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SERVICE CONTRACT  
FOR  
WASTEWATER TREATMENT SYSTEM  
CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT

among

THE BOROUGH OF NAUGATUCK, CONNECTICUT

and

THE WATER POLLUTION CONTROL AUTHORITY  
OF THE BOROUGH OF NAUGATUCK

and

U.S. FILTER OPERATING SERVICES, INC.

Dated

October 25, 2001

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SERVICE CONTRACT  
FOR  
WASTEWATER TREATMENT SYSTEM  
CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT

THIS SERVICE CONTRACT FOR WASTEWATER TREATMENT SYSTEM CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT is made and entered into as of this 25<sup>th</sup> day of October, 2001 among the Borough of Naugatuck, a political subdivision organized and existing under the laws of State of Connecticut, the Water Pollution Control Authority of the Borough of Naugatuck, a water pollution control authority established by the Borough of Naugatuck pursuant to Chapter 103 of the Connecticut General Statutes (the "WPCA"; the WPCA and the Borough of Naugatuck are collectively referred to herein as the "Borough") and U.S. Filter Operating Services, Inc., a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Connecticut (the "Company").

RECITALS

(A) The Borough owns the Borough of Naugatuck wastewater treatment plant and the associated sewage collection, pumping and interceptor system.

(B) The wastewater treatment plant is operated by the Company under a contract which expires on April 30, 2002, or such earlier time as provided in such contract.

(C) The sewage collection, pumping and interceptor system is operated by the Borough.

(D) The Borough is authorized under NPDES Permit No. CT0100641 to discharge treated wastewater from the wastewater treatment plant into the Naugatuck River.

(E) The Borough and the United States Environmental Protection Agency (Region I) have heretofore consented to the entry of a consent agreement and final order pursuant to a complaint filed by EPA alleging that the Borough violated the limits for total residual chlorine and fecal coliform established in NPDES Permit No. CT0100641 issued on July 25, 1991. The consent agreement and final order, which required the Borough to pay the EPA an administrative penalty assessment, constituted a settlement by the EPA of all claims for judicial or administrative civil penalties for the above alleged violations.

(F) In 1998, the United States Environmental Protection Agency (Region I) heretofore issued a findings of violation and order for compliance which established an interim limit on the amount of total residual chlorine of the effluent discharged from the Borough's wastewater treatment plant. The order for compliance was superseded by the reissuance of the Borough's NPDES Permit on August 7, 2001.

(G) The Borough has determined that it is in the Borough's best interests to contract with a private company on a long-term basis to operate, maintain, repair, replace and manage certain wastewater treatment system assets, and to permit, design, construct, startup, test

and achieve acceptance of certain initial capital improvements to the wastewater treatment system to meet the requirements of applicable law.

(H) The Borough issued a request for proposals on February 5, 1999 to provide capital improvement and asset management services for, among other things, the wastewater treatment system, and set forth in the RFP the criteria for selection of the preferred proposer. RFP Addenda were issued on March 18, 1999, March 30, 1999, April 8, 1999, April 20, 1999 and April 23, 1999.

(I) Proposals submitted in response to the RFP were received on May 25, 1999 from two firms. A proposal clarification process was conducted commencing in September, 1999 and post-proposal clarification submittals were received from the Company in October, 1999, December, 1999 and February, 2000. The other proposer declined to submit a proposal clarification response and formally withdrew its proposal.

(J) Based on further evaluation of the Company's clarified proposal, the Borough's Board of Mayor and Burgesses, on behalf of the Borough and the WPCA, voted in February, 2000 to proceed with negotiations with the Company.

(K) In March, 2000, the Borough initiated the contract negotiations with the Company which have concluded with this Service Contract.

(L) On October 11, 2001, the Borough's Board of Mayor and Burgesses, on behalf of the Borough of Naugatuck and the WPCA, adopted a resolution authorizing the execution and delivery of this Service Contract.

(M) Vivendi Environnement, S.A., an affiliate of the Company, will guarantee the performance of the obligations of the Company under the Service Contract pursuant to a guaranty agreement executed concurrently herewith.

(N) The wastewater treatment system will continue to be owned by the Borough and certain wastewater treatment assets will be operated, maintained, repaired, replaced and managed by the Company.

(O) The Company will be responsible for permitting, designing, constructing, starting up, testing and achieving acceptance of certain initial capital improvements to the wastewater treatment system pursuant to this Service Contract.

(P) The Borough desires to receive, and the Company desires to provide, wastewater treatment system capital improvement and asset management services under the terms of this Service Contract.

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

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

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

"Acceptable Disposal Site" has the meaning specified in subsection 8.3(A).

"Access Road" means the access road to the Plant across CMCI's property located at 280 Elm Street, Naugatuck, Connecticut, as delineated in Attachment 1 to Appendix 1, or such other alternate access route across CMCI's property as may be determined and designated by the Borough and CMCI from time to time in accordance with the Discharge and Access Agreement.

"Adjustment Factor" has the meaning specified in subsection 12.4(D).

"Advancement Work" has the meaning set forth in subsection 4.5(B).

"Advancement Work Commencement Date" has the meaning set forth in subsection 4.5(A).

"Advancement Work Period" means the period from and including the Advancement Work Commencement Date to and including the day preceding the Commencement Date.

"Affiliate" means any person directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

"Annual Settlement Statement" has the meaning specified in Section 12.9.

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

"Applicable Law" means: (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate regulatory Governmental Body if such interpretation is documented by such regulatory body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or other similar agreement between the Borough and the DEP or EPA, in each case having the force of law and applicable from time to time: (a) to the siting, design, acquisition, construction, equipping, financing, ownership, possession, startup, testing, acceptance, operation, maintenance, repair, replacement or management of the System; (b) to the conveyance, treatment, storage or discharge of the influent thereto or the effluent thereof; (c) to the air emissions therefrom; and (d) to the transfer, handling, processing, transportation, incineration or disposal of sludge and other residuals produced thereby. Applicable Law shall include the NPDES Permit, the Title V Permit and the Sewer Use Regulations, but shall be deemed not to include the Excluded Conditions.

"Approval Period" means that period between the Contract Date and the Commencement Date during which the parties will carry out their obligations under Article IV.

"Back-Up" means a discharge of Sewer Influent onto a third party's property caused by a clog, obstruction, capacity limitation or other condition affecting (1) a waste service line, and all installed appurtenances thereto, connecting such third party's property to the Collection System or (2) the Collection System.

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

"Base Fee" has the meaning specified in Section 12.4.

"Billing Period" means each calendar month, except that (1) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of the month in which the Commencement Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Service Contract. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

"Biochemical Oxygen Demand" or "BOD<sub>5</sub>" means the five-day measure of the amount of oxygen required for the stabilization of decomposable carbonaceous organic matter and the biooxidation of nitrogenous material under aerobic conditions, the analysis of which shall conform to 40 CFR 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", unless other test procedures have been specified in the NPDES Permit.

"Borough" means, collectively, the Borough of Naugatuck, a political subdivision of the State, and the WPCA.

"Borough Engineer" means Alternative Resources, Inc. (ARI), or if ARI shall be unavailable, then another nationally recognized consulting engineer or firm of consulting engineers, having experience with respect to the permitting, design, construction, testing, operation, maintenance, repair, replacement and management of wastewater treatment facilities, designated as the Borough Engineer in writing by the Borough.

"Borough Fault" means any breach (including the untruth or breach of any Borough representation or warranty herein set forth), failure, nonperformance or noncompliance by the Borough with respect to its obligations under this Service Contract to the extent not directly attributable to any Uncontrollable Circumstance, and which materially and adversely affects the Company's rights, obligations or ability or costs to perform under this Service Contract.

"Borough Indemnitee" has the meaning specified in Section 14.3.

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

"Capital Modification" means any material change, alteration, improvement, upgrade or modification of any of the Managed Assets or Collection System assets or any installation of new equipment or systems, including any of the foregoing that results from a replacement of any of the Managed Assets or the Collection System assets (other than replacements in-kind) or the installation of new equipment, machinery, systems or other property at the Managed Assets or the Collection System assets pursuant to the Company's responsibilities under Article VII (other than replacements in kind). A "Capital Modification" shall include any modification of the Initial Capital Improvements, before, during or after their construction.

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

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

(a) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Contract Date;

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

(c) a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the Contract Standards in effect as of the Contract Date in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the

Company or of the Borough, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

It is specifically understood, however, that none of the following shall constitute a "Change in Law":

(a) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Contract Date; or

(b) after the Scheduled ICI Acceptance Date for the nitrogen removal system portion of the Initial Capital Improvements, a Change in Law related to the Borough's TMDL compliance for total nitrogen that does not impose a TMDL allocation that is more stringent than 247.4 lbs/day on an annual average basis as of the Contract Date.

"Change Order" means a written order of the Borough signed by the Borough's Contract Representative authorizing and approving a Capital Modification pursuant to Section 11.1.

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

"Collection System" means the Borough's wastewater collection system and the real property on which it is located, as described in Appendix 1, which the Company is responsible for managing and consisting generally of sanitary sewers, drains, manholes, force mains and interceptors (including those portions of the West Side Interceptor not located within the Plant Site, the Pump Stations, and sewer trunk lines and mains, but excluding service connections), together with all Collection System Improvements and Capital Modifications thereto, as the same shall be acquired, installed, constructed or reconstructed from time to time. The Collection System also includes: (1) the pneumatic ejector station located in the Platts Mills section of the Borough of Naugatuck and the 4-inch force main up to the Bristol Street Pump Station in the City of Waterbury for which the Borough is responsible under the Agreement, dated January 28, 1985, among the Borough, the Water Pollution Control Board of the Borough of Naugatuck and the City of Waterbury; and (2) those portions of the sanitary sewer located in the Town of Beacon Falls for which the Borough is responsible under the Agreement, dated August 8, 1973, as amended, among the Borough, the Town of Beacon Falls, the Water Pollution Control Board and the Sewer Authority of the Town of Beacon Falls (the foregoing Agreements are attached hereto as Reference Documents). The Collection System does not include the Borough's storm water system.

"Collection System Environmental Condition" means, and is limited to, (1) the presence anywhere in, on or under the Collection System of underground storage tanks (for the storage of chemicals or petroleum products); and (2) the presence of Hazardous Materials or Regulated Substances in environmental media anywhere in, on, around or under the Collection

System (including the presence in surface water, groundwater, soils or subsurface strata), whether or not disclosed to the Company, except for releases of Hazardous Material or Regulated Substances directly resulting from the Company's failure to perform its Collection System obligations as set forth in Article VII.

"Collection System Fee" has the meaning specified in Section 12.2.

"Collection System Improvements" means the improvements to the Collection System, which are described in and shall be implemented pursuant to Appendix 2A.

"Collection System O&M Manual" means the Wastewater Collection System Operation and Maintenance Manual, dated July 1997, and attached hereto as a Reference Document, prepared for the Borough by Stearns & Wheler providing operation and maintenance guidance for the Collection System.

"Collection System Sites" means the real property (including all sewer easements) described or referred to in Appendix 1 on which the above-grade improvements constituting part of the Collection System are located.

"Commencement Date" means the first date on which all of the Commencement Date Conditions shall be satisfied or waived, as agreed to in writing by the parties pursuant to Section 4.4.

"Commencement Date Conditions" has the meaning specified in Section 4.3.

"Community Septage" means Septage from the Borough and the Participating Entities which is delivered to the Plant other than through the Collection System, except for Middlebury Septage which is delivered to the Incineration Facilities pursuant to the Lease Agreement.

"Company" means U.S. Filter Operating Services, Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

"Company Construction Superintendent" has the meaning specified in subsection 9.11(C).

"Company Fault" means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, nonperformance or noncompliance by the Company with respect to its obligations under this Service Contract to the extent not directly attributable to any Uncontrollable Circumstance, and which materially and adversely affects the Borough's rights, obligations or ability to perform under this Service Contract.

"Consumables" means fuel oil, diesel fuel, liquid chlorine, liquid sulfur dioxide, liquid defoamant, quick lime, lubricants, polymers, office supplies and other chemicals, fuels, materials, supplies and similar consumables used in connection with the operation of the Managed Assets.

"Consumer Price Index" or "CPI" means the final reported non-seasonally adjusted Consumer Price Index as reported by the U.S. Department of Labor, Bureau of Labor Statistics,



for Metropolitan Areas in the Northeast Region of the United States with populations less than 1.5 million people.

"Contract Administration Memorandum" has the meaning set forth in subsection 5.6(B).

"Contract Administrator" has the meaning specified in subsection 5.5(C).

"Contract Date" means the date this Service Contract is executed and delivered by the parties hereto.

"Contract Representative" means, in the case of the Company, the individual specified in writing by the Company as the representative of the Company from time to time for all purposes of this Service Contract and, in the case of the Borough, the individual designated in writing by the Board of Mayor and Burgesses from time to time.

"Contract Services" means the Management Services and the ICI Design/Build Work.

"Contract Standards" means the terms, conditions, methods, techniques, practices and standards imposed or required by: (1) Applicable Law; (2) the ICI Design and Construction Requirements; (3) the Performance Guarantees; (4) Good Engineering and Construction Practice; (5) Prudent Industry Practice; (6) the Operation and Maintenance Manual; (7) applicable equipment manufacturers' specifications; (8) applicable Insurance Requirements; and (9) any other standard, term, condition or requirement specifically provided in this Service Contract to be observed by the Company. Subsection 1.2 (O) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

"Contract Year" means the Borough's fiscal year commencing on July 1 in any year and ending on June 30 of the following year; provided, however, that the first Contract Year shall commence on the Commencement Date and shall end on the following June 30, and the last Contract Year shall commence on July 1 prior to the date this Service Contract expires or is terminated, whichever is appropriate, and shall end on the last day of the Term of this Service Contract or the effective date of any termination, whichever is appropriate. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365/366 days.

"Cost Substantiation" has the meaning specified in Section 16.4.

"Crompton" or "CMCI" means the Crompton Manufacturing Company, Inc.

"Deliverable Material" has the meaning specified in Section 9.10.

"DEP" means the Connecticut Department of Environmental Protection or any predecessor or successor agency.

"DEP-Mandated Collection System Work" shall have the meaning set forth in Appendix 14.

"Designated Disposal Site" has the meaning specified in subsection 8.3(B).

"Designated Disposal Site Change in Law" has the meaning specified in subsection 8.6(D).

"Discharge and Access Agreement" means the Discharge and Access Agreement, dated April 12, 2001, between the Borough and CMCI pertaining to the treatment of CMCI wastewater at the Plant and the use of the Access Road, and attached hereto as a Reference Document.

"Effluent Requirement" means the numerical and narrative effluent limitations set forth in the NPDES Permit or otherwise imposed under Applicable Law.

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

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

"Event of Default" means, with respect to the Company, those items specified in Section 13.2, and with respect to the Borough, those items specified in Section 13.3.

"Excessive Influent" means (1) Unacceptable Substances, (2) Hazardous Material and (3) System Influent in excess of the Plant Capacity.

"Excluded Conditions" means those conditions of the NPDES Permit and other Governmental Approvals which the Company is not required to perform hereunder. The Excluded Conditions are defined in Appendix 9.

"Existing Contracts" means the contracts of the Borough or NTC listed in Appendix 17.

"Exit Transition Plan" means the transition services, including plans for temporary, short-term, operational procedures and activities relating to and after termination of the Service Contract, to be undertaken by the Company when and as more fully specified in Appendix 19.

"Extension Period" has the meaning specified in Section 10.8.

"Facilities Plan" means the Wastewater Facilities Report (Draft Report), dated September 1991, and attached as a Reference Document hereto, prepared for the Borough by Stearns & Wheler pursuant to the NPDES Permit issued on July 25, 1991.

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

"Final Completion" means, with respect to each Initial Capital Improvement, completion of the ICI Design/Build Work in compliance with the ICI Design and Construction Requirements and the requirements of Section 10.11.

"Final Design" means the detailed plans and specifications necessary and sufficient to allow complete construction of the Initial Capital Improvements in conformance with the requirements of this Service Contract.

"Final Punch List" has the meaning specified in subsection 10.1(C).

"Financing Commitment Date" means the date on which the Borough and a third-party lessor have agreed upon the definitive terms and conditions regarding the lease-purchase of the Initial Capital Improvements and the final principal and interest schedules for the financing of such Initial Capital Improvements; provided that the Financing Commitment Date shall not be more than 15 days prior to the Commencement Date.

"Fixed ICI Design/Build Price" has the meaning specified in subsection 9.5(C).

"Fixed ICI Design/Build Price Adjustments" has the meaning specified in subsection 9.5(D).

"Good Engineering and Construction Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the municipal wastewater treatment industry as followed in the northeast region of the United States. Good Engineering and Construction Practice shall include, without limitation, adherence to the "design criteria" set forth in Appendix 4 as such criteria may be amended, modified or updated from time to time as of the date of commencement of work for the Initial Capital Improvements, the Collection System Improvements or any Capital Modification.

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

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

"Guarantor" means Vivendi Environnement, S.A.

"Guaranty Agreement" or "Guaranty" means the Guaranty Agreement entered into concurrently with this Service Contract from the Guarantor to the Borough in substantially the form set forth in the Transaction Forms, as the same may be amended from time to time in accordance therewith.

"Hazardous Material" means any waste, substance, object or material deemed hazardous under Applicable Law, including without limitation "hazardous substances" as defined in CERCLA and "hazardous waste" as defined in RCRA.

"Hazardous System Residuals" means any portion of the System Residuals which: (1) constitutes a "hazardous waste" (as defined in RCRA or counterpart state environmental laws); or (2) contains "hazardous substances" (as defined in CERCLA or counterpart state environmental laws) or other Regulated Substances in such concentrations or volumes as to render the Plant Sludge or other System Residuals that would normally be handled at the Incineration Facilities unacceptable for treatment or disposal at the Incineration Facilities, or would render the System Residuals that would normally be handled at a Designated Disposal Site unacceptable for treatment or disposal at such Designated Disposal Site.

"ICI" means the Initial Capital Improvements.

"ICI Acceptance" means, with respect to each Initial Capital Improvement, demonstration by the Company in accordance with Article X and Appendix 7 that the ICI Acceptance Tests have been conducted, the ICI Acceptance Test Procedures and Standards have been achieved and the other ICI Acceptance Date Conditions set forth in Section 10.5 have been achieved.

"ICI Acceptance Date" means, with respect to each Initial Capital Improvement, the date on which ICI Acceptance occurs or is deemed to have occurred under Article X hereof.

"ICI Acceptance Date Conditions" has the meaning specified in Section 10.5.

"ICI Acceptance Test Procedures and Standards" means, with respect to each Initial Capital Improvement, the test procedures and standards for ICI Acceptance set forth in Appendix 7.

"ICI Acceptance Tests" means, with respect to each Initial Capital Improvement, the inspections and tests for ICI Acceptance set forth in Appendix 7.

"ICI Design and Construction Requirements" means the ICI Design and Construction Requirements for the Initial Capital Improvements set forth in Appendix 4, as the same may be changed or modified in accordance herewith.

"ICI Design/Build Period" means the period from and including the Commencement Date to and including the day preceding the ICI Acceptance Date.

"ICI Design/Build Price" has the meaning specified in Subsection 9.5(B).

"ICI Design/Build Work" means the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Company's permitting, design, engineering, construction, start-up, shakedown, ICI Acceptance Testing, ICI Acceptance and related obligations with respect to the Initial Capital Improvements during the Advancement Work Period and the ICI Design/Build Period under this Service Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the Company's administrative, accounting, record-keeping, notification and similar responsibilities of every kind whatsoever under this Service Contract pertaining to such obligations. A reference to ICI Design/Build Work shall mean any part

and all of the ICI Design/Build Work, including the Advancement Work, unless the context otherwise requires, and shall include all extra ICI Design/Build Work authorized by Change Order.

"ICI Design Contract" means any material Subcontract relating to the design of the Initial Capital Improvements.

"ICI Start-Up" means, with respect to each Initial Capital Improvement, the process for start-up testing, to the extent practical, of all or any component thereof after construction or installation for the purpose of demonstrating that the equipment or system being tested operates properly, as described in Section 10.2 and Appendix 7.

"ICI Substantial Completion" has the meaning specified in subsection 10.1(A).

"Incineration Facilities" means the facilities for the processing, incineration and disposal of Plant Sludge, Crompton sludge and merchant wastewater, septage and sludge, which are identified in the diagram in Attachment 1 to Appendix 1 and located on the Incineration Facilities Site adjacent to the Plant Site, including the dedicated merchant wastewater and septage holding tank, the sludge dewatering building and equipment, the sludge incinerators, air emissions control equipment and the ash lagoons, and the initial capital improvements and any other capital modifications made thereto from time to time. The Incineration Facilities are leased by the Lessor to the Lessee under the Lease Agreement, and are not part of the Managed Assets.

"Incineration Facilities Site" means the parcel of real property on which the Incineration Facilities are located, as described in Appendix 1. The boundaries of the Incineration Facilities Site are set forth in Attachment 1 to Appendix 1.

"Incineration Facilities Temporary Shutdown" means the shutdown of the Incineration Facilities by the Lessee for scheduled or unscheduled maintenance and repair for reasons other than Uncontrollable Circumstances.

"Incineration Process Filtrate" means any wastewater generated from the operation of the Incineration Facilities in accordance with the Lease Agreement, including filtrate resulting from sludge and septage dewatering operations, wastewater from the air emissions control equipment for the incinerators and quenchwater removed from the ash lagoons.

"Industrial Pretreatment Program" or "IPP" means the DEP's municipal/industrial pretreatment program of sampling, inspecting, analyzing and keeping records with respect to compliance by industrial and certain commercial users with the Borough's Sewer Use Regulation and technology based local limits.

"Initial Capital Improvements" or "ICI" means the improvements to the Plant described in Appendix 2 to be permitted, designed, constructed, installed, started up and tested by the Company in accordance with the ICI Design and Construction Requirements.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy of Required Management Period Insurance or Required ICI

Design/Build Period Insurance under this Service Contract, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

"Interference" has the meaning set forth in 40 C.F.R. Part 403.

"Interim Service Contract" mean the Interim Service Contract for Wastewater Treatment System Asset Management, dated April 12, 2001, among the Borough of Naugatuck, the Water Pollution Control Authority of the Borough of Naugatuck and U.S. Filter Operating Services, Inc., including the appendices and reference documents thereto, as the same may be amended or modified from time to time in accordance therewith.

"Lease Agreement" means the Incineration Facilities Lease Agreement, entered into concurrently with this Service Contract, between the Lessor and the Lessee, including the appendices, the transaction forms and reference documents thereto, as the same may be amended from time to time in accordance therewith.

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

"Lessee" means Naugatuck Environmental Technologies, LLC, a limited liability corporation organized and existing under the laws of the State of Connecticut, and its permitted successors and assigns.

"Lessor" means, collectively, the Borough of Naugatuck, a political subdivision of the State, and the WPCA.

"Letter of Credit" has the meaning specified in Section 15.3.

"Lien" means any and every lien against the System or against any monies due or to become due from the Borough to the Company under this Service Contract, for or on account of the Contract Services, including without limitation mechanics', materialmen's, laborers' and lenders' liens.

"Loss-and-Expense" means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, cost or expense, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Service Contract.

"Managed Assets" means the Plant and the Plant Site, as described in Appendix 1, and shall include the Initial Capital Improvements and all other Capital Modifications, both when under construction and after being placed in service as part of the Managed Assets.

"Managed Assets Equipment" means all manufactured equipment constituting part of the Managed Assets as of the Commencement Date and further described in Appendix 15.

"Managed Assets Registry" means the registry of Managed Assets prepared pursuant to Appendix 15.

"Managed Assets Structures" means all structures and buildings, other than Managed Assets Equipment, constituting part of the Managed Assets as of the Commencement Date and further described in Appendix 15.

"Management Period" means the period from and including the Commencement Date to and including the last day of the Term of this Service Contract.

"Management Services" means everything required to be furnished and done for and relating to the Managed Assets and the Collection System by the Company pursuant to this Service Contract during the Term hereof, other than the ICI Design/Build Work. Management Services include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Company's operation, maintenance, repair, replacement, management and related obligations under this Service Contract, and all of the Company's administrative, accounting, recordkeeping, reporting, notification and similar responsibilities of every kind whatsoever under this Service Contract pertaining to such obligations.

"Material Decline in Guarantor's Credit Standing" has the meaning specified in subsection 15.1(B).

"Non-Binding Mediation" means the voluntary system of dispute resolution established by Section 13.12 for the resolution of disputes arising under this Service Contract.

"NPDES Permit" means National Pollutant Discharge Elimination System Permit No. CT0100641 issued on August 7, 2001 and expiring on August 7, 2006, and attached hereto as a Reference Document.

"NTC" means the Naugatuck Treatment Company, an affiliate of Crompton and operator of the Managed Assets prior to April 16, 2001.

"Odor Control Plan" means the Company's plan for controlling odor at the Managed Assets as set forth in Appendix 16.

"Odor Litigation" means the legal proceedings initiated in Jones, et al. v. Borough of Naugatuck, No. CV-98-0146754-5, including any subsequent appeals, remands or related proceedings related to alleged odor conditions at the Plant and the Incineration Facilities prior to April 16, 2001.

"Off-Site" means elsewhere than on or at the Plant.

"Off-Site Residuals Disposal Obligations" means the obligations of the Company hereunder with respect to System Residuals which take place Off-Site, including the obligations of the Company to transport and dispose of System Residuals and all related Off-Site handling, processing, storage and stockpiling rights, obligations and activities.

"On-Site" means on, at or within the Plant.

"On-Site Residuals Handling Obligations" means the obligations of the Company hereunder with respect to the System Residuals which take place On-Site, including the obligations of the Company to remove System Residuals from System Influent and to handle, load and transfer for disposal all System Residuals.

"Operation and Maintenance Manual" means the manual and related computer programs prepared and maintained by the Company containing detailed standard operating and

maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Management Services, in accordance with Article V and Appendix 14.

"Operations Collateral Bond" has the meaning set forth in subsection 15.2(C).

"Operations Surety Bond" has the meaning set forth in subsection 15.2(B).

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate plus 2%, whichever is lower.

"Participating Entities" means the Town of Oxford, the Town of Middlebury, the Town of Beacon Falls, CMCI and any other entity which the Borough may contract with from time to time for the treatment and disposal of wastewater, septage or materials at the Plant. The contracts between the Borough and the Participating Entities are attached hereto as Reference Documents.

"Pass-Through" has the meaning set forth in 40 C.F.R. Part 403.

"Performance Guarantees" means the guarantees of performance made by the Company specifically set forth in Sections 6.2 and 6.3.

"Plant" or "WWTP" means the Borough of Naugatuck Wastewater Treatment Plant and the real property on which it is located, consisting generally of that separate and contiguous part of the System comprised of buildings, structures and equipment (including the raw sewage pump station and screening building), and the roads, grounds, fences and landscaping appurtenant thereto, utilized for preliminary treatment, primary treatment, secondary treatment and advanced biological treatment (nitrification) of System Influent, Plant Effluent disinfection and dechlorination, Plant Sludge storage, laboratory functions and administration and management of the Managed Assets, including the Initial Capital Improvements and any other Capital Modifications made thereto from time to time. The Plant is identified in the diagram in Attachment 1 to Appendix 1.

"Plant Capacity" means the capacity and capabilities of the Plant as set forth in Appendix 3.

"Plant Effluent" means wastewater discharged from the Plant.

"Plant Site" means the parcel of real property on which the Plant is located, as described in Appendix 1. The boundaries of the Plant Site are set forth in Attachment 1 to Appendix 1.

"Plant Sludge" means all liquid and dewatered sludge generated from the treatment of System Influent by the Plant.

"Pre-Existing Environmental Condition" means, and is limited to, (1) the presence anywhere in, on or under the Managed Assets on the Contract Date of underground storage tanks (for the storage of chemicals or petroleum products) that are not then in use in connection with operation of the Managed Assets; (2) the presence of Hazardous Materials or Regulated Substances in environmental media anywhere in, on or under the Managed Assets (including the presence in



surface water, groundwater, soils or subsurface strata) as of April 16, 2001, whether or not disclosed to the Company; (3) the presence anywhere in, on or under the Collection System on July 1, 2002 of underground storage tanks (for the storage of chemicals or petroleum products) that are not then in use in connection with operation of the Collection System; and (4) the presence of Hazardous Materials or Regulated Substances in environmental media anywhere in, on, around or under the Collection System (including the presence in surface water, groundwater, soils or subsurface strata) as of July 1, 2002, whether or not disclosed to the Company.

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

"Private Management Approvals" means all approvals, authorizations, consents or clearances, if any, necessary to be obtained by the Borough from the EPA, the DEP or any other Governmental Body in connection with the Management Services to be performed under this Service Contract.

"Projected Rebuild/Replacement Schedule" has the meaning set forth in Appendix 15.

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

"Pump Stations" means those pump stations described in Appendix 1 that are a part of the Collection System (excluding the raw sewage pump station and screening building located on the Plant Site).

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

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

"Reference Documents" means the documents attached hereto and made a part of this Service Contract.

"Regulated Substance" means (a) any oil, petroleum or petroleum product and (b) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic

pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law.

"Reimbursable Costs Charge" has the meaning specified in Section 12.5.

"Required Borough Insurance" has the meaning specified in Appendix 10.

"Required ICI Design/Build Period Insurance" has the meaning specified in Appendix 10.

"Required Insurance" means the Required ICI Design/Build Period Insurance and the Required Management Period Insurance.

"Required Management Period Insurance" has the meaning specified in Appendix 10.

"Requisition" means a written submission by the Company on the form of requisition as agreed to by the parties, together with accompanying submittals, requesting payment with respect to the Fixed ICI Design/Build Price as set forth in Section 9.5.

"Response Action" means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Hazardous Material, any Pre-Existing Environmental Condition or any Collection System Environmental Condition. "Response Actions" include, without limitation, any action which constitutes a "removal", "response", or "remedial action" as defined by Section 101 of CERCLA.

"RFP" means the Borough's Request for Proposals to Operate and Maintain and Make Improvements to the Borough of Naugatuck Wastewater Treatment Plant and Sludge Incinerators issued on February 5, 1999, as amended.

"SCADA" means, in the context of data gathering and telemetry systems, "Supervisory Control and Data Acquisition".

"Scheduled ICI Acceptance Date", with respect to each Initial Capital Improvement, has the meaning specified in Section 10.9, and shall reflect all adjustments provided for therein.

"Scheduled ICI Substantial Date", with respect to each Initial Capital Improvement, has the meaning specified in subsection 10.1(B), and shall reflect all adjustments provided for in Section 10.9.

"Security Instruments" means the Guaranty Agreement, the Letter of Credit, the Operations Collateral Bond and the Operations Surety Bond.

"Senior Supervisors" has the meaning specified in subsection 5.5(B).

"Septage" means the liquid and solid material pumped from a septic tank, cesspool or similar domestic sewage treatment system, or a domestic septage holding tank, during cleaning located within the Borough of Naugatuck, the Participating Entities and any other municipality under contract with the Borough for the processing of Septage at the Plant except for Middlebury Septage which is delivered to the Incineration Facilities pursuant to the Lease Agreement.

"Service Contract" means this Service Contract for Wastewater Treatment System Capital Improvements and Asset Management, entered into concurrently with the Lease Agreement, between the Company and the Borough, including the Appendices, the Transaction

Forms and the Reference Documents, as the same may be amended or modified from time to time in accordance herewith.

"Service Fee" has the meaning specified in Article XII.

"Service Manager" has the meaning specified in subsection 5.5(A).

"Sewer Influent" means all flows reaching the Plant through the System from all connected sources, including residential, commercial, municipal and industrial sources. Sewer Influent includes wastewater, infiltration and inflows, pretreatment flow from the Participating Entities and landfill leachate from the Laurel Park Superfund Site, but does not include Community Septage.

"Sewer Use Regulation" means the Borough's sewer use regulation as required by the NPDES Permit and amended from time to time.

"Shared Services Agreement" means the Shared Services Agreement, entered into concurrently with this Service Contract, between the Company and the Lessee, as the same may be amended from time to time in accordance therewith, and attached hereto as a Reference Document.

"Side Streams" means any material other than Plant Sludge (including Side Streams produced within the Collection System) which is, or at any time has been, a part of the System Influent and that ultimately is required to be disposed of in a manner other than that approved for Plant Effluent including, but not limited to, grit (detritus), screenings, scum, grease, and liquid byproducts and waste streams from intermediate treatment processing.

"Sites" means the Plant Site and the Collection System Sites.

"Small Scale Capital Modification" means a Capital Modification requested by the Company, and not required as a result of Uncontrollable Circumstances or directed by the Borough, which has a cost of less than \$50,000, as adjusted by the Adjustment Factor.

"Specified Site Conditions" means, and is limited to, (1) the presence at the Managed Assets and the Collection System of subsurface structures, materials or conditions having historical, archaeological, religious or similar significance, and (2) the presence at the Managed Assets and the Collection System of any habitat of an endangered or protected species as provided in Applicable Law.

"SRF" means the State's state revolving fund established pursuant to Subchapter VI of the Clean Water Act, as administered by the State's Clean Water Fund and its successors and assigns.

"Staffing Plan" means the Company's plan for staffing the Managed Assets.

"State" means the State of Connecticut.

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

"Subcontractor" means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly in privity with the

Company (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

"System" means the Plant and the Collection System.

"System Influent" means Sewer Influent, Incineration Process Filtrate and Community Septage.

"System Residuals" means any solid, semi-solid or liquid residue or sludge removed during the treatment of System Influent by the Managed Assets, including Plant Sludge and Side Streams, and any material which is removed from the Collection System through the Company's routine and emergency inspection and cleaning responsibilities hereunder. System Influent and Plant Effluent shall not constitute System Residuals.

"System Residuals Management Services" means the On-Site Residuals Handling Obligations and the Off-Site Residuals Disposal Obligations.

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

"Term" has the meaning set forth in Article III.

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

"Title V Permit" means the Title V Permit No. 109-0059-TV issued on November 27, 2000 and expiring on November 27, 2005, and attached hereto as a Reference Document.

"TMDL" means total maximum daily load.

"Total Suspended Solids" or "TSS" means solids that either float on the surface of, or are in suspension in wastewater, the analysis of which shall conform to 40 C.F.R. 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants."

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

"Transferred Employees" means those NTC employees who accepted the Company's offer of employment pursuant to the Interim Service Contract and who are assigned to work at the Managed Assets and the Collection System as of the Commencement Date.

"Transferred Property" means all vehicles, rolling stock, spare parts and consumables in stock at the Managed Assets and the Collection System and having operational utility which are to be transferred to the Company on the Commencement Date for its use.

"Transition Plan" means the plan relating to certain transition responsibilities of the Company for the Managed Assets as set forth in Appendix 13.

"Unacceptable Substance" means any toxic, hazardous, chemical, industrial, explosive, flammable, volatile, reactive, corrosive or radioactive waste, material or substance (including "toxic pollutants" as defined in the Clean Water Act) which, alone or in combination with other substances, is contained in sufficiently high concentrations or volumes in System Influent received at the Plant so as:

- (1) to cause an Interference, a Pass-Through or an Upset;
- (2) to endanger human health or safety; or
- (3) to cause System Residuals to become a Hazardous Material, if any such result could not reasonably have been prevented by the management of the Managed Assets in accordance with the Contract Standards.

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

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances shall include, and shall not be limited to, the following:

- (b) a Change in Law, except as otherwise provided in this Service Contract;
- (c) the receipt of Excessive Influent at the Plant, subject to the terms of Section 6.5;
- (d) the occurrence of an Interference, a Pass-Through or an Upset, in each case subject to the terms of Section 6.5;
- (e) the existence of a Pre-Existing Environmental Condition or a Collection System Environmental Condition;
- (f) the existence of a Specified Site Condition;
- (g) the existence of Hazardous System Residuals at the Managed Assets or the Collection System, subject to the terms of Section 6.5;
- (h) contamination of the Managed Assets or the Collection System from groundwater, soil or airborne Hazardous Material migrating from sources outside the Managed Assets or the Collection System to the extent not caused by Company Fault;
- (i) naturally occurring events (except weather conditions normal for the Borough of Naugatuck) such as landslides, underground movement, earthquakes, lightning, fires, tornadoes, hurricanes, floods (but only to the extent the hydraulic capacity of the Managed Assets is exceeded), epidemics, and other acts of God;
- (j) explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (k) labor disputes, except labor disputes involving employees of the Company, its Affiliates, or Subcontractors which affect the performance of the Contract Services;

(l) the failure of the Borough to provide the Company with prompt access to the Borough's vacuum truck in accordance with its obligations set forth in Section 7.2, unless the truck is unavailable due to Company Fault;

(m) any act, event, circumstance or Change in Law occurring outside the United States affecting the fabrication of, or transportation to the United States of, equipment that is expected to be incorporated in the Managed Assets and the Collection System through the construction of the Initial Capital Improvements and the Collection System Improvements; provided that, except for the imposition of Taxes by a non-United States Governmental Body which are more stringent than those in effect as of the Contract Date for which price may be afforded, the Company shall be afforded only schedule or performance relief, as appropriate, hereunder;

(n) the failure of any Subcontractor, to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Company directly, and the Company is not able after exercising all reasonable efforts to timely obtain substitutes;

(o) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Managed Assets and the Collection System are located to provide and maintain Utilities to the Managed Assets and the Collection System which are required for the performance of this Service Contract;

(p) any failure of title to the Managed Assets or the Collection System or any placement or enforcement of any Encumbrance on the Managed Assets or the Collection System not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;

(q) the preemption, confiscation, diversion or destruction of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Managed Assets or the Collection System;

(r) a violation of Applicable Law by a person other than the affected party or its Subcontractors;

(s) with respect to the Company, any Borough Fault and Borough-requested Change Orders not due to Company Fault; and

(t) with respect to the Borough, any Company Fault.

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

(a) any act, event or circumstance with respect to which the Company has assumed the "as-is" risk under Section 5.4, except as specifically provided in subsection 5.4(C);

(b) receipt of Sewer Influent containing industrial wastewaters that comply with all applicable general pretreatment standards and any specific limitations set forth in any then-applicable pretreatment permit governing such industrial wastewaters so long as the receipt of any such wastewaters does not exceed the Plant Capacity;

(c) any act, event or circumstance that would not have occurred if the affected party had complied with its obligations hereunder;

(d) changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions, except as otherwise specifically provided in this Service Contract;

(e) changes in the financial condition of the Borough, the Company, the Guarantor, or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

(f) the consequences of error, neglect or omissions by the Company, the Guarantor, any Subcontractor, any of their Affiliates or any other person in the performance of the Contract Services;

(g) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Managed Assets and the Collection System or otherwise increasing the cost to the Company of performing the Contract Services;

(h) any impact of prevailing wage or similar laws, customs or practices on the Company's costs;

(i) weather conditions normal for the Borough of Naugatuck;

(j) any surface or subsurface geotechnical or hydrological conditions, including without limitation the existence of compressible soil layers, masses, unstable soils, manmade deposits, and water table fluctuations not otherwise associated with an Uncontrollable Circumstance (other than Collection System Environmental Conditions, Pre-Existing Environmental Conditions or Specified Site Conditions);

(k) any act, event, circumstance or Change in Law occurring outside of the United States, except as specifically provided in item (l) in the "Inclusions" section of this definition;

(l) mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;

(m) power failures to the extent not caused by third party Utilities or resulting from a condition that is listed in the "Inclusions" section of this definition;

(n) failure of the Company to secure patents which it deems necessary for the performance of the Contract Services;

(o) any failure or delay in obtaining DEP approval for operating staff reductions;

(p) a Change in Law pertaining to Taxes, except to the extent provided in Section 12.12;

(q) after the Scheduled ICI Acceptance Date for the nitrogen removal system portion of the Initial Capital Improvements, a Change in Law related to the Borough's TMDL compliance for total nitrogen that does not impose a TMDL allocation more stringent than 247.4 lbs/day on an average annual basis as of the Contract Date;

(r) any changes in electricity rates or costs, in the availability of electricity or in the market for electricity, but not including any Change in Law relating to electricity; and

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

"Upset" has the meaning set forth in 40 C.F.R. 122.41(n)(1).

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

"WPCA" means the Water Pollution Control Authority of the Borough of Naugatuck, a water pollution control authority established by the Borough of Naugatuck pursuant to Chapter 103 of the Connecticut General Statutes.

"WWTP Service Territory" means the Borough of Naugatuck and the Participating Entities as described in Appendix 1.

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

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

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words importing the singular number mean and include the plural number and vice versa.

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



(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Service Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

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

(F) Responsibilities of the Borough of Naugatuck and the WPCA. All obligations of the Borough hereunder shall be performed by the Borough of Naugatuck except where required under Applicable Law to be performed on behalf of the Borough of Naugatuck by the WPCA, in which case such actions shall be taken by the WPCA and shall be deemed to be binding on the Borough. Each of the Borough of Naugatuck and the WPCA shall be jointly and severally responsible for the performance of all of the Borough's obligations hereunder.

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

(H) Standards of Workmanship and Materials. Any reference in this Service Contract to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, Appendices, or otherwise) shall be construed to require the Company to furnish the same in accordance with the grades and standards therefor indicated in this Service Contract. Where this Service Contract does not specify any explicit quality or standard for construction materials or workmanship, the Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the ICI Design and Construction Requirements, and the ICI Design and Construction Requirements are to be interpreted accordingly.

(I) Technical Standards and Codes. References in this Service Contract to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications

shall apply as if incorporated in the ICI Design and Construction Requirements and (2) if any material revision occurs, to the Company's knowledge, after the Contract Date, and prior to completion of the applicable ICI Design/Build Work, the Company shall notify the Borough. If so directed by the Borough, the Company shall perform the applicable ICI Design/Build Work in accordance with the revised professional and technical standard, code or specification as long as the Company is compensated, subject to Cost Substantiation, for any additional cost or expense attributable to any such revision.

(J) Liquidated Damages. This Service Contract provides for the payment of liquidated damages in certain circumstances of nonperformance, breach and default. Each party agrees that the damaged party's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such nonperformance, breach or default of the Company) and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred. Except as otherwise specifically provided herein, such liquidated damages shall constitute the only remedy in such circumstances by the nonperforming, breaching or defaulting party, regardless of legal theory.

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

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

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

(N) Prudent Industry Practice and Good Engineering and Construction Practice. Prudent Industry Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term of this Service Contract, Prudent Industry Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Company, the Company shall be relieved of its obligation to comply with such evolved Prudent Industry Practice and Good Engineering and Construction Practice (but not Prudent Industry Practice and Good Engineering and Construction Practice as of the Contract Date) unless the

Borough agrees to adjust the Service Fee on a Cost-Substantiated basis to account for such additional costs. Except to the extent that the Company is relieved of its obligation to comply with such evolved Prudent Industry Practice or Good Engineering and Construction Practice, as provided above, in no event shall any evolution of Prudent Industry Practice or Good Engineering and Construction Practice, or any Borough election to pay or not pay any such additional costs, relieve the Company of its obligations hereunder.

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

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

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

(R) Drafting Responsibility. Neither party shall be held to a higher standard than the other party in the interpretation or enforcement of this Service Contract as a whole or any portion hereof based on drafting responsibility.

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

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

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

(V) References to Including. All references to "including" herein shall be interpreted as meaning "including without limitation."

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

(X) References to Best Of. All references to "best of" the knowledge of a person or party shall be interpreted as meaning "after reasonable due inquiry."

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

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

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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

(A) Existence and Powers. The Borough of Naugatuck is a political subdivision of the State, validly existing under the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Service Contract. The Borough's Water Pollution Control Authority is a water pollution control authority duly established by the Borough of Naugatuck, validly existing under the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Service Contract.

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

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

(D) No Approvals Required. Except as described in Appendix 9, no approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the Borough of this Service Contract, and no referendum or other approval of voters is required for the performance by the Borough of its obligations under this Service Contract.

(E) No Litigation. Except as described in Appendix 9, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body, or proceeding for referendum or other voter initiative, pending or, to the best of the Borough's knowledge, overtly threatened or publicly announced against the Borough, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Service Contract by the Borough or the validity, legality or enforceability of this Service Contract against the Borough, or any other agreement or instrument entered into by the

Borough in connection with the transactions contemplated hereby, or on the ability of the Borough to perform its obligations hereunder or under any such other agreement or instrument.

(F) Claims and Demands. Except as described in Appendix 9, to the best of the knowledge of the Mayor and the Borough Attorney, there are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against the Borough with respect to the Managed Assets or the Collection System.

(G) Governmental Approvals. The Borough has obtained or will obtain in the course of its performance hereunder all Governmental Approvals necessary to effectuate its responsibilities under this Service Contract or required of the Borough as owner of the System, and the Borough has enacted all municipal laws, ordinances or regulations and has taken or will take all other governmental actions which are necessary for the performance by the Borough of this Service Contract.

(H) Applicable Law Compliance. To the best of its knowledge (1) the Borough is not in material violation of any Applicable Law pertaining to the Managed Assets or the Collection System, and (2) the Borough has not received notice of a violation or an alleged violation of any such Applicable Law.

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

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

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

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

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Service Contract by the Company.

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

(F) Governmental Approvals. The Company has obtained or will obtain in the course of its performance hereunder, either directly or through qualified Subcontractors, the Governmental Approvals which the Company must obtain in its own or the Borough's name or that of its Subcontractors to provide the Contract Services. The Governmental Approvals that are the Company's responsibility are listed in Appendix 9.

(G) Applicable Law Compliance. Except as disclosed in writing to the Borough, to the best of its knowledge, the Company is not in material violation of any law, order, rule or regulation applicable to any water or wastewater plant or system providing service to the general public designed, constructed, operated, maintained or managed by the Company.

(H) Practicability of Performance. The ICI Design and Construction Requirements, the technology and the construction and management practices to be employed in the construction of the Initial Capital Improvements and the Collection System Improvements and operation of the Managed Assets and the Collection System as so improved are furnished exclusively by the Company pursuant to the terms of this Service Contract, and the Company assumes and shall have exclusive responsibility for their efficacy, notwithstanding the inclusion of design principles or other terms and conditions in the RFP or the negotiation of the terms of the ICI Design and Construction Requirements, ICI Acceptance Test Procedures and Standards, Performance Guarantees and the Collection System Improvements requirements between the Company and the Borough. The Company assumes the risk of the practicability and possibility of performance of the Initial Capital Improvements and the Collection System Improvements on the scale, within the time for completion and in the manner required hereunder, and of treating System Influent (other than Excessive Influent) through the operation of the Managed Assets as so improved in a manner which meets all of the requirements hereof, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or circumstances (other than Uncontrollable Circumstances) which may be different from those assumed by the Company in entering into this Service Contract, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Fixed ICI Design/Build Price, the Service Fee and the Collection System Fee. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance.

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

(J) Information Supplied by the Company and the Guarantor. The information supplied and representations and warranties made by the Company and the Guarantor in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Company and the Guarantor (and, to the best of its knowledge, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.



## ARTICLE III

### TERM

SECTION 3.1. EFFECTIVE DATE AND TERM. This Service Contract shall become effective on the Contract Date, and shall continue in effect for 20 years following the Commencement Date (the period from the Contract Date to the twentieth anniversary of the Commencement Date constituting the "Term"), unless earlier terminated pursuant to the termination provisions of Article XIII, in which event the Term shall be deemed to have ended as of the date of such termination. Except as otherwise specifically set forth herein, all rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. The Company shall have no obligation to undertake the Management Services or the ICI Design/Build Work, and the Borough shall have no obligation to make Service Fee payments or to pay the ICI Design/Build Price hereunder until the Commencement Date. At the end of the Term of this Service Contract, all other obligations of the parties hereunder shall terminate, except as provided in Sections 13.7 and 13.8.

ARTICLE IV  
APPROVAL PERIOD

SECTION 4.1. COMPANY APPROVAL PERIOD RESPONSIBILITIES. (A) Obligation to Proceed. The Company shall satisfy the following Company responsibilities as soon as practicable after the Contract Date, each of which shall be a condition precedent to the occurrence of the Commencement Date.

(1) Transition Plan. The Company shall carry out and complete the Transition Plan in accordance with Appendix 13 and shall provide all management, technical, administrative engineering, labor relations and other personnel necessary in connection therewith. The Company shall demonstrate and certify such compliance to the satisfaction of the Borough.

(2) Governmental Approvals. The Company shall submit complete applications and take all other steps which are necessary under Applicable Law to obtain all Governmental Approvals required to be obtained by the Company before the Commencement Date for the performance of the Management Services, or certify to the Borough that no such Governmental Approvals are required.

(3) Letter of Credit. The Company shall obtain and deliver to the Borough the Letter of Credit in accordance with Section 15.3. The Letter of Credit shall be substantially in the form set forth in the Transaction Forms.

(4) Contact Information. The Company shall submit to the Borough the contact information specified in subsection 5.5(E).

(5) Required Management Period Insurance. The Company shall submit to the Borough certificates of insurance for all Required Management Period Insurance specified in Appendix 10.

(6) Private Management Approval Assistance. The Company shall actively advise the Borough with respect to, and shall cooperate with and assist the Borough in obtaining, any required Private Management Approvals, and shall have full responsibility for any aspect thereof relating to staffing levels or requirements.

(7) Financing Assistance. The Company shall cooperate with and assist the Borough in providing any information, certifications or documents which may be reasonably required in connection with Borough's completing all financing transactions necessary to fund the ICI Design/Build Price.

(8) Company Law Compliance. The Company shall certify to the Borough as of the Commencement Date that the Company is in substantial compliance with all laws, regulations, rules and orders applicable to its business, noncompliance with which would have a material and adverse effect upon its business or its ability to perform its obligations under this Service Contract.

(9) Confirmation of Guaranty. The Guarantor shall execute and deliver a confirmation to the Borough that the Guaranty remains in full force and effect.

(10) Financial Condition. The Company shall provide audited financial statements of the Guarantor for the most recently completed fiscal year and quarterly period. Since the Contract Date, there shall not have occurred any change, financial or otherwise, in the condition of the Guarantor that would materially and adversely affect the ability of the Guarantor to perform its obligations under the Guaranty.

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

(12) Representations. The representations of the Company set forth in Section 2.2 and of the Guarantor set forth in the Guaranty shall be true and correct in all material respects as of the Commencement Date as if made on and as of the Commencement Date, and the Company shall deliver to the Borough a certificate of an authorized officer of each to that effect.

(13) Supporting Certifications. The Company shall deliver to the Borough appropriate certificates of incorporation, certified authorizing resolutions and incumbency certificates supporting the representations made in Section 2.2.

(B) Notice of Default. The Company shall provide to the Borough, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Governmental Approval or Subcontract pertaining to the Approval Period.

SECTION 4.2. BOROUGH APPROVAL PERIOD RESPONSIBILITIES. The Borough shall satisfy the following Borough responsibilities as soon as practicable after the Contract Date, each of which shall be a condition precedent to the occurrence of the Commencement Date.

(1) Governmental Approvals. The Borough shall cooperate with the Company in the submittal of all applications for the Governmental Approvals, if any, which the Company is obligated to submit pursuant to Section 4.1.

(2) Private Management Approvals. The Borough shall make all submittals and take all other action which is reasonably necessary under Applicable Law in order to apply for any required Private Management Approval.

(3) Financing. The Borough, in accordance with Section 9.5, shall undertake, implement and complete all financing transactions necessary to fund the ICI Design/Build Price.

(4) Survey. The Borough shall deliver to the Company currently available survey information relating to the Plant Site.

(5) Representations. The representations of the Borough set forth in Section 2.1 shall be true and correct in all material respects as of the Commencement Date as if made

on and as of the Commencement Date, and the Borough shall deliver to the Company a certificate of an authorized officer to that effect.

(6) Supporting Certifications. The Borough shall deliver to the Company appropriate certified authorizing resolutions and incumbency certificates supporting the representations made in Section 2.1.

SECTION 4.3. COMMENCEMENT DATE CONDITIONS. (A) Commencement Date Conditions Defined. The obligations of the Company and the Borough to proceed with their respective obligations hereunder during the Management Period shall not commence until all of the following conditions (the "Commencement Date Conditions") are satisfied or waived by both parties:

(1) Company Approval Period Responsibilities. The Company shall have fulfilled all of its responsibilities with respect to the Approval Period under Section 4.1.

(2) Borough Approval Period Responsibilities. The Borough shall have fulfilled all of its responsibilities with respect to the Approval Period under Section 4.2.

(3) Governmental Approvals. All Governmental Approvals required for the commencement of the Management Services shall have been issued or obtained and shall be in full force and effect.

(4) Private Management Approvals. All required Private Management Approvals shall have been issued or obtained and shall be in full force and effect.

(5) Fixed ICI Design/Build Price Funds Available. The proceeds of the financing transaction to fund the Fixed ICI Design/Build Price are available for disbursement by the Borough.

(6) No Default Under Interim Service Contract. Either party may refuse to proceed hereunder if the other party is in default of the terms and conditions of the Interim Service Contract.

(7) Incineration Facilities Operations. Except as provided in subsection 4.4(C), the commencement date under the Lease Agreement shall occur concurrently with the Commencement Date hereunder.

(8) Shared Services Agreement. The Shared Services Agreement shall have been approved by the Borough and executed by the Company and the Lessee on or before the Commencement Date hereunder.

(9) Inventory and Initial Evaluation. An inventory of all Transferred Property, and the initial evaluation of the Managed Assets shall have been conducted as required by Section 7.3 and Appendix 15, and the parties shall have agreed on such inventory and initial evaluation for purposes of such Section.

(10) Acceptability and Effectiveness of Documents. All of the documents and instruments identified in this Section shall be in form and substance reasonably satisfactory to both parties, and shall be valid, in full force and effect and enforceable

against each party thereto on the Commencement Date. It is understood that any such document, instrument or agreement the form of which is set forth in a Transaction Form, that is executed and delivered in substantially such form is and shall be deemed to be in form and substance satisfactory to the parties. No such document, instrument or agreement shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Commencement Date. No party to any such document, instrument or agreement shall have repudiated or be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested.

(11) Legal Proceedings. There shall be no Legal Proceeding before or by any Governmental Body, pending or threatened, which: (1) challenges, or might challenge, directly or indirectly, (a) the authorization, execution, delivery, validity or enforceability of this Service Contract or the Guaranty, or (b) the interest of the Borough in the Managed Assets and the Collection System; (2) seeks to enjoin or restrict the use of the Managed Assets and the Collection System in the manner or for the purposes contemplated by this Service Contract; or (3) seeks damages, fines, remediation or any other remedy in connection with the environmental condition or any other matter pertaining to the Managed Assets and the Collection System, in any such case which can reasonably be expected to materially and adversely affect the Borough's or the Company's ability to comply with its obligations hereunder.

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

(B) Commencement Date Conditions for which Both Parties Have Responsibility. The Borough and the Company shall each use all reasonable efforts in taking such actions as may reasonably be under their control in order to satisfy the Commencement Date Conditions set forth in items (3) through (12) of subsection (A) of this Section as soon as practicable.

(C) No Payment to Either Party for Approval Period Expenses of the Other. All costs and expenses incurred by each party in performing its obligations during the Approval Period shall be for the account of such party and shall not be reimbursable by the other party except upon the occurrence of an Event of Default and except as provided in Section 4.4 and 4.5.

SECTION 4.4. CLOSING THE APPROVAL PERIOD. (A) Establishment of Commencement Date. The parties shall give each other prompt notice when each Commencement Date Condition has been achieved. Upon the satisfaction or waiver of all of such Commencement Date Conditions, the parties shall hold a formal closing on a date and at a location determined by the Borough acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Commencement Date has occurred. The date of such closing shall be deemed

to be the Commencement Date hereunder, and thereupon the Management Period and the ICI Design/Build Period each shall commence. Notwithstanding anything in the Interim Service Contract, the parties agree to terminate the Interim Service Contract concurrently with the Commencement Date hereunder. Written documents or instruments constituting or evidencing satisfaction of the Commencement Date Conditions shall be furnished to each party for review prior to the Commencement Date to the extent practicable.

(B) Failure of Conditions. If by the first anniversary of the Contract Date (as such date may be extended day-for-day by any third party Legal Proceeding which has a material bearing upon the ability of the parties to proceed with the transactions contemplated hereby, but not later than the second anniversary of the Contract Date), or such later date upon which the Borough and the Company may agree, any of the Commencement Date Conditions are not satisfied, or have not been waived, either party may, by notice in writing to the other party, terminate this Service Contract, effective on the date stated in the notice. Neither party shall be liable to the other for the termination of this Service Contract pursuant to this Section except to the extent that such party breaches its obligations under Section 4.1 or 4.2, respectively, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the Commencement Date Conditions.

(C) Borough Election to Proceed with Service Contract. In the event that the parties mutually determine that for any reason the Commencement Date Condition identified in subsection 4.3(A)(7) cannot be satisfied by the time period set forth in subsection (B) of this Section, the Borough may elect to waive such condition and establish the Commencement Date for this Service Contract in accordance with this Section. The parties agree that any such determination and election shall not be made prior to the time of satisfaction of the Commencement Date Condition set forth in subsection 4.3(A)(4) nor after the time period set forth in subsection (B) above. Should the Borough elect to proceed with the commencement of this Service Contract under this subsection, the parties agree that the Element A of the Fixed Component of the Service Fee under subsection 12.4(B) shall be \$2,522,000 in recognition of the additional scope of work to be performed by the Company with respect to the disposal of Plant Sludge at a disposal site other than the Incineration Facilities.

SECTION 4.5. COMPANY ADVANCEMENT OF ICI DESIGN/BUILD WORK. (A) Company Advancement of ICI Design/Build Work. During the Approval Period, following the issuance by the DEP of the draft State air permit to construct the fluidized bed incinerator portion of the initial capital improvements under the Lease Agreement in a form which is satisfactory to the Company but prior to satisfaction of the Commencement Date Conditions (including the Borough's obligation to obtain the financing for the Initial Capital Improvements as required in Section 4.2(3)), the Company may self-fund and undertake certain ICI Design/Build Work subject to the terms and conditions of this Section. The Company shall provide written notice to the Borough of the determination that such draft State air permit is in a form satisfactory

to the Company and that the Company intends to commence the Advancement Work; the date of such written notice shall constitute the Advancement Work Commencement Date.

(B) Advancement Work. Prior to the Commencement Date, the work undertaken and committed to by the Company under the provisions of this Section shall be limited to those tasks and commitments identified in Appendices 2 and 6 (the “Advancement Work”). All work undertaken pursuant to this Section, and ultimately paid for by the Borough, shall be credited toward the Fixed ICI Design/Build Price.

(C) Fixed ICI Design/Build Price Escalation. If the Company provides notice of its intent to initiate the Advancement Work as provided in subsection (A) of this Section, the Fixed ICI Design/Build Price shall escalate by one-half of the rate provided in Section 9.5(C) from August, 2001 through the Advancement Work Commencement Date and shall be suspended upon the Advancement Work Commencement Date; and if the Commencement Date Conditions are satisfied on or before six months following Advancement Work Commencement Date, the Fixed ICI Design/Build Price shall be established under subsection 9.5(C) as of the Advancement Work Commencement Date, in place of the Financing Commitment Date. If the Commencement Date Conditions are not satisfied on or before six months following the Advancement Work Commencement Date for any reason (including, but not limited to, failure by the DEP to issue a final State air permit) other than Company Fault, (i) the portion of the Fixed ICI Design/Build Price that has been accrued as the result of performance of the Advancement Work shall not be subject to further escalation; and (ii) the portion of the Fixed ICI Design/Build Price that has not been accrued as the result of the performance of the Advancement Work shall escalate at one-half of the rate provided in Section 9.5(C) from August, 2001 through the Financing Commitment Date.

(D) Payment for Advancement Work. Any provisions of Section 9.5 notwithstanding, the following provisions shall govern payment by the Borough for Advancement Work:

(1) the Company shall submit Requisitions to the Borough for the milestone payments associated with the Advancement Work in accordance with the procedures set forth in subsections 9.5(F) through (I), (K), (M) and (N) and Appendix 6, which Requisitions shall be subject to review by the Borough Engineer as provided in subsection 9.5(J) and resolution of disputes pursuant to subsection 9.5(L);

(2) the Borough shall not be legally obligated to make payment for the Advancement Work unless and until the Commencement Date Conditions have been satisfied and the Borough has secured financing for the ICI Design/Build Work as provided in Section 4.2(3), and the funds from such financing are available for disbursement;

(3) within 15 days following the Commencement Date, the Borough shall make payment of the amounts of any milestone payments for Advancement Work for which Requisitions have been submitted in accordance with subsection 9.5(F) that have been determined eligible for payment under subsection 9.5(J) and (L), less retainage and any

other permitted withholdings as provided in subsections 9.5(G) and 9.5(K), respectively, plus interest as provided in subsection (D)(4) of this Section; and

(4) the amounts of any milestone payments for Advancement Work for which Requisitions have been duly submitted and approved in accordance with this Section shall bear interest beginning 30 days following the date of each such Requisition, at an annual interest rate of 6.9 percent through the date of actual payment.

(E) Applicability of Other Provisions. Except as otherwise provided in this Section, performance of the Advancement Work shall be subject to all applicable provisions of Article IX.

SECTION 4.6. TRANSACTION COST REIMBURSEMENT AND OTHER PAYMENTS.

(A) Financed Payments. On the Commencement Date, the Borough shall be paid from the proceeds of the financing for the ICI Design/Build Work:

(1) an amount equal to \$197,925 for reimbursement of its transaction costs incurred in the procurement and negotiation of this Service Contract; and

(2) an amount equal to \$39,585 for its costs to be incurred in reviewing and monitoring the ICI Design/Build Work.

(B) Company Payments. Within 30 days following the Commencement Date, the Company shall pay or reimburse, as applicable, to the Borough:

(1) an amount equal to the total mobilization costs paid to the Company through the date of termination of the Interim Service Contract;

(2) an amount equal to any outstanding credit due to the Borough for having assumed the responsibility for transferring Governmental Approvals under the Interim Service Contract (in the amount of \$15,000); and

(3) an amount equal to (i) all Cost Substantiated fees paid by the Borough for the fiscal year ending June 30, 2002 that were required for the maintenance of Governmental Approvals for the Managed Assets and for which the Company will be responsible hereunder as of the Commencement Date, multiplied by (2) a fraction, the denominator of which is 365, and the numerator of which is the number of days from the Commencement Date through June 30, 2002.

SECTION 4.7. EXISTING CONTRACTS. Appendix 17 lists the Existing Contracts to which the Borough or NTC is or was a party, as of the Contract Date, for the provision of goods and services with respect to the Managed Assets and the Collection System. Commencing on the Commencement Date, the Company shall administer and perform the Borough's or NTC's obligations under the Existing Contracts on behalf of the Borough and NTC, including all payment obligations except those which accrued with respect to goods and services provided prior to the Commencement Date. The Borough or NTC, at the direction of the Company, shall enforce performance by the counterparty to all the Existing Contracts. Upon the expiration or termination of each such contract, the Company, either directly or by its own Subcontract with the previous



provider or a new provider, shall be responsible for providing the goods or services which had been provided under the expired or terminated contract to the extent necessary to provide the Contract Services.

**SECTION 4.8. CONTINUANCE OF EMPLOYMENT OF TRANSFERRED EMPLOYEES.**

The Company shall continue to provide full-time employment at the Managed Assets and the Collection System to all Transferred Employees who elected to accept the Company's offer of employment pursuant to the Interim Service Contract and who are assigned to work at the Managed Assets and the Collection System as of the Commencement Date. The parties acknowledge that the Company will be providing management services for the Incineration Facilities under the Shared Services Agreement and may use certain Transferred Employees for such purposes. The Company shall not terminate the employment of any Transferred Employee at the Managed Assets and the Collection System unless: (1) the Transferred Employee voluntarily quits; (2) the Transferred Employee voluntarily elects an early retirement, severance or other incentive termination package sponsored and funded by the Company; or (3) the Transferred Employee is dismissed for just cause. No Transferred Employee shall be involuntarily transferred to a Company location outside the Borough.

ARTICLE V

MANAGEMENT AND OPERATION

SECTION 5.1. OWNERSHIP AND USE OF THE MANAGED ASSETS AND COLLECTION SYSTEM. (A) Borough Ownership. The Managed Assets, the Collection System, the Initial Capital Improvements, the Collection System Improvements and all Capital Modifications are and shall be owned by the Borough throughout and following the Term of this Service Contract, except that certain of the Initial Capital Improvements may be owned by a third party in connection with the financing arrangements therefor and leased to the Borough subject to the payment of the lease payments securing the financing. The Company shall perform the Contract Services as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the System, the Initial Capital Improvements, the Collection System Improvements or any Capital Modification.

(B) Use. During the Term hereof, the Company may enter upon, occupy and use the Managed Assets and the Collection System to operate, maintain, repair, replace and manage the Managed Assets and Collection System, and to permit, design, construct, install, start-up and test the Initial Capital Improvements, the Collection System Improvements and any Capital Modifications, all to provide the Contract Services in accordance herewith, and for no other purpose. The parties acknowledge that, concurrently with the execution of this Service Contract, the Company and the Lessee have entered into the Shared Services Agreement providing for the exchange of certain services, which include the use of the Managed Assets to receive, process and treat Incineration Process Filtrate. The Company shall keep the Managed Assets in good working order and condition in light of their intended use hereunder.

(C) Use of Transferred Property. The Company shall have the right to use and consume in the performance of the Contract Services the spare parts and Consumables constituting part of the Transferred Property. The Borough hereby grants the Company a license to use in the performance of the Management Services the vehicles and rolling stock constituting part of the Transferred Property, and the Company shall be responsible for insuring such vehicles and rolling stock in accordance with Appendix 10.

(D) Liens and Encumbrances. At all times during the Term of this Service Contract, the Company shall keep the System free from any and all Liens and Encumbrances arising out of or in connection with (1) the Contract Services, or (2) any acts, omissions or debts of the Company, the Guarantor, their Affiliates and their Subcontractors, other than Liens arising by operation of law, which shall be promptly bonded or discharged.

(E) Company Property. The Company shall have the right to deliver to, station at, and remove from the Managed Assets and the Collection System personal property of the Company for use in connection with the performance of the Contract Services. The Company shall

provide the Borough with a copy of its initial inventory and periodic inventory updates of all Company-owned computer equipment and all other equipment having a value of \$1,000 located at the Managed Assets and the Collection System. The parties acknowledge that the purpose of this provision is to provide for the smooth and orderly removal of Company-owned personal property upon the expiration or termination of this Service Contract.

SECTION 5.2. COMPANY OBLIGATIONS GENERALLY. (A) Management Responsibility. Commencing on the Commencement Date, the Company shall operate and manage the Managed Assets on a 24-hour per day, 7-day per week basis, and shall collect, receive and treat System Influent, discharge Plant Effluent, transport and dispose of System Residuals and operating wastes, control odor, provide all information necessary to secure Governmental Approvals, and otherwise manage and operate the Managed Assets so as to comply with the Contract Standards applicable to such activities, each of the plans pertaining thereto set forth in the Appendices, and the other terms and conditions of this Service Contract. Commencing in the Contract Year beginning July 1, 2002, the Company shall provide the services with respect to the Collection System as set forth in this Service Contract.

(B) Contract Monitoring Payment. The Company, within 30 days following the commencement of each Contract Year (except for the first contract monitoring payment which shall be paid on the Commencement Date), shall make a payment to the Borough in the following amounts for costs incurred in connection with its Service Contract compliance and monitoring activities: (1) \$38,000 for Contract Years 1 and 2; and (2) \$63,000 for Contract Years 3 through 20. Each such amount shall be adjusted annually by the Adjustment Factor.

SECTION 5.3. BOROUGH OBLIGATIONS GENERALLY. The Borough, in addition to the obligations it has accepted elsewhere in this Service Contract, shall:

- (1) Cooperate with the Company in carrying out its Transition Plan responsibilities;
- (2) Make available to the Company upon request all information relating to the System which is in the possession of the Borough and material to the Company's performance hereunder;
- (3) Grant and assure the Company and any of its employees, agents, representatives or Subcontractors access to the Managed Assets at all times during the Term hereof for the performance of its obligations hereunder, subject to Section 5.20;
- (4) Grant and assure the Company and any of its employees, agents, representatives or Subcontractors access to the Collection System Site at all times during the term hereof for the performance of its obligations hereunder;
- (5) Make available for the Company's use hereunder all Consumables and spare parts in inventory at the Managed Assets as of the Commencement Date;
- (6) Maintain the Required Borough Insurance;

- (7) Maintain and repair in good working order all System assets which are not included in the Managed Assets and the Collection System;
- (8) Maintain and repair in good working order the Access Road including all snow and ice removal therefrom;
- (9) Provide access to the Borough-owned vacuum truck as provided in Section 7.2;
- (10) Support the Company in obtaining and maintaining all Governmental Approvals including without limitation the Governmental Approvals listed in Appendix 9;
- (11) Comply with Applicable Law pertaining to the Borough as owner of the Managed Assets and the Collection System;
- (12) Keep in effect, and amend as necessary from time to time, the ordinances, rules and regulations pertaining to the use of sewers, which are required in order for the Borough to comply with Applicable Law;
- (13) Pay the Service Fee, the Collection System Fee and any other amounts due the Company in accordance with the terms and conditions of this Service Contract; and
- (14) Retain responsibility for, and perform and comply with all obligations with respect to the Excluded Conditions as set forth in Appendix 9.

SECTION 5.4. MANAGED ASSETS CONDITION CONFIRMATION. (A) Familiarity with Managed Assets. The Company acknowledges that: (1) the Company's agents and representatives have visited, inspected, observed and are familiar with the Managed Assets, their design, and their physical condition relevant to the obligations of the Company pursuant to this Service Contract, including structural and operating conditions, roads, Utilities, topographical conditions and historical System Influent, Plant Effluent and System Residuals quality conditions; (2) the Company is familiar with all current local conditions which may be material to the Company's performance of its obligations under this Service Contract (including, but not limited to, transportation; seasons, climate and ambient air; access, availability, handling, storage and disposal of materials, supplies and equipment; and availability and quality of labor and Utilities); and (3) the Company has received and reviewed the Reference Documents, the background documents provided in the RFP and in the document room at the Plant prior to proposal submittal, and conducted all reviews, studies, inspections and field work it determined to be necessary to verify information or gather new information necessary to prepare its proposal.

(B) "As-Is" Condition of Managed Assets. Based on its review of the design drawings, plans and specifications pertaining to the Managed Assets, its inspections of the Managed Assets, and other inquiries and investigations made by the Company prior to the Contract Date, which the Company acknowledges to be sufficient for this purpose, the Company assumes the risk of the adequacy and sufficiency of the design of the Managed Assets and the existing, "as-is" condition of the Managed Assets as such design or condition may affect the ability

of the Company to comply with Applicable Law, meet the Performance Guarantees, permit, design, construct, start up, test and achieve acceptance of the Initial Capital Improvements by the Scheduled ICI Acceptance Date, meet its maintenance, repair and replacement obligations or perform any of its other obligations hereunder on the schedule and for the compensation provided for herein. The Company agrees that any latent or patent defect, flaw, error, inoperability, inadequacy or other condition or aspect of the design or existing condition of the Managed Assets which exists as of the Contract Date or which may be revealed during the performance hereof shall not be an Uncontrollable Circumstance. The Company's assumption of risk under this subsection is subject to the limitations provided in subsection (C) of this Section.

(C) Limitations on Risk. It is specifically understood that the Company does not assume any risk, and the Borough retains all risk as to the following: (1) Pre-Existing Environmental Conditions, and (2) Specified Site Conditions. Without limiting the foregoing, the Borough shall retain all obligations arising out of any third party Legal Proceedings resulting from Pre-Existing Environmental Conditions or Specified Site Conditions at the Managed Assets and the Collection System, except to the extent such Legal Proceeding is based in whole or in part on the Company's breach of its obligations pursuant to Section 6.8.

SECTION 5.5. SERVICE COORDINATION. (A) Company's Service Manager. The Company shall appoint a full-time manager of the Managed Assets and the Collection System (the "Service Manager") who shall be licensed, trained, experienced and proficient in the management and operation of wastewater treatment systems comparable to the System be appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Company's performance of the Management Services. The Company acknowledges that the performance of the individual serving from time to time as the Service Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the Borough and the Service Manager will be essential to effectuating the intent and purposes of this Service Contract. Accordingly, not fewer than 30 days prior to the date on which any candidate for Service Manager from time to time during the Term of this Service Contract is proposed by the Company to assume managerial responsibility for the Managed Assets and the Collection System, the Company shall: (1) provide the Borough with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and (2) afford the Borough an opportunity to interview the candidate with respect to such matters. The Borough shall have the right within seven days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably.

(B) Company's Senior Supervisors. The Company shall appoint and inform the Borough of the identity of the corporate officials of the Company with senior supervisory responsibility from time to time for the Managed Assets and the Collection System and the performance of this Service Contract (the "Senior Supervisors"). The Company shall promptly notify in writing to the Borough of the appointment of any successor Senior Supervisors. The

Senior Supervisors shall cooperate with the Borough in any reviews of the performance of the Service Manager which the Borough may undertake from time to time, and shall give full consideration to any issues raised by the Borough in conducting such performance reviews, including any determination of the Borough that an unworkable relationship has developed between the Service Manager and the Borough.

(C) Borough's Contract Administrator. The Borough shall designate an individual or firm to assist it in administering this Service Contract and act as the Borough's liaison with the Company in connection with the Contract Services (the "Contract Administrator"). The Company understands and agrees that the Contract Administrator has only limited authority with respect to the implementation of this Service Contract, and cannot bind the Borough with respect to any matter pertaining to this Service Contract including any Service Contract amendment or to incurring costs in excess of the amounts appropriated therefor. The Company shall only be entitled to rely on the written directions of the Board of Mayor and Burgesses. The Contract Administrator shall have the right at any time, on behalf of the Borough, to issue to the Company a written request for information relating to this Service Contract. Any written request for information designated as a "priority request" shall be responded to by the Company within three business days.

(D) Borough Approvals and Consents. When this Service Contract shall require any approval or consent by the Borough to a Company submission, request or report, the approval or consent shall be given by the Board of Mayor and Burgesses in writing and such writing shall be conclusive evidence of such approval or consent. Unless expressly stated otherwise in this Service Contract, and except for requests, reports and submittals made by the Company that do not, by their terms or the terms of this Service Contract, require a response or action, if the Borough does not find a request, report or submittal acceptable, it shall provide written response to the Company describing its objections and the reasons therefor within 30 days of the Borough's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected and the Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the Borough pursuant to some specific term of this Service Contract shall be deemed acceptable to the Borough if the Borough shall not have objected thereto within 30 days of the receipt thereof. The procedures for Borough reviews, consents and approvals pertaining to ICI Design/Build Work are set forth in Articles IX and X and Appendix 5.

(E) Communications and Meetings. On or before the Commencement Date, the Company shall inform the Borough of the telephone, fax and beeper numbers, e-mail address and other means by which the Service Manager and Senior Supervisors may be contacted. The Borough shall furnish to the Company comparable communications information with respect to the Contract Administrator. The Company shall meet with the Borough each month to review the contents of the operations reports required to be prepared pursuant to Section 5.15. The Service

Manager and, if requested by the Borough upon at least five days prior notice, at least one Senior Supervisor shall personally attend the monthly operations meetings with the Borough, and all public Borough meetings which the Borough may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Managed Assets and this Service Contract. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation, and the resolution of any issue resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum.

(F) Customer Service. The Company shall respond in a timely and effective manner to all complaints and communications received by the Company or the Borough regarding the collection, treatment and discharge of wastewater, odor and air emissions, noise, construction or any other matter related to the Contract Services. The Company shall investigate each such complaint and communication and, if it has a valid basis, the Company shall promptly develop a response plan or a corrective action plan and proceed to rectify the matter. Complaints and communications concerning Back-Ups, flood conditions, stoppages, spillages, leaks, breaks and emergencies shall be responded to within one hour, and other communications within 24 hours. Complaints concerning odor from the Managed Assets shall be responded to by the Company as required under the Odor Control Plan set forth in Appendix 16. All customer communications shall be promptly logged and promptly responded to in writing, faxed to the Borough on a daily basis, and reported to the Borough as part of the operations reports delivered pursuant to Section 5.15. The Company shall establish, maintain and make freely known a telephone number, e-mail address and mailing address to which customer complaints and communications may be directed.

(G) Relations with Participating Entities. The Company shall cooperate with and assist the Borough in performing its obligations under its agreements with the Participating Entities relating to the System, including providing all information, data and reports required under such agreements. Unless excused by Uncontrollable Circumstances, the Company shall indemnify and hold harmless the Borough, in accordance with Section 14.3, from and against any Loss-and-Expense imposed as a result of any Legal Proceeding brought by a third party arising from any failure by the Company to perform obligations owed to a Participating Entity under any such agreement to the extent the Loss-and-Expense is attributable to the failure by the Company to perform the Contract Services.

SECTION 5.6. CONTRACT ADMINISTRATION. (A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term of this Service Contract. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue

in such communications, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Service Contract.

(B) Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this Service Contract between the parties shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the Borough and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) claims for an increase or decrease of the Service Fee, the Collection System Fee or other demands for compensation or performance based on any provision of this Service Contract; (2) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (3) the specific details and terms of any Change Order; (4) notices, waivers, releases, satisfactions, confirmations, further assurances and approvals given hereunder; and (5) other similar contract administration matters.

(C) Procedures. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the Borough reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed by a Senior Supervisor for the Company and by the Mayor for the Borough. The Borough and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Service Contract.

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

SECTION 5.7. OPERATION AND MAINTENANCE MANUAL. (A) Existing Operation and Maintenance Manual. The Company shall operate and maintain the Managed Assets in accordance with the existing Operation and Maintenance Manual. The existing Operation and Maintenance Manual shall be updated by the Company to incorporate its operating and maintenance standards and policies and, as necessary, to meet Prudent Industry Practice. The Operation and Maintenance Manual shall also be modified, revised or supplemented as necessary from time to time due to the design, construction and installation of any Initial Capital Improvement, any DEP requirement or to comply with this Section. The Company shall submit all updates, modifications, revisions and supplements to the Operation and Maintenance Manual to the DEP for its review and approval to the extent required by Applicable Law or as requested by the DEP. The content of the Operation and Maintenance Manual shall be consistent with



Appendix 14 and the other Contract Standards, shall contain a detailed description of the means and methods of properly operating the Managed Assets and all sampling, testing and measurement procedures, shall document predictive, preventive and corrective maintenance procedures, practices and schedules, and shall otherwise be sufficiently detailed to permit the Managed Assets to be operated and maintained by a third party reasonably experienced in wastewater treatment and shall be reviewed and approved by the DEP in accordance with Applicable Law. The Operation and Maintenance Manual shall be developed and maintained in a manner which is fully consistent with the computerized maintenance management system installed and utilized by the Company pursuant to Section 7.5. The Contract Services shall be performed substantially in compliance with the Operation and Maintenance Manual and the Company's computerized maintenance management system.

(B) Revisions and Modifications. To the extent the Operation and Maintenance Manual is required to be modified, revised or supplemented as provided in subsection (A) of this Section, the Company shall provide to the Borough and the Borough Engineer five copies of a draft Operation and Maintenance Manual for its review and comment. The Company shall review and discuss in good faith with the Borough any aspect of the draft Operation and Maintenance Manual, and shall deliver the final Operation and Maintenance Manual to the Borough within 60 days following completion of review and discussion with the Borough. Notwithstanding any such review and comment by and discussion with the Borough, the Operation and Maintenance Manual shall remain at all times the responsibility of the Company. Neither the review of or comment upon, nor the failure of the Borough to comment upon, the Operation and Maintenance Manual shall: (1) relieve the Company of any of its responsibilities under this Service Contract; (2) be deemed to constitute a representation by the Borough that operating the Managed Assets pursuant to the Operation and Maintenance Manual will cause the Managed Assets to be in compliance with this Service Contract or Applicable Law; or (3) impose any liability upon the Borough.

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

SECTION 5.8. STAFFING AND PERSONNEL TRAINING. (A) Staffing. The Company shall staff the Managed Assets during the Term of this Service Contract with qualified personnel who meet the licensing, certification and other requirements of the State, under a Staffing Plan which is consistent with the Contract Standards. The Company shall staff the Collection System in a manner which is consistent with the Contract Standards considering the scope and limitations of the Company's Collection System obligations as set forth in Section 7.2. The Company shall

discipline or replace, as appropriate, any employee of the Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Company shall notify the Borough of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level or staffing positions would adversely affect the ability of the Company to provide the Contract Services. This current Staffing Plan with respect to the Managed Assets is included as an attachment to Appendix 12.

(B) Changes in Staffing Plan. Changes in the Staffing Plan or refusal by the DEP to approve proposed changes in the Staffing Plan, as a result of the Initial Capital Improvements or otherwise, shall not constitute a Change in Law unless such changes are required in order for the Company to provide the Contract Services as a result of a separate and identified Change in Law event. In the case of such a separate and identified Change in Law event, the Staffing Plan as approved and in effect as of the date of such event shall be the baseline for measuring the effect of any such Change in Law event that affects required staff levels.

(C) Training. The Company shall be responsible for training the Service Manager, operations supervisors and all other Company personnel. Within 180 days following the Commencement Date, the Company shall submit to the Borough for its review and comment a personnel training program which the Company proposes to institute in order to ensure that the Managed Assets and the Collection System are managed and operated in accordance with this Service Contract and Appendix 12. Such personnel training program shall include the personnel training guidelines, policies and procedures established: (1) by the DEP and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

SECTION 5.9. ELECTRICITY SUPPLY AND CONSUMPTION. The Company shall be responsible for arranging and negotiating all contracts for the supply of electricity to the Managed Assets and the Pump Stations, and shall pay all costs in relation thereto.

SECTION 5.10. SAFETY AND SECURITY. (A) Safety. The Company shall maintain the safety of the Managed Assets at a level consistent with the Contract Standards. Within the limitations of its scope of services with respect to the Collection System, the Company shall establish and maintain safety practices with respect to the Collection System work performed by the Company consistent with Prudent Industry Practice. Without limiting the foregoing, the Company shall: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation, maintenance, repair and replacement of the Managed Assets, the Company's work with respect to the Collection System and construction of the Initial Capital Improvements, the Collection System Improvements or any Capital Modifications to, (a) all employees working at the Managed Assets and the Collection System and all other persons who may be involved with the operation, construction, maintenance, repair and replacement of the Managed Assets and the Collection System, (b) all visitors to the Managed Assets and the Collection System, (c) all materials and equipment under the care,

custody or control of the Company on the Sites, (d) other property constituting part of the Managed Assets and the Collection System, and (e) Borough Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Managed Assets whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State and Borough officials; (5) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movement; and (7) develop and carry out Sites-specific safety programs, including employee training and periodic inspections, designed to implement the requirements of this Section.

(B) ADA/OSHA. The Company shall make all Capital Modifications to the Managed Assets and take all other actions which may be required in order to bring the Managed Assets into compliance with the Americans with Disabilities Act and the Occupational Safety and Health Act as in effect on the Contract Date.

(C) Security. The Company shall be responsible for the security of the Managed Assets and the Pump Stations, and shall maintain suitable fences, gates and locks at the Managed Assets and the Pump Stations.

SECTION 5.11. COMPLIANCE WITH APPLICABLE LAW. (A) Compliance Obligation. The Company shall perform the Contract Services in accordance with Applicable Law, and shall cause all Subcontractors to comply with Applicable Law (other than the Excluded Conditions). The Company shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Managed Assets, the Collection System, the System Influent, the Plant Effluent, air emissions and odor, and System Residuals notwithstanding the fact that the Company may not be a permittee or co-permittee with respect to some or all of such Governmental Approvals. The Company's obligations under this Section shall apply regardless of the extent to which the Borough, NTC or the Company (under the Interim Service Contract) complied with Applicable Law with respect to the Managed Assets prior to the Commencement Date.

(B) Sampling, Testing and Laboratory Work. The Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be DEP or EPA certified, as applicable, for the applicable test, shall be operated in accordance with Prudent Industry Practice, and shall be audited and monitored by the Company for compliance with EPA standard test methods. All sampling and test data shall be available for review by, and reported to, the Borough in accordance with Section 5.15 and Appendix 14. The Company explicitly assumes the risk of incorrect sampling, testing and laboratory work, whether such work is performed by itself or its Subcontractors, both as to failures to detect and as to false detections.

The Company shall permit the Borough, at the Borough's expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Managed Assets, the Collection System or otherwise.

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

(D) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, the Excluded Conditions or the conditions set forth in subsection 5.4(C), in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Managed Assets, the System Influent, the Plant Effluent, air emissions, odor or System Residuals, the Company shall, without limiting any other remedy available to the Borough upon such an occurrence and notwithstanding any other provision of this Service Contract: (1) expeditiously take actions to correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Company and the Borough resulting therefrom; (3) pay or reimburse the Borough for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all Capital Modifications and changes in operating and management practices which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law. The Company shall have the right to contest any fine or penalty imposed under this subsection so long as: (1) the Company is contesting any such action in good faith by appropriate proceedings conducted with due diligence; and (2) the Borough shall have no liability as a result of the failure of the Company to pay any such fine or penalty during the period of contest.

(E) No Nuisance Covenant. The Company shall keep the Managed Assets and the Pump Stations neat, clean and litter-free at all times, ensure that the operation of the Managed

Assets and the Pump Stations does not create any odor, litter, noise, fugitive dust, vector or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur which is not caused by Uncontrollable Circumstances, the Company shall promptly remedy the condition, pay any fines or penalties relating thereto, make all Capital Modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold the Borough harmless from any Loss-and-Expense imposed as a result of any Legal Proceeding originated by a third party and arising from such nuisance condition in the manner provided in Section 14.3.

SECTION 5.12. OPERATING AND CONSTRUCTION GOVERNMENTAL APPROVALS. (A) Applications and Submittals. The Company shall make all filings, applications and reports necessary to obtain and maintain the NPDES Permits and all other Governmental Approvals required to be made, obtained or maintained by or in the name of the Company or the Borough under Applicable Law in order to operate the Managed Assets and the Collection System and construct the Initial Capital Improvements and the Collection System Improvements, including those set forth in Appendices 8 and 9. With respect to Governmental Approvals which are required to be obtained in the name of the Borough, the Company shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions of such Governmental Approvals; (4) attend all required meetings and hearings; and (5) take all other action necessary or otherwise reasonably requested by the Borough in order to assist and support the Borough in obtaining, maintaining, renewing, extending and complying with the terms of such Governmental Approvals. The Company shall not file any Governmental Approval without first providing the Borough an opportunity to review and comment thereon. The Company shall submit draft copies of all Governmental Approvals to the Borough sufficiently in advance of their filing with the Governmental Body to allow for full and meaningful review and comment by the Borough. All permit and filing fees required in order to obtain and maintain Governmental Approvals for the Contract Services shall be paid by the Company, regardless of the identity of the applicant, except Governmental Approvals required in connection with an Uncontrollable Circumstance. The Company shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental Body. The Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals that would be unfairly detrimental to the position of the Borough in relationship to the Company; provided that nothing shall restrict the Company from submitting to any Governmental Body any application, data or other information that the Company reasonably believes is true and accurate. The Borough shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body that would be unfairly detrimental to the position of the Company in relationship to the Borough; provided that nothing

shall restrict the Borough from submitting to any Governmental Body any application, data or other information that the Borough reasonably believes is true and accurate. With respect to the Initial Capital Improvements and the Collection System Improvements, the Company shall maintain, renew and extend Governmental Approvals required for their operation.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Contract Services shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the Borough as the legal and beneficial owner of the Managed Assets and primary permittee. The data and information supplied by the Company to the Borough and all regulatory agencies in connection therewith shall be correct and complete in all material respects, and shall be submitted in draft form to the Borough sufficiently in advance to allow full and meaningful review and comment by the Borough. The Company shall be responsible for any schedule and cost consequences which may result from the submittal by the Company of materially incorrect or incomplete information. The Borough reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by the Company pursuant to this Section.

(C) Non-Compliance and Enforcement. The Company shall report to the Borough, expeditiously upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Managed Assets or the Collection System. The Borough shall have the right independently to enforce compliance with the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. Unless excused by Uncontrollable Circumstances, the failure of the Company to comply with any Governmental Approval shall constitute a breach of this Service Contract as well as an event of noncompliance with the Governmental Approval.

(D) Reports to Governmental Bodies. The Company shall prepare all periodic and annual reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Managed Assets and the Collection System, including sampling and testing results and monthly discharge monitoring reports. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the Borough, if such are acceptable to the Governmental Body. The Company shall submit the monthly operating reports, discharge monitoring reports and aquatic toxicity reports required under the NPDES Permit to the appropriate Governmental Body and the Borough within 15 days after the end of each month. With respect to all other reports, the Company first shall provide the Borough with copies of such regulatory reports for review, comment and signature, as applicable, at least seven days before their filing with the Governmental Body.

(E) Potential Regulatory Change. The Company shall (1) review and keep the Borough regularly advised as to potential changes in regulatory requirements affecting the wastewater treatment industry, the Managed Assets and the Collection System, (2) provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the Borough should a Change in Law actually occur, and (3) attend and participate in meetings and hearings in relation thereto. The Company, at the request of the Borough, shall participate in performance evaluation surveys conducted by the DEP and the EPA.

SECTION 5.13. BOROUGH ACCESS TO MANAGED ASSETS AND COLLECTION SYSTEM. The Borough shall have the right at any time, on a 24-hour per day, 365 days per year basis, to visit and inspect the Managed Assets and the Collection System and observe the Company's performance of the Contract Services. The Company shall permit and facilitate access to the Managed Assets and the Collection System for such purposes by Borough personnel and by agents and contractors designated by the Borough. Keys or passwords, as applicable, for the facilities or structures comprising the Managed Assets and the Collection System shall be provided to the Borough's Contract Administrator by the Company in accordance with the Company's physical security plan and key control program. All visitors shall comply with the Company's reasonable operating and safety procedures and rules, and shall not interfere with the Company's operations of the Managed Assets and the Collection System. When visiting any portion of the Managed Assets and the Collection System that is staffed by the Company at the time of the visit, all Borough employees, agents and contractors shall announce themselves to the staff and Company employees may elect to accompany any Borough employees, agents and contractors during the visit. The parties agree that the Borough and its agents and contractors shall have immediate access to the Managed Assets and the Collection System, and no Company rule or procedure shall impede, impair or delay such access (provided that the Borough and its agents and contractors shall at all times comply with the Company's applicable safety procedures and rules).

SECTION 5.14. ASSET AND FINANCIAL RECORDS. (A) System Records. The Company, on and after the Commencement Date, shall establish and maintain computerized information systems with respect to the Managed Assets and the Collection System for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Service Contract and demonstrate compliance with the Contract Standards. The Company shall promptly provide the Borough, upon reasonable request, with e-mail versions or hard copies or both of all operations and maintenance data kept by the Company in its performance of the Contract Services.

(B) Availability of System Records to Borough. The Company shall make available to the Borough all operations, maintenance, performance, odor complaint tracking, System Residuals management, process control and similar records and data as are available to the Company's Service Manager. The Borough shall have real time, continuous computer access

to the SCADA system, and hard copy reproduction capability, through information systems installed and maintained by the Company at a location in the Borough of Naugatuck outside the Plant designated by the Borough.

(C) Record Documents and Mapping. The Company shall maintain at the Plant and make available to the Borough upon request for review and copying: (1) all designs, drawings, blueprints, plans, specifications and "as-built" or record drawings and documents pertaining to the Managed Assets and the Collection System which are delivered to the Borough by the Company pursuant to Appendix 4; and (2) similar documents relating to the Initial Capital Improvements, the Collection System Improvements and any Capital Modifications. The Company shall: (1) keep current all such System records to show any changes to the Managed Assets and the Collection System (including valves, pipes, pumps, meters and other assets) made by the Company in the performance of the Contract Services; and (2) provide advice and assistance to the Borough, based on such records, in establishing and maintaining any Borough geographic mapping and information systems.

(D) Financial Records. The Company shall prepare and maintain financial books, records and accounts with respect to the Managed Assets, the Collection System and the Contract Services sufficient to support all financial reporting, including Cost Substantiation, required hereunder. In the event the Company fails to prepare or maintain any books, records or accounts as required under this Section, the Company shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Company shall keep the relevant portions of such books, records and accounts maintained with respect to each Contract Year for any disputed amounts until at least the seventh anniversary of the last day of each such Contract Year (or such longer period as may be appropriate to account for any dispute then pending). For those circumstances that require Cost Substantiation under Section 16.4, the Company shall make such books and records available to the Borough for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the Borough to determine to its reasonable satisfaction the accuracy, completeness, currency and propriety of any charge or request for payment hereunder. The Company shall not be required to provide to the Borough any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the Borough through the Cost Substantiation process, in which event the Borough and its representatives, and their respective employees and agents, shall treat and maintain such information as confidential. The provisions of this Section shall survive the termination of this Service Contract.

(E) Allocation of Costs. For the purpose of assisting the Borough in apportioning the cost of service to the Participating Entities, as applicable, the Company shall allocate all costs payable by the Borough hereunder, including the Service Fee, the Fixed ICI Design/Build Price, and capital and operating costs related to Capital Modifications and Uncontrollable Circumstances,



among the following service-related categories: (1) the Plant, including costs related to System Residuals transportation and disposal; (2) the Collection System; and (3) all other services. Cost allocation information shall be estimated annually in advance as part of the budgetary submittal made by the Company pursuant to Section 12.8 for the purposes of the Borough's periodic billing to the Participating Entities in the forthcoming Contract Year, and shall be finally determined as part of the Service Fee annual settlement process provided for in Section 12.9.

(F) Inspection, Audit and Adjustment. The Borough shall have the right to perform or commission an inspection or an independent audit of the financial information required to be kept under this Section, subject to possible reimbursement as provided in this Section. If an inspection or audit reveals that the Borough has overpaid the Service Fee, then the Company shall, at the election of the Borough, either promptly reimburse to the Borough or offset against future Service Fee payments, as a Service Fee adjustment, the overpaid amount, in addition to interest, from the time such amount was initially overpaid until reimbursed or credited to the Borough, at the Overdue Rate.

SECTION 5.15. PERIODIC REPORTS. (A) Operations Reports. The Company shall provide the Borough with operations reports no later than 20 days after the end of each Billing Period. The operations reports shall include the operating data specified in Appendix 14.

(B) Annual Operations and Maintenance Reports. The Company shall furnish the Borough, within 60 days after the end of each Contract Year, an annual summary of the information contained in the operations reports. In addition to the requirements set forth in Appendix 14, the Company shall also perform and report to the Borough, as part of its annual operations report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the management of the Managed Assets and the Collection System.

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

(D) Permit Communications and Reports. The Company shall provide to the Borough copies of all communications and reports furnished to any Governmental Body pursuant to Section 5.11 simultaneously with their submittal to the Governmental Body.

SECTION 5.16. EMERGENCIES. (A) Emergency Plan. Within 60 days following the Commencement Date, the Company shall provide the Borough with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions at the Managed Assets and the Collection System. The plan shall: (1) provide for appropriate notifications to the Borough and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the Borough and all such other appropriate Governmental Bodies; (2) specifically

include flood mitigation and spill prevention and response measures; (3) assure the timely availability of all personnel required to respond to any emergency (no later than two hours during nights, weekends or holidays); and (4) otherwise comply with the requirements in Appendix 14. The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary.

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

SECTION 5.17. COMMUNITY SEPTAGE. The Company shall perform, administer and carry out all of the Borough's obligations under its Existing Contracts with the Participating Entities for the treatment and disposal of Community Septage, including without limitation the Borough's recordkeeping, collection and billing obligations thereunder. The Company shall be responsible for the orderly and timely scheduling of all deliveries of Community Septage in accordance with the Community Septage Protocol set forth in Appendix 20 and the Discharge and Access Agreement. The weekday operating hours for the receipt of Community Septage at the Plant shall be established pursuant to the Community Septage Protocol. The Company and its Subcontractors shall comply with Section 5.20 in connection with the hauling of Community Septage to the Plant.

SECTION 5.18. NITROGEN REMOVAL CREDITS. Following the completion of the Initial Capital Improvements pertaining to nitrogen removal, the Borough may request the Company to, or the Company may on its own initiative, undertake a study as to whether the Managed Assets are able to cost-effectively reduce the amount of nitrogen contained in the Plant Effluent such that nitrogen removal credits can be marketed by the Company under Applicable Law. If the results of the study conclude that nitrogen removal credits can be cost-effectively marketed, the Company, acting as agent of the Borough, shall market and sell any such nitrogen removal credits. The parties shall, at the time of implementation of any such marketing program, negotiate a fixed fee per credit as compensation for the Company's making available, marketing and selling such credits. Any such compensation shall be payable to the Company as part of the Variable Component of the Service Fee as provided in subsection 12.4(C).

SECTION 5.19. INDUSTRIAL PRETREATMENT PROGRAM. (A) Generally. The responsibility for the administration and enforcement of the Industrial Pretreatment Program in the State currently rests with the DEP. Each party shall cooperate with and assist the other and the DEP and shall comply with Applicable Law in all matters pertaining to the Industrial Pretreatment Program. In the event that the DEP withdraws from administration and enforcement of the Industrial Pretreatment Program and another State or federal entity has not assumed such responsibility for the Industrial Pretreatment Program, the Borough shall promptly adopt, administer and enforce for the remaining Term of this Agreement an industrial pretreatment program meeting all requirements of Applicable Law, including the requirements set forth in 40 C.F.R. §§ 403.8-403.9.

(B) Crompton Application for New or Amended Industrial Pretreatment Permit. The Borough and the Company each agree to promptly notify the other in the event that Crompton or any successor owner of the CMCI property applies to the DEP for a new industrial pretreatment permit or for an amendment to the current industrial pretreatment permit authorizing the discharge of industrial wastewater from the CMCI property. The Company shall advise the Borough as to the impact of any such proposal upon the operation of the Managed Assets, and the Borough and the Company shall coordinate their respective responses to any such application.

(C) Certain Relief for New or Amended Pretreatment Permit. In the event that the DEP approves any new industrial pretreatment permit or industrial pretreatment permit amendment authorizing the discharge of industrial wastewater from the CMCI property involving an increased volume, pollutant loading, or discharge of different pollutants from those authorized under the industrial pretreatment permit issued to Crompton as of the Contract Date (the "New or Increased Crompton Wastewater Discharge") and such New or Increased Crompton Wastewater Discharge would alone, or in combination with other the System Influent, exceed (1) the Plant Capacity or (2) for other parameters not set forth in Appendix 3 the design capacity and capabilities of the Plant, such circumstances shall constitute an Uncontrollable Circumstance and the Borough shall be solely responsible for any Capital Modifications to the Managed Assets required to accommodate such New or Increased Crompton Wastewater Discharge, subject to the provisions of Article XI.

SECTION 5.20. ACCESS TO PLANT SITE. (A) Cherry Street Access. Except as otherwise provided in this Section, the Company and its employees, contractors, vendors, customers and agents shall access the Plant Site via the Cherry Street entrance. The parties acknowledge that, as of the Contract Date, certain small-scale haulers of Community Septage use the Cherry Street entrance to deliver Community Septage to the Plant. It is the intention of the parties to continue to provide such haulers with access to the Plant via the Cherry Street entrance.

(B) Access via the Access Road. The Access Road shall be the primary means for providing access to the Plant Site for the transport of Community Septage, System Residuals

and bulk supplies. The Company shall provide appropriate instructions and take all reasonable actions to direct the operators of all vehicles entering and leaving the Plant Site for purposes of hauling System Residuals and bulk supplies to use the Access Road except as provided in subsection (C) of this Section. Each of the Borough and the Company shall use reasonable efforts to comply with and to enforce the terms and conditions of the Discharge and Access Agreement under which CMCI permits the use of the Access Road in connection with the Plant Site. The Borough shall take all necessary actions to enforce CMCI's obligations to provide access through the CMCI property in accordance with the Discharge and Access Agreement.

(C) Alternative Access. In the event that CMCI, acting or purported to act under the Discharge and Access Agreement, denies or materially restricts access to or egress from the Plant Site via the Access Road by any particular vehicle and the Company believes the denial or material restriction to be unjustified under the terms of the Discharge and Access Agreement or otherwise to be unreasonable, the Company shall promptly notify the Borough and upon provision of such notice, the Company may allow the affected vehicle access to or egress from the Plant Site by the Cherry Street entrance via the Elm Street/Spencer Street/Cherry Street Extension route as delineated in Appendix 1 or another alternative route approved by the Borough. Promptly following the Company's provision of such notice, the Company shall investigate the cause of CMCI's denial or restriction of access for the affected vehicle and shall prepare a report summarizing the findings of such investigation and recommending actions that should be reasonably pursued by the Borough, the Company or both in connection therewith. The Borough shall use all reasonable efforts to assure that any such alternative route provides reasonable vehicular access to and egress from the Plant Site. To the extent that the denial of use of the Access Road arises from the violation by a vehicle owner or operator of the Rules for Vehicle Owners or Operator established under the Discharge and Access Agreement, the Company shall use all reasonable efforts to prevent the occurrence or recurrence of such violation by the involved vehicle owner or operator.

ARTICLE VI  
PERFORMANCE

SECTION 6.1. MANAGED ASSETS PERFORMANCE GENERALLY. (A) Reliance. The Company acknowledges that the Borough, in serving the wastewater treatment needs of the WWTP Service Territory, is providing an essential public service, and in complying with its obligations under Applicable Law is relying on the performance by the Company of its obligations hereunder.

(B) Maximum Capacity Utilization. The Company shall utilize the capacity of the Managed Assets to its maximum reasonable extent in order to reduce Plant Effluent pollution discharged and to control odor emitted from the Managed Assets. The Company shall not intentionally reduce the level of wastewater treatment or odor control capable of being achieved by the Managed Assets in an effort to reduce its operating and maintenance expenses.

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

SECTION 6.2. PLANT EFFLUENT GUARANTEE. (A) Applicable Law Limits. Except to the extent relieved as provided in Section 6.5 and the Excluded Conditions, the Company shall operate the Managed Assets on a continuous, uninterrupted 24-hour per day, 7-day per week basis so as to receive, process and treat all System Influent and discharge Plant Effluent in compliance with the requirements of Applicable Law.

(B) Liquidated Damages for Plant Effluent Exceedences. Except to the extent the Company is relieved as provided in Section 6.5 or receives regulatory approval for reduced treatment during the construction of Capital Modifications, the Company shall pay liquidated damages in the amounts set forth below for each exceedence and reporting violation indicated:

(1) For each violation of an Effluent Requirement for any pollutant that is not a "toxic substance" (as defined in Section 22a-430-3(a)(3) of the Regulations of Connecticut State Agencies): \$100 per violation of a daily Effluent Requirement; \$300 per violation of a weekly Effluent Requirement; and \$1,000 per violation of a monthly average Effluent Requirement.

(2) For each violation of an Effluent Requirement for a "toxic substance" (as defined in Section 22a-430-3(a)(3) of the Regulations of Connecticut State Agencies): \$200

per violation of a daily Effluent Requirement; \$500 per violation of a weekly Effluent Requirement; and \$2,500 per violation of a monthly average Effluent Requirement.

(3) For each Pump Station Back-Up resulting in an unauthorized discharge (excluding severe storm water events): \$1,000.

(4) For each Plant overflow or Plant equipment bypass resulting in an unauthorized discharge: \$2,000.

(5) For each discharge event which causes a water quality problem (such as fish kills or other problems that result in the imposition of a fine or penalty by the State) or health problems (such as beach closings, fishing bans or other restrictions on beneficial uses): \$5,000.

The Company shall have the right to discuss with the Borough any such liquidated damages prior to its imposition. In any event, the total amount of liquidated damages payable by the Company under this subsection shall be limited to \$10,000 per month.

(C) Adjustment of Liquidated Damages. All dollar amounts specified in this Section pertain to the Contract Year beginning on the Commencement Date and ending on June 30, 2002, and shall be adjusted for each subsequent Contract Year by the Adjustment Factor.

(D) Indemnity for Loss-and-Expense from Non-Complying Plant Effluent. In the event that any Plant Effluent discharged by the Company fails to comply with the requirements of subsection (A) of this Section, except to the extent such failure of compliance is caused by an Uncontrollable Circumstance, the Company, in addition to its obligations under Section 5.11, shall indemnify, defend and hold harmless the Borough and the Borough Indemnitees in accordance with Section 14.3 from the Loss-and-Expense of any tort, environmental or other liability imposed as the result of any Legal Proceeding originated by any third party arising from the discharge of such non-complying Plant Effluent. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any party from exposure to such non-complying Plant Effluent based on any theory of recovery, including theories of toxic tort or environmental impairment. The Loss-and-Expense relating to such liabilities to third parties to which the indemnity provided in this Section extends shall not be construed to constitute consequential or other damages as set forth in Section 13.10, as to which both parties have waived any rights of recovery.

(E) Change in Law Affecting Plant Effluent. The parties acknowledge that a Change in Law may affect Plant Effluent standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law occurs, the Company shall not be entitled to performance relief or additional compensation under Section 14.2 unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Plant Effluent characteristic or parameter which is more stringent or burdensome to comply with than the Contract Standards in effect as of the Contract Date applicable to such characteristic or parameter, or requires equipment or

processes not then in place or practiced at the Managed Assets, and (2) the Company is unable, after taking all reasonable mitigation measures required under Section 14.2 with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation.

SECTION 6.3. ODOR GUARANTEE. (A) Pre-ICI Acceptance Odor Guarantee. Except to the extent relieved as provided in Section 6.5 or other Uncontrollable Circumstances, in operating the Managed Assets prior to ICI Acceptance of the Initial Capital Improvements, the Company shall implement the Odor Control Plan set forth in Appendix 16 as it pertains to the Company's pre-ICI Acceptance responsibilities, and shall operate the Managed Assets (recognizing the limitations of their existing design) in accordance with Prudent Industry Practice to control odors, with the objective of achieving and maintaining compliance with all Applicable Law. The Company shall promptly respond to odor complaints and correct any odor problems emanating from the Managed Assets in accordance with the Odor Control Plan.

(B) Post-ICI Acceptance Odor Guarantee. Except to the extent relieved as provided in Section 6.5, in operating the Managed Assets subsequent to ICI Acceptance of the Initial Capital Improvements, the Company shall comply with all limits and requirements established by Applicable Law with respect to odor control. In addition, the Company shall operate and maintain the Managed Assets in compliance with the Odor Control Plan set forth in Appendix 16 as it pertains to the Company's post-ICI Acceptance responsibilities.

(C) Odor Control Practices Report. The Company shall submit, together with the operations report required by Section 5.15, a monthly odor control practices report to the Borough which shall include: (1) a listing of all odor complaints received during the month, with name, address, and nature of complaint; (2) all investigations conducted and actions taken or planned in response to such complaints; (3) evidence showing compliance with the odor control operating practices required by this Service Contract; (4) the quantity of odor control chemicals used during the month; (5) all other information contained in the Odor Scorecard as set forth in Appendix 16; and (6) such other matters pertaining to odor control as the Borough may require from time to time.

(D) Preventing Recurrence of Violations. The general remedies for exceeding odor limits are set forth in Section 5.11, this Section and Appendix 16. The Company acknowledges that, in the proposal process leading to the execution of this Service Contract, the Company had a full opportunity to propose additional capital improvements for odor control to be made at the Borough's expense, and by making its proposal and by executing this Service Contract, the Company assumed the risk that the Managed Assets, as improved by the Initial Capital Improvements, will be capable of controlling odor to a level required by the Contract Standards absent the receipt of Excessive Influent or the occurrence of other Uncontrollable Circumstances. Accordingly, in the event the Company fails to comply with its odor control obligations set forth or referred to in this Section, and is not excused by Uncontrollable Circumstances, the Company shall, in addition to its obligation to pay liquidated damages as

required by Appendix 16, be obligated to implement such Capital Modifications and changes in operating, maintenance, repair, replacement and management practices as shall be necessary, in light of the nature, extent and repetitiveness of such non-compliance, to assure that the odor violation will not recur.

SECTION 6.4. BOROUGH REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES. (A) Remedies. If the Company fails to comply with any Performance Guarantee and is not excused from performance as provided in Sections 6.5 or 14.2, the Company shall, without relief under any other Performance Guarantee, and in addition to any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body: (1) promptly notify the Borough within 24 hours of the Company's having knowledge of any such non-compliance; (2) promptly provide the Borough within 24 hours with copies of any notices sent to or received from the EPA, the DEP or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law; (3) pay any liquidated damages required hereunder; (4) pay any other resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom; (5) take any action (including, without limitation, making all Capital Modifications or repairs and replacements and operating and management practices changes) necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent the recurrence of non-compliance with such Performance Guarantee; (6) promptly prepare all public notifications required by Applicable Law, and submit such notifications for publication; and (7) assist the Borough with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

(B) Performance Testing. The Borough, at any time, may require a performance test to be conducted by the Company, at the Borough's cost and expense, to demonstrate that the Plant is operating in compliance with Applicable Law and the Performance Guarantees. The performance tests shall be conducted in the same manner as provided for the ICI Acceptance Tests in Appendix 7. If the test is not successfully passed, the Company shall reimburse the Borough and, at its own cost and expense, make all necessary repairs and replacements, including major repairs and replacements, or Capital Modifications and the test shall be re-performed at the Company's sole cost. The Borough Engineer will conduct or verify each test and inspection.

SECTION 6.5. UPSETS, INTERFERENCE, PASS-THROUGHS AND EXCESSIVE INFLUENT AFFECTING COMPANY COMPLIANCE WITH PERFORMANCE GUARANTEES. (A) Relief Generally. The Company shall be relieved of its obligation to comply with a Performance Guarantee to the extent and for any period during which the operation of the Managed Assets is affected by the occurrence of an Upset, Interference or Pass-Through, the receipt of Excessive Influent or any other Uncontrollable Circumstance.



(B) Upsets, Interference or Pass-Through and Excessive Influent. The occurrence of an Upset, Interference or Pass-Through or the receipt of Excessive Influent shall be considered an Uncontrollable Circumstance, and the Company shall be entitled to relief from a Performance Guarantee due to the occurrence of an Upset, Interference or Pass-Through or the receipt of Excessive Influent, if the Company affirmatively demonstrates through contemporaneous operating logs, sampling logs or other relevant evidence that:

(1) an Upset actually occurred (as demonstrated in accordance with the conditions set forth in 40 C.F.R. 122.41(n)(3) irrespective of whether an Upset is included in the NPDES Permit), Interference or a Pass-Through actually occurred, or Excessive Influent was actually received;

(2) during the relevant period, the Company was following Prudent Industry Practice and the other Contract Standards with respect to monitoring of System Influent and the operation of the Managed Assets; and

(3) the Upset, Interference or Pass-Through or Excessive Influent resulted in a violation of the NPDES Permit or any other Applicable Law or any other non-compliance with any Performance Guarantee.

(C) Failure to Monitor System Influent. If the Company has failed to properly monitor System Influent at the Plant in accordance with Prudent Industry Practice and the other the Contract Standards, and during the period of such failure there occurs an Upset, Interference or Pass-Through or a receipt of Excessive Influent that could reasonably have been caused by Incineration Process Filtrate, there shall be a rebuttable presumption that such receipt was caused by Incineration Process Filtrate and such receipt shall not constitute an Uncontrollable Circumstance, unless the Company can prove by a preponderance of the evidence that such receipt resulted from Sewer Influent or Community Septage received at the Plant.

(D) Response Measures to Upsets, Interference or Pass-Through and Excessive Influent. If an Upset, Interference or Pass-Through occurs or the Plant receives Excessive Influent, the Company shall, without limiting its obligations under the Contract Standards: (1) use all reasonable efforts consistent with Prudent Industry Practice to maintain Plant performance; (2) advise the Borough of the situation and the Company's planned course of action within 8 hours of the Company's first knowing of the occurrence of an Upset or the receipt of Excessive Influent, Interference or Pass-Through; (3) submit any notice thereof required by Applicable Law; and (4) use all reasonable efforts consistent with Prudent Industry Practice to return the Plant Effluent to compliance with the requirements of Applicable Law and the Performance Guarantees as soon as reasonably possible, but, in any event, within ten days after the Plant has ceased receiving Excessive Influent. The Borough and the Company shall cooperate with each other in the investigation of the cause of any Upset, Interference or Pass-Through or Excessive Influent, and in any efforts to seek reimbursement, compensation or indemnification from the responsible

parties. The Company acknowledges that its assistance in such matters may include the provision of all necessary technical support, including testing and monitoring, to enable the parties to pursue the responsible parties, the costs of which shall be subject to Cost Substantiation and reimbursement by the Borough.

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

SECTION 6.6. TESTING, METERING AND WEIGHING. (A) Testing. The Company shall conduct all tests of System Influent, Plant Effluent, System Residuals, air emissions and odor in accordance with Appendix 14 and the other Contract Standards. The tests shall be made at State certified laboratories to the extent required by the Contract Standards and shall be conducted at the Company's sole cost and expense, except to the extent such tests are required by a Change in Law or any other Uncontrollable Circumstance and are not required under the terms hereof as of the Contract Date; provided, however, that reasonable minor changes to testing and analysis protocols required by the DEP from time to time shall not constitute a Change in Law or other Uncontrollable Circumstance within the meaning of this Section.

(B) Metering and Weighing. The Company shall maintain in good working order, and repair and replace when necessary, devices at the Plant capable of (1) metering the continuous and daily total volume of Sewer Influent (including Sewer Influent originating in the Participating Entities), Incineration Process Filtrate and Plant Effluent, (2) metering or weighing Community Septage, (3) metering or weighing the daily amount of System Residuals leaving the Plant for disposal, (4) metering the continuous and daily total amount of flow at the Participating Entities' pump stations, and (5) any other metering or weighing requirement imposed by Applicable Law. With the exception of third-party scales that are state-certified, the Borough shall have full access to such meters, instruments, controls, recorders, scales and other metering and weighing devices. All operating data produced by such metering and weighing devices shall be subject to audit, and shall be summarized in the operations reports delivered to the Borough pursuant to Section 5.15. All such metering and weighing devices maintained by the Company shall be calibrated to the accuracy required by, and shall be operated and maintained in accordance with the requirements of, the Contract Standards. All third-party scales shall be state-certified. To the extent any metering or weighing device is incapacitated or is being tested, the Company shall estimate as accurately as practicable the data required by the Company to perform the Contract Services. This

estimate and methodology shall, with the Borough's approval, be used as the basis for determining the operating data required hereunder during the outage. The Borough shall have the right to monitor, inspect and test such metering and weighing devices which are part of the Managed Assets and the Collection System at any time and for any purpose and to take measurements regarding System Influent, Plant Effluent, System Residuals and Community Septage without unreasonably interfering with the Company's ordinary operations.

SECTION 6.7. RELEASES, LEAKS AND SPILLS. (A) Unauthorized Releases Prohibited. The Company shall operate the Managed Assets in such a manner that System Influent, Plant Effluent and System Residuals will not contaminate, or be bypassed, released, leaked or spilled on or into, the environment, other than as permitted by Applicable Law and the other Contract Standards.

(B) Notification and Reporting. The Company, while contemporaneously notifying the Borough, shall be responsible for fulfilling all notification of and reporting requirements established by Applicable Law related to any unauthorized release of System Influent, Plant Effluent or System Residuals into the environment from or in connection with its operation and management of the Managed Assets. The Company shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the Borough, along with any documents provided to the relevant Governmental Body regarding the release.

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

SECTION 6.8. PRE-EXISTING ENVIRONMENTAL CONDITIONS, COLLECTION SYSTEM ENVIRONMENTAL CONDITIONS AND SPECIFIED SUBSURFACE CONDITIONS.

(A) Company Obligation. In the operation and management of the Managed Assets, the performance of the Collection System scope of services, and the performance of the ICI Design/Build Work and the Collection System Improvements work, the Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating the nature or areal extent of any Pre-Existing Environmental Condition after the location and existence of such Pre-Existing Environmental Condition has been disclosed to or through physical observation (including any such observation made during excavations) becomes actually known to the Company. Prior to undertaking any excavation or construction work, the Company shall review available records, drawings and plans, and, as appropriate, interview Transferred Employees still in the employ of

the Company, regarding the Managed Assets, the Collection System and the Collection System Sites with respect to the identification of any known Pre-Existing Environmental Conditions. Except for the Company's failure to exercise due care with respect to such disclosed or known Pre-Existing Environmental Condition, the Company shall not be responsible for any Pre-Existing Environmental Condition including any Loss-and-Expense relating to any Pre-Existing Environmental Condition.

(B) Borough Obligations. If at any time a Pre-Existing Environmental Condition, Collection System Environmental Condition or Specified Site Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Contract Services, or (3) increases the cost to the Company of performing the Contract Services, then the Borough shall promptly after written notice from any Governmental Body or the Company of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary to dispose of, remediate or otherwise correct the Pre-Existing Environmental Condition, Collection System Environmental Condition or Specified Site Condition or otherwise make the Pre-Existing Environmental Condition, Collection System Environmental Condition or Specified Site Condition comply with Applicable Law. The Borough shall have the right to contest any determination of a Pre-Existing Environmental Condition, Collection System Environmental Condition or Specified Site Condition and shall not be required to take any action under this subsection so long as: (1) the Borough is contesting any determination of a Pre-Existing Environmental Condition, Collection System Environmental Condition or Specified Site Condition in good faith by appropriate proceedings conducted with due diligence; and (2) Applicable Law permits continued operation of the Managed Assets or the Collection System pending resolution of the contest, so that the Company shall have no liability as a result of the failure of the Borough to dispose of, remediate or otherwise correct such Pre-Existing Environmental Condition, Collection System Environmental Condition or Specified Site Condition during the period of contest.

## ARTICLE VII

### MAINTENANCE, REPAIR AND REPLACEMENT

#### SECTION 7.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance. The Company shall perform all normal and ordinary maintenance of the machinery, equipment, structures, improvements and all other property constituting the Managed Assets, shall keep the Managed Assets in good working order, condition and repair, in a neat and orderly condition and in accordance with Appendix 14 and the other Contract Standards. The Company shall not undertake any normal and ordinary maintenance activity which will permanently impair the exterior physical appearance of the Managed Assets Structures (such as changes to the exterior surface materials, colors, roof materials, or exterior structural dimensions) that may be viewed from the exterior of the Plant Site without the prior approval of the Borough. The Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, Consumables and services which are necessary for the normal and ordinary maintenance of the Managed Assets and shall conduct predictive, preventive and corrective maintenance of the Managed Assets as required by the Contract Standards. The Company shall keep maintenance logs in accordance with the maintenance, repair and replacement plan set forth in Appendix 14 and developed as part of the Operation and Maintenance Manual.

(B) Repair and Maintenance of Grounds. The Company, in accordance with the Contract Standards, shall keep the grounds of the Plant Site and the Pump Station sites in a neat and orderly condition. The Company shall also maintain and repair all Managed Asset and Pump Station fencing and signage. In addition, the Company shall provide lawn mowing, leaf raking, and brush cutting services for the Plant Site and the Pump Station sites, and provide winter maintenance (snow and ice removal) for all parking lots, roadways, walk-ways, and building entrances and exits at the Plant Site and the Pump Station sites; provided that the Borough shall be responsible for maintenance (including snow and ice removal) with respect to the Access Road.

(C) Major Maintenance, Repair and Replacements. The Company shall perform all major maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other property constituting the Managed Assets during the Term of this Service Contract required under the Contract Standards, including without limitation all maintenance, repair and replacement which may be characterized as "structural" or "capital" in nature; provided, however, the Company's major maintenance, repair and replacement responsibilities shall also be subject to Section 7.2. The Borough's approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification other than a Small Scale Capital Modification, in which event the Borough shall have the approval rights set forth in Article XI. The obligations of the Company under this Article are

intended to assure that the Managed Assets are fully, properly and regularly maintained, repaired and replaced in order to preserve their long-term reliability, durability and efficiency, and that in any event the Managed Assets are returned to the Borough at the end of the Term in a condition which does not require the Borough to undertake a significant overhaul or make immediate replacements in order to continue to provide reasonably priced and efficient wastewater treatment services.

(D) Replacements Constituting Capital Modifications. The Company shall bear the cost and expense of all maintenance, repairs and replacements required under this Article, including the cost and expense of any maintenance, repair or replacement that may constitute a Capital Modification, unless otherwise provided in Article XI.

SECTION 7.2. COLLECTION SYSTEM MAINTENANCE, REPAIR AND REPLACEMENT. (A) Inspections, Cleaning and Blockage Removal. Commencing in the Contract Year beginning July 1, 2002, the Company shall perform the following work with respect to the Collection System:

(1) the Company shall conduct scheduled inspections on a routine basis of the force main and Pump Station components of the Collection System to maintain their continuous operability in accordance with the procedures set forth in Appendix 14;

(2) the Company shall conduct routine and emergency cleaning of the Collection System in accordance with Contract Standards;

(3) the Company shall conduct inspections of the Collection System mains in accordance with an inspection plan developed by the Company and approved by the Borough as provided in Appendix 14;

(4) within one hour of observation or receipt of notice by the Company of a blockage in the Collection System that is causing a Back-Up, the Company shall take prompt action to remove such blockage; and

(5) within a reasonable time after observation or receipt of notice by the Company of a partial blockage in the Collection System that is significantly restricting the use or function of any component of the Collection System, the Company shall take action to remove such blockage.

The Borough shall make available to the Company on an "as-needed" basis the Borough's vacuum truck for its use in performing the Collection System services hereunder. The Borough shall make the Borough's vacuum truck available to the Company promptly upon request (no later than one hour) in the event of notice received by the Company of a blockage, partial blockage, Back-Up or other emergency, and shall otherwise make the vacuum truck available within a reasonable time (no later than one day) following request by the Company in order to perform other services relating to the Collection System.

(B) Responsibilities for Back-Ups. In the event of a Back-Up, the Company shall conduct an investigation as to the cause of the Back-Up and advise both the Borough and any

affected property owner of the location of the blockage or other condition causing the Back-Up. Responsibility for such Back-Ups shall be allocated as follows:

(1) if the Back-Up is caused by a failure at a Pump Station, the Company shall undertake necessary repairs at the Pump Station in accordance with, and subject to the limitations contained in, subsection (C) of this Section;

(2) if the Back-Up is caused by a blockage in the Collection System, the Company shall undertake necessary actions to remove the blockage as provided in subsection (A)(4) of this Section;

(3) if the Back-Up is caused by a blockage in a lateral/connection line, the Company shall advise the Borough and the affected property owner, it being the understanding of the parties that such blockage is the responsibility of the affected property owner; and

(4) the Company shall be responsible for any Sanitation Cost or Property Loss (as such terms are defined in Attachment 1 to Appendix 14) for a Back-Up that is caused by the failure to the Company to fulfill its obligations set forth in subsection (A)(4) or (A)(5) of this Section.

(C) Collection System Repair and Replacement. The Company shall conduct maintenance, repair and replacement activities with respect to the Collection System in accordance with Appendix 14. In carrying out its repair and replacement obligations in relation to the Collection System, the Company shall be responsible for all repair and replacement costs at the Pump Stations up to a \$10,000 limit (per Pump Station event) and repair and replacement costs for the balance of the Collection System up to a \$50,000 limit per Contract Year (each as adjusted annually by the Adjustment Factor). If any repairs or replacements that are required to be made to the Collection System as a result of any of the foregoing involve costs in excess of the applicable limits, then the Company shall be responsible for the costs resulting from such event up to such limit and the Borough shall pay for all repair and replacement costs in excess thereof, subject to Cost Substantiation. The Company shall be solely responsible, however, for all repair and replacement costs, regardless of the costs thereof, if such repair and replacement is due to Company Fault. In determining the costs for any repair and replacement work for purposes of this Section, the Company may include the direct and actual costs related to parts, supplies and third party contractors used in connection with such repair or replacement work. The Company shall not include the costs of any of its employees assigned to the Managed Assets and the Collection System in determining the costs of any maintenance, repair or replacement work. If required by Applicable Law governing the procurement of public works, the Company shall, on behalf of the Borough (without change in responsibility between the parties for payment as provided in this subsection), solicit bids or otherwise contract the construction and installation of any such repair or replacement work, and the repair or replacement work shall be carried out by the successful third party contractor. The Company shall give the Borough reasonable advance notice (at least

ten business days) of any Collection System repair and replacement event expected to exceed the limits set forth in this Section.

(D) Third Party Contractors for the Collection System. Commencing in the Contract Year beginning July 1, 2002 and in each Contract Year thereafter, the Borough shall appropriate an amount equal to \$81,500 (as adjusted annually by the Adjustment Factor) for DEP-Mandated Collection System Work to be performed by unrelated third party contractors. The Company, as part of its Collection System responsibilities and no later than 60 days prior to the end of each such Contract Year, shall submit to the Borough for review and comment its schedule of DEP-Mandated Collection System Work that is expected to be performed in the next Contract Year. This schedule shall be prepared by the Company in accordance with the Collection System O&M Manual and Appendix 14. If required by Applicable Law governing the procurement of public works, the Company shall, on behalf of the Borough, solicit bids or otherwise contract the maintenance or repair work, and such maintenance or repair work shall be carried out by the successful third party contractor. The Company shall not commit to any third party contracts for DEP-Mandated Collection System Work for amounts more than the \$81,500 limit (as adjusted annually by the Adjustment Factor) without the prior approval of the Borough; and if the Company, without the Borough's approval, commits to any third-party contracts in excess of such amounts, the Company shall be responsible for such excess contractual commitments. If DEP-Mandated Collection System Work requires work in excess of the \$81,500 limit (as adjusted annually by the Adjustment Factor) and the Borough fails to timely approve such additional amount, the Borough shall be responsible for all Loss-and-Expense imposed as a result of such failure to complete such DEP-Mandated Collection System Work. The Company shall pay all costs relating to such third party contractor maintenance or repair work and shall be reimbursed therefor by the Borough as provided in Section 12.5; provided that the Company shall have no obligation to pay for such third party maintenance and repair work in excess of the limits set forth in this subsection (other than for unapproved excess contractual commitments as provided herein) or such additional amounts as approved by the Borough.

(E) Odor Complaints. The Company shall promptly respond to and investigate odor complaints relating to the Collection System, including the Pump Stations. The Borough acknowledges the limitations of the Company's Collection System responsibilities as set forth in this Section; and subject to such limitations, the Company agrees to use reasonable efforts in accordance with Prudent Industry Practice to address and resolve, to the extent practicable, any verified odor complaints relating to the Collection System. The Company shall submit, together with the operations report required by Section 5.15, a monthly report to the Borough which includes: (1) a listing of all odor complaints related to the Collection System received during the month, with the name, address, and nature of the complaint; and (2) all investigations conducted and actions taken or planned in response to such complaints. Nothing in this subsection shall be



deemed to expand the Company's responsibilities with respect to the design, construction, operation, maintenance, repair or replacement of the Collection System or any part thereof.

SECTION 7.3. MANAGED ASSET AND PUMP STATION EVALUATIONS. (A) Initial and Final Inventories of Vehicles, Rolling Stock, Spare Parts and Consumables. As required by Section 4.3(A)(9), prior to the Commencement Date the Company shall conduct an itemized inventory of all vehicles, rolling stock, spare parts and Consumables in stock and having operational utility at the Managed Assets which are to be licensed or transferred to the Company as of the Commencement Date. The Company shall correct any deficiencies it identifies in the initial inventory by restoring spare parts and Consumables to the appropriate levels required by the Contract Standards. In like manner, prior to the Termination Date, the Company shall prepare an itemized inventory of all vehicles, rolling stock, spare parts and Consumables in stock and having operational utility at the Managed Assets which are to be transferred to the Borough on the Termination Date. The final inventory shall be compared to the initial inventory and the Company shall be responsible for restoring any deficiencies identified and having operational utility on or before the Termination Date. Each such Company inventory shall be subject to review and concurrence by the Borough.

(B) Initial Evaluation of the Managed Assets. Prior to the Commencement Date the Company shall prepare and submit to the Borough for its review and approval the Managed Assets Registry and the Projected Rebuild/Replacement Schedule in accordance with Appendix 15. The information contained in the Managed Assets Registry and the Projected Rebuild/Replacement Schedule will be used by the Borough to establish a baseline for determining compliance by the Company generally with its maintenance, repair and replacement obligations under this Article. The evaluation of the Managed Assets Structures shall determine and establish the existing condition and state of repair of the Managed Assets Structures. The Borough shall use the information in the Managed Assets Registry and the Projected Rebuild/Replacement Schedule to calculate the weighted average rebuild/replacement useful life of the Managed Assets Equipment, on a system or sub-system basis, projected to exist at the end of the Term hereof (the "Projected Weighted Average Rebuild/Replacement Useful Life") as set forth in Appendix 15.

(C) Final Evaluation of Managed Assets. Commencing in Contract Year 18 or concurrently with the Termination Date upon an early termination of this Service Contract (the "Evaluation Date"), the Borough shall calculate the Actual Weighted Average Rebuild/Replacement Useful Life of the Managed Assets based on the Company's documented and scheduled remaining maintenance, repair and replacement activities for the Managed Assets. The Borough shall have the right to independently verify the Company's maintenance, repair and replacement records for purposes of determining the Actual Weighted Average Rebuild/Replacement Useful Life.

(D) Required Condition of Managed Assets Upon Return to the Borough. The Managed Assets Structures, and any equipment specifically exempted from the provisions of Appendix 15, as set forth therein, shall be returned to the Borough in good condition, working

order and repair, taking into account their condition and state of repair on the Commencement Date (as improved by the Initial Capital Improvements) and with ordinary wear and tear excepted. The Managed Assets Equipment shall be returned to the Borough in such a condition and state of repair such that, on a system and sub-system basis as of the Evaluation Date, the Actual Weighted Average Rebuild/Replacement Useful Life of the Managed Assets Equipment at the end of the Term is equal to or greater than 92.5% of the Projected Weighted Average Rebuild/Replacement Useful Life. In the event the final audit establishes a maintenance, repair or replacement deficiency for the Managed Assets Structures or Managed Assets Equipment under this Section, the Company shall, at the election of the Borough, either remedy the deficiency or make a cash payment to the Borough in accordance with the terms of Appendix 15.

(E) Pump Station Evaluations. Prior to the Commencement Date, the Company shall prepare and submit to the Borough for its review and approval the precondition surveys of the Pump Stations in accordance with Appendix 15A. The Pump Stations shall be returned to the Borough in good condition, working order and repair, taking into account their condition and state of repair on the Commencement Date (as improved by the Collection System Improvements), the scope of the Company's maintenance obligations for Pump Stations under this Article, and with ordinary wear and tear excepted. At the end of the Term or earlier upon termination of this Service Contract, the Borough shall inspect the condition of the Pump Stations. In the event the final inspection establishes a maintenance, repair or replacement deficiency under this subsection, the Company shall, at the election of the Borough, either remedy the deficiency or make a cash payment to the Borough in accordance with the terms of Appendix 15A.

(F) Initial Capital Improvements and Capital Modifications. Upon completion of their construction, the mechanical equipment portion of each Initial Capital Improvement and each Capital Modification having a value equal to or greater than \$5,000 shall be added to the Managed Assets Registry and a separate Projected Rebuild/Replacement Schedule shall be developed for such equipment as provided in Appendix 15. The final evaluation of the mechanical equipment portion of each Initial Capital Improvement and Capital Modification shall be performed independently of the final evaluation of the Managed Assets Equipment, and such equipment shall be returned to the Borough in accordance with the same requirements for the Managed Assets Equipment as set forth in this Section and Appendix 15. In the same manner as Managed Assets Structures, the structure portion of any Initial Capital Improvement and Capital Modification shall be returned to the Borough on the Termination Date in good condition, working order and repair, with ordinary wear and tear excepted.

(G) Disputes. Any matter arising under this Section which is in dispute between the Borough and the Company shall be determined as provided in Sections 13.11 and 13.12.

SECTION 7.4. PERIODIC MAINTENANCE INSPECTIONS. (A) Annual Maintenance Inspection. The Borough shall, upon reasonable written notice, perform a full-scale inspection and

review of the state of repair, working condition and performance capability of the Managed Assets and relevant records of the Company each Contract Year to determine the extent to which the Managed Assets are being properly maintained, repaired, and replaced in accordance with the Contract Standards generally. The inspection and review shall be performed by or on behalf of the Borough by a Borough Engineer at the Borough's expense. The Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services.

(B) Remediation. Based on the annual operations and maintenance reports submitted by the Company pursuant to subsection 5.15(B) or the annual inspections and reviews conducted pursuant to this Section, the Borough may submit a statement to the Company detailing any deficiencies found and requiring the Company to submit a plan of remediation. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Managed Assets will be promptly brought into compliance with the requirements of this Article. If the Borough accepts the remediation plan, the Company shall thereupon correct all deficiencies noted in accordance therewith. If the Company fails to implement such corrective action and the Borough elects to undertake action, the Borough's costs of remediation, subject to Cost Substantiation, may be deducted from the Service Fee. Any disputes with respect to the cause or amounts specified in the Borough's statement, not resolved to the mutual satisfaction of the parties, shall be determined as provided in Sections 13.11 or 13.12.

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

SECTION 7.5. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM. The Company shall install, maintain, upgrade, repair and replace, as appropriate throughout the Term, a computerized maintenance management system capable of providing a record of repair and replacement of the Managed Assets and the Pump Stations on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; monitoring routine operations within the Managed Assets; issuing work orders and purchase orders; maintaining a spare parts inventory; and issuing exception, equipment status and repair priority reports. The computerized maintenance management system shall be installed and operational within 180 days following the Commencement Date, shall be developed consistently with the Managed Assets Registry, and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Managed Assets and the Pump Stations. The Company shall utilize the computerized maintenance management system to provide the Borough with documentation which allows it to efficiently monitor compliance by the Company with its maintenance obligations hereunder. The Company shall permit all electronic data to be replicated and provided to the Borough for review by the Borough Engineer.

SECTION 7.6. MAINTENANCE, REPAIR AND REPLACEMENT PLAN. Appendix 14 contains the Company's plan for the maintenance, repair and replacement of the Managed Assets and the Collection System. This plan is intended to establish minimum standards by which to measure the Company's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or substandard maintenance, repair and replacement occurs. The Operation and Maintenance Manual shall incorporate a maintenance, repair and replacement plan that is in substantial conformance with Appendix 14. The Company shall adhere to the plan as incorporated in the Operation and Maintenance Manual, except where it can demonstrate to the Borough that changes are reasonable under Prudent Industry Practice. The timing and extent of maintenance, repair and replacement activities performed by the Company hereunder with respect to the Managed Assets and the Collection System, taken as a whole, shall be in accordance with Appendix 14. The Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

SECTION 7.7. DISPOSAL OF SURPLUS EQUIPMENT. The Company may, with the approval of the Borough, remove from the Managed Assets and the Collection System and dispose of or sell, in accordance with Applicable Law, equipment constituting part of the Managed Assets and the Collection System that is unused or obsolete and no longer needed. All proceeds from any sale shall be the property of the Borough, and the Borough shall reimburse the Company for its direct and actual expenses in arranging the sale (to the extent such expenses are not included in the Fixed ICI Design/Build Price), subject to Cost Substantiation. The Company shall not store or stockpile any such removed equipment at the Managed Assets or the Collection System.

SECTION 7.8. WARRANTIES. During the Term of this Service Contract, the Company shall be responsible for meeting the Borough's maintenance obligations under all manufacturer's warranties on new equipment purchased and installed in the Managed Assets and the Collection System by the Borough or by the Company, and shall be the agent of the Borough in enforcing existing equipment warranties and guarantees. The Company shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion. The Company shall cooperate with and assist the Borough if the Borough seeks to enforce warranties and guarantees through litigation.

SECTION 7.9. LOSS, DAMAGE OR DESTRUCTION TO THE MANAGED ASSETS.  
(A) Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the Managed Assets and the Pump Stations from loss, damage or destruction. The Company shall report to the Borough and the insurers, promptly upon obtaining knowledge thereof, any loss, damage or destruction to the Managed Assets and the Pump Stations and as soon as practicable thereafter shall submit a full report to the Borough. The Company shall also submit to the Borough within 24 hours of receipt copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or

Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Managed Assets and the Pump Stations to at least the character and condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Article XI and Article XIV, as applicable. The Borough shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company as if such work constituted ICI Design/Build Work hereunder.

(B) Insurance and Other Third Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each party shall assist the other in exercising such rights as it may have to effect such recovery. Each party shall provide the other with copies of all relevant documentation at no cost to the other party, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims. The proceeds of any insurance recovery shall be payable to the party that has paid for the costs of any repair, replacement or restoration of the Managed Assets or the Collection System following an event of loss, damage or destruction thereto.

(C) Waiver of Subrogation Rights. The Borough and the Company intend that all policies of insurance required under this Service Contract to be held by the Borough or the Company shall protect the Borough and the Company, and provide primary coverage for all losses and damages caused by the perils covered. Accordingly, all such policies shall be endorsed to provide that in the event of payment of any loss or damage the insurer shall have no rights of subrogation or other recovery against any of the parties named as insured or additional insured, or any Affiliates of the Company.

(D) Uninsured Costs — Managed Assets. The Borough shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Managed Assets after an event of loss, damage or destruction thereto caused by an Uncontrollable Circumstance or a peril of the type required to be covered by the Required Borough Insurance and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Managed Assets shall be for the account of the Borough and the Company as their interests may appear. To the extent that any loss, damage or destruction of the Managed Assets is caused by a peril of the type required to be covered by the Required Borough Insurance, the Borough shall be responsible for payment of any deductible amounts, any amounts that are or should have been covered under the Required Borough Insurance, and any amounts in excess of the coverage limitations of the Required Borough Insurance. Any costs for loss, damage or destruction of the Managed Assets not covered by insurance proceeds or third party payments shall be borne by the Company to the extent the loss, damage or destruction was not caused by Uncontrollable Circumstances or by a peril of the type required to be covered by the Required Borough Insurance.

(E) Uninsured Costs — Collection System. The Borough shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Collection System after an event of loss, damage or destruction thereto except to the extent that such loss, damage or destruction was caused by Company Fault.

(F) Repair of Borough and Private Property — Managed Assets. The Company shall promptly repair or replace all Borough Property and all private property damaged by the Company or any officer, director, employee, representative or agent of the Company in connection with the performance of, or the failure to perform, the Contract Services pertaining to the Managed Assets. The repair and replacements, to the maximum extent reasonably practicable, shall restore the damaged property to its character and condition existing immediately prior to the damage. The Company shall be liable for the cost of repairing, replacing or restoring the Collection System after an event of loss, damage or destruction to the extent that such loss, damage or destruction was caused by Company Fault, and the Company shall be liable for damage to Borough and private property caused by the Company or any officer, director, employee, representative or agent of the Company in connection with the performance of, or the failure to perform, the Contract Services pertaining to the Collection System as set forth in Section 7.2.

## ARTICLE VIII

### SYSTEM RESIDUALS DISPOSAL

SECTION 8.1. SYSTEM RESIDUALS DISPOSAL GENERALLY. (A) General Plan of Disposal. The parties acknowledge that the general plan of disposal of System Residuals is for the Company to (1) treat, manage, transport and dispose of Plant Sludge at the Incineration Facilities and (2) treat, manage, transport and dispose of all other System Residuals, including the temporary disposal of Plant Sludge in the event of an Incineration Facilities Temporary Shutdown, at a Designated Disposal Site, in each case such obligations shall be performed in a safe and environmentally sound manner and in accordance with Applicable Law and the other Contract Standards, as more specifically set forth in this Article.

(B) General Risk Allocation in the Transportation and Disposal of System Residuals. It is the intention of the parties, in general, that with respect to System Residuals Management Services:

(1) Company. Except as affected by Uncontrollable Circumstances, the Company shall bear the following transportation and disposal risks: (a) the availability and cost to the Company from time to time of any Acceptable Disposal Site for System Residuals; (b) the availability and cost to the Company from time to time of transportation services for System Residuals; (c) the transportation distance from the Plant to any site which may be designated as an Acceptable Disposal Site approved hereunder; (d) the business terms, conditions and practices which may prevail at any Acceptable Disposal Site and in the residuals transportation and disposal market generally from time to time; and (e) the performance or non-performance by any Subcontractor of the Company for System Residuals handling, transportation or disposal services;

(2) Borough. The Borough shall bear the risk with respect to the Incineration Facilities as set forth in Section 8.5 and the risk of Uncontrollable Circumstances with respect to Designated Disposal Sites as set forth in Section 8.6; and

(3) Response Actions. Except as set forth in subsection (H) of this Section, the Company shall not be responsible for any liabilities (including liabilities with respect to Response Actions or natural resource damages) arising at any Acceptable Disposal Site where System Residuals have been delivered for storage, treatment or disposal.

(C) Avoiding Hazardous System Residuals Classification. Except as excused by Uncontrollable Circumstances, the Company shall operate the Plant, subject to the terms and conditions of this Service Contract, and shall use all reasonable efforts so as to avoid the classification of Hazardous System Residuals under any Applicable Law.

(D) Storage and Loading. The Company shall not store solid System Residuals on the Plant Site unless such System Residuals are stored in an enclosed building or vessels that

have an odor control system in accordance with the Contract Standards. The Company shall remove System Residuals from the Plant Site in a timely manner. The Company acknowledges that the principal purpose of this provision is to minimize odor originating from the Managed Assets.

(E) Transportation Operations. All transportation operations shall be conducted in accordance with Applicable Law and Section 5.20. In the event of a release, spill, leak or loss of System Residuals during transfer or transit, the Company shall promptly arrange or cause to be arranged through the responsible hauler for the clean-up of the material and transportation of the System Residuals to an Acceptable Disposal Site, and for the payment by the Company or the responsible hauler of any resulting fines, assessments, penalties or damages resulting therefrom, all as further provided in Section 6.7.

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

(G) Documentation. The Borough, to the extent required by Applicable Law, shall sign all permits, manifests or similar documents required for the treatment, storage, management, transportation or disposal of System Residuals.

(H) Indemnity. The Company shall indemnify and hold harmless the Borough in accordance with Section 14.3 from all Loss-and-Expense arising from: (1) the failure by the Company to properly test and characterize any System Residuals in accordance with the Contract Standards, which failure results in the transportation and delivery of such System Residuals to storage, treatment or disposal facilities that are not qualified to accept, treat or dispose of such System Residuals; (2) the delivery of any System Residuals to a disposal site other than an Acceptable Disposal Site approved by the Borough in accordance with this Article; and (3) the release, spill, leak or loss of System Residuals during transfer or transportation operations. The Company shall have no other obligation to indemnify the Borough for any other Loss-and-Expense otherwise arising or related to the treatment, management, transportation or disposal of System Residuals.

SECTION 8.2. DISPOSAL OF PLANT SLUDGE AND CERTAIN OTHER SYSTEM RESIDUALS. (A) Disposal at the Incineration Facilities. Except as otherwise provided in this Section, the Company shall manage and transport all Plant Sludge and certain other System Residuals capable of incineration for treatment and disposal at the Incineration Facilities. The parties acknowledge that concurrently with the execution of this Service Contract, the Company and the Lessee, with the concurrence of the Borough, have entered into the Shared Services



Agreement providing for the terms and conditions of conveyance, treatment and disposal of Plant Sludge and certain other System Residuals capable of incineration at the Incineration Facilities. The Company shall not enter into any amendment of the Shared Services Agreement without the approval of the Borough, which approval shall not be unreasonable withheld, delayed or conditioned.

(B) Temporary Alternative Disposal of Plant Sludge. In the event of an Incineration Facilities Temporary Shutdown, the Company shall transport, treat and dispose of Plant Sludge and other affected Systems Residuals at a Designated Disposal Site as provided in Section 8.3. The Company shall not be entitled to any schedule, performance or price relief in the performance of its obligations under this subsection in the event of an Incineration Facilities Temporary Shutdown.

(C) Indefinite or Permanent Incineration Facilities Shutdown. Except as provided in subsection (B) of this Section, in the event an Uncontrollable Circumstance (as defined in the Shared Services Agreement) affects the Incineration Facilities and results in a temporary or permanent shutdown of the Incineration Facilities, or if the Incineration Facilities are shutdown for any reason (other than Company Fault) under which the Lessee is not obligated under the Shared Services Agreement to accept Plant Sludge and other System Residuals at the Incineration Facilities, the Company shall treat, transport and dispose of the Plant Sludge and other affected System Residuals at one or more of the Designated Disposal Sites identified in Section 8.3(B). In such event, Element A of the Fixed Component of the Service Fee set forth in Section 12.4(B) shall be increased by \$219,000 (as adjusted annually in accordance with the Adjustment Factor). The Company shall not be entitled to any other schedule, performance or price relief in the performance of its obligations under this subsection.

(D) Replacement Disposal Site for Plant Sludge and Other Affected Residuals. Promptly following an indefinite or permanent shutdown of the Incineration Facilities as provided in subsection (C) of this Section, the Company shall prepare and deliver to the Borough for its review and approval a proposal for one or more Acceptable Disposal Sites for the alternative treatment and disposal of Plant Sludge and other System Residuals. The Company shall use all commercially reasonable efforts to develop a cost-effective combination of alternatives (considering transportation, treatment and disposal costs) in order to minimize net incremental costs to the Borough. The Company shall provide in its proposal a description of: (1) the amount, if any, by which the Service Fee is proposed to be adjusted as a result of such indefinite or permanent shutdown of the Incineration Facilities; (2) any areas where costs might be reduced and the approximate amount of such cost reductions; and (3) the estimated impact on the other obligations of such party under this Service Contract. In addition, the following provisions shall apply with respect to the use of an alternate Designated Disposal Site for the Plant Sludge and other affected System Residuals under the circumstances described in this subsection:

(1) In-State Alternate Disposal Site. If the Company has proposed, and the Borough approves, an Acceptable Disposal Site located in the State to which Plant Sludge and other affected System Residuals can be delivered, then Element A of the Fixed Component of the Service Fee, as established pursuant to subsection (C) of this Section, shall remain fixed and the Company shall not be entitled to any schedule, performance or other price relief hereunder.

(2) Out-of-State Alternate Disposal Site. If there is no available Acceptable Disposal Site located in the State capable and willing to commit to accept the Plant Sludge and other affected System Residuals, or if an out-of-State Acceptable Disposal Site is available and willing to commit to accept the Plant Sludge and other affected System Residuals at an incremental cost less than the available in-State Acceptable Disposal Site, then Element A of the Fixed Component of the Service Fee, as established pursuant to subsection (C) of this Section, shall be reduced by an amount equal to \$657,000 (as adjusted annually by the Adjustment Factor), and the Borough shall reimburse the Company, as a pass-through cost, for all transportation, treatment and disposal costs relating to use of such out-of-State Acceptable Disposal Site. The Company shall not be entitled to any schedule, performance or other price relief hereunder.

The parties shall proceed, promptly following presentation of the Company's proposal, to negotiate to reach agreement on the replacement Designated Disposal Site and the appropriate adjustment to the Service Fee.

SECTION 8.3. DISPOSAL OF OTHER SYSTEM RESIDUALS. (A) Acceptable Disposal Site. All Side Streams, material removed from the Collection System, and Plant Sludge and other System Residuals requiring temporary disposal in the event of a shutdown of the Incineration Facilities pursuant to subsections 8.2(B) or 8.2(C), shall be disposed of at an Acceptable Disposal Site. An Acceptable Disposal Site, as used in this Article, means either a sewage sludge incinerator, a municipal solid waste incinerator, a sanitary landfill or other lawfully authorized waste disposal or management facility (other than land application of sludge), which: (1) is operated in accordance with good engineering practice and Applicable Law (as applicable to waste disposal facilities disposing of such waste materials); (2) is located in the United States; (3) is not listed on or proposed for listing on any federal or State list of sites, such as but not limited to the National Priority List under CERCLA, maintained for the purpose of designating landfills or other sites which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Materials; (4) is being operated at the time of disposal or delivery in accordance with Applicable Law as evidenced by the absence of any unresolved regulatory sanctions or any significant enforcement actions with respect to material environmental matters; (5) has committed by written agreement of the owner or operator to receive System Residuals originating at the Managed Assets and the Collection System; and (6) is not under any executive or judicial order barring receipt of System Residuals from any region which includes the Borough.

(B) Designated Disposal Site. The Acceptable Disposal Sites at which all Side Streams, material removed from the Collection System, and Plant Sludge and other System Residuals requiring temporary treatment and disposal in the event of a shutdown of the Incineration Facilities pursuant to subsections 8.2(B) and 8.2(C) are actually treated and disposed of from time to time hereunder are referred to herein as the "Designated Disposal Sites". The Designated Disposal Sites identified as of the Contract Date are set forth in the following table:

<u>Facility Name</u>	<u>Facility Operator</u>	<u>Location</u>
Hartford MDC	Hartford MDC	Hartford, CT
Mattabassett Sewer District	Mattabassett Sewer District	Cromwell, CT
City of New Haven Wastewater Treatment Plant	Synagro	New Haven, CT
City of Waterbury Wastewater Treatment Plant	Synagro	Waterbury, CT
City of Cranston Wastewater Treatment Plant	U.S. Filter Operating Services, Inc.	Cranston, RI
Passaic Valley Treatment Facility	Passaic Valley Sewage District	Newark, NJ

(C) Change in Designated Disposal Site and Disposal Subcontracts. Subject to the prior approval of the Borough, the Company shall have the right to change a Designated Disposal Site during the Term hereof, so long as the replacement Designated Disposal Site is an Acceptable Disposal Site, and to execute a Subcontract for the performance of its Off-Site Residuals Disposal Obligations. Any such disposal Subcontract shall be priced based on disposal at a specific Designated Disposal Site and shall provide for deliveries of System Residuals thereto. Any such disposal Subcontract which is not so structured shall be deemed to be insufficient to permit a reasonable determination of the effect of any Change in Law affecting a Designated Disposal Site hereunder. Not later than 10 days prior to commencing deliveries of System Residuals to the initial or any new Designated Disposal Site, the Company shall furnish the Borough with notice thereof, together with: (1) the name, address and permit number of the Designated Disposal Site; (2) the name of the owner and operator, together with phone, fax and e-mail contact information for the facility manager and for the chief operating officers of the owner and operator; (3) information relevant to the criteria for confirming the proposed sites as an Acceptable Disposal Site under subsection (A) of this Section; and (4) a summary of the principal business terms and conditions of the applicable transportation and disposal contracts (other than price), such as term, termination rights, delivery rights and requirements, residuals quality requirements, and the definition and effect of force majeure, law changes and other uncontrollable events. The Company shall not be required to furnish the Borough with a copy of any such contract except upon a claim for relief based on a Designated Disposal Site Change in Law.

(D) Emergencies. In the event an emergency causes the Company to temporarily change a Designated Disposal Site, the Company shall not be obligated to furnish the information required under this Section in advance, but shall do so as soon as practicable, and shall notify the Borough upon reinstating use of the previous Designated Disposal Site.

SECTION 8.4. HAZARDOUS SYSTEM RESIDUALS. (A) Protocol. The parties acknowledge that System Influent may from time to time contain materials which cause System Residuals to constitute Hazardous System Residuals. In order to identify and provide for the proper disposal of Hazardous System Residuals, the Company shall implement and comply with the screening and monitoring protocols set forth in Appendices 14 and 20, and any additional screening and monitoring requirements imposed under the Contract Standards.

(B) Notification and Reporting. In the event Hazardous System Residuals are identified, whether On-Site or Off-Site, the Company shall notify the Borough, shall fulfill all notification and reporting requirements established by Applicable Law, and shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the Borough, along with any documents provided to the relevant Governmental Body regarding such Hazardous System Residuals. The Borough shall have the right to witness and to document any action taken by the Company with respect to Hazardous System Residuals.

(C) Investigation, Management and Disposition of Hazardous System Residuals. The Company shall cooperate with the Borough in investigating and attempting to identify the source of any material that caused System Residuals to become Hazardous System Residuals, and cooperate with the Borough and all appropriate Governmental Bodies in effectuating the proper management, treatment and disposal of such Hazardous System Residuals. The Company in the most expeditious manner possible, shall cause any Hazardous System Residuals to be removed from the Managed Assets and transported to, treated and disposed of at an Off-Site disposal facility authorized to receive, treat and dispose of such Hazardous System Residuals under Applicable Law, and shall take all necessary On-Site remediation steps. The cost of performing any additional identification, testing, removal, temporary storage, On-Site remediation, and Off-Site transportation, treatment and disposal measures with respect to such Hazardous System Residuals shall be borne by the Borough, except to the extent such costs of performing would have been avoided had the Company complied with its screening and monitoring obligations under subsection (A) of this Section. Any costs which would have been avoided had the Company complied with its screening and monitoring obligations under subsection (A) of this Section shall be borne by the Company. Incremental costs of transportation, treatment and disposal of Hazardous System Residuals identified as such prior to disposal shall be borne by the Borough in all cases.

(D) Off-Site Remediation. Except as provided in subsection 8.1(H), in the event that Hazardous System Residuals are transported, treated and disposed of Off-Site, the costs associated with any necessary Off-Site Response Actions shall be borne by the Borough, and the

Borough shall indemnify, defend and hold harmless the Company from all Loss-and-Expense with respect to the transport, treatment and disposal Off-Site of such Hazardous System Residuals, including any liabilities for Off-Site Response Actions related to such Off-Site transport, treatment and disposal of Hazardous System Residuals. The obligations of this subsection shall survive termination of this Service Contract.

(E) Reimbursement of Costs. Any costs payable by the Borough under this Section shall be reimbursed to the Company as an Extraordinary Item component of the Service Fee.

SECTION 8.5. UNCONTROLLABLE CIRCUMSTANCES AFFECTING ON-SITE RESIDUALS HANDLING OBLIGATIONS OR INCINERATION FACILITIES. (A) On-Site. In the event of an Uncontrollable Circumstance that affects the Company's performance of its On-Site Residuals Handling Obligations or the cost of performing its On-Site Residuals Handling Obligations, the Company shall be entitled to performance, schedule and price relief as provided in Section 14.2.

(B) Incineration Facilities. Subject to the provisions of subsections (B)through (D) of Section 8.2, in the event an Uncontrollable Circumstance (as defined in the Shared Services Agreement) affects the Incineration Facilities or the cost of transporting, treating, and disposing of Plant Sludge and other System Residuals at the Incineration Facilities for which the Company is responsible for under the Shared Services Agreement, the Company shall be entitled to performance, schedule and price relief as provided in Section 14.2.

SECTION 8.6. UNCONTROLLABLE CIRCUMSTANCES AND CHANGES IN LAW AFFECTING OFF-SITE RESIDUALS DISPOSAL OBLIGATIONS. (A)Scope. This Section shall generally govern relief for Uncontrollable Circumstances (including Changes in Law) affecting the Company's performance of its Off-Site Residuals Disposal Obligations, including the utilization of Designated Disposal Sites other than the Incineration Facilities.

(B) Uncontrollable Circumstances (Other Than Changes in Law) Affecting Off-Site Residuals Disposal Obligations. In the event an Uncontrollable Circumstance, other than a Change in Law, affects the Company's performance of its Off-Site Residuals Disposal Obligations, the Company shall be entitled to performance, schedule and price relief as provided in Section 14.2, and subject to the duty to mitigate as provided in subsection (F) of this Section; provided that the Company shall not be entitled to price relief hereunder if an Uncontrollable Circumstance, other than a Change in Law, prevents or otherwise materially hinders transportation of System Residuals to, or acceptance of System Residuals at, a Designated Disposal Site but where an alternative Designated Disposal Site within the State which was designated prior to the occurrence of such Uncontrollable Circumstance is available to accept the System Residuals.

(C) Change in Law Affecting Transportation to Designated Disposal Sites. In the event of a Change in Law that materially and directly (1) affects the method and manner in which System Residuals may be transported to a Designated Disposal Site; (2) affects access to pickup System Residuals at the Plant; (3) affects access to deliver the System Residuals at a Designated

Disposal Site; or (4) imposes a Tax upon the transportation, treatment or disposal of System Residuals at a Designated Disposal Site, the Company shall be entitled to performance, schedule and price relief as provided in Section 14.2, subject to the duty to mitigate as provided in subsection (F) of this Section.

(D) Designated Disposal Site Change in Law Defined. For purposes of this Service Contract, a "Designated Disposal Site Change in Law" (which shall constitute a "Change in Law" hereunder) shall mean any of the following acts, events or circumstances occur, to the extent that compliance therewith materially affects the performance of the Company or a Subcontractor or materially increases the costs incurred by the Company or a Subcontractor in performing Off-Site Residuals Disposal Obligations at a Designated Disposal Site where System Residuals are being treated or disposed:

(1) the adoption, amendment, promulgation, issuance, repeal or written change in administrative or judicial interpretation of any law which is applicable to such Designated Disposal Site or to the transportation of System Residuals to such Designated Disposal Site, that is made and effective on or subsequent to the date on which the Company entered into a contract with the Designated Disposal Site operator for treatment or delivery of System Residuals to the Designated Disposal Site; or

(2) an order or judgment of a Governmental Body issued and effective on or subsequent to the date on which the Company entered into a contract with the Designated Disposal Site operator for the treatment or delivery of System Residuals to the Designated Disposal Site (unless such order or judgment is issued to enforce compliance with law applicable to the Designated Disposal Site which was effective prior to such date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or the Designated Disposal Site operator; provided that the contesting in good faith or the failure in good faith to contest such order or judgment shall not constitute or be constructed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the imposition of a term, condition or requirement in connection with the re-issuance or renewal of an Governmental Approval which is more stringent than the terms, conditions or requirements which were in effect on the date on which the Company entered into a contract with the Designated Disposal Site operator for treatment or delivery of System Residuals to the Designated Disposal Site, to the extent that such Governmental Approval is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or the Designated Disposal Site operator.

(E) Designated Disposal Site Change in Law Relief. Upon the occurrence of a Designated Disposal Site Change in Law, the Company shall be entitled to schedule, performance and price relief as provided in Section 14.2, subject to the requirements of this subsection and the duty to mitigate as provided in subsection (F) of this Section. Cost Substantiation shall be

furnished by the Company to support any requested increase in the Service Fee as a result of a Designated Disposal Site Change in Law. As part of such Cost Substantiation, the Company shall provide the Borough with a copy of the entire contract between the Company and the Designated Disposal Site operator, together with such additional supporting cost information as is available from the Designated Disposal Site operator. To the reasonable extent practicable, the Company shall seek to assure that costs charged by a Subcontractor as a result of a Designated Disposal Site Change in Law do not exceed an amount reasonably allocable to the System Residuals compared to the nature and volume of other materials received at the Designated Disposal Sites.

(F) Mitigation. The Company, in cooperation with the Borough, shall use all commercially reasonable efforts to minimize the net incremental costs to the Borough resulting from Uncontrollable Circumstances or Changes in Law under this Section. Such efforts may include: (1) causing the Subcontractor to mitigate its costs; (2) changing practices with respect to On-Site Residuals Handling Obligations; (3) proposing a Capital Modification to modify the nature or volume of the System Residuals; or (4) proposing an alternative Designated Disposal Site; provided, however, that the Company's duty to mitigate shall not impose upon the Company an obligation to change the Designated Disposal Site to another site.

(G) Adjustment of Service Fee. Any payment or reimbursement of costs by, or reduction of costs to, the Borough under this Section involving an Uncontrollable Circumstance or Change in Law having a temporary impact shall be reflected in the Extraordinary Items component of the Service Fee; and any payment or reimbursement of costs by, or reduction of costs to, the Borough under this Section involving an Uncontrollable Circumstance or Change in Law having a permanent impact shall be reflected as a change in scope adjustment to the Base Fee component of the Service Fee.

(H) Changes in Law Affecting Other Contract Services. Nothing in this Section shall limit the Company's entitlement to relief upon the occurrence of a Change in Law affecting any of the Management Services other than the System Residuals Management Services.

ARTICLE IX

DESIGN/BUILD OF THE INITIAL CAPITAL IMPROVEMENTS

SECTION 9.1. DESIGN/BUILD GENERALLY. (A) Commencement of Design/Build Work. On the Commencement Date, the ICI Design/Build Period shall commence and the Company shall promptly proceed to undertake, perform and complete the ICI Design/Build Work in accordance with Appendices 2, 3, 4, 5, 6, 7 and 8 and the other Contract Standards. The time for completion of the Company's performance of the ICI Design/Build Work shall be computed from the Commencement Date. The Company's failure to achieve ICI Substantial Completion for each Initial Capital Improvement on or before the respective completion dates set forth in Section 10.1(B) and ICI Acceptance on or before the Scheduled ICI Acceptance Date shall result in the assessment of delay liquidated damages as provided in Sections 10.1(B) and 10.9(C), as appropriate.

(B) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Initial Capital Improvements shall pass to the Borough upon payment therefor by the Borough, except that certain of the Initial Capital Improvements may be owned by a third party in connection with the financing arrangements therefor and leased to the Borough subject to the payment of the lease payments securing the financing. The Company shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until ICI Acceptance has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(C) Elements of the ICI Design/Build Work. In performing the ICI Design/Build Work generally, the Company shall, in accordance with the Contract Standards as and to the extent applicable hereunder: (1) prepare and excavate the Plant Site; (2) demolish and remove existing improvements; (3) re-route or replace any underground Utilities; (4) remove from the Plant Site and dispose of any demolition or construction debris resulting from the ICI Design/Build Work and any soil excavated therefrom; (5) design and construct the Initial Capital Improvements; (6) conduct start up operations; and (7) conduct the ICI Acceptance Tests, all so that the Initial Capital Improvements are suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Plant Site, or at other locations approved by the Borough and arranged and paid for by the Company.

(D) Subcontracts. Section 16.5 shall be applicable to the Company's use of Subcontracts and Subcontractors in connection with ICI Design/Build Work. No Subcontract shall contain any provision which is materially inconsistent with this Service Contract.

(E) Changes to ICI Design/Build Work. Any deletions from or additions or changes to the ICI Design/Build Work, whether proposed by the Company, necessitated by a



Change in Law or other Uncontrollable Circumstance, or directed by the Borough, shall be considered to be Capital Modifications and handled in the manner provided in Article XI and Section 14.2, as applicable.

(F) Damage or Destruction to the ICI Design/Build Work. The procedures set forth in subsection 7.9(A) shall be applicable in the event of any damage to or the destruction of the ICI Design/Build Work.

(G) Surplus Equipment. Section 7.7 shall be applicable to any salvage or disposal of structures, improvements, fixtures, machinery and equipment having a resale or salvage value and which are rendered obsolete or surplus by the construction of the Initial Capital Improvements.

(H) Encumbrances. The Company shall promptly discharge or bond any Encumbrance arising on the Initial Capital Improvements, Plant Site or ICI Design/Build Work arising out of the Company's construction of the Initial Capital Improvements.

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

(J) Payment of Costs. The Company shall pay directly all costs and expenses of the ICI Design/Build Work of any kind or nature whatsoever, including without limitation all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments; payments due under the Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar taxes on building supplies, materials and equipment (subject to Section 12.12); general supervision by the Company of all ICI Design/Build Work; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve ICI Acceptance. Costs related to Capital Modifications shall be paid as provided in Article XI.

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

SECTION 9.2. COMPANY DESIGN. (A) Sole Responsibility and Liability. The Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Initial Capital Improvements hereunder, notwithstanding the Contract Standards or the fact that the RFP included certain minimum conceptual design criteria for the ICI Design/Build Work and certain performance standards that the Initial Capital Improvements would be required to meet. The Company acknowledges that, in the proposal and negotiating process leading to the execution of this Service Contract, the Company had the unrestricted right and opportunity not to submit a proposal, and not to execute this Service Contract if the Company had determined that such minimum conceptual design criteria would in any manner or to any degree impair the Company's ability to perform the ICI Design/Build Work and the Management Services in compliance herewith.

(B) Conformity of Company Design Documents with ICI Design and Construction Requirements. The Company shall prepare all plans, technical specifications, drawings, blueprints and other design documents necessary or appropriate to carry out and complete the ICI Design/Build Work. All Company working and final design documents shall comply strictly with the ICI Design and Construction Requirements and shall ensure that the Initial Capital Improvements are constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the ICI Design and Construction Requirements. The Borough shall have the right to review such design documents as provided in Appendix 5, but shall have no right of approval with respect thereto except in order to confirm the compliance and consistency of the design documents with the ICI Design and Construction Requirements. Neither compliance by the Company with the ICI Design and Construction Requirements, nor review and approval by the Borough of the Company's design documents, shall in any way relieve the Company of full responsibility for the design, construction, operation and performance of the Initial Capital Improvements in accordance with the Contract Standards. Architects and engineers engaged by the Company for the Initial Capital Improvements design services shall be experienced and qualified to perform such services and shall be licensed in the State.

(C) Borough Interest in ICI Design and Construction Requirements. The Company acknowledges the Borough's material interest in each provision of the ICI Design and Construction Requirements and, notwithstanding the ICI Acceptance Test Procedures and Standards and Performance Guarantees of the Company and the associated non-performance remedies of the Borough, agrees that no change to the ICI Design and Construction Requirements shall be made except upon the terms and conditions set forth in this Section and pursuant to a Change Order.

(D) Company Requested Changes. The Company shall have the right to request changes to the ICI Design and Construction Requirements, which shall be handled in the same manner as provided in Article XI with respect to Capital Modifications. The parties shall agree on

a form for describing any change to or clarification of the ICI Design and Construction Requirements so approved by the Borough. The completed form pertaining to each such change shall be appended to the Contract Administration Memorandum containing the Borough's Change Order authorizing the change.

(E) Procedure for Borough Review of Design Submittals. The Borough shall review each preliminary design submittal in accordance with the procedures set forth in Appendix 5. Prior to the commencement of construction of any Initial Capital Improvement, the final plans and specifications and the permit approvals therefor shall also be submitted to the Borough in accordance Appendix 5.

(F) Documents at the Plant Site. The Company shall maintain at the Plant Site in a safe place one record copy of all drawings, specifications, addenda, Change Orders, graphic or written instructions, interpretations and clarifications, and all other documents related to the ICI Design/Build Work, in good order and marked currently to record all changes made during construction, together with blueprints, general arrangements, manufacturing and shop drawings, product data and samples, and copies of all building, electrical, plumbing and public safety codes applicable to the ICI Design/Build Work. These documents shall be available to the Borough for reference, copying and use, and a complete set thereof shall be delivered to the Borough upon completion of the ICI Design/Build Work.

SECTION 9.3 COMPANY PERMITTING. (A) Applications for Governmental Approvals. The Company shall make all applications and take all other action necessary to obtain and maintain all Governmental Approvals necessary under Applicable Law to construct the Initial Capital Improvements and to commence and complete the ICI Design/Build Work. Such applications shall be made and Governmental Approvals issued in the name of the Borough, where required by Applicable Law, in all cases subject to prior acceptance by the Borough. The Company shall manage the process of obtaining the Governmental Approvals on behalf of the Borough for which it is responsible hereunder in a manner which affords the Borough a reasonable opportunity to review and comment upon material documentation submitted to and issued by any Governmental Body in connection therewith, all as provided in Appendix 5.

(B) Borough Cooperation. The Borough shall provide in a timely manner data and information within the Borough's possession and shall timely review and execute all required application documents upon request by the Company. In addition, the Borough's intention is to provide reasonable assistance to the Company in carrying out its obligations under this Section, provided that the Borough's commitment to provide such additional assistance shall not relieve the Company of the Company's responsibility for the quality and timely preparation of any such Governmental Approval applications.

(C) Company Assumption of Permitting Responsibility. The Company shall use its best efforts in applying, on behalf of the Borough, for any Governmental Approvals required for the Initial Capital Improvements. The Company shall be responsible for (i) assuring that all

applications for such Governmental Approvals are complete in accordance with Applicable Law governing such applications; (ii) assuring that the design of any such Initial Capital Improvements comply with Applicable Law governing such Initial Capital Improvements; and (iii) providing sufficient data and other information to demonstrate that the proposed Initial Capital Improvements comply with all existing Applicable Law. The Company shall be responsible for the cost of any additions or changes to the ICI Design/Build Work arising from a determination during the process of obtaining Governmental Approvals for the construction of the Initial Capital Improvements that the design for the Initial Capital Improvements does not conform with or is not sufficient to comply with existing Applicable Law. However, the Company shall not be responsible for any Change in Law with respect to such Initial Capital Improvements, including any delay in the review or issuance of any Governmental Approval for which a timely and complete application has been submitted, or the imposition of any term, condition or requirement in any Governmental Approval which is more stringent or burdensome than the Applicable Law in effect as of the Contract Date. Any such Change in Law with respect to Initial Capital Improvements shall be addressed as follows:

(1) If any Governmental Body denies or refuses to issue a Governmental Approval for an Initial Capital Improvement for any reason other than (i) failure of the design and plans for the Initial Capital Improvement to comply with Applicable Law in effect as of the Contract Date, (ii) the compliance history of the Company, or (iii) failure by the Company to exercise reasonable diligence in securing the Governmental Approval following submittal of the complete application therefor, then the Company shall be entitled to relief pursuant to Section 14.2. (By way of example, but without limitation, such relief under Section 14.2 may be provided if a Governmental Approval is denied based upon (i) the existence of Site Specific Conditions; (ii) claims of environmental justice concerns related to the location of the Managed Assets in relation to minority or disadvantaged communities; (iii) claims that project benefits do not exceed environmental or other impacts; or (iv) the Borough's compliance history).

(2) The Company shall be entitled to schedule and price relief with respect to delay in issuance of Governmental Approvals for any Initial Capital Improvements to the extent provided in Section 10.9.

(3) If a Governmental Body proposes terms, conditions or requirements in any proposed or final Governmental Approval that are more stringent or burdensome than the Applicable Law in effect as of the Contract Date, within 10 days of the receipt of such information the Company shall provide the Borough with written notice of its determination and reasoning as to whether and why the terms and conditions of any such draft or final Governmental Approval are more burdensome or stringent than those of the Applicable Law. In the event that the Company claims that such Governmental Approval contains conditions or requirements which are more burdensome or stringent than those of the Applicable Law, and

therefore constitutes a Change in Law, the Company shall, at the same time of providing notice to the Borough under this subsection, provide the Borough with notice and information required pursuant to Section 14.2.

(D) Failure to Obtain Governmental Approvals. The parties acknowledge that if the Company has otherwise complied with its obligations hereunder and the Governmental Approvals for the construction of the Initial Capital Improvements have not been issued within the time period set forth in subsection 4.4(B), then either party may, by notice in writing to the other party, terminate this Service Contract and each party shall bear its respective costs and expenses incurred through the Termination Date as provided in such subsection 4.4(B).

(E) Change in Law Not Related to Governmental Approvals. Any Change in Law which requires a Capital Modification to the Initial Capital Improvements shall be handled as a Change in Law in accordance with Article XI and Section 14.2.

SECTION 9.4. COMPANY CONSTRUCTION. (A) Construction Practice. The Company shall perform the ICI Design/Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the ICI Design/Build Work as required by this Service Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Company to provide the following construction requirements: temporary offices and construction trailers; temporary construction related odor control measures; required design certifications; quality control and testing; required approvals; weather protection; Plant Site clean-up and housekeeping; construction trade management; temporary parking, vehicle traffic, safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses, temporary fire protection; Plant Site security; temporary Utilities, potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

(B) Conditions to Commencement of Construction. The Company shall not commence or proceed with construction of any Initial Capital Improvement until the Company has satisfied the following conditions with respect to such Initial Capital Improvement:

(1) Managed Assets Condition. The Company has made all further tests, inspections and analyses of the condition of the Managed Assets necessary under Good Engineering and Construction Practice as preparation for construction of the Initial Capital Improvement hereunder in accordance with Applicable Law and to obtain all required Governmental Approvals;

(2) Governmental Approvals. The Company has obtained, on its own behalf or behalf of the Borough as applicant, all Governmental Approvals necessary to commence or

proceed with construction of the Initial Capital Improvement or any stage thereof, in form and substance satisfactory to the Borough;

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

(4) Construction Submittal Protocol. The Company has submitted to the Borough the Construction Submittal Protocol required by Appendix 5;

(5) Utilities. The Company has made all arrangements necessary to secure the availability of all Utilities required to construct and operate the Managed Assets, as improved by the Initial Capital Improvements, in the capacities required hereunder, and has evidenced such availability by letters from the providers of such Utilities;

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

(7) Required ICI Design/Build Period Insurance. The Company has obtained and submitted to the Borough certificates of insurance for all Required ICI Design/Build Period Insurance for the ICI Design/Build Period specified in Appendix 10.

SECTION 9.5. PAYMENT OF THE ICI DESIGN/BUILD PRICE. (A) Borough Financing. The Borough shall secure the availability of all funds necessary to pay the ICI Design/Build Price in a timely manner, whether through the authorization or issuance of revenue or debt obligations of the Borough to the SRF or to other financial markets, or otherwise as determined by the Borough. Milestone payments of the ICI Design/Build Price shall be made by the Borough to the Company as provided in this Section and in Appendix 6. In the event the Borough elects to refinance any Borough obligations through SRF obligations, the Company will cooperate with and assist the Borough in complying with any SRF regulations therewith.

(B) ICI Design/Build Price Generally. The Borough shall pay the Company the ICI Design/Build Price for the ICI Design/Build Work on a milestone progress basis in accordance with the terms of this Section and in Appendix 6. The ICI Design/Build Price shall be the sum of the Fixed ICI Design/Build Price and the Fixed ICI Design/Build Price Adjustments.

(C) Fixed ICI Design/Build Price. Subject to Section 4.5, the Fixed ICI Design/Build Price is an amount equal to (1) \$2,165,835 multiplied by (2) a fraction, the denominator of which is the Consumer Price Index for the month of August, 2001, and the numerator of which is the Consumer Price Index for the month in which the Financing Commitment Date occurs; provided, however, that the Consumer Price Index for the month in

which the Financing Commitment Date occurs shall be prorated such that the Fixed ICI Design/Build Price escalates only through such date and not through such entire month.

(D) Fixed ICI Design/Build Price Adjustments. The following items shall constitute the Fixed ICI Design/Build Price Adjustments:

(1) An adjustment for the cost of any Change Orders issued by the Borough with respect to the Initial Capital Improvements pursuant to Section 9.2;

(2) An adjustment for any Government Body's delay in issuing the required Governmental Approvals for any Initial Capital Improvement pursuant to Section 10.9; and

(3) An adjustment for the cost of any Uncontrollable Circumstances required pursuant to Section 14.2.

(E) Limitation on Payments for Initial Capital Improvement Costs. The Company agrees that the ICI Design/Build Price shall be the Company's entire compensation and reimbursement for the performance of the ICI Design/Build Work, including obtaining all Utilities that the Company will require to perform the ICI Design/Build Work, starting up Initial Capital Improvements, operating the Initial Capital Improvements during the ICI Acceptance Test and achieving ICI Acceptance. Except as provided in subsection (D) of this Section, the Company shall not be entitled to any payment for Initial Capital Improvement costs in excess of the ICI Design/Build Price, notwithstanding any cost overruns the Company may incur. The Company shall finance and pay for any such excess costs in any manner it chooses without reimbursement from or other claim upon the Borough.

(F) Construction Disbursement Requisition Procedure. Appendix 6 sets forth milestone payments to be made with respect to each separate Initial Capital Improvement, and the sum of all such milestone payments equals the Fixed ICI Design/Build Price. Following the Commencement Date, the Company shall be entitled to submit Requisitions on a monthly basis and receive from the Borough the milestone payments of the Fixed ICI Design/Build Price, which: (1) shall be made only upon completion of the milestone required to be completed as the basis for such payment as set forth in Appendix 6; (2) shall be subject to the maximum payment limitations specified in the maximum drawdown schedule set forth in Appendix 6; and (3) shall be subject to the conditions of payment set forth in this Section. On the date that the ICI Acceptance Date is permanently established under Section 10.7 the Company shall be entitled to receive all payments due for completed work which remain unpaid as of such date with respect to the applicable Initial Capital Improvement, except for the payment conditioned on Final Completion in the event Final Completion has not occurred prior to the ICI Acceptance Date. The Fixed ICI Design/Build Price Adjustments shall be payable monthly when and as the cost or expense constituting the Fixed ICI Design/Build Price Adjustment is paid or incurred.

(G) Retainage. Each milestone payment will be subject to a 10% retainage holdback. Interest earned on the retainage holdback shall be for the Borough's benefit only. The Borough shall release to the Company the accumulated funds (without interest) so retained with

respect to each Initial Capital Improvement on a pro rata basis upon receipt of certification from the Company and confirmation by the Borough Engineer that: (1) ICI Substantial Completion for each Initial Capital Improvement has occurred; and (2) Final Completion of the Initial Capital Improvements has occurred. Upon certification by the Borough Engineer that ICI Substantial Completion has been achieved, the Borough shall release to the Company an amount equal to one-half of the retainage holdback. Upon certification by the Borough Engineer that Final Completion has occurred, the Borough shall release to the Company an amount equal to the balance of the retainage holdback.

(H) Certification of Requisitions. Each Requisition shall be accompanied by a certificate of an authorized officer of the Company certifying: (1) the portion of the Fixed ICI Design/Build Price which is payable to the Company, (2) the amount of any Fixed ICI Design/Build Price Adjustments which are payable to the Company, together with Cost Substantiation for such amounts, (3) that the Company is neither in default under this Service Contract nor in breach of any material provision of this Service Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (4) that all items applicable to the milestone entitling the Company to request payment under the milestone payment schedule set forth in Appendix 6 have been completed in accordance therewith and with the ICI Design and Construction Requirements.

(I) Information Supporting Requisition. The Company shall submit to the Borough, with a copy to the Borough Engineer, with each Requisition or as part of the monthly progress report to be delivered pursuant to Section 9.7:

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

(2) a reasonably detailed description of all ICI Design/Build Work actually completed to date;

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

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

(5) any other documents or information relating to the ICI Design/Build Work or this Service Contract requested by the Borough or the Borough Engineer as may be required by Applicable Law, this Service Contract or generally accepted accounting principles (but, with respect to the Fixed ICI Design/Build Price, shall not include Cost Substantiation documents or information); and

(6) construction progress photographs.

(J) Review and Payment of Requisitioned Amounts. The Borough Engineer shall review the Company's certified Requisitions to the Borough for each Fixed ICI Design/Build Price



payment and for Fixed ICI Design/Build Price Adjustment payments and, within 15 days of receipt of the Company's written submittal delivered pursuant to subsection (I) of this Section, shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Company's certification that the Company has achieved the level of progress indicated and is entitled to payment. If (1) the Borough Engineer determines that the work has progressed to the milestone indicated in the Company's certified Requisition or that the costs constituting Fixed ICI Design/Build Price Adjustments have been paid or incurred and the Borough Engineer provides written notice thereof to the Company and the Borough, or (2) the Borough Engineer fails to verify or dispute the certified Requisition within 15 days of receipt, thereupon the Company shall be entitled to payment within 30 days of such determination or expiration of such 15 day period. Disputes regarding payments of the Fixed ICI Design/Build Price and Fixed ICI Design/Build Price Adjustments shall be resolved in accordance with subsection (L) of this Section.

(K) Permissible Withholdings. The Borough may disapprove and withhold and retain all or any portion of any payment requested in any Requisition in an amount equal to the sum of:

- (1) any amounts which are permitted under this Section to be withheld from any payment requested in any Requisition;
- (2) any delay liquidated damages which are payable under Section 10.9;
- (3) any indemnification or other amounts which are due and owing to the Borough under any provision of this Service Contract;
- (4) any deductions which are required by Applicable Law;
- (5) any payments with respect to which the documents required to be delivered in connection therewith are not correct and complete;
- (6) an amount equal to the cost to the Borough of performing any work in the event of a failure by any Subcontractor to timely perform its obligations under the warranties given pursuant to subsection 9.1(I);
- (7) any payments with respect to which the ICI Design/Build Work covered by such Requisition (or any previous Requisition) does not comply with this Service Contract;
- (8) any payments with respect to which any person has filed a Lien or Encumbrance resulting from the acts or omissions of the Company in performing the ICI Design/Build Work, where such Lien or Encumbrance remains unreleased, unbonded or undischarged; and
- (9) all requisitioned payments, if an Event of Default of the Company has occurred and remains outstanding under Section 13.2.

(L) Disbursement Dispute Procedures. If the Borough Engineer determines pursuant to subsection (J) of this Section that the work required for any payment has not progressed to the milestone indicated, or disputes any requisition for Fixed ICI Design/Build Price Adjustments, the Borough Engineer shall provide prompt written notice to the Company and the

Borough as to the Borough Engineer's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Company may make the necessary corrections and resubmit a certified Requisition to the Borough Engineer, or the Borough Engineer may agree on a revised amount, Requisition or estimate, as applicable, in which case the Company shall promptly notify the Borough of such agreement and thereupon be entitled to payment. Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if: (1) the Company demonstrates to the Borough Engineer that the work has proceeded to the milestone indicated in the certified Requisition giving rise to the dispute or that any disputed certified Requisition is correct; and (2) the Borough Engineer concurs with such demonstration. The Company shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the Company shall be entitled to all requisitioned amounts which are not in dispute. In the event that upon resolution of any such dispute it is determined that the Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Company shall be entitled promptly to receive such disputed amount, together with interest thereon for the period of dispute calculated at the Overdue Rate. Nothing contained in this subsection shall be deemed to alter the rights of the parties, if any, under Article XIII, including the right of either party to request a referral of the dispute to Non-Binding Mediation.

(M) Required Company Oversight Engineer Certification. Any notice, certification, report or requisition delivered by the Company to the Borough in connection with the ICI Design/Build Work or payment therefor under this Article, Article X, or any Appendix shall be accompanied by a certificate of the Company's design-build principal in charge affirming the accuracy thereof to the best of his or her knowledge.

(N) Certification of Amounts Due. Whenever requested by the Borough, the Company shall submit a sworn statement certifying all amounts then due (or yet to become due) the Company for the ICI Design/Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Company and any Subcontractor.

SECTION 9.6. ENGAGEMENT OF BOROUGH ENGINEER. (A) Duties. The Company shall fully cooperate with any Borough Engineer designated by the Borough to assist it in connection with the administration of this Service Contract and the performance of its duties for the Borough. In the performance of such services, the Company agrees that the Borough Engineer may, without limiting other possible services to the Borough: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the ICI Design/Build Work; review proposed changes to the ICI Design and Construction Requirements pursuant to Section 9.2; review Initial Capital Improvement plans, drawings and specifications for compliance with the ICI Design and Construction Requirements; monitor the ICI Acceptance Tests undertaken by the Company to determine whether any ICI Acceptance Test Procedure and Standard has been satisfied pursuant to Article X and Appendix 7; review the

validity of any Company written notice that an Uncontrollable Circumstance has occurred; review the Company's submissions with respect to any Capital Modifications pursuant to Article XI hereof; and provide certificates and perform such other duties as may be specifically conferred on the Borough Engineer hereunder. It is understood that the services intended to be provided by the Borough Engineer shall be of an observational and review nature only, and that the Borough Engineer shall not have authority to interfere with, halt or delay in any way the construction of the Initial Capital Improvements or to require or approve changes to the ICI Design and Construction Requirements or the Company's plans and specifications made in accordance therewith.

(B) Fees. Any fees of the Borough Engineer prior to the ICI Acceptance Date shall initially be paid by the Borough, but shall be reimbursed by the Company to the Borough (together with allocable costs of Borough personnel) to the extent any such fees and costs are attributable to the failure of the Company to cause ICI Acceptance to occur on or before the Scheduled ICI Acceptance Date. The Company also shall reimburse the Borough for the reasonable fees and expenses of the Borough Engineer and costs of Borough personnel for services in connection with repetition of any ICI Acceptance Tests unless such additional or repeated ICI Acceptance Tests are required as a result of Uncontrollable Circumstances. Any fees of the Borough Engineer and Borough personnel after the ICI Acceptance Date shall be paid by the Borough without reimbursement by the Company except as otherwise specifically provided by this Service Contract.

SECTION 9.7. PROGRESS SCHEDULE AND REPORTS. The Company shall submit to the Borough a monthly progress report detailing work accomplished and an updated progress schedule which reflects any change in the Company's estimated construction progress schedule as of the Commencement Date. The Company shall provide to the Borough, for its planning, budgeting and financing purposes, monthly estimates of the date for start-up of operations, the date upon which the ICI Acceptance Tests shall commence, and the ICI Acceptance Date. The Company agrees that the Company's submission of the monthly progress schedule (or any revised progress schedule) is for the Borough's information only, and the Borough's acceptance of the monthly progress schedule (or any revised progress schedule) shall not bind the Borough in any manner. Thus, the Borough's acceptance of the monthly progress report and schedule (or any revised monthly progress report and schedule) shall not imply Borough approval or consent to any of the matters set forth therein.

SECTION 9.8. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF ICIDESIGN/BUILD WORK. (A) Observation and Construction Review Program. During the progress of the ICI Design/Build Work through ICI Acceptance, the Company shall at all times during normal working hours afford the Borough, the Borough Engineer and the DEP every reasonable opportunity for observing all ICI Design/Build Work, and shall comply with the ICI Design/Build Review Procedures set forth in Appendix 5. During any such observation, all representatives of the Borough, the Borough Engineer and the DEP shall comply with all

reasonable safety and other rules and regulations applicable to presence in or upon the Plant Site or the Initial Capital Improvements, including those adopted by the Company, and shall in no material way interfere with the Company's performance of any ICI Design/Build Work.

(B) Company Tests. The Company shall conduct all tests of the ICI Design/Build Work (including shop tests) or inspections required by the Contract Standards. The Company shall give the Borough and the Borough Engineer reasonable advance notice (at least five business days) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal to attend or be present of the Borough or the Borough Engineer at or during any such test or inspection delay the conduct of such test or inspection or the performance of the ICI Design/Build Work. If required by the Contract Standards, the Company shall engage a registered engineer or architect at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the Borough, which consent shall not be unreasonably withheld. In addition to the foregoing, ICI Acceptance Testing of the performance of the completed Initial Capital Improvements shall be conducted in accordance with Article X and Appendix 7.

(C) Borough Tests, Observations and Inspections. The Borough, its employees, agents, representatives and contractors (which may be selected in the Borough's sole discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the Borough deems necessary or desirable to ascertain whether the ICI Design/Build Work complies with this Service Contract. The costs of such test, observation or inspection shall be borne by the Borough unless such test, observation or inspection reveals a material failure of the ICI Design/Build Work to comply with this Service Contract or Applicable Law, in which event the Company shall bear all reasonable costs and expenses of such test, observation or inspection. In the event that any requested test, observation or inspection causes a material delay in the construction schedule, the Scheduled ICI Acceptance Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or noncompliance as set forth herein.

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

by the Company under or in connection with any Governmental Approval, Subcontract, or Required ICI Design/Build Period Insurance pertaining to the ICI Design/Build Period.

(E) Notice of Covering ICI Design/Build Work. The Company shall give the Borough notice in the monthly progress report of its upcoming schedule with respect to the covering and completion of any ICI Design/Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five business days) before such covering and completion. The Borough shall give the Company reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such ICI Design/Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the Borough a reasonable opportunity to conduct a full inspection of such ICI Design/Build Work. At the Borough's written request (at least five business days), the Company shall take apart or uncover for inspection or testing any previously-covered or completed ICI Design/Build Work; provided, however, that the Borough's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the Borough as to whether the disputed ICI Design/Build Work conforms with the requirements of this Service Contract. The cost of uncovering, taking apart, or replacing such ICI Design/Build Work along with the costs related to any delay in performing ICI Design/Build Work caused by such actions, shall be borne as follows:

(1) by the Company, if such ICI Design/Build Work has been covered prior to any observation or test required by the Contract Standards or if such ICI Design/Build Work has been covered prior to any observation or test as to which the Borough has provided reasonable advance notice hereunder of its intention to conduct; and

(2) in all other cases, as follows:

(a) by the Company, if such observation or test reveals that the ICI Design/Build Work does not comply with this Service Contract; or

(b) by the Borough, if such observation or test reveals that the ICI Design/Build Work complies with this Service Contract.

In the event such ICI Design/Build Work does comply with this Service Contract, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be borne by the Borough (through and only through a Fixed ICI Design/Build Price Adjustment).

(F) Meetings and Design/Build Review. During the ICI Design/Build Period, the Company and the Borough shall conduct meetings on a monthly basis at a minimum. At such meetings, discussions shall be held concerning all aspects of the ICI Design/Build Work including construction schedules, progress payments, Capital Modifications, shop drawings, catalogued and dated progress photographs, and any soil boring data and shop test results. Monthly reports containing all relevant information shall be prepared by the Company and provided to the Borough at least 10 days prior to each monthly meeting, together with an agenda for the meeting. The Company shall also attend any on-call meeting which may be required by the Borough from time

to time in connection with the ICI Design/Build Work, provided that the Company has at least 24 hours notice of such meeting.

SECTION 9.9. CORRECTION OF ICIDESIGN/BUILD WORK. (A) Correction of Non-Conforming ICI Design/Build Work. Throughout the Term of this Service Contract, the Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any ICI Design/Build Work which does not conform with the Contract Standards.

(B) Election to Accept Non-Conforming ICI Design/Build Work. The Borough may elect by Change Order, at the Company's request, to accept non-conforming ICI Design/Build Work and charge the Company (by a reduction in the Fixed ICI Design/Build Price) for the amount agreed upon by the parties by which the value of the Company's services or ICI Design/Build Work has been reduced.

SECTION 9.10. DELIVERABLE MATERIAL. As the ICI Design/Build Work progresses (or upon the termination of the Company's right to perform the ICI Design/Build Work), the Company shall deliver to the Borough all documents, reports, submittals and other materials ("Deliverable Material") required to be delivered under Appendices 4 and 5. The provisions of Section 16.2 shall apply to any Deliverable Material used by the Company in the ICI Design/Build Work. The Borough shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by the Borough in connection with the ICI Design/Build Work, and all ideas or methods represented by such Deliverable Material without additional compensation for any other public purpose in connection with wastewater collection and treatment by the Borough; provided that the Borough acknowledges and agrees that (i) such Deliverable Material was prepared solely with respect to the ICI Design/Build Work, (ii) the Company makes no representations or warranties regarding the suitability of such Deliverable Material for any other purpose; (iii) the use of such Deliverable Material for any other purpose shall be solely at the risk of the Borough, and the Borough waives all claims against the Company, its employees and subcontractors of any kind or nature (including claims under contract, tort or any other law) with respect to use of such Deliverable Material for any other purpose.

SECTION 9.11. PERSONNEL. (A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company's employees and all Subcontractors. All persons engaged by the Company for ICI Design/Build Work shall have requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers, licensed surveyors and other consultants to perform all engineering and other services required for the ICI Design/Build Work. Each such engineer and consultant shall have a current professional registration or certification to practice in the State if required by Applicable Law.

(B) Prevailing Wages. The wages paid on an hourly basis to any mechanic, laborer or workman employed upon the ICI Design/Build Work (or any Capital Modifications) and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of Section 31-53 of the Connecticut General

Statutes, as amended, shall be at a rate equal to the rate customary for the same work in the same trade or occupation in the Borough. If the Company or any of its Subcontractors are not obligated by agreement to make a payment or contribution on behalf of such employees to any such employee welfare fund, then the Company shall pay to each employee as part of his wages the amount of payment or contribution for his classification on each payday. The Company shall take all action necessary directly and through its Subcontractors to assure that all laborers performing services in connection with the ICI Design/Build Work are paid in accordance with this subsection and other Applicable Law. Certified payrolls and other relevant information shall be furnished to the Borough in order to permit the Borough to monitor compliance by the Company with this requirement.

(C) Company Construction Superintendent. The Company shall designate an employee of the Company, any Affiliate of the Company, or the Company's General Contractor or construction manager (the "Company Construction Superintendent"), who, unless unavailable for good cause shown as defined in subsection (D) of this Section, shall be employed at the Plant Site with any necessary assistants on a full time basis during any period when the Company or any Subcontractor is performing ICI Design/Build Work. The Company Construction Superintendent, or an assistant superintendent, shall be available at the Plant Site on any day when ICI Design/Build Work is being performed. If at any time the Company Construction Superintendent is so unavailable, the Company shall provide a temporary replacement superintendent who has the equivalent skill, experience and reputation as the Company Construction Superintendent. The Company Construction Superintendent shall, among other things:

- (1) be familiar with the ICI Design/Build Work and all requirements of this Service Contract;
- (2) coordinate the ICI Design/Build Work and give the ICI Design/Build Work regular and careful attention and supervision;
- (3) maintain a daily status log of the ICI Design/Build Work; and
- (4) attend monthly construction progress meetings with the Borough and the Borough Engineer.

The Company may change the person assigned as Company Construction Superintendent, subject to the provisions of subsection (D) of this Section.

(D) Borough Rights With Respect to Key Personnel. The Company acknowledges that the identity of the key management and supervisory personnel proposed by the Company and its Subcontractors in its proposal submitted in response to the RFP was a material factor in the selection of the Company to perform this Service Contract. Such personnel and their affiliations are set forth in Appendix 12. The Company shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects but shall include termination for cause, employee resignation, illness and death. In the event of any such permissible unavailability, the Company

on a timely basis shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-Site key personnel change shall be proposed to the Borough for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

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

SECTION 9.12. CONSTRUCTION BOOKS AND RECORDS. The Company shall prepare and maintain proper, accurate and complete books and records regarding the ICI Design/Build Work and all other transactions related to the permitting, design, construction, startup and testing of the Initial Capital Improvements, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the ICI Design/Build Work, this Service Contract, any Subcontract or any operations or transactions in which the Borough has or may have a financial or other material interest hereunder, in each case to the extent required to determine changes in the ICI Design/Build Price or the Service Fee. The Company shall produce such construction books and records (except financial ledgers and statements) for examination and copying in connection with the costs of Capital Modifications, Uncontrollable Circumstance costs, or other changes in or additions to the Fixed ICI Design/Build Price or the Service Fee for which the Borough may be responsible with respect to work performed prior to the ICI Acceptance Date. To the extent any such information is delivered or made available to the Borough, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principles. The Company shall keep and maintain all such construction books and records for at least seven years after the ICI Acceptance Date, or such longer period during which any Legal Proceeding with respect to the Initial Capital Improvements commenced within seven years of the ICI Acceptance Date may be pending.



ARTICLE X

ACCEPTANCE OF THE INITIAL CAPITAL IMPROVEMENTS

SECTION 10.1. ICI SUBSTANTIAL COMPLETION. (A) Conditions for ICI Substantial Completion. With respect to each individual Initial Capital Improvement, the Company shall not commence ICI Start-Up operations in preparation for conducting the ICI Acceptance Test until ICI Substantial Completion has occurred. ICI Substantial Completion shall occur only when all of the following conditions, as and to the extent applicable, have been satisfied:

- (1) a preliminary or temporary certificate of occupancy has been issued for the Initial Capital Improvements, if required by Applicable Law;
- (2) the Company is authorized to conduct an ICI Acceptance Test and to operate the Initial Capital Improvement under Applicable Law, and such authorization has not been withdrawn, revoked, superseded, suspended, or materially impaired or amended;
- (3) all Utilities specified or required under this Service Contract to be arranged for by the Company are connected and functioning properly;
- (4) the Company and the Borough have agreed in writing upon the Final Punch List as provided in subsection 10.1(C) (or, if they are unable to agree, the Borough shall have prepared and issued the Final Punch List to the Company within 15 business days of the Company having submitted its Final Punch List to the Borough);
- (5) the Borough has approved in writing, such approval not to be unreasonably withheld, the certification by the Company that all ICI Design/Build Work pertaining to the Initial Capital Improvement, excepting the items on the Final Punch List, is complete and in all respects is in compliance with this Service Contract;
- (6) the Company has delivered to the Borough written certification from the equipment manufacturers that all major items of machinery and equipment included in the Initial Capital Improvement have been properly installed in accordance with the manufacturers' recommendations and requirements, and that those tests that are required to be conducted prior to ICI Start-Up operations have been conducted in accordance with the manufacturers' recommendations and requirements;
- (7) the Company has delivered to the Borough a claims statement setting forth in detail all claims of every kind whatsoever against the Company connected with, or arising out of, the ICI Design/Build Work pertaining to the Initial Capital Improvement and arising out of or based on events prior to the date when the Company gives such statement to the Borough;
- (8) the Company has submitted to the Borough and the Borough has reviewed and approved the plan for ICI Acceptance Testing, if any is required by Appendix 7;

(9) if required by Applicable Law, the DEP or other the Governmental Body has approved the plan for any required ICI Acceptance Testing and has issued, if applicable, a notice of permission to conduct the ICI Acceptance Tests; and

(10) the Company has submitted written certification that all of the foregoing conditions have been satisfied and the Borough has approved the Company's certification, which approval shall be effective as of the date of the Company's certification.

Alternatively, ICI Substantial Completion with respect to any particular Initial Capital Improvement shall occur on any date certified by the Borough, which shall have discretion to waive any of the foregoing conditions.

(B) Scheduled ICI Substantial Completion Date. The Company shall achieve ICI Substantial Completion for each Initial Capital Improvement by the respective completion date therefor as set forth in subsection 10.9(A). If ICI Substantial Completion with respect to an Initial Capital Improvement occurs subsequent to the Scheduled ICI Substantial Completion Date, then the Company shall pay to the Borough daily delay liquidated damages for each day that ICI Substantial Completion falls after the Scheduled ICI Substantial Completion Date, up to the end of the Extension Period and thereafter until any termination of this Service Contract for an Event of Default. The delay liquidated damages for delays with respect to each Initial Capital Improvement shall be \$1,000 per day. Upon achieving ICI Substantial Completion for an Initial Capital Improvement, the Company shall be entitled to payment of a pro rata portion of the applicable retainage holdback pursuant to subsection 9.5(G).

(C) Final Punch List. The Company shall submit a proposed Final Punch List to the Borough and the Borough Engineer when the Company believes that the ICI Design/Build Work with respect to each Initial Capital Improvement has been substantially completed in compliance with this Service Contract. The "Final Punch List" shall be a statement of repairs, corrections and adjustments to the ICI Design/Build Work, and incomplete aspects of the applicable ICI Design/Build Work, which in the Company's opinion:

(1) the Company can complete before the Company's agreed date for Final Completion and with minimal interference to the occupancy, use and lawful operation of the Initial Capital Improvements; and

(2) would represent, to perform or complete, a total cost of not more than 2.5% of the portion of the Fixed ICI Design/Build Price applicable to the Initial Capital Improvements (unless the Borough determines that a higher percentage is acceptable).

The Final Punch List shall be approved by the Borough, and completion of the Final Punch List work shall be verified by a final walk-through of the Initial Capital Improvements conducted by the Borough and the Borough Engineer with the Company and the Company Construction Superintendent.

SECTION 10.2. NOTICE OF ICI START-UP OPERATIONS. (A) Submittal of ICI Start-Up Plan. With respect to any Initial Capital Improvement for which ICI Start-Up is required under Appendix 7, at least 60 days before the date upon which the Company plans to begin ICI Start-Up operations, the Company shall prepare and submit to the Borough for its approval a detailed ICI Start-Up plan. The ICI Start-Up plan shall define a test program for each requirement specified in Section 3 of Appendix 7 and shall detail all procedures to be used, start-up materials to be used (including electrical power and water), the tests schedule (including the expected date, time and duration of each test) and the operating and maintenance schedule for the Managed Assets during testing. The ICI Start-Up plan shall conform to the requirements of Appendix 7 in all respects. If the Company and Borough are unable to agree upon an ICI Start-Up plan within 60 days of such submission, their inability to agree may be mediated as provided in Section 13.12. The Scheduled ICI Acceptance Date for any affected ICI Design /Build Work shall be extended on a day-for-day basis equal to the number of days in duration of any applicable dispute resolution process and, in the event any such delay involves the nitrogen removal portion of the Initial Capital Improvements, any additional time that may be required to allow performance of the ICI Acceptance Test within the required ICI Acceptance Test period of June 1 through October 31 in any Contract Year.

(B) Notice of ICI Start-Up. The Company shall give the Borough's Contract Representative at least 10 days prior written notice of the expected date of ICI Substantial Completion and of commencement of ICI Start-Up operations of each Initial Capital Improvement in accordance with the ICI Start-Up plan.

(C) ICI Start-Up Test Report. Within 30 days following conclusion of each ICI Start-Up test, the Company shall furnish the Borough and the Borough Engineer with ten copies of a certified written report describing and certifying (1) the ICI Start-Up test conducted, (2) the results of the ICI Start-Up test, and (3) the operation of facilities and systems relating to the Initial Capital Improvement has been performed in accordance with the requirements specified in Appendix 7. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the applicable ICI Start-Up test, and copies of laboratory reports conducted in conjunction with the applicable ICI Start-Up test, including all laboratory sampling and test results. The Company shall be responsible for making any changes required to the Initial Capital Improvement in order for it to meet the applicable design performance requirements.

(D) Borough Review of ICI Start-Up Report. If the Company certifies in its written report delivered pursuant to subsection (C) of this Section that the full ICI Start-Up test has been passed, the Borough shall determine, within 30 days of its receipt of the report, whether it concurs in such certification. The Borough's approval of the ICI Start-Up test report shall not be construed as Borough acceptance of the Initial Capital Improvement or any component thereof.

If the Borough determines at any time during such 30-day review period that it does not concur with such certification, the Borough shall promptly send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by the Borough, either party may elect to refer the dispute to Non-Binding Mediation for resolution pursuant to Section 13.12. The Scheduled ICI Acceptance Date for any affected ICI Design/Build Work shall be extended on a day-for-day basis equal to the number of days in duration of any applicable dispute resolution process and, in the event any such delay involves the nitrogen removal portion of the Initial Capital Improvements, any additional time that may be required to allow performance of the ICI Acceptance Test within the required ICI Acceptance Test period of June 1 through October 31 in any Contract Year.

SECTION 10.3. NOTICE OF ACCEPTANCE TESTING. (A) Submittal of ICI Acceptance Test Plan. At least 90 days before the earlier of the Scheduled ICI Acceptance Date or the date upon which the Company plans to begin ICI Acceptance Testing, the Company shall prepare and submit to the Borough for its approval a detailed ICI Acceptance Test plan. The ICI Acceptance Test plan shall define a test program for each requirement specified in Section 5 of Appendix 7 and shall detail all procedures to be used, specific measurements to be made, the use of permanent and temporary instrumentation, the tests schedule (including the expected date, time and duration of each test) and the operating and maintenance schedule for the Managed Assets during testing. The ICI Acceptance Test plan shall conform to the requirements of Appendix 7 in all respects. If the Company and Borough are unable to agree upon an ICI Acceptance Test plan within 90 days of such submission, their inability to agree may be mediated as provided in Section 13.12.

(B) Notice of ICI Substantial Completion. The Company shall give the Borough's Contract Representative at least 30 days' prior written notice of the expected date of ICI Substantial Completion for all of the Initial Capital Improvements and of commencement of ICI Start-Up operations of the Initial Capital Improvements in preparation for conducting the applicable ICI Acceptance Test.

(C) Notice of Commencement of ICI Acceptance Test. The Company shall also provide the Borough with at least 30 days prior written notice of the expected initiation of the ICI Acceptance Test in accordance with the requirements of Appendix 7. At least 10 days prior to the actual commencement of ICI Acceptance Testing, the Company shall certify in writing that it is ready to begin ICI Acceptance Testing in accordance with the ICI Acceptance Test plan and Appendix 7.

SECTION 10.4. CONDUCT OF ICI ACCEPTANCE TESTS. The Company shall conduct the ICI Acceptance Test in accordance with Appendix 7 and the ICI Acceptance Test plan, and shall notify the Borough when the test shall occur. The Company shall permit the designated representatives of the Borough and any Governmental Body, if required, to inspect the preparations for the ICI Acceptance Test and to be present for the conduct of ICI Acceptance Test

for purposes of ensuring compliance with the test plan and the integrity of the ICI Acceptance Test results.

SECTION 10.5. ICI ACCEPTANCE DATE CONDITIONS. The following conditions shall constitute the "ICI Acceptance Date Conditions," each of which must be satisfied in all material respects by the Company in order for the ICI Acceptance Date to occur with respect to each Initial Capital Improvement, and each of which must be and remain satisfied as of the ICI Acceptance Date:

(1) Achievement of ICI Acceptance Test Procedures and Standards. The Company shall have completed the ICI Acceptance Test and such test shall have demonstrated that the Initial Capital Improvement has met the ICI Acceptance Test Procedures and Standards;

(2) ICI Substantial Completion. The Company shall demonstrate that ICI Substantial Completion for the applicable Initial Capital Improvement has occurred;

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

(4) Operation and Maintenance Manual Supplement. The Company has delivered to the Borough an update to the Operation and Maintenance Manual for the Initial Capital Improvement in the same manner as prescribed under Section 5.7;

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

(6) Equipment Warranties and Manuals. The Company shall be in possession of, and shall have delivered to the Borough, copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Initial Capital Improvement required to be obtained under subsection 9.1(I), together with copies of all related operating manuals supplied by the equipment supplier; and

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

SECTION 10.6. ACCEPTANCE TEST REPORT. Within 30 days following the conclusion of the ICI Acceptance Test, the Company shall furnish the Borough and the Borough Engineer with ten copies of a certified written report describing and certifying (1) the ICI Acceptance Test conducted, (2) the results of the ICI Acceptance Test, and (3) the level of satisfaction of the ICI Acceptance Test Procedures and Standards relating thereto and all other requirements specified in Appendix 7. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the ICI Acceptance Test, and copies of laboratory reports conducted in conjunction with the ICI Acceptance Test, including all laboratory sampling and test results. In the event the Borough disagrees with the Company's certification in the ICI Acceptance Test report pursuant to subsection 10.7(B), the Company shall submit a revised, certified written report within 30 days following receipt of the Borough's written notice of such disagreement unless the Company elects to refer such dispute to Non-Binding Mediation as provided in subsection 10.7(B).

SECTION 10.7. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.  
(A) ICI Acceptance Date Concurrence. The "ICI Acceptance Date" with respect to each Initial Capital Improvement shall be the day on which the applicable ICI Acceptance Date Conditions have been satisfied. If the Company certifies in its written report delivered pursuant to Section 10.6 that the full ICI Acceptance Test Procedures and Standards have been achieved and all other ICI Acceptance Date Conditions have been satisfied, the Borough shall determine, within 30 days of its receipt of the report, whether it concurs in such certification. If the Borough states in writing that it concurs with the Company's certification, the applicable Initial Capital Improvement shall be deemed to have achieved ICI Acceptance and the ICI Acceptance Date shall be deemed to have been established on a permanent basis from the date of the Company's original certification of the ICI Acceptance Date.

(B) ICI Acceptance Date Disagreement. If the Borough determines at any time during such 30-day review period that it does not concur with such certification, the Borough shall promptly send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by the Borough, (1) the Company shall resubmit a revised, certified Acceptance Test report in accordance with Section 10.6, or (2) either party may elect to refer the dispute to Non-Binding Mediation for resolution pursuant to Section 13.12. The mediator shall issue a decision within 60 days of the dispute referral unless both parties agree that more time is appropriate. In the event that the mediator fails to issue a decision within 60 days, then either party may initiate judicial proceedings. The parties acknowledge and agree that any decision

rendered by the mediator as to whether ICI Acceptance has occurred shall be non-binding. ICI Acceptance shall not be deemed to have been achieved unless the ICI Acceptance Test, conducted in a unified and continuous manner as provided in the ICI Acceptance Test plan and Appendix 7, demonstrates that all of the ICI Acceptance Test Procedures and Standards have been met, and all other ICI Acceptance Date Conditions have been satisfied. In the event the Company, in conducting the ICI Acceptance Test, does not successfully meet the applicable ICI Acceptance Test Procedures and Standards, the Borough shall have the right, in its sole discretion, to permit the Company to re-test the Initial Capital Improvements for compliance only with the ICI Acceptance Test Procedures and Standards not previously achieved through an earlier ICI Acceptance Test. Nothing in this Section shall prevent the Company from bringing an action or from repeating the ICI Acceptance Test in order to establish the achievement of ICI Acceptance.

SECTION 10.8. EXTENSION PERIOD. It is agreed that time is of the essence in the performance of the ICI Design/Build Work. If ICI Acceptance shall not have occurred on or before the Scheduled ICI Acceptance Date applicable to any Initial Capital Improvement as set forth in and as adjusted pursuant to subsection 10.9(B), the Company shall be entitled to conduct or repeat the ICI Acceptance Test as often as it desires in order to secure ICI Acceptance of the Initial Capital Improvements during the applicable Extension Period. The "Extension Period" shall mean an additional period of 365 days beyond the applicable Scheduled ICI Acceptance Date. During the Extension Period, the Company shall be responsible for and shall pay any fines and penalties assessed by a Governmental Body against the Borough or the Company due to the failure to achieve ICI Acceptance by the applicable Scheduled ICI Acceptance Date, together with liquidated damages as set forth in subsection 10.9(E).

SECTION 10.9. SCHEDULED ICI ACCEPTANCE DATE (A) Schedule for Completing the Initial Capital Improvements. The Company shall submit completed applications for all required Governmental Approvals by the "Governmental Approval Application Date," and shall achieve ICI Acceptance by the "Scheduled ICI Acceptance Date" for each Initial Capital Improvement by the date determined on the basis of the following table. The "Assumed Approval Issuance Date" is the date by which all such required Governmental Approvals are expected to be obtained, determined in a similar manner, and assuming the appropriate Governmental Bodies have deemed the application submittals complete by the required date. The "Outside Approval Issuance Date" is the last date by which all such required Governmental Approvals are expected to be obtained without the Company's being entitled to an adjustment in the Fixed ICI Design/Build Price as provided in subsection (C) below. Each such date shall be the date which is the number of days following the Commencement Date indicated in the table.

<u>Initial Capital Improvement</u>	<u>Governmental Approval Application Date</u>	<u>Assumed Approval Issuance Date</u>	<u>Outside Approval Issuance Date</u>	<u>Scheduled ICI Substantial Completion Date</u>	<u>Scheduled ICI Acceptance Date</u>
Nitrogen Removal Upgrade	90 days	180 days	240 days	540 days	*(120 days)
SCADA System	90 days	180 days	240 days	540 days	660 days
Odor Control	90 days	180 days	240 days	300 days	660 days
General Upgrades	90 days	180 days	240 days	540 days	660 days

\* If the Scheduled ICI Substantial Completion Date for an Initial Capital Improvement marked with an asterisks, as adjusted pursuant to subsection (B) of this Section or by Uncontrollable Circumstances, occurs prior to August 1 in a calendar year, the applicable Scheduled ICI Acceptance Date shall be the later of: (1) 120 days following June 1 of that calendar year or (2) 120 days following the Scheduled ICI Substantial Completion Date. If the Scheduled ICI Substantial Completion Date for an Initial Capital Improvement marked with an asterisks, as adjusted pursuant to subsection (B) of this Section or by Uncontrollable Circumstances, occurs on or after August 1 in a calendar year, then the applicable Scheduled ICI Acceptance Date shall be reset as the number of days indicated in the parenthesis following June 1 of the next calendar year.

(B) Adjustment of Scheduled ICI Substantial Completion Dates and the Scheduled ICI Acceptance Dates. Subject to the footnote to the table contained in subsection (A) of this Section, the Scheduled ICI Substantial Completion Dates and the Scheduled ICI Acceptance Dates set forth in subsection (A) of this Section shall each be adjusted to account for (1) delay caused by Uncontrollable Circumstances or Borough-requested Change Orders not due to Company Fault, and (2) the number of days of delay by any Governmental Body in issuing any required Governmental Approvals beyond the Assumed Approval Issuance Date set forth in subsection (A) of this Section, reduced by (i) the number of days of Company delay in submitting a complete application beyond the applicable Governmental Approval Application Date set forth in subsection (A) of this Section, and (ii) the number of days of any Governmental Body delay in issuing the required Governmental Approval due to the failure of the Company to exercise reasonable diligence in securing the Governmental Approval following submittal of the complete application, but only to the extent any such Governmental Body delay actually caused delay in the overall progress of the ICI Design/Build Work after the exercise of all commercially reasonable mitigation efforts by the Company.

(C) Adjustment of Fixed ICI Design/Build Price. The Fixed ICI Design/Build Price for each Initial Capital Improvement as set forth in Appendix 6 shall be adjusted to account for any delay by any Governmental Body in issuing any required Governmental Approvals for such Initial Capital Improvement beyond the Outside Approval Issuance Date set forth in subsection (A)



of this Section; provided that the Company must affirmatively demonstrate that a Governmental Body's delay in issuing the required Governmental Approval was not due to the failure of the Company to exercise reasonable diligence in securing the Governmental Approval following submittal of the complete application. To the extent the Company failed to submit a completed application for an Initial Capital Improvement by the Governmental Approval Application Date, the Outside Approval Issuance Date for such Initial Capital Improvement shall be extended for each day of delay by the Company. Assuming the Company has affirmatively demonstrated that it is entitled to an adjustment of any portion of the Fixed ICI Design/Build Price hereunder, such amount of the Fixed ICI Design/Build Price relating to the affected Initial Capital Improvement shall be adjusted based on the CPI from the Outside Approval Issuance Date to the date on which all required Governmental Approvals to commence construction of the affected the Initial Capital Improvement are actually obtained.

(D) No Other Relief. Any such Governmental Body delay in issuing required Governmental Approvals shall entitle the Company only to an extension of time and a price adjustment as provided in this Section, and shall not entitle the Company to any other relief from its other performance obligations hereunder.

(E) Delay Liquidated Damages. If the ICI Acceptance Date with respect to the Initial Capital Improvements occurs subsequent to the applicable Scheduled ICI Acceptance Date, then, in addition to the amounts payable under Section 10.8, the Company shall pay to the Borough daily delay liquidated damages as follows:

(1) Liquidated Damages for Nitrogen Removal Improvements. If the ICI Acceptance Date with respect to the nitrogen removal portion of the Initial Capital Improvements falls after the applicable Scheduled ICI Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Service Contract for an Event of Default, the Company shall pay to the Borough delay liquidated damages for such delays in the amount of \$1,500 per day, provided that the maximum amount that shall accrue for delays that occur during the Extension Period shall be \$45,000.

(2) Liquidated Damages for All Other Initial Capital Improvements. If the ICI Acceptance Date for all Initial Capital Improvements other than the nitrogen removal and SCADA system improvements falls after the applicable Scheduled ICI Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Service Contract for an Event of Default, the Company shall pay to the Borough delay liquidated damages for such delays in the amount of \$1,500 per day.

The \$1,500 delay liquidated damages payable in items (1) and (2) above are not additive, and the Company shall continue to pay such \$1,500 delay liquidated damages until the earlier of such time as the Company achieves ICI Acceptance Date for all of the Initial Capital Improvement or the Borough has terminated this Service Contract pursuant to Section 13.2. The Company shall also indemnify the Borough in accordance with Section 14.3 against all Loss-and-Expense resulting

from any Legal Proceeding originated by any third party arising from such failure to achieve ICI Acceptance by the applicable Scheduled ICI Acceptance Date except to the extent such failure is caused by an Uncontrollable Circumstance.

SECTION 10.10. FAILURE TO MEET ICI ACCEPTANCE STANDARD. (A) Acceptance at Reduced ICI Acceptance Test Procedures and Standards. If, as of the last day of the applicable Extension Period, the ICI Acceptance Tests have not been conducted or have failed to demonstrate that the applicable Initial Capital Improvement operates at a standard equal to or greater than the full ICI Acceptance Test Procedures and Standards, the Borough shall have the option to establish the ICI Acceptance Date at a reduced standard; provided, however, such reduced standard shall have been demonstrated to be consistently achievable by the ICI Acceptance Test and does not violate Applicable Law. If ICI Acceptance occurs at a reduced standard, the Borough shall be entitled to reduce the ICI Design/Build Price or Service Fee, as appropriate, as damages for the Company's failing to meet the full ICI Acceptance Test Procedures and Standards.

(B) Termination. If, as of the last day of the applicable Extension Period, the ICI Acceptance Tests have not been conducted or have failed to demonstrate that all of the Initial Capital Improvements operate at a standard equal to or greater than the full ICI Acceptance Test Procedures and Standards and the Borough has not exercised its option under subsection (A) of this Section, an Event of Default by the Company will be deemed to have occurred under Section 13.2 notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the Borough shall thereupon have the right to terminate this Service Contract upon written notice to the Company. Upon any such termination, the Borough shall have all of the rights provided in Article XIII upon a termination of the Company for cause.

SECTION 10.11. FINAL COMPLETION. (A) Requirements. The Company shall achieve Final Completion of each Initial Capital Improvement within 30 days after the applicable ICI Acceptance Date. "Final Completion" shall occur when all of the following conditions have been satisfied:

(1) ICI Acceptance Achieved. The Company has achieved ICI Acceptance with respect to the applicable Initial Capital Improvement;

(2) ICI Design/Build Work Completed. All applicable ICI Design/Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Service Contract;

(3) Spare Parts In Storage. All spare parts required by the applicable ICI Design and Construction Requirements have been delivered and are in storage at the Managed Assets;

(4) Deliverable Material Furnished. The Company has furnished to the Borough all Deliverable Material required to be delivered prior to ICI Acceptance;

(5) Record Drawings. The Company shall have delivered to the Borough a final and complete reproducible set of record drawings, together with six copies thereof, in a size and form required by the Borough and as required by the ICI Design and Construction Requirements and shall certify that the Initial Capital Improvement was constructed in accordance with the ICI Design and Construction Requirements, including any Change Orders. Such record drawings shall include one mylar copy. The Company shall also provide an electronic file in AutoCad/DXF format to the extent drawings are prepared in such format; and

(6) Equipment Warranties and Manuals. The Company shall be in possession of, and shall have delivered to the Borough, copies of the warranties of machinery, equipment, fixtures and rolling stock constituting a part of the Initial Capital Improvement, together with copies of all related operating manuals supplied by the equipment supplier.

(B) Final Voucher and Claims Statement. The Company shall also prepare and submit to the Borough as soon as practicable following the ICI Acceptance Test, for purposes of demonstrating Final Completion: (1) a certificate of the Company Contract Representative certifying (a) that all applicable ICI Design/Build Work has been completed in accordance herewith and with the ICI Design and Construction Requirements, and (b) that ICI Acceptance of the Initial Capital Improvement has occurred; and (2) a claims statement setting forth a detailed, itemized description, related dollar amount and grounds for all claims of every kind whatsoever against the Borough in connection with or arising out of the applicable ICI Design/Build Work the Company may have. The Borough shall review the certificate and the claims statement and shall verify or dispute them in writing within 30 days of receipt.

SECTION 10.12. NO ICI ACCEPTANCE, WAIVER OR RELEASE. Unless other provisions of this Service Contract specifically provide to the contrary, none of the following, without limitation, shall be construed as the Borough's acceptance of any ICI Design/Build Work which is defective, incomplete, or otherwise not in compliance with this Service Contract, as the Borough's release of the Company from any obligation under this Service Contract, as the Borough's extension of the Company's time for performance, as an estoppel against the Borough, or as the Borough's acceptance of any claim by the Company:

(1) any payment by the Borough to the Company or any other person with respect to the Initial Capital Improvements;

(2) the Borough's approval or acceptance of any drawings, submissions, punch lists, other documents, certifications (other than certificates relating to completion or ICI Acceptance of the Initial Capital Improvements), or ICI Design/Build Work of the Company or any Subcontractor;

- (3) the Borough's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the ICI Design/Build Work;
- (4) the Borough's entry at any time on the Plant Site (including any area in which the ICI Design/Build Work is being performed);
- (5) any inspection, testing, or approval of any ICI Design/Build Work (whether finished or in progress) by the Borough or any other person;
- (6) the failure of the Borough or any Borough consultant to respond in writing to any notice or other communication of the Company; or
- (7) any other exercise of rights or failure to exercise rights by the Borough hereunder.

SECTION 10.13. COMPLIANCE WITH CONTRACT STANDARDS NOT EXCUSED. No delay or failure by the Company in achieving ICI Substantial Completion, Final Completion or ICI Acceptance with respect to any Initial Capital Improvement shall excuse the Company from its obligation to comply with the Contract Standards.

## ARTICLE XI

### CAPITAL MODIFICATIONS

SECTION 11.1. CAPITAL MODIFICATIONS GENERALLY. (A) Purpose. The parties acknowledge that it may be necessary or desirable from time to time during the Term of this Service Contract to make Capital Modifications, either at the request of the Company or at the direction of the Borough or to respond to an Uncontrollable Circumstance. Capital Modifications may be appropriate or desirable, for example, to improve the performance or increase the capacity of the Managed Assets, to increase the efficiency of the Managed Assets, to address or anticipate the obsolescence of portions of the Managed Assets, to reduce the cost to the Company of performing this Service Contract or to reduce the Service Fee payable by the Borough as provided in subsection (D) of this Section. The parties further acknowledge that the provisions of this Article are intended: (1) to provide for such Capital Modifications should the need arise and to provide a mechanism under which they may negotiate to accomplish efficiently such Capital Modifications; and (2) to provide an acceptable mechanism for modifying the Managed Assets if they are unable to agree to a Capital Modification under this Service Contract. All such Capital Modifications shall be made and implemented in accordance with this Article.

(B) Cooperation of Parties. Each party shall advise the other in a timely manner of the need for a Capital Modification and the circumstances necessitating such Capital Modification. Upon receipt of such notice, the parties shall promptly arrange to meet and negotiate in good faith to reach mutual agreement regarding the scope, cost, benefit sharing and other particulars relating to the proposed Capital Modification. To the extent then known and identified, the Company shall propose in its annual operations report any Capital Modifications that may be necessary or desirable for the parties to consider in the forthcoming Contract Year.

(C) Borough Approval and Change Orders. With respect to any item requiring Borough approval under this Article, such Borough approval shall be given by means of a "Change Order", which shall contain all material information required by this Article.

(D) Exterior Appearance. Any Capital Modification, including Small Scale Capital Modifications, that will affect the exterior physical appearance of structures comprising the Managed Assets (such as changes to exterior surface materials, colors, roof materials, or exterior structural dimensions) that may be viewed from the exterior of the Plant Site, shall be subject to approval by the Borough irrespective of the value of such Capital Modification.

(E) Small Scale Capital Modifications. Except as provided in subsections (C) and (D) of this Section, Borough approval will not be required for Small Scale Capital Modifications provided that such Small Scale Capital Modification (1) does not diminish the capacity of the Managed Assets to be operated so as to meet the Contract Standards, (2) does not impair the quality, integrity, durability and reliability of the Managed Assets, and (3) is feasible.

(F) Cost Savings. In the event any Capital Modification other than a Small Scale Capital Modification is reasonably expected to result in a net savings with respect to the Company's costs of performing the Contract Services, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared and any related adjustment in the Service Fee, in accordance with the principles set forth in Section 11.9.

(G) Borough Right to Finance Capital Modifications. The parties acknowledge that the Borough shall have the right, notwithstanding any other provision hereof, to elect to finance any Capital Modification proposed to be undertaken pursuant to this Article.

SECTION 11.2. CAPITAL MODIFICATIONS AT COMPANY REQUEST. The Company shall give the Borough written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Company's request, whether before or after ICI Acceptance. The notice shall contain sufficient information for the Borough to determine that the Capital Modification (1) does not diminish the capacity of the Managed Assets to be operated so as to meet the Contract Standards, (2) does not impair the quality, integrity, durability and reliability of the Managed Assets, and (3) is feasible. Any Capital Modification proposed by the Company shall be subject to the Borough's prior written approval, which approval shall not be unreasonably withheld. It is understood that the Borough may reasonably withhold its approval if a proposed Capital Modification will materially and adversely affect the Borough's costs, rights, or obligations under this Service Contract or under any agreement with the Participating Entities, will diminish the capacity of the Managed Assets to be operated so as to meet the Contract Standards, or will impair the quality, integrity, durability or reliability of the Managed Assets. Any approved Capital Modification shall be made at the Company's sole cost and expense, and the Company shall not be entitled to any adjustment in the Service Fee or other compensation or schedule or risk adjustment as a result thereof, unless agreed to in writing by the Borough.

SECTION 11.3. CAPITAL MODIFICATIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of an Uncontrollable Circumstance, whether before or after ICI Acceptance, the Borough shall promptly proceed, subject to the terms, conditions and procedures set forth in this Article and Section 14.2, to make or cause to be made all Capital Modifications reasonably necessary to address the Uncontrollable Circumstance. The Company shall consult with the Borough concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and the Borough shall cooperate in order to minimize any delay, lessen any additional cost and modify the Managed Assets so as to permit compliance with the requirements resulting from the Uncontrollable Circumstance. The design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Borough except to the extent provided in Section 14.2 pertaining to cost sharing. The Borough shall pay the Capital Modification costs and

any such related costs for which it is responsible in the manner established in accordance with the procedures set forth in Sections 11.5, 11.6 and 11.7.

SECTION 11.4. CAPITAL MODIFICATIONS AT BOROUGH DIRECTION. If the Borough proposes to implement a Capital Modification at the Borough's expense, the Borough shall give the Company written notice, and reasonable opportunity to review and comment on, any such proposed Capital Modification. The Borough shall have the right to make Capital Modifications at any time and for any reason whatsoever, upon approval by the Company, which approval shall not be unreasonably withheld. It is understood that the Company will not withhold its approval of a proposed Capital Modification if the proposed Capital Modification will not materially affect the Company's costs, rights or obligations under this Service Contract and will not adversely affect the durability and performance of the Managed Assets. With respect to any Capital Modification proposed by the Borough, if the proposed Capital Modification will materially and adversely affect the Company's costs, rights or obligations under this Service Contract (including operating, maintenance, repair and replacement costs with respect to the Managed Assets), then the Company shall be entitled to an equitable adjustment with respect to its price, schedule, performance and other obligations under this Service Contract as provided in Section 11.8. If the parties are unable to agree upon such an equitable adjustment, such dispute shall be determined as provided in Sections 13.11 or 13.12. The design and construction costs of any such Capital Modification made at the Borough's direction under this Section, and any related operation, maintenance, repair and replacement costs, shall be at the Borough's sole cost and expense. Any cost-savings accruing as the result of any such Capital Modification undertaken at the Borough's direction shall be shared as provided in Section 11.1(F). The Borough shall have no obligation to direct the Company to make any Capital Modification.

SECTION 11.5. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS. (A) Primary Implementation Procedure. Unless the Borough determines pursuant to Section 11.6 that an alternative implementation procedure be employed, the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications except Small Scale Capital Modifications, which the Company may implement by means of its own choosing.

(B) Preliminary Company Plan and Borough Review. At the request of the Borough and the cost and expense of the Company, the Company shall prepare and deliver to the Borough a preliminary plan for the implementation of the Capital Modification. The preliminary plan shall include recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Company or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The preliminary plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the

Company is recommending. The Borough shall review the Company's preliminary plan and recommendations, and undertake discussions with the Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the Borough the Company shall submit a formal implementation proposal to the Borough for its consideration. With respect to any Capital Modification to be undertaken at the Borough's expense and as otherwise required by Applicable Law, the implementation proposal shall contain (1) a Company services element, to be implemented through an amendment to this Service Contract, and (2) a third-party construction services element, to be implemented through third party contracting.

(1) Company Services Element. The Company services element shall contain (a) the Company's offer to perform design, construction management and acceptance testing services with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through an acceptance test and either a good faith estimate of total construction costs or a guaranteed maximum construction price, if so requested by the Borough and agreed to by the Company, and (b) the Company's offer to operate, maintain, repair, replace and manage the Capital Modification following construction and acceptance for a fixed fee or a fixed and variable fee to be added to the Service Fee, and shall include long term performance guarantees with respect to the Capital Modification.

(2) Third-Party Construction Services Element. The third-party construction services element shall be a proposal by the Company to conduct, as allowed by Applicable Law, a bidding process or a competitive proposal process for the construction work or the design/build work involved in completing the Capital Modification. The bidding process shall include an advertisement for bids and a construction contract award to the lowest responsible bidder, and shall be conducted in accordance with the requirements of Applicable Law which govern construction projects undertaken by the Borough. A competitive proposal process shall include a request for proposals and a design/build contract award to the most advantageous proposer.

With respect to any Capital Modification to be undertaken at the Borough's expense and as otherwise required by Applicable Law, the Borough shall be a party to all such construction contracts or design/build contracts unless the Borough determines otherwise as permitted by Applicable Law.

(D) Negotiation and Finalization of Company Implementation Proposal. The parties shall proceed, promptly following the Borough's review of the Company's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Service Contract required under Section 11.8. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable,



(1) design requirements, (2) construction management services, (3) acceptance tests and procedures, (4) a guarantee of completion and acceptance, (5) performance guarantees, (6) any changes to the Performance Guarantees or other Contract Standards to take effect as a consequence of the Capital Modification, (7) a payment schedule for the design and construction management-related services, (8) provisions for Borough Engineer review, (9) any adjustments to the Service Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs, (10) a financing plan, and (11) any other appropriate amendments to this Service Contract. The Company shall not be obligated to undertake any Capital Modification under Section 11.3 or 11.4 except following agreement as to such negotiated adjustments, unless otherwise required on an emergency basis. The Borough shall have no obligation to reimburse the Company for any costs incurred pursuant to this Section except as part of a negotiated amendment to this Service Contract.

(E) Implementation Procedures. With respect to each Capital Modification to be made by the Company, other than Small Scale Capital Modifications, the Borough shall have the same substantive and procedural rights that it has with respect to the design, construction and acceptance of the Initial Capital Improvements, as set forth in Articles IX and X and in Appendices 4, 5, 6, 7 and 8.

SECTION 11.6. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS. With respect to any Capital Modification to be undertaken at the Borough's expense and as otherwise required by Applicable Law, the Borough shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 11.5, and may instead, in its sole discretion, utilize any other implementation procedure available to it or required under the Applicable Law. Alternative implementation procedures may include, without limitation and to the extent permissible under Applicable Law, (1) contracting with the Company on a sole source basis to implement the Capital Modification on a design/build basis; (2) contracting with the Company to manage a competition for design/build services to implement the Capital Modification; and (3) contracting with third parties for the implementation of the Capital Modification on a traditional design/bid/build basis, with the Borough rather than the Company responsible for the design and construction of the Capital Modification, or with the Company acting as the Borough's agent in the design/bid/build process. While it is the intention of the Borough to have the Company operate, maintain, repair, replace and manage Capital Modifications on an integrated basis with the Managed Assets, the Borough is not obligated to do so and may contract for such services with a third party, so long as any such third party contract does not impair the Company's rights under Section 11.8. The Borough may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Company under the primary implementation procedure specified under Section 11.5. No alternative implementation procedure for Capital Modifications shall impair the Company's rights under Section 11.8.

SECTION 11.7. FINANCING CAPITAL MODIFICATIONS. (A) Borough Financing. The Borough shall provide financing for any Capital Modification for which it is financially responsible under this Article, and shall make the proceeds of the financing available to the Company to pay the negotiated price on the milestone schedule and subject to any retainage or other conditions negotiated by the parties pursuant to this Section. The Borough in its sole discretion may voluntarily, if requested by the Company, provide financing for the Capital Modifications for which the Company is financially responsible hereunder, on terms and conditions established by the Borough in its sole discretion.

(B) SRF Financing. The parties acknowledge that it may be desirable from time to time to obtain financing for eligible Capital Modifications through the SRF. In such event, the Borough shall be responsible for obtaining any SRF financing, including any DEP certificate of approval, and the Company shall cooperate with and assist the Borough in such efforts. Notwithstanding any provision of this Service Contract to the contrary, if the Borough has borrowed to finance any Capital Modification by the issuance of debt to the SRF, the Company understands and agrees that each Requisition shall be payable in accordance with this Section only upon receipt of a disbursement from the SRF therefor. The Company further agrees that, to the extent necessary in connection with any SRF financing of the Capital Modifications, the Company will comply with any SRF requirements pertaining to businesses owned by specially-designated groups.

(C) Borough Request for Company Financing. Notwithstanding the provisions of subsections (A) and (B) of this Section, at the request for the Borough, the Company shall utilize its best efforts (utilizing the Company's contacts with and knowledge of available financial mechanisms and institutions) to develop and present to the Borough a Private Financing Plan for any such Capital Modification. An example of such a Private Financing Plan is provided in Appendix 23; provided that the parties acknowledge that the availability of private financing for particular Capital Modification projects at any point during the term of this Service Contract depends on a variety of factors, and that except for the Company's commitment to use best efforts to develop and present such a Private Financing Plan for a Capital Modification, neither party shall be bound to provide or accept such private financing arrangement.

(D) Terms and Conditions of Private Financing Plan. The terms and conditions of any Private Financing Plan made pursuant to subsection (C) of this Section shall include, in addition to the requirements of Appendix 23, a Borough right to refinance any such Company financing and any reimbursement due the Company with respect to the unamortized principal amount of such financing if this Service Contract is terminated prior to the end of its scheduled Term. If the Company provides financing for any Capital Modifications and assigns this Service Contract as security therefor, the loan documents related to such financing may require that all or a portion of each Service Fee payment be paid to a trustee or paying agent, either on a regular basis or upon the occurrence of certain stated events. In such a case, upon being notified in

writing of such requirement by the Company, the Borough shall make payment as required therein and the Company shall, as between it and the Borough, accept any payment made to such trustee or paying agent as required therein as payment to the Company.

SECTION 11.8. COMPANY NON-IMPAIRMENT RIGHTS. (A) Company Non-Impairment. No Capital Modification, other than a Company-requested Capital Modification, shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the Company hereunder, including operating, maintenance, repair and replacement costs related to such Capital Modification. With respect to any Capital Modification proposed by the Borough, if the proposed Capital Modification will materially and adversely affect the Company's costs, rights or obligations under this Service Contract (including operating, maintenance, repair and replacement costs with respect to the Managed Assets), then the Company shall be entitled to an equitable adjustment with respect to its price, schedule, performance and other obligations under this Service Contract. If the parties are unable to agree upon such an equitable adjustment, such dispute shall be determined as provided in Sections 13.11 or 13.12.

(B) Borough Operating Rights. The Borough shall have the right, notwithstanding any other provision hereof, at its own cost and expense to operate, maintain, repair, replace and manage any Capital Modification made to the Managed Assets as a result of an Uncontrollable Circumstance or Borough direction. Any such operation, maintenance, repair, replacement and management work performed by the Borough shall not materially impair any right, materially impair the ability to perform, impose any material additional obligation or liability, or materially increase the costs of the Company hereunder. If any such operation, maintenance, repair, replacement or management work performed by the Borough would have such effect, the parties shall negotiate in good faith an equitable adjustment with respect to the Company's price, schedule, performance and other obligations under this Service Contract. If the parties are unable to agree upon such an equitable adjustment, such dispute shall be determined as provided in Sections 13.11 or 13.12.

SECTION 11.9. BENEFIT SHARING FROM CAPITAL MODIFICATIONS. (A) Generally. If a Capital Modification undertaken pursuant to this Article involves a reduction in the Company's costs of performing the Contract Services over the remaining Term of this Service Contract, the benefits of such reduction in Company costs shall be calculated and shared as agreed by the parties. In the event the parties are unable to reach an agreement, such reduction shall be calculated and shared as provided in this Section.

(B) Principles in Cost Sharing. The savings in annual Company costs of performing the Contract Services resulting from the Capital Modification (the "O&M Cost Savings") shall be calculated annually based on actual or estimated costs incurred in each year after implementation of the Capital Modification ("Post-Modification Year"), considering, among other factors, any reductions in staffing, chemical use, utility utilization, maintenance, repair and

replacement requirements directly related to the Capital Modification, compared to the actual or estimated costs of such items in the year prior to implementation of the Capital Modification (the "Benchmark Year"). The following principles shall apply with respect to savings in certain Company costs:

(1) Calculation of Savings in Expenses. The calculation of all savings directly resulting from a Capital Modification shall be based only on the amount of direct savings in expenses that would otherwise have been incurred by the Company or by the Borough, as chemical, fuel or electric expenses and such savings calculation shall not include any overhead or margin.

(2) Chemical Use Savings. The annual amount of savings related to chemical use shall be based on the number of gallons of System Influent and shall be calculated based on the difference between the rate of chemical use associated with the affected Managed Assets equipment or processes per gallon of System Influent received in the Benchmark Year and the rate of chemical use associated with the affected Managed Assets equipment or processes per gallon of System Influent received in such Post-Modification Year, times the Company's unit cost of chemicals in such Post-Modification Year.

(3) Electricity Use Savings. The annual amount of savings related to electricity use shall be based on the number of gallons of System Influent, and shall be calculated based on a good faith engineering estimate of the difference between the rate of electric energy consumed by the Managed Assets (measured in KWH per gallon of System Influent) in the Benchmark Year and the rate of electric energy consumed per gallon of System Influent treated in such Post-Modification Year.

(4) Maintenance, Repair and Replacement Savings. The savings related to reduced maintenance, repair, and replacement requirements shall be based on a good faith engineering projection of the reduced maintenance costs (such as adjustments and Consumables), and the revised replacement schedule for the Managed Assets components involved in the Capital Modification, compared to the maintenance costs and replacement schedule of the corresponding Managed Assets components in place in the Benchmark Year prior to the Capital Modification.

(5) Staffing Savings. The savings related to reduced staffing shall be based on the direct wage, salary, and benefits costs of the employee positions which are no longer required as the result of the Capital Modification, calculated at the actual rates prevailing in the Benchmark Year. It is understood that the savings related to a change in a position from full-time to part-time due to a Capital Modification shall be included in the savings calculation under this subsection.

In each Post-Modification Year, the Company shall provide to the Borough a calculation of the O&M Cost Savings, along with Cost Substantiation therefor, for the approval of the Borough, which approval shall not be unreasonably withheld. Any dispute regarding the amount of the O&M Cost

Savings shall be subject to dispute resolution as provided as provided in Sections 13.11 or 13.12.

(C) Capital Cost Recovery. The total capital cost of the Capital Modification shall be based on the price for the Capital Modification, determined pursuant to Section 11.6 or 11.7 (the "Capital Modification Cost"). Until fully recovered through the O&M Cost Savings as provided in subsections (D)(1) and (E)(1) of this Section, the unrecovered balance of such Capital Modification Cost shall bear interest at an annual, non-compounded, interest rate equal to the Prime Rate in effect as of the date that implementation of the Capital Modification is commenced. With respect to any Capital Modification paid for by the Company, the unrecovered balance of the Capital Modification Cost and the monthly accrued interest shall be stated on each monthly Billing Statement provided to the Borough by the Company. At the Borough's election, the Borough may payoff such unrecovered balance and all accrued interest thereon to the date of payoff. Upon payoff, the parties shall share the O&M Cost Savings as provided in subsections (D) and (E) of this Section, unless otherwise agreed to by the parties.

(D) Company-Financed Capital Modification. If the Capital Modification Cost is financed and paid for by the Company as provided herein, the annual O&M Cost Savings shall be applied as follows:

(1) Credit to Capital Modification Cost. Initially, the annual O&M Cost Savings shall be retained by or paid to the Company and credited against the balance of the Capital Modification Cost plus accrued interest thereon, as provided in subsection (C) of this Section.

(2) Sharing by Parties. After the Capital Modification Cost, plus accrued interest thereon, has been paid off as provided in subsection (C) of this Section or recovered as provided in subsection (D)(1) of this Section, the annual O&M Cost Savings shall be allocated 75% to the Company and 25% to the Borough. The Borough's share of such annual O&M Cost Savings shall be credited to the Borough as part of the Annual Settlement.

(E) Borough-Financed Capital Modification. If the Capital Modification Cost is financed and paid for by the Borough as provided herein, the O&M Cost Savings shall be applied as follows:

(1) Credit to Capital Modification Cost. Initially, the annual O&M Cost Savings shall be credited to the Borough as part of the Annual Settlement Statement, until the amount so credited equals the Capital Modification Cost plus accrued interest thereon as provided in subsection (C) of this Section.

(2) Sharing by Parties. After the Capital Modification Cost, plus accrued interest thereon, has been recovered as provided in subsection (E) (1) of this Section, the annual O&M Cost Savings shall be allocated 75% to the Borough and 25% to the Company.

The Borough's share of such annual O&M Cost Savings shall be credited to the Borough as part of the Annual Settlement.

ARTICLE XII  
COMPENSATION

SECTION 12.1. COMPENSATION GENERALLY. From and after the Commencement Date, the Borough shall pay the Service Fee to the Company as compensation for the Company's performing the Management Services (other than the Management Services relating to the Collection System) under this Service Contract. Commencing on the Contract Year beginning July 1, 2002, the Borough shall pay the Collection System Fee to the Company as compensation for the Company's performing the Management Services relating to the Collection System under this Service Contract. The Service Fee and Collection System Fee shall each be calculated according to this Article. Examples of the calculation of the Service Fee and the Collection System Fee and the application of the Adjustment Factor are included in Appendix 21.

SECTION 12.2. COLLECTION SYSTEM FEE. The Collection System Fee for the Contract Year beginning July 1, 2002 shall be \$226,453. The amount for any subsequent Contract Year shall be determined by multiplying (a) the Collection System Fee for the previous Contract Year, times (b) the Adjustment Factor.

SECTION 12.3. SERVICE FEE FORMULA. The Service Fee shall be calculated in accordance with the following formula:

$$ASF = BF + RC \pm EI$$

Where,

ASF	=	Annual Service Fee
BF	=	Base Fee
RC	=	Reimbursable Costs Charge
EI	=	Extraordinary Items

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

SECTION 12.4. BASE FEE COMPONENTS. (A) Formula. The Base Fee shall be calculated in accordance with the following formula:

$$BF = FC + VC$$
$$VC = FLAE + NRE$$

Where,

BF	=	Base Fee
FC	=	Fixed Component
VC	=	Variable Component
FLAE	=	Flows and Loadings Adjustment Element
NRE	=	Nitrogen Removal Element

(B) Fixed Component. The Fixed Component shall consist of the sum of Element A and Element B in the following table:

Contract Year (ending June 30)	Element A	Element B**
2002	\$2,303,000*	211,600
2003		211,600
2004		211,600
2005		211,600
2006		211,600
2007		211,600
2008		270, 800
2009		330,000
2010		330,000
2011		330,000
2012		330,000
2013		330,000
2014		330,000
2015		330,000
2016		330,000
2017		330,000
2018		330,000
2019		330,000
2020		330,000
2021		330,000
2022		330,000

\* Element A for any subsequent Contract Year shall be determined by multiplying (a) Element A for the previous Contract Year, times (b) the Adjustment Factor. Element A of the Fixed Component shall be subject to further adjustment in any Contract Year in which the Incineration Facilities are indefinitely or permanently shutdown as provided in Section 8.2.

\*\* Element B shall not be subject to annual escalation by the Adjustment Factor.

(C) Variable Component. The Variable Component shall consist of the Flows and Loadings Adjustment Element and the Nitrogen Removal Element determined as follows:



(1) Flows and Loadings Adjustment Element. The Flows and Loadings Adjustment Element of the Variable Component shall not be payable to the Company or be credited to the Borough in first full 60 months following the Commencement Date. Following the sixtieth full month, the Company or the Borough, as appropriate, shall be entitled to the Flows and Loadings Adjustment Element of the Variable Component as determined herein. The Flows and Loadings Adjustment Element of the Variable Component, which may be a charge or a credit (subject to Section 12.11), shall be payable to the Company or credited by the Borough in any Contract Year if the Plant has received variances in total Sewer Influent flows and loadings (Incineration Process Filtrate shall not be considered in determining the Flows and Loadings Adjustment Element) outside of the following thresholds (representing the lower and upper bounds of historical flows and loadings received at the Plant):

	<u>Lower Threshold</u>	<u>Upper Threshold</u>
Flow (gal/y)(000s)	1,609,000	2,500,000
BOD <sub>5</sub> Load (lb/y)	2,359,667	6,047,000
TSS Load (lb/y)	2,296,550	4,588,000

The Flows and Loadings Adjustment rates for actual flow and load values, which are outside of the range of the threshold values listed above, are as follows for the Contract Year ending on June 30, 2002:

	<u>Lower Threshold</u>	<u>Upper Threshold</u>
Flow (per gallon)	\$0.00027	\$0.00027
BOD <sub>5</sub> Load (per lb)	\$0.148	\$0.131
TSS Load (per lb)	\$0.125	\$0.163

The Flows and Loadings Adjustment rates for any subsequent Contract Year shall be determined by multiplying (a) the rates for the previous Contract Year, times (b) the Adjustment Factor. No adjustments to the Flows and Loadings Adjustments rates shall be made for the Contract Year ending on June 30, 2002. Such adjustments will be made beginning with the Contract Year commencing July 1, 2002, and for each subsequent full Contract Year during the Term of this Service Contract.

(2) Nitrogen Removal Element. The Nitrogen Removal Element of the Variable Component shall be payable to the Company in an amount equal to a fixed fee for each nitrogen removal credit made available, marketed and sold by the Company hereunder, such amount to be negotiated by the parties pursuant to Section 5.18.

(D) Adjustment Factor. The "Adjustment Factor" for purposes of this Service Contract, when used with respect to any particular Contract Year, shall be based on the percent change in the CPI over the immediately preceding 12-month period.

SECTION 12.5. REIMBURSABLE COSTS CHARGE. Commencing in July 1, 2002, the Reimbursable Costs Charge shall be in an amount equal to the actual and direct

expenses (without markup for profit, administration or otherwise) paid by the Company to unrelated third-party contractors for DEP-Mandated Collection System Work as provided in subsection 7.2(D), up to a maximum amount of \$81,500 per Contract Year (adjusted annually based on the Adjustment Factor) unless a higher amount is approved by the Borough.

SECTION 12.6. EXTRAORDINARY ITEMS CHARGE OR CREDIT. The Extraordinary Items component of the Service Fee, which may be a charge or a credit, shall be equal to the sum of (1) the amounts payable by the Borough for increased operation, maintenance or other costs incurred on account of the occurrence of an Upset, Interference or Pass-Through, the receipt of Excessive Influent, or the occurrence of other Uncontrollable Circumstances which are chargeable to the Borough hereunder, net of any operation and maintenance cost savings achieved by the Company in mitigating the effects of the occurrence of such an Uncontrollable Circumstance, plus (2) the adjustments to the Service Fee for increased or reduced operation and maintenance costs resulting from any Capital Modifications the costs of which are payable by the Borough, or the benefits of which accrue to the Borough, under the provisions of this Service Contract, plus (3) any liquidated damages resulting from Company non-performance as specifically provided for under Article VI or any other provision hereof, plus (4) Service Fee adjustment provided for in Section 6.5 with respect to Hazardous System Residuals, plus (5) any other increase or reduction in the Service Fee provided for under any other Article or Section of this Service Contract including Section 5.18.

SECTION 12.7. BILLING AND PAYMENT. (A) Billing. The Borough shall pay the Collection System Fee in monthly installments. The Borough shall pay the Service Fee in monthly installments in an amount equal to the sum of (1) one-twelfth of the annual Fixed Component; (2) any monthly Reimbursable Costs Charge; (3) any Extraordinary Items determined on a monthly basis; (4) one-twelfth of any Extraordinary Items determined on an annual basis; and (5) any adjustments, plus or minus, to reconcile any prior monthly Variable Component or Reimbursement Cost payments. The Flows and Loading Adjustment Element of the Variable Component shall be payable to the Company or credited to the Borough once the total BOD<sub>5</sub> and TSS, measured in pounds, and the total flows, measured in gallons, in each Contract Year exceed the respective thresholds established in subsection 12.4(C)(1).

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

SECTION 12.8. ESTIMATES AND ADJUSTMENTS. (A) Pro Rata Adjustments.

Any computation made on the basis of a stated period shall be adjusted on a pro rata basis to take into account any initial or final period which is a partial period. For purposes of this subsection, a month shall be taken as a month containing 30 days and a year shall be taken as a year containing 360 days.

(B) Budgeting. For Borough budgeting purposes, no later than 120 days preceding each Contract Year, the Company shall provide to the Borough a written statement setting forth for such Contract Year its reasonable estimate of the aggregate Service Fee, each component thereof, and the Adjustment Factor and an estimated cost allocation among the Participating Entities provided for in subsection 5.14(E). The estimate shall not be binding on the Company but shall establish the basis for monthly billing for such Contract Year, subject to annual settlement pursuant to this Article.

(C) Adjustment to Service Fee. If any adjustment to the Service Fee is required pursuant to any express provision of this Service Contract, the party requesting the adjustment shall submit to the other party a written statement setting forth the cause of the adjustment, the anticipated duration of the adjustment, and the amount of the adjustment, as appropriate. Except to the extent that a longer period is otherwise specifically provided for in this Service Contract, any request for adjustment of the Service Fee hereunder shall be accepted or rejected by the party receiving the request within 45 days of receipt. If the receiving party does not notify the requesting party of its rejection and the reasons therefor within such 45 day period, the request shall be deemed rejected. A rejected request may be resubmitted, with or without change, and this paragraph shall apply to such resubmitted request as it applies to an original request. Any disputes with respect to a rejected request not resolved to the mutual satisfaction of the parties, shall be determined as provided in Sections 13.11 or 13.12. Any Service Fee adjustment request which is not rejected or deemed rejected shall take effect as of the next monthly billing period thereafter, or as otherwise agreed to by the parties.

SECTION 12.9. ANNUAL SETTLEMENT. Within 45 days after the end of each Contract Year, the Company shall provide to the Borough an annual settlement statement (the "Annual Settlement Statement") setting forth the actual aggregate Service Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the Borough with respect to such Contract Year. The Annual Settlement Statement shall include the cost allocation information pertaining to the Participating Entities required by subsection 5.14(E). The Borough or the Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Company of the amount in question. When the dispute is resolved or the amount otherwise finally

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

SECTION 12.10. BILLING STATEMENT DISPUTES. If the Borough disputes any amount billed by the Company, the Borough may either (1) pay the disputed amount when otherwise due, and provide the Company with a written objection indicating the amount that is being disputed and providing all reasons then known to the Borough for its objection to or disagreement with such amount, or (2) withhold payment of the disputed amount and provide the Company with written objection as aforesaid within the time when such amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the Borough to the Company of amounts withheld or reimbursement to the Borough by the Company of amounts paid under protest is required, such payment or reimbursement shall be made within 45 days of the date of resolution, with interest at the Overdue Rate.

SECTION 12.11. COMPLIANCE WITH INTERNAL REVENUE SERVICE REV. PROC. 97-13. (A) Payments to Company. Any provision hereof to the contrary notwithstanding, the Borough and the Company agree that the Borough shall be under no obligation to, and shall not, pay compensation for services to the Company for any Contract Year, if such payment, or any portion thereof, would result in less than 80% of the Company's compensation for services for such Contract Year being based on a periodic fixed fee or would result in any portion of the Company's compensation being based on net profit, as such terms are defined in Internal Revenue Service Revenue Procedure 97-13 ("Rev. Proc. 97-13"). The payment by the Borough of any reimbursable costs to the Company pursuant to Section 12.5 shall not constitute "compensation for services" for purposes of this Section. The Borough and the Company further agree that any such payment or portion thereof that is not made by virtue of the preceding sentence shall be paid to the Company, without interest, during the next annual period in which such payment will not result in less than 80% of the Company's compensation being based on a periodic fixed fee or in which such payment will be based on net profit, all as defined by Rev. Proc. 97-13. It is the intent of the Borough and the Company that this Service Contract shall be construed and applied so as to constitute a management contract that does not result in private business use of property financed by the Borough within the meaning and intent of Rev. Proc. 97-13.

(B) Net Credits to Borough. If a net credit is due the Borough under subsection 12.4(C) in any Contract Year, the Borough shall not be entitled to receive such net credit except as against any charge which may be payable to the Company under subsection 12.4(C) in any future Contract Year. It is the intention of the parties, consistent with this Section, that the amount payable to the Company for the Management Services hereunder in any Contract Year shall never be less than the Fixed Component. Notwithstanding the foregoing, any such net credit due the Borough may be made in the Contract Year in which the Borough is entitled to receive it, and not deferred, if the Borough and the Company are provided with an opinion of nationally-recognized bond counsel that the making of such credit in such Contract Year

will not adversely affect the tax-exempt status of any obligations issued by the Borough with respect to the Managed Assets or the Collection System.

SECTION 12.12. PROPERTY, SALES AND SERVICE TAX EXEMPTION. Except as otherwise provided in this Service Contract, it is the expectation of the parties that (1) the Managed Assets and the Collection System shall continue to be municipally-owned property and not subject to property taxation, by any Governmental Body, (2) the equipment, chemicals, Consumables and other supplies and services provided and used in the performance of the Service Contract, including any equipment, construction materials and supplies initially acquired by the Company or any Subcontractor in connection with the Initial Capital Improvements, the Collection System Improvements or any Capital Modifications shall continue to be exempt from sales taxes imposed by any Governmental Body, (3) the Contract Services shall continue to be exempt from any Tax directly imposed or applied to such Contract Services, or any part thereof, by any Governmental Body; and (4) the receipt of System Influent at the Plant, the discharge of Plant Effluent, and the storage, transportation, treatment, disposal or other management of System Residuals generated by the Plant shall continue to be not subject to a Tax (including any fee or other imposition) imposed by a Governmental Body other than any such Taxes as in effect as of the Contract Date. If a Change in Law imposes any such Tax or repeals any such exemption from the imposition of a Tax, and the Company has exercised due diligence and taken all steps necessary to obtain any available exemptions on a timely basis and is nonetheless required to pay any such Tax, the Company shall be entitled to recover the amount paid therefor or receive reimbursement from the Borough. The Borough shall provide to the Company a sales tax exemption certificate or certificate number for use in securing the sales tax exemption.

## ARTICLE XIII

### BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 13.1. REMEDIES FOR BREACH. The parties agree that, except as otherwise provided in Sections 13.2, 13.3, 13.4, 13.5 and 13.6 with respect to termination rights, in the event that either party breaches this Service Contract, the other party may exercise any legal rights it has under this Service Contract, under the Security Instruments and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Service Contract for cause except upon the occurrence of an Event of Default.

SECTION 13.2. EVENTS OF DEFAULT BY THE COMPANY. (A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Company upon which the Borough, by notice to the Company, may terminate this Service Contract without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Company to obtain or maintain in full force and effect any Security Instrument required by Article XV as security for the performance of this Service Contract (unless the Borough has released the Company from its obligation to provide a Security Instrument pursuant to Section 15.4), without excuse for Uncontrollable Circumstances;

(2) Failure to Achieve ICI Acceptance. The failure of the Company to achieve ICI Acceptance of the Initial Capital Improvements prior to the end of the Extension Period;

(3) Failure to Meet Certain Effluent Requirements. The failure of the Company to meet the monthly Effluent Requirements on a 12-month rolling average basis, as to each individual pollutant with respect to which such an Effluent Requirement has been established on a monthly basis unless caused by Uncontrollable Circumstances;

(4) Abandonment. The abandonment or failure to operate all or a substantial portion of Managed Assets for two or more consecutive days in any Contract Year, unless caused by Uncontrollable Circumstances;

(5) Insolvency. The insolvency of the Company or the Guarantor as determined under the Bankruptcy Code;

(6) Voluntary Bankruptcy. The filing by the Company or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company or the Guarantor to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor under the Bankruptcy Code; or the filing by the

Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code;

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

(8) Default of Guarantor. The failure of the Guarantor to perform any obligation under the Guaranty in a timely manner (but not to exceed 90 days); and

(9) Guarantor Credit Standing. The failure of the Company to provide credit enhancement when and as required by subsection 15.1(C).

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

(1) The Borough has given prior written notice to the Company stating that in its opinion a specified default in its duty to pay or perform exists which gives the Borough a right to terminate this Service Contract for cause under this Section unless such default is corrected within a reasonable period of time, and describing the default in reasonable detail; and

(2) The Company has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence; except that if the Company shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time (in any event not more

than 120 days from the initial default notice) as the Company shall continue with due diligence to carry out to completion all such actions).

(C) Other Remedies Upon Company Event of Default. The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. If this Service Contract is terminated by the Borough for an Event of Default by the Company, the Borough shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Service Contract, under the Security Instruments and under Applicable Law. The Company shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

SECTION 13.3. EVENTS OF DEFAULT BY THE BOROUGH. (A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the Borough upon which the Company, by notice to the Borough, may terminate this Service Contract:

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

(2) Failure to Pay or Perform. The failure, refusal or other default by the Borough in its duty: (1) to pay the amount required to be paid to the Company under this Service Contract within 90 days following the due date for such payment; or (2) to perform any other material obligation under this Service Contract (unless such default is excused by an Uncontrollable Circumstance or Company Fault); or

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

(B) Notice and Cure Opportunity. No such default described in subsections (A)(1) or (A)(2) of this Section shall constitute an Event of Default giving the Company the right to terminate this Service Contract for cause under this subsection unless:

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

(2) The Borough has not initiated within a reasonable amount of time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence; except that if the Borough shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such



actions, the default shall not constitute an Event of Default during such period of time (in any event not more than 120 days from the initial default notice) as the Borough shall continue with due diligence to carry out to completion all such actions.

(C) Termination Liquidated Damages During the Term. If this Service Contract is terminated by the Company for cause as a result of an Event of Default by the Borough, the Borough shall pay the Company, as liquidated damages upon any such termination, the same amount which would be payable under subsection 13.5(A) if this Service Contract were terminated during the Term, according to the month of termination, at the election of the Borough for convenience and without cause.

SECTION 13.4. BOROUGH CONVENIENCE TERMINATION DURING THE APPROVAL PERIOD. (A) Borough Convenience Termination Option During the Approval Period. The Borough shall have the right at any time after the Contract Date during the Approval Period, exercisable in its sole discretion, for its convenience and without cause by written notice to the Company, to terminate this Service Contract upon 30 days written notice to the Company. Upon any such termination the Borough, subject to Cost Substantiation, shall reimburse the Company for 100% of the reasonable costs incurred directly by the Company and any expenses paid or incurred to third parties from the Contract Date to the Termination Date hereunder, which are directly related to the performance of its obligations hereunder and which are necessary to be performed prior to the Commencement Date (but not engineering or other costs in connection with the Initial Capital Improvements) ("Reimbursable Expenses"), subject to a maximum amount of \$100,000. The Borough shall also have the right to direct the Company to suspend its work during the Approval Period, and to direct the resumption of work.

(B) Cost Records and Reporting. During the Approval Period, the Company shall prepare and maintain proper, accurate and complete books and records of the cost and description of the work which the Company has performed since the Contract Date which is directly and solely related to the Company's obligations during the Approval Period under this Service Contract, the cost of which would be the responsibility of the Borough if the Borough were to elect to terminate this Service Contract pursuant to this Section. All financial records of the Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards. The Company shall submit all books and records or a reasonably detailed summary thereof acceptable to the Borough, together with a summary statement of monthly and aggregate Reimbursable Expenses incurred, to the Borough at any time after the Contract Date at its request.

(C) Delivery of Approval Period Work Product to the Borough. Concurrently with payment by the Borough to the Company of the amount due upon any termination of this Service Contract under this Section, the Company shall deliver to the Borough all of its work product produced during the period commencing on the Contract Date to the Termination Date hereunder, which work product immediately shall become the property of the Borough.

SECTION 13.5. BOROUGH CONVENIENCE TERMINATION DURING THE MANAGEMENT PERIOD. (A) Termination Right and Fee. The Borough shall have the right at any time during the Management Period, exercisable in its sole discretion, for its convenience and without cause, to terminate this Service Contract upon 60 days' written notice to the Company. If the Borough exercises its right to terminate the Service Contract pursuant to this Section, the Borough shall pay the Company a convenience termination fee equal to the sum of: (1) \$3,000,000 reduced by 1/240 of such amount for each month which has elapsed following the Commencement Date to and including the month in which the Termination Date occurs; provided, however, that in the event of a "dramatic market change" as defined in the Lease Agreement the applicable amount shall be the lesser of \$250,000 or the amount computed hereunder; plus (2) if the Company has provided financing for any Capital Modifications pursuant to subsection 11.7(C), the unamortized value thereof based on the financing methodology approved by the Borough at the time the financing was effectuated. Examples of the convenience termination fee calculation are included in Appendix 22.

(B) Uncontrollable Circumstances. In the event an Uncontrollable Circumstance causes a total constructive loss of the Plant, or in the event an Uncontrollable Circumstance causes an extraordinary increase in Borough costs, and thereupon the Borough elects to exercise its right of convenience termination under this Section, the amount specified in item (1) of subsection (A) of this Section shall be excluded from the termination fee payable by the Borough; provided that the Borough shall pay the Company, subject to Cost Substantiation, for its reasonable costs of terminating any Company employees not hired pursuant to subsection 13.7(B). A "total constructive loss" for this purpose shall be deemed to have occurred: (1) if so determined by the casualty insurance carrier; or (2) if the Plant is substantially inoperable for a period of at least six months following the occurrence of the Uncontrollable Circumstance. "An extraordinary increase" in Borough costs shall be deemed to have occurred for this purpose if either (1) costs proposed to be paid to the Company and amortization of any debt to be incurred by the Borough resulting from the Uncontrollable Circumstance would cause an increase of more than 10% from the prior contract year in the total Service Fee payable under this Service Contract; or (2) the cumulative cost increases described in (1) above exceed 40% in the aggregate the total Service Fee payable under this Service Contract (in each case excluding the amortization of debt incurred by the Company for Capital Modifications resulting from Uncontrollable Circumstances) in each case when compared to such amounts that would have been payable during the comparable periods had no Uncontrollable Circumstances occurred.

(C) Payment of Amounts Owning Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid: (1) all amounts due for the Management Services to be paid as part of the Service Fee and Collection System Fee, but not yet paid as of the date of termination; (2) all amounts for the ICI Design/Build Work to be paid as part of the ICI Design/Build Price, but not yet paid or billed (subject to Cost Substantiation), including

accumulated Retainage as of the date of termination; and (3) the costs of terminating any Subcontracts related to such ICI Design/Build Work and the costs of demobilization related to such ICI Design/Build Work (subject to Cost Substantiation).

(D) Termination Fee Payment Contingent Upon Surrender of Possession. The Borough shall have no obligation to pay the applicable termination fee provided for under this Section except concurrently with the surrender of possession and control by the Company of the Managed Assets and the Collection System to the Borough.

(E) Adequacy of Termination Payment. The Company agrees that the applicable termination fee provided in this Article shall fully and adequately compensate the Company and all Subcontractors for all foregone potential profits, Loss-and-Expense, and charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Company's right to perform this Service Contract.

(F) Consideration for Convenience Termination Payment. The right of the Borough to terminate this Service Contract for its convenience and in its sole discretion in accordance with this Article constitutes an essential part of the overall consideration for this Service Contract, and the Company hereby waives any right it may have under Applicable Law to assert that the Borough owes the Company a duty of good faith dealing in the exercise of such right.

(G) Completion or Continuance by Borough. After the date of any termination under this Section, the Borough may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including, without limitation, entering into contracts with other operators and contractors.

#### SECTION 13.6. SPECIAL BOROUGH TERMINATION RIGHTS.

(A) Termination Right. The Borough shall have the right at any time during the Term hereof, but not the obligation, to terminate this Service Contract upon 30 days' written notice to the Company if the Company fails to increase, pursuant to subsection 13.13(C), its Damage Limitation Amount set forth in Section 13.13(A) by a stated dollar amount. Upon any termination under this Section, neither party shall have any payment obligation to the other party except as provided in subsection (B) of this Section and in Section 13.7.

(B) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Company shall be paid (1) all amounts due for the Contract Services, but not yet paid as of the date of termination; and (2) if the Company has provided financing for any Capital Modifications pursuant to subsection 11.7(C), the unamortized value thereof based on the financing methodology approved by the Borough at the time the financing was effectuated.

(C) Termination Fee Payment Contingent Upon Surrender of Possession. The Borough shall have no obligation to pay the applicable termination payment provided for under this Section except concurrently with the surrender of possession and control by the Company of the System to the Borough.

(D) Completion or Continuance by Borough. After the date of any termination under this Section, the Borough may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including, without limitation, entering into contracts with other operators and contractors.

SECTION 13.7. OBLIGATIONS OF THE COMPANY UPON TERMINATION OR EXPIRATION. (A) Company Obligations. Upon a termination of the Company's right to perform this Service Contract under Sections 13.2, 13.3, 13.4, 13.5 or 13.6 or upon the expiration of this Service Contract under Section 3.1, the Company shall, as applicable:

- (1) stop the Contract Services on the date and to the extent specified by the Borough;
- (2) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;
- (3) promptly remove from the Managed Assets and the Collection System all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including, but not limited to sheds, trailers, workshops and toilets), and repair any damage caused by such removal;
- (4) leave the Managed Assets and the Collection System in a neat and orderly condition;
- (5) subject to subsection (B) of this Section, promptly remove all employees of the Company and any Subcontractors and vacate the Managed Assets and the Collection System;
- (6) with respect to the ICI Design/Build Work and any Capital Modification, promptly deliver to the Borough a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Managed Assets and the Collection System;
- (7) deliver to the Borough the Operation and Maintenance Manual and all computer programs used at the Plant in the performance of Contract Services, including all revisions and updates thereto; provided that the Borough assumes the Company's existing obligations to pay all applicable licensing fees associated with any such computer programs;
- (8) deliver to the Borough a copy of all books and records in its possession relating to the performance of the Contract Services;
- (9) provide the Borough with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;

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

(11) promptly deliver to the Borough copies of all Subcontracts, together with a statement of:

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

(12) assign to the Borough any Subcontract that the Borough elects in writing, at its sole election and without obligation, to have assigned to it. The Borough shall assume, and the Company shall be relieved of its obligations under, any Subcontract so assigned;

(13) terminate all Subcontracts which the Borough has not directed the Company to assign, and make no additional agreements with Subcontractors;

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

(15) promptly transfer to the Borough all warranties given by any manufacturer or Subcontractor with respect to particular components of the Management Services or the ICI Design/Build Work;

(16) notify the Borough promptly in writing of any Legal Proceedings against the Company by any Subcontractor or other third parties relating to the termination of the Management Services or the ICI Design/Build Work (or any Subcontracts);

(17) give written notice of termination, effective as of date of termination of this Service Contract, promptly under each project specific policy of Required Insurance (with a copy of each such notice to the Borough), but permit the Borough to elect to continue such policies in force thereafter at its own expense, if possible;

(18) arrange its dealings with employees such that no accrued benefit liability will bind the Borough in the event the Borough determines to offer employment to the Company's employees at the Managed Assets following the Termination Date; and

(19) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the Borough's costs, and take no action which shall increase any amount payable to the Borough under this Service Contract.

(B) Hiring of Company Personnel. Upon the termination or expiration of this Service Contract under any provision hereof, the Borough or any successor operator of the Managed Assets designated by the Borough shall have the right to offer employment on any terms

it may choose to any Company employee employed full time at the Managed Assets. No Company employment agreement, job offer, letter or similar document may contravene this right. The Borough or its designated successor operator shall extend any such job offer within 15 days of the expiration or termination of this Service Contract. The Company shall assist and cooperate with any such employee transition.

(C) Continuity of Service and Technical Support. Upon the termination of the Company's right to perform this Service Contract under Sections 13.2, 13.3, 13.4, 13.5 or 13.6 or upon the expiration of this Service Contract under Section 3.1, the Company, at the request and direction of the Borough, shall provide for an effective continuity of service and the smooth and orderly transition of management back to the Borough or any replacement operator designated by the Borough. Such service shall be (1) in the event of a termination pursuant to Section 13.2 for a period of up to 365 days, (2) in the event of a termination pursuant to Sections 13.4, 13.5 or 13.6 or expiration pursuant to Section 3.1 for a period of up to 180 days, or (3) in the event of a termination pursuant to 13.3 for a period of up to 90 days, provided that the Borough makes its prepayment obligations set forth in subsection (E) of this Section. In each case, such service shall include providing technological and design advice and support and delivering any plans, drawings, renderings, blueprints, operating manuals, computer programs, spare parts or other information useful or necessary for the Borough or any replacement operator designated by the Borough to carry out and complete the ICI Design/Build Work and to perform the Management Services.

(D) Company Payment of Certain Costs. If termination is pursuant to Section 13.2, the Company shall be obligated to pay the costs and expenses of undertaking its obligations under subsections (A) through (C) of this Section. If the Company fails to comply with any obligation under this Section, the Borough may perform such obligation and the Company shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

(E) Borough Payment of Certain Costs. If termination is pursuant to Sections 13.3, 13.4, 13.5(B) or 13.6, or upon the expiration of this Service Contract under Section 3.1 the Borough shall pay to the Company within 60 days of the date of the Company's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by the Company in satisfying its obligations under subsections (A) through (C) of this Section. If termination is pursuant to Section 13.5(A), the Borough shall pay to the Company within 60 days of the date of the Company's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by the Company in satisfying its obligations under subsection (C) of this Section. However, if termination is due to a Borough Event of Default pursuant to Section 13.3, the Borough shall prepay the Company on a monthly basis its reasonable estimate of the aggregate costs and expenses expected to be incurred by the Company in satisfying its obligations under subsection (C) of this Section. Within 15 days after the end of each month of continued service, the Company shall provide the Borough with a settlement statement supported by Cost Substantiation setting forth the actual aggregate costs and expenses payable with respect to such

month and a reconciliation of such amount with the amounts actually paid by the Borough with respect to such month. The Borough or the Company, as appropriate, shall pay any known and undisputed amounts within 60 days after receipt of the Company's settlement statement. If any amount in dispute is unable to be resolved by the parties, such dispute shall be determined as provided in Sections 13.11 or 13.12.

(F) Exit Transition Plan. The Company shall comply with the Exit Transition Plan set forth in Appendix 19 in transferring management of the Managed Assets and the Collection System to the Borough upon the expiration or termination of this Service Contract.

SECTION 13.8. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION. All representations and warranties of the parties hereto contained in Article II, each of the party's indemnity obligations in this Service Contract with respect to events that occurred prior to the Termination Date, the rights and obligations of the parties hereto pursuant to Sections 1.2(J), 4.4(B), 5.6(D), 5.11(D), 5.14(D), 6.7(C), 6.8(B), 7.9(C), 9.1(I), 9.12, 14.2, 14.3, 14.4, and 16.3 and Article XIII (except for this Section 13.8), and all other provisions of this Service Contract that so provide shall survive the termination of this Service Contract. No termination of this Service Contract shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination, or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term of this Service Contract.

SECTION 13.9. NO WAIVERS. No action of the Borough or the Company pursuant to this Service Contract (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Service Contract. No course of dealing or delay by the Borough or the Company in exercising any right, power or remedy under this Service Contract shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the Borough or the Company under this Service Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 13.10. NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party be liable to the other or obligated in any manner to pay to the other, except with respect to indemnification of Loss-and-Expense imposed as a result of a Legal Proceeding brought by a third party for which the Company is obligated to indemnify the Borough pursuant to the provisions of this Service Contract, any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under this Service Contract, or the material falseness or inaccuracy of any representation made in this Service Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 13.11. FORUM FOR DISPUTE RESOLUTION. (A) Generally. It is the express intention of the parties that all Legal Proceedings related to this Service Contract or to the Managed Assets and the Collection System or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the courts of the State or Federal District Court for the State. The Company and the Borough each irrevocably consents to the jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to the laying of the jurisdiction of any such action or proceeding, and waives its right to a trial by jury.

(B) Costs of Legal Proceedings. Except as otherwise required by the Company's indemnity obligations under Section 14.3 or the Borough's reimbursement obligations under Section 14.4, each party shall bear its own costs and expenses in any Legal Proceeding where it is the named defendant in such lawsuit. Notwithstanding the foregoing, each party retains its rights to bring any Legal Proceeding or to implead the other party as to any matter arising hereunder.

SECTION 13.12. NON-BINDING MEDIATION. (A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Service Contract, whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs associated with Non-Binding Mediation shall be shared equally by the Borough and the Company.

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

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

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

SECTION 13.13. LIMITATION OF LIABILITY. (A) General Limitation. Notwithstanding anything herein to the contrary, the total liability of the Company with respect to money damages paid to, or on behalf of, the Borough by the Company on account of any breach of this Service Contract shall be subject to a cumulative maximum amount of (1) \$10,000,000 prior to ICI Acceptance and (2) \$10,000,000 after ICI Acceptance (each amount as adjusted annually by



the Adjustment Factor) (the "Damage Limitation Amount"). For purposes of this Section, the term "money damages paid to the Borough by the Company" does not include losses or liabilities incurred by the Company as the result of Legal Proceedings brought by third parties directly against the Company, but does include any amounts paid by the Company to the Borough or any third party on behalf of the Borough pursuant to any indemnification provision under this Service Contract.

(B) Exclusions From Limitation. No amounts other than monetary damages paid to, or on behalf of, the Borough on account of any breach of this Service Contract shall be subject to the Damage Limitation Amount, including without limitation the following: (1) any economic or operating losses sustained by the Company in performing the Contract Services, including any payments made by the Guarantor on behalf of the Company; (2) any fines, penalties, losses or liabilities paid or sustained by the Company to Governmental Bodies other than the Borough due to a failure to comply with Applicable Law (other than as a result of Borough Fault); (3) any amounts to the extent covered by, or which should have been covered by, and paid from the proceeds of the Required Insurance; (4) any losses or liabilities sustained by the Company to third parties from any cause other than Borough Fault, including losses or liabilities based on tort, property, and environmental claims brought by third parties; and (5) any claims caused by the gross negligence or willful misconduct of the Company.

(C) Termination Event. If the Company has at any time paid money damages to the Borough or on behalf of the Borough at the Borough's direction, equal to or greater than 90% of the Damage Limitation Amount, the Borough shall so notify the Company, whereupon the Company may, within five business days of receipt of such notice, certify to the Borough in writing that it will increase the applicable Damage Limitation Amount by a stated dollar amount. Upon such certification, the Company's Damage Limitation Amount shall be permanently increased for all purposes under this Service Contract. The Borough shall have the right to terminate this Service Contract pursuant to Section 13.6 for any failure of the Company to so certify.

## ARTICLE XIV

### INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

SECTION 14.1. INSURANCE. (A) Company Insurance. Unless otherwise provided by the Borough pursuant to Appendix 10, the Company shall, at all times during the Term of this Service Contract, obtain and maintain or cause to be obtained and maintained the Required Insurance in accordance with the requirements of Appendix 10 and shall pay all premiums with respect thereto as the same become due and payable.

(B) Additional Contractors Pollution Liability Insurance Coverage. The Borough shall reimburse the Company in an amount equal to the premium (without markup for profit, administration or otherwise) paid by the Company in each Contract Year for the Borough-requested additional contractors pollution liability insurance coverage as set forth in Appendix 10 (estimated to be \$41,000 for the first full Contract Year); provided that the Company shall not be entitled to reimbursement by the Borough for increases in such premiums to the extent such increases are caused by extraordinary claims under policies issued to the Company, the Guarantor or any of their Affiliates other than claims arising from Uncontrollable Circumstances. The amount of any such extraordinary increases shall be for the account of the Company.

(C) Insurers, Deductibles and Borough Rights. All insurance required by this Section shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in Appendix 10. The insurers shall be selected by the Company with the consent of the Borough, which consent shall not be unreasonably withheld, and shall be authorized to write such insurance in the State. The insurance coverage may be written with deductible amounts within the limits allowed in Appendix 10, and the Company shall be responsible for paying all deductible amounts. The Company shall also be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Company hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to the Borough and to the Company as their respective interests may appear; and (2) at least 30 days' prior written notice of the cancellation thereof to the Company and the Borough. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the Borough. The Borough shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

(D) Certificates, Policies and Notice. The delivery by the Company to the Borough of certificates of insurance is required by this Service Contract as a condition to the occurrence of the Commencement Date. Not later than 60 days prior to the beginning of each

Contract Year throughout the Term, the Company shall furnish certificates of insurance to the Borough to confirm the continued effectiveness of the Required Insurance. Whenever a Subcontractor is utilized, the Company shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 10.

(E) Maintenance of Insurance Coverage. If the Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the Borough's election (but without any obligation to do so), the Borough, following notice to the Company, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the Borough the amount thereof shall be immediately reimbursable to the Borough by the Company or the Borough may offset the Service Fee by such amount. The Company shall not perform ICI Design/Build Work during any period when any policy of Required Insurance pertaining to the ICI Design/Build Work is not in effect. The Company shall comply with all applicable Required Insurance and take all steps necessary to assure the Initial Capital Improvements remain continuously insured in accordance with the requirements of this Service Contract during the Term hereof. The failure of the Company to obtain and maintain any Required Insurance shall not relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Company shall defend, indemnify and hold harmless the Borough against any Loss-and-Expense arising out of such failure. The purchase of insurance to satisfy the Company's obligations under this Section shall not be a satisfaction of any Company liability under this Service Contract or in any way limit, modify or satisfy the Company's indemnity obligations hereunder.

SECTION 14.2. UNCONTROLLABLE CIRCUMSTANCES. (A) Relief from Obligations. Except as expressly provided under the terms of this Service Contract, neither party to this Service Contract shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The parties agree that the relief for an Uncontrollable Circumstance described in this Section shall apply to all obligations in this Service Contract, except to the extent specifically excluded by a particular provision hereunder, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Service Contract but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Service Contract, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstances. The Borough shall pay the Service Fee during the continuance of any Uncontrollable Circumstance, adjusted to account for any cost reductions achieved through Company mitigation measures required by

subsection (B) of this Section, as well as for any cost increases to which the Company is entitled under subsection (C) of this Section.

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

(C) Conditions to Performance, ICI Design/Build Price, Service Fee and Schedule Relief. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost of the Company's performing the Contract Services in accordance herewith, the Company shall be entitled to relief from its performance obligations, an increase in the Service Fee, or an extension of schedule which properly reflects the interference with performance, the amount of the increased cost, or the time lost as a result thereof, in each case only to the minimum extent reasonably incurred by the Company as a result of the event, and the Company shall perform all other Contract Services. The proceeds of any Required Insurance available to meet any such increased cost, and the payment by the Company of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the Borough under this Section. Any cost reduction from normal operating costs included within the Service Fee achieved through the mitigating measures undertaken by the Company pursuant to subsection (B) of this Section upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Service Fee would have otherwise been increased to reflect such

mitigation measures, as applicable. In the event that the Company believes it is entitled to any performance, price or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the Borough written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed, within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Company the Borough shall issue a written determination as to the extent, if any, it concurs with the Company claim for performance, price or schedule relief, and the reasons therefor. The Company acknowledges that its failure to give timely notice pertaining to an Uncontrollable Circumstance as required under this Section may adversely affect the Borough, and the additional cost borne by the Borough shall be reduced to account for such adverse effect to the extent the Borough demonstrates that such additional cost was caused or contributed by the Company's failure to give timely notice.

(D) Capital Modifications. Before proposing any adjustment to the Service Fee in its notice of requested relief under this Section, the Company shall determine whether any increased costs of operation and maintenance of the Plant resulting from an Uncontrollable Circumstance can reasonably and prudently be reduced by the undertaking of a Capital Modification. In the event that the Company makes such a determination, the Company shall so advise the Borough in accordance with Sections 11.3 and 11.5. The Borough shall thereupon determine, in its sole discretion, whether such a Capital Modification shall be undertaken and shall so advise the Company within 60 days of receipt of such notice by the Company. In no event shall the Company undertake such a Capital Modification except at the express written direction of the Borough.

(E) Share of Costs of Uncontrollable Circumstances. The Company shall bear the costs which result from the occurrence of an uninsured Uncontrollable Circumstance (except any Change in Law made by the Borough) to the extent of the first 5% of such net costs up to an aggregate of \$25,000 per Contract Year (as adjusted annually by the Adjustment Factor). The Company's share of such costs shall be reflected in a decrease in the amount by which the Service Fee would otherwise have been increased on account of such occurrence. The Company's obligation under subsection 14.1(C) to bear the expense of any deductibles applicable on claims made with respect to any Required Insurance provided by the Company hereunder is an independent obligation, and the amount of any such expense shall not be taken into account in determining costs borne by the Company under this subsection.

(F) Acceptance of Relief Constitutes Release. In the event of an Uncontrollable Circumstance, the Borough may provide the Company with a written offer of a combination of performance, price or schedule relief under this Section. Within five days of receiving such offer, the Company shall provide the Borough with written notice accepting or rejecting such offer. The

Company's acceptance of the Borough's offer of performance, price or schedule relief under this Section shall be construed as a release of the Borough by the Company (and all persons claiming by, through, or under the Company) for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed. If the Company rejects the Borough's offer, any dispute regarding the nature of relief to be granted for such event shall be resolved as provided in Sections 13.11 and 13.12; provided that the parties may agree to certain partial relief in response to such an Uncontrollable Circumstance, while retaining their respective positions with respect to the provision of other appropriate relief. During the pendency of any such dispute, any action by the Company in proceeding with performance of the Management Services or ICI Design/Build Work shall not be deemed "acceptance" of the Borough's offer or a release of the Borough for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event.

SECTION 14.3. INDEMNIFICATION BY THE COMPANY. The Company shall indemnify, defend and hold harmless the Borough, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, a "Borough Indemnitee"), from and against (and pay the full amount of) any and all Loss-and-Expense imposed as a result of any Legal Proceeding brought by a third party arising from (1) any unexcused failure by the Company to perform its obligations under this Service Contract; or (2) the negligence or willful misconduct of the Company or any of its officers, directors, employees, representatives, agents or Subcontractors in connection with this Service Contract. The Company shall also indemnify the Borough as and to the extent provided elsewhere in this Service Contract. The Company's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Company which is intended to respond to such events. The Company shall not, however, be required to reimburse or indemnify any Borough Indemnitee for any Loss-and-Expense to the extent caused by the negligence or willful misconduct of any Borough Indemnitee or to the extent attributable to any Uncontrollable Circumstance. A Borough Indemnitee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Company shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the Borough Indemnitees only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Service Contract.

SECTION 14.4. REIMBURSEMENT FOR ODOR LITIGATION. (A) Pre-ICI Acceptance. So long as the Company has complied and continues to comply with its obligations under Section 6.3(A) prior to ICI Acceptance of the Initial Capital Improvements pertaining to odor control, if (1) any claim is asserted seeking to join the Company in the pending Odor Litigation, or (2) any other Legal Proceeding is initiated by any third party relating to odor conditions at the Managed Assets, the Borough shall reimburse the Company, as a pass-through cost, for all Loss-

and-Expense incurred by the Company as a result of such Odor Litigation or other Legal Proceedings.

(B) Post-ICI Acceptance. Subsequent to ICI Acceptance of the Initial Capital Improvements pertaining to odor control, if any claim is asserted seeking to join the Company in the pending Odor Litigation, the Borough shall reimburse the Company, as a pass-through cost, for all Loss-and-Expense incurred by the Company as a result of such Odor Litigation.

## ARTICLE XV

### SECURITY FOR PERFORMANCE

SECTION 15.1. GUARANTOR. (A) Guaranty Agreement. The Company shall cause the Guaranty Agreement to be provided and maintained by the Guarantor during the Term hereof substantially in the form attached hereto as a Transaction Form.

(B) Material Decline in Guarantor's Credit Standing. For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if: (1) in the event that the Guarantor has long-term senior debt outstanding which has a credit rating by either Rating Service, such rating by either Rating Service is established at, or is reduced, below investment grade level; or (2) in the event that the Guarantor does not have long-term senior debt outstanding or such debt is not rated by either Rating Service, the credit standing of the Guarantor declines to a level which is insufficient to support an investment grade credit rating by either Rating Service on long-term senior debt of the Guarantor, whether or not any such debt is outstanding. Each party shall promptly notify the other upon actual knowledge of any Material Decline in the Guarantor's Credit Standing, which notice may be given orally or in writing.

(C) Credit Enhancement. Upon receipt of notice from the Borough as provided in subsection (B) of this Section or upon actual knowledge of the Company, whichever occurs first, as to the occurrence of a Material Decline in Guarantor's Credit Standing, the Company shall, within 30 days, provide credit enhancement of its obligations hereunder by any of the following: (1) providing and maintaining an Operations Surety Bond in accordance with Section 15.2(B) in an amount equal to the then current one-year annual Service Fee; (2) providing an Operations Collateral Bond in accordance with Section 15.2(C) in an amount equal to the then current one-year annual Service Fee; or (3) increasing the amount of the Letter of Credit required by Section 15.3 by an amount equal to the then-current one-year annual Service Fee. The Company shall maintain such credit enhancement until the Guarantor's credit standing has been restored to investment grade or an additional guarantee is provided by another firm or company acceptable to the Borough whose credit rating would have avoided the occurrence of a Material Decline in the Guarantor's Credit Standing or whose credit rating by either Rating Service is investment grade level.

(D) Guarantor Annual Reports. The Company shall furnish the Borough, within 120 days after the end of the Guarantor's fiscal year, consolidated balance sheets and income statement for the Guarantor attached to the audited year end financial statements reported upon by the Guarantor's independent public accountant. If applicable, the Company shall also furnish the Borough with copies of the quarterly and annual reports and other public filings of the Guarantor filed with the Securities and Exchange Commission.



SECTION 15.2. OPERATIONS SURETY BOND AND OPERATIONS

COLLATERAL BOND. (A) General. Upon and during the pendency of a Material Decline in Guarantor's Credit Rating, if the Company chooses to provide an operations bond as the means of credit enhancement required under Section 15.1(C), such operations bond shall be in the form of an Operations Surety Bond meeting the requirements of subsection (B) of this Section or an Operations Collateral Bond meeting the requirements of subsection (C) of this Section.

(B) Operations Surety Bond. An Operations Surety Bond shall be issued by a surety company: (1) approved by the Borough having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) properly registered and licensed to conduct business in the State. Such Operations Surety Bond shall be issued in the name of the Borough, shall be in the amount of the then-current annual Service Fee, shall be continuously renewed, extended or replaced so long as credit enhancement is required under the provisions of subsection 15.1(C), and shall be issued in the form set forth in the Transaction Forms.

(1) Monitoring of Sureties. If the Company provides an Operations Surety Bond under the terms of this subsection (B), the Company shall be responsible for monitoring the financial condition of any surety company issuing bonds under this Service Contract and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section.

(2) Replacement Surety. In the event the rating of any issuing surety company falls below such minimum level, the Company shall promptly notify the Borough of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all of above requirements, or an alternative form of credit enhancement as specified in Section 15.1(C).

(C) Operations Collateral Bond. An Operations Collateral Bond shall be secured by one or more of the following types of collateral acceptable to the Borough: (1) cash; (2) certified checks, cashier's checks, or treasurer's checks issued, drawn or certified by a State-chartered or national financial institution chartered or authorized to conduct the business of banking in the United States and examined by a Federal agency; (3) automatically renewable and assignable certificates of deposit from a State-chartered or national financial institution chartered or authorized to conduct the business of banking in the United States and examined by a Federal agency; (4) negotiable bonds of the United States Government, the State, or a municipality of the State. Such Operations Collateral Bond shall be issued in the name of the Borough, shall be in the amount of the then current one-year annual Service Fee, shall be continuously renewed, extended or replaced so long as credit enhancement is required under the provisions of Section 15.1(B), and shall be issued in the form set forth in the Transaction Forms. The collateral

pledged or assigned under such bond shall be in the name of the Company, and shall be pledged and assigned to the Borough clear of claims or rights. Such pledge or assignment will vest in the Borough a property interest in the collateral which will remain until release under the terms of the bond, and will not be affected by the bankruptcy, insolvency or other financial incapacity of the Company.

SECTION 15.3. LETTER OF CREDIT. (A) Terms and Purpose. On or before the Commencement Date, the Company shall cause the Guarantor to provide further security for the performance of its obligations hereunder during the Management Period through an irrevocable direct pay letter of credit issued by a United States bank whose long-term debt is rated "A" or better by either Rating Service and which maintains a banking office in the State (the "Letter of Credit"). The Letter of Credit shall be in the stated amount of \$1,000,000 (adjusted each Contract Year based on the Adjustment Factor), shall be for a term of one year, shall be continuously renewed, extended or replaced to the then-applicable full stated amount so that it remains in effect until 180 days after the Termination Date, and shall be issued substantially in the form set forth in the Transaction Forms. The Letter of Credit shall serve as security for the performance of the Company's obligations hereunder, and the stated amount thereof shall in no way limit the amount of damages to which the Borough may be entitled for any Company Event of Default hereunder.

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

(C) Drawings for Material Breach. The Letter of Credit also shall authorize the Borough to draw an amount representing the estimated damages suffered by the Borough in the event of a material breach of this Service Contract by the Company. It shall be a condition to the right of the Borough to draw on the Letter of Credit for a material breach that: (1) the Mayor has given the Guarantor written notice of a material breach of this Service Contract, whether or not such breach constitutes an Event of Default, and attached a copy of his or her good faith assessment of the damages the Borough has suffered as a result of such breach, and (2) the Company has had an opportunity at a meeting scheduled by the Mayor to be held not earlier than 15 days nor later than 30 days following delivery of such notice, to present to the Mayor evidence disputing the Borough's assertion of material breach or assessment of damages. Notice to the Company of a material breach hereof shall be given concurrently with the notice to the Guarantor, except that following any event of voluntary bankruptcy or involuntary bankruptcy by the Company as described in Section 13.2, no such notice shall be required to be given to the

Company, nor shall the giving of such notice be a condition to the Borough's drawing rights under the Letter of Credit pursuant to this subsection.

(D) Effect of Final Determination of Damages. In the event that subsequent to any drawing on the Letter of Credit it is determined by any court of competent jurisdiction in a final non-appealable decision that such drawing to any extent was not permitted hereunder, the Borough shall pay the amount wrongfully drawn to the Company together with interest thereon at the Overdue Rate calculated from the date of the drawing to the date of payment to the Company.

SECTION 15.4. COST OF PROVIDING SECURITY FOR PERFORMANCE.

(A) Inclusion in Service Fee. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Company's obligations hereunder shall be borne by the Company without reimbursement from the Borough.

(B) Release of Security. The Borough shall have the right at any time to release the Company from its obligation to provide the Letter of Credit required under this Article. Upon any such release and for such time as the Borough does not reinstate the Letter of Credit requirement hereunder, the Company shall credit the Borough an amount equal to \$3,250 (as adjusted annually by the Adjustment Factor) for each Contract Year the Letter of Credit has been released. Notwithstanding the Borough's having elected to release the Letter of Credit hereunder, the Borough may direct the Company at any time thereafter to reinstate such Letter of Credit. In such event, the Company shall within 15 days following such notice of reinstatement furnish the Borough with the reinstated Letter of Credit.

## ARTICLE XVI

### MISCELLANEOUS PROVISIONS

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

SECTION 16.2. PROPERTY RIGHTS. (A) Protection from Infringement. The Company shall pay all royalties and license fees payable in connection with the performance of the ICI Design/Build Work and the Management Services. The Company shall protect, indemnify and hold harmless the Borough, and any of the Borough Indemnitees, from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the performance of the ICI Design/Build Work and the Management Services, or at its option, shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe. The Company shall not, however, be required to reimburse or indemnify any person for any Loss-and-Expense to the extent due to the negligence or willful conduct of such person. The provisions of this Section shall survive termination of this Service Contract.

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

SECTION 16.3. INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges or

reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 16.4. COST SUBSTANTIATION. (A) Substantiating Non-Fixed Costs. The Fixed Component of the Service Fee and the Fixed ICI Design/Build Price have been negotiated by the parties and fixed by the terms of this Service Contract and are not subject to Cost Substantiation as provided in subsection (B) of this Section except to the extent otherwise specifically set forth in this Service Contract. Any other cost proposed or incurred by the Company which is directly or indirectly chargeable to the Borough in whole or in part hereunder (including without limitation costs related to emergency actions, cost-plus work Capital Modifications, additional Management Services, and other additional work necessitated or additional costs to be borne on account of Uncontrollable Circumstances, Borough Fault or Borough direction) shall be the fair market price for the good or service provided, or, if there is no market, shall be a commercially reasonable price. The Company shall provide certified Cost Substantiation for all such other costs invoiced to the Borough hereunder except lump sum payments agreed to by the parties in advance of undertaking the work.

(B) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall be signed by a senior management officer of the Company, shall state the amount of such cost and the provisions of this Service Contract under which such cost is properly chargeable to the Borough, shall describe the competitive or other process utilized by the Company to obtain a fair market price, and shall state that such cost is a fair market price for the service or materials to be supplied (or, if there is no market, that such cost is commercially reasonable) and that such services and materials are reasonably required pursuant to this Service Contract. The certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the Borough and shall include reasonably detailed information concerning: (1) all Subcontracts; (2) the amount and character of materials and services furnished, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes; (3) a statement of the equipment used and any rental payable therefor; (4) Company and Subcontractor employee hours, duties, wages, salaries, benefits and assessments; and (5) Company and Subcontractor profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The Company's entitlement to reimbursement of Cost Substantiated costs of the Company shall be subject to the limitations set forth in this Section.

(C) Technical Services. For costs proposed or incurred by the Company that are subject to Cost Substantiation, Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on

projects of similar size and scope to the ICI Design/Build Work or Management Services. The Company shall use commercially reasonable efforts to use available Company personnel for additional work hereunder before using Subcontractors.

(D) Mark-Up. The Company shall not be entitled to any mark-up with respect to any Collection System repair and replacement work performed by the Company or by any Subcontractor the cost of which is under the respective limits set forth in subsections 7.2(C) and (D). The Company will be entitled to a mark-up of 10% for a combination of overhead, risk, profit and contingency on costs of any good or services with respect to any Collection System repair and replacement work that is approved by the Borough and that is in excess of such limits, and any other goods or services the costs of which are subject to Cost Substantiation hereunder. No mark-up will be added to the Company's costs for lodging and meals or travel. Construction and operation Subcontractors similarly will be entitled to such mark ups with respect to its personnel costs but no mark ups for costs for their lodging and meals or travel.

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

SECTION 16.5. SUBCONTRACTORS. (A) Use Restricted. The Company shall operate the Managed Assets with its own employees. Subcontractors may be used to perform other Contract Services, subject to the Borough's right of approval set forth in subsection (B) of this Section. The Company shall as part of its annual operations report provide a summary of all Subcontractors used and located in the Borough of Naugatuck and the approximate value paid to such Subcontractors.

(B) Limited Borough Review and Approval of Permitted Subcontractors. The Borough shall have the right, based on the criteria provided below in this Section, to approve all Subcontractors which the Company is permitted to engage under subsection (A) of this Section for Contract Services relating to hauling of Community Septage, except: (1) Affiliates of the Company; (2) Governmental Bodies; and (3) approved Subcontractors listed in Appendix 18. The Company shall furnish the Borough written notice of its intention to engage such Subcontractors, together with all information reasonably requested by the Borough pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest; (2) any record of felony criminal convictions or pending felony criminal investigations; (3) any final judicial or administrative finding or adjudication of illegal employment discrimination; (4) any unpaid federal, State, Borough or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the Borough or the State. In the event the Borough fails to respond to any such notice of intention within 15 days of receipt thereof, the Borough shall be deemed to have approved the proposed Subcontractor. The approval or withholding thereof by the Borough of any proposed Subcontractor shall not create any liability

of the Borough to the Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State or Borough contracting for any services similar in scope to the Management Services or ICI Design/Build Work.

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

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

(E) ICI Design Contract. In the event the Company elects to hire a third party to design the Initial Capital Improvements, any ICI Design Contract shall be subject to review and comment by the Borough for consistency with the applicable requirements of this Service Contract, and shall not contain any provision which is material and adverse to the Borough. No such review or comment shall amend, alter or affect this Service Contract or the Company's obligations hereunder in any manner, nor shall the Borough incur any liability or expense as a result thereof.

(F) Construction Subcontractor. Not later than 30 days prior to the Commencement Date the Company shall enter into a construction contract with Carlin Contracting Company, Inc. for the Initial Capital Improvements, or, subject to the approval of the Borough not to be unreasonably withheld, another general construction contractor reasonably experienced in constructing industrial and utility projects similar to the Initial Capital Improvements.

(G) Notice to Borough of Amendments, Breaches and Defaults. The Company shall give prior written notice to the Borough of any proposed and final amendments to ICI Design Subcontract, and shall not enter into any such amendment which is material and adverse to the rights and obligations of the Borough hereunder without the Borough's prior written consent. The Company shall notify the Borough promptly of any material breach or event of default occurring under the ICI Design Subcontract and the probable effect on the ICI Design/Build Work or the Management Services. The Company shall keep the Borough apprised of the course of the dispute and shall advise the Borough of its ultimate resolution.

(H) Assignability. All Subcontracts entered into by the Company with respect to the Managed Assets and the Collection System shall be assignable to the Borough, solely at the Borough's election and without cost or penalty, upon the expiration or termination of this Service Contract.

SECTION 16.6. ACTIONS OF THE BOROUGH IN ITS GOVERNMENTAL CAPACITY. (A) Rights as Government Not Limited. Nothing in this Service Contract shall be interpreted as limiting the rights and obligations of the Borough under Applicable Law in its governmental or regulatory capacity, (including police power actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Company to bring any action against the Borough, not based on this Service Contract, arising out of any act or omission of the Borough in its governmental or regulatory capacity.

(B) No Borough Obligation to Issue Governmental Approvals. The Borough retains all issuance and approval rights it has under Applicable Law with respect to any Governmental Approval required with respect to the Managed Assets, the Collection System, the ICI Design/Build Work or the Management Services, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Service Contract. The Borough shall not be deemed to be in breach or default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval; provided, however, the Company shall be afforded schedule and price relief for delays in the Borough's issuance of any Governmental Approval necessary for the ICI Design/Build Work as provided in Section 10.9.

SECTION 16.7. ASSIGNMENT. (A) By the Company. The Company shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Service Contract, its right to execute the same, or its right, title or interest in all or any part of this Service Contract or any monies due hereunder whatsoever prior to their payment to the Company, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the Borough. Any such approval given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of the Borough to any further assignment. Any assignment of this Service Contract which is approved by the Borough shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Service Contract, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term hereof. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under Service Contract unless such approval specifically provides otherwise.

(B) By the Borough. The Borough may not assign its rights or obligations under this Service Contract without the prior written consent of the Company.

SECTION 16.8. COMPLIANCE WITH MATERIAL AGREEMENTS. The Company shall comply with its obligations under agreements of the Company which are material



to the performance of its obligations under this Service Contract. The Borough shall comply with its obligations under agreements of the Borough which are material to the performance of its obligations hereunder.

SECTION 16.9. BINDING EFFECT. This Service Contract shall bind and inure to the benefit of and shall be binding upon the Borough and the Company and any assignee acquiring an interest hereunder consistent with Section 16.7.

SECTION 16.10. AMENDMENT AND WAIVER. This Service Contract may not be amended except by a written amendment signed by the parties. Any of the terms, covenants, and conditions of this Service Contract may be waived at any time by the party entitled to the benefit of such term, covenant, or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 16.11. NO DISCRIMINATION. The Company shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex or, with respect to otherwise qualified individuals, handicap. The Company will take all actions reasonably necessary to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, handicap. Such action shall include, without limitation: (1) recruitment and recruitment advertising; (2) layoff or termination; (3) upgrading, demotion, transfer, rates of pay or other form of compensation; and (4) selection for training, including apprenticeship. The Company shall impose the non-discrimination provisions of this Section by contract on all Subcontractors hired to perform work related to the Managed Assets and the Collection System and shall take all reasonable actions necessary to enforce such provisions. The Company will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SECTION 16.12. NOTICES. (A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Service Contract shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States Mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

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

U.S. Filter Operating Services, Inc.  
500 Cherry Street  
Naugatuck, Connecticut 06770  
Attn: Service Manager

With a copy to:

U.S. Filter Operating Services, Inc.  
4950 Heathrow Forest Parkway  
Suite 200  
Houston, Texas 77032  
Attn: General Counsel

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

Borough of Naugatuck  
Town Hall  
29 Church Street  
Naugatuck, Connecticut 06770  
Attn: Mayor

With copies to:

Kevin H. McSherry  
Borough Attorney  
38 Fairview Avenue  
Naugatuck, Connecticut 06770

Alternative Resources, Inc.  
9 Pond Lane  
Concord, Massachusetts 01742  
Attn: President

With a courtesy copy to:

N. Warren Hess, III  
Attorney at Law  
42 Terrace Avenue  
P.O. Box 47  
Naugatuck, Connecticut 06770

SECTION 16.13 NOTICE OF LITIGATION. In the event the Company or Borough receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Managed Assets and the Collection System, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings.

SECTION 16.14. FURTHER ASSURANCES. The Borough and Company each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Service Contract. The Borough and the Company, in order to carry out this Service Contract, each shall use all commercially

reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Service Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

[SIGNATURE PAGE FOLLOWS]

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

[Borough Seal]

BOROUGH OF NAUGATUCK, CONNECTICUT

ATTEST:

-----

By: \_\_\_\_\_  
Joan B. Taf  
Mayor

THE WATER POLLUTION CONTROL AUTHORITY OF  
THE BOROUGH OF NAUGATUCK

ATTEST:

-----

By: \_\_\_\_\_  
Joan B. Taf  
Mayor

Approved as to form:

-----  
Kevin H. McSherry  
Borough Attorney

[Company Seal]

U.S. FILTER OPERATING SERVICES, INC.

ATTEST:

-----

By: \_\_\_\_\_  
Donald R. Rodgers, Jr.  
Senior Vice President

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## REFERENCE DOCUMENTS

- A. National Pollutant Discharge Elimination System (NPDES) Permit No. CT0100641, effective as of August 7, 2001.
- B. National Pollutant Discharge Elimination System (NPDES) Sewage Sludge Incinerator Permit No. CTL000002, effective as of November 14, 1994.
- C. Title V Permit No. 109-0059-TV issued on November 27, 2000.
- D. Sewer Use Regulations, adopted by the Borough of Naugatuck.
- E. Wastewater Facilities Report (Draft Report), dated September 1991, prepared by Stearns & Wheler for the Borough of Naugatuck.
- F. Wastewater Collection System Operation and Maintenance Manual, dated July 1997, prepared by Stearns & Wheler for the Borough of Naugatuck.
- G. Discharge and Access Agreement, dated April 12, 2001, between the Borough of Naugatuck and Crompton Manufacturing Company, Inc.
- H. Agreement, dated May 7, 1970, as amended, between the Borough of Naugatuck and the Town of Middlebury.
- I. Agreement, dated May 20, 1987, as amended, between the Borough of Naugatuck and the Town of Oxford.

- J. Agreement, dated August 8, 1973, as amended, among the Borough of Naugatuck, the Town of Beacon Falls, the Water Pollution Control Board and the Sewer Authority of the Town of Beacon Falls.
- K. Agreement, dated September 5, 1980, between the Borough of Naugatuck and BHE, Inc.
- L. Agreement, dated January 28, 1985, among the Borough of Naugatuck, the Water Pollution Control Board of the Borough of Naugatuck and the City of Waterbury.
- M. Shared Services Agreement, dated October 25, 2001, between the U.S. Filter Operating Services, Inc. and Naugatuck Environmental Technologies LLC.