CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2024 – 135

By: Mayor Perciak and All Members of Council

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES OF THE CITY'S WASTEWATER TREATMENT FACILITIES AND APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, by and through Resolution No. 2024-091, Council authorized the Mayor to advertise a Request for Proposals ("RFP") for consulting services for the operations, maintenance and management services of the City's Wastewater Treatment facilities and appurtenances; and

WHEREAS, the City has received one (1) proposal from a company having substantial experience with the City, and which is recommended by the City's independent engineering consultant that finds such proposal to be advantageous, competitive, in compliance with the specifications required by the City through its RFP, and in the best interests of the City; and

WHEREAS, Council is, therefore, desirous of proceeding to award and enter into a contract for such services for a five (5) year period, and in accordance with the RFP requirements and the contract document incorporated therein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1. That this Council finds and determines that the proposal submitted by **VEOLIA WATER NORTH AMERICA-CENTRAL, LLC** for the operations, maintenance and management services of the City's Wastewater Treatment facilities and appurtenances in the City for a five (5) year period commencing October 1, 2024, meets the requirements set forth in the Request for Proposals on file in the office of the Director of Public Service, is in compliance with the applicable requirements for proposals and contracts established by the laws of the City and the State, and is the lowest and best proposal for the contract. All other proposals for this contract, if any, are hereby rejected.

Section 2. That the Mayor be and hereby is authorized and directed to enter into an Agreement with **VEOLIA WATER NORTH AMERICA-CENTRAL, LLC** for the operations, maintenance and management services of the City's Wastewater Treatment facilities and appurtenances, substantially in the form attached hereto as Exhibit "A," and incorporated herein, together with various Exhibits identified in said Agreement, and in an amount for the first contract year of an annual fixed fee not to exceed the sum of $2,573,133.00.

Section 3. That the funds necessary for the purposes of said contract have been appropriated for the year 2024, and shall be paid now and in future contract years pursuant to lawful appropriation ordinances, all from the Sanitary Sewer Fund.

Section 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in

such formal action were in meetings open to the public in compliance with all legal requirements.

Section 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that it is immediately necessary to enter into said contract in order to avoid legal issues arising from the currently expiring contract, to continue the operations, maintenance and management of the aforesaid facilities and appurtenances, provide for safe disposal of sanitary waste within the City, and to conserve public funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

CARBONE
President of Council

Date Passed: 09 16 2024

	Yea	Nay
Carbone	✓	
Clark	✓	
Kaminski	✓	
Kosek	✓	
Roff	Absent	
Short	✓	
Spring	✓	

Approved: Thomas B. Zuvich
Mayor

Date Approved: Sept. 16, 2024

Attest: Jennifer Pientka
Clerk of Council

Ord. No. 2024-135 Amended:
1st Rdg. 09-16-24 Ref:
2nd Rdg. Suspended Ref:
3rd Rdg. Suspended Ref:

Public Hrg. Ref:
Adopted: 09-16-24 Defeated:

CITY OF STRONGSVILLE, OHIO
WASTEWATER FACILITIES
OPERATIONS, MAINTENANCE AND
MANAGEMENT SERVICES
AGREEMENT

2024

CITY OF STRONGSVILLE
16099 FOLTZ PARKWAY
STRONGSVILLE, OHIO 44149

Ex. A

CITY OF STRONGSVILLE, OHIO
WASTEWATER FACILITIES
OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES

AGREEMENT INDEX

CITY OF STRONGSVILLE, OHIO
WASTEWATER FACILITIES
OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES

AGREEMENT

THIS AGREEMENT is made and entered into on this1st day of October, 2024, by and between the **CITY OF STRONGSVILLE, OHIO**, an Ohio municipal corporation (hereinafter "City"), whose address is 16099 Foltz Parkway, Strongsville, Ohio 44149 and **VEOLIA WATER NORTH AMERICA – CENTRAL, LLC**, a Delaware Limited Liability Company (hereinafter "Company"), whose address is 53 State Street, 14th Floor, Boston, MA 02109.

WITNESSETH

WHEREAS, the City owns and is responsible for the operation and maintenance of the City's wastewater Facilities, which include but are not limited to two (2) wastewater treatment plants and nineteen (19) lift stations, and appurtenances (collectively, the "Facilities"); and

WHEREAS, the City desires to have the Facilities operated. maintained and managed in the most effective manner possible, while complying with all federal, state and local laws, rules and regulations; and

WHEREAS, the operation, maintenance and management of the Facilities require unique and specialized professional skills; and

WHEREAS, the City desires to maintain ownership of the Facilities and to contract with an organization that has the specialized professional skills and experience to operate, maintain and manage the Facilities; and

WHEREAS, the Company responded to the Request for Proposals issued by the City for the operation, maintenance and management of the Facilities; and

WHEREAS, the City has selected the Company, pursuant to the Request for Proposals and the Company's proposal to operate, maintain and manage the Facilities in accordance with the terms, conditions and provisions of this Agreement, in reliance on the Company's representations in its response to the Request for Proposals of its skill, expertise and past successful experience of supplying operation, maintenance and management services for facilities such as the Facilities; and

WHEREAS, the City desires to engage the services of the Company for the operation, maintenance and management of the Facilities and the Company desires to perform such services for the compensation provided herein; and

WHEREAS, the Company shall have executed prior to the commencement date the Performance Bond presented in Exhibit 4 hereto; and

WHEREAS, the Company shall have provided a certificate of insurance providing the insurance coverage required by Exhibit 5 hereto; and

WHEREAS, the City expects and desires that the relationship between the City and the Company will be a cooperative one, devoted to achieving the cost-savings goals of the City while also providing safe, economical and efficient services, meeting the needs of the current and future customers of the Facilities, maintaining the long-term integrity of the Facilities implementing capital improvements to the Facilities, and assuring safe and environmentally sound service while utilizing Prudent Industry Practices;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the Company hereby agree as follows:

ARTICLE 1 – DOCUMENTS

1.01 Agreement Documents. The following Exhibits are attached hereto and made a part of this Agreement. In the event of a conflict or inconsistency between or among the Exhibits and sections of this Agreement, the parties hereto agree that the more stringent and restrictive requirements applicable to the Company shall govern and control; provided, however, that the Company shall at all times be able to rely on the limitations and conditions set forth in the sections of this Agreement as applicable, even if such limitations and conditions are not repeated in the Exhibits to this Agreement.

Exhibit 1	Facilities
Exhibit 2	WWTP B NPDES Permit
Exhibit 3	WWTP C NPDES Permit
Exhibit 4	Performance Bond
Exhibit 5	Insurance Requirements
Exhibit 6	Industrial Pretreatment Ordinance
Exhibit 7	Mercury Pollutant Minimization Program

This Agreement, together with the foregoing Exhibits, constitutes the entire agreement between the City and the Company with respect to the operation, maintenance and management of the Facilities which shall govern exclusively the obligations of the parties hereto, and supersedes all prior negotiations, representations, documents and agreements, written or oral, occurring prior to the date of this Agreement.

ARTICLE 2 - TERM OF AGREEMENT AND AUTHORIZED REPRESENTATIVES

2.01 Term of Agreement. The effective date of this Agreement shall be the Agreement Date. The term of this Agreement shall begin on the Commencement Date and, subject to earlier termination as provided herein, shall expire five years from the Commencement Date (the "Initial Term"). Not less than six (6) months prior to the expiration of the Initial Term, the City in its sole and absolute discretion may deliver to the Company written notice requesting that the Parties extend the Initial Term by an additional five (5) year term (the "Extended Term"). If the City desires to extend the Initial Term, the Parties shall cooperate in attempting to agree upon such modifications to this Agreement as may be required or desirable and to implement such modifications in accordance with the terms of this Agreement and Applicable Law. The City shall negotiate exclusively with the Company with respect to the Extended Term, as applicable, for a minimum period of sixty (60) days following delivery of the City's written notice; provided, however, that (1) neither Party shall be bound to an agreement for an Extended Term that such Party determines is not in its best interests and (2) each Party shall maintain the right to discontinue negotiations with respect to an Extended Term at the conclusion of the sixty (60) day period. The Initial Term, together with the Extended Term, if any, is referred to herein as the "Term".

2.02 Authorized Representatives. Prior to the commencement of work under this Agreement, each Party shall designate in writing an employee of the designating Party (the "Authorized Representative") who shall have the authority and responsibility to administer this Agreement. Each Party may change its Authorized Representative by written notice as provided in this Agreement. Each Authorized Representative shall be sent a copy of all notices required under this Agreement.

ARTICLE 3 - INTERPRETATION AND DEFINITIONS

3.01 Interpretation.

A. As used in this Agreement, (i) the word "or" is not exclusive, (ii) the words "consent" and "approval" are synonymous and are deemed to be followed by the phrase "which shall not be unreasonably withheld or delayed," (iii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (iv) any pronoun shall include the corresponding masculine, feminine and neuter forms, (v) words in the singular number shall include words in the plural and vice versa, unless the context of the usage of such term clearly indicates otherwise, and (vi) accounting terms that are used, but not otherwise defined herein, are to be construed and interpreted in accordance with "generally accepted accounting principles" and procedures in effect on the Agreement Date.

B. Captions, headings and the Table of Contents in this Agreement, exclusive of Exhibits, are for convenience of

reference only and do not constitute a part of this Agreement or affect its meaning, construction or effect.

C. Except as expressly stated to the contrary elsewhere herein, in computing the number of days for purposes of this Agreement, all days should be counted, including Saturdays, Sundays and legal holidays for the City; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday for the City, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday for the City.

3.02 Definitions. For the purposes of this Agreement and Exhibits hereto, the following words and terms shall have the respective meanings set forth below applicable to both the singular and plural thereof. Unless otherwise specified in this Agreement and Exhibits hereto, all capitalized terms herein refer to described terms in this Agreement and Exhibits hereto.

Acceptable Disposal Site means for purposes of Residuals disposal, a lawful land application site, a sewage sludge incinerator, a sanitary landfill or other lawfully authorized disposal facility for non-hazardous waste which; (1) is located in the United States; (2) does not appear on any federal or state list of sites, including the National Priority List, which list is maintained for the purpose of designating landfills or other sites which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Substances; (3) to the knowledge of the Company, is being operated at the time of disposal in accordance with Applicable Law, as evidenced by the absence of any regulatory sanctions or any significant enforcement actions with respect to material environmental matters; and (4) has committed by written agreement of the owner or operator to receive Residuals.

Addenda means the written or graphic instruments issued prior to the receipt of Proposals which clarify, correct, or change the Proposal requirements or the proposed Agreement and Exhibits thereto.

Additional Services means the additional services provided by the Company which are outside of the general scope of Services set forth in this Agreement but are consistent with the purposes hereof and the effective operation of City government.

Administrative Consent Orders means the administrative orders issued by governmental regulatory agencies exercising jurisdiction over the City's wastewater treatment activities.

Affiliates means the Company, and any corporation, partnership, limited liability company, joint venture or other entity controlled by, controlling or under common control with, directly or indirectly, the Company or any one of such entities.

Agreement means this Agreement for the Operation, Maintenance and Management of the Wastewater Facilities between the City and the Company, including the Exhibits hereto, as the same may be amended or modified from time to time in accordance herewith.

Agreement Date means the date when this Agreement has been executed by the City and the Company.

Amendment means any written amendment to this Agreement approved by both Parties.

Applicable Law means as of the Agreement Date (1) any federal, state or local law, code, or regulation, any Administrative Consent Order, any Consent Order or any agreement with any Regulating Entity having appropriate jurisdiction; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any Regulating Entity having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Regulating Entity if such interpretation is documented by such regulatory body and generally applicable; and (4) any Governmental Approval, in each case having the force of law and applicable from time to time to (a) the siting, permitting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation, maintenance, repair, replacement or management of wastewater treatment systems; (b) the conveyance, treatment or discharge of Influent and Effluent to and from the Facilities; (c) the transfer, handling, processing, transportation or disposal of Residuals; (d) the air emissions from the Facilities; (e) the health and welfare of individuals at or visiting the Facilities; or (f) any other transaction or matter contemplated hereby (including, without limitation, any of the foregoing which pertain to sewer treatment, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non- discrimination).

Authorized Representative means the representative of the City or the Company and any successor designated pursuant to Section 2.02 of this Agreement with the authority and responsibility to administer this Agreement.

Billing Month means each calendar month. Any computation made on the basis of a Billing Month shall be adjusted on a pro rata basis to take into account any Billing Month of less than the actual number of days in the month to which such Billing Month relates.

Biologically Toxic influent means Influent containing a biologically toxic substance or combination of substances (that individually may or may not be biologically toxic substances but which collectively quality as a biologically toxic substance) in sufficiently high concentrations so as to materially interfere with the biological processes necessary for the removal of the organic and chemical constituents of the Influent required to meet the performance guarantees.

Buildings means all buildings owned by the City related to operations, maintenance and management of the Facilities under this Agreement.

Capital Improvement means (a) replacement of an Equipment item or replacement of directly connected components of an Equipment item that has or have met or exceeded their useful life, unless such replacement was a result of the Company's failure to comply with the proper operation and maintenance of the Facilities, provided such replacement of components is anticipated to extend the useful life of the Equipment five (5) years or more as determined by the manufacturer or according to industry standards or, in the case of the replacement of the whole of the Equipment, such replaced whole is anticipated to have a useful life of five (5) years or more as determined by the manufacturer or according to industry standards, or (b) items for construction and placement of new facilities (*e.g.*, piping, equipment, including material costs) and capital purchases that significantly improve operations and/or maintenance, aesthetics, long-term capital conditions or other aspects not generally associated with ongoing operation and maintenance; in each case with a construction, installation (including materials, site preparation costs, demolition and removal costs and labor to construct and install the Capital Improvements, but not for design assessment or oversight or other labor costs that are included in the Services to be provided under this Agreement) or purchase value in excess of the Capital Improvement Threshold Amount.

A "Capital Improvement" shall not (i) include operations activities; (ii) include preventive, predictive, routine and/or corrective maintenance activities; or (iii) allow the aggregation of unrelated items or activities to meet the Capital Improvement Threshold Amount, unless deemed eligible by the City prior to the commencement of the work activity.

Capital Improvement Threshold Amount means an amount equal to Ten Thousand Dollars ($10,000).

Change in Control means change associated with the control of the Company as described in Section 15.06 of this Agreement.

Change in Law means any of the following acts, events or circumstances to the extent that compliance therewith materially increases or decreases the cost of performing or materially increases or decreases the scope of a Party's obligations hereunder;

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

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

C. the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination,

or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the Contract Standards in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Company or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

It is specifically understood, however, that change in the nature or severity of the actions typically taken by a Regulating Entity to enforce compliance with Applicable Law which was effective as of the Agreement Date shall not constitute a "Change in Law".

Chemicals means all process chemicals used for wastewater treatment at the Wastewater Treatment Facilities.

City means the City of Strongsville, Ohio acting through the Department of Public Service.

City Default means an Event of Default by the City as described in Section 14.02 of this Agreement.

City Indemnitee means the individual or collective entity of the City, the Department and their respective officials, officers, employees, agents, representatives, consultants, contractor, and subcontractors.

Commencement Date means the date on which the Company takes responsibility for the day-to-day operation, maintenance and management of the Facilities under this Agreement, which date shall be October 1, 2024, and upon which the Initial Term begins, unless mutually agreed otherwise by the City and the Company.

Company means the entity that has entered into this Agreement with the City.

Company Default means an Event of Default by the Company as described in Section 14.01 of this Agreement. Consent

Order means an order of a court associated with the Facilities.

Contract Standards means the terms, conditions, methods, techniques, practices and standards imposed or required by: (1) Applicable Law; (2) the performance guarantees; (3) Prudent Industry Practices; (4) the Operation and Maintenance Manuals; (5) applicable manufacturers' instructions for maintenance and care of Equipment; (6) Required Insurance; and (7) any other standard, term, condition or requirement specifically provided in this Agreement to be observed by the Company.

Contract Year means the period commencing with the Commencement Date and ending at 12:00 a.m. midnight on the anniversary of the Commencement Date and, for each successive Contract Year thereafter, the period commencing on 12:00 a.m. midnight on the most recent anniversary of the Commencement Date and ending on 12:00 a.m. midnight of the next succeeding anniversary of the Commencement Date.

Cost Substantiation means documentation to substantiate costs of the Company for Additional Services, Capital Improvements or work performed under this Agreement on an emergency basis, all as set forth in Section 17.04 hereof.

County means Cuyahoga County, Ohio

CPI Index means the Consumer Price Index series for All Urban Consumers, Midwest Urban Area, All Items, Monthly, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics, or any successor series (or a replacement index as mutually agreed upon by the Parties and which provides for the measurement of the Adjustment Factor pursuant to a specified, objective, external standard that is not linked to the output or efficiency of the Facilities or any portion thereof).

Daily Operation and Maintenance Log means the daily log as required by OEPA to be maintained on site.

Default Notice means written notice as described in Section 14.03 of this Agreement.

Department means the Department of Public Service of the City of Strongsville, Ohio.

Effluent means the Influent which has been received and treated by and discharged from the Wastewater Treatment Facilities as permitted by Applicable Law.

Encumbrance means any lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Facilities.

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

Equipment means all machinery, components, process-related equipment, property or assets (including pumps, bar screens, grit handling equipment, sludge handling equipment, chemical feed storage equipment and tank covers), parts and materials contained within the Facilities which are owned or leased by the City and in use as of the Commencement Date, or procured or provided on or after the Commencement Date by the Company or the City pursuant to this Agreement.

Event of Default means those items in Section 14.01 of this Agreement with respect to the Company and those items in Section 14.02 of this Agreement with respect to the City.

Extended Term means the five (5) year renewal term subsequent to the Initial Term as described in Section 2.01 hereof.

Facilities means all wastewater and ancillary facilities, Buildings and Grounds, Equipment, consumables, spare parts, and Fixed Assets, including subsurface structures such as pipes, in the Facilities existing at the Commencement Date or placed into service during the Term of this Agreement, including but not limited to, Capital Improvements, both when under construction and after being placed in service as part of the Facilities.

Fixed Asset means items that are not permanently installed, including computer and video equipment, office furniture, storage units, hand tools, hand-help communication devices, and laboratory equipment, and with a value of Five Thousand Dollars ($5,000) or more.

Fixed Fee means the portion of the Service Fee described in Section 8.01 of this Agreement.

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

Grounds means the lands or areas indicated in this Agreement and Exhibits hereto as being furnished by the City upon which the Services are to be performed, including rights-of-way and easements for access thereto and such other lands furnished by the City which are designated for the use of the Company.

Hazardous Residuals means any portion of the Residual that constitutes or contains Hazardous Substances in such concentrations or volumes as to render the Residuals unable to be normally disposed of as contemplated in this Agreement.

Hazardous Substance means any flammable, explosive, corrosive or ignitable material, characteristic waste, listed waste, radon, radioactive material, asbestos, ureaformaldehyde foam insulation, polyclorinated biphenyls, petroleum and petroleum-based wastes, methane gas, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, mixtures or derivatives having the same or similar characteristics and effects, as described in, listed under, or regulated by various federal, state or local environmental statutes, including, without being limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 S.S.C. § 9601, *et seq.*) ("CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C.§ 1801, *et seq.*), the Emergency Planning and Community Right to Know Act (42 U.S.C.§ 11001, *et seq.*), the Resource, Conservation and Recovery Act (42 U.S.C.§ 6901, *et seq.*), the Toxic Substances Control Act (15 U.S.C.§ 2601, *et seq.*), the Clean Water Act (33 U.S.C.§ 1251, *et seq.*), the Clean Air Act (42 U.S.C.§ 7401, *et seq.*), the Safe Drinking Water Act (42 U.S.C.§ 300, *et seq.*), and including all amendments, modifications or successor legislation; or as such substances are described under any similar federal or state laws or regulations.

Industrial Pretreatment Ordinance means Chapter 1050 entitled Pretreatment Requirements of the Codified ordinances of the City of Strongsville and which is included in Exhibit 6.

Influent means all flows reaching the Wastewater Treatment Facilities from all connected sources, including residential, commercial, municipal and industrial sources, infiltration and inflows.

Initial Term means the five (5) year period starting from the Commencement Date of this Agreement.

Legal Proceeding means every action, suit, litigation, arbitration, administrative proceeding and other legal or equitable proceeding having a material effect on this Agreement or the performances of the Parties hereunder, and all appeals therefrom.

Lift Station means those lift stations and pump stations used to convey wastewater as referenced in Exhibit 1 hereto.

Losses is defined in Section 13.01 (A) of this Agreement.

Memorandum of Understanding means a written memorandum between the Parties providing for the clarification or interpretation of a provision of this Agreement or memorializing the outcome of a dispute resolved pursuant to Article 16 hereof.

Non-Specified Influent means influent entering a wastewater treatment facility that is characterized by (i) a solids or organic content that exceeds one or more of the design Influent parameters set forth in Exhibit 1 or (ii) Biologically Toxic Influent.

NPDES Permit means any National Pollutant Discharge Elimination System Permit issued from time to time by OEPA to the City with respect to the Facilities during the Term of this Agreement, including any revision or modification to such a permit. The NPDES Permits in effect as of the Agreement Date are: with respect to Plant B, NPDES Permit No. OHOO27570 issued by OEPA to the City and included in Exhibit 2; with respect to Plant C, NPDES Permit No. OH0033707, issued by OEPA to the City and included in Exhibit 3. For purposes of this Agreement, all of the provisions and requirements of these NPDES Permits shall be deemed to apply to the City and the Company except as specifically excluded by this Agreement.

OEPA means the Ohio Environmental Protection Agency or any successor agency.

Off-site means elsewhere other than on or at the Facilities.

On-site means on, at or within the Facilities.

Operational Change means an adjustment in routine operating procedures that will be made as a matter of routine practice by the Company to operate the Wastewater Treatment Facilities and the Lift Stations.

Operation and Maintenance Manuals means (a) the existing Wastewater Facilities Operations and Maintenance Manuals, (b) Equipment, supplier or vendor operation and maintenance manuals and (c) any new operation and maintenance manuals.

Operator of Record means the licensed operator designated to oversee the technical operation of a wastewater treatment facility and/or sewerage collection system in accordance with OEPA requirements.

Party or Parties means the parties to this Agreement.

Permits means all regulatory permits and licenses to which the Facilities and their operation are subject, including, without limitation, the NPDES Permits.

Person(s) means any natural or artificial entity including an individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government, agency or authority (including federal, state, county, municipal or other local agency) or political subdivision thereof.

Project Manager has the meaning specified in Section 7.07 hereof.

Prudent Industry Practices means the methods, techniques, standards and practices which, at the time they are to

be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the municipal wastewater treatment industry as observed in the United States.

Regulating Entity means any federal, state, regional, county or local entity, court, agency or body, or subdivision thereof, having governmental or quasi-governmental authority and jurisdiction over the Facilities.

Required Insurance means the insurance required to be maintained by the Company as provided in Article 12 hereof and Exhibit 5 hereto.

Residuals means any solid, semi-solid or liquid residue or sludge that is collected, produced or otherwise handled from the Facilities and disposed of Off-site. Residuals includes sludge produced at the wastewater treatment Facilities and grit, screenings and other materials removed from System Influent and Influent. System Influent, Influent, and Effluent shall not constitute Residuals.

Request for Proposals means the Request for Proposals for Wastewater Facilities Operations and Maintenance Services issued by the City dated August 16, 2024 and any Addenda or amendments thereto.

Service Fee means the fee as described in Section 8.01 of this Agreement.

Services means the operation, maintenance, repair and management services provided by the Company pursuant to this Agreement, including, without limitation, wastewater treatment, customer services, as well as the provision of project management for the Facilities and all required ancillary activities in accordance with the requirements of the Request for Proposal, this Agreement and the Exhibits hereto.

SOP means a standard operating procedure.

State means the State of Ohio and all of its relevant administrative, contracting and regulatory agencies and offices.

Subcontractor means an individual or entity having a direct contract with the Company or with any other subcontractor for the performance of a part of the Services.

Substantial Completion means that the City has issued a certificate of substantial completion for a Capital Improvement.

System Influent means all wastewater, inflow/infiltration entering the Wastewater Treatment Facilities.

Term has the meaning specified in Section 2.01 of this Agreement.

Termination Date means the date on which this Agreement terminates and is no longer in force or effect, which date shall be the end of the Initial Term or the Extended Term, as applicable, unless earlier terminated as provided herein.

Transition Period means the period between the Agreement Date and the Commencement Date.

Uncontrollable Circumstances means any act, event or condition that is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, and that materially interferes with or materially increases the cost of performing its obligations hereunder (other than payment obligations, including any payment obligations the City may have to reimburse or compensate the Company for an Uncontrollable Circumstance), to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such Party.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An "Upset" does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

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

Vehicles means all cars, trucks, vans or other modes of transportation that require a license plate used in connection with operation of the Facilities for transporting people or things or used for other necessary functions in the operation or maintenance of the Facilities.

Wastewater Treatment Facilities means those wastewater treatment facilities referenced in Exhibit 1 hereto.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

4.01 Representations and Warranties of the City. The City represents and warrants to the Company that:

A. Organization and Powers. The City is a municipal corporation duly organized and existing under the laws of the State and is duly authorized and empowered to enter into and perform its obligations pursuant to the terms and provisions of the Agreement and to execute all documents related hereto to which it is a party.

B. Due Authorization and Binding Obligations. The execution and delivery of this Agreement has been duly authorized by all necessary actions of the City, none of which actions have been rescinded or otherwise modified. This Agreement is 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, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity. All payments to be made by the City pursuant to this Agreement are subject to appropriation by the City's legislative body, and the City agrees to use all reasonable efforts to include such appropriation in each of the City's budgets during the Term.

C. No Conflict. The execution and delivery of this Agreement and any other documents related hereto to which the City is a party, the consummation by the City of the transactions contemplated hereby and thereby, and the fulfillment by the City of the terms and conditions hereof and thereof do not and will not (i) conflict with, violate or result in a material breach of any constitution, law, corporate charter or by-laws applicable to the City or (ii) conflict with, violate or result in the material breach of any terms or conditions of any order, judgment or decree, or any restriction, contract, agreement or instrument to which the City is not a party or by which it is bound, or constitute a default under any such restriction, contract, agreement or instrument.

D. No Litigation. There is no action, suit, claim, investigation or proceeding, at law or in equity, before or by any court or Regulating Entity, pending or, to the best of the City's knowledge, threatened against the City, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material adverse effect on the execution and delivery of this Agreement by the City or the validity, legality or enforceability of this Agreement against the City, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby, or on the ability of the City to perform its obligations hereunder or under any such other agreement or instrument.

E. No Default. The City is not in default under, and, to the best of its knowledge, no condition exists that with notice or lapse of time or both would constitute a default under, (i) any mortgage, loan agreement, lease, lease purchase, indenture or evidence of indebtedness for borrowed money to which the City is a party or by which any material amount of the assets of the City is bound that would materially affect the City's entering into, or performance of, this Agreement, or (ii) any judgment, order, injunction, rule, regulation or other judicial or administrative mandate of any court, arbitrator or governmental agency or instrumentality, which default or potential default could reasonably be expected to have a material adverse effect on the City's entering into, or performance of, this Agreement.

F. Compliance With Law. The City is presently in compliance with all Applicable Laws in connection with the operation and maintenance of the Facilities and to the best of the City's knowledge, no event has occurred which would constitute reasonable grounds for a claim that noncompliance has occurred or is occurring. There are no outstanding complaints, orders, citations, notices or orders of violation or noncompliance issued to the City relating to the operations, maintenance or condition of the Facilities, which could reasonably be expected to have a material adverse effect on the City's entering into, or performance of, this Agreement.

4.02 Representations and Warranties of the Company. The Company represents and warrants to the City that:

A. Due Authorization and Binding Obligation. The execution and delivery of this Agreement has been duly authorized by all necessary corporate actions of the Company, none of which actions have been rescinded or otherwise modified. The Company has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. No consents, approvals or permits are required for the execution and delivery of this Agreement or the performance of the terms and provisions herein, or, if any such consents, approvals or permits are required, they have been, or will be prior to the Commencement Date, obtained. This Agreement is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally o by general principles of equity.

B. No Conflict. The execution and delivery of this Agreement and any others documents related hereto to which the Company is a party, the consummation by the Company of the transactions contemplated hereby and thereby, and the fulfillment by the Company of the terms and conditions hereof and thereof do not and will not (i) conflict with or violate any of the terms of the Company's formation documents or, to the Company's knowledge, and Applicable Laws, (ii) conflict with, violate or result in a breach of any of the terms and conditions of, or result in the acceleration of any indebtedness or obligations under, any order, judgment or decree, or any restriction, contract, agreement, obligation or instrument to which the Company is now a party or by which it is bound or to which any property of the Company is subject, or constitute a default under any such order, judgment, decree, restriction, contract, agreement, obligation or instrument, or (iii) conflict with, violate or result in or constitute a default under, a breach of or grounds for termination of, any Permits or other Governmental Approvals to which the Company is a party or by which the Company may be bound, or result in the violation by the Company of any Applicable Laws to which the Company or any assets of the Company may be subject, which would materially adversely affect the transactions contemplated herein.

C. No Litigation. There is no action, suit, claim, investigation or proceeding, at law or in equity, before or by any court or Regulating Entity, pending or, to the best of the Company's knowledge, threatened against the Company, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material adverse effect on the execution and delivery of this Agreement by the Company or the validity, legality or enforceability of this Agreement against the Company, or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

D. No Default. The Company is not in default under, and, to the best of its knowledge, no condition exists that with notice or lapse of time or both would constitute a default under, (i) any mortgage, loan agreement, lease, lease purchase, indenture or evidence of indebtedness for borrowed money to which the Company is a party or by which any material amount of the assets of the Company is bound that would materially affect the Company's entering into, or performance of, this Agreement, or (ii) any judgment, order, injunction, rule, regulation or other judicial or administrative mandate of any court, arbitrator or governmental agency or instrumentality, which default or potential default could reasonably be expected to have a material adverse effect on the Company's entering into, or performance of, this Agreement.

E. Ability to Perform. The Company is financially solvent. The Company and each of its employees, agents, subcontractors and contractors are competent to perform the services required under this Agreement.

F. Agreement Feasible. The Company has examined and analyzed the provisions and requirements of this Agreement. The Company understands the nature of the services required under this Agreement. From its own analysis, the Company has satisfied itself as to the nature of all things needed for its performance of this Agreement, the general and special conditions, and all other matters which in any way affect its performance of this Agreement. The time available to the Company for such examination, analysis and preparation was adequate, This Agreement is feasible of performance in accordance with all of its provisions and requirements.

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

H. Compliance With Law. The Company is presently in compliance with all Applicable Laws, and to the best of the Company's knowledge, no event has occurred which would constitute reasonable grounds for a claim that noncompliance has occurred or is occurring.

I. Opportunity to Review and Inspect. Prior to the Agreement Date, the Company had the opportunity to review and inspect Governmental Approvals and permit applications regarding the Facilities and to meet with and ask questions of an receive answers from representatives of the City connected with the Facilities. The Company's Proposal was based primarily upon those reviews and inspections and supplemented by the City's information so provided.

J. Pledge of Credit; No Impairment. The Company shall not pledge the City's credit or the revenues generated by the System or make the City a guarantor of payment or surety for any contract, debt, obligation, judgement, lien or any form of indebtedness. The Company further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

K. Accuracy of Company Representations. The representations made by the Company in the Company's Proposal and in all other information and documentation submitted to the City by the Company were true and accurate as of the date they were made and are true and accurate as of the Agreement Date. The representations made by the Company in the Company's Proposal did not contain any material misrepresentations or omissions of any material facts as of the date that they were made, and the representations made therein, except to the extent such representations are modified in this Agreement, do not contain any material misrepresentations or omissions of any material facts as of the Agreement Date.

L. Financial Condition. The Company has not filed, nor have creditors of the Company filed, any type of bankruptcy proceeding.

M. Approvals. The Company has obtained and is in compliance with all the Governmental Approvals which are required for the Company to perform its obligations pursuant to this Agreement.

N. Prior Experience. The Company has trained personnel who will be assigned to perform the Services required under this Agreement and such Company personnel have experience operating and maintaining facilities similar to the Facilities in accordance with Prudent Industry Practices.

O. Employment Matters. During the Term of this Agreement, the Company agrees to observe all municipal ordinances, state laws, and federal laws related to labor and employment matters that are applicable.

P. Representations and Warranties Generally. No statement, representation or warranty by the Company in this Agreement, including the Exhibits hereto, contains any untrue statement of material fact, or, to the best of the Company's knowledge, omits to state any material fact, necessary to make such statements, representations and warranties not misleading.

4.03 Materiality of Representations. The representations and warranties enumerated in Sections 4.01 and 4.02 hereof are material for purposes of this Agreement, and misrepresentations are grounds for an Event of Default hereunder.

ARTICLE 5 - SYSTEM DESCRIPTION

5.01 General. A description of the Facilities is attached hereto as Exhibit 1.

5.02 Facilities Condition Confirmation.

A. Inspection of the System. The Company acknowledges that: (i) the Company's agents and representatives have visited, inspected and observed the above-ground portion of the Facilities, and its design and physical condition relevant to the obligations of the Company pursuant to this Agreement, including operating conditions, roads, utilities, topographical conditions and historical Influent conditions; (ii) the Company's agents and representatives have reviewed information available relating to the below-ground portion of the facilities relating to its design and physical condition relevant to the obligations of the Company pursuant

to this Agreement; (iii) the Company's agents and representatives have reviewed the scope of services for the Facilities; (iv) the Company is familiar with all local conditions which may be material to the Company's performance of its obligations under this Agreement (including, without limitation, transportation; season, climate and ambient air; access, availability, handling, storage and disposal of materials, supplies and Equipment; and availability and quality of labor and utilities); (v) the Company has received and reviewed records and information pertaining to the Facilities that is has deemed necessary to receive and review for the purposes of entering into and performing this Agreement; and (vi) based on the foregoing, the Company is of the opinion that the Facilities can be managed, operated, maintained, repaired and replaced, in accordance with the terms and conditions and limitations hereof.

B. "As-Is" Condition of the Facilities. Based on its review and inspection of the Facilities and the scope of services for the Facilities as described in paragraph (A) above and other inquiries and investigations made by the Company prior to the Agreement Date, which the Company acknowledges to be sufficient for this purpose, the Company assumes the risk of the adequacy and sufficiency of the Facilities and the existing, "as- is" condition of the Facilities to the extent such condition may affect the ability of the Company to comply with Applicable Law, or otherwise comply with all of the other terms and provisions of this Agreement. The Company agrees that the physical condition of the Facilities which exists as of the Agreement Date or which may be revealed during the performance hereof shall not be an Uncontrollable Circumstance.

ARTICLE 6 - OPERATIONS, MAINTENANCE AND MANAGEMENT

6.01 General.

A. Ownership of System. The Facilities and all Capital Improvements shall be owned by the City throughout and following the Term of this Agreement, and the Company shall have no ownership interest therein or in any revenues generated by the Facilities. During the Term hereof, the City shall provide the Company with all required access and the Company may enter upon, occupy, and use the Facilities to operate, maintain, repair, replace and manage the Facilities.

B. Operation and Management Responsibility. Commencing on the Commencement Date, the Company shall operate and manage the Facilities on a twenty-four (24) hour per day, seven (7) day per week basis, and shall collect, receive and treat Influent, subject to the terms and conditions of this Agreement, produce and discharge Effluent, handle, transport and dispose of Residuals and operating wastes, provide all information necessary to each Regulating Entity, and otherwise operate and manage the Facilities so as to comply with Applicable Law and other terms and conditions of this Agreement.

C. Subcontractors. The City shall have the right to require prior notice of all Subcontractors to be hired by the Company for performing services on behalf of the Company in carrying out its obligations hereunder (other than administrative, financial, accounting or legal services). The City reserves the right to object to the hiring of any Subcontractor subject to Section 16.01 of this Agreement. The Company shall maintain direction and control of all Subcontractors, and shall promptly pay all amounts owing and due to all Subcontractors retained, engaged, employed or directed by the Company to provide materials or services to the Facilities. If a Subcontractor has not satisfactorily performed under other contracts with the City, the City may request that the Company not use such Subcontractors to perform services under this Agreement.

6.02 Exclusions. The NPDES Permit Storm Water Pollution Prevention requirements contained in each permit and addressed in Part IV - Storm Water Pollution Prevention Plans, Part V - Numeric Effluent Limitations and Monitoring Requirements and Part VI - Other Storm Water Requirements, Definitions and Authorizations are specifically excluded from Company's operations, maintenance and management responsibilities and will be performed by the City.

6.03 Operation of Facilities. On and after the Commencement Date and for the duration of the Term, the Company shall operate the Facilities in compliance with the terms of this Agreement. The Company's obligations pursuant to this Agreement also shall include but not be limited to:

A. Maintaining and revising as necessary the Operation and Maintenance Manuals and the written SOPs to the extent necessary to supplement or refine procedures provided in the Operation and Maintenance Manuals, or to describe operations practices not specified in such manuals in order to facilitate and clarify operation procedures and techniques.

B. Responding in a timely manner to all consumer complaints and comments relative to wastewater treatment and discharge, including odor complaints. Responses shall be made and documented in writing, all complaints and responses shall be kept on file and available for public viewing at the Facilities and a copy of such complaints and responses shall be filed with the City.

C. Consulting with the City prior to responding to inquiries from the media regarding the Facilities, the City or the Company with respect to the Facilities.

6.04 Maintenance of Facilities.

A. General. The obligations of the Company under this Section 6.03 are intended to assure that the machinery, Equipment, Fixed Assets, Buildings and Grounds and improvements constituting the Facilities are properly and regularly maintained, repaired and replaced in order to preserve their long term reliability, durability and efficiency, and in a way such that when the Facilities are returned to the City at the end of the Term, they are in a condition similar to that which existed on the Commencement Date absent reasonable wear and tear given the age and environment of the Facilities and which with reasonable and routine efforts, does not require the City to undertake a significant overhaul or immediate replacements in order to continue to provide reasonably priced and efficient wastewater treatment.

B. Ordinary Maintenance. The Company shall perform and record all normal and ordinary maintenance of the machinery, Equipment, Buildings and Grounds, improvements and all other property constituting the Facilities, shall keep the Facilities in good working order, condition and repair, in a neat and orderly condition, and shall maintain the aesthetic quality of the Facilities as originally constructed. The Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the Facilities and shall conduct predictive, preventative and corrective maintenance of the Facilities.

C. Repair and Maintenance of Buildings and Grounds. The Company shall keep the Building and Grounds in a neat, clean, functional and orderly condition. In addition, the Company shall provide all landscaping services to maintain the Buildings and Grounds in an aesthetically attractive manner and shall maintain and routinely repair (but not replace) the Buildings and Grounds' parking lots, roadways and walkways subject to other provisions of this Agreement. The City shall be responsible for snow clearing and de-icing all parking lots and roadways.

D. Major Maintenance, Repair and Replacements. The Company shall perform all major maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other property constituting the Facilities during the Term of this Agreement without limitation, unless it constitutes a Capital Improvement, in which event the City shall have the approval rights and provide the funding as set forth in Article 9 hereof. The Company shall prepare and submit to the City a five (5) year forecast of the major repair and replacement activities that the Company believes needs to be performed at the Facilities during such five (5) year period to keep the Equipment in good working condition and repair so as to be able to properly perform the Services. To the extent any repair or replacement is required as a result of Uncontrollable Circumstances, the City shall pay the costs thereof.

E. Residential Grinder Pump Repairs. Company shall perform minor repairs of residential grinder pumps which are currently being maintained by the City, provided that the Company is granted access by the residential property owner to make said repairs and provided that the residential property owner agrees to hold the Company harmless for claims relating to such pump repair. The scope of the work shall be limited to the grinder pump sump up to but not including the discharge piping slip connection and will include repair or replacement of the pump, discharge piping, check valve and float switch but shall not include the electric supply to the pump. City shall be responsible for furnishing replacement pumps for any such pump that cannot be repaired.

F. Replacements Constituting Capital Improvements. The Company shall bear the cost and expense of all maintenance, repairs and replacements required under this Article 6, except for any replacements that constitute Capital Improvements as defined herein or needed as a result of any Uncontrollable Circumstance. In those instances where the failure of the Company to properly operate and maintain results in the replacement of Equipment (the replacement of which would have constituted a Capital Improvement if not for such failure), the Company shall share in the expense of the replacement in a proportion to be determined by the Department based upon the Company's lack of performance.

G. Chemicals. The Company shall, as part of the Service Fee, arrange for the supply of and pay the bills for all required process chemicals and negotiate any and all contracts or agreements for the supply of chemicals.

H. Utilities. The Company shall, as part of the Service Fee, have the responsibility to arrange for the supply of and pay the bills for all utilities required by the Facilities including but not limited to, electricity, natural gas, water and telephone.

6.05 Odor Control. The Company shall operate and maintain the Facilities in a manner that minimizes odors at the Facilities boundaries.

6.06 Compliance With Applicable Law.

A. Compliance Obligation. The Company shall perform the Services in accordance with Applicable Law, and shall require all Subcontractors to comply with Applicable Law.

B. Sampling, Testing and Laboratory Work. The Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by OEPA. All testing laboratories shall follow acceptable laboratory procedures as approved by OEPA and EPA, as applicable, and be certified for the applicable test. All sampling and test data shall be available for review by, and reported to, the City in accordance with Section 6.18 hereof. The Company assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon for laboratory services it or its Subcontractors provide, both as to failures to detect and as to false detections.

C. Investigations of Noncompliance. In connection with any actual or alleged event of noncompliance with Applicable Law, the Company shall, in addition to any other duties which Applicable Law may impose: (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Regulating Entity; (2) attend all meetings and hearings required by any Regulating Entity; (3) provide all corrective action plans, reports, submittals and documentation required by any Regulating Entity; (4) in conjunction with the City, communicate in a timely and effective manner with the general public as to the nature of the event, the impact on the public, and the nature and timetable for the planned remediation measures; (5) immediately upon receipt thereof, provide the City with a true, correct and complete copy of any written notice of violation or noncompliance with Applicable Law, and true and accurate transcripts of any verbal notice of noncompliance with Applicable Law, issued or given by any Regulating Entity; and (6) assist the City with the defense of any Legal Proceeding arising out of a noncompliance event. The Company shall furnish the City with an immediate written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or noncompliance to the extent the Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such noncompliance.

D. Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law, the Company shall, without limiting any other remedy available to the City upon such an occurrence and notwithstanding any other provision of this Agreement; (1) immediately correct such failure and resume compliance with Applicable Law; (2) indemnify and hold harmless the City from any Loss resulting therefrom; (3) pay or reimburse the City for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all changes in operating and management practices which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Regulating Entity in order to remedy a failure of the Company to comply with Applicable Law.

E. No Nuisance Covenant. The Company shall keep the Facilities neat, clean and litter-free and ensure that the operation of the Facilities does not create any odor, litter, noise, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur which is not caused by Uncontrollable Circumstances, the Company shall immediately remedy the condition, pay any fines or penalties imposed on the City or the Company as a result thereof, make all improvements and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and

indemnify and hold harmless the City from any third party Loss relating thereto in the manner provided in Section 13.01 hereof.

6.07 Industrial Pretreatment. The Company shall continue the implementation of the existing Industrial Pretreatment Ordinance requirements as presented in Exhibit 6 and in compliance with OEPA requirements.

6.08 Mercury Pollutant Minimization Program. The Company shall continue the implementation of the existing Mercury Pollutant Minimization Program in compliance with OEPA requirements, NPDES Permit requirements and the Mercury Pollutant Minimization Program requirements as presented in Exhibit 7. Any additions or modifications to the Mercury Pollutant Minimization Program required by OEPA or EPA and/or recommended by the Company shall be made by the Company and incorporated into Exhibit 7 hereto after being approved by OEPA and the City.

6.09 Residuals Management.

A. Disposal of Residuals. Except as provided in Sections 6.09(E) and 6.09(F) of this Agreement, the Company shall have full responsibility for and shall bear all costs and expense associated with disposal of Residuals. The Company shall ensure that the Residuals disposal is performed in accordance with Applicable Law. All Residuals shall be disposed of at an Acceptable Disposal Site. The Company shall provide evidence satisfactory to the City, from time to time as requested by the City, that the disposal location conforms with the requirements of this Section 6.09.

B. Residuals Disposal Information. The Company shall keep and maintain such logs, records, manifests, bills of lading or other documents pertaining to Residuals as are necessary or appropriate to comply with Applicable Law and to monitor and confirm compliance by the Company with the requirements of this Article 6, and shall collect and promptly provide the City with a copy of all weights and measures data and information relating to quantities of Residuals generated, transported and disposed of hereunder. The Company shall prepare and file, on behalf of the City and subject to the City's review, approval and, as applicable, signature, all reports and records required to be prepared and filed with any Regulating Entity pursuant to the 503 Regulations and other Applicable Law with respect to all Residuals. The City, only to the extent required by Applicable Law, shall sign all permits, manifests or similar documents required for the transportation or disposal of Facilities Residuals.

C. Protocol for Hazardous Residuals. The Parties acknowledge that, notwithstanding the administration and enforcement of the Industrial Pretreatment Program, Influent may from time to time contain materials that cause Residuals to constitute Hazardous Substances. The Company shall identify and hold harmless the City, and provide for the proper disposal of said Hazardous Substances.

D. Notification and Reporting. In the event Hazardous Residuals are identified, whether On-Site or Off-site, the Company, after first notifying the City, shall be responsible for fulfilling all notification and reporting requirements established by Applicable Law and shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the City, along with any documents provided to the relevant Regulating Entity regarding such Hazardous Residuals. The City shall have the right to witness and to document any action taken by the Company with respect to Hazardous Residuals.

E. Off-site Disposal and On-Site Remediation. The Company, in the most expeditious manner possible, shall cause any Hazardous Residuals to be removed from the Facilities and transported to and disposed of at an Off-site disposal facility authorized to receive and dispose of such Hazardous Residuals under Applicable Law, and shall take all necessary On-site remediation steps. The Company shall only be responsible for the costs to perform any identification, testing, removal, temporary storage, On-site remediation, or Off-site transportation and disposal of Hazardous Residuals that are incurred due to the failure of the Company to comply with terms of the Agreement.

F. Off-site Remediation. If Hazardous Residuals are transported and disposed of Off-site, and the Company can show that it had no knowledge that it was transporting and disposing of Hazardous Residuals, the Company shall only be responsible for the costs associated with any necessary Off-site remediation measures that are the result of the Company's failure to comply with the terms of the Agreement. Each Party shall bear any Losses it may incur resulting from any Legal Proceeding originated by a third party arising from the Off- site transportation or disposal of Hazardous Residuals; provided, however, that the Company shall indemnify, defend and hold harmless the City from any such Loss to the extent the Loss would have been avoided and the Company complied with the terms of the Agreement or to the extent the

Company had, or should have had, knowledge that it was transporting or disposing of Hazardous Residuals.

G. Risks Assumed by the Company. The Company shall bear the transportation and disposal risks associated with the disposal of Residuals, including all risks relating to (1) the prices and business terms and conditions which may prevail from time to time over the Term in the market for the transportation and disposal of Residuals; (2) the availability and cost to the Company from time to time of Acceptable Disposal Sites for Residuals; (3) the availability and cost to the Company from time to time of transportation and disposal services for Residuals; and (4) the performance or non-performance by any Subcontractor of the Company engaged in the disposal of Residuals.

H. Reimbursement of Costs. Any costs paid by the Company to unrelated third parties and chargeable to the City under this Section 6.09 shall be reimbursed to the Company as a Reimbursable Costs Charge in accordance with Section 8.01 hereof.

6.10 Operation and Maintenance Manuals.

A. Company Responsibilities. The Services shall be performed substantially in compliance with the Operation and Maintenance Manuals and the SOPs. The Company shall keep these documents current, shall make all appropriate updates, supplements or revisions thereto and shall make such documents available to the City upon request. Any review of the operation and maintenance documents shall not: (1) relieve the Company of any of its responsibilities under this Agreement; (2) be deemed to constitute a representation by the City that operating the Facilities pursuant to the operation and maintenance documents will cause the Facilities to be in compliance with this Agreement or Applicable Law; or (3) impose any liability upon the City.

B. Supplements for Capital Improvements. The Company shall prepare supplements and revisions to the existing Operation and Maintenance Manuals, SOPs, and other documents which are required due to the design, construction and installation of all Capital Improvements based upon manuals provided by the engineers and/or contractors for the Capital Improvements. The cost and expense of all such supplements and revisions shall be borne by the Company, except with respect to supplements and revisions necessitated by Capital Improvements directed by the City or required by a a Change in Law or other Uncontrollable Circumstance.

6.11 Equipment, Fixed Assets, Consumables and Spare Parts.

A. Equipment. All Equipment provided by the City or the Company on or after the Commencement Date, including any Equipment on order by the Company or the City, shall be deemed to be owned by the City and shall remain a part of the Facilities upon the termination or expiration of this Agreement.

B. Fixed Assets. All Fixed Assets provided by the City or the Company on or after the Commencement Date, including any Fixed Assets on order by the Company or the City, shall be owned by the City and shall remain a part of the Facilities upon the termination or expiration of this Agreement.

C. Consumables. On or about the Commencement Date, the City and Company shall prepare an itemized inventory and valuation of all consumables in stock within the Facilities which are to be transferred to the Company that are jointly determined to be necessary for the operation and maintenance of the Facilities. In a like manner, on or about thirty (30) days prior to the end of the Term, or the Termination Date, an itemized inventory and valuation of all consumables in stock within the Facilities necessary and dedicated for the maintenance of the Facilities which are to be transferred to the City shall be performed by the City and Company. The final valuation amount shall be compared to the initial valuation amount as adjusted by the CPI Index. Consumables that are no longer usable for systems and Equipment shall be excluded from the initial and final valuation amount. The amount of any valuation shortfall or excess shall be paid by the Company to the City, or by the City to the Company, as appropriate, on or before the end of the Term or the Termination Date.

D. Spare Parts. On or about the Commencement Date, the City and the Company shall prepare an itemized inventory and valuation of all spare parts in stock within the Facilities which are to be transferred to the Company that are jointly determined to be necessary for the operation and maintenance of the Facilities. The value of each inventory item turned over to the Company shall be recorded as of the Commencement

Date. In a like manner, on or about thirty (30) days prior to the end of the Term or the Termination Date, an itemized inventory and valuation of all spare parts in stock within the Facilities necessary and dedicated for the operation and maintenance of the Facilities which are to be transferred to the City shall be performed by the City and the Company. The final valuation amount shall be compared to the initial valuation amount as adjusted by the CPI Index. Spare parts that are no longer usable for Facilities shall be excluded from the initial and final valuation amount. The amount of any valuation shortfall or excess shall be paid by the Company to the City or by the City to the Company, as appropriate, on or before the end of the Term or the Termination Date.

6.12 Emergency Response.

A. Emergency Plan. The Company shall provide the City with a draft plan of action to be implemented in the event of an emergency, including but not limited to, fire, weather, environmental, health (e.g., a pandemic), safety, breach of security and other potential emergency conditions. The plan shall; (i) provide for appropriate notifications to the City and all other Regulating Entities having jurisdiction and for measures which facilitate coordinated emergency response actions by the City and all such other appropriate Regulating Entities; (ii) specifically include spill prevention and response measures; (iii) address the discharge of Effluent which does not comply with Applicable Law; (iv) assure the timely availability of all personnel required to respond to any emergency; and (v) be prepared and updated in accordance with Applicable Law throughout the Term. The emergency plan shall be reviewed by the Parties annually as part of the review of the annual operations report and updated when necessary.

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

6.13 Safety of Persons and Property.

A. Safety. The Company shall prepare a safety plan in accordance with and shall maintain the safety of the Facilities at a level consistent with generally accepted standards. Without limiting the foregoing, the Company shall; (1) take all reasonable precautions for the safety, maintenance, and repair of, and provide all reasonable protection to prevent, repair and replace damage, injury or loss by reason of our related to the operation or maintenance of the Facilities to, (i) all employees working at the Facilities and all other persons who may be involved with the operation, construction, maintenance, repair and replacement of the Facilities, (ii) all visitors to the Facilities, (iii) all materials and Equipment under the care, custody or control of the Company on the Buildings and Grounds, (iv) other property constituting part of the Facilities and (v) property owned by the City; (2) establish and enforce all reasonable safeguards for safety and protection, including (i) posting danger signs and other warnings against hazards and (ii) promulgating safety regulations; (3) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Facilities whose duty shall be the supervision of Facilities safety, the prevention of fire and accidents and the coordination of such activities as shall be necessary with Federal, State and City officials; (5) operate all Equipment, Vehicles and Rolling Stock in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movements; and (7) develop and carry out a specific safety program, including employee training and periodic inspections.

B. Security. The Company shall be responsible for the security of the Facilities, and shall maintain suitable fences, gates and locks at the Facilities. The Company shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties. The Company shall comply with all Applicable Law guidelines regarding security measures against terrorist threats and activities.

6.14 Disposal of Surplus Equipment and Scrap Metal. The Company may remove, dispose of and sell, in

accordance with Applicable Law, equipment constituting part of the Facilities that is obsolete or no longer needed, subject to approval by the City, and if necessary, in the opinion of the City's Law Director, by the City's Council in accordance with law. The proceeds from any cash sale shall be the property of the City, and in the event of a trade-in or like kind exchange of such surplus property, the City shall be entitled to the benefit thereof.

6.15 Loss, Damage or Destruction of Assets.

A. Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the Facilities from loss, damage or destruction. The Company shall promptly report to the City and the insurers, upon obtaining knowledge thereof, any damage or destruction to the Facilities and as soon as practicable thereafter shall submit a full report to the City. The Company shall also submit to the City within twenty-four (24) hours of receipt, copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or Regulating Entity. If the Company damages the Facilities or caused loss or destruction of the Facilities in connection with the performance of, or the failure to perform, the Services, except to the extent any such damage, loss or destruction was caused by Uncontrollable Circumstances, the Company shall promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Facilities at its own cost to at least the character or condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Articles 9 and 12 hereof, as applicable. The repairs and replacements shall restore the damaged property to its character and condition existing immediately prior to the damage. The City shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company as if such work constituted part of the Facilities as originally constructed hereunder. If the damage, loss or destruction was not the result of the Company's actions, or if damage, loss or destruction was caused by Uncontrollable Circumstances, the Company will not be responsible for the costs of repair, replacement or restoration.

B. Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section 6.15 can be recovered from any insurer or from another third party, each Party shall assist each other in exercising such rights as it may have to effect such recovery. Each Party shall provide each other with copies of all relevant documentation at no cost to the other Party, and shall cooperate with and assist the other Party upon request by participating in conferences, negotiations and litigation regarding insurance claims.

C. Repair of Private Property. The Company shall promptly repair or replace all private property damaged by the Company or any officer, director, employee, representative or agent of the Company in connection with the performance of, or the failure to perform, the Services, except to the extent any such damage was caused by Uncontrollable Circumstances. The repair and replacements shall restore the damaged property to its character and condition existing immediately prior to the damage.

6.16 Uncontrollable Circumstance. If either Party shall rely on an Uncontrollable Circumstance as the basis for not performing its obligations under the terms and provisions of this Agreement, then the Party relying on such Uncontrollable Circumstance shall (i) provide prompt notice to the other Party of the occurrence of the act, event or condition giving an estimation of its expected duration and the probable impact on the performance of it's obligations hereunder, (ii) exercise its commercially reasonable efforts to continue to perform its obligations hereunder, (iii) in accordance with this Agreement, expeditiously take action to correct or cure the act, event or condition preventing performance, (iv) exercise its commercially reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not materially adversely affect its own interests, and (v) provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to its inability to perform.

6.17 Reporting and Record Keeping

A. Daily Operational Log. The Company shall maintain a Daily Operation and Maintenance Log for each wastewater treatment plant as required by OEPA. These logs shall be maintained in formats acceptable to OEPA, shall be maintained on each treatment plant site and shall be made available for inspection by OEPA, City or emergency response personnel on a 24 hour per day basis. The log shall be current and shall include a minimum of the previous three months of data at all times. These logs will be required, as a minimum, to contain the following items:

1. Identification of the public wastewater treatment facility

2. Signature and certificate number of the operator and the signature of persons making entries
3. Date and time of arrival and departure for each certified operator
4. Specific operation and maintenance activities and any repairs made
5. Results of tests performed and samples taken
6. Performance of preventative maintenance and repairs or requests for repairs of equipment

The Company shall submit an operational summary of the above information and data to the City in electronic format on a monthly basis.

B. OEPA Reports. The Company shall prepare and submit the monthly and annual reports as required by the NPDES permits for each treatment plant to OEPA and the City by the 25th of the following month or as otherwise agreed to by the City and the Company.

ARTICLE 7 - PERSONNEL

7.01 Adequate Staffing. The Company shall maintain a staffing level and qualifications at the Facilities sufficient to enable the Company to perform all of its obligations pursuant to the terms and provisions of this Agreement in a timely and efficient manner and in compliance with all Applicable Laws and OEPA requirements. The Company shall maintain staffing at or above the minimum staffing level of eight and one half (8 1/2).

7.02 Labor Organizations and Collective Bargaining. To the extent required or permitted by law, the Company shall recognize and bargain in good faith with any labor organization that represents the employees of the Company who perform work that is subject to this Agreement.

A. Any collective bargaining agreement entered into by the Company with the employees of the bargaining unit for the Facilities shall contain a "no strike/slowdown" provision in a form acceptable to the City.

B. Should any employees performing work under this Agreement not be represented by a labor organization but, during the Term of the Agreement become represented by a labor organization, and following certification in accordance with Applicable Law that a majority of such employees in a bargaining unit have authorized a labor organization to represent them for collective bargaining with the Company, the Company shall recognize the labor organization and bargain with it in good faith for a collective bargaining agreement.

7.03 Training of Employees. The Company shall ensure that all management and personnel education and training relative to the operation, maintenance, repair and management of the Facilities is continually updated on a scheduled basis, and that such management and personnel shall be recertified or relicensed, as applicable, as required or as recommended pursuant to Applicable Law. The Company shall provide training for all personnel involved in providing the Services, including training to integrate any new Equipment, Capital Improvements and processes that may be added to the Facilities during the Term of this Agreement. It is the sole responsibility of the Company to ensure that all personnel are fully knowledgeable of his or her duties and responsibilities. The Company shall be expected to develop, implement and maintain a formal training and retraining program for all personnel.

7.04 Equal Employment Opportunity. The Company confirms that it is an equal opportunity employer and during the performance of this Agreement, the Company agrees as follows:

A. The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Company will take affirmative action to ensure that applicants are employed and the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

B. The Company will, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex or national origin.

C. The Company will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Company's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the Notice in conspicuous places available to employees and applicants for employment.

D. The Company will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant order of the Secretary of Labor.

E. The Company will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto and will permit access to his books, records, and accounts by the City and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of the Company's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Company may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 or by rules, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

G. The Company will include the provisions of Paragraphs A through G in every Subcontract or Purchase Order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or Vendor. The Company will take such action with respect to any Subcontract or Purchase Order as the City may direct of a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Company becomes involved in, or is threatened with, litigation with a Subcontract or Vendor as a result of such direction by the City, the Company may request the United States to enter into such litigation to protect the interest of the United States.

H. The standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), pages EEO-6 through EEO-13 of the specifications are incorporated into this Agreement by reference as if fully rewritten herein.

I. Section 3 of the Housing and Urban Development Act of 1968 - Summary of Requirements, pages EEO-18 through EEO-27 of the Specifications, are incorporated into this Agreement by reference as if fully rewritten herein.

7.05 No Restriction on Employment. At or prior to the Termination Date, the Company shall not place any restriction upon the ability of the employees at the Facilities to become employees of the City or employees of any contractor which may in the future operate and maintain the Facilities.

7.06 City Not the Employer. It is understood that individuals performing work under this Agreement shall be considered employees of the Company and not employees of the City. The City shall have no obligation to the Company's employees for wages or any fringe benefits, including pension benefits, nor any obligation with regard to their income requirements. Nothing in this Article 7 shall be construed to place the City in the relationship of the employer of or to grant the City the rights to direct or control either employees of the Company or displaced employees.

7.07 Project Manager.

A. The Company shall assign an individual employee of the Company to act as the Project Manager. The City reserves the right to reject the Company's proposed Project Manager. The Project Manager shall be responsible, on a full-time basis, for the management and oversight of the safe and reliable provision of all Services. The Project Manager shall be dedicated on a full-time basis to the Facilities and shall maintain an office in one of the Buildings within the Facilities or at another office of the Company located in the City. The Project Manager shall be expected to directly supervise the daily activities of Company personnel employed to operate, support and monitor all activities associated with the Services. The Project Manager will be the primary Company liaison with the City.

B. The Project Manager shall hold and continue to hold a valid Ohio Treatment Works Class III Operators Certification, in accordance with OEPA requirements.

C. The Project Manager shall be required to have working knowledge of the requirements of all Applicable Laws. The Project Manager shall work cooperatively with the City with respect to service quality, providing operational data, planning future service, responding to complaints and comments from customers and the general public, and responding to specific requests for other assistance.

D. As required, the Project Manager shall attend all meetings and hearings pertaining to the provision of Services. This includes, but is not limited to, City Council meetings, and meetings with the Department. In the event the Project Manager is unable to attend such meetings, the Project Manager shall appoint a staff member with the authority to act on the Company's behalf and to appear as an agent of the Company in his or her place.

E. In the event the Project Manager is temporarily unable to perform his or her duties, the Project Manager promptly shall appoint a staff member to serve in his or her place. The Company shall provide the City's Authorized Representative prior written notice whenever such appointment shall occur. If the Project Manager is unable to perform his or her duties for more than two (2) consecutive weeks, the Company shall assign another individual employee of the Company to act as a substitute Project Manager, subject to City approval and Applicable Laws.

7.08 Operator of Record. The Company shall be required to employ a minimum of two (2) individuals having Ohio Class III Treatment Works Operator Certificates with one (1) being assigned as the Operator of Record for each wastewater treatment plant in accordance with OEPA requirements. Additional Class III Operators shall be employed, if necessary, to meet the minimum required staffing hours for Operators of Record at each wastewater treatment plant in accordance with OEPA requirements. The Operator of Record for each treatment plant shall also serve as the Operator of Record for the contributory sewerage collection system. The duties of the Operator of Record for the contributory sewerage collection system will include the technical supervision of the respective collection system in accordance with Ohio Administrative Code Section 3745-7 and the preparation and submission of the Ohio Environmental Protection Agency's Sanitary Sewer Overflow annual reports. The City will supply the Company with the necessary records and information required to prepare the Sanitary Sewer Overflow annual reports; and will repair and maintain both sewerage collection systems. The Company is not responsible for supervising the City's staff for the sewerage collection systems.

7.09 Background Checks: Drug Testing. The Company shall conduct appropriate background checks on applicants for employment, including, but not limited to, criminal record checks subject to Applicable Law. Subject to the terms of any agreement in effect on the Commencement Date between the Company and an authorized labor organization representing employees of the Company, the Company may require individuals from the Company's work force to whom it makes offers, or any other future applicant, to undergo the background checks and drug testing required by the Company; provided, however, that the Company shall, pursuant to Applicable Law, require drug tests of employees who hold commercial driver licenses in connection with their positions with the Company and shall further require pre-employment drug tests of employees who are required to possess federal, State or local licenses or certifications in connection with their positions with the Company. The Company shall have the right to reject for employment any person not passing the background checks and drug testing required by the Company or any person declining to allow the Company to perform the background check or drug testing. The Company shall maintain at all times a drug screening policy for its employees that is at least as comprehensive as the City's policy for its employees.

ARTICLE 8 - COMPENSATION

8.01 Service Fee. From and after the Commencement Date, the City shall pay the Company an annual Service Fee as compensation for the Company's performing the Services under this Agreement. The Service Fee shall be calculated and paid to the Company in accordance with this Article 8.

A. Service Fee Formula. The annual Service Fee shall be calculated in accordance with the following formula:

$$SF = FF + RC - CR$$

where,

SF	= Service Fee
FF	= Fixed Fee
RC	= Reimbursable Costs Charge
CR	= Credits

Each component of the Service Fee shall be determined in accordance with this Article 8.

B. Fixed Fee. The Fixed Fee shall be compensation for each Contract Year for all Services to be provided by the Company under this Agreement except where otherwise noted herein. The Fixed Fee for the first Contract Year shall be Two Million, Five Hundred Seventy Three Thousand, One Hundred Thirty Three Dollars ($2,573,133.00). For subsequent Contract Years the Fixed Fee shall be adjusted taking into account inflation, treatment plant flows and number of lift stations in accordance with the following formula:

$$FF_n = CPI_n/CPI_i\,(FF_i + (TF_n - TF_i)TF + (LS_n - LS_i)LS)$$

Where,

FF_n	=	The annual Fixed Fee for Contract Year "n"
FF_i	=	The annual Fixed Fee for the first Contract Year which is $2,573,133.00
CPI_i	=	The Consumer Price Index on the September 1st immediately preceding the Commencement Date
CPI_n	=	The Consumer Price Index on the September 1st immediately preceding "n" Contract Year
TF	=	The annual Fixed Fee flow adjustment price per 0.1 million gallons of flow which is $74.19
TF_i	=	The combined average daily effluent flow from both wastewater treatment plants for the period from September 1, 2023 to September 1, 2024 rounded to the nearest 0.1 million gallons which is 1.8 million gallons.
TF_n	=	The combined average daily effluent flow from both wastewater treatment plants for the one year period preceding the September 1st immediately preceding Contract Year "n" rounded to the nearest 0.1 million gallons.
LS	=	The annual Fixed Fee lift station adjustment price per lift station which is $3,595.00
LS_i	=	The initial number of lift stations included in the Facilities on October 1, 2024 which is 19.
LF_n	=	The actual number of lift stations included in the Facilities on October 1 of Contract Year "n"

In the case of the addition or deletion of Lift Stations, the Fixed Fee shall be adjusted reflecting the addition of a Lift Station on the date that the Lift Station becomes operational and reflecting the deletion of a Lift Station on the date that the Lift Station is taken out of service. The adjusted Fixed Fee shall be reflected in the next subsequent Billing Month invoice.

The annual Fixed Fee flow adjustment is conditioned upon the flow weighted annual average influent pollutant

concentrations for the one year period preceding the September 1st immediately preceding Contract Year "n" being within ten percent (10%) of the flow weighted annual average influent flow pollutant concentrations for the one year period preceding the September 1st immediately preceding the Commencement Date. The flow weighted annual average influent pollutants shall include $CBOD_5$, TSS, NH_3 and Phosphorus all expressed in milligrams per liter (mg/l). Flow weighting of each pollutant shall be in accordance with the following formula:

$$PC = ((PC_B \times F_B) + (PC_C \times F_C))/(F_B + F_C)$$

Where,

PC	=	Flow weighted annual average influent pollutant concentration for specific pollutant
PC_B	=	Average annual influent pollutant concentration at Treatment Plant B
PC_C	=	Average annual influent pollutant concentration at Treatment Plant C
F_B	=	Average annual daily effluent flow for Treatment Plant B
F_C	=	Average annual daily effluent flow for Treatment Plant C

If the flow weighted annual average influent pollutant concentrations for any of the named pollutants for the one year period preceding September 1st immediately preceding Contract Year "n" vary by more than ten percent (10%) from the flow weighted annual average influent concentration for the one year period preceding the September 1st immediately preceding the Commencement Date, the City and Company will negotiate an equitable annual Fixed Fee flow adjustment. The initial flow weighted annual influent pollutant concentrations are $CBOD_5$ (141 mg/l), TSS (254 mg/l), NH_3 (20.8mg/l) and Phosphorus (4.6 mg/l).

C. Reimbursable Cost Charge: The Reimbursable Costs Charge shall be an amount equal to the actual and direct expenses (without markup for profit, administrative costs or otherwise) paid by the Company to unrelated third parties for any charges incurred in the operation of the Facilities that are the responsibility of the City pursuant to this Agreement. Such charges for which the City is responsible (and for which the Company shall be reimbursed to the extent paid by the Company) shall be identified and approved by the City.

D. Credits. Except as otherwise provided in this Agreement, the City shall receive a credit for expenses paid by the City (without markup for administrative costs or otherwise) for charges incurred in the operation of the Facilities that are the responsibility of the Company pursuant to this Agreement.

8.02 Additional Services: Change in Scope of Services.

A. A change in the scope of services under this Agreement shall occur when the Company's costs for providing service under this Agreement changes as a result of the following:

1. City Requested Additional Services. If the City requests the Company to provide Additional Services, the City and the Company shall negotiate the costs associated with the Additional Services subject to Cost Substantiation as provided in Section 17.04 hereof. In the event that the Parties cannot agree to an appropriate fee for such Additional Services, the procedures set forth in Section 16.01 of this Agreement shall apply. The Company will provide Additional Services on a twenty- four (24) hour, seven (7) day a week basis at the request of the City.

2. Uncontrollable Circumstances. In the event that there occurs an Uncontrollable Circumstance of a Party to this Agreement that results in a change in the scope of services under this Agreement or a material change in the Company's costs for providing service under this Agreement, the City and the Company agree to negotiate in good faith such amendments to this Agreement as such Parties shall determine to reflect the change in scope of services and provide for an equitable adjustment to the Company's Service Fee.

B. The Authorized Representative of each Party shall have full authority to approve changes in the scope of services of this Agreement and compensation therefor, execute written change orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other Party when necessary subject to Applicable Law and subject to approval of the City's Council when required.

8.03 Billing and Payment.

A. Billing. The City shall pay the Service Fee in monthly installments in an amount equal to the sum of: (1) one-twelfth (1/12) of the annual Fixed Fee; (2) any monthly Reimbursable Costs Charge described in Section 8.01 hereof; (3) less any credits described in Section 8.01 hereof determined on a monthly basis. The Company shall provide the City with an invoice no later than the first (1st) day of each Billing Month which sets forth the monthly Fixed Fee portion of the Service Fee for such Billing Month and of Reimbursable Costs Charge or any Additional Services charge for the prior Billing Month and such other documentation or information as the City may reasonably require to determine the accuracy and appropriateness of the invoice.

If the September 1st Consumer Price Index is not published by the United States Department of Labor by October 1st of Contract Year "n", the annual Fixed Fee adjustment shall occur as soon as practicable after publication. The subsequent invoice after the Consumer Price Index is published will include any incremental adjustment in Fixed Fee retroactive to October 1st of Contract Year "n".

B. Payment. The City shall pay the invoice, less any Credits described in Section 8.01 hereof within thirty (30) days after receipt of the invoice. The City shall provide the Company with a statement setting forth Credits taken.

8.04 Estimates and Adjustments.

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

B. Budgeting. For City budgeting purposes, no later than September 1st of the year, the Company shall provide to the City a written statement setting forth for the next Contract Year its reasonable estimate of the aggregate Service Fee, each component thereof, and the estimated annual Additional Services charge, if any. The estimate shall not be binding on the Company but shall establish the basis for monthly billing for such Contract Year.

C. Adjustment to Service Fee for Material Change in Operation and Maintenance Costs Due to Capital Improvement. In the event that the City implements a Capital Improvement with a construction, installation, or purchase value in excess of One Hundred Thousand Dollars ($100,000) and, pursuant to Section 9.01 hereof, the Company or the City requests an adjustment to the Fixed Fee of the Service Fee after implementation of such Capital Improvement to account for a material increase or decrease to the Company's operation and maintenance costs under this Agreement, the City and the Company agree to negotiate in good faith such amendments to this Agreement as such Parties shall determine. Any adjustments to the Fixed Fee of the Service Fee resulting from an amendment to this Agreement shall be deemed to be a material revision of the compensation arrangements under this Agreement.

8.05 Interest on Overdue Payments. All payments outstanding after the applicable due date shall be compounded annually at the prime rate as reported in the Wall Street Journal plus one percent (1%).

8.06 Payment Disputes. If any Party shall dispute an amount owing to the other Party, such Party shall utilize the provisions of Article 16 hereof regarding dispute resolution, and shall:

A. Give notice at least fifteen (15) days prior to the due date for such payment from the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute delivered on or before the due date of the amount disputed; and

B. Pay all undisputed amounts on the due date. Interest at the rate specified in Section 8.05 hereof shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount, or any portions of such disputed amounts.

8.07 Offsets.

A. In order to provide the City with unencumbered, unilateral authority to clean, repair, replace, operate, maintain, haul, dispose or conduct any of the Services required of the Company pursuant to this Agreement in the event the Company is not in compliance with the terms of this Agreement or in the event the City is entitled to indemnification pursuant to Article 13 of this Agreement or in the event fines, penalties or any other amounts are owed but unpaid by the Company pursuant to any provision of this Agreement, including without limitation, Sections 6.06 and 8.06, or any Event of Default, the City shall have the right, upon the giving of notice as provided below, to offset the amount the City may incur to remedy the Company nonperformance of the Services including but not limited to indemnity claim, fines, penalties or other amounts against amounts then owing or to become owing by the City to the Company pursuant to the terms and provisions of this Agreement, including any Exhibits hereto. Notwithstanding the foregoing, the City shall not offset against or delay payments due the Company as a result of, or based on, any failure of the City to receive payment properly billed to users of the Facilities and/or the inability of the City to collect monies owed the City. The rights of the City under this Section 8.07 shall be in addition to, and not in limitation of, any other rights, which it may have.

B. In the event that the City determines that there is reason to suggest that the Company is not performing any of its obligations under this Agreement, the City may, in its sole and absolute discretion, provide written notification of withholding to the Company describing its intent to remedy such nonperformance, including a good faith cost estimate to perform such remedy.

C. Within forty-eight (48) hours of receipt of a withholding notification from the City, the Company shall respond to the City with a written response explaining the cause of such noncompliance and outlining the corrective measures to be performed within seven (7) calendar days of the receipt of such withholding notification.

D. In the event that the Company fails to commence corrective action as described in this response to the City, the City shall take all actions necessary to remedy the conditions in questions and shall offset the amount of the cost of such remedy against amounts then owing or to become owing by the City to the Company pursuant to the terms and provisions of this Agreement, including any Exhibits hereto.

E. The conditions of nonperformance giving rise to the right of set-off under this Section 8.07 may or may not be an Event of Default as defined in Article 14 of this Agreement.

8.08 Tax Exemption of Facilities. It is the intent of the Parties that the Facilities shall continue to be City owned property and not subject to real property taxation.

8.09 Sales Tax. In its performance of the Services, the Company acknowledges that construction materials and supplies acquired by the Company or any Subcontractor in connection with the Capital Improvements and operating supplies relating to the performance of the Services are subject to State sales tax. The Company further acknowledges that these taxes have been priced into the Fixed Fee of the Service Fee and agrees to pay all such taxes imposed with its performance of the Services without reimbursement from the City.

ARTICLE 9 - CAPITAL IMPROVEMENTS

9.01 General. Any Capital Improvements implemented during the Term shall comprise Facilities for which the Company shall be responsible for operation and maintenance pursuant to this Agreement as part of the Services. The City will determine, in its sole discretion, when a Capital Improvement has reached Substantial Completion, but the Company may review and comment upon the City's determination. The Company or the City may request an adjustment to the Fixed Fee of the Service Fee after implementation of a Capital Improvement with a construction, installation, or purchase value in excess of One Hundred Thousand Dollars ($100,000) to account for a material increase or decrease to the Company's operation and maintenance costs. Adjustment, if any, to the Fixed Fee of the Service Fee to reflect changes in operational conditions due to Capital Improvements shall be made as set forth in Section 8.04 (C) hereof.

9.02 Procedures for Implementing of Capital Improvements. The City shall determine in it sole discretion which Capital Improvements shall be completed and how the Capital Improvements shall be implemented in accordance with Applicable Law. All items which meet the terms of the definition of Capital Improvement as set forth in Section 3.02 hereof, but which have a construction, installation or purchase value (without

combining a series of smaller projects or cost items) that is equal to or less than the Capital Improvement Threshold Amount shall be completed and paid for by the Company as part of the Services included in the Fixed Fee of the Service Fee. The City may request the Company to complete any Capital Improvement or it may complete the Capital Improvement on its own behalf, through contractors designated by it through a bidding process completed in compliance with Applicable Law. If the City elects to complete the Capital Improvement through contractors other than the Company, the Company shall use all commercially reasonable efforts to cooperate with the City and its contractors in completing such improvements by (a) providing reasonable access to the areas of the Facilities necessary or useful to complete the work and (b) adjusting operations at the Facilities at the direction of the City or its contractors, in such a manner as will permit completion of the work without impairing or impeding the Company's ability to meet its obligations under this Agreement. The City agrees to use all commercially reasonable efforts to minimize disruption to the Company's operation of the Facilities during the completion of the work, but nothing in this Section 9.02 shall be construed as prohibiting the City from taking any action necessary to ensure that the work can be completed, including cessation of operations at portions of the Facilities. If the City elects to require the Company to complete the Capital Improvement, the City shall pay all costs incurred by the Company in connections therewith subject to the Cost Substantiation provisions of Section 17.04 hereof.

9.03 Capital Improvements at Company's Request. The Company may, upon the prior written approval by the City, and at the Company's sole cost and expense, make Capital Improvements to the Facilities to increase the efficiency of the Facilities and achieve cost savings. The City may approve such Capital Improvements, in its sole discretion, upon submission to the City for its review and comment of appropriate plans and specifications and price proposals for such Capital Improvement. At such time as the City approves the Capital Improvement requested by the Company hereunder, the Company and the City shall agree upon and determine the useful life and amortization schedule of such Capital Improvement. All Capital Improvements made by the Company shall be owned by the City and shall become part of the Facilities. In the event the City terminates this Agreement pursuant to Section 15.04 or 15.09 hereof, the City shall pay the Company certain of its undepreciated costs for any Capital Improvements approved by the City and paid for by the Company pursuant to this Section 9.03, which undepreciated costs to be paid by the City are expressly understood to be limited to solely the purchase price paid by the Company to the independent vendor and any labor costs related to such Capital Improvement.

9.04 Capital Improvements Due to Change in Law or Uncontrollable Circumstance.

A. The Company and the City shall each notify the other in writing within thirty (30) days following them becoming aware of a Change in Law or as provided in Section 6.16 hereof with regard to an Uncontrollable Circumstance. Within a time that reasonably permits the City to evaluate and implement changes necessary to comply with such Change in Law or to address such Uncontrollable Circumstance following such notice, the Company shall prepare an evaluation of the expected impact of such Change in Law or Uncontrollable Circumstance on (1) the operation or maintenance of the Facilities including any cost increases or decreases associated therewith, (2) the modifications to the Facilities including any Capital Improvements, that may be required as a direct consequence of such Change in Law or Uncontrollable Circumstance, and (3) the ability of the Company to continue to operate the Facilities in accordance with this Agreement.

B. As soon as is reasonably practicable following notice and evaluation of the expected impact of a Change in Law or Uncontrollable Circumstance, the Company shall prepare and deliver to the City a proposed response to such Change in Law or Uncontrollable Circumstance including (1) an evaluation of the Change in Law or Uncontrollable Circumstance prepared pursuant to paragraph (A) above, and (2) a list of proposed recommendations to address the Change in Law or Uncontrollable Circumstance. The proposed response shall be prepared by the Company with the objective of providing the most cost- effective long-term response options available to the Change in Law or Uncontrollable Circumstance, taking into account projected capital costs and operating and maintenance costs during the remaining portion of the Term (or, at the request of the City, for a greater period of time). The proposed response shall include, but not be limited to (1) the proposed Capital Improvements and/or operational changes, if any, (2) the estimated cost of the proposed Capital Improvements and/or operational changes, (3) the proposed effect on the operation, maintenance and management of the Facilities, if any, (4) the proposed costs or savings on the operation, maintenance and management of the Facilities by item, and (5) the effect, if any, on the ability of the Company to comply with the terms and conditions of this Agreement including operating in compliance with Applicable Law.

C. The City shall review the proposed response submitted to it by the Company and, within a reasonable

period of time, notify the Company that the City either (1) agrees with and accepts the Company's proposal, (2) rejects the Company's proposal, or (3) accepts the Company's proposal with modifications (with the proposed modifications specified). If the City rejects the Company's proposal, the City may request the Company to submit a revised proposal or the City may submit its own proposal. The Company shall accept any proposal submitted by the City or any modifications to its proposal, provided, however, the Company shall notify the City of the impact, if any, of any City proposal or modification on (1) the ability of the Company to continue to operate the Facilities in accordance with this Agreement and (2) the anticipated cost impact of the City's proposal or proposed modifications, compared to the Company's proposal.

D. If a Change in Law or Uncontrollable Circumstance will require a Capital Improvement to the Facilities, the City may (1) request the Company to complete the Capital Improvements, (2) complete the Capital Improvement on its own behalf, either directly or through contractors designated by it, or (3) not elect in the City's reasonable discretion consistent with Prudent Industry Practices to complete the Capital Improvement.

E. If the City elects to complete the Capital Improvement itself or through a contractor, the City shall bear all costs and expenses of the project including, but not limited to, costs of acquisition and installation of the Equipment and related construction work. If the City elects to require the Company to complete the Capital Improvement, the City shall pay all costs incurred by the Company in connection therewith subject to the Cost Substantiation as provided in Section 17.04 hereof.

F. Upon the Company becoming aware of a Change in Law and prior to the implementation and completion of a response to the Change in Law, the Company shall use all reasonable efforts to mitigate the harm or effect that will be caused by the Change in Law and to avoid or minimize the cost impact of such Change in Law to the City.

ARTICLE 10 - PERFORMANCE GUARANTEES

10.01 General. The Company shall at all times comply with the Performance Guarantees set forth herein, except to the extent compliance is prevented or excused by Uncontrollable Circumstances, agreement of the Parties or by provisions of this Agreement. If the Company fails to comply with any Performance Guarantee, the Company shall, to the extent required and not by way of limitation: (1) promptly notify the City within twenty-four (24) hours of the Company's having knowledge of any such noncompliance, except if such noncompliance results in a violation of the terms of the NPDES Permits, or any other Applicable Law, consists of a major spill or jeopardizes public health, in which case the Company shall notify the City as soon as possible but no later than two (2) hours after such noncompliance; (2) promptly provide the City within twenty-four (24) hours with copies of any notices sent to or received from EPA, OEPA or any other Regulating Entity having regulatory jurisdiction with respect to any violations of Applicable Law; (3) pay any resulting direct damages, fines, judgments or awards, including penalties, levies, assessments, penalties or other charges resulting therefrom and indemnify the City in accordance with Section 13.01 hereof; (4) at its own cost and expense, take any action necessary within the scope of the Company's responsibilities under this Agreement (including, without limitation, recommending Capital Improvements and making repairs, replacements, and operating and management practices changes) in light of the nature, extent and repetitiveness of such noncompliance, in order to comply with such Performance Guarantee, to continue or resume performance hereunder, to eliminate the cause of such noncompliance, and to reasonably assure that such noncompliance will not recur; (5) promptly prepare all Public Notifications required by Applicable Law, and submit such Public Notifications for publication; and (6) assist the City with all public relations matters necessary to adequately address any public concern caused by such noncompliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

10.02 Effluent Guarantee.

A. Applicable Law and Additional Standards. Except to the extent relieved as provided in Section 10.07 hereof, the Company shall operate the Wastewater Facilities on a continuous, uninterrupted twenty-four (24) hour per day, seven (7) day per week basis so as to receive and treat all Influent and discharge Effluent in compliance with the requirements of Applicable Law, including the NPDES Permit, and that is within the design capabilities of the Facilities.

B. Indemnity for Loss from Non-Complying Effluent. In the event that any Effluent discharged by the

Company fails to comply with the Effluent Guarantee, except to the extent such failure of compliance is caused by an Uncontrollable Circumstance, the Company, in addition to its obligations under Section 6.06 hereof, shall indemnify, defend and hold harmless the City in accordance with Section 13.01 hereof from the Loss of any tort, environmental or other liability resulting in any Legal Proceeding originated by any third party arising from the discharge of such non-complying Effluent. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any person from exposure to such non-complying Effluent based on any theory of recovery, including theories of environmental impairment. The Loss to which the indemnity provided in this Section 10.02 extends shall not be construed to constitute consequential or other damages as set forth in Article 13 hereof, as to which both Parties have waived any rights of recovery.

C. Change in Law Affecting Effluent. The Parties acknowledge that a Change in Law may hereafter affect Effluent standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Agreement Date. In the event a Change in Law affecting Effluent occurs, the Company shall not be entitled to performance relief or additional compensation under this Agreement unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Effluent characteristic or parameter which is more stringent or burdensome to comply with than the Contract Standards applicable to such characteristic or parameter, or requires equipment or processes not then in place or practiced at the Wastewater Treatment Facilities, and (2) the Company is unable, after taking all mitigation measures required under Section 6.16 hereof with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation.

10.03 Wet Weather Operations Guarantee. The Company shall operate and maintain the Facilities to maximize the volume of flows received and treated at the Wastewater Treatment Facilities in accordance with Applicable Law.

10.04 Residuals Guarantee. Except to the extent relieved by Uncontrollable circumstances, the Company shall operate all Residuals processing systems and deliver Residuals in accordance with the requirements of Applicable Law and the Services.

10.05 Odor Control Guarantees. Except to the extent relieved by the occurrence of an Uncontrollable Circumstance, the Company shall comply with all limits and requirements established by Applicable Law in operating the Facilities with respect to odor control.

10.06 Upsets and Non-Specified Influent Affecting Company Compliance with Performance Guarantees.

A. Required Demonstration. The occurrence of an Upset or the receipt of Non-Specified Influent shall not be considered to be an Uncontrollable Circumstance, and the Company shall not be entitled to relief from a Performance Guarantee due to the occurrence of an Upset or the receipt of Non-Specified Influent, except to the extent that the Company affirmatively demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. an Upset actually occurred or Non-Specified Influent was actually received; and

2. the occurrence or receipt thereof could not have been prevented by compliance with the Contract Standards.

B. Response Measures to Upsets and Non-Specified Influent. If an Upset occurs or a Wastewater Treatment Facility received Non-Specified Influent, the Company shall, without limiting its obligations under the Contract Standards; (i) use all reasonable efforts consistent with Prudent Industry Practices to maintain Wastewater Treatment Facility performance as if the Upset had not occurred or Non-Specified Influent had not been received; (ii) advise the City of the situation as soon as possible and no later than four (4) hours of the Company's first knowing of the occurrence of an Upset or the receipt of Non-Specified Influent and advise the City of the Company's planned course of action as soon as possible and not later than twelve (12) hours of the Company's first knowing of the occurrence of an Upset or the receipt of Non-Specified Influent; (iii) submit any notice thereof required by Applicable Law, and (iv) use all reasonable efforts consistent with Prudent Industry Practices to return the Effluent to compliance with the requirements of Applicable Law and the Performance Guarantees as soon as reasonably possible, but, in any event, within fourteen(14) days after an Upset and three (3) days after the Wastewater Treatment Facility has ceased receiving Non-Specified Influent.

C. Reimbursement of Costs. To the extent the occurrence of an Upset or the receipt of Non-Specified Influent constitutes an Uncontrollable Circumstance hereunder, the City will reimburse the Company an amount equal to the reasonable costs incurred by the Company with respect to such Uncontrollable Circumstance, including the reasonable, documented and substantiated costs incurred by the Company in responding to the effect of the Uncontrollable Circumstance on the Facilities and on the treatment and disposal of Effluent and Residuals, but excluding any such costs which would have been avoided had the Company complied with any remedial measures required under Applicable Law and appropriate mitigating measures required by Section 6.16 hereof.

10.07 Notwithstanding any of the City's specific remedies as set forth above, the City in connection with any of the Company's Guarantees will reserve any and all of its rights and remedies provided to it under law or equity.

ARTICLE 11 - PERFORMANCE BOND

11.01 Performance Bond. The Company shall provide an annual performance bond equal to the then current Fixed Fee of the Service Fee as security for the value of the services/work to be performed by the Company under this Agreement. This bond will be issued for a one-year period effective on the Commencement Date and shall be renewed annually thereafter. The form of such bond shall be substantially in the form submitted by the Company and attached hereto as Exhibit 4, and further subject to review and approval by the City's Law Director.

Such bond shall be the security for the performance of the Company's obligations under this Agreement and shall be provided by a surety company approved to transact business in the State of Ohio.

Neither non-renewal by the surety company, nor failure, nor inability of the Company (principal) to file a performance bond for subsequent terms under this Agreement shall constitute loss to the City (oblige) recoverable under the bond. The maximum liability under the bond for the surety is the penal sum of the bond and not cumulative in amount.

ARTICLE 12 - INSURANCE

12.01 Insurance Procurement: Duty to Maintain: Obligation to Provide Continuous Coverage.

A. Procurement. Throughout the Term of this Agreement the Company, on its own behalf and on behalf of anyone directly or indirectly employed by it for whose acts or omissions it may be liable, shall secure, or cause to be secured, and maintain at its cost and expense, including premium payments the insurance policies described in Exhibit 5 and attached hereto. The cost and expense, including premium payments will be included in the Fixed Fee of the Service Fee.

B. Duty to Maintain. Each policy shall be secured prior to the Commencement Date and the policies shall be continuously maintained through the Term of this Agreement.

C. Continuous Coverage. The Company shall assure continuous coverage if any policy is canceled, not renewed or materially changed. The Company shall, at its own expense, pay such extra premium as required to assure no lapse of coverage for any time period.

D. Evidence of Insurance. With sufficient notice copies of all policies of insurance can be made available to the City for the City's review. If a policy is canceled, not renewed or materially changes, a certificate for the substitute policy shall be submitted to the City as soon as possible before the commencement of the policy period. The Company shall annually supply the City with proof of insurance in the form of a Certificate of Insurance which reflects all coverages required by this Agreement.

E. Property Insurance. The City shall procure and maintain property insurance as deemed appropriate for Facilities. The City and the Company hereby waive and release each other with respect to damages caused by events that are covered by the property insurance required herein. The City agrees to provide the Company a waiver of subrogation on behalf of itself and its insurance carriers, to the extent available. The City shall provide the Company with a Certificate of Insurance.

12.02 Policy Requirements and Company Obligations. The policy or policies procured, or caused to be procured hereunder, shall satisfy the following requirements:

A. To the extent possible in the insurance marketplace, each policy shall specifically insure the Company's indemnification obligations.

B. The Company shall promptly provide the City with notice prior to cancellation, non-renewal or material change of each policy subsequent to Company's receipt of such notice by its insurers.

C. Each policy shall provide that the Company and the Company's insurers shall have no right of recovery or subrogation against the City or the Company. The intention of the Parties is that any insurance policy by the Company shall protect both such Parties and shall be the primary coverage for any losses covered by the insurance policies.

D. The City and the employees of the City shall be named as additional insureds on a primary and non-contributory basis with respect to the Company's commercial general liability policy, and auto liability policies. The additional insured status is limited to liability arising out of Facilities operations under this contract conducted by the Company. The Company will be responsible for premium payment and will receive loss proceeds on the part of the City.

E. The Company's insurance policy shall provide that the insurance company shall have no recourse against the City for payment of any premiums or for assessments under any form of policy.

F. The Company shall be solely responsible to satisfy any and all deductibles and self-insured retentions contained in its insurance coverages as well as any excluded loss or losses if the same are within the Company's liability under this Agreement. The Company shall promptly notify the City of any material change to any and all deductibles and self-insured retentions.

G. Each company providing coverage required by this Agreement shall be licensed or authorized to transact business in the State of Ohio.

H. The Company's failure to secure and maintain the insurance required under this Agreement shall not relieve the Company of its liability for any losses intended to be insured thereby. These insurance provisions shall not be construed or interpreted so as to conflict with the indemnification obligations of Article 13 hereof.

I. The Company's failure to secure and maintain the insurance required under this Agreement, notwithstanding any other provision of this Article 12, shall be deemed an Event of Default for purposes under Article 14 hereof.

ARTICLE 13 - INDEMNIFICATION AND LIMITATION OF LIABILITY

13.01 Indemnification by the Company.

A. Except as otherwise set forth in Section 13.01 (B) or (C) hereof and except to the extent that a matter is covered by insurance required to be obtained hereunder, the Company shall defend, indemnify and hold harmless the City, the Department and their respective officials, officers, employees, agents, representatives, consultants, contractors and subcontractors (individually, a "City Indemnitee," and collectively, the "City Indemnitees") from and against any and all liabilities, actions, damages, indirect damages, consequential damages, personal injuries, death claims, other claims, lawsuits, demands, judgments, suits, losses, deficiencies, obligations, fines, penalties, costs and expenses (including legal, accounting and consulting fees) (collectively, "Losses"), to the extent arising out of or relating to, directly or indirectly, (i) performance by the Company or any of its officers, members, employees, agents, representatives, consultants, contractors or subcontractors of the terms and provisions of this Agreement; or (ii) any inaccuracy or misrepresentation in or breach of any representation, warranty, covenant or agreement made by the Company in this Agreement or in any document, certificate or affidavit delivered by the Company pursuant to the terms and provisions of this Agreement, notwithstanding the fact that any such inaccuracy, misrepresentation, breach or noncompliance has been cured by the Company and regardless of whether or not any such inaccuracy, misrepresentation, breach or noncompliance has been cured by the Company and regardless of whether or not any such inaccuracy, misrepresentation, breach or noncompliance constitutes an Event of Default under Article 14 hereof; provided the Company's indemnity shall not extend to any matter for which the City is required to indemnify the Company hereunder.

The Company shall use commercially reasonable efforts to incorporate this indemnification obligation in all subcontracts entered into with suppliers of materials or services, and all labor organizations who furnish skilled and unskilled labor, or who may perform any such labor or services in connection with a contract entered into hereunder.

The Indemnification obligation under this Section 13.01 shall not be limited in any way be any limitation on the amount or type of damages, equitable relief, compensation or benefits payable by or for the Company, any Subcontractor or any Subcontractor of a Subcontractor under worker's compensation acts, or other employee benefit acts. The City shall promptly notify the Company of all notices of claims and tender the defense of claims. The Parties agree to exercise all reasonable efforts to cooperate with one another to the extent their respective interest may appear.

The Company's indemnity obligation includes indemnification for all reasonable expenses, court costs and attorney fees, including those incident to appeals incurred by or imposed upon the City Indemnitees in connection with enforcement or defense of the City Indemnitees' rights to indemnity hereinabove provided. In addition, the Company agrees that the City Indemnitees may employ any attorney (or attorneys) of their choice and/or may use its in-house counsel in a matter to enforce or defend the City Indemnitees' right to the indemnity hereinabove provided. However, if the City Indemnitees engage their own legal counsel, and the Company has engaged or offered to engage legal counsel to defend the City Indemnitees in the matter, the City Indemnitees shall bear their own costs and expenses of their legal counsel, unless the Company's and the City Indemnitees' positions in the matter are in conflict, in which case all reasonable costs and expenses of the City Indemnitees' legal counsel shall be borne by the Company.

B. Notwithstanding the foregoing subsection (A), provided the Company is in compliance with the provisions of Sections 10.01 and 10.06 hereof, to the extent a City Indemnitee incurs any Losses as a result of the Company's unexcused failure to satisfy the Performance Guarantees or other nonperformance by the Company of the terms of this Agreement, which failure or nonperformance is a demonstrated direct result of Non-Specified Influent or a failure by the City to provide a required Capital Improvement pursuant to Section 9.04 (D) of this Agreement, the Company shall indemnify the City Indemnitee to the full extent of the Company's insurance coverage required pursuant to the terms of Article 12 of this Agreement for such Losses, if any, but shall otherwise be relieved of its obligation to indemnify the City Indemnitee to the extent and in such amount as the Losses incurred by the City Indemnitee exceed the Company's insurance coverage required pursuant to Article 12 of this Agreement for such Losses, irrespective of any deductible the Company is required to pay, if any, in connection with such insurance coverage. Notwithstanding the foregoing, at no time shall Company be required to obtain and/or maintain any additional insurance that is not otherwise specifically required pursuant to the terms of this Agreement.

C. The Company need not indemnify nor defend the City Indemnitees for Losses arising from construction project design performed by third parties or construction performed by third parties contracting with the City. In such event, the Parties shall bear their own costs of defense and such Losses as the law assigns to each.

D. With respect to this Section 13.01, the Parties shall have the right to defend their respective interests. The costs for such defense shall be included as part of the costs of Losses of the responsible Party pursuant to this Section 13.01.

13.02 Indemnification by the City

A. To the extent permitted by Applicable Law, and subject to future lawful appropriation of funds, and except to the extent a matter is covered by insurance required to be obtained thereunder, the City shall protect, indemnify and hold harmless the Company and its officials, officers, employees, agents, representatives, consultants, contractors and Subcontractors (individually, a "Company Indemnitee" and collectively, the "Company Indemnitees") from and against any and all Losses arising out of or relating to, directly or indirectly, (i) the negligence or intentional misconduct of the City or any of its officials, employees, agents, representatives, engineers, consultants, contractors or subcontractors in connection with the performance by the City of the City's responsibilities, if any, under the terms and provisions of this Agreement; or (ii) any inaccuracy or misrepresentation in or breach of any representation, warranty, covenant or agreement made by the City in this Agreement or in any document, certificate or affidavit

delivered by the City pursuant to the terms and provisions of this Agreement; provided the City's indemnity shall not extend to any matter for which the Company is required to indemnify the City hereunder.

B. To the extent a City Indemnitee requires any indemnity in any contract with a City contractor relative to the Facilities the City Indemnitee hereby agrees to include the Company as an indemnified party in any such indemnification. The Company shall give prompt written notice of a claim and tender the defense when invoking any right of indemnification.

13.03 Procedure in Event of Indemnity.

A. Notice to the indemnifying party shall be given promptly after receipt by any City Indemnitee or any Company Indemnitee of actual knowledge of the commencement of any action or the assertion of any claim that will likely result in a claim by it for indemnity pursuant to this Agreement. Such notice shall set forth in reasonable detail the nature of such action or claim to the extent know, and include copies of any written correspondence from the party asserting such claim or initiating such action. The indemnifying party shall be entitled, at its own expense, to participate in the defense of such action or claim or, if (i) the action or claim involved seeks (and continues to seek) solely monetary damages, (ii) the indemnifying party is obligated to indemnify and hold harmless the other party with respect to such damages in their entirety pursuant to Section 13.01 or 13.02 hereof, and (iii) the indemnifying party shall admit in writing it obligation to indemnify in connection therewith, then such party shall be entitled to assume and control such defense with counsel chosen by such party; provided, that a decision or judgment with respect to such action or claim will not have any direct or indirect material adverse effect upon the person seeking indemnification. The person seeking indemnification shall be entitled to participation therein after such assumption, the costs of such participation following the assumption to be at its own expense. Upon assuming such defense, the indemnifying party shall agree to be fully responsible for, and to pay, the entire amount of any monetary judgment or settlement, and shall have full rights to enter into any monetary compromise or settlement which is dispositive of the matters involved; provided that such settlement will not have any direct or indirect material adverse effect upon the person seeking indemnification. In the event that the indemnifying party assumes the defense of such action or claim, it shall be conducted by counsel by such party and approved by the party seeking indemnification, which approval shall not be unreasonably withheld.

B. With respect to actions as to which (i) the indemnifying party does not have the right to assume the defense, or (ii) it shall not have exercised its right to assume the defense, the party seeking indemnification shall assume and control the defense of and contest such action with counsel chosen by it and approved by the indemnifying party, which approval shall not be unreasonable withheld. The indemnifying party shall be entitled to participate in the defense of such action, the cost of such participation to be at its own expense. The indemnifying party shall be obligated to pay the reasonable attorneys' fees and expenses of the party seeking indemnification to the extent that such fees and expenses related to claims as to which indemnification is payable under Section 13.01 or 13.02 hereof, as such expenses are incurred. The party seeking indemnification shall have full rights to dispose of such action and enter into any monetary compromise or settlement, provided, however, that in settling any action in respect of which indemnification is payable under Section 13.01 or 13.02 hereof, it shall act reasonably and in good faith.

C. Both the indemnifying party and the indemnified party shall cooperate fully with one another in connection with the defense, compromise or settlement of any such claim or action, including without limitation, by making available to the other all pertinent information and witnesses within its control.

D. Subject to Section 17.12 of this Agreement, in any action relating to a claim for Losses, the parties shall bear such Losses as the law assigns to each.

13.04 Environmental Indemnification. The Company shall not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Facilities, by the Company, its agents, employees, contractors, subcontractors or invitees, except in compliance with all Applicable Laws and with the prior written consent of the City (which the City shall not unreasonably withhold as long as the Company demonstrates to the City's reasonable satisfaction that such Hazardous Substance is necessary or useful to the Company's business and will be used, kept and stored in a manner that complies with all Applicable Laws regulating any such Hazardous Substance so brought upon or used or kept in or about the Facilities. If the Company breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Substances within the Facilities

caused or permitted by the Company results in contamination of the Facilities or the environment, or if contamination of the Facilities or the environment by Hazardous Substances otherwise occurs for which the Company is responsible to the City for damage resulting therefrom, in addition to and not in limitation of Section 13.01 hereof, the Company shall indemnify, defend and hold the City Indemnitees harmless from and against any and all Losses, (including, without limitation, diminution in value of the Facilities and sums paid in settlement of claims, attorney's fees, court costs, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of the City by the Company includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Regulating Entity because of Hazardous Substances present in the soil or ground water on, under or within the facilities or the environment resulting from the Company's breach of its obligations pursuant to this Agreement, or the presence of Hazardous Substances within the Facilities caused or permitted by the Company or contamination of the Facilities or the environment by Hazardous Substances for which the Company is otherwise responsible to the City. Without limiting the foregoing, if the presence of any Hazardous Substances on, under or within the Facilities or the environment caused or permitted by the Company results in any contamination of the Facilities or the environment, the Company shall promptly take all actions at its sole cost and expense as are necessary to return the Facilities to the condition existing prior to the introduction of any such Hazardous Substances to the Facilities and shall promptly take all actions at its sole cost and expense as are necessary to remediate the environment in accordance with all Applicable Laws; provided that the City's approval of such action shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any adverse short-term or long-term effect on the Facilities. The Company's cleanup and remedial obligations as set forth above shall not extend beyond this cleanup and remedial obligations required by any Regulating Entity pursuant to Applicable Law or as otherwise required pursuant to Applicable Law.

Notwithstanding any provision to the contrary contained in this Section 13.04, and provided that the Company is otherwise in compliance with the terms and provisions of this Agreement in all material respects, including without limitation, Sections 10.01 and 10.06 of this Agreement, the Company shall not be liable to the City (i) for any Biologically Toxic Influent contained in the Influent, or (ii) Hazardous Substances anywhere within the subsurface of the Facilities which are existing prior to the Commencement Date to the extent the Company has not aggravated or exacerbated such pre-existing environmental conditions.

13.05 Remedies Cumulative. The remedies provided for herein shall be cumulative.

13.06 Limitation of Liability.

A. Disclaimer of Consequential Damages. The Company and the City acknowledge and agree that because of the unique nature of the undertakings contemplated by this Agreement, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the City or the Company as a result of a breach of this Agreement. In no event, however, shall the City or the Company be liable for or obligated in any manner, except to the extent of indemnification of claims of third parties pursuant to Section 13.01 hereof, to pay incidental, special, punitive or consequential damages of any nature to the other Party because of a breach of this Agreement, warranty, delay or otherwise, arising out of the performance or nonperformance by the Company or the City, as applicable, or their respective obligations under this Agreement, except where such damages are subject to a claim by the Company for insurance, including coverage pursuant to a policy secured as required by Article 12 of this Agreement.

B. Damage Cap. Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of the Company to the City under this Agreement during the Initial Term shall not exceed Twenty One Million Dollars ($21,000,000), regardless of whether such liability arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal or equitable theory; provided, however, that such damage cap shall apply only if the Company has at all times (i) complied with all insurance requirements under Article 12 of this Agreement and (ii) made good faith efforts to demand insurance coverage and proceeds for claims, losses, and damages.

13.07 Pre-Existing Conditions. The Company shall not be responsible for any fines, penalties or other costs connected with any complaint or a violation of any law, regulation, guideline, permit, judgment or order in effect or in existence on any date prior to the Commencement Date of this Agreement or which arise from acts or omissions occurring prior to the Commencement Date of this Agreement.

13.08 Survival. This Article 13 shall survive the termination or expiration of this Agreement.

ARTICLE 14 - EVENTS OF DEFAULT

14.01 Events of Default by the Company. Each of the following shall constitute an Event of Default by the Company after the Commencement Date:

A. To the extent such failures or refusals are not otherwise covered in this Section 14.01 persistent and repeated failure or refusal of the Company to operate and maintain the Facilities in accordance with the performance measures set forth in Article 6 of this Agreement and in accordance with the Performance Guarantees set forth in Article 10 of this Agreement or to perform timely any other obligation under this Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of this Agreement.

B. Failure of the Company to pay amounts owed to the City under this Agreement within sixty (60) days following the date they become due and owing:

C. Failure of the Company to meet any NPDES Permit conditions or requirements on a regular basis, unless such failure is clearly recognized, justified and excused by the terms and conditions of this Agreement;

D. Failure to secure and maintain the insurance required under this Agreement as provided in Article 12 hereof;

E. Failure to maintain solvency, as determined under the applicable definition of "insolvent" contained in 11 U.S.C.§101(32), as amended. The occurrence of any of the following are deemed a failure to maintain solvency;

1. Inability, failure or refusal to pay debts as they mature; entry into an arrangement by the Company with or for the benefit of their creditors; the Company's to or acquiescense in the appointment of a receiver, trustee or liquidator for a substantial part of the Company's property; or

2. A bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Company under the laws of any jurisdiction, which proceeding is not dismissed within sixty (60) days; or

3. Any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding in which the Company approves of, consents to, or acquiesces in any such proceeding; or

4. The levy of any distress, execution or attachment upon the property of the Company which shall substantially interfere with its performance hereunder; provided, however, that with respect to the Company only, this form of insolvency shall not be deemed to have occurred if the insolvency is caused primarily by the City's failure to make a payment due pursuant to Article 8 hereof within forth-five (45) days of when it becomes due and payable.

14.02 Events of Default by the City. Each of the following shall constitute an Event of Default on the part of the City after the Commencement Date:

A. To the extent such failures or refusals are not otherwise covered in this Section 14.02, persistent and repeated failure or refusal of the City to perform timely and material obligations under this Agreement unless such failure or refusal is clearly recognized, justified and excused by the terms of and conditions of the Agreement; or

B. Failure of the City to pay undisputed amounts owed to the Company under this Agreement within ninety (90) days following the time they become due and payable.

14.03 Default Notices; Opportunity to Cure. With the exception of a termination for the reason described in Section 15.01 (B) hereof, this Agreement shall not be terminated for an Event of Default unless and until (i) the Party contemplating termination gives the offending Party written notice in reasonable detail of each Event of Default, the offending Party is alleged to have committed or permitted , and (ii) the offending Party shall have failed to cure such Event of Default within thirty (30) days (or such longer period as may reasonably be

required to diligently effect such cure) following delivery of the Default Notice to the offending Party. Notwithstanding the foregoing, if there are repeated Company Defaults under Sections 14.01 (A) through (D), then, regardless of attempts by the Company to cure the same, the City, in its sole discretion, may terminate this Agreement without giving a Default Notice or affording the Company a period to cure.

ARTICLE 15 - TERMINATION

15.01 Termination of Agreement for a Company Default.

A. If the City gives the Company notice pursuant to Section 14.03 hereof of the occurrence of a Company Default under Section 14.01 (A) or (B) hereof, and the Company Default is not cured within the period set forth in Section 14.03 hereof, the City may terminate this Agreement.

B. Upon the occurrence of a Company Default under one or more of Sections 14.01 (C), (D), or (E) hereof, the City may terminate this Agreement immediately by delivery of a Default Notice to the Company.

15.02 Termination of Agreement for a City Default. If the Company gives the City a Default Notice pursuant to Section 14.03 hereof of the occurrence of a City Default, and such City Default is not cured within the period set forth in Section 14.03 hereof, the Company may terminate this Agreement.

15.03 Termination for Labor Unrest. If, on or after the Commencement Date, personnel employed by the Company and performing services pursuant to the Company's obligations under this Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Company from performing its material obligations under this Agreement, the City, during the pendency of the period in which performance is prevented, may, in its sole discretion, by notice to the Company, terminate this Agreement immediately.

15.04 Termination for Uncontrollable Circumstances. If an Uncontrollable Circumstance shall occur after the Commencement Date relative to a material obligation of the Company or the City under this Agreement and such Uncontrollable Circumstance or the effect thereof prevents performance of such material obligation for a period of thirty (30) days, the City and the Company shall, during or after such thirty (30) day period, meet to review the situation. If, despite the good faith efforts of the Parties to reach an agreement, no agreement is reached within a reasonable time considering the nature and extent of the Uncontrollable Circumstance, then either Party may terminate this Agreement upon notice to the other Party.

15.05 Termination for Insufficient Funding. In the event sufficient funds to pay the Service Fee are unavailable, through the failure of any entity to appropriate funds or otherwise, the City shall have the right to terminate the Agreement upon thirty (30) days prior notice.

15.06 Termination for Breach of Assignment Provision. The Company will not (i) assign or transfer this Agreement or its right, title or interest or obligations therein, in whole or in part, or (ii) voluntarily or involuntarily undergo a Change in Control without, in each instance, the City's advance written approval, which the City has the sole discretion to withhold. If assignment of this Agreement is to an affiliate, subsidiary, or related entity of the Company, the City will not unreasonably withhold consent. Violation of this Section 15.06 will constitute a breach of this Agreement and the City may, in its sole discretion, terminate this Agreement. All rights, title and interest of the Company will thereupon cease and terminate.

15.07 Remedies of the City. If the City terminates this Agreement pursuant to Section 15.01, 15.03 or 15.06 hereof, the City Shall have the right to seek legal and equitable remedies provided by law. If the City shall terminate this Agreement pursuant to Section 15.03 hereof, the City shall pay the Company in addition to those payments and reconciliation amounts specified in Section 15.11 hereof, the Company's out-of-pocket costs as of the date of termination, which shall in no event be greater than the amount of the Fixed Fee of the Service Fee for one Billing Month determined using the Billing Month of the termination. If the City shall terminate this Agreement pursuant to Section 15.04 (unless there has been no meeting) or 15.05 hereof, or for failure of the Parties to agree on a renegotiation of this Agreement, such termination shall be treated as a termination for convenience pursuant to Section 15.09 of this Agreement.

15.08 Remedies of the Company. If the Company terminates this Agreement pursuant to Section 15.02 or 15.03 hereof, the City shall pay the Company the payments and reconciliation amounts specified in Section 15.11 hereof.

15.09 Termination for Convenience. The City may terminate this Agreement in its sole discretion for its convenience and without cause at any time upon one hundred twenty (120) days prior written notice to the Company. If the City exercises its right of convenience termination, the City shall not be liable to the Company for demobilization costs, termination fees or any other costs or expenses except for:

A. With respect to any convenience termination occurring during the Initial Term, the amount of Ninety Thousand Dollars ($90,000) per year remaining on the Initial Term pro rata; and

B. With respect to any convenience termination occurring during the Extended Term, the amount of One Hundred Fifteen Thousand Dollars ($115,000) per year remaining on the Extended Term pro rata.

15.10 Operations Cooperation and Transfer of Personnel.

A. If the City or the Company terminates this Agreement, the Company shall, from the date of the notice of termination make fully available its managers and employees performing services at the Facilities for at least six (6) months after the Termination Date pursuant to this Section 15.10 to continue to perform all the operation, maintenance, repair and management services contemplated in this Agreement. The City may determine that it requires a lesser amount of services, managers, employees and intellectual property in order to provide a smooth and orderly transition of the operation and maintenance of the Facilities to City administrators, managers and personnel or, as applicable, the City's contracted private company; provided, however, in no event shall such provision of services by the Company exceed the tenth (10^{th}) anniversary date of this Agreement as measured from the Commencement Date. The Company shall immediately transfer to the City all intellectual property owned by the City and used or created by the Company during the Term of this Agreement, including, but not limited to, the City's licenses, data, source codes and software, used in, updated or created for the operation of the Facilities. The Company shall fully cooperate with the City to effectuate such a transition, including the provision of training and "know-how" in the procedures and techniques employed by the Company in meeting its obligations under Articles 6 and 10 hereof.

B. Notwithstanding the termination of this Agreement, the City shall compensate the Company for performing the services specified in Section 15.10 (A) hereof on a daily basis in an amount equal to the daily allocated cost of such services calculated on the basis of the Fixed Fee of the Service Fee for the last full Billing Month immediately prior to the Termination Date; provided, however, such daily portion of the Fixed Fee shall be reduced on a pro rata basis to reflect the number of Company employees performing services and the operation and maintenance services performed (the management fee and profit shall be reduced pro rata to reflect the reduction in personnel and services) on a daily basis. The Company shall invoice the City for such Fixed Fee as calculated pursuant to this Section 15.10 (B) within fifteen (15) days after the end of each month after the Termination Date, and the City shall pay to the Company the amount due and owing pursuant to this Section 15.10(B) within forty-five (45) days thereafter. The Company shall comply with the invoicing and date and information provisions of this Agreement in submitting any such invoice to the City.

C. Upon receipt of notice of termination, the Company shall, at the option of the City, cancel outstanding commitments for procurement of services, materials and supplies. In addition, the Company must exercise all reasonable diligence to cancel or divert to other activities its outstanding commitments for procurement of personal services, if the City, in its sole discretion so requires. If, after serving notice of termination for nonperformance or default, the City determines that the reasons for nonperformance or default are excusable and are not the fault of and beyond the control of the Company, the City may, in its sole discretion, authorized the Company to resume work.

D. The Company recognizes and understands that the transition outlined in this Section 15.10 may well result in the City employing or attempting to employ some or all of the managers or personnel employed by the Company and performing services at the Facilities. The Company shall have no covenant not to compete or other restrictions on the City hiring Company employees working on the Facilities.

E. Upon the termination or expiration of this Agreement, the Company shall assign to the City its interest in all contracts entered into by the Company relative to the Facilities if requested by the City, if such contracts do not prohibit such assignment. The City's right to request assignment of certain contracts shall not be read as an obligation by the City to assume all or any of such contracts. The City shall, however, assume the payment and performance of all contracts assigned to it and shall pay any penalties and costs incurred by the Company with respect to the assignment of such contracts. The Company shall

exercise all reasonable efforts in negotiating contracts relative to the Facilities to (i) obtain the written consent of the other parties to such contracts to the assignment by the Company of its rights therein to the City and (ii) secure contract terms and conditions that do not include damages or penalties to any assignee with respect to any assignment.

F. In the event of a Company Default, the City may, in its discretion, determine to perform any Company obligation under this Agreement that the Company has failed to perform. The City may issue a Default Notice informing the Company of the City's intent to perform such obligation(s). The Company shall be obligated to reimburse the City for all costs the City incurs in the performance of such Company obligation(s). The City's performance under this paragraph (F) shall not effect a cure of the Company Default; such cure period shall be tolled during the period the City is performing the Company's obligations.

G. If the City has notified the Company of a Company Default and the City determines, in its sole discretion, that the public safety is threatened by the Company Default, the City may assume operation of the Facilities pending termination of this Agreement and direct Company employees, or contract with others, to take such actions as the City deems necessary or appropriate to ensure the continuity of services or protect the public safety. Damages incurred by the City in such respect shall be paid by the Company.

15.11 Manner of Termination Payment. All performance and payment obligations under this Agreement, including payment of the Service Fee that is due and owing, shall continue pursuant to the terms of this Agreement until this Agreement terminates and any amount accrued but unpaid prior to termination shall, if due and owing, be payable in accordance with this Section 15.11. Except as otherwise specifically provided in this Agreement with respect to the time of payment following termination, within ninety (90) days following termination of this Agreement, the City and the Company shall reconcile all amounts then due and payable to each other under the terms of this Agreement. Upon reaching, as a result of such reconciliation, the total amount of the outstanding unpaid balance which the City and the Company owe the other, the City and the Company shall, within thirty (30) days thereafter, make the final payments in complete discharge of their obligations under this Agreement, except those obligations which survive the termination or expiration of this Agreement. Payment obligations under this Section 15.11 are subject to Sections 8.05 and 8.06 hereof.

15.12 Exclusive Remedies. The remedies specifically set forth in this Agreement are exclusive, and the Parties waive any other remedies they may have at law or in equity subject among other sections to Section 15.07; provided, however, that either Party may seek judicial enforcement of any remedy provided herein and any amounts payable hereunder. The Parties agree and acknowledge that the damages provided for in this Article 15 are to be liquidated damages and shall be the sole and exclusive measure of damages or liability for termination of this Agreement by a Party under this Article 15 and that the provisions for damages set forth herein are intended to measure as accurately as possible the direct damages of the Party entitled to such damages and are not intended to include punitive, special, consequential or incidental damages.

15.13 Survival. This Article 15 shall survive the termination or expiration of this Agreement.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Dispute Resolution. To the extent the Company and the City cannot, after good faith attempts, resolve any controversy or dispute that may have arisen under this Agreement, either the Company or the City, to the extent its respective interest is adversely affected, may refer the matter to mediation in the State, the cost of which shall be borne equally by the City and the Company. Any litigation commenced after mediation must be commenced in the Ohio court system and filed in the County, exclusive of any other judicial forum that may have jurisdiction over the matter.

16.02 Covenant to Perform. The Company and the City shall continue to perform their respective obligations under this Agreement, including payment obligations, except as provided in Section 8.06 hereof, without interruption or slowdown, pending resolution of any dispute(s), unless the matter at issue precludes such continued activity.

16.03 Survival. This Article 16 shall survive the termination or expiration of this Agreement.

ARTICLE 17 - MISCELLANEOUS

17.01 Assignment. The City reserves the right to assign its rights and obligations under this Agreement to any

validly constituted agency, department or authority of the State, or a duly created municipal corporation or authority. The City will provide the Company with prior notice of such an assignment. Such assignee will have full authority to enforce and manage this Agreement, unless otherwise specified by the City.

Except as permitted above, this Agreement shall not be assigned by either Party without the prior written consent of the other Party. The Company shall not assign or transfer this Agreement or its rights, title or interests or obligations under this Agreement, in whole or in part, without in each instance the City's prior written consent, which consent may be withheld by the City in its sole discretion; provided, however, that the Company may assign its interest without such consent to any Affiliate, successor or parent of the Company if (i) the Company shall remain liable for all obligations under this Agreement, and (ii) the Guarantors, pursuant to the Guarantee, fully guarantee the performance of such assignee's obligations under this Agreement. Violation of the terms of this paragraph will constitute a breach of this Agreement and the City may, in such event and within its discretion, cancel this Agreement upon written notice. All right, title and interests of the Company will thereupon cease and terminate. It is understood and agreed between the Parties that this Section 17.01 shall not be construed or interpreted to restrict the Company's ability to employ Subcontractors in connection with the performance of portions of its obligations hereunder.

17.02 Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The City shall execute such further instruments and documents and take such action as may be reasonably requested by the Company and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.

17.03 Relationship of Parties. Except as otherwise explicitly provided herein, neither the Company nor the City shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the Company or the City, respectively, and nothing in this Agreement shall be deemed to constitute the Company or the City a partner, agent, employee or legal representative of any other party or to create any fiduciary relationship, partnership or joint venture between or among the Parties. The Parties agree that the Company has entered into this Agreement and shall be performing the services contemplated herein as an independent contractor. As an independent contractor the Company is solely responsible for the means, methods, techniques, procedures and schedules used to perform the work. The Company has the sole right to control and direct the means, manner and method by which the obligations of this Agreement are satisfied.

Nothing in this Agreement may be interpreted to mean the City may exercise control over how services are provided by the Company nor how the Company satisfied its obligations under this Agreement. Nothing in this Agreement may be interpreted to give the appearance that the Company possesses the apparent or actual authority to act or speak for the City and the Company shall not by words, acts or representations convey to the general public, any Person or any governmental unit the impression that the Company has the authority to speak or act for the City. If any Person believes that the Company has the necessary power to bind the City or believes that the City has the power to control how services are provided by the Company, the Company shall take actions as are necessary to correct the erroneous inferences and prevent reliance on such a mistake of fact.

17.04 Cost Substantiation.

A. Cost Substantiation Generally. The Company shall provide Cost Substantiation for the cost for which the City is financially responsible hereunder, other than the Fixed Fee of the Service Fee. In the case of Cost Substantiation for Subcontractors, the Company shall use its best efforts to provide all information requested by the City. In incurring costs which are or may be subject to Cost Substantiation, the Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable and except with respect to costs of the Company to which the Service Fee applies, obtaining three (3) bids or utilizing a contractor selection process in compliance with Applicable Law to complete a Capital Improvement with costs that are expected to be in excess of the Capital Improvement Threshold Amount), and shall enter into subcontracts on commercially reasonable terms and prices in light of the work to be performed and the City's potential obligation to pay for it.

B. Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Company. Examples of costs which require substantiation include (i) work done on an emergency basis to respond to an Uncontrollable Circumstance, where it is not reasonably practicable for the parties in advance to negotiate price for the work, (ii) Capital Improvements, and (iii) other Additional Services. Cost Substantiation

shall also be required if the parties agree that the Company shall perform work on a cost-plus basis.

C. Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall be signed by the Project Manager for the Company, shall state the amount of such cost and the provisions of this Agreement under which such cost is chargeable to the City, shall describe the competitive or other process utilized by the Company to obtain the commercially reasonable price, shall state that such cost is a fair market price for the service or materials supplied and shall state that such services and materials are reasonably required pursuant to this Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonable demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the City and shall include reasonably detailed information concerning all subcontracts and, with respect to self-performed work, (i) the amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related deliver and transportation costs and any sales or personal property taxes; (ii) a statement of the equipment used and any rental payable therefor; (iii) Company employee hours, duties, wages, salaries, benefits and assessments; and (iv) Company and Subcontractor profit, administration cost, bonds, insurance, taxes, premiums overhead, and other expenses. The Company's entitlement to reimbursement of Cost Substantiated costs of the Company shall be subject to the limitations set forth in this Section 17.04.

Company billing rates shall include actual labor costs and all benefits, and shall not be marked up except as provided in 17.04 (E) hereof.

D. Technical Service. Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and scope to the Services. The Company shall use commercially reasonable efforts to use available Company personnel for additional work hereunder before using Subcontractors.

E. Mark-Up. On all costs incurred by the Company for work performed directly by the Company or any of its Affiliates which are subject to Cost Substantiation, the Company shall be entitled to a mark-up not to exceed ten percent (10%). The price payable to all Subcontractors, including Subcontractor overhead and mark-ups for risk and profit, shall be commercially reasonable. No mark-up will be added to the Company's or Subcontractor's costs for lodging, meals, travel, labor costs of Company employees, or the purchase of Vehicles.

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

17.05 Public Records Law. The Company recognizes the requirements of Ohio Revised Code Section149.43 *et seq.*, otherwise known as the "Ohio Public Records Law," and fully waives and releases any claim against the City and any of its officers and employees relating to the release of any of its documents or information. Furthermore, the Company agrees to defend, indemnify, and hold the City and its officers and employees harmless from any and all claims arising from the release of any document or information made available to the City unless subject to lawful exemption.

17.06 Municipal Income Tax. The Company, if located within the City or doing business within the City, shall withhold all City income taxes due or payable under the provisions of the Municipal Income Tax ordinance for wages, salaries, and commissions paid to its employees pursuant Chapter 880, Section 880.17 of the Codified Ordinances of the City of Strongsville. The Company shall likewise require its subcontractors to withhold any such City income taxes due for services performed under this Agreement.

17.07 Notices and Authorized Representatives.

A. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed sufficient and to have been received (i) when delivered by personal delivery, or (ii) upon delivery by a nationally recognized overnight courier service that provides evidence of delivery, or, if refused, upon the first date of attempted delivery, or (iii) when five (5) days have lapsed after its transmittal by registered or certified mail, postage prepaid, return receipt requested, addressed to the Party to whom directed or that Party's address as it appears below or another address of which that Party has given notice, or (iv) when delivered by facsimile transmission and a copy thereof is

also delivered in person or by overnight courier, or (v) when delivered electronically and confirmation of receipt is provided by the Party to whom the notice is directed.

To the Company:
Christopher Earle
Regional Vice President
Veolia Water North America – Central, LLC
700 East Butterfield Road, Suite 201
Lombard, Illinois 60148
Christopher.earle@veolia.com

With a copy to the General Council:
General Legal Counsel
Veolia Water North America – Central, LLC
53 State Street, 14th Floor
Boston, Massachusetts, 02109
george.kidd@veolia.com

To the City:
City of Strongsville
Department of Public Service
Attn: Director of Public Service
16099 Foltz Parkway
Strongsville, Ohio 44149
servicedept@strongsville.org

With a copy to the Law Director:
City of Strongsville
16099 Foltz Parkway
Strongsville, Ohio 44149
strongsville.law@strongsville.org

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other party.

B. For purposes of this Agreement, the Authorized Representatives are as follows:

For the Company: Richard Meloy, Project Manager

For the City: Joseph Walker, Strongsville Director of Public Service

Either Party may change its Authorized Representative at any time by written notice to the other Party.

17.08 Waiver. Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, and the waiver by either Party of a default or a breach of any provision of this Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of such default or breach or any subsequent default or breach.

17.09 Entire Agreement; Modification and Amendments. This Agreement (and the Exhibits attached hereto) contain the entire understanding between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understanding, inducements and conditions, expressed or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement (including the Exhibits attached hereto) may only be modified or amended by an Amendment or Memorandum of Understanding approved by the City Council in accordance with law. The Company and the City shall be bound by any such Amendment or Memorandum of Understanding.

17.10 Governing Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Ohio.

17.11 Consent to Jurisdiction. The Company hereby irrevocably consents to the Cuyahoga County Common Pleas Court being the venue for all legal actions, in connection with any action or proceeding arising out of or relating to this Agreement.

17.12 Non-Waiver of Immunity. Nothing in this Agreement shall be construed to constitute a waiver of any immunity or defense conferred by law upon or otherwise available to the City, its departments, officers, employees and duly authorized agents as against the Company or any Person.

17.13 Counterparts. This Agreement will be executed by two counterparts, each of which shall be deemed to be an original. All such counterparts shall together constitute but one and the same instrument.

17.14 Severability. The provisions of this Agreement and of each section or other subdivision herein are

independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17.15 Liability of Officers and Employees. No director, officer, agent, consultant, representative or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Agreement, merely because of either Party's execution or attempted execution or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

17.16 Third Party Beneficiary. This Agreement is intended to be solely for the benefit of the Company and the City and their successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto, except as specifically set forth herein.

This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the City and the
Company respectively and their respective partners, successors, permitted assigns and legal representatives.

IN WITNESS WHEREOF, City and Company have signed this Agreement in two counterparts. One counterpart each has been delivered to City and Company.

Attest: _____(s)

Name: Joseph Walker

Title: Director of Public Service

(SEAL)

CITY: City of Strongsville, Ohio

By: _____(s)

Name: Thomas P. Perciak

Title: Mayor

Date: Sept. 16, 2024

Address: 16099 Foltz Parkway

Strongsville, Ohio 44149

(Attach evidence of authority to sign)

Attest: _____(s)

Name: _____

Title: _____

(SEAL)

COMPANY: Veolia Water North America-Central LLC

Signed by:
By: Jason Costa
A3444E8383E1417...(s)

Name: Jason R. Costa, Principal

Title: Vice President

Date: 9/13/2024

Address: 53 State Street, 14th Floor

Boston, MA 02109

(If Contractor is a corporation, a partnership or a joint venture, attach evidence of authority to sign)

CERTIFICATE OF ASSISTANT SECRETARY

OF

VEOLIA WATER NORTH AMERICA-CENTRAL, LLC

The undersigned, Whitney Fawcett, Assistant Secretary of Veolia Water North America-Central, LLC, a Delaware limited liability company (the "Company"), does hereby certify that Jason Costa is the duly elected and acting Vice President of the Company and in such capacity is authorized to execute documents and make commitments with regard to the following:

WASTEWATER FACILITIES
OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES
CITY OF STRONGSVILLE, OHIO

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company this 7th day of August, 2024.

DocuSigned by:

Whitney Fawcett

Whitney Fawcett, Assistant Secretary

1981A032DF2C40F...

SEAL

CITY'S DIRECTOR OF FINANCE CERTIFICATION

I, Eric Dean, Director of Finance for the City of Strongsville, Ohio hereby certify that the money to meet this Agreement has been lawfully appropriated for the year 2024 for the purpose of the Agreement and is in the Treasury of the City, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance and that the remaining years of the contract will be subject to future applicable appropriation ordinances of the City Council of Strongsville in accordance with law.

By: Eric Dean (s)

Name: Eric Dean

Title: Director of Finance

Date: 09-16-24

CITY'S LAW DIRECTOR CERTIFICATION

I hereby certify that I have reviewed and approved the form of the foregoing Agreement.

By: _____ (s)

Name: Neal M. Jamison

Title: Law Director

Date: 9-16-2024