant throughout the Term. The District may assign one or more persons to observe the operation and maintenance of the Plant and to provide coordination assistance to the Company to assure that the operation of the Plant is fully integrated into the operation of the collection system.

9.2 Monthly Coordination Meetings

Monthly coordination meetings between the Company and the District shall be held at the Plant or other mutually agreeable location. The Plant Manager and/or a Senior Supervisor shall attend these meetings. The purpose of these meetings is to review management, operational, performance, and planning matters for the Plant, maintenance issues, the monthly operations

reports, condition of the Plant, safety, housekeeping of the Sites, compliance with Applicable Law, Governmental Approvals and the Performance Guarantees, staffing issues, invoicing issues, public relations, and other relevant issues. The Company shall distribute copies of documentation of these meetings to all attendees.

9.3 Governmental Body Submittals

The Company shall submit draft copies of all Governmental Approvals required for the Operation Services to the District for review and comment at least 14 days prior to submittal to any Governmental Body. The Company shall address the District's comments prior to submitting the documents to the Governmental Body and shall strictly comply with District comments identifying areas where a statement made in a submittal would be detrimental to the District regarding its position with the Company, the Governmental Body to which the Permit is being submitted, or otherwise.

10.0 SECURITY PLAN

The Company shall maintain a security plan in accordance with the Service Agreement (the "Security Plan"). This Plan shall be periodically updated by the Parties when security equipment or systems are added or modified and submitted to the District annually with a summary of the new or modified equipment or systems. The Company shall comply with the Security Plan throughout the operation Period. The District intends to keep confidential all information and materials relating to security at the Plant, including the Security Plan, irrespective of whether the Company has requested the District to keep any such information and materials confidential.

The Security Plan shall include, at a minimum, the following information and meet all federal guidelines:

- A general description of the security measures and procedures for prevention, detection, and response to terrorism, vandalism, sabotage, natural disasters, theft, accident, assault on employees, and cross-connection contamination.
- A risk analysis of critical areas on the Site and measures to secure them. Critical areas include, but are not limited to, chemical storage and feed Plant, control systems, electrical systems (including transformers); laboratory, pump stations, and the outfall.

- A description of the zoning or subzoning of the Plant into multiple levels of security.
- A description of the intrusion detection and surveillance systems.
- A description of all security alarms and how and where they will be monitored to ensure a rapid and effective response.
- A detailed description of features and procedures that will secure and protect chemical storage facilities.
- A description of the procedures and surveillance activities to be implemented to ensure protection of the portion of the natural gas transmission line located on the Site.
- A description of the methods to detect and respond to chemical or biological contamination of the influent.
- A vulnerability assessment of the Plant which shall include, but not be limited to, a review of pipes and constructed conveyances, physical barriers, water collection, pretreatment, treatment, electronic, computer or other automated systems, the use, storage, or handling of various chemicals and the operation and maintenance of such system, as consistent with all Applicable Law.
- An emergency response plan for the Plant which shall also include actions, procedures, identification of equipment, which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals, as consistent with Applicable Law.

APPENDIX 5

ODOR CONTROL PROTOCOL

1.0 GENERAL

Subject to the provisions of the Service Agreement, the Company shall control odors from the Plant to comply with all limits and requirements of Applicable Law and the Odor Guarantee. In addition, the Company shall develop and submit the following plans to the District for approval at least 90 days prior to the initial receipt of wastewater:

- Odor control plan (the "Odor Control Plan")
- Odor monitoring plan (the "Odor Monitoring Plan")
- Odor response plan (the "Odor Response Plan")

In addition, the Company shall prepare an odor control practices report for submission with its monthly operating report in accordance with [Section 6.3(C)] of the Service Agreement.

2.0 ODOR GUARANTEES

The Company shall operate the Plant such that the following limits and requirements are achieved:

- An odor concentration of 7 D/T (dilution to threshold ratio) or less at the Site boundary,
- An odor concentration of 14 D/T (dilution to threshold ratio) or less at the inlet to the administration and maintenance area HVAC system.
- An odor concentration of 14 D/T (dilution to threshold ratio) or less in the visitor parking area.
- A minimum of 99.5 percent of hydrogen sulfide (H₂S) removal or 20 parts per billion by volume (ppbv) at the outlet of the odor control systems, whichever is more stringent.
- Maximum H₂S levels of 10 ppb measured at the Site boundary.

3.0 ODOR CONTROL PLAN

The Company shall develop an Odor Control Plan that addresses, at a minimum, the following:

Good Housekeeping.

The Company shall implement a regimented housekeeping schedule and work plan for the Plant to maintain clean facilities.

Proper Sludge Management

The Company shall provide proper residuals management within the Plant including, but not limited to:

- Control of solids inventory throughout the Plant;

- Operation of the Plant sludge holding tanks as necessary, to maintain minimal sludge quantities within the Plant;
- Frequent processing of Side Streams and Plant sludge to avoid excessive sludge in storage;
- Optimization of chemical dosages to reduce solids inventory within the Plant; and
- Timely repair and replacement of equipment, in accordance with the Service Agreement, that would impact the Company's ability to rapidly remove solids from the liquid unit processes.

Efficient Process Control

The Company shall maintain a proactive approach to odor control through diligent process control of the unit operations of the Plant. Typical of these are, but not limited to:

- Operation of the Plant at appropriate solids retention times, for summer and winter requirements, to minimize waste activated solids and related sludge production;
- Ongoing evaluation of the Plant odor control systems to insure adequate control of the controllable parameters;
- Optimization of sludge processing to reduce the on-site sludge inventory;

The Odor Control Plan shall also address the following:

- Development and implementation of operating checklist or log forms to record the status of the odor control system equipment.
- Standard operating procedures to optimize the performance of all odor control systems, including chemical addition measures. The procedures shall identify what parameters will be monitored and the procedures to be followed to maintain the target operating range for each odor control system. Target parameters include pH and ORP of the chemical scrubber; the remaining capacity of activated carbon unit; the pressure drop in each odor control system; and negative pressure from each enclosed process unit.
- Maintenance schedule and procedures for all odor control systems.
- Procedures to address odor control when an odor control system is out of service for preventative or corrective maintenance.
- Procedures to confirm that air is being properly collected from individual process units through pressure monitoring and smoke testing; and
- Procedures for the Company's assessment of the nature and sources of any odors perceived in the neighborhood.

The Company shall develop and submit to the District an Odor Monitoring Plan to monitor H₂S, odor strength (measured D/T) and meteorological conditions at the Plant as described below. Atmospheric H₂S will be used as the primary indicator compound for odor detection. For each monitoring location, three H₂S measurements will be obtained and the average recorded. The Company shall provide the proper instrument to measure H₂S down to the parts per billion (ppb) level. The Company shall also monitor odor strength (measured as D/T) whenever H₂S measurements or odor complaints indicate that an odor problem exists.

The Odor Monitoring Plan shall address how odor strength (D/T) measurements shall be used to supplement H₂S readings and also address the action to be taken by the Company when the results of any odor monitoring indicate that H₂S or D/T levels at any location or Site boundary exceed the Odor Guarantee limits for more than a 24 hour period.

The Company shall monitor a minimum of eight (8) locations for H₂S at a frequency of once per weekday, unless hampered by extreme weather conditions. The Odor Monitoring Plan shall include the following locations: four (4) Site boundary locations; the inlets to the HVAC systems if odors are detected within building areas; the emission from each operating odor control system; and the visitor parking area. In addition to the above measurement, the Odor Monitoring Plan shall address the monitoring of the chemical scrubber system performance. Inlet and outlet H₂S concentrations shall be obtained once per week to assess the scrubber's performance and daily if odors are identified on site. In addition, monitoring shall be conducted as soon as possible but within one hour of receiving an odor control complaint if the complaint is received during a normal weekday shift and within two hours otherwise.

Whenever odor data is being monitored the following information will be collected using meteorological equipment provided by the Company: wind speed and direction, air temperature and relative humidity.

Log forms to record the date, time of day, location, meteorological information and results of odor measurements and any other observations shall be developed and included in the Odor Monitoring Plan.

4.0 ODOR RESPONSE PLAN

The Company shall establish an Odor Response Plan to investigate all odor complaints related to the Plant. The site of the detected odor shall be visited as soon as possible but no later than one hour after receipt of the complaint, if the complaint is received during a normal weekday shift and within three hours otherwise. The Company shall obtain H₂S measurements using a portable meter and make other qualitative odor observations of odor intensity and character to establish the presence of H₂S and other odorous compounds at the site of the detected odor. A complaint log form shall be developed to record all information related to the odor complaint. The Company shall concurrently, with the dispatching of a Company representative to the location of the detected odor, conduct an immediate review of Plant operations, to include, at a minimum, the following:

- Odor control system performance
- Presence of open hatches and doors
- Active tank cleaning operations
- RV waste deliveries
- Sludge removal (open garage bay)
- Scum or grease accumulation in open tanks
- Low dissolved oxygen levels in the SBRs

In addition to checking the above elements, the Company shall conduct an odor survey at the Site boundary to check H₂S levels around the perimeter of the Site boundary.

If the source of the detected odor is found to be related to the Plant, the Company shall determine the odor strength, odor source and take the appropriate action to eliminate the source of the odor. In the event of a major equipment failure, the Company shall implement a contingency plan to minimize odor emissions until the equipment problem can be rectified.

The Company shall maintain a record of every odor complaint and shall document the complaints using an odor complaint log form. The odor complaint log form shall include the nature of the complaint, complainant contact information, location of detected odor, date and time of complaint, wind speed and direction, temperature, relative humidity, date and time of response, employee responding to the complaint, the status of odor control systems, status of Plant operations, and action taken by the Company to rectify the odor complaint including a Senior Supervisor review.

5.0 ODOR CORRECTIVE ACTION PLAN

If the results of the odor monitoring and other investigations establish the continued presence of odorous compounds generated from the Plant, then the Company shall undertake the following additional investigations to determine the nature and source of odors;

- A comprehensive review of odor sources at the Plant. The review shall include all unit processes and emission points such as points of turbulence in channels, discharges from pipes and over weirs.
- An evaluation of the performance of all odor control units.
- Air sampling for H₂S levels, odor strength (D/T) and any other criteria established by Applicable Law at contract signing.
- Wastewater/sludge sampling of the odor sources including wastewater sulfides, sulfates, dissolved oxygen, wastewater pH, and ORP.
- Smoke testing to observe air flow patterns in ventilated areas.

Based on the results of the investigation, the Company shall identify and implement the measures necessary to prevent the recurrence of odor violations as required under Section 6.3(D) of the Service Agreement.

6.0 PLANT OPERATIONS

Following acceptance of the odor control system; the Company shall control odors from the Plant so as to eliminate objectionable odors. To achieve this goal, the Company will implement a comprehensive program in which it will:

- Properly maintain and operate new systems;
- Comply with current, applicable odor control practices, including participation in a local odor panel;
- Respond and properly investigate all odor complaints in accordance with the procedures described in this Appendix;
- Perform odor survey(s) when odor complaints are received; and
- Prepare an odor scorecard for monthly performance assessment (the "Odor Scorecard").

A description of the Odor Scorecard follows. The use of the Odor Scorecard shall not limit the District's ability to enforce the Odor Guarantee's at all times.

There are three elements to the Odor Scorecard: Two thousand dollars (\$2,000) of each month's billing will be used as collateral for the program. A perfect odor score for odor control for the month will net the full \$2,000. The worst-case score will net \$0 for the month. The three elements and percentage to the score include:

A. Odor Control System Operational Time.....	25%
B. Verified Odor Complaints.....	25%
C. Odor panel, community odor survey.....	50%

A. Odor Control Systems on Line (25%)

The scrubbers will be kept online and will operate 24 hours a day, 7 days a week, excluding routine maintenance of systems or major equipment failure. The Company will maintain daily and weekly monitoring forms, including operating and performance data on the scrubbers.

Credit for Operational time	Credit
95%-100% on line time	100%
90-95% on line time	90%
86-90% on line time	75%
82-86%	50%
below 82%	0%

The above credit is applicable if all monitoring forms are current and up to date. If monitoring forms are not acceptable, the above grades are reduced by 50%

B. Verified Odor Complaints (25%)

The Plant can generate no more than one (1) verified odor complaint per month to obtain 100% credit. If 2 verified odor complaints are documented, the Company will receive 75% credit, and if 3 odor complaints are verified, the Company will receive 50% for this section. More than 3 the company shall receive 0%. A documented odor complaint is one that is verified by the Company with a District representative. If any County agency has received a complaint; or if the complaint is received by any other means, it shall only be deemed to have been received by the Company upon actual notification.

District officials shall be directed to refer all odor complaints to the Company. The Company shall have 4 hours to correct the problem from the time it received the notification. The Company and a District representative may survey the community after handling the problem to verify that the odor is corrected. After correction, the Company shall make a follow-up call to the complainant to verify the odor(s) has/have dissipated. A complaint monitoring form shall be used for each notification.

The form shall include the following information:

- Name/address of complainant
- Time and date of call
- Time of odor incident and location of odor
- Description of complaint and odor
- Wind directions, wind speed, relative humidity and temperature
- Direction and distance of complaint from Plant
- Results of investigation

Company shall maintain an instrument at the Plant to monitor wind direction and wind speed.

C. Local Odor Panel

A local odor panel shall be maintained, consisting of representatives from the following:

District	1 + 1 alternate
Company	1 + 1 alternate
Total	2

The panel will make community field observations every month during normal operations at the Plant. A member of the panel may call for a special meeting or an inspection of the facility if he/she believes an odor exists. The panel shall determine the date of inspections and shall preserve confidentiality of same until the inspection. A route will be followed with pre-selected sampling points. Each route will be determined based on wind directions for that day. The panel will start at the furthest point from the Plant, moving towards the Plant. Each member will make Ten (10) odor observations in one-minute period, at each test location. The survey shall consist of the following odor intensity observations;

0 – no odor	No odor perceived or so weak so that it cannot be readily described
1 - Slight	Identifiable odor, slight
2 – Moderate	Identifiable odor, moderate
3 – Strong	Identifiable, strong, offensive
4 – Extreme	Severe odor, offensive, forced to leave area

The panelists will then rank Plant on a scale of 0 – 10. Moderate to Extreme odors must be attributed to the Plant to count against the odor credit. All 0 readings shall constitute a score of 10. All 1 readings shall constitute a score of 7. All 2 readings shall constitute a score of 5. All 3 readings a score of 3 and 4 readings shall constitute a score of 0. The average reading from all 3 observers will be used as the score. All decisions of the Odor Control Panel shall be made by a majority of its members. No business of the panel shall be transacted, except to adjourn and reschedule the meeting, unless a quorum of three members is present.

D. Scoring

The monthly billing retained by the District is based on the results of this odor scorecard.

Total monthly amount = \$3,200

Total retained by District = \$3,200 x Odor Score

$$\text{Odor Score} = \frac{A + B + C}{100}$$

A = 25% score for On Line Odor System
B = 25% score for Odor Complaints
C = 50 % score for local odor panel

Example:

Odor System on line = 89%
Zero verified complaints = 1
Odor Panel score = 8.5

A = 25% x 0.75	=	18.75%
B = 50% x 1.0	=	25.00%
C = 50% x 8.5/10	=	42.5%
Total	=	86.25%

Total retained by District = \$3,200 x (1-0.8625) = \$440

WEEKLY ODOR MONITORING DATA SHEET

WESTERN RAMAPO ADVANCED WASTEWATER TREATMENT PLANT

Instrument Used: Jerome 631-X Hydrogen Sulfide Meter

Date	Wind Speed
Operator	Air Temperature
Weather	Relative Humidity
Precipitation	Barometric Pressure
Wind Direction	

		Measurements (PPM)			
Location	Time	1	2	3	Average
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
Biofilter Inlet					
Biofilter Outlet					

Comments:

Key:

Weather – Mostly Sunny; Partly Sunny; Mostly Cloudy; Overcast; Hazy

Precipitation – None; Fog; Rain; Sleet; Snow

Wind Direction (From) – N; NNE; NE; ENE; E; ESE; SE; SSE; S; SSW; SW; WSW; W; WNW; NW; NNW

Wind Speed – Calm (<1); Light Breeze (1-5mph); Moderate Wind (5-15mph); Strong Wind (>15mph)

APPENDIX 6

REQUIRED INSURANCE

Section 1.1. Insurance. COMPANY shall, at its own expense, procure and maintain, with insurers reasonably acceptable to the District, the types and amounts of insurance conforming to the requirements set forth herein. Prior to the Contract Date, COMPANY shall ensure that the required insurance is in force and evidence of insurance as provided for in Section 1.1 (a) below, and reasonably acceptable to the District has been provided to and approved by the District. Insurers providing coverage under this section shall meet the following criteria: (i) the insurance company is licensed in the State of New York, and (ii) maintains a Best's financial rating of A or Better.

(a) Evidence of insurance.

As evidence of compliance with the insurance required herein, COMPANY shall furnish the District with:

- (1) A fully completed reasonably satisfactory Certificate of Insurance (ACORD Form 25 or equivalent) evidencing all coverage required herein and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy signed by an authorized representative of the insurer(s) verifying all required coverages; with respect to Workers Compensation Insurance, Insured Form C-105.2 Or U- 26.3 or its state authorized equivalent and for the required Disability Benefits, Insured Form DB-120.1 or DB-155.
- (2) Thirty (30) days written notice of cancellation, termination or non-renewal to the District for all coverage including ten (10) days written notice of cancellation due to non-payment of premium.
- (3) Upon request from the District, Veolia shall provide the District with copies of all policies for coverage under this section.

Until such insurance is no longer required by this Service Contract, COMPANY shall provide the District with renewal or replacement evidence of insurance five (5) days prior to the expiration or termination of such insurance. In addition, if COMPANY does not provide District with evidence of the insurance coverage required by this Service Contract, after a seven day written notice and cure period, which date shall run from the date upon which the notice of intent to renew the Required Insurance was required to be provided to the District under this paragraph, the District may purchase insurance (at Company's sole expense) to protect the District's interests. This insurance may, but need not, protect the Company's interest. If the District purchases insurance under this section, Company will be responsible for the cost of that insurance, including interest, until the effective date of the cancellation or expiration of the insurance. The cost of insurance under this section may be more than the cost of insurance the Company may be able to obtain on its own.

(b) Workers' Compensation & Employer's Liability Insurance.

Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in New York by the National Council of Compensation Insurance. In addition to coverage under the state statute, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$2,000,000	Each Accident
	\$2,000,000	Disease-Policy Limit
	\$2,000,000	Disease-Each Employee

The policy must be endorsed to waive the insurer's right to subrogation against District and its officials, officers and employees in the manner which would result from the attachment of National Council on Compensation Insurance's (NCCI) Waiver of Our Right to Recover From Others' Endorsement (Advisory Form WC 00 03 13) with District and its officials, officers and employees scheduled thereon.

(c) Commercial General Liability Insurance.

Such insurance shall be no more restrictive than that provided by the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of New York. Any restrictive endorsements not contained below must be submitted to and approved by the District. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Sexual molestation
- Pollution
- Professional liability
- Asbestos
- Lead
- Extremely low frequency electromagnetic fields
- Methyl-Tert-Butyl Ether
- Radioactive matter
- Benzene
- Nuclear energy
- Silica or silica-related dust

The County, the District and the County and District's officials, officers and employees shall be included as an "Additional Insured" on a form no more restrictive than ISO Form (CG 20

10), Additional Insured - Owners, Lessees, or Contractors). The limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$2,000,000	Each Occurrence

(d) Business Automobile Liability Insurance.

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 0 1) including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos of the COMPANY. Any restrictive endorsements must be submitted to and approved by the District. Such insurance shall not be subject to any aggregate limit and the limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$2,000,000 Each Accident - Bodily Injury and Property Damage Combined

The County, the District and the County and District's officials, officers, and employees shall be included as an "Additional Insureds" on the policy.

(e) Excess Liability Insurance

Such insurance shall be above the required Commercial General Liability, Business Automobile, and Employer's Liability Insurance to result in an overall liability coverage in the amount of \$10,000,000:

The County, the District and the County and District's officials, officers, and employees shall be included as an "Additional Insureds" on the commercial general liability and automobile liability policies with respect to the COMPANY's duties under the scope of this Service Contract.

(f) Contractor's Pollution Liability.

Such insurance shall cover the COMPANY for liability resulting from pollution or other environmental impairment arising out of, or in connection with work performed on the premises by the COMPANY or subcontracted by the COMPANY including coverage for clean-up of pollution conditions and third party bodily injury and property damage claims arising from pollution conditions relating to Company's Work, as provided for under this Service Contract. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

The limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Claim	\$10,000,000
Annual Aggregate	\$10,000,000

The County, the District and the County and District's officials, officers, and employees shall be included as an "Additional Insureds" on the policy with respect to the COMPANY's duties under the scope of this Service Contract.

(g) Professional Liability

Such insurance shall be on a form reasonably acceptable to the District and shall cover COMPANY for liability arising out of the rendering or failure to render professional services in the performance of the services required in this Service Contract including any hold harmless and/or indemnification agreement. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. Coverage may be provided as part of the General Liability Insurance coverage provided by COMPANY.

The limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$10,000,000 Each Claim

\$10,000,000 Annual Aggregate

(h) Builder's Risk Insurance for Capital Modifications

In the event that Capital Modifications are performed by the COMPANY, the COMPANY will procure such insurance covering loss, damage, or destruction to the Capital Modifications (including boiler and machinery coverage) caused by physical damage in an amount equal to the replacement cost of the Capital Modifications with no co-insurance provisions written on a completed value form, including increased cost of construction, subject to sub-limits reasonably approved by the District.

The County, the District and the County and District's officials, officers, and employees shall be included as an "Additional Insureds" on the policy.

(i) General Conditions.

The insurance provided by the COMPANY shall apply on a primary basis. Any similar insurance maintained by the District as an additional insured shall be excess of and shall not contribute with the insurance provided by the COMPANY.

Except as otherwise specifically authorized in this Service Contract, the insurance maintained by the COMPANY shall apply on a first dollar basis without application of a deductible or self-insured retention unless said deductible or retention is fully collateralized. Under limited circumstances, the District may permit the application of a deductible or permit the COMPANY to self-insure, in whole or in part, one or more of the insurance coverage required by this Service Contract. The COMPANY shall pay on behalf of the District or District's officials, officers and employees any deductible or self-insured retention applicable to a claim against the District or the District's officials, officers and employees.

COMPANY shall provide the District with at least thirty (30) days' notice of cancellation, termination, and at least ten (10) days' notice for cancellation for non-payment of premium, received for any policy required by this Service Contract for any Required Insurance.

Compliance with these insurance requirements shall not limit the liability of the COMPANY. Any remedy provided to the District by the insurance provided by the COMPANY shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the COMPANY) available to the District under this Service Contract or otherwise

Neither approval nor failure to disapprove insurance furnished by the COMPANY shall relieve the COMPANY from responsibility to provide insurance as required by this Service Contract.

Section 1.2. Additional Waivers. The District and COMPANY waive all rights against (1) each other and any of their subcontractors, subcontractors' agents, and employees each of the other, and (2) the separate contractors if any, and any of their subcontractors, subcontractors' agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Service Contract or other property insurance applicable to the Work. The District or COMPANY, as appropriate, shall require separate contractors, if any, and the subcontractors, subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. Any required Builder's Risk policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Section 1.3 Additional Insurance During Periods of Capital Modification. Notwithstanding any other provision contained in this Appendix or the Service Contract, the County at its reasonable discretion, may require additional forms and proof of insurance for any periods of time during which the Company is undertaking a Capital Modification in accordance with the Service Contract. The additional insurance requirements will be contained in the Notice to Proceed.

APPENDIX 7

DESIGN AND CONSTRUCTION OF CAPITAL MODIFICATIONS

SECTION 1.1. DESIGN/BUILD WORK GENERALLY

(A) Commencement of Design/Build Work. In accordance with a written notice directing the Company to begin design, construction and testing of a specific Capital Modification (“Notice to Proceed”) the District may authorize the Company to undertake a Capital Modification pursuant to Article VIII of the Service Agreement. The Notice shall contain, among other things, a prescribed period of time, described in days, for completion of the design, construction, testing and acceptance of the Capital Modification (the “Time for Completion”). The Time for Completion shall commence upon the date the Notice to Proceed is issued and the Company shall promptly proceed to undertake, perform and complete the Design/Build Work in accordance with the Contract Standards. The Company’s failure to achieve acceptance of the Capital Modification on or before the expiration of the Time for Completion shall result in the assessment of delay liquidated damages in accordance with the schedule contained in Section 2.6, below.

(B) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the particular Capital Modification shall pass to the District upon delivery to the Site or upon payment therefore by the District, whichever is earlier. The Company shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until acceptance of the Capital Modification has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(C) Elements of the Design/Build Work. In performing the Design/Build Work necessary for a Capital Modification generally, the Company shall, in accordance with the Contract Standards, including any design requirements, and without limitation, as and to the extent applicable hereunder: (1) prepare and excavate the Site of the Capital Modification; (2) demolish and remove any existing improvements; (3) obtain Governmental Approvals; (4) remove from the Site and dispose of any demolition or construction debris resulting from the Design/Build Work and any unused soil excavated therefrom; (5) design and construct the Capital Modification; (6) conduct start-up operations; and (7) conduct any required acceptance tests, all so that the Capital Modification is suitable and adequate for its intended purposes. Laydown and staging areas for construction materials shall be located on the Site, or at other locations approved by the District and any other appropriate Governmental Body and arranged and paid for by the Company.

(D) Quality Assurance and Quality Control. The Company shall have full responsibility for quality assurance and quality control for the Design/Build Work, including the Quality Management Plan.

(E) Environmental Guarantees. All Design/Build Work shall be performed in accordance with the Environmental Guarantees (except as excused by Unknown Subsurface Conditions, Hazardous Waste or Toxic Substances).

(F) Health and Safety. All Design/Build Work shall be performed in accordance with all health and safety standards required by Applicable Law, Insurance Requirements and the other Contract Standards.

(G) Subcontractors. The Company’s use of Subcontracts and Subcontractors in connection with the Design/Build Work is subject to review and approval by the District.

(H) Damage or Destruction to the Design/Build Work. The procedures set forth in Section 12.4 of the Service Agreement shall be applicable in the event of any damage to or the destruction of the Design/Build Work.

(I) Encumbrances. The Company shall promptly discharge or bond any Encumbrance arising out of the design and construction of the Capital Modification, whether the Encumbrance applies to the Site or Design/Build Work arising out of the Company's construction of the Capital Modification.

(J) Warranties. The Company warrants to the District that the structures, improvements, fixtures, machinery, equipment and materials incorporated in the Plant, and in all Capital Modifications that are undertaken or made by the Company or its Subcontractor, will be new, of recent manufacture, of good quality, free from faults and defects, suitable for its intended purpose and in conformity with any design requirements and the Contract Standards. The Company shall, for the protection of the District, obtain from all Subcontractors, vendors, suppliers and other persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials such warranties and guarantees as are normally provided with respect thereto, each of which shall be assigned to the District to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Company of any obligation hereunder, and no failure of any warranted structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee or non-performance of the Contract Services unless such failure is itself attributable to an Uncontrollable Circumstance or District Fault. There are no warranties which extend beyond those expressed in this Service Agreement.

(K) Payment of Costs. The Company shall pay directly all costs and expenses of the Design/Build Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments; payments due under the Service Agreement, subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar taxes on building supplies, materials and equipment (unless tax-exempt due to District's tax-exempt status); general supervision by the Company of all Design/Build Work; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve acceptance.

(L) EFC Loan Condition Compliance. The Company shall take all action necessary to comply with conditions to disbursements of any loan received by the County from EFC. Such conditions include access to construction records, access to the Site, and access to project review meetings if so desired. In addition, at the end of construction, the Company shall certify to the EFC that the construction of the Capital Modification was conducted in accordance with the approved final design. Such certifications shall be executed by a New York State professional engineer representing the Company. In addition, the Company shall comply with the MBE/WBE requirements set forth in Appendix 12 of the Service Agreement.

(M) Site Conditions. The Company shall make any required soil test borings and conduct analyses of subsurface conditions, inspections and applicable site history reviews of the area for the Capital Modification, in each case as necessary under Good Engineering and Construction Practice to prepare for excavation and construction hereunder in accordance with Applicable Law and to obtain all required Governmental Approvals.

(N) Information to Support Site Easements. In the event the District is required to grant Utility easements on the Site in connection with any Capital Modification, the Company shall provide complete descriptions of all Utility connections, surface features within 10 feet of both sides of the easement and routes on the Site necessary for such purposes.

SECTION 1.2. COMPANY DESIGN.

(A) Sole Responsibility and Liability. The Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of any Capital Modification to the Plant hereunder. The Company shall indemnify, defend and hold harmless the District Indemnitees in accordance with, and subject to the limitations, of Section 12.3 of the Service Agreement, from any Loss-and-Expense arising out of the design, construction or performance of the Capital Modification.

(B) Conformity of Company Design Documents with the Design Requirements. The Company shall prepare all plans, technical specifications, drawings and other design documents necessary or appropriate to carry out and complete the Design/Build Work for the Capital Modification. All Company working and final design documents shall comply strictly with any design requirements prescribed by the District or the District Engineer for the particular Capital Modification and shall ensure that the Capital Modification is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the design requirements. The District shall have the right to review such design documents but shall have no right of approval with respect thereto except in order to confirm the compliance and consistency of the design documents with any design requirements. Neither compliance by the Company with the any design requirements, nor review by the District of the Company's design documents, shall in any way relieve the Company of full responsibility for the design, construction, operation and performance of the Capital Modification in accordance with the Contract Standards. Architects and engineers engaged by the Company for the design services shall be experienced and qualified to perform such services and shall be licensed in the State.

(C) District Interest in the Design Requirements. The Company acknowledges the District's material interest in each provision of the design requirements for the Capital Modification and, notwithstanding any acceptance test procedures, acceptance standards and Performance Guarantees of the Company and the associated non-performance remedies of the District, agrees that no change to any design requirements shall be made except upon the terms and conditions set forth in this Section and pursuant to a Change Order. The District reserves the right to review and comment upon the final design(s) of any Capital Modification insofar as it relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Plant is compatible with their surroundings.

(D) Company Requested Changes. The Company shall have the right to request changes to any design requirement, which shall be handled in the same manner as provided in Article VIII of the Service Agreement with respect to Capital Modifications. The parties shall agree on a form for describing any change to or clarification of the design requirements so approved by the District. The completed form pertaining to each such change shall be appended to the Contract Administration Memorandum containing the District's Change Order authorizing the change.

(E) Procedure for District Review of Design Submittals. The procedures for District review of design submittals shall be issued by the District prior to implementation of a Capital Modification under Article VIII of the Service Agreement.

(F) Documents at the Site. The Company shall maintain at the Site in a safe place one record copy of all drawings, specifications, addenda, Change Orders, graphic or written instructions, interpretations and clarifications, and all other documents related to the Design/Build Work for all Capital Modifications, whether or not such Capital Modification was performed by the Company, in good order and marked currently to record all changes made during construction, together with construction drawings approved by the applicable regulatory body, general arrangements, manufacturing and shop drawings, product data and samples, and copies of all building, electrical, plumbing and public safety codes applicable to the Design/Build Work. These documents shall be available to the District for reference, copying and use, and a complete set thereof shall be delivered to the District upon completion of any Capital Modification.

SECTION 1.3. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance with Law and Equipment Operating Requirements. In designing, constructing, starting up and testing any Capital Modification, the Company shall comply with Applicable Law, shall construct and operate all equipment and systems comprising the Capital Modification and the Plant in accordance with the Contract Standards and applicable equipment manufacturer's specifications and recommendations, and shall observe the same safety standards as are set forth in the Contract Documents with respect to the operation of the Plant.

(B) Compliance with Conditions in Governmental Approvals. The Company shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with implementation of any Capital Modification.

(C) Governmental Approvals Necessary for Design/Build Work Associated with a Capital Modification. The Company shall make all necessary filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the implementation of the Capital Modification, including the preparation of any Site-related plans. The District shall cooperate with the Company in connection with the foregoing undertaking, and shall provide the Company with such relevant data or documents as are within its control and which are reasonably required for such purpose.

SECTION 1.4. CONSTRUCTION PRACTICE. The Company shall perform the Design/Build Work for any Capital Modification in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design/Build Work as required by the Service Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Company to provide the following construction requirements: temporary power and light; temporary offices and construction trailers; required design certifications; required approvals; weather protection; Site clean-up and housekeeping; construction trade management; temporary parking; vehicle traffic; safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; Site security; temporary Utilities; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

SECTION 1.5. ENGAGEMENT OF DISTRICT ENGINEER.

(A) Duties. The Company shall fully cooperate with any District Engineer designated by the District to assist it in connection with the administration of this Service Agreement and the performance of its duties for the District. In the performance of such services, the Company agrees that the District Engineer may, without limiting other possible services to the District: review and monitor construction progress, payments and procedures; determine the completion of specified portions of any Capital Modification; review proposed changes to any design requirements; review any plans, drawings and specifications for compliance with any design requirements; monitor any acceptance tests undertaken by the Company in conjunction with the requirements for a Capital Modification and review the Company's certified acceptance test report to determine whether any applicable acceptance test procedures have been followed and the acceptance standards have been satisfied; review the validity of the Company's written notice that an Uncontrollable Circumstance has occurred; review the Company's submissions with respect to Capital Modifications pursuant to Article VIII of the Service Agreement; and provide certificates and perform such other duties as may be specifically conferred on the District Engineer hereunder. It is understood that the services intended to be provided by the District Engineer shall be of an observational and review nature only, and that the District Engineer shall not have authority to interfere with, halt or delay in any way the construction of any Capital Modification or to require or approve changes to any design requirements or the Company's plans and specifications made in accordance therewith.

(B) Fees. Any fees of the District Engineer shall initially be paid by the District, but shall be reimbursed by the Company to the District (together with allocable costs of District personnel) to the extent any such fees and costs are attributable to the failure of the Company to cause acceptance of the Capital Modification to occur on or before the Time for Completion. The Company also shall reimburse the District for the reasonable fees and expenses of the District Engineer and costs of District personnel for services in connection with repetition of any acceptance tests unless such additional or repeated acceptance tests are required as a result of District Fault or Uncontrollable Circumstances. Any other fees of the District Engineer not associated with a Capital Modification shall be paid by the District without reimbursement by the Company except as otherwise specifically provided by the Service Agreement.

SECTION 1.6. PROGRESS SCHEDULE AND REPORTS. During the period of any Capital Modification, the Company shall submit to the District a monthly progress report by the tenth day of each month. The monthly progress report shall be in a form prescribed by the District. The Company agrees that the Company's submission of the monthly progress schedule (or any revised progress schedule) is for the District's information only, and the District's acceptance of the monthly progress schedule (or any revised progress schedule) shall not bind the District or shall not imply District approval or consent to any of the matters set forth therein.

SECTION 1.7. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observation and Design Review Program. During the progress of the Design/Build Work for any Capital Modification through acceptance of the improvement, the Company shall at all times during normal working hours afford the District and the District Engineer every reasonable opportunity for observing all Design/Build Work. During any such observation, all representatives of the District and the District Engineer shall comply with all reasonable safety and other rules and regulations applicable to presence in or upon the Site or the Plant, including those adopted by the Company, and shall in no material way interfere with the Company's performance of any Design/Build Work.

(B) Company Tests. The Company shall conduct all tests of the Design/Build Work for any Capital Modification (including shop tests) or inspections required by the Contract Standards. The Company shall give the District and the District Engineer reasonable advance notice (at least 14 days) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal to attend or be present of the District or the District Engineer at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design/Build Work. If required by the Contract Standards, the Company shall engage a registered engineer or architect, at its sole cost and expense, to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the District, which consent shall not be unreasonably withheld. In addition to the foregoing, acceptance testing of the performance of the completed Capital Modification shall be conducted in accordance with any acceptance testing protocol or Requirements for the Capital Modification issued by the District. The Company shall pay all reasonable costs and expenses incurred by the District, the District Engineer and the District staff, including transportation, meals and lodging, incurred in connection with any such shop tests or inspections that occur outside of the County. The Company shall arrange for any such travel, and such travel shall be limited to two District representatives.

(C) District Tests, Observations and Inspections. The District, its employees, agents, representatives and contractors (which may be selected in the District's sole discretion), representatives of the EFC and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the District deems necessary or desirable to ascertain whether the Design/Build Work for any Capital Modification complies with this Service Agreement. The costs of such test, observation or inspection shall be borne by the District unless such test, observation or inspection reveals a material failure of the Design/Build Work to comply with this Service Agreement or Applicable Law, in which event the Company shall bear all reasonable costs and expenses of such observation, inspection or test. In the event that any requested test, observation or inspection causes a material delay in the construction schedule, the Time for Completion shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Company shall secure and deliver to the District promptly, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to any Capital Modification as and when required by the Contract Standards. The Company shall provide to the District, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Company under or in connection with any Governmental Approval, Subcontract or Security Instrument pertaining to the Time for Completion.

(E) Notice of Covering Design/Build Work. The Company shall give the District reasonable notice (at least 14 days) in the monthly progress report of its upcoming schedule with respect to the covering and completion of any Design/Build Work associated with a Capital Modification, and shall update such notice, if necessary, within a reasonable time period before such covering and completion. The District shall give the Company reasonable notice of any

intended inspection or testing of such Design/Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the District a reasonable opportunity to conduct a full inspection of such Design/Build Work. At the District's written request, the Company shall take apart or uncover for inspection or testing any previously-covered or completed Design/Build Work; provided, however, that the District's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the District that the disputed Design/Build Work may not conform with the requirements of the Service Agreement. The cost of uncovering, taking apart, or replacing such Design/Build Work along with the costs related to any delay in performing Design/Build Work caused by such actions, shall be borne as follows:

1. By the Company, if such Design/Build Work has been covered prior to any observation or test required by the Contract Standards or if such Design/Build Work has been covered prior to any observation or test for which the District has not been provided reasonable advance notice hereunder or did not observe the test; and

2. In all other cases, as follows:

- (a) By the Company, if such observation or test reveals that the Design/Build Work does not comply with this Service Agreement; or
- (b) By the District, if such observation or test reveals that the Design/Build Work complies with this Service Agreement and the Time for Completion shall be extended for the length of time the Design/Build Work was delayed due to such observation or test having been conducted.

(F) Meetings and Design/Build Review. During the Time for Completion, the Company and the District shall conduct meetings on a monthly basis at a minimum. At such meetings, discussions shall be held concerning all aspects of the Design/Build Work including construction schedules, progress payment, shop drawings, catalogued and dated progress photographs, and any soil boring data and shop test results. Monthly reports containing all relevant information shall be prepared by the Company and provided to the District at least 10 days prior to each monthly meeting, together with an agenda for the meeting. The Company shall also attend any on-call meeting which may be required by the District from time to time in connection with the Design/Build Work, provided that the Company has at least 24 hours' notice of such meeting.

SECTION 1.8. CORRECTION OF DESIGN/BUILD WORK

(A) Correction of Non-Conforming Design/Build Work Associated with a Capital Modification. Throughout the Term of this Service Agreement, the Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design/Build Work associated with a Capital Modification undertaken by the Company which does not conform with the Contract Standards or any design requirements.

(B) Election to Accept Non-Conforming Design/Build Work. The District may elect by Change Order, at the Company's request, to accept non-conforming Design/Build Work associated with any Capital Modification undertaken by the Company and charge the Company (by a reduction in the Capital Modification Price for the Capital Modification) for the amount agreed upon by the parties by which the value of the Company's services or Design/Build Work has been reduced.

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Company's specific obligation to correct the Design/Build Work associated with

any Capital Modification undertaken by the Company and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Company under the Service Agreement. This Section is intended to supplement (and not to limit) the Company's obligations under any acceptance test procedures and/or acceptance standards, the Performance Guarantees and any other provisions of this Service Agreement or Applicable Law.

(D) District Corrective Action. Notwithstanding any other provision in this Section to the contrary, the District shall have the right, but not the obligation, to perform any construction obligation of the Company relating to matters of health, safety, environment or aesthetics that the Company has failed to perform after 15 days' notice and to charge the Company the cost of such corrective action on a Cost Substantiation basis.

SECTION 1.9. CHANGE ORDERS.

(A) Right to Issue Change Orders. The District, subject to the provisions of subsection (E) of this Section, may issue Change Orders pertaining to any and all aspects of the Design/Build Work associated with any Capital Modification undertaken by the Company at any time and for any reason whatsoever, whether and however such Change Orders revise the Service Agreement, add a[n] additional Capital Modification[s] or omit Design/Build Work or affect the Time for Completion.

(B) Obligation to Complete Change Order. The Company shall, except to the extent excused under subsection (E) of this Section, undertake and complete promptly all Change Orders issued under this Section. The Company shall not commence performance of any Change Order without express written authorization by the District. The Company shall be entitled to additional compensation for the Change Order as determined in accordance with this Section.

(C) Effect of Company Fault. The Company shall not be entitled to any additional payment for any Change Order if required by reason of any Company Fault.

(D) Proposal for Change Order. The Company shall submit a written quotation on a lump-sum basis for the cost of the Change Order. The Company shall include with each quotation Cost Substantiation therefore and, with respect to any Change Order necessitated by Uncontrollable Circumstances, the Company agrees to forego any profit with respect thereto. Any such quotation shall be deemed the Company's offer to the District, binding for 90 days to perform the Change Order at the price quoted. In addition, each quotation shall include the effect, if any, of the Change Order on the progress schedule, the Performance Guarantees, the Time for Completion, the Design/Build Price for the Capital Modification, the Service Fee and any of the other obligations of the Company under this Service Agreement.

(E) Conditions to Obligation to Proceed. The parties shall promptly proceed to negotiate in good faith to reach agreement on the price to be paid the Company for the Change Order and on the effect of the Change Order on any other obligations of the Company under this Service Agreement. The Company shall not be obligated to proceed with the Change Order except following agreement as to the price to be paid therefore and as to any adjustments to the Performance Guarantees and its other obligations hereunder which are necessitated by the Change Order associated with the Capital Modification. In order to be entitled to such payments, the Company shall submit all Cost Substantiation information to the District on a monthly basis, for amounts specified in this Section as they are incurred. Except to the extent that the District and the Company shall agree, no such work shall modify the Time for Completion, or impair the ability of the Company to meet the Performance Guarantees, comply with any other term or condition of this Service Agreement, affect any right of the Company or impose any additional liability or

obligation on the Company under this Service Agreement; but the Company shall have no right of objection with respect to such work if the District affords the Company price, schedule and any other relief hereunder agreed to by the parties to be necessary to avoid any such impairment.

SECTION 1.10. DELIVERABLE MATERIAL. As the Design/Build Work associated with any Capital Modification progresses (or upon the termination of the Company's right to perform the Design/Build Work), the Company shall deliver to the District all documents, reports, submittals and other materials ("Deliverable Material") required to be delivered hereunder. The provisions of Section 14.2 of the Service Agreement shall apply to any Deliverable Material used by the Company in the Design/Build Work. The District shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by the District in connection with the Design/Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation.

SECTION 1.11. PERSONNEL.

(A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company's employees and all Subcontractors. All persons engaged by the Company for Design/Build Work associated with any Capital Modification shall have requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design/Build Work. Each such engineer and consultant shall have current professional registration or certification to practice in the State if required by Applicable Law.

(B) Company Construction Superintendent. The Company shall designate an employee of the Company, any Affiliate of the Company, or the Company's General Contractor or construction manager (the "Company Construction Superintendent"), who shall be present on the Site with any necessary assistants on a full time basis when the Company or any Subcontractor is performing Design/Build Work associated with any Capital Modification. The Company Construction Superintendent shall, among other things:

1. Be familiar with the Design/Build Work and all requirements of this Service Agreement;
2. Coordinate the Design/Build Work and give the Design/Build Work regular and careful attention and supervision;
3. Maintain a daily status log of the Design/Build Work; and
4. Attend monthly construction progress meetings with the District and the District Engineer.

The Company may change the person assigned as Company Construction Superintendent, subject to the provisions of subsection (C) of this Section.

(C) Labor Disputes. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Service Agreement or the Design/Build Work associated with the Capital Modification. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company or its Subcontractors, whether pertaining to organization of the Design/Build Work, arrangement or subdivision of the design requirements, employee hiring, or

any other matters. The District shall have no responsibility whatsoever for any such disputes or issues.

SECTION 1.12. CONSTRUCTION BOOKS AND RECORDS. The Company shall prepare and maintain proper, accurate and complete books and records regarding the Design/Build Work associated with any Capital Modification including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Design/Build Work, this Service Agreement, any Subcontract or any operations or transactions in which the District has or may have a financial or other material interest hereunder, in each case to the extent required to determine changes in the Capital Modification Price or the Service Fee. The Company shall produce such construction books and records (except financial ledgers and statements) for examination and copying in connection with the costs of the Capital Modification within the Time for Completion. To the extent any such information is delivered or made available to the District, 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 and maintain all such construction books and records for at least seven years after the completion of the Capital Modification, or such longer period during which any Legal Proceeding with respect to the Plant is pending.

SECTION 1.13. PAYMENT OF THE CAPITAL MODIFICATION PRICE

(A) Capital Modification Price Generally. The District shall pay the Company the Capital Modification Price for the work in accordance with the terms of this Section. The Capital Modification Price shall be determined in accordance with Section 8.8(C) of the Service Agreement.

(B) Capital Modification Price Adjustments. The following items shall constitute the "Capital Modification Price Adjustments":

1. An adjustment for the cost of any Change Orders issued by the District with respect to the Plant pursuant to Section 1.9 hereof; and
2. An adjustment for the cost of any Uncontrollable Circumstances required pursuant to Section 12.2 of the Service Agreement or due to District Fault.

The Company shall not be entitled to receive any adjustments to the Capital Modification Price due to its implementation of any Compliance Plan.

(C) Construction Disbursement Requisition Procedure. Following the Notice to Proceed for a Capital Modification, the Company shall be entitled to submit Requisitions on a monthly basis and receive from the District payments of the Capital Modification Price, which shall be paid as a schedule of values for all Design/Build Work associated with the Capital Modification which shall include quantities and prices of items that the sum of which shall equal the Capital Modification Price and such schedule shall further subdivide the Design/Build Work into component parts in sufficient detail to serve as the basis for progress payments during the Time of Completion. A schedule of values shall be delivered to the District prior to issuance of a Notice to Proceed, and such may be modified as agreed to between the parties. Such payments shall also be subject to the conditions of payment set forth in this Section. Upon Substantial Completion, the Company shall be entitled to receive all payments due for completed work less

(i) any retainage not yet due under section (D) below or (ii) any amount for which the payment of the amount was conditioned upon acceptance of the Capital Modification in the event that acceptance has not occurred (iii) less any amount lawfully withheld from the Company under any section of the Service Agreement. The Capital Modification Price Adjustments shall be payable monthly when and as the cost or expense constituting the Capital Modification Price Adjustment is paid or incurred.

(D) Retainage. Each payment will be subject to a 5% retainage holdback. Interest earned on the retainage holdback shall be for the District's benefit only. The District shall release to the Company the accumulated funds (without interest) so retained with respect to each payment upon receipt of certification from the Company and confirmation by the District Engineer that acceptance of the Capital Modification has occurred. Retainages shall be fully released upon acceptance of the Capital Modification.

(E) Certification of Requisitions. Each Requisition shall be accompanied by a certificate of an authorized Company official certifying: (1) the portion of the Capital Modification Price which is payable to the Company; (2) the amount of any price adjustments which are payable to the Company, together with Cost Substantiation for such amounts; (3) that the Company is neither in default under this Service Agreement nor in breach of any material provision of that Service Agreement such that the breach would, with the giving of notice or passage of time, constitute an Event of Default; and (4) that all Design/Build Work for which payment has been requested has been completed in accordance with the Contract Standards.

(F) Information Supporting Requisition. The Company shall submit to the District, with a copy to the District Engineer, with each Requisition the following documents or information:

1. A verified statement setting forth the information required under any Applicable Law pertaining to prevailing wages;
2. A reasonably detailed description of all Design/Build Work actually completed to date;
3. Revisions to the progress schedule (or a revised progress schedule) which shall reflect changes in the Company's construction schedule since the date of the last Requisition;
4. Certified payroll reports;
5. Notice of any Liens or Encumbrances which have been filed, together with evidence that the Company has bonded or discharged such Liens or Encumbrances;
6. MBE/WBE information as required by the EFC and Applicable Law;
7. A completed County payment voucher;
8. Any other documents or information relating to the Design/Build Work for the Capital Modification or this Service Agreement requested by the District or the District Engineer as may be required by Applicable Law, this Service Agreement, generally accepted accounting principles or the EFC in connection with the financing of the Capital Modification (but, with respect to the Capital Modification Price, shall not include Cost Substantiation documents or information); and
9. Construction progress photographs.

(G) Review and Payment of Requisitioned Amounts. The District Engineer shall review the Company's certified Requisitions to the District for each Capital Modification Price payment and for Capital Modification Price Adjustment payments and, within 15 days of receipt of the Company's written submittal delivered pursuant to subsection (F) of this Section, shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Company's certification that the Company has achieved the level of progress indicated and is entitled to payment. If (1) the District Engineer determines that the work has progressed as indicated in the Company's certified Requisition or that the costs constituting Capital Modification Price Adjustments have been paid or incurred and the District Engineer provides written notice thereof to the Company and the District, or (2) the District Engineer fails to verify or dispute the certified Requisition within 15 days of receipt, thereupon the Company shall be entitled to payment within 30 days of such determination or expiration of such 15 day period. Disputes regarding payments of the Capital Modification Price and Capital Modification Price Adjustments shall be resolved in accordance with subsection (I) of this Section.

(H) Permissible Withholdings. The District may disapprove and withhold and retain all or any portion of any payment requested in any Requisition in an amount equal to the sum of:

1. Any amounts which are permitted under this Section to be withheld from any payment requested in any Requisition;
2. Any amounts which the Company is required to reimburse to the District hereunder;
3. Any delay liquidated damages which are payable hereunder;
4. Any indemnification or other amounts which are due and owing to the District under any provision of this Service Agreement;
5. Any deductions which are required by Applicable Law;
6. Any payments with respect to which the documents required to be delivered in connection therewith are not correct and complete;
7. An amount equal to the cost to the District of performing any work in the event of a failure by the Company or any Subcontractor to timely perform its obligations under the warranties given pursuant to the Contract Documents;
8. Any payments with respect to which the Design/Build Work covered by such Requisition (or any previous Requisition) does not comply with this Service Agreement;
9. Any payments with respect to which any person has filed a Lien or Encumbrance resulting from the acts or omissions of the Company in performing the Design/Build Work, where such Lien or Encumbrance remains unreleased, unbonded or undischarged; and
10. All requisitioned payments, if an Event of Default of the Company has occurred under Section 10.2 of the Service Agreement.

(I) Disbursement Dispute Procedures. If the District Engineer determines pursuant to subsection (G) of this Section that the work required for any payment has not progressed as indicated, or disputes any requisition for any price adjustment, the District Engineer shall provide prompt written notice to the Company and the District as to the District Engineer's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving

such determination notice, the Company may make the necessary corrections and resubmit a certified Requisition to the District Engineer, or the District Engineer may agree on a revised amount, Requisition or estimate, as applicable, in which case the Company shall promptly notify the District of such agreement and thereupon be entitled to payment. Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if: (1) the Company demonstrates to the District Engineer that the work has proceeded as indicated in the certified Requisition giving rise to the dispute or that any disputed certified Requisition is correct; and (2) the District Engineer concurs with such demonstration. The Company shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the Company shall be entitled to all requisitioned amounts which are not in dispute. In the event that upon resolution of any such dispute it is determined that the Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Company shall be entitled promptly to receive such disputed amount. Nothing contained in this subsection shall be deemed to alter the rights of the parties, if any, under Article X of the Service Agreement, including the right of either party to request a referral of the dispute to Non-Binding Mediation.

(J) EFC Financing. Notwithstanding any provision of this Service Agreement to the contrary, if the County has borrowed to finance the Capital Modification by the issuance of debt to the EFC, the Company understands and agrees that each Requisition shall be payable in accordance with this Section only upon receipt of a disbursement from the EFC therefore.

(K) Required Company Oversight Engineer Certification. Any notice, certification, report or requisition delivered by the Company to the District in connection with the Capital Modification or payment therefore under this Appendix shall be accompanied by a certificate of the Company's design-build principal in charge affirming the accuracy thereof to the best of his or her knowledge.

(L) Certification of Amounts Due. Whenever requested by the District, the Company shall submit a sworn statement certifying all amounts then due (or yet to become due) the Company for the Design/Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Company and any Subcontractor.

ARTICLE II
ACCEPTANCE OF CAPITAL MODIFICATION

SECTION 2.1. SUBSTANTIAL COMPLETION.

(A) Conditions to Substantial Completion. The Company shall not commence start-up operations in preparation for conducting any acceptance test required for any Capital Modification until “Substantial Completion” for that modification has occurred unless otherwise authorized by the District Engineer. Substantial Completion shall mean and shall occur only when all of the following conditions have been satisfied:

1. The Company has complied with all of the pre-acceptance test requirements contained in any design requirements or acceptance testing protocol for the Capital Modification;
2. All Utilities specified or required under this Service Agreement to be arranged for by the Company are connected and functioning properly;
3. The Company and the District have agreed in writing upon any Final Punch List (or, if they are unable to agree, the District shall have prepared and issued the Final Punch List to the Company within 15 business days of the Company having submitted its Final Punch List to the District);
4. The District has approved in writing, such approval not to be unreasonably withheld, a certification by the Company that all Design/Build Work pertaining to the Capital Modification, excepting the items on the Final Punch List, is complete and in all respects is in compliance with this Service Agreement;
5. The Company has delivered to the District written certification from the equipment manufacturers that all major items of machinery and equipment included in the Capital Modification have been properly installed and tested in accordance with the manufacturers’ recommendations and requirements;
6. All warranties required to be obtained have been delivered to the District;
7. The Company has delivered to the District a claims statement setting forth in detail all claims of every kind whatsoever of the Company connected with, or arising out of, the Design/Build Work for the Capital Modification, and arising out of or based on events prior to the date when the Company gives such statement to the District;
8. All spare parts and Consumables required by the applicable design requirements have been delivered and are in storage at the Plant;
9. The Company has submitted to the District and the District has reviewed and approved the applicable plan for acceptance testing;
10. If required by Applicable Law, the DEC has approved the applicable plan for acceptance testing and has caused a notice of permission to conduct the acceptance tests; and
11. The Company has submitted written certification that all of the foregoing conditions have been satisfied and the District has approved the Company’s certification, which approval shall be effective as of the date of the Company’s certification.

Alternatively, Substantial Completion shall occur on any date certified by the District, which shall have discretion to waive any of the foregoing conditions.

(B) Final Punch List. The Company shall submit a proposed Final Punch List to the District and the District Engineer when the Company believes that the Design/Build Work associated with the Capital Improvement has been substantially completed in compliance with the Service Agreement and this Appendix. The “Final Punch List” shall be a statement of repairs, corrections and adjustments to the Design/Build Work, and incomplete aspects of the Design/Build Work, which in the Company’s opinion:

1. The Company can complete all of the work associated with the Capital Modification, including acceptance, before the Company’s Time for Completion and with minimal interference to the occupancy, use and lawful operation of the Plant; and

2. Would represent, to perform or complete, a total cost of not more than 2.5% of the portion of the Capital Modification Price (unless the District determines that a higher percentage is acceptable in its sole discretion).

Completion of the Final Punch List work shall be verified by a final walk-through of the Plant conducted by the District and the District Engineer with the Company and the Company Engineer. The existence and approval of the Final Punch List shall in no way either limit the Company from performing additional repairs, corrections and adjustments to the Design/Build Work as may be necessary to comply with this Service Agreement or limit the District’s ability to enforce the Company obligation to complete the Design/Build Work in accordance with any design requirements. If the Company fails to complete any Final Punch List-related Design/Build Work, the District shall have the right to withhold twice the value of such work from the retainage amount.

SECTION 2.2. NOTICE OF START-UP OPERATIONS.

(A) Submittal of Acceptance Test Plan. Prior to issuing a Notice to Proceed, the District and the Company will agree what, if any acceptance testing is necessary for the Capital Modification. The Company will then submit, prior to issuance of the Notice to Proceed, or, with the express permission of the District, within 30 days of the Notice, an acceptance test plan for the Capital Modification. The District will review any acceptance testing plan or procedures for compliance with any design requirements and performance standards, and may approve, or approve with comments, the plan or reject the same.

(B) Notice of Substantial Completion. The Company shall give the District at least 30 days prior written notice of the expected date of Substantial Completion for the Capital Modification and of commencement of start-up operations in preparation for conducting any required acceptance test.

(C) Notice of Commencement of Acceptance Test. The Company shall also provide the District with at least 30 days prior written notice of the expected initiation of any acceptance test. At least 10 days prior to the actual commencement of the acceptance testing, the Company shall certify in writing that it is ready to begin the acceptance testing in accordance with the acceptance test plan approved by the District in accordance with Section 2.2(A) of this Appendix [10].

SECTION 2.3. CONDUCT OF ACCEPTANCE TEST. The Company shall conduct any required acceptance tests in accordance with the acceptance test plan approved by the District in accordance with Section 2.2(A) of this Appendix [10] and shall notify the District when

any such test shall occur. The Company shall permit the designated representatives of the District to inspect the preparations for any acceptance test and to be present for the conducting of any acceptance test for purposes of ensuring compliance with the applicable acceptance test plan and the integrity of the acceptance test results.

SECTION 2.4. TEST REPORT. Within 30 days following the completion of any required acceptance tests, the Company shall furnish the District and the District Engineer with ten copies of a certified written report describing and certifying (1) the acceptance test conducted; (2) the results of the acceptance test; and (3) the level of satisfaction of any acceptance standards relating thereto and all other requirements specified the acceptance test plan approved by the District in accordance with Section 2.2(A) of this Appendix [10]. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the applicable acceptance test, and copies of laboratory reports conducted in conjunction with the applicable acceptance test, including all laboratory sampling and test results.

SECTION 2.5. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.

(A) District Concurrence with Acceptance Test Results. The District shall, within 60 days of its receipt of a certified acceptance test report, determine whether the District concurs in the report's findings and conclusions. If the District states in writing that it concurs with the Company's certification, such Capital Modification shall be deemed to have achieved acceptance.

(B) Acceptance Report Disagreement. If the District determines at any time during such 60-day review period that it does not concur with such certification, the District shall immediately send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by the District, either party may elect to refer the dispute to Non-Binding Mediation for resolution pursuant to Section 10.11 of the Service Agreement. The Mediator shall issue a decision within 60 days of the dispute referral unless both parties agree that more time is appropriate. In the event that the Mediator fails to issue a decision within 60 days, then either party may initiate judicial proceedings. The parties acknowledge and agree that any decision rendered by the Mediator as to whether any acceptance has occurred shall be non-binding. Acceptance shall not be deemed to have been achieved unless the applicable acceptance test, conducted in a unified and continuous manner as provided the acceptance test plan approved by the District in accordance with Section 2.2(A) of this Appendix [10] demonstrates that all of the applicable acceptance standards have been met. In the event the Company, in conducting the acceptance test, does not successfully meet the acceptance standards, the District shall have the right, in its sole discretion, to permit the Company to re-test such Capital Modification for compliance only with the applicable acceptance standards not previously achieved through an earlier acceptance test. Nothing in this Section shall prevent the Company from bringing an action or from repeating any acceptance test in order to establish the achievement of acceptance.

SECTION 2.6. TIME FOR COMPLETION.

(A) Schedule for Completing the Capital Modification. The Company shall achieve acceptance by the "Time for Completion."

(B) Delay Liquidated Damages. If acceptance of the Capital Modification occurs subsequent to the Time for Completion, except as excused due to Uncontrollable Circumstances or District Fault, in addition to the amounts payable under any other provision of

the Service Agreement, the Company shall pay to the District daily delay liquidated damages for each day that the acceptance of the Capital Modification falls after the Time for Completion. The delay liquidated damages for delays in achieving acceptance for any Capital Modification shall be \$2000 per day; provided, however, that the aggregate amount of such delay liquidated damages paid by the Company in accordance herewith and in accordance with the Service Agreement shall not exceed 5% of the Capital Modification Price. The Company shall also defend and indemnify the District in accordance with and subject to the limitations set forth in Section 12.3 of the Service Agreement against all Loss-and-Expense resulting from any Legal Proceeding originated by any third party arising from such failure to achieve acceptance of the Capital Modification by the Time for Completion except to the extent such failure is caused by an Uncontrollable Circumstance or District Fault.

SECTION 2.7. EFFECT OF UNEXCUSED DELAY; EXTENSION PERIOD.

Time is of the essence in the implementation of any Capital Modification. If acceptance has not occurred on or before the Time for Completion, the Company shall be entitled to continue the Design/Build Work in order to secure acceptance during any extension period permitted in the original Capital Modification Plan or in the Notice to Proceed. During any extension period, the Company shall be responsible for and shall pay any fines and penalties assessed by a Governmental Body against the District or the Company due to the failure to achieve acceptance by the Time for Completion, together with liquidated damages as set forth in subsection 2.6, above.

SECTION 2.8. FAILURE TO MEET ACCEPTANCE STANDARD. If, as of the last day of any extension period, the acceptance tests have not been conducted or have failed to demonstrate that the Capital Modification operates at a standard equal to or greater than the applicable full acceptance standard (except due to District Fault), prescribed, an Event of Default by the Company shall be deemed to have occurred under Section 10.2 of the Service Agreement notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the District shall thereupon have the right to terminate the Service Agreement upon written notice to the Company. Upon any such termination, the District shall have all of the rights provided in Article X of the Service Agreement upon a termination of the Company for cause.

SECTION 2.9. NO ACCEPTANCE, WAIVER OR RELEASE. Unless other provisions of the Service Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as the District's acceptance of any Design/Build Work associated with a Capital Modification which is defective, incomplete, or otherwise not in compliance with the Service Agreement [including any design requirements, acceptance test standards or Performance Guarantees]; as the District's release of the Company from any obligation under this Service Agreement; as the District's extension of the Company's time for performance; as an estoppel against the District; or as the District's acceptance of any claim by the Company:

(A) The District's payment to the Company or any other person with respect to the Plant or the Capital Modification;

(B) The District's review or acceptance of any drawings, submissions, punch lists, other documents, certifications (other than certificates relating to completion or acceptance, or Design/Build Work of the Company or any Subcontractor);

(C) The District's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design/Build Work;

(D) The District's entry at any time on the Site (including any area in which the Design/Build Work is being performed);

(E) Any inspection, testing, or approval of any Design/Build Work associated with the Capital Modification (whether finished or in progress) by the District or any other person;

(F) The failure of the District or any District consultant to respond in writing to any notice or other communication of the Company; or

(G) Any other exercise of rights or failure to exercise rights by the District hereunder.

APPENDIX 8

EXAMPLE SERVICE FEE CALCULATION

The purpose of this Appendix is to provide an example of how the Service Fee is to be calculated in accordance with the Service Contract. Any inconsistency between this appendix and the Service Contract shall be resolved in favor of the Service Contract.

The Service Fee shall be calculated in accordance with the following formula:

$$\text{ASF} = \text{BF} + \text{EI}$$

Where

ASF = Annual Service Fee

BF = Base Fee

EI = Extraordinary Items

Each component of the Service Fee shall be determined as follows.

1.1 Base Fee Components

The Base Fee shall be calculated in accordance with the following formula:

$$\text{BF} = \text{FC} + \text{VC} + \text{CC}$$

$$\text{VC} = \text{LAE} + \text{FAE}$$

Where

FC = Fixed Component

VC = Variable Component

CC = Chemical Component

LAE = Loadings Adjustment Element

FAE = Flow Adjustment Element

Values for the each Plant Influent Parameter Group are specified in Section 9.4 and are repeated below:

Plant Influent Parameters: Group 1

BOD5 Load (lbs./day)	1000
TSS Load (lbs./day)	1000
Ammonia (lbs./day)	120
Phosphorous (lbs./day)	40
TKN (lbs./day)	200
Flow (mgd)	0.6

Fixed Component	\$
Chemical Components	\$

Plant Influent Parameters: Group 2

BOD5 Load (lbs./day)	1250
TSS Load (lbs./day)	1250
Ammonia (lbs./day)	150
Phosphorous (lbs./day)	50
TKN (lbs./day)	250
Flow (mgd)	0.75

Fixed Component	\$
Chemical Components	\$

Plant Influent Parameters: Group 3

BOD5 Load (lbs./day)	1500
TSS Load (lbs./day)	1500
Ammonia (lbs./day)	180
Phosphorous (lbs./day)	60
TKN (lbs./day)	300
Flow (mgd)	0.90

Fixed Component	\$
Chemical Components	\$

Plant Influent Parameters: Group 4

BOD5 Load (lbs./day)	2500
TSS Load (lbs./day)	2500
Ammonia (lbs./day)	300
Phosphorous (lbs./day)	100
TKN (lbs./day)	500
Flow (mgd)	1.50

Fixed Component	\$
Chemical Components	\$

Values for the Flow and Loadings Adjustment Fees applicable to each Plant Influent Parameter Group are repeated below:

Plant Influent Parameters: Group 1		Plant Influent Parameters: Group 2	
BOD5	\$/lb-BOD/d	BOD5	\$/lb-BOD/d
TSS	\$/lb-TSS/d	TSS	\$/lb-TSS/d
Ammonia	\$/lb-NH3/d	Ammonia	\$/lb-NH3/d
Phosphorous	\$/lb- P /d	Phosphorous	\$/lb- P /d
TKN	\$/lb.-TKN/d	TKN	\$/lb.-TKN/d
Flow	\$/MGD	Flow	\$/MGD

Plant Influent Parameters: Group 3		Plant Influent Parameters: Group 4	
BOD5	\$/lb-BOD/d	BOD5	\$/lb-BOD/d
TSS	\$/lb-TSS/d	TSS	\$/lb-TSS/d
Ammonia	\$/lb-NH3/d	Ammonia	\$/lb-NH3/d
Phosphorous	\$/lb- P /d	Phosphorous	\$/lb- P /d
TKN	\$/lb.-TKN/d	TKN	\$/lb.-TKN/d
Flow	\$/MGD	Flow	\$/MGD

Sample Annual Adjustment of Fixed Component

The Fixed Component for each Contract Year shall be the amount specified in the Service Agreement (and repeated above) based on the Plant Influent Parameter Group selected by the District multiplied by the Adjustment Factor.

$$\text{Adjustment Factor (AF)} = (\text{SFEFN} \div \text{SFEFPD})$$

where,

SFEFN = The SFEF value for the first month of the subject Contract Year.

SFEFPD = 318.840, the SFEF value for the month of the Contract Date.

Service Fee Escalation Factor or SFEF is the final not seasonally adjusted Consumer Price Index, for All Urban Consumers, for the Northeast region (Series Id: CUUR0100SA0)

Assume the following:

SFEFN as of January 2024 – 316.330
SFEFPD as of January 2023 – 315.148
District selects Parameter Group 1
Fixed Component: \$575,000

The Adjustment Factor (AF) for the first Contract Year is calculated as follows:

$$\text{Adjustment Factor (AF)} = 316.330 \div 315.148 = 1.003$$

$$\text{Fixed Component (FC)} = \$575,000 * 1.003 = \$576,725$$

The Chemical Component for each Contract Year shall be the amount specified in the Service Contract based on the Plant Influent Parameter Group selected by the District multiplied by the following adjustment factor.

$$\text{Chemical Component (CF)} = (\text{CCEFN} \div \text{CCEFPD})$$

where,

CCEFN = The CCEF value for the first month of the subject Contract Year.

CCEFPD = 183.0, the CCEF value for the month of the Contract Date.

Chemical Cost Escalation Factor or CCEF is the final not seasonally adjusted Producer Price Index-Chemicals and Allied products. WPU06, as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

Assume the following:

CCEFN for January 2024 = 342.276
CCEFPD for January 2022 = 341.927
Fixed Chemicals Component = \$155,000

The CCEF for the first Contract Year is calculated as follows:

$$\text{Chemicals Component Adjustment Factor} = 342.276 \div 341.927 = 1.001$$

$$\text{CF} = \$155,000 * 1.001 = \$155,155 \text{ in the first Contract Year}$$

Variable Component - Flow and Loadings Adjustment Fees

Assume that the annual average parameter values were:

BOD ₅ Load (lbs/d)	1095
TSS Load (lbs/d)	960
Ammonia (lbs/d)	150
Phosphorous (lbs/d)	50
TKN (lbs/d)	230
Flow (mgd)	0.68

The resulting adjustments to the Annual Service Fee are as follows:

BOD ₅	(1095 lbs/d minus 1000 lbs/d) x \$36.5 per lbs/d = \$ 3,468
TSS	960 lbs/d is less than 1000 lbs/d -- No adjustment
Ammonia	(150 lbs/d minus 120 lbs/d) x \$292.0 = \$8,760
Phosphorous	(50 lbs/d minus 40 lbs/d) x \$985.5 = \$ 9,855
TKN	(230 lbs/d minus 200 lbs/d) x \$182.5 = \$5,475
Flow	(0.68 mgd minus 0.6 mgd) x \$62,233 = \$4,979

Variable Component (VC) = (\$3,468 + \$8,760 + \$9,855 + \$5,475 + \$4,979) * 1.003 = \$32,634.61

Service Fee (SF) = Fixed Component (FC) + Chemical Component (CC) + Variable Component (VC)

\$576,725 + \$155,155 + \$32,634.61 = \$764,514.61

APPENDIX 9

ICIS

ICI No. 1

Influent Pumps

Description: Replace three (3) submersible influent pumps. Ther pumps shall match the existing pumping conditions and be manufactured by Flygt.

Location: Influent Pump Station

Related Improvements: Remove, replace and reconnect the existing influent pumps. Modify existing power and control conduit and conductors as necessary to match the new pumps.

Design: Provide design documents with proposal for review by district Engineers.

ICI No. 2

Low Flow EQ Pump No. 4

Description: Low flow EQ Pump 4 shall be replaced. The pump shall be a Flowserv pump with the same capacities as Low Flow EQ Pumps 1 through 3.

Location: Filter Room

Related

Improvements: The replacement of Low Flow EQ Pump 4 to have the same capacity as pumps 1 through 3 will include all necessary modifications to the suction and discharge piping. In addition, Low Flow EQ pump No. 4 replacement will include new electrical conduit, conductors and modifications to power feed and controls.

Design: Provide design drawings with proposal for review by district Engineer.

ICI No. 3

Filter Room Piping

Description: Replace the sand filter effluent piping and valves.

Location: Filter Room

Related

Improvements: The sand filter shall remain in operation while the piping is removed and reinstalled.

ICI No. 4

Hydroxide Feed and Storage System

Description: Replace the existing Hydroxide Feed and Storage System. The Hydroxide Feed and Storage System includes all piping, pumps, valves, tanks, feed control systems, electrical conduit and conductor's and control panels. All equipment shall match existing materials and manufactures. Remove and replace all accessories related to the Hydroxide Feed and Storage System. Repaint containment area and other areas exposed to chemical contact with chemical resistant paint as recommended by Tnemec or equal.

Location: Chemical Feed Room

Related

Improvements: Remove and replace all accessories related to the Hydroxide Feed and Storage System. Repaint containment area and other areas exposed to chemical contact with chemical resistant paint as recommended by Tnemec or equal.

Design: Provide design documents with proposal for review by district Engineer.

ICI No. 5

Bisulfate Feed and Storage System

Description: Replace the existing Bisulfate Feed and Storage System. The Bisulfate Feed and Storage System includes all piping, pumps, valves, tanks, feed control system, electrical conduit and conductors and control panels. All accessories shall match existing materials and manufacturers.

Location: Chemical Feed Room

Related

Improvements: Remove and replace all accessories related to Bisulfate Feed and Storage. Repaint containment area and other areas exposed to chemical contact with chemical resistant paint as recommended by Tnemec or equal.

Design: Provide design documents with proposal for review by district Engineer.

ICI No. 6

Odor Control System Carbon

Description: Replace the plastic media in the Odor Control System.

Location: Odor Control Area

Related

Improvements: The existing carbon should be replaced as virgin carbon type. Carbon manufacturer shall inspect the existing system and verify type of carbon to be installed..

ICI No. 7

Electrical Room 1 Harmonic Filter

Description: Replace the existing 200kVAR harmonic filter with power factor correction capacitors and appurtenances.

The harmonic filter shall be model automatic PowerLogic PFC Smart Capacitor Bank, 200kVAR, manufactured by Schneider Electric (Square D) in NEMA 12 enclosure.

Location: Electrical Room 1

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Remove existing floor standing enclosure and install replacement filter in place.

ICI No. 8

Influent Pump Variable Frequency Drives

Description: Replace the 3 existing 40HP Influent Pump Variable Frequency Drives (VFD-21, VFD-22 and VFD-23) with bypass and appurtenances.

The VFDs shall be model Altivar Process 660 drive systems manufactured by Schneider Electric (Square D) in NEMA 12 enclosures with input circuit breakers.

Location: Influent Pump Station

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Remove existing wall mount enclosures and install replacement drives in place.

ICI No. 9

Electrical Room 1 Variable Frequency Drives

Description: Replace the 3 existing 125HP SBR Blower variable frequency drives (VFD-811, VFD-812 and VFD-813) with bypass and appurtenances.

Replace the 3 existing 40HP Mixing Blower variable frequency drives (VFD-821, VFD-822 and VFD-823) with bypass and appurtenances.

Replace the 2 existing Sludge Transfer Pump variable frequency drives (VFD-381 and VFD-382) with bypass and appurtenances. Verify horsepower rating in field, match existing.

Replace the 2 existing Centrifuge Feed Pump variable frequency drives (VFD-971 and VFD-972) with bypass and appurtenances. Verify horsepower rating in field, match existing.

The VFDs shall be model Altivar Process 660 drive systems manufactured by Schneider Electric (Square D) in NEMA 12 enclosures with input circuit breakers.

Location: Electrical Room 1

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Remove existing wall mount enclosures and install replacement drives in place.

ICI No. 10

Electrical Room 2 Variable Frequency Drives

Description: Replace the 2 existing VFD-831 and VFD-832 variable frequency drives with bypass and appurtenances. Verify horsepower rating in field, match existing.

Replace the 3 existing 30HP Effluent Pump variable frequency drives (VFD-701, VFD-702 and VFD-703) with bypass and appurtenances.

Replace the 2 existing 20HP Low Flow EQ Pump variable frequency drives (VFD-281 and VFD-282) with bypass and appurtenances.

Replace the 1 existing 7.5HP Low Flow EQ Pump variable frequency drives (VFD-283) with bypass and appurtenances.

Replace the 1 existing 4HP Low Flow EQ Pump variable frequency drives (VFD-284) with bypass and appurtenances.

Replace the 3 existing 20HP MF Feed Pump variable frequency drives (VFD-331, VFD-332 and VFD-333) with bypass and appurtenances.

The VFDs shall be model Altivar Process 660 drive systems manufactured by Schneider Electric (Square D) in NEMA 12 enclosures with input circuit breakers.

Location: Electrical Room 2

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Remove existing wall mount enclosures and install replacement drives in place.

ICI No. 11

Filter Room Exhaust Fans

Description: Replace the existing 3 exhaust fans with all aluminum construction exhaust fans rated for the environment.

The exhaust fans shall be model XW manufactured by Loren Cook.

Location: Filter Room

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Provide supports as necessary.

ICI No. 12

Air Handling Unit 1 & 2

Description: Replace the existing air handling units in kind.

The air handlers shall be M series manufactured by Trane.

Location: HVAC Mezzanine Room

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Adjust associated duct as necessary.

ICI No. 13

Air Handling Unit 1 & 2

Description: Replace the existing ducted split system units in kind.

The air handlers shall be TWE manufactured by Trane.
The condensers shall be TTA manufactured by Trane.

Location: ACU-1: Blower Room
ACU-2: Filter Room

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Adjust associated duct as necessary. Provide new interconnecting refrigerant piping and piping insulation.

ICI No. 14

Chemical Storage Exhaust Fans

Description: Replace the existing exhaust fan with all aluminum construction exhaust fans rated for the environment.

The exhaust fans shall be model CV manufactured by Loren Cook.

Location: Chemical Storage Room

Related

Improvements: Existing conduit and wire shall be extended as required for the installation. Provide supports as necessary. Adjust associated duct as necessary.

ICI No. 15

Filter Room GUH Thermostats

Description: Replace the existing 6 thermostats with thermostats rated for the environment.
The thermostat shall be model EPETD8D manufactured by TPI Corporation.

Location: Filter Room

Related
Improvements: Existing conduit and wire shall be extended as required for the installation.

ICI No. 16

Rusting Mono-Rail Bases

Description: Mono-rail bases rusting.

Location: Influent Pump Station

Related

Improvements: Paint rusting mono-rail bases to 12" above effected area:

General Ferrous Metal

SYSTEM M-4	SHERWIN-WILLIAMS	PPG	TNEMEC	REMARKS
Surface preparation	SSPC-SP6/NACE 3 Commercial Blast Cleaning			Shop
Prime coat	Macropoxy 646	Amerlock 2/400	Series 1 2.5-3.0 mils	Shop
Intermediate coat	Macropoxy 646	Amerlock 2/400	Series 66HS 3.0-5.0 mils	--
Finish coat	Hi-Solids Polyurethane 250 Polyurethane Semi-Gloss	Amercoat 450H	Series 1095-Color Endura-Shield 3.0-5.0 mils	Total DFT – 10.5 mils minimum

ICI No. 17

Masonry Repair

Description: Damaged CMU veneer on column @ Main Entry

Location: Building Exterior D-100 Entry Canopy column

Related

Improvements: Repair / replace existing damaged CMU veneer. Clean existing CMU columns to remove any dirt and coat both columns with W.R. Meadows Pentreat 244-20 sealant. Add sealant at column to sidewalk joints with Two Component, Self-Leveling Polyurethane Sealant - Sika Sikaflex 2cSL or equal.

ICI No. 18

Chemical Fill Station CMU Repair

Description: Add elbow plus pipe extension to the existing Chemical Fill Port line drain to divert chemicals away from the building.
Add elbow plus pipe extension to the existing Eye Wash Line drain to divert water away from the building.

Location: Building Exterior at Chemical Fill Area

Related

Improvements: Repoint existing CMU veneer in the area affected. Clean area with a Prosoco Cleaning product that is recommended for the stain. Coat area with W.R. Meadows Pentreat 244-20 sealant. Add sealant at building to sidewalk joint with Two Component, Self-Leveling Polyurethane Sealant - Sika Sikaflex 2cSL or equal.

ICI No. 19

Door Hardware Replacement

Description: Replace Door hardware that is showing rust and deterioration

Location: Filter Room A-302

Related

Improvements: Replace hardware element with new product that has a stainless-steel finish. Contractor to reuse existing lock cylinders if capable or key new cylinders to match existing keying.

ICI No. 20

Door Hardware Replacement

Description: Replace Door hardware that is showing rust and deterioration

Location: Chemical Room A-300

Related

Improvements: Replace hardware element with new product that has a stainless-steel finish. Contractor to reuse existing lock cylinders if capable or key new cylinders to match existing keying.

ICI No. 21

Sludge Handling – Belt Thickener Room Floor

Description: Patch deteriorated concrete located at (3) floor drains. The quantity of deteriorated concrete to be repaired is approximately 50 square feet.

Location: Sludge Handling Building

Related Improvements: Deteriorated concrete shall be cleaned and prepared per product manufacturer's recommendations prior to installation of patching mortar. For horizontal surfaces use SikaQuick 1000 patching mortar or similar.

ICI No. 22

Chemical Unloading Pad

Description: Exterior surface of the chemical unloading concrete pad has some minor spalling which should be repaired. Additionally, the entire surface should be coated with an epoxy coating to protect. The quantity of pad to be coated is approximately 500 square feet. Spalling and patching is approximately 10 square feet.

Location: Chemical Unloading Pad

Related

Improvements: All surfaces to be coated including cracks and spalls shall be cleaned and prepped per product manufacturer's recommendations prior to installation of coating. For horizontal surfaces use SikaQuick 1000 patching mortar or similar. All cracks shall be repaired utilizing Sikadur 35, Hi-Mod LV epoxy resin or similar. Epoxy coating shall be (2) coats of epoxy coating such as Sikagard 62 or similar.

ICI No. 23

Headworks Building – Exterior Stairs

Description: Clean and remove all spalling concrete. Coat all concrete stair walking surfaces with pedestrian coating. Remove and replace all stair nosing's. Approximately 250 square feet and 20 nosing's.

Location: Headworks Building

Related

Improvements: All surfaces to be coated including cracks and spalls shall be cleaned and prepped per product manufacturer's recommendations prior to installation of coating. For horizontal surfaces use SikaQuick 1000 patching mortar or similar. For vertical surfaces use SikaQuick VOH repair mortar or similar. All cracks should be repaired utilizing Sikadur 35, Hi-Mod LV epoxy resin or similar. Pedestrian coating should be applied at a minimum thickness of 35 mils with an integrated anti-skid surface such as Sikalastic-726 Balcony One Shot or similar. Nosing's should match existing style, profile and type currently installed. Any cracks or spalls discovered during prep and install shall be repaired prior to installation of coating and nosing's.

ICI No. 24

SBR Electrical Room

Description: Shrinkage cracks located in the concrete slab of the SBR electrical room should be routed and filled. The quantity of cracks to be repaired is approximately 40 lineal feet.

Location: SBR Tank

Related Improvements: Cracks shall be cleaned and prepped per product manufacturer's recommendations prior to repair. All cracks shall be repaired utilizing Sikadur 35, Hi-Mod LV epoxy resin or similar.

ICI No. 25

Headworks Building – Floor

Description: Remove and replace existing floor coating with new epoxy coating. The quantity of floor to be coated is approximately 2,500 square feet.

Location: Headworks Building

Related

Improvements: Any cracks or spalls discovered during prep and install shall be repaired prior to installation of coating. All surfaces to be coated including cracks and spalls shall be cleaned and prepped per product manufacturer's recommendations prior to installation of coating. For horizontal surfaces use SikaQuick 1000 patching mortar or similar for spalls. All cracks should be repaired utilizing Sikadur 35, Hi-Mod LV epoxy resin or similar. Epoxy coating shall be (2) coats of epoxy coating such as Sikagard 62 or similar.

ICI No. 26

Headworks Building – Foundation Wall

Description: Exterior Northeast corner of foundation wall at the SBR level is delaminating/spalling. Should be cleaned and patched to prevent accelerated deterioration of wall before reinforcing is exposed. The quantity of repair is approximately 10 square feet.

Location: Headworks Building

Related

Improvements: Spalls shall be cleaned and prepped per product manufacturers recommendations prior to installation of patching mortar. For horizontal surfaces use SikaQuick 1000 patching mortar or similar.

ICI No. 27

Centrifuge System PLC CPUs

Description: Upgrade existing Centrifuge System PLCs (2) CPUs. The new PLC CPUs shall be Allen Bradley model 1769-L33ER.

Location: Dewatering Building, Centrifuge PLCs.

**Related
Improvements:**

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing PLC CPUs and replace with compatible model replacement CPUs identified in the described improvements.
3. Obtain electronic copy of existing PLC program from the original programmer, convert PLC program to the latest software and firmware versions supported by the provided CPU, download to new CPU, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed PLC components to Owner.

ICI No. 28

Centrifuge System Operator Interface Terminals (OITs)

Description: Upgrade existing Centrifuge System OITs. The new OIT model shall be Allen Bradley PanelView Plus model 2711P-T10C21D8S.

Location: Dewatering Building, Centrifuge PLC enclosures (2)

Related Improvements:

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing OITs and replace with compatible model replacement OITs identified in the described improvements.
3. Obtain electronic copy of existing OIT program from the original programmer, convert OIT program to the latest software and firmware versions supported by the provided OIT, download to new OIT, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Provide electronic copy of final converted OIT program to the Owner on USB media.
5. Package, label, and return removed OIT components to Owner.
6. Provide a blank filler plate through-bolted through the enclosure preserving the originally designed NEMA rating of the enclosure, with an opening of appropriate dimension for the new OIT, and color-matched to match the original color of the enclosure. Install OIT in filler plate.

ICI No. 29

Fiberoptic Ethernet Switches

Description: Upgrade existing Hirschmann RS20 Fiberoptic Ethernet switches. The new Fiberoptic Ethernet switches shall be Hirschmann model Bobcat BRS.

Location: Influent Building (PLC-IPSCP)
Headworks Building (PLC-ER3CP), (Grit System PLC)
Dewatering Building (PLC-ER1CP), (OITCP), (Centrifuge PLCs), (GBT PLC),
Effluent Building (PLC-ER2CP), (Pall Common CP)
Admin Building (CRMESC)

**Related
Improvements:**

Work shall include:

1. Obtain existing SCADA Network Architecture Diagram in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Configure each switch with a static IP address that doesn't conflict with the facility's existing IP addressing structure.
3. Modify the default password associated with each switch's default administrator account. Share the updated login credentials with the Owner.
4. Review the SCADA network architecture diagram to identify which switches comprise the facility's fault-tolerant fiberoptic ring. Configure the replacement switches to function in a fault-tolerant fiberoptic ring.
5. Demonstrate the ring's ability to function when a segment has been disconnected to the Owner.
6. Remove existing Ethernet switches from service, install new switches in their place, and reconnect all cables.
7. Package, label, and return removed Ethernet switches to Owner.

ICI No. 30

Gravity Belt Thickener System Operator Interface Terminals (OITs)

Description: Upgrade existing Gravity Belt Thickener System OIT. New OIT shall manufacturer's recommended replacement model for existing Red Lion model G310S000.

Location: Dewatering Building, (GBT PLC).

**Related
Improvements:**

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing OITs and replace with compatible model replacement OITs identified in the described improvements.
3. Obtain electronic copy of existing OIT program from the original programmer, convert OIT program to the latest software and firmware versions supported by the provided OIT, download to new OIT, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Provide electronic copy of final converted OIT program to the Owner on USB media.
5. Package, label, and return removed OIT components to Owner.
6. Provide a blank filler plate through-bolted through the enclosure preserving the originally designed NEMA rating of the enclosure, with an opening of appropriate dimension for the new OIT, and color-matched to match the original color of the enclosure. Install OIT in filler plate.

ICI No. 31

Gravity Belt Thickener System PLC Hardware

Description: Upgrade existing Gravity Belt Thickener brick-style Allen Bradley PLC. The new PLC shall be Allen Bradley model Micro 800.

Location: Dewatering Building, Gravity Belt Thickener Control Panel.

**Related
Improvements:**

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing PLC CPUs and replace with compatible model replacement CPUs identified in the described improvements.
3. Obtain electronic copy of existing PLC program from the original programmer, convert PLC program to the latest software and firmware versions supported by the provided CPU, download to new CPU, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed PLC components to Owner.

ICI No. 32

Grit System Operator Interface Terminal (OIT)

Description: Upgrade existing Grit System Maple Systems OIT. The new UPS model shall be Maple Systems model HMI5040Bv2.

Location: Headworks Building, Grit System PLC enclosure

Related Improvements:

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing OITs and replace with compatible model replacement OITs identified in the described improvements.
3. Obtain electronic copy of existing OIT program from the original programmer, convert OIT program to the latest software and firmware versions supported by the provided OIT, download to new OIT, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Provide electronic copy of final converted OIT program to the Owner on USB media.
5. Package, label, and return removed OIT components to Owner.
6. Provide a blank filler plate through-bolted through the enclosure preserving the originally designed NEMA rating of the enclosure, with an opening of appropriate dimension for the new OIT, and color-matched to match the original color of the enclosure. Install OIT in filler plate.

ICI No. 33

Pall System Remote IO Hardware

Description: Upgrade existing remote communication and IO modules within the Pall cleaning system control panel. New remote communication and IO modules shall be Allen Bradley Flex 5000 remote IO.

Upgrade existing remote communication and IO modules within each Pall filter control panel (4). New remote communication and IO modules shall be Allen Bradley Flex 5000 remote IO.

Location: Effluent Area, Pall Cleaning System control panel and each Pall filter control panel.

**Related
Improvements:**

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing Remote IO hardware and replace with compatible model replacement Remote IO identified in the described improvements. Provided Remote IO shall be compatible with the existing Common Pall System Control Panel PLC.
3. Obtain electronic copy of existing SBR PLC program from the original programmer, install latest firmware versions supported by the provided new remote IO, and test and debug communication between the existing Common Pall System Control Panel and new Remote IO hardware in each control panel. Demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed Remote IO components to Owner.

ICI No. 34

Plant PLC Hardware

Description: Replace the existing Modicon Premium plant PLC hardware, including all PLC CPUs, in-rack communication modules, and IO modules. The new PLC hardware shall be model Modicon M340 or greater.

Location: Influent Building (PLC-IPSCP)
Headworks Building (PLC-ER3CP)
Dewatering Building (PLC-ER1CP)
Effluent Building (PLC-ER2CP)

Related Improvements:

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing PLC hardware and replace with compatible model replacement PLC hardware identified in the described improvements.
3. Obtain electronic copy of existing PLC program from the original programmer, convert PLC program to the latest software and firmware versions supported by the provided CPU, download to new CPU, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed PLC components to Owner.

ICI No. 35

SBR DO Transmitters

Description: Replace the existing Hach SC200 DO transmitters on the SBR deck. The new DO transmitters shall be Hach model SC4500 with compatible DO sensors.

Location: SBR Deck

Related Improvements:

Work shall include:

1. Remove existing DO transmitters and probes, disconnect all signal and power wiring from the existing equipment, and replace with DO transmitters identified in the described improvements and compatible DO sensors.
2. Preserve or adapt existing mounting brackets for DO sensors and transmitters.
3. Reconnect power and signal cables to new DO transmitters.
4. Configure the transmitters to display each probe's feedback complete with a label describing its mounted location. Preserve existing 4-20 mA scaling output to the PLC, if possible. If preserving existing 4-20 mA scaling is not possible, update pertinent PLC programs to accommodate new scaling parameters.
5. Demonstrate SCADA conforms to DO readings at 4, 8, 12, 16, and 20 mA.

ICI No. 36

SBR System Operator Interface Terminals (OITs)

Description: Upgrade existing SBR System OIT. The new OIT shall be the manufacturer's recommended replacement for the existing OIT Allen Bradley Model 2711P-T10C4D1.

Location: Admin Building, (SDR 1 & 2 PLC).

**Related
Improvements:**

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing OITs and replace with compatible model replacement OITs identified in the described improvements.
3. Obtain electronic copy of existing OIT program from the original programmer, convert OIT program to the latest software and firmware versions supported by the provided OIT, download to new OIT, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Provide electronic copy of final converted OIT program to the Owner on USB media.
5. Package, label, and return removed OIT components to Owner.
6. Provide a blank filler plate through-bolted through the enclosure preserving the originally designed NEMA rating of the enclosure, with an opening of appropriate dimension for the new OIT, and color-matched to match the original color of the enclosure. Install OIT in filler plate.

ICI No. 37

SBR PLC CPU

Description: Upgrade existing SBR System PLC CPU. The new PLC CPU shall be Allen Bradley model 1769-L33ER.

Location: Admin Building, (SDR 1 & 2 PLC).

Related Improvements:

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing PLC CPUs and replace with compatible model replacement CPUs identified in the described improvements.
3. Obtain electronic copy of existing PLC program from the original programmer, convert PLC program to the latest software and firmware versions supported by the provided CPU, download to new CPU, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed PLC components to Owner.

ICI No. 38

SBR Remote IO Hardware

Description: Upgrade existing remote communication and IO modules within the SBR 3 & 4 control panel. New remote communication and IO modules shall be Allen Bradley Flex 5000 remote IO.

Location: Admin Building, SBR 3 & 4 control panel.

Related Improvements:

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing Remote IO hardware and replace with compatible model replacement Remote IO identified in the described improvements. Provided Remote IO shall be compatible with the existing SBR 1 & 2 PLC.
3. Obtain electronic copy of existing SBR PLC program from the original programmer, install latest firmware versions supported by the provided new remote IO, and test and debug communication between the existing SBR PLC and new Remote IO hardware. Demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed Remote IO components to Owner.

ICI No. 39

SCADA Network Firewall

Description: Upgrade existing TZ100 Sonic Wall firewall. The new firewall shall be Sonic Wall TZ300.

Location: Admin Building

**Related
Improvements:**

Work shall include:

1. Obtain existing SCADA Network Architecture Diagram in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Configure the new firewall with a static IP address that doesn't conflict with the facility's existing IP addressing structure.
3. Modify the default password associated with the firewall's default administrator account. Share the updated login credentials with the Owner.
4. Obtain the login credentials of the existing firewall from the original programmer. Review the configuration settings of the existing firewall and implement identical rules in the new firewall.
5. Review configuration settings of the existing firewall that allow remote access to the SCADA system and implement identical rules within the firewall to allow the Owner to remotely access SCADA. Coordinate individuals that should receive remote access and provide remote access training to everyone.
6. Remove existing firewall from service, install new firewall in its place, and reconnect all cables.
7. Package, label, and return removed firewall to Owner.

ICI No. 40

Uninterruptible Power Supplies (UPSs)

Description: Replace existing APC, CyberPower, and Eaton UPSs in various control panels around the facility. The new UPS model shall be Eaton 9SX1000.

Location: Influent Building (PLC-IPSCP)
Headworks Building (PLC-ER3CP)
Dewatering Building (PLC-ER1CP), (OITCP)
Effluent Building (PLC-ER2CP), (Pall Common CP)
Admin Building (PLC-SBR1&2), (PLC-SBR3&4), (CRUPSCP)

Related Improvements:

Work shall include:

1. Remove existing UPS and replace with model identified in the described improvements.
2. Fully charge each UPS and demonstrate each UPS provides uninterrupted backup power to all originally designed components for a minimum of 30 minutes.
3. Demonstrate the appropriate alarms are indicated in SCADA.

ICI No. 41

Common Pall System Control Panel PLC Hardware

Description: Upgrade existing Pall System Common Control Panel PLC CPU. The new PLC CPU shall be Allen Bradley model 1756-L72.

Upgrade existing in-rack Ethernet communication module within the Pall System Common Control Panel. The new Ethernet communication module shall be Allen Bradley model 1756-EN2T.

Location: Effluent Area, Pall System Common Control Panel.

Related Improvements:

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing PLC CPUs and Ethernet communication module and replace with compatible model replacement CPUs and Ethernet communication module identified in the described improvements.
3. Obtain electronic copy of existing PLC program from the original programmer, convert PLC program to the latest software and firmware versions supported by the provided CPU, download to new CPU, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed PLC components to Owner.

ICI No. 42

Combustible Gas Detectors

Description: Upgrade combustible gas detectors on the SBR deck, including new combustible gas detection sensors and transmitters, air sample pumps and appurtenances, tubing, and fan driven enclosure heaters within each enclosure. New combustible gas detection equipment shall be MSA Ultima x5000. The new air sample pump shall be compatible with the new combustible gas detection sensors. The new enclosure heaters shall be by Hoffman.

Location: SBR Deck, heated instrument enclosures (4)

Related Improvements:

Work shall include:

1. Remove existing gas detection sensors, sample pumps, tubing, and heaters and disconnect all signal and power wiring from the existing equipment and replace with equipment identified in the described improvements and compatible combustible gas detection equipment.
2. Preserve or adapt existing mounting brackets for combustible gas detection equipment, air sample pumps, and heaters.
3. Reconnect power and signal cables to new combustible gas detection transmitters and air sample pumps.
4. Calibrate the new combustible gas detection equipment and utilize a gas with a known concentration to test the transmitter calibrations.
5. Utilize new tubing to connect the sample point, air sample pump, combustible gas detection transmitter, and discharge point.
6. Configure the transmitters to display each probe's feedback complete with a label describing its mounted location. Preserve existing 4-20 mA scaling output to the PLC, if possible. If preserving existing 4-20 mA scaling is not possible, update pertinent PLC programs to accommodate new scaling parameters.
7. Demonstrate SCADA conforms to combustible gas detection readings at 4, 8, 12, 16, and 20 mA.
8. Replace existing control panel nameplates. New nameplates shall be indicative of the equipment installed within each enclosure.
9. Create wiring diagrams for each combustible gas detection panel in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.

ICI No. 43

Grit System PLC Hardware

Description: Replace the existing Grit System PLC hardware, including all PLC CPUs, communication modules, and IO modules. The new PLC hardware shall be the manufacturer's recommended replacement PLC platform for the existing DirectLOGIC DL06 series PLC.

Location: Headworks Building, Grit System control panel

**Related
Improvements:**

Work shall include:

1. Obtain existing PLC wiring diagrams in AutoCAD or recreate existing drawings in AutoCAD, if unavailable from original vendor. Update wiring diagrams in AutoCAD to reflect the described improvements. Submit final as-built diagrams to Owner in AutoCAD format.
2. Remove existing PLC hardware and replace with compatible model replacement PLC hardware identified in the described improvements.
3. Obtain electronic copy of existing PLC program from the original programmer, convert PLC program to the latest software and firmware versions supported by the provided CPU, download to new CPU, test, tune, debug, and demonstrate the upgraded systems preserve all existing functionality to the Owner.
4. Update HMI application database to reflect new PLC addressing and validate equivalent HMI performance through all modes of operation via manipulation of equipment in the field.
5. Provide electronic copy of final and fully annotated, converted PLC program to the Owner on USB media.
6. Package, label, and return removed PLC components to Owner.

APPENDIX 10
OPERATING CONDITIONS

Maximum Monthly Influent Conditions	
Flow, mgd	1.5 (peak hourly flow 4.5 mgd)
BOD, mg/L	300 (3750 lbs/day)
TSS, mg/L	300 (3750 lbs/day)
Phosphorus, mg/L	20 (250 lbs/day)
TKN, mg/L	60 (750 lbs/day)
Ammonia, mg/L	50(625 lbs/day)
PH	6 to 9
Temperature Range	45° F - 78° F
Alkalinity	150 mg/L CaCO ₃ (minimum)

TRANSACTION FORMS

FORM OF LETTER OF CREDIT

Date:
Our Ref. No.:
Amount: US\$
Expiry:

Beneficiary: County of Rockland and Rockland County Sewer District No. 1

Dear Sirs:

By order of and for the account of [] a []
[] organized and existing under the laws of the State of [] (the
“Company”) we, [INSERT NAME AND ADDRESS OF BANK], hereby establish in favor of
COUNTY OF ROCKLAND and ROCKLAND COUNTY SEWER DISTRICT NO. 1 (the
“Beneficiaries”) our Irrevocable Letter of Credit No. _____ (the “Letter of Credit”) in the amount
of [] (the “Stated Amount”).

We are advised by the Company that this Letter of Credit is issued in accordance with the
Management Service Agreement between the Beneficiaries and the Company, dated []
[] (the “Agreement”). This Letter of Credit is effective immediately and expiring at
the close of business on [] (the “Stated Termination Date”). All drawings
under this Letter of Credit shall be paid with our own funds.

We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed
the Stated Amount and in accordance with the terms and conditions as hereinafter set forth, in one
or more drawings by one or more of your drafts in the form of Annex A attached hereto, payable
at sight by you on a Business Day (as hereinafter defined), and accompanied by your written and
completed certificate in the form of Annex B attached hereto (any such draft accompanied by such
certificate being your “Drawing Certificate”), representing amounts payable to you by the
Company under the Agreement.

Each Drawing Certificate drawn under this Letter of Credit must be dated the date of
presentation and bear on its face the clause “Drawn under Irrevocable Letter of Credit No. ____”

Funds under this Letter of Credit shall be available to you against receipt by us of your
Drawing Certificate. Presentation of any such Drawing Certificate by you or an Authorized
Representative of the Beneficiary shall be made at our office located at:

[BANK]
[STREET ADDRESS]
Attention: Letter of Credit Department
Telephone no.: () -
Fax no.: () -

Demand for payment hereunder may also be made in the form of a facsimile transmission
of the appropriate Drawing Certificate hereunder to the address and fax number shown above.

You must confirm our receipt of each faxed Drawing Certificate by telephoning the number shown above. Only upon such confirmation shall the demand under such Drawing Certificate be made. As used herein, the term "Business Day" means any day, other than a Saturday or Sunday or other day on which we at the aforesaid office are authorized or required by law or executive order to close.

In the case of a presentation of a Drawing Certificate hereunder, if such Drawing Certificate is presented hereunder by sight or facsimile transmission as permitted hereunder, by 10:00 a.m. eastern standard time on a Business Day, and provided that such Drawing Certificate conforms to the terms and conditions hereof, payment shall be made to you, of the amount specified, in immediately available funds, not later than 5:00 p.m. eastern standard time on the next business day or such later Business Day as you may specify. If a Drawing Certificate is presented by you or an Authorized Representative of the Beneficiary hereunder after the time specified hereinabove, on a Business Day, and provided that such Drawing Certificate conforms to the terms and conditions hereof, payment shall be made to you, of the amount specified, in immediately available funds, not later than 5:00 p.m. eastern standard time on the second succeeding Business Day thereafter or such later business day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank of New York funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you maintain with us.

Upon honoring any Drawing Certificate presented by you or an Authorized Representative of the Beneficiary hereunder, the amount available to be drawn hereunder by you by any subsequent Drawing Certificate shall be automatically replenished up to the Stated Amount.

Only you or an Authorized Representative of the Beneficiary may make a drawing under this Letter of Credit. Upon any payment to you, of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

Except as set forth in the next paragraph and the certificates referred to herein, this Letter of Credit sets forth in full 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); and such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except as set forth in the next paragraph and for the certificates referred to herein.

This Letter of Credit is to be construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication 590 (the "ISP98") and any subsequent revisions thereto, as interpreted by the laws of the State of New York.

Very truly yours,

[BANK]

Signature

Printed name

Title

ANNEX A TO LETTER OF CREDIT
FORM OF SIGHT DRAFT

AT SIGHT PAY TO COUNTY OF ROCKLAND, as Beneficiary, [Amount in words] United States Dollars (US\$_____). Drawn under Irrevocable Letter of Credit No. ____.

COUNTY OF ROCKLAND

Date of Presentation: [_____]

Signature of
Authorized Representative

Printed name

Title

ANNEX B TO LETTER OF CREDIT
CERTIFICATE FOR DRAWING
IN CONNECTION WITH
PAYMENT OF AMOUNTS
UNDER THE AGREEMENT

Drawn under Irrevocable Letter of Credit No.: _____

The undersigned, a duly authorized representative of the County of Rockland (the “County” or the “Beneficiary”) or its Representative, hereby certifies to [Name of Bank] (the “Bank”), with reference to Irrevocable Letter of Credit No. (the “Letter of Credit”); terms defined therein but not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary as follows:

The Beneficiary is a party to the Management Service Agreement between the Beneficiaries and the Company, dated as of [] (the “Agreement”).

The Beneficiary is making a demand for payment under the Letter of Credit in the amount of _____ United States Dollars (US\$ _____) and such amount represents an amount owed to the Beneficiary with respect to an obligation of the Company under the Agreement and does not exceed the Stated Amount.

Payment of the amount described hereby shall be made by wire transfer to the following account: [wire transfer instructions].

The undersigned is the [_____ Title _____] of the County, is a duly authorized representative of the Beneficiary and authorized to bind the County.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its Representative as of this ____ day of _____, ____.

COUNTY OF ROCKLAND

Signature of
Authorized Representative

Printed name

Title

FORM OF OPERATIONS PERFORMANCE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we _____ with a place of business at _____ as principal (the “Principal”), and _____, a [corporation] qualified to do business in the State of New York, with a place of business at _____ as Surety (the “Surety”), are held and firmly bound unto Rockland County Sewer District No. 1 as Obligee (the “Obligee”), in the sum of *one million dollars (\$1,000,000.00)* lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of _____, and entitled Management Services and Capital Improvements at the Advanced Wastewater Treatment Plant in Hillburn, NY (the “Agreement”).

NOW THE CONDITIONS of this obligation are such that if the Principal and all Subcontractors or suppliers under said contract shall well and truly keep and perform all the undertakings, covenants, agreement, terms, and conditions of said contract on its part to be kept and performed during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life and including any guarantee required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions. The obligations of the Surety set forth herein shall become null and void only if expressly waived in writing by the Obligee Rockland County Solid Waste Management Authority; otherwise such obligations shall remain in full force and virtue.

IN THE EVENT the Agreement is abandoned by the Principal, or is terminated by the Obligee, Rockland County Sewer District No. 1, under the applicable provisions of the Agreement, the Surety hereby further agrees that the Surety shall, if requested in writing by Rockland County Sewer District No. 1, promptly take all such actions as is necessary to complete said Agreement in accordance with its terms and conditions.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____, 2024.

PRINCIPAL SURETY

[Name and Seal] [Attorney-In-Fact][Seal]

[Title] [Address]

[Phone]

Attest: _____ Attest: _____

The rate for this Bond is _____% of the first \$_____ and _____% for the next
\$_____.

The total premium for this Bond is \$_____.

*[END OF OPERATIONS
PERFORMANCE BOND]*

FORM OF LABOR AND MATERIALS PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we [_____] with a place of business at _____ as principal (the “Principal”), and _____, a [_____] qualified to do business in the State of New York, with a place of business at _____ as Surety (the “Surety”), are held and firmly bound unto Rockland County Sewer District No. 1 as Obligee (the “Obligee”), in the sum of [_____ Dollars (\$ _____)] lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of [_____], and entitled Contract for Management Services and Capital Improvements at the Advanced Wastewater Treatment Plant in Hillburn, NY (the “Contract”).

NOW, THE CONDITIONS of this obligation are such that if the Principal and all Subcontractors under said Contract shall promptly pay for all labor performed or furnished and for all materials and equipment used or employed in said Contract (including any amendments or modifications thereto), notice to the Surety of such amendments or modifications being hereby waived, and defends, indemnifies and holds harmless the Obligee from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in performance of the Contract, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

The Surety’s obligation to the Obligee under this Bond shall arise after the Obligee provides notice to the Principal and Surety of claims, demands, liens or suits against the Obligee or the Obligee’s property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Contract.

The Surety shall promptly and at the Surety’s expense defend, indemnify and hold harmless the Obligee against any duly tendered claim, demand, lien or suit against the Obligee or the Obligee’s property.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____, 2024.

PRINCIPAL

[Name and Seal]

[Title]

SURETY

[Name and Seal]

[Title]

[Address]

[Phone]

Attest: _____

The rate of the Bond is _____% of the first \$ _____ and _____% for the next
\$ _____. The total premium for this Bond is \$ _____.

[Address]

[Phone]

Attest: _____

FORM OF CONSTRUCTION PERFORMANCE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we _____ with a place of business at _____ as principal (the "Principal"), and _____, a [_____] qualified to do business in the State of New York, with a place of business at _____ as Surety (the "Surety"), are held and firmly bound unto Rockland County Sewer District No. 1 as Oblige (the "Oblige"), in the sum of *[insert amount and spell out bond penal sum]* lawful money of the United States of America, to be paid to the Oblige, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Oblige, bearing the date of _____, and entitled Contract for Management Services and Capital Improvements at the Advanced Wastewater Treatment Plant in Hillburn, NY (the "Contract").

NOW THE CONDITIONS of this obligation are such that if the Principal and all Subcontractors or suppliers under said Contract shall well and truly keep and perform all the undertakings, covenants, agreement, terms, and conditions of said Contract on its part to be kept and performed during the original term of said Contract and any extensions thereof that may be granted by the Oblige, with or without notice to the Surety, and during the life and including any guarantee required under the Contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions, the obligations of the Surety set forth herein shall become null and void; otherwise such obligations shall remain in full force and virtue.

WHENEVER the Principal shall be declared by the Oblige to be in default under the Contract, the Oblige having performed the Oblige's material obligations thereunder, at the Oblige's option as declared in writing, the Surety may promptly remedy the default whatever it may be or shall promptly perform the Contract in accordance with all of its terms and conditions. To the extent that the Oblige elects to not have the Surety remedy the default nor promptly perform the Contract, the Surety shall make payment to the Oblige up to the Penal Sum of this instrument.

IN THE EVENT the Contract is abandoned by the Principal, or is terminated by the Oblige under the applicable provisions of the Contract, the Surety hereby further agrees that the Surety shall, if requested in writing by the Oblige, promptly take all such actions as are necessary to complete said Contract in accordance with its terms and conditions. To the extent that the Oblige elects not to require the Surety to take all such actions as are necessary to complete said Contract, the Surety shall make payment to the Oblige up to the Penal Sum of this instrument.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____, 2024.

PRINCIPAL SURETY

[Name and Seal] [Attorney-In-Fact][Seal]

[Title] [Address]

[Phone]

Attest: _____ Attest: _____

The rate for this Bond is _____% of the first \$ _____ and _____% for the next \$ _____.

The total premium for this Bond is \$ _____.

[END OF CONSTRUCTION PERFORMANCE BOND]

REFERENCE DOCUMENTS

2002 N.Y. S.N. 7354

Enacted, December 3, 2002

Reporter

2002 N.Y. ALS 665; 2002 N.Y. LAWS 665; 2002 N.Y. S.N. 7354

NEW YORK ADVANCE LEGISLATIVE SERVICE > NEW YORK 225TH ANNUAL LEGISLATIVE SESSION
SENATE - ASSEMBLY > CHAPTER 665 > SENATE BILL 7354

Synopsis

AN ACT in relation to authorizing the building of a wastewater treatment plant in the county of Rockland by a private company

Text

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Notwithstanding the provisions of any other law to the contrary, a county sewer district in Rockland county, acting through its administrative head, is hereby authorized and empowered to issue a request for proposals, and subsequently to enter into agreements based upon such request for proposals, or to amend, supplement, modify, change or extend such agreements, including but not limited to, contracts, with any private corporation, partnership or individual, upon such terms and conditions and for such consideration and for such term or duration not to exceed twenty-five years, as may be agreed upon by said administrative head, with the approval of the county legislature, wherein such private entity is granted the right to design, construct, operate, maintain, manage, use, occupy or any of them, all or part of certain facilities it or the district owns or will own and to carry on activities or furnish services, in whole or in part relative to the manner of sewerage and wastewater treatment and collection for the district on sites approved by the district which may either be owned by the district, the county, or privately. The district, only after conducting a cost/benefit review analyzing the efficacy of such an arrangement, may enter into such agreements with a private entity based upon a determination by the district that the selected proposal is the most responsive to the district's request for proposals and is in the best interest of the district, with the overall cost of the proposal being a major criterion in the selection. The district may negotiate with any proposer. This act shall not be construed to alter or diminish a district's obligation to provide wastewater services, to comply with all applicable environmental laws and regulations, and to administer the district's services, including the assessment, levying, and collection of the expenses of the district. Such facilities, including their influent, effluent, waste, and by-products, shall be regulated and permitted as if such facilities were fully owned and operated by a municipality.

A private entity which is a party to such agreement may be granted the rights hereinbefore referred to for any purpose or purposes which shall, by utilization of such sewerage and wastewater treatment and collection facilities, benefit the people of the district or provide for the improvement of their health and welfare or aid and undertake or assist in the financing of the design, construction, operation, maintenance, and management of such facilities. The district shall not sell to any such private entity any existing wastewater treatment facility of the district.

SPDES PERMIT