

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

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

THIS AGREEMENT, made this 30th day of December, 1998 by and between the **CITY OF CAMDEN**, a Municipal Corporation of the State of New Jersey (the "City"), and **CAMDEN WATER L.L.C.**, a Delaware limited liability company whose offices are located in Somerville, New Jersey (the "Operator").

W I T N E S S E T H :

WHEREAS, the City currently owns and operates a water supply, treatment, transmission, storage and distribution system, a wastewater and stormwater collection system and a billing and collections department, within the City limits of the City of Camden, New Jersey; and

WHEREAS, the geographical boundaries and description of such water and wastewater system are shown on Schedule 1 attached hereto; and

WHEREAS, the Operator is engaged in the business of operating, maintaining and managing water and wastewater utilities; and

WHEREAS, it is the mutual desire of the parties to enter into an agreement to provide for the operation, management, maintenance and repair of the water and wastewater systems; and

WHEREAS, the City Council of the City has determined that the public health, safety, and welfare of the residents of the City can best be protected by entering into an Agreement to provide for the operation, management, maintenance, and repair of the water and wastewater systems;

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

ARTICLE I. DEFINITIONS.

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

"Agreement" - means this "Management Services Agreement for the Operation, Management, Maintenance and Repair of the City of Camden's Water and Wastewater Collection Systems", and all Schedules attached hereto and made a part hereof, executed by and between the City and the Operator

"Annual Concession Fee" - means the annual payment made by the Operator to the City in accordance with and in the amount specified in Schedule 5

"Annual Service Fee" - means the sum of the Fixed Management Fee, Pass Through Charge, and any variable fee components that will be paid by the City to the Operator in accordance with Schedule 5.

"Approved Subcontractor" - means such entity to be approved by the City, who will subcontract with the Operator to provide all or a portion of the Services related to the operation, management, maintenance and repair of the Water and Wastewater Collection Systems hereunder

"Billing & Collection Service" - means the billing and collection services to be rendered by the Operator with respect to the Systems in accordance with Section 8 7 and Schedule 3.

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

"Capital Improvements" - means any acquisition, construction, or replacement of property that is capitalizable for Federal income tax purposes and that either extends the depreciable life of other property or has a useful life of more than one year.

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

"City-Controlled Account" - means that account to which all funds collected from the users shall be deposited by the Operator from which the Trustee (or City if no Trustee is appointed) will disburse the funds to the Operator and the City in accordance with the terms and provisions of this Agreement.

"City Fault" - means any breach of this Management Services Agreement by the negligence or willful misconduct of the City

"Commencement Date" - means the date that the Operator shall begin the commencement of the Services related to the operation, management, maintenance and repair of the Water and Wastewater Collection Systems.

"Concession Fees" - means the Initial Concession Fee and/or the Annual Concession Fees paid by the Operator to the City in accordance with the terms and provisions of this Agreement

"Concession Fee Amortization Amount" - means the amount reflected on Schedule 24 which reflects the amortization of the Initial Concession Fee, the Procurement Costs, and the Employee Transition Payment.

"Conditions for Notification" - means those wastewater collection conditions set forth in Table S2-10 of Schedule 2 of this Agreement, with which the Operator must comply at all times.

"Contract Date" - means the date of execution of this Agreement

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

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

"Debt Component" - means that portion of the Initial Concession Fee, the Procurement Costs and the Employee Transition Payment which is expected to be financed by the Operator. Such portion is expected to be 80% of \$21,800,000 or \$17,440,000. The Debt Component will be zero if the Initial Concession Fee is eliminated.

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

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

"Employee Transition Payment" - means the amount paid to the City by the Operator on or prior to Commencement Date to be utilized by, and at the discretion of the City (in consultation with the Operator in order to assist Operator with the implementation of an employee transition plan) in accordance with Section 8.3 and Schedule 5.

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

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

"Equity Component" - means that portion of the Initial Concession Fee, the Procurement Costs and the Employee Transition Payment which is not being financed by the Operator and is being paid from the Operator's equity. Such portion is assumed to be 20% of \$21,800,000, or \$4,360,000. The Equity Component will decrease to \$1,800,000 if the Initial Concession Fee is eliminated.

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

"Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is, or at any time before or after the Contract Date becomes, listed, regulated or addressed pursuant to (i) to Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; (iii) the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); (iv) the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; (v) the Clean Water Act, 33 U.S.C. Section 1251 et seq.; (vi) applicable New Jersey Environmental Laws and/or (vii) any other federal, state, regional or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to or imposing liability, responsibility or standards of conduct concerning any hazardous, toxic, or dangerous substance, product, waste or other material, as now or any time hereafter in effect; (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the foregoing or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum-

based products contained within regularly operated motor vehicles or other equipment; or (d) asbestos; (2) but not chlorine, lubricants or any substances inherent in operating, managing, maintaining or repairing the System.

"Initial Concession Fee" - means the payment made to the City by the Operator on or prior to the Commencement Date in the amount of \$20,000,000 in accordance with Schedule 5

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

"Minimum Financial Criteria" - means the financial requirements applicable to the Operator as set forth in Schedule 16.

"Minimum Technical Criteria" - means the technical requirements applicable to the Operator as set forth in Schedule 17.

"O&M" - means operation and maintenance.

"Operator" - means Camden Water, LLC, or its permitted successors or assigns, the firm or entity selected by the City to provide the Services for the Systems in accordance the terms and conditions of this Agreement

"Pass-through Charge" - means the increase in the Annual Service Fee paid to the Operator to reimburse the Operator, on a dollar-for-dollar basis, for additional costs of the Operator (excluding profit) incurred during the previous Contract Year (except in the case of the final Contract Year) resulting from the occurrence of (a) Unforeseen Events; (b) Repair costs that constitute Capital Item Costs in excess of the aggregate annual amount of Operator's repair responsibility as provided herein; (c) increases subsequent to Commencement Date in the rates charged by PSE&G (or such other entity used by the City) for electricity; or (d) other items as identified in the Agreement that entitle Operator to an adjustment to the Annual Service Fee.

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

"Permits" - means permits, approvals and/or licenses issued by the United States Environmental Protection Agency (USEPA), the Department or any other federal, state or local regulatory agency or private party that is necessary for the proper operation of the Water System and/or the Wastewater Collection System

"Preexisting Environmental Condition" - means the condition of the real property (including, without limitation, the soil, subsurface soils, subsurface gases, surface and groundwaters) and any and all structures and improvements located at, on, in, under, above, or in the vicinity of any portion of the System on or before the Commencement Date, including, without limitation, the presence at, on, in, under, above or in the vicinity of the System of any Hazardous Substances.

"Procurement Costs" - means the City's costs related to the procurement of the Operator's Services for the Systems in the amount of and as identified in Schedule 5.

"Project Guarantor(s)" - means U.S. Water LLC, United Utilities Overseas Holdings (Limited) and Bechtel Enterprises, Inc the firm(s)/entity(s) who will be guaranteeing all of the financial and performance obligations of the Operator.

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

"Proposal" - means the Proposal submitted by the Operator in response to the RFP.

"Repairs" - means the costs of any repair, renewal or replacement of property, including the acquisition or installation of substitute property, for the purposes of assuring that such property continues to be useful for the purposes for which such property or the original property was designed, without enhancement in the capacity or performance characteristics of such property.

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

"RFP" - means the "Request for Proposals for a Management Services Agreement for the Operation, Management, Maintenance and Repair of the City of Camden's Water and Wastewater Systems", dated February 24, 1998, that was issued by the City in connection with procurement of the Operator to implement the operation, management, maintenance and repair Services of the Systems.

"Services" - means all of the duties, obligations, and services as defined herein to be provided by the Operator that are related to operation, management, maintenance and repair services to be provided for the City's Water System, Wastewater Collection System, and Billing and Collection Service

"State" - means the State of New Jersey

"Systems" - means collectively all of the individual components and elements which compromise the Water System, Wastewater Collection System, and Billing and Collection Service owned by the City of Camden.

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

"Total User Charge Rate" - means that rate charged to the users of the Systems

"Trustee" - means an agent that may be selected by the City to perform the fiscal responsibilities as set forth in Article VIII and Schedule 3 of this Agreement

"Unforeseen Events" - means (a) any acts, events or conditions or any combination thereof (other than a labor strike by the Operator, its employees, affiliates, subcontractors, and/or suppliers) that are (i) reasonably unforeseeable as of the Contract Date, (ii) outside of the reasonable control of the party relying thereon not performing an obligation or complying with any condition required of such party under the Agreement; and (iii) has had or may be reasonably expected to have a direct, material adverse effect on the Systems or the operation thereof, including, without limitation the following:

A. Force Majeure events that are outside the reasonable control of the party relying thereon, such as acts of God, acts of terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, floods that constitute a 100-year flood, and explosions, civil disturbances, acts of the public enemy, and war;

B. Change in Law, defined as (1) the enactment of any law or regulations after the Contract Date (excluding (a) laws adopted at the time of execution of this Agreement but which have provisions that take effect after the Commencement Date and (b) pending changes in law reasonably anticipated to be enacted as of the Contract Date and (c) changes in tax law other than a tax law promulgated by the City); or (2) a material modification of or imposition of any material condition

on the issuance, modification or renewal of any Permit which, in the case of either (1) or (2) above, establishes requirements affecting the financing or operation or capital costs of the Systems that are materially more burdensome than the most stringent requirements in effect as of the Contract Date;

C. Judicial/Administrative Determinations, defined as the final order, judgment, action and/or determination of any federal, state or local court of competent jurisdiction, administrative agency or governmental body (other than the City if issued pursuant to the provisions of this Agreement expressly authorizing the same);

D. Permit Terminations, defined as the suspension, termination, interruption, denial or failure of renewal or issuance of any Permit (to the extent not caused in any way by the negligence or willful misconduct of the Operator) that is necessary to operate the Systems.

E. The failure of any appropriate federal, state, municipal, county or other public agency or private utility having operating jurisdiction in the area in which the facility is located, to provide and maintain utilities, services, water and sewer lines and power transmission lines to the System, except if such failure is caused by the negligence or willful misconduct of the Operator

F. The condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the System, or any material portion or part thereof by the action of any federal, state or local government or governmental agency.

G. Labor strikes, provided however, that those strikes directed at the Operator, its parents or other related entities or any subcontractor(s), employee(s), affiliate(s) and/or supplier(s), shall not be an event beyond Operator's control.

H. With respect to the Operator, City Fault

I Any Environmental Condition or Preexisting Environmental Condition or Hazardous Substances to the extent not caused by the negligence or willful misconduct of Operator, parent and/or affiliated entities or by any of the Operator's subcontractors, employees and/or agents.

J Receipt by the Water System or the Wastewater Collection System of any water or wastewater containing any Hazardous Substance.

K The "Year 2000" computer problem only to the extent that such specifically affects the operating components of the Systems.

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

"Water System" - means the City's water supply, treatment, transmission, storage and distribution system as described in Schedule 1.

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

"Wastewater Collection System" - means the City's wastewater and stormwater system as described in Schedule 1

Section 1.2. Interpretation. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the words "include", "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation". The words "agree", "agreements", "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed", except or unless the context may otherwise specify

ARTICLE II. MANAGEMENT SERVICES.

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

Section 2.2. Irrevocable Performance Letter of Credit/Annually Renewable Performance Bond/Labor and Materials Bond. (a) On or prior to the Commencement Date, and 30 days prior to each anniversary of Commencement Date, the Operator shall submit to the City (i) an irrevocable performance letter of credit specifically encumbered to the City; (ii) an annually renewable performance bond; or (iii) a combination thereof; each of which shall be in the amounts and substantially in form and substance as set forth in Schedules 18 and 19. The Operator shall also provide a labor and materials payment bond, which shall be obtained from a surety that is authorized to do business in the State and that is listed in the United States Treasury Department Circular 570. If applicable, the irrevocable performance letter of credit and/or the annually renewable performance bond shall be issued by a bank that is rated in one of the two highest rating categories by Standard & Poor's Corporation and/or Moody's Investors Service or a surety provider, as applicable

(b) The amount of the irrevocable performance letter of credit, as applicable, and the annually renewable performance bond, as applicable, shall be provided in an amount equal to 100% of the annual cost to provide the Services (which amount shall be calculated by the City, initially, on or prior to the Contract Date and, annually, thereafter) The irrevocable letter of credit and/or the annually renewable performance bond shall be substantially in the form set forth in Schedules 18 and 19 attached hereto.

(c) The failure of the Operator to provide the annually renewable performance bond, the irrevocable performance letter of credit, and/or the labor and materials payment bond (or such other substitute as authorized by the City in writing) in the amounts and at the times provided herein shall entitle the City to terminate this Agreement upon three (3) days prior written notice to the Operator and to seek any damages and/or remedies available at law or in equity

Section 2.3 Operations Committee.

The City and the Operator shall establish a formal Operations Committee, which shall meet every three (3) months to discuss issues related to the operation, management, maintenance and Repair of the Systems; to receive and review reports; and to confer generally as a means of enhancing communication between the City and the Operator. In addition to such quarterly meetings, representatives of the Operator shall be available to meet with the Mayor and members of the City Council of the City or their authorized representatives as reasonably requested by the City. In addition, the Operations Committee shall utilize its best efforts to resolve any disputes that may arise between the parties during the term of this Agreement. If disputes are not resolved through negotiations of the parties, either party may pursue its remedies in a court of competent jurisdiction or other applicable venue

ARTICLE III. TERM.

Section 3.1. Term. The Term of this Agreement shall commence on the Commencement Date and, unless earlier terminated in accordance with the terms hereof, shall expire on the twentieth anniversary date of the Commencement Date, and subject to such extension as is contemplated in Section 3.2., Extension.

Section 3.2. Extension. This Agreement may be extended by the parties hereto upon terms mutually acceptable consistent with applicable law. The City shall notify the Operator, in writing, of its desire to extend the Agreement prior to the expiration of the original Term or of any extension period. Such notice shall identify the period of the proposed extension and any proposed modifications to the terms and conditions of this Agreement that would be effective during such extension period. The Operator shall respond, in writing, to the City's request for an extension within thirty (30) days of the City's notice requesting an extension, which response shall specify the Operator's acceptance or rejection of the City's proposed modifications, if any. Notwithstanding the foregoing, the City shall not be obligated to extend or modify this Agreement beyond its original Term.

ARTICLE IV. CONDITIONS PRECEDENT.

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

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

- (a) The Board, the Division and the Department shall have approved this Agreement
- (b) The Operator shall have paid the Initial Concession Fee to the City
- (c) The Operator shall have paid the City's Procurement Costs to the City.
- (d) The Operator shall have paid the Employee Transition Payment to the City
- (e) The Operator and the Project Guarantor shall have been validly organized and created and shall be validly existing under the laws of the jurisdiction in which each was incorporated and is authorized to transact business in the State of New Jersey, as evidenced by delivery of (1) certified copies of the Certificate of Incorporation and the Certificate of Good Standing and certification of the State that it is authorized to do business in the State; (2) an opinion of counsel to the Operator and the Project Guarantor to such effect; and (3) such other documentation as the City may reasonably require to evidence satisfaction of the requirements set forth in this subparagraph.

- (e) The Operator shall have delivered the Project Guarantor Agreement(s) to the City, and such Project Guarantor Agreement(s) shall be duly executed and delivered by the duly authorized and proper corporate officers of the Project Guarantor(s)

(f) The Operator shall have delivered to the City (1) a certificate of an authorized officer of the Operator, dated the Commencement Date, to the effect that each of the representations of the Operator that are set forth in this Agreement are true and correct as if made on such date, and (2) an opinion of counsel to the Operator and the Project Guarantor(s), in a form which is satisfactory to the City, to the effect set forth in Section 5.2 hereof

(g) The Operator, its employees and/or its subcontractors, as applicable, shall have obtained all applicable Permits, licenses and authorizations that are necessary for the operation, management, maintenance and repair of the Systems.

(h) The Operator shall have submitted to the City all certificates of insurance and, at the City's option, copies of all applicable endorsements to insurance policies, as are required by the terms of this Agreement for operation, management, maintenance and repair of the Systems

(i) The Operator and the Project Guarantor shall have delivered an Opinion of Counsel to the effect that no (reasonably foreseeable) material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, state or local governmental authority or agency, or in any federal, state or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the Operator or the Project Guarantor or to any of the agreements that are referred to in this Section as a result of the Operator's negotiation, execution, delivery or performance of any such agreement or its participation or intended participation in any transaction contemplated thereby.

(j) No receiver, liquidator, custodian or trustee of the Operator or the Project Guarantor or of a major part of either entity's property shall have been appointed subsequent to the Contract Date, and no petition to reorganize the Operator or the Project Guarantor pursuant to the United States

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

(k) No indictment has been returned against any officer of the Operator or the Project Guarantor with respect to any business transaction, whether or not related to the transactions contemplated by the terms and conditions of this Agreement.

(l) The Minimum Financial Criteria set forth in Schedule 16 have been, and continue to be, satisfied as of the Contract Date. The entity for which the Minimum Financial Criteria will be measured will be the Respondent, United Utilities Overseas Holdings, and financial information required to be provided by the Project Guarantors, if any, shall only be provided by United Utilities Overseas Holdings.

(m) No change shall have occurred subsequent to the Contract Date and on or prior to the Commencement Date or in any applicable federal, State or local law, or any applicable federal, State or local statute, regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by either party of this Agreement or the compliance by the City with the terms and conditions hereof or the consummation by the City of the transactions contemplated hereby, a violation of such law, statute or regulation

Section 4.3. Conditions Precedent to Operator Obligations. The Operator shall be under no obligation to perform any obligations under the terms of this Agreement (other than obligations arising or relating to actions required to be taken by or on behalf of the Operator pursuant to Article IV prior to issuance of the Notice to Proceed) unless the following conditions have been satisfied (or waived by the Operator (in writing)):

(a) The Board, the Division and the Department shall have reviewed and/or approved this Agreement, as applicable.

(b) The City shall have delivered to the Operator (1) a certificate of an authorized officer of the City, dated the Commencement Date, to the effect that each of the representations of the City that are set forth in Section 5.1 hereof are true and correct as if made on such date.

(c) No material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, State or local governmental authority or agency, or in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the City or to any of the agreements that are referred to in this Section as a result of the City's negotiation, execution, delivery or performance of any such agreement or its participation or intended participation in any transaction contemplated thereby.

(d) No change shall have occurred subsequent to the Contract Date in any applicable federal, State or local law, or any applicable federal, State or local statute or regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by either party to this Agreement (or the execution or delivery by the Project Guarantor of the Project Guarantor Agreement) the compliance by the Operator or the Project Guarantor with the terms and conditions hereof or the consummation by the Operator or the Project Guarantor of the transactions contemplated hereby, a violation of such law, statute or regulation.

(e) Except as previously disclosed, no change shall have occurred subsequent to the Contract Date and prior to Commencement Date, in the financial condition of the City which would materially and adversely affect for a substantial period of time the ability of the City to meet its financial obligations under the Agreement.

Section 4.4. Satisfaction of Conditions Precedent. (a) The parties hereto shall exercise good faith and due diligence in satisfying the conditions precedent required by this Article IV and shall promptly proceed to perform or cause to be performed those conditions precedent, or portions thereof, that are within each party's control.

(b) If the Commencement Date has not occurred on or prior to one hundred twenty days (120) after the Contract Date, the period in which the conditions precedent can be satisfied or waived may be extended by joint agreement of the City and Operator, for a period of time to be agreed upon by the City and Operator, on the same terms and conditions set forth in this Agreement, except to the extent expressly provided below.

(c) In the event that the Commencement Date shall not have occurred on or before the one hundred twentieth (120th) day after the Contract Date or prior to the last day of any extension period elected pursuant to Section 4.4(b), then either party, by notice in writing to the other party, may terminate this Agreement. If the reason for such termination is the fault of neither party to the Agreement, then all amounts paid by the Operator to the City prior to such termination shall be returned to the Operator (without interest) and each party shall bear its respective expenses attributable to the Agreement. Because the amount of damages are unascertainable if termination is the result of the fault of the Operator for failure to meet conditions precedent within its reasonable control, and through the exercise of reasonable due diligence, then the City shall be entitled to a \$4,000,000 liquidated damages payment. Failure of the Operator to secure third-party lender project financing (based on revenues of this Agreement) needed to fund payments required of the Operator on or before the Commencement Date as a result of materially adverse and different market conditions than that which existed as of July 27, 1998 shall not give rise to a claim of liquidated

damages if the Operator has proceeded in good faith to secure such financing but is unsuccessful in securing it

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

Section 4.5. Timing of Certain Obligations. (a) Pursuant to the Water Act and the Wastewater Act, this Agreement must be submitted to the Division, Department and the Board for review and approval. The City shall be responsible for obtaining such review and approval, and the Operator shall cooperate with the City in providing any assistance and information that is required in order to obtain such review and approval. In the event that the Division, Department and/or the Board conditionally approve this Agreement or any portion thereof and premise future approval on the acceptance of certain proposed terms and conditions by the parties, to the extent that such terms and conditions are immaterial terms and conditions in that such terms and conditions do not (i) materially and adversely affect the rates to be charged by the City or the amounts of the Initial Concession Fee and/or the Annual Concession Fee to be paid to the City; (ii) impose restrictions on the City's use of the Initial Concession Fee and/or the Annual Concession Fee; or (iii) materially and adversely impact the cost to operate and maintain the Systems (or any portion thereof), or the obligations of the City or the Operator to operate and maintain the System (or any portion thereof) the parties shall accept such terms and conditions and shall modify this Agreement to include such terms and conditions. If the proposed terms and conditions imposed by the Division, Department

or the Board are material terms and conditions in that such terms and conditions (i) materially and adversely affect the rates to be charged by the City or the amount of the Initial Concession Fee and/or the Annual Concession Fee to be paid to the City; (ii) impose restrictions on the City's use of the Initial Concession Fee and/or the Annual Concession Fee; or (iii) materially and adversely impact the cost to operate and maintain the Systems (or any portion thereof), the parties shall cooperate in good faith to negotiate acceptable terms and conditions to this Agreement that will satisfy the concerns of the Division, Department or the Board, as the case may be (which good faith negotiations may include elimination of all or a portion of the Initial Concession Fee and related recalculation of the Annual Service Fee)

(b) On the Commencement Date, or at such time as agreed to between the parties, the Operator shall pay to the City the full amount of the Initial Concession Fee in accordance with, and subject to Section 8.1(a) hereof, and Schedule 5 of this Agreement

(c) On the Commencement Date, the Operator shall reimburse the City the full amount of the City's Procurement Costs in accordance with, and subject to Section 8.1(b) hereof, and Schedule 5 of this Agreement

(d) On the Commencement Date, the Operator shall have paid to the City the Employee Transition Payment in accordance with, and subject to Section 8.3 hereof, and Schedule 5 of this Agreement.

(e) On the first day of each anniversary of the Commencement Date during the term of this Agreement, commencing on the first day of the second Contract Year, the Operator shall pay to the City the full amount of the Annual Concession Fee in accordance with, and subject to Section 8.2 hereof, and Schedule 5 of this Agreement

ARTICLE V. REPRESENTATIONS AND WARRANTIES.

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

(a) The City is a municipal corporation duly created and existing pursuant to the laws of the State. The City has the requisite power and authority to enter into this Agreement

(b) The City has the legal capacity and authority to assess the rates for the supply of water and wastewater services to customers of the Systems that are required to be established by the City pursuant to Section 8 5 (Establishment and Collection of Rates, Fees and Charges) hereof. The City has and will maintain for the Term of this Agreement the legal capacity and authority to impose liens for the nonpayment of such rates and fees. Other than the existing indebtedness and any indebtedness for Capital Improvements if such are undertaken and paid for by the City, there are no liens, notes, bonds, mortgages, encumbrances, or other entitlement to the revenues of the Systems (other than connection fees, if any, which shall be retained by the City) which have priority over the Operator's entitlement to the revenues of the Systems pursuant to this Agreement

(c) Other than that disclosed to the Operator in writing referring to this Section, the City is not aware of any claims, suits, actions, or judgments which, if successful, would create an encumbrance upon the revenues of the Systems which would have a priority over the Operator's entitlement to be paid from the revenues of the Systems pursuant to this Agreement or which otherwise would have a material adverse effect on the ability of either the Operator or the City to perform its obligations hereunder.

(d) The City has enacted, or will have enacted by the Commencement Date, all municipal laws, ordinances, or regulations necessary for the performance of this Agreement. The City shall establish rates and fees for Services in accordance with Section 8 5 hereof

(e) The term of this Agreement does not exceed 80% of the reasonably expected useful life of the Systems.

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

(a) The Operator is an entity duly organized and validly existing and in good standing in the State of Delaware and is qualified and authorized to do business in the State of New Jersey.

(b) The Operator has full power and authority to enter into this Agreement and to perform its duties and obligations hereunder. This Agreement has been duly authorized, executed and delivered by the Operator and the authorization, execution, delivery and performance of this Agreement by the Operator will not violate any law, judgment, order, ruling or regulation applicable to the Operator and does not constitute a breach of or default under any agreement or instrument by which the Operator is bound.

(c) The Operator has or holds, or will have or hold as of the Commencement Date, and will continue to have or hold throughout the term of this Agreement, all approvals, licenses, Permits, and certifications necessary to operate, manage, maintain and repair the Systems in accordance with the terms and provisions of this Agreement, and competent and experienced personnel on its staff who have direct experience in operating, managing, maintaining and repairing water systems and wastewater collection systems similar in nature and character to the Systems

(d) No litigation is pending or threatened (or reasonably foreseeable) against the Operator which would impair its ability to perform its duties and obligations under this Agreement

(e) At all times during the term of this Agreement, after the Commencement Date, the Operator shall keep the Systems and all components thereof free from any and all liens and encumbrances arising out of or in connection with its operation, management, maintenance and

repair of the Systems or any acts, omissions or debts of the Operator, its parent, any of its affiliates or subsidiaries, or any of its subcontractors

(f) At all times during the term of this Agreement, the Operator and/or Project Guarantor shall meet and maintain the Minimum Financial Criteria, as set forth in Schedule 16, and will maintain on and after the Commencement Date, the irrevocable performance letter of credit and/or the annually renewable performance bond.

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

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

(b) The total cost of all Services outlined in this Agreement and in the Schedules shall be included in the Fixed Management Fee, to be paid to the Operator in accordance with Schedule 5. Although the Schedules address the major activities required to be performed by the Operator, they are not, however, intended to include all specific activities that are necessary for meeting the performance requirements set forth in this Agreement, the Schedules, and the O&M Plan and in no way do they limit the generality of the Services under this Agreement.

Section 6.2. Maintenance Management Program. (a) The Operator shall develop, implement and maintain a comprehensive computer-based maintenance management program for all components of the Water System and Wastewater Collection System, in accordance with Schedule 2 of this Agreement

(b) Maintenance shall be performed by the Operator in accordance with the terms and provisions of this Agreement, the O&M Plan, routine maintenance schedule, manufacturers' recommendations, federal, State and local requirements, and industry standards. The Operator shall maintain documentation of all maintenance activities.

Section 6.3. Analytical Services. The Operator shall perform testing, sampling and any other analytical procedures to demonstrate compliance with this Agreement, applicable regulatory requirements, and Permit provisions, in accordance with Schedule 2 of this Agreement.

Section 6.4. Administrative Consent Orders. The Operator shall be responsible for operation, management, maintenance and repair of the Systems in compliance with all Permits and Administrative Consent Orders (ACOs), in accordance with Schedule 2 of this Agreement

Section 6.5. Equipment and Chemicals. (a) The Operator shall keep all equipment in good operating condition and maintain and operate all equipment and chemicals and perform all tests and testing, in accordance with Schedule 2 of this Agreement

(b) All equipment, and chemicals provided by the City on and after the Commencement Date, including any equipment and chemicals on order, shall be deemed to be owned by the City and shall remain a part of the Systems upon termination or expiration of this Agreement

Section 6.6. Vehicle Maintenance. The Operator shall operate, maintain and store the vehicles included in Schedule 10 of this Agreement, and/or any additional equipment provided by the Operator, in accordance with Schedule 2 of this Agreement

Section 6.7. Buildings and Grounds Services. The Operator shall maintain the current condition of the Systems and maintain the facilities and facilities' structures in accordance with Schedule 2 of this Agreement

Section 6.8. Utilities. As of the Commencement Date, the Operator shall be responsible for supplying and paying for all utilities in accordance with Schedule 2 of this Agreement.

Section 6.9. Planning. The Operator shall be responsible for supporting the City's short and long-term planning for the Systems, and for development and implementation of all planning

documents as required by federal, State and local regulations and requirements, in accordance with Schedule 2 of this Agreement.

Section 6.10. Economic Development. The Operator shall provide all reasonable services requested by the City or potential developers or others regarding potential development or rehabilitation within the City.

Section 6.11. Permits. The Operator shall maintain continuous compliance with all federal, State and local Permits held by the City related to the Systems, and obtain any Permits (federal, State or local) required to operate, maintain, or enhance the Systems over the term of this Agreement

Section 6.12. Solid Waste Management. The Operator shall perform collection and delivery of all solid waste from within the Systems to City-approved disposal facilities, in accordance with Schedule 2 of this Agreement.

Section 6.13. Water System. (a) Adjustments to the Fixed Management Fee due to changes in water demand shall be made in accordance with Schedule 2 of this Agreement and shall constitute a Pass-through Charge or Pass-through Credit, as the case may be

(b) The Operator shall operate, maintain and manage the Water System in accordance with Schedule 2 of this Agreement, and in compliance with all federal, State and local laws, regulations and requirements and in conformance with applicable Permits

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

(d) The Operator shall maintain and monitor the wells located adjacent to the Harrison Ave Landfill in accordance with NJPDES Permit No. 0056111, and Schedule 2 of this Agreement

(e) The Operator shall provide treated water in quantities meeting the production and quality requirements specified in Schedule 2 of this Agreement.

(f) The Operator shall routinely monitor, calibrate, repair and/or replace all existing flow meters; periodically remove accumulated iron and manganese deposits from exposed equipment surfaces and unit processes; operate the solids handling and residuals disposal system in accordance with NJPDES-DGW Permit No. NJ0101991; and shall furnish all labor, materials, equipment and incidentals required to repair or replace, and then to continuously maintain, the embankments of the Morris-Delair Water Treatment Plant residuals lagoon and to allow for operation of the residuals lagoon without overflows, all in accordance with Schedule 2 of this Agreement.

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

Section 6.14. Distribution and Storage. (a) The Operator shall repair or replace all water mains which become frozen or broken, in accordance with Schedule 2 of this Agreement.

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

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

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

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

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

(g) The Operator shall read, test, calibrate and repair meters in accordance with Schedule 2 of this Agreement.

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

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

(j) The Operator shall maintain the existing radio based communications system in accordance with Schedule 2 of this Agreement.

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

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

Section 6.15. Wastewater Collection System. (a) The majority of all wastewater and a portion of the stormwater generated within the City is conveyed via interceptor sewer facilities to the Delaware No 1 Wastewater Treatment Plant owned and operated by the Camden County Municipal Utilities Authority (CCMUA) where same is treated in accordance with an existing contract. Dedicated stormwater sewers discharge directly to the Delaware River. The Operator shall comply with all provisions, amendments and revisions of said contract (including any fees and/or payments up to an annual aggregate amount of \$30,000) The Operator shall also operate the Wastewater Collection System in conformance with all requirements of said contract, including

prohibited discharges and assistance with industrial pretreatment programs, in accordance with Schedule 2 of this Agreement.

(b) The Operator shall operate, maintain and manage the Wastewater Collection System in accordance with this Agreement and Schedule 2 of this Agreement

(c) The Operator shall maintain an accurate inventory of the Wastewater Collection System, in accordance with Schedule 2 of this Agreement

(d) The Operator shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles and equipment necessary to make repairs, in accordance with Schedule 2 of this Agreement

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

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

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

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

(i) The Operator shall clean and maintain all regulators, weirs, flood gates and outfalls (CSO Equipment), in accordance with Schedule 2 of this Agreement

(j) The Operator shall furnish all labor, materials, equipment and incidentals required to remove and properly dispose of the residuals/debris collected at the pump stations, overflow

structures or through cleaning of the Wastewater Collection System in accordance with the requirements of all applicable federal, State and local regulations, and in accordance with Schedule 2 of this Agreement

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

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

Section 6.16. Wastewater Collection System Monitoring and Notification Requirements. The Operator shall perform system monitoring in conformance with all federal, State and local regulations and in conformance with applicable Permits, and comply at all times with the City's Conditions for Notification, in accordance with Section 2.2.5.2 of Schedule 2 of this Agreement.

Section 6.17. Operation and Maintenance Costs. The Operator shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, storage areas, equipment, office equipment (i.e., copiers, computers, etc.), fuel, chemicals, supplies, materials, spare parts, expendables, consumables, testing and laboratory analysis, and any other items required for the Operator to perform the Services, in accordance with the terms and provisions of this Agreement and the Schedules attached hereto

Section 6.18. Operations Review. The City shall have the right to and intends to exercise its right to actively participate in the review of Services performed by the Operator and any subcontractor throughout the term of this Agreement.

Section 6.18.1 Monthly Progress Report. The Operator shall prepare and submit Monthly Progress Reports regarding the Services for submission to the City in accordance with Section 2.4.1 of Schedule 2 of this Agreement

Section 6.18.2. Access to Systems and Records. (a) The City and/or its authorized agents and representatives from the governing regulatory agency (e.g., DEP) reserve the right to visit or inspect the Systems at any time, in accordance with Schedule 2 of this Agreement.

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

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

(d) The Operator shall maintain a computerized recordkeeping system for all operation and maintenance functions performed, in accordance with Schedule 2 of this Agreement. The Operator shall provide the City, upon request, with copies of all operating data, accounting, financial and other information kept by the Operator in accordance with Schedule 2 of this Agreement.

Section 6.18.3. Meetings. The City and the Operator shall meet on a monthly basis to discuss performance of services, maintenance issues, equipment conditions, environmental and Permit compliance, invoicing issues, public relations and other relevant issues, in accordance with Schedule 2 of this Agreement

Section 6.18.4. Audit of Systems and Review at Expiration of Agreement. A complete Systems audit to determine the condition of the Systems shall be conducted within 60 days of the Commencement Date and periodically thereafter, but in no case less than every five years, throughout the term of this Agreement, in accordance with Schedule 2 of this Agreement.

Section 6.19. Operations and Maintenance Plan. (a) The Operator shall prepare and submit to the City for approval three separate comprehensive O&M Plans for the Water System, Wastewater Collection System and the Billing and Collection Service, in accordance with Schedule 2 of this Agreement.

(b) The O&M Plan shall dedicate a separate section to detail the Operator's major maintenance, repair and replacement program, in accordance with Schedule 2 of this Agreement. The Operator shall make and complete all major maintenance, Repairs and replacements to the Systems which are necessary to achieve such standard of repair and replacement by performing all such listed activities within the timeframe indicated in the O&M Plan

Section 6.20. Continuous Operation. During the Term of this Agreement, the Operator shall continue to operate and maintain all of the City's Water System and Wastewater Collection System facilities on a continuous basis, twenty-four hours a day, seven days a week, in accordance with the terms and provisions of this Agreement, and in compliance with all applicable Permits and other federal, State, and local requirements.

Section 6.21. Continuity of Service. The Operator shall cooperate in good faith with the City, its agents, contractors, and subcontractors and shall provide for the orderly transition of Services from the City and/or its contractors to the Operator without interruption or disruption of Services and without adverse impacts to customers of the System or to the City, in accordance with Schedule 2 of this Agreement.

Section 6.22. Customer Services and Emergency Response. The Operator shall respond promptly (within 2 hours) -- to the extent practicable -- and in a reasonable manner to all customer problems and emergencies pertaining to the Systems in accordance with Schedule 2 of this Agreement

Section 6.23. Staffing. (a) The Operator shall provide a staff of qualified and experienced employees who have direct experience in operating, maintaining and managing potable water and wastewater systems similar in nature and character to the City's Systems, for operations, maintenance and management procedures, and shall provide such additional third-party support as may be needed to perform its duties and obligations hereunder, in accordance with Schedule 6 and Schedule 2 of this Agreement.

(b) The Operator at all times shall maintain the necessary number of employees, staff and third-party contractors to operate, maintain and manage the Systems in accordance with the terms and provisions of this Agreement, to adequately maintain the Systems in good repair and to adequately operate the Systems to provide good service to the customers, and protect the health, welfare and safety of the citizens of the City

Section 6.24. Licenses. The Operator shall acquire and hold, or cause its personnel to acquire and hold, all required State, federal and local approvals, licenses, Permits, and certifications necessary to operate, maintain and manage the Systems in accordance with the terms and provisions of this Agreement.

Section 6.25. Compliance with Laws and Regulations and Permits. (a) The Operator shall comply with the Safe Drinking Water Act ("SDWA"), the Water Pollution Control Act (the "Clean Water Act"), the Resource Conservation Recovery Act, as amended ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act as amended ("CERCLA"), Occupational Safety and Health Act ("OSHA") and any other applicable local, State and federal laws, codes, ordinances and regulations as they pertain to the Systems and their operation. The Operator shall pay all regulatory fines and penalties, without limitation, assessed against the City and/or the Operator for non-compliance resulting from the actions, or lack of action,

required pursuant to the terms and conditions of this Agreement, of the Operator, throughout the duration of the Term of this Agreement.

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

(c) The Operator shall comply with all applicable State, federal and local laws, regulations and ordinances including, without limitation, all environmental laws and regulations as they apply to the Systems and will comply with all Permits issued for or with respect to the Systems. The Operator will maintain existing Permits (currently held by the City) and will pay all costs associated therewith, including annual fees. In the event that during the Term of this Agreement, any existing Permit must be renewed, or additional Permits are required, the Operator shall be responsible for obtaining, including filling out required application forms, supplying required data, and payment of required fees for such Permits or Permit renewals. All additional and renewed Permits shall be in the name of the City, as the permittee. The costs associated with obtaining additional permits not currently required to operate the System shall be treated as a Pass-through Charge to the City.

(d) On and after the Commencement Date, the Operator shall operate the Systems in compliance with all laws and Permits as is required by the terms and provisions of this Agreement. The Operator shall indemnify and hold the City harmless from any fines or penalties assessed by the regulatory agencies during the Term of this Agreement for any and all violations of applicable laws, regulations or Permits committed by the negligent or willful acts or failure to act of the Operator, its agents, servants or employees that are not a result of a preexisting condition

(e) All Repairs to the Systems shall be made by the Operator at its cost and expense, subject to Schedule 22, in accordance with existing City ordinances for work in the City including, but not limited to, securing all necessary road opening permits.

Section 6.26. Safety and Security. (a) The Operator shall provide for and maintain security and safety for all Systems' assets contemplated under this Agreement. Fences shall be maintained in neat order and structural integrity. Gates, access points and doors shall be kept locked, structures shall be protected from unauthorized entry and security alarms shall be maintained in good working order.

(b) The Operator shall conduct all operations, maintenance and management of the Systems in compliance with applicable health and safety regulations including, but not limited to, OSHA, general industry regulations including requirements for confined space entry, respiratory protection and hazard communication; EPA regulations on emergency planning and notification under CERCLA, 40 CFR Part 355; and EPA regulations on hazardous chemical reporting and community right-to-know, 40 CFR Part 370

Section 6.27. User Complaints. (a) The Operator shall contain and control noise and odors emitted from the Systems and shall take an active role in the community to improve the local residents' understanding of the operation of the Systems.

(b) If the Operator or the City receive any complaints in relation to the level of odors or noise generated by the Systems, or any other matters related to the Systems, the party receiving the complaint shall notify the other party immediately. The Operator shall immediately investigate the complaint and, within three days of the time of the notification of the complaint, prepare and provide to the City for approval, its proposed action plan to remedy the complaint. Upon the City's approval

of the Operator's action plan, as may be modified by the City, the Operator shall implement the action plan within a time period to be determined by the City.

ARTICLE VII. CAPITAL IMPROVEMENTS

Section 7.1. City Responsibilities. Unless otherwise agreed to by the City and the Operator, the City shall be responsible for the design, construction, implementation and financing of Capital Improvements to the Systems. Notwithstanding anything in the Agreement to the contrary, the City will design, construct and implement, at a minimum, two million dollars per year (\$40,000,000 in the aggregate over the term of the Agreement) worth of capital upgrades to the Systems. Further, the City, in conjunction with Operator shall develop a long-term Capital Improvements Program within the first 12 months of Commencement Date in accordance with Schedule 13.

Section 7.2. Operator Responsibilities. (a) The Operator shall be required to assist the City in the implementation of all Capital Improvements to the Systems. The Operator shall also be responsible for all Repairs to the Systems as specifically identified in Schedule 2, subject to Schedule 22. The Operator, in consultation with the City, shall within the first 12 months of commencement, develop a long-term Capital Improvement Program. In addition, the Operator will be required to implement the Capital Improvements as described in Schedule 15 within 36 months of Commencement Date (with the exception of the Morris Delair pump/motor modification project which is expected to be completed within the first 48 months of the Commencement Date)

(b) In the event the Operator deems an element of work to be a Capital Improvement, the Operator shall (i) immediately notify the City or its consulting engineer of the need to perform such work; and (ii) provide the City with an explanation of the reasons why such work is necessary. The City shall determine if and how the Capital Improvement will be implemented, subject to Section 7.3.

Section 7.3. Emergencies or Improvements Required by Law. In the event that a Capital Improvement is required (i) in order to continue to provide water and wastewater service to the residents of the City, (ii) to be made to the Systems in order to comply with applicable federal, State or local law, or (iii) if the failure to make a Capital Improvement will jeopardize the health and safety of the residents of the City or the public welfare, or materially and adversely affect the ability of the Operator to perform its obligations under this Agreement, the City shall be obligated to implement such Capital Improvement as soon as practicable under the circumstances.

ARTICLE VIII. FINANCIAL TERMS.

Section 8.1. Initial Payments.

(a) Initial Concession Fee. On the Commencement Date, or at such other time as agreed to between the parties, the Operator will pay to the City Twenty Million Dollars (\$20,000,000.00), equal to the sum of the Initial Concession Fee

(b) Procurement Costs. On the Commencement Date, the Operator shall reimburse the City Six Hundred Thousand Dollars (\$600,000.00) in payment of Procurement Costs, in accordance with Schedule 5 of this Agreement. The Procurement Costs payment shall be used by the City to pay the City's total costs for professional services and consultant services related to the procurement of this Agreement.

Section 8.2. Annual Concession Fees. On the first day of the first anniversary of the Commencement Date of this Agreement and on the first day of each Contract Year thereafter during the Term of this Agreement, the Operator shall pay the City the Annual Concession Fee in accordance with Schedule 5 of this Agreement.

Section 8.3. Employee Transition Payment. The Employee Transition Payment, in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000) shall be paid by Operator to the City on Commencement Date

Section 8.4. Annual Service Fee. On the first day of the month next succeeding the Commencement Date, and on the first day of each month thereafter during the Term of this Agreement, the Trustee, on behalf of the City, in accordance with Schedule 3, shall pay the Operator one twelfth of the Annual Service Fee calculated in accordance with Schedule 5 of this Agreement

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

(a) The City retains responsibility for setting water collection rates and charges, in accordance with Schedule 5 of this Agreement. The Operator shall implement revised rates and charges on a date specified by the City within thirty (30) days after notification from the City.

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

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

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

Section 8.6. Expenses.

The Operator shall pay all expenses required for the normal operation, management, maintenance and repair of the Systems, including those Repairs and replacements set forth in Schedule 2 hereof, subject to the provisions of Schedule 22.

Section 8.7. Billing and Collections

(a) On and after the Commencement Date, the Operator, as agent for the City, shall be responsible for the preparation, maintenance, and delivery of all bills and invoices to the users of the Systems and collection of Revenues and all costs and expenses associated therewith, in accordance with Schedule 3 of this Agreement. The Operator shall operate the Billing and Collection Service in accordance with the specific performance standards of Schedule 3 of this Agreement.

(b) The Operator shall deposit all funds collected from the users into a City-Controlled Account from which the Trustee (or City if no Trustee is appointed) will disburse funds to the Operator and the City pursuant to the terms of this Agreement.

(c) The City agrees to cooperate with the Operator in collection matters and to use its statutory powers pertaining to any and all remedies granted to municipalities for purposes of collection.

8.7.1. Customer Service.

The Operator shall handle customer service and complaints relating to billing and collection matters in accordance with Schedule 3 of this Agreement. The Operator shall promptly respond (within 24 hours or the next business day following a holiday or weekend) to all customer billing and collection questions, problems, and inquiries and shall maintain a toll free telephone number for customers of the Systems to handle such questions, problems and inquiries, as well as any emergencies, as may arise.

8.7.2. Collection Office.

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

use to be located in the City Hall; however, the Operator shall not be obligated to accept cash payments at the "drop box" located in City Hall.

8.7.3. Municipal Water Service Charges.

The Operator shall, at no cost or expense to the City (other than payment of the Annual Service Fee), provide during the term of this Agreement water and wastewater service as provided in this Agreement to the Municipal Building and all other City offices and public and quasi-public facilities, including, but not limited to, the City police and fire departments.

8.8 Deposit of Revenues. The Operator shall deposit on a daily basis all revenues collected from the ratepayers of the Water and Wastewater Systems into a City-Controlled Account maintained for the benefit of the City. The Trustee of the City-Controlled Account (or City if no Trustee is appointed) shall disburse monies in accordance with Schedule 3

ARTICLE IX. DEFAULT AND TERMINATION.

Section 9.1 General Provisions.

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

Section 9.2 Termination for Cause by the City.

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

(1) the persistent and repeated failure by the Operator to provide the Services in accordance with the terms and provisions of this Agreement, and/or applicable laws, rules and regulations;

(2) the failure of the Operator to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;

(3) if any representation and/or warranty which is not capable of cure is made by the Operator that shall prove to be false and/or misleading in any material respect and the legality of this Agreement or the ability of the Operator to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;

(4) the commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the Operator, its parent corporation or Guarantor(s) and which materially and adversely affects the Operator's ability to perform its duties or

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

(5) the failure by the Operator to make any payment required to be made by the Operator pursuant to the terms of this Agreement.

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

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

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

(d) If the City terminates this Agreement in accordance with the provisions of this Section 9.2, the City shall be obligated to pay to the Operator, the sum determined in accordance with the following formula¹:

$$(A + B) - (C + D)$$

Where: A = The unamortized balance of the Initial Concession Fee, the Procurement Cost payment and the Employee Transition Payment (not to exceed 80% of the sum of the unamortized balance of the Initial Concession Fee, Procurement Cost payment, and the Employee Transition Payment) (“Debt Component”) paid to the City in accordance with this Agreement (such unamortized balance to be calculated per the attached amortization schedule (Schedule 25)). The City will have no obligation to pay as part of this termination formula to the Operator the actual cost of financing or any interest paid by Operator prior to the date of termination or any prepayment penalty.

¹In the event the Initial Concession Fee is paid, it is understood that such termination will be effective on the next quarterly payment date of the Operator’s financing, and the sum to be paid hereunder will be computed as of such date. It is also understood the City will continue to pay the Annual Service Fee and any other amounts due hereunder and the Operator will continue to perform through such date.

It is the intent of this Agreement and the parties hereby agree that the City will not be required to pay any portion of the Equity Component.

Where: B = Any outstanding Pass-through Charge required to be charged to the City

Where: C = The amount, if any, necessary to enable the City to restore the System so that it is operational by the City without the Operator, and/or the amount necessary to enable the City to replace the Operator.

Where: D = Any outstanding Pass-through Credit required to be credited to the City

The sum to be paid by the City to the Operator in accordance with the preceding formula shall be paid within six (6) months after the date of the negotiated settlement between the City and the Operator, or a final determination by a court of competent jurisdiction, as the case may be.

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

under this Agreement for comparable services, and (iii) any fines and penalties imposed on the City as a result of the Operator's failure to perform its obligations under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Operator shall not be responsible to the City for any consequential or punitive damages arising from breach of this Agreement.

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

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

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

(1) The Operator or the debtor-in-possession agrees to perform all obligations under the Agreement, including curing all defaults and making ongoing

payments, or, in the event it chooses not to do so, will move as soon as practicable to reject the executory contract under applicable bankruptcy law.

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

Section 9.3 Termination for Cause by the Operator.

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

(1) the failure of the City to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;

(2) if any representation and/or warranty which is not capable of cure is made by the City that shall prove to be false and/or misleading in any material respect and the legality of this Agreement or the ability of the City to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;

(3) the commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the City which materially and adversely affects the City's ability to perform its duties or under this Agreement; the consent by the City to the appointment of and/or taking possession by a receiver, liquidator, assignee, trustee and/or custodian of the City, and/or any substantial part of its assets which materially and adversely affects the City's ability to perform its duties or obligations under this Agreement; the making by the City of any assignment for the benefit of creditors which materially and adversely affects the City's ability to perform its duties or

obligations under this Agreement; and/or the failure by the City to generally pay its debts as they come due

(b) Upon the happening of any event described in clause (1) or (2) of paragraph (a) of Section 9.3, the Operator shall provide written notice to the City setting forth in detail the alleged failure and/or deficiency of the City. The City shall have thirty (30) days after receipt of such written notice from the Operator to cure and/or correct such failure and/or deficiency or to deliver to the Operator a written notice alleging that no such event described in clause (1) or (2) of subsection (a) of this Section 9.3 has occurred and setting forth in detail its reasoning as to why no such event has occurred. In the event that the City does not cure and/or correct such failure and/or deficiency within said thirty (30) day period or deliver to the Operator the written notice described in the preceding sentence within said thirty (30) day period, the Operator shall provide the City with a second written notice affording the City an additional thirty (30) days to cure and/or correct such failure and/or deficiency. If the City fails to cure and/or correct the failure and/or deficiency within such second thirty (30) day period, the Operator shall be entitled to seek specific performance before a court of competent jurisdiction.

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

(d) If the Operator terminates this Agreement in accordance with the provisions of this Section 9.3, the City shall be obligated to pay to the Operator, the sum determined in accordance with the following formula²:

$$(A + B) - (C)$$

Where: A = The unamortized balance of the Initial Concession Fee, the Procurement Cost payment and the Employee Transition Payment (not to exceed 80% of the sum of the unamortized balance of the Initial Concession Fee, Procurement Cost payment and the Employee Transition Payment) (“Debt Component”) and the Equity Component of the Initial Concession Fee (with such Equity Component amortized on a straight line basis over the term of the Agreement) paid to the City in accordance with this Agreement (such unamortized balance to be calculated per the attached amortization schedule (Schedule 25)). The City will have no obligation to pay as part of this termination formula to the Operator the actual cost of financing or any interest paid by Operator prior to the date of termination.

Where: B = Any outstanding Pass-through Charge permitted pursuant to the Agreement

Where: C = Any outstanding Pass-through Credit required to be credited to the City pursuant to the Agreement.

²In the event the Initial Concession Fee is paid, it is understood that such termination will be effective on the next quarterly payment date of the Operator’s financing, and the sum to be paid hereunder will be computed as of such date. It is also understood the City will continue to pay the Annual Service Fee and any other amounts due hereunder and the Operator will continue to perform through such date.

The sum to be paid by the City to the Operator in accordance with the preceding formula shall be paid within six (6) months after the date of the negotiated settlement between the Operator and the City, or a final determination by a court of competent jurisdiction, as the case may be

(e) Notwithstanding anything in this Agreement to the contrary, the Operator shall be entitled to pursue a cause of action against the City for any and all actual damages suffered by the City as a result of any default by the Operator, plus any and all reasonable attorneys' fees, litigation costs, collection costs or other expenses incurred by the City, provided however, notwithstanding anything in this Agreement to the contrary, the City shall not be responsible to the Operator for any consequential or punitive damages arising from breach of this Agreement

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

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

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

(1) The City or the debtor-in-possession agrees to perform all obligations under the Agreement, including curing all defaults and making ongoing payments, or, in the event it chooses not to do so, will move as soon as practicable to reject the executory contract under applicable bankruptcy law.

(2) Since the City is a public body corporate and politic of the State of New Jersey and therefore is in a special legal position and has certain unique legal attributes, no other entity can provide "adequate assurance of future performance" as that term is defined under the Bankruptcy Code and therefore the Agreement cannot be assigned.

Section 9.4 Termination for Unenforceability of Agreement.

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

Section 9.5. Optional Termination by the City. The City may, at its sole option and discretion, terminate this Agreement if the increase in the Consumer Price Index (CPI) (as defined in Schedule 5) for the prior Contract Year period exceeds 9%. In the event the City elects to terminate this Agreement, the City shall be obligated to make a payment to the Operator, as determined pursuant to Section 9.3(d)

ARTICLE X. MISCELLANEOUS.

Section 10.1. Insurance.

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

(b) The insurance policies provided by the Operator at its sole expense and more particularly described hereafter shall specifically designate the City as an additional insured (except for Workers' Compensation) with respect to the operation and management of the System.

(c) The Operator shall be solely responsible for all injuries to persons or for damages to property of third parties occurring on account of and during performance of the Services hereunder, regardless of who is performing the Services, attributable to the negligence of the Operator, its employees, subcontractors, or others acting on behalf of the Operator, and shall defend, indemnify and save harmless the City, its elected and appointed officials, officers, members, employees, consultants, attorneys and agents from liability as provided in this Agreement.

(d) The Operator shall note the insurance requirements set forth below and shall ascertain the cost to it of all the required insurance policies.

(e) Certificates, in triplicate, from the insurance carrier, stating the limits of liability and the expiration date for each policy and type of coverage shall be filed with the City before the Commencement Date, and, annually, thereafter. The certificates shall contain the following express endorsement:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, sixty (60) days prior written notice will be given the certificate holder."

(f) Such certificates shall specifically refer to this Agreement and this Section 10.1, and the following paragraphs in accordance with which the insurance is being furnished, and state that such insurance is as required by such paragraphs of this Agreement.

(g) Certificates of the required insurance as listed above shall be submitted to the City as evidence covering Comprehensive General Liability, Comprehensive Automobile Liability and where applicable, necessary Workmen's Compensation and Employer's Liability Insurance. Such coverage shall be with insurance companies acceptable to the City which possess an A.M. Best Company rating of at least A+.

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

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

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

- (i) Workers' Compensation and Employer's Liability Insurance in accordance with the requirements of the General Laws of the State and all other applicable laws and regulations.

The Operator shall take out and maintain during the life of this Agreement the applicable statutory Workers Compensation Insurance with an insurance company authorized to write such insurance in the applicable state covering all of its employees, and in the case of any work sublet, the Operator shall require the Subcontractor similarly to provide statutory Workers' Compensation Insurance for the latter's employees. The Operator shall take out and maintain during the life of this Agreement, Employer's Liability Insurance with a limit of \$1,000,000 with an insurance company authorized to write such insurance in all states where the Operator will have employees located in the performance of this Agreement and the Operator shall require each of its Subcontractors similarly to maintain Employer's Liability Insurance on its employees. The Employer's Liability Insurance limit should be split as: bodily injury by accident - \$1,000,000 each accident; bodily injury by disease - \$1,000,000 each Employee; and bodily injury by disease - \$1,000,000 policy limit

- (ii) Public Liability Insurance

The Operator shall maintain during the life of this Agreement such Public Liability Insurance (subject to the exclusions currently in the City's policy)

as shall protect it against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, with respect to property damage to third parties and with respect to claims brought by the City with respect to property damage to City property caused by the Operator's negligence or neglect which may arise from operations under this Agreement whether such operations be by itself or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Public Liability Insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$5,000,000 each occurrence/annual aggregate.

The Public Liability Insurance required by the preceding subparagraph shall include the following extensions of coverage:

- (a) The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto
- (b) XCU Coverage - If the contract requires any work procedures involving blasting, excavating, tunneling or other underground work, the liability coverage shall include Standard Blasting or Explosion Coverage, Standard Collapse Coverage and Standard Underground Coverage, commonly referred to as XCU property damage liability coverage with limits of at least \$1,000,000 CSL.
- (c) The property damage coverage shall include a Broad Form Property Damage Endorsement

- (d) Contractual Liability coverage shall be included.
- (e) Protective Liability coverage shall be included to protect the Operator against claims arising out of operations performed by its Subcontractors
- (f) Products Liability and/or Completed Operations coverage shall be included.

(iii) Automobile Liability and Property Damage Insurance

The Operator shall take out and maintain during the life of this Agreement such Automobile Liability Insurance as shall protect it against claims for damages resulting from 1) bodily injury, including wrongful death, and 2) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for it in any capacity in connection with the carrying out of this Agreement (including theft and collision) If the Operator is unable to obtain such coverage with respect to vehicles owned by the City, the City shall take out such coverage and the Operator shall reimburse the City with respect to the cost of such coverage The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$5,000,000 each occurrence/annual aggregate

This limit can also be provided by an umbrella policy provided that policy has coverages no more restrictive than the primary general liability and automobile policies.

(iv) City Coverage

The Operator shall assist the City with the provision of underwriting information for purposes of obtaining their property insurance. The City will rely on its first party insurance coverage to pay for any loss or damage and the Operator shall reimburse the City for the deductible amount (\$10,000 per occurrence) in the event such loss or damage is the result of Operator's negligence.

The City shall obtain an insurers' waiver of subrogation in favor of the Operator.

(v) Excess Umbrella Liability in an Amount Not Less Than \$10,000,000

(vi) Subcontractor

The Operator shall require each of its Subcontractors to take out and maintain during the life of its subcontract the same insurance coverage required of the Operator under Paragraphs 1, 2, and 3 above, including the extensions of coverage required under Paragraph 2, subparagraph b above reflecting the City as a third party insured. Each Subcontractor shall furnish to the Operator four (4) copies of each certificate of insurance and such certificates shall contain the same information required hereinabove. The Operator shall furnish three (3) copies of the certificates to the City.

(k) If at any time the Operator fails to maintain any of the foregoing policies, or if a company issuing any such policy shall become unsatisfactory to the City, the Operator shall, upon notice to that effect from the City, promptly obtain a new policy, submit the same to the City for its approval and submit a certificate thereof as hereinabove provided. Upon failure of the Operator to furnish,

deliver and maintain such insurance as above provided, this Agreement, provided that such insurance is commercially available, (if unavailable, Operator must provide the City with a reasonable substitute subject to City approval) at the election of the City, may be forthwith declared suspended, discontinued or terminated. Failure of the Operator to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the Operator of any liability under this Agreement.

Section 10.2. Indemnification.

(a) The Operator shall indemnify and hold harmless the City, its elected and appointed officers, and its duly authorized agents, servants, consultants and employees from any liability including, but not limited to, pollution damages, and also including liability to third parties, for personal injury, including death, property damage or any other losses which are caused by or arise from the actions, or lack of actions, required pursuant to the terms and conditions of this Agreement, of the Operator or any subcontractor and/or agent selected by the Operator.

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

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

(d) The last sentence in Section 9.2(e) and 9.3(e) shall apply to this Section.

Section 10.3. New Equipment. Any new equipment, other than replacement of vehicles or other vehicles purchased by the Operator, installed as part of the Systems by the Operator during the term of this Agreement shall be owned by the City and shall remain a part of the Systems upon termination or expiration of this Agreement. Prior to making any significant change to the Systems or expenditures of its own for new equipment (other than vehicles), the Operator will consult with the City.

Section 10.4. Enforcement.

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

Section 10.5. Assignment. This Agreement shall not be assigned by any party without the prior written consent of the other party.

Section 10.6. Affirmative Action. During the performance of this Agreement, the Operator agrees as follows:

(a) The Operator or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Operator will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Operator agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause

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

(c) The Operator or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Operator's commitments under P.L. 1975, c. 127 and shall post copies of this notice in conspicuous places available to employees and applicants for employment

(d) The Operator or subcontractor, where applicable, agrees to comply with the regulations promulgated pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, and the Americans with Disabilities Acts.

(e) The Operator or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

(f) The Operator or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry,

marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

(g) The Operator or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State, and applicable federal court decisions.

(h) The Operator and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

(i) The above provisions are not required for subcontractors with four (4) or fewer employees if the Operator has presented evidence of a federally approved or sanctioned Affirmative Action Program

(j) In accordance with Public Law 1975, Chapter 127, the Operator will be required to submit one of the following within seven (7) days after award of this Agreement:

- (1) An existing federally approved or sanctioned Affirmative Action Program;
or
- (2) A certificate of Employee Information Report approval; or
- (3) If the Operator cannot provide (1) or (2) above and the Operator has never before applied for same, (3) the Operator is required to submit a completed Employee Information Report (Form AA302), to the City Affirmative Action Office and the State Affirmative Action Office. This form will be available from the City and the State Affirmative Action Office.

(k) The Operator's Proposal must be rejected as non-responsive if the Operator fails to submit (1), (2), or (3) above within the time specified after the City submits this Agreement to the Operator for execution.

(l) Operators with fewer than 50 employees must submit an affidavit to that effect, which will be retained by the City. Operators with fewer than 50 employees are not required to submit a Certificate of Employee Information Report Approval and are not required to submit an Employee Information Report. They must agree, however, to mandatory affirmative action language in this Agreement.

(m) If the Operator refuses to sign this Agreement containing the mandatory affirmative action contract language at the time this Agreement is submitted for signing by the City, then the City shall reject the Operator's Proposal as nonresponsive. When such a rejection occurs, the same affirmative action requirements shall apply to any other Proposal selected by the City, in accordance with contracting laws and procedures

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

Section 10.8. Notices. (a) All notices given pursuant to the terms of this Agreement shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid. Notices required to be given to the Operator shall be addressed as follows:

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

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

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

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

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

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

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

Section 10.13. Cost Substantiation. With respect to any costs and expenses incurred or to be incurred by the parties hereto in the performance of their obligations hereunder, all such costs and expenses shall be reasonably documented and accompanied by a certificate, signed by an authorized representative of the City or the Operator, as the case may be, stating the reason for incurring the cost, the amount of the cost, including labor, materials and a fixed overhead, the event or Section of this Agreement giving rise to the requesting party's right to incur such cost, and that such cost represents a competitive price for the service or materials supplied and any other information that is reasonably requested by the other party in order to assist in the evaluation and approval of the cost; provided, however, that such amounts shall not include any contingency amounts.

Section 10.14. Bulk Sale and/or Wheeling of Water. Currently, the City does not intend on entering into any Bulk Sale and/or Wheeling of Water arrangement with the Operator. However, the parties reserve the right to amend the Agreement at any time (subject to applicable law) and to negotiate mutually agreeable terms and conditions, subject to an opinion of Bond Counsel that such amendment does not adversely affect this Agreement satisfying the requirement of Rev. Proc. 97-13

Section 10.15. Hazardous Wastes. If, during the course of excavation work (or other construction) necessary to make Repairs and/or improvements to the Systems, hazardous waste materials or other Hazardous Substances are uncovered by the Operator, it shall not be the obligation of the Operator to remove and dispose of such hazardous substances. The Operator shall, however,

take all of the necessary steps to protect the existing Systems from contamination and to notify the appropriate agencies and determine the necessary steps to properly dispose of such hazardous waste. The parties legally responsible shall pay all costs for such removal

Section 10.16. Unforeseen Events. (a) If an Unforeseen Event occurs, each party shall be relieved of its responsibility to perform to the extent necessitated by the Unforeseen Event and during the pendency thereof, except that neither party shall be relieved of its responsibility to satisfy any payment obligations. The affected party will notify the other promptly of the occurrence of such Unforeseen Event, including the anticipated duration and effects of the Unforeseen Event, and will make all reasonable efforts to alleviate or eliminate the effects of the Unforeseen Event.

(b) The City shall be responsible for making Capital Improvements that are necessitated by Unforeseen Events or a change in law, regardless of cost

(c) If an Unforeseen Event occurs that causes an adverse change in the operations of the Systems or increases in the operational costs, the Operator shall prepare a proposal to be submitted to the City and the City's consulting engineer that describes the cause of the changes, the extent of the changes, the anticipated duration of the changes, the cost impact (increase or decrease) of the changes, and the duration of time that such anticipated cost increases or decreases will be in effect. If the City approves the changes, such cost increases or decreases will be Pass-through Charges or Pass-through Credits, as the case may be, and shall be recovered through an increase or decrease in Annual Service Fee in the following year (or amortized as agreed to by the parties). If the City does not approve the changes, the parties will use reasonable and good faith efforts to resolve the issue pursuant to Section 2.3 hereof. In the event any such dispute is not resolved pursuant to Section 2.3, the parties may take other actions to resolve such dispute, including filing claims in a court of competent jurisdiction.

(d) The City also may submit proposals to decrease the Annual Service Fee if an Unforeseen Event occurs that causes a decrease in costs

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

Section 10.18. Covenant to Continue Work. During resolution of any dispute under this Management Services Agreement, the Operator and the City shall each continue to perform all of their respective obligations under this Management Services Agreement without interruption or delay. In the event any dispute arises under the Agreement relative to any payment obligations, the disputing party shall deposit said monies in an escrow account until resolution of the issue.

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

Section 10.20. City's Obligations.

(a) It is understood that the City shall pay to the Operator the Annual Service Fee through the revenues of the System and other available revenues of the City that the City shall take all reasonable and necessary steps to provide for and to authorize the payment of all amounts due to the Operator from the City under this Management Services Agreement as the same become due and payable

(b) In consideration of the Operator entering into this Management Services Agreement and to provide funds for such purpose through financing or otherwise, the City agrees that the pledge set forth in this Section and all related covenants and agreements in this Management Services Agreement are for the equal benefit, protection and security of the Operator, any assignee of the

rights of the Operator hereunder, and any Person lending money or providing credit in connection with any financing relating to the System.

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

Section 10.22. Survivorship. Notwithstanding anything in this Agreement to the contrary and not intending to limit the rights of the parties, the parties agree that (i) all claims for breach of this Agreement will survive termination of this Agreement and the obligations of the Project Guarantor(s) with respect to those claims will survive termination of this Agreement; (ii) the City's ability to draw upon the letters of credit and/or performance bonds as contained in Article II, Section 2.2 shall survive termination of this Agreement for so long as same remain in effect; (iii) the indemnification provisions contained in Article X, Section 10.2 shall survive termination of this Agreement.

Section 10.23. Severability. In the event that any material provision of this Agreement, for any reason, shall be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments to this Agreement or to take such other actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement, as so amended, shall remain in full force and effect.

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

ATTEST:

Preston M. Taylor Jr

CITY OF CAMDEN

By: M. L. Milan

ATTEST:

Sheri Benda

OPERATOR

By: M. L. Benda