Massaro, Luly (PUC)

From: Verdi, Nicole <NVerdi@apslaw.com>
Sent: Wednesday, January 02, 2019 3:13 PM
To: Michael@McElroyLawOffice.com; Christy Hetherington; lmorgan@exeterassociates.com; leah@mcelroylawoffice.com; Joel munoz; CChamberland@woonsocketri.org; Smith, Pat (DPUC); Hogan, Margaret (PUC); Shoer, Alan; jmierzwa@exeterassociates.com; sdagostino@woonsocketri.org; jpratt@woonsocketri.org; Bell, John (DPUC); Donna MacRae; ColbyCamara, Sharon (PUC); dbebyn@gmail.com; OtoskiRM@cdmsmith.com; Mancini, Al (DPUC); WilsonFrias, Cynthia (PUC); maureen.gurghigian@hilltopsecurities.com; Massaro, Luly (PUC)
Cc: Fontaine, April; Simmons, Eason
Subject: [EXTERNAL] : RE: Dkt 4879 - Woonsocket Water Division - DPUC DR 5
Attachments: Mimecast Large File Send Instructions

I'm using Mimecast to share large files with you. Please see the attached instructions.

Hi Christy,

Please see the attached exhibit. The schedules should have been included in the initial response, but it appears that due to technical issues, the schedules were not reviewable. Everyone should now be able to review the schedules after opening the attached exhibit as a PDF. (Please note, the schedules will appear in a list on the left hand side of the PDF. The schedules will not appear if you open this document in your browser.)

Please let me know if anyone has any difficulty accessing.

Hard copies will be mailed to the PUC.

Thank you,
Nicole

From: Christy Hetherington [mailto:CHetherington@riag.ri.gov]
Sent: Wednesday, January 2, 2019 10:15 AM
To: Shoer, Alan <AShoer@apslaw.com>; Verdi, Nicole <NVerdi@apslaw.com>; jpratt@woonsocketri.org; CChamberland@woonsocketri.org; sdagostino@woonsocketri.org; dbebyn@gmail.com; maureen.gurghigian@hilltopsecurities.com; OtoskiRM@cdmsmith.com; Christy Hetherington <CHetherington@riag.ri.gov>; John.bell@dpuc.ri.gov; Donna MacRae <dmacrae@riag.ri.gov>; Joel munoz <jmunoz@riag.ri.gov>; Al.mancini@dpuc.ri.gov; Pat.smith@dpuc.ri.gov; jmierzwa@exeterassociates.com; lmorgan@exeterassociates.com; Luly.massaro@puc.ri.gov; Margaret.hogan@puc.ri.gov; Cynthia.WilsonFrias@puc.ri.gov; Sharon.ColbyCamara@puc.ri.gov; Michael@McElroyLawOffice.com; leah@mcelroylawoffice.com
Subject: Dkt 4879 - Woonsocket Water Division - DPUC DR 5

Good morning:

Attached is a follow-up data request for Woonsocket Water.
Thank you for your attention to this.

Very truly yours,

Christy Hetherington | **Special Assistant Attorney General**
The State of Rhode Island | Office of the Attorney General
150 South Main Street | Providence, RI - 02903
Office: +1 401 274 4400 | Ext: 2425
chetherington@riag.ri.gov| www.riag.ri.gov [3m.com] |

*Please note: **Starting Monday, July 23, 2018**, the Bureau of Criminal Identification (BCI), Consumer Protection Unit, and Diversion Unit will be located at 4 Howard Avenue, Cranston (on the corner of Howard Avenue and Pontiac Avenue). As of that date, **all in-person state and/or national background checks will ONLY be available at the 4 Howard Avenue, Cranston location** (background checks will NO LONGER be available at the Attorney General's main office in Providence). For more information, please visit www.riag.ri.gov or call 401-274-4400.*

WOONSOCKET WATER DIVISION
DOCKET NO. 4879
FIFTH SET OF DATA REQUESTS OF THE
DIVISION OF PUBLIC UTILITIES AND CARRIERS

January 2, 2019

5-1 With reference to the response to DIV 1-2, please provide Schedules 1 through 18 that are part of the Water Treatment Plant Agreement that was provided as an attachment to the response.

EXHIBIT 1-2

WOONSOCKET DRINKING WATER TREATMENT FACILITY

CAPITAL IMPROVEMENTS, OPERATIONS, MAINTENANCE AND MANAGEMENT AGREEMENT BY AND BETWEEN

THE CITY OF WOONSOCKET, RHODE ISLAND AND WOONSOCKET WATER SERVICES LLC

JULY 31, 2017

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WOONSOCKET DRINKING WATER TREATMENT FACILITY CAPITAL IMPROVEMENTS, OPERATIONS, MAINTENANCE AND MANAGEMENT AGREEMENT

This WOONSOCKET DRINKING WATER TREATMENT FACILITY CAPITAL IMPROVEMENTS, OPERATIONS, MAINTENANCE AND MANAGEMENT AGREEMENT ("Agreement"), dated as of July 31, 2017 ("Agreement Date"), is entered into by and between the ***City of Woonsocket, Rhode Island***, a Rhode Island municipal corporation ("City"), and ***Woonsocket Water Services LLC***, a limited liability company organized and existing under the laws of the State of Delaware ("Company").

W I T N E S S E T H:

WHEREAS, the City owns and operates the existing City of Woonsocket drinking water treatment facility located on Manville Road, Woonsocket, Rhode Island (as more particularly described below, the "Existing Facility");

WHEREAS, the City issued a request for proposals on August 5, 2015 for the design and construction of a new drinking water treatment facility to be located on City-owned property on Jillson Avenue, Woonsocket (as more particularly described below, the "New Facility"), and for the long-term operation, maintenance and management of the New Facility, as well as for the operation, maintenance and management of the Existing Facility pending completion of the New Facility;

WHEREAS, in response to the RFP (as defined herein), the Company submitted a proposal;

WHEREAS, pursuant to the RFP, the City has selected the Company;

WHEREAS, the Company desires to design and perform the capital improvements and to operate, maintain and manage the New Facility in accordance with the terms and subject to the conditions of this Agreement;

WHEREAS, the Guarantors shall execute the Guaranty Agreements in the forms attached as an exhibit hereto, guarantying the Company's obligations under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
SCHEDULES

Section 1.1 Schedules and Exhibits.

The following Schedules and Exhibits are attached hereto and made a part of this Agreement. In the event of a conflict or inconsistency between or among the Schedules and this Agreement, the provisions of this Agreement control over the Schedules unless otherwise agreed to in writing by the parties or unless otherwise specifically provided in this Agreement.

EXHIBIT H – BLASTING PROVISIONS

EXHIBIT I – SAMPLE QUALITY MANAGEMENT PLAN

ARTICLE II
CERTAIN DEFINITIONS

Section 2.1 Definitions.

As used herein, these terms shall have the following meanings:

"Acceptance" means demonstration by the Company in accordance with the terms of this Agreement that the Acceptance Test has been conducted and the Acceptance Standards have been achieved.

"Acceptance Date" means the date on which Acceptance is granted by the City.

"Acceptance Deadline" has the meaning specified in Section 6.9 hereof.

"Acceptance Standards" means the standards for Acceptance set forth in Schedule 1 hereto.

"Acceptance Test(s)" or "Acceptance Testing" means the tests, plans and procedures set forth in Schedule 13 hereto.

"Affiliate(s)" 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.

"Analytical Services" has the meaning specified in Schedule 2 hereto.

"Annual Facility Inspection" has the meaning specified in Schedule 2 hereto.

"Annual Report" has the meaning specified in Schedule 2.

"Applicable Law" means any law, rule, regulation, requirement, action, determination, guideline, order of, or any legal entitlement issued by any governmental body having jurisdiction, applicable from time to time to the siting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation, maintenance or repair of the Existing Facility or the New Facility, the delivery, treatment, or storage of water, the transfer, handling, transportation or disposal of residue or any other transaction or matter contemplated hereby including, without limitation, any of the foregoing which pertain to water.

"Auditor" has the meaning specified in Section 10.3 hereof.

"Auditor's Report" has the meaning specified in Section 10.3 hereof.

"Authorized Representative" has the meaning specified in Section 5.3 hereof.

"Billing Month" means each calendar month in a Contract Year.

"Bonds" mean the Construction Payment and Performance Bond, the Labor and Materials Bond and the Operations Bond.

"Buildings Services" has the meaning specified in Schedule 2 hereto.

"Capital Improvement(s)" has the meaning specified in Section 5.4.2 hereof.

"Certificates" means insurance certificates as specified in Schedule 4 hereto.

"Change in Law" means:

(a) the enactment, adoption, promulgation, modification or repeal after the Agreement Date of any federal, State, or local law, ordinance, code, rule, regulation or other similar legislation or the modification or change in interpretation after the Agreement Date of any federal, State, or local law, ordinance, code, rule, regulation, official permit, license or approval by any regulatory or judicial entity having jurisdiction with respect to the operation or maintenance of the Existing Facility or the New Facility, as applicable; or

(b) the imposition after the Agreement Date of any material conditions on the issuance, modification or renewal of any official legal permit, license or approval necessary for the operation and maintenance of the Existing Facility or the New Facility, which, in the case of either (a) or (b) above, modifies the Company's obligations in connection with the Existing Facility's or the New Facility's performance or decreases or increases the cost of the Company's operation or maintenance of the Existing Facility or the New Facility and which is less or more burdensome than the most stringent requirements:

(i) in effect on the Agreement Date; or

(ii) agreed to by the City in any applications for official permits, licenses or approvals for the Existing Facility or the New Facility, other than any requirements set forth in said applications to comply with future laws, ordinances, codes, rules, regulations or similar legislation; or

(iii) in the Performance Standards set forth in Schedule 1 hereto and operation and maintenance standards set forth in Schedule 2 hereto; or

(iv) of "Prudent Industry Practices" meaning those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or reasonably believed to exist at the time, are generally accepted as reasonably prudent in the water treatment industry or other industry in which services similar to the Services are provided as practiced in the United States with respect to a plant of similar type as the Existing Facility and the New Facility.

For purposes of part (a) of this definition of the term "Change in Law," no enactment, adoption, promulgation or modification of laws, ordinances, codes, rules, regulations or similar requirement or enforcement policy with respect to any such requirement shall be considered a

Change in Law if, as of the Agreement Date, such law, ordinance, code, rule, regulation or other similar requirement would have affected directly the continued management, operation and maintenance of the Existing Facility or the New Facility by the City after the Commencement Date in the absence of this Agreement and such law, ordinance, code, rule, regulation or other similar requirement was either (i) officially proposed by the responsible agency and published in final form in the Federal Register or equivalent federal, State or local publication and thereafter becomes effective without further action or (ii) enacted into law or promulgated by the appropriate federal, State or local body before the Agreement Date, and the comment period with respect to which expired on or before the Agreement Date and any required hearing concluded on or before the Agreement Date in accordance with applicable administrative procedures and which thereafter becomes effective without further action. In no event shall a change in any federal, State or local tax law relating to corporate income tax be considered a Change in Law.

"Change Order" means a written order issued by the City to the Company after execution of this Agreement, authorizing or requiring: (1) Extra Construction Work, or deleted or omitted Construction Work, pursuant to Section 5.15 hereof; (2) an increase or reduction in the Fixed Construction Price; or (3) any other change in this Agreement prior to the Acceptance Date, including any change in the Design Requirements.

"Chemical(s)" has the meaning specified in Schedule 2, Section 2.2.5 hereto.

"City Employee(s)" has the meaning specified in Section 3.9 hereof.

"City Engineer" means (1) an engineer employed by the City, or (2) a consulting engineer or firm of consulting engineers, in either case having experience with respect to the design, construction, testing, operation and maintenance of water treatment facilities, who is designated for purposes of this Agreement as the City Engineer from time to time in writing by the City.

"City Fault" means any breach (including the untruth or breach of any City representation or warranty set forth herein), failure, nonperformance or noncompliance by the City under this Agreement which is not attributable to any Uncontrollable Circumstance or Company Fault, and which materially and adversely affects the Company's rights or ability to perform under this Agreement.

"City Indemnitees" has the meaning specified in Section 7.4.1 hereof.

"Commencement Date" means the date upon which the Company commences operations and related duties in connection with the Existing Facility.

"Commencement Date Deadline" has the meaning specified in Section 3.1.1 hereof.

"Company Construction Superintendent" has the meaning specified in Section 5.19.3 hereof.

"Company Fault" means any breach (including the untruth or breach of any Company representation or warranty set forth herein), failure, nonperformance or noncompliance by the Company under this Agreement (whether or not attributable to any officer, member, agent, employee, contractor, subcontractor of any tier, or an independent contractor of the Company or any

Affiliate of the Company) which is not directly attributable to any Uncontrollable Circumstance or City Fault, and which materially and adversely affects the City's rights or ability to perform under this Agreement.

"Compliance Plan" has the meaning specified in Section 3.10 hereof.

"Consent Agreement" means that certain Modified Consent Agreement No. RIA-382 dated June 19, 2012 entered into by RIDEM and the City.

"Construction Date" means the first date on which all of the Construction Date Conditions shall be satisfied or waived, as agreed to in writing by the parties, pursuant to Section 4.6 hereof.

"Construction Date Conditions" has the meaning specified in Section 4.5.1 hereof.

"Construction Date Deadline" has the meaning specified in Section 4.6.2 hereof.

"Construction Payment and Performance Bond" means the bond that guarantees the Company's timely performance of its payment, construction and other specified obligations for the benefit of the City.

"Construction Period" means the period from and including the Construction Date to the Acceptance Date.

"Construction Price" has the meaning specified in Section 5.17.1 hereof.

"Construction Work" means everything required to be furnished and done for and relating to the New Facility or the Site pursuant to this Agreement during the Construction Period, including all design work and including the design and construction of the Capital Improvements. A reference to Construction Work shall mean any part and all of the Construction Work unless the context otherwise requires, and shall include all Extra Construction Work authorized by Change Order pursuant to Section 5.15 hereof.

"Contract Term" or "Term" has the meaning specified in Section 10.1.1 hereof.

"Contract Year" means the consecutive twelve (12) month period commencing on July 1 in any year and ending on the following June 30; provided, however, that the first Contract Year shall begin on the Commencement Date and shall end on the following June 30, and the last Contract Year shall commence on July 1 prior to the date this Agreement expires or is terminated, whichever is appropriate, and shall end on the last day of the Contract Term or the effective date of any termination, as applicable.

"Cost Substantiation" means, with respect to any cost reasonably incurred or to be incurred by the Company which is directly or indirectly chargeable in whole or in part to the City hereunder, delivery to the City of a certificate signed by an officer of the Company, setting forth the amount of such cost and the provisions of this Agreement under which such cost is properly chargeable to the City, stating that such cost is a fair market price for the service or materials supplied or to be supplied and that such services and materials are reasonably required pursuant to this Agreement, and accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required under this Agreement has been or will be

incurred. Such documentation shall include reasonably detailed information concerning (1) all Subcontracts; (2) the amount and character of materials furnished or to be furnished, the persons from whom purchased or to be purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes, if any; (3) a statement of the equipment used or to be used and any rental payable therefor; (4) Company worker hours, duties, wages, salaries, benefits, assessments, taxes and premiums; and (5) Company expenses, including administrative expenses, bonds, insurance, overhead, and other expenses; and (6) Company profit (5% on Construction Work and 4.0% on Operation Services). Cost Substantiation, as applicable to the Fixed Construction Price, the fixed component of the Service Fee or any costs for which the City and Company have negotiated a lump sum price, shall mean documentation reasonably acceptable to the City but in no event less than that required by any City lender providing funding for the Services.

"Credit Enhancement Guaranty" has the meaning specified in Section 11.2.4 hereof.

"Credit Enhancement Letter of Credit" has the meaning specified in Section 11.2.4 hereof.

"Deliverable Material" has the meaning specified in Section 5.16 hereof.

"Design Requirements" means the Design Requirements for the Capital Improvements set forth in Schedule 12 hereto, as the same may be changed or modified in accordance with this Agreement.

"Development Period" has the meaning specified in Section 4.1 hereof.

"Discretionary Termination Amount" has the meaning specified in Section 8.4.1 hereof.

"Disposal Agreement" has the meaning specified in Section 3.5 hereof.

"Disposal Facility" has the meaning specified in Section 3.5 hereof.

"Disputed Work" has the meaning specified in Section 5.15.7 hereof.

"Distribution System" means any water collection, conveyance, or transmission piping, conduits or underground electrical wiring not within the confines of the Existing Facility or any pump station.

"Encumbrance(s)" means any lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Site, other than Permitted Encumbrances.

"Enterprise Fund" means the City's fund through which all City water revenues are collected and expenses are paid, as authorized by the Rhode Island Public Utilities Commission.

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

"Equipment" means all vehicles, machinery, structures, components, parts and materials located at the Existing Facility or the New Facility that are utilized in the operation, maintenance

and management of the Existing Facility or the New Facility.

"Equipment and Chemical Responsibilities" has the meaning specified in Schedule 2 hereto.

"Extension Period" means the period mutually agreed to by the City and the Company, extending the Acceptance Deadline. The Extension Period shall commence on the day after the Acceptance Deadline except in the event of one or more delays caused by (i) Uncontrollable Circumstances, (ii) City requested Change Orders or (iii) City Fault occurring during such period, in which case the Extension Period shall be deemed to have commenced on the date that is the next business day following the date calculated by adding to the Acceptance Deadline the aggregate number of days of such delay.

"Extra Construction Work" means any Construction Work ordered by the City in addition to the Construction Work originally required hereunder.

"Extra Payment" has the meaning specified in Section 5.15.2 hereof.

"Existing Facility" or "Existing WTP" means the existing City Water Treatment Facility, including but not limited to all treatment processes, disposal facilities, laboratory, water storage, pump stations, discharge facilities, and fixtures, equipment, tools and other property stored on or constituting the water plant, pump stations, intake structure, and associated site properties.

"Facility Modification" means any improvement, alteration, addition or other modification to the New Facility following Substantial Completion, which is requested or approved by the City. New Facility Modifications do not include maintenance, repair or replacement activities required to be undertaken by the Company pursuant to this Agreement.

"Facility Operations Report" has the meaning specified in Schedule 3 hereto.

"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 any Legal Proceeding.

"Final Completion" means completion of the Construction Work in compliance with the Design Requirements and the requirements of Section 6.11 hereof.

"Final Punch List" has the meaning specified in Section 6.2.2 hereof.

"Fiscal Year" means the fiscal year of the City, currently July 1 through June 30.

"Future Finished Water Requirements" means limits as of the Agreement Date set forth in the column labeled "Finished Water Quality Long Term Performance Standards" in Table 2.5 of Schedule 1 hereto.

"Future Operation Period" means the time period beginning with the Acceptance Date and ending on the last day of the Contract Term.

"FY" means Fiscal Year.

"Governmental Body" means any federal, State, City or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

"Guaranty" or "Guaranty Agreements" means the agreements executed between the City and the Project Guarantors at Exhibit B.

"Hazardous Material" means, collectively, Hazardous Substance and Hazardous Waste.

"Hazardous Substance" has the meaning given such term in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., applicable State law and the regulations promulgated thereunder.

"Hazardous Waste" means any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, oil or petroleum product or byproduct, know or unknown, defined or identified as such in (or for the purposes of) any existing or future local, State or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions, including but not limited to the Resource Conservation and Recovery Act (" RCRA"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act (" TSCA"), 15 U.S.C. § 2601 et seq.; the Federal Water Pollution Control Act, 49 U.S.C. § 1801 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300 et seq.; CERCLA; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. App. § 1802 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; including all similar State of Rhode Island laws and municipal ordinances; including all rules, regulations and guidelines promulgated under such statutes and including all amendments and supplements to such statutes and rules, regulations and guidelines and any order or decree relating to or imposing liability or standards or conduct concerning, or prohibiting, limiting or regulating exposure to, any waste, material, substance, contaminant, pollutant or chemical.

"Inflation Index" means the annual change in the blended index comprised of sixty percent (60%) of the U.S. Department of Labor, Consumer Price Index (CPI) for all urban consumers in the Northeast Area, ID CUUR0100SA0 (or its successor index) and forty percent (40%) of the U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index (ECI), ID CIU2010000000210A, Compensation: Total Compensation, Industry/Occupation: Northeast, Sector: Private Industry (or its successor index).

"Infrastructure Bank" means the Rhode Island Infrastructure Bank (formerly known as the Rhode Island Clean Water Finance Agency) or its successor.

"Insurance" has the meaning specified in Schedule 4 hereto.

"Insurance Requirement(s)" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy of Insurance under this Agreement, as in effect during the Contract Term, compliance with which is a condition to the effectiveness of such policy.

"Interim Finished Water Requirements" shall have the same meaning as Future Finished Water Requirements.

"Interim Operation Period" means the time period, beginning with the Commencement Date, during which the Existing Facility will operate under the Interim Finished Water Requirements and ending with the Acceptance Date.

"Labor and Materials Bond" means the bond, in an amount equal to the Fixed Construction Price, which guarantees to the City the Company's timely payment for all labor, materials, supplies, implements, and machinery and equipment to be furnished with respect to the Facility.

"Legal Entitlement" means any and all Permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described, which are required under Applicable Law to be obtained or maintained by any person with respect to the construction of the Capital Improvements or the operation, maintenance and management of the Existing Facility or the New Facility or the performance of any other obligation of the Company under this Agreement, including without limitation, the Consent Agreements and Permits detailed in Schedule 6 hereto.

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

"Lien" means any and every lien against the Existing Facility or the New Facility or the Site or against any moneys due or to become due from the City to the Company under this Agreement, for or on account of the Construction Work or the Services, including without limitation mechanics', materialmen's, laborers' and lenders' liens.

"Loss-and-Expense" means any and all loss, expense, liability, forfeiture, obligation, damage, delay, penalty, judgment, deposit, cost, claim, demand, charge, tax, or expense, except as explicitly excluded or limited under any provision of this Agreement.

"Maintenance Management System" has the meaning specified in Schedule 2 hereto.

"Manuals" means the Operations Manual and related operations and maintenance manuals, including future operations manuals issued with new Equipment.

"Material Decline in Guarantor's Credit Standing" has the meaning specified in Section 11.2.3 hereof.

"Monthly Meeting" has the meaning specified in Schedule 2 hereto.

"Monthly Reports" has the meaning specified in Schedule 2 hereto.

"New Facility" or "New WTP" means the new City Water Treatment Facility to be designed and built pursuant to this Agreement, including but not limited to all treatment processes, disposal facilities, laboratories, water storage facilities, pump stations, pipelines, discharge facilities, and fixtures, equipment, tools and other property stored on or constituting the water plant, pump stations, aeration systems, well fields, intake structure, and associated site properties.

"Notice to Proceed" has the meaning specified in Section 5.4.1 hereof.

"Operation and Maintenance Fee" means the component of the Service Fee consisting of the costs of performing the Services exclusive of the Capital Improvements.

"Operation and Maintenance Manual" has the meaning specified in Section 3.3 hereof.

"Operations and Maintenance Plan" or "O&M Plan" has the meaning specified in Schedule 3 hereto.

"Operation Period" means the period of time commencing with and including the Commencement Date, through and including the last day of the Contract Term. The Operation Period is comprised of the Interim Operation Period and the Future Operation Period.

"Operation Period Letter of Credit" has the meaning specified in Section 11.3.3 hereof.

"Operations Bond" has the meaning specified in Section 11.3.2 hereof.

"Operations Records" has the meaning specified in Schedule 2 hereto.

"Pass Through Cost(s)" means that component of the monthly invoices from the Company to the City consisting of those costs of the Company listed on Schedule 10 hereto, but not included in the Service Fee.

"Performance Guaranties" means the Bonds, the Guaranty Agreements, the Operation Period Letter of Credit, the Credit Enhancement Letter of Credit, the Credit Enhancement Guaranty, and the Insurance set forth in Schedule 4, or any combination thereof.

"Performance Requirements" means the Performance Standards set forth in Schedule 1 hereto as well as any other performance requirements relating to the Existing Facility or the New Facility set forth in this Agreement that are the responsibility of the Company.

"Performance Standards" has the meaning specified in Schedule 1 hereof.

"Permits" has the meaning specified in Schedule 6 hereto.

"Permitted Encumbrances" means, as of any particular time, any one or more of the following:

(1) encumbrances for utility charges, taxes rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with generally accepted accounting principles;

(2) any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially sound insurer and which does not have a material and adverse effect on the

ability of the Company to construct or operate the New Facility;

(3) any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen's, mechanics', workmen's, repairmen's, warehousemen's, landlords', vendors' or carriers' encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves;

(4) servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which will not in the aggregate materially and adversely impair the construction and operation of the New Facility by the Company; and

(5) zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants which do not materially interfere with the construction and operation of the New Facility by the Company.

"Plans" has the meaning specified in Schedule 3 hereto.

"Pre-Construction Period" means the period from and including the Agreement Date to the Construction Date.

"Pre-Existing Environmental Condition" means, and is limited to, the following occurrences to the extent not reasonably discoverable as part of the Site and geotechnical investigations contemplated in Section 4.3 hereof: (1) the presence anywhere in, on or under the Sites on the Contract Date of underground storage tanks (for the storage of chemicals or petroleum products); (2) the presence of Hazardous Materials or other Regulated Substances in environmental media anywhere in, on or under the Sites (including the presence in surface water, groundwater, soils or subsurface strata) as of the Contract Date; and (3) the off-site migration of pollutants or contamination to or from the Sites, including any migration during any dewatering required for the construction of the Work, which is not caused by the failure of the Company to perform dewatering in accordance with Prudent Engineering and Construction Practice.

"Project Guarantors" or "Guarantors" means the Initial Guarantor, AECOM Technical Services Inc., a California corporation, and the Successor Guarantor, SUEZ Water Inc., a Delaware corporation, the entities financially guarantying the performance of the Company to fulfill the obligations of this Agreement by issuing the Guaranties.

"Proposal" means the Company's Proposal submitted in response to the RFP and the responses submitted by the Company including (a) responses to the City's (i) Requests for Clarifications; and (ii) Interview Questions and (b) all clarifying documents and correspondence from the Company to the City. The Proposal is made a part hereof by reference and is intended to be used for background and interpretation purposes in the event of any ambiguity in this Agreement; provided, however, that in the event of a conflict between the Proposal and the terms and conditions of this Agreement (including all Schedules and Exhibits thereto other than the Proposal), this Agreement shall be controlling.

"Proposal A" means the proposal in response to the RFP addressing meeting existing

Finished Water regulatory requirements with existing facilities.

"Proposal A Service Fee" means the Service Fee under Proposal A.

"Proposal B" means the proposal in response to the RFP addressing meeting the requirements hereof for newly constructed facilities.

"Proposal B Service Fee" means the Service Fee under Proposal B.

"Pump Station(s)" has the meaning specified in Schedule 2.

"Rating Service" means Moody's Investors Service or Standard & Poor's Rating Services, or any of their respective successors.

"Record Documents" has the meaning specified in Section 6.5.6 hereof.

"Renewal and Replacement Plan" has the meaning specified in Schedule 3 hereto.

"Repair and Replacement Fund" has the meaning specified in Section 3.7 hereof.

"Residuals" or "Facility Residuals" means any liquid, semisolid or solid material resulting from the water treatment process at the Existing Facility or the New Facility.

"RFP" means the Request for Proposals for Capital Improvements, Operations, Maintenance, and Management of City of Woonsocket Water Treatment Facility, dated August 5, 2015 and all addenda thereto and all Requests for Clarifications and Interview Questions submitted by the City. The RFP is made a part hereof by reference and is intended to be used for background and interpretation purposes in the event of any ambiguity in this Agreement; provided, however, that in the event of a conflict between the RFP and the terms and conditions of this Agreement (including all Schedules and Exhibits thereto other than the RFP), this Agreement shall be controlling.

"RIDEM" means the Rhode Island Department of Environmental Management or its successor.

"RIPUC" means the Rhode Island Public Utilities Commission or its successor.

"RIWRB" means the Rhode Island Water Resources Board or its successor.

"Rolling Stock" means vehicular Equipment included in the New Facility.

"Safety and Security Plan" has the meaning specified in Schedule 3 hereto.

"SCADA System" means the supervisory control and data acquisition system at the New Facility.

"Schedule(s)" mean(s) the schedule(s) attached to this Agreement, which together with this Agreement and the Exhibits attached thereto constitute the entire Agreement with respect to the

Capital Improvements, operations, maintenance, and management of the Existing Facility or the New Facility.

"Selected Proposer" means the Company.

"Service Fee" means the annual amount payable to the Company by the City for the Services, exclusive of Capital Improvements, provided under this Agreement as set forth in Schedule 11 hereto and including the Proposal A Service Fee and the Proposal B Service Fee.

"Service Territory" means the City and all other territory in which customers are served by the Existing Facility or the New Facility during the Contract Term.

"Services" means the Capital Improvements to, and operations, maintenance, and management of the Existing Facility and the New Facility to be provided by the Company in accordance with the terms and provisions of this Agreement.

"Site" means the real property upon which the Existing Facility or the New Facility, as applicable, shall be situated.

"Special Subsurface Condition" means the presence at the Sites of subsurface or latent physical conditions (other than Pre-existing Environmental Conditions) that materially differ from the subsurface conditions described as existing or assumed to exist in the documents supplied by the City during the RFP process and/or included as the baseline conditions outlined in the Proposal and Schedule 12, including the presence of subsurface structures, materials or conditions having historical, geological, archeological, religious or similar significance, to the extent said subsurface conditions were also not reasonably discoverable during the Site investigations contemplated in Section 4.3 hereof.

"Staffing Plan" has the meaning specified in Schedule 2 hereto.

"State" means the State of Rhode Island and all its relevant administrative, contracting and regulatory agencies and offices.

"Subcontract" means an agreement between the Company and a Subcontractor, or between two Subcontractors, as applicable.

"Subcontractor" means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly in privity with the Company (including every subcontractor of whatever tier) whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

"Substantial Completion" has the meaning specified in Section 6.2 hereof.

"System" means the City's drinking water treatment system as described in Exhibit A hereto, and including any and all modifications to the System during the Contract Term, but not including the operation and maintenance of the watershed lands and reservoir system and the water distribution system and appurtenances (excluding pump stations and those transmission facilities designed or rehabilitated by the Company), capital planning, policy development, long range and

Service Area planning, the setting of customer rates and charges, meter reading, billing and collection.

"System Revenues" means all revenues derived by the City in connection with the operation of the System and accounted for under the City's Enterprise Fund.

"Termination for Convenience" has the meaning specified in Section 8.4.1 hereof.

"Transaction Costs" has the meaning specified in Section 3.11.1 hereof.

"Transaction Cost Payment" has the meaning specified in Section 3.11.1 hereof.

"Transition Plan" has the meaning specified in Schedule 3 hereto.

"Transmission Line" means any major water conveyance pipeline located outside the treatment plant and/or pump stations for the transportation (i.e. transmission) of water to or from the water treatment plant. In the latter case, the transmission lines are part of the water distribution system of the City.

"Uncontrollable Circumstances" means any act, event or condition to the extent that it impacts the cost of performance of or materially and adversely affects the ability of either party to perform any obligation under this Agreement (except for payment of obligations), if such act, event or condition, in light of the circumstances known or reasonably believed to exist at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or a lack of reasonable diligence of either party.

Subject to the foregoing, such acts, events or conditions may include, but are not limited to, the following:

(a) Inclusions:

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

(2) a Change in Law;

(3) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;

(4) the preemption, confiscation, diversion, destruction, or other interference in possession or performance of material or services by, on behalf of, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Existing

Facility or the New Facility;

(5) Contamination of the Sites groundwater, soil or airborne Hazardous Material, Hazardous Substances, or Toxic Substances migrating from sources outside of the Sites and not caused by Company Fault;

(6) the existence of a Special Subsurface Condition, except as may be specifically identified in and resolved following the Written Test Report;

(7) the existence of a Pre-existing Environmental Condition, except as may be specifically identified in and resolved following the Written Test Report.

(b) Exclusions:

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

(2) changes in the financial condition of the City, the Company, the Project Guarantors, or any of their affiliates or subcontractors;

(3) union work rules which increase the Company's operating cost for the Existing Facility or the New Facility;

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

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

(6) failure of any Subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to;

(7) local strikes, work stoppages or labor disputes of the Company's employees, agents or Subcontractors;

(8) equipment failure (unless caused by an Uncontrollable Circumstance); or

(9) litigation against the Company.

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

"Vehicle(s)" means all cars, trucks, vans or other modes of transportation used in connection with the operation of the Existing Facility or the New Facility for transporting people or things or used for other necessary functions in the operation or maintenance of the Existing Facility or the New Facility.

"Vehicle Maintenance Responsibilities" has the meaning described in Schedule 2 hereto.

ARTICLE III
OPERATION, MAINTENANCE AND MANAGEMENT OF THE FACILITY

Section 3.1 Conditions Precedent to the Commencement Date.

Section 3.1.1. Company Obligations.

The Commencement Date shall occur no later than midnight, December 31, 2018, or such other date as mutually agreed by the City and Company (the "Commencement Date Deadline"). The Commencement Date shall be subject to the satisfaction by the Company, to the City's sole satisfaction, of all of the following conditions precedent:

(a) The Guarantors shall have executed and delivered to the City the Guaranty. Agreements to be provided by the Guarantors in the forms attached hereto as Exhibit B. Each Guaranty Agreement shall be effective in accordance with its respective terms and conditions.

(b) The Company shall have delivered to the City (i) a certificate of an authorized officer of the Company, dated as of the Commencement Date, to the effect that each of the representations of the Company set forth in this Agreement is true and correct in all material respects as if made on such date, and an (ii) opinion of counsel to the Company, in customary form and reasonably acceptable to the City, regarding matters of law set forth in Sections 9.2.1 through 9.2.5 hereof.

(c) The City shall have received documentation that all Insurance required to be obtained by the Company pursuant to this Agreement has been obtained.

(d) The Company shall have delivered to the City the Operations Bond, duly executed by its issuer in the amount equal to the then-current year's annualized Service Fee.

(e) The Company shall have recruited, retained and employed all management and other personnel necessary for its performance of the Services hereunder, which personnel shall be duly licensed as and to the extent required by Applicable Law, and shall have delivered to the City a roster of all such personnel together with copies of the licenses of all personnel required to be licensed.

(f) The Company shall have obtained and shall have submitted to the City copies of all Legal Entitlements required to be obtained by the Company by Applicable Law as a condition of performing the Services hereunder as of the Commencement Date.

(g) The Company shall have provided to the City resumes of key staff, including but not limited to the Company plant manager, construction site construction manager and construction design project manager.

Section 3.1.2. City Obligations.

The Commencement Date shall be subject to the satisfaction by the City of each of the

following conditions precedent:

(a) The City shall have delivered to the Company a certificate of an authorized representative of the City, dated as of the Commencement Date, to the effect that each of the representations of the City set forth in this Agreement is true and correct in all material respects as if made on such date.

(b) The City shall have delivered to the Company a notice that the City has received approvals for the public and private financing for the Capital Improvements necessary as of the Commencement Date.

Section 3.1.3. Non-Compliance.

If all of the Commencement Date Conditions for which the Company is responsible are not either satisfied by the Company or waived by the City on or prior to the Commencement Date Deadline, then the Company shall pay to the City, in addition to other costs and expenses required to be paid pursuant to this Agreement (including without limitation fines, penalties or other expenses imposed on or incurred by the City in connection with the Company's failure to meet such deadline), a daily delay non-compliance assessment in the amount of $7,500 for each day that such Commencement Date Conditions remain unsatisfied after said date until any termination of this Agreement for an Event of Default. In the event that the Commencement Date Conditions are not either satisfied or waived as required hereunder due to the sole fault of the City, then schedule relief will be granted by the City consistent with documented evidence of such fault and delay provided by the Company to the City's satisfaction.

In addition to the foregoing, the Company shall also be responsible to reimburse the City one hundred percent (100%) of the City's documented costs for supervision, management and other labor and materials expenses incurred by the City in connection with the Company's failure to timely meet the Commencement Date Deadline.

Section 3.2 Satisfaction of Conditions Precedent.

The Company and City shall satisfy or waive the conditions precedent identified in Section 3.1.1 and Section 3.1.2 on or before the Commencement Date Deadline; each party shall give the other prompt notice when any condition precedent has been satisfied. Upon satisfaction of all such conditions precedent, the City shall give written notice to the Company, and the Commencement Date shall occur on the Commencement Date Deadline or such other date as shall be agreed upon by the Parties, so long as, as of such date:

(1) No action, suit, proceeding or official investigation shall have been overtly threatened or publicly announced or commenced by any person or federal, State or local governmental authority or agency other than the City in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to the City or the Company as a result of the City's or the Company's negotiation, execution, delivery or performance of this Agreement, other than any such action, suit, proceeding or investigation which would not, if adversely determined, materially adversely affect this Agreement or the performance by the parties of their respective obligations

hereunder; or

(2) No changes shall have occurred after the Agreement Date and on or before the Commencement Date in any applicable federal, State or local rule, regulation or ordinance thereunder, or in the interpretation thereof by any applicable regulatory authority, that would make (i) the execution or delivery of this Agreement by the City or the Company or (ii) compliance by the City or the Company with the terms and conditions of this Agreement, a violation of such law, rule, regulation or ordinance.

If all such conditions precedent set forth in Sections 3.1.1 and 3.1.2 hereof are not so satisfied or waived on or before the Commencement Date Deadline or such later date mutually agreed to in writing by the parties hereto, or if any circumstances described in clauses (1) or (2) above, if any, exist and continue as of such date, then the City, by notice in writing to the Company, may terminate this Agreement or may extend the date upon which the Commencement Date shall occur. If the City shall give a written termination notice to the Company for failure of the Company to fulfill the Company obligations set forth in Section 3.1.1 or clauses (1) or (2) above, the City shall have recourse to, in addition to any other recourse provided hereunder, the Construction Payment and Performance Bond to recoup the City's costs in connection with reprocurement.

If the City shall not have fulfilled the City obligations set forth in Section 3.1.2, or if the circumstances described in clauses (1) or (2) above exist and continue, as of the Commencement Date Deadline, then the Company may terminate this Agreement by written notice.

Section 3.3 Overall Company Responsibilities.

On and after the Commencement Date and throughout the Contract Term, the Company shall:

(1) operate, maintain and manage the Existing Facility and the New Facility in accordance with this Agreement (including, without limitation, the requirements set forth in the Schedules hereto) and Applicable Law, said Company responsibilities including, without limitation, the following:

(a) preparing and delivering to the City an updated Operation and Maintenance Manual for the New Facility, including the Capital Improvements (the "Operation and Maintenance Manual"), which shall be provided to the City in hard copy and electronic format;

(b) conducting day-to-day operations and monitoring in accordance with this Agreement, including all Schedules hereto, and in compliance with Applicable Law;

(c) preparing and submitting to appropriate authorities all reports and plans mandated by this Agreement and by Applicable Law;

(d) complying with all emergency and safety requirements set forth in Schedule 3 hereto and required by Applicable Law;

(e) performing all scheduled maintenance to ensure the long-term efficient operation of the Existing Facility and the New Facility;

(f) in addition to the Capital Improvements, performing maintenance, repairs and replacements as needed on infrastructure components;

(g) maintaining the inventory and inventory records for the consumable supplies and Equipment needed for the operations and maintenance of the System, including, without limitation, the Equipment and Chemicals Inventory described more particularly in Schedule 2 hereto;

(h) maintaining the grounds at the Site in a neat and orderly condition;

(i) disposing of residuals from the Existing Facility or the New Facility;

(j) plowing access roads and parking areas when snow levels reach two (2) or more inches;

(k) integrating, on an on-going basis, the SCADA System with New Facility operations, including, without limitation, (a) any staff training with regard to the SCADA System that may be required, and (b) any modifications to the SCADA System that may be required in connection with the Capital Improvements;

(l) hiring and retaining appropriate staff for the Existing Facility and the New Facility while maintaining compliance with Section 3.9 hereof; and

(m) maintaining any and all appropriate records in connection with the activities specified above for the longer period of (1) the minimum periods required by Applicable Law, or (2) the duration of this Agreement; and

(2) Except for Equipment and other facilities and materials included in the Existing Facility as of the Commencement Date, and except for the Capital Improvements and expenditures under the Repair and Replacement Fund, provide, at its sole cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment (i.e. copiers, computers, etc.), fuel, chemicals, supplies, spare parts, expendables, consumables, testing and laboratory analysis and any other items required for operation, maintenance repair, replacement, renewal and management of the Existing Facility and the New Facility in accordance with this Agreement.

(3) As requested by the City, provide facilities and facility operation of any future Existing Facility or New Facility upgrades or expansions in accordance with terms and conditions mutually agreed to by the City and the Company.

Section 3.4 [INTENTIONALLY OMITTED].

Section 3.5 Identification of an Authorized Disposal Facility.

The Company shall be responsible for making all arrangements, subject to the City's approval, with respect to quantity, quality and timing of discharge of any residuals to the City's sewer system.

Section 3.6 Responsibilities.

On and after the Commencement Date and during the remainder of the Contract Term, the City shall:

(1) pay, or cause to be paid, the Service Fee to the Company in accordance with the terms and conditions of this Agreement for the Company's performance of its obligations under this Agreement;

(2) afford the Company access to the Existing Facility and the New Facility to the extent necessary for the Company to perform its obligations hereunder;

(3) retain responsibility for the operation and maintenance of the Distribution System, perform meter reading and maintenance, and perform long-term System and Service Area planning and management of watershed dams and reservoirs;

(4) make available to the Company Equipment warranty information, engineering drawings, calculations, maintenance manuals, operational records, logs, reports, submittals, repair records, audits, and information which may be in the City's possession or that of its agents, relating to the design, condition, operation or maintenance of the Existing Facility or the New Facility.

Section 3.7 Repair and Replacement.

The City recognizes that repair and replacement capital spending may be required during the Interim Operation Period to maintain its functional performance until such time as the New WTP becomes operational.

The Company shall include the following for repair and replacement budgets during the Interim Operation Period:

a. All repair and replacement expenditures will be funded by the Company for all expenses less than $10,000 per event (i.e., shall be budgeted by the Company as part of the Service Fee).

b. Any Company repair and replacement expenses greater than $10,000 will be funded by the City on a "time and materials" basis following written request by the Company and approval by the City.

New Facility:

For the first ten full years of the Future Operation Period, the Company shall be responsible for all repair and replacement expenses regardless of the amount (i.e., such amounts shall be included in the Service Fee). Following the first ten full years, consistent with the Company's obligations during the Interim Operation Period, the Company shall be responsible for all repair and replacement expenses less than $10,000 per event (i.e., such amounts shall be included in the Service Fee).

Commencing ten years following the Acceptance Date and continuing annually until the termination of this Agreement, the City will establish a "Repair and Replacement Fund" in the amount of $300,000 (to be adjusted by the change in the Inflation Index, using 2017 as a baseline) per fiscal year. The Repair and Replacement Fund shall be available beginning on the tenth (10^{th}) anniversary of

the Acceptance Date (the "Repair and Replacement Fund Eligibility Date"). Beginning on the Repair and Replacement Fund Eligibility Date, certain repair and replacement expenses in excess of $10,000 (to be adjusted by the change in the Inflation Index, using 2017 as a baseline) will be funded separately from the Service Fee through the Repair and Replacement Fund, but only with City approval and authorization (not to be unreasonably withheld) following documented submittals by the Company to the City. Costs for repair and replacement expenditures over and above the Repair and Replacement Fund shall be the responsibility of the Company; provided, however, if the Company's expenditures from the Repair and Replacement Fund exceed the yearly amount, such expenditures may, at the Company's option, be charged against the fund amount for the following year only (not subsequent years). For the avoidance of doubt, the foregoing is not a one-time allowance over the term of the Agreement; rather, the Company may exercise the option to charge against the fund for the following year repeatedly over the term of the Agreement.

No funds shall be disbursed from the Repair and Replacement Fund without the prior written consent of the City. Commencing on the Repair and Replacement Fund Eligibility Date, the Company, on a monthly basis, shall submit to the City a report on expenses that should be reimbursed out of the Repair and Replacement Fund and may request the City to pay such expenses directly from the Repair and Replacement Fund.

On the Repair and Replacement Fund Establishment Date and periodically thereafter, the Company shall recommend and perform activities to be paid for from the Repair and Replacement Fund as follows:

The Company shall evaluate the necessity for performing any major repair and replacement activities payable from the Repair and Replacement Fund. Ordinary maintenance activities shall continue to be paid for by the Company.

The Company shall prepare written recommendations for all major repair and replacement activities to be paid from the Repair and Replacement Fund that the Company advises are required to keep the Facility in a state of good operating order, which recommendations shall include the approximate cost of completing such activities.

The City, within fifteen (15) days of the receipt of such written recommendations, shall either approve or deny the Company's recommendation in writing, provided that if the City fails to timely notify the Company in writing, such recommendation shall be deemed denied.

In the event that the City shall approve the Company's recommendation, and in the event the cost of the major repair or replacement activity plus the total aggregate cost of all such activities previously incurred during any Contract Year does not exceed the total amount in the Repair and Replacement Fund, the Company shall proceed with the recommended work, and it shall be paid for from the Repair and Replacement Fund.

In the event the City shall approve the Company's recommendation, but the cost of the major repair or replacement activity plus the total aggregate cost of all such activities previously made during the current Contract Year exceeds the total amount then in the Repair and Replacement Fund, the Company shall be responsible for providing the additional funding.

Any amounts not used by the Company and remaining in the Repair and Replacement Fund at the end of each Contract Year will be rolled over and accumulate. Any amounts not used by the Company and remaining in the Repair and Replacement Fund at the end of the Term shall revert back to the City.

Section 3.8 Company Project Manager.

The Company has designated Chris Jacobs as the Company's full-time Project Manager. The Project Manager, and any successor (which successor shall be subject to the approval of the City, as described below), shall, within ninety (90) days after the Commencement Date, reside either within the City service area or within thirty (30) miles of the Site. The Project Manager will be responsible for all duties customarily assigned to project managers. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Project Manager. Accordingly, the Company shall not, absent good cause, replace such Project Manager during the term of this Agreement, without the prior approval of the City. If such Project Manager or any City-approved successor shall retire, resign as Project Manager or otherwise cease employment with the Company, the Company shall not appoint a successor Project Manager without the prior written approval of the City. If the City, in its sole discretion, determines that the Project Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Project Manager and the City shall arise, the Company, upon notice by the City of such circumstance, shall promptly replace such Project Manager with a successor acceptable to the City; provided, however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify to its satisfaction the adverse circumstance regarding the Project Manager.

Section 3.8A Company Design/Build Manager.

The Company has designated Rhonda Pogodzienski as the Company's manager of the design/build of the New Facility to be provided by the Company from commencement of the Agreement through acceptance of the New Facility. The Company Design/Build Manager will be responsible for all duties customarily assigned to project managers. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Design/Build Manager. Accordingly, the Company shall not, absent good cause, replace such Design/Build Manager during the term of this Agreement, without the prior written approval of the City. If such Design/Build Manager or any City-approved successor shall retire, resign as Design/Build Manager or otherwise cease employment with the Company, the Company shall not appoint a successor Design/Build Manager without the prior written approval of the City. If the City, in its sole discretion, determines that the Design/Build Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Design/Build Manager and the City shall arise, the Company, upon notice by the City of such circumstance, shall promptly replace such Design/Build Manager with a successor acceptable to the City; provided, however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify, to its satisfaction, the adverse circumstance regarding the Design/Build Manager.

Section 3.8B Company On-Site Construction Project Manager.

The Company has designated Steve Emmendorfer as the Company's on-site construction project manager of the New Facility to be provided by the Company from commencement of Construction activities through acceptance of the New Facility. The On-Site Construction Project Manager will be responsible for all duties customarily assigned to project managers. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated On-Site Construction Project Manager. Accordingly, the Company shall not, absent good cause, replace such On-Site Construction Project Manager during the term of this Agreement, without the prior written approval of the City. If such On-Site Construction Project Manager or any City-approved successor shall retire, resign as On-Site Construction Project Manager or otherwise cease employment with the Company, the Company shall not appoint a successor On-Site Construction Project Manager without the prior written approval of the City. If the City, in its sole discretion, determines that the On-Site Construction Project Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the On-Site Construction Project Manager and the City shall arise, the Company, upon notice by the City of such circumstance, shall promptly replace such On-Site Construction Project Manager with a successor acceptable to the City; provided, however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify, to its satisfaction, the adverse circumstance regarding the On-Site Construction Project Manager.

Section 3.9 Personnel

Section 3.9.1. Orientation and Career Planning.

The Company shall conduct a Company orientation and career planning workshop or workshops for City Employees, at the Company's sole cost and expense. The workshop(s) shall apprise City Employees of applicable legal requirements relative to their employment rights, and shall orient the City Employees to the Company's management, operation and maintenance policies (and its plan for providing such services under this Agreement), its career planning policy, its hiring program and criteria and its compensation and benefits plans. The Company's obligation to hire City employees is subject to the Company's standard hiring practices, including background checks and drug testing, to the extent consistent with the Memoranda referenced in Section 3.9.2. The City makes no representations as to whether such practices are consistent with such memoranda, and the City assumes no obligation to act in the event the Company's City employees challenge such practices.

Section 3.9.2. Continued and Comparable Employment.

The parties hereby incorporate the terms of those certain Memoranda of Agreement by and among (a) Rhode Island Council 94, AFSCME-CIO on behalf of City of Woonsocket; Rhode Island Employees Local 670, the City and the Company, and (b) Rhode Island Council 94, AFSCME-CIO on behalf of City of Woonsocket Professional and Technical Employees Local 3851, the City and the Company, attached hereto as Schedule 18.

Section 3.10 Noncompliance Assessment for Failure to Meet Water Quality Standards.

The Company is required to satisfy the requirements of Applicable Law with respect to the quality of treated raw water by the Existing Facility and the New Facility as set forth in Schedule 1 hereto except during events of Uncontrollable Circumstances. Except where such failure is due to Uncontrollable Circumstances, failure to satisfy such requirements, or failure to operate the Existing Facility and the New Facility in such a manner as to minimize noise and/or dust emanating from the Existing Facility and the New Facility, shall result in the imposition on the Company of a noncompliance assessment in the manner and in the amounts set forth in this Section 3.10. If the Company fails to meet Interim or Future Finished Water Requirements as and when required hereunder:

(1) the Company shall immediately take all reasonable and appropriate action to satisfy all Interim or Future Finished Water Requirements as applicable;

(2) the Company shall provide a plan to the City outlining corrective actions for achieving compliance with Interim or Future Finished Water Requirements as applicable (the "Compliance Plan") within forty-eight (48) hours of written notice of noncompliance given by the City;

(3) the City will review and provide written comments on the Compliance Plan within forty-eight (48) hours after receipt; and

(4) the Company shall immediately implement the Compliance Plan, which shall address the City's comments.

The Company will be responsible for performing any and all operational modifications as specified by the Compliance Plan. If the Company fails to either provide a Compliance Plan or to implement the corrective actions set forth in the Compliance Plan, the Company shall be liable for a noncompliance assessment in the amount of $5,000 per day from either (i) the date on which the Compliance Plan should have been submitted, or (ii) the date on which corrective actions should have commenced pursuant to the Compliance Plan. Such noncompliance assessment of $5,000 per day shall be continued for any repeated failure to comply with the same particular standard previously violated within any twelve (12) month period under this Section 3.10. The Company's liability for non-compliance assessments under this provision shall not exceed $1,000,000 per occurrence requiring a Compliance Plan. This limitation shall be included under the aggregate limitation of liability included under below Section 7.1. Neither the review of or comment on, nor the failure of the City to comment on, any Compliance Plan proposed by the Company, nor the Company's obligation to pay noncompliance assessments hereunder, shall relieve the Company of

any of its responsibilities under this Agreement, shall be deemed to constitute a representation by the City that the corrective actions proposed in any such Compliance Plan will cause the Existing Facility or the New Facility to be in compliance with the Interim or Future Finished Water Requirements, as applicable, or otherwise impose any liability on the City.

All fines or penalties imposed on the City or the Company by any Governmental Body as a result of failure of the Existing Facility to conform to the Interim Finished Water Requirements or the New Facility to conform to the Future Finished Water Requirements shall be the obligation of and shall be paid by the Company.

Section 3.11 Fees and Payments.

Section 3.11.1. Reimbursement for Procurement and Related Costs.

Upon delivery of an invoice by the City, the Company shall pay the City a one-time payment for the fee and expenses of a consultant to assist the Woonsocket Fire Department in their review of submittals, in the amount of Thirty Thousand Dollars ($30,000).

Also upon delivery of an invoice by the City, the Company shall pay the City a one-time payment for the fee and expenses of National Grid to extend the power from the corner of Getchell Avenue and Jillson Avenue to a location 200 feet from the pad mounted transformer shown on the Company's proposed site plan, in the amount of Fifty Thousand Dollars ($50,000).

Also upon delivery of an invoice by the City, the Company shall pay for the fee and expenses to cover the costs of permit fees associated with the project as described in this Agreement, in the amount of Ten Thousand Dollars ($10,000). The allowance shall only be used towards the permit fee itself. The allowance shall not be used for reimbursement for any time and expense associated with preparation of applications for the permits or for any costs associated with meeting the requirements of the permits. Any additional permits resulting from alternate approaches proposed by the Company shall be the responsibility of the Company and shall not be paid by utilization of the allowance.

Section 3.11.2. Service Fee.

Commencing with the first Billing Month after the Commencement Date and for each Billing Month thereafter, the City shall pay to the Company a Service Fee for managing, operating and maintaining the Existing Facility or the New Facility, as applicable, pursuant to the terms and conditions of this Agreement. The Service Fee paid shall be dependent upon the phase of operation. The initial Service Fee shall be the Existing WTP Service Fee as set forth on Schedule 11. The Existing WTP Service Fee shall terminate on the Acceptance Date and the New WTP Service Fee as set forth on Schedule 11 shall commence. Except as otherwise provided in this Agreement, the Service Fee includes all compensation to the Company for managing, operating and maintaining the Facility. The annual Service Fee, as applicable, shall be paid in increments of 1/12th each during each month of a Contract Year and shall be paid via wire transfer. Company shall invoice the City in arrears for all other amounts due, if any. Partial months shall be prorated. Such invoices shall be due and payable within thirty (30) days from the date received by the City. The City will review

Company's invoices, and if the City questions any items, the City shall notify Company within twenty-one (21) days of receipt of the invoice. All amounts not in dispute will be paid when due.

Section 3.11.3. Service Fee Adjustment.

The Service Fee shall be consistent with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 2017-13 ("Private Activity Limitations"). The City shall have the right to equitably adjust the Service Fee payment formula over the course of the Contract Term as follows.

(1) As necessary to comply with the Private Activity Limitations. Notwithstanding any provision hereof to the contrary, the City and the Company agree that the City shall be under no obligation to, and shall not, pay compensation for services to the Company to the extent that such payment would result in less than 80% of the Company's compensation for services for such contract year being based on a periodic fixed fee or would result in any portion of the Company's compensation being based on net profit, as such terms are defined in Rev. Proc. 2017-13. The City and the Company further agree that any payment or portion thereof that is not made by virtue of the first sentence of this paragraph shall be paid to the Company, without interest, during the next annual period in which such payment will not result in less than 80% of the Company's compensation being based on a periodic fixed fee and in which such payment will not be based on net profit or, if in the last Contract Year, in the year immediately thereafter. The Parties further agree that adjustments hereunder shall be made if necessary to comply with the limitation contained in Rev. Proc. 2017-13 that the term of this Agreement, including all renewal options, may not exceed the lesser of thirty (30) years or 80% of the reasonably expected useful life of the financed property. It is the intent of the City and the Company that this Agreement shall be construed and applied so as to constitute a management contract that does not result in private business use of property financed by the City within the meaning and intent of Rev. Proc. 2017-13, and no payments shall be made to the Company hereunder that would result in such private business use under Rev. Proc. 2017-13. Any such adjustments shall be such that the fixed and variable components of the Service Fee are within the specified percentages allowed by the Private Activity Limitations. Adjustments shall not entitle the Company to additional compensation. Should such adjustments not be possible so that continued compliance with the Private Activity Limitations is not possible, the City reserves the right to terminate this Agreement upon thirty (30) days' notice to the Company. Any such termination shall be deemed to be a Termination for Convenience pursuant to and governed by Subsection 8.4.1 hereof.

(2) If the 12-month moving average for finished water quantity falls outside of the established range of "3.6 MGD +/- 15%" for the monthly average of finished water production and/or the 12-month moving averages for raw water quality parameters fall outside of the range of +/- 15% of the values specified in Schedule 1, then the Company and the City shall negotiate in good faith to adjust upward or downward the Service Fee in accordance with the adjustment methodology set forth in Schedule 11 incorporated by reference herein and made a part hereof.

(3) By (i) mutual agreement of the parties as to the amount and/or methodology and (ii) determination by the City that any such adjustment will not contravene the Applicable Law (including, without limitation, any law relating to procurement) or the Private Activity Limitations.

(4) Annually on the anniversary date of the Commencement Date, the Service Fee will be adjusted to reflect changes resulting from inflation or deflation using the Inflation Index, as outlined in Schedule 11 hereto, which adjustment shall utilize the percentage change in the indices for the prior 12 month period using all indices published for that 12 month period as outlined in Schedule 5.

(5) On an annual basis, the City shall monitor compliance with the Private Activity Limitations. In the event the City determines that any payment or fee would result in a violation of the Private Activity Limitations, the City shall immediately notify the Company. The City and the Company shall then mutually agree to make any and all adjustments necessary to comply with Applicable Law.

Section 3.11.4. Cost Savings.

The Company shall actively pursue improvements in the effectiveness and efficiency of the operation, maintenance and management of the Existing Facility and the New Facility that may reduce the Service Fee or Pass Through Costs. Any Company proposals for such improvements, including the costs, benefits and anticipated net savings, shall be provided to the City in writing. If the City approves any such proposals, and if implementation of any such proposal results in net savings to the City as determined by the City, the City shall pay the Company an amount equal to forty percent (40%) of the aggregate net savings to the City resulting from the implementation of any such proposal. Such share of net savings shall be, at the discretion of the City, either (i) a one-time payment to the Company, or (ii) an annual payment, depending on the nature of the modification and the resulting net savings. Any such payment shall be consistent with the Private Activity Limitations.

Section 3.12 Additional Compliance Obligations.

Should the Company fail to timely perform the other aspects of the work scope contained in this Agreement, including reporting and administrative requirements, and should such failure continue following written notification to cure and a five business day period to cure, the Company shall be liable to the City for a noncompliance assessment in the amount of $1,000 per day until such time as the noted deficiency is corrected. In the event of repeated failure to timely perform such aspects of this Agreement within any twelve (12) month period, such fine shall be increased to $5,000 per day until such time as the noted deficiency is corrected.

Section 3.13 Pass Through Costs

Pass Through Costs for any Billing Month shall be the sum of the costs and expenses (set forth in Schedule 10 hereto), and except for electricity, Pass Through Costs shall be subject to overhead and administrative fee of fifteen percent (15%), exclusive of profit to the Company or any Company Affiliate, which were incurred by the Company during such Billing Month, provided that the Company provides documentation of such costs and expenses; provided further, however, that electricity Pass Through Costs shall be reimbursed up to the maximum KwH usage amount set forth in Schedule 10.

ARTICLE IV
CAPITAL IMPROVEMENTS: DEVELOPMENT PHASE

Section 4.1 Development Phase Generally.

The period beginning on the Commencement Date and ending on the Construction Date shall be referenced herein as the "Development Period." The obligations of the parties to proceed with their respective obligations during the Construction Period shall not commence until all Construction Date Conditions have been satisfied. During the Development Period, the obligations of the parties with regard to the Capital Improvements shall be as provided for in this Article.

Section 4.2 Site Suitability Confirmation.

Section 4.2.1. Site Familiarity.

The Company acknowledges that the Company's agents and representatives have visited, inspected and are familiar with the observable conditions at the Site, its surface physical condition relevant to the obligations of the Company pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, topographical conditions and air and water 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 Agreement (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 RFP process or obtained in the course of performing its obligations hereunder.

Section 4.2.2. Assumption of Structural Suitability Risk.

Based on the review of information provided by the City prior to the Agreement Date and subject to the Company's right to conduct additional Site investigations, the Parties' subsequent agreement to price and schedule relief and Section 4.3.1 (a) hereof, which the Company acknowledges to be sufficient for this purpose, the Company assumes the risk of all subsurface geotechnical conditions at the New Facility Site as they may affect the structural suitability of the Site or the Company's excavation or construction costs or schedules, and agrees that any such subsurface geotechnical condition revealed during excavation for or construction of the Capital Improvements which has such an effect shall not be an Uncontrollable Circumstance.

Section 4.3 Company Responsibilities During the Development Period.

Section 4.3.1. Obligation to Proceed.

Following the Agreement Date, the Company shall, at its own cost and expense and in good faith and using due diligence, promptly satisfy all of the following responsibilities:

(a) Geotechnical Investigation. On or prior to the date that is one hundred twenty (120) days following the Agreement Date, the Company shall cause a fully integrated

geotechnical investigation to be performed by qualified professionals, including but not limited to an exploratory boring and soil sampling program, in-situ testing of soils, and geophysical investigations, consistent with Prudent Industry Practices, and as necessary for construction of all required Sites for Capital Improvements.

(1) *Generally.* Such geotechnical investigation shall include, without limitation: synthesizing available data; retaining all required permits; conducting field and laboratory investigations; characterizing and confirming site stratigraphy and soil properties, evaluating engineering alternatives, including proposed load-bearing fill support or subsoil improvement techniques, if applicable; identifying bearing levels; selecting the appropriate foundation system(s); formulating design and construction criteria; and performing appropriate constructability and field tests. Such geotechnical program shall be integrated with design and construction quality assurance to ensure a continuity of purpose and philosophy that effectively reduces the risks associated with unanticipated subsurface conditions and design and construction deficiencies.

(a) As part of the required geotechnical investigation, the Company will conduct a focused environmental site assessment with the objective of better determining the presence of oil and Hazardous Materials in ground water and soils. The focused site assessment will include review of reasonably available information on existing environmental conditions in accordance with American Society for Testing Materials (ASTM) documents E1527-13, including such records that might be available from the City, EPA or RIDEM.

(2) *Water Treatment Plant and Pump Station Sites.* With respect to the areas planned to be excavated by the Company at the water treatment plant and pump station Sites, the focused environmental site assessment shall, in addition to the actions described in Section 4.3.1(a)(1), include the collection of soil and ground water for laboratory analysis to assess soil and ground water for reasonably anticipated contaminated and hazardous substances, including volatile organic compounds, RCRA 8 metals, semi-volatile organic compounds and petroleum products. Soil samples will be collected at each boring and test pit location (13 locations at the New Facility water treatment plant Site) and groundwater samples will be collected at up to three (3) locations, if groundwater is encountered during the geotechnical investigation). Three (3) soil samples will be collected at the pump station Site and up to three (3) groundwater samples will be collected if groundwater is encountered.

(3) *Pipeline Routes.* With respect to the areas planned to be excavated by the Company for any new transmission mains, the focused environmental site assessment shall mean visual and olfactory characterization of soils and screening for volatile organic compounds using field instrumentation at each location where geotechnical testing for the presence of ledge or rock will be conducted, no less frequently than once every 300 feet, as well as collection of soil and groundwater samples at each location.

(4) *Written Test Report.* Within forty-five (45) days following the completion of the geotechnical investigation, including the focused environmental site assessments, the Company shall furnish the City with a written report describing and certifying the

geotechnical tests and focused environmental site assessments conducted, the results of each test, and the level of satisfaction of the tests relating thereto and all other requirements specified herein (the "Written Test Report"). The Written Test Report shall include copies of the original data sheets, log sheets, and all calculations used to determine the suitability of the Site for the Capital Improvements, and laboratory reports conducted in conjunction with the Site investigation. If Hazardous Materials or contaminated soils or ground water are discovered, the Written Test Report will include recommendations for mitigation and an assessment of potential mitigation costs, including required costs for reporting to RIDEM and estimated unit and total costs for required remediation or removal of the identified Hazardous Materials and contaminated soils and groundwater.

(a) The Written Test Report also shall detail the geotechnical and environmental conditions, if any, that were not previously identified by the Company or the City or in the information provided by the City with the RFP and reasonably could not have been identified by the Company and, therefore, were not included in the baseline geotechnical conditions description provided in the Proposal and in Schedule 12 hereof. If applicable, the Written Test Report also will detail, for acceptance by the City, the impact on the design of the Capital Improvements and on the Fixed Construction Price of accommodating the newly identified geotechnical condition(s) in a manner consistent with generally accepted design standards and sound, professional engineering and construction methodologies. If the Company demonstrates to the City's satisfaction that the revisions to the Capital Improvements are necessary to accommodate the newly identified geotechnical condition(s), the City will make appropriate adjustments to the Fixed Construction Price and schedule. Under no circumstances shall the Company be eligible for an adjustment to the Fixed Construction Price or schedule based on geotechnical conditions at the Site not identified in the Written Test Report except for Pre-Existing Environmental Conditions or Special Subsurface Conditions.

(b) With respect to geotechnical conditions for the various new pipelines and utilities, the City and Company acknowledge that it is impractical to perform sufficient geotechnical investigations to fully characterize the extent of rock and unsuitable materials along the proposed pipeline and utility alignments and therefore agree that a rock profile will be prepared for the proposed transmission pipelines based on the number of rock probes or borings as described in Schedule 12. A unit price for removal for rock and unsuitable materials, including Hazardous Materials, removal will be provided in the Written Test Report together with an estimated quantity of rock and unsuitable materials and price for removal. This will be used to establish an allowance for rock and unsuitable soil removal to be added to the Fixed Construction Price. Final payment for rock and unsuitable soil removal will be based on the actual quantities removed.

(c) The Company shall certify, through the Written Test Report, either (i) that the Site constitutes an acceptable and suitable Site for the Capital Improvements and the operation, maintenance and management of the New Facility in accordance with the terms of this Agreement and that the Capital Improvements can be constructed

within the Fixed Construction Price, or (ii) that modifications to the Fixed Construction Price are necessary because of newly identified geotechnical conditions.

(d) The City shall determine within twenty (20) days of its receipt of the Written Test Report whether it concurs with such certification. If the City states in writing that it concurs with the Company's certification, then the geotechnical investigation shall be deemed complete. If the City determines that it does not concur with such certification, the City shall promptly send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by the City, either party may elect to refer the dispute to mediation for resolution.

(b) Permit Applications and Fee Payments. The Company shall prepare and submit, on behalf of the City as applicant, applications, including any and all required studies and supporting documentation, for those Permits and approvals required for the design and construction of the New Facility. The Company shall pay all Permit and utility fees, permitting agency costs and charges due in connection therewith using the allowance established in Schedule 14, and shall take all action necessary on behalf of the City as applicant in connection with all associated permitting before all appropriate Governmental Bodies if and to the extent required in order to obtain, designate and provide for the use of the Site for the purposes of this Agreement, and obtain all permits necessary to commence construction of the New Facility not later than the Construction Date. Any Permit fees or agency costs in excess of the allowance established in Schedule 14 shall be paid by the City.

(c) Legal Entitlements. The Company shall submit, on behalf of the City as applicant, applications and take all other steps which are necessary to obtain all Legal Entitlements for the design and construction of the New Facility required to be issued under Applicable Law before the Construction Date, in form and substance satisfactory to the City.

(d) Site-Related Plans. The Company shall prepare and submit to the appropriate Governmental Body, as required, any and all plans necessary for issuance of any Permit, including but not limited to (a) clearing and grading plans, (b) erosion and sediment control plans, (c) drainage plans, (d) wetland mitigation plans, and (e) landscaping plans.

(e) Supplemental Environmental Site Investigation Report(s). The Company shall prepare for the City all supplements and addenda to any environmental Site Investigation Reports and other environmental reports prepared by the City with respect to the Sites which are required under Applicable Law to undertake and complete the Capital Improvements or to obtain any necessary Permits and approvals. Notwithstanding the foregoing, if an Environmental Release Notification Form or Impact Report is required by a Governmental Body with respect to matters identified in the Company's Written Test Report, the Company shall be entitled to a price and schedule adjustment arising as a direct consequence of this requirement.

(f) Information to Support Site Easements. In the event that the City is required to grant Utility easements on the Sites in connection with the Capital Improvements, the Company shall provide complete descriptions of all Utility connections and routes on the Sites necessary for such purposes.

(g) Site Survey. The Company shall prepare or have prepared a property line survey of the Sites as of a date subsequent to the Agreement Date showing (i) the exact dimensions and locations of the Site, (ii) the exact location of all means of access thereto and all easements relating thereto, (iii) that the proposed location(s) of any Capital Improvements at the New Facility are in compliance with all applicable building and set-back lines and do not encroach on or interfere with existing easements (whether on, above or below ground), (iv) no encroachments from the New Facility extending to adjacent property or from adjacent property onto the New Facility, nor any gaps, gores, projections, protrusions or other survey defects, and (v) that the New Facility, after completion of the Capital Improvements, will comply with the zoning classification applicable thereto. Notwithstanding the foregoing, the City acknowledges that a zoning variance may be required for the proposed location of the Raw Water Pumping Station.

(h) Zoning. If necessary, the Company shall obtain from the appropriate Governmental Body any required zoning relief or change in the zoning classification applicable to the Sites, or any portion thereof, caused by the Capital Improvements so that, no later than the Construction Date, a zoning ordinance, or a variance or special exception thereto, shall then be effective which permits the construction of the Capital Improvements and operation of the New Facility as contemplated hereby, and the Company shall furnish confirming evidence thereof to the City. The City's entry into this Agreement shall in no way constitute a waiver of any municipal ordinances or other authority applicable to the project. Notwithstanding the foregoing, if a required zoning change or relief is delayed or denied due to (i) the sole fault of the City, then the Company shall be entitled to a price and schedule adjustment arising as a direct consequence of the delay or denial; or (ii) any reason other than Company fault in seeking a dimensional variance for the raw water pump station in the alternative location proposed by the Company (the "Variance"), then the Company shall be entitled to a price and schedule adjustment arising as a direct consequence of the delay or denial; or (iii) any reason other than Company fault with respect to zoning matters other than the Variance, the Company shall be entitled to a schedule adjustment arising as a direct consequence of the delay or denial.

(i) Utilities. The Company shall make all arrangements necessary to secure the availability of all Utilities required to support the New Facility, including the Capital Improvements in the capacities required hereunder.

(j) Technical Materials and Safety Plans. The Company shall provide to the City copies of all plans, technical specifications, blueprints, drawings, reports and other design documents and safety plans prepared by or on behalf of the Company prior to the Construction Date for permitting, regulatory compliance, financing, bonding, credit enhancement and insurance purposes. Documents to support Permit applications shall be submitted to the City for review prior to submittal to permitting agencies.

(k) Construction Plans. All drawings, blueprints, plans and specifications prepared shall be consistent with all terms and conditions of this Agreement, and shall be subject to review and comment by the City. No such review or comment by the City shall amend, alter or affect this Agreement or the Company's obligations hereunder in any manner, nor shall the City incur any liability or expense as a result thereof.

(l) Applicable Law Compliance. The Company shall comply with all

requirements of Applicable Law pertaining to the activities constituting the Construction Date Conditions.

(m) Insurance. The Company shall submit to the City the necessary Certificates and/or such other evidence as the City in its sole discretion shall determine to be satisfactory, for all Insurance specified in Schedule 4 hereto.

(n) Emergency Response Plan. The Company shall have completed and furnished to the City, and the City shall have accepted, the Emergency Response Plan described in Schedule 3 hereto.

(o) Financing Assistance. The Company shall cooperate with and assist the City in providing any information, certifications or documents which reasonably may be required in connection with the issuance of City revenue obligations, accessing funds through the Infrastructure Bank or otherwise obtaining the funds necessary to pay the Fixed Construction Price.

(p) Representations. The representations of the Company set forth in this Agreement and of the Guarantors set forth in the Guaranty Agreements shall be true and correct in all material respects as of the Construction Date as if made on and as of the Construction Date, and the Company shall deliver to the City a certificate of an authorized officer of each to that effect, together with appropriate certified authorizing resolutions and incumbency certificates.

(q) Documents Evidencing Required Activities. The Company shall have provided to the City copies of all filings and reports conducted, prepared or obtained with respect to or evidencing the Company's activities pursuant to this Section 4.3.

(r) Financial Condition. The Company shall provide audited financial statements of the Company, if available (and if not available, shall provide such statements of the Company's members) and the Guarantor for the most recently completed fiscal year and unaudited quarterly period. Since the Agreement Date, there shall not have occurred any change, financial or otherwise, in the condition of the Company or the Guarantor that would materially and adversely affect the ability of the Company or the Guarantor to perform its respective obligations under this Agreement or the Guaranty Agreements.

(s) Notice of Default. The Company shall provide to the City, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Permit or any other matter pertaining to the Development Period.

(t) Construction Performance Bond and Labor and Materials Bond. On or before the Construction Date, the Company shall provide or cause to be provided financial security for the performance of Construction Period obligations hereunder through the Construction Performance and Labor and Materials Bonds issued by a surety acceptable to the City. The Construction Performance and Labor and Materials Bonds shall be issued in a form as approved by the City no later than ten (10) days prior to the Construction Date and in the amount of the Fixed Construction Price.

Section 4.4 City Responsibilities During the Development Period.

Promptly following the Agreement Date, the City shall proceed at its own cost and expense to exercise good faith and due diligence in order to satisfy all of the following responsibilities.

Section 4.4.1. Financing.

The City shall obtain financing, through the public or private sector, for the Capital Improvements and deliver to the Company a notice that the City has received approvals for the financing for the Capital Improvements. The capital improvements and operations will be performed by the Company to comply with all Federal, State, and local laws, ordinances, rules, regulations and requirements, including requirements for projects financed through the Infrastructure Bank or RIWRB. The Company shall assist the City with periodic RIPUC/ Rhode Island Division of Public Utilities ("RIDPU") rate filings and hearings by supporting the needs of the City as the City prepares for such meetings and hearings, if any. Without limiting the foregoing, the Company shall perform its obligations under this Agreement in a manner consistent and compliant with the Rhode Island Department of Health ("RIDOH"), Office of Drinking Water Quality's Drinking Water State Revolving Fund Program *Contract Specifications Package*, as the same may be amended or modified from time to time.

Section 4.4.2. Legal Entitlements.

The City shall cooperate with the Company in the submittal, on behalf of the City as applicant, of all applications for Legal Entitlements which the Company is obligated to submit pursuant to Section 4.3 hereof.

Section 4.4.3. Zoning.

The City will cooperate with (including signing as applicant, if necessary) and assist the Company in any application for any change in zoning classification or zoning relief that may be required to undertake the Capital Improvements.

Section 4.5 Construction Date Conditions.

Section 4.5.1. Construction Date Conditions.

The obligations of the Company and the City to proceed with their respective obligations hereunder during the Construction Period shall not commence until all of the following conditions are satisfied or waived in writing by the City and the Company (the "Construction Date Conditions"):

(a) Company Development Period Responsibilities. The Company shall have fulfilled all of its responsibilities with respect to the Development Period under Section 4.3 hereof.

(b) Development Period Responsibilities. The City shall have fulfilled all of its responsibilities with respect to the Development Period under Section 4.4 hereof.

(c) Legal Entitlements. All Permits and other Legal Entitlements required to

commence construction of the Capital Improvements shall have been issued or obtained and shall be in full force and effect.

(d) Acceptability and Effectiveness of Documents. All of the documents, instruments and agreements identified in this Section 4 shall be in form and substance reasonably satisfactory to both parties, and shall be valid, in full force and effect and enforceable against each party thereto as of the Construction Date. No such documents, instruments or agreements shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Construction Date, no party to any such document, instrument or agreement shall have repudiated or be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested. The City and the Company shall each proceed at their own cost and expense, in good faith and with due diligence, to take such actions as may reasonably be under their respective control in order to satisfy the condition set forth in this Section 4.5.1(d).

(e) Legal Proceedings. There shall be no Legal Proceeding which (1) challenges, or might challenge, directly or indirectly, the authorization, execution, delivery, validity or enforceability of this Agreement or the Guaranty Agreements, or (2) seeks to enjoin or restrict the use of the Site for the purposes contemplated by this Agreement or seeks damages, fines, remediation or any other remedy in connection with the environmental condition or any other factor pertaining to the Site.

(f) No Change In Law. No Change In Law shall have occurred after the Agreement Date that would make the authorization, execution, delivery, validity, enforceability or performance of this Agreement or the Guaranty Agreements a violation of Applicable Law.

Section 4.5.2. Required Development Milestone Completion Dates.

Without limiting the Company's obligations under Section 4.3 hereof, and notwithstanding the occurrence of any Uncontrollable Circumstance, the Company shall meet, complete and satisfy in full the following milestones by the dates indicated:

Milestone	Guaranteed Completion Date
1. Submit to the City the final schedule and reconfirmation of the envisioned components of the Capital Improvements	(1) 90 days after the Agreement Date
2. Submit to the City all applications for Legal Entitlements	(2) In accordance with Schedule 6

Section 4.5.3. Conditions to Legal Entitlements.

The Company shall apply on behalf of the City for any Legal Entitlement required to ensure that the terms and conditions of any such Legal Entitlement are not inconsistent with the Company's obligations hereunder, and shall notify the City of any terms and conditions proposed by the issuing or approving Governmental Body that are more stringent or burdensome than the standards set forth in Schedule 1 hereto. Within ten (10) days of the receipt of information as to proposed terms,

conditions or requirements to be contained in any draft or final Legal Entitlement, the Company shall provide the City with written notice of its determination and reasoning as to whether and why the terms and conditions of any such draft or final Legal Entitlement are more burdensome or stringent than those set forth in Schedule 1 hereto. In the event the Company claims that such Legal Entitlement contains conditions or requirements which are more burdensome or stringent than those set forth in Schedule 1, and therefore constitutes a Change In Law, the Company shall provide the City with notice and information required pursuant to Section 5.14.3 hereof and the parties shall negotiate any equitable adjustment to the Service Fee as appropriate.

Section 4.5.4. Denial of a Legal Entitlement.

In the event that at any time during the Development Period any application (or appeal from the denial of an application) for a Legal Entitlement required to be obtained by the Company hereunder for the Capital Improvements is denied, the City may elect to either (1) direct the Company to appeal the denial at the sole cost and expense of the City (unless the denial is due to the failure of the Company to fulfill its obligations under this Agreement, in which event the appeal shall be brought at the Company's sole cost and expense), or (2) terminate this Agreement with the same effect as if the Company had terminated this Agreement upon a failure of the parties to satisfy the Construction Date Conditions contained in Section 4.5 hereof by the time required under Section 4.6.2 hereof. The City shall make any such election within sixty (60) days of the date it receives final formal notice of the denial action. If the City elects to direct the Company to appeal the initial denial, denial at a higher appellate level of the same Legal Entitlement shall give rise to an additional termination option as set forth in subparagraph (2) hereof.

Notwithstanding the foregoing, upon documenting the same to the City's reasonable satisfaction the Company shall be entitled to a price and schedule adjustment arising as a direct consequence of 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 an unforeseeable, arbitrary term, condition or requirement only to the extent that such occurrence is not the result of negligent action, error or omission or a lack of reasonable diligence of the Company but is solely the fault of the applicable governmental agency reviewing the application.

Section 4.6 Closing the Development Period.

Section 4.6.1. Satisfaction of Conditions.

The parties will give each other prompt notice when each Construction Date Condition has been achieved. Upon the satisfaction or waiver in writing by both the City and the Company of all of such Construction Date Conditions, the parties shall hold a formal closing acknowledging such satisfaction and certifying that the Construction Date has occurred. Written documents or instruments constituting or evidencing satisfaction of the Construction Date Conditions shall be furnished to each party prior to or on the Construction Date.

Section 4.6.2. Failure to Satisfy Construction Date Conditions.

If all of the Construction Date Conditions for which the Company is responsible are not either satisfied by the Company or waived by the City on or prior to November 15, 2018 (the "Construction Date Deadline"), then the Company shall pay to the City, in addition to fines and penalties imposed on or incurred by the City in connection with the Company's failure to meet the Construction Date Deadline), a daily delay non-compliance assessment in the amount of $2,500 for each day that such Construction Date Conditions remain unsatisfied after said date until either the Construction Date Conditions are satisfied or this Agreement is terminated for an Event of Default. In the event that the Construction Date Conditions are not either satisfied or waived as required hereunder due to the sole fault of the City, then schedule relief will be granted by the City consistent with documented evidence of such fault and delay provided by the Company to the City's satisfaction. Except as otherwise specifically provided herein, such non-compliance assessment shall constitute the sole and exclusive remedy for all delay related costs in meeting the Construction Date Deadline, whether based in contract, tort or otherwise. The Company's liability for non-compliance assessments under this provision shall not exceed $1,000,000. This limitation shall be included under the aggregate limitation of liability included under below Section 7.1.

Section 4.7 City Termination and Suspension Options.

Section 4.7.1. City Convenience Termination Option.

As set forth more fully in Section 8.4.1 hereof, the City shall have the right to terminate this Agreement at its sole discretion, for its convenience and without cause.

Section 4.7.2. City Suspension Option During the Development Period.

The City shall have the right at any time prior to the Construction Date, exercisable in its sole discretion, for any reason by written notice to the Company and without terminating this Agreement, to suspend the obligations of the Company and the City to seek the fulfillment of the Construction Date Conditions. Upon any such suspension, the City shall reimburse the Company for its substantiated actual direct costs and demobilization and mobilization costs, all of which shall be documented to the City's satisfaction, incurred and paid to third parties from the Agreement Date to the date on which this Agreement is suspended by the City, less any amounts already paid to the Company; provided, however, that all such costs and expenses must have been (a) directly related to the Company's performance of its Development Period obligations hereunder, and (b) necessary to be performed prior to the Construction Date. The Company shall not be further obligated during the suspension to seek to fulfill the Construction Date Conditions.

The City may, in its sole discretion at any time after a suspension, upon written notice to the Company, reinstate the obligations of the Company to fulfill the Construction Date Conditions. At that time, an amount equal to all substantiated actual direct expenses previously reimbursed to the Company, not including demobilization and mobilization costs, shall be deducted from the Fixed Construction Price and the obligations of the Company as to the Construction Date Conditions shall resume. In such event, schedule and price relief shall be granted by the City to the Company based upon documented evidence to the City's satisfaction of the necessity of such relief due to the suspension. If the City does not reinstate the obligation of the Company to seek to fulfill the

Construction Date Conditions within twelve (12) months following the suspension, the Company may, at any time thereafter, terminate this Agreement upon written notice to the City.

Section 4.7.3. Cost of Records and Reporting.

During the Development Period, the Company shall prepare and maintain proper, accurate and complete records of the cost and description of the permitting and other Development Period costs of the Company since the Agreement Date which are directly related to the Company's obligations under this Agreement, the cost of which would be the responsibility of the City if the City were to elect to suspend or terminate this Agreement pursuant to Section 4.7.1 or 4.7.2 hereof. All financial records of the Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards. The Company shall submit all books and records or a reasonably detailed summary thereof acceptable to the City, together with a summary statement of monthly and aggregate reimbursable expenses incurred, to the City on a monthly basis after the Agreement Date until either the City exercises its right to suspend or terminate this Agreement or until the Construction Date occurs, whichever is earlier. If the Company fails to provide such monthly reports to the City within sixty (60) days from the last business day of any such month, the Company waives its right to claim and receive any reimbursable expenses incurred for that month. Specific requests by the Company for the payment of reimbursable expenses shall include documentation substantiating such expense. In addition, on the Agreement Date and on the first day of each month thereafter, the Company shall provide to the City an itemized list of all work related to the Capital Improvements expected to be undertaken in the following month and the expected costs thereof. The City shall have the right to question the Company's decision to undertake such activities and to provide notice to the Company that such costs will not be reimbursed.

Section 4.7.4. Delivery of Development Period Work Product to the City.

Concurrent with payment by the City to the Company of any amount due on termination or suspension of this Agreement by the City under this Section 4.7, the Company shall deliver to the City all its Development Period work product for the Capital Improvements during the period commencing on the Agreement Date and ending on the date of payment. Such work product immediately shall become the property of the City and shall include, without limitation, all plans, specifications, designs, drawings, renderings, blueprints, manuals, equipment layouts, and Legal Entitlements and related applications, submittals and other information prepared for the purpose of planning, designing, constructing and operating the Capital Improvements and securing Legal Entitlements.

Section 4.8 Termination for Cause During the Development Period.

The City shall have the right during the Development Period to terminate this Agreement for cause and to pursue all remedies available pursuant to Article VIII hereof, without cost or liability to the City, based upon (1) any failure of the Company to satisfy the Development Period responsibilities specified in Section 4.3 hereof by the required date or failure by the Company to meet the Construction Date conditions under Section 4.5 hereof by the date required in Section 4.6.2 or (2) the occurrence of an Event of Default during the Development Period by the Company. The Company shall have the right during the Development Period to terminate this Agreement for

cause and pursue all remedies available pursuant to Article VIII hereof, based upon the occurrence of an Event of Default during the Development Period by the City.

Section 4.9 City Election to Initiate Construction Work.

Notwithstanding anything in this Agreement to the contrary and without changing any of the obligations of the City or the Company other than those expressly changed under this Section 4.9, the City may provide written notice to the Company during the Development Period directing the Company to initiate certain portions of the Capital Improvements prior to the Construction Date. If the City provides such written notice to the Company to so direct the commencement of certain portions of the Capital Improvements, then the costs and expenses payable under Section 4.7.1 shall include such portions of the Capital Improvements which are authorized to be initiated prior to the Construction Date. In order to be eligible for any adjustment to the Fixed Construction Price, the Company shall be obligated to document to the City's satisfaction any change in Capital Improvement cost resulting from this early commencement of certain Capital Improvements prior to commencing such Capital Improvements. Otherwise, there shall be no change in the Fixed Construction Price as a result of an election by the City under this Section 4.9.

ARTICLE V
DESIGN AND CONSTRUCTION OF THE CAPITAL IMPROVEMENTS

Section 5.1 Construction Period - Generally.

The period beginning on the Construction Date and ending on the Acceptance Date shall be referred to as the Construction Period. The Company shall complete all Capital Improvements during the Construction Period; provided, however, that the Company shall not begin construction until after issuance by the City of the Notice to Proceed. During the Construction Period, the Company shall be entitled to payments for construction of the Capital Improvements as provided in this Article V.

Section 5.2 New Facility Ownership.

The New Facility shall be owned by the City or its assignee for financing purposes at all times. The Company shall perform the Capital Improvements and other Services provided for herein as an independent contractor and shall not have any ownership or other property interest in the New Facility or the Site.

Section 5.3 Authorized Representative.

The City and the Company shall each designate in writing by the Construction Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement during the Construction Period (each, an "Authorized Representative"). Either party may designate a successor or substitute Authorized Representative at any time by written notice to the other party.

Section 5.4 Design and Construction Generally.

Section 5.4.1. Commencement of Design and Construction.

Following the Construction Date, the City shall have the right to issue a written Notice to the Company to begin the Construction Work (the "Notice to Proceed"). The Notice to Proceed shall be issued within thirty (30) days of the Construction Date unless the City provides a reason to the Company that the Notice to Proceed will not be issued within such period. If the City does not issue the Notice to Proceed within 30 days of the Construction Date, the Company shall be entitled to a schedule adjustment arising as a direct consequence of the City's delay. Immediately following the issuance of the Notice to Proceed, except as otherwise provided in this Section 5.4, the Company shall commence and proceed to undertake, perform and complete the Capital Improvements at its sole cost and expense in accordance with all provisions of this Agreement. The Company's failure to achieve Acceptance on or before the Acceptance Deadline shall result in the assessment of the delay non-compliance assessments under Section 6.9 hereof.

Section 5.4.2. Elements of the Capital Improvements Construction.

The Company shall be responsible for the design and construction of all necessary water system capital improvements to meet the Future Finished Water Requirements, including all capital improvement requirements for the New Facility necessary to achieve compliance with all Applicable Law, including but not limited to the capital improvements set forth in Schedule 12 hereto (the "Capital Improvements") (but not including any design or construction obligations with respect to the City's distribution system except as expressly provided in this Agreement). In constructing the Capital Improvements generally, the Company shall, in accordance with all of the terms and conditions of this Agreement, (1) prepare and excavate the Site, (2) demolish and remove any existing facilities or systems indicated in the Company's Proposal, (3) reroute or replace any underground Utilities, pipes or systems, (4) dispose of any demolition or construction debris on the Site and any soil excavated therefrom, (5) supply and install all labor, materials and equipment necessary to design and construct the Capital Improvements, (6) monitor the Capital Improvements construction work, (7) maintain continuous compliance with all Legal Entitlements and Applicable Law, (8) allow free and unlimited access to the New Facility by the City and/or its representatives, (9) start up and commission the Capital Improvements, (10) conduct the Acceptance Tests required, and (11) operate, maintain and manage the Capital Improvements and the existing New Facility as an integrated system following completion and endorsement of the Acceptance Tests, all so that the New Facility is suitable and adequate for meeting the Future Finished Water Requirements as provided herein.

Section 5.4.3. Liens and Subcontracts.

The Company shall promptly discharge or bond any liens or Encumbrances arising out of the Company's construction of the Capital Improvements or operation of the Existing Facility or the New Facility, and shall provide evidence to the City of such bond or discharge within ten (10) business days of the placement of such lien or encumbrance. Contracts and Subcontracts entered into by the Company for the construction of the Capital Improvements shall neither supersede nor abrogate any of the terms or provisions of this Agreement.

Section 5.4.4. Payment of Costs.

The Company shall pay directly all costs and expenses of the design and construction of the Capital Improvements of any kind or nature whatsoever, without payment or reimbursement from the City except through payment of the Fixed Construction Price, including any Fixed Construction Price Adjustments, based on achievement of milestones listed in the drawdown schedule set forth in Schedule 14 hereof. Such costs and expenses, without limiting the generality of the foregoing, shall include all costs of permitting, regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining all forms of Company credit enhancement required hereunder during the Development Period and Construction Period; payments due under the Construction Contract, if any, contracts with Subcontractors or otherwise for all labor and materials and equipment; legal, financial, engineering, architectural and other professional services of the Company; general supervision by the Company of all design and construction; the cost of all design and construction performed by or on behalf of the Company; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Acceptance. In accordance with Applicable Law, the Company shall pay all wages and benefits to its employees when due and require its Subcontractors to pay all wages and benefits of its employees when due.

Section 5.5 Company Design.

Section 5.5.1. Sole Responsibility.

The Company shall have the sole and exclusive responsibility for the design of the Capital Improvements hereunder and the preparation of all plans, technical specifications, drawings, blueprints or other design documents necessary or appropriate to construct the Capital Improvements. The Company warrants that the New Facility, upon the occurrence of Acceptance, will be capable of achieving the performance requirements specified in Schedules 1 and 2 hereof. Further, all components, materials, equipment and workmanship incorporated in the Work shall be of good quality and in accordance with Prudent Industry Practices and all relevant industry standards. The New Facility shall be constructed consistent with the standard of care, professional judgment, skill and attention in the construction industry, and the Company shall give the Project a high priority among its projects. The Company shall ensure that this standard of performance is the standard it requires of each of its subcontractors. The City 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 requirements set forth in the Schedules hereto. Any architects and engineers engaged by the Company related to the construction of the Capital Improvements shall be licensed in the State of Rhode Island, experienced and qualified to perform such services and shall be selected in the manner consistent with Section 5.19 hereof.

Section 5.5.2. City Interest in Design Requirements.

The Company acknowledges the City's material interest in each provision of the Design Requirements and, notwithstanding the Acceptance Standards and Performance Guaranties of the Company and associated non-performance remedies of the City, agrees that no change to the Design Requirements shall be made except upon the terms and conditions set forth in this Section and

pursuant to a City Change Order.

Section 5.5.3. Company Requested Changes.

The Company shall have the right to request changes to the Design Requirements. At its sole cost and expense, it must give written notice to the City containing detailed information concerning the design changes and the expected effects thereof on the Company's Performance Guaranties. The notice shall contain sufficient information to enable the City to determine that such changes (1) do not adversely affect the ability of the New Facility to be operated so as to meet the Performance Guaranties set forth in this Agreement, (2) do not impair the quality, integrity, durability or reliability of the New Facility as set forth in the Design Requirements, (3) do not impair, and are necessary for, the Company's ability to fulfill all of its obligations under this Agreement, and (4) are feasible.

Section 5.5.4. City Approval of Changes.

The City shall have the right to review all changes requested by the Company under this Section, and if the City agrees in writing that the requested change meets the design change criteria set forth in Section 5.5.3, then the City shall permit the change to the Design Requirements, and the Company shall be responsible for all additional costs, including additional costs to the City, resulting from such changes to the Design Requirements. Cost savings resulting from such change to the Design Requirements shall be to the benefit of both the Company and the City in a ratio to be negotiated. If the City and the Company cannot agree that a requested change meets the design change criteria set forth in Section 5.5.3, then the dispute shall be submitted to mediation in accordance with Section 8.8.2 hereof. No such change shall result in an increase in the Fixed Construction Price or an extension of the Acceptance Deadline unless otherwise agreed by the City in its sole discretion.

Section 5.6 Construction Practice.

Unless the Design Requirements or this Agreement expressly provide otherwise, the Company shall perform the Construction Work in a good and workmanlike manner and in accordance with generally accepted construction practice 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 Improvements as required by this 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, site access control and safety, adherence to construction requirements contained within Schedule 12, required design certifications, required approvals, weather protection, site clean-up and housekeeping construction trade management, temporary parking, 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, including potable water, phone, sanitary and gas, Subcontractor and vendor qualification, receipt and unloading of delivered materials and equipment, erection rigging, temporary supports, and construction coordination. Laydown and staging areas for construction material shall be located on the Site, or at other locations approved by and arranged

and paid for by the Company. In addition to the Site, the City has designated land adjacent to the existing blending chamber facilities for use in laydown and staging.

Section 5.7 [INTENTIONALLY OMITTED].

Section 5.8 Compliance with Law and Equipment Operating Requirements.

In designing, constructing, starting-up and testing the Capital Improvements, the Company shall comply with Applicable Law, shall operate all Equipment and systems comprising the New Facility in accordance with good engineering practice and applicable equipment manufacturer's specifications and recommendations, and shall observe, at minimum, the same safety standards as are set forth in Schedule 2 and Schedule 3 hereof with respect to the operation of the Existing Facility and the New Facility, as applicable, while maintaining all responsibilities related to health and safety.

Section 5.9 Legal Entitlements Necessary for Continued Construction.

Company, at its own cost and expense and on behalf of the City as applicant, shall make all further filings, applications and reports necessary to obtain and maintain all Legal Entitlements required to be made, obtained or maintained under Applicable Law in connection with the continuance of work with respect to the design, construction, start-up and testing of the Capital Improvements. The City 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 which are reasonably required for such purpose.

Section 5.10 Engagement of the City Clerk of the Works and City Engineer.

Section 5.10.1. Duties.

The Company shall fully cooperate with any City Clerk of the Works and City Engineer designated by the City to assist it in connection with the administration of this Agreement. In the performance of such services, the Company agrees that the Clerk of the Works and City Engineer may, without limiting other possible services to the City: review and monitor construction progress, payments and procedures; confirm the completion of specified portions of the Construction Work and review the release of City funds in payment of the Construction Price; review proposed changes to the Design Requirements pursuant to Section 5.5.4 hereof; review New Facility plans, drawings and specifications for compliance with the Design Requirements; monitor the Acceptance Tests undertaken by the Company pursuant to Article VI hereof and Schedule 13 hereto; review validity of Company's written notice that an Uncontrollable Circumstance has occurred; review and advise the City with respect to material changes to the New Facility during the Contract Term; issue one or more stop work orders in the event the City Clerk of the Works or City Engineer determines the same may be necessary in response to a Company breach or Event of Default hereunder; and provide certificates and perform such other duties as may be specifically conferred on the Clerk of the Works and City Engineer hereunder. The Company agrees to cooperate with all reasonable requests made by the City Engineer and the City Clerk of the Works in connection with the performance of such duties for the City.

Section 5.10.2. Fees.

The Company shall reimburse the City for the reasonable fees and expenses of the City Engineer and costs of City personnel for services in connection with repetition of any Acceptance Tests unless such additional or repeated Acceptance Tests are required as a result of City Fault or Uncontrollable Circumstances. Any fees of the City Engineer and City personnel after Acceptance shall be paid by the City without reimbursement by the Company except as otherwise specifically provided by this Agreement.

Section 5.11 Monthly Progress Report.

The Company shall submit to the City a monthly progress report detailing work accomplished and an updated schedule. The monthly progress report shall include a summary of work activities during the reporting month, a listing of upcoming work activities, a listing of submittals delivered during the reporting month, a listing of submittals scheduled for delivery the following month, a listing of any permit violations, and an updated schedule which reflects critical path activities. The updated schedule shall set forth major activities and reflect any change in the Company's estimated construction progress schedule from the schedule submitted the prior month. The Company agrees that the Company's submission of the monthly progress report is for the City's information only, and the City's acceptance of the monthly progress report shall not bind the City in any manner. Thus, the City's acceptance of the monthly progress report shall not imply that the City: (1) approves the Company's proposed staffing or scheduling of the Construction Work; (2) agrees or guaranties to the Company or any other person that the Company has the capacity or ability to complete the Construction Work in accordance with the progress schedule, or that the Construction Work can or will be completed in accordance with the monthly progress schedule; or (3) consents to any changes in scheduling, or agrees to any extension of time, unless the City agrees specifically in writing to the applicable change.

Section 5.12 Construction Monitoring, Observations, Testing and Uncovering of Work.

Section 5.12.1. Observation and Design Review Program.

During the progress of the Construction Work through Acceptance, the Company shall at all times during normal working hours afford the City and the City Engineer every reasonable opportunity for observing all Construction Work at the Site. During any such observation, all representatives of the City and the City Engineer shall comply with all safety and other rules and regulations applicable to presence in or upon the Site or the New Facility, including those adopted by the Company, and shall in no material way interfere with the Company's performance of any Construction Work. The Company shall provide the City with five (5) copies, plus electronic (pdf files) of the construction design drawings, blueprints, detailed plans and technical Design Requirements and of all other Deliverable Materials. The Company shall provide the City with electronic files of manufacturing and shop drawings.

Section 5.12.2. Company Tests.

The Company shall conduct all tests of the Construction Work (including shop tests) or inspections required by good engineering practice, by the Design Requirements, by Applicable Law

or for Insurance purposes. The Company shall give the City and the City Engineer reasonable advance notice (no less than three working 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 City or the City Engineer at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Construction Work. Costs for the City or City Engineer to witness shop tests or inspections shall be borne by the City. If required by Applicable Law or for Insurance purposes, 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 City, which consent shall not be unreasonably withheld. Acceptance Testing shall be conducted in accordance with Schedule 13 hereto.

Section 5.12.3. City Tests, Observations and Inspections.

The City, its employees, agents, representatives and contractors (which may be selected in the City'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 City deems necessary or desirable to ascertain whether the Construction Work complies with this Agreement. The City shall pay for any test, observation or inspection requested by the City and any Governmental Bodies, and in addition to that required of the Company (Section 5.12.2), and the costs of such test, observation or inspection shall be borne by the City unless such test, observation or inspection reveals a material failure of the Construction Work to comply with this Agreement or Applicable Law, in which event the Company shall bear all reasonable costs and expenses of such test, observation or inspection. In the event that any requested test, observation or inspection causes a material delay in the construction schedule, the Acceptance Deadline shall be extended 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 noncompliance as set forth herein.

Section 5.12.4. Certificates and Reports.

The Company shall secure and deliver to the City promptly, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll or approvals with respect to the Construction Work as and when required by the Design Requirements, Applicable Law or the Insurance Requirements. The Company shall provide to the City, within (2) days after the receipt thereof, copies of any notice of default, breach or noncompliance received by the Company under or in connection with, any Legal Entitlement, Subcontract, any Bond, the Guaranty Agreements or agreement pertaining to the Construction Period.

Section 5.12.5. Notice of Covering Construction Work.

The Company shall give the City reasonable notice of its upcoming schedule with respect to the covering and completion of any Construction Work. The City shall give the Company reasonable notice of any intended inspection or testing of such Construction Work in progress prior to its covering or completion, which notice shall be sufficient to afford the City a reasonable opportunity to conduct a full inspection of such Construction Work. At the City's written request,

the Company shall take apart or uncover for inspection or testing any previously-covered or completed Construction Work; provided, however, that the City's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the City that the disputed Construction Work conforms with the requirements of this Agreement. The cost of uncovering, taking apart or replacing such Construction Work along with the costs related to any delay in performing Construction Work caused by such actions, shall be borne as follows: (1) by the Company, if such Construction Work has been covered prior to any observation or test required by the Design Requirements, Applicable Law or the Insurance Requirements or if such Construction Work has been covered prior to any observation or test as to which the City has provided reasonable advance notice hereunder; and (2) in all other cases, as follows: (a) by the Company, if such observation or test reveals that the Construction Work does not comply with this Agreement, or (b) by the City, if such observation or test reveals that the Construction Work complies with this Agreement.

In the event such Construction Work does comply with this Agreement, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be borne by the City (through and only through a Fixed Construction Price Adjustment). Either the City or the Company may request confirmation of the test results pursuant to Section 8.8 of this Agreement.

Section 5.12.6. Meetings and Design and Construction Review.

During the Construction Period, the Company and the City shall conduct meetings on a monthly basis at a minimum. At such meetings, discussions shall be held concerning all aspects of the construction of the Capital Improvements including but not limited to construction schedule, progress payments, Extra Construction Work, shop drawings, catalogued and dated progress photographs, and any soil boring data and shop test results. Monthly project construction progress reports containing all relevant information shall be prepared by the Company and provided to the City at least five (5) business days prior to each monthly meeting, together with a list of agenda items for the meeting. The Company shall also attend any on-call meeting which may be required by the City from time to time in connection with the Construction Work, provided that the Company has at least twenty-four (24) hours notice of such meeting. The Company shall provide to the City, for its planning, budgeting and financing purposes, monthly estimates of the commencement date for start-up operations, the date upon which the Acceptance Tests shall commence, and the Acceptance Date.

Section 5.13 Correction of Work.

Section 5.13.1. Correction of Non-Conforming Construction Work.

Throughout the Contract Term, including the period of any renewal pursuant to Section 10.2 hereof, the Company at its sole cost and expense, shall complete, repair, replace, restore, rebuild and correct promptly any Construction Work which does not conform with the Design Requirements and all other requirements of this Agreement.

Section 5.13.2. Election to Accept Non-Conforming Construction Work.

The City may elect, by Change Order, at the Company's request, to accept Construction Work that does not conform to the Design Requirements and charge the Company (by a reduction in the Fixed Construction Price) for the amount agreed upon by the parties by which the value of the Company's services or Construction Work has been reduced.

Section 5.13.3. Relation to Other Obligations.

The obligations specified in this Section establish only the Company's specific obligation to correct the Construction Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Company under this Agreement. This Section is intended to supplement (and not to limit) the Company's obligations under the Acceptance Test procedures and standards, the Future Finished Water Requirements and any other provisions of this Agreement or Applicable Law.

Section 5.14 Damage to the Construction Work

Section 5.14.1. Damage Prevention.

From the Construction Date until Acceptance (or whenever earlier or later performing Construction Work on the Site), the Company shall use care and diligence, and shall take all appropriate precautions, to guard the Construction Work and the Site and the property of other persons (including any materials, equipment, or other items furnished by the City) from damage prior to the Acceptance Date. For such purpose, the Company shall provide fencing, protective features (such as tarpaulins, boards, boxing, frames, canvas guards, and fireproofing), and other safeguards to the extent the Company reasonably determines (subject to agreement by the City) are necessary and proper in the performance of the Construction Work.

Section 5.14.2. Restoration.

In case of damage or destruction to the Construction Work or the Site resulting from any cause, and regardless of the extent thereof or the estimated cost of repair, replacement or restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, the Company shall immediately undertake and complete the repair, replacement and restoration of the damage or destruction to Construction Work to the character and condition thereof existing immediately prior to the damage or destruction in accordance with the construction procedures set forth herein, as applicable, all at the Company's sole cost and expense, except in the event that such damage or destruction is caused by City Fault.

Section 5.14.3. Notice and Reports.

The Company shall notify the City immediately of any damage or destruction to the Construction Work or the Site or any accident or permit violation on the Site, including but not limited to Hazardous Substance spills or releases, damage to sensitive areas, permit conditions violations, fires and injuries. Additionally, the Company shall notify the insurers under any risk insurance and all applicable Insurance of any damage or destruction to the Construction Work or the

Site, or any accidents on the Site, as promptly as possible after the Company learns of any such damage, destruction or accidents. As soon as practicable after learning of any such occurrence, the Company shall submit a full and complete written report to the City. The Company shall also submit to the City within twenty-four (24) hours copies of all reports relating to the subject matter of this subparagraph which are filed with, or given to the Company by, any insurance company, adjuster, or Governmental Body.

Section 5.15 Change Orders and Extra Construction Work

Section 5.15.1. Right to Issue Change Orders.

The City, subject to the provisions of Section 5.15.6, may issue Change Orders pertaining to any and all aspects of the Construction Work at any time and for any reason whatsoever, whether and however such Change Orders revise this Agreement, add Extra Construction Work or omit Construction Work or affect the Acceptance Deadline. Notwithstanding anything contained herein to the contrary, the City shall have no obligation to request that the Company perform any work outside of the work scope specifically set forth in this Agreement; the City may, at its option, undertake such work itself and/or may award such work to any other entity. In such event, the Company shall reasonably cooperate with the City and/or other entity to achieve the work in an efficient, timely and cost-effective manner.

Section 5.15.2. Obligation to Complete Extra Construction Work.

The Company shall, except to the extent excused under Section 5.15.6, undertake and complete promptly all Extra Construction Work authorized under this Section. The Company shall not perform any Extra Construction Work without a Change Order authorized by the City. The Company shall be entitled to reasonable additional compensation and/or additional time for Extra Construction Work determined in accordance with this Section 5.15 ("Extra Payment").

Section 5.15.3. Effect of Company Fault.

The Company shall not be entitled to any Extra Payment for any Extra Construction Work required by reason of any Company Fault. The Fixed Construction Price shall be reduced for omitted Construction Work resulting from any Company Fault by the greater of: (1) the reduction in value of the New Facility due to the omitted Construction Work, or (2) the reduction in the Company's cost as a result of the omitted Construction Work.

Section 5.15.4. Cost Reductions.

The Fixed Construction Price shall be reduced if and to the extent that any Change Order, whether for omitted Construction Work or otherwise, results in any reduction in the Company's cost of the Construction Work.

Section 5.15.5. Proposal for Extra Work.

The Company shall promptly submit a written quotation on a lump-sum basis for Extra Construction Work covered by any proposed Change Order. The Company shall include with each quotation Cost Substantiation therefor and, with respect to any Extra Construction Work

necessitated by Uncontrollable Circumstances, the Company shall be limited to five percent (5%) profit with respect thereto. Any such quotation shall be deemed the Company's offer to the City, binding for ninety (90) days to perform the Extra Construction Work at the price quoted. In addition, each quotation shall include the effect, if any, of the Extra Construction Work on the progress schedule, the Performance Guaranties, the Acceptance Deadline, the Fixed Construction Price, the Service Fee and any of the other obligations of the Company under this Agreement.

Section 5.15.6. Conditions to the 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 Extra Construction Work and on the effect of the Extra Construction Work on any other obligations of the Company under this Agreement. The Company acknowledges that it shall not be entitled to seek nor shall it receive a price for the Extra Construction Work which is in excess of the fair market price of such Extra Construction Work, whether such work is to be performed solely by the Company or by a Subcontractor under the Company's supervision. Utilization of a "Time and Materials" cost determination may be ordered by the City in the absence of agreement on a fair market price. The Company shall not be obligated to proceed with the Extra Construction Work except following agreement as to the price to be paid therefor and as to any adjustments to the Performance Guaranties and its other obligations hereunder which are necessitated by the Change Order requiring the Extra Construction Work. Payments for Extra Construction Work shall be paid only as a Fixed Construction Price Adjustment, in accordance with Section 5.17.6. Except to the extent that the City and the Company shall agree, no such work shall modify the Acceptance Deadline, or impair the ability of the Company to meet the Performance Guaranties, comply with any other term or condition of this Agreement, affect any right of the Company or impose any additional liability or obligation on the Company under this Agreement; but the Company shall have no right of objection with respect to such work if the City affords the Company price, schedule and any other relief hereunder agreed to by the parties to be necessary to avoid any such impairment.

Section 5.15.7. Disputed Work.

If the Company is of the opinion that any Construction Work which it elects to perform in the absence of any agreement hereunder is Extra Construction Work and not original Construction Work ("Disputed Work"), the Company shall give the City a written notice of dispute before commencing the Disputed Work.

Section 5.15.8. Notice; Waiver.

The Company shall give at least thirty (30) days advance notice to the City in writing of the scheduling of all Extra Construction Work and all Disputed Work. The Company's failure to give such written notice of Disputed Work under this Section shall constitute a waiver of Extra Payment, any extension of time, and all other Loss-and-Expense whatsoever relating to the particular Disputed Work.

Section 5.16 Deliverable Material.

Section 5.16.1. Delivery and Use.

The Design Requirements and all other documents forming any part of this Agreement shall be and remain the property of the City and may be utilized for all appropriate public purposes in reference to the New Facility, provided that the City use of any such documents shall be at its own risk. As the Construction Work progresses (or upon the termination of the Company's right to perform the Construction Work), the Company shall deliver to the City all documents, reports and other deliverable materials required for the Construction Work ("Deliverable Material"), as described and set forth in Schedule 12 hereto together with the Operations and Maintenance Manual described at Section 3.3 hereof. If any Deliverable Material utilized in the Construction Work is patented or copyrighted by other persons (or is or may be subject to other protection from use or disclosure), the City shall, upon and following the Construction Date, have a royalty-free perpetual license to use the same, but solely for purposes of the ownership, construction, and operation of the New Facility. However, if the Company does not have the right to grant such a license, the Company shall obtain for the City such rights of use as the City may request, without separate or additional compensation, whether such Deliverable Material is patented or copyrighted or becomes subject to other protection from use before, during or after performance of the Construction Work. The City shall have the right from and after the Agreement Date to use (or permit use) of all such Deliverable Material, process or equipment, all oral information whatsoever received by the City in connection with the Construction Work, and all ideas or methods represented by such Deliverable Material, process or equipment, without additional compensation.

Section 5.16.2. Injunction on Use.

If the Company or the City is enjoined from using any Deliverable Material (or any affected Construction Work) from and after the Construction Date for reasons other than Uncontrollable Circumstances or City Fault, the City may, at the City's option, require the Company (1) to provide, at the Company's expense, equivalent substitutes for the Deliverable Material (and any affected Construction Work), (2) to take such steps necessary to eliminate the injunction or to otherwise obtain the right to use the Deliverable Materials; or (3) to take such steps as to make the Deliverable Materials non-infringing on any patent, copyright, trade secret or other intellectual property right.

Section 5.17 Payment of the Construction Price.

Section 5.17.1. Construction Price Generally.

The Company shall be entitled to receive the Construction Price for the Construction Work on a progress basis in accordance with the terms of this Section. The Construction Price shall be the sum of the Fixed Construction Price and the Fixed Construction Price Adjustments, as adjusted by Change Orders.

Section 5.17.2. Fixed Construction Price.

The Fixed Construction Price is an amount equal to $56,752,800.

Section 5.17.3. Fixed Construction Price Adjustments.

The following items shall constitute the Fixed Construction Price Adjustments: (1) an adjustment for Change Orders given pursuant to Section 5.15 hereof; (2) an adjustment for any increases in taxes imposed by the City at any time during the Term of this Agreement; and (3) cost increases due to a Change in Law, (4) cost adjustments due to Uncontrollable Circumstances if and to the extent expressly provided for in this Agreement; or (5) any other adjustment as expressly provided for in this Agreement.

Section 5.17.4. Limitation on Payments for Construction Costs.

The Company agrees that the Construction Price shall be the Company's entire compensation and reimbursement for the performance of the Construction Work, including obtaining all Utilities that the Company will require to perform the Construction Work, except utility infrastructure fees imposed by any utility to bring electric power, telephone, internet and natural gas to the Site as described in Schedule 14. In no event shall the Company be entitled to any payment for Construction Costs in excess of the Construction Price (including the adjustments provided for pursuant to Section 5.17.3), notwithstanding any cost overruns, except for additional amounts payable to the Company on account of Uncontrollable Circumstances or Change Orders (except in the event of any City Fault, as and to the extent provided in Article VIII hereof). The Company shall pay for or finance any such excess Construction Costs which are the Company's responsibility in any manner it chooses without reimbursement from or other claim upon the City.

Section 5.17.5. Construction Disbursement Procedure.

Upon the issuance of the Notice to Proceed by the City, the Company shall be entitled to submit a requisition for the initial payment of the Fixed Construction Price set forth in the milestone payments provided for in Schedule 14 hereto. Following the initial payment, the Company shall be entitled to submit requisitions on a monthly basis, as requested by the City, the remainder of the milestone payments, 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 Schedule 14 hereto, including additional intermediate milestones or progress portions thereof to be developed by the Company and approved by the City as allowed by Schedule 14; (2) shall be subject to the maximum payment limitations for each major milestone specified in Schedule 14 hereto; and (3) shall be subject to the conditions of payment regarding disbursement disputes set forth in Section 5.18 hereof. Any Fixed Construction Price Adjustments shall be payable monthly when and as the cost or expense constituting the Fixed Construction Price Adjustment is paid or incurred. Each requisition shall be accompanied by a certificate of an authorized officer of the Company certifying (1) the portion of the Fixed Construction Price which is payable to the Company, (2) the amount of Fixed Construction 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 Agreement nor in breach of any material provision of this Agreement such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (4) that all items applicable to the milestone

entitling the Company to request payment under the milestone payment schedule in Schedule 14 hereto have been completed in accordance therewith and with the Design Requirements. In addition, the Company shall submit all completed forms required by the Infrastructure Bank. The City shall review the Company's certified requisitions to the City for each Fixed Construction Price payment and for Fixed Construction Price Adjustment payments, and within ten (10) business days of receipt of the Company's written submission 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. The Company shall be entitled to payment within thirty (30) days of the expiration of such ten (10) business day period if (1) the City determines that the work has progressed to the milestone indicated in the Company's certified requisition or that the costs constituting Fixed Construction Price Adjustments have been paid or incurred and the City provides written notice thereof to the Company, or (2) the City fails to verify or dispute the certified requisition within ten (10) business days of receipt. Disputes regarding payments of the Fixed Construction Price and Fixed Construction Price Adjustments shall be resolved in accordance with Section 5.18 hereof.

Section 5.17.6. Information Supporting Requisition.

With each requisition the Company shall submit to the City, the following:

(a) a verified statement setting forth the information required under any Applicable Law pertaining to prevailing wages;

(b) a reasonably detailed description of all Construction Work actually completed to date;

(c) any 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;

(d) any revisions to the critical path schedule, which shall reflect changes in the critical path schedule since the date of the last requisition;

(e) notice of any Liens which have been filed together with evidence that the Company has bonded against any such Liens;

(f) any other documents or information relating to the Construction Work or this Agreement requested by the City, the City Engineer or the Infrastructure Bank as contemplated hereunder as may be required by Applicable Law, this Agreement or generally accepted accounting practices and principles; and

(g) any construction progress photographs as may be requested by the City.

Section 5.17.7. Permissible Withholdings.

The City may disapprove and withhold and retain all or any portion of any payment requested in a requisition in any amount equal to the sum of:

(a) any amounts which are permitted under this Section to be withheld from any

payment requested in any requisition;

(b) any amounts which are due the City under this Article;

(c) any delay non-compliance assessments which are payable under Article VI hereof;

(d) any indemnification amounts which are due and owing to the City under Section 7.4 hereof;

(e) any other deductions which are required by Applicable Law;

(f) any payments with respect to which documents to be delivered in connection therewith are not correct and complete;

(g) an amount equal to the cost to the City of performing any work in the event of a failure by the Company or any Subcontractor to timely perform its obligations hereunder;

(h) any payments with respect to which the Construction Work covered by such requisition (or any previous requisition) does not comply with this Agreement;

(i) any payments with respect to which any person has filed a Lien resulting from the acts or omissions of the Company in performing the Construction Work, where such Lien remains unreleased or unbonded;

(j) any payments by the City due to the failure of the Company to make payment properly to Subcontractors or for labor, materials and equipment; and

(k) all requisitioned payments, if an Event of Default of the Company has occurred under Section 8.2 hereof.

Section 5.17.8. Set-Off.

The Company hereby grants to the City a lien upon, security interest in and right of set-off against, as security for all liabilities and obligations of the Company to the City arising under or relating to this Agreement or any other documents related thereto, all deposits, credits, collateral, proceeds and property of the Company, now or hereafter in the possession, custody, safekeeping or control of the City or any entity under the control of the City (including any and all payments due the Company from City). THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO REQUIRE THE CITY TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES ANY SUCH LIABILITY OR OBLIGATION, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH PROPERTY OF THE COMPANY RELATED TO OR EMPLOYED IN THE PERFORMANCE OF THIS AGREEMENT.

Section 5.17.9. Required Company Certification.

Any notice, certification, report or requisition delivered by the Company to the City in connection with the Construction Work or payment therefor under this Agreement shall be accompanied by a certificate of the Company affirming the accuracy thereof to the best knowledge of the Company.

Section 5.17.10. Retainage.

Each progress payment for the Fixed Construction Price shall be subject to a five percent (5%) retainage holdback for the first fifty percent (50%) of the Fixed Construction Price and two and one-half percent (2.5%) retainage holdback for the remaining fifty percent (50%) of the Fixed Construction Price. Interest earned on the retainage holdback shall be for the City's benefit only. Upon Substantial Completion, the City shall release to the Company an amount equal to the retainage holdback less an amount equal to two times the Final Punch List value. Such amount held back for the punch list shall be released upon Final Completion.

Section 5.18 Disbursement Dispute Procedures.

Section 5.18.1. Dispute Notice.

If the City disputes in writing pursuant to Section 5.17.6 that the Construction Work required for any payment has progressed to the milestone indicated or disputes any requisition for Fixed Construction Price Adjustments, such dispute notice from the City shall include the City's reasons for such dispute, in detail reasonably available to the City. After receiving such dispute notice, the Company may make the necessary corrections and resubmit a certified requisition to the City, or the City may agree on a revised amount, requisition or estimate, as applicable, in which case the Company shall be entitled to payment accordingly.

Section 5.18.2. Dispute Resolution.

If the Company is unable to reach agreement with the City as to the progress of work, the Company may exercise its right to Dispute Resolution pursuant to Section 8.8 hereof. 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 Section; provided, however, that the Company shall be entitled to all requisitioned amounts which are not in dispute. Nothing contained in this Section shall be deemed to alter the rights of the parties, if any, under Article VIII hereof. The Company shall continue the Construction Work while the dispute is being resolved.

Section 5.19 Personnel

Section 5.19.1. 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 Construction Work 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 specified in this Agreement and as required for the layouts, locations, and levels of the Construction Work.

Each such engineer and consultant shall have current professional registration or certification to practice in the State of Rhode Island.

Section 5.19.2. Prevailing Wages.

The Company shall take all action necessary directly and through its Subcontractors to assure that all laborers performing services in connection with the Construction Work are paid prevailing wages under Applicable Law whether or not such legal prevailing wage requirements are held to be applicable to the Construction Work. Certified payrolls and other relevant information shall be furnished to the City in order to permit the City to monitor compliance by the Company with this Section. Prevailing wage rates shall be paid in accordance with the applicable U.S. Department of Labor Davis-Bacon Wage Determination for the Project.

Section 5.19.3. Company Construction Superintendent.

The Company shall designate an employee of the Company, any Affiliate of the Company, or the Company's 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 Construction Work on the Site. The Company Construction Superintendent shall, among other things:

(a) be familiar with the Construction Work and all requirements of this Agreement;

(b) coordinate the Construction Work and give the Construction Work regular and careful attention and supervision;

(c) maintain a daily status log of the Construction Work; and

(d) attend all construction progress meetings with the City.

The Company may change the person assigned as Company Construction Superintendent, subject to the provisions of Section 5.19.4.

Section 5.19.4. City Rights With Respect to Key Personnel.

The Company acknowledges that the identity of the key management and supervisory personnel proposed by the Company and its Subcontractors was a material factor in the selection of the Company to perform this Agreement. Such personnel and their affiliations are set forth in Schedule 3 hereto. The Company shall utilize such personnel to direct services unless such personnel are unavailable for good cause shown. "Good cause" for this purpose shall not include performing services on other projects. In the event of any such unavailability for good cause, the Company shall utilize replacement key management and supervisory personnel of equivalent experience and reputation. Any such personnel change shall be proposed to the City for its approval within a reasonable advance time period.

Section 5.19.5. Labor Disputes.

The Company shall have exclusive responsibility for all disputes or jurisdictional issues among unions or trade organizations representing employees of the Company or its Subcontractors. The City shall have no responsibility whatsoever for any such disputes or issues.

Section 5.20 Construction Books and Records.

In order to ensure that the City can review and consider changes in the Construction Price, the Company shall prepare and maintain proper, accurate and complete books and records regarding the Construction Work and all other transactions related to the permitting, design, construction, start-up and testing of the New Facility, 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 Construction Work, this Agreement, any Subcontract or any operations or transactions in which the City has or may have a financial or other material interest hereunder. The Company shall produce such construction books and records (except financial ledgers and statements) for examination and copying in connection with the costs of Change Orders, Extra Construction Work, Uncontrollable Circumstance costs, costs associated with the implementation of the Capital Improvements that result in savings to the Parties pursuant to Section 3.11.4, or other costs in addition to the Fixed Construction Price on the basis of which the City may be responsible for increases in the Service Fee payable hereunder with respect to work performed prior to the Acceptance Date. The Company shall keep and maintain all such construction books and receipts for at least six (6) years after the Acceptance Date, or such longer period during which any Legal Proceeding with respect to the New Facility commenced within six (6) years of the Acceptance Date may be pending.

ARTICLE VI
ACCEPTANCE OF THE FACILITY

Section 6.1 Acceptance - Generally.

At such time during the Construction Period that the Company accomplished Substantial Completion of the New Facility, the Company shall then conduct the Acceptance Test as provided for in this Article. Once the Acceptance Test has been successfully passed and Final Completion shall have occurred, the Construction Period and Interim Operation Period shall end and the Future Operation Period shall begin. However, in no event shall the Future Operation Period begin after the Acceptance Deadline without the written approval of the City.

Section 6.2 Substantial Completion.

Section 6.2.1. Requirements for Substantial Completion.

The Company shall not commence operations in preparation for conducting the Acceptance Tests until Substantial Completion has occurred. Substantial Completion shall occur only when the City certifies that all of the following conditions have been satisfied:

(1) a preliminary or temporary certificate of occupancy has been issued for the New Facility;

(2) the Company is authorized, on a temporary or permanent basis, to operate the New Facility under Applicable Law, and such authorization has not been withdrawn, revoked, superseded, suspended, or materially impaired or amended;

(3) all Utilities specified or required under this Agreement are connected and functioning properly;

(4) the Company and the City have agreed in writing upon the Final Punch List (or, if they are unable to agree, the City shall have prepared and issued the Final Punch List to the Company within fifteen (15) business days of the Company having submitted its Final Punch List to the City);

(5) the City has approved in writing the certification by the Company that all Construction Work, excepting the items on the Final Punch List, is complete and in all respects is in compliance with this Agreement;

(6) the Company has delivered to the City written certification from equipment manufacturers that all major items of machinery and equipment have been properly installed and tested in accordance with the manufacturers' recommendations and project requirements;

(7) the Company has delivered to the City a Claims Statement setting forth in detail all claims of every kind whatsoever of the Company connected with, or arising out of, this Agreement or the Construction Work and arising out of or based on events prior to the date when the Company gives such statement to the City (if there are no such claims, the Company shall deliver a Claims Statement to that effect);

(8) the Company has delivered to the City the initial Operating Protocol and the Operations and Maintenance Manual required to be delivered by Section 3.3 hereof;

(9) the Company has submitted to the City and the City has reviewed and approved the plan for Acceptance Testing as required by Schedule 13 hereto;

(10) RIDEM, RIDOH and any other applicable authority have approved the plan for Acceptance Testing and have authorized the Acceptance Tests to be conducted if such approval is required by the applicable authority;

(11) the Company has submitted to the City and the City has reviewed and approved the Transition Plan; and

(12) the Company has submitted written certification that all of the foregoing conditions have been satisfied and the City has approved the Company's certification.

Alternatively, Substantial Completion shall occur on such earlier date (than would otherwise be required by this Section) as certified by the City, which shall have the discretion to waive any of the foregoing conditions.

Section 6.2.2. Final Punch List.

The Company shall submit a proposed Final Punch List to the City and the City Engineer when the Company believes that the Construction Work has been substantially completed in compliance with this Agreement. The "Final Punch List" shall be a statement by the Company, accepted by the City, of minor repairs, corrections, adjustments and incomplete aspects of the Construction Work. The proposed "Final Punch List" shall be a statement of those items that:

(a) the Company can complete before the Company's agreed date for Final Completion and with minimal interference to the occupancy, use and lawful operation of the New Facility; and

(b) would represent, to perform or complete, a total cost of not more than one and one-half percent (1.5%) of the Fixed Construction Price (unless the City determines that a higher percentage is acceptable).

The Final Punch List shall be approved by the City, and completion of the Final Punch List work shall be verified by a final walk-through of the New Facility conducted by the City and the City Engineer with the Company and the Company Engineer.

Section 6.3 Notice of Start-Up Operations

Section 6.3.1. Submittal of Acceptance Test Plan.

The Company shall prepare and submit an Acceptance Test plan, which shall conform to the requirements of Schedule 13 hereto in all respects.

Section 6.3.2. Notice of Substantial Completion.

The Company shall provide the Authorized Representative of the City at least thirty (30) days prior written notice of the expected date of Substantial Completion and of commencement of start-up operations at the New Facility in preparation for conducting the Acceptance Tests.

Section 6.3.3. Notice of Commencement of Acceptance Test.

The Company shall provide the Authorized Representative of the City at least thirty (30) days prior written notice of the expected initiation of the Acceptance Tests in accordance with the requirements of Schedule 13 hereto. At least ten (10) days prior to the actual commencement of Acceptance Testing, the Company shall certify in writing that it is ready to begin Acceptance Testing in accordance with the Acceptance Test Plan and Schedule 13 hereto.

Section 6.4 Transitional Operations.

At least one hundred eighty (180) days before the Acceptance Deadline, the Company shall prepare and submit to the City for its approval a detailed Transition Plan. If the Company and City are unable to agree upon an acceptable Transition Plan within thirty (30) days of such submission, their inability to agree shall be treated as an engineering dispute subject to construction period alternative dispute resolution as set forth in Section 8.8. The Transition Plan shall ensure that

operations and Acceptance Testing of the New Facility are conducted in a manner which has no adverse effect on the ability of the City to process water to meet the Future Finished Water Requirements at all times without interruption and in accordance with Applicable Law.

Section 6.5 Acceptance Date Conditions.

The following conditions shall constitute the "Acceptance Date Conditions," each of which may be satisfied in all material respects by the Company at its cost, expense and risk in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date.

Section 6.5.1. Construction Date Conditions.

Each of the Construction Date Conditions shall be and remain satisfied as of the Acceptance Date.

Section 6.5.2. Achievement of Acceptance Standards.

The Company shall have completed the Acceptance Tests and such tests shall have demonstrated that the New Facility has met the Acceptance Standards as defined in Schedule 1.

Section 6.5.3. Substantial Completion.

The Company shall demonstrate that Substantial Completion has occurred.

Section 6.5.4. Utility Usage.

It is recognized that the actual energy use will be affected by environmental conditions outside the Company's control. For the water treatment plant only, the Company shall demonstrate in meeting the Acceptance Standards that Utility usage has been within an error of +/- 25% of the forecasted limits of the Guaranteed Maximum Electricity Utilization ("GMEU"). Such demonstration may be made by the submittal of calculations showing the forecasted energy use of the constructed facility as compared to the forecasted limits of the GMEU; provided, however, that the GMEU will not be modified as a result of such margin of error.

Section 6.5.5. Operating Legal Entitlements.

Legal Entitlements required under Applicable Law which are necessary for the continued routine operation of the New Facility shall have been duly obtained by the Company and shall be in full force and effect. Copies of all such Legal Entitlements, to the extent not in the City's possession, certified by the Company shall have been delivered to the City.

Section 6.5.6. Record Documents.

The Company shall maintain current as-built or record drawings and documents, including but not limited to shop drawings and manufacturer's guaranties ("Record Documents") at the New Facility for inspection by the City. The Company also shall have delivered to the City a final and complete reproducible set of Record Documents, together with six (6) copies thereof, in a size and

form required by the City and as required by the Design Requirements and shall certify that the Capital Improvements were constructed in accordance with the Design Requirements, including any Change Orders. The Company shall also provide an electronic file of the Record Documents in such format as the City may specify.

Section 6.5.7. Equipment Warranties and Manuals.

The Company shall be in possession of, and shall have delivered to the City, copies of the warranties of all machinery, Equipment, fixtures and Rolling Stock constituting a part of the New Facility, together with copies of all related operating manuals supplied by the equipment supplier.

Section 6.5.8. Contract Compliance Calendar.

The Company shall have delivered to the City a calendar schedule of all required activities to be performed by both parties under this Agreement during the Future Operation Period.

Section 6.5.9. No Default.

There shall be no Event of Default by the Company under this Agreement or by the Guarantor under the Guaranty Agreement, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Company hereunder or an Event of Default by the Guarantor under the Guaranty Agreement.

Section 6.6 Acceptance Test Report.

Within forty five (45) days following conclusion of the Acceptance Test, the Company shall furnish the City and the City Engineer with an Acceptance Test report consistent with the requirements of Schedule 13.

Section 6.7 Concurrence or Disagreement with Test Results

Section 6.7.1. Acceptance Date Concurrence.

If the Company certifies in its Acceptance Test report that the full Acceptance Standards have been achieved, the City shall determine within thirty (30) days of its receipt of such report whether it concurs in such certification. If the City states in writing that it concurs with the Company's certification, the New Facility shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on a permanent basis on the date upon which the City received Acceptance Test Report.

Section 6.7.2. Acceptance Date Disagreement.

If the City determines at any time during such thirty (30) day review period that it does not concur with the Company's certification that the full Acceptance Standards have been achieved, the City shall immediately send written notice to the Company of the basis for its disagreement.

In the event of any such non-concurrence by the City, or in the event the City fails to act within such thirty (30) day review period, the dispute shall be referred to mediation for resolution.

Acceptance shall not be deemed to have been achieved unless the Acceptance Test is conducted in a unified and continuous manner as provided in the Acceptance Test Plan and Schedule 13 hereto, and demonstrates that all of the Acceptance Standards have been met. In the event the Company, in conducting such Acceptance Test, does not successfully meet each Acceptance Standard, the City shall have the right, in its sole discretion, to permit the Company to re-test the New Facility for compliance only with the Acceptance Standards not previously achieved through an earlier Acceptance Test. Nothing in this Section shall prevent the Company from repeating any Acceptance Test in order to establish the achievement of Acceptance.

Section 6.8 Extension Period.

If Acceptance shall not have occurred on or before the Acceptance Deadline for any reason other than Uncontrollable Circumstances or City Fault, the Company shall be entitled to conduct or repeat the Acceptance Test at its sole cost and expense as often as it desires in order to secure Acceptance of the New Facility during the Extension Period, if applicable.

Section 6.9 Delay Non-Compliance Assessment.

If the Acceptance Date occurs subsequent to December 31, 2020 (the "Acceptance Deadline"), then the Company shall pay to the City, in addition to other costs and expenses required to be paid pursuant to this Agreement (including without limitation fines, penalties or other expenses imposed on or incurred by the City in connection with the Company's failure to meet such deadline), a daily delay non-compliance assessment in the amount of $5,000 for each day that the Acceptance Date falls after said date. Except as otherwise specifically provided herein, such delay non-compliance assessment shall constitute the sole and exclusive remedy for delay in meeting the Construction Date Deadline whether based in contract, tort or otherwise. The Company's liability for such non-compliance assessments shall not exceed $3,000,000. The limitation shall be included under the aggregate limitation of liability included under below Section 7.1. It is understood that the delay non-compliance assessment shall not limit the City's right to recover from the Company for the Company's failure to timely achieve Acceptance with respect to liability, claims and damages (other than routine operations and maintenance costs) associated with the continued operation of the existing Facility after the Acceptance Deadline, including without limitation structural/equipment repairs (other than (i) latent defects not reasonably identifiable by the Company and (ii) matters that were previously recommended for repair by the Company but not authorized for repair by the City), and regulatory assessments or penalties imposed by RIDEM or other government authorities.

Section 6.10 Failure to Meet Acceptance Standard.

If, as of the Acceptance Deadline, as extended (if applicable), the Acceptance Test has not been conducted or has failed to demonstrate that the New Facility operates at a standard equal to or greater than the full Acceptance Standard, an Event of Default by the Company will be deemed to have occurred under Section 8.2 hereof notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the City shall thereupon have the right to terminate this Agreement upon written notice to the Company. Upon any such termination, the City shall have all of the rights provided in Article VIII hereof upon a termination of the Company for cause.

Section 6.11 Final Completion.

Section 6.11.1. Requirements.

"Final Completion" shall occur when all of the following conditions have been satisfied:

(a) Certificate of Occupancy Issued. If necessary, a certificate of occupancy has been issued for the New Facility;

(b) Acceptance Achieved. The Acceptance Test has been conducted, the Acceptance Standards have been achieved and Acceptance has occurred;

(c) Construction Work Completed. All Construction Work (including all items on the Final Punch List) is complete and in all respects is in compliance with this Agreement; and

(d) Deliverable Material and Record Documents Furnished. The Company has furnished to the City all Deliverable Material and Record Documents required to be delivered prior to Acceptance.

(e) Existing WTP Demobilized. The Company has met all requirements for shutdown and demobilization of the existing WTP, as described in Schedule 12.

Section 6.11.2. Final Voucher and Claims Statement.

The Company shall also prepare and submit to the City as soon as practicable following the Acceptance Test, for purposes of demonstrating Final Completion and obtaining Final Completion payment of the Construction Price, (1) a voucher for payment of the Construction Price, accompanied by a certificate of an authorized officer of the Company certifying (a) the amount of the Fixed Construction Price which is payable, (b) the amount of Fixed Construction Price Adjustments which are to be added or subtracted from the Fixed Construction Price (together with Cost Substantiation if not previously submitted), (c) that all Construction Work has been completed in accordance herewith and with the Design Requirements, and (d) that Acceptance of the New Facility has occurred, and (2) a Claims Statement setting forth in detail all claims of every kind whatsoever against the City in connection with or arising out of this Agreement or the Construction Work the Company may have, and (3) waivers, releases or discharges of any rights to mechanics' lien claims for labor or material that could be brought by any contractor or subcontractor. The City shall review the certified voucher to the City for the Construction Price and the Claims Statement and shall verify or dispute them in writing within thirty (30) days of receipt. When the City determines them to be correct, the Company shall be entitled to payment of the remainder of the Construction Price as of the date of the City's determination. In the event of disputes regarding the certification, the parties shall attempt in good faith to resolve the dispute and, if they are unable to do so, the Company may exercise its right to submit the dispute to resolution pursuant to Section 8.8 hereof.

Section 6.12 No Acceptance, Waiver or Release.

Unless other provisions of this Agreement specifically provide to the contrary, none of the following shall be construed as the City's acceptance of any Construction Work which is defective,

incomplete, or otherwise not in compliance with this Agreement, as the City's release of the Company from any obligation under this Agreement, as the City's extension of the Company's time for performance, as an estoppel against the City, or as the City's acceptance of any claim by the Company:

(1) the City's payment to the Company or any other person of all or any portion of the Fixed Construction Price;

(2) the City's approval or acceptance of any drawings, submissions, punch lists, other documents, certifications (other than certificates relating to completion or Acceptance of the Capital Improvements), or Construction Work of the Company or any Subcontractor;

(3) the City's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Construction Work;

(4) the City's entry at any time on the Site (including any area in which the Construction Work is being performed);

(5) any inspection, testing, or approval of any Construction Work (whether finished or in progress) by the City or any other person; or

(6) the failure of the City or any City consultant to respond in writing to any notice or other communication of the Company.

ARTICLE VII
LIABILITY, INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

Section 7.1 Liability.

The Company shall be liable for injuries and death to any and all persons and for damage to the Existing Facility, the New Facility and the property of others which result from the acts, errors or omissions by the Company occurring in connection with, or arising out of, the design, construction, start-up, testing, operation and maintenance of the Existing Facility or the New Facility.

With respect to the Design and Construction of the New Facility, in recognition of the relative risks and benefits of the Project to both City and Company, City agrees, to the fullest extent permitted by law and notwithstanding any other provision in this Agreement, that any liability created by or arising out of this Agreement on the part of Company to City and any person or entity claiming by, through or under City, for any and all claims, liabilities, losses, costs, damages of any nature whatsoever, whether in contract, tort or otherwise, or claims expenses from any cause or causes (including without limitation any attorneys' fees under this Agreement), shall not exceed fifty percent (50%) of the Fixed Construction Price, inclusive of non-compliance assessments above including but not limited to Sections 4.6.2 and 6.9.

With respect to the operations and maintenance obligations hereunder during the Operation Period, any liability created by or arising out of this Agreement on the part of Company to City and any person or entity claiming by, through or under City, for any and all claims, losses, costs, damages of any nature whatsoever, whether in contract, tort or otherwise, or claims or expenses from any cause or causes (including without limitation any attorneys' fees under this Agreement) shall not exceed the amount of three (3) times the Annual Service Fee applicable at the time such claim is made, inclusive of assessments pursuant to Section 3.10.

Notwithstanding anything to the contrary contained herein, the limitations on liability and caps on noncompliance assessments provided for in this Agreement shall not apply to the Company's (a) indemnification obligations described in Section 7.4.1 or (b) obligations to pay fines and penalties that may be assessed by any governmental agency. Further, said limitations on liability and caps on noncompliance assessments shall apply only to liability over and above the recovery of proceeds of insurance required under this Agreement, such that recovery of proceeds of insurance required under this Agreement shall not be included toward the limitation of liability and caps on noncompliance assessments.

Section 7.2 Insurance.

Section 7.2.1. General Requirements.

At all times during the Contract Term, the Company or, with the consent of the City, the Company's approved design/builder and operator, shall, at its own cost and expense, obtain and maintain Insurance in accordance with Schedule 4 hereto. If the Company fails to pay any premium for the Insurance, or if any insurer cancels any Insurance and the Company fails to obtain replacement coverage so that the Existing Facility and the New Facility, as applicable, and the Site remain insured on a continuous basis, then, at the City's election (but without any obligation to do so), the City may pay such premium or procure similar insurance coverage from such company or companies as the City, in its sole discretion, chooses, and upon such payment by the City the amount thereof shall be immediately reimbursable to the City by the Company or deducted by the City from any payment(s) due the Company. The Company shall not perform any construction work on the Capital Improvements, or allow any of the Company's or any Subcontractor's employees on the Site, during any period when any policy of Insurance is not in effect. The Company shall take all steps necessary to assure that the Existing Facility and the New Facility, as applicable, and the Site remain continuously insured in accordance with the requirements of this Agreement during the Contract Term, and that no gaps in coverage occur. Should any such gap in coverage occur, the Company shall bear, indemnify and defend the City against any and all expense arising out of the failure of the Company to provide such continuous Insurance coverage. The City and its employees, officers and consultants shall be additional insureds on Insurance policies in accordance with Schedule 4 hereto. No material change shall be made to the Insurance coverage in effect as of the Commencement Date without the prior written consent of the City.

Section 7.2.2. Insurers, Deductibles and City Rights.

All Insurance shall be procured and maintained from financially sound and generally recognized responsible insurance companies selected by the Company with the consent of the City, which consent shall not be unreasonably withheld, and authorized to write such insurance in the

State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and respects to those in which the Company is engaged. The Company shall be responsible for any deductible amounts. All policies evidencing such insurance shall provide for (1) payment of the losses to the City and the Company as their respective interests may appear under the Builder's Risk policy, and (2) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the City, except for cancellation due to non-payment of premium, which shall provide for at least ten (10) days prior written notice of cancellation. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the City.

Section 7.2.3. Certificates, Policies and Notice.

The Company shall deliver to the City, as soon as practicable after the execution of this Agreement and prior to each Contract Year thereafter, a certificate setting forth in reasonable detail the particulars as to all insurance policies which the Company is required to maintain pursuant to this Section, listing the risks that are covered thereby, the name of the insurers issuing such insurance, certifying that the same are in full force and effect and giving the amounts and expiration dates of such insurance. The Company shall also supply to the City certified copies of said policies promptly following issuance by the insurers. Whenever a Subcontractor is utilized, the Company shall either procure and maintain, or require the Subcontractor to procure and maintain, during the Construction Period and the Operation Period, as applicable, insurance coverage subject to the requirements of Schedule 4.

Section 7.3 Uncontrollable Circumstances.

Section 7.3.1. Relief from Obligations.

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

Section 7.3.2. Notice and Mitigation.

The party experiencing an Uncontrollable Circumstance shall notify the other party in writing, within a reasonable time after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within fifteen (15) days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder shall be delayed, and the impact, if any, on the anticipated Acceptance Date, (3) the amount, if any, by which the Construction Price or the Service Fee is proposed to be adjusted as a result of such Uncontrollable Circumstance, (4) estimated impact on the other obligations of such party under this Agreement, and (5) any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable

Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement; provided, however that Company's reasonable costs of mitigation are eligible for price relief as an adjustment to the Fixed Construction Price or Annual Service Fee, as applicable. While the delay 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 experiencing an Uncontrollable Circumstance shall furnish promptly (if and to the extent available to the Company) any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

Section 7.3.3. Conditions and Schedule Relief.

If and to the extent that Uncontrollable Circumstances delay the Company's performing its obligations in accordance herewith, and the Company has given timely notice as required by this Section, the Company may be entitled to an extension of the schedule during the Construction Period equal to the time lost as a result thereof, and appropriate adjustment in Fixed Construction Price for reasonable costs associated with the delay, in each case only to the minimum extent reasonably forced on the Company by the event, and the Company shall perform all other services required hereunder.

In the event that the Company believes it is entitled to any relief on account of any Uncontrollable Circumstance, it shall furnish the City 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 Section 7.3.2. In connection therewith, the Company shall be required to establish that the time delay requested is necessary, not merely that the Uncontrollable Circumstances occurred over a given period. Within thirty (30) days after receipt of such a timely submission from the Company, the City shall issue a written determination as to the extent, if any, it concurs with the Company claim for schedule relief, and the reasons therefor.

The proceeds of insurance required under this Agreement that cover any increased cost attributed to an Uncontrollable Circumstance shall be applied to such purpose prior to any determination of cost increase payable by the City under this Section. In particular, the Company shall apply the proceeds of insurance required under this Agreement by the Company for builder's risk to the reconstruction of the Capital Improvements should an insured event under such builder's risk insurance cause property damage prior to the Acceptance.

Section 7.3.4. [INTENTIONALLY OMITTED]

Section 7.3.5. No Reimbursement for Costs Due to Delays Caused by Uncontrollable Circumstances.

If an Uncontrollable Circumstance under (a)1.of the definition thereof causes the Company a delay in performance of any of its obligations under this Agreement during the Construction Period, the sole remedy available to the Company shall be a reasonable extension of time pursuant to Section 7.3.3 hereof. The Company shall not be entitled to any reimbursement of costs due to any such

delay. Otherwise if an Uncontrollable Circumstance causes the Company a delay in performance of any of its obligations under this Agreement during the Construction Period, the Company shall be entitled to an extension of time pursuant to Section 7.3.3 hereof and any other directly attributable costs based on such delay or hindrance which costs shall be limited to actual, direct costs, documented to the City's reasonable satisfaction by Cost Substantiation and subject to the Company's duty to mitigate its damages.

Section 7.3.6. Acceptance of Relief Constitutes Release.

The Company's acceptance of any Service Fee or Schedule relief under this Section shall be construed as a release of the City 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 7.4 Indemnification.

Section 7.4.1. Indemnification by the Company.

The Company agrees that it shall protect, indemnify, defend and hold harmless the City, and its officers, employees, agents and persons under the City's control or supervision (the "City Indemnitees"), from and against (and pay the full amount of) all claims for Loss-and-Expense incurred by a City Indemnitee to third parties and shall defend the City Indemnitees in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property to the extent arising from or in connection with (or alleged to arise from or in connection with) (1) the negligence, wrongful conduct or other fault of the Company or any of its officers, members, employees, agents, representatives, contractors or Subcontractors in connection with its obligations or rights under this Agreement, (2) the negligence, wrongful conduct or other fault of the Company or any of its officers, members, employees, agents, representatives, contractors or Subcontractors in connection with the operation of the Existing Facility or the New Facility by or under the direction of the Company, or (3) the performance or non-performance of the Company's obligations or rights under this Agreement.

The Company shall not, however, be required to reimburse or indemnify any City Indemnitee for any Loss-and-Expense to the extent due to (a) the negligence or other wrongful conduct of any City Indemnitee or due to any Uncontrollable Circumstance or (b) any act or omission of any City Indemnitee responsible for or contributing to the Loss-and-Expense, and the City Indemnitee whose negligence or other wrongful conduct, act or omission is adjudged to have caused such Loss-and-Expense shall be responsible therefor in the proportion that its negligence or wrongful conduct caused or contributed to the Loss-and-Expense. A City Indemnitee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Company the opportunity to defend such claim, and shall not settle the claim without the approval of the Company.

These indemnification provisions are for the protection of the City Indemnitee only and shall not establish, of themselves, any liability to third parties. Except as set forth herein, this indemnification obligation shall include, but shall not be limited to, all claims against the City by an employee or former employee of the Company, the Guarantor or any Subcontractor. The provisions

of this Section shall survive termination of this Agreement.

Section 7.4.2. Indemnification by the City.

The City shall, to the extent permitted by applicable law, indemnify, defend and hold harmless the Company, and its officers, directors, employees, representatives and agents (each, a "Company Indemnitee"), from and against any and all Loss-and-Expense incurred by a Company Indemnitee to third parties to the extent arising from or in connection with (or alleged to arise from or in connection with): (1) any failure by the City or any of its elected officials, employees, agents, representatives, or contractors to perform its obligations under this Agreement or (2) the negligence or willful misconduct of the City or any of its elected officials, employees, agents, representatives, or contractors in connection with its obligations or rights under this Agreement. The City shall also indemnify the Company as and to the extent provided elsewhere in this Agreement. The City shall not be required to reimburse or indemnify any Company Indemnitee for any and all Loss-and-Expense to the extent caused by the failure of Company Indemnitee(s) to perform its obligations under this Agreement, or the negligence or other wrongful misconduct of any Company Indemnitee or to the extent attributable to any Uncontrollable Circumstance. A Company Indemnitee shall promptly notify the City of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the City shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim.

Notwithstanding anything contained in this Agreement to the contrary, the City's indemnity obligations hereunder shall be limited to matters for which the City is able to recover directly or through right of subrogation under its insurance policies, if any, and the City shall maintain reasonable levels of insurance coverage throughout the term of this Agreement. These indemnification provisions are for the protection of the Company Indemnitee only and shall not establish, of themselves, any liability to third parties, and these provisions are not intended to benefit any third parties. The provisions of this Section shall survive termination of this Agreement.

ARTICLE VIII
EVENTS OF DEFAULT, REMEDIES AND TERMINATION

Section 8.1 Remedies for Breach.

Section 8.1.1. General.

Except as otherwise specifically provided for in this Agreement, neither party shall have the right to terminate this Agreement. In the event that (1) either party breaches any obligation under this Agreement or (2) any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages or to secure the performance of any obligation hereunder. Such right to recover damages or to secure the performance of such obligations as provided herein shall constitute an adequate remedy for any breach of such obligation or any material untruth in any such representation. Any action taken shall be subject to the dispute resolution provisions more fully set forth in Section 8.8 hereof.

Section 8.1.2. No Damages for City Delay.

If the Company shall claim to have sustained any damages or costs by reason of delays, extraordinary or otherwise, or hindrances which it claims to be due to any action, omission or direction of the City, the Company shall be entitled to an extension of time and any other claim, cause or action against the City based on such delay or hindrance shall be limited to actual, direct costs, documented to the City's reasonable satisfaction by Cost Substantiation and subject to the Company's duty to mitigate its damages.

Section 8.2 Events of Default by the Company.

Section 8.2.1. Events of Default Not Requiring Notice or Cure Opportunity.

Due to the opportunity already given to cure or the seriousness of the Event of Default, each of the following shall constitute an Event of Default by the Company upon which the City may terminate this Agreement without any requirement to provide notice or further opportunity to cure:

(1) Failure to Apply for Certain Legal Entitlements. The failure of the Company to submit applications or required submittals, to be complete by the dates and in the manner for the milestones required by Section 4.5.2 hereof.

(2) Failure to Achieve Acceptance. The failure of the Company to achieve Acceptance within the time period required under this Agreement.

(3) Failure to Comply. The failure of the Company to comply with the Finished Water Quality Long-Term Performance Standards set forth in Schedule 1, Table 2.5.1 for three (3) consecutive days in any Contract Year.

(4) Abandonment. The failure to operate or the abandonment of the Existing Facility or the New Facility for a period of one (1) or more days in any Contract Year.

(5) Failure to Pay or Credit. The failure of the Company to pay or credit amounts not in dispute (including performance non-compliance assessments and/or non-compliance assessments) owed to the City under this Agreement as and when such payments become due and owing.

(6) Failure to Provide, Extend or Replace Security. The failure of the Company to provide, extend or replace any Bond or Letter of Credit or other security acceptable in the sole discretion of City when and if required by Section 11.3 hereof.

(7) Bankruptcy. The voluntary or involuntary filing by or against the Company or the Guarantor of a petition seeking relief under the Federal Bankruptcy Code or any Federal or State statute intended to provide relief for entities that are insolvent or unable to meet their obligations as they come due.

Section 8.2.2. Events of Default Requiring Notice and Cure Opportunity.

Each of the following shall be an Event of Default by the Company upon which the City may terminate this Agreement upon notice and cure opportunity as set forth herein:

1. the failure or refusal of the Company to perform any material obligation under this Agreement, other than those indicated in Subsection 8.2.1 above.

2. the failure of the Company or the Guarantor to satisfy their respective covenants and agreements (other than those indicated in Subsection 8.2.1 above), the material untruth of any representation or warranty of the Company contained in this Agreement or of the Guarantor contained in, the Guaranty Agreement, or the failure of the Company or the Guarantor to comply with the terms and conditions of Subsections 11.2.4 or 11.2.5 hereof, as applicable, after a Material Decline in Guarantor's Credit Standing occurs.

3. the failure of the Company to comply with the limits set forth in the column labeled "Finished Water Quality Acceptance Standards" in Table 2.5 of Schedule 1, to the extent that such limits are more stringent than the Future Finished Water Requirements, for ten (10) cumulative days per parameter in any Contract Year, provided that the remedy for breach of this failure shall be a daily liquidated damage payment to the City in the amount of One Hundred Dollars ($100) for each day that such failure shall continue, provided further that the Company takes and continues to take all steps necessary to remedy and mitigate such failure required under this Agreement. In the event that such failure is not so remedied within ten (10) days of first occurring, the daily liquidated damage limitation set forth above shall be nullified and the City may pursue any and all remedies available to it for the failure to perform a material obligation hereunder.

Failure to Perform Any Other Material Obligation. The failure of the Company to perform any material obligation hereunder where said failure is caused by any job action, including but not limited to a labor strike or slow down, a work stoppage, a walkout, or a secondary boycott, by employees of the Company performing services pursuant to this Agreement.

However, no such failure to perform (other than those set forth in Subsection 8.2.1) shall give the City the right to terminate this Agreement for cause under this Section unless:

(a) the City has given prior written notice to the Company stating that a specified failure or refusal to perform exists which constitutes a material breach of this Agreement by the Company which gives the City a right to terminate this Agreement for cause under this Section, unless such default is corrected within a reasonable time; and

(b) the Company has neither (i) challenged in an appropriate forum the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor (ii) corrected or diligently taken steps to correct such default within ten (10) days from receipt of the notice given pursuant to the preceding paragraph (but if the Company shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Company is diligently continuing to take such steps to correct such default).

Section 8.2.3. Termination Damages and Other Legal Rights Upon Company Default.

The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. Upon the occurrence of an Event of Default by the Company, the City may exercise, without prejudice to any other right held by the City, any rights provided by law to the City to bring appropriate legal action to recover actual damages for failure in the performance by the Company of its obligations pursuant to this Agreement for the remaining Contract Term. In calculating actual damages, the Company's obligation to pay delay non-compliance assessment amounts accruing during the Extension Period in accordance with Section 6.9 hereof shall in no way limit the right of the City to receive damages. No such termination or other exercise of legal rights shall affect the right of the City to exercise its rights under any Bonds, nor shall any value in the Facility created on account of the surety's performance under any Bonds be offset against, credited or otherwise reduce the amount of such actual damages.

Section 8.2.4. Enforcement Costs.

The Company agrees to pay to the City all reasonable Fees and Costs incurred by or on behalf of the City in enforcing payment or performance of the Company's obligations hereunder.

Section 8.3 Events of Default by the City.

Section 8.3.1. Events of Default Requiring Notice and Cure Opportunity for Termination.

The following shall be an Event of Default by the City upon which the Company may terminate this Agreement upon the conditions stated in (1) and (2) below:

(a) The City fails or refuses to perform any material obligation under this Agreement (unless such failure or refusal is excused by an Uncontrollable Circumstance or Company Fault),

(b) The City fails to provide funding for (a) Facility Modifications necessary over the life of the Agreement Term to achieve environmental compliance due to Changes in Law and (b) Repair and Replacement amounts that are subject to City approval pursuant to Section 3.7 as necessary to maintain system condition and achieve environmental compliance during the Agreement Term and such failure results in a loss to the Company or a claim by a Governmental Body that the Facility is out of compliance with Applicable Law, following notice to the City and 60 days for the City to cure, no such cure having been effectuated. Further, the City shall release the Company from liability as to any claim, loss, liability, damage, non-compliance, fine, penalty or enforcement action arising in connection with the City's failure to provide such funding. All funding under this Agreement shall be subject to appropriation by the City in accordance with its Charter, ordinances and applicable State law.

(c) The failure of the City to pay undisputed amounts owed to the Company under this Agreement in either case where:

(1) the Company has given prior written notice to the City stating that a specified failure or refusal to perform exists which shall, unless corrected, constitutes a material breach of this Agreement on the part of the City and which shall, in the Company's opinion, give the Company a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time; and

(2) the City has neither challenged in an appropriate forum the Company's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than sixty (60) days from the date of the notice given pursuant to the preceding paragraph (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, but in no event greater than sixty (60) days, the same shall not constitute an Event of Default for as long as the City is continuing diligently to take such steps to correct such default).

Section 8.3.2. Termination During the Initial Term.

If this Agreement is terminated by the Company for cause as a result of an Event of Default by the City during the Initial Term (as defined in Section 10.1.1 hereof), the City shall be obligated to pay the Company, as liquidated damages upon any such termination, the sum specified in Section 8.4 hereof which would be payable if this Agreement were terminated during the Initial Term, according to the year of termination, at the election of the City for convenience and without cause. The parties agree that since the Company's actual damages upon termination of the City for cause under this Section during the Initial Term would be difficult or impossible to ascertain, that the termination liquidated damages provided for in this Section are intended to place the Company in the same economic position it would have been had the Event of Default permitting termination for cause during the Initial Term not occurred, and that such termination liquidated damages shall constitute the only amounts payable by the City upon any such termination for cause, regardless of legal theory.

Section 8.4 City Discretionary Termination.

Section 8.4.1. Discretionary Termination Right.

The City shall have the right to terminate this Agreement in its sole discretion, for its convenience and without cause at any time upon ninety (90) days' written notice to the Company (a "Termination for Convenience"). A Termination for Convenience will be deemed to have occurred if the City terminates this Agreement for either of the following reasons: (1) funds for the Capital Improvements or for the operations, maintenance and management of the Existing Facility or the New Facility are not appropriated or otherwise made available; and (2) an Uncontrollable Circumstance, regardless of the cause, shall have occurred relative to a material obligation of the Company hereunder, and said material obligation of the Company is not performed for a period of thirty (30) days following the initial occurrence of said Uncontrollable Circumstance; provided, however, that in the event of a Termination for Convenience for the reasons specified in (1) and (2) above, the City may terminate this Agreement upon fifteen (15) days' written notice. The amount paid for termination ("Discretionary Termination Amount") shall be calculated in accordance with Schedule 16, plus the compensation allowed under Section 8.4.2, if such termination occurs within

the first five (5) years of the term. Beginning in the sixth (6th) year of the term, the maximum amount for termination shall be calculated in accordance with Schedule 16, plus the compensation allowed under Section 8.4.2, plus demobilization-related costs, which demobilization-related costs amount shall not be subject to reduction.

Section 8.4.2. Discretionary Termination - Costs.

If the City exercises its right to terminate this Agreement pursuant to this Section within the first five (5) years of the Contract Term, and the Company, upon the request of the City, demonstrates that the Company is ready, willing and able to perform its obligations under this Agreement, the City shall reimburse the Company for its substantiated actual direct costs incurred and any expenses paid or incurred to third parties from the Agreement Date to the date on which this Agreement is terminated by the City, less any amounts already paid to the Company; provided, however, that all such costs and expenses must have been (a) directly related to the Company's performance of its Development Period obligations hereunder, and (b) necessary to be performed prior to the Construction Date, provided, however, that the total payment due to the Company under items (a) and (b) shall not exceed a maximum amount of the fees and payments contemplated by and calculated in accordance with Schedule 16.

Section 8.4.3. Payment of Amounts Owing Through the Termination Date.

Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for services hereunder to be paid as part of the Construction Price and the Service Fee due but not yet paid as of the date of termination.

Section 8.4.4. Adequacy of Termination Payment.

The Company agrees that the applicable termination payments provided in this Section constitute full and adequate compensation to the Company and all Subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to such termination of the Company's right to perform this Agreement.

Section 8.4.5. Completion or Continuance by the City.

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

Section 8.5 Certain Obligations of the Company Upon Termination or Expiration.

Section 8.5.1. Company Obligations Upon Termination.

Upon a termination of the Company's right to perform this Agreement under Sections 8.2, 8.3 or 8.4 hereof or upon the expiration of this Agreement under Section 10.1 hereof, the Company shall, as applicable: (1) stop the Construction Work and/or the Operation Services, as applicable, on the date and to the extent specified by the City; (2) promptly take all action as necessary to

protect and preserve all materials, equipment, tools, facilities and other City property; (3) promptly remove from the Site all construction equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company, and repair any damage caused by such removal; (4) clean the Site and Existing Facility and/or the New Facility, as applicable, and leave the same in a neat and orderly condition; (5) promptly remove all employees of the Company and any Subcontractors and vacate the Site; (6) promptly deliver to the City copies of any and 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; (7) deliver to the City promptly a list of: (a) all special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Construction Work or the Operation Services; and (b) all other supplies, materials, machinery, equipment, and other property previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Construction Work or the Operation Services; (8) advise the City promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract; (9) unless the City directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors; (10) as directed by the City, transfer to the City by appropriate instruments of title, and deliver to the Site (or such other place as the City may specify), all special order items pursuant to this Agreement; (11) promptly transfer to the City all warranties given by any manufacturer or Subcontractor with respect to particular components of the Construction Work or the Operation Services; (12) notify the City promptly in writing of any Legal Proceedings against the Company by any Subcontractor relating to the termination of the Construction Work or the Operation Service (or any Subcontracts); (13) give written notice of termination, effective as of date of termination of this Agreement, promptly under each policy of Insurance (with a copy of each such notice to the City), but permit the City to continue such policies thereafter at its own expense, if possible; and (14) 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 City's costs, and take no action which shall increase any amount payable by the City under this Agreement.

Section 8.5.2. Additional Obligations.

Upon termination of the Company's right to perform this Agreement under Sections 8.2, 8.3 or 8.4 hereof or upon the expiration of this Agreement under Section 10.1 hereof, the Company at its cost and expense shall provide, and shall use its best reasonable efforts to cause its Subcontractors to provide, operational, systems, technological and design advice and support to the City or any replacement operator designated by the City. Such advice and support shall be for a period of twelve (12) months and shall include providing any existing plans, drawings, renderings, blueprints, operating manuals, maintenance and operating records (each as the same may exist as of the date of termination), or other information useful or necessary for the City or any replacement operation designated by the City or any such replacement operator to complete and carry out the Construction Work and to perform the Operation Services. If terminated during the Operation Period, the Company shall exercise its best efforts to maintain the performance of the Existing Facility or the New Facility, as applicable, during the transfer to the City.

Section 8.5.3. Company Payment of Certain Costs.

If termination is pursuant to Section 8.2.1 or 8.2.2 hereof, the Company shall be obligated to

pay the costs and expenses of undertaking its post-termination responsibilities under this Section. If the Company fails to comply with any obligations under this Section, the City may perform such obligations and the Company shall pay on demand all reasonable costs thereof subject to receipt of invoices or other substantiation.

Section 8.5.4. City Payment of Certain Costs.

If termination is not in connection with a Company Event of Default, the City shall pay to the Company within sixty (60) days of the date of the Company's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by the Company in satisfying the requirements of this Section, subject to the limitations set forth in this Section 8.5.

Section 8.6 No Waivers.

No action of the City or Company pursuant to this Agreement (including but not limited to any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the City or Company in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or Company under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 8.7 No Consequential or Punitive Damages.

The parties shall not be liable to each other for special, indirect, consequential or punitive damages except as such are brought by a third party and are subject to indemnification by virtue of this Agreement.

Section 8.8 Dispute Resolution.

To the extent the parties cannot, after good faith attempts, resolve any controversy or dispute that may have arisen hereunder, either party, to the extent its interests are adversely impacted, may refer the matter to mediation. If despite the good faith efforts of the parties to resolve the dispute, the mediation does not conclude with a resolution of the dispute, the parties shall follow the procedure set forth in Section 8.8.4 hereof.

The parties shall continue to perform services and make payments not in dispute under this Agreement, without interruption or slowdown, pending resolution of any dispute(s), unless the matter at issue precludes such continued activity until resolved. This Section shall survive termination of this Agreement.

Section 8.8.1. Negotiation.

The City and the Company agree, prior to invoking any other method of dispute resolution as provided in this Agreement, first to engage in good faith negotiations regarding any dispute. Either party may invoke good faith negotiations by written notice to the other, and, upon receipt of such written notice, said negotiations shall commence forthwith. If the dispute has not been resolved by mutual agreement within seven (7) calendar days of the commencement of negotiations, either party may refer the dispute to non-binding mediation as provided below.

Section 8.8.2. Independent Panel Establishment.

The Parties will establish, within one hundred twenty (120) days after executing this Agreement, an Independent Panel of Engineers (the "Independent Panel") to conduct non-binding mediation of any disputes referred for mediation which the Parties have been unable to resolve through good faith negotiation. The Independent Panel shall consist of one member nominated by the City and approved by the Company, one member nominated by the Company and approved by the city, and a third member nominated by the first two members and approved by both the City and the Company. The Independent Panel shall consist of engineers or other persons with expertise and experience in design, build and operate projects for private, public or municipal water treatment plants, or other similar type facilities, similar in size and complexity to the Facility.

Section 8.8.3. Non-Binding Mediation.

In the event that any dispute cannot be resolved through negotiation, either party may invoke the services of the Independent Panel to conduct non-binding mediation of the dispute by (a) giving written notice to the other of its intent to invoke non-binding mediation before the Independent Panel, which notice shall include a brief but detailed description of the dispute, including the relief requested, and (b) providing a copy of such notice to the Independent Panel. Within seven (7) days of its receipt of the written notice, the Independent Panel shall designate one member to serve as a mediator in the dispute, and so notify the Parties. The member so designated shall fix a time and place for the non-binding mediation, which date shall not be later than fourteen (14) days from the date of the receipt of such notice, and shall give the parties at least five (5) business days written notice of the initial mediation session. The Independent Panel shall meet with the parties until either (a) the dispute is resolved or (b) the Independent Panel decides that further meetings will not likely result in a resolution by agreement. All costs and expenses incurred by the mediator in the performance of the mediator's duties and responsibilities shall be shared equally between the City and the Company. If the dispute has not been resolved by non-binding mediation within forty-five (45) days of the written notice convening such non-binding mediation, either party may refer the dispute to binding arbitration as provided below.

Section 8.8.4. Binding Arbitration.

All disputes arising out of or relating to this Agreement, which have not been resolved by negotiation or mediation as provided above, shall be decided by binding arbitration conducted in accordance with the Public Works Arbitration Act, R.I. Gen. Laws § 37-16-1, et seq. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American

Arbitration Association. A demand for arbitration shall be made within a reasonable time after the dispute has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings would be barred by the applicable statute of limitations. The party filing a notice of demand for arbitration must assert in the demand all disputes then known to that party on which arbitration is permitted to be demanded. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES

Section 9.1. Representations of the City.

The City represents and warrants to the Company as follows:

Section 9.1.1. Due Authorization and Binding Obligation.

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

Section 9.1.2. No Conflict.

Neither the execution nor delivery by the City of this Agreement, nor the performance by the City of its obligations in connection with the transactions contemplated hereby or the fulfillment by the City of the terms or conditions hereof (1) conflicts with, violates or results in the breach of any constitution, law or governmental regulation applicable to the City, 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 City is a party or by which the City or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

Section 9.1.3. No Approvals Required.

Except for City Council authorization of financing and the RIPUC/RIDPU approval of financing arrangements and water rates to pay for the City operational and capital costs, 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 City of this Agreement or the performance by the City of its payment or other obligations hereunder except as the same have been disclosed to the Company and have been duly obtained or made.

Section 9.1.4. No Litigation.

There is no action, lawsuit or 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 City's knowledge, threatened against the City, which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution and delivery of this Agreement or the validity, legality or enforceability of this Agreement, or any other

agreement or instrument entered into by the City in connection with the transactions contemplated hereby, or which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any such other agreement or instrument.

Section 9.1.5. No Implied Representations or Warranties.

Except as expressly set forth in this Agreement, the City shall not be deemed to have made and has not made (1) any representations or warranties, either express or implied, irrespective of any reviews or other action by the City, or its representatives, with respect to the Site, (2) any representations or warranties as to compliance with, design, operation, fitness for use, condition or capacity, actual or design, of the Existing Facility or the New Facility or any component thereof, or (3) any representations or warranties as to the suitability of the Existing Facility or the New Facility for the purpose specified in this Agreement or for any other purpose specified in this Agreement or otherwise.

Section 9.2 Representations and Warranties of the Company.

The Company represents and warrants to the City as follows:

Section 9.2.1. Existence and Powers.

The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the authority to do business in the State of Rhode Island, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

Section 9.2.2. Due Authorization and Binding Obligation.

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

Section 9.2.3. No Conflict.

Neither the execution nor delivery by the Company of this Agreement 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.

Section 9.2.4. No Approvals Required.

No approval, authorization, order or consent, or declaration, registration or filing with any governmental authority is required for the valid execution and delivery of this Agreement by the

company or the performance of its payment or other obligations hereunder except as the same have been disclosed to the City and have been duly obtained or made.

Section 9.2.5. No Litigation.

There is no action, lawsuit or proceeding, a law or in equity, before or by any court or Governmental Body pending or, to the best of the Company's knowledge, threatened against the Company, which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution and delivery of this Agreement or the validity, legality or enforceability of this Agreement, or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or which would materially and adversely affect the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

Section 9.2.6. Practicability of Performance.

The Company assumes and shall have exclusive responsibility for the design and the technology to be employed in the Capital Improvements and maintenance and operation of the Existing Facility and the New Facility, and for their efficacy. The Company (1) assumes the risk of the practicability and possibility of performance of the Existing Facility or the New Facility in accordance with its obligations required hereunder, (2) assumes the risk of treating water through the operation of the Existing Facility and the New Facility which meets all of the requirements hereof even though such performance and supply may involve technological or market breakthroughs or overcoming facts, events or circumstances which may be different from those assumed by the Company in entering into this Agreement, and (3) agrees that sufficient consideration for the assumption of such risks and duties is included in the Fixed Construction Price and the Service Fee. The Company's warranties in this paragraph shall apply notwithstanding the occurrence of any Uncontrollable Circumstance other than those specifically enumerated in item (a)(l) and (a)(7) of the definition thereof.

Section 9.2.7. Adequacy of Price and Schedule.

The Company has reviewed carefully the Capital Improvements described in Schedule 12 hereto and all other documents forming part of this Agreement, as existing on the Agreement Date. Subject to the terms of this Agreement, the Company agrees that it can perform the Capital Improvements for the Fixed Construction Price, can achieve Acceptance on or before the Acceptance Deadline, and can perform the operations maintenance and management of the Existing Facility and the New Facility for the Service Fee set forth in Schedule 11 hereto.

Section 9.2.8. Information Supplied by the Company.

The information in this Agreement supplied by the Company is correct and complete in all material respects.

Section 9.3 Representations and Warranties Against Patent Infringement.

Section 9.3.1. Patents and Licenses.

The Company warrants that it owns, or is authorized to use under patent rights, licenses, franchises, trademarks, copyrights, or otherwise, the technology necessary for the performance by the Company of this Agreement and the transactions contemplated hereby, without any known material conflict with the rights of others.

Section 9.3.2. Warrant Against Infringement.

The Company warrants that it shall pay all applicable royalties and license fees and shall at its own cost and expense defend, indemnify, save and hold harmless, and pay any and all awards of damages assessed against the City from and against any and all damages, costs, claims, expenses, and liabilities including, without limitation, all fees and costs, on account of infringements of patents, copyrighted or uncopyrighted works, secret processes, trade secrets, patented or unpatented inventions, articles or appliances, or claims thereof pertaining to the Existing Facility or the New Facility, or any part or operation thereof, combinations thereof, processes therein or the use of any tools or implements used by the Company, or its Subcontractors; provided, however, that the City (1) promptly upon receipt forwards to the Company any communication charging infringement; (2) promptly forwards to the Company all process, pleadings, and other papers served in any action charging infringement; and (3) gives the Company the opportunity to defend any such action which defense shall be at the Company's sole cost and expense.

Section 9.3.3. Preliminary Injunction.

If in any suit or proceeding, a temporary restraining order or preliminary injunction with respect to the Project is requested by any third party, the Company shall immediately retain counsel and shall use its best efforts, by giving a satisfactory bond or otherwise, to avoid the issuance of or alternatively to secure the release of the order or injunction.

Section 9.3.4. Permanent Injunction.

If in any suit or proceeding the Existing Facility or the New Facility, or any part or combination thereof or process therein, is held to constitute an infringement and its use is permanently enjoined, the Company shall at once use its best efforts to secure for the City and the Company a license, at the Company's expense, including payment of any fee or royalty related thereto, authorizing the continued use of the Existing Facility or the New Facility, part thereof, or combination therein.

Section 9.3.5. Replacement.

If the Company is unable to secure such license within a reasonable time as determined by the City, the Company shall, at its own expense, and without impairing any Performance Requirements for the construction or operation of the New Facility, cause the infringing portion of the New Facility to be replaced with non-infringing components or parts or modify the same so that they become non-infringing.

Section 9.4 Survival of Representations and Warranties.

Notwithstanding any other provision of this Agreement, the representations, warranties and covenants in this Article IX are intended to and shall survive termination of this Agreement.

ARTICLE X
TERM

Section 10.1 Term of Agreement.

Section 10.1.1. Effective Date and Termination Rights.

This Agreement shall become effective on the Agreement Date and shall continue in effect for twenty (20) years following the Interim Operations Period (the "Initial Term") unless (1) if renewed at the option of the City as provided in Section 10.2 hereof, this Agreement shall remain effective until the last day of any applicable renewal term (the "Renewal Term"; the Initial Term and any Renewal Term being referred to herein collectively as the "Term" or the "Contract Term"), or (2) if earlier terminated pursuant to the termination provisions of Article IV or Article VIII hereof, in which event the Term shall be deemed to have ended as of the date of such termination. Notwithstanding anything contained herein to the contrary, the Parties agree that adjustments to the Term (including any Renewal Term) hereunder shall be made if necessary to comply with the limitation contained in Rev. Proc. 2017-13 that the term of this Agreement, including all renewal options, may not exceed the lesser of thirty (30) years or 80% of the reasonably expected useful life of the financed property (the Existing Facility or the New Facility).

Section 10.1.2. Survival of Certain Provisions.

All representations and warranties of the parties contained in this Agreement are intended to and shall survive the termination of this Agreement, and no termination of this Agreement shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination.

Section 10.2 Renewal.

The City shall have the option to renew this Agreement for two (2) additional periods, the first of which shall be five (5) years, the second of which shall be the lesser of five (5) years or the maximum total Term permitted under the Private Activity Limitations. If the City determines that it wishes to renew this Agreement pursuant to this Section, the City shall give the Company written notice of the City's irrevocable election to renew this Agreement on or before one hundred eighty (180) days preceding the last day of the Initial Term hereof or the then effective Renewal Term hereof. If the City so elects to renew this Agreement, such renewal shall be on the same terms and conditions as are applicable during the Initial Term hereof. However, the Company may terminate this Agreement at the expiration of the Initial Term only if, following request by the Company, the City does not permit a reconsideration and adjustment of the amount of the Service Fee, based upon documented evidence, over a minimum of the previous three (3) years of the Initial Term, presented by the Company in support of such request for reconsideration.

Section 10.3 Review at Expiration of Agreement.

During the first three (3) months of the final Contract Year, the Company and the City shall mutually select an independent, technically qualified firm (the "Auditor") to perform an audit of the New Facility to determine the condition of the New Facility. The cost of the services provided by the Auditor shall be divided equally between the Company and the City.

The Auditor will conduct a detailed and comprehensive survey and inspection of the New Facility, including but not limited to all Equipment, buildings, structures, pavements, grounds, utility lines, spare parts inventories, operation and maintenance records, to identify the physical and operational conditions and general status of repair of the New Facility. The Auditor will prepare a detailed report documenting the findings of the survey and inspection during the first six (6) months of the final Contract Year (the "Auditor's Report"). The Auditor's Report will include, but not be limited to, the following: an assessment of the current condition of each item or component, its estimated remaining service life, and whether its current condition is consistent with the maintenance and general upkeep requirements of this Agreement and expected normal wear and tear. An estimated cost, including a reasonable contingency allowance which will vary depending on the nature of the work required, for repair, renewal or replacement, as appropriate, will be included in the Auditor's Report for each item or component that is judged to be deficient by the Auditor.

The Auditor will provide a draft of the Auditor's Report to the City and the Company for their respective review and comments. In the case of any disagreement between the City and the Company as to the appraised condition of items or portions of the New Facility, or the estimated cost for repair, renewal or replacement, the Auditor's determination will be final and binding upon both parties.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Limited Recourse to City.

Section 11.1.1. No Recourse to General Fund.

No recourse shall be had to the general fund or general credit of the City for the payment of any amount due the Company hereunder, whether on account of the Construction Price, the Service Fee, any Indemnity payment, or for any Loss-and-Expense or payment or claim of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the Company for all such amounts shall be to the funds held in the City's Enterprise Fund to the benefit of the drinking water treatment plant and related facilities. All amounts held in the Enterprise Fund shall be held for the uses permitted thereby, and no such amounts shall constitute property of the Company.

Section 11.1.2. Enforcement of Collections.

The City will use reasonable efforts to enforce its right to receive the System Revenues and will use reasonable efforts to enforce and collect the fees, rates and charges as contemplated in this

Section. The City shall, so long as this Agreement is in full force and effect, take such lawful action necessary or required, as determined in its sole discretion, to continue to entitle the City to receive the System Revenues in an amount sufficient to satisfy its payment obligations hereunder.

Section 11.2 Company Business Activities and Guarantor Credit Standing.

Section 11.2.1. Company Business.

The Company agrees that its business will be limited to that contemplated by this Agreement and it will not engage in activities or incur liabilities other than in connection with the Company's performance of this Agreement and the transactions contemplated hereby.

Section 11.2.2. Guaranty Agreements.

During the Contract Term, the Company shall cause to be provided and maintained the Guaranty Agreements, substantially in the form attached hereto as Exhibit B. The parties acknowledge that the Initial Guarantor and the Successor Guarantor have negotiated the explicit terms under which the Successor Guarantor shall be obligated to issue the Successor Guaranty Certificate of Effectiveness in accordance with this Agreement and the Guaranty Agreements. Accordingly, and without limiting the obligations of the Company or the Guarantors, the Company shall indemnify, defend and hold harmless the City Indemnitees in the manner provided in Section 7.4.1 of this Agreement (Indemnification by the Company), and the Guarantors shall indemnify, defend and hold harmless the City Indemnitees in the manner provided in the Guaranty Agreements, from and against any and all Loss-and-Expense arising out of or related to any disputes between the Initial Guarantor and the Successor Guarantor as to whether and when the Successor Guaranty Certificate of Effectiveness is to be issued by the Successor Guarantor, and as to which the Guaranty Agreements is effective.

Section 11.2.3. Material Decline in Guarantor's Credit Standing.

For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if (1) the Guarantor's long-term senior debt outstanding is rated by either Rating Service at or below investment grade level, or (2) in the event that the Guarantor does not have long-term senior debt outstanding or such debt is not rated by either Rating Service, net worth of the Guarantor declines below $100,000,000. The Company immediately shall notify the City of any Material Decline in the Guarantor's Credit Standing.

Section 11.2.4. Credit Enhancement.

If, at any time, a Material Decline in Guarantor's Credit Standing occurs, the Company shall cause to be provided credit enhancement of its obligations hereunder within thirty (30) days after such occurrence. Such credit enhancement shall be in the form either of (1) an unconditional guaranty of all of the Company's obligations hereunder provided by a corporation or financial institution whose long-term senior debt is or would be rated investment grade by either Rating Service (the "Credit Enhancement Guaranty"), or (2) a letter of credit securing the Company's obligations hereunder in the face amount of Five Million Dollars ($5,000,000), provided by a financial institution whose long-term senior debt is or would be rated investment grade by either

Rating Service (the "Credit Enhancement Letter of Credit"). Such Credit Enhancement Letter of Credit shall be maintained until the Guarantor's credit standing has been restored. Should the Company fail to provide such credit enhancement, the Company shall pay to the City a daily delay non-compliance assessment in the amount of $500 each day, commencing on the date that is thirty (30) days from the date of occurrence of such Material Decline in Guarantor's Credit Standing until the date that such credit enhancement is provided or the date upon which Guarantor's credit standing has been restored, whichever is earlier.

Section 11.2.5. Annual Financial Reports.

The Company shall furnish the City, within one hundred and twenty (120) days after the end of each Guarantor's fiscal year, consolidated balance sheets and income statements for the Guarantor (which shall include the respective statements of the Company) attached to the Guarantor's audited year-end financial statements reported upon by the independent public accountant. The Company shall also furnish the City with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission if applicable.

Section 11.3 Financial Security for the Performance of the Company's Obligations.

Section 11.3.1. Construction Payment and Performance Bond; Labor and Materials Bond.

Simultaneously with the execution of this Agreement, the Company shall cause to be provided to the City the Construction Payment and Performance Bond and the Labor and Materials Bond as security for the performance of all of its Pre-Construction Period and Construction Period obligations hereunder. The Construction Payment and Performance Bond and the Labor and Materials Bond shall be issued by a surety (1) having ratings no lower than the second highest long-term and short term rating by Moody's and Standard and Poor's; (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) holding a certificate of authority to transact surety business in the State issued by the Director of the Department of Insurance. The Construction Payment and Performance Bond and the Labor and Materials Bond, which shall remain open until Final Completion, shall be issued in substantially the forms specified in Exhibit D and, in any event, shall satisfy the requirements of R.I. Gen. Laws § 37-13-14. The Construction Payment and Performance Bond and the Labor and Materials Bond shall provide that the City will be given not less than thirty (30) days written notice prior to any termination, lapse or non-renewal of the Construction Payment and Performance Bond or the Labor and Materials Bond.

Section 11.3.2. Operations Bond.

The Company shall cause to be provided to the City an Operations Bond issued by a surety reasonably acceptable to the City as security for performance of its operations and maintenance obligations hereunder during the Operation Period (the "Operations Bond"). The Operations Bond shall be in the amount of the Annual Service Fee plus pass-through costs at the time it is issued, shall be for a term of one (1) year, shall be continuously renewed, extended or replaced throughout the term of the Operations Period, or for as long as required by the City, and shall be issued in substantially the form specified in Exhibit D. Failure to renew the annual performance bond or

provide alternate security acceptable to the City shall be an event of default by the Company and constitute cause for termination under the provisions of this Agreement. However, neither the non-renewal of the Operations Bond by the surety nor the failure of the Company to provide a replacement Operations Bond shall constitute a loss to the City recoverable under the Operations Bond or any renewal thereof. The Operations Bond shall provide that the City will be given not less than thirty (30) days written notice prior to any termination, lapse or non-renewal of the Operations Bond.

Section 11.3.3. Operation Period Letter of Credit.

Upon the occurrence of one or more of the following conditions:

(1) Any Event of Default specified in Section 8.2;

(2) The failure or refusal promptly to cure any Event of Default specified in Section 8.2.1; or

(3) Continued and repeated material events of non-compliance with the Performance Requirements of Schedule 1 hereto; the Company shall provide a letter of credit in the stated amount of 150% of the then-established annual Service Fee, including pass through costs, and shall be annually adjusted thereafter by the annual Inflation Index as determined in Section 3.11.3(5). Such letter of credit shall be issued by a bank whose long-term debt is rated "A" or better by either Rating Service (the "Operation Period Letter of Credit"). The Operation Period Letter of Credit shall be for a term of one (1) year, shall be continuously renewed, extended or replaced so that it remains in effect for the entire Term of this Agreement, or such shorter period of time as determined by the City, in its sole discretion, and shall be issued in form and substance acceptable to the City. The City shall be authorized under the Operation Period Letter of Credit to make one or more sight drawings thereon upon certification to the issuing bank of the Company's failure to pay any amounts due and owing under this Agreement when and as due as the result of an Event of Default by the Company. The Operation Period Letter of Credit shall permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made prior to thirty (30) days of its expiration. Such Operation Period Letter of Credit shall serve as a security for the performance of the Company's obligations hereunder, and the stated amount thereof shall in no way limit the amount of damages to which the City may be entitled for any Company Event of Default.

Section 11.4 Relationship of the Parties.

The Company is an independent contractor of the City and the relationship between the parties shall be limited to the performance of this Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. Except as otherwise provided herein, 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 Agreement or the performance.

Section 11.5 Property Rights.

The Company shall pay all royalties and license fees relating to the design, construction, start-up, and testing of the Capital Improvements, and to the operation and maintenance of the Existing Facility and the New Facility. The Company shall indemnify and hold harmless the City, and any of the City Indemnities from and against all Loss and Expense, and shall defend the City Indemnities in any suit, including appeals, arising out of or related to infringement of such patent, trademark or copyright relating to, or for the unauthorized use of trade secrets by reason of the design, construction, start-up, and testing of the Capital Improvements, and to the operation and maintenance of the Existing Facility and New Facility, 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 losses and expenses due to the negligent or willful conduct of such person. The provisions of the Section shall survive termination of this Agreement.

Section 11.6 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 lower of (1) the maximum rate permitted by the law of the State or (2) 6% per annum above the then-applicable London Interbank Offered Rate ("LIBOR") 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, to the extent permitted by law, shall be deemed added to the amount due as accrued.

Section 11.7 No Discrimination.

During the performance of this Agreement, the Company agrees that it will comply with all applicable anti-discrimination statutes, ordinances and regulations, and will take affirmative action or have affirmative action programs.

Section 11.8 Subcontractors.

Section 11.8.1. Limited Review and Approval.

The City shall have the right, to the extent provided below in this Section, to approve Subcontractors engaged for Construction Work and Operation Services at the Existing Facility and the New Facility, except: (1) Affiliates of the Company, (2) equipment suppliers, (3) Subcontractors the common stock of which is publicly traded on a national exchange or over-the-counter, (4) Governmental Bodies, and (5) Subcontractor(s) required for emergency response, and (6) pre-approved Subcontractors listed in Schedule 7. At least 10 days prior to subcontracting with any Subcontractor not on the pre-approved Subcontractor list, the Company shall furnish the City written notice of its intention to engage such Subcontractors, together with all information requested by or otherwise available to the Company pertaining to the proposed Subcontractor and subcontract pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (a) any conflicts of interest, (b) any record of felony criminal convictions or pending felony

criminal investigations, (c) any final judicial or administrative finding or adjudication of illegal employment discrimination, (d) any unpaid State, City or local taxes, and (e) any final judicial or administrative findings or adjudication of non-performance in contracts with the City. In the event the City fails to respond to any such notice of intention within ten (10) days of receipt thereof, the City shall be deemed to have approved the proposed Subcontractor. The approval or withholding thereof by the City of any proposed Subcontractor shall not create any liability of the City to the Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from working in the State. In the event of an emergency, the City may waive the requirements of this Section 11.8.1.

Section 11.8.2. Indemnity for Subcontractor Claims.

No Subcontractor shall have any right against the City for labor, services, materials or equipment furnished for the Construction Work or the Operation Services. The Company acknowledges that its indemnity obligations under Section 7.4 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 Construction Work or the Operation Services.

Section 11.9 Actions of the City in its Governmental Capacity.

Section 11.9.1. Rights as Government Not Limited.

Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity, or as limiting the right of the Company to bring any action against the City, not based on this Agreement, arising out of any act or omission of the City in its governmental or regulatory capacity.

Section 11.9.2. No City Obligation to Issue Legal Entitlements.

Notwithstanding any other provision of this Agreement, the City shall not be obligated in any manner to issue or approve any Legal Entitlement required with respect to the Existing Facility or the New Facility, nor shall the City be deemed to be in breach or default hereunder as a result of any delay or failure in the issuance or approval of any such Legal Entitlement. The City retains all issuance and approval rights the City has have under Applicable Law with respect to such Legal Entitlements, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Agreement.

Section 11.10 Assignment.

Section 11.10.1. By the Company.

The Company shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Agreement, its right to execute the same, or its right, title or interest in all or any part of this Agreement whatsoever whether equitably or legally, by power of attorney or otherwise to another entity without the prior written consent of the City, in the City's sole discretion. Any such approval given in one instance shall not relieve the Company of its obligation to obtain the prior written

approval of the City to any further assignment. Any such assignment shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Agreement, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty, which shall remain in full force and effect during the Contract Term. 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 Agreement unless such approval specifically provides otherwise. The following shall constitute an assignment for purposes hereof: (i) the sale, lease, or other disposal of all or substantially all of the Company's stock or assets to any other person, firm, corporation or association, or (ii) the entry by the Company into any agreement to any such effect. No purported assignment shall be valid absent the City's approval, and any such attempted assignment shall fail, be invalid and void and shall constitute a breach of this Agreement.

Section 11.10.2. By the City.

The City may not assign its rights or obligations under this Agreement without the prior written consent of the Company, except that the City may assign its rights and obligations under this Agreement, without the consent of the Company, to another public or quasi-public entity if such entity is legally capable of discharging the duties and obligations of the City hereunder.

Section 11.11 Amendment.

This Agreement may not be amended, except by a written agreement signed by the parties. This Agreement shall not be amended in such a way as to make any tax-exempt financing of this Agreement taxable.

Section 11.12 No Other Agreements.

All negotiations, proposals and agreements prior to the date of this Agreement are merged herein and superseded hereby, there being no agreements or understandings other than those written or specified herein, unless otherwise provided. This Agreement, including all Schedules attached hereto, constitutes the entire Agreement between the City and the Company with respect to the design, construction, start-up, and Acceptance Testing of the Capital Improvements, and the management, operation and maintenance of the Existing Facility and the New Facility. No obligation or covenant of good faith or fair dealing shall be implied or interpreted as conferring upon either party any right, duty, obligation or benefit other than as expressly set forth herein, notwithstanding the fact that certain terms and conditions hereof may give either party discretion in the manner of performance under this Agreement.

Section 11.13 Notices.

All notices required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee) (i) when delivered by personal delivery, (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, (iii) one (1) business day after having been deposited with an expedited, overnight courier service, or (iv) when delivered by electronic mail, which electronic

mail is followed by delivery by an expedited, overnight courier service, addressed to the party to whom notice is intended to be given at the address set forth below:

(a) If to the City:	City of Woonsocket 169 Main Street Woonsocket, RI 02895 Attn: Director, Department of Public Works Phone: 401-762-6400
With a copy to:	Burns & Levinson LLP One Citizens Plaza, Suite 1100 Providence, RI 02903 Richard M. Coen, Esq. Phone: 401-831-3010 Electronic Mail: rcoen@burnslev.com
(b) If to the Company:	AECOM Technical Services, Inc. 250 Apollo Drive Chelmsford, MA 01824 Attn: Scott Thibault Phone: 978-905-3217 Electronic Mail: scott.thibault@aecom.com
With a copy to:	Suez Water Inc. 461 From Road, Suite 400 Paramus, NJ 07652 Jason O'Brien Phone: 203-270-4313 Electronic Mail: jason.obrien@suez-na.com

Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

Section 11.14 Binding Effect.

This Agreement shall bind and inure to the benefit of and shall be binding upon the City and the Company and any assignee acquiring an interest hereunder consistent with Section 11.10.

Section 11.15 Consent to Jurisdiction.

THE COMPANY IRREVOCABLY (1) AGREES THAT ANY LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT SHALL BE BROUGHT IN THE STATE OR FEDERAL COURTS IN PROVIDENCE COUNTY, RHODE ISLAND, (2) CONSENTS TO THE

JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, (3) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF THE JURISDICTION OF ANY LEGAL PROCEEDING, AND (4) WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING IN ANY OF SUCH COURTS.

Section 11.16 Further Assurances.

The City and the 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 Agreement. The City and the Company each agree, in order to carry out this Agreement, to use all 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 Agreement 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 11.17 Counterparts.

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

Section 11.18 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island.

Section 11.19 Headings.

The Table of Contents and any heading preceding the text of Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 11.20 Days.

All references to days herein are references to calendar days, unless otherwise specified in this Agreement.

Section 11.21 Time of Essence.

Time is of the essence of this Agreement. Unless another time is specifically stated herein, the expiration of any period of time prescribed in this Agreement shall occur at 11:59 p.m. of the last day of the period. Should any period of time prescribed herein end on a Saturday, Sunday or legal holiday (recognized in Providence, Rhode Island), the period of time shall automatically be extended to 11:59 p.m. of the next full business day.

Section 11.22 Interpretation.

Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and neuter and vice versa. This Agreement and any related

instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

Section 11.23 Severability.

In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[The remainder of this page is intentionally left blank]

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

WITNESS:

CITY OF WOONSOCKET

By: Lisa Baldelli-Hunt
Name (Print): Lisa Baldelli-Hunt
Its duly authorized MAYOR

[WOONSOCKET WATER SERVICES LLC signature page follows]

WOONSOCKET WATER SERVICES LLC

By: Scott K. Thibault
Name (Print): Scott K. Thibault
Its duly authorized Vice President