

**SERVICES AGREEMENT FOR THE
1
OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE
CITY OF CAMDEN'S WATER SUPPLY AND SEWER COLLECTION SYSTEMS**

By and Between

CITY OF CAMDEN

and

AMERICAN WATER OPERATIONS AND MAINTENANCE, INC.

Dated: January 19, 2016

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**SERVICES AGREEMENT FOR THE
OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE
THE CITY OF CAMDEN'S WATER SUPPLY AND SEWER COLLECTION SYSTEMS**

THIS AGREEMENT, made this 19th day of January, 2016 by and between the **CITY OF CAMDEN**, a Municipal Corporation of the State of New Jersey ("City"), with offices located at City Hall, 520 Market Street, Camden, New Jersey, 95120 and American Water Operations and Maintenance, Inc., a Texas corporation whose offices are located at 1025 Laurel Oak Road, Voorhees, New Jersey 08043 ("Operator"). The City and the Operator are collectively referred to herein as the "Parties" and individually as a "Party".

WITNESSETH:

WHEREAS, the City currently owns and operates a Water Supply System and a Sewer Collection System within the City limits of the City of Camden, New Jersey; and

WHEREAS, the geographical boundaries and description of such Water Supply System and Sewer Collection System are shown on **Schedule 1** attached hereto; and

WHEREAS, on January 24, 2014, the City and the Camden County Municipal Utilities Authority ("CCMUA") entered into a shared services agreement under which the City requested the that the Authority undertake, on its behalf, a procurement process to obtain the services of a private operator for the Systems; and

WHEREAS, CCMUA, on the City's behalf, issued a *Request for Qualifications and Proposals for a Services Agreement for the Operation, Management, Maintenance and Repair of the City of Camden's Water and Sewer Collection Systems*, dated January 7, 2015 (the "RFQ/RFP"); and

WHEREAS, the Operator was selected as the "Successful Respondent" under Option 1 - Operation, Management, Maintenance and Repair of the City of Camden's Water Supply and

Sewer Collection Systems; and

WHEREAS, the Operator is engaged in the business of operating, maintaining, managing and repairing water supply systems and sewer collection systems; and

WHEREAS, it is the mutual desire of the Parties to enter into an agreement to provide for the operation, management, maintenance and repair of the City's Water Supply System and Sewer Collection System; and

WHEREAS, the City Council has determined that the public health, safety, and welfare of the residents of the City can best be protected by entering into an agreement to provide for the operation, management, maintenance, and repair of the City's Water Supply System and Sewer Collection System;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I. DEFINITIONS.

Section 1.1 Definitions. The following definitions shall apply to and are used in this Agreement:

“Acceptable Finished Water” – means treated water leaving the treatment plant that complies with all applicable guidelines and criteria under Applicable Law.

“Acceptable Influent” – means domestic, commercial, institutional, industrial and other wastewater received in the Separate Sanitary Sewer System excluding any substances or contaminants that violates CCMUA Local Limits or the City’s Sewer Ordinances, whichever is more restrictive, as set forth in **Schedule 3.**

“Acceptable Raw Water” – means raw water coming into the Water Supply System meeting the quality and quantity requirements set forth in a Treatability Study that is to be completed by the Operator within one hundred and twenty (120) days of the Contract Date of this Agreement and then incorporated as part of this Agreement as **Schedule 11** that is within the design parameters of the treatment plant such that the treatment plant is capable of producing Acceptable Finished Water. Until such time as the Treatability Study is completed, Acceptable Raw Water quality shall be determined by the Parties by reviewing the prior eighteen (18) months of documented raw water quality data.

“Agreement” - means this “Services Agreement for the Operation, Management, Maintenance and Repair of the City of Camden’s Water Supply System and Sewer Collection System, and all Schedules attached hereto and made a part hereof, executed by and between the City and the Operator, as the same may be amended from time to time.

“Annual Maintenance, Repair and Replacement Allocation” – means the amount of Maintenance, Repair and Replacement costs that the Operator is responsible for on an annual basis and which is established for the first Contract Year in **Schedule 2** attached hereto.

“Annual City Reserve Fund” – has the meaning set forth in Section 6.2(d).

“Annual Service Fee” - means the sum of the Fixed Management Fee, Pass-through Charge, the Annual Maintenance, Repair and Replacement Allocation, the Annual Utility Allocation and any variable fee components that will be paid by the City to the Operator in accordance with **Schedule 5** attached hereto.

“Applicable Law” – means any federal, State or local statute, local charter provision, regulation, ordinance, rule, mandate, order, decree, permit, code, or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either Party under this Agreement.

“Annual Utilities Allocation” – means the Utilities costs that the Operator is responsible for on an annual basis and which is established for the first Contract Year in **Schedule 2** attached hereto.

“Approved Subcontractor” - means such entity to be approved by the City, who will subcontract with the Operator to provide all or a portion of the Services.

“Billing and Collection Services” - means the billing and collection services to be rendered by the Operator with respect to the Systems in accordance with Section 8.7 and **Schedule 2** attached hereto.

“Board” - means the Board of Public Utilities of the State of New Jersey or any successor agency.

“Capital Improvements” – means any material acquisition, construction, or replacement made to the Systems, including the installation of new structures, equipment, systems or technology as approved by the City.

“Change Order” – means a written document signed by the City and the Operator after the Contract Date requesting a change in the Services. A Change Order may be memorialized by the City through the issuance of a purchase order to the Operator and acceptance of same by the Operator.

“City” - means the City of Camden, a public body corporate and politic of the State of New Jersey, and/or designated representatives thereof.

“City-Controlled Account” - means that account to which all funds collected from the users shall be deposited by the Operator and from which the City will disburse the funds to the Operator and the City in accordance with the terms and provisions of this Agreement.

“City Fault” - means any breach of this Agreement by the fault, failure, negligence or willful misconduct of the City.

“Combined Sewer System” – means the sewers that are designed to collect stormwater, sanitary waste/sewage, and industrial wastewater in the same pipe and shall also include combined sewage pumping stations, combined sewer netting facilities, regulators, and outfalls, future combined sewers that may result from new development and redevelopment within the City, as well as all structures and facilities appurtenant thereto.

“Commencement Date” - means the date that the Operator shall begin the commencement of the Services which shall not be later than February 1, 2016.

“Conditions for Notification” - means those Sewer Collection System conditions set forth in **Schedule 2** of this Agreement, with which the Operator must comply at all times.

“Contract Date” - means the date of execution of this Agreement.

“Contract Year” - means each one year period beginning on the Commencement Date and ending on the day immediately prior to the next succeeding anniversary of the

Commencement Date (which shall be the first Contract Year) and for each succeeding period beginning on the anniversary of the Commencement Date and ending on the day immediately prior to the next succeeding anniversary of the Commencement Date.

"Day" - means a calendar day of twenty-four hours measured from midnight to the next midnight.

"DEP" or "Department" - means the New Jersey Department of Environmental Protection or any successor agency.

"Division" - means the Local Finance Board of the Division of Local Government Services of the New Jersey Department of Community Affairs.

"Environmental Condition" - means soil or groundwater or surface water contamination (a) migrating from any portion of the Systems as the result of a release of a Hazardous Substance originating at, in, or from the Systems to the extent not caused by the negligence or willful misconduct of Operator (including Operator's subcontractors, employees and agents), or which is inherent in operating the Systems; or (b) migrating to the Systems as a result of any source condition existing on other property to the extent not caused by the negligence or willful misconduct of the Operator (including Operator's subcontractors, employees and agents).

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

"Fixed Management Fee" - means the fixed compensation due to the Operator for the Services rendered pursuant to this Agreement, as permitted by the guidelines of IRS Rev Proc 97- 13.

"Governmental Authority" means any federal, State, or local legislative, executive,

judicial, quasi judicial or other public authority, agency, department, bureau, division, unit, court, tribunal or other public body, person or entity having jurisdiction over a Party to this Agreement, or the Systems.

“Green Infrastructure” – means the list of green infrastructure facility locations set forth in **Schedule 12** of this Agreement.

“Hazardous Substance” - means any (a) substance, product, waste or other material of any nature whatsoever which is, or at any time before or after the Contract Date becomes, listed, regulated or addressed pursuant to (i) to Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (“CERCLA”); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; (iii) the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“RCRA”); (iv) the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; (v) the Clean Water Act, 33 U.S.C. Section 1251 et seq.; (vi) applicable New Jersey Environmental Laws and/or (vii) any other federal, state, regional or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to or imposing liability, responsibility or standards of conduct concerning any hazardous, toxic, or dangerous substance, product, waste or other material, as now or any time hereafter in effect; (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the foregoing or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum-based products contained within regularly operated motor vehicles or other equipment; or (d) asbestos; (2) but not chlorine, lubricants or any substances inherent in operating, managing, maintaining or repairing the

Systems.

"Local Public Contracts Law" - means N.J.S.A. 40A:11-1, et seq.

"Maintenance, Repair and Replacement" - means all scheduled and unscheduled maintenance, repair and replacement activities required to ensure the efficient and effective operation of the Systems, including, but not limited to, all normal maintenance of the grounds of the Systems, routine or repetitive activities required to maximize the service life of the Systems and the components thereof, non-routine or unscheduled preventative or corrective maintenance, repair, or replacement activities required for the operational continuity, safety and performance of the Systems, and the replacement of all components of the Systems at the end of their useful life or as necessary to comply with the obligations of this Agreement.

"Minimum Financial Criteria" - means the financial requirements that shall be applicable to the Operator during the Term of this Agreement as set forth in **Schedule 16** attached hereto.

"Minimum Technical Criteria" - means the technical requirements that shall be applicable to the Operator during the Term of this Agreement as set forth in **Schedule 17** attached hereto.

"O&M" - means operation and maintenance.

"Operator" - means American Water Operations and Maintenance, Inc., or its permitted successors or assigns.

"Operator Fault" - means any breach of this Agreement by the fault, failure, negligence or willful misconduct of the Operator.

"Pass-through Charge" - means the increase in the Annual Service Fee paid to the Operator to reimburse the Operator for additional costs of the Operator incurred during a

Contract Year resulting from the occurrence of (a) Unforeseen Events; (b) increase in cost to provide Services due to an expanded scope of services and/or an expanded service area that is not otherwise agreed-to and memorialized in a Change Order based upon a rate agreed upon by and between the Parties; (c) increases subsequent to Commencement Date in the rates charged by PSE&G (or such other entity used by the City) for electricity; (d) any amounts above the Annual Maintenance, Repair and Replacement Allocation and the Annual Utilities Allocation; or (e) other items as identified in the Agreement that entitle Operator to an adjustment to the Annual Service Fee.

“Pass-through Credit” - means the reduction in the Annual Service Fee paid to the Operator to give the City the benefit, on a dollar-for-dollar basis, of the reduction in costs (excluding profit) incurred during a Contract Year resulting from the occurrence of (a) Unforeseen Events; (b) identified, quantified and verifiable operational cost savings resulting from Capital Improvements financed and/or implemented by the City; (c) decreases subsequent to Commencement Date in rates charged by PSE&G (or such other entity used by the City) for electricity, (d) any amounts below the Annual Maintenance, Repair and Replacement Allocation and the Annual Utilities Allocation; or (e) other items as identified in the Agreement that entitle City to an adjustment to the amount owed to Operator.

“Permits” - means permits, approvals and/or licenses issued by the EPA, the Department or any other federal, State or local regulatory agency or private party that is necessary for the proper operation of the Systems.

“Preexisting Environmental Condition” - means the condition of the real property (including, without limitation, soil, subsurface soils, subsurface gases, surface and groundwater) and any and all structures and improvements located at, on, in, under, above, or in the vicinity of

any portion of the Systems on or before the Commencement Date, including, without limitation, the presence at, on, in, under, above or in the vicinity of the Systems of any Hazardous Substances.

“Project Guarantor(s)” - means American Water Works Company, Inc., or its permitted successors or assigns.

“Project Guarantor(s) Agreement” - means the agreement(s) between the Operator and the Project Guarantor(s) that guarantees all of the financial and performance obligations of the Operator.

“Proposal” - means the Proposal submitted by the Operator in response to the RFQ/RFP and accepted by the City.

“Rev. Proc. 97-13” - means IRS Revenue Procedure 97-13, as supplemented, amended, revised or superseded, and any supplement, amendment or revision thereof to the extent applicable to this Agreement.

“RFQ/RFP” - means the *Request for Qualifications and Proposals for a Services Agreement for the Operation, Management, Maintenance and Repair of the City of Camden's Water and Sewer Collection Systems*, dated January 7, 2015, issued by the Authority on behalf of the City.

“Separated Sanitary Sewer System” – means separated sanitary sewers that carry only sanitary wastewater and shall include future sanitary sewers that may result from new development and redevelopment within the City, as well as all structures and facilities appurtenant thereto.

“Separated Storm Water System” – means separated storm sewers that carry only stormwater and shall also include vortex devices, detention basins, all MS4 outfalls, and future

separated storm sewers that may result from new development and redevelopment within the City, as well as all structures and facilities appurtenant thereto.

“Services” - means all of the duties, obligations, and services as defined herein to be provided by the Operator for the Systems, including operational, management and Maintenance, Repair and Replacement services, development and implementation of effective responses to high water loss in the Water Supply System, development and implementation a flood mitigation plan for the City with respect to the Sewer Collection System, development and implementation of a plan for the renewal and replacement of infrastructure, coordination of Systems operations with the City and Authority for Systems-wide optimal performance, regulatory compliance in accordance with the terms and conditions of this Agreement and the Billing and Collection Services, all as further defined in **Schedule 2** attached hereto.

“Sewer Collection System” - means the Combined Sewer System, the Separated Storm Water System and the Separated Sanitary Sewer System, Green Infrastructure, future facilities that may result from the implementation of the CSO Long Term Control Plan set forth in **Schedule 7** and future sewers, regardless of type, that may result from new development and redevelopment within the City.

“Solid Waste” – means solid waste generated within the Systems, but does not include residuals generated from the Water Supply System.

“Start-Up Services” – means those initial tasks required to be performed by the Operator as set forth in **Schedule 2** of this Agreement.

“Start-Up Services Fee” – means the compensation due to the Operator for performing the Start-Up Services rendered pursuant to this Agreement.

“State” - means the State of New Jersey

“Systems” - means collectively all of the individual components and elements which compromise the Water Supply System and the Sewer Collection System all owned by the City.

“Term” - means the period of time in which this Agreement is in full force and effect.

“Total User Charge Rate” - means that rate charged to the users of the Systems.

“Unforeseen Event” - means (a) any acts, events or conditions or any combination thereof (other than a labor strike by the Operator, its employees, affiliates, subcontractors, and/or suppliers) that are (i) reasonably unforeseeable as of the Contract Date, (ii) outside of the reasonable control of the Party relying thereon not performing an obligation or complying with any condition required of such Party under the Agreement; (iii) has had or may be reasonably expected to have a direct, identified, quantified and verifiable adverse effect on the Water Supply System and/or the Sewer Collection System or the operation thereof; (iv) by itself or in combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays the Party’s ability to perform its obligations under this Agreement, expands the scope of the Party’s obligations under this Agreement, or increases the Party’s cost of performing its obligations under this Agreement; including, without limitation the following:

- A. Force Majeure events that are outside the reasonable control of the Party relying thereon, such as acts of God, acts of terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, floods that constitute a 100-year flood, and explosions, civil disturbances, acts of the public enemy, and war;
- B. Change in Law, defined as the enactment, adoption, amendment, promulgation, issuance, modification, repeal, or change of any Applicable Law that (excluding laws adopted at the time of execution of this Agreement but which have provisions that take effect after the Commencement Date) which, establishes requirements affecting the financing or

operation or capital costs of the Systems collectively or the Water Supply System or Sewer Collection System individually that are materially more burdensome than the most stringent requirements in effect as of the Contract Date;

- C. Judicial/Administrative Determinations, defined as the final order, judgment, action and/or determination of any federal, state or local court of competent jurisdiction, administrative agency or governmental body (other than the City if issued pursuant to the provisions of this Agreement expressly authorizing the same);
- D. Permit Terminations, defined as the suspension, termination, interruption, denial or failure of renewal or issuance of any Permit (to the extent not caused by the negligence or willful misconduct of the Operator) that is necessary to operate the Systems collectively or the Water Supply System or Sewer Collection System individually.
- E. Failure of Essential Services, defined as the failure of any appropriate federal, State, municipal, county or other public agency or private utility having operating jurisdiction in the area in which the facility is located, to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Systems collectively or the Water Supply System or the Sewer Collection System individually, except if such failure is caused by the negligence or willful misconduct of the Operator.
- F. Condemnation, defined as the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Systems collectively or the Water Supply System or the Sewer Collection System individually, or any material portion or part thereof by the action of any federal, State or local government or governmental agency.
- G. Labor Strikes, provided however, that those strikes directed at the Operator, its parents or other related entities or any subcontractor(s), employee(s), affiliate(s) and/or supplier(s),

shall not be an event beyond Operator's control.

H. Miscellaneous Other Unforeseen or Uncontrollable Circumstances, as Set Forth Below,

- a. any material change that takes place between the Contract Date and the Commencement Date that materially impacts the Operator's performance of the Services;
- b. delays or denials of any licenses and approvals that that are required to be maintained by the Operator in order to perform the Services;
- c. the existence of a concealed or latent environmental condition at the Systems collectively or the Water Supply System or the Sewer Collection System individually or adjoining sites;
- d. contamination of the Systems collectively or the Water Supply System or the Sewer Collection System individually from Hazardous Substances contained in groundwater, soil or air migrating from sources outside of the Systems;
- e. the result of any act, error or omission of any other contractor engaged by the City, its affiliates, or the CCMUA to perform services at or for the Systems during the Term;
- f. the failure of any governmental body or private utility having operational jurisdiction in the area in which the Systems are located to provide and maintain utilities, or telephone and telecommunication services;
- g. any change in title or placement of any encumbrance on the Systems;
- h. the receipt of raw water in the Water Supply System other than Acceptable Raw Water;

- i. the receipt of influent in the Sewer Collection System other than Acceptable Influent;
- j. the failure of the City to proceed with a Capital Improvement that the Operator determines is necessary to provide the Services in this Agreement;
- k. any Capital Improvement that interferes with the Operator's obligations and responsibilities under this Agreement;
- l. the action or inaction of any third party; and
- m. without prejudice to the generality hereof, any other circumstance, cause or occurrence of any kind whatsoever beyond the reasonable control of a Party.

"Utilities" – means any and all utility services whatsoever including natural gas, water, sewer, fuel oil, electricity, telephone, telecommunications, internet and solid waste collection and disposal required by the Operator to provide the Services.

"Water Act" - means the "New Jersey Water Supply Public/Private Contracting Act," N.J.S.A. 58:26-19 et seq.

"Water Supply System" – means, collectively, all of the individual components and elements which comprise the City's potable water supply system as described in **Schedule 2** attached hereto.

"Wastewater Act" - means the "New Jersey Wastewater Treatment Public-Private Contracting Act," N.J.S.A. 58:27-19 et seq.

Section 1.2. Interpretation. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the words "include," "includes" and "including" when used in this Agreement shall be deemed to be

followed by the phrase "without limitation." The words "agree," "agreements," "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed," except or unless the context may otherwise specify.

ARTICLE II MANAGEMENT SERVICES.

Section 2.1. Operation, Management, Maintenance Repair and Replacement of the Systems. On and after the Commencement Date, the City and the Operator, in combination with each other in the manner herein described, shall operate and manage the Systems and perform Maintenance, Repairs and Replacements of the Systems on the terms and conditions set forth in this Agreement and Schedules attached hereto.

Section 2.2. Irrevocable Performance Letter of Credit or Renewable Performance Bond and Labor and Materials Bond. In order to provide security to the City for the performance by the Operator of its obligations under the Agreement, the Operator must provide one of the following forms of security, selected at the option of the Operator: (i) an annually renewable performance letter of credit, as described below, or (ii) an annually renewable performance bond in an amount equal to 100% of the value of the Fixed Management Fee payable to the Operator in each Contract Year as set forth in **Schedule 5**. If such performance letter of credit or performance bond is to be issued on behalf of a company other than the Operator (e.g. an affiliate, subsidiary or parent), such affiliated company, subsidiary or parent must commit to guarantee the obligations of the Operator under the terms of the Agreement. In addition, the Operator shall be required to provide an annually renewable labor and materials bond in an amount equal to one year's estimated cost of all subcontractor services and materials.

If, during the term of the Agreement, the amount of the yearly Services increases above the initial year Services value by more than twenty percent (20%), or, if in the initial year, a portion of the Services commence prior to the commencement of all of the Services causing an increase in the value of the Agreement equal to or greater than twenty percent (20%), then the City may direct the Operator to increase its performance security to accurately reflect the annual

amount of the Services to be provided. Failure to increase such performance security may subject the Operator to termination of the Agreement and potential damages.

ARTICLE III. TERM

Section 3.1. Term. (a) The Term of this Agreement shall commence on the Commencement Date and, unless earlier terminated in accordance with the terms hereof, shall expire on January 31, 2026.

(b) On the fifth (5th) anniversary of the Commencement Date and prior to the sixth (6th) anniversary of the Commencement Date, unless otherwise extended by the Parties, the Parties agree to meet and discuss in good faith potential adjustments to the Services, the Annual Service Fee, the Annual Maintenance, Repair and Replacement Allocation and the Annual Utilities Allocation based on the initial five (5) years of operations (hereinafter referred to as the "Agreement Adjustment Period"). During the Agreement Adjustment Period, the Parties have the option upon mutual agreement to extend the Agreement for an additional five (5) years until January 31, 2031.

ARTICLE IV. CONDITIONS PRECEDENT

Section 4.1. General. The issuance of a notice to proceed and the establishment of the Commencement Date shall be subject to the satisfaction or waiver of the conditions precedent set forth in this Article IV hereof.

Section 4.2. Conditions Precedent to the City's Obligations. The City shall be under no obligation to perform any obligations under the terms of this Agreement (other than those obligations arising or relating to actions required to be taken by or on behalf of the City pursuant to Article IV prior to issuance of the Notice to Proceed) unless the following conditions have been satisfied (or waived by the City, (in writing)):

- (a) The Board, the Division and the Department shall have approved this Agreement via formal resolution, if applicable.
- (b) The Operator and the Project Guarantor shall have been validly organized and created and shall be validly existing under the laws of the jurisdiction in which each was incorporated and is authorized to transact business in the State, as evidenced by delivery of (1) certified copies of the Certificate of Incorporation and the Certificate of Good Standing and certification of the State that each is authorized to do business in the State; and (2) such other documentation as the City may reasonably require to evidence satisfaction of the requirements set forth in this subparagraph.
- (c) The Operator shall have delivered the Project Guarantor Agreement to the City, and such Project Guarantor Agreement shall be duly executed and delivered by the duly authorized and proper corporate officers of the Project Guarantor.
- (d) The Operator shall have delivered to the City a certificate of an authorized officer

of the Operator, dated the Commencement Date, to the effect that each of the representations of the Operator that are set forth in this Agreement are true and correct as if made on such date.

- (e) The Operator, its employees and/or its subcontractors, as applicable, shall have obtained all applicable Permits, licenses and authorizations that are necessary for the operation, management, maintenance and repair of the Systems.
- (f) The Operator shall have submitted to the City all certificates of insurance and, at the City's option, copies of all applicable endorsements to insurance policies, as are required by the terms of this Agreement.
- (g) The Operator and the Project Guarantor shall have delivered to the City a certificate of an authorized officer of the Operator and the Project Guarantor, dated the Commencement Date, to the effect that no (reasonably foreseeable) material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, state or local governmental authority or agency, or in any federal, state or local court, ~~that~~ seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the Operator or the Project Guarantor that would prevent the Operator's and the Project Guarantor from completing the execution, delivery or performance of this Agreement or the Guarantor Agreement.
- (h) No receiver, liquidator, custodian or trustee of the Operator or the Project Guarantor or of a major part of either entity's property shall have been appointed subsequent to the Contract Date, and no petition to reorganize the Operator or the

Project Guarantor pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Operator or the Project Guarantor shall have been filed; and no adjudication of bankruptcy or a filing for voluntary bankruptcy under the provisions of the United States Bankruptcy Code or any other similar statute which is applicable to the Operator or the Project Guarantor shall have been filed.

- (i) No indictment has been returned against any officer of the Operator or the Project Guarantor with respect to any business transaction, whether or not related to the transactions contemplated by the terms and conditions of this Agreement.
- (j) The Minimum Financial Criteria set forth in **Schedule 16** have been, and continue to be, satisfied as of the Contract Date. The entity for which the Minimum Financial Criteria will be measured will be the Operator, and financial information required to be provided by the Project Guarantors, if any, shall only be provided by the Project Guarantor.
- (k) No change shall have occurred subsequent to the Contract Date and on or prior to the Commencement Date in any applicable federal, State or local law, or any applicable federal, State or local statute, regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by either Party of this Agreement or the compliance by the City with the terms and conditions hereof or the consummation by the City of the transactions contemplated hereby, a violation of such law, statute or regulation.

Section 4.3. Conditions Precedent to Operator Obligations. The Operator shall be

under no obligation to perform any obligations under the terms of this Agreement (other than obligations arising or relating to actions required to be taken by or on behalf of the Operator pursuant to Article IV prior to issuance of the Notice to Proceed) unless the following conditions have been satisfied (or waived by the Operator (in writing)):

- (a) The Board, the Division and the Department shall have reviewed and approved this Agreement via formal resolution, if applicable.
- (b) The City shall have, via approval of the Board, the Division and the Department, allocated the funds necessary for the payment of the Annual Service Fee and for all Services to be performed by the Operator hereunder for the first year of the Term, with anticipated budgeting for the balance of the Term.
- (c) The City shall have, via approval of the Board, the Division and the Department, allocated the funds necessary for the payment of Capital Improvements for the first year of the Term, with anticipated budgeting for the balance of the Term.
- (d) The City shall have delivered to the Operator a certificate of an authorized officer of the City, dated the Commencement Date, to the effect that each of the representations of the City that are set forth in Section 5.1 hereof are true and correct as if made on such date.
- (e) No material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, State or local governmental authority or agency, or in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the City or to any of the agreements that are referred to in this Section as a result of the City's

negotiation, execution, delivery or performance of any such agreement or its participation or intended participation in any transaction contemplated thereby.

- (f) No change shall have occurred subsequent to the Contract Date in any applicable federal, State or local law, or any applicable federal, State or local statute or regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make (i) the execution or delivery by either Party to this Agreement (or the execution or delivery by the Project Guarantor of the Project Guarantor Agreement), (ii) the compliance by the Operator or the Project Guarantor with the terms and conditions hereof or (iii) the consummation by the Operator or the Project Guarantor of the transactions contemplated hereby, a violation of such law, statute or regulation.
- (g) Except as previously disclosed, no change shall have occurred subsequent to the Contract Date and prior to Commencement Date, in the financial condition of the City that would materially and adversely affect for a substantial period of time the ability of the City to meet its financial obligations under the Agreement.

Section 4.4. Satisfaction of Conditions Precedent.

(a) The Parties hereto shall exercise good faith and due diligence in satisfying the conditions precedent required by this Article IV, and shall promptly proceed to perform or cause to be performed those conditions precedent, or portions thereof, that are within each Party's control.

(b) If the Commencement Date has not occurred on or prior to one hundred twenty days (120) after the Contract Date, the period in which the conditions precedent can be satisfied or waived may be extended by joint agreement of the City and Operator, for a period of time to

be agreed upon by the City and Operator, on the same terms and conditions set forth in this Agreement, except to the extent expressly provided below.

(c) In the event that the Commencement Date shall not have occurred on or before the one hundred twentieth (120th) day after the Contract Date or prior to the last day of any extension period elected pursuant to Section 4.4(b), then either Party, by notice in writing to the other Party, may terminate this Agreement. If the reason for such termination is the fault of neither Party to the Agreement, then each Party shall bear its respective expenses attributable to the Agreement. Because the amount of damages are unascertainable if termination is the result of the fault of the Operator for failure to meet conditions precedent within its reasonable control, and through the exercise of reasonable due diligence, then the City shall be entitled to a liquidated damages payment in the amount of \$75,000 per month until a new operator can be procured by the City, but for no more than three (3) months. If termination is the result of the fault of the City for failure to meet conditions precedent within its reasonable control and through the exercise of reasonable due diligence, then the Operator shall be entitled to the payments set forth in Section 9.3(d) as damages.

(d) The Operator and the City shall each provide an executed acknowledgment to the other of the date that the respective conditions precedent to its obligations under this Agreement have been met or waived, and such acknowledgment shall be given within thirty (30) days of the date on which the last such condition is met or waived. Subject to an Unforeseen Event, neither Party will be permitted to terminate this Agreement for failure to satisfy any condition precedent that is entirely and reasonably within such Party's control or which failure is determined to be City Fault or Operator Fault, as the case may be.

Section 4.5. Timing of Certain Obligations.

Pursuant to the Water Act and the Wastewater Act, this Agreement must be submitted to the Division, Department and the Board for review and approval. The City shall be responsible for obtaining such review and approval, and the Operator shall cooperate with the City in providing any assistance and information that is required in order to obtain such review and approval. In the event that the Division, Department and/or the Board conditionally approve this Agreement or any portion thereof and premise final approval on the acceptance of certain proposed terms and conditions by the Parties, to the extent that such terms and conditions are immaterial terms and conditions in that such terms and conditions do not (i) materially and adversely affect the rates to be charged by the City; or (ii) materially and adversely impact the cost to operate and maintain the Systems (or any portion thereof), or the obligations of the City or the Operator to operate and maintain the Systems (or any portion thereof) the Parties shall accept such terms and conditions and shall work cooperatively in an attempt to modify this Agreement to include such terms and conditions. If the proposed terms and conditions imposed by the Division, Department or the Board are material terms and conditions in that such terms and conditions (i) materially affect the rates to be charged by the City; (ii) materially impact the cost to operate and maintain the Systems (or any portion thereof), the Parties shall cooperate in good faith to negotiate acceptable terms and conditions to this Agreement that will satisfy the concerns of the Division, Department or the Board, as the case may be. If the Parties are unable to come to a meeting of minds as it relates to determination of modified terms and conditions that meet the parameters of the conditions imposed by the Division, Department or the Board, then this Agreement will be terminated by the Parties without penalty or prejudice, and the Operator shall be compensated for all Services performed up to the date of termination, if any.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

Section 5.1. City Representations and Warranties. The City hereby represents and warrants to the Operator as follows:

- (a) The City is a municipal corporation duly created and existing pursuant to the laws of the State. The City has the requisite power and authority to enter into this Agreement.
- (b) As of the Commencement Date, the City will have obtained all requisite approvals for the budgeting of the payment for the Annual Service Fee and balance of Services to be performed by the Operator under this Agreement for the first year of the Term, with an allocation and established line-item for the collective Annual Service Fees to be paid to the Operator for the remainder of the Term.
- (c) As of the Commencement Date, the City will have obtained all requisite approvals for the budgeting of the payment of Capital Improvements for the first year of the Term, with an allocation and established line-item for the funding of Capital Improvements for the remainder of the Term.
- (d) The City has the legal capacity and authority to assess the rates for the supply of water and wastewater services to customers of the Systems that are required to be established by the City pursuant to Section 8.5 (Establishment and Collection of Rates, Fees and Charges) hereof. The City has and will maintain for the Term of this Agreement the legal capacity and authority to impose liens for the nonpayment of such rates and fees. Other than the existing indebtedness and any indebtedness for Capital Improvements if such are undertaken and paid for by the

City, there are no liens, notes, bonds, mortgages, encumbrances, or other entitlement to the revenues of the Systems (other than connection fees, if any, which shall be retained by the City), that have priority over the Operator's entitlement to the revenues of the Systems pursuant to this Agreement.

- (e) Other than that disclosed to the Operator in writing referring to this Section, the City is not aware of any claims, suits, actions, or judgments which, if successful, would create an encumbrance upon the revenues of the Systems which would have a priority over the Operator's entitlement to be paid from the revenues of the Systems pursuant to this Agreement, or which otherwise would have a material adverse effect on the ability of either the Operator or the City to perform its obligations hereunder. In the instance of such claims, suits, actions, or judgments, the Operator shall be entitled to relief pursuant to the provisions of an Unforeseen Event, and will be entitled to terminate this Agreement and be compensated for all Services performed up to the date of Termination.
- (f) The City has enacted, or will have enacted by the Commencement Date, all municipal laws, ordinances, or regulations necessary for the performance of this Agreement. The City shall establish rates and fees for water and sewer services in accordance with Section 8.5 hereof, which such rates and fees shall be sufficient to ensure compensation to the Operator for the Services to be performed under this Agreement.

Section 5.2. Operator Representations and Warranties. The Operator represents and warrants to the City as follows:

- (a) The Operator is an entity duly organized and validly existing and in good standing

in the State of Texas and is qualified and authorized to do business in the State.

- (b) The Operator has full power and authority to enter into this Agreement and to perform its duties and obligations hereunder. This Agreement has been duly authorized, executed and delivered by the Operator and the authorization, execution, delivery and performance of this Agreement by the Operator will not violate any law, judgment, order, ruling or regulation applicable to the Operator and does not constitute a breach of or default under any agreement or instrument by which the Operator is bound.
- (c) The Operator has or holds, or will have or hold as of the Commencement Date, and will continue to have or hold throughout the term of this Agreement, all approvals, licenses, Permits, and certifications necessary to operate, manage, maintain and repair the Systems in accordance with the terms and provisions of this Agreement, and competent and experienced personnel on its staff who have direct experience in operating, managing, maintaining and repairing water systems and wastewater collection systems similar in nature and character to the Systems.
- (d) No material litigation is pending or threatened (or reasonably foreseeable) against the Operator that would impair its ability to perform its duties and obligations under this Agreement. In the instance of such material pending or threatened (or reasonably foreseeable) litigation against the Operator that could impair the Operator's ability to perform its duties and obligations under this Agreement, the City shall be entitled to relief pursuant to the provisions of an Unforeseen Event, and will be entitled to terminate this Agreement.

- (e) At all times during the term of this Agreement after the Commencement Date, the Operator shall keep the Systems and all components thereof free from any and all liens and encumbrances arising out of or in connection with its provision of the Services or any acts, omissions or debts of the Operator, its parent, any of its affiliates or subsidiaries, or any of its subcontractors.
- (f) At all times during the term of this Agreement, the Operator or Project Guarantor shall meet and maintain the Minimum Financial Criteria, as set forth in Schedule 16, and will maintain on and after the Commencement Date, the annually renewable performance bond.

ARTICLE VI.
OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE SYSTEMS

Section 6.1. General. (a) On and after the Commencement Date and throughout the term of this Agreement, the Operator shall operate and manage the Systems and perform Maintenance, Repairs and Replacement of the Systems at all times on behalf of the City and shall perform the Services in a professional, efficient and economical manner and in accordance with the terms and provisions set forth in this Agreement and in accordance with the Schedules attached hereto. In addition, the Operator shall perform the Services in compliance with all federal, State and local laws, regulations, Permits and requirements.

(b) The total cost of all Services outlined in this Agreement and in the Schedules shall be included in the Annual Service Fee, to be paid to the Operator in accordance with **Schedule 5**.

(c) The Operator shall include recommendations for Capital Improvements to the Systems in accordance with its responsibilities under Section 7.1 of this Agreement. If a disagreement arises over the Operator's explanation of limitations or proposed recommendations for Capital Improvements, the matter shall be subject to the dispute resolution procedure set forth under Section 10.24 of this Agreement. In such instance, and if the failure to proceed with the Capital Improvement adversely affects the Operator's performance, the Operator may be entitled to relief pursuant to an Unforeseen Event until such dispute has been resolved.

Section 6.2. Maintenance, Repair and Replacement. (a) The Operator shall perform all Maintenance, Repair and Replacement; shall keep the Systems in good working order, condition and repair, in a neat and orderly condition and shall maintain the aesthetic quality of the Systems in accordance with this Agreement and the scope of Services as set forth in **Schedule 2**. The Operator shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the Maintenance,

Repair and Replacement of the Systems.

(b) The Operator shall be responsible for paying for Maintenance, Repair and Replacement costs relating to each and every incident of Maintenance, Repair and Replacement in accordance with the Annual Maintenance, Repair and Replacement Allocation set forth in **Schedule 2** and as set forth in **Schedule 5, Section 5.3** of this Agreement.

(c) Reserved.

(d) The Parties acknowledge that for each Contract Year the City intends to allocate funds to a City controlled Maintenance, Repair and Maintenance fund to provide a source of reimbursement to the Operator for Maintenance, Repair and Replacement costs (the "Annual City Reserve Fund") in excess of the Annual Maintenance, Repair and Replacement Allocation and the Annual Utilities Allocation set forth in **Schedule 2** of this Agreement. The Annual City Reserve Fund for the first Contract Year shall be \$1,300,000. The Operator and the City shall work together to develop the Annual Maintenance, Repair and Replacement Allocation, the Annual Utilities Allocation and the Annual City Reserve Fund for each upcoming Contract Year at least three (3) months prior to the end of the preceding City's fiscal year. The Operator, as part of its monthly reporting obligations under Section 6.18, shall include an accounting of all Maintenance, Repair and Replacement expenditures that occurred during the applicable time period and a cumulative total for the Contract Year to date.

Section 6.3. Computerized Maintenance Management System and Operation and Maintenance Plan. (a) The Operator shall develop, implement and maintain a comprehensive computer-based maintenance management program for all components of the Water Supply System and the Sewer Collection System, in accordance with **Schedule 2** of this Agreement.

(b) Maintenance, Repairs and Replacements shall be performed by the Operator in

accordance with **Schedule 2**, the terms and provisions of this Agreement, the O&M Plan, routine maintenance schedule, manufacturers' recommendations, federal, State and local requirements, and industry standards. The Operator shall maintain documentation of all Maintenance, Repair and Replacement activities.

The Operator shall provide to the City, no later than January 31st of each year, a written O&M Plan that consists of the schedule of predictive and preventive maintenance activities for the upcoming Contract Year. The City shall have thirty (30) days to review such O&M Plan or provide written comments on such plan to the Operator. If the City does not provide such written comments, the O&M Plan shall be deemed approved. The Operator shall include information in its monthly reports that will assist the City on an ongoing basis in evaluating the Operator's maintenance accomplishments relative to the annual O&M Plan. The City shall bring any concerns or questions regarding the monthly reports to the Operator's attention within thirty (30) days of receipt of each report. In the event the Operator fails to provide an annual written O&M Plan and comprehensive monthly reports that detail the preventative maintenance and general maintenance activities provided to the City, the City shall advise the Operator of its deficiency and the Operator will have thirty (30) days to cure.

Section 6.4 Analytical Services. The Operator shall perform testing, sampling and any other analytical procedures to demonstrate compliance with this Agreement, applicable regulatory requirements, and Permit provisions, in accordance with **Schedule 2** of this Agreement.

Section 6.5. Administrative Consent Orders. The Operator shall be responsible for operation, management, maintenance and repair of the Systems in compliance with all Permits and Administrative Consent Orders ("ACOs"), in accordance with **Schedule 2** of this

Agreement; however, to the degree that the cost of operation of the Systems is increased in a quantifiable and verifiable manner thereby, the Operator, so long as the Operator shall not have caused the need for the ACO, shall be entitled to relief pursuant to an Unforeseen Event.

Section 6.6. Equipment and Chemicals. (a) The Operator shall keep all equipment in good operating condition and maintain and operate all equipment and chemicals and perform all tests and testing, in accordance with **Schedule 2** of this Agreement.

(b) All equipment, and chemicals provided by the City, or purchased with City funds, on and after the Commencement Date, including any equipment and chemicals on order, shall be deemed to be owned by the City and shall remain a part of the Systems upon termination or expiration of this Agreement; however, in no instance shall any equipment or chemicals provided by the Operator in performance of the Services be deemed to be owned by the City and title shall remain with Operator.

Section 6.7 Asset Inventory and Maintenance. The Operator shall on or before January 31st of each year for the Term of this Agreement, provide the City with an updated asset inventory with the initial inventory to be based upon **Schedule 10** of this Agreement. Within three (3) years of the execution of this Agreement, the Operator shall provide to the City, a complete Asset Inventory that account for all assets that comprise the Systems. The Operator shall operate, maintain and store the vehicles included in **Schedule 10** of this Agreement, and/or any additional vehicles provided by the Operator, in accordance with **Schedule 2** of this Agreement.

Section 6.8. Buildings and Grounds Services. The Operator shall maintain the current condition of the Systems and the Systems' structures in accordance with **Schedule 2** of this Agreement.

Section 6.9. Utilities. As of the Commencement Date, the Operator shall be responsible for supplying and paying for all Utilities in accordance with the Annual Utilities Allocation set forth in **Schedule 2** and as set forth in **Schedule 5, Section 5.3** of this Agreement.

Section 6.10. Planning. The Operator shall be responsible for supporting the City's short and long-term planning for the Systems, and for development and implementation of all planning documents as required by federal, State and local regulations and requirements, in accordance with **Schedule 2** of this Agreement.

Section 6.11. Economic Development and Redevelopment. The Operator shall provide all reasonable services requested by the City, including the City's Planning and Zoning Boards, or potential developers or others regarding potential development or rehabilitation within the City to the extent such development or rehabilitation affects the Systems. The Operator's use of third party support for such development and redevelopment services shall be included in the Fixed Management Fee so long as these third party-supplied services are capped at one hundred and twenty (120) hours per Contract Year on a rolling basis. Further, if the Operator utilizes less than one hundred and twenty (120) hours of third party-supplied services in a given Contract Year, then any remaining portion of said 120 hours shall carry over to the following Contract Year. This banking of hours process shall continue year-to-year for the entire Term of the Contract as well as any extension thereof agreed to by the Parties in writing.

Section 6.12. Permits. The Operator shall maintain continuous compliance with all federal, State and local Permits held by the City related to the Systems, and obtain any Permits (federal, State or local) required to operate, maintain, or enhance the Systems over the term of this Agreement.

Section 6.13. Solid Waste Management. The Operator shall perform collection and

delivery of all solid waste from within the Systems to disposal facilities, in accordance with **Schedule 2** of this Agreement.

Section 6.14. Water Supply System.

(a) The Operator shall operate, manage and perform Maintenance, Repairs and Replacements of the Water Supply System in accordance with **Schedule 2** of this Agreement, and in compliance with all federal, State and local laws, regulations and requirements and in conformance with applicable Permits, including those contained in **Schedule 7** of this Agreement.

(b) The Operator shall perform raw water monitoring in conformance with all federal, State and local laws, regulations and requirements, and in accordance with **Schedule 2** of this Agreement.

(c) So long as the Water Supply System receives Acceptable Raw Water, the Operator shall provide Acceptable Finished Water in quantities meeting the production and quality requirements specified in **Schedule 2** of this Agreement and as required by applicable Permits. If the raw water fails to meet the parameters required for Acceptable Raw Water, , then it shall be considered an Unforeseen Event. ,

(d) The Operator shall routinely monitor, calibrate, and perform Maintenance, Repair and Replacement of all existing flow meters; periodically remove accumulated iron and manganese deposits from exposed equipment surfaces and unit processes; operate the solids handling and residuals disposal system in accordance with all applicable Permits all in accordance with **Schedule 2** of this Agreement.

(e) The Operator shall perform process and finished water monitoring in conformance with all federal, State and local laws, regulations and requirements, and in accordance with

Schedule 2 of this Agreement.

Section 6.15. Distribution and Storage.

(a) The Operator shall perform Maintenance, Repairs and Replacements of all water mains which become frozen or broken, in accordance with **Schedule 2** of this Agreement.

(b) The Operator shall propose and implement a valve exercising program to address those valves deemed to be critical to the Water Supply System's operation.

(c) The Operator shall flush all hydrants and water mains and record the condition and maintenance of the hydrants, and replace the hydrants, in accordance with **Schedule 2** of this Agreement.

(d) The Operator shall operate all treatment plants and pumping facilities needed to maintain distribution system water pressure at all locations in accordance with **Schedule 2** of this Agreement.

(e) The Operator shall cooperate and assist fire and police department personnel or their representatives in times of fire or other emergencies in accordance with **Schedule 2** of this Agreement.

(f) The Operator shall maintain, monitor and control water capacity in all storage tanks, in accordance with **Schedule 2** of this Agreement.

(g) The Operator shall read, test, calibrate and perform Maintenance, Repair and Replacement of the meters in accordance with **Schedule 2** of this Agreement.

(h) The Operator shall replace all commercial, industrial and residential meters in accordance with **Schedule 2** of this Agreement.

(i) The Operator shall install meters in accordance with **Schedule 2** of this Agreement.

(j) The Operator shall perform distribution system monitoring and notification in conformance with all federal, State and local laws, regulations and requirements and in conformance with applicable Permits, as currently performed by the City, and in accordance with **Schedule 2** of this Agreement.

(k) The Operator shall meet the distribution system operating requirements in accordance with **Schedule 2** of this Agreement.

Section 6.16. Sewer Collection System.

(a) The majority of all combined sewage generated within the City is conveyed via interceptor sewer facilities to the Delaware No. 1 Wastewater Treatment Plant owned and operated by the CCMUA, where same is treated in accordance with an existing contract. Dedicated stormwater sewers discharge directly to the Delaware River or other receiving water bodies. The Operator shall comply with all provisions, amendments and revisions of said contract a copy of which is contained in **Schedule 13** of this Agreement. The Operator shall also operate the Sewer Collection System in conformance with all requirements of said contract, including prohibited discharges and assistance with industrial pretreatment programs, in accordance with **Schedule 2** of this Agreement. If the City's contract with the CCMUA is revised or amended in manner that generates documentable, quantifiable and verifiable cost increases to the Operator to operate the Sewer Collection System and perform the Services related thereto then the Operator's Fixed Management Fee shall be adjusted via Change Order.

(b) The Operator shall operate, manage and perform Maintenance, Repairs and Replacements of the Sewer Collection System in accordance with this Agreement and **Schedule 2** of this Agreement.

(c) The Operator shall maintain an accurate inventory of the Sewer Collection

System, in accordance with **Schedule 2** of this Agreement.

(d) The Operator shall perform Maintenance, Repairs and Replacements in accordance with **Schedule 2** of this Agreement.

(e) The Operator shall clean all manholes, catch basins and collection and interceptor sewers and perform CCTV inspections, in accordance with **Schedule 2** of this Agreement.

(f) Based on the CCTV inspection, the Operator shall develop and implement a program to facilitate Maintenance, Repairs and Replacements of sewer piping and connections on the street side of the curb line, and prepare a list of abandoned service connections in accordance with **Schedule 2** of this Agreement.

(g) The Operator shall operate, inspect and perform Maintenance, Repairs and Replacements of all City-owned pumping stations in accordance with industry standards, manufacturer's material recommendations (provided that the Operator shall undertake all maintenance to ensure effectiveness of all warranties, licenses and permits) and field conditions unique to the individual facility, and **Schedule 2** of this Agreement.

(h) The Operator shall develop a Pumping Station Rehabilitation Program in accordance with **Schedule 2** of this Agreement.

(i) The Operator shall clean and maintain all regulators, weirs, flood gates, netting chambers and outfalls (CSO Equipment), in accordance with **Schedule 2** of this Agreement and the requirements of the CSO Long Term Control Plan.

(j) The Operator shall furnish all labor, materials, equipment and incidentals required to remove and properly dispose of the residuals/debris collected at the pump stations, overflow structures, netting facilities, or through cleaning of the Sewer Collection System in accordance with the requirements of all applicable federal, State and local regulations, and in accordance with

Schedule 2 of this Agreement.

(k) The Operator shall coordinate with a designated person responsible for the City's Industrial Pretreatment Program ("IPP") and notify the City regarding known and/or suspected illegal discharges, in accordance with **Schedule 2** of this Agreement.

(l) The Operator shall develop and implement a preventive maintenance program for the Sewer Collection System in accordance with **Schedule 2** of this Agreement.

(m) The Operator shall operate, inspect, and maintain all separate stormwater sewer systems in accordance with **Schedule 2** of this Agreement.

(n) The Operator shall undertake and maintain a street sweeping program in accordance with the requirements set forth in **Schedule 2** of this Agreement.

Section 6.17. Sewer Collection System Monitoring and Notification Requirements.

The Operator shall perform system monitoring in conformance with all federal, State and local regulations and in conformance with applicable Permits, and comply at all times with the City's Conditions for Notification, in accordance with **Schedule 2** of this Agreement.

Section 6.18. Operation and Maintenance Costs. The Operator shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, fuel for vehicles, storage areas, equipment, office equipment (i.e., copiers, computers, etc.), chemicals, supplies, materials, spare parts, expendables, consumables, testing and laboratory analysis, and any other items required for the Operator to perform the Services, in accordance with the terms and provisions of this Agreement and the Schedules attached hereto, including without limitation Section 10.16.

Section 6.19. Operations Review. The City shall have the right to and intends to exercise its right to actively participate in the review of Services performed by the Operator and any subcontractor throughout the term of this Agreement. The City may, at its sole expense,

retain one or more representatives to undertake an audit of Operator's performance under this Agreement at any time after the second anniversary of the Commencement Date. Results of said audit will be provided to the Operator and the Parties agree to meet and discuss the audit results to determine what, if any, steps each Party must take to address any instances of non-compliance with the terms and conditions of this Agreement, if any. Such audit shall be performed with as much advanced notice as the City and its authorized agents/representatives are able to reasonably provide, and shall be performed as to not disrupt operations.

Section 6.19.1 Monthly Progress Report. The Operator shall prepare and submit Monthly Progress Reports regarding the Services for submission to the City in accordance with Section 2.4.1 of **Schedule 2** of this Agreement. Such Monthly Progress Report shall contain a section that specifically provides a status concerning the development of the Annual O&M Plan as addressed in Section 6.3(b) of this Agreement.

Section 6.19.2. Access to Systems and Records. (a) The City and/or its authorized agents, and representatives from the governing regulatory agencies (e.g., DEP) reserve the right to visit or inspect the Systems at any time, in accordance with **Schedule 2** of this Agreement; however, such inspections shall be performed with as much advanced notice as the City and its authorized agents/representatives are able to reasonably provide, and shall not be performed as to disrupt operations.

(b) The City and/or its authorized agents and representatives shall perform an annual inspection of the Systems, in accordance with **Schedule 2** of this Agreement.

(c) The Operator shall maintain all records of operating data and information relevant to the Systems, including accounting and financial records, and provide the City access to all such records upon request, in accordance with **Schedule 2** of this Agreement;

however, the City shall have access to only operational and financial records related to the Services, and not the Operator's financial models or accounting.

- (d) The Operator shall maintain a computerized recordkeeping system for all operation and maintenance functions performed, in accordance with **Schedule 2** of this Agreement. The Operator shall provide the City, upon request, with copies of all operating data, accounting, financial and other information kept by the Operator in accordance with **Schedule 2** of this Agreement; however, the City shall have access to only operational and financial records related to the Services, and not the Operator's financial models or accounting.

Section 6.19.3. Meetings. The City and the Operator shall meet on a not less than monthly basis to discuss performance of Services, maintenance issues, equipment conditions, environmental and Permit compliance, invoicing issues, public relations and other relevant issues, in accordance with **Schedule 2** of this Agreement.

Section 6.19.4. Condition Assessment of Systems and Review at Expiration of Agreement. A complete Systems condition assessment to determine the condition of the Systems shall be conducted within sixty (60) days of the Commencement Date and periodically thereafter, but in no case less than once every five (5) years, throughout the Term of this Agreement, in accordance with **Schedule 2** of this Agreement.

Section 6.20. Operations and Maintenance Plan.

- (a) The Operator shall prepare and submit to the City for review two separate comprehensive O&M Plans for the Water Supply System, and Sewer Collection System, which will include, among other things, sub-plans for addressing Billing and Collection Services associated with the Systems, in accordance with **Schedule 2** of this Agreement.

(b) The O&M Plan shall dedicate a separate section to detail the Operator's Maintenance, Repair and Replacement program, in accordance with Schedule 2 of this Agreement. The Operator shall make and complete all Maintenance, Repairs and Replacements to the Systems that are necessary to achieve the standards set forth in the O&M Plan by performing all such listed activities within the timeframe indicated in the O&M Plan.

Section 6.21. Continuous Operation. During the Term of this Agreement, the Operator shall continue to operate and maintain all of the City's Water Supply System and Sewer Collection System facilities on a continuous basis, twenty-four hours a day, seven days a week, in accordance with the terms and provisions of this Agreement, and in compliance with all applicable Permits and other federal, State, and local requirements and Schedule 2 of this Agreement.

Section 6.22. Continuity of Service. The Operator shall cooperate in good faith with the City, its agents, contractors, and subcontractors and shall provide for the orderly transition of Services from the City/current operator and/or its/their contractors to the Operator without interruption or disruption of Services and without adverse impacts to customers of the Systems or to the City, in accordance with Schedule 2 of this Agreement. The City shall require that the current operator correspond with the Operator, and shall provide the Operator with all reasonable accommodations and requests as the Operator deems necessary in order to effectuate an appropriate transition of the Services.

Section 6.23. Customer Services and Emergency Response. The Operator shall respond promptly (within two (2) hours) – to the extent practicable – and in a reasonable manner, to all customer problems and emergencies pertaining to the Systems in accordance with Schedule 2 of this Agreement.

Section 6.24. Staffing.

(a) The Operator agrees to interview former City employees currently employed by the current operator and currently working on the Systems for open positions related to the transfer of services, where said employee has the immediate qualifications and skills to perform the relevant open position.

(b) The Operator shall provide a staff of qualified and experienced employees who have direct experience in operating, maintaining and managing potable water and wastewater systems similar in nature and character to the City's Systems, for operations, maintenance and management procedures, and shall provide such additional third-party support as may be needed to perform its duties and obligations hereunder, in accordance with Schedule 6 and Schedule 2 of this Agreement.

(c) The Operator may, after consultation with the City, revise its Staffing Plan contained in Schedule 6, of this Agreement, provided that if said revisions will result in a reduction in the number of individuals contained in the staffing plan, the Operator shall provide the City with a written report explaining the reason for said reduction, confirmation that the reduction shall not negatively impact the level or quality of Services provided by the Operator and shall fully describe the Pass Through Credit that will be provided to the City as a result of said reduction. The City shall not unreasonably withhold, delay or condition its approval of any Staffing Plan reduction proposed by the Operator, but the City shall have the right to propose modifications to the Operator's staffing reduction proposal.

Section 6.25. Licenses. The Operator shall acquire and hold, or cause its personnel to acquire and hold, all required State, federal and local approvals, licenses, Permits, and certifications necessary to operate, maintain and manage the Systems in accordance with the

terms and provisions of this Agreement.

Section 6.26. Compliance with Laws and Regulations and Permits.

(a) The Operator shall comply with the Safe Drinking Water Act ("SDWA"), Water Pollution Control Act ("Clean Water Act"), RCRA, as amended, CERCLA, as amended, Occupational Safety and Health Act ("OSHA"), and any other applicable local, state and federal laws, codes, ordinances and regulations as they pertain to the operation and maintenance of the Water Supply System and Sewer Collection System as set forth in this Agreement. The Operator shall pay all regulatory fines and penalties assessed against the City and/or the Operator for non-compliance resulting from the actions, or lack of action, of the Operator in connection with Services required to be performed by the Operator as defined in the Agreement. Notwithstanding the above, Operator shall be responsible for only those fines and penalties that are in proportion to its degree of fault, failure and negligence, and only to the extent thereof. Should the City, CCMUA, their agents, representatives or affiliates, a third-party (other than the Operator's subcontractors), or some other element outside of Operator's control contribute to the condition that resulted in the fine or assessment or which caused it to arise, Operator shall not be solely responsible therefor. The preceding sentence shall survive the expiration or termination of this Agreement.

(b) The Operator shall comply with and shall satisfy, all regulatory requirements pertaining to the above including, but not limited to, public notification in the event of non-compliance with drinking water standards and the Operator shall pay all costs or fees associated with same.

(c) The Operator shall comply with all applicable State, federal and local laws, regulations and ordinances including, without limitation, all environmental laws and regulations

as they apply to the operation and maintenance of the Water Supply System and the Sewer Collection System and will comply with all Permits issued for or with respect to the Systems as set forth in the Agreement. The Operator shall maintain existing Permits for the Systems (currently held by the City) and will pay all costs associated therewith, including annual fees. In the event that, during the Term of this Agreement, any existing Permit must be renewed, or additional Permits are required, the Operator shall be responsible for completing all necessary applications, including completing required application forms, supplying required data, and paying of required fees for such Permits or Permit renewals. The Operator shall not be required to undertake system modeling or engineering studies in connection with such Permits. All additional and renewed Permits shall be in the name of the City, as the permittee. The costs associated with obtaining additional Permits not currently required to operate the Systems shall be treated as a Pass-through Charge to the City.

(d) On and after the Commencement Date, the Operator shall operate and maintain the Water Supply System and Sewer Collection System in compliance with all applicable laws and Permits as is required by the terms and provisions of this Agreement. The Operator shall indemnify and hold the City harmless from any fines or penalties assessed by a regulatory agency for any and all violations of applicable laws, regulations or Permits resulting from breach of this Agreement, negligence or willful misconduct on the part of the Operator, its agents, servants or employees during the Term of the Agreement that are not a result of a lack of Capital Improvements required by the Systems in order to maintain compliance; however, in all instances, the Operator shall be responsible for indemnifying the City for only the Operator's proportionate degree of fault, failure or negligence, and only to the extent thereof.

(e) Notwithstanding the provisions of paragraph (d), above, to the contrary, the

Operator shall not be responsible for any fines or penalties that do not fall under the terms for operation, management, maintenance and repair of the Water Supply System and Sewer Collection System set forth in this Agreement. These include but are not limited to Capital Improvements required for regulatory compliance, including provision of additional instrumentation at combined sewer overflow locations, prevention of intrusion of receiving waters, addressing potential deficiencies related to the City's long term control plan, engineering studies or assessments required to meet the regulatory standards for Nine Minimum Controls of Combined Sewer Overflows, and reduction of inflow and infiltration.

(f) All Maintenance, Repairs and Replacements to the Systems shall be made by the Operator at its cost and expense, subject to the other terms and conditions of the Agreement, in accordance with existing City ordinances for work in the City including, but not limited to, securing all necessary road opening permits.

Section 6.27. Safety and Security.

(a) In accordance with **Schedule 2**, the Operator shall provide for and maintain security and safety for all Systems' assets contemplated under this Agreement.

Section 6.28. User Complaints.

(a) The Operator shall contain and control noise and odors emitted from the Systems and shall take an active role in the community to improve the local residents' understanding of the operation of the Systems. To the degree that the noise and odors emanating from the Systems are enhanced from the date of the Commencement Date or unable to be maintained at a level that is reasonable to meet all applicable law, Permits, rules, regulations, and community standards, the City shall implement a plan for the making of certain Capital Improvements as recommended by the Operator in order to contain the noise and odors.

(b) If the Operator or the City receives any complaints in relation to the level of odors or noise generated by the Systems, or any other matters related to the Systems, the Party receiving the complaint shall notify the other Party immediately. The Operator shall immediately investigate the complaint and, within three (3) days of the time of the notification of the complaint, prepare and provide to the City for approval, a proposed action plan to remedy the complaint. Upon the City's approval of the Operator's action plan, as may be modified by the City, the Operator shall implement the action plan within a time period to be determined by the City. If the action plan materially affects the Operator's scope of Services, the Parties will address said action plan via a Change Order.

ARTICLE VII. CAPITAL IMPROVEMENTS

Section 7.1. City Responsibilities. If agreed to by both Parties, the Operator may at the City's direction undertake the design, permitting, construction, implementation and financing of Capital Improvements to the Systems. However, the City shall otherwise be responsible for the design, permitting, construction, implementation and financing of Capital Improvements to the Systems. Further, the City, in conjunction with Operator, shall develop a long-term Capital Improvements recommendations ("Capital Improvement Plan") within the first twelve (12) months of the Commencement Date in accordance with **Schedule 2.**

The City shall notify the Operator in writing within thirty (30) days after the end of the City's fiscal year of the projects and expenditures it has undertaken to fulfill the requirements of this Section concerning design, construction, implementation and financing of Capital Improvements to the Systems. The City shall complete all Capital Improvements necessary to maintain compliance with applicable federal, State or local laws and as otherwise

set forth in this Agreement. In the event that the City does not approve or adequately fund a Capital Improvement recommended by the Operator as necessary to operate the Systems in accordance with the Operator's proposed guidelines, or to achieve environmental compliance or required by any regulatory body, the City shall be responsible for any fines, penalties, regulatory actions, increased operating costs, or other resultant fees and costs arising out of such failure to implement a Capital Improvement. In such instance, Operator shall notify the City and provide the City with an explanation of why the City should be responsible for the increased operating or other costs, as well as the cost of such fines and/or civil or criminal penalties, and for contesting such fines and/or civil or criminal penalties resulting from the City's failure to fund the Capital Improvement. If a dispute arises under this Section, then the Parties shall comply with the dispute resolution procedure set forth under Section 10.24 of this Agreement, and the Operator shall be entitled to relief pursuant to an Unforeseen Event.

Section 7.2. Operator Responsibilities.

(a) The Operator shall be required to assist the City in the implementation of all Capital Improvements to the Systems, with the costs thereof being the City's responsibility. Upon the completion of any Capital Improvement to the Systems, the City and the Operator shall negotiate a Change Order that will address the Operator's increased or decreased responsibilities for all Maintenance, Repairs and Replacements to the Systems and the new Capital Improvement, which shall be properly reflected in the Services in the form of a modification to **Schedule 2** approved by both Parties in writing. The City, in consultation with the Operator, shall within the first twelve (12) months of the Commencement Date, develop a Capital Improvement Plan as described in **Schedule 2**. Consistent with this obligation, the Operator shall provide to the City, upon the City's request, operational review of proposed Capital

Improvements.

(b) In the event the Operator deems an element of work to be a Capital Improvement, the Operator shall (i) immediately notify the City or its consulting engineer of the need to perform such work; and (ii) provide the City with an explanation of the reasons why such work is necessary, and (iii) indicate whether the Capital Improvement is included in the Capital Improvement Plan. If the Capital Improvement is not included in the Capital Improvement Plan, the Operator shall provide an explanation of the reasons why such improvement was not included. The City shall determine if and how the Capital Improvement will be implemented, subject to Section 7.3.3.

Section 7.3. Emergencies or Improvements Required by Law. In the event that a Capital Improvement is required (i) in order to continue to provide water and wastewater service to the residents of the City, (ii) to be made to the Systems in order to comply with applicable federal, State or local law, or (iii) if the failure to make a Capital Improvement will jeopardize the health and safety of the residents of the City or the public welfare, or materially and adversely affect the ability of the Operator to perform its obligations under this Agreement, the City shall be obligated to implement such Capital Improvement as soon as practicable under the circumstances. The Operator shall be required to provide the City with a detailed report documenting the applicable federal, State or local law that necessitates the any such Capital Improvement. The Operator's report shall detail the evaluation of all feasible alternatives that could be implemented to eliminate the need for, or reduce the cost of, such Capital Improvement; however, the Operator's implementation of any such feasible alternative thereof, if selected by the City, shall be subject to a Change Order if the costs of the Operator's performance are increased or decreased.

ARTICLE VIII. FINANCIAL TERMS.

Section 8.1. Reserved

Section 8.2. Reserved

Section 8.3. Reserved

Section 8.4. Annual Service Fee. The City, in accordance with Schedule 5, shall pay the Operator the Annual Service Fee calculated in accordance with Schedule 5 of this Agreement. Effective February 1, 2016, the Annual Service Fee shall be \$11,250,797.

Section 8.5. Establishment and Collection of Rates, Fees and Charges.

(a) The City retains responsibility for setting all rates and charges, in accordance with Schedule 5 of this Agreement, and in all instances shall ensure that the established rates are adequate to compensate the Operator for the costs of the Services performed by it hereunder and payment of the Annual Service Fee. The Operator shall implement revised rates and charges on a date specified by the City within sixty (60) days after notification from the City. The City shall continue to review and implement where feasible rate policies that will help to improve customer metering, billing and collections.

(b) Effective on the Commencement Date, and as of each anniversary thereafter throughout the Term of this Agreement, the City agrees, to the extent permitted by law, and in accordance with Schedule 5, to increase its rates for the supply of water and wastewater service to customers of the Systems to at least the rates required to cover the Annual Service Fee to be paid to the Operator for Services provided.

(c) The Operator shall be responsible for the collection of all connection and tapping fees in accordance with Schedule 5 of this Agreement.

(d) The City shall be the sole authority in determining and establishing the connection

and tapping fees to be charged to new customers of the Systems connecting with the Systems. All such connection fees shall be established in accordance with the provisions of State law including, but not limited to, N.J.S.A. 40A:31-11, and all other charges shall be established pursuant to municipal ordinance. All such connection and tapping fees shall be paid to the City within forty-eight (48) hours, and shall remain the property of, the City, including those connection fees paid after the Commencement Date of this Agreement.

Section 8.6. Expenses.

Subject to Sections 6.2 and 6.9, the Operator shall pay all expenses required for the normal operation, management, Maintenance, Repair and Replacement of the Systems as set forth in the Annual Maintenance, Repair and Replacement Allocation in Schedule 2 of this Agreement, as more fully set forth in Schedule 2 hereof.

Section 8.7. Billing and Collections.

- (a) Reserved
- (b) On and after the Commencement Date, the Operator, as agent for the City, shall be responsible for the preparation, maintenance, and delivery of all bills and invoices to the users of the Systems and collection of Revenues and all costs and expenses associated therewith, in accordance with Schedule 2 of this Agreement. The Operator shall conduct billing and collection in accordance with the specific performance standards of Schedule 2 of this Agreement.
- (c) The Operator shall direct the deposit of all funds collected from the users into a City-Controlled Account from which the City will disburse funds to the Operator and the City pursuant to the terms of this Agreement.
- (d) The City agrees to cooperate with the Operator in collection matters and to use its statutory powers pertaining to any and all remedies granted to municipalities for purposes of

collection.

(e) On an annual basis, the Operator shall provide the City with a report that lists all customers being sent a bill. This Report should include, but not be limited to, the customer's name and address and amount billed and collected. The Report should be provided to the City in Microsoft Excel format.

(f) In no instance shall City withhold or delay payment of all or any portion of the Annual Service Fee as result of failure to collect payment of Revenues from customers/users, and shall be obligated to make all payments in a timely manner in accordance with the terms of this Agreement, and in no instance later than thirty (30) days from the date of Operator's invoice. However, the Parties acknowledge and agree that the collection targets set forth in **Schedule 2** of this Agreement shall be one of many metrics by which the City shall judge the performance of the Operator in its provision of Services under this Agreement.

(g) Annually, the Parties shall meet to determine if the billing database utilized by the Operator requires updating. Prior to such meeting, the City shall contact all departments within City government to obtain relevant information concerning tax lien sales, property demolitions, property abandonment, and redevelopment. Prior to such meeting, the Operator shall compile all available information it has concerning account terminations, and service connection terminations. The Operator shall also contact the CCMUA and request a comparison of its billing list against the CCMUA's billing list for the area of the City being serviced under this Agreement.

8.7.1. Customer Service.

The Operator shall handle customer service and complaints relating to billing and collection matters in accordance with **Schedule 2** of this Agreement. The Operator shall

promptly respond (within 24 hours or the next business day following a holiday or weekend) to all customer billing and collection questions, problems, and inquiries and shall maintain a toll free telephone number for customers of the Systems to handle such questions, problems and inquiries, as well as any emergencies, as may arise.

8.7.2. Collection Office.

The Operator shall provide, within the geographical limits of the City, a centrally located collection office (such as a bank) where customers of the Systems may pay their bills during normal business hours Monday through Friday. The Operator shall also provide a “drop box” for customer use to be located in the City Hall; however, the Operator shall not be obligated to accept cash payments at the “drop box” located in City Hall.

8.7.3. Water and Wastewater Service to City and Water Sales by the City.

(a) The Operator shall, at no cost or expense to the City (other than payment of the Annual Service Fee), provide during the term of this Agreement water and wastewater service as provided in this Agreement to the Municipal Building and all other City offices and public and quasi-public facilities, including, but not limited to, the police and fire departments. The City shall cooperate with the Operator in attempting to install meters at all such municipal and quasi-municipal properties, the cost of which shall be a Pass-through Charge. A list of all such municipal and quasi-municipal properties is set forth in **Schedule 14** of this Agreement.

(b) The City may decide to enter into water sale agreements with third parties. The City shall consult with the Operator prior to finalizing any such agreements so that the City and the Operator can determine any affect on the Water Supply System and/or the Services. If the City’s water sales expand the scope of the Operator’s Services or affect the Operator’s costs of performing the Services, the Parties shall address said changes in a Change Order.

Section 8.8. Deposit of Revenues. The Operator shall deposit on a daily basis all revenues collected from the ratepayers of the Water Supply System and Sewer Collection System into a City-Controlled Account maintained for the benefit of the City. The City shall disburse monies in accordance with **Schedule 2** of this Agreement.

ARTICLE IX. DEFAULT AND TERMINATION.

Section 9.1 General Provisions.

This Agreement may be terminated prior to its stated expiration date by the City or the Operator on the terms and conditions set forth in this Article IX. The rights of the City and the Operator to terminate this Agreement shall be strictly construed in accordance with the provisions of this Article IX.

Section 9.2 Termination for Cause by the City.

(a) Upon the happening of any of the following events of default by the Operator, the City shall have the right to terminate this Agreement and/or to pursue a cause of action for actual damages, all as more fully described herein:

1. The persistent and repeated failure by the Operator to provide the Services in accordance with the terms and provisions of this Agreement, and/or applicable laws, rules and regulations;
2. The failure of the Operator to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;
3. If any representation and/or warranty that is not capable of cure is made by the Operator, and such representation and/or warranty shall prove to be false and/or misleading in any material respect, and the legality of this Agreement or the ability of the Operator to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;
4. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the Operator, its parent corporation or Guarantor(s) and which materially and adversely affects the Operator's ability to perform its duties or

obligations under this Agreement; the consent by the Operator, or its parent, to the appointment of and/or taking possession by a receiver, liquidator, assignee, trustee and/or custodian of the Operator, its parent corporation(s) or Guarantor(s) and/or any substantial part of their respective assets which materially and adversely affects the Operator's ability to perform its duties or obligations under this Agreement; the making by the Operator, and/or its parent corporation or Guarantor(s) of any assignment for the benefit of creditors which materially and adversely affects the Operator's ability to perform its duties or obligations under this Agreement; and/or the failure by the Operator, its parent corporation or Guarantor(s) to generally pay its debts as they come due; or

5. The failure by the Operator to make any payment required to be made by the Operator pursuant to the terms of this Agreement, and such failure continues for thirty (30) days following notification of such failure.

(b) Upon the happening of any event described in clause (1), (2) or (5) of paragraph (a) of Section 9.2, the City shall provide written notice to the Operator setting forth in detail the alleged failure and/or deficiency of the Operator. The Operator shall have thirty (30) days after receipt of such written notice from the City to cure and/or correct such failure and/or deficiency or to deliver to the City a written notice alleging that no such event described in clause (1) or (2) or (5) of subsection (a) of this Section 9.2 has occurred and setting forth in detail its reasoning as to why no such event has occurred. In the event that the Operator does not cure and/or correct such failure and/or deficiency within said thirty (30) day period or deliver to the City the written notice described in the preceding sentence within said thirty (30) day period, the City shall provide the Operator with a second written notice affording the Operator an additional thirty (30)

days to cure and/or correct such failure and/or deficiency. If the Operator fails to cure and/or correct the failure and/or deficiency within such second thirty (30) day period, the City shall be entitled to seek specific performance before a court of competent jurisdiction.

(c) Upon the happening of any event described in clause (3) or (4) of paragraph (a) of this Section 9.2, the City shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Operator.

(d) If the City terminates this Agreement in accordance with the provisions of this Section 9.2, the City shall be obligated to pay to the Operator all fees due and owing up to the date of termination, including, without limitation, the prorated portion of the costs of the Start-up Services as set forth in the table of costs contained in Schedule 2, the prorated portion of the Annual Service Fee due to Operator owed as of that date, as well as outstanding Pass-through Charges owed, the prorated portion owed on any Change Orders, and all other fees owing to Operator as of that date, which such amount, the City shall pay within thirty (30) days of the date of termination, less any amounts owed by the Operator to the City required to be made by the Operator pursuant to the terms of this Agreement.

(e) Notwithstanding anything in this Agreement to the contrary, the City shall be entitled to pursue a cause of action against the Operator for any and all actual damages suffered by the City as a result of any default by the Operator. The term damages as used in this Section shall include, without limitation, any and all reasonable costs to the City of (i) restoring the Systems to the condition they would have been in if the Operator had operated, maintained, managed and repaired them in accordance with the requirements of this Agreement, (ii) procuring a replacement operator for the Systems, including the reasonable expenses of the City incurred in connection with any procurement process and any reasonable amount which the City

is required to pay any such replacement operator as a management fee which is in excess of the amounts payable by the City to the Operator under this Agreement for comparable services, and (iii) any fines and penalties imposed on the City as a result of the Operator's failure to perform its obligations under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Operator shall not be responsible to the City for any special, consequential or punitive damages arising from breach of this Agreement.

(f) The Parties agree that with respect to this Section, the Agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The Parties further specifically acknowledge that this provision is intended to "bankruptcy-proof" the Agreement, that this provision is critical to the Agreement, and was "bargained for" and part of the consideration for the Agreement.

To the extent a court of competent jurisdiction holds this Agreement to be an executory contract subject to assumption by the Operator as a debtor pursuant to the Bankruptcy Code, the Operator and the City specifically acknowledge that this Agreement falls within the provisions of 11 U.S.C. Section 365(c)(i)(a) to the extent that the trustee may not assume or assign it without the consent of the City in that "applicable law excuses the party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor-in-possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties."

Alternatively, to the extent a court of competent jurisdiction holds that the Agreement is an executory contract subject to assumption and not within the exception of 11 U.S.C. Section 365(c)(i)(a), the City and Operator specifically agree to the following:

1. The Operator or the debtor-in-possession agrees to perform all obligations

under the Agreement, including curing all defaults and making ongoing payments, or, in the event it chooses not to do so, will move as soon as practicable to reject the executory contract under applicable bankruptcy law.

2. Since the Operator is specialized in the provision of Services and therefore is in a special legal position and has certain unique legal attributes, no other entity can provide "adequate assurance of future performance" as that term is defined under the Bankruptcy Code and therefore the Agreement cannot be assigned.

Section 9.3 Termination for Cause by the Operator.

(a) Upon the happening of any of the following events of default by the City, the Operator shall have the right to terminate this Agreement or pursue a cause of action, for actual damages, all as described herein:

1. The failure of the City to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;
2. If any representation and/or warranty that is not capable of cure is made by the City, and such representation and/or warranty shall prove to be false and/or misleading in any material respect, and the legality of this Agreement or the ability of the City to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;
3. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the City which materially and adversely affects the City's ability to perform its duties or obligations under this Agreement; the consent by the City to the appointment of and/or taking possession by a receiver,

liquidator, assignee, trustee and/or custodian of the City, and/or any substantial part of its assets which materially and adversely affects the City's ability to perform its duties or obligations under this Agreement; the making by the City of any assignment for the benefit of creditors which materially and adversely affects the City's ability to perform its duties or obligations under this Agreement; and/or the failure by the City to generally pay its debts as they come due.

4. The failure of the City to make timely payments to the Operator or otherwise as set forth in this Agreement or, in the event of a dispute, the City's failure to place disputed funds into an escrow account pursuant to Section 10.18, and such failure continues for thirty (30) days following notification of such failure.
5. The failure of the City to perform a Capital Improvement, subject to the provisions set forth below.
6. The failure of the City to pay the costs in excess of the Annual Maintenance, Repair and Replacement Allocation and/or the Annual Utilities Allocation and such failure continues for thirty (30) days following notification of such failure.

(b) Upon the happening of any event described in paragraph (a) of Section 9.3, the Operator shall provide written notice to the City setting forth in detail the alleged failure and/or deficiency of the City. The City shall have thirty (30) days after receipt of such written notice from the Operator to cure and/or correct such failure and/or deficiency. In the event that the City does not cure and/or correct such failure and/or deficiency within said thirty (30) day period, the

Operator shall have the right to terminate this Agreement; provided, however, the Operator shall not terminate this Agreement based on the City's alleged failure to make Capital Improvements pursuant to Section 7.1 of this Agreement until such dispute is resolved pursuant to Section 10.24 of this Agreement.

(c) Upon the happening of any event described in clause (2) or (3) of paragraph (a) of this Section 9.3, the Operator shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the City.

(d) If the Operator terminates this Agreement in accordance with the provisions of this Section 9.3, the City shall be obligated to pay to the Operator all fees due and owing up to the date of termination, including, without limitation, the prorated portion of an mobilization fees, the prorated portion of the Annual Service Fee due and owing as of that date, all outstanding Pass-through Charges owed, the balance owed on any Change Orders, and all other fees owing to Operator as of the termination date, as well as all fees incurred by Operator to demobilize operations, severance costs incurred by Operator resulting from the termination and cessation of Services, as well as all fees and costs incurred by Operator to secure machinery and equipment for use in execution of the Agreement that are not otherwise recoverable, which such amounts, the City shall pay within thirty (30) days of the date of termination or date of determination of the amount thereof, whichever is first, less any amounts owed by the Operator required to be made by the Operator pursuant to the terms of this Agreement.

(e) The Parties agree that with respect to this Section, the Agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The Parties further specifically acknowledge that this provision is intended to "bankruptcy-proof" the Agreement, that this provision is critical to the Agreement and was "bargained for" and part of the

consideration for the Agreement.

To the extent a court of competent jurisdiction holds this Agreement to be an executory contract subject to assumption by the City as a debtor pursuant to the Bankruptcy Code, the City and Operator specifically acknowledge that this Agreement falls within the provisions of 11 U.S.C. Section 365(c)(i)(a) to the extent that the trustee may not assume or assign it without the consent of the Operator in that “applicable law excuses the party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor-in-possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties.”

Alternatively, to the extent a court of competent jurisdiction holds that the Agreement is an executory contract subject to assumption and not within the exception of 11 U.S.C. Section 365(c)(i)(a), the City and Operator specifically agree to the following:

1. The City or the debtor-in possession agrees to perform all obligations under the Agreement, including curing all defaults and making ongoing payments, or, in the event it chooses not to do so, will move as soon as practicable to reject the executory contract under applicable bankruptcy law.
2. Since the City is a public body corporate and politic of the State of New Jersey and therefore is in a special legal position and has certain unique legal attributes, no other entity can provide “adequate assurance of future performance” as that term is defined under the Bankruptcy Code and therefore the Agreement cannot be assigned.

Section 9.4 Termination for Unenforceability of Agreement. If any court, agency and/or other entity with competent jurisdiction shall finally determine that this Agreement is

unenforceable and/or prohibited by law, or, if for any reason the City Council is legally prohibited (such prohibition shall be supported by a written legal opinion) from enacting any ordinance establishing the rates for the supply of water service and wastewater collection service to the customers of the Systems that are required to be established by the City in accordance with the Agreement hereof, or any such ordinance so enacted shall fail to become legally effective or shall no longer be legally effective, then the City and the Operator shall each have the right to terminate this Agreement, upon ninety (90) days' prior written notice to the other Party, provided that the City shall be obligated to make payment to the Operator, as determined pursuant to Section 9.3(d).

Section 9.5. Optional Termination by the City. The City may, at its sole option and discretion, terminate this Agreement if the increase in the Consumer Price Index ("CPI") (as defined in **Schedule 5**) for the prior Contract Year period exceeds four percent (4%) and Operator does not agree to cap the increase in the Annual Service Fee at four percent (4%). In the event the City elects to terminate this Agreement pursuant to this clause, the City shall be obligated to make a payment to the Operator, as determined pursuant to Section 9.3(d).

ARTICLE X. MISCELLANEOUS.

Section 10.1. Insurance.

(a) The Operator shall not commence performance of the Services under this Agreement until it has provided evidence of insurance of the types and in such amounts as is satisfactory to the City and as set forth herein, and such insurance has been approved by the City, nor shall the Operator allow any subcontractor to work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The Operator shall maintain such insurance in full force and effect for the duration of this Agreement.

(b) The insurance policies provided by the Operator at its sole expense and more particularly described hereafter shall specifically designate the City as an additional insured (except for Workers' Compensation and Professional/Errors and Omissions Liability) with respect to the operation, management, maintenance and repair of the Systems.

(c) The Operator shall be responsible for all injuries to persons or for damages to property of third parties occurring as a result of Operator's actions during performance of the Services hereunder, attributable to the negligence of the Operator, its employees, subcontractors, or others acting on behalf of the Operator, and shall defend, indemnify and save harmless the City, its elected and appointed officials, officers, members, employees, consultants, attorneys and agents from liability as provided in this Agreement, but in all instances, only to the extent of an in proportion to the degree of Operator's fault, failure or negligence.

The Operator shall note the insurance requirements set forth below and shall ascertain the cost to it of all the required insurance policies. No separate payment will be made by the City for the cost of the insurance herein specified, but the Successful Respondent(s) shall include the cost of such insurance in the prices for the various items scheduled in the Proposal. In the event the

contractor is self-insured, it must provide satisfactory evidence of its ability to meet the requirements of this section and demonstrate evidence of re-insurance. Successful Respondent shall be responsible for payment of all uninsured deductibles or retentions applicable under the required insurance Certificates, in triplicate, from the insurance carrier(s) representative, stating the limits of liability and the expiration date for each policy and type of coverage shall be filed with the City before Services commence. Certificates evidencing the renewal or replacement of insurance during the term of the agreement shall be furnished to the City on or before the date of such renewal or replacement.

Such certificates shall specifically refer to the Services Agreement and article, and the following paragraphs in accordance with which the insurance is being furnished, and state that such insurance is as required by such paragraphs of this Agreement.

(d) Certificates of the required insurance, listed below, shall be submitted to the City as evidence covering all of the types of coverages required in this contract. Such coverages shall be written by insurance companies possessing an A.M. Best Company rating of at least A- VII, and allowed to do business in the State of New Jersey.

(e) All insurance policies herein required of the Operator shall be written by a company duly authorized and licensed to do business in the State and be executed by an agent therein duly licensed as an agent in the State.

(f) Insurance shall include the type of insurance specified below in not less than the amounts stated and whatever other insurance may be necessary to provide complete protection to the City and the Operator against liability, damage and accident of every kind. Neither approval by the City nor a failure to disapprove insurance furnished by an Operator shall release the Operator from full responsibility for liability, damages, and accidents as set forth herein.

(g) Except as otherwise agreed to in writing by the City, the Operator shall purchase and maintain during the life of this Agreement the following types of insurance in an amount, for each policy, not less than the amounts stated:

1. Workers' Compensation and Employer's Liability Insurance in accordance with the statutory requirements of the State of New Jersey and all other applicable laws and regulations which may apply.

In the case of any subcontracted work, the Operator shall require the subcontractor to provide statutory Workers' Compensation Insurance for subcontractor's employees. The Operator shall purchase and maintain during the life of the Services Agreement Employer's Liability Insurance with a limit of \$1,000,000 each accident, \$1,000,000 each employee and \$1,000,000 policy limit for disease from an insurance company allowed to write such insurance in all states where the Operator will have employees located in the performance of the Services Agreement, and the Operator shall require each of its subcontractors to maintain Employer's Liability Insurance on its employees in the same manner.

2. Commercial General Liability Insurance

- a. Commercial General Liability Insurance, or its equivalent, as shall protect it against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, including loss of use, which may arise from operations under the Services Agreement whether such operations be conducted by the Operator or by any subcontractor or anyone directly or indirectly employed by either of them.

This insurance shall be written on an occurrence form, and shall include coverage for all of the following:

- (i) General aggregate limit;
- (ii) Liability arising from premises and operations;
- (iii) Liability arising from the actions of independent contractors;
- (iv) Liability arising from products and completed operations, with such coverage to be maintained for five (5) years after termination of the Agreement; and
- (v) Contractual liability including protection for bodily injury and property damage claims arising out of liability assumed under this Agreement.
- (vi) Deletion of any collapse or underground hazard exclusions or limitations.

The minimum acceptable limits of liability to be provided by such Commercial General Liability Insurance shall be as follows:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products and Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury
\$300,000 Fire Damage Liability
\$10,000 Medical Expense

3. Business Automobile Liability Insurance

Business Automobile Liability Insurance as shall protect it against claims for damages resulting from 1) bodily injury, including wrongful death, and 2) property damage, including loss of use, which may arise from the operations of any owned, hired or non-owned automobiles used by or for the Operator in any capacity in connection with the performance of the Services Agreement. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$1,000,000 each occurrence/annual aggregate.

4. Excess umbrella liability in an amount not less than \$25,000,000.
5. Should services include Billing and Collection, Employee Dishonesty insurance at a limit of \$500,000 each loss, which will pay for loss of the City's property or money, caused by the unlawful taking of such money or property by the Operator's employees whether acting alone or in collusion with others. The Operator shall obtain an endorsement to its crime policy (ISO Form CR 0401 or its equivalent) and agrees that it will file a claim with its bonding carrier to effect recovery for the City.
6. Environmental (Pollution) Legal Liability insurance at limits of \$1,000,000 each pollution incident and \$2,000,000 annual aggregate, covering bodily injury, property damage and on and off site clean-up (remediation) expenses, for injuries or damages arising out of Operator's work for the City. If applicable, coverage should extend to the transportation of hazardous materials from the City facility or work site to the final disposal site. The City shall be named as Additional Insured, and no cross liability restrictions shall apply.
7. If professional design or engineering services are to be performed, Professional/Errors and Omissions Liability insurance at limits of \$2,000,000 each claim and \$4,000,000 annual aggregate.

If any liability insurance purchased by the Operator has been issued on a "claims made" basis, the Operator must comply with the following additional conditions:

- i. The Operator shall agree to provide certificates of insurance evidencing the above coverages for a period of five years after final payment for the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the

work under the Agreement, and shall cease as of the date of termination of the Agreement and cessation of Services by Operator; or

- ii. The Operator shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the work under this Contract.

If at any time the Operator fails to maintain any of the foregoing policies, or if a company issuing any such policy shall become unsatisfactory to the City, the Operator shall, upon notice from the City, promptly obtain a new policy, submit the same to the City for its approval and submit a Certificate thereof as hereinabove provided. Upon failure of the Operator to furnish, deliver and maintain such insurance as above required, and such failure continues for thirty (30) days, the Services Agreement, at the election of the City, may be immediately suspended, discontinued or terminated. Failure of the Successful Respondent(s) to purchase and/or maintain any required insurance shall not relieve the Successful Respondent of any liability under the Services Agreement.

The City and Operator hereby waive all rights against each other for damages caused by fire or other perils to the extent and degree that the damages are covered by real and personal property and equipment breakdown insurance to be provided by the City, or any other property insurance secured by the City, except such rights as they may have to the proceeds of such insurance. Property and equipment breakdown policies shall provide for this waiver of subrogation by endorsement or otherwise.

Section 10.2. Indemnification.

(a) The Operator shall indemnify and hold harmless the City, its elected and appointed officers, and its duly authorized agents, servants, consultants and employees from any liability including, but not limited to, pollution damages, and also including liability to third parties, for personal injury, including death, property damage or any other losses that are caused by or are directly attributed to the actions, or lack of actions of the Operator or any subcontractor and/or agent selected by the Operator, but only to the extent of and in proportion to the degree of the Operator's fault, failure or negligence.

(b) The Operator shall indemnify and hold harmless the City, its elected and appointed officers, and its duly authorized agents, servants, consultants and employees from any liability including, but not limited to, pollution damages, and also including liability to third parties, for personal injury, including death, property damage or any other losses which are caused by or directly attributable to the use and operation of vehicles and/or equipment used by the Operator, owned or leased by the Operator or owned or leased by the City and used by the Operator, but only to the extent of and in proportion to the degree of the Operator's fault, failure or negligence.

(c) The City shall indemnify and hold harmless the Operator, and its employees, officers, agents and consultants from any liability (including, but not limited to liability to third parties) which is caused by or arise from City Fault, including for acts or events to the extent not caused by Operator prior to Commencement Date.

Section 10.3. New Equipment. Any new equipment, other than replacement of vehicles or other vehicles purchased by the Operator, installed into and made a part of the Systems by the Operator during the term of this Agreement so that same shall be considered a fixture, shall be

owned by the City and shall remain a part of the Systems upon termination or expiration of this Agreement. Prior to making any significant change to the Systems or expenditures of its own for new equipment (other than vehicles), the Operator will consult with the City, and the cost of same shall be paid in accordance with the terms of this Agreement.

Section 10.4. Enforcement. The failure on the part of any Party to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce such provision in the future.

Section 10.5. Assignment. This Agreement shall not be assigned by any Party without the prior written consent of the other Party, except that the Operator shall have the right to assign to an affiliated entity, which shall be a subsidiary of the Guarantor and which shall satisfy the Minimum Technical Criteria set forth in **Schedule 17.**

Section 10.6. Affirmative Action. During the performance of this Agreement, the Operator agrees that it shall comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq. (Affirmative Action and Equal Opportunity) as set forth in **Schedule 9** of this Agreement.

Section 10.7. Entire Agreement. This Agreement, the Schedules attached hereto and any written clarification or modification executed by the Parties contain the entire agreement between the Parties hereto relating to the operation, management, maintenance and repair of the Systems and supersede all previous communications, representations, or agreements. This Agreement may be modified only by written amendment signed by the Parties hereto.

Section 10.8. Notices.

(a) All notices given pursuant to the terms of this Agreement shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid.

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

American Water Operations and Maintenance, Inc.
1025 Laurel Oak Road
Voorhees, New Jersey 08043
Attention: Vice President of Contract Services

With copy to:

American Water Enterprises, Inc.
1025 Laurel Oak Road
Voorhees, New Jersey 08043
Attention: General Counsel

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

The City of Camden
Office of the City Attorney
City Hall
520 Market Street
Camden, New Jersey 08101-5120
Contact Person: City Attorney

(b) The Operator shall issue all public notices associated with non-compliance with regulatory requirements for drinking water standards, in a format acceptable to the City, and the City shall provide all necessary support that the Operator may reasonably require.

Section 10.9. Application of Law. This Agreement shall be construed in accordance with, and is subject to, all applicable laws, rules and regulations of the United States of America, the State, any appropriate political subdivision(s), and any relevant regulatory or administrative agency.

Section 10.10. Relationship. The relationship of the Operator to the City is that of independent contractor and not one of employment. None of the employees or agents of the Operator shall be considered employees of the City. For the purposes of all State, local and federal laws and regulations, the Operator shall exercise primary management and operational decision-making authority.

Section 10.11. Public Relations. The Operator shall develop, with the advice and consent of the City, all communications, publicity and community relations programs in order to keep the City and the Systems' customers informed about the operation and maintenance of the Systems. The Operator will deal in a professional manner with community groups concerned with any aspect of the operation of the Systems, including scheduling of tours of the Systems, if and as requested. The Operator shall prepare written summaries of all formal meetings with the City and/or community groups and provide the City with a copy.

Section 10.12. Notice of Litigation. In the event the Operator or the City receives notice of, or undertakes the defense or the prosecution of, any actions, claims, suits, administrative or arbitration proceedings or investigations in connection with the Systems, the Party receiving such notice or undertaking such prosecution shall give the other Party timely notice of such proceedings and will inform the other Party in advance of all hearings regarding such proceedings.

Section 10.13. Cost Substantiation. With respect to any costs and expenses incurred or to be incurred by the Parties hereto in the performance of their obligations hereunder, all such costs and expenses shall be reasonably documented and accompanied by a certificate, signed by an authorized representative of the City or the Operator, as the case may be, stating the reason for incurring the cost, the amount of the cost, including labor, materials and a fixed overhead, the event or Section of this Agreement giving rise to the requesting Party's right to incur such cost, and that such cost represents a competitive price for the service or materials (for services and materials supplied by third-party vendors, with the exception of previously competitively procured master services and other contracts in place with Operator as of the Contract Date, the Operator shall comply with the requirements of **Schedule 15** and shall obtain a minimum of

three (3) quotes from three different vendors) supplied and any other information that is reasonably requested by the other Party in order to assist in the evaluation and approval of the cost; provided, however, that such amounts shall not include any contingency amounts.

A fixed overhead of 8%, which the Operator represents is a reasonable charge for its administrative overhead, is to be applied to Pass-through Charges and to additional services that the Operator may provide to the City pursuant to a contract amendment, provided no additional profit or overhead shall be charged by the Operator. For any Pass-through Charges that are subject to cost substantiation, the Operator shall follow the Agreed Procurement Procedures set forth in **Schedule 15** attached hereto and made a part hereof.

Section 10.14. Reserved

Section 10.15. Hazardous Wastes. If, during the course of excavation work (or other construction) necessary to make Repairs and/or improvements, or Capital Improvements to the Systems, hazardous waste materials or other Hazardous Substances are uncovered by the Operator, it shall not be the obligation of the Operator to remove and dispose of such hazardous substances. The Operator shall, however, take all of the necessary steps to protect the existing Systems from contamination, the cost of which shall be a Pass-through Charge, and to notify the appropriate agencies and determine the necessary steps to properly dispose of such hazardous waste. The parties legally responsible shall pay all costs for such removal, and Operator shall not be responsible for same.

Section 10.16. Unforeseen Events.

If an Unforeseen Event occurs, the affected Party shall be entitled to:

(a) relief from its performance obligations under this Agreement to the extent the occurrence of the Unforeseen Event prevents the affected Party's performance of such

obligations;

(b) an extension of schedule to perform its obligations under this Agreement to the extent the occurrence of the Unforeseen Event prevents the affected Party's ability to perform such obligations in the time specified in this Agreement; and

(c) an increase in the Annual Service Fee to be paid under this Agreement to the extent the occurrence of the Unforeseen Event impacts the Operator's costs of performance of its obligations under this Agreement.

The occurrence of an Unforeseen Event shall not, however, excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation under this Agreement not affected by the occurrence of the Unforeseen Event. The City shall continue to pay the Annual Service Fee to the Operator during the continuance of any Unforeseen Event. The Parties shall commence negotiations for appropriate relief consistent with this section upon five (5) days' notice by either Party to the other. If the Parties are unable to reach an agreement for appropriate relief within thirty (30) days of commencing negotiations, both Parties shall have the right to implement dispute resolution pursuant to the terms of Section 10.24 hereof.

The Party that claims the occurrence of an Unforeseen Event shall notify the other Party by telephone, electronic mail or facsimile promptly after the Party affected by such Unforeseen Event first knew of the occurrence thereof, followed within fifteen (15) days by a written description of the Unforeseen Event, the cause thereof (to the extent known), the date the affected Party became aware of the Unforeseen Event, its expected duration, and an estimate of the specific relief requested by the affected Party. The affected Party shall use good faith efforts to reduce costs resulting from the occurrence of the Unforeseen Event, fulfill its performance

obligations under this Agreement and otherwise mitigate the adverse effects of the Unforeseen Event. While the Unforeseen Event continues, the affected Party shall give the other Party a monthly update of the information previously submitted. The affected Party also shall provide prompt written notice to the other Party upon the cessation of the Unforeseen Event.

The Operator shall not be responsible for any damage caused to the Systems as a result of an Unforeseen Event, and the City shall be responsible for the cost of any necessary repairs, maintenance or Capital Improvements required for the normal operation of the Systems instruments and equipment. At the City's request, the Operator may assist with or perform the necessary Capital Improvements at a mutually agreeable cost to be negotiated between the Parties, which shall be considered an additional service. The City shall be responsible for making Capital Improvements that are necessitated by Unforeseen Events or a change in law, regardless of cost. The Operator and the City shall determine what, if any, operation and maintenance cost savings are generated from any Capital Improvement and shall adjust the Fixed Management Fee appropriately via a contract amendment. If an Unforeseen Event occurs that causes an adverse change in the operations of the Systems or increases in the operational costs, the Operator shall prepare a proposal to be submitted to the City and the City's consulting engineer that describes the cause of the changes, the extent of the changes, the anticipated duration of the changes, the cost impact (increase or decrease) of the changes, and the duration of time that such anticipated cost increases or decreases will be in effect. If the City approves the changes, such cost increases or decreases will be paid as a Pass-through Charge or Pass-through Credit, as the case may be and payable immediately, and the remainder thereof as it impacts ongoing costs shall be recovered through an increase or decrease in the Annual Service Fee in the following year (or amortized as agreed to by the Parties and included in the then current year). If the City does not

approve the changes, the Parties will use reasonable and good faith efforts to resolve the issue pursuant to Section 2.3 hereof. In the event any such dispute is not resolved pursuant to Section 2.3, the Parties may take other actions to resolve such dispute, including filing claims in a court of competent jurisdiction. The City also may submit proposals to decrease the Annual Service Fee if an Unforeseen Event occurs that causes a decrease in costs.

Section 10.17. System Regulations. The City shall maintain in effect, or cause to be maintained in effect, and amend, or cause to be amended, as necessary from time to time, the requirements, rules, regulations and ordinances which currently exist in regard to the Systems.

Section 10.18. Covenant to Continue Work. Without limiting either Party's rights under Article IX or other provisions of this Agreement, during resolution of any dispute under this Agreement, the Operator and the City shall each continue to perform all of their respective obligations under this Agreement without interruption or delay. In the event any dispute arises under the Agreement relative to any payment obligations, the disputing Party shall deposit said monies in an escrow account until resolution of the issue.

Section 10.19. Cooperation with Financing. The City agrees to reasonably cooperate in good faith with the Operator in connection with any financing or refinancing of financing responsibilities of the Operator with respect to the Systems.

Section 10.20. City's Obligations.

(a) It is understood that the City shall pay to the Operator the Annual Service Fee through the revenues of the Systems and other available revenues of the City, as are approved in advance for each budgetary year, and that the City shall take all reasonable and necessary steps to provide for and to authorize the payment of all amounts due to the Operator from the City

under this Agreement as the same become due and payable.

(b) In consideration of the Operator entering into this Agreement and to provide funds for such purpose through financing or otherwise, the City agrees that the pledge set forth in this Section and all related covenants and agreements in this Agreement are for the equal benefit, protection and security of the Operator, any assignee of the rights of the Operator hereunder, and any person lending money or providing credit in connection with any financing relating to the Systems.

Section 10.21. City Approvals. When it is provided in this Agreement that any matter is subject to the approval or review of the City, except as to matters which are expressly stated to be in the City's sole discretion, the City shall not unreasonably withhold or delay any such approval or review. Any task that the City may request or require the Operator to perform or any information or other material the City may request or require the Operator to provide shall be reasonably requested or required.

Section 10.22. Survivorship. Notwithstanding anything in this Agreement to the contrary and not intending to limit the rights of the Parties, the Parties agree that (i) all claims for breach of this Agreement will survive termination of this Agreement and the obligations of the Project Guarantor(s) with respect to those claims that will survive termination of this Agreement, except as otherwise provided in the Guarantor Agreement; (ii) the City's ability to draw upon the performance bonds as contained in Article II, Section 2.2 shall survive termination of this Agreement for so long as same remain in effect; (iii) the indemnification provisions contained in Article X, Section 10.2 shall survive termination of this Agreement for a period of three (3) years following the date of the Agreement's termination.

Section 10.23 Severability. In the event that any material provision of this Agreement,

for any reason, shall be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments to this Agreement or to take such other actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement, as so amended, shall remain in full force and effect.

Section 10.24. Dispute Resolution. In the event that a dispute arises among the Parties, the disputing Party shall provide the other Party with written notice of the dispute and within twenty (20) days after receipt of said notice, the receiving Party shall submit to the other a written response. The notice and response shall include a statement of each Party's position and a summary of the evidence and arguments supporting its position. Each Party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive or officer shall also be included in the notice and response. The executives or officers shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing Party's notice and thereafter as they reasonably deem necessary to resolve the dispute. If the executives or officers have not resolved the dispute through good faith efforts within thirty (30) days after such initial meeting, then unless otherwise agreed, before resorting to the courts, the Parties shall try in good faith to resolve the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. All costs attributed to mediation shall be borne equally by both Parties.

Absent mutual consent by both Parties, in the event that one of the Parties brings a dispute immediately to court without first following the afore-mentioned dispute resolution process, then the opposing Party shall be entitled to recover reasonable attorneys' fees and costs from the Party initiating the litigation if either (a) the case is remanded and the Parties are

ordered to follow the dispute resolution process outlined herein or (b) the dispute is heard and judgment is awarded in favor of the opposing Party.

All payments or funds that are the subject matter of a dispute between the Parties shall be paid into an escrow account until such time as the dispute is fully resolved either through mediation or litigation. During the course of any dispute between the Parties each Party must comply with all terms and conditions of, and continue to perform all Services required under, this Agreement, except as otherwise set forth herein to the contrary.

The Parties consent to jurisdiction of any state or federal court located in Camden County, New Jersey.

Section 10.25 Rev. Proc. 97-13. The City and Operator acknowledge and agree that this Agreement is intended to conform to the requirements of Rev. Proc. 97, and is to be interpreted consistently therewith. Notwithstanding any provisions in this Agreement to the contrary, the City and Operator agree that the City shall be under no obligation to pay, and shall not pay, compensation to the Operator for the provision of the Services for any annual period to the extent such payment would exceed the limitations specified for qualified management contracts in Rev. Proc. 97-13. The City and the Operator agree that, for so long as tax-exempt obligations are outstanding with respect to the Systems, this Agreement shall not be amended or revised without an opinion of the City's nationally recognized bond counsel indicating that any such amendments or revisions shall not affect the tax-exempt status of any obligations outstanding with respect to the Systems.

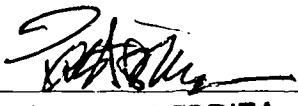
Section 10.26 Conflicts and Inconsistencies Between Documents. Should there be any conflicts or inconsistencies between the RFQ/RFP documents and the Operator's Proposal, the Operator's Proposal shall prevail. Should there be any conflicts or inconsistencies between this

Agreement and the Operator's Proposal, then the terms of this Agreement shall prevail.

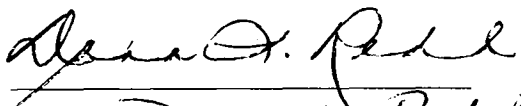
IN WITNESS WHEREOF, the Parties have hereunto set their hands and fixed their seals as of the date first above written.

ATTEST:

CITY OF CAMDEN



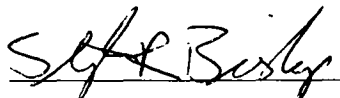
LUIS PASTORIZA



Dana L. Redd
Mayor

ATTEST:

OPERATOR



Stephen R. Bishop
Corporate Counsel



David Choate
Vice President

**MANAGEMENT SERVICES AGREEMENT FOR THE
OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE
CITY OF CAMDEN'S WATER AND WASTEWATER COLLECTION SYSTEMS**

**By and Between
City of Camden & American Water Operations and Maintenance, Inc.**

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- 4 - Computer Information Systems
- 5 - Rates, Fees and Charges
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- 7 - Permits / Administrative Consent Orders
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Water and Sewer Service Areas

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Section 1. General

The City of Camden, New Jersey is located in the southwest region of New Jersey, directly across the Delaware River from Philadelphia, Pennsylvania. The 2010 Census population of the City is approximately 77,334. The City provides water service to approximately 54,000 residents, while providing wastewater and stormwater services to all the residents within the City.

1.1 General Provisions

The Operator shall operate and maintain the Water Supply System and the Sewer Collection System, collectively the Systems, and provide the Billing and Collection Services in a professional, efficient, and economical manner in compliance with all federal, State and local laws, regulations.

The Operator shall provide all labor, materials, machinery, Vehicles (defined below), other than City owned Vehicles, equipment, office equipment (copiers, typewriters, facsimile machines, computer systems, etc.), fuel, power, chemicals, supplies, spare parts, expendables, consumables, testing and laboratory analysis, hardware, software and licenses, necessary for the operation and management of the Systems and to perform Maintenance, Repair and Replacement of the Systems.

Any computer hardware and software and/or licensing purchased by the Operator and/or data produced by the Operator shall be maintained by the Operator and kept current, and ownership shall transfer to the City at the end of the Agreement.

The Operator shall, at all times, keep the Systems in good working order.

The Operator shall endeavor to provide uninterrupted service, twenty-four (24) hours per day, seven (7) days per week.

1.2 Analytical Services

The Operator shall perform all testing, sampling, and any other analytical procedures to demonstrate compliance with applicable regulatory requirements and permit provisions.

The Operator shall perform all applicable testing related to process control and monitoring requirements for regulatory compliance.

The Operator shall conduct all necessary analyses whether the analyses are conducted at an on-site laboratory, at an offsite laboratory operated by the Operator, or through a subcontracted service.

Any laboratory that is utilized must be appropriately certified to perform the required analyses.

The Operator shall prepare the data received from the testing laboratory for all applicable regulations, permit monitoring, and operating reports and shall forward the results from the laboratory to the appropriate State and regulatory agencies.

The results of all analytical testing shall be made available to the City.

1.3 Permits

The Operator shall be responsible for operation and management of the Systems and shall perform all, Maintenance, Repair and Replacement of the Systems in compliance with all federal, State and local permits related to Systems.

Additionally, the Operator will be required to obtain any permits (federal, State or local) required to operate, maintain, or enhance the Systems, with the exception of permits that are in connection with construction activities implemented by the City.

For construction activities implemented by the City, or other entities on behalf of the City (such as developers), the Operator shall review, complete, and execute the permits. The Operator shall be reimbursed for any fees associated with these permits as a Pass-through Charge.

The Operator shall make all filings, applications and reports reasonably necessary to obtain and maintain such permits required to be made, obtained or maintained by or in the name of the City under applicable law in order to operate the Systems.

The Operator shall be required to undertake any engineering studies or modeling in order to obtain a renewal of a permit. The Operator shall be reimbursed for any costs for engineering studies and modeling associated with addressing changes in the terms or conditions of existing permits as a Change Order. With respect to permits that are required to be obtained in the name of the City, the Operator shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required within its scope of knowledge; (3) familiarize itself with the terms and conditions of such permits; and (4) attend all required meetings and hearings.

1.4 Administrative Consent Orders

The Operator as part of its management responsibilities will serve as the primary contact for the City in all regulatory-related matters. As such, the Operator will coordinate any and all actions associated with an existing or future Administrative Consent Orders ("ACOs") to include, if necessary, coordination of any Capital Improvements funded by the City. The Operator shall be responsible for compliance with existing ACOs once the terms for those ACOs have been satisfied.

1.5 Equipment and Chemicals

The Operator shall operate all used or useful equipment necessary in order to maintain compliance with applicable regulatory requirements and operational requirements, including equipment placed in service, and perform all tests and testing as may be required or recommended pursuant to applicable warranties, commercial or industrial standards, federal, State, and local laws, regulations and permits.

The Operator shall be responsible for promptly notifying the City in the event of any major equipment failures and such equipment failures shall be identified in the Monthly Progress Reports.

All water treatment chemicals used at the Water Supply System shall be in accordance with AWWA standards and must be NSF approved for potable water treatment.

1.6 Vehicle Maintenance and Rolling Stock

The Operator shall be responsible for leasing or purchasing any Vehicles needed to perform the services. "Vehicles" means all cars, trucks, vans or other modes of transportation that require a license plate used in connection with providing the services for transporting people, equipment, or used for other necessary functions in the operation and maintenance of the system.

The Operator shall be responsible for maintenance of Rolling Stock. "Rolling Stock" means equipment available for transportation or that moves on wheels other than vehicles.

The City has provided a list of all City owned Vehicles and Rolling Stock available for the Operator's use in providing the Services which is set forth in **Schedule 10**. As part of the Start-Up Services, the Operator will develop a Replacement Plan for the City furnished Rolling Stock. The Operator shall identify City owned Vehicles and Rolling Stock that are obsolete or non-operational and the City shall dispose of said Vehicles and Rolling Stock.

Fuel and maintenance cost associated with the City owned Vehicles and Rolling Stock shall be charged to the Maintenance, Repair & Replacement Allocation which, for the first Contract Year, is set forth in **Table B** of this **Schedule 2**.

1.7 Buildings and Grounds Services

The Operator shall perform services to maintain the current condition of the buildings and grounds of the Systems. The Systems and Systems' structures shall be maintained at a level adequate for the efficient, long-term reliability and preservation of the capital investment.

1.8 Utilities

The Operator shall be responsible for supplying all Utilities, as necessary at the Systems to allow for the proper operation and maintenance. The Operator's responsibility for the Utilities is subject to the Annual Utilities Allocation (see **Table C** of this **Schedule 2** for the Annual Utility Allocation for the first Contract Year) to pay for said Utilities.

1.9 Planning

The Operator shall be responsible for supporting the City's short and long-term planning for the Systems. Such support shall consist of providing Systems information and data and attending meetings with City officials, and the City's representatives and designees, to assist in the development of such plans as requested by the City.

Additionally, the Operator shall assist the City in preparing on an annual basis its Capital Improvement Plan for the Systems. Plans to be developed and implemented by the Operator include but are not limited to those outlined in **subsection 5.9** of this **Schedule 2**.

In addition, the Operator shall assist the City in review of Development Plans (to respond to inquiries from potential water customers) by reviewing, completing, and executing permit applications from existing or potential water customers.

1.10 Geographic Information System ("GIS")

The Operator shall provide the equipment, software licensing, and associated effort to maintain and periodically update the GIS system to display and plot the respective system maps and aid in the tracking of maintenance activities. As part of the Start-Up Services, the Operator shall review and update the database including connectivity checks to ensure viability and effectiveness of the GIS. At a minimum, the system shall consist of a base map showing the respective system assets, as well as all pertinent information related to same to aid in maintenance of the particular system. The database shall contain fields that will include such information, including, but not limited to, location of assets, size of pipes, age of pipes, pipe material, maintenance performed with dates, attribute identification numbers, etc.

The GIS database shall be maintained by the Operator with continuous electronic access provided to the City which will provide the City with the ability to print files and maps.

1.11 Economic Development

The Operator shall be a resource to the City in its economic planning by providing professional services to the City, potential developers, or others regarding potential development or rehabilitation within the City. See, **Section 6.10** of the Services Agreement for additional information.

1.12 Solid Waste Management

The Operator shall be required to provide for the collection and proper disposal of all Solid Waste associated with the operation of the Systems, in accordance with all applicable federal, State, and local regulations.

1.13 Facility Security

The Operator shall perform a vulnerability assessment in accordance with EPA guidelines and then develop and implement a plan to minimize vandalism and risks at the Systems facilities owned by the City ("Facility Security Plan"). The Facility Security Plan shall include SCADA/cyber security.

The Facility Security Plan shall be included in the O&M Plan and updated as often as necessary as potential vulnerabilities of the Systems are identified or other information is learned, but no less than an annual basis.

1.14 Public Education Program

The Operator shall develop and maintain a public outreach program that includes a hotline and webpage.

The outreach program shall provide the community with information on the Systems while providing a means for community members to air their concerns. The outreach program shall be set-up as a valuable tool for educators as well.

The public education program should include a variety of resources such as:

- The Annual Water Quality Report
- Public information on the Water Conservation Program
- Public information on the Street Sweeping Program
- Public information on the Combined Sewer Overflow Program
- Guidelines for reporting suspected leaks or faulty meters
- Community involvement on all infrastructure projects
- Education handout materials provided to the community by the operators completing system operation and maintenance work
- Customer comment program

Water conservation is perhaps the biggest component of a public education program. It is important customers know water conservation strategies to implement at their own property. During summer months, monitoring shall be conducted to observe if fire hydrants are opened for recreational purposes which are not authorized. Whatever media is used, whether it is handouts, attending community meetings, or online, the message that water conservation benefits the community and rate payers should be conveyed.

Customers shall be provided with appropriate channels to report leaks or other required repairs to the system.

1.15 Generators

Each generator shall be exercised weekly. Generators shall be refueled as needed.

1.16 Operator and Maintenance Training

Training programs shall be provided on at least an annual basis and more frequently as required for all personnel employed for performance of Services related to the Systems. Training shall include, but not be limited to, modern process control, equipment operation, repair, and maintenance, sampling and analytical procedures, regulatory requirements, supervisory skills, and safety and occupational health procedures. Records of all training shall be maintained as part of a "Training Plan" to be reviewed by the City.

The Training Plan shall clearly define the classroom and practical training curriculum for each operator position and classification. On-site training by each of the equipment manufacturer's technical representatives shall be included.

Operators are responsible for maintaining their certification through continuing education. Work crews should be assigned based on their certifications and license to meet regulatory requirements.

The Operator shall maintain a log of current personnel certifications including type of certification, date issued, and expiration date.

The Maintenance Training Program can be coupled with the Operator Training Program. Training programs shall be provided on at least an annual basis and more frequently as required for all personnel employed for performance of services related to the Systems.

1.17 Emergency Maintenance and Response

Emergency maintenance shall be given a high priority and addressed immediately.

1.18 Emergency Customer Service and Utility Mark Outs

The Operator shall respond promptly (within two (2) hours) to the extent commercially practicable and in a reasonable manner to all customer problems and emergencies pertaining to the system.

In addition, requests for utility mark outs shall be completed within three (3) business days.

The Operator shall maintain a toll-free twenty-four (24) hour telephone number so that customers of the Systems can report any problems and emergencies. The Operator shall immediately notify the City of any activity, problem, or circumstance of which it becomes aware that threatens the safety, health, or welfare of the customers of the Systems.

The Operator shall maintain a computerized emergency maintenance log of all problems and emergencies identified and measures taken by the Operator to remedy such problems and emergencies. The City shall be provided with read-only access to the emergency maintenance log with the ability to compile and print all reports.

1.19 Emergency Contact Information

The Operator is responsible for developing and maintaining emergency contact information and procedures. At a minimum, the list of emergency contacts must include the name, phone number, and email of City and Operator staff, as well as any local and State personnel that should be contacted in the event of an emergency. The list of emergency contacts should be prepared in cooperation with the City and updated as needed such that the latest information is always provided. The list should be reviewed quarterly

1.20 Initial Start-Up Services

The Operator shall provide the following Start-Up Services and as described in **Table A:**

TABLE A
Start-Up Services

The Start-up Services documented in Table A represent one-time expenditures that are considered necessary for the effective execution of services over the term of this Agreement. The initial proposal from the Operator identified the work items described in the "Original Services per Proposal on Form A-1a" in Table A. Payment for these initial services (identified as Parts 1 and 2) will be on a lump-sum basis, with payment to be made on February 1, 2016 for the Mobilization/Kickoff services (Part 1) and upon receipt of the various plans identified in Part 2.

Subsequent detailed site inspections during the negotiation process have identified the need for several additional items of work ("Additional Start-up Services, Table A). The scope of these services is as described in the table. The costs provided in the table are understood to be provisional; the Operator will develop a detailed scope and price proposal for the City's review and acceptance before commencing any work on these items. Lump-sum pricing is the preferred approach; where infeasible, proposals may be based on unit pricing with a not-to-exceed price ceiling.

Payment to the Operator from the City shall be in accordance with Section 5.3 of **Schedule 5** of the Agreement.

Original Proposal per Addendum 2 of the RFQ/RFP, dated January 29, 2015	Scope of Service
The City has applied for an AmeriCorps grant for a green jobs program. The City's application calls for the new workers to work on (1) cleaning out the City's storm inlets and trash cleanup in the vicinity of the storm inlets, (2) cleaning the Authority's rain gardens and (3) cleaning out the City's parks. The Authority will be providing the matching cost share for Item 2, while the City would be responsible for providing the matching cost share associated with Items 1 and 3. The Successful Respondent will be responsible for the cost share of Item 1 (approximately \$120,000) if the City does win the AmeriCorps grant. The cleaning program would call for the City to provide the Successful Respondent with one mentor/trainer who would oversee a crew of 10 individuals who would then work, under the Successful Respondent's guidance, to do the aforementioned storm inlet cleaning and trash cleanup. Each group of 10 workers would work for 6 months and then cycle off into a job placement program and be replaced by a new group of 10 workers. The mentor/trainer would remain in place. It is important to note that this would not take the place of the Successful Respondent's ultimate responsibility to provide these storm inlet management services under the Services Agreement.	An AmeriCorps Grant for an initial three year period has been approved for Camden PowerCorps, a program established by the City of Camden, the State of New Jersey and Center for Family Services that will deploy 30 AmeriCorps members (three (3) crews of ten (10) individuals) to maintain parks, storm water inlets, and other green infrastructure projects in Camden City. Crew 1 will be responsible for cleaning out the City's 5500 storm inlets and trash cleanup in the vicinity of the storm inlets that comprise the City's network; Crew 2 will be responsible for maintaining 53 green infrastructure installations, including 20 community rain gardens, 10 city and county parks; Crew 3 will be responsible for trash cleanup in over 400 vacant lots. In addition, the AmeriCorps members will leverage an additional 400 volunteers who will be engaged in environmental projects throughout the City, including cleaning waterways, planting trees, and helping to maintain and beautify the City. The program will be overseen by the Center for Family Services. The Operator shall provide limited technical support.

Table A – Cont. Original Services per Proposal on Form A-1a

Priority	Description	Projected Start Date	Projected End Date	Price
1	<u>Mobilization/Kickoff</u> Per RFP, original start-up services included 90 day observation period, billing transitional services, vulnerability assessment, O&M plan and audit of systems, Flood Mitigation Plan, Water Loss and Prevention Plan and Stormwater Activities. The Water Loss and Prevention Plan include the mapping of water main leak and break locations in the City of Camden's water service area over the last 10 years using GIS. The leak data will be evaluated to determine if there are trends on where leaks/breaks occur in the system. The data will also be used to correlate leaks/breaks with water main age and material, wherever possible. Storm Water Activities include the investigation and development of street sweeping plan, and compliance/O&M plans for MS4 Compliance, and CSO Compliance. As a result of subsequent negotiations, these Initial Service Fees are divided into two parts from the original Proposal format. Mobilization/Kickoff – Part 1 –A lump sum payment for 90 day observation and transitional services, as well as the due diligence efforts that included significant data gathering efforts for subsequent plans, due on February 1, 2016 for \$382,652. Part 2 is also a lump sum fee of \$158,000 for Plans including O&M, EPA Vulnerability Assessment, Flood Mitigation Plan, Initial Asset Assessment/Audit, Water Loss & Prevention Plan and Stormwater Activities all due May 1, 2016 with the delivery of these documents.			
	Part 1 - Mobilization/Kickoff – Part 1 – 90 day observation and transitional services including significant data gathering for Plans – Lump Sum Payment	11/1/2015	1/31/2016	\$382,652 (Lump Sum)
	Part 2 - Final Plans Submission for O&M, EPA Vulnerability Assessment, Asset Assessment/Audit, Flood Mitigation, Water Loss & Prevention Plan and Stormwater Activities (2 Hard copies and electronic versions)	11/1/2015	5/1/2016	\$158,000 (Lump Sum)

Table A – Cont. Additional Start-up Services

Priority	Description	Projected Start Date	Projected End Date	Price
2	<u>City Rolling Stock Replacements.</u> The City's Rolling Stock was evaluated, and found to be in fair to poor condition. It is highly recommended that the Rolling Stock be replaced over a five (5) year period as part of the City's Capital Improvement Program. The first vehicle that should be replaced is Vehicle No. 85, a 1997 Camel/JetVac that has no vacuum capability.	2/1/2016	2/29/2016	\$ 207,333 (Estimate – Cost Allowance) Please see Table D for a breakdown
3	<u>Updating the GIS.</u> This includes updating the existing GIS from as-built drawings to include network asset changes since the date of the last update. The updates will include connectivity checks to eliminate any stranded pipes, overshoots, or orphaned nodes. A report documenting the GIS updates will be submitted to the City of Camden. <i>This scope assumes that the GIS will be</i>	2/1/2016	7/1/2016	\$ 147,620 (Estimate – Cost Allowance)

	<i>updated based on available as-built data. Field work to identify and correct data gaps is not included except as noted for the Sewer modeling effort below. Assumes approximately 20% of the system inventory requires updating from as-built's, field notes, and red line mark-ups.</i>			
4	<u>Conducting Treatability Study.</u> This analysis will include an evaluation of the capacity of each of the processes in each of the water treatment plants based on best operating practices for that process for the constituent being removed. The analysis will also include an assessment of the performance for each treatment plant by comparing finished water quality versus existing and anticipated future drinking water quality regulations. A report summarizing the findings of the analyses will be submitted to the City of Camden.	2/1/2016	6/1/2016	\$ 67,100 (Estimate – Cost Allowance)

5	<u>Develop a Sewer Collection System Hydraulic Model.</u> This includes development of a hydraulic model of the sewer system from the GIS. Field survey of manhole rim and invert elevations will be needed in order to develop a complete functional model. Perform the survey of about 1,500 manholes in the system and incorporate into the GIS. Install and maintain 30 temporary flow meters for at least a 6-week period to capture wet weather flows; the flow monitoring data will be used to calibrate the model. Once calibrated, the model will be used to perform a general system performance evaluation including potential dry weather overflow locations and wet weather overflow frequency assessments. A report summarizing the model development and calibration and system analyses will be submitted to the City of Camden. <i>This scope is based on</i>	2/15/2016	12/31/2016	\$ 402,600 (Estimate – Cost Allowance)
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	<i>the assumption that the GIS files have been updated to include the most recent as-built information.</i>			
6	<u>Develop a Water Supply System Hydraulic Model.</u> This includes development of a hydraulic model of the water system from the GIS. Water demand loadings will be applied to the nodes based on available billing records and factored up to include non-revenue water. Approximately 20 hydrant flow tests will be conducted throughout the City and will be used for steady-state model calibration. SCADA data will be used for extended period simulation (EPS) model calibration. Once calibrated, the model will be used to perform a general system performance evaluation including available fire protection and system pressure analysis. A report summarizing the	2/15/2016	9/1/2016	\$ 93,940 (Estimate - Cost Allowance)

	model development and calibration and system analyses will be submitted to the City of Camden. <i>This scope is based on the assumption that the GIS files have been updated to include the most recent as-built information.</i>			
7	<u>Conducting yard piping survey</u> to develop pipe drawings for the Morris-Delair Water Treatment Plant and the Parkside Water Treatment Plant (Use ground penetrating radar to locate piping and transfer that data into GIS mapping system)	4/1/2016	8/1/2016	\$ 53,680 (Estimate – Cost Allowance)
8	<u>Clearing power line rights-of-way</u> (10 feet on either side of ROW centerline).	4/1/2016	4/16/2016	\$ 27,727 (Estimate – Cost Allowance)
9	<u>Repairing access roads</u> to all remote well fields (re-grading and stoning 15-ft wide)	6/1/2016	7/31/2016	\$ 177,513 (Estimate- Cost Allowance)
10	Restoring stormwater retention/ponds at the Campbell Soup and Front and Erie Street CSO locations (clearing and grubbing as well as necessary slope stabilization) (Dates may be refined with EPA ACO activities)	7/1/2016	7/31/2016	\$ 55,455 (Estimate – Cost Allowance)

11	<u>Facility & SCADA/Cyber Security Plan</u> (During negotiations, SCADA/Cyber security was discussed as an important need; especially in light of the SCADA connection with American Water's Operations Support Center to monitor the Camden Systems. The American Water Security Group will review all Facilities (including physical security systems and SCADA systems) to identify/mitigate the security risk of the Facilities and the risk of Cyber-attack on the City network).	2/1/2016	5/1/2016	\$ 26,840 (Estimate – Cost Allowance)
	Additional Services Total			\$1,800,460

TABLE B
MAINTENANCE REPAIR & REPLACEMENT ALLOCATION

Cost Category	Cost Allocation	City Reserve Fund
Sewer Cleaning and TV	\$1,332,532	
Emergency Cleaning	\$ 100,000	\$ 80,000
Vector out eight (8) Lift Stations annually	\$ 57,600	
Sewer Materials (general)	\$ 25,000	\$ 10,000
Sewer Repairs	\$ 250,000	\$ 400,000
CSO Repairs	\$ 107,000	
Street Sweeping (nine (9) months per year & temperatures above 32 degrees Fahrenheit	\$ 369,000	
City Rolling Stock/Vehicles Fuel and Maintenance	\$ 59,970	
CSO Nets	\$ 160,000	
Morris Water Treatment Plant Maintenance	\$ 150,000	
Parkside Water Treatment Plant Maintenance	\$ 100,000	
Water Tank Inspections	\$ 6,000	
Meter Testing	\$ 14,270	\$ 50,000
Grounds Keeping/Janitorial	\$ 50,000	
Generator Maintenance	\$ 50,000	
General Water System Materials	\$ 25,000	\$ 10,000
Exercise Valves	\$ 48,937	
Meter Replacements	\$ 107,019	
Other Meter Systems Repairs	\$ 49,000	
Other Distribution System Repairs (hydrants/valves, etc.)	\$ 100,000	\$ 100,000
Water Main Repairs	\$ 310,500	\$ 200,000
Fire Hydrant Flushing/Flow Testing	\$ 253,800	
Wells Rehabilitation, Maintenance and Repair	\$ 100,000	
Emergency/Minor Capital Improvements		\$ 400,000
Police Support		\$ 50,000
TOTALS	\$3,825,628	\$1,300,000

TABLE C
Annual Utility Allocation

Cost Category	Cost	City Reserve Fund
Telephone/Staff Radio Communications/SCADA Communications	\$24,000	
Natural Gas	\$6,400	
Solid Waste	\$24,000	
Electricity	\$856,821	\$90,000
Internet (T-1 Lines for Morris-Delair and Parkside Water Treatment Plants)	\$19,200	
Total	\$930,421	\$90,000

TABLE D

[American Water Letter added here]



AMERICAN WATER

Contract Services

American Water
Enterprises, Inc.
1025 Laurel Oak Road
Voorhees, NJ 08043

C 856-938-8114
jim.cowley@amwater.com
www.amwater.com

October 2, 2015

James P. Hopkins, P.E.
Buchart Horn, Inc. / BASCO Associates
3477 Corporate Parkway
Suite 100
Center Valley, PA 18034

Dear Mr. Hopkins:

As part of the Services Agreement, the City of Camden intends make its Rolling Stock (defined in the Services Agreement and summarized below) available to American Water Operations and Maintenance, Inc. ("AWO&M") in its performance of the Services Agreement. In accordance with Section 1.6 of the Scope of Services, on Thursday, July 30, 2015, AWO&M performed an onsite evaluation of the City's Rolling Stock.

AWO&M found that most of the City's Rolling Stock has been in service for over eighteen (18) years, and is in need of replacement. Below is a summary of AWO&M's findings:

City Rolling Stock						
Veh. No.	Year	Vehicle Description	Mileage	Hours	Condition	Recommend.
84	1997	Camel Jet/Vac Truck	40,000	74,000	Fair	Replace
85	1997	Camel Jet/Vac Truck	47,000	100,000	Poor. No vacuum capability.	Replace
87	1997	Camel Jet/Vac Truck	56,000	13	Poor. In repair shop	Replace
350		Dump Truck	77,000	14,000	Fair.	Replace
	1996	Case Backhoe		29,000	Fair. Controls and hydraulics sloppy	Replace
	N/A	6" CD Pump			Good	Keep
	N/A	6" CD Pump			Good	Keep
43	N/A	Pettibone Crane			Poor.	Replace

Understanding that the City will replace the Rolling Stock as part of its capital program and as such will require a capital investment by the City, AWO&M provides the City with the following schedule for replacement and an estimated cost for replacement. Please note that the below Replacement Costs are best estimates based on information as of the date of this letter. Thus, these estimates may change:

Section 2 Water Supply Operations

2.1 General

The Operator is responsible to operate and perform Maintenance, Repair and Replacement of the Water Supply System to ensure that the Water Supply System complies with all applicable local, State, federal codes and regulations, and to ensure safe and adequate drinking water for all consumers twenty-four (24) hours per day, seven (7) days per week.

2.2 Pumps, Motors, and Equipment

All pumping facilities and associated equipment shall be exercised as specified in the O&M Plan unless otherwise agreed to by the City in writing.

2.3 Raw Water Wells

The Operator shall maintain the current permitted, operational and capacity status of all wells identified in Water Allocation Permit No. 5302 (provided in **Schedule 7**). The Operator shall be responsible for monitoring, operating and maintaining all wells in accordance with the Water Allocation Permit in effect. Changes in permit conditions associated with permit renewals will be subject to discussions between the Operator and the City.

2.4 Raw Water Metering

The Operator shall routinely monitor, calibrate, and perform Maintenance, Repair and Replacement for all existing raw water flow meters in accordance with the manufacturer's recommendations and State requirements.

2.5 Raw Water Monitoring

The Operator shall perform raw water monitoring in compliance with all federal, State, and local regulations.

2.6 Treatment Processes

The Operator shall operate all treatment unit processes in accordance with the manufacturer's recommendations, and monitor their performance as required under federal, State, and local regulations.

Commencing as part of the its Start-Up Services, the Operator shall perform a Treatability Study within the first year by reviewing all available data on the constituents in the raw water to ascertain if the existing design parameters and treatment processes of the water treatment plants are capable of producing Acceptable Finished Water.

2.7 Treated Water Metering

All existing flow meters located on finished water pipelines shall be routinely monitored, calibrated, repaired, and or replaced in accordance with manufacturer recommendations, State requirements.

2.8 Treated Water Quality Monitoring

The Operator shall perform process and finished water monitoring in compliance with all federal, State, regulations and requirements. The Operator shall implement a Water Quality Monitoring Program in compliance with all federal, State, and local regulations.

The Operator shall perform distribution system monitoring in compliance with all federal, State, regulations and applicable permits.

2.9 Solids Handling and Residuals Disposal

The Operator shall operate, manage, and perform Maintenance, Repair and Replacement of the mechanical dewatering facilities, and shall coordinate and arrange for the transportation and disposal of residuals generated by the Parkside and Morris-Delair Water Treatment Plants in accordance with all federal, State, and local regulations.

2.10 Treated Water Storage Tanks

The Operator shall be responsible for maintaining the combined water capacity in all storage tanks to ensure proper pressures for satisfactory service and firefighting capabilities, and that tank volume turnover is adequate to maintain the quality of the treated water stored within each tank.

The Operator shall ensure that all tank overflow and low level warning alarms are operational.

The Operator shall include a tank maintenance plan as part of the O&M Plan.

2.11 Water System Pressure

The Operator shall maintain system pressure at a minimum of 35 psi under normal operating conditions, and at a minimum of 25 psi under emergency conditions respectively at all locations throughout the Water Supply System.

Emergencies can be of any nature as determined by the police and fire department, as well as other City officials, included extended power outages.

The Operator shall liaise with the City's Emergency Management Coordinator ("EMC") in times of fire or other emergencies.

2.12 New Connections

Prior to allowing additional service connections to the distribution system, the Operator shall evaluate the system's ability to support the new demand. The Operator shall confirm that all permits have been received, as necessary, prior to a new connection to the Water Supply System.

2.13 Cross Connection and Backflow Prevention

The Operator shall continue the City's Cross Connection Program in accordance with Ordinance MC-3128 or the latest version thereof, as well as all applicable regulations.

The Operator shall also be required to perform all Maintenance, Repair and Replacement and conduct testing and calibration of the backflow preventers in accordance with the City's Cross Connection Program, N.J.A.C. 7:10 and all applicable regulations, the manufacturer's guidelines, including all City owned properties.

All backflow preventers shall only be installed and tested by licensed/certified professionals. The Operator shall include the cross-connection and backflow program in the O&M Plan.

2.14 Reporting Data

Sampling results shall be maintained by the Operator and be available to the City as soon as applicable upon completion of the test. Should any of the sample test results trigger additional sampling, testing, or modification to the operation of the Water Supply System those results should be reported directly to the City. Emergency changes to the Water Supply System operation triggered by sampling results should be given the highest priority to protect consumers.

The operator shall also prepare reporting data for the annual water quality report ("Consumer Confidence Report" or "CCR"). This information should be provided to the City at least 1-month prior to issuance to the customers. The Operator shall distribute the CCR as part of the Billing and Collection Services being provided by the Operator.

2.15 Annual Water Loss and Conservation Plan

The Operator shall place a priority on minimizing the volume of potable water loss within the first 5-years of operation.

The Operator shall develop and implement an Annual Water Loss and Conservation Plan. The Operator shall maintain an annual water loss record and develop a response plan to reduce the volume of water loss throughout the System.

Corrective actions required to minimize the amount of water loss in the System shall be included in the annual Capital Improvement Plan. Additionally, the Operator shall be responsible for the completion of any unaccounted for water forms or reports that must be submitted to any regulatory agencies, such as, but not limited to, the New Jersey Department of Environmental Protection and the Delaware River Basin Commission.

Additionally, on a quarterly basis, the Operator shall provide the City with a Water Loss and Conservation Plan Quarterly Report on the unaccounted water in an agreed upon format. This quarterly report shall indicate all activities completed and/or underway, record of water loss and a quarterly look ahead schedule of planned activities.

2.16 Leak Detection Program

Operator shall include a leak detection program in the Operator's Annual Water Loss and Conservation Plan.

Detailed and accurate records should be kept to be used to identify possible leak locations. Records should be kept in such a format so they can easily be coordinated with a map of the distribution system including the GIS maps. Field inspections will be required to locate the exact area of the leak and make appropriate repairs in a timely manner.

Section 3 Sewer Collection System Operations

3.1 System Inventory

The Operator shall be responsible for reviewing available Combined Sewer System, Sanitary Sewer System, and Stormwater System (collectively referred to as the Sewer Collection System) information for the purpose of identifying discrepancies between available inventories. The Operator shall resolve discrepancies and maintain an accurate inventory of the combined and separate Sewer Collection System. The Operator shall be responsible for updating existing GIS information as appropriate.

3.2 Sewer Collection System

The Operator shall operate the Sewer Collection System in compliance with all federal, State, regulations and applicable permits.

The Operator shall provide all labor, materials, machinery, vehicles and equipment necessary to perform all Maintenance, Repair and Replacement of any manhole or sewer main and/or outfall break, fracture, collapse, or blockage including roadway repair. All Maintenance, Repair and Replacement shall be made as soon as practicable of the reported break, fracture, collapse, or blockage. Priority attention shall be given to dangers to public life and health and to those posing a threat to public and private property.

3.3 Service Connections

The Operator shall conduct the TV inspections and the Comprehensive Sewer Rehabilitation Program. This program shall, to the extent practical, include preparation of a list of abandoned service connections to the sewer pipes that were televised. The severing of the service connections will be included the Maintenance, Repair and Replacement Allocation in **Table B** of this **Schedule 2**..

The Operator shall be responsible for all services lines that are on the street side of the curb line. The customer shall be responsible for the service lines that are located on the property side of the curb line and for all blockages in the service line caused by waste material discharged from the customer's property.

Additionally, prior to allowing additional service connections to the Sewer Collection System, the System shall be evaluated by the Operator to determine its ability to support the new demand while also being able to comply with Local Limits set forth in **Schedule 13** and the CCMUA's Industrial Pretreatment Program and the City's sewer ordinances, which ever is more restrictive. The Operator shall confirm that all permits have been received, as necessary, prior to a new connection to the System. New connections shall be made in accordance with federal, State, and local regulations.

3.4 Pumping Stations

The Operator shall be responsible for inspecting and performing Maintenance, Repair and Replacement at all eight (8) City-owned pumping stations on a basis predicated on industry standards, manufacturer's recommendations and field conditions unique to the individual facility. The standby power at pump stations shall be exercised at least weekly.

3.5 Solid Waste and Residuals Disposal

The Operator shall furnish all labor, materials, equipment and incidentals required to remove and properly dispose of the Solid Waste collected at the treatment plants, pump stations, overflow structures, netting facilities, or through cleaning of the Sewer Collection System in accordance with the requirements of all applicable federal, State, and local regulations. The Operator shall develop a Residuals Disposal Plan that describes the proper disposal of all residuals produced in the treatment of water at the two treatment facilities.

3.6 Industrial Pretreatment Program ("IPP")

The Operator shall coordinate with a designated CCMUA staff person responsible for the IPP and notify the City and the CCMUA regarding known and/or suspected illegal discharges. The Operator shall provide reasonable assistance in the form of access, inspection, or similar activity to the City and CCMUA for implementation of the IPP.

3.7 Overflow Response Plan

The Operator is responsible for implementing the Overflow Response Plan, and shall utilize standard operating procedures ("SOPs") for responding to combine sewage overflows ("CSOs") to provide a standardized approach to the collection system release data and release reporting protocols.

The Operator shall provide a local telephone number where individuals that witness overflows can report the occurrence.

3.8 Wet Weather Standard Operating Plan

The Sewer Collection System shall be operated, including the Capital Improvements that will be implemented, to achieve maximum treatment of wastewater flow in wet weather and to comply with applicable law and the Long Term Control Plan.

Each year, a Wet Weather Operations workshop with the City shall be conducted to present and discuss proposed plan for optimizing system operation in wet weather. At the workshop, a draft Wet Weather Operations Plan shall be submitted for the upcoming

year. Following the workshop, the plan shall be revised in response to the City's comments and submit the final annual Wet Weather Operations Plan for approval.

3.9 Combined Sewer Overflow Reporting

The system operator shall monitor, record, and report the volume and time of each CSO outfall discharge, in accordance with the NJPDES Permit. Upon notification of a potential dry weather overflow, a representative shall visit the overflow site as soon as possible to assess the situation and take pictures. Recommendations shall be made to the City in order to eliminate dry weather overflows.

3.10 Flood Mitigation Plan

The Operator shall develop a flood mitigation plan based on a 10 year storm within ninety (90) days of the Commencement Date. This plan shall be used as a benchmark by to identify systems improvements for inclusion in the Capital Improvement Plan to prevent flooding and basement backups.

3.11 Street Sweeping

Once a month, the Operator shall utilize specialized street sweeping vehicles to clean approximately three-hundred and seventy-five (375) curb miles of City streets by collecting debris from City road curbs and gutters.

A public awareness program shall be developed and implemented by the Operator with coordination with the City and be used to educate residents and businesses regarding the importance of street sweeping, notify the public of the street sweeping schedule, discourage littering, and to require different parking habits on street cleaning days.

Any required signage that is proposed by the Operator to educate the public regarding parking restrictions that correspond with the street sweeping program shall be approved and installed by the City.

3.12 Catch Basin Inspection and Cleaning

Every catch basin shall be cleaned and inspected within the first Contract Year and then inspected semi-annually thereafter.

Additionally, the Operator shall perform Maintenance, Repair and Replacement on any catch basin hoods that are missing and/or damaged.

The catch basins and/or the pipes between catch basins and from the catch basins to the stormwater mains shall be cleaned immediately if any debris, litter, or other obstruction is blocking the catch basin opening, or if there is any debris, litter, or other obstruction located in or at the bottom of the catch basin structure or at the bottom of

the pipes. The catch basin and pipe cleaning program shall be included in the O&M Plan.

Section 4 Maintenance

4.1 Operations and Maintenance Plans

The Operator shall develop, implement, and maintain a comprehensive computer-based Operation and Maintenance Plan/ Program ("O&M Plan") for the Systems. The plan shall be submit to the City for review within ninety (90) days of the Commencement Date.

The Operator shall implement such maintenance programs to include preventative, predictive, and corrective maintenance for all components of the Water Supply System, and the Sewer Collection System, including, but not limited to the following:

- Buildings and structures
- Electrical systems
- Instrumentation and control systems, including SCADA systems and all software upgrades, licensing renewals, and computer hardware, servers, equipment, alarms, and field instruments maintenance. The City shall also be provided with web-based view-only access for the SCADA systems.
- Mechanical equipment
- Rolling Stock
- Laboratory, monitoring and sampling equipment
- Heating, ventilation, and air conditioning
- Computer systems that are the property of the City (software and hardware)
- Other facilities and systems contained within the Systems
- Other specialized tools and equipment owned by the City

Each separate unit process and auxiliary system processes section of the O&M Plan shall include a detailed written explanation of the following:

- The process or system including its key components
- The system function including its purpose and normal operating parameters
- Equipment summary including nameplate data, supplier/local representative, and manufacturer
- Description of instrumentation and control system, including an alarm summary
- Description of normal system operations including startup and shutdown, adjustment of variable functions and settings, interface with other plant systems, routine monitoring checklists and record keeping forms
- Emergency system operations including procedures to be followed in the event of probably plant or system upset conditions and/or emergencies, including temporary power outages, chemical spills, localized or area-wide flooding, etc.
- Maintenance, including preventative, predictive, and corrective maintenance for all equipment
- Trouble shooting system malfunctions
- Safety and emergency response plan and procedures (Emergency Response Plan)

Preventative maintenance shall be incorporated into the O&M Plan. Preventative maintenance shall be performed in such a manner that the operation of the Systems is not impacted and the performance standards, guarantees, and/or warranties are not threatened.

The Operator shall also develop and maintain computer based preventative maintenance logs for each facility and all equipment, pipes, and other components included in the O&M Plan. The City shall have read-only privileges to these logs with the ability to generate and print all required reports.

The Operator shall also perform Maintenance, Repair and Replacement to achieve the following:

- Maintain all equipment in an operational condition at all times in accordance with the applicable manufacturers recommendations, unless undergoing repair or renewal.
- Preserve the warranties on all Systems' equipment.
- Perform predictive and preventive maintenance on all Systems equipment in accordance with manufacturers' recommendations.
- Minimize corrective maintenance and emergency repairs.

The Operator shall hold an annual Maintenance, Repair and Replacement Workshop with the City to discuss the prior year's maintenance activities and recommended changes to the O&M Plan for the upcoming year.

The Operator shall also develop a metrics system to evaluate its performance of the maintenance programs.

In addition, the Operator shall be responsible to maintain:

- Schedule of permit applications to be submitted to regulatory agencies
- Copies of all permits, licenses, and other regulatory documents obtained for Operator's services
- Staffing plan showing a breakdown by staff classification of all personnel to be utilized during operations and maintenance

4.2 Water Supply System Maintenance

The Operator shall perform the necessary maintenance for all components of the Water Supply System, including, but not limited to, the booster stations, water treatment plants, wells, distribution and transmission pipes, valves, and fire hydrants

4.3 Meter Reading and Maintenance

The Operator shall be responsible for reading all meters on at least a quarterly basis. The Operator shall arrange for mobile communications systems for the Operator's use in performing the meter maintenance.

Broken, inaccurate or inoperable customer meters shall be promptly repaired or removed and replaced within five (5) business days. Broken or inoperable meters, or any meters that must be replaced due to age, shall be replaced by the Operator with new meters.

The City will provide the Operator with residential and commercial/industrial meters for installation by the Operator in accordance with the City's requirements and standards. The Operator shall maintain responsibility for all meters, but the City shall retain ownership. All meters that are removed from service, including residential and commercial/industrial meters, shall be returned to the City.

If the Operator discovers an unmetered customer, the Operator shall immediately notify the City and the Operator shall install a meter for these customers within five (5) business days of discovery.

The Operator shall implement a program to test, repair and replace commercial/industrial meters, and replace residential meters according to the following schedule:

<u>Meter Size</u>	<u>Test</u>	<u>Replace</u>
• 5/8" to 3/4"	Once per billing dispute.	Every ten (10) years.
• 1" to 3"	Every five (5) years.	Every ten (10) years.
• ≥ 4"	Every year.	As needed

Larger meters in the system, including but not limited to raw water meters, production water meters, source water meters, and distribution water meters, as well as wholesale customer meters, shall be calibrated, as well as tested for accuracy every year.

All meters that fail to achieve an accuracy of 96% to 103% shall be repaired or replaced. The Operator shall be required to repair or replace all inoperable or below standard commercial/industrial meters and residential meters. All meter tests shall be documented and maintained by the Operator..

4.4 Service Line Maintenance

The Operator shall maintain responsibility for all service lines that are on the street side of the curb line. The customer shall be responsible for the service lines that are located on the property side of the curb line.

For service connections that have been abandoned and are no longer billed, the Operator shall remove the existing meter and shutoff the service line utilizing the corporation stop at the water main.

The City shall develop procedures for notifying the Operator of service connections that need to be removed for properties subject to demolition.

4.5 Water Main Breaks and Repairs

Water main repairs should be prioritized and addressed in a timely manner based on the degree of repair needed and the potential impact on the distribution system and community.

Repair work shall be performed without interruption of service whenever possible. If an interruption is necessary, the repair work shall include considerations to minimize the length of time for the outage.

After repairs are performed and the repairs are tested for water tightness, area hydrants shall be flushed and water quality samples shall be taken for testing.

4.6 Distribution System Flushing

The Operator shall be responsible for flushing all hydrants and water mains at least twice a year. At all times during system flushing, adequate system pressure and flow volume shall be maintained.

4.7 Valve Maintenance

The Operator shall develop and implement a reasonable valve exercising program to be implemented in a progressive manner and address those valves deemed to be critical to the water system's operation.

The valve exercising program shall be included in the O&M Plan. All valves determined to be broken or inoperative shall be reported to the City as part of the Monthly Progress Report and then repaired/replaced by the Operator as part of the O&M Plan.

The Program shall be developed such that 50% of the valves are exercised each year so that every valve has been exercised every two years; however, critical valves shall be exercised on a more frequent basis. This program shall be developed in accordance with the manufacturer's recommended procedures and include several key components including:

- Number of transmission valves to be exercised annually based on the percentage of the total valves in the system
- Number of distribution valves to be exercised annually
- Critical valves in the distribution system shall be identified for exercising on a regular basis.

Valve exercising can result in breakages in valve stems and exercised valves being left in a position other than as found. Procedures shall be in place to respond to broken or frozen valves, and to assure that valves are returned to their proper position.

4.8 Connection Shut-offs

It is the responsibility of a customer to alert the City when they are closing buildings or moving. Additionally, the Operator may be informed, or otherwise be made aware, of unauthorized uses of City water. The Operator shall respond to these reports and remove the connection or shut-off the water service at the curb or water main using approved standard operating procedures ("SOPs") and in accordance with the City's

Ordinance. The proposed connection shut-off procedures shall be detailed in the O&M Plan.

4.9 Hydrant Maintenance and Testing

The Operator shall be responsible for inspecting the serviceability of all hydrants in the distribution system.

The condition of and maintenance performed on the hydrants shall be recorded. All hydrants found to be broken or inoperable shall be tagged immediately and shall be replaced or repaired within one (1) month by the Operator, including those fire hydrants that are in need of repair or replacement that are damaged by theft or vandalism by third parties not under control of the Operator. Any fire hydrants that are in need of repair or replacement as a result of vandalism shall be immediately reported by the Operator to the City and documented separately by the Operator on the maintenance logs. All new fire hydrants shall be in accordance with the City's latest Ordinance.

In addition to the above, fire flow test results may be requested by public or private entities. The Operator shall provide these results, upon request, to the City for furnishing to the requesting entity within one week of the request being made. If recent (one (1) year or less) fire flow test results are not available for the requested area, the

Operator shall perform a fire flow test as soon as practicable following the request for information and then provide the results to the City within one (1) week following the fire flow test.

4.10 Iron and Manganese Deposits

The Operator shall be responsible for periodically removing accumulated iron and manganese deposits from exposed equipment surfaces and all above-ground process pipelines, culverts and other conveyances in order to allow for the proper operation and performance of the equipment. The Operator shall be responsible for disposal of all accumulated material in accordance with all federal, State, and local regulations.

4.11 Sewer Collection System Maintenance

The Operator shall perform the necessary maintenance to keep the Sewer Collection System in good operation and repair. Maintenance activities include, but are not limited to:

- System inspections using closed circuit television ("CCTV"), pipe and manholes
- System cleaning
- Manhole inspections and repairs
- Pump station inspections and repairs

4.12 System Inspection

The Operator shall inspect the Sewer Collection System using CCTV so that the entirety of the System has been inspected every three (3) years. The schedule for the System

inspection shall be subject to revision under the "Reopener Clause" based on operating experience.

The CCTV video and records shall be maintained digitally and be available for City review. All manholes, sewer reaches, and service connections shall be inspected. The CCTV video and records shall note the location of all laterals relative to both the manholes and the sewer, defects, blockages, pipe size and material, and other pertinent information. Defects such as cracks, misaligned joints, grease, sags, roots, and blockages shall also be recorded.

Upon request by the City, the Operator shall also CCTV sewers to assist the City and to locate laterals if the particular sewer in question has not already been inspected.

Based on the results of the CCTV inspections, the Operator shall be responsible for the development of a Comprehensive Sewer Rehabilitation Program which summarizes the results of the inspection, identifies recommended improvements, and provides estimated costs for the rehabilitations for inclusion in Capital Improvement Plan by the City. This program shall also include preparation of a list of abandoned service connections to the sewer pipe that was televised.

The Operator shall be responsible for all services lines that are on the street side of the curb line and shall clear any reported blockages or repair any breaks in this portion of the service line. The customer shall be responsible for the service lines that are located on the property side of the curb line and for all blockages caused by waste material discharged from the property. Priority should be given to work related to basement back-ups, flooding, and potential sewer cave-ins.

Following any significant repairs to the sewer system, the area of repair shall be re-inspected via CCTV to confirm that the repairs were successful.

4.13 Sewer Collection System Cleaning

The Operator shall clean the Sewer Collection System so that the entirety of the System has been cleaned every three (3) years, with the exception of hot spots, which are further defined outlined below in **subsection 4.3.3**. The schedule for the System cleaning shall be subject to revision under Section 3.1(b) of the Agreement based on operating experience.

The Operator shall utilize equipment that propels high pressure water through a sewer to collect dirt and debris. Other cleaning methods may be proposed by the Operator for review and approval by the City.

The collected debris shall be removed out of the manhole, inlet, and/or other access point and disposed of in accordance with federal, State, and local regulations.

Priority shall be given to areas of flooding and basement backups and existing pipes that contain debris in the first year. The City shall be divided into sewer cleaning districts to monitor the progress of system maintenance. The System Cleaning

Program shall be developed by the Operator and included in the O&M Plan for review by the City.

4.14 Hot Spots

Sewer segments that are identified as hot spots shall be cleaned more frequently than others. The Operator and the City shall identify these hot spots based on flow data, surface flooding, basement flooding, and customer complaints.

Cleaning will occur on an as-needed basis for these hot spots and is expected to be completed within 1-week of the initial hot spot being identified and then as often as necessary to mitigate this hot spot. Additionally, recommendations for improvements of these hot spots shall be made by the Operator and included in the Capital Improvement Plan, as appropriate.

4.15 Manhole Repairs

The Operator shall perform Maintenance, Repair and Replacement for all City manholes. The Operator shall inspect the manholes so that all manholes have been inspected every three (3) years, to verify their structural integrity and identify potential I/I.

4.16 Root Control

When roots are damaging the sewers in the system, the Operator shall determine the proper course of action for tree maintenance or removal and coordinate this tree maintenance with the City. The Operator shall perform Maintenance, Repair and Replacement on damaged sewers using appropriate methodologies in a timely manner. Trees that experience injury due to root control work shall be identified to the City, and the City shall determine the disposition of said trees.

4.17 Sewer Breaks and Repairs

When a sewer break is reported an emergency response crew shall be dispatched to investigate, and if necessary set up barricades to isolate the affected area. The incident should be reported to the City immediately.

Breaks in the sewers shall be repaired as soon as practicable.

Repair work shall be performed without interruption of service whenever possible. If an interruption is necessary, the repair work shall include considerations to minimize the length of time for the outage. Residents and commercial/industries shall be contacted if the break disrupts their service.

If the break is causing an overflow or unauthorized discharge, temporary bypass pumping or other means shall be furnished and implemented to alleviate the overflow. NJDEP shall be notified if the break resulted in an overflow or unauthorized discharge.

Any newly constructed or repaired sewer shall be performed in accordance with City standards.

4.18 Pump Station Maintenance

The pump station maintenance program shall include, but not be limited to, the following tasks:

- Inspect and clean wet wells
- Inspect and maintain hydraulic accumulator compressors and the seal water system.
- Inspect and maintain electrical and alarm system.
- Perform preventive maintenance for pumps, generators, and engines.
- Inspect and remove and clogging or rags when they are found.
- Inspect and lubricate pump motor and bearings, according to the recommendations of the manufacturer of the pump.
- Perform grounds maintenance around pump stations, as needed including snow removal

4.19 Pump Draw-Down Testing

Pump draw-down testing is required to analyze the performance of each individual pump. Pump draw-down tests shall be conducted annually.

4.20 Regulator Chambers and Tide Gate Cleaning and Repair

Regulator chambers and tide gates shall be inspected, cleaned, and maintained during dry-weather and at low tide when the gate is fully above the water level of the receiving water body. Regulator chambers and tide gates shall be inspected, cleaned, and maintained monthly. Cleaning activities shall include removal of debris and/or blockages that prevent the tide gate from fully opening or closing. The tide gate may also require lubrication and/or adjustment to provide the full range of movement.

Failed components of the regulator chambers and tide gates that are no longer operational shall be repaired as soon as possible. These repairs shall be documented in the Monthly Progress Report.

4.21 Netting Facilities

The Operator shall provide for labor and materials associated with:

- Removal of nets, furnishing of new nets, and replacement of the nets at each facility as required following a CSO event
- Disposal of used nets and debris at a suitable disposal facility
- Minor and major repairs to the netting facilities, net frames and retrieval facilities
- Maintenance of the facility sites including snow plowing, grass cutting, and leaf removal

The netting facilities shall be inspected within 48-hours following a wet-weather event or snow melt. Nets shall be replaced, as needed, and disposed of at an appropriate facility.

Nets shall also be inspected quarterly for damage including rips, tears, or dislodging. If the netting is noted to be damaged, repairs shall be made or the net shall be replaced in its entirety. If the net is dislodged from the outfall structure, it shall be reconnected.

4.22 Outfall Maintenance

The Operator shall be responsible for the inspection and cleaning and continued maintenance of all regulators, weirs, flood gates, and outfalls for the Combined Sewer System and Stormwater Systems.

4.23 Optimization

All regulators and tide gates shall be inspected periodically, with priority being given to those that have been proven to be problematic. Regulators shall be adjusted to maximize the amount of in-line storage without causing additional flooding and/or basement backups. Tide gates shall also be adjusted, as necessary, to allow for the proper operation.

4.24 Green Infrastructure Inlet Cleaning

Multiple Green Infrastructure sites are located within the boundaries of the City. Surface inlets and outlets of these structures shall be kept clean of litter and other debris to allow from optimal performance of the technology. Debris at the inlet and outlet structures including catch basins, pipe openings, gratings, or other structures shall be removed. These devices shall be inspected quarterly.

Section 5 Record Keeping and Inventory

5.1 Work Orders

Work orders shall be completed whenever a needed repair is identified. All work orders will follow the appropriate procedure as described in the operation and maintenance manual.

All work orders shall be available in paper and digital database format. The digital database shall be organized by equipment ID (pipe ID, valve ID, hydrant ID, etc.) so a review of the database provides information of the frequency of repair needed at each individual location.

The City shall be provided with read-only access and the ability to print reports for the work orders.

5.2 Generation

Any reported incident shall result in the generation of a unique work order. Location, equipment involved, severity, and a general description of the maintenance/repair needed shall be recorded as part of the work order.

Once a work order is generated, the work shall be completed within a two (2) week period unless the item needed repair is negatively impacting the respective system operation, in which case the work shall be completed as soon as practicable.

Work orders shall be given a priority designation based on their impact on the operational integrity of the distribution system and public welfare. The Operator shall visit the site and make the final determination of the maintenance activity required. If the work cannot be completed at that time, the operator shall document the reason that the work cannot be completed at that time, as well as what is required to complete the work order, and then the work shall be scheduled to be completed within the 2-week period or sooner depending on the type of repair as previously described.

5.3 Completion Procedures

To complete a work order, the Operator shall indicate the corrective action taken, the date the work order was completed, and the personnel involved in carrying-out the corrective action. A completed work order shall be entered into the digital database.

If any follow-up action is required, it shall also be included in the database and a new work order created. The original work order shall reference the new work order for the follow-up work and the new work order for the follow-up work shall reference the original work order such that there is a complete history and record for the items in need of repair.

5.4 Daily Operating Logs/Records

The Daily Operating Logs shall be maintained electronically and City personnel shall be provided read-only access with the ability to print reports from the logs.

5.5 Maintenance and Inspection Logs

Maintenance logs shall be completed daily and with each assigned maintenance task. Information included on the log shall contain, but not be limited to:

- Description of maintenance performed
- Names and signature of operator completing the work action
- Names and signature of inspector approving the work action
- Warranty information
- Safety precautions implemented
- Follow-up actions

The maintenance logs shall be reviewed regularly and revised based on performance needs. These logs will serve as basis for reporting requirements and therefore need to align with the reporting criteria.

Inspection logs shall be used as support documents for regulatory requirements and therefore need to be accurate and up-to-date.

The maintenance logs shall be maintained electronically and City personnel shall be provided read-only access with the ability to print reports from the maintenance logs.

5.6 Incident Log

Incidents logs shall be developed to describe occurrences that resulted in compromised system operation, or violation of regulatory standards, or other events that require immediate action and/or reporting to regulatory agencies).

These logs shall include the date the incident occurred, a description of the incident, and when the corrective action was complete. Personnel involved in rectifying the situation shall also be provided. The incident log shall be maintained electronically and City personnel shall be provided read-only access with the ability to print these reports.

5.7 Spare Parts Inventory

In order for the respective system to be maintained properly, an accurate list of spare parts shall be kept. Replacement parts for critical equipment shall be kept on hand so routine repairs can be completed within a timely manner. The Operator shall maintain a computerized spare parts inventory and the City shall be provided read-only access with the ability to print reports.

5.8 Annual Equipment Report

The Operator shall maintain a list of equipment owned by the City as well as the Operator. The list of equipment shall identify the following at a minimum:

- Owner of the equipment
- Type of equipment
- Year
- Make
- Model
- Serial Number
- Hours/Miles of Use
- Warranty Status
- Maintenance Log
- Inspection Records
- Inspection Date

Any City owned equipment in need of repair shall be highlighted in the report.

Should any City owned equipment be damaged, vandalized, stolen, or rendered inoperable, the Operator shall notify the City within 24-hours of the event.

Additionally, the Annual Equipment Report shall be maintained electronically and the City shall be read-only access and the ability to print reports associated with the Annual Equipment Report.

5.9 Capital Improvement Plan

The Operator shall provide recommendations to the City for review and consideration for inclusion in the City's Capital Improvement Plan ("CIP").

These recommendations shall include a project description, the reason for the Capital Improvement, construction cost analysis, anticipated operational and maintenance savings, and operational benefit.

The capital improvement recommendations shall be listed in order of priority with the highest priority item listed first and then the remaining items listed in descending priority order. Priority shall be given to those measures which provide operational and maintenance costs savings, and/or improve the operation of the respective system.

5.10 Asset Management Plan

The Operator shall develop an Asset Management Plan to support the long-term sustainability of the potable water system by helping the City make informed decisions on when it is most appropriate to repair, replace, or rehabilitate particular assets and by developing a long-term funding strategy.

The Asset Management Plan shall be prepared, updated, and submitted to the City on an annual basis and the Asset Management Plan shall be closely coordinated with the Capital Improvement Plan. The City will make the final determination on which assets need repair or replacement.

5.11 Monthly Progress Report

The Operator shall prepare a Monthly Progress Report regarding the Services. The Monthly Progress Reports shall be prepared by the 10th of every month for the previous month of Services.

The Monthly Progress Reports shall be submitted to the City for review and shall be maintained electronically with read-only access and printing capabilities provided to the City.

The Operator shall prepare the Progress Reports in a format subject to approval by the City. The Monthly Progress Reports shall include data pertaining to performance, including analysis of permit requirements, flows, and any other information required by the applicable regulatory agencies, the City.

The Monthly Progress Reports shall also include a description of preventive and corrective maintenance activities and emergency services performed during the previous month.

Additionally, any reports submitted to the regulatory agencies shall be sent to the City and appropriate consultants of the City as directed by the City.

5.12 Annual Operation and Maintenance Report

The Operator shall develop, implement, maintain, and submit to the City for approval a comprehensive computer-based Operation and Maintenance Report for the potable water and Sewer Collection System. The Operation and Maintenance Report shall be prepared on an annual basis and be submitted to the City within 30 days of the new calendar or contract year. The purpose of this Report will be to provide a year-end summary of the operation and maintenance of the System, and, shall include, but not be limited to, the current condition of the System, a summary of the information provided in the Monthly Progress Reports, as well as any additional information that is relevant and required by the City.

5.13 Systems Asset Assessment

Within sixty (60) days of the Commencement Date, the Operator shall conduct an initial systems asset assessment ("Initial Systems Asset Assessment") to determine the condition of the Systems. Said assessment shall be presented to the City upon completion for verification and approval of the conclusions drawn there from.

Following the Initial Systems Asset Assessment, subsequent assessments shall be performed by the Operator every five (5) years. The City shall be notified of the assessment schedule and offered an opportunity to participate directly and/or periodically. In any event, at the City's discretion, the City may conduct its own assessment at its cost at any time.

The Initial Systems Asset Assessment shall include a detailed, comprehensive survey, and inspection of the Systems to identify the physical and operational conditions and general status of repair of all equipment, buildings, structures, pavements, grounds, utility lines and system, spare parts inventories, operation and maintenance records.

The Initial Systems Asset Assessment shall include a detailed report documenting the findings of the assessment. The report shall include a description of the current condition of each item or component, its estimated remaining service life, and whether the current condition is consistent with the maintenance and general upkeep requirements and expected normal wear and tear.

An estimated cost for repair, renewal or placement shall be included for each item or component which is judged deficient. Estimates shall include a reasonable contingency allowance that will vary depending on the nature of the work required.

5.14 Summary of Plans

Several plans have been identified as necessary for a well-run utility to categorize, monitor, and economically manage the Systems. A summary of the required annual plans which shall be prepared and submitted to the City for review is listed below:

Water Supply System Plans

- Operation & Maintenance Plan
 - Facility & SCADA/Cyber Security Plan
 - Emergency Response Plan
 - Training Plan
 - Water Quality Sampling Plan
 - Water Conservation & Drought Management Plan
 - Residuals Disposal Plan
- Asset Management Plan
- Capital Improvement Plan

Sewer Collection System Plans

- Operation & Maintenance Plan
 - Facility & SCADA/Cyber Security Plan
 - Emergency Response Plan
 - Training Plan
 - Overflow Response Plan
 - Wet Weather Operating Plan
 - Flood Mitigation Plan
 - Solid Waste Disposal Plan
- Asset Management Plan
- Capital Improvement Plan

Section 6 Billing and Collections

On and after the Commencement Date, the Operator, as agent for the City, shall be responsible for the preparation, maintenance and collection of all bills and invoices to the users of the Systems and except for those costs and expenses identified in the Start-Up Services and payable as part of the Start-Up Services Fee, all costs and expenses associated therewith are incorporated into the Operator's Fixed Management Fee; provided however, that it is recognized that the City has the authority to enforce collection of bills and invoices to users of the Systems through liens and other remedies.

The City shall cooperate in good faith with Operator with respect to such enforcement activities. The Operator shall design the format and content (which shall be reasonably acceptable to the City) of the bills for the Water Supply System and Sewer Collection System.

In addition, the Operator shall maintain a computerized billing and collections system and customer information system ("CIS"), which provides, at a minimum, data on accounts such as customer name, address, account type (residential or commercial), meter size, lists fire lines, overdue accounts, and monthly billing cycles.

6.1 General Provisions

The Operator shall prepare, print, and deliver utility bills to the post office for mailing within five (5) working days of the meter read out. The Operator shall also coordinate the preparation of bills and include public service messages, when directed by the City, on bills.

The Operator shall be responsible for posting premises for shut off and implementing its water service termination procedures to any customer of the Water Supply System not in compliance with their obligation to pay the established rates in conformance with the policy and reestablishing services when appropriate in conformance with the policy. Shut offs shall not be made during the winter months (November through March) or in the two months prior to a lien sale. Shut offs and posting premises for shut off shall be subject to safety considerations and availability of police protection, where reasonably required. The practice regarding shut-offs is that the Operator shall send letters twice per year to the delinquent customer requesting payment and advising of the water shut-off alternative. For sewer accounts serviced by New Jersey American Water Company, enforcement is based upon foreclosure.

The Operator shall conduct one (1) lien sale per year in coordination with the City's Tax Collector. The City is responsible for designating the tax status of properties in its own system, and the Operator is entitled to rely on information furnished by the City. It is the Operator's responsibility to ensure that information provided by the City regarding the tax status of various properties is correctly reflected in the Operator's billing system.

The Operator does not have the authority to write off bills, and only the City has such authority.

When the Operator learns that a property is abandoned, the Operator shall be responsible for shutting off the services and stopping billing for such property unless otherwise directed by the City. The City shall provide Operator with a clear policy as to when to stop billing for abandoned properties, which it shall provide within ninety (90) days of the Commencement Date. All developers must be required to obtain a construction meter and service to developers shall be billed at the standard applicable metered rates. The Operator shall collect a deposit (to be placed in the City Controlled Account) to guarantee the payment for metered water used for construction purposes where no advance payments have been made. These deposits will be based upon the cost of the meter, plus the estimated amount of water which may be used during construction. When the meter is returned to the Operator in good condition, the outstanding deposit will be refunded without interest due, less any amount due for unpaid bills.

The City shall notify the Operator of new subdivisions and any type of new property construction, designating the block and lot.

6.2 Allocation of Revenues

The Operator shall deposit on a daily basis all funds collected from the users into a City controlled account (the "City Controlled Account") from which a Trustee (selected by the City) or the City (if no Trustee is appointed) will disburse funds to the Operator and the City pursuant to the terms of this Agreement.

The Operator shall provide daily reconciliation of receipts and evidence of deposits and maintenance of related accounts and databases. The Operator shall supply a detailed transaction report for the entire year to support a year-end audit performed by the City.

If the Operator produces inaccurate reconciliation information to the City due to the fault of Operator, the Operator shall reimburse all reasonable direct costs to the City arising out of the Operator's production of the inaccurate reconciliation information.

Circumstances where reimbursement is warranted may include, but are not limited to, instances where the City is caused to reimburse tax sale certificates and interest to lien purchasers, as a result of the Operator's production of inaccurate reconciliation information to the City due to Operator fault.

The Trustee (selected by the City) or the City (if no Trustee is appointed) shall, from the City Controlled Account, pay to the Operator on a monthly basis 1/12 of the Annual Service Fee on the first day of the month following Commencement Date and the first day of each month thereafter, for services provided in the prior month.

In no instance shall the portion of the Annual Service Fee due to the Operator not be paid if the City Controlled Account does not contain the full amount of monies necessary to remit payment to Operator, and the City shall be responsible for securing, as needed,

any remaining amount owed to the Operator not contained in the City Controlled Account.

6.3 Customer Service

The Operator shall respond, within twenty-four (24) hours or the next business day following a holiday or weekend, to all customer billing and collection questions, problems, and inquiries and shall maintain a toll free telephone number for customers of the Systems to handle such questions, problems and inquiries, as well as any emergencies, as may arise. Customer shall be served in a prompt and courteous manner. The Operator shall log all customer calls in its billing system and shall provide access (one seat) to the City to view such data in the Operator's billing system. Operator's monthly reports deliverable to the City shall also include a summary of the types of calls received during the prior thirty (30) day period. Seasonal (1st Q, 2nd Q, 3rd Q, 4th Q) and annual summaries shall be prepared and maintained, and copies shall be made available to the City and included in the monthly and annual reports. The Operator shall prepare and maintain, and provide the City, upon request, a copy of the Operator's written policy in dealing with customer service and complaints relating to billing and collection matters.

6.4 Collection Office

The Operator shall provide, within the downtown City business district, a centrally located collection office (such as a bank) where customers of the Systems may pay their bills during normal business hours Monday through Friday. The Operator shall also provide a "drop box" for customer use.

6.5 Municipal Water Service

During the Term of the Services Agreement, the Operator shall, at no cost or expense to the City, other than payment of the Annual Service Fee, provide water service in accordance with this Agreement to the Municipal Building and all other City offices and public and quasi-public facilities, including but not limited to, the police department and fire department, as well as to all fire-department related activities and all facilities identified in **Schedule 1, Table 1-1**, which such service shall be made in accordance with the terms and parameters set forth in the Agreement, and which shall include a cap on service in the event of variations from the three (3) year average immediately prior to the Commencement Date. The City shall be responsible to identify any such properties that are not metered. The Operator shall install meters at such unmetered properties, and the City shall cooperate and assist the Operator in contacting such facilities and securing their permission to install meters, per the terms of the Agreement. The Operator shall produce a bill but no bill shall be delivered or presented to any properties identified in **Schedule 1, Table 1-1** as public properties. The City may, from time to time, supplement **Schedule 1, Table 1-1**, to identify any properties acquired after Commencement of the Services Agreement that fall into the City, other public and quasi-public category to which water service shall be provided in accordance with this Section 6.5

6.6 Municipal Wastewater Service

The Operator shall, at no cost or expense to the City, provide during the term of the Agreement, wastewater service in accordance with this Agreement to the Municipal Building and all other City offices and public and quasi-public facilities, including but not limited to, the police department and fire department, and those facilities identified in the Agreement, which such service shall be made in accordance with the terms and parameters set forth in the Agreement, and which shall include a cap on service in the event of variations from the three (3) year average immediately prior to the Commencement Date. The City may, from time to time, supplement the list, to identify any properties acquired after Commencement of the Services Agreement that fall into the City, other public and quasi-public category to which wastewater service shall be provided in accordance with this Section 6.6

6.7 Performance Standards and Targets

The Operator shall perform the Billing and Collection Services consistent with prudent industry standards. In addition, the Operator shall utilize commercially reasonable efforts to achieve the specific performance targets as set forth in **Table S3-1**, performance targets, **Table S3-2**, billing and collection monitoring targets and **Table S3-3**, reporting targets and **Table S3-4**, customer advocacy targets, all set forth below.

6.8 City Contact

The Operator shall designate a Billings and Collection contact person who shall be readily accessible to the City to respond to any City billings, collection and customer service inquiries.

Table S3-1
Billing and Collection Performance Targets

Parameter	Requirements	Comments
Customer Meter Readings	Quarterly	Meters read and billed quarterly
Water and Sewer Billing	Within five (5) days of meter readout	
Water and Sewer Bill Collection Rates	90% in the first year, and 90% each year thereafter.*	

*Note — Public properties that are not subject to lien are excluded from this calculation.

Table S3-2
Billing and Collection Monitoring Targets

Type	Location/Frequency	Other Requirements
Billed consumption by customer class for water and sewer	Monthly	Ongoing program of water reconciliation
Customer historical water usage to identify malfunctioning meters	Quarterly	Monitoring of high/low readings and no usage
Customer Inquiries/Complaints	Ongoing	Maintain log of escalated calls

Table S3-3
Billing and Collection Reporting Targets

Item/Parameter	Reporting Requirement
Billing delinquency – 30 days	Notify City within seven (7) calendar days from delinquency.
Billing delinquency – 90 days	Immediate notification required. Include in accounts receivable report sent by 10 th of each month with request for City authority to shut off.
Billing delinquency- 120 days	Immediate notification required. Lien to be coordinated with City Tax Collector.

SCHEDULE 3
CCMUA'S LOCAL LIMITS AND THE CITY'S SEWER ORDINANCES

Attached as separate documents.

TABLE I
SPECIFIC POLLUTANT
Maximum Daily Discharge Limitations (mg/L)

<u>Parameter</u>	<u>Maximum Daily Discharge Concentration</u>
Flow	Monitor only
Biochemical Oxygen Demand (BOD5)	1000
Chemical Oxygen Demand (COD)	1000
Oils and Grease (O/G)	100
Total Suspended Solids (TSS)	750
Arsenic, Total (As, Total)	1.0
Beryllium, Total (Be, Total)	Monitor only
Cadmium, Total (Cd, Total)	0.04
Chromium Total (Cr, Total)	2.0
Color	Monitor only
Copper, Total (Cu, Total)	1.0
Cyanide, Total (CN, Total)	1.0
Cyanide, Amenable (CN,Amenable)	1.0
Lead, Total (Pb, Total)	0.30
Mercury, Total (Hg, Total)	0.01
Molybdenum, Total (Mo, Total)	Monitor only
Nickel, Total (Ni, Total)	1.0
Oxidation Reduction Potential(ORP)	-50(mv)
Phenol	Monitor only
Silver, Total (Ag, Total)	Monitor only
Zinc, Total (Zn, Total)	4.0
pH	6.0 to 11.5
Sulfide	1.0
Petroleum Hydrocarbons (PHC)	30
Total Dissolved Solids(TDS)	Monitor only
Total Toxic Organics (TTO)	5.00
Benzene, Toluene, Ethylbenzene, Xylenes (BTEX)	1.50(<i>Screening Limit Only</i>)

***Exceptions to Table I for Small Flow Commercial Users Only**
SPECIFIC POLLUTANT
Maximum Daily Discharge Limitations (mg/L)

<u>Parameter</u>	<u>Maximum Daily Discharge Concentration</u>
Biochemical Oxygen Demand (BOD5)	1500
Chemical Oxygen Demand (COD)	1500
Oils and Grease (O/G)	150
Petroleum Hydrocarbons (PHC)	45

*The remaining effluent limitations in Table I above apply to Small Flow Commercial Users.

SCHEDULE 4

COMPUTER INFORMATION SYSTEMS

COMPUTER INFORMATION SYSTEMS

As part of its Management Fee, the Operator will implement a comprehensive Computer Information Systems program for current and future information management needs for the water, sewer as well as the billing and collection systems as described in Schedule 2. The Operator shall be provided with available computer information for use in contract performance from the Current Operator. The selection, implementation, maintenance and any associated trouble shooting except those covered by warranties or guarantees if provided by City as part of a Capital Improvements Project. Computer Information Systems shall be included in the O&M Plan developed by the Operator. Computer Information Systems shall be used to provide management reports to City and any changes, upgrades or modifications to these systems shall be reported to City as part of the Monthly Reports. Changes, upgrades or modifications shall be made by the Operator to ensure reliable performance and compatible transfer at contract completion. All applications by Operator shall provide "read only" capabilities to City for immediate access if desired. All information contained in any computer information system used by the Operator in performance of any activity associated with this Agreement shall become and remain the property of the City.

4.1 SCADA (Supervisory Control And Data Acquisition)

Camden had several small SCADA programs provided as part of capital improvement projects over the term of the Current Operator that were not compatible or capable of handling the water and sewer systems. As a result the City of Camden has included the provision of a SCADA system as part of the Pump Station Rehabilitation Project. Exhibit 1 is an overview of the proposed system. Exhibit 2 is a schematic of the SCADA architecture. The Operator shall review this system as it becomes available which is anticipated during the 90 day observation period. Thereafter the Operator shall operate the SCADA system and any necessary maintenance will be handled through MR&R Allocations and Reserves. Recommendations for potential upgrades and expansions shall be included as part of Capital Improvements Plan.

4.2 GIS (Geographic Information System)

The Current Operator was required to provide a functioning GIS system for the water system after receiving mapping for the wastewater system upon contract commencement. The Current Operator was required to update and maintain a GIS system and offer the transitioning to another Operator upon termination of the MSA. The current system uses Arcview which was the basis of the original City supplied GIS. The current system includes street and utility system information (e.g. lines, manholes, hydrants, etc.). The Operator will use the available database and consistent with good management and operating protocol for utilities enhance the database to maximize the value and benefits of GIS for the systems. Operator will ensure the database can be readily transitioned to its Contract successor.

4.3 CMMS (Computerized Maintenance Management System)

The Operator shall be required to implement and maintain a computer based maintenance management program for all functions of the Systems including predictive, preventative, and corrective maintenance in accordance with Schedule 2. The Current Operator has utilized Hiperweb and worked with Operator for transitioning database, which does not include any data prior to 2011, however that data is available on paper records.

4.4 Billing and Collection Systems

The Operator shall be required to implement and maintain computerized programs to prepare billing and

collection systems as well as all associated management reports.

4.5 Other Systems

The Operator is encouraged to provide computerized programs or software packages for any and all functions of the Systems including, but not limited to:

- Process Control and data management
- Water storage level monitoring
- Telemetry
- Laboratory data management and quality control
- Industrial pretreatment monitoring
- Administration and management reports and plans
- Regulatory compliance

SCHEDULE 5
RATES FEES AND CHARGES

5.1 START-UP SERVICES FEE

The Start-Up Services Fee shall be \$1,800,460. The City shall pay the Start-Up Services Fee to the Operator as set forth in **Table A** of **Schedule 2**.

5.2 FIXED MANAGEMENT FEE

The Fixed Management Fee for the Agreement Year ending December 31, 2016 shall be \$6,494,748. The Fixed Management Fee shall be increased each year by the Index Factor as set forth in this **Schedule 5**.

5.3 ANNUAL SERVICE FEE; PAYMENT TERMS

The Annual Service Fee is composed of the sum of the Fixed Management Fee, as may be amended via Change Order, and Pass-through Charges or Pass-through Credits, which include, but are not limited to the Maintenance, Repair and Replacement Allocation and the Utility Allocation each set forth in **Tables B and C** of **Schedule 2**, respectively. The City shall pay to the Operator one twelfth of the Fixed Management Fee, one twelfth of the Maintenance, Repair and Replacement Allocation and one twelfth of the Utility Allocation as on the first day of each month following the Commencement Date throughout the Term of the Agreement for Services performed in the preceding month. On a quarterly basis the Parties shall reconcile the amounts paid by the City to the Operator in connection with the Maintenance, Repair and Replacement Allocation and the Utility Allocation with the actual costs incurred by the Operator for the quarter. If the reconciliation reveals that the City has overpaid the Operator for Maintenance, Repair and Replacement and/or Utility costs, the Operator shall reimburse the City according by the first day of the next calendar month following the determination. If the reconciliation reveals that the City has underpaid the Operator for Maintenance, Repair and Replacement and/or Utility costs, the City shall reimburse the Operator according by the first day of the next calendar month following the determination. The City shall pay to the Operator \$318,802.33 amount of the Maintenance, Repair and Replacement Allocation and \$77,535.10 amount of the Utility Allocation for the first month of the Term of the Agreement in order to ensure that the Operator is properly funded to address these Pass-through Charges. All payments to be made by the City to the Operator pursuant to this Services Agreement shall be made within thirty (30) days after receipt of invoice. The City will review Operator's invoices, and if the City questions any items, the City shall notify Operator within twenty-one (21) days of receipt of the invoice. All amounts not in dispute will be paid when due. Payment not made on the date due shall be subject to interest at the prime rate plus two percent (2%). All amounts in dispute shall be resolved by the dispute resolution procedure set forth under Section 10.24 of this Services Agreement. Failure to make payments on a timely basis shall be an event of default pursuant to Article IX of the Agreement.

The Operator shall be paid a Fixed Management Fee for the Services that will be performed by

the Operator as contemplated herein. In addition, the yearly Fixed Management Fee as set forth in Section 8.4 of the Services Agreement shall not be subject to adjustment unless otherwise agreed to by the Parties and/or as provided herein. To the extent Rev. Proc. 97-13 imposes limits on the Operator's ability to perform the Services and/or receive compensation for such Services, the City and Operator shall make the appropriate adjustments in the method of compensation so that the City will receive such Services and Operator shall receive its corresponding compensation. In no event shall any adjustment be made until the Parties agree that such adjustment is warranted and until such time the Parties agree on the actual adjustment through a contract amendment or Change Order. If such adjustment cannot be made and mutually agreed-upon by and between the Parties, then the Operator will not be responsible for performing the portion of the Services in dispute.

5.4 INFLATION ADJUSTMENT

Annual Adjustments: At the beginning of each Contract Year, the Fixed Management Fee shall be increased each year by the Consumer Price Index, subject to an annual cap of four percent (4%) (the "Index Factor").

The Consumer Price Index that is used as the Index Factor shall be the current Consumer Price Index, Philadelphia-Wilmington-Atlantic City CPI-U 12-month percent changes, all items index (not seasonally adjusted) (<http://www.bls.gov/ro3/cpiphl.htm>), as published by the U.S. Department of Labor, Bureau of Labor Statistics.

All changes shall be calculated on a twelve-month basis ending December 31st of the calendar year immediately prior to the Contract Year in which such change takes effect. The new adjusted rate shall be effective for the Contract Year even if the calculation made pursuant to the terms hereof is not computed by the Operator until such information is made available (such information typically being available in January). In the event that the Consumer Price Index ceases to become available, the most closely comparable index then available shall be used by the Operator.

5.5 USER CHARGES

The City retains responsibility for setting rates and charges. The Operator agrees to implement revised rates and charges on a date specified by the City within sixty (60) days after notification from the City. The Operator's obligation to implement such revised rates and charges shall be limited to once per Contract Year.

Effective on the Commencement Date and as of each annual anniversary thereafter throughout the term of the Agreement, the City agrees, to the extent permitted by law, to increase its rates for the supply of water services and wastewater services, as applicable, to customers of the Systems to at least the rates required to cover the Annual Service Fee to be paid to the Operator for services provided. Nothing herein shall be construed to restrict the City from establishing rates for the supply of water service or wastewater service to the customers of the Systems that are in excess of the rates required to cover the Annual Service Fee.

5.6 CONNECTION FEES

The Operator shall be responsible for the collection of all connection fees and tapping fees. The City shall be the sole authority in determining and establishing the connection fees to be charged to new water and wastewater customers connecting with the Systems.

All such connection and tapping fees shall be paid to, and shall remain the property of, the City including those connection fees paid after the Commencement Date of the Services Agreement.

5.7 REV. PROC. 97-13 REQUIREMENTS

Rev. Proc. 97-13 limits the amount of any variable fee payable to Operator to 20% of the Annual Service Fee. For purposes of applying this limitation, the following items shall be subtracted from the Annual Service Fee:

- (i) Pass-through Charges/Credits
- (ii) Allocable portion of the cost of Capital Improvements payable to third parties, amortized in equal amounts over the term of the Agreement.
- (iii) Operator labor associated with Capital Improvements or otherwise contemplated at the time of execution of this Agreement, amortized in equal amounts over the term of the Agreement.
- (iv) The Start-Up Services Fee.

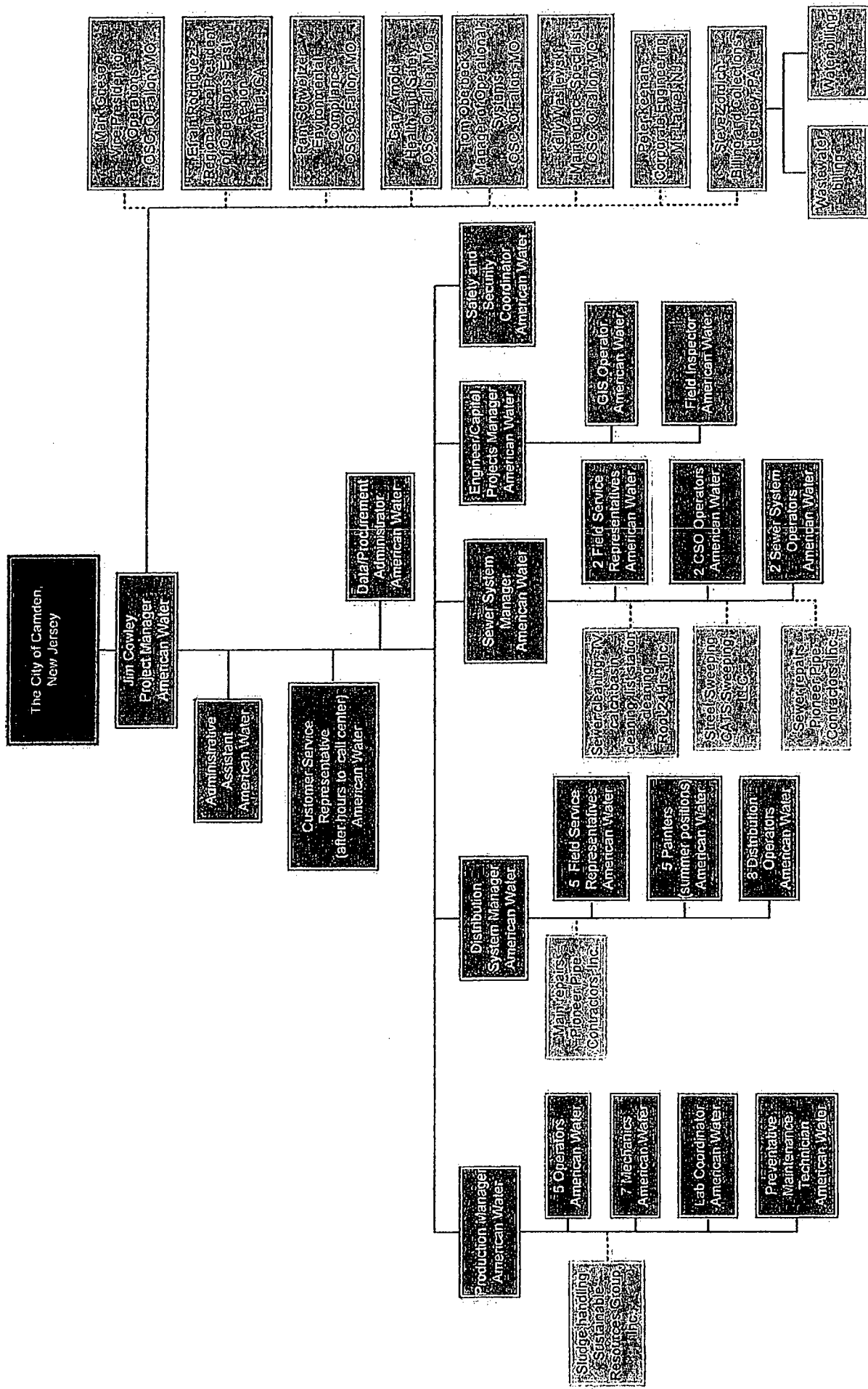
5.8 VARIABLE COMPONENTS OF FEE

The following items shall be considered variable components of the Operator's Annual Service Fee for purposes of Rev. Proc. 97-13:

- (i) Adjustments in fee attributable to changes in water usage.
- (ii) Allocable portion of cost of Capital Improvements including internal labor costs retained by Operator and not payable to third parties, amortized in equal amounts over a 5-year period.

SCHEDULE 6
STAFFING

[see attached]



Legend

- On-site American Water Employee
- On-site American Water Subcontractor

SCHEDULE 7
PERMITS / ADMINISTRATIVE CONSENT ORDERS

PERMITS

Water Allocation Permit –		WAP000001/NJ060001
CSO Permit –		NJ015338
MS4 Permit	Camden	NJ0108812
	General Tier A	NJ0141852
Physical Connection Permit -		WPC130001
Air Quality Permit -	Morris Delair	GEN110001
	Parkside	GEN080001

ADMINISTRATIVE CONSENT ORDERS

CWA 02 2014-3038 (CSO)
CWA 02 2015-3006 (MS4)

SCHEDULE 8 INSURANCE

COMMERCIAL GENERAL LIABILITY

General Aggregate:	\$25,000,000
Products & Completed Ops Aggregate:	\$25,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage (Any one Fire):	\$300,000
Medical Expense (Any one Person):	\$10,000
Coverage Written on Occurrence Basis:	Yes

COMMERCIAL AUTOMOBILE

Liability	\$1,000,000
Non-Owned & Hired Liability	\$1,000,000
Personal Injury Protection:	Statutory
Uninsured Motorists:	\$1,000,000
Underinsured Motorists:	\$1,000,000

WORKERS' COMPENSATION

Workers' Compensation-Statutory Coverage

Employer's Liability

Each Accident:	\$1,000,000
Disease – Each Employee:	\$1,000,000
Disease – Policy Limit:	\$1,000,000

EXCESS LIABILITY

(Excess of General Liability, Automobile Liability and Employers Liability)

Each Occurrence	\$25,000,000
Annual Aggregate	\$25,000,000

NOTE: Any combination of primary and excess liability totaling \$25,000,000 per accident/occurrence and \$25,000,000 aggregate will be acceptable.

COMMERCIAL CRIME

Employee Dishonesty	\$500,000 each loss
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ENVIRONMENTAL (POLLUTION) LIABILITY

Each Pollution Incident	\$1,000,000
Annual Aggregate	\$2,000,000

IF REQUIRED, PROFESSIONAL/ERRORS AND OMISSIONS LIABILITY FOR DESIGN AND ENGINEERING SERVICES

Each claim	\$2,000,000
Annual Aggregate	\$4,000,000

CITY- PROVIDED COVERAGE FOR COMMERCIAL PROPERTY/EQUIPMENT BREAKDOWN

Limits of Insurance & Coverages	
\$109,929,404	Blanket Limit Per Occurrence-Real & Personal Property
\$1,500,000 \$125,000-Monthly Limitation	Blanket Business Income
\$1,000,000	Blanket Extra Expense
Special/All Risk	Perils Insured
Replacement Cost	Valuation
\$5,000,000	Flood-Each Occurrence/Annual Aggregate (Applies to Properties located in Flood Zones X or C with flood scores of 30 or less)
\$2,000,000	Flood-Each Occurrence/Annual Aggregate (Applies to Properties located in Flood Zones B, XB, X500, And on a FEMA Flood Rate map Shaded X)
Excluded	Locations in Zone A
I. b. Deductibles:	
\$100,000	Per Occurrence, All Coverages Combined
\$100,000 72 Hours	Flood & Earthquake, Per Occurrence-Property Damage Business Income
\$100,000 72 Hours	Flood-Per Location for properties located in Flood Zones B, XB, X500, And on a FEMA Flood Rate map Shaded X Business Income

The Operator shall assist the City with the provision of underwriting information for the purposes of obtaining City's property insurance. The City will rely on its first party insurance coverage to pay for any loss or damage, and, in proportion to the extent and degree of its fault, failure or negligence, the Operator shall reimburse the City for the deductible amount (\$100,000 per occurrence) in the event such loss or damage is the result of Operators negligence.

SCHEDULE 9
AFFIRMATIVE ACTION REQUIREMENTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A 10:5-31 et seq. (P. L. 1975, c. 127)
N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of the Services, the Successful Respondent(s) must agree as follows:

a. The Contractor or subcontractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this nondiscrimination clause.

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

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

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

e. The Contractor or subcontractor shall furnish such reports or other documents to the affirmative action office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the affirmative action office for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

f. The Contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

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

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

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

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

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

k. The Contractor or its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program

for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

SCHEDULE 10
EQUIPMENT AND CHEMICALS INVENTORY

[Note: This Schedule 10 shall be completed by the Operator on February 1, 2016 to be reflective of the then existing Equipment and Chemicals Inventory]

[under development]

**SCHEDULE 11
TREATABILITY STUDY**

TO BE COMPLETED WITHIN 120 DAYS OF THE CONTRACT DATE

SCHEDULE 12
GREEN INFRASTRUCTURE

Within the boundaries of the City there are a numerous of Green Infrastructure projects. Green Infrastructure consists of the facilities underlined on the attached list.

The Standard Operating Procedures that the Operator must adhere to with respect to each of these Green Infrastructure facilities is set forth in Schedule 2 Section 4.24.



City of Camden
Camden Green Infrastructure

No.	Name	Location
1	<u>29th St. Biobasins</u>	29th St between Pierce St & Tyler St
2	<u>Baird CSO</u>	Baird Blvd & US 30
3	Beckett Street Garden	309 Beckett St
4	Brimm School Rain Garden	1626 Copewood St
5	Cramer Hill Nature Preserve	
6	Farnham Park	
7	<u>Ferry Avenue Library Rain Garden</u>	852 Ferry Ave
8	Ferry Avenue Rain Garden	1645 Ferry Ave
9	Front St. Community Garden	Penn St & North Front St
10	Haddon Avenue Pocket Park	Haddon Ave & White Horse Pk
11	Liney Ditch Park	351 Jasper St
12	Neighborhood Center Rain Garden	278 Kaighns Ave
13	Pyne Point School	N 7th St & Erie St
14	St. Anthony's Catholic School Rain Garden	2824 River Ave
15	<u>Thorndyke CSO Rain Garden</u>	Farnham Park off of Admiral Wilson Blvd
16	Urban Promise Academy Rain Garden	3700 Rudderow St
17	Yorkship Elementary School	1251 Collings Ave
18	Adventure Aquarium	1 Riverside Dr
19	Octavius V. Catto Community School	3100 Westfield Ave
20	Cooper Sprouts Community Garden	S 7th St & Pine St
21	Acelero Learning Center	331 Grand Ave
22	Henry H. Davis School	3425 Cramer St
23	Mt. Vernon Street & 3rd Street Lot Renovation	Mt. Vernon St & S 3rd St
24	St. Joan Of Arc Church	3107 Alabama Rd
25	Trenton Ave Pocket Park	Trenton Ave & Newton Ave
26	Vietnamese Community Garden	N 29th St & Cramer St
27	Respond, Inc.	309 Vine St
28	Line Street & White Street Community Garden	Line St & White St
29	U.S. Wiggins Elementary School	400 Mount Vernon St
30	Mt. Zion Highway of Holiness	295 Chestnut St
31	Staley Park	Master St & Chelton Ave
32	Wiggins Park Marina	Riverside Dr & Mickle Blvd
33	Broadway School	St. John St & Clinton St
34	Pierce St. Community Garden	Pierce St & Dupont St
35	Front St. Curb Extensions	Linden St & North Front St
36	Hosanna AME Church	Saunders St & N 30th St
37	St. John's Baptist Church	Thompson St at N 30th St



City of Camden
Camden Green Infrastructure

No.	Name	Location
38	East Camden Middle School	Freemonth Ave & Burwood Ave
39	Common Road Rain Gardens	Sumter Rd & N Common Rd
40	Sword of the Spirit Christian Church	Kaighns Ave & Louis St
41	Lanning Square Community Garden	S 3rd St & Line St
42	AME Zion Church	S 10th St & Florence St
43	Vacant Lot	S 9th St & Woodland Ave
44	Vacant Lot	N 2nd St & York St
45	North 3rd Traffic Triangle	N 3rd & Main St
46	Respond Community Center	N 9th St & Linden St
47	Davis St at Sayrs Ave	Davis St & Sayrs Ave
48	<u>CSO Area C03</u>	Jackson St
49	Brimm Boulevard Project	Kaighns Ave (Dr. Charles Brimm Blvd)
50	East Camden Rain Barrel Program	
51	Baird Boulevard Rain Gardens	
52	Henry L. Bonsall Elementary School	1575 Mt. Ephraim Ave
53	<u>Walnut and Broadway Triangle</u>	South Broadway & Walnut St
54	Whittier Elementary School	SW Chesnut & 8th St
55	Iglesia De Dios Pentacostal	3706 Westfield Ave
56	4th and Washington Park	4th & Berkley St
57	Elijah Perry Park	Ferry Ave & Phillip St
58	Cooper's Poynt School	3rd St & York St
59	Cramer Elementary School	2800 Mickle St
60	20th St. Community Garden Rain Gardens	N 20th St & River Ave
61	304 State St. Rainwater Harvesting	304 State St
62	9th and Woodland Ave., City Lot	9th & Woodland Ave
63	Boys and Girls Club of Camden	1725 Park Blvd
64	Camden County Technical Schools (Penn Tech)	6008 Browning Rd
65	Camden County Municipal Utilities Authority	1645 Ferry Ave
66	Challenge Square Academy	Kaighns Ave & Louis St
67	Dudley Elementary School	2250 Berwick St
68	<u>Dudley Grange Park</u>	3101 Federal St
69	Early Childhood Development Center	1602 Pine St
70	Park Blvd Rain Garden #1	Park Blvd & Magnolia Ave
71	Park Blvd Rain Garden #2	Park Blvd & Vesper Blvd
72	Princess Avenue Vacant Lot	Princess Ave & Walnut St
73	PRUP Rain Garden and Rainwater Harvesting	South Broadway & Pine St
74	Waterfront South Rain Garden	South Broadway & Chelton Ave
75	RT Cream School Rain Garden	1875 Leon Huff St
76	Sumner Elementary School	Jackson St & N 8th St
77	Woodrow Wilson High School Rain Garden	
78	Union Field Rain Garden	
79	Phoenix Park	227 Jefferson St



City of Camden
Camden Green Infrastructure

No.	Name	Location
80	Baldwins Run	
81	Von Nieda Park Restoration	
82	St. Bartholomew's Church	751 Kaighn Ave
83	Waterfront South Native Plant Nursery	Ferry Ave & Jackson St

SCHEDULE 13

CCMUA's SERVICES AGREEMENT WITH THE CITY

[Attached as a separate document]

**SHARED SERVICES AGREEMENT BETWEEN
THE CAMDEN COUNTY MUNICIPAL UTILITIES AUTHORITY
AND THE CITY OF CAMDEN**

WHEREAS, the Legislature of the State of New Jersey enacted the New Jersey "Uniform Shared Services and Consolidation Act" ("ACT"), N.J.S.A. 40A:65-1, et. seq., to enable and encourage local governmental units and agencies to effectuate agreements between them that will result in efficiency and cost savings for the public; and

WHEREAS, the Camden County Municipal Utilities Authority (CCMUA), with its principal offices located at 1645 Ferry Avenue, Camden, New Jersey 08104, and the City of Camden (CITY), a municipal corporation of the State of New Jersey with its principal office located at Camden City Hall, Fifth and Market Streets, Camden, New Jersey 08101, have reached an agreement to cooperate and share services to improve the operation and performance of the CCMUA's wastewater treatment plant, and the CITY's combined sewer system, due to the existing interconnected nature of these operations (collectively referred to herein as "THE OPERATIONS"); and

WHEREAS, the City of Camden is currently reviewing a Request for Proposal ("RFP") #13-17 for General Engineering Services for the City of Camden Water and Sewer Operations. The services sought are including, but not limited to, a survey and inspection of facilities, Physical Asset Inventory, Operating Inventory, Audit of Billing and Collections, and review of options for the future of the Camden Water and Sewer Operations; and

WHEREAS, after the City of Camden decides the preferred option, the City of Camden will issue an RFP seeking a Water and Sewer Operator; and

WHEREAS, the CCMUA and the CITY (collectively referred to herein as "THE PARTIES") find that entering into such an agreement will be of mutual benefit to their public constituencies; NOW, THEREFORE

IT IS HEREBY AGREED as of this 28th "effective" date of December, 2013 by and between the City of Camden and the Camden County Municipal Utilities Authority, for and in consideration of the improvement to THE OPERATIONS referred to above, of each entity, that:

1. The "WHEREAS" clauses above are made a part of this AGREEMENT of the parties.
2. The CCMUA, at no cost to CITY, will provide technical assistance to the City in the selection of an engineer under RFP# 13-17.
3. The CCMUA, at no cost to the CITY, will undertake the responsibility of oversight, contract compliance, and monitoring for the CITY's current and future water and sewer contract as follows:
 - A. Review and oversee the CITY's contract operator's operations and maintenance services, in order to ensure that said operator is meeting its contractual responsibilities to the CITY, including but not limited to providing an emphasis upon the CITY's contract operator's performance needed to reduce flooding, overflows and potable water loss. The CCMUA will review all of the contract operator's invoices and other pertinent reports that contract operator provides to the City. The CCMUA will make recommendations for payment to the City based upon the performance of the contract operator.

- B. The CCMUA will provide monthly reports to the CITY concerning the CCMUA's activities and recommendations of its functions provided in paragraph 3A, above.
 - C. In order to assist the CCMUA in its performance of its duties herein, the CCMUA anticipates that it will procure and retain, at the CCMUA's own cost, an outside consulting engineering firm.
4. Since the parties recognize that the CITY's contract ("CONTRACT") with its current water and sewer contract operator will expire on or before December 31, 2014, the CCMUA agrees to, at its own cost:
- A. Upon the CITY selecting its preferred option, the CCMUA will prepare the specifications under the City's direction and guidance for the procurement of the CITY's future Water and Sewer Contract.
 - B. The CCMUA will procure a consultant to assist with the development of the specifications for the RFP.
 - C. The CCMUA, at no cost to the CITY, will provide technical assistance in connection with the CITY's review of the proposals.
5. In consideration of the foregoing, the CITY agrees to directly and indirectly, fully cooperate and provide support on a timely basis, to the CCMUA in the performance of the CCMUA's duties herein, and make available to the CCMUA the CITY's facilities, records, and employees at the CCMUA's request. Reference to the CCMUA and CITY herein includes their respective outside contractors and consultants for these purposes.
-

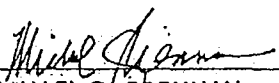
6. This Agreement becomes effective upon the passage of a resolution by the respective governing bodies of the CCMUA and the CITY, authorizing the entering into this Agreement.
 7. Each party agrees to hold the other party harmless for any acts of negligence or gross negligence.
 8. This AGREEMENT, pursuant to the "ACT", is for a term of ten (10) years from the effective date hereof. However, notwithstanding the foregoing sentence, this AGREEMENT may be terminated by either the CITY or the CCMUA, at the sole discretion of each, upon the giving of thirty (30) days written NOTICE OF TERMINATION to the other.
 9. This AGREEMENT shall be governed by the LAWS OF THE STATE OF NEW JERSEY and is further subject to any provision provided in the existing "Service Agreement" between the CCMUA and all municipalities within the County of Camden.
 10. If any disputes should arise hereunder, the PARTIES agree that the appropriate legal forum to resolve same shall be within the Superior Court of New Jersey, Law or Chancery Division, Camden County venue.
 11. This contract contains the entire agreement of the PARTIES. Any prior or other understandings, either written or verbal, which are not included herein, are not valid, proper or made a part hereof, and have no legal or binding effect.
 12. If a Court of Law rules that any provision or clause in this Agreement is of no legal or binding effect, the remaining provisions and clauses in this Agreement shall remain in full force and effect.
-

IN WITNESS WHEREOF, and intending to be legally bound, the authorized
representatives of each PARTY hereby enters their signatures and seals:

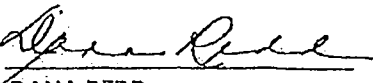
CAMDEN COUNTY MUNICIPAL
UTILITIES AUTHORITY

CITY OF CAMDEN

BY:


MICHAEL G. BRENNAN
CHAIRMAN
BOARD OF COMMISSIONERS
CCMUA

BY:


DANA REDD
MAYOR

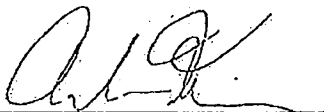
DATED:

1/10/14

DATED:

1/24/2014

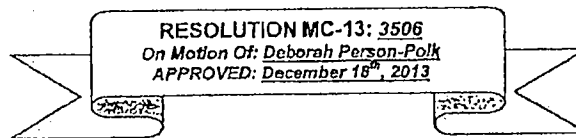
WITNESS:



WITNESS:



MAR:dh
12-10-13



R-41

RESOLUTION AUTHORIZING A SHARED SERVICES AGREEMENT BETWEEN
THE CITY OF CAMDEN AND CAMDEN COUNTY MUNICIPAL UTILITIES
AUTHORITY (CCMUA)

WHEREAS, N.J.S.A. 40A:65-1 et. seq. authorizes local units of government to enter into agreements for the joint provision of services; and

WHEREAS, the CCMUA and the City of Camden seek to enter into such an agreement; and

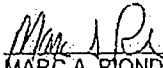
WHEREAS, there is a need, to establish the rights and responsibilities of both entities as it relates to provide technical assistance, contract oversight/monitoring for the City's current and future water and sewer contract, and preparation of the specifications for the procurement of the City's next water contract; now, therefore

BE IT RESOLVED by the City Council of the City of Camden that a Shared Services Agreement is hereby authorized between the City of Camden and the CCMUA.

BE IT FURTHER RESOLVED, that pursuant to N.J.S.A. 52:27BBB-23, a true copy of this Resolution shall be forwarded to the State Commissioner of Community Affairs, who shall have ten (10) days from the receipt thereof to veto this Resolution. All notices of veto shall be filed in the Office of the Municipal Clerk.

Date of Introduction: December 10, 2013

The above has been reviewed
and approved as to form.


MARC A. RIONDINO
City Attorney


FRANCISCO MORAN
President, City Council

ATTEST: 
LUIS PASTORIZA
Municipal Clerk

I, LUIS PASTORIZA, MUNICIPAL CLERK OF THE CITY OF CAMDEN, DO HEREBY CERTIFY, that the foregoing is a true copy of a resolution entitled "Resolution authorizing a shared services agreement between the City of Camden and Camden County Municipal Utilities Authority (CCMUA)" ADOPTED by the Council of the City of Camden, New Jersey, the 18th day of December 2013 as taken from and compared with the original now on file in my office.
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed seal of the City of Camden, at this 5th day of January, 2013.


Luis Pastoriza, Municipal Clerk

SCHEDULE 14**LIST OF PROPERTIES TO RECEIVE FREE SERVICES**

Metered / Not Billed	Unmetered Building	Location
x		City Hall
x		Community Centers (2 locations)
	x	Fire Stations (7 locations)
	x	Police
	x	Fire Usage and Training
	x	Public Works
	x	Spray Pools (8 locations)

SCHEDULE 15 PROCUREMENT PROCEDURES

Procurement Procedures

1. Competitive procurement

The Operator shall competitively procure the goods and services that will result in Pass-through Charges to the City for procurements worth \$50,000 and above; however, if the Operator has an existing master service agreement with a vendor that has been competitively procured, then Operator shall have the right, upon provision of written certification to the City of such competitive procurement process, to use same without further competition.

Competitive procurement requires a minimum of three (3) quotes or bids; and also implies the selection of the "best value" bid. Not necessarily the lowest price.

2. Non-competitive procurement

The City and The Operator acknowledge situations where competitive procurement is not feasible, relevant or practical, including, but not limited to the following: sole or single source vendor situations; when the cost of the goods or services is an amount less than \$50,000; and emergency purchases made to protect the health, safety or welfare of the public and/or the environment or to avoid work stoppage, downtime, injury to persons or property or unusual costs. In cases of emergency, the Operator shall as soon as practicable, notify the City Engineer or Director of Public Works regarding the estimated costs and nature of any work that is anticipated to exceed \$50,000. Notification via e-mail shall be acceptable, provided such email is supported by relevant back-up documentation.

3. Documentation to be Retained by the Operator

For procurements in excess of \$50,000, upon request by the City, the Operator shall provide to the City the particulars of the project and bid process (i.e. scope of goods or services, contract template, bid list, price sheet and bid format, bid results and evaluation, an estimate of the cost of the goods or services supported by relevant back-up documentation, etc.).

The Parties recognize that procurements of services may be accomplished on an annual or semi-annual basis in order to secure qualified vendors, who may then perform services through task orders at agreed upon pricing under Operator's direction.

SCHEDULE 16
MINIMUM FINANCIAL CRITERIA

In order to ensure that the Operator or other entity serving as guarantor will have the financial strength, resources and capacity to perform the Services for the term of the Services Agreement, the Operator must meet and maintain, for the term of the Services Agreement, the following Minimum Financial Criteria:

1. The Operator shall have a net worth for each of the three (3) most recent reviewed financial statements of at least Fifteen Million (\$15,000,000) Dollars.
2. The Operator shall have had annual pre-tax earnings for the most recently reviewed financial statement of One and half Million (\$1,500,000) and for two (2) out of the three (3) most recent reviewed financial statements of at least One Million (\$1,000,000) Dollars per year.
3. The Operator shall have unencumbered cash and/or cash equivalents (such as marketable securities) of at least Five Million (\$5,000,000) Dollars as of the date of its most recent reviewed financial statement. A portion of the "Cash Equivalent" can include an unencumbered line of credit up to Two Million Dollars (\$2,000,000) that the Operator can access during the term of the Services Agreement. If the Operator determines to satisfy the "Cash Equivalent" through use of the unencumbered line of credit, the Operator shall submit a letter from an authorized representative evidencing the current existence of such a line of credit and verifying the encumbered and unencumbered portions thereof and the ability of the Operator to access such line of credit during the term of the Services Agreement. If the bank's letter qualifies the Operator's ability to access the line of credit on the absence of any events of default by the Operator, the bank must agree to (and acknowledge such agreement in the letter) notify the City upon the occurrence of an event of default by the Operator. Notification of an event of default will entitle the City to seek additional security from the Operator or terminate the Services Agreement.

In the event that a related entity, other than the Operator, satisfies all of the Minimum Financial Criteria, such entity must be willing to provide:

- (1) an executed guarantor agreement pursuant to which such entity will fully guarantee all of the obligations of the Operator.

In order to demonstrate on-going compliance with the Minimum Financial Criteria set forth above, the Operator must, if requested to do so by City, submit either (i) audited financial statements, or (ii) financial statements reviewed by an independent certified public accountant under generally accepted accounting principles, with full disclosure, and such financial statements shall be accompanied by an Accountant's Review Report. In either case, such financial statements must be submitted for each of the three most recent fiscal years.

SCHEDULE 17
MINIMUM TECHNICAL CRITERIA

1. Personnel

- (a) During the Term of this Services Agreement, the Operator shall have in its employ, and available to provide the Services required under this Services Agreement, at least three supervisory personnel experienced in providing supervision, troubleshooting, evaluations, and other technical information in support of operation and maintenance of water facilities. Resumes indicating the names, education, experience and years of service with the Respondent of these employees shall be supplied to the City upon request.
- (b) During the Term of this Services Agreement, the Operator shall have in its employ, and available to provide the Services required under this Services Agreement, at least three supervisory personnel with current public water treatment and distribution system license classification pursuant to N.J.S.A. 58:11-64 et. seq. and N.J.A.C. 7:10-13 of W3 or higher for water distribution and T4 for water treatment for operation of water facilities in accordance with Department Permits. Resumes indicating the names of these employees, their licenses held and years of experience with the Respondent shall be supplied to the City upon request.
- (c) During the Term of this Services Agreement, the Operator shall currently have in its employ, and available to provide the Services required under this Services Agreement, sufficient technical, managerial, engineering, administrative, office, field, clerical and accounting staff to efficiently and effectively render the Services as specified herein. Resumes of key individuals shall be supplied to the City upon request.
- (d) During the Term of this Services Agreement, the Operator, upon request from the City, shall provide an organizational chart for each System indicating the category of employee, number of employees required per category and level of responsibility of each employee. The responsibilities of individuals named in (a) through (c) above shall be addressed and included in the chart.

2. Vehicles/Equipment

During the Term of this Services Agreement, the Operator must own or lease a sufficient number and type of vehicles and equipment as necessary to render the required Services. A list of all such equipment and vehicles shall be provided to the City upon request.

SCHEDULE 18
ANNUALLY RENEWABLE PERFORMANCE BOND / PERFORMANCE LETTER OF
CREDIT

To be added.

SCHEDULE 19
ANNUALLY RENEWABLE LABOR AND MATERIALS BOND

To be added.

SCHEDULE 20
RESERVED

SCHEDULE 21
GUARANTOR AGREEMENT

[Attached as a separate document]