

CITY COUNCIL**The City of Orange Township, New Jersey**DATE June 21, 2021NUMBER 317-2021**TITLE:****AMENDED**

A RESOLUTION AUTHORIZING THE CITY OF ORANGE TOWNSHIP TO ENTER INTO AN AGREEMENT WITH SUEZ WATER ENVIRONMENTAL SERVICES, INC., TO SERVE AS THE PRINCIPAL CONTRACTOR AND TO PROVIDE PLANNING, DESIGN, ENGINEERING, AND CONSTRUCTION SERVICES FOR THE REHABILITATION AND RECONDITIONING OF WATER WELLS FIVE AND EIGHT FOR A CONTRACT AMOUNT NOT TO EXCEED \$2,181,000.00.

WHEREAS, the City of Orange Township (the "CITY") needs to continue its ongoing efforts improve, upgrade and increase the efficiency of its water infrastructure in a proactive manner; and

WHEREAS, increasing the City of Orange Township's water system's capacity is central to that goal and will decrease the likelihood that the CITY will need to rely on supplemental supply from any other entity; and

WHEREAS, the City of Orange Township has therefore decided it is in the best interests of the health and welfare of its residents to rehabilitate and recondition Municipal Water Well #5 and Municipal Water Well #8 ("Water Well Rehabilitation Project") to bring them back on-line; and

WHEREAS, Suez Water Environmental Services, Inc. ("SUEZ") and the City of Orange Township have agreed to enter into an agreement wherein Suez Water Environmental Services, Inc will serve as the principal contractor on the WATER WELL REHABILITATION PROJECT; and

WHEREAS, pursuant to the agreement that is the subject of the instant resolution, Suez Water Environmental Services, Inc. will serve as the principal contractor providing planning, design, engineering, and construction services to the WATER WELL REHABILITATION PROJECT, for both Municipal Water Well #5 and Municipal Water Well #8 projects; and

WHEREAS, pursuant to the CITY's existing operating agreement with Suez Water Environmental Services, Inc, SUEZ has a duty to, at minimum, assess and inform the CITY of capital project/improvement needs but is not precluded from being engaged for additional duties including but not limited to serving as the principal contractor providing planning, design, engineering and construction services to the WATER WELL REHABILITATION PROJECT; and

WHEREAS, this agreement is for the designing, financing, construction, operation, engineering, or maintenance, or any combination thereof, of a water supply facility and may negotiated by the CITY and awarded by the CITY COUNCIL OF THE CITY OF ORANGE TOWNSHIP pursuant to N.J.S.A. 40A:11-1 et seq and other applicable law; and

WHEREAS, the CITY has extended the expiration date of the operating agreement with SUEZ past the end of the construction schedule for the WATER WELL REHABILITATION


Gracia Robert Montilus

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RANGE CITY CLERK'S OFFICE

PROJECT for both Municipal Water Well #5 and Municipal Water Well #8; and

WHEREAS, the estimated cost of the project is \$2,181,000.00; and

WHEREAS, the CITY has adopted various bond ordinances to fund the project amount; and

WHEREAS, the CITY will also be pursuing alternative funding and/or reimbursement from the New Jersey Infrastructure Bank (“I-BANK”); and

WHEREAS, the Chief Financial Officer of the City of Orange Township has prepared the necessary Certificate of Availability of Funds; a copy of which is attached hereto, certifying that funds will be available out of Account Number C-06-XX-021-023-001.

NOW, THEREFORE, BE IT RESOLVED by the **CITY COUNCIL OF THE CITY OF ORANGE TOWNSHIP**:

1. The agreement with SUEZ and the CITY for SUEZ to serve as the principal contractor providing planning, design, engineering and construction services to the WATER WELL REHABILITATION PROJECT, for both Municipal Water Well #5 and Municipal Water Well #8, in an amount not to exceed \$1,148,000 for Well 5 and \$700,000 for Well 8 for a total amount not to exceed of \$2,181,000 is hereby authorized.
2. The agreement/contract award is made pursuant to N.J.S.A. 40A:11-1 et seq and other applicable law.
3. The construction schedule and term of the agreement will be no more than 24 months consistent with N.J.S.A. 40A:11-15; and
4. The MAYOR, or his designee is authorized to execute any necessary documents to evidence and memorialize the contract extension(s) set forth in paragraph 1.
5. The CITY is authorized to pursue funding and/or reimbursement from the I-BANK for the Water Well Rehabilitation Project, including but not limited to drafting, executing and submitting application documents and/or supplemental materials to the I-BANK, and executing any loan, grant and/or reimbursement agreements for funding from the I-BANK as related to the WATER WELL REHABILITATION PROJECT.

ADOPTED:

LISETTE SANCHEZ
DEPUTY CITY CLERK

KERRY J. COLEY
COUNCIL PRESIDENT



CITY OF ORANGE
FINANCE DEPARTMENT

CERTIFICATION OF FUNDS
WATER CAPITAL BUDGET

I, Nile Clements, Chief Financial Officer for the City of Orange, do hereby certify to the best of my knowledge and belief that there are now sufficient funds in the following Water Capital accounts to Contract with:

Vendor Name: SUEZ WATER ENVIRONMENTAL SVS
Address#1: 420 Montgomery Street

City: San Francisco
State: California
Zip Code: 94101

Purpose: Contractor, planning and design services for the
rehabilitation and reconditioning of the water wells 5 & 8

Fund: Water Capital
Account Name : 21-023 WATER SYSTEM PH II 2021
Account Numbers(s): C-06-XX-021-023-001

balance before	2,300,000.00
requested	<u>2,181,000.00</u>
balance after	119,000.00

Vendor ID: UNITE010

Purchase Order #: 21-01086

PENDING RESOLUTION

Amount not to exceed: \$ 2,181,000.00

Division Head

Date

Nile Clements

6/16/2021

Chief Financial Officer

Date

CONTRACT

This contract ("Contract") is entered into by and between the **CITY OF ORANGE TOWNSHIP** ("Owner") and **SUEZ WATER ENVIRONMENTAL SERVICES, INC.**, ("Company") for work on the **WATER WELL REHABILITATION PROJECT**, for both **Municipal Water Well #5 and Municipal Water Well #8** (the "Project").

The parties agree as follows:

1. Award of Contract. Company has submitted a scope of work, an estimate of cost to perform work on the Project and the project construction schedule including planning, engineering, and design services all as set forth in the attached Appendix A, and on, June 21, 2021, pursuant to a Municipal Council Resolution, Owner authorized award of this Contract to Company for the amount of Company's proposal.
2. Contract Documents. The Contract Documents are comprised of the Scope of Work Summary; the Estimate of Cost; addenda, if any; the Contract; the payment and performance bonds; the General Conditions; the Supplemental General Conditions, if any; the Project drawings and specifications; the Design Standards and Standard Specifications; and Change Orders including all engineering drawings, if any.
3. Company's Services. Company agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. Company shall provide, furnish, and supply all things necessary and incidental for the design, planning, and engineering for the project and for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor,

materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Company also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Company's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, Owner shall pay Company \$1,481,000 for Well #5 and \$700,000 for Well #8 (the "Contract Price"), in accordance with the payment provisions set forth in the General Conditions. Company agrees to fully cooperate with Owner if it should decide to pursue, inter alia, grants and/or I-Bank funding to assist in funding the Project.

5. **Time for Completion.** Company shall fully complete the Work for the Project within 600 working days, or whatever lesser number the parties agree to, from the date given in the Notice to Proceed. For each and every calendar day delay in finishing the work in excess of the number of days prescribed above ("Contract Time"), Company shall pay to the Owner the sum of \$1,000 per day. By signing below, Company expressly waives any claim for delayed early completion.

6. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by e-mail as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified.

Notice for each party shall be given as follows:

<p>Owner: CITY OF ORANGE TOWNSHIP Address: 29 North Day Street, Orange New Jersey 07050 Attn: Christopher Hartwyk, Business Administrator Email to chartwyk@orangenj.gov and cc: swatkins@orangenj.gov</p>
--

<p>Company Name: SUEZ WATER ENVIRONMENTAL SERVICES, INC., Address:</p>
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7. General Provisions.

7.1 **Assignment and Successors.** Company may not assign its rights or obligations under this Contract, in part or in whole, without Owner's written consent. This Contract is binding on Company's successors and permitted assigns.

7.2 **Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Supplemental General Conditions.

7.3 **Governing Law and Venue.** This Contract shall be governed by New Jersey law and venue shall be in the Superior Court of the County in which the Project is located, and no other place.

7.4 **Amendment.** No amendment or modification of this Contract shall be binding unless it is in a writing duly authorized and signed by the parties to this Contract and accompanied by a Municipal Council Resolution authorizing such amendment and modification.

7.5 Integration; Severability. This Contract and the Contract Documents incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between Owner and Company. If any provision of this Contract, or portion thereof, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract shall remain in full force and effect.

7.6 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. The parties agree to this Contract as witnessed by the signatures below:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the date or dates set forth below.

<p><u>OWNER:</u> CITY OF ORANGE TOWNSHIP</p> <p>_____</p> <p>By:</p> <p>Its Authorized Signatory</p> <p>Date: _____, 2021</p>	<p><u>COMPANY:</u> SUEZ WATER ENVIRONMENTAL SERVICES, INC.,</p> <p>_____</p> <p>By:</p> <p>Its Authorized Signatory</p> <p>Date: _____, 2021</p>
<p><u>Attest:</u></p> <p>_____</p> <p>Name:</p> <p>_____</p> <p>Title:</p>	<p><u>Attest:</u></p> <p>_____</p> <p>Name:</p> <p>_____</p> <p>Title:</p>

Approved as to form, sufficiency and legality:

 Gracia Robert Montilus
 City Attorney

Appendix A

Christopher Hartwyk

From: Kathrina Nease
Sent: Wednesday, June 16, 2021 11:12 AM
To: Christopher Hartwyk
Cc: jkiernan@veronanj.org; Kiernan, Jason
Subject: RWell 8 Projects for IBank
Attachments: Project Information (3).pdf

	Total Project Cost Durin
1. Building Costs (Total)	\$1,200,000
2. Soft Costs - Contingencies (5% of line No. 1)	\$60
3. Soft Costs - Administrative Expenses (3% of Line No. 1)	\$36
4. Soft Costs - Engineering Fees (12% of Line No. 1)	\$75,000
5. Soft Costs - Planning and Design Funds will only be disbursed based on actual invoices received	\$110,000
6. Other Costs	\$0
7. Total Project Costs	\$1,481,000

Explanation for Other Costs

Basis of cost estimate

Preliminary conceptual cost estimates based, in part, on comparable quotes from v

Cost estimation date

2020-03-31

From: Christopher Hartwyk <CHartwyk@orangenj.gov>
Sent: Wednesday, June 16, 2021 10:58 AM
To: Kathrina Nease <knease@orangenj.gov>
Cc: jkiernan@veronanj.org; Kiernan, Jason <jasonm.kiernan@suez.com>
Subject: Well 5 and Well 8 Projects for IBank

What are the aggregate costs for well 5 and 8 that we are borrowing from the lbank?

Chris Hartwyk / Business Administrator
Mobile 973.280.2587 // chartwyk@orangenj.gov



City of Orange Township
Department of Administration
29 North Day Street
Orange / New Jersey / 07060
Direct Dial 973.952.6088
Facsimile 973.672.2383

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Project Information

Project Sponsor:	Orange City
Project Number:	N/A
Project Name:	Orange Twp PFAS in Well 8 Drinking Water System
Description:	Well 8 is located at 333 Gist Avenue in the City of Orange. The well has been offline since 2015 due to elevated levels of PFOA. This project will address PFOA treatment, rehabilitate the existing well and replace other necessary equipment to get the well operational withing NJDEP guidelines.
Service Area:	N/A
Water Quality Need:	N/A
Additional Sponsor(s):	None
PWSID #	0717001
Blocks & Lots:	N/A
Letter of Intent Amount	N/A
Loan Application Amount	N/A
Appropriation Amount	N/A

Form Status

Form	Status
Project Information (Application Step 2)	Date Submitted: 2020-03-31 12:33 pm
Short-Term FAF (STFAF)	Not Started
LP-6A (Line of Credit Loan)	Not Started
Drinking Water Letter of Intent (Application Step 3 - Environmental Planning Document)	Not Started

Project Contacts

Role	Name	Address	Email Address	Phone Number
Authorized Representative	Christopher Hartwyk	City of Orange Township 29 N. Day Street Orange, NJ 07050-0001	chrtwyk@orangenj.gov	Work: 973-266-4010 x4074
Authorized Representative (Backup)	Kathrina Neseo	Orange Water Works Well 8 333 Gist Place Orange, NJ 07050-0004	kneseo@orangenj.gov	Work: 862-438-0647
Consulting Engineer	Tugba Akgun	632 Beach St Orange, NJ 07050-1152	tugba.akgun@suez.com	Work: 201-329-3582
Consulting Engineer	JORDAN VOLK	331 NEWMAN SPRINGS Rd SUITE 203 RED BANK, NJ 07701-5699	jvolk@maserconsulting.com	Work: 732-383-1950 x3429
Consulting Engineer	YunJie Tu	632 Beach Street Chestnut Street Pumping Station Orange Water Works Water Operations & Engineering Orange, NJ 07050-1008	yunjie.tu@suez.com	Mobile: 201-364-6088

Consulting Engineer	Joseph Venezia	Maser Consulting PA 331 Newman Springs Road Suite 203 Red Bank, NJ 07701-0004	venezia@maserconsulting.com	Work: 877-627-3772
Environmental Consultant	Robert Rasco	SUEZ 69 Devos Place Hackensack, NJ 07601-0001	bob.rasco@suez.com	Work: 845-742-3958
Environmental Consultant	John Ludington	632 Beach Street Orange Water Works Operations & Engineering Orange, NJ 07050-1008	john.ludington@suez.com	Mobile: 908-966-2541
Financial Advisor	Nies Clemens	29 N. Day Street Finance 2nd Floor Orange, NJ 07050-1008	nclemens@orangenj.gov	Work: 973-885-2103
SED Reviewer (North)	Lisa M Price	428 East Street/1st floor PO Box 420 - Mail Code 428-01 Office of Equal Opportunity and Public Contract Assistance Melanie L. Armstrong, Esq., Director Trenton, NJ 08625-0420	lisa.price@dep.nj.gov	Work: 609-984-9742
SED Reviewer (North)	Rohini C. Gandhi	428 E. State Street 1st Floor Mail Code 428-01 P.O. Box 420 Trenton, NJ 08625-0001	rohini.gandhi@dep.nj.gov	Work: 609-984-9742
SED Reviewer (North)	Joe Genovay (Inactive)	401 East State Street Trenton, NJ 08625-0420	joe.genovay@dep.nj.gov	Work: 609-984-9742

Location Info

Project Location Description: The project is located at Well No. 8, which is positioned on Lot 21, Block 31, as shown on Sheet Number 10 of the Official Tax Map of the City of Orange, property also known as 333 Gist Place

Block And Lot: N/A

Additional Info Part 1 - Basic Information

Project Type: Well Construction / Replacement (Drinking Water)

The project or portion thereof will be specifically designed to reduce total energy consumption or recover previously wasted energy. Please explain in the project description section below.

Please enter a description for the project:

Well 8 is located at 333 Gist Avenue in the City of Orange. The well has been offline since 2015 due to elevated levels of PFOA. This project will address PFOA treatment, rehabilitate the existing well and replace other necessary equipment to get the well operational withing NJDEP guidelines.

PWSID #

0717801

When is funding being sought for this project?

2020-04

The date in which you intend to commence construction of the project

2020-04-01

Will the engineering design be performed by a firm whose services secured pursuant to a publicly advertised procurement process?

Yes

No

If funding is being sought for a prior project that was funded with one or more NJEIFP loans, please enter that project's Project Number below:

Additional Information Part 2 - General Information

Plan/Study Type (Optional): -- Select One --

Median Annual Household Income

\$48,386

How did you calculate the Median Annual Household Income?

Based on US Census Data.

Income weighted for multiple municipalities?

Yes

No

State Endorsement or State Center Designation for the project site (Optional): Urban Centers and Complexes

Is the project in a designated Brownfields Development Area?

Yes

No

Is the project in a designated Transit Village?

Yes

No

Is the Project located in or benefiting areas designated as TDR Receiving Areas?

Yes

No

Summer population served by the project

\$0

Winter population served by the project

\$0

Service area description for the project

City of Orange Township, New Jersey; Monte Irvin Park

Water quality-based need for the project

To bring the well back on line with PFOA treatment. The well is needed for system firm capacity. Is this project limited to the acquisition of Eligible Equipment (and associated costs)?

Yes

No

Will this eligible equipment acquisition require the construction of a concrete pad or building to house it?

Yes

No

Will any Development or Redevelopment services be utilized by any portion of this project?

Yes

No

Building Costs - Drinking Water

Green reference: https://doh.nj.gov/office-of-environmental-protection/office-of-water-protection/eligible_projects.pdf

Resiliency reference: https://doh.nj.gov/office-of-environmental-protection/office-of-water-protection/eligible_projects.pdf

	Building Cost Categories	Estimated Building Cost	Green %	Resiliency %
I	Surface Water Treatment Rule: Resolution of violation	\$0	%	%
II	Ground Water Under Direct Influence of Surface Water: Resolution of violation	\$0	%	%
III	Acute Maximum Contaminant Level Violations: Ground Water	\$0	%	%
IV	Chronic Maximum Contaminant Level Violations or Action Level Exceedances	\$0	%	%
V	Actual or Potential Groundwater Quality Criterion, Guidance, or Advisory Exceedance	\$0	%	100.00%
VI	Systems that were classified as vulnerable, as a result of a 2007 NJDEP	\$0	%	%
VII	Non-Water Quality Noncompliance	\$0	%	%
VIII	Purchase or Consolidation of Water System	\$0	%	%
IX	Water Supply Management Initiative	\$0	%	%
X	Saltwater Intrusion	\$0	%	%
XI	Extension of Water Mains for contaminated private wells	\$0	%	%
XII	Rehabilitate Existing Treatment Facility	\$0	%	%
XIII	Rehabilitate Existing Transmission or Distribution Mains	\$0	%	%
XIV	Rehabilitate Existing Pump Stations or Finished Water Storage Facilities	\$0	%	%
XV	New Pump Stations or Finished Water Storage Facilities	\$0	%	%
XVI	Security Measures	\$0	%	%
XVII	Green Infrastructure	\$0	%	%
XVIII	Secondary Drinking Water Regulation Exceedances	\$0	%	%
XIX	New Water Meters or Water Conservation Devices	\$0	%	%

XX	New or Rehabilitate Existing Interconnections	\$0	%	%
XXB	Replace Water Meters	\$0	%	%
XXC	Redevelop Wells, New Wells, or Rehabilitate Surface Water Sources	\$1,200,000	%	%
XXD	Other	\$0	%	%
	Building Costs (Total)	\$1,200,000		

	Total Project Cost During Construction
1. Building Costs (Total)	\$1,200,000
2. Soft Costs - Contingencies (5% of line No. 1)	\$60
3. Soft Costs - Administrative Expenses (3% of Line No. 1)	\$36
4. Soft Costs - Engineering Fees (12% of Line No. 1)	\$75,000
5. Soft Costs - Planning and Design <i>Funds will only be disbursed based on actual invoices received</i>	\$110,000
6. Other Costs	\$0
7. Total Project Costs	\$1,481,000

Explanation for Other Costs

Basis of cost estimate

Preliminary conceptual cost estimates based, in part, on comparable quotes from vendors and comparable bid prices.

Cost estimation date

2020-03-31

Orange, NJ – Well No. 8– Schedule 4/8/2021

	2021											2022										
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov		
Submit SWSE & Building Permit Applications	■	■																				
Submit Loan Application/ Plans & Specifications to NJDEP		■	■	■																		
NJDEP Authorization to Proceed				■	■	■																
NJDEP Authorization to Award						■	■															
Construction Phase							■	■	■	■	■	■	■	■	■	■	■	■	■	■		

**Project: Orange Twp PFOA in Well 8 Drinking Water System
 NJDEP Project No. 0717001-011**

	Cost
Construction Contract (contract)	\$1,481,000.00
Construction Contract - Allowable	\$1,481,000.00
Soft - Construction Contingencies (5%)	\$70,000.00
Soft - Administrative (3%)	\$42,000.00
Soft - Engineering During Construction (12% is allowable)	\$168,000.00
Soft - Planning and Design	\$215,000.00

Date	Project Milestone	Disbursement Amount
Year	Month	
2021	44405 I-Bank Funding	\$1,481,000.00
2021	44454 Receive Approval to Advertise/ Procure	
2021	44545 Award of Contract	\$295,000.00
2022	44571 Pre-Construction Meeting	
2022	44581 Notice to Proceed/ Construction Start	\$300,000.00
2022	44593 Construction	\$500,000.00
2022	44621 Construction	\$200,000.00
2022	44652 Construction	\$181,000.00
2022	44896 Construction End/ Initiation of Operation	\$5,000.00
		\$1,481,000.00

**Project: Orange Twp Well 5 Drinking Water System Rehabilitation
 NJDEP Project No. 0717001-011**

	Cost
Construction Contract (contract)	\$700,000.00
Building Cost	\$500,000.00
Soft - Construction Contingencies (5%)	\$25,000.00
Soft - Administrative (3%)	\$15,000.00
Soft - Engineering During Construction (12% is allowable)	\$60,000.00
Soft - Planning and Design	\$100,000.00
Total Project Costs	\$700,000.00

Date	Project Milestone	Disbursement Amount
Year	Month	
2021	44405 I-Bank Funding	\$700,000.00
2021	44454 Receive Approval to Advertise/ Procure	
2021	44545 Award of Contract	\$95,000.00
2021	44571 Pre-Construction Meeting	
2021	44581 Notice to Proceed/ Construction Start	\$315,000.00
2021	44593 Construction	\$200,000.00
2022	44621 Construction	\$50,000.00
2022	44896 Construction End/ Initiation of Operation	\$40,000.00
		\$700,000.00

Projects funded under the New Jersey Environmental Infrastructure Financing Program (NJEIFP) must be reviewed for the Architectural and Engineering (A/E) Services during construction. The scope of work shall include the following tasks:

Bid Phase

- Prepare Bid Package for advertising
- Advertise for Bids
- Prepare and administer pre-bid meeting and site walk-through
- Address any pre-bid phase request for information by bidders
- Issue contract clarifications and/or addenda
- Attend bid opening
- Tabulation & analysis of bid results
- Furnishing recommendations on the award of construction contracts
- Assistance in the preparation of formal contract documents for the award of contracts

Construction Phase

Construction Administration

- Provide general communication with owner and Contractor throughout the duration of construction regarding such issues as progress, submittal status, construction issues and their resolution.
- Provide communication and correspondence with the NJDEP
- Maintain project files as required for periodic inspection by the NJDEP
- Conduct pre-construction meeting, establish agenda, issue notice to proceed
- Review and approve Progress Schedule, Schedule of Submittals, Schedule of Values required to be submitted by the contractor
- Review shop drawings and other submittals as required to evaluate that the proposed materials and equipment conform to the contract documents.
- Establish baselines and benchmarks for locating work
- Review laboratory, shop and mill test reports of materials and equipment
- Prepare monthly progress reports
- Prepare record drawings at the completion of the project

- During the first year of operation, directing the operation of the treatment works, revising the O&M Manual to reflect actual operating problems and experience, advising the owner as to whether the treatment works is meeting the project performance standards, certifying project performance standards after one year of operation of the treatment works and undertake corrective actions, if the applicant fails to achieve compliance with the project performance standards

Construction Inspection/Observation Services

- Provide full time construction inspection/observation services during periods when the contractor is on site to monitor the contractor's progress and compliance with the contract drawings and specifications, including the contractor's environmental protection and restoration measures.
- Conduct a weekly construction meeting with the Contractor and owner to discuss scheduled activities
- Prepare daily inspection reports.
- Review monthly and payment requests including the final payment requests.
- Participate in the review and evaluation of potential change orders, including detailed review of cost proposals.
- Participate in the resolution of issues involving unforeseen field conditions.
- Witness testing and startup of equipment and systems.
- Coordinate vendor training.
- Prepare punchlist of remaining work items.
- Evaluate substantial and final completion and issue certificates of substantial or final completion as appropriate.

Special Note: In general, all Engineering Agreements must include the Scope of Work, Hours/Hours per Task, and Personnel identified as qualified to perform the tasks (by title and rate of pay) for Services during Bidding, Construction, Inspection and Project Performance. The Hours should match the Number of Contracts in the Project and Contract Duration(s).

Project: Orange Twp Well 5 Drinking Water System Rehabilitation
 NJDEP Project No. 0717001-011

	Cost
Construction Contract (contract)	\$700,000.00
Building Cost	\$500,000.00
Soft - Construction Contingencies (5%)	\$25,000.00
Soft - Administrative (3%)	\$15,000.00
Soft - Engineering During Construction (12% is allowable)	\$60,000.00
Soft - Planning and Design	\$100,000.00
Total Project Costs	\$700,000.00

Date	Project Milestone	Disbursement Amount	
Year	Month		
2021	7/28/2021	I-Bank Funding	\$700,000.00
2021	9/15/2021	Receive Approval to Advertise/ Procure	
2021	12/15/2021	Award of Contract	\$95,000.00
2021	1/10/2022	Pre-Construction Meeting	
2021	1/20/2022	Notice to Proceed/ Construction Start	\$315,000.00
2021	2/1/2022	Construction	\$200,000.00
2022	3/1/2022	Construction	\$50,000.00
2022	12/1/2022	Construction End/ Initiation of Operation	\$40,000.00
			\$700,000.00

Project: Orange Twp PFOA in Well 8 Drinking Water System
 NJDEP Project No. 0717001-011

	Cost
Construction Contract (contract)	\$1,481,000.00
Construction Contract - Allowable	\$1,481,000.00
Soft - Construction Contingencies (5%)	\$70,000.00
Soft - Administrative (3%)	\$42,000.00
Soft - Engineering During Construction (12% is allowable)	\$168,000.00
Soft - Planning and Design	\$215,000.00

Date	Project Milestone	Disbursement Amount
Year	Month	
2021	7/28/2021 I-Bank Funding	\$1,481,000.00
2021	9/15/2021 Receive Approval to Advertise/ Procure	
2021	12/15/2021 Award of Contract	\$295,000.00
2022	1/10/2022 Pre-Construction Meeting	
2022	1/20/2022 Notice to Proceed/ Construction Start	\$300,000.00
2022	2/1/2022 Construction	\$500,000.00
2022	3/1/2022 Construction	\$200,000.00
2022	4/1/2022 Construction	\$181,000.00
2022	12/1/2022 Construction End/ Initiation of Operation	\$5,000.00
		\$1,481,000.00

CITY COUNCIL**The City of Orange Township, New Jersey**DATE April 1, 2003NUMBER 12-2003**TITLE:**

AN ORDINANCE PROVIDING FOR THE APPROVAL OF AN OPERATING AGREEMENT WITH U.S. WATER, INC. FOR SERVICES TO THE CITY OF ORANGE'S WATER, WASTEWATER AND STORMWATER SYSTEMS AND THE ADOPTION OF THE RATE SETTING MECHANISM CONTAINED THEREIN.

WHEREAS, the City of Orange Township, in the County of Essex, New Jersey (the "City") currently owns and operates a water supply, transmission and distribution system, as well as a wastewater collection system and a stormwater system (the "System"); and

WHEREAS, the City has determined that the most efficient means to provide water, wastewater, and stormwater services (the "Services") to the residents and property owners in the City is through an agreement with a private party experienced in providing such services; and

WHEREAS, the City prepared and distributed a Request for Qualifications and Proposals on December 28, 2001 as amended and supplemented on January 24, 2002, January 31, 2002, March 13, 2002 and April 4, 2002 (the "RFQ/RFP") pursuant to the New Jersey Waste Supply Public-Private Contracting Act, N.J.S.A. 58:26-19 et seq., New Jersey Act and the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-19 et seq., (together the "Acts") for such services; and

WHEREAS, on April 22, 2002, the City received a proposal from U.S. Water L.L.C. (the "Operator"), a limited liability corporation duly organized and existing under the laws of the State of Delaware, as well as proposals from United Water, Inc., E'town Corporation, Consumers Water (together with Joseph Jingoli and Sons and GEOD Engineering) and American Water Services (together with Killam Management and Operational Services, Inc.) in response to such RFQ/RFP; and

WHEREAS, the City has determined, based on an evaluation of the proposals, that the most qualified proposal was submitted by the Operator; and

WHEREAS, the City and the Operator have agreed to the terms and conditions under which the Operator shall provide certain services in exchange for certain fees, all as described in an agreement between the City and the Operator entitled "AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES FOR THE CITY OF ORANGE TOWNSHIP MUNICIPAL WATER, WASTEWATER AND STORMWATER SYSTEMS" and attached hereto as Exhibit A (the "Operating Agreement"); and

WHEREAS, the Operator's performance of the Services will be guaranteed by its corporate parent, United Water Resources, a New Jersey corporation qualified and authorized to do business in the State of New Jersey and having its primary business address at 200 Old Hook Road, Harrington Park, New Jersey (the "Guarantor") and secured by the posting of a performance bond (the "Performance Bond") in an amount equal to the Operator's base compensation (the "Service Fee") under the Operating Agreement; and

WHEREAS, the Act requires that the City hold a public hearing, following proper advertising, on a proposed contract procured under the Act; and

WHEREAS, in accordance with the Act, the City published notice of a public hearing in the Orange Transcript on December 19, 2002 and filed a copy of the final Operating Agreement with the City Clerk for public inspection on December 30, 2002; and

WHEREAS, on January 6, 2003, the City held a public hearing on the Operating Agreement in accordance with the Act; and

WHEREAS, in addition to the Services, the Operating Agreement provides for the establishment of Rates and the annual adjustment thereto; and

WHEREAS, the Act requires that the Operating Agreement be approved by the City by ordinance; and

WHEREAS, the City Council desires to approve the Operating Agreement, including the formula for annual Rates;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE TOWNSHIP, COUNTY OF ESSEX AS FOLLOWS:

Section 1. Approval of the Operating Agreement. The agreement entitled "AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES FOR THE CITY OF ORANGE TOWNSHIP MUNICIPAL WATER, WASTEWATER AND STORMWATER SYSTEMS" (the "Operating Agreement") in substantially the form attached hereto as Exhibit A is hereby approved.

Section 2. Execution of the Operating Agreement. The Mayor of the City of Orange Township, in the County of Essex (the "Mayor" and together with the Business Administrator and Chief Financial Officer of the City, an "Authorized Officer") is hereby authorized and directed, upon satisfaction of all the legal conditions precedent to the execution and delivery by the City of the Operating Agreement as determined by the Authorized Officers in consultation with counsel to the City, to execute the Operating Agreement in substantially the form of the draft attached hereto and with such changes, insertions and omissions thereto as the Mayor, after consultation with counsel to the City and bond counsel to the City, deems in the Mayor's sole discretion to be necessary or desirable for the execution thereof, which authorization thereof shall conclusively evidence the Mayor's consent to any such changes thereto.

Section 3. Attestation and Sealing of the Operating Agreement. The Clerk of the City is hereby authorized and directed, upon the execution of the Operating Agreement in accordance with the terms of Section 2 hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed thereupon to affix the corporate seal of the City upon such document.

Section 4. Implementation of the Operating Agreement. Upon the execution and attestation and placing of the seal on the Operating Agreement as contemplated by Sections 2 and 3 hereof, the Authorized Officers are hereby authorized and directed to (i) deliver the fully executed, attested and sealed document to the other parties thereto and (ii) perform such other actions as the Authorized Officers deem necessary or desirable in relation to the execution and delivery of the Operating Agreement.

Section 5. Approval of Rate Formula. The formula for rates established in Section 5.2 of the Operating Agreement, and the delegation therein, is hereby approved as if set forth herein.

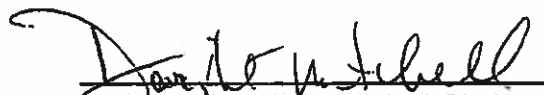
Section 6. Acknowledgment of Required Approvals. It is hereby acknowledged that the Operating Agreement requires the approval of the Division of Local Government Services and the Board of Public Utilities pursuant to Section 6 of the Act.

Section 7. Effective Date. This ordinance shall take effect at the time and in the manner prescribed by law.

Section 8. Publication. The Clerk of the City is hereby directed to publish and post notice of this ordinance as required by law.

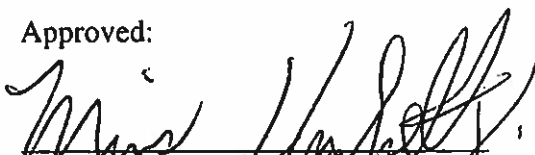
Section 9. Distribution. Upon the adoption hereof, the Clerk of the City shall forward certified copies of this ordinance to the Mayor, Council to the City, the Director of the Division of Local Government Services, the President of the Board of Public Utilities, the Operator, N.W. Financial, Financial Advisors to the City and Joseph P. Baumann, Jr., McManimon and Scotland L.L.C., Special Counsel and Bond Counsel to the City.

Adopted: **April 1, 2003**


Dwight Mitchell, Municipal Clerk


Allen Barnhardt, Council President

Approved:


Mims Hackett, Jr., Mayor

ORDINANCE No. 12-2003

REGULAR MEETING - 3/4/03
INTRODUCTION - FIRST READING

MOTION TO ADOPT: Lewis SECOND: Eason

YEAS: Eason, Gaunt, Lewis, Rimes, Vandermeer & Council
President Barnhardt

NAYS: None

ABSTENTIONS: None

ABSENT: Peters

REGULAR MEETING - 4/1/03
PUBLIC HEARING - SECOND READING

MOTION TO ADOPT: Lewis SECOND: Eason

YEAS: Eason, Gaunt, Lewis, Peters, Rimes & Council
President Barnhardt

NAYS: None

ABSTENTIONS: None

ABSENT: Vandermeer

WORRALL COMMUNITY NEWSPAPERS INC.

1291 Stuyvesant Avenue, P.O. Box 3109, Union, NJ 07083

Phone (908) 686-7700

Federal ID #22-1012381

cation

To: MUNICIPAL CLERK'S OFFICE
CITY OF ORANGE TOWNSHIP
DWIGHT MITCHELL MUNICIPAL CLERK

RECEIVED
CITY OF ORANGE
MUNICIPAL CLERK'S OFFICE
2003 MAR 19 P 1:34

DESCRIPTION	SIZE	RATE	TOTAL
3/13/03 TICKET E5847 ACCOUNT 156003 ORANGE TRANSCRIPT			
ORDINANCE 12-2003 ON FIRST READING			
411 LINES @ .25			102.75
1 AFFIDAVIT			7.50
TOTAL DUE			110.25

Newspapers Serving Suburban Essex and Union Counties

Maplewood and South Orange • West Orange Chronicle • Orange Transcript • East Orange Record • The Independent Press of Bloomfield
 • Nutley Journal • Belleville Post • Irvington Herald • Wallburg Leader • Union Leader • The Leader of Roselle Park and Kenilworth • Summit
 Leader of Mountainside and Springfield • Spectator Leader of Linden and Roselle • The Eagle of Cranford and Clark • Rahway Progress • Gazette Leader
 Hillside

day of MARCH , 20 03

Lee E. Wollenberg

 Notary Public of New Jersey

LEE E. WOLLENBERG
 A NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires June 1, 2007

**CITY OF ORANGE TOWNSHIP
LEGAL NOTICE**

Notice is hereby given that the following Ordinance was introduced and passed on First Reading at a meeting of the City Council of the City of Orange Township, New Jersey held on Tuesday evening March 4, 2003, at 7:00 P.M., and that said Ordinance will be further considered on Second Reading and Final Passage at the Regular Meeting of the City Council of the City of Orange Township to be held on Tuesday evening April 1, 2003, at 7:00 P.M., in the Council Chambers, City Hall, 29 North Day Street, Orange, New Jersey at which time and place all persons who may be interested therein will be given an opportunity to be heard, concerning same.

CITY COUNCIL

The City of Orange Township, New Jersey
 DATE NUMBER 12-2003

TITLE:

AN ORDINANCE PROVIDING FOR THE APPROVAL OF AN OPERATING AGREEMENT WITH U.S. WATER, INC. FOR SERVICES TO THE CITY OF ORANGE'S WATER, WASTEWATER AND STORMWATER SYSTEMS AND THE ADOPTION OF THE RATE SETTING MECHANISM CONTAINED THEREIN.

WHEREAS, the City of Orange Township, in the County of Essex, New Jersey (the "City") currently owns and operates a water supply, transmission and distribution system, as well as a wastewater collection system and stormwater system (the "System"); and

WHEREAS, the City has determined that the most efficient means to provide water, wastewater, and stormwater services (the "Services") to the residents and property owners in the City is through an agreement with a private party experienced in providing such services; and

WHEREAS, the City prepared and distributed a Request for Qualifications and Proposals on December 28, 2001 as amended and supplemented on January 24, 2002, January 31, 2002, March 13, 2002 and April 4, 2002 (the "RFQ/RFP") pursuant to the New Jersey Waste Supply Public-Private Contracting Act, N.J.S.A. 58:26-19 et seq., New Jersey Act and the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-19 et seq. (together the "Acts") for such services; and

WHEREAS, on April 22, 2002, the City received a proposal from U.S. Water L.L.C. (the "Operator"), a limited liability corporation duly organized and existing under the laws of the State of Delaware, as well as proposals from United Water, Inc., Etown Corporation, Consumers Water (together with Joseph Jingoli and Sons and GEOD Engineering) and American Water Services (together with Killam Management and Operational Services, Inc.) in response to such RFQ/RFP; and

WHEREAS, the City has determined, based on an evaluation of the proposals, that the most qualified proposal was submitted by the Operator; and

WHEREAS, the City and the Operator have agreed to the terms and conditions under which the Operator shall provide certain services in exchange for certain fees, all as described in an agreement between the City and the Operator entitled "AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES FOR THE CITY OF ORANGE TOWNSHIP MUNICIPAL WATER, WASTEWATER AND STORMWATER SYSTEMS" and attached hereto as Exhibit A (the "Operating Agreement"); and

WHEREAS, the Operator's performance of the Services will be guaranteed by its corporate parent, United Water Resources, a New Jersey corporation qualified and authorized to do business in the State of New Jersey and having its primary business address at 200 Old Hook Road, Harrington Park, New Jersey (the "Guarantor") and secured by the posting of a performance bond (the "Performance Bond") in an amount equal to the Operator's base compensation (the "Service Fee") under the Operating Agreement; and

Affidavit of Publication

WORRALL COMMUNITY NEWSPAPERS INC.

1291 Stuyvesant Avenue, P.O. Box 3109, Union, NJ 07083

Phone (908) 686-7700

Federal ID #22-1012381

To: MUNICIPAL CLERK'S OFFICE
CITY OF ORANGE TOWNSHIP
DWIGHT MITCHELL MUNICIPAL CLERK

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CITY OF ORANGE
MUNICIPAL CLERK'S OFFICE
2003 APR 17 P 3:25

**CITY OF ORANGE TOWNSHIP
PUBLIC NOTICE**
Notice is hereby given that Ordinance
No. 12-2003 entitled,
**AN ORDINANCE PROVIDING FOR
THE APPROVAL OF AN OPERATING
AGREEMENT WITH THE U.S. WATER,
INC. FOR SERVICES FOR THE CITY OF
ORANGE'S WATER, WASTEWATER
AND STORMWATER SYSTEMS AND
THE ADOPTION OF THE RATE SETTING
MECHANISM CONTAINED THEREIN.**
The above Ordinance was adopted by
the City Council of the City of Orange Town-
ship on April 1, 2003 and approved by May-
or Mims Hackett Jr. on April 3, 2003.
Dwight Mitchell, RMC
Municipal Clerk
E6189 OTR April 10, 2003 (\$8.00)

E	DESCRIPTION	SIZE	RATE	TOTAL
	4/10/03 TICKET E6189 ACCOUNT 156003 ORANGE TRANSCRIPT ADOPTED ORDINANCE NO. 12-2003 32 LINES @ .25 1 AFFIDAVIT			8.00 10.00
			TOTAL DUE	18.00

Newspapers Serving Suburban Essex and Union Counties

1 Maplewood and South Orange • West Orange Chronicle • Orange Transcript • East Orange Record • The Independent Press of Bloomfield
Paper • Nutley Journal • Belleville Post • Irvington Herald • Valtsburg Leader • Union Leader • The Leader of Roselle Park and Kenilworth • Summit
Leader of Mountainside and Springfield • Spectator Leader of Linden and Roselle • The Eagle of Cranford and Clark • Rahway Progress • Gazette Leader
d Hillside

RECEIVED
CITY OF ORANGE
MUNICIPAL CLERK'S OFFICE
2003 APR 17 P 3:26

LEE E. WOLLENBERG
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 1, 2007



The City of Orange Township

Office of the Municipal Clerk

Dwight Mitchell, R.M.C.
Municipal Clerk

City Hall
29 North Day Street
Orange, New Jersey 07050
(973) 266-4025
Fax: (973) 672-6643

April 3, 2003

Honorable Mims Hackett, Jr.
Mayor
City of Orange Township
29 North Day Street
Orange, NJ 07050

Dear Mayor Hackett:

I am enclosing the original Ordinance (s) listed below, which is being delivered to you pursuant to law, Section 2.11 of the Administrative Code for your signature of approval. If you do not approve the Ordinance (s), please return it to the City Council by delivery to the Municipal Clerk, together with a statement setting forth your objections to the Ordinance (s).

This must be done within ten (10) days after receipt of the Ordinance (s), which are:
Ordinance (s) 7-2003, 8-2003, 9-2003, 10-2003, 11-2003 & 12-2003.

Thank you.

Dwight Mitchell
Municipal Clerk

DM/dw Enclosures (7-2003, 8-2003, 9-2003, 10-2003, 11-2003 & 12-2003)

EXECUTION COPY

**AGREEMENT FOR
OPERATION, MAINTENANCE AND MANAGEMENT SERVICES
FOR THE CITY OF ORANGE TOWNSHIP
MUNICIPAL WATER, WASTEWATER AND STORMWATER SYSTEMS**

DATED AS OF MAY 1, 2003

**AGREEMENT FOR
OPERATION, MAINTENANCE AND MANAGEMENT SERVICES
FOR THE CITY OF ORANGE TOWNSHIP
MUNICIPAL WATER, WASTEWATER AND STORMWATER SYSTEMS**

THIS AGREEMENT is between the **CITY OF ORANGE TOWNSHIP** (the "City"), a public body corporate and politic of the State of New Jersey (the "State"), and **U.S. Water L.L.C.** (the "Operator"), a limited liability corporation duly organized and existing under the laws of the State of Delaware.

WITNESSETH:

WHEREAS, the City currently owns and operates a water supply, transmission and distribution system, as well as a wastewater collection system and a stormwater system (the "System"); and

WHEREAS, the City has determined that the most efficient means to provide water, wastewater, and stormwater services to the residents and property owners in the City is through an agreement with a private party experienced in providing such services; and

WHEREAS, the City prepared and distributed a Request for Qualifications and Proposals on December 28, 2001 as amended and supplemented on January 24, 2002, January 31, 2002, March 13, 2002 and April 4, 2002 (the "RFQ/RFP") pursuant to the Act (as such term is defined herein) for such services; and

WHEREAS, on April 22, 2002, the City received a proposal from the Operator, as well as proposals from United Water, Inc., E'town Corporation, Consumers Water (together with Joseph Jingoli and Sons and GEOD Engineering) and American Water Services (together with Killam Management and Operational Services, Inc.) in response to such RFQ/RFP; and

WHEREAS, the City has determined, based on an evaluation of the proposals, that the most qualified proposal was submitted by the Operator; and

WHEREAS, the City and the Operator have agreed to the terms and conditions under which the Operator shall provide certain services in exchange for certain fees, all as described herein;

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:

"Abnormal Substance" means a substance, material or object present in the Wastewater or Raw Water, as the case may be, which cannot be removed or treated by elements within the System including but not limited to those substances, materials or objects which are not susceptible to treatment by elements within the System or materially interfere with or obstruct the operations of the System; provided however that Abnormal Substances shall not include any substances, materials or objects which can be removed or treated by standard operating practices applied to the System. As an example and not in limitation of what constitutes an Abnormal Substance, any substance which was not anticipated by the design of the treatment facilities and that cannot be reasonably removed by modifications to treatment operating practices, an example being sodium concentrations in excess of regulatory standards allowing for sodium addition during treatment with standard water treatment chemicals.

"Act" means the Water Act and the Sewer Act.

"Additional Capital Improvements" shall mean any Capital Improvements to the System (other than the Minimum Capital Improvements) which are identified by the City or the Operator or necessitated by Unforeseen Events.

"Affirmative Action Office" shall mean such office as defined in N.J.A.C. 17:27-2.1, as the same may be supplemented, amended or revised from time to time.

"Agreement" means this "Agreement for Operation, Maintenance and Management Services for the City of Orange Township Municipal Water, Wastewater and Stormwater Systems" executed by and between the City and the Operator, as the same may be amended or supplemented.

"AM Best" shall mean the A.M. Best Company of Oldwick, New Jersey or if such organization shall cease to exist, a successor or alternative organization agreeable to the City and the Operator.

"American Water Works Association" shall mean the American Water Works Association, an international nonprofit scientific and educational society dedicated to the improvement of drinking water quality and supply and

headquartered in Denver, Colorado, or if such organization shall cease to exist, a successor or alternative organization agreeable to the City and the Operator.

"American Water Works Association Standards" shall mean task specific standards and minimum requirements as promulgated by the American Water Works Association.

"Americans with Disabilities Act" shall mean 42 U.S.C. 12101 et seq., as the same may be supplemented, amended or revised from time to time.

"AMR" means encoded meter readers and appurtenances readable on the outside of the applicable structure, or by telephone or radio, at the discretion of the Operator.

"Annual EDU Total" means for any Year, a ratio the numerator of which is the total amount of water produced from the Water System for the preceding Year and the denominator of which is one EDU.

"Applicable Law" means any law, rule, code, standard, regulation, requirement, consent decree, consent order, consent agreement, permit, guideline, action, determination or order of, or legal entitlement issued or deemed to be issued by, any governmental body having jurisdiction, applicable from time to time to any activities associated with the System or the Services and any other obligation of the parties under this Agreement and in each case having the force of law.

"Authorized Representative" means, in the case of the Operator, the individual(s) specified in writing by the Operator as the representative of the Operator for purposes of this Agreement and in the case of the City, the City Administrator or such other representative otherwise designated in writing by the City Administrator or Mayor as the representative of the City for purposes of this Agreement.

"Bankruptcy Code" shall mean 11 U.S.C. 101 et seq., as the same may be supplemented, amended or revised from time to time.

"BPU" shall mean the State Board of Public Utilities or any successor agency.

"Business Day" shall mean a day that the City is open to conduct regular business with the public.

"Capital Improvement Plan" shall mean the list of Capital Improvements developed, organized and maintained by the Operator, in consultation with the City, as provided in Section 7.2(a).

"Capital Improvements" means new improvements or replacement items or repairs to or modifications of the System, or any portion thereof, that (a) have a five year or greater useful economic life, (without regard to depreciation tables or accounting or tax standards) (b) are non-consumable in nature, (c) are not listed on Schedule K, and (d) are not Repair and Replacement Items. Any item which satisfies the criteria set forth in this definition may constitute a "Capital Improvement" regardless of (i) its cost, (ii) whether the City has approved it as a capital project or improvement of the City, or (iii) any other consideration.

"City" means the City of Orange Township, in the County of Essex, New Jersey, a public body corporate and politic of the State.

"City Administrative Expenses" means an amount determined by the Authorized City Representative on an annual basis that is reasonably calculated to compensate the City for its direct and indirect costs of monitoring the Operator's performance under this Agreement, and an amount reasonably necessary to fund an adequately sized System revenue reserve, and a surplus amount as permitted by law.

"City Fault" means any breach of this Agreement by the City or, for activities of the City outside the scope of this Agreement, any negligent act or omission of the City, or any of its employees, agents, representatives, invitees or subcontractors.

"Commencement Date" means the date when the Operator must begin rendering the Services as determined in the Notice to Proceed delivered in accordance with Section 3.1.

"Connection Charges" means the fees to be charged by the Operator for the work performed all as set forth in Schedule H and as may be adjusted in accordance herewith.

"Consumable Items" shall mean items that are not Capital Improvements, and which during the course of operation of a utility system in accordance with prudent industry standards are the types of items expected to be replaced at regular intervals as part of routine maintenance, including but not limited to curb boxes and rods, meter box lids, valve box caps, hydrant caps, locks, doorknobs, light bulbs, small fuses, filter elements, chemical analyzer sensor cells, chemical feed pump diaphragms, chemical feed pump inlet and discharge valve internals, lubricants, coolants, or transmission fluids.

"Contract Date" shall mean May 1, 2003.

"Contract Year" means a one-year period commencing on the Commencement Date and ending on the Day immediately preceding the first anniversary date of the Commencement Date and each one year period thereafter.

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

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

"ECIA Bonds" shall mean the Essex County Improvement Authority Utility System Revenue Bonds, Series 1997A and Series 1997B (Orange Franchise Acquisition Project), dated July 1, 1997.

"ECIA Resolution" means the resolution numbered 97-165 adopted by the Essex County Improvement Authority on April 29, 1997 entitled "Resolution Authorizing the Issuance of Utility System Revenue Bonds (Orange Franchise Acquisition Project) of the Essex County Improvement Authority" as amended and supplemented.

"EDU" means 1000 Cubic Feet of Water.

"Environmental Condition" means soil or groundwater or surface water contamination (a) migrating from any portion of the System(s) as a result of a release of Hazardous Substances originating at, in, or from the System(s) to the extent not caused by the negligence or willful misconduct of Operator or (b) migrating to the System(s) 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.

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

"Fiscal Year" shall mean the City's fiscal year ending December 31st or such other period as the City may establish from time to time.

"Fixed Costs" means an amount reasonably anticipated to cover the expenses of the following: (a) annual costs of fuel, natural gas and electricity for operating the Systems; (b) Permit fees; (c) general landscaping maintenance at the Orange Reservoir, Walker Road Reservoir and Campbell Pond Reservoir when required by the City; (d) all charges for the transmission and treatment of Wastewater, including but not limited to PVSC charges and charges imposed by Second River Joint Meeting, (e) all charges for the Purchased Water; and (f) lease payments for equipment covered by the agreement referenced in Section 6.32.

"General Maintenance" shall mean routine maintenance items set forth in Sections 6.17, 6.18 or 6.19, the items set forth in Schedule K up to the limits set forth therein and the replacement of Consumable Items.

"Guarantor" shall mean United Water Resources, Inc., a New Jersey corporation qualified and authorized to do business in the State and having its primary business address at 200 Old Hook Road, Harrington Park, New Jersey.

"Guaranty Agreement" shall mean the guaranty agreement executed by the Guarantor for the benefit of the City as set forth in Schedule A.

"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) 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.*; (iv) the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; (v) the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.* and/or (vi) any other federal, state, regional or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating 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, polychlorinated biphenyls 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; provided, however, that chlorine, lubricants or any other substances which are customarily used under standard industry practice in operating, managing, maintaining or repairing the System(s) shall not be considered a Hazardous Substance if the amount of any such substance involved in the applicable situation is consistent with prudent industry standards and if any such substance is used as contemplated under prudent industry standards.

"Heavy Cleaning" shall mean the removal of all deposits, whether inorganic or organic, sand, silt, grease, and all other solids or semi-solid material from the sanitary sewer lines and manholes by means of bucket machines, power rodders, screw rodders, cutters and other accessories.

"Hydrant Flow Test" shall mean all hydrant flow tests as requested by the City or individual customers for the purpose of determining available flow rates and residual pressures at individual hydrant locations.

"Hydrant Maintenance and Repair" shall mean all maintenance and repair work requiring disassembly of the above-ground section of the hydrant down to the shoe of the hydrant, including any internal parts that can be removed without excavation down to and including the seat ring, as well as all external parts that can be repaired or replaced without excavating the hydrant, hydrant turn-offs, and the replacement of all packing and gaskets.

"Hydrant Relocation" shall mean the relocation of the hydrant, supply pipe and valves from one point in the Main to another, including the installation of new tapping sleeves and valves

"Hydrant Replacement" shall mean the replacement of the hydrant down to the shoe of the hydrant, but not including the hydrant turn-off.

"Incident report" shall mean the initial notice, report or request to Operator by the City, a customer or any person or entity of an act relative to or affecting the Systems.

"Lateral Service Pipe" shall mean the section of sanitary sewer pipe between the Main and the first cleanout, or the property line if no cleanout exists, and shall include the branch connection at the sewer Main.

"Lateral Service Pipe Repairs" shall mean all repair work to (including replacement of) branch connections (including the connection at the Sewer Main), fittings, cleanouts and Lateral Service Pipe.

"Licenses" shall mean all Federal, State and local approvals, licenses and certificates required to provide the Services.

"Light Cleaning" shall mean the removal of all deposits, whether inorganic or organic, sand, silt, grease, and all other solids or semi-solid material from the sanitary sewer lines and manholes that can be accomplished by a reasonable number of passages of hydraulically propelled or driven cleaning equipment.

"Local Finance Board" shall mean the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs of the State.

"Local Public Contracts Law" shall mean N.J.S.A. 40A:11-1 et seq., as the same may be supplemented, amended or revised from time to time.

"Main" shall mean a pipe designed to transport water to a Supply Pipe or transport sewerage from a Lateral Service Pipe, including water valves (but not corporation stops or branch connections), sewer manholes, sewer catch basins and sewer inlets, but excluding water valve box covers, manhole or catch basin covers/castings, and inlet castings.

"Minimum Administrative Criteria" shall mean the administrative requirements applicable to the Operator as set forth in Schedule E.

"Minimum Capital Improvements" shall mean the Capital Improvements set forth in Schedule B.

"Minimum Financial Criteria" shall mean the financial requirements applicable to the Operator as set forth in Schedule F.

"Minimum Charge" means, for a customer within a class of property, an amount determined by the following calculation: (i) the principal and interest due on the System Indebtedness for the next twelve months beginning April 1 of the year of calculation plus the Operator's Annual Capital Costs (if any), (ii) the sum of which is multiplied by the percentage of water consumed by such class of property and (iii) the resulting product is then divided by the number of customers within such class of property.

"Minimum Technical Criteria" shall mean the technical requirements applicable to the Operator as set forth in Schedule G.

"Miscellaneous Revenues" shall mean Tapping Fees, Connection Charges, interest and penalties on late payments and any other fees or charges or amounts for direct or indirect use of the System that are not Rates.

"Notice to Proceed" shall mean a written notice from the City to the Operator establishing the Commencement Date in accordance with Section 3.1 and enclosing (a) a certificate of an Authorized Representative of the City to the effect that the Local Finance Board and the BPU have finally approved this Agreement and the time for appeal of such decision has expired and that each of the representations, warranties and covenants of the City that are set forth in Section 4.1 are true and correct and (b) an opinion of counsel to the effect set forth in Section 4.1(a), (b) and (c).

"OMB Repairs" shall mean repairs to outside meter boxes consisting of the excavation and replacement of existing outside meter boxes for meters one inch and smaller, including the replacement of tile pipe or monotubes, to the extent necessary, but not the replacement of poured concrete vaults. Repairs or replacement of meters located within outside meter boxes shall not be considered a OMB Repair but shall be considered a Service Investigation. OMB Repairs shall include the replacement of all or some of the following (as required): riser pipes (which shall be type K copper), yokes, valves, fittings and meters including the curb stop, box and rod as well as the meter box, cover and lid and the backfill and replacement of suitable excavated material and the replacement of any sidewalk, driveway aprons, pavers or lawns disturbed in order to make the repair and notice by the Operator to the City and the owner of the condition of the respective supply pipe and service pipe connected to the new risers.

"Operations Committee" shall mean the committee established pursuant to Section 6.22.

"Operator" shall mean U.S. Water L.L.C., a limited liability corporation incorporated under the laws of the State of Delaware and licensed to do business in the State.

"Operator's Annual Capital Cost" for any Additional Capital Improvement shall mean the Operator's Total Capital Cost financed over a twenty year term at prevailing market interest rates and with substantially level monthly principal and interest payments.

"Operator's Capital Improvement Proposal" shall mean the proposal submitted by the Operator to the City to undertake the construction and financing of Additional Capital Improvements under Section 7.5.

"Operator's Construction Fee" shall mean the guaranteed maximum price agreed to by the City and the Operator for the construction of any Additional Capital Improvements under Section 7.5.

"Operator's Design Fee" shall mean the firm price agreed to by the City and the Operator under Section 7.4 to provide design services for any Capital Improvements.

"Operator's Total Capital Cost" for any Capital Improvement shall mean the sum of the Operator's Design Fee and the Operator's Construction Fee.

"Permits" shall mean permits, approvals, certifications, authorizations and/or consents issued by the EPA, the DEP, or any other Federal, State or local regulatory agency or private party that is required of the City as the owner of the System.

"Prevailing Wage Law" shall mean N.J.S.A. 34:11-56.25 et seq., as the same may be supplemented, amended or revised from time to time.

"Pre-Existing 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(s) on or before the Commencement Date, including, without limitation, the presence at, on, in, under, above or in the vicinity of the System(s) of any Hazardous Substances.

"Purchase Option Price" shall mean for any Additional Capital Improvement, the price at which the City may exercise its right to prepay the unamortized principal amount of the Operator's Design Fee and the Operator's Construction Fee, plus any accrued interest thereon to the date of prepayment.

"Purchased Water" means water purchased by the City for the Water System from New Jersey American or any other purveyor of bulk water.

"PVSC" shall mean the Passaic Valley Sewerage Commission or other such entity responsible for the transmission and/or treatment of wastewater from the Wastewater System.

"Rate Formula" shall mean the formula used to establish the Rates as set forth in Schedule C.

"Rates" shall mean the annual charges for use of the Water System and Wastewater System, expressed as a per-one thousand cubic feet of water charge for the Water System and for the Wastewater System calculated in accordance with the Rate Formula.

"Raw Water" means any water made available to the Operator from the City's well's within the Water System or the interconnections between the Water System and New Jersey American Water Company or the City of East Orange, or any other source approved by DEP.

"Repair and Replacement Item" shall mean any of the items described on Schedule J.

"Repair and Replacement Requirement" means an annual amount of \$150,000 to be deposited by the City from the System Revenues into the Repair and Replacement Fund.

"Required Equipment" shall mean the equipment and materials listed on Schedule L.

"Revenues" shall mean the Usage Charges, Minimum Charges and the Miscellaneous Revenues.

"Service Break" shall mean any break in a Service Line.

"Service Line" shall mean a pipe designed to transport water from a Supply Pipe to the user's structure or transport sewerage from a user's structure to a Lateral Service Pipe.

"Services" shall mean all of the duties, obligations, and services described herein that are to be provided by the Operator.

"Service Fee" shall mean the amount to be paid by the City to the Operator in monthly installments, as set forth in Schedule I as may be adjusted pursuant to Section 8.2.

"Service Investigation" shall mean the Operator's response to an Incident Report or Work Order requiring the Operator to perform a field investigation in order to act or obtain further information. Types of service investigations include but are not limited to responses for (1) customer complaints of high bills or meter leaks requiring an on premises appearance for action or inspection in order to determine the cause of the high bill, (rereading of meters by remote device shall not be considered a service investigation); (2) outside leak complaints requiring sounding or other leak detection methods; (3) sewer blockages (4) meter changes requested by the owner and approved by the City (5) other responses by the Operator to incident reports generating work orders for items that are not listed in Schedule K. Performance of multiple tasks such as turn off at curb and remove meter shall be considered one service investigation. Continuing additional tasks emanating from the original service investigation shall not be considered an additional service investigation. Service investigations shall not include (1) Operator's response for service required by utility plant equipment located at the pumping station or wells or (2) Operator's response to all items listed in Schedule K (other than Service Investigations).

"Sewer Act" shall mean the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-19 et seq., as the same may be supplemented, amended or revised from time to time.

"Sewer Main" shall mean a pipe designed to transport sewage from a Lateral Service Pipe, including sewer manholes, sewer catch basins and sewer inlets, but excluding manhole or catch basin covers/castings, and inlet castings.

"Specification Raw Water" means Raw Water which (1) has the physical, chemical and biological characteristics that were anticipated in the design of the treatment facilities constituting part of the Water System,

(2) contains no Hazardous Substance in concentrations which exceed those allowed under Applicable Law and contains no Abnormal Substances and (3) meets raw water characteristics similar to those encountered during the previous three years. In addition, Specification Raw Water shall be the annual average daily quantity of Raw Water necessary to meet water demands similar to (within 10%) those encountered during the previous three years.

"Specification Wastewater" means Wastewater possessing the following characteristics:

(a) containing no Hazardous Substance in concentrations which exceed those allowed under Applicable Law; and

(b) containing no Abnormal Substance; and

(c) having the characteristics prescribed in the applicable service contracts and/or rules and regulations of the PVSC.

"State" shall mean the State of New Jersey.

"State Treasurer" shall mean treasurer of the State.

"Stormwater System" shall mean the stormwater system as set forth in Schedule D.

"Supply Pipe" shall mean the section of water distribution pipe between the Main and the curb stop; including the connection between the Supply Pipe and Main and further including the curb stop, box and rod, and any required fittings necessary to connect the curb stop to the service pipe, the piping between the curb stop and the corporation stop, and the corporation stop.

"Supply Pipe Repairs" shall mean all repair work on the Supply Pipe requiring excavation, including the repair or replacement of all or some of the following: the Supply Pipe (but only repairs to, not total replacement of which shall be a Supply Pipe Replacement), corporation stop, curb box, and curb stop, including cutting off the corporation stops at the Main, and all necessary replacement parts to connect the preceding and including necessary excavation of all materials, backfill with replacement of unsuitable material or saturated material with quarry process, temporary and permanent road repair. Supply pipe repairs includes excavation of all materials, backfill with replacement of unsuitable material or saturated material with quarry process, temporary and permanent road repair.

"Supply Pipe Replacement" shall mean the replacement of the Supply Pipe in total, including the replacement of the Supply Pipe, the corporation stop, curb stop, curb box, curb rod, if necessary, and all necessary replacement parts to connect the preceding and including necessary excavation of all materials, backfill with replacement of unsuitable material or saturated material with quarry process, temporary and permanent road repair.

"System" shall mean all of the individual components and elements that comprise the Water System, Wastewater System and Stormwater System, as same may be improved from time to time.

"System Indebtedness" shall mean any bonds or notes issued by or on behalf of the City for improvements to the System.

"Tapping Fees" shall mean the fees to be charged by the City for connections to the Systems as set forth in Schedule H.

"Technical Specifications" shall mean the minimum design and performance specifications set forth in Schedule N, subject to such written modification as may be agreed to by the City and the Operator.

"Term" shall mean the term of this Agreement as determined in accordance with Section 2.2.

"Unforeseen Events" shall mean any acts, events or conditions or any combination thereof provided they (a) are outside of the reasonable control of the party relying thereon for justification for not performing an obligation or complying with any condition required of such party under this Agreement; and either (b) have or may be reasonably expected to have a material adverse effect on the System or the operation thereof; or (c) have or may be reasonably expected to have an adverse impact on the actual cost to provide the Services. Unforeseen Events shall include, to the extent they meet (a) and either (b) or (c) above, but not be limited to, any of the following:

- (i) Force Majeure events, such as acts of God, acts of terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, droughts, washouts and explosions, civil disturbances, acts of the public enemy and war, labor actions, strikes or slowdowns (other than a labor action, strike or slowdown by the Operator, its employees, affiliates or subcontractors);
- (ii) Change in Law, defined as (i) the enactment, adoption, issuance, modification, or written changes in administrative or judicial interpretation of any Applicable Law after the Contract Date

- (excluding (1) laws adopted at the time of execution of this Agreement, but which have provisions that take effect after the first Contract Year and (2) changes in Federal or State income tax law, but excluding any user, franchise or similar tax law); or (ii) a material modification of or imposition of any material condition on the issuance, modification or renewal of any Permitter License;
- (iii) 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 including the City, except for enforcement by the City against the Operator of the obligations of the Operator under this Agreement;
 - (iv) Permit Terminations, defined as the suspension, termination, interruption, denial or failure of renewal or issuance of any Permit or License or a delay in the review, issuance or renewal of a Permit or License (to the extent not caused by the negligence of the Operator) that is necessary to operate the System;
 - (v) With respect to the Company only, City Fault;
 - (vi) Receipt, treatment or disposal of (i) non-Specification Raw Water, or (ii) non-Specification Wastewater, or (iii) the presence in the Stormwater System of stormwater or other materials from any source (including inflow, infiltration, discharge by an industrial user or otherwise) containing Hazardous Substances in concentrations which exceed those allowed under Applicable Law, to the extent not caused by the negligence of the Operator;
 - (vii) Any Environmental Condition or Pre-existing Environmental Condition (but excluding the presence of Hazardous Substances in Raw Water in concentrations which do not exceed those allowed under Applicable Law);
 - (viii) The failure of any system or piece of equipment not under the direct control of the Company or (its subcontractors), in whole or in part, to the extent the proper operation of the same is necessary or advisable for the performance of the Services.

- (ix) Unavailability of utilities, or upon the completion of the Minimum Capital Improvements described in paragraphs 1(A) and 5 of Schedule B hereto, and only with respect to the Minimum Capital Improvements that have back up power, the unavailability of utilities and back up power.
- (x) Unavailability of Raw Water.

"Usage Charges" means for any customer, the annual amount due calculated by multiplying the Rate by the amount of water consumed by the customer for each year.

"Variable Costs" means an amount equal to the Operator's Service Fee, plus compensation for Repair and Replacement Items due under Section 8.3, plus the Repair and Replacement Requirement, plus the City Administrative Expenses.

"Wastewater" means wastewater and stormwater discharging into the Wastewater System by users of the Wastewater System.

"Wastewater System" shall mean the wastewater collection system as set forth in Schedule D.

"Water Act" shall mean the New Jersey Waste Supply Public-Private Contracting Act, N.J.S.A. 58:26-19 et seq., as the same may be supplemented, amended or revised from time to time.

"Water Main" shall mean a pipe designed to transport water to a Supply Pipe, including water valves (but not corporation stops or branch connections), but excluding water valve box covers.

"Water System" shall mean the potable water supply, transmission and distribution system as set forth in Schedule D.

"Work Order" shall mean a written record generated by the Operator and relating to work to be done on the Systems, including performance of the Services, Service Investigations as a result of an Incident Report, General Maintenance, Repair and Replacement Items or in response to an emergency.

Section 1.2. 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," unless the context specifies otherwise. Any consent or approval required of the City may be given by an Authorized Representative of the City and any notice or document required to be delivered to the City shall be delivered to an Authorized Representative of the City. Any reference to the word "System" shall be deemed to refer to the Water System, the Wastewater System or the Stormwater System or to all of the foregoing, as applicable under the circumstances. All references to Articles, Sections, and Schedules shall, unless the context specifies otherwise, refer to this Agreement. For purposes of prorating any payments due under this Agreement, it shall be assumed that a Year is 360 Days consisting of 12 thirtyday months.

ARTICLE II
AGREEMENT

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

Section 2.2. Term. The Term of this Agreement shall begin on the Commencement Date and, unless earlier terminated in accordance with the terms hereof or extended in accordance with Section 2.3, shall expire on the tenth anniversary date of the Commencement Date.

Section 2.3. Extension. At any time prior to the expiration of the Term, the City shall have the right to extend the Term of the Agreement for a period of 5 years and for an additional period of 5 years. To exercise such right of extension, the City shall notify the Operator in writing within six month prior to the expiration of the Term.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1. Notice to Proceed. Within thirty Days of the satisfaction or waiver of the conditions set forth in Section 3.2, the City shall issue a Notice to Proceed. Such Notice to Proceed shall set forth the Commencement Date, which shall be not later than thirty Days after the issuance of such Notice to Proceed.

Section 3.2. Conditions to Commencement Date

(a) The City shall be under no obligation to issue a Notice to Proceed or to perform any of its other obligations under this Agreement (other than those obligations arising or relating to actions required to be taken by or on behalf of the City prior to the issuance of the Notice to Proceed) unless the following conditions have been satisfied or, with the consent of the Operator, waived by the City in writing:

(i) The Local Finance Board and the BPU shall have finally approved this Agreement and the time for appeal of such decision shall have expired;

(ii) The Operator and the Guarantor shall each have delivered to the City their respective certificates of incorporation and bylaws;

(iii) The Operator shall have delivered to the City (1) a certificate of an Authorized Representative of the Operator, to the effect that each of the representations, warranties and covenants set forth in Section 4.2 are true and correct as of the date of this Agreement and (2) an opinion of counsel to the effect set forth in Sections 4.2(a) through (d), inclusive;

(iv) The Operator, its employees and/or its subcontractors, if applicable, shall have obtained all applicable Licenses that are necessary for the operation, maintenance and management of the System, and that are not expressly required to be obtained by the City hereunder;

(v) The Operator shall have submitted to the City all appropriate certificates of insurance and all applicable endorsements to such insurance policies, as are required by this Agreement;

(vi) The Operator shall have submitted to the City the performance bond for operation and maintenance and the labor and materials payment bond as required by Section 10.2 of this Agreement;

(vii) The Operator shall have been named the licensed Operator of the System by the DEP;

(viii) The ECIA Bonds shall have been defeased in accordance with Section 12.01 of the ECIA Resolution;

(ix) The Guarantor shall have delivered the Guaranty Agreement to the City along with (1) a certificate of an officer of the Guarantor, to the effect that each of the representations, warranties and covenants set forth in Section 4.3 are true and correct as of the date of the Guaranty Agreement and (2) an opinion of counsel to the effect set forth in Section 4.3(a) through (d);

(b) The Operator shall be under no obligation to perform any of its obligations under this Agreement until the Commencement Date (other than obligations arising or relating to actions required to be taken by or on behalf of the Operator prior to the Commencement Date) unless the following conditions have been satisfied by the City or waived by the Operator:

(i) The Local Finance Board and the BPU shall have finally approved this Agreement and the time for appeal of such decision shall have expired;

(ii) The City shall have delivered to the Operator (1) a certificate of an Authorized Representative of the City, to the effect that each of the representations, warranties and covenants set forth in Section 4.1 are true and correct as of the date of this Agreement and (2) an opinion of counsel to the effect set forth in Sections 4.1(a) through (c), inclusive;

(iii) The Operator, its employees and/or its subcontractors, if applicable, shall have obtained all applicable Licenses that are necessary for the operation, maintenance and management of the System, and that are not expressly required to be obtained by the City hereunder;

(iv) The Operator shall have been named the licensed Operator of the System by the DEP;

(v) The City shall have obtained and there shall be in effect all Permits for the operation, maintenance and management of the System required to be obtained by the City as owner of the System.

Section 3.3. Satisfaction of Conditions Precedent

(a) The parties hereto shall exercise good faith and due diligence in satisfying the conditions precedent required by Section 3.2 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 two hundred seventy Days 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 the Operator, for a period of time to be agreed upon by the City and the Operator, on the same terms and conditions set forth in this Agreement, except as provided in Section 3.4.

(c) In the event that the Commencement Date shall not have occurred on or prior to two hundred seventy Days after the Contract Date or prior to the last Day of any extension period elected pursuant to Section 3.3(b), then either party, by notice in writing to the other party, may terminate this Agreement. If the reason for such termination is not the fault of either party to this Agreement, then each party shall bear its respective expenses attributable to this Agreement. In the event that such termination is the fault of one of the parties for failure to meet conditions precedent within its control, then that party shall be responsible for all reasonable fees and expenses of the other party attributable to this Agreement.

(d) Neither party shall be permitted to terminate this Agreement for failure to satisfy any condition precedent that is entirely and reasonably within such party's control or is such party's fault or if the failure to satisfy any condition precedent is due to the party's lack of due diligence.

Section 3.4. Timing of Certain Obligations. Pursuant to the Act, this Agreement must be submitted to the Local Finance Board and the BPU 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 reasonably required in order to obtain such review and approval. In the event that the Local Finance Board or the BPU conditionally approves this Agreement or any portion thereof and premises 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 increase the cost to operate, maintain or manage the System (or any portion thereof) or do not materially and adversely affect the obligations, rights and remedies of the parties, as provided herein, 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 Local Finance Board or the BPU are material terms and conditions in that such terms and conditions increase the cost to operate, maintain or manage the System (or any portion thereof) or materially and adversely affect the obligations, rights and remedies of the parties as provided herein, the parties shall cooperate in good faith to renegotiate the terms and conditions to this Agreement in order to satisfy the concerns of the Local Finance Board or the BPU. Failure of the parties to renegotiate the terms and conditions to this Agreement in order to satisfy the concerns of the Local Finance Board shall be considered a failure to satisfy the conditions set forth in Section 3.2 and will be deemed a valid reason for termination of this Agreement by either party without fault, in which case each party shall bear its respective expenses attributable to this Agreement.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 4.1. Representations, Warranties and Covenants of the City. (a) The City represents and warrants to the Operator as follows:

(i) The City is a public body corporate and politic duly created and existing pursuant to the laws of the State. The City has the full legal right, 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 City and constitutes a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting rights of creditors of the City generally);

(ii) 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 this Agreement or any actions contemplated in this Agreement;

(iii) There is no Federal, State or local law or regulation, or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery of this Agreement by the City, 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 or regulation;

(iv) Except as otherwise disclosed, the City is, to its knowledge now and at the Commencement Date shall be, in compliance with the terms of all applicable laws, regulations, Permits, orders, judgments, administrative orders, regulations and guidelines adopted or entered by any governmental authority having jurisdiction to do so in connection with its operation and maintenance of the System;

(v) The City has or holds all Permits necessary to effectuate its responsibilities under this Agreement; and

(vi) The Agreement is not subject to annual appropriation.

(b) The City hereby covenants to the Operator to have or hold throughout the Term of this Agreement, all Permits necessary to effectuate its responsibilities under this Agreement.

Section 4.2. Representations, Warranties and Covenants of the Operator. (a) The Operator represents and warrants to the City as follows:

(i) The Operator is a Limited Liability Corporation duly organized and existing under the laws of the State of Delaware and is qualified and authorized to do business in the State. The Operator has the full legal right, 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 constitutes a legal, valid and binding obligation of the Operator, enforceable against it in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting rights of creditors of the Operator generally);

(ii) 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 Operator or to this Agreement or any actions contemplated in this Agreement and which will have an adverse material impact on the performance of Services under this Agreement.

(iii) There is no Federal, State or local law or regulation, or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery of this Agreement, by the Operator, the compliance by the Operator with the terms and conditions hereof, or the consummation by the Operator of the transactions contemplated hereby, a violation of such law or regulation;

(iv) The Operator is not in default under any material provisions of the laws of its state of incorporation that would adversely affect its performance under this Agreement or under its certificate of incorporation or bylaws;

(v) No indictment or conviction has been returned against any official of the Operator with respect to any business transaction, whether or not related to the transactions contemplated by the terms of this Agreement;

(vi) The Operator (or the Operator's personnel, where appropriate) has or holds, and will continue to have or hold throughout the Term of this Agreement, all Licenses necessary to provide the Services;

(vii) No receiver, liquidator, custodian or trustee of the Operator or of a major part of its property has been appointed; no petition to reorganize the Operator pursuant to the Bankruptcy Code or any similar statute that is applicable to the Operator is pending, and no adjudication of bankruptcy or a filing for voluntary bankruptcy under the provisions of the Bankruptcy Code or any other similar statute which is applicable to the Operator has been filed;

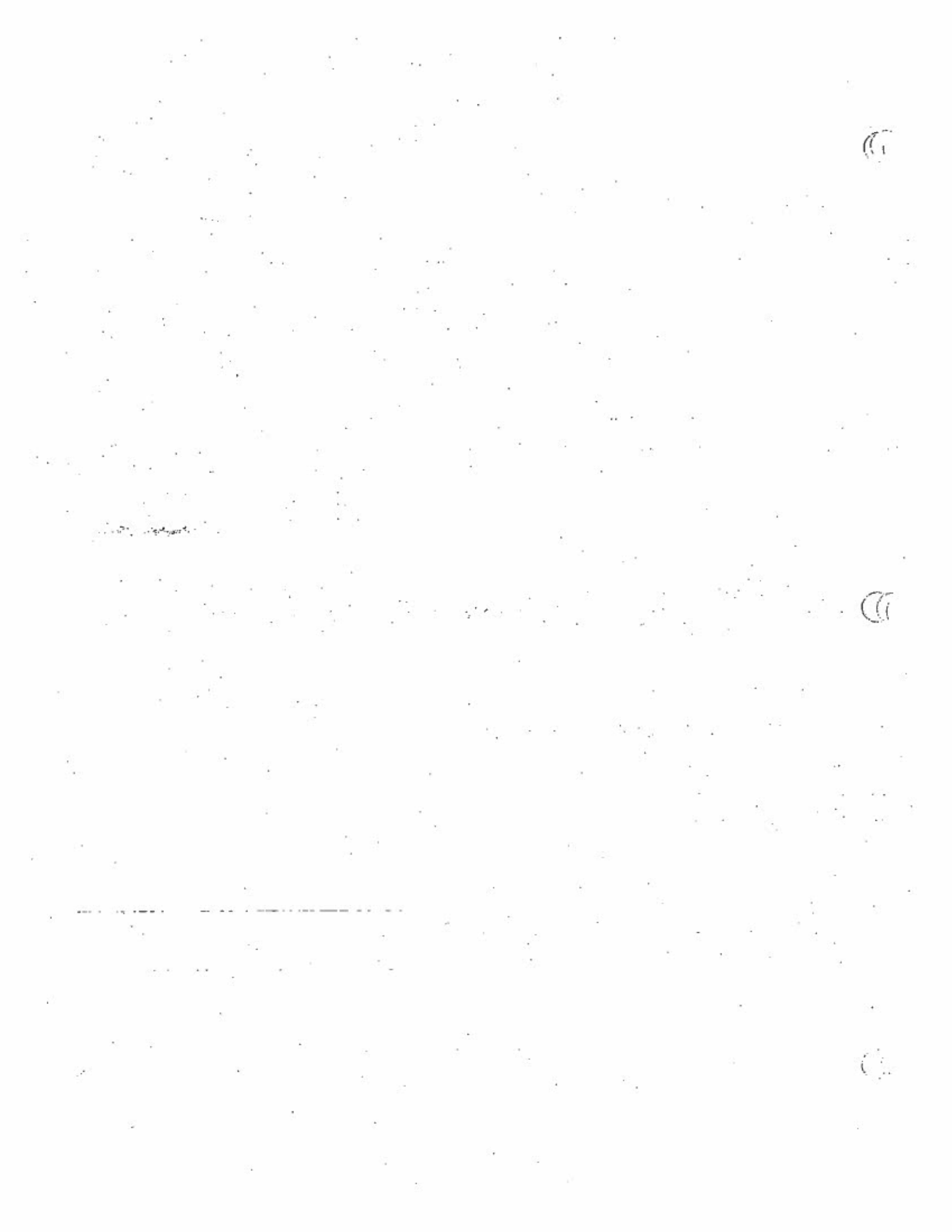
(viii) The Operator together with the Guarantor meet or exceed the Minimum Administrative Criteria, Minimum Financial Criteria and Minimum Technical Criteria; and

(ix) The Operator has no prior knowledge of any pre-existing conditions or substances which may impact his impending operation of the Systems or its ability to do so for the Service Fee.

(b) The Operator covenants to the City as follows:

(i) The Operator (or the Operator's personnel, where appropriate) will continue to have or hold throughout the Term of this Agreement, all Licenses necessary to provide the Services;

(ii) At all times during the Term of this Agreement, the Operator shall keep the System free from any and all liens and encumbrances arising out of or in connection with (i) its operation, maintenance



and management of the System or (ii) any acts, omissions or debts of the Operator, any of its subsidiaries or any of its subcontractors;

(iii) The Operator will immediately, by fax and certified mail, provide notice to the City upon:
(x) the appointment of any receiver, liquidator, custodian or trustee of the Operator or of a major part of its property or of the Guarantor or a major part of its property; (y) the pendency of any petition to reorganize the Operator or the Guarantor pursuant to the Bankruptcy Code or any similar statute that is applicable to the Operator or Guarantor; and (z) the filing for voluntary bankruptcy or adjudication of bankruptcy under the provisions of the Bankruptcy Code or any other similar statute which is applicable to the Operator or the Guarantor; and

(iv) The Operator or the Guarantor shall continue to meet or exceed the Minimum Administrative Criteria, Minimum Financial Criteria and Minimum Technical Criteria.

Section 4.3. Representations, Warranties and Covenants of the Guarantor. The Guarantor represents, warrants and covenants to the City as follows:

(a) The Guarantor is a corporation duly organized and existing under the laws of the State of New Jersey, and is qualified and authorized to do business in the State. The Guarantor has the full legal right, power and authority to enter into the Guaranty Agreement and to perform its duties and obligations thereunder. The Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting rights of creditors of the Guarantor generally);

(b) 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 Guarantor or to the Guaranty Agreement or any actions

contemplated in the Guaranty Agreement and which will have an adverse material impact on the performance of its obligations under the Guaranty Agreement;

(c) There is no Federal, State or local law or regulation, or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery of the Guaranty Agreement, by the Guarantor, the compliance by the Guarantor with the terms and conditions thereof, or the consummation by the Guarantor of the transactions contemplated thereby, a violation of such law or regulation;

(d) The Guarantor is not in default under any material provisions of the laws of its state of incorporation that would adversely affect its performance under the Guaranty Agreement or under its articles of incorporation or bylaws;

(e) No indictment or conviction has been returned against any official of the Guarantor with respect to any business transaction, whether or not related to the transactions contemplated by the terms of this Agreement or the Guaranty Agreement;

(f) No receiver, liquidator, custodian or trustee of the Guarantor or of a major part of its property has been appointed; no petition to reorganize the Guarantor pursuant to the Bankruptcy Code or any similar statute that is applicable to the Guarantor is pending, and no adjudication of bankruptcy or a filing for voluntary bankruptcy under the provisions of the Bankruptcy Code or any other similar statute which is applicable to the Guarantor has been filed; and

(g) The Guarantor meets or exceeds the Minimum Financial Criteria.

Section 4.4 Tax Covenants.

(a) The City and Operator acknowledge and agree that this Agreement is intended to conform to the requirements of Internal Revenue Service Revenue Procedure 97-13, 1997-1 C.B. 632, and is to be interpreted consistently therewith.

(b) Notwithstanding any provisions herein to the contrary, the City and Operator agree that the City shall be under no obligation to, and shall not, pay compensation for Services to the Operator for any annual period,

if such payment, or any portion thereof, would result in less than 80% of the Operator's compensation for Services for such year being based on a periodic fixed fee, as such term is defined in Internal Revenue Service Revenue Procedure 97-13.

(c) The City and the Operator agree that, for so long as tax-exempt obligations are outstanding with respect to the System, this Agreement shall not be amended or revised except with an opinion of a nationally recognized bond counsel firm that such amendments or revisions will not affect the tax-exempt status of any obligations outstanding with respect to the System.

(d) The City and the Operator agree that, for so long as tax-exempt obligations are outstanding with respect to the System, the City and the Operator shall not take any action, or fail to take any action, which would result in the interest on any tax exempt obligations outstanding with respect to the System being included as gross income for federal income tax purposes.

ARTICLE V

CITY RESPONSIBILITIES

Section 5.1. General Responsibilities. The City shall do the following:

- (a) Promptly procure and continually maintain in full force and effect and in accordance with their respective terms the Permits;
- (b) Enact all necessary ordinances to carry out the provisions of this Agreement and enforce all such ordinances;
- (c) At all times, provide access to the System for the Operator, its agents, and employees;
- (d) In each Contract Year the City shall budget and appropriate amounts sufficient to pay the Operator the Service Fee and any other amounts expected to be due and payable to the Operator during such Contract Year;
- (e) The City shall, at its expense, implement any Capital Improvement or Repair or Replacement Item that is required (1) in order to comply with Applicable Law, (2) in order to remedy the effects of an Unforeseen event, (3) in order for the Operator to continue to provide the services in accordance with prudent industry standards or (4) if the failure to do so will jeopardize the health or safety of the residents of the City, the users of the System or the employees of the City or the Operator; and
- (f) Comply with the requirements of the Public Health Security and Bioterrorism Preparedness and Response Act or direct the Operator to comply with the same, in which case such compliance would be considered an Unforeseen Event.

Section 5.2. Establishment and Collection of Rates, Tapping Fees and Connection Charges

- (a) During the first Contract Year, the Rates, Tapping Fees and Connection Charges shall be as set forth in Schedules C and H, respectively. On the first Day of the second Contract Year and each Contract Year thereafter, the Tapping Fees shall be increased by two percent and the Connection Charges shall be increased by three percent. On the first Day of the second Contract Year and each Contract Year thereafter, the Rates shall be

revised in accordance with the Rate Formula. Such Rates shall be calculated by an Authorized Representative of the City at least thirty Days prior to the beginning of each Contract Year. An Authorized Representative of the City shall notify the Operator of the revised Rates immediately upon completing such calculation.

(b) Rates, Tapping Fees and Connection Charges remaining unpaid for thirty Days shall accrue interest at the maximum rate permitted under N.J.S.A. 40A:26A-17. The City shall have the ability to establish installment payment plans for the repayment of delinquent accounts in accordance with N.J.S.A. 54:5-19 and the Operator shall abide by these plans.

(c) Rates, Tapping Fees and Connection Charges shall become a first lien on the property benefited in accordance with N.J.S.A. 40A:26A-12 and N.J.S.A. 40A:31-12. Such liens shall be enforceable in the manner provided for real property tax liens by the tax sale law, N.J.S.A. 54:5-1 et seq.

(d) The City reserves the right to change the Rates, Connection Charges or Rate Formula, at any time and for any reason, at its sole discretion, by duly adopting an ordinance establishing alternate charges, fees or rates for the System. Upon due adoption, such ordinance shall supercede any and all provisions contained in this Section 5.2.

ARTICLE VI

OPERATION, MAINTENANCE, MANAGEMENT OF THE SYSTEM

Section 6.1. General. (a) The Operator shall keep the System in good repair and working order at all times. The Operator shall provide the Services (i) in compliance with all Federal, State and local laws and regulations and all Permits, (ii) in accordance with this Agreement, (iii) in an efficient and economical manner, and (iv) in accordance with prudent industry and utility standards. Unless otherwise specified, all work performed by the Operator under this Agreement shall be performed in accordance with the Technical Specifications.

(b) The Operator shall comply with all existing federal, state and local standards concerning drinking water quality. The cost of providing services to comply with all existing standards and regulations as of the Contract Date except those costs specifically listed as a responsibility of the City shall be the sole responsibility of the Operator. The obligation of the Operator to be responsible for the cost of providing services to comply with such existing standards and regulations is not intended in any manner to reduce the obligation of the City to pay the costs of Capital Improvements, Repair and Replacement Items and other parts, materials and services which are described herein as being the responsibility of the City. These include the Safe Drinking Water Act, New Jersey Drinking Water Regulations, Total Coliform Rule, Lead and Copper Rule, Consumer Confidence Reports and the Public Notification Rule as in effect on the Contract Date. The Operator shall comply with all new federal, state and local standards concerning drinking water quality. Such new or changed standards occurring after the Contract Date shall be considered Unforeseen Events and accordingly may result in an increase or decrease in the Service Fee. The following rules for the purpose of this section include but are not limited to Source Water Protection Rule, Radon Rule, Unregulated Contaminant Monitoring Rule, The New Radionuclides Rule and the Arsenic Rule.

Section 6.2. Materials, Labor, Vehicles, etc. The Operator shall provide, at its cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment (copiers, typewriters, computers, etc.), chemicals, supplies, software, materials, spare parts (See Schedule M), consumables, testing and laboratory analysis, and all else necessary for or incidental to the operation, maintenance and management of the System in accordance with this Agreement. The Operator shall continue to purchase parts and materials that have been standardized over the years

by the City, including but not limited to Mueller fire hydrants but excluding meters and remote reading devices for such meters which shall be chosen and purchased by the City.

Section 6.3. Use of Other Contractors. The City, in its sole discretion, may require that work (other than the Services, but including Additional Capital Improvements) be performed on the System by its own employees or by other contractors. In such event, such work shall be deemed as supplemental to that performed by the Operator under this Agreement and the Operator shall make no claim for a loss of anticipated profit. The City shall cause such employees or other contractors not to interfere with the performance by the Operator of its obligations under this Agreement and the Operator shall cooperate with such employees of the City or other contractors, including by making on-site personnel of the Operator reasonably available to perform project related tasks requiring operation of an element of the System, including operation of valves, by-passing of mains, etc.; provided however that the availability of such personnel shall be determined based on the Operator's ability to provide such assistance while satisfying its obligation to provide the Services without incurring overtime. In the event such assistance requires the Operator to incur overtime expenses or to hire additional employees on a full or part-time basis, the Operator shall notify the City of its expected expenses and if the City directs the Operator to provide such assistance, the Operator's reasonable costs shall be borne by the City.

Section 6.4. Hazardous Substances. If, during the course of providing the Services, hazardous or toxic waste or materials (as defined in applicable Federal and/or State laws and regulations) are uncovered by the Operator, it shall not be the obligation of the Operator to remove and dispose of such hazardous substance. If any sludge, residue or other material collected in or removed from the System constitutes a Hazardous Substance, then the Operator shall take all of the necessary steps to contain the Hazardous Substances and to notify the City and all appropriate regulatory agencies and assist the City in determining the necessary steps to properly address such Hazardous Substances. Except to the extent the existence of such Hazardous Substances is caused by the failure of the Operator to perform its obligations under this Agreement, such existence, uncovering or removal of such Hazardous Substance shall constitute an Unforeseen Event, and all costs of uncovering, containment, removal, disposal, repair or other related costs, shall be borne by the City. The Operator shall, however, immediately notify

the City upon becoming aware of the presence of such hazardous or toxic waste or materials, and shall immediately notify such other governmental agencies as may be required by law and shall take such further actions to assist the City in protecting the health, safety and welfare of the public.

Section 6.5. Response Requirements for Problems, Complaints and Inquiries. The Operator's response time for problems, under normal conditions shall be as follows:

Condition	Initiate Contact with Complainants	Initiate Investigation/Work
billing inquiry	same Day when possible or within 1 Business Day	2 Business Days
Main break or blockage or equipment breakdown	not applicable	as soon as possible, but not later than 1 hour after obtaining actual notice or knowledge of such break, blockage or breakdown
water service complaint	2 business hours	1 Business Day
utility mark out	not applicable	3 Business Days (completion); less for emergencies
storm drainage blockage	not applicable	1 Business Day
hydrant pressure test inquiry	not applicable	3 Business Days

Section 6.6. Inventory. The Operator shall maintain a supply of the following consumables and provide same to the City upon termination of this Agreement:

Consumable	Quantity
sodium hypochlorite (15% solution)	1500 gallons
caustic soda (50% solution)	1500 gallons
calgon 31	240 gallons

caterpillar natural gas engine oil 7X-2469 SAE40	60 gallons
bulk industrial undried solar salt	60 tons

Section 6.7. Maintenance Management Program

(a) The Operator shall develop and implement, within one year of the Commencement Date, a comprehensive computer-based maintenance management program that develops readily available historical data, including recording and tracking of all Incident Reports and Work Orders, an inventory of spare parts and provisions for enforcing existing equipment warranties and guarantees and maintaining all warranties on new equipment purchased after the Commencement Date, and of providing documentation thereof to the City. Such a comprehensive maintenance management program shall include preventative, predictive, and corrective maintenance for all components of the System.

(b) The Operator shall provide a comprehensive maintenance program for all components of the System, which shall include preventative, predictive, and corrective maintenance for the System, including, but not limited to, the following: all existing buildings and structures; vehicles and other related rolling stock; electrical systems and instrumentation; mechanical equipment; laboratory, monitoring and sampling equipment; wells, pumping equipment, water treatment systems and appurtenances; surge tanks and water storage reservoirs; Mains; Lateral Service Pipes; Supply Pipes; hydrants and appurtenances; heating, ventilation and air conditioning; valve exercise programs, hydrant maintenance programs, large meter calibration programs, communication equipment; computer system equipment; chemical feed facilities; pumping facilities; SCADA system; auxiliary power facilities; manholes; and storm drain pipes, culverts, inlets and manholes. The program shall be with in accordance with prudent industry standards. The Operator shall include the Minimum Capital Improvements and Additional Capital Improvements in its maintenance management program.

The maintenance management program shall: (i) ensure efficiency, long-term reliability and conservation of capital investment in accordance with prudent industry standards; (ii) be otherwise in accordance with prudent industry standards; Federal, State and local codes; manufacturer's equipment recommendations; and any operation

and maintenance manuals to be developed by the Operator; (iii) develop and provide for timely generation and/or updating of operation and maintenance manuals; (iv) be documented as reasonably required by the City; (v) provide enforcement of existing equipment warranties or guarantees; provided, however, that enforcement of any such warranties or guarantees shall not include initiating or conducting any action, suit or other cause of action in any court or arbitration proceeding, all such activities to be undertaken by the City at its expense and provided further however, that the Operator shall, as reasonably required, make its employees available as witnesses in a City enforcement action as part of the Services; and (vi) maintain all warranties on new equipment purchased after the Commencement Date; and (vii) be in accordance with the Technical Specifications.

Section 6.8. Software Program. (a) The Operator shall provide "Windows NT" compatible computerized software packages and licenses, or such other format acceptable to the City, for all functions of the System, including, but not limited to, the following: billing and collections; process control and data management; System Maintenance; water storage facilities level monitoring; well pump and motor controls and monitoring, including appropriate telemetry; telemetry for water booster pumping station; laboratory data management and quality control; administration; electrical power management; and industrial pretreatment monitoring. Until such time as the proposed Supervisory Control and Data Acquisition (SCADA) System is in place, the Operator shall provide all of the functions of the System described in the preceding sentence in manual or computer format as the Operation deems necessary. Once the SCADA System is in place, the Operator shall be responsible for providing software packages and licenses for all functions of the System not operated and maintained by the SCADA System and shall operate and maintain the SCADA System. The computerized programs shall be capable of providing computer discs that may be used by the City's computers as required.

(b) The Operator shall submit to the City a records management plan (both electronic and hard copy) within six months of the Commencement Date.

(c) All records shall be maintained in a neat and orderly fashion and accessible to the City. The City has the right, without limit, of immediate access to all data and records for the Systems given to the Operator as of the Commencement Date or made available to or developed by the Operator as part of the Services during the Term, including records of supplies, materials, utilities, invoices, packing slips, service contracts, vendors, regulatory

reports, inspections, correspondence, logs, inventories, analysis, chain of custody, sampling, operations, process control, maintenance, materials used, materials stored, equipment, tools, software, Service Investigations, Incidence Reports, Work Orders and the disposition thereof, employee qualifications, training, engineering drawings, plans, reports, maps, records, as-builts, emergency management plans and records of emergencies, operation manuals, maintenance manuals, records of repairs, construction and replacements, material specifications, quotations and orders, meter installations, meter repairs, distribution system repairs and replacements, sanitary and storm sewer system repairs and replacements.

Section 6.9. Testing and Laboratory Analysis. The Operator shall perform, or cause to be performed, all laboratory sampling, analyses and reporting of the water and wastewater (a) as necessary for compliance with all Permits, PVSC requirements and applicable Federal, State or local laws and regulations, (b) as that which is customary for process (e.g. corrosion control) monitoring and control (unless there is a conflict), and (c) as necessary to conform to the current edition of Standard Methods for the Examination of Water and Wastewater. All testing, with the exception of process control testing, shall be performed by a State certified laboratory and the Operator shall deliver such results to the appropriate State and regulatory agencies. The Operator will immediately report any violation or test results above normal parameters to the City. Notwithstanding anything in this Agreement to the contrary, the obligations of the Operator shall not include the enforcement of any Permits or other Applicable Law against users of the System or any activities relating to disputes with users of the System regarding invoices or compliance with Permits or other Applicable Law (including preparation, initiation and prosecution of any claim, suit or other cause of action in any court or arbitration proceeding or before any administrative agency), all such enforcement and other activities relating to such disputes being the obligation of the City; provided however that the Operator shall reasonably assist and support such enforcement and other activities of the City. In the event the Operator incurs any costs in connection with any such enforcement or dispute activities, the City shall reimburse the Operator, based upon the Operator's reasonable costs, within 30 days after receipt of an invoice from the Operator.

Section 6.10. Reporting Requirements

(a) The Operator shall comply with all reporting requirements related to the operation, maintenance and management of the System, as mandated by the PVSC, all Federal, State and local laws and regulations, and the Permits. The Operator shall, upon obtaining actual knowledge, report any material deviations from such standards or requirements or any changes in such standards and requirements to the City.

(b) The City may reasonably change the data or format it receives from the Operator. The Operator shall supply a full report to the City of any violations of water quality, any failure of major equipment, results of any government inspections, environmental spills or any other major or serious act, incidence or occurrence. The Operator shall supply to the City copies of all regulatory reports. The Operator shall specifically notify the City of any regulatory documents containing a violation.

(c) The Operator shall provide comprehensive monthly, year-to-date and annual reports in a format satisfactory to the City and the regulatory agencies for each function or activity of the System, including, but not limited to: (i) operating parameters, laboratory analyses, maintenance plans and activities including conditions of the System, water quality results, water produced or purchased versus water sold, equipment and parts inventories, manpower utilization, repairs, service calls and responses and other relevant information; and (ii) safety reports regarding accidents, injuries, and damages to City property and other relevant information. The Operator will include and record all reports generated from the computerized Maintenance Management System.

(d) The Operator shall maintain up-to-date financial records as they apply to the Services; provided, however, that the Operator, notwithstanding anything in this Agreement to the contrary, shall not be required to provide to the City or any other entity or person any profit or loss statement relating to the Services or this Agreement or any similar statement or related profit and loss information. All records shall be kept in accordance with State municipal accounting procedures.

(e) The Operator shall provide the City with periodic financial reports that, at a minimum, shall include the following:

(i) Monthly reports due on or before the fifteenth Day of each month providing a summary account activity report showing the aggregate balance of accounts receivable from customers at the end of the preceding month; billings to customers for the preceding month, Fiscal Year to date, and Contract Year to date; collections from customers for the preceding month, Fiscal Year to date, and Contract Year to date; adjustments to customers' accounts for the preceding month, Fiscal Year to date and Contract Year to date. The report shall provide a breakdown by classes of users. Revenues received shall be divided between Rates and Miscellaneous Revenues.

(ii) Quarterly reports due on or before the fifteenth Day of each month following the end of each quarter of a Contract Year showing a detailed accounts receivable trial balance for each individual customer as of the preceding quarter, as reconciled with the aggregate balance of accounts receivables in the summary account activity report submitted pursuant to Section 6.10(d)(i);

(iii) Annual reports due within sixty Days of the end of each Contract Year showing a compilation of the monthly and quarterly reports set forth above; and

(iv) Periodic System reports as may be requested from time to time by the City.

(f) The Operator shall supply comprehensive monthly operating reports including a itemized report of all work performed under Schedule K and emergencies as well as under the Services. Such reports shall compile data in current month and year to date formats. The Operator shall issue an annual report summarizing all activities from the preceding year. The report shall provide a summary of all additional expenses, yearly totals of water produced, water delivered to the Water System, power consumed, fuel consumed, inventory items used and the cost thereof, valves exercised, valves repaired, hydrants maintained, hydrants repaired, services repaired, services replaced, water mains repaired by size and location, sewer mains repaired by size and location, catch basins cleaned, linear feet of sewer cleaned including locations thereof, Service Investigations, flow tests, Lateral Pipe Repairs, itemization of mechanical and electric equipment repairs and the cost thereof, Operator's personnel man hours worked under the Services, Operator's personnel man hours worked on Repair and Replacement Items and emergencies, meter calibrated or repaired under 6.17, meters read and other items as may be requested by the City.

(g) The Operator shall be responsible for the maintenance of mapping for the Water System, Wastewater System and Stormwater System provided by the City. The Operator shall be responsible for the maintenance of intersection maps showing the location of all City water valves provided by the City.

(h) All System records shall be the property of the City, which records shall not include financial information of the Operator except as necessary for Cost Substantiation or to demonstrate satisfaction of Minimum Financial Criteria. All systems and software used for access, storage and analysis of records and data shall be supplied to the City by the Operator at the end of the Term. The Operator shall provide copies of all System data to the City upon regular monthly data back-ups. No records shall be removed or destroyed without prior permission from the City. All City records shall be maintained in accordance with the State Records Management Plan. All records agreed by the City to be the Operator's confidential records shall be kept in separate files or on computers not accessible to the City.

Section 6.11. Staffing.

(a) The Operator shall provide a staff of qualified and experienced employees, and third party contractors who have direct experience in operating, maintaining, managing and repairing potable water, wastewater and stormwater systems similar in nature and character to the System.

(b) The Operator shall provide a resident manager accessible to the City and its employees on a full time basis during normal business hours. The initial resident manager shall be the resident manager named by the Operator in its response to the City's Request for Qualifications and Proposals, submitted April 22, 2002. The Operator shall not reassign the initial resident manager during the two year period following the Commencement Date. Should the initial resident manager become unavailable, the City shall have the right to consent to any replacement resident manager offered by the Operator. If an acceptable replacement is not offered by the Company, the City shall have the right to terminate the Contract under Section 9.4.

(c) The Operator shall provide and maintain an organizational chart that identifies the staff providing the Services together with their job classifications. The organizational chart may be revised from time to time at the discretion of the Operator provided the Operator notifies the City of any proposed material revisions thereto no later than thirty Days prior to the proposed effective date of such proposed revisions. The City shall have the right to review and comment upon any such proposed revisions within such thirty Day period. The Operator shall in good

faith consider any comments provided by the City, and shall respond to the City in writing regarding any such comments.

(d) The City shall forward all complaints about the Operator's employees or staff in writing to the Operator, which shall address such complaints with the offending employee or staff in an appropriate and timely manner. If the basis for any such complaint is not corrected to the reasonable satisfaction of the City, the City shall have the right to require that such person no longer provide any of the Services.

(e) The Operator shall provide ongoing training programs for all personnel in operations and maintenance procedures, management and process control, QA/QC, right-to-know, safety, etc. as required for proper performance of their duties and for professional development.

Section 6.12. Licenses. The Operator shall acquire and hold, or cause its personnel to acquire and hold, all Licenses.

Section 6.13. Fines and Penalties. The Operator shall pay all fines and penalties, without limitations, assessed against the City and/or the Operator for the Operator's non-compliance with this Agreement.

Section 6.14. Safety and Security. The Operator shall provide for and maintain security and safety for the System. Fences shall be maintained in neat order and structural integrity. Gates, access points and doors shall be kept locked and structures protected from unauthorized entry and security alarms (where applicable) shall be maintained.

Section 6.15. Emergency Situations

(a) The Operator shall immediately notify the City and all applicable emergency and regulatory agencies of any activity, problem or circumstance that it becomes aware of that threatens the safety, health or welfare of the users of the System or the residents of the City or violates a Permit. Such notification shall be made by the Operator in accordance with Permit requirements and an emergency plan to be developed by the Operator and submitted to and approved by the City and the DEP.

(b) In an emergency, the Operator shall act, to the extent possible, in consultation with an Authorized Representative of the City, to prevent threatened damage, injury or loss and continue such actions until the threatened damage, injury or loss has been abated.

(c) In an emergency, which, in the reasonable judgment of the Operator, is likely to result in material loss or damage to the System or constitute a material threat to human health or safety, the Operator may suspend operation of the System or portions thereof.

(d) The Operator shall respond to emergencies in accordance with applicable regulations and requirements and with such personnel and equipment as necessary to maintain or restore the operations of the System in a timely manner with the least possible disruption or inconvenience to the users of the System. The Operator shall fully mobilize all needed equipment within four hours, if not sooner, of receiving notice of an emergency. The Operator's response to such emergencies shall include, but not be limited to: the provision of any and all labor; excavation equipment and tools; dewatering processes; trench protection; safety equipment; traffic protection; by-pass pumping; protection of utilities; pipes, fittings and repair clamps; disinfection chemicals; bedding and backfill materials; compaction; paving repairs and road opening permits which may be required.

Section 6.16. Access to and Inspection of the System. Authorized Representative(s) of the City shall have the right from time to time or at any time, upon reasonable notice, to inspect, monitor and review the System, and the operation, maintenance and management thereof. In the event that such inspection, monitoring or review reveals a lack of repairs or necessary maintenance to the System, an Authorized Representative of the City shall identify such items to the Operator in writing. The Operator shall perform such repairs or maintenance items on a mutually agreeable schedule. To the extent that such repairs and maintenance are required as a result of the failure of the Operator to comply with this Agreement, then the cost of all such reinspection and all such repairs and maintenance items shall be paid by the Operator.

Section 6.17. Provisions Specific to Water System.

(a) The Operator's maintenance of the Water System shall include:

(i) Routine painting and repairs to existing structures and the Minimum Capital Improvements and Additional Capital Improvements, both interior and exterior; painting of all mechanical equipment, such as pumps, motors, sump pumps, valves, piping, panels, tanks, etc., to prevent corrosion of such equipment; painting off all fire hydrants on a five year cycle; calibration of instrumentation every two years; sampling, testing analysis, reporting, billing and collections; General Maintenance; all site work

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associated with the general and detailed maintenance work, including locating and operating of valves; and operating of fire hydrants; in a manner that protects the health, safety and welfare of the users of the Water System and as required by prudent industry standards and utility practices;

(ii) Supply Pipe Repairs, Supply Pipe Replacements, Hydrant Replacements, Hydrant Maintenance and Repair, Hydrant Flow Tests, Hydrant Relocations, OMB Repairs, service turn-ons, service turn-offs, Service Investigations and mark-outs; provided, however, that all the items in this clause in excess of those units per year set forth in Schedule K shall constitute Repair and Replacement Items;

(iii) Coordination with property owner in the event of Service Breaks in order to ensure that the integrity of the Water System is maintained, water loss is minimized and cross contamination is prevented;

(iv) Development and provision, until such time as the proposed SCADA System is in place, of a microcomputer-based process reporting system that furnishes complete and accurate records and regulatory reports in a format acceptable to the City and to the DEP. Such reporting system shall be capable of providing historical data and trends and computing data generated by the City's SCADA System, once operational.

(v) Periodic testing of the Water System, including, without limitation, the installation, removal and testing of the meters in accordance with 6.17 in accordance with prudent industry and utility standards as outlined in N.J.A.C. 14:9-6.1 and in accordance with American Water Works Association Standards. Process meters shall be calibrated in accordance with manufacturer's requirements. All generators and engines shall be exercised on a regular schedule at times to minimize inconvenience to residents resulting from noise;

(vi) Disposal of all sludge, scum, grit, screenings, trash and refuse generated by or resulting from the provision of the Services relating to the Water System in accordance with applicable law and regulations pertaining thereto;

(vii) Monitoring and controlling of all levels of the storage reservoirs, surge towers and storage tanks, if any, on at least a daily basis or more frequently as required to ensure proper pressures and

adequate capacity for satisfactory service and fire fighting capabilities throughout the Water System. The Operator agrees that it will fully utilize the SCADA system installed under minimum capital improvements and that it will immediately inform the City of the failure to operate as intended of any part of the SCADA system. The Operator will be allowed input into the design and capabilities of the SCADA System.

(viii) Beginning on the first anniversary of the Commencement Date, development and implementation of a Water System head loss-testing program to evaluate the condition of the Water System's piping. A minimum of forty thousand feet of water pipe, including water Mains, shall be flow tested each year, such that the entire Water System shall be flow tested by the end of the eleventh Contract Year. Flow test results shall be submitted, along with the Water System's condition evaluations and repair/replacement recommendations, to the City on a yearly basis; provided however that prior to the fourth anniversary of the Commencement Date, all flow test programs shall be coordinated with the City engineer in connection with the Minimum Capital Improvements;

(ix) Inspection of each water supply well and pump station and observation of all associated mechanical and electrical equipment which includes but is not limited to pumps, motors, sump pumps, valves, piping, chart recorders, chemical softening systems, control panels and alarm panels, on at least a daily basis and as necessary, to provide all operational and maintenance services required under the terms of this Contract and manufacturer's recommendations. This service shall include inspection of the well area, inspection of all valves, evaluation of the condition and performance of the pumps during pumping mode, recording of pH and chlorine levels, and inspection of leaks within the softening system. Regular maintenance service shall also include, but not be limited to, lubrication of all bearings; tightening of all seals and/or gaskets; repair of minor leaks; replacement and tightening of all packing; replacement of miscellaneous gauges, small valves, and fittings; replacement of ink, blank charts and all else required to operate the chart recorders; maintenance of sump pumps, sump areas and all control and alarm panels, and inspection of all equipment, panels, wires, conduits, pipes, etc. for corrosion due to chemical exposure.

(x) Video inspection of the wells during the second, tenth and twentieth Contract Years or earlier if problems with well performance are observed. At the time of such inspections, the well pump and

motor shall be replaced or completely overhauled, damaged screen or piping shall be replaced and electric and control systems shall be carefully inspected and repaired/replaced as needed; provided however that any required well pump and motor replacement or overhaul, damaged screen or piping replacement, and electrical and control system repairs/replacements shall be Repair and Replacement Items;

(xi) Inspection at least annually of the operation of the alarms at all locations so equipped;

(xii) Inspection of pressure switches and alarms and other Water System controls at least once a month. The controls shall be reset as necessary;

(xiii) Responding to all alarm calls within the Water System and the making of the necessary control adjustments. During power failures, the Operator shall verify emergency power is online, where applicable, restart all equipment as needed when normal power is resumed, and remain at the location until proper performance of the equipment is ensured;

(xiv) Visiting the Chestnut Street pump station and treatment facility (also known as the Chestnut Street filter plant) and all associated Minimum Capital Improvements, at least every day. The operation and maintenance of the Chestnut Street pump station and treatment facility shall conform to all equipment manufacturers' instruction. This shall include but not be limited to lubrication of all bearings; tightening of all seals and/or gaskets; repair of minor leaks; replacement of miscellaneous gauges, small valves and fittings; replacement and tightening of all packing; replacement of ink, blank charts and all else required to operate the chart recorders; maintenance of all control and alarm panels; and inspection of all equipment, panels, wires, conduits and pipes for corrosion due to chemical exposure. Each valve in the Chestnut Street pump station and treatment facility shall be exercised on a quarterly basis. The Operator shall remain at the Chestnut Street pump station for as long as is necessary to monitor the performance of the booster pump during pumping mode. The Operator shall not be responsible for mechanical maintenance of the abandoned surface water filter plant housed in the Chestnut Street facility;

(xv) On a daily basis, recording the pH and chlorine levels, Walker Road Reservoir level, and pump and flow rate at the Chestnut Street pump station and treatment facility and adjust such levels as needed.

(xvi) All hydrants should be inspected for wear and tear after each reported use by the fire department. Beginning on the first anniversary of the Commencement Date, all hydrants shall be flushed at least once a year and the condition of each hydrant, and maintenance performed on such hydrant shall be recorded. Flushing shall, at a minimum, consist of removing the cap and replacing the cap gasket, if necessary, checking for and, if necessary, removing standing water, inspecting the hydrant nozzle (including replacement of any gaskets, if necessary) and operating the hydrant while checking the packing for leaks. All hydrants with oil reservoirs shall be checked and filled in accordance with manufacturer's recommendations as part of the flushing program. The Operator will, upon contact from the City's fire department, be present at all multiple alarm fires to address any hydrant problems that occur during the event; provided however that if response to such an event occurs before 7 a.m. or after 3:30 p.m., the cost of such response shall be a Repair and Replacement Item. All hydrants found to be broken or inoperable shall be bagged and shall immediately (within forty-eight hours after discovery) be replaced or repaired;

(xvii) Immediate thawing, repair or replacement of all water Mains, Service Lines and hydrants that become frozen, and if such condition requires the repair or replacement of such item so as to minimize disruption of customer service; provided, however, that any such repair or replacement shall constitute a Repair and Replacement Item;

(xviii) On a yearly basis, beginning on the first anniversary of the Commencement Date, the performance of an infrared scan on all well and pump station motors, motor starters, combination starters, motor control centers, variable frequency drives, equipment and electrical connections with potential hot spots. A vibration analysis of pumps and motors shall also be performed at least once a year;

(xix) The necessary service to maintain the natural gas engine at the Chestnut Street pump station and treatment facility. This shall include, but not be limited to, verifying the oil level and adding oil as needed and scheduling an engine service every one thousand hours. In addition, the Operator shall schedule a top end service the sooner of every fourteen thousand hours or every two years (if desired by the City), each by an authorized manufacturer's representative, the costs of such top end service to be paid by the City;

(xx) On a quarterly basis, or more frequently if necessary, the Operator shall provide the performance of general cleaning (as described in this Section 6.17(a)(xx)) of the Chestnut Street pump station and treatment facility and all well station buildings, any proposed pumping or water treatment facility to be built in the future, the associated Minimum Capital Improvements and facility grounds. Dirt, dust and debris shall be removed from pumps, motors, sump pumps, control and alarm panels, chart recorders, electrical equipment and piping appurtenances. All buildings' windows shall be washed, all interior and exterior buildings' lights shall be checked for operation and all burnt bulbs shall be replaced. Facility grounds shall be kept free from trash. The Operator shall not be responsible for general cleaning and dusting of the area within the Chestnut Street pump station and treatment facility that houses the abandoned surface water filter plant;

(xxi) Arranging for the delivery of all necessary diesel fuel and natural gas for all engines within the Water System and consumables as described in Section 6.6.

(xxii) Responding to requests for Hydrant Flow Tests within three Days.

(xxiii) The Operator shall exercise only 25% of all water main valves each year such that the entire city valve inventory is exercised every four years. Prior to the fourth anniversary of the Commencement Date, the valve exercise program shall be coordinated with the engineer responsible for the Minimum Capital Improvements. Many of the City's valves are of the age and type to contain packing glands and packing gland bolts. During the operation of these valves, the Operator shall take care not to use excessive force to snap these bolts. The Operator shall gradually repeat open and close motions slowly progressing with the closure of each valve. Should the Operator when closing any valve feel a packing gland bolt snap, he shall immediately cease closing the valve and attempt to raise the valve to its fully open position. Should the Operator in operating any valve create a packing gland leak, he shall attempt to continue to operate the valve up or down to effectively eliminate or minimize such leaks. No valve exercising program shall be conducted whenever the weather is below freezing or predicted to be below freezing in the coming 24 hours. All valves indicated to be 4-inch diameter or smaller shall be operated by hand. The Operator will note and record for each valve operated (1) was the valve fully operable (2) the

number of counter clockwise 360 degree turns he was able to turn the valve closed and the number of clockwise 360 degree turns he was able to return the valve to the open position (3) did the valve leak while being operated (4) did the leak stop when the valve was fully opened (5) the condition of the valve box when found, (was the cover on or off, was the box full of dirt or debris, was the valve not accessible, was the valve box at a suitable grade in reference to the ground surface, was the valve box top section broken, etc.)

(xxiv) Inspection of all pressure reducing and all air valves and relief valves on a quarterly basis. Any observed problems shall be reported to an Authorized Representative of the City for further evaluation. Routine maintenance shall be performed as per manufacturer's recommendations and prudent industry standards.

(xxv) Inspection of all underground and aboveground structures housing Water System equipment such as valves and pressure regulators on a quarterly basis;

(xxvi) Inspection of the Walker Road Reservoir internally within eighteen months of the Commencement Date and during the tenth and twentieth Contract Years by a qualified structural inspector certified for underwater inspection;

(xxvii) Preparation and submission of the DEP water allocation permit application and any interaction necessary with the City or the DEP, in order to renew any Permits necessary for the operation of the Systems;

(xxviii) Maintenance of a log of all inspection services performed, problems encountered and other data as appropriate to the prudent industry standards and regulations;

(xxviii) Inspection of the Orange Reservoir dam and spillway on a monthly basis;

(xxix) Video inspection of the submerged intake structure at the Orange Reservoir dam on a yearly basis, beginning in the second contract year;

(xxx) Inspection of the fifty-thousand gallon surge tower located in the vicinity of mountain well number six on a yearly basis, beginning in the second contract year. An ultrasonic scan to measure

steel thickness shall be performed during the second, fifth, tenth, fifteenth and twentieth Contract Years and spot surface preparation and minor painting of the surge tower shall be performed as needed;

(xxxi) Inspection of the strippers at the Gist Place and Orange Park wells by a certified inspector every two years commencing in the second Contract Year;

(xxxii) Replacement of any missing or broken valve covers or missing or broken manhole covers in accordance with prudent industry standards and time frames;

(xxxiii) Large meters (3 inches and above) shall be tested once every 4 years. The Operator shall test and record the results of all meters tested in accordance with the American Water Works Association Standards. Based on the meter test results, the Operator shall repair, calibrate and reuse the meter or, if the meter cannot be repaired, discard the meter. Documentation of discarded meters shall be submitted to the City; provided however that should the quoted cost to repair a water meter equal or exceed 70% of the cost to purchase a new water meter, the water meter shall be considered to be broken and the cost of a new replacement water meter shall be paid by the City;

(xxxiv) One year after the Operator has established an accurate billing and collection system, the Operator shall evaluate water losses in the Water System based on the amount of Raw Water as measured by existing meters compared to the metered water distributed throughout the Water System. On an annual basis, the Operator shall submit to the City a report outlining the quantity of unaccounted water for their review. It is the goal of the City to limit unaccounted for water to no more than 15% of the total volume produced. The Operator shall operate the Water System in a manner consistent with that goal to the extent reasonably practicable by promptly fixing leaking pipes and pumps and documenting leaks requiring Repair and Replacement Items and Capital Improvements to the City. The City shall cooperate with the Operator in achieving such objective by promptly approving Repair and Replacement Items and Capital Improvements for such purposes.

(b) The Operator shall make every attempt to identify and report to the City the person or persons responsible for causing damage to components of the Water System, such as fire hydrants, mains, services, valves etc. The Operator shall when possible obtain copies of any police reports available for such damage and forward a

copy of that report to the City. The Operator shall assist the City in determining the total loss to the City including emergency response, repairs, loss of water etc.

Section 6.18. Provisions Specific to Wastewater System

(a) The Operator shall not be responsible to implement or enforce the rules and regulations concerning discharges to the PVSC treatment works, which are implemented and enforced by PVSC. The Operator shall provide PVSC with access to the Wastewater System as required.

(b) The Operator's maintenance of the Wastewater System shall include:

(i) Development and implementation of a program for the identification and isolation of infiltration/inflow (I/I) into the Wastewater System. The Operator shall make recommendations for repair or replacement of portions of the Wastewater System, where cost effective or where required to protect the structural integrity of portions of the Wastewater System, based on the inspection program set forth in this Agreement and based on the Operator's routine observations made during performance of the Services.

(ii) Disposal of all sludges, scum, grit, screenings, trash and refuse collected by the Operator during its maintenance and operation of the Wastewater System; provided, however, that none of such materials shall be flushed through other sections of the Wastewater System or the Stormwater System, dumped on the streets, or dumped into ditches, catch basins, storm drains, or watercourses. Trucks hauling solids or semi-solids from the job site shall be sealed tight so as to prevent spillage;

(iii) Setting and cleanup of all Sewer Mains at least once every three years, or as needed for those sections which exhibit a history of problems, in order to prevent the blockage of such Mains;

(iv) Beginning on the first anniversary of the Commencement Date, cleaning of a minimum of seventy-thousand linear feet of wastewater pipe per Contract Year (including multiple cleanings of the same pipe) pursuant to the following wastewater pipe cleaning program prepared in consultation with the City:

(1) Non-emergency cleaning operations shall be conducted Monday through Friday, between the hours of 8:00 A.M. and 4:00 P.M. unless otherwise agreed to by the City;

(2) If necessary, cleaning shall be suspended at one location and moved to another location to clear blockage(s) at such other location;

(3) Cleaning shall consist of a Light Cleaning or Heavy Cleaning. The cleaning method to be used shall be determined based upon the condition of the line at the time the work commences and as necessary to ensure adequate cleanliness for television inspection;

(4) Cleanings shall begin at the upstream end of a sub-area and work downstream with all upstream sections of the pipe being cleaned before downstream sections of the pipe; and

(5) Uncovered manholes shall not be left unattended and all manhole covers shall be replaced immediately after work is completed.

(vii) Inspection, on a regular basis, of the Wastewater System, including sewers, manholes and appurtenances. All sewer Mains shall be internally inspected via television camera (or such other method approved by the City) and documented on video tape over a ten year period with such work being performed in substantially equal annual increments. Two copies of the inspection tapes shall be submitted to the City on a monthly basis along with two copies of the written report summarizing inspections completed during such period. The report shall document all areas of pipe failures, indicating location, type of failure, and corrective action recommended. Additionally, location of leaking pipe joints or sections shall be documented and noted on monthly reports based on such inspections or other information the Operator becomes aware of in the course of providing the Services.

(viii) Inspection of all sewer lines in advance of commencing work to determine if surcharge conditions exist. In the event the Operator encounters any sewer lines that contain a surcharge sufficient enough to prevent cleaning or inspection, it will immediately notify the City and confer as to the course of action to be undertaken. The Operator shall provide adequate pumps and equipment to dewater the surcharge and bypass sewerage to a downstream location;

(ix) Investigation of any malfunction of the Wastewater System to determine the nature of the malfunction and establish whether the malfunction is the responsibility of the Operator, the City or a third party to repair. Corrective action (i.e., removal of blockages) shall be taken immediately to restore the Wastewater System to proper function. During such corrective action, the Operator shall provide all measures to maintain the operation of the Wastewater System and limit the extent of any spillage, including, but not limited to, by-pass pumping or use of tanker trucks. Corrective action shall be continuously provided until the malfunction is remedied and the Wastewater System is returned to normal operation. Once the malfunction has been remedied, the Operator shall be responsible for determining, to the extent possible, the cause of the malfunction and scheduling necessary corrective action (such as Light Cleaning, investigation, etc.). All broken or missing manhole covers shall be replaced within one Day of discovery. Adequate warning and traffic protection devices shall be provided and temporary protection measures over the opening shall be installed until a new manhole cover is provided; and

(x) Provision of traffic control where necessary during the performance of work by the Operator or the Operator's subcontractor, to protect the Operator's employees, subcontractors, agents, and the general public. All controls employed shall be in accordance with (i) the applicable sections of the Technical Specifications, (ii) the applicable requirements of the City and (iii) the latest version (at the time the Services are performed) of the State Department of Transportation's Standard Specifications for Road and Bridge Construction.

(c) The Operator shall take prudent precautions and exercise due care so as to not damage the Wastewater System, or functional parts thereof, during cleaning, evaluation or servicing. If the Wastewater System is damaged during these operations, the Operator shall notify the City and make any and all repairs that, in the opinion of the City, are necessary. All such repairs necessitated by the Operator's actions shall be done at the Operator's sole expense, at no cost to the City, and in a time period specified by the City.

Section 6.19. Provisions Specific to Stormwater System

(a) The Operator's maintenance of the Stormwater System shall include:

(i) Development and implementation of a program for the identification, isolation, and where cost-effective, alleviation of flooding or to protect the structural integrity of the Stormwater System. The Operator shall make recommendations for repair or replacement of portions of the Stormwater System, where cost effective or where required to protect the structural integrity of portions of the Stormwater System, based on the inspection program set forth in this Agreement and based on the Operator's routine observations made during performance of the Services.

(ii) Disposal of all sludges, scum, grit, screenings, trash and refuse collected by the Operator during its maintenance of the Stormwater System provided, however, that none of such materials shall be flushed through the Stormwater System or the Wastewater System, dumped on the streets, or dumped into ditches, catch basins, storm drains, or watercourses. Trucks hauling solids or semi-solids from the job site shall be sealed tight so as to prevent spillage;

(iii) Cleaning of all Stormwater System Mains and manholes at least once every five years, or as-needed for those sections which exhibit a history of problems and thus require more frequent cleaning;

(iv) Cleaning all catch basins and inlets at least twice a year with the condition of and maintenance performed on the inlets to be recorded. All catch basins and inlets found to be blocked shall immediately (within forty-eight hours after discovery) be cleaned;

(v) The immediate cleaning, repair, and replacement of all Stormwater System Mains that become blocked so as to minimize the potential for flooding;

(vi) The cleaning of all open public channels at least twice per year of vegetative overgrowth, fallen leaves, debris, floatables and sediment buildup that could adversely affect flow;

(vii) The cleaning of all inlet blockages resulting from snow/ice/leaves/debris that impair the storm drainage flow and cause surface flooding;

(viii) The replacement of all broken or missing manhole covers or inlet gratings within one Day of discovery. Adequate warning and traffic protection devices shall be provided and temporary protection measures over the opening shall be installed until the manhole cover or inlet grate is replaced.

Section 6.20. Mark Outs. The Operator shall be responsible for mark-outs under the system. The Operator shall respond to requests for mark-outs for all of the City's facilities in the City of South Orange Township, the Township of Maplewood, the Township of Millburn and the Township of Orange. The Operator will be responsible for any damages caused to System components due to its inaction or error in locating and marking same provided that proper notification of the markout request was received.

Section 6.21 System Inspections.

(a) The Operator shall be responsible for performing a complete inspection of the existing System within three (3) months of the Commencement Date and submitting an evaluation report to the City for its review outlining the results of the inspection and cost estimates for any repair deficiencies discovered during the inspection.

(b) The City shall have the right to have the System inspected by an independent contractor providing they afford the Operator with two weeks notice. Any deficiencies noted during the inspection resulting from the Operator's failure to operate or maintain the System in accordance with the requirements of this Agreement or resulting from the Operator's negligence shall be repaired by the Operator at no cost to the Owner within the time period established by the City.

Section 6.22. Minimum Capital Improvements. Once a Minimum Capital Improvement is completed and brought on-line by the City, the Operator shall be responsible for the operation and maintenance of such Minimum Capital Improvement. Operation shall be in accordance with manufacturer's directions and prudent industry standards. Regular maintenance shall include all manufacturer's recommended servicing as well as regular cleaning, painting and replacement of normal wear and tear items.

Section 6.23. Operations Committee. The City and the Operator shall establish a formal Operations Committee, consisting of two representatives from the City and two representatives from the Operator which shall meet to discuss issues related to the System; to receive and review reports; and to confer generally to enhance communication between the City and the Operator. The Operations Committee should meet monthly and shall hold a special meeting three months prior to the following fiscal year of the City to discuss and submit capital needs requests to the City. In addition to such meetings, representatives of the Operator shall be available to meet

with the Mayor and members of the Council of the City or their Authorized Representatives, as reasonably requested by the City.

Section 6.24. Grant Assistance. The Operator shall assist the City in identifying and applying for System related grants. Such assistance shall not, however, require the Operator to lobby for or advocate on behalf of the City for such grants.

Section 6.25. Billing and Collections.

(a) The Operator shall be responsible for the preparation, delivery, maintenance and collection of all bills and invoices to the customers of the System; provided however the City shall present to the Operator a list of facilities that shall not be billed for Services, such list to be periodically updated by the City. Within thirty Days of the Commencement Date, the Operator shall read all System meters to establish a base line for each customer. The Operator shall prepare, with the approval of the City, the format and content of all bills.

(b) The Operator shall develop a written policy in dealing with customer service and complaints relating to billing and collection matters, which policy should be approved by the City.

(c) The Operator shall exercise, on its own behalf and on behalf of the City, all powers which it and the City may have in collection matters and shall use statutory powers pertaining to any and all remedies granted to municipalities for purposes of collection, including the imposition of interest on unpaid fees and charges and the termination of water service to System customers; provided however the Operator will not be responsible for litigation and other enforcement activities to collect unpaid amounts, other than terminating service to customers at the request of the City or in compliance with specified City policies as set forth in (g) below.

(d) The Operator shall maintain a local (or toll-free) telephone number for customers of the System to handle questions, problems and inquires.

(e) The City shall provide cashier services within the municipal building to allow customers to pay bills during normal business hours, Monday through Friday. The Operator shall provide the City with one computer station, six additional licenses for installation on other computer stations, and training for the billing software used by the Operator.

(f) The Operator shall design the billing and collection system so that it will interact with the City's existing computer system. The computer station and software shall be "Windows NT" compatible or such other format acceptable to the City and shall be capable of uploading billing information to the Operator for input into their billing database using "Virtual Private Network" or such other method approved by the City.

(g) The Operator shall conduct quarterly readings of all customers' usages and shall bill such customers accordingly. Bills shall be mailed to customers within fifteen Days of conducting meter readings. Delinquent notices shall be mailed to customers after thirty and sixty Days of non-payment and interest shall be charged in accordance with applicable State and local requirements. Shutoff notices shall be sent by certified mail after ninety Days and the Operator shall shutoff Service to delinquent customers five Business Days after customer receipt of the shutoff notice.

(h) In addition to the City's other obligations with respect to Capital Improvements, the City shall, at its expense, within thirty (30) months following the Commencement Date, replace all Water System meters that measure water and wastewater usage by residential users of the Water System. The replacement meters shall be radio-based meters that are capable of providing meter readings by radio signals transmitted to meter reading equipment located on public roads off the property on which the meter is located. Such meter equipment to be installed by the City shall consist of all equipment necessary for such meter readings, including meters, radio transmitters and equipment to receive the radio transmissions and record usage on a regular basis, and at least once a month, the City shall update the Operator regarding the number and location of the meters replaced and the schedule for replacing the remaining meters, and shall generally cooperate with the Operator in the collection of meter reading data during the replacement process, including in those situations in which meter readings by the Operator are adversely affected by the City's replacement program or by the condition of the current meters. The City shall be responsible for enforcing all warranties relating to such equipment and for repairing or replacing defective replacement meter equipment.

(i) The Operator's obligations with respect to billing and collection are those expressly set forth in this Section, including the Operator's collection activities set forth in paragraphs (c) and (g) above, and the Operator

does not guarantee specific levels of collections or specific amounts of revenue for the City; provided that the Operator's activities shall be based on prudent industry standards.

Section 6.26. Application of Revenues. On and after the Commencement Date, all Revenues, other than Connection Charges, shall be deposited in a City banking account daily. Connection Charges shall be retained by the Operator. Connection Charges received by the City will be forwarded to the Operator.

Section 6.27. Cost Substantiation. Except for Services provided by the Operator for the Service Fee, all costs and expenses incurred hereunder shall be reasonably documented and accompanied by a certificate, signed by the applicable Authorized Representative (a) itemizing such costs and expenses, including labor, materials and a fixed overhead component, if applicable, (b) identifying the event or Section of this Agreement giving rise to the requesting party's right to incur such cost or expense, (c) affirming that such cost or expenses represents a competitive price for the service or materials supplied, and (d) providing any other information that is reasonably requested by the other party in order to assist in the review of such certificate.

Section 6.28. Public Notices. The City shall issue all public notices associated with non-compliance with regulatory requirements for drinking water standards, if and as required, and the Operator shall prepare such notice(s) in compliance with the applicable regulation, submit such to the City, and pay all costs incurred by the City associated with issuing such public notices and shall provide all necessary support that the City may reasonably require.

Section 6.29. 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 System customers informed about the operation and maintenance of the System, including the Consumer Confidence Report required by the DEP. The Operator shall deal in a professional manner with community groups concerned with any aspect of the operation of the System. 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 6.30. 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 System, the party receiving such notice or undertaking such prosecution shall

give the other parties timely notice of such proceedings and shall inform the other parties in advance of all hearings regarding such proceedings.

Section 6.31. Development of Land. The City shall retain the right to develop any of the lands upon which any portion of the System is located for commercial or recreational purposes provided, however, that the City does not interfere with the operation of the System. The Operator shall inform the City how and if such action will interfere with the operation of the system. The operator shall offer remedies to the City to mitigate any interference.

Section 6.32. Energy Costs. The Operator shall operate the System in an efficient manner in order to minimize energy costs to the extent reasonably practicable. The existing agreement with SYCOM Enterprises, Inc. shall be retained by the City along with the payments by PSE&G pursuant thereto, including monitoring payments to SYCOM, standard offer program fee payments to PSE&G and any PSE&G penalty assessments.

Section 6.33. Strikes, Stoppages and Other Labor Actions. The Operator shall make such provisions as are necessary to ensure that no portion of the System shall be shut down for any period of time due to strikes, lock-outs or labor problems. In the event of a labor action, stoppage or dispute by the Operator's employees or its subcontractors' employees that prevents the Operator's personnel from entering upon and working on any part of the System, the Operator shall, at its sole cost, seek appropriate legal injunctions, remedies, or court orders. In any event, the Operator shall continue to operate the System through the use of office personnel, management, or other resources at its disposal.

Section 6.34 Required Equipment. The Operator shall have the Required Equipment available in order to provide the Services.

Section 6.35. Service Breaks. All Service Breaks shall be the responsibility of the applicable property owner. Whenever a break in the line occurs between the service box and the sidewalk and the curb stop can not be operated to determine which side of the curb stop has failed, the Operator shall excavate the curb stop and make any temporary repairs necessary to the Service Pipe, such activity to be a Supply Pipe Repair. The Operator will then inform the owner of the condition of the Service Line and the likely hood of additional Service Line breaks in the near future. If upon excavating the curb stop and the failure has occurred in the Supply Pipe or the curb stop itself the Operator shall make necessary repairs. If the Operator determines such repairs are temporary and that the entire

Supply Pipe should be replaced, it shall securely cover and protect the excavation until such time as the City along with the Operator can inspect the Supply Pipe. The City will then determine if the Supply Pipe should be totally replaced.

Section 6.36. Excess Water. The Operator shall not make any sale of water from the Water System to any other system; and the Operator shall not use the Water System for the purpose of conveying water through the system to other systems (wheeling) without prior consent of the City.

ARTICLE VII

CAPITAL IMPROVEMENTS AND REPAIR AND REPLACEMENT ITEMS

Section 7.1. General.

(a) Capital Improvements to the System shall include Minimum Capital Improvements and Additional Capital Improvements. Except for the Operator's responsibilities under Sections 7.2 and 7.3, the City and the Operator agree that the undertaking of Capital Improvements to the System shall be outside the scope of Services covered by the Service Fee; provided however that during the undertaking of such Capital Improvement, the Operator will, as part of the Services, assist others with location of System components. Additionally, the Operator shall cooperate with the Capital Improvement Contractor(s), including by making on-site personnel of the Operator reasonably available to perform improvement related tasks requiring operation of an element of the System, including operation of valves, by-passing of mains, etc.; provided however that the availability of such personnel shall be determined based on the Operator's ability to provide such assistance while satisfying its obligation to provide the Services without incurring overtime. In the event such assistance requires the Operator to incur overtime expenses or to hire additional employees on a full or part-time basis, the Operator shall notify the City of its expected expenses and if the City directs the Operator to provide such assistance, the Operator's reasonable costs shall be borne by the City. To the extent Capital Improvements are undertaken in accordance with this Article VII, the Operator shall be entitled to receive additional compensation in accordance with, and subject to, the provisions hereof.

(b) All Additional Capital Improvements that are constructed or installed by the Operator shall be done so in accordance with applicable law and Technical Specifications and shall become the property of the City upon acceptance thereof.

Section 7.2 Capital Improvement Plan.

(a) The Operator shall, in consultation with the City, develop a Capital Improvement Plan. The Capital Improvement Plan shall consist of: (i) a list of the parts of the System requiring Capital Improvements; (ii) the data collected in accordance with Article VI supporting the need for such Capital Improvements; (iii) the suggested Capital Improvements; and (iv) the expected increase or decrease in operating costs resulting from the

improvement. The Operator shall maintain the Capital Improvement Plan and shall, upon any change or revision thereto, provide a copy of the revised plan to an Authorized Representative of the City. The initial Capital Improvement Plan shall consist of the Minimum Capital Improvements. The Capital Improvements Plan of the Operator shall be based upon the observation and experience of the Operator as the operator of the System and shall not include, or require the Operator to perform or cause to be performed, any engineering studies, system modeling (hydraulic or otherwise), capacity evaluations, analysis that relates to the expansion, extension or relocation of the System or any components thereof, or similar analysis or studies

(b) Notwithstanding any provision in this Section to the contrary, the City may, at any time and for any reason, (i) propose Additional Capital Improvements to be undertaken by the Operator in accordance with Sections 7.4 and 7.5 or (ii) undertake a Capital Improvement directly.

Section 7.3. Minimum Capital Improvements. The Minimum Capital Improvements shall be funded by the City and the City shall provide the engineering design services, bidding for such construction and installation of the Minimum Capital Improvements under the Local Public Contracts Law, contract administration and construction inspection services. The Operator's responsibility with respect to the design, construction, acquisition and installation of the Minimum Capital Improvements shall be limited to meeting, at the City's request, with the City or agents thereof to discuss the scope of the Minimum Capital Improvement to be undertaken and review and comment on plans for such Minimum Capital Improvement once designed. The Operator shall cooperate and coordinate with the City, its agents and contractors during construction of the Minimum Capital Improvements and shall perform all necessary work to operate the System so as to maintain full service during the construction period, including the location and operation of System components. It is understood that major by-passing schemes if necessary to maintain service during construction shall be the responsibility of the City or its construction contractor.

Section 7.4. Additional Capital Improvements; Design Services.

(a) The City may request the Operator to prepare a proposal for the design of Additional Capital Improvements. If requested by the City, the Operator shall respond by preparing said proposal within a reasonable time as agreed to by the City (in no case shorter than two weeks from the City's initial request) or declining said request in writing within that two week period. The determination whether to decline or accept a request from the

City to prepare a proposal for the design of Additional Capital Improvements shall be in the sole discretion of the Operator, and any determination by the Operator to decline any such request shall not be subject to dispute resolution or other review hereunder or constitute the basis for any claim by the City against the Operator under this Agreement or otherwise.

(b) A proposal prepared by the Operator under this Section 7.4 shall include: (i) a description of the area of the System requiring the Additional Capital Improvements, including sufficient information to allow a third party to locate such area; (ii) a brief description of the scope of the Additional Capital Improvements, including the identification of the process or approach to be utilized therein; (iii) a statement of work with sufficient detail to enable a third party to evaluate the cost thereof; and (iv) the Operator's Design Fee.

(c) The City shall evaluate the Operator's proposal and, in its sole discretion, accept or reject the scope of such proposal and the Operator's Design Fee.

(d) If the City accepts the Operator's proposal, the material terms of the agreement between the City and the Operator with respect thereto shall be memorialized in a contract identifying such material terms, including, but not limited to, the Additional Capital Improvements to be designed, the process or technology to be employed, the work product to be produced, the estimated period for completion of the approved design services and the Operator's Design Fee. If the City accepts the Operator's Construction Proposal under Section 7.5, the Operator's Design Fee shall be incorporated into the Operator's Total Capital Cost for the Additional Capital Improvement. If the Operator declines to submit an Operator's Capital Improvement Proposal or if the City and the Operator are unable to come to an agreement over the Operator's Capital Improvement Proposal, the Operator's Design Fee shall be due on the last Business Day of the next succeeding month following such occurrence.

Section 7.5. Additional Capital Improvements: Construction and Financing Proposals

(a) At the time the Operator submits its design under Section 7.4, the Operator shall also submit the Operator's Capital Improvement Proposal or a statement that it cannot construct and finance the Additional Capital Improvements. A determination whether or not to submit an Operator's Capital Improvement Proposal and whether or not the Operator can construct and finance any Additional Capital Improvement shall be in the sole discretion of the Operator, and any determination by the Operator as to any such matter shall not be subject to dispute resolution

or other review hereunder or constitute the basis for any claim by the City against the Operator under this Agreement or otherwise.

(b) The Operator's Capital Improvement Proposal shall include:

- (i) the proposed Additional Capital Improvements;
- (ii) the Operator's Construction Fee;
- (iii) the Operator's Annual Capital Cost;
- (iv) an estimated completion schedule; and
- (v) a proposed guaranteed maximum price contract for consideration by the City.

(c) For purposes of obtaining credit to finance the Capital Improvement, the Operator may pledge payments due the Operator under this Agreement, provided however, that the Operator shall in no way indicate that any such loan shall be secured by the City, its taxing power or the Revenues.

(d) Upon receipt of the Operator's Capital Improvement Proposal, the City shall evaluate the same. If the City accepts the Operator's Capital Improvement Proposal; the parties shall execute a guaranteed maximum price contract and the Operator shall undertake the Additional Capital Improvements, in accordance therewith. Upon acceptance of the completed Additional Capital Improvement in accordance with the terms of the guaranteed maximum price contract, the Operator shall be entitled to receive the Operator's Total Capital Cost.

(e) The Operator shall not be required to publicly bid the construction of any Additional Capital Improvements designed, constructed and delivered by the Operator in accordance with this Section 7.5 although the Operator shall be required to comply with the Prevailing Wage Law in connection therewith.

(f) The City shall have the right to pay the entire Operator's Total Capital Cost for an Additional Capital Improvement at any time during the Term of this Agreement upon sixty Days notice to the Operator by tendering the Purchase Option Price to the Operator.

(g) If the Operator declines to submit an Operator's Capital Improvement Proposal or if the City and the Operator are unable to come to an agreement over the Operator's Capital Improvement Proposal, the City may bid out the work, utilizing the Operator's design approved under Section 7.4, under applicable public bidding laws in effect at the time the Capital Improvement is to be built.

Section 7.6. Repair and Replacement Items. The Operator shall undertake Repair and Replacement Items with the consent of the City as and when needed, the cost of which shall be in accordance with Schedule J.

ARTICLE VIII
FINANCIAL TERMS

Section 8.1. Service Fee. The City shall pay a monthly Service Fee to the Operator on the last Business Day of each month in accordance with Schedule I. In consideration for such Service Fee, the Operator shall provide all of the Services at its cost and expense except for the following items which shall be paid for by the City:

- (a) Fuel, natural gas and electricity;
- (b) Permit fees;
- (c) General landscaping maintenance at the Orange Reservoir, Walker Road Reservoir and Campbell Pond Reservoir when required by the City;
- (d) All charges for the transmission and treatment of Wastewater, including but not limited to PVSC charges and charges imposed by Second River Joint Meeting, and any charges for Purchased Water;
- (e) System Indebtedness;
- (f) Lease payments for equipment covered by the agreement referenced in Section 6.32;
- (g) Repair and Replacement Items; and
- (h) Capital Improvements.

Section 8.2. Adjustments to the Service Fee.

(a) If the Operator incurs increased costs or expenses (including, without limitation, increased operating, maintenance, repair or replacement expenses, the cost of any materials used in operating the System, and increases in labor expenses in each case subject to Cost Substantiation) as a result of (1) an Unforeseen Event, (2) the making of any Additional Capital Improvement or Repair and Replacement Item, (3) any change of the service area comprising the System, or (4) a request from the City to do something that is not part of the Services, the City and the Operator shall adjust the Service Fee accordingly to reflect such increased costs or expenses. In addition, the Service Fee shall be increased to the extent of any increased operating and maintenance costs of the Operator (including, without limitation, increased operating, maintenance, repair or replacement expenses, the cost of any materials used in operating the System, and increases in labor expenses) resulting from the failure of the City to make any Capital Improvement or Repair and Replacement Item required (1) in order to remedy the effects of an Unforeseen Event (2) to be made to the System in order to comply with Applicable Law, (3) in order to continue to

provide the Services in accordance with prudent industry standards or (4) if the failure to make any such capital Improvement or Repair and Replacement Item will imminently jeopardize the health or safety of the residents of the Township or employees of the Operator or the public welfare.

(b) If the Operator incurs decreased costs or expenses as a result of an Unforeseen Event or an Additional Capital Improvement, the City and the Operator shall adjust the Service Fee accordingly to reflect such savings.

(c) At the end of each Contract Year, the costs shown in Schedule I for each subsequent year shall be increased by the annual change in the Consumer Price Index-All Urban Consumers for New York-Northern New Jersey-Long Island (not seasonally adjusted), Series Id: CUURA101SA0,CUUSA101SA0. Such change shall be calculated on a twelve-month basis from January to January. For example, at the end of the first Contract Year each of the amounts shown in Schedule I for Year 2 through Year 20 shall be adjusted based upon the change in such consumer price index for the twelve (12) month period ending on (and including) the December 31 immediately preceding the end of such Contract Year. Such consumer price index change shall be converted to a percent, which shall then be multiplied by each of such amounts shown on Schedule I to produce an amount which is then added to the existing amount. At the end of the following Contract Year (and each Contract Year thereafter), each of the new amounts resulting from the previous year's calculation shall be similarly adjusted. So, if in the twelve (12) month period ending the December 31 immediately preceding the end of the first Contract Year, the consumer price index increased from 100 (at the beginning of such 12 month period) to 101 (at the end of such 12 month period), the number \$1,071,000 would be multiplied by such increase, expressed as a percent, or one percent, to equal \$10,710, which amount would then be added to \$1,071,000 to provide \$1,081,710. The amount of \$1,081,710 would be the base Service Fee applicable to the second Contract Year. Similarly, at the end of the second Contract Year (assuming the Consumer Price Index increases another one and one-half percent in the 12 month period ending on the December 31 immediately preceding the end of the second Contract Year), the amount of \$1,081,710 applicable to the third Contract Year would be multiplied by 1.5% to produce \$16,225.25, which would then be added to \$1,081,710 to equal \$1,097,935.25, which would be the base Service Fee applicable to the third Contract Year. In the event that the consumer price index set forth above ceases to be published or its otherwise unavailable, a comparable index shall be substituted which is reasonably satisfactory to the City and the Operator. No retroactive adjustment will be made based upon any such substitute index.

Section 8.3 Payments in addition to the Service Fee

(a) In addition to the Service Fee, the Operator shall be entitled to receive the Operator's Annual Capital Costs for Additional Capital Improvements accepted by the City. Payment shall be made by the City on the last Business Day of the Month.

(b) In addition to the Service Fee, the Operator shall be entitled to receive compensation for Repair and Replacement Items. The Contract Operator shall submit the appropriate Work Order and a payment voucher to the City no later than the 10th day of each month. The payment voucher will detail the Repair and Replacement Items completed and accepted as of the last day of the preceding month and the compensation due the Operator in accordance with Schedule J hereof. Payment for submitted vouchers, once approved by the City, will be made on the last Business Day of the month.

Section 8.4 Payments due at end of Term

At the end of the Term of the Agreement, in addition to the final Service Fee due, the Operator shall be entitled to:

- (a) adjustments to the Service Fee in accordance with Section 8.2(a) which were not paid, less any adjustments to the Service Fee in accordance with Section 8.2(b) which were not recovered;
- (b) compensation for all Repair and Replacement Items invoiced but not paid under Section 8.3; and
- (c) the Purchase Option Price for each accepted Additional Capital Improvement.

ARTICLE IX

DEFAULT AND TERMINATION

Section 9.1. General Provisions. This Agreement may be terminated at any time 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 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 pursue a cause of action for actual damages plus attorney's fee:

(i) the failure of the Operator or Guarantor to perform or observe any of its material covenants, agreements, obligations and/or duties created by this Agreement or the Guaranty Agreement, as applicable;

(ii) the persistent and repeated failure by the Operator to provide the Services in accordance with the material terms and provisions of this Agreement; provided, however, that there shall be no event of default pursuant to this clause unless, for each alleged non-compliance with such obligation or duty that is the basis of the claim that there has been repeated and persistent non-compliance with such obligation or duty, the party declaring an event of default has provided written notice of the alleged non-compliance to the other party within a reasonable time of becoming aware of such alleged noncompliance.

(iii) a determination that any representation or warranty made by the Operator or Guarantor shall prove to be false and/or misleading in any material respect; or

(iv) the commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the Operator or Guarantor and/or any of its subsidiaries and/or related companies which materially and adversely affects the Operator's or Guarantor's ability to perform its duties or obligations under this Agreement or the Guaranty Agreement, as applicable; the consent by the Operator or Guarantor's and/or any of its subsidiaries and/or related companies, to the appointment of and/or taking possession by a receiver, liquidator, assignee, trustee and/or custodian of the Operator or Guarantor and/or any of its subsidiaries and/or related companies, and/or any substantial part of their respective assets which materially and adversely affects the Operator's or Guarantor's ability to perform its duties or obligations under this Agreement or the

Guaranty Agreement, as applicable; the making by the Operator or Guarantor and/or any of its subsidiaries and/or related companies, of any assignment for the benefit of creditors that would materially and adversely affect the Operator's or Guarantor's ability to perform its duties or obligations under this Agreement or the Guaranty Agreement, as applicable; and/or the failure by the Operator, the Guarantor and/or any of its subsidiaries and/or related companies, to generally pay its debts as they come due that would materially and adversely affect the Operator's or Guarantor's ability to perform its duties or obligations under this Agreement or the Guaranty Agreement, as applicable.

(b) Upon the happening of any event described in Section 9.2(a)(i) or (iii), 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 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 Section 9.2(a)(i) or (iii) 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 or deliver to the City the written notice described in the preceding sentence within said thirty Day period, the City shall provide the Operator with a second written notice affording the Operator an additional sixty 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 additional sixty Day period, the City may terminate this Agreement by providing written notice thereof to the Operator.

(c) On the happening of any event described in Section 9.2(a)(ii) or (iv), the City shall have the right to immediately terminate this Agreement upon thirty Days' prior written notice to the Operator. The City and the Operator specifically agree that this Agreement shall terminate immediately after thirty Days from the receipt of such written notice to the Operator.

(d) If the City terminates this Agreement in accordance with this Section 9.2, the City shall pay the Operator an amount calculated in accordance with the following formula: $(A+B) - (C+D)$ (Unless such formula results in a negative number, in which event the Operator shall pay the City an amount calculated in accordance with the following formula: $(C+D) - (A+B)$), where:

A = the Purchase Option Price for each accepted Additional Capital Improvement;

B = (i) any Service Fees and other compensation due and owing under Section 8.3 (b) as of the termination of the Operator (which Service Fees shall be prorated if such termination occurs in the middle of a month) and (ii) any unpaid Operator's Design Fee or Operator's Construction Fee (prorated based on the actual work performed);

C = the actual costs associated with the procurement of a new operator for the System plus the actual expenses associated with the transition to a new operator for the System; provided however that such figures shall not exceed the Service Fee due the Operator for the current Contract Year; and

D = the cost to make repairs to the System, the need for which is a result of the failure of the Operator to maintain the System in accordance with this Agreement.

(e) In addition to any other remedies provided herein, 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 reasonable attorneys' fees.

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 and/or pursue a cause of action for actual damages:

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

(ii) a determination that any representation or warranty made by the City shall prove to be false or misleading in any material respect; or

(iii) the failure by the City to make any payment required to be made by the City pursuant to the terms of this Agreement within sixty Days of its receipt of notice from the Operator that any such payment is overdue.

(b) Upon the happening of any event described in Section 9.3(a)(i) or (ii), 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 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 Section 9.3(a)(i) or

(ii) 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 or deliver to the Operator the written notice described in the preceding sentence within said thirty Day period, the Operator shall provide the City with a second written notice affording the City an additional fifteen 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 fifteen Day period, the Operator may terminate this Agreement by providing written notice thereof to the City.

(c) Upon the happening of any event described in Section 9.3(a)(iii), the Operator shall have the right to terminate this Agreement upon thirty Days' prior written notice to the City.

(d) If the Operator terminates this Agreement in accordance with this Section 9.3, the City shall pay the Operator an amount calculated in accordance with the following formula: $A+B-C$ (Unless such formula results in a negative number, in which event the Operator shall pay the City an amount calculated in accordance with the following formula: $C-A+B$), where:

A = the Purchase Option Price for each accepted Additional Capital Improvement;

B = (i) any Service Fees due and owing as of the termination of the Operator (which Service Fees shall be prorated if such termination occurs in the middle of a month) and (ii) any unpaid Operator's Design Fee or Operator's Construction Fee (prorated based on the actual work performed); and

C = the cost to make repairs to the System, the need for which is a result of the failure of the Operator to maintain the System in accordance with this Agreement.

(e) In addition to any other monetary remedies provided herein, the Operator may pursue a cause of action against the City for any and all actual damages suffered by the Operator as a result of any default by the City, plus reasonable attorneys' fees.

Section 9.4. Termination for Unenforceability of Agreement/Unforeseen Event

(a) 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 there is an Unforeseen Event which increases the costs of providing the Services by 20% in any one Year or 40% over the Term, then the City and the Operator shall each have the right to terminate this Agreement, upon ninety Days prior written notice to the other party.

(b) If this Agreement is terminated in accordance with this Section 9.4, the City shall pay the Operator or the Operator shall pay the City in accordance with the formula set forth in Section 9.3(d).

Section 9.5. No Consequential Damages. Neither party shall be liable for any special, consequential, indirect, punitive, incidental or similar damages relating in any way to this Agreement.

Section 9.6. Bankruptcy Related Provisions.

(a) The parties agree that this 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" this Agreement, is critical to this Agreement and was "bargained for" and part of the consideration for this Agreement.

(b) 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)(1)(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."

(c) Alternatively, to the extent a court of competent jurisdiction holds that this Agreement is an executory contract subject to assumption and not within the exception of 11 U.S.C. Section 365(c)(1)(a), the City and Operator specifically agree to the following:

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

(ii) Since the City is a public body corporate and politic of the State 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 this Agreement cannot be assigned.

Section 9.7. Continuity of Service Upon Termination. In the event of the termination of this Agreement, the City may require that the Operator continue to provide the Services for a six month temporary period. The monthly Service Fee during such temporary period shall equal the Service Fee for the last full month prior to such termination.

Section 9.8. Status of System Upon Termination or Expiration of Agreement. Upon the termination or expiration of this Agreement, the Operator shall (a) restore the System to equal or better condition than on the Commencement Date subject to ordinary wear and tear consistent with prudent industry standards and (b) provide the City with an inventory of spare parts, as set forth in Schedule Mand chemicals as set forth in Section 6.6.

ARTICLE X
MISCELLANEOUS

Section 10.1. Insurance.

(a) The Operator shall not commence or subcontract the performance of the Services until it has provided the City with certificates of insurance of the types and in the amounts as set forth below, 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.

(b) All insurance policies required pursuant hereto, except for workers' compensation, shall specifically designate the City as an additional insured and shall further contain such provisions, to the extent commercially available, as shall indemnify and hold harmless the City, and its officials, officers, members, employees, consultants, and agents, pursuant to the terms and requirements set forth herein.

(c) The certificates of insurance shall contain the following express language: "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 Days prior written notice shall be given the certificate holder." All insurance required pursuant hereto shall be with insurance companies which (i) possesses an AM Best rating of at least A-, and (ii) are duly authorized and licensed to do business in the State. All insurance policies required pursuant hereto shall be executed by an agent duly licensed as an agent in the State.

(d) The Operator shall take out and maintain during the Term of this Agreement the following types of insurance:

(i) Worker's Compensation and Employer's Liability Insurance. The Operator and each of its subcontractors shall maintain worker's compensation insurance in accordance with the requirements of the laws of the State and all other applicable laws and regulations. If any class of employees engaged in hazardous work cannot be protected by worker's compensation insurance, the Operator shall provide alternate insurance for such class of employees. The Operator and each of its subcontractors shall maintain employer's liability insurance with a minimum limit of \$1,000,000;

(ii) Public Liability Insurance. The Operator and each of its subcontractors shall maintain public liability insurance with a limit of \$1,000,000 per occurrence/annual aggregate that protects against claims for damages resulting from bodily injury, including wrongful death, and property damages, which may arise from the performance of Services hereunder regardless of by whom performed. Such public liability insurance shall include the following extensions of coverage: (1) a comprehensive general liability form of policy or similar thereto; (2) XCU coverage (If any work is required that involves 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 \$1,000,000 CSL; (3) a broad form property damage endorsement; (4) contractual liability coverage; (5) protective liability coverage shall be included to protect the Operator against claims arising out of operations performed by its subcontractors; and (6) products liability and/or completed operations coverage. The Operator shall be responsible for the work done by subcontractors it employs;

(iii) Automobile Liability and Property Damage Insurance. The Operator and each of its subcontractors shall maintain automobile liability insurance with a bodily injury and property damage limit of \$1,000,000 per occurrence/annual aggregate that 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 performance of the Services;

(iv) Excess Umbrella Liability Insurance. The Operator shall maintain excess umbrella liability insurance in an amount not less than \$10,000,000 covering the conduct and operations of the Operator and its subcontractors; and

(v) Professional Liability Insurance. Any consulting engineer hired by the Operator to provide any Services shall maintain professional liability insurance in an amount not less than \$2000,000.

(vi) Business Interruption Insurance. The Operator shall carry business interruption insurance to the extent not provided in the coverages above.

(e) Failure of the Operator to maintain insurance shall not relieve the Operator of any liability under this Agreement.

Section 10.2. Performance Bonds/Labor and Materials Bond

(a) The Operator shall provide, to the City, a performance bond for operation and maintenance and a labor and materials payment bond, each equal to the full value of the average annual Service Fee. Such bonds shall be the security for performance of the Services, and the payment for furnished labor, outside services, subcontractors, or supplies in the provision of the Services. Such bonds shall be provided on an annual basis and the liability to the surety for each period shall not be cumulative. The bonds shall be provided by a surety company that (i) has a minimum rating of "A" by AM Best; (ii) is in the United States Treasury Department's annual listing of surety companies in the United States Federal Register, and (iii) is properly registered and licensed to conduct business in the State.

(b) The Operator shall be responsible for monitoring the financial condition of any surety company issuing bonds and for making inquiries no less often than semiannually to confirm that such surety company maintains at least the minimum rating level specified in Section 10.2(a). In the event the rating of any surety company falls below such minimum level, the Operator shall promptly notify the City of such event and shall promptly furnish a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all of the above requirements, unless the City agrees to accept an alternative method of assurance.

(c) In lieu of a performance bond and labor and materials bond, the Operator may obtain an irrevocable letter of credit from a bank with a credit rating of "A" from Standard & Poor's Corporation or Moody's Investors Service. Such letter of credit shall be in an amount equal to the average annual Service Fee.

Section 10.3. Indemnification

(a) The Operator shall indemnify, defend and hold harmless the City, its elective and appointive officers, members and directors, and its duly authorized agents, servants, employees, contractors, invitees, licensees, successors and assigns against and from any costs, expenses, liabilities, claims and demands, including, without limitation, death or property loss or damage of any kind, together with reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against the City whether by reason of any of the following occurrences

during the Term of this Agreement or otherwise, provided such costs, expenses, liabilities, claims or demands do not arise as a result of the negligent or willful acts or omissions of the City:

(i) any work or thing done in a negligent manner or in violation of the obligations of the Operator under this Agreement in , on or about the System or any part thereof by the Operator, or its agents, employees, contractors, subtenants, licensees or invitees;

(ii) any use, non-use, possession, occupation, ownership, condition, operation, maintenance or repair of the System or any part thereof by the Operator, or its agents, employees, contractors, subtenants, licensees or invitees in a negligent manner or in violation of the obligations of the Operator under this Agreement;

(iii) any negligence on the part of the Operator, or its agents, employees, contractors, subtenants, licensees or invitees;

(iv) any accident, injury or damage to any person or property occurring in or on the System or any part thereof as a result of the negligence of the Operator or its failure to comply with its obligations under this Agreement;

(v) any material failure on the part of the Operator to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Agreement on its part to be performed or complied with; or

(vi) any fines or penalties for any and all violations of applicable laws which are caused by or arise from the Operator's breach of this Agreement or the negligent or willful acts or omissions of the Operator or its agents, employees, contractors, subtenants, licensees or invitees.

(b) To the extent permitted by law, the City shall indemnify, defend and hold harmless the Operator and the Guarantor, their officers, authorized agents, servants, employees, contractors, invitees, licensees, successors and assigns for any costs, expenses, liabilities, claims and demands, including, without limitation, death or property loss or damage of any kind and liability to third parties, together with reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against the Operator or the Guarantor, or either of their employees, officers, directors, agents or representatives, which are caused by or arise from (i) any violations committed by the City, (ii) the City's breach of this Agreement; (iii) the negligent or willful acts or omissions of the City or its agents, servants,

employees, contractors, invitees, licensees, successors and assigns; (iv) any Environmental Condition or any Pre-Existing Environmental condition, but excluding the presence of Hazardous Substances to the extent permitted to be present in Specification Raw Water or (v) the receipt, treatment, use or discharge of any non-Specification Raw Water or non-Specification Wastewater provided such costs, expenses, liabilities, claims or demands do not arise as a result of the negligent or willful acts or omissions of the Operator.

(c) In the event of a claim for indemnification by the Operator, the City shall immediately notify the Operator of the claim and the City shall have the right to assume the defense against the claim, and the right to approve the settlement of the claim.

Section 10.4. New Equipment. Any new equipment installed in the System by the Operator during the Term of this Agreement shall become the property of the City upon the expiration of this Agreement or if the Agreement is terminated, repayment of the costs incurred by the Operator to acquire such equipment and not recovered through the Service Fee. The Operator shall properly operate the equipment and maintain such equipment in good working order during the Term of this Agreement. The Operator shall maintain books and records regarding any such new equipment.

Section 10.5. 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 10.6. Assignment. This Agreement may not be assigned or assumed operation at law or by either party without the prior written consent of the other, provided however the Operator may assign this Agreement to an affiliate or wholly-owned subsidiary of the Operator or the Guarantor upon notice to the City; provided further that such assignee continues to satisfy the Minimum Financial Criteria, Minimum Technical Criteria and Minimum Administrative Criteria.

Section 10.7. Affirmative Action. During the performance of this Agreement, the Operator shall conform with the following requirements:

(a) The Operator or any subcontractor, where applicable, shall 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 shall 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;

(b) The Operator or any subcontractor, where applicable, shall, in all solicitations or advertisements for employees placed by or on behalf of the Operator, state that all qualified applicants shall 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 any subcontractor, where applicable, shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Operator's commitments under this applicable law and shall post copies of this notice in conspicuous places available to employees and applicants for employment;

(d) The Operator or any subcontractor, where applicable, shall comply with the regulations promulgated by the State Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time, with the Americans with Disabilities Act;

(e) The Operator or any subcontractor, where applicable, shall attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the State Treasurer 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 promulgated by the State Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time;

(f) The Operator or any subcontractor, where applicable, shall inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities or 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 shall discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;

(g) The Operator or any subcontractor, where applicable, shall 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; and

(h) The Operator and its subcontractors, where applicable, 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 State administrative code (N.J.A.C. 17:27).

Section 10.8. Entire Agreement. This Agreement contains the entire agreement between the parties hereto relating to the operation, maintenance and management of the System and supersedes all previous or contemporaneous communications, representations, or agreements.

Section 10.9. Notices. 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:

U.S. Water L.L.C.
3434 Route 22 West
Sommerville, New Jersey 08876
ATTN: President

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

City of Orange Township
29 N. Day Street
Orange, New Jersey 07050
Attn: City Administrator

Section 10.10. Application of Law. This Agreement shall be governed in accordance with the laws of the State.

Section 10.11. Relationship of Parties. 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 Federal, State and local laws and regulations, the Operator shall exercise primary management and operational decision making authority. Nothing contained herein shall be

construed to place the parties in the relationship of partners or joint venturer and neither party shall have the power to obligate or bind the other party in any manner whatsoever.

Section 10.12. Unforeseen Event. If an Unforeseen Event occurs, the Operator shall prepare a proposal to be submitted to the City that describes the Unforeseen Event and the cost impact (increase or decrease) of such Unforeseen Event and the proposed change in the Service Fee as a result of such Unforeseen Event. The Service Fee shall be adjusted in accordance with Section 8.2 and Schedule I shall be amended accordingly, subject to the resolution of any dispute regarding such Unforeseen Event or the related amount of the Service Fee adjustment. Notwithstanding the above, if an Unforeseen Event occurs, either party may terminate this Agreement in accordance with the provisions of Section 9.4.

(a) The Operator shall not be liable to the City for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Unforeseen Event. The parties agree that the relief for an Unforeseen Event described in this Section shall apply to all obligations in this Agreement, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Agreement but not other obligations. The occurrence of an Unforeseen Event shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Unforeseen Event. The City shall pay the Service Fee during the continuance of any Unforeseen Event.

(b) As soon as reasonably practicable after the occurrence of an Unforeseen Event, the Operator shall also provide the City with a description of the amount, if any, by which the Service Fee is proposed to be adjusted as a result of such Unforeseen Event. If and to the extent that an Unforeseen Event interferes with, delays or increases the cost of the Operator's performing its obligations under this Agreement in accordance herewith, the Operator shall be entitled to relief from its performance obligations, an increase in the Service Fee, or an extension of schedule which properly reflects the interference with performance, the amount of the increased cost, or the time lost as a result thereof. The proceeds of any insurance required under this Agreement available to meet any such increased cost, and the payment by the Operator of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the City under this Section; provided, however, that any applicable

increase to the Service Fee which may be payable from the proceeds of any insurance required under this Agreement shall be implemented by the Operator and the City and paid by the City until receipt by the Operator of the proceeds of any insurance required under this Agreement, at which time the Service Fee for the month in which such proceeds are received shall be reduced by the amount of such proceeds received by the Operator. In the event that the Operator believes it is entitled to any performance, price or schedule relief on account of any Unforeseen Event, it shall furnish the City written notice of the specific relief requested detailing the event giving rise to the claim within 30 days after initial notice to the City following the Operator obtaining actual knowledge of the occurrence of the Unforeseen Event (which initial notice shall be given promptly after obtaining such knowledge). Within 30 days after receipt of such a submission from the Operator, the City shall issue written determination as to the extent, if any, it concurs with the Operator's claim for performance, price or schedule relief, and the reasons therefore. Any dispute regarding the occurrence of an Unforeseen Event shall be resolved by dispute resolution in accordance with Section 10.13. In the event that the Operator fails to give any notice described in this Section at the time set forth herein and such failure increases the costs to the Operator with respect to the performance of its obligations under this Agreement or prevents cost reduction with respect to the performance of its obligations under this Agreement which may have been achieved through mitigation measures undertaken by the Operator, the increases in cost payable by the City due to the applicable Unforeseen Event shall be reduced by the amount of any such cost increase or prevented cost reduction resulting from such failure to give such notice.

Section 10.13. Dispute Resolution. Any disputes arising under this Agreement between the City and the Operator shall be referred to the Operations Committee for resolution. If the dispute cannot be resolved by the Operations Committee either party shall be entitled to refer the dispute to an arbitration panel comprised in the following manner: The City and the Operator shall each select one independent third party to serve as an arbitrator and shall together select one additional mutually acceptable independent third party to serve as an arbitrator, so that a panel of three independent third-party arbitrators shall be formed. The decision of said panel on any disputes arising under this Agreement shall be binding on both the City and the Operator. During resolution of any dispute under this Agreement, the Operator and the City shall each continue to perform all of their respective obligations under this Agreement without interruption or delay. If the City disputes all or any portion of an invoice of the

Operator with respect to the Service Fee or the requirement or obligation of the City to pay any amount to the Operator hereunder, the City shall nevertheless pay the undisputed portion of such invoice without any offset or deduction. If the City does not prevail in the dispute resolution, the City shall reimburse the Company immediately after such resolution for the aggregate amount of the underpayment, plus interest at the prime rate plus one percent (as published in the Wall Street Journal) calculated from the date on which the City should have paid such invoice

Section 10.14. Survival. Notwithstanding anything herein to the contrary, the provisions of Section 10.3 shall survive the expiration and/or termination of this Agreement.

Section 10.15. Amendment. This Agreement may be amended in writing upon the mutual consent of the parties hereto.

Section 10.16. Headings. The Article and Section headings in this Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

Section 10.17. Non-Waiver. It is understood and agreed that nothing contained in this Agreement shall be construed as a waiver on the part of the parties hereto of any right not explicitly waived in this Agreement.

Section 10.18. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have herunto set their hands and fixed their seals as of the date first

above written.

ATTEST:

City OF ORANGE TOWNSHIP

By: _____

By:

Name: _____

Name: MIMS HACKETT, JR.

Title: _____

Title: MAYOR

ATTEST:

OPERATOR

U.S. WATER L.L.C.

By: Kathleen Desimone

By: Michael Belsante

Name: KATHLEEN DESIMONE

Name: MICHAEL BELSANTE

Title: EXEC. ADMIN. ASST

Title: MANAGER

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

ATTEST:

By: Marie Marzano
Name: MARIE MARZANO
Title: ACTING DEP. MUN. CLERK

CITY OF ORANGE TOWNSHIP

By: Mims Hackett
Name: MIMS HACKETT, JR.
Title: MAYOR

ATTEST:

By: _____
Name: _____
Title: _____

U.S. WATER, L.L.C.

By: _____
Name: MICHAEL BELSANTE
Title: MANAGER

SCHEDULE A

GUARANTY AGREEMENT

GUARANTY AGREEMENT

THIS GUARANTY, made as of this ____ day of _____, 2003, by United Water Resources, Inc., a New Jersey corporation qualified and authorized to do business in the State of New Jersey and having its primary business address at 200 Old Hook Road, Harrington Park, New Jersey (the "Guarantor"), to and for the benefit of the City of Orange Township ("City");

WITNESSETH

WHEREAS, the City has entered into an Agreement for the Operation, Maintenance and Management Services for the City of Orange Township municipal water, wastewater and stormwater systems, dated May 1, 2003 (the "Agreement") with U. S. Water L.L.C., a limited liability company organized and existing under the laws of the State of Delaware doing business at 3434 Route 22 West, Somerville, New Jersey (the "Company"), a subsidiary of the Guarantor for the management, operation, maintenance and repair services for the City's water supply, transmission and distribution system wastewater collection system and stormwater collection system (collectively, the "System"); and

WHEREAS, the City has required the Company under the Agreement to provide this guaranty (the "Guaranty" or "Guaranty Agreement") from the Guarantor pursuant the Agreement; and

WHEREAS, the Guarantor acknowledges that the City would not have entered into the Agreement unless the Guarantor provided this Guaranty and the Guarantor will receive benefit because of the Agreement; and

WHEREAS, the Guarantor is willing to provide such Guaranty;

NOW THEREFORE, as an inducement to the City to enter into the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

(1) The Guarantor hereby guarantees the full and prompt performance by the Company of all the Company's obligations under the Agreement when due (the "Obligations") in accordance with the terms and conditions contained herein.

(2) The Guarantor further guarantees that in the event the Company fails to duly and properly perform and satisfy when due any and all of its Obligations under the Agreement, Guarantor will, upon written demand of the City, setting forth the specific failure of the Company, promptly perform and satisfy those Obligations set forth in such demand.

(3) The obligations of the Guarantor under this Guaranty (i) shall be absolute, irrevocable and unconditional under any and all circumstances without regard to the genuineness, validity, legality or enforceability of the Agreement (unless the City, its successors

or assigns, asserts any claim or defense based on any alleged invalidity, illegality or unenforceability of the Agreement or any term thereof) or of any term thereof, or lack of power or authority of any party (other than the City) to enter into the Agreement, or any substitution, release or exchange of any other guaranty of or any security for the Obligations, and irrespective of any other circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, (ii) are in no way conditional upon any attempt to enforce performance or compliance by the Company except to the extent of the cure opportunities which are afforded the Company under the Agreement and (iii) shall remain in full force and effect until the performance by the Company of all of its performance and payment Obligations under the Agreement. This Guaranty shall continue to be effective or be automatically reinstated, as the case may be, if at any time any payment by or on behalf of the Company or the Guarantor in respect of the Obligations is rescinded or must otherwise be restored by the City to the Company or such Guarantor, as the case may be, or any assignee of the City for any reason whatsoever, including, but not limited to, any proceedings in bankruptcy or reorganization, as though such payment had not been made and the Guarantor agrees that it shall indemnify the City on demand for all costs and expenses (including, without limitation, fees and expenses of counsel) incurred by the City in connection with any such rescission or restoration. Without limiting the generality of the foregoing, the obligations of the Guarantor shall not be affected, reduced, modified or impaired upon the happening from time to time of any of the following events, whether or not with notice to or the consent of Guarantor:

- (a) the failure to give notice to Guarantor of the occurrence of a default by the Company under the terms and provisions of the Agreement;
- (b) the modification or amendment (in accordance with the terms of the Agreement) (whether material or otherwise) of any obligation, covenant or agreement set forth in the Agreement;
- (c) any failure, omission, delay by or lack on the part of the City to assert or exercise any right, power or remedy conferred on the City in the Agreement or this Guaranty except that the Guarantor will be afforded all rights under the Agreement as is the Company;
- (d) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the City's and/or the Company's assets, the marshaling of the City's and/or the Company's assets and liabilities, the receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors, or readjustments of, or other similar proceedings affecting the City and/or the Company or the Guarantor or any of the assets of any of them;
- (e) the assignment (in accordance with the terms of the Agreement) of any right, title or interest of the City in the System or the Agreement to any other person, including, without limitation, any person providing financing to the City and any entity purchasing an interest in the System pursuant to a leverage lease or similar arrangement; or

(f) any other cause or circumstance, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing;

it being the intent of Guarantor that its obligations hereunder shall not be discharged except by payment for and/or performance of the Company's Obligations, and then only to the extent of such payment or performance.

(4) Guarantor hereby waives diligence, presentment, demand of payment, protest and all notices whatsoever, including, without limitation, notice of (1) any alteration or modification of the Agreement, provided such alteration or modification has been duly executed by the Company, (2) the City's acceptance and reliance on this Guaranty and (3) notice of default or demand in the case of default, provided such notice or demand has been given to or made upon the Company, and any requirement that the City exhaust any right, power or remedy or proceed against the Company under the Agreement or any other agreement or instrument referred to herein or therein or against any other person under any other guarantee of, or security for, any of the Obligations.

(5) If a demand, in accordance with Section 2 of this Guaranty, is made upon the Guarantor and the Guarantor duly and properly performs the obligations of the Company set forth in the demand, then (a) after satisfaction in full of all of the Obligations, the Guarantor shall be subrogated to the rights of the Company against the City, and (b) the City shall suspend the pursuit of any remedy against the Company in respect of any such Obligations which have been fully satisfied by Guarantor hereunder;

(6) The Guarantor hereby represents and warrants that:

(a) The Guarantor is a corporation duly organized and existing under the laws of the State of New Jersey and is qualified and authorized to do business in the State of New Jersey.

(b) The Guarantor is not in default under any provisions of the laws of its state of incorporation or under its certificate of incorporation.

(c) The Guarantor has corporate power under said laws and under its certificate of incorporation to enter into and perform this Guaranty Agreement and it has, by proper corporate action, duly authorized the entering into and the execution and delivery of this Guaranty Agreement.

(d) The Guaranty Agreement has been duly and validly executed and delivered by the Guarantor and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting rights of creditors of Guarantor generally).

(e) The authorization and execution of this Guaranty Agreement and performance hereunder is not an event of default or otherwise contrary to any obligation by which it is bound.

(f) There is no Federal, State or local law, or regulation thereunder, or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the Guarantor of this Guaranty Agreement, the compliance by the Guarantor with the terms and conditions hereof, or the consummation by the Guarantor of the transactions contemplated hereby, a violation of such law or regulation.

(g) There is no action or proceeding pending or threatened against the Guarantor before any court or administrative agency that could reasonably adversely affect its ability to perform its Obligations under this Guaranty Agreement and all authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery of this Guaranty Agreement or in connection with the performance of its obligations thereunder have been obtained as required hereunder or by law.

(h) No indictment or conviction has been returned against any official of the Guarantor with respect to any business transaction, whether or not related to the transactions contemplated by the terms of this Guaranty Agreement.

(7) This Guaranty shall be governed by the laws of the State of New Jersey, and the Guarantor hereby agrees to service of process in the State of New Jersey for any claim or controversy arising out of this Guaranty or relating to any breach and to submit to the exclusive jurisdiction of any court of competent jurisdiction in the State.

(8) This Guaranty shall be binding upon and enforceable against the Guarantor, its successors and assigns, and is for the benefit of the City, its successors, agents and assigns.

(9) Notwithstanding anything in this Guaranty Agreement to the contrary:

(a) the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Agreement, and the obligations of the Guarantor under this Guaranty Agreement are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Agreement;

(b) the total liability of the Guarantor in respect of the Obligations shall not exceed the liability of the Company set forth in Article IX of the Agreement;

(c) nothing contained in this Guaranty Agreement shall create any obligation of or right to look to any director, officer, employee or stockholder of the Guarantor for the satisfaction of any obligations under this Guaranty Agreement, and no

judgment, order or execution with respect to or in connection with this Guaranty Agreement shall be taken against any such director, officer, employee or stockholder; and

(d) the Guarantor shall have no obligation under this Guaranty Agreement until the Commencement Date under the Agreement has occurred.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

Attest:

UNITED WATER RESOURCES, INC.

By:

Name:

Title: President

SCHEDULE B

MINIMUM CAPITAL IMPROVEMENTS

1. Chestnut Street Pump Station

A. Description. At the present time the City operates a booster pump at Chestnut Street to pump water from the mountain wells (Wells No. 2, 3, 4, 5 and 6 located in Millburn and West Orange) to the Walker Road Reservoir located in West Orange.

The existing booster pump is a 250 horsepower split suction water pump with a dual power system consisting of a General Electric 4150 volt 250 horsepower electric motor and an 8 cylinder natural gas Caterpillar engine. A manual clutch allows for operation of the pump on either gas or electric power. Pump speed is controlled by manual throttle adjustments to the natural gas engine or by manual adjustments to a variable resistance electric speed control.

The only backup for the booster pump is a 50 horsepower pump which has been piped into the system. However this pump does not have a connected power source and requires connection to a portable electric generator to operate. It is reported this pump can deliver approximately 500 gpm into the system. Other pumping equipment exists in the building however, these pumps are currently dismantled and are not considered serviceable.

The booster pump station is housed in a large building approximately 100-years old. In addition to the booster pump the building houses garage facilities for the public works department, a chemical feed system for treatment of the water from the mountain wells, a 4150 volt electrical power supply and an abandoned surface water filter plant.

B. Proposed Improvements. In order to improve reliability and operation at its Chestnut Street facility the City proposes to accomplish the following work:

- i. Replace the existing variable resistance speed controller with a variable frequency drive (VFD) and automatic control system for the existing 250 horsepower booster pump.
- ii. A spare booster pump shall be purchased to serve as a replacement for the existing booster pump in the event of breakdown.
- iii. An engineering evaluation of the building structure and mechanical and electric systems shall be conducted to determine building repairs and improvements necessary to facilitate use as a booster pump station and improve energy efficiency. It is anticipated upgrading shall include structural and architectural repairs, improvements to the electrical system, improvements to the heating and ventilating system and construction of enclosures around equipment which is to remain in service.
- iv. Minimum provisions to permanently shut down the water filter plant and abandon it in place.

2. Redevelopment of Well No. 5. Mountain Well No. 5 contains a 50 horsepower well pump housed in a masonry structure. The well has a design capacity of 700 gpm at 180 feet TDH. However, in recent years the capacity of this well has declined and it currently can only pump less than 200 gpm. Therefore this well shall be redeveloped by chemical and mechanical means to achieve a firm flow of 500 gpm.

3. Replacement of Well No. 6. Well No. 6 is located in a masonry structure just downstream of the Orange Reservoir Dam. At the present time Well No. 6 is permitted for a water diversion of 1,400 gpm. However, because the existing well casing liner limits the size of pumping equipment this well currently has a 25 HP pump with a design capacity of 800 gpm at 90 feet TDH. The City intends to replace the well with a new well designed for 1,400 gpm. The new well shall be located outside in the immediate vicinity of the existing well. The existing wire house shall be used for electric power and controls.

4. Miscellaneous Well Improvements - Wells Nos. 3, 4, 5 and 6. Mountain Wells Nos. 3, 4, 5 and 6 are located in Millburn and West Orange in an area known as the South Mountain Reservation. The City proposes to perform miscellaneous improvements at these wells including electrical, mechanical, HVAC, and architectural improvements. Also included will be replacement of the variable resistance speed controls with new variable frequency drives and control systems at Wells No. 3, 4 and 5.

5. Portable Electric Generator. Presently none of the mountain wells (Wells No. 2, 3, 4, 5 and 6) have provisions for alternate power in the event of a power failure. The City therefore proposes to install manual transfer switches at each of these wells and to purchase a trailer mounted portable generator capable of operating any of the wells in the event of an extended power failure.

6. SCADA System. Operation of the water system is currently accomplished by local manual operation of each component with minimum telemetry back to the central control location at the Chestnut Street Facility. To improve operation and efficiency the City proposes to install a state of the art Supervisory Control and Data Acquisition (SCADA) system. The SCADA system will collect data from the various components of the system for transmission to a central computer control station to be located at the Chestnut Street pump station. The proposed computer software will allow for collection and logging of the data from the various remote data point locations, remote control of critical system components and local and remote alarms. It is anticipated that the following locations shall be incorporated into the SCADA system:

- A. Gist Place Well
- B. Orange Park Well
- C. Chestnut Street Booster Pump
- D. Chestnut Street chemical feed system
- E. Mountain Wells No. 2, 3, 4, 5 and 6
- F. Campbell's Pond Recharge Basins 1 and 2
- G. Orange Reservoir
- H. Mountain Well Surge Tank
- I. Walker Road Reservoir

7. Campbell's Pond. Campbell's Pond, located in the South Mountain Reservation serves as a recharge basin for Well No. 5. The existing dam was reconstructed within the past year. The City plans to complete other minor improvements as well as dredging of a silt buildup in order to improve the Pond's function as a recharge basin.

8. Recharge Basins 1 and 2. Recharge Basins 1 and 2, also located in the South Mountain Reservoir, serve to recharge ground water for operation of the mountain wells. At the present time these basins have become silted up and the earth dam has failed. It is the City's intention to dredge the recharge basins to improve groundwater recharge and to repair the earth dam and control structures to maintain proper water level in the recharge basins.

9. Replacement of Transmission Pipe at the Glenn Avenue Bridge. During a recent major hurricane the 20-inch transmission pipe beneath the Glenn Avenue bridge was exposed. There is concern this pipe may be subject to future damage. The City therefore proposes to replace a portion of this 20-inch transmission Main at a location adjacent to the Glenn Avenue Bridge. It is intended to install the new Main by means of directional drilling or open cut excavation at least 3-feet below the bottom of the stream bed. The new pipe shall be encased in concrete in order to protect it from future damage.

10. Replacement of Isolation Valves on Transmission Mains. Raw Water from the five mountain wells is conveyed to the Chestnut Street pump station via 16-inch and 20-inch raw water mains. There is a total of approximately 17 miles of pipe from the mountain well locations to Chestnut Street. It is reported the isolation valves on these transmission mains are not functioning. It is the City's intention to replace these isolation valves in order to facilitate future operation and maintenance of the transmission mains. For this Item 10 of the Minimum Capital Improvements, extended employee time of the Operator necessitated by this improvement will be reimbursed.

11. Wastewater System Improvements

- A. Replacement of broken pipe at various locations - estimated cost \$590,000.
- B. Replacement of structurally deficient pipe at various locations - estimated cost \$720,000
- C. Repair of sewer pipe collapse at Canfield Avenue - estimated cost \$375,000.
- D. Separation of sanitary and storm sewer pipe at McChesney Street.

SCHEDULE C

RATE FORMULA

Amounts due from System Customers

(1) Calculation of Rates: No later than April 10 of each Year, an Authorized City Representative shall calculate a Rate in accordance with the following Rate Formula:

$$\text{RATE} = \frac{\text{FIXED COSTS} + \text{VARIABLE COSTS}}{\text{ANNUAL EDU TOTAL}}$$

Where:

FIXED COSTS = an amount reasonably anticipated to cover the expenses of the following: (a) annual costs of fuel, natural gas and electricity for operating the Systems; (b) Permit fees; (c) General landscaping maintenance at the Orange Reservoir, Walker Road Reservoir and Campbell Pond Reservoir when required by the City; (d) All charges for the transmission and treatment of Wastewater, including but not limited to PVSC charges and charges imposed by Second River Joint Meeting, (e) all charges for Purchased Water; and (f) Lease payments for equipment covered by the agreement referenced in Section 6.32;

VARIABLE COSTS = an amount equal to the Operator's Service Fee, plus the Operator's compensation for Repair and Replacement Items due under Section 8.3, plus the Repair and Replacement Requirement, plus the City Administrative Expenses, all as such terms are defined in this Agreement.

ANNUAL EDU TOTAL = for any Year, a ratio the numerator of which is the total amount of water produced from the Water System for the preceding Year and the denominator of which is one EDU.

(2) Additional Charges. In addition to the consumption based charges, each customer shall be assessed a Minimum Charge.

(3) Amounts Due. For an individual customer, the amount due from the customer shall be equal to the sum of (x) the Usage Charge plus (y) the Minimum Charge.

(4) Time of Calculation. No later than April 1 of each Year, the Authorized City Representative shall notify the Operator of (i) the Rates calculated pursuant to Subsection (1) of this Section and (ii) the Minimum Charges calculated in accordance with subsection (b) of this Section. Such Rates and Minimum Charges shall be used by the Operator to generate bills beginning on July 1 of each year.

(e) Transition. During the initial Contract Year, the Rate and Minimum Charge shall be established by a certificate signed by an Authorized City Representative on or before the date of this Agreement.

(f) Development of Customer Classes. In the performance of the requirements set forth herein, the Authorized Representative shall, if necessary and desirable, classify customers based on such factors deemed proper and equitable as permitted under N.J.S.A. 40A:26A-10.

(g) Late charges. Usage Charges, Minimum Charges and Tapping Fees shall, if remaining unpaid for 30 days following the date for the payment thereof, accrue interest at the maximum rate permitted under N.J.S.A. 40A:26A-17. The City shall have the ability to establish installment payment plans for the repayment of delinquent accounts in accordance with N.J.S.A. 54:5-19.

(i) Lien on Property. Usage Charges, Minimum Charges and Tapping Fees shall become a first lien on the property benefitted in accordance with N.J.S.A. 40A:26A-12, such liens to be enforceable in the manner provided for real property tax liens in chapter 5 of Title 54 of the State's Revised Statutes.

(j) Modification The City reserves the right to modify or replace the Rate Formula, at any time and for any reason, at its sole discretion, by duly adopting an ordinance establishing alternate rates for the System. Upon due adoption, such ordinance shall supercede any and all provisions contained herein.

SCHEDULE D

DESCRIPTION OF THE SYSTEMS

The City of Orange Township ("City"), located in Essex County, is bounded on the north by the City of West Orange, on the east by the City of East Orange, and on the south and west by the City of South Orange. According to 2000 Census information the City population is approximately 32,868. The City comprises approximately 2.2 square miles. The City's system (the "System") is comprised of a water supply, treatment and distribution system, a sanitary sewage collection system that drains to the Passaic Valley Sewerage Commissioners (the "PVSC") facility and a stormwater collection system, each as described below.

Description of the Water System. Collectively, all of the used and useful individual structures, equipment, land, components and elements that comprise the potable water system of the City of Orange Township, including, but not limited to, the Water Treatment Plant, and all wells, well treatment equipment, reservoirs, booster pumping stations, transmission and distribution pipelines, fire hydrants, valves, services, meters and related facilities

Description of the Wastewater System. Collectively all of the used and useful individual structures, equipment, land, components and elements that comprise the wastewater collection and transmission system of the City of Orange Township, including, but not limited to, all collection and transmission sanitary sewer mains, manholes, cleanouts and related facilities. Such system shall not include any pipes, main, treatment facilities, gates, meters or valves owned or maintained by the PVSC.

Description of the Stormwater System. Collectively all of the used and useful individual structures, equipment, land, components and elements that comprise the stormwater collection and transmission system, of the City of Orange Township, including, but not limited to, all collection and transmission storm sewer pipes, manholes, inlets, junction chambers, headwalls, channels, open public ditches and public swales.

SCHEDULE E

MINIMUM ADMINISTRATIVE CRITERIA

The Operator possesses the corporate resources, staff and personnel necessary to provide all of the required management, financial, and support services as specified herein.

The Operator is not be limited in any way by any pending or threatened litigation or corporate restructuring which could materially affect the resources, staff and personnel or otherwise limit the Operator's ability to provide the Services.

Except as disclosed in the RFQ/RFP, the Operator has not have been terminated for cause on any contract for management, operation or maintenance of a water, wastewater or storm water system.

SCHEDULE F

MINIMUM FINANCIAL CRITERIA

- (1) The Operator or the Guarantor maintains a net worth for the most recent fiscal year of at least Five Million Dollars (\$5,000,000).
- (2) The Operator or the Guarantor has maintained had annual pre-tax earnings for two (2) out of the three (3) most recent fiscal years of at least One Million Dollars (\$1,000,000) per year.
- (3) The Operator or the Guarantor maintains cash and/or cash equivalents (such as marketable securities) of at least One Million Dollars (\$1,000,000) as of the date of its most recent audited financial statement; provided, however that the Operator and the Guarantor may satisfy a portion of the "cash equivalent" requirement through an unencumbered line of credit up to One Million Dollars (\$1,000,000) that the Operator can access during the term of the Agreement and provided further that such line of credit has been properly documented to the City by submission of a letter from the line of credit bank by an authorized representative evidencing the existence of such a line of credit and verifying the encumbered and unencumbered portions thereof and the ability of the Operator to access such line of credit during the term of the Agreement. If the bank's letter qualifies the Operator's ability to access the line of credit on the absence of any events of default by the Operator or the Guarantor, the bank must agree to (and acknowledge such agreement in the letter) notify the City upon the occurrence of an event of default by the Operator or the Guarantor. Notification of an event of default will entitle the City to seek additional security from the Operator or the Guarantor or exercise the remedies available to it pursuant to the terms of the Agreement.

SCHEDULE G

MINIMUM TECHNICAL CRITERIA

- (a) The Operator shall remain in the business of providing O&M services for water facilities, wastewater collection systems and storm water systems similar to the System.
- (b) The Operator shall maintain in its employ at least three supervisory personnel experienced in providing supervision, trouble shooting, evaluations, and other technical information in support of operation and maintenance of water, wastewater collection and storm water facilities.
- (c) Respondent shall maintain in its employ at least three licensed supervisory personnel. Collectively, these supervisory personnel must have current public water distribution and wastewater collection systems license classifications pursuant to *N.J.S.A. 58:11-64 et seq. and N.J.A.C. 7:10-13* of W3 or higher for water distribution, T3 for water treatment and C-3 for wastewater collection for operation of water and wastewater and storm water facilities in accordance with DEP Regulations.
- (d) The Operator shall maintain sufficient technical, managerial, administrative, office, field, clerical and accounting staff to efficiently and effectively render the Services.
- (e) The Operator must own or lease a sufficient number and type of vehicles and equipment to render the required Services.
- (f) The Operator shall maintain the ability to conduct Systems evaluations and engineering reviews and to implement improvements in operations and maintenance practices to improve performance, efficiency and reliability.
- (g) The Operator shall maintain its ability to employ a person or persons who have, past experience with the Department and EPA in regard to compliance with all regulatory requirements and submissions, and in-depth knowledge of the Safe Drinking Water Act and the Clean Water Act and all other State regulatory requirements.
- (h) The Operator shall maintain experience in developing and implementing emergency contingency plans for the Systems.

SCHEDULE H

TAPPING FEES

Water Connections:

3/4-inch diameter.....	\$ 475.00
1-inch diameter.....	\$ 510.00
2-inch diameter.....	\$ 975.00
4-inch diameter.....	\$2,160.00
6-inch diameter.....	\$2,560.00
8-inch diameter.....	\$3,900.00

Sanitary Sewer Connections

6-inch diameter.....	\$1,500.00
8-inch diameter.....	\$2,000.00
10-inch diameter.....	\$3,000.00

Storm Sewer Connections:

6-inch diameter.....	\$1,000.00
8-inch diameter.....	\$1,500.00
10-inch diameter.....	\$2,000.00
12-inch diameter.....	\$2,500.00
15-inch diameter.....	\$3,000.00
18-inch diameter.....	\$3,500.00

CONNECTION CHARGES
(Retained by Operator)

DOMESTIC CONNECTION CHARGES							
SIZE	CONNECTION FEE	METER VALVES (PAIR) & CPLGS.*	EXCAVATION	METER/DC	TEST TEE	INSPECTION FEE	TOTAL
3/4"	\$1,000.00	\$90.00	\$500.00	N/C	--	\$75.00	\$1,665.00
1"	1,300.00	100.00	500.00	N/C	--	75.00	1,975.00
2"	1,750.00	250.00	500.00	N/C	--	75.00	2,575.00
4"	2,400.00	670.00	675.00	N/C	4x4x2	125.00	3,870.00
6"	2,800.00	950.00	675.00	N/C	6x6x2	125.00	4,550.00
8"	3,250.00	1,285.00	675.00	N/C	8x8x2	125.00	5,335.00
SPRINKLER & STANDPIPE CONNECTION CHARGES							
4"	2,400.00	970.00	675.00	\$1,000.00	4X4X2	125.00	5,170.00
6"	2,800.00	1,200.00	675.00	1,200.00	6X6X6	125.00	6,000.00
8"	3,250.00	1,600.00	675.00	1,900.00	8X8X2	125.00	7,550.00

1. All excavation fees listed above are for cuts up to 10' from the curb. Any cuts over 10' must pay a double or triple fee accordingly.
2. All water connections requested on county roads shall cost an additional \$500.00.
3. A cut-off fee of \$200.00 each shall be added to the Connection Charges where applicable.
4. The customer's contractor shall supply test tees and cast iron wall sleeves on all settings 4" and larger.
5. The customer's contractor shall be responsible for setting all water meters 2" and larger to exact Operator specifications.

6. The Operator shall provide to customer with the following for all 4", 6" and 8" connections:
 - A. Meter (which shall be the type used by the City and compatible with the reading technology used by the City)
 - B. Flange to spigot piece with flange adaptor
 - C. Fire line services: meter-trim package and appropriate by-pass meter for detector check valve.
7. No Meter By-passes shall be permitted by the Operator.
8. The work required to perform sanitary sewer connections and storm water connections is the responsibility of the property owner. Application for connection is to be made to the City construction code official and a Tapping Fee shall be paid to the City in accordance with the above schedule.
9. The Operator will not perform any of the work under this schedule until the fees have been paid.

SCHEDULE I

SERVICE FEE

Payments to Operator for 10 Year Term with two five year renewals:			
Year 1:	\$1,130,000	Year 11:	\$1,092,000
Year 2:	\$1,071,000	Year 12:	\$1,092,000
Year 3:	\$1,071,000	Year 13:	\$1,092,000
Year 4:	\$1,071,000	Year 14:	\$1,092,000
Year 5:	\$1,071,000	Year 15:	\$1,092,000
Year 6:	\$1,071,000		
Year 7:	\$1,071,000	Year 16:	\$1,043,000
Year 8:	\$1,071,000	Year 17:	\$1,043,000
Year 9:	\$1,071,000	Year 18:	\$1,043,000
Year 10:	\$1,071,000	Year 19:	\$1,043,000
		Year 20:	\$1,043,000

Payment shall be on the last Business Day of each month in each Contract Year in an amount equal to one-twelfth of the Service Fee, as such fee may be adjusted pursuant to the terms of this Agreement, due in each Contract Year.

SCHEDULE J

REPAIR AND REPLACEMENT FEES

1. Repair and Replacement Items shall include all of the costs associated with or incidental to the following:
 - a. Sandblasting and/or re-coating of the Water System surge tower and Ion exchange tanks when required by the City;
 - b. Heavy Cleaning of and repairs and replacement to the System Mains, with the prior approval of the City, including but not limited to lining (both cured-in-place and slip applications) and joint grouting;
 - c. Supply Pipe Repairs, Supply Pipe Replacements, Hydrant Replacements, Hydrant Relocation, Hydrant Maintenance and Repair, Hydrant Flow Testing, Service investigations, OMB Repairs, service turn offs, and service turn ons in excess of those units per year set forth in Schedule K;
 - d. Lateral Service Pipe Repairs;
 - e. Structural repairs to the System's buildings and the Walker Road Reservoir
 - f. All repairs or replacements of mechanical, electrical, structural, or site components or items of the System (including, without limitation items not expected to be replaced at regular intervals as part of routine maintenance such as tanks, towers, wells, dams and spillways) except any such repairs or replacements that are (1) listed in Schedule K (General Maintenance) until they exceed the annual quantities listed in Schedule K; (2) routine maintenance items as described in Sections 6.17, 6.18 or 6.19 of this Agreement; or (3) Consumable Items; and
 - g. All assistance to the City or outside contractors under Section 6.3 or 7.1 and responses to fires as provided under 6.17 (xvi).

2. Performance of Repair and Replacement Items shall entitle the Operator to compensation in addition to the Service Fee based on either paragraph a. or b. below:
 - a. **Unit Pricing:** If the Operator exceeds the annual limits set forth in Schedule K, the Operator will be eligible for reimbursement (for those activities in excess of the annual limits) from the City on a unit price basis as set forth in the following table:

<u>Item of Maintenance</u>	<u>Unit Price per Item</u>	<u>Annual Increase in Unit Price</u>
Supply Pipe Repairs	\$900	3%

Supply Pipe Replacement	\$1,200	3%
Lateral Service Pipe Repairs	\$900	3%
Hydrant Relocation	\$5,700	3%
Hydrant Replacement	\$2,500	3%
Hydrant Maintenance and Repair	\$250	3%
Hydrant Flow Testing	\$70	3%
Service Investigations	\$35	3%
OMB Repairs	\$350	3%
Service Turn-Offs	\$35	3%
Service Turn-Ons	\$35	3%

b. Cost Plus Basis

- (1) For Repair and Replacement Items not covered in Subsection 2(a), the Operator will be reimbursed for Repair and Replacement Items based on the following formula:

The sum of Labor, Materials, Equipment and Subcontracts, as applicable, multiplied by 1.15, such multiple to be complete compensation to the Operator for profit and overhead, where:

- (a) Labor shall equal the cost of the Operator's labor (but not employees covered by overhead as set forth in paragraph B below) based on the applicable wage rates provided by the Department of Labor under the auspices of the Prevailing Wage Law.
- (b) Materials shall equal the cost of materials and supplies installed or consumed in the repair based on the actual costs paid by the Operator, without mark-up by the Operator except as set forth above.
- (c) Equipment shall mean the actual or imputed cost of equipment reasonably required to make the repair which for rented equipment shall be the actual invoice cost for rented equipment (including transportation to and from the repair site) and which for equipment owned by the Operator or a related entity, the most current costs established in the Equipment Guidebook Company's "Rental Rate Blue Book for Construction

Equipment" (the "Blue Book"). Costs will be based on an hourly rate determined by dividing the monthly rate listed in the Blue Book by 176. Equipment listed under the Required Equipment Schedule under sections titled "Safety Equipment," "Testing Equipment," "Traffic Control Equipment," "General Tools" and "Other Equipment" shall not be compensable.

- (d) Subcontracts shall equal the Operator's invoice cost, which cost shall be reasonable in the estimate of the City, from the subcontractor for undertaking the repair, which cost shall include labor, materials and equipment costs (whether or not such equipment is Required Equipment) of the subcontractor, without mark-up by the Operator except as set forth above.
- (2) For Repair and Replacement Items on a Cost Plus Basis, "overhead" shall include all salaries and expenses of administrative officers, general superintendence, clerical employees, Required Equipment and other miscellaneous materials and supplies.
- (3) Except for Emergency Repairs under Section 6.15, the Operator shall use a competitive procedure in selecting materials, subcontractors and rented equipment to undertake Repair and Replacement Items on a Cost Plus Basis. Competition shall be evidenced by a contractual arrangement with a material or equipment supplier or subcontractor applicable to more than one transaction which is competitively procured by the Operator or a solicitation of proposals from at least three vendors, or upon notice to the City of the lack of sufficient qualified vendors, a solicitation of fewer than three vendors, on a transaction-by-transaction basis.
- (c) The Operator shall keep details cost records for all Repair and Replacement Items for purposes of Cost Substantiation under Section 6.26.

SCHEDULE K
GENERAL MAINTENANCE

As part of the Services, Operator shall be responsible for performing the following items of General Maintenance up to the annual number of occurrences listed below. Performance of General Maintenance shall be based upon the need to return each item to its intended functionality based on prudent industry standards, provided however that items marked with a "*" shall be performed by the Operator at the request of the City whether or not performance of such item is needed to return the item to its intended functionality based on prudent industry standards. When the Operator reaches 80% of the annual limit, it shall, within 5 business days, notify the City of this benchmark in writing. For purposes of calculating a unit under this Schedule, (1) with respect to Hydrant Maintenance and Repair, each occurrence requiring some disassembly of the above ground section of the hydrant, whether or not such disassembly is down to the shoe of the hydrant, shall constitute a unit, (2) with respect to OMB Repairs, the replacement of one or more of the item listed in the definition of such term shall constitute a unit, (3) with respect to Supply Pipe Repairs, the repair or replacement of one or more of the items listed in the definition of such term in connection with repair work on the Supply Pipe shall constitute a unit and (4) with respect to Supply Pipe Replacement, the replacement of any water distribution pipe portion of the Supply Pipe in total or any water distribution pipe portion of the Supply Pipe plus one or more of the items listed in the definition of such term shall constitute a unit.

WORK TYPE	UNITS PER YEAR
Supply Pipe Repairs	725
Supply Pipe Replacement	25
Hydrant Replacement	5
Hydrant Relocation	5
Hydrant Maintenance and Repair	25
Hydrant Flow Testing *	10
Service Investigations *	150
Lateral Pipe Repairs	0
OMB Repairs*	5
Service Turn Offs *	150

Service Turn Ons *	150
Mark-Outs *	600

SCHEDULE L
REQUIRED EQUIPMENT

The Operator shall, at all times during the Term of this Agreement, own and/or have access to the equipment listed below.

A. Safety Equipment

Safety harness/life line.

Tripod with mechanical advantage for easy removal of a worker by one person (assistant) and must be equipped with fall arrestor.

Portable atmosphere ventilator to provide adequate fresh air for entry.

Portable atmospheric monitoring equipment for H₂S, O₂, and LEL (CH₄) levels.

Appropriate fire extinguishers.

Appropriate first aid kits.

Each employee shall be outfitted with a hard hat, safety goggles, protective work gloves, steel-toed work boots and orange traffic vest.

All other safety equipment which may be necessary to provide adequate safe working conditions.

Note: This list of Safety Equipment is not intended to be inclusive and shall serve as a general guideline. Operator shall be responsible for providing all safety equipment as necessary or required by Federal, State and local regulation.

B. Testing Equipment

Vibration analysis unit.

Thermal analysis unit.

Lubrication analysis unit.

Electrical testing equipment (standard multi-meter amp probe).

Pressure gauges.

Strobe lights.

Stethoscopes.

Hydrant flow and pressure testing equipment.

All other testing equipment which may be necessary to provide required and adequate System equipment testing recommended by the manufacturers.

C. Traffic Control Equipment

Flashing traffic lights and flags.

Traffic cones.

Traffic barricades

Traffic signs.

All other traffic control devices and equipment which may be necessary to provide safe working conditions.

D. General Tools. The Contractor Operator shall have dedicated to the provision of the Services at least two (2) of each of the following: shovels, picks, hydrant wrenches, gate valve wrenches, pipe wrenches, manhole hooks, explosion proof flashlights, and adequately sized plumber's snakes. Operator shall also provide, as needed, such sewer plugs as are necessary and such cones, signs, light kits and vests as are necessary to provide adequate traffic control.

E. Other Equipment

Sewer Jetting/Vacuum truck of adequate size and capacity, as approved by an Authorized City Representative.

Metal Detector.

5000W Generator with GFI receptacle.

2" portable pump.

4 wheel drive pick-up truck.

Communications gear (with radio or device provided to the City).

All other equipment which may be necessary to perform work under this contract.

The Operator shall, at all times during the Term of this Agreement have access to, and an ability to mobilize within six hours notice, the equipment listed below:

TV inspection system.

Large scale construction/repair equipment such as bulldozer, backhoe, emergency bypass pumping system (including all necessary plugs, pumps, hoses, storage facility, etc.), jackhammer, and pavement cutter.

Portable lift unit.

All other equipment which may be necessary to provide the Services.

SCHEDULE M

SPARE PARTS

1. One (1) 5 GPH spare chemical injection pump for Chestnut Street Facility;
2. One (1) 1 GPH spare chemical injector pumps for wells;
3. Two (2) Injectors;
4. Three (3) Air release valves;
5. 50 LF of Tubing;
6. One (1) set of Packing for each pump;
7. Two (2) Dresser couplings for 4", 6" 8" 16" and 20" pipe;
8. Two (2) Repair clamp assemblies for 4", 6" 8", 16", 20" pipe;
9. Two (2) of each - 4", 6", 8" gate valves;
10. Two (2) of each - 4", 6", 8" check valves;
11. Two (2) Fire hydrants and hydrant valves;
12. Ten (10) Curb stops and curb boxes;
13. Ten (10) Manhole and inlet castings;
14. Component parts for Darling and Mueller fire hydrants.
14. Miscellaneous small valves, fittings and appurtenances, as needed;
15. Any spare parts recommended by the equipment manufactures.

SCHEDULE N

TECHNICAL SPECIFICATIONS

CITY COUNCIL**The City of Orange Township, New Jersey**DATE December 19, 2017

AMENDED

NUMBER 424-2017

TITLE: RESOLUTION AUTHORIZING THE CITY OF ORANGE TOWNSHIP TO ENTER INTO AN AMENDED EXTENSION AGREEMENT WITH SUEZ WATER ENVIRONMENTAL SERVICES, INC., TO PROVIDE CONTINUING OPERATION AND MAINTENANCE OF THE WATER SUPPLY, TRANSMISSION AND DISTRIBUTION SYSTEM, WASTEWATER COLLECTION SYSTEM, STORM WATER SYSTEM, AND CUSTOMER SERVICE, BILLING AND COLLECTION SYSTEM IN AN AMOUNT NOT TO EXCEED \$1,649,000.00 ANNUALLY

WHEREAS, the City of Orange Township entered into an agreement with U.S. Water, Inc., effective May 1, 2003, for the operation and maintenance of the Orange Water Services including the water supply, transmission and distribution system, wastewater collection system, storm water system and customer service, billing and collections ("water agreement"); and

WHEREAS, SUEZ Water Environmental Services, Inc. ("SUEZ"), acquired U.S. Water, Inc., on July 9, 2002; and

WHEREAS, SUEZ took over the prior water agreement as part of its acquisition of U.S. Water; and

WHEREAS, the prior water agreement between the City of Orange Township and SUEZ had an initial term of ten years for the operation and maintenance of the Orange Water Services which expired on April 30, 2013 and has two five-year applicable extension periods; and

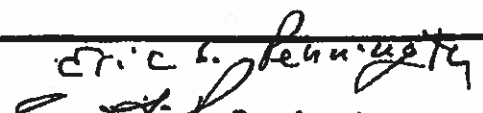
WHEREAS, SUEZ has continued to provide operation and maintenance services to the City since the expiration of the prior water agreement's initial ten-year term; and

WHEREAS, SUEZ had contacted the City of Orange Township to consider an amendment to the prior water agreement with more applicable terms and conditions; and

WHEREAS, the Department of Environmental Protection requires that an agreement be executed to ensure the continued operation and maintenance services of the City of Orange Township water service to the public; and

WHEREAS, the City of Orange Township and SUEZ have decided to enter into an Amendment and extension of the initial Agreement (Extension Agreement), a draft of which is attached hereto, that will modify and modernize the operation and maintenance performed by SUEZ to the water system; and

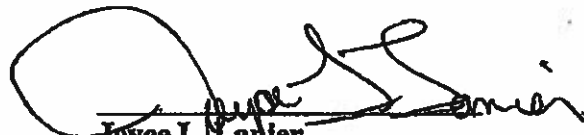
WHEREAS, the proposed Extension Agreement will streamline and incorporate many concepts inherent in local municipal contracts with private service providers; and




WHEREAS, the Chief Financial Officer of the City of Orange Township has prepared the necessary Certificate of Availability of Funds; a copy of which is attached hereto, certifying that funds are available for this purpose in Account No. 8-05-55-502-192-528.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Orange Township that the Mayor of the City of Orange Township be and is hereby authorized to enter into an Extension Agreement with SUEZ in an amount not to exceed \$1,649,000.00 *per annum* for a maximum term of two years under the initial five-year extension provision.

Adopted: December 19, 2017


Joyce L. Lanier
City Clerk


Kerry J. Coley
Council President

RESOLUTION NO. 424-2017

REGULAR MEETING— DECEMBER 19, 2017

OFF CONSENT AGENDA

MOTION TO ADOPT AS AMENDED: Williams

SECOND: Jackson

YEAS: Eason, Jackson, Johnson, Jr., Summers-Johnson, Williams and Council President Coley

NAYS: None

ABSTENTIONS: None

ABSENCES: Wooten

Contract Operations, Maintenance and Management Services Agreement

This Operation and Maintenance Agreement (the "Agreement"), made and entered into as of 2.9, 2018, ("Effective Date") between, the City of Orange Township, a municipal corporation of the State of New Jersey with an address at 29 North Day Street, Orange, NJ 07050 ("Owner") and SUEZ WATER ENVIRONMENTAL SERVICES INC., a Delaware corporation, with an address at 461 From Road, Suite 400, Paramus, NJ 07652 ("Company").

RECITALS:

WHEREAS, the Owner owns and operates a water supply, transmission and distribution system, wastewater collection system and storm water system (collectively the "System") as described in Appendix A, which is attached hereto and made a part hereof; and

WHEREAS, the Owner is responsible for overseeing the day to day operations, maintenance and management of the System; and

WHEREAS, the Owner desires to contract with a private contracting firm that has the specialized professional skills and experience to efficiently operate, maintain and manage this System; and

WHEREAS, the Owner and Company wish to enter into this Agreement setting forth their respective rights, duties, privileges and responsibilities; and

WHEREAS, the Company has provided Operation, Maintenance and Management Services for the Owner pursuant to an agreement that expired on August 3, 2013 and was subsequently extended until November 3, 2013; and;

WHEREAS, thereafter, the Company has provided services pursuant to an amendment that was approved as a resolution (121-2014) by the City of Orange Township Council on May 6, 2014; and

WHEREAS, the parties are in agreement that as of the expiration of the agreement on November 3, 2013 and continuing until the Commencement Date of this Agreement, the terms and conditions of the amended agreement were applicable to both parties; and

WHEREAS, the parties now desire to enter into this Agreement on the terms and conditions set forth herein, which will replace and supersede all past Agreements and Amendments.

NOW, THEREFORE, in consideration of the agreements, terms and conditions stated herein, the parties agree as follows:

SECTION I — TERM

The term of this Agreement shall commence on 2.9, 2018 (the "Commencement Date") and continue for a period of three (3) years, unless otherwise terminated in accordance with Section VIII . The Owner and Company may extend the term of this Agreement on mutually acceptable terms and conditions.

SECTION II - SCOPE OF SERVICES

Operation, Maintenance and Management of the System:

The Company shall provide the services as detailed in this Agreement and more particularly in the Scope of Services attached hereto as Appendix C ("Scope of Services"). The Company shall operate, maintain and manage

the System at all times on behalf of the Owner in compliance with Applicable Law and in accordance with the terms and provisions of this Agreement; subject to any Uncontrollable Circumstances as defined herein; and the operating and design capability of the facilities comprising the System. Company shall at all times manage, operate and maintain the System in an efficient and economical manner and in accordance with prudent industry and utility practice.

Regulatory Compliance:

Company will supervise all regulatory compliance, including the enforcement of Owner's ordinances or regulations. Subject to the limitations of this Section and the design capabilities, Company shall operate the System in compliance with current state and federal regulatory requirements. Company will not be responsible for process upsets or violations that are attributable to:

- (a) Influent constituents or contaminants that are not within the design capabilities of the System or that cannot, within the design capabilities of the System, be treated to the degree required by Applicable Law, as amended from time to time; or
- (b) The malfunction or failure of equipment except to the extent due to the negligent acts, errors or omissions of Company.

Company shall pay any fines or civil penalties for violations imposed on the Owner or Company by a regulatory agency having jurisdiction of the operation, maintenance and management of the System to the extent caused by the negligence or willful misconduct of Company. Company shall be given full authority to contest such violations.

Access:

Owner shall provide Company with access to the System on an as needed basis to perform the Services under this Agreement. Company shall provide reasonable access to the System for authorized Owner personnel. All visitors, including Owner personnel, shall comply with Company's established operating and safety procedures. Company shall provide Owner with a copy of the aforementioned procedures.

Technical Support:

The Company shall provide technical advice to the Owner, utilizing on-site and/or locally based staff, on the operations impact or planning level costs associated with proposed expansions or extensions of the System. Such support is not intended to include engineering design, supervision of major projects, or services that are unrelated to Company's obligations under this Agreement. Owner may, at its discretion, negotiate with Company for technical support.

Staffing:

Company will provide properly trained and licensed employees of Company for the staffing of the System. Backup services will be provided by Company corporate personnel. In addition, Company will be on call 24 hours per day, 7 days per week for emergencies. Company will provide appropriate initial and ongoing training for its employees with respect to safety, supervisory skills, and regulatory compliance. Company shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws. If applicable, the Company is required to pay the prevailing wage rates for the locality in which the project is to be performed in accordance with the New Jersey Prevailing Wage Law (N.J.S.A. 34:11-56.25 et seq.)

Non Routine Services:

Non-Routine Services are not included in the Services provided by Company and outlined herein. Company will assist Owner in obtaining or providing, or Company will obtain and provide with Owner authorization, such Non-Routine Services so required, and Company will be paid for such Non-Routine Services as provided for in Appendix D.

SECTION III — RESPONSIBILITIES

Owner Responsibilities:

Owner shall be responsible for:

- Payment of all permitting fees;
- Use of Owner's land, equipment, buildings, structures and facilities under the Owner's ownership that are located at the System as of the effective date of this Agreement;
- Facilities insurance;
- Capital Improvements to the System;
- Payment of all new meters
- Maintaining all existing easements, licenses, warranties and all permits pertaining to the System;
- Establishment of customer water service rates and charges by Ordinance; and
- All other items not specifically listed as a Company obligation under this Agreement.

Company Responsibilities:

- Ensure that facility performance is in full compliance with NJ DEP regulations
- Ensure that the staffing plan is maintained and in accordance with the established business hours as outlined in Appendix H.
- Have a licensed system operator pursuant to NJ DEP regulations.
- Company shall be responsible for complete operation and administration of the System as detailed in the scope of services attached hereto. Company shall perform all routine maintenance services required for efficient operation and maintenance of the System. Company shall not however be responsible for failure to perform its obligations as set forth herein if said performance is impeded or cannot be reasonably achieved as a result of the Owner's failure to make any necessary Capital Improvements to the System. The Company shall provide a minimum notification of six (6) months for minor capital improvements and 12 months for major capital improvements in order to provide the Owner with adequate time for planning and execution of required capital improvements.
- Company shall be responsible for any and all income taxes associated with or arising from the performance of the services contemplated under this Agreement. To the extent permitted by law, Owner shall provide Company with any applicable certificates of exemption from sales tax for purchases made by Company in order to fulfill its obligations under this Agreement.
- Company shall be responsible for customer service in accordance with Appendix B.

SECTION IV — REPRESENTATIONS

Company Representations:

Company hereby represents and warrants to the Owner that:

- a) Company has full power and authority to perform and observe its covenants contained in this Agreement, has taken all action necessary for the execution, delivery and performance of this Agreement and to carry out and consummate all transactions contemplated hereby, and this Agreement has been duly authorized, executed and delivered by Company and constitutes the legal, valid and binding obligation of Company, enforceable against it in accordance with its terms.

b) The authorization, execution, delivery do not and will not (i) violate any laws or any regulation, order, injunction or decree of any court, governmental body, agency or other instrumentality or (ii) result in a breach of any of the terms and conditions or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Company pursuant to the terms of any agreement or other instrument to which Company is a party or by which Company or any of its properties is bound.

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened in writing, against or affecting the Company or any basis thereof, wherein unfavorable decision ruling or finding would materially adversely affect the transactions contemplated hereby or that in any way would adversely affect the validity of enforceability of this Agreement.

Owner Representations:

The Owner hereby represents and warrants to the Company that:

- a) The Owner has full power and authority to perform and observe its covenants contained in this Agreement, has taken all action necessary for the execution, delivery and performance of this Agreement and to carry out and consummate all transactions contemplated hereby, and this Agreement has been duly authorized, executed and delivered by the Owner and constitutes the legal, valid and binding obligation of the Owner, enforceable against it in accordance with its terms.
- b) The authorization, execution, delivery and performance of this Agreement, the compliance with the terms and conditions hereof and the consummation of the transactions herein contemplated on part of the Owner do not and will not (i) violate any laws or any regulation, order, injunction or decree of any court, governmental body, agency or other instrumentality or (ii) result in a breach of any of the terms and conditions or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Owner pursuant to the terms of any agreement or other instrument to which the Owner is a party or by which the Owner or any of its properties is bound.
- c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened in writing, against or affecting the Owner or any basis thereof, wherein unfavorable decision ruling or finding would materially adversely affect the transactions contemplated hereby or that in any way would adversely affect the validity of enforceability of this Agreement.

SECTION V-INDEMNIFICATION

Company Indemnification:

Company shall indemnify, defend and hold the Owner and its officials, employees and agents (collectively, the "Owner Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Owner Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Company; or (b) the negligence or willful misconduct of Company, its agents, employees, and/or subcontractors arising out of the performance of this Agreement or the Services; provided, however, as to any of the foregoing, Company shall not be liable to the Owner Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims,

demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Owner Indemnified Parties.

Owner Indemnification:

Owner shall indemnify, defend and hold the Company and its officers, directors, employees, and agents (collectively, the "Company Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Company Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Owner; or (b) the negligence or willful misconduct of Owner; its officials, agents, employees, and/or contractors arising out of this Agreement or the Services; or (c) an Environmental Claim, any discharge, dispersal, release, or escape from the System, any flow into or upon land, the atmosphere or any water course or body of water; or (d) any violation by the Owner of any Applicable Law prior to the first date of the Term of this Agreement; provided, however, that as to any of the foregoing, Owner shall not be liable to the Company Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Company Indemnified Parties.

In the event that both the Owner and Company are negligent, then in such event each party shall be responsible the portion of the liability equal to its comparative share of the total negligence. Neither the Owner nor the Company shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence or willful misconduct.

Hazardous Materials:

Owner acknowledges that except as specifically stated in this Agreement, Company has no responsibility as a generator, treater, to storer or disposer of hazardous or toxic substances found or identified at a site. Owner agrees to defend, indemnify and hold harmless Company from any claim or liability, arising out of Company's performance of work under this Agreement and or brought against Company for any actual or threatened environmental pollution or contamination except to the extent that Company has negligently caused or contributed to any such pollution or contamination. This indemnification includes reasonable attorney fees and expenses incurred by Company in defense of such claim.

Consequential Damages:

Neither party shall be liable for any special, consequential, indirect or incidental damages relating in any way to this Agreement or the System, loss of actual or anticipated profits or revenue or cost of claims of customers.

Limitation of Liability:

Liability of Company to Owner under this Agreement shall be limited to the amount of the Annual Fee plus proceeds of applicable insurance. The foregoing limitation of liability shall not apply to claims of indemnification from third parties.

SECTION VI - INSURANCE

Company Insurance:

The Company shall obtain and maintain at its expense the insurance coverage described in Appendix F.

Owner's Insurance

Owner shall procure and maintain fire, property, and boiler and machinery insurance, on an all risk basis, on the System, in amounts equal to 100% of the value of their repair or replacement. The Owner agrees to provide the Company a waiver of subrogation on behalf of itself and its insurance carriers.

SECTION VII — COMPENSATION

Fee:

The initial Base Compensation for the operation, maintenance and management of the System as well as customer service shall be as set forth in Appendix D.

Maintenance Fund:

- a) **Maintenance Fund.** The Base Compensation includes a budgeted amount ("Annual Maintenance Cap") of Seven Hundred and Fifty Thousand dollars (\$750,000.00) to provide for necessary predictive, preventative, routine and minor corrective maintenance and repair ("Maintenance") required for the continued operation of the System in the first year of this Agreement, and have included that amount in the Annual Fee, to be paid Company in equal monthly installments. The Annual Maintenance Cap in each subsequent Agreement Year shall be adjusted in the same manner as the annual Base Compensation, unless otherwise agreed in writing by Owner and Company.
- b) In connection therewith, the Owner will allow the Company, where appropriate, to make use of its annual contracts for procuring goods and services necessary to complete the Maintenance work. Eligible Maintenance related costs for which the Company shall be entitled to charge against the Annual Maintenance Cap pursuant to this Section shall include the cost of all materials, supplies, equipment rental and subcontracting costs, plus fifteen percent (15%).
- c) All Maintenance that exceeds the Annual Maintenance Cap shall be the responsibility of the Owner.
- d) The Company shall include in its monthly status reports sufficient information for the Owner to monitor the amounts spent on such Maintenance during each Agreement Year and to determine when the Company is within approximately 80% of reaching the Annual Maintenance Cap. As soon as the Company reasonably believes that it may exceed the Annual Maintenance Cap, the Company shall so notify the Owner and shall promptly recommend a revised Annual Maintenance Cap for the Agreement Year sufficient to accomplish Maintenance of the System through the end of the Agreement Year, subject to the Owner's approval, which shall not be unreasonably withheld. The Annual Fee shall be adjusted to reflect such revision in the Annual Maintenance Cap. If the Owner does not approve the revised Annual Maintenance Cap recommended by the Company, the Owner shall indemnify, defend and hold the Company harmless, after one hundred percent (100%) of funds allocated for maintenance have been expended, from and against any and all loss, liability, damage, non-compliance, fine, penalty or enforcement action and reimbursement to the Company for additional costs incurred to operate and maintain the System arising from, related to or resulting from the Owner's rejection of the Company's recommended funding of the revised Annual Maintenance Cap.
- e) Any further individual expenditure or expenditures that would exhaust or exceed the Annual Maintenance Cap for any Agreement Year will require the Owner's written approval, and Company shall not be required to undertake any such expenditures without such written approval. In the event the Owner shall approve a proposed expenditure by the Company which causes expenditures for Maintenance to exceed the Annual Maintenance Cap, the Company shall proceed with the work and the Owner shall reimburse the Company for the cost of all materials,

supplies, equipment rental and subcontracting costs related to such work, plus fifteen percent (15%), no later than thirty-five (35) days from the date of receipt of an invoice therefore. Any Maintenance Fund monies not expended for Maintenance during an Agreement Year shall at the discretion of the Owner (a) be returned to the Owner at the onset of the subsequent Agreement Year or (b) be carried over to the subsequent Agreement Year, and any such monies which are not expended as of the end of this Agreement shall be returned to the Owner. In the event that the Owner determines that the money shall be returned to Owner in the subsequent Agreement Year, the Owner shall notify the Company in writing and Company shall return the money within forty-five (45) days.

Annual Adjustment to Base Compensation:

The Base Compensation for the operation, maintenance and management of the System as well as customer service shall be adjusted annually in accordance with the terms of Appendix D.

Payment Terms:

Monthly payments shall be made in an amount equal to 1/12 of the then current Base Compensation; Company shall invoice Owner on the first day of each month and Company shall be paid via wire transfer on the first day of the month after which services are provided. Company shall invoice the Owner in arrears for all other additional services provided and amounts due, if any. Such invoices shall be due and payable within thirty (30) days from the date received by the Owner. The Owner will review Company's invoices, and if the Owner questions any items, the Owner shall notify Company within twenty-one (21) days of receipt of the invoice. All amounts not in dispute will be paid when due. Payment not made within thirty days shall be subject to interest at the prime rate plus two percent (2%).

Change in Law:

Additional costs of operation and maintenance associated with a change in Applicable Law shall be equitably adjusted by the parties.

Non-Routine Services

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, including overtime at the rates set forth in Appendix D.

Public Health and Safety Emergencies:

Company may, without the Owner's prior written approval, act under an Emergency event and undertake emergency repairs or actions which may subsequently be considered changes in the scope of services under this Agreement when in its judgment Company believes public health and safety or regulatory compliance will be compromised and when time is of the essence and prior notification and written agreement by the Owner is not practical. In such instances, Company shall notify the Owner as soon as possible via email and phone of its actions and its intention to request additional compensation for such emergency services. The Owner shall promptly review Company's request and upon mutual agreement that there was a change in scope of services (which agreement shall not be withheld without good and sufficient cause), the Owner shall provide such compensation.

SECTION VIII - TERMINATION

Breach or Default:

Owner or Company may terminate this Agreement prior to the expiration of its terms, provided:

- a) The other party has materially breached the Agreement;
- b) The party claimed to have committed the breach is given thirty (30) days written notice specifically detailing the nature of the alleged breach;
- c) The party that is claimed to have breached the Agreement shall have the right to cure the breach within a reasonable time which in no event shall be more than ninety (90) days from the receipt of notice.

Convenience:

Either party may terminate this Agreement, with or without cause, by giving the other party ninety (90) days prior written notice, at the following times during the term of the Agreement:

- a) On the six (6) month anniversary of the Agreement Effective Date;
- b) On the twelve (12) month anniversary of the Agreement Effective Date;
- c) On the eighteen (18) month anniversary of the Agreement Effective Date;
- d) On the twenty fourth (24th) month anniversary of the Agreement Effective Date.

Thereafter, the Parties shall only have the right to terminate the Agreement or any extension thereof, for breach or default as outlined above.

Demobilization; Transition:

In the event that the Owner does exercise its rights to terminate for its convenience, Company shall be entitled to reimbursement for its reasonable demobilization costs (which in no event shall be less than one month's service fee).

In the event of termination by Owner, the Company shall be entitled to reimbursement for the modifications that the Company has completed on behalf of the Owner to the extent not previously reimbursed.

After the termination or expiration of this Agreement, Company shall assist the Owner with the orderly transition of duties to the Owner or its agent. Company shall, if requested by the Owner, continue to provide the services under this Agreement for up to ninety (90) days beyond the termination or expiration date and shall continue to receive its then current service fee on a pro rata basis for providing such services.

SECTION IX - ASSIGNMENT AND SUBCONTRACTING

Assignment:

Except as otherwise provided in this Agreement, neither party shall assign its rights, nor secure the assumption of its obligations under this Agreement, in whole or in part, without the prior written consent of the other party. The Owner shall have the right to withhold consent if it has reasonable grounds to believe that the assignee will not be able to fulfill the scope of services requirements. This Agreement shall ensure to the benefit of the parties hereto and their respective successors and permitted assigns.

Subcontracting:

Company may subcontract portions of work under this Agreement to any third party identified in Appendix G without the consent of the Owner. . In the event that Company subcontracts portions of the work under this Agreement to a third party that is not identified on Appendix G, Company shall notify the Owner of the subcontractor and shall receive Owner's prior written consent, before utilizing said subcontractor, provided the subcontractor is not being utilized for an Emergency event. The list identified in Appendix G may be updated from time to time throughout the Term of this Agreement upon the written consent of the Owner. Upon the occurrence of an Emergency event, Company may, without the Owner's prior written consent, undertake emergency repairs or actions utilizing a third party without the prior written consent of the Owner. Company shall ensure that all subcontractors obtain the requisite permits prior to performing work, provided however that upon the occurrence of an Emergency event, the Company shall ensure that the subcontractor obtains the requisite permit within a reasonable time after the work occurs.

SECTION X - UNCONTROLLABLE CIRCUMSTANCES

Uncontrollable Circumstances:

Except for payment of compensation, a party's performance under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of Uncontrollable Circumstances. In the event of any such Uncontrollable Circumstance, the party claiming relief from performance shall promptly notify the other party of the existence of same, shall perform those services under the Agreement that are not affected, and shall be required to resume performance of its obligations under this Agreement upon the termination of the Uncontrollable Circumstance. The compensation to Company shall be equitably adjusted for any increase or decrease in the Scope of Services due to Uncontrollable Circumstances.

Labor Disputes:

Labor disputes (strikes, stoppages, slowdowns) by Company employees shall not be considered an Uncontrollable Circumstance; however, Company shall be required to perform the Services on a best efforts basis during such labor dispute. If the Company is unable to meet its material obligations under this Agreement during such labor dispute, the Owner may terminate this Agreement pursuant to Section VIII.

Emergencies:

Company may, without the Owner's prior written approval, undertake emergency repairs or actions which may subsequently be considered changes in the Scope of Services under this Agreement when in its judgment Company believes public health and safety or regulatory compliance will be compromised and when time is of the essence and prior notification and written agreement by the Owner is not practical. In such instances, Company shall notify the Owner as soon as reasonably practicable of the emergency situation and of Company's actions in response thereto. Thereafter, Company shall provide Owner with an invoice for services rendered for the emergency situation; compensation shall be provided as a Non-Routine Service in accordance with this Agreement.

SECTION XI — GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law:

This Agreement shall be governed by and construed in accordance with the laws (and not the rules governing the conflict of laws) of the State where the Services are performed.

Dispute Resolution:

In the event that a dispute arises among the parties, the disputing party shall provide the other party with a good faith effort to work it out with a written notice of the dispute and within ten (10) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Each party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive shall also be included in the notice and response. The executives shall meet at a mutually acceptable time and place within fifteen (15) days of the date of the disputing party's notice and thereafter as they reasonably deem necessary to resolve the dispute. If the executives have not resolved the dispute through good faith efforts within thirty (30) days, before resorting to taking the case to court, the parties shall try in good faith to resolve the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. All costs attributed to mediation shall be borne equally by both parties.

Jurisdiction shall be proper in any state or federal court located in the State of New Jersey.

SECTION XII — MISCELLANEOUS

Relationship of the Parties; Beneficiaries:

This Agreement reflects an arms-length transaction. Nothing in this Agreement creates a fiduciary, partnership, joint venture or employment or other agency relationship among the parties. This Agreement is not entered into for the benefit of, nor are any rights granted to, any third party except as expressly provided herein.

Both parties understand and agree that neither this Agreement nor the performance hereof by Company shall render Company an "owner" or "operator" of the System as those terms are used in the Resource Conservation and Recovery Act, 42 U.S.C.6901 et seq., as amended, and the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601, et seq. or similar federal, state or local environmental legislation and Company's liability shall remain limited as defined in this Agreement. Owner shall execute any manifests or forms required by law or regulation in connection with the transportation, storage or disposal of hazardous or contaminated materials resulting from the Services or work at the site .

Waiver:

The failure of either party to enforce any of the terms of this Agreement on one or more occasions shall not constitute a waiver of the right to enforce such term on any other occasion or of the right of either party to enforce each and every term of the Agreement.

Notices:

All notices shall be in writing and shall be delivered, in person or transmitted by certified mail, return receipt requested, or national courier service providing proof of receipt, to the parties listed below. Either party may update such addresses on written notice to the other party. Notices shall be effective upon receipt.

To the Company:

SUEZ Water Environmental Services Inc.
461 From Road, Paramus, NJ 07640
Attn: Legal Department

And to:

SUEZ Water Environmental Services Inc.
461 From Road, Paramus, NJ 07640
Attn: Chris Riat, General Manager

To the Owner

City of Orange
Township
Attn: (Finance Dept.)
29 North day Street
Orange, NJ 07050

Entire Agreement; Modifications; Schedules:

The provisions of this Agreement (except captions, which are for convenience only and shall be ignored in interpreting this Agreement), including the Appendices annexed hereto shall (a) constitute the entire agreement between the parties, superseding all prior or contemporaneous negotiations, understandings or agreements and (b) not be modified in any respect except by express written agreement executed by the parties. The Appendices attached hereto are specifically made a part of this Agreement. The recitals set forth hereinabove at the outset of this Agreement are true and correct and are incorporated herein as though set forth in their entirety in the body of this Agreement.

Severability:

If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, provided the consideration for the agreement can be reasonably determined. In such event, the parties shall make good faith efforts to modify this Agreement to implement the intent of the parties embodied in this Agreement. Any resulting modification and the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Survival

The Sections of this Agreement pertaining to indemnification, payment and dispute resolution shall be deemed to survive the expiration or earlier termination of this Agreement.

Appendices:

- Appendix A — Description of System
- Appendix B — Description of Customer Service Requirements
- Appendix C — Scope of Services
- Appendix D — Pricing
- Appendix E — Definitions
- Appendix F — Insurance
- Appendix G- List of Approved Subcontractors
- Appendix H- Staffing Plan

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first written above.

ATTEST:

SUEZ WATER ENVIRONMENTAL SERVICES
INC.

Name: Daniell Capozzari

Name: 

Title: Secretary

Title: President

ATTEST:

CITY OF ORANGE TOWNSHIP

Name: 

Name: 

Title: Deputy City Attorney

Title: Mayor

APPENDIX A

DESCRIPTION

The City of Orange Township is located in Essex County and bounded on the north by the City of West Orange, on the east by the City of East Orange and on the south and west by the City of South Orange, The City is comprised of a water supply, treatment and distribution system, a sanitary sewage collection system that drains to the Passaic Valley Sewerage Commissioners facility and a storm water collection system*.

***The Company's scope of services for each system is defined in Appendix C. Company has very limited scope of responsibility as it relates to storm water as further outlined in this Agreement.**

APPENDIX B

CUSTOMER SERVICE REQUIREMENTS

Services should include the following:

A. Meter Reading

- 1) Company shall read residential water meters in the cycles provided under the current reading/billing structure.
- 2) Company will perform all "special" meter readings, including re-reads for estimated accounts, final readings for property title transfer,
- 3) Company will utilize a customer information system with a computerized work order system that schedules and tracks appointments for all meter reading functions. The work order system will address the replacement of meters found not functioning properly. The system must provide reports to allow the Owner to assess water meter performance.
- 4) Meter readers assigned under this contract must be permanent employees of Company that are skilled in meter reading. All employees are to be uniformed and wear identification badges with the company logo, the employee's picture and name and the date the card was issued.

B. Billing

- 1) Company shall provide water billing services for the Owner, which shall include transmitting bills to all of the Owner's residential and commercial water customers on a quarterly basis. Where an actual reading cannot be obtained, Company shall send an estimated bill.
- 2) Company bills shall include the following minimum information: the billing date, service location, billing period, current and previous meter readings, units of usage, indication of actual or estimated billing, prior balance, total amount due, and due date. The mailing address to which payment shall be sent and telephone number(s) for inquiries shall also be included. The address and telephone number(s) shall be those of Company. In addition, Company may insert bill stuffers (to inform customers of charges in service, to relay public service announcements and the like) as is necessary and appropriate, provided the same shall be approved by the Mayor.
- 3) Company shall accommodate any rate changes effected by the Owner, but changes shall be limited to one rate change per calendar year without cost. Should the Owner adopt additional rate changes, Company shall accommodate such additional changes but shall bill the Owner for the costs thereof.

C. Reports.

- 1) Company shall submit a monthly report to the Owner on the tenth (10th) business day of each month, which shall include the following customer service related information: (a) a list of customer accounts in arrears for more than thirty (30) days; (b) a list of customer accounts for which a refund is due; and (d) any other relevant information reasonably requested by the Owner.
- 2) Company shall also include monthly reports regarding Aged Accounts Receivable, Accounts Receivable Roll Forward & Reconciliation, System Reconciliation, Daily Deposits, Billed Consumption by Cycle and Rate; and any special reports upon reasonable request, such as mailing lists, lien sale candidates, and certain account information other than in the canned reports as mentioned above.

D. Customer Services

- 1) Company shall respond to customer questions and complaints and make billing adjustments as necessary and appropriate for the resolution thereof. For this purpose, Company shall maintain a staff dedicated to assisting customers. Company's staff will be responsible for responding to customer phone calls and billing questions during the hours of 8:00 a.m. to 4:30 p m., Monday through Friday. All of the Customers will be provided with a toll free number to reach these representatives. Should customers call the Owner directly regarding customer service questions or complaints, the Owner should direct customers to Company's toll free customer service number.
- 2) Problems of an emergency nature such as water main breaks, sewer backups or lack of water service are to be reported by Company to the Owner via email and Company shall also call the Owner's Water Manager. Company shall email the DPW Director and shall put the Deputy Director, Chief of Staff and City attorney on copy.

E. Collection Procedures

- 1) Company shall mail appropriate notices to property owners for delinquent accounts. However, Company's obligation in this regard is limited to the mailing of two notices to any delinquent Customer over two consecutive months. If the Customer remains in arrears thirty (30) days after the second notice is mailed, the matter will be forwarded to the Owner for resolution.
- 2.) Customer shut offs for delinquent accounts will be coordinated and managed by the Owner in accordance with the Owner's written policy regarding shut offs. Upon Owner's request, the Company shall provide the Owner with recommendations for shut-offs. The parties understand however that the Owner is under no obligation to implement any such recommendations made by Company or include such recommendations into Owner's written policy. Additionally, and upon Owner's request, Company shall also provide reasonable coordination assistance to Owner for shut-offs for delinquent accounts as reasonably requested by Owner.

APPENDIX C
SCOPE OF SERVICES

Water System:

Company will perform the services needed to operate the Water system as follows:

- Basic operation and maintenance, which generally consists of:
- Landscaping to be maintained by system operator at specific locations (Wells# 2, 3, 4,6R, Beach St, Walker Rd). maintaining pumps, motors and instrumentation at intervals determined by the manufacturer annual hydrant flushing.
- Annual hydrant inspection .
- Provide the City with a monthly accounting of all hydrants that are out of service.
- Completion and filing of all NJDEP reports as required by licensed operators (i.e. distribution and other compliance reports)

Repair and Replacement as follows:

- Repairs and installation of service connections as required (which is from the main to the curb only; the house to the curb is the responsibility of the property owner). The parties recognize that the property owner owns the service line in its entirety and therefore is responsible, by law, to pay for and initiate all such repairs and connections. However, the parties have agreed that the Company will perform repairs and service connections from the main to the curb until such time as the Annual Maintenance Cap has been reached. At such time, The Company will invoice the Owner for the repairs. The Owner shall authorize the Company to add costs to the water bill of the property owner.
- Repairs of water mains
- Hydrant relocation, repair and maintenance
- Service investigations
- Service Turn-off and Service Turn-on
- Utility mark-outs as required.
- Provide recommendations for addressing problems related to un-accounted for water. (If the Owner implements any recommendations made by the Company, all such work shall be performed as a Non-Routine Service.)
- Leak detection program of the System for a three (3) year cycle in which one third (1/3rd) of the System will be inspected each year so that the ensure system will be inspected at the end of the three (3) year cycle.

Sanitary System:

- Sanitary Sewer: Television camera inspection (or such other method approved by the City) and documented on video tape shall be performed once every ten (10) years; therefore 21,200 feet of sewer pipe will be video camera inspected on an annual basis. Company will provide recommendations to the Owner for repairs.
- All repairs to the Sanitary System, except for manhole repairs, will be considered outside the scope of this Agreement and may be performed by Company as a Non-Routine Service.

Storm water System:

- Storm water: Perform television camera inspection and documented on known 'problematic areas' of the Storm water System and provide recommendations to the Owner for repairs. Whereas, 'problematic areas' shall be deemed those areas where there have been a history of complaints or inadequate system performance related to the storm water system.
- Semi- annual catch basin cleaning
- Catch basin repairs.

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- All other repairs to the Storm water System will be considered outside the scope of this Agreement and may be performed by Company as a Non-Routine Service.

General Reports:

Company will provide the Owner with a monthly report in a format mutually agreed upon by both parties. The report will be provided to the Owner on the fifth day of every month. Company and Owner will establish an Operations Committee (within a reasonable time after the Effective Date) with representatives from each party and the Operations Committee parties will meet to discuss the items in the report no later than the fifteenth (15th) day of each month, unless mutually agreed otherwise by the parties.

From time to time during the Term of this Agreement, the parties may mutually determine that additional services not specifically enumerated in the Scope of Services are necessary to achieve optimal or enhanced System performance and said services shall be performed by the Company for an additional cost to the Owner, mutually agreed upon by the parties prior to Company undertaking such services. Such services shall thereafter be specifically added to the Company's scope of services and the parties shall thereafter mutually determine if the fee shall be treated as one time payment or if the cost shall be added to the Base Compensation for the remainder of the then current Term. If the cost is treated as a one-time payment, the cost shall be the same as those costs paid for a Non-Routine Service in accordance with Appendix D. If the cost is added to the Base Compensation, the parties shall document the new Base Compensation for the remainder of the then current Term in a Memorandum of Understanding executed by both parties.

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APPENDIX D

PRICING

Base Compensation in First Agreement Year: \$1,649,000.00- One million six hundred and forty nine thousand dollars

Annual Adjustments: The Base Compensation consists of a Labor Cost Component, a Non Labor Cost Component, and an Energy/Chemicals Component. The Base Compensation for Years 2 and beyond shall be increased through the application of a set of readily available and national cost indices, as follows:

- a) Labor Cost Component, representing 33% of the Base Fee shall be escalated each year based upon the "ECI Index" for price-level changes.
 - b) Non-Labor Costs Component, representing 67% of the Base Fee shall be escalated each year based upon the "CPI Index" for price-level changes.
 - c) Escalation for Growth of Services. Each year, the Base Compensation shall be increased based upon the percentage of new customers added to the System.
- The ECI is the current Employment Cost Index, Northeast, Index ID CIU2010000002101 (B), as published by the U.S. Department of Labor, Bureau of Labor Statistics.
 - The CPI is the current Consumer Price Index, Northeast Area, ID CUUR0100SA0, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

Non-Routine Services

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, including overtime. Materials and subcontractors will be invoiced to Owner by Company at cost, plus fifteen percent (15%) on the actual cost of materials to reimburse Company for administrative expenses. For Company labor not regularly assigned to the System, Owner shall pay Company actual wages plus benefits at 35% plus 20% for overhead and administration. There will be no additional charge for Company labor regularly assigned to the System performing non-routine services during the course of their normal working shift; however, if such employee performs services on an overtime basis, Owner shall pay Company actual wages plus 50% for overtime plus 20% for overhead and administration.

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APPENDIX E

DEFINITIONS

"Applicable Law" means any applicable statute, law, constitution, charter, ordinance, resolution, judgment, order, permit, industry standard or code, decree, rule, regulation, directive, interpretation, standard or similar binding authority, which has been enacted, promulgated, issued or enforced by any judicial, legislative, administrative, municipal or other governmental authority having jurisdiction as of the date of execution of this Agreement. A change in Applicable Law means the enactment, adoption, promulgation, modification, repeal or change of any Applicable Law which establishes new requirements or changes the requirements with respect to the operation or maintenance of the System or otherwise impacts a party's ability or cost of performance of its obligations under this Agreement. A change in Applicable Law shall include any change in any sales, use, and real property, ad valorem or excise tax or any tax paid by or on behalf of the Company which is imposed by the United States or another taxing authority, or any political subdivision thereof with respect to the Facilities or the performance of the Company's obligation hereunder, but shall not include taxes based on or measured by net income, any unincorporated business, incorporated business, payroll, franchise or employment taxes.

"Base Compensation" is the annual amount paid by Owner to Company for the standard services provided for in the Agreement. The Base Compensation shall be adjusted each year in accordance with Appendix D.

"Capital Improvement" means all costs related to the construction, installation, repair or replacement of any component of the System in excess of \$7,500 per item, which has a useful life exceeding 5 (five) years.

"Emergency event" shall mean an event that compromises public health and safety (including but not limited to damage to property, injury or loss) or regulatory compliance.

"Environmental Claim" means any civil, criminal or administrative action, suit, communication (written), demand, claim, hearing, citation, notice, warning, consent decree, contract right, notice of violation, investigation, judgment or order by any person or entity lawfully authorized to issue, bring, give or make the same alleging, claiming, concerning or finding liability or potential liability arising of, based on or resulting from, in whole or in part, the actual or alleged presence, threatened release, release, emission, disposal, storage, treatment, transportation, generation, manufacture or use of any hazardous substance or waste at or from any location.

"Non-Routine Services" means additional operation and maintenance outside the Scope of Services outlined in Appendix C, including the cost of labor, parts and subcontractors, considered non-routine under this Agreement or required as a result of Uncontrollable Circumstances.

"Operations Committee" means the committee which is comprised of representatives of the Company and the City, as mutually agreed by the parties, by at a minimum, shall include the Company Project Manager, the Owner's Chief of Staff, the Owner's DPW Supervisor, the Owner's City Attorney and the Owner's Deputy Director.

"Services" means those activities provided by Company to Owner as described in Appendix C.

"Uncontrollable Circumstances" means causes beyond either party's reasonable control, including, but not limited to, Acts of God, the imposition or increase of New Jersey Prevailing Wage Law (N.J.S.A. 34:11-56.25 et seq.), floods, quarantine restrictions, riots, strikes other than by employees of Company, commercial impossibility, failures of utilities, increases in tariff rates for electric and gas utilities, hurricanes, landslides, lightning, earthquakes, drought, epidemics, fires, explosions, bombings, casualties, acts of civil or military authority, sabotage, vandalism, acts of a public enemy or terrorists, changes in Applicable Law, receipt of Non-Specification Influent, damage to the system caused by third parties, or other events or circumstances beyond the control of the party

obligated to perform, whether such other causes or related or unrelated, similar or dissimilar, to any of the foregoing.

APPENDIX F

INSURANCE

The Company at its expense shall procure and maintain during the term of this Agreement the following insurance:

I. Insurance Types and Limits.

- 1) **Commercial General Liability Coverage** - A policy to provide coverage against of personal injury and property damage, including broad form contractual liability coverage and shall have a \$3,000,000 limit for personal injury and property damage per occurrence and \$3,000,000 in the aggregate
- 2) **Comprehensive Automobile Liability Coverage** — A policy to provide coverage against claims of personal injury or property damage covering all owned, leased, non-owned and hired vehicles used in the performance of work under this Agreement with a minimum limit per occurrence of \$1,000,000 for personal injury and property damage.
- 3) **Workers Compensation Insurance** — A policy to provide coverage as required by State law and Employers Liability coverage in the amount of \$1,000,000 per occurrence.
- 4) **Umbrella Liability Coverage** — A policy to provide coverage excess of General Liability and Automobile Liability in the amount of \$2,000,000. The Company may satisfy this requirement by providing additional limits under the primary policies.

II. Insurance Certification. All policies of liability insurance required to be maintained by the Company shall:

- 1) Be issued by insurers with an A.M. Best rating of not less than "A-VII".
- 2) Provide that coverage shall not be canceled or non-renewed until at least thirty (30) days prior notice has been given, except only ten (10) days' notice shall be provided for non-payment of premium.

Company shall annually provide Owner a certificate of insurance as evidence of the above coverage.

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APPENDIX G

LIST OF APPROVED SUBCONTRACTORS

- **Montana Construction**
- **J Cronce**
- **JF Kiely (South Jersey)**
- **CRJ Contracting**
- **Coppola (Services SWNJ Arlington Hills area primarily)**
- **Oswald Enterprises**
- **Subsurface Technologies Inc.**
- **Uni-Tech Drilling**
- **Rinbrand**
- **Layne Christensen**
- **The Shauger Group**
- **HW Alward**

Contract Operations, Maintenance and Management Services Agreement

This Operation and Maintenance Agreement (the "Agreement"), made and entered into as of 2, 9, 2018, ("Effective Date") between, the City of Orange Township, a municipal corporation of the State of New Jersey with an address at 29 North Day Street, Orange, NJ 07050 ("Owner") and SUEZ WATER ENVIRONMENTAL SERVICES INC., a Delaware corporation, with an address at 461 From Road, Suite 400, Paramus, NJ 07652 ("Company").

RECITALS:

WHEREAS, the Owner owns and operates a water supply, transmission and distribution system, wastewater collection system and storm water system (collectively the "System") as described in Appendix A, which is attached hereto and made a part hereof; and

WHEREAS, the Owner is responsible for overseeing the day to day operations, maintenance and management of the System; and

WHEREAS, the Owner desires to contract with a private contracting firm that has the specialized professional skills and experience to efficiently operate, maintain and manage this System; and

WHEREAS, the Owner and Company wish to enter into this Agreement setting forth their respective rights, duties, privileges and responsibilities; and

WHEREAS, the Company has provided Operation, Maintenance and Management Services for the Owner pursuant to an agreement that expired on August 3, 2013 and was subsequently extended until November 3, 2013; and;

WHEREAS, thereafter, the Company has provided services pursuant to an amendment that was approved as a resolution (121-2014) by the City of Orange Township Council on May 6, 2014; and

WHEREAS, the parties are in agreement that as of the expiration of the agreement on November 3, 2013 and continuing until the Commencement Date of this Agreement, the terms and conditions of the amended agreement were applicable to both parties; and

WHEREAS, the parties now desire to enter into this Agreement on the terms and conditions set forth herein, which will replace and supersede all past Agreements and Amendments.

NOW, THEREFORE, in consideration of the agreements, terms and conditions stated herein, the parties agree as follows:

SECTION I — TERM

The term of this Agreement shall commence on 2, 9 2018 (the "Commencement Date") and continue for a period of three (3) years, unless otherwise terminated in accordance with Section VIII . The Owner and Company may extend the term of this Agreement on mutually acceptable terms and conditions.

SECTION II - SCOPE OF SERVICES

Operation, Maintenance and Management of the System:

The Company shall provide the services as detailed in this Agreement and more particularly in the Scope of Services attached hereto as Appendix C ("Scope of Services"). The Company shall operate, maintain and manage

the System at all times on behalf of the Owner in compliance with Applicable Law and in accordance with the terms and provisions of this Agreement; subject to any Uncontrollable Circumstances as defined herein; and the operating and design capability of the facilities comprising the System. Company shall at all times manage, operate and maintain the System in an efficient and economical manner and in accordance with prudent industry and utility practice.

Regulatory Compliance:

Company will supervise all regulatory compliance, including the enforcement of Owner's ordinances or regulations. Subject to the limitations of this Section and the design capabilities, Company shall operate the System in compliance with current state and federal regulatory requirements. Company will not be responsible for process upsets or violations that are attributable to:

- (a) Influent constituents or contaminants that are not within the design capabilities of the System or that cannot, within the design capabilities of the System, be treated to the degree required by Applicable Law, as amended from time to time; or
- (b) The malfunction or failure of equipment except to the extent due to the negligent acts, errors or omissions of Company.

Company shall pay any fines or civil penalties for violations imposed on the Owner or Company by a regulatory agency having jurisdiction of the operation, maintenance and management of the System to the extent caused by the negligence or willful misconduct of Company. Company shall be given full authority to contest such violations.

Access:

Owner shall provide Company with access to the System on an as needed basis to perform the Services under this Agreement. Company shall provide reasonable access to the System for authorized Owner personnel. All visitors, including Owner personnel, shall comply with Company's established operating and safety procedures. Company shall provide Owner with a copy of the aforementioned procedures.

Technical Support:

The Company shall provide technical advice to the Owner, utilizing on-site and/or locally based staff, on the operations impact or planning level costs associated with proposed expansions or extensions of the System. Such support is not intended to include engineering design, supervision of major projects, or services that are unrelated to Company's obligations under this Agreement. Owner may, at its discretion, negotiate with Company for technical support.

Staffing:

Company will provide properly trained and licensed employees of Company for the staffing of the System. Backup services will be provided by Company corporate personnel. In addition, Company will be on call 24 hours per day, 7 days per week for emergencies. Company will provide appropriate initial and ongoing training for its employees with respect to safety, supervisory skills, and regulatory compliance. Company shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws. If applicable, the Company is required to pay the prevailing wage rates for the locality in which the project is to be performed in accordance with the New Jersey Prevailing Wage Law (N.J.S.A. 34:11-56.25 et seq.)

Non Routine Services:

Non-Routine Services are not included in the Services provided by Company and outlined herein. Company will assist Owner in obtaining or providing, or Company will obtain and provide with Owner authorization, such Non-Routine Services so required, and Company will be paid for such Non-Routine Services as provided for in Appendix D.

SECTION III --- RESPONSIBILITIES

Owner Responsibilities:

Owner shall be responsible for:

- Payment of all permitting fees;
- Use of Owner's land, equipment, buildings, structures and facilities under the Owner's ownership that are located at the System as of the effective date of this Agreement;
- Facilities insurance;
- Capital Improvements to the System;
- Payment of all new meters
- Maintaining all existing easements, licenses, warranties and all permits pertaining to the System;
- Establishment of customer water service rates and charges by Ordinance; and
- All other items not specifically listed as a Company obligation under this Agreement.

Company Responsibilities:

- Ensure that facility performance is in full compliance with NJ DEP regulations
- Ensure that the staffing plan is maintained and in accordance with the established business hours as outlined in Appendix H.
- Have a licensed system operator pursuant to NJ DEP regulations.
- Company shall be responsible for complete operation and administration of the System as detailed in the scope of services attached hereto. Company shall perform all routine maintenance services required for efficient operation and maintenance of the System. Company shall not however be responsible for failure to perform its obligations as set forth herein if said performance is impeded or cannot be reasonably achieved as a result of the Owner's failure to make any necessary Capital Improvements to the System. The Company shall provide a minimum notification of six (6) months for minor capital improvements and 12 months for major capital improvements in order to provide the Owner with adequate time for planning and execution of required capital improvements.
- Company shall be responsible for any and all income taxes associated with or arising from the performance of the services contemplated under this Agreement. To the extent permitted by law, Owner shall provide Company with any applicable certificates of exemption from sales tax for purchases made by Company in order to fulfill its obligations under this Agreement.
- Company shall be responsible for customer service in accordance with Appendix B.

SECTION IV — REPRESENTATIONS

Company Representations:

Company hereby represents and warrants to the Owner that:

- a) Company has full power and authority to perform and observe its covenants contained in this Agreement, has taken all action necessary for the execution, delivery and performance of this Agreement and to carry out and consummate all transactions contemplated hereby, and this Agreement has been duly authorized, executed and delivered by Company and constitutes the legal, valid and binding obligation of Company, enforceable against it in accordance with its terms.

b) The authorization, execution, delivery do not and will not (i) violate any laws or any regulation, order, injunction or decree of any court, governmental body, agency or other instrumentality or (ii) result in a breach of any of the terms and conditions or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Company pursuant to the terms of any agreement or other instrument to which Company is a party or by which Company or any of its properties is bound.

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened in writing, against or affecting the Company or any basis thereof, wherein unfavorable decision ruling or finding would materially adversely affect the transactions contemplated hereby or that in any way would adversely affect the validity of enforceability of this Agreement.

Owner Representations:

The Owner hereby represents and warrants to the Company that:

- a) The Owner has full power and authority to perform and observe its covenants contained in this Agreement, has taken all action necessary for the execution, delivery and performance of this Agreement and to carry out and consummate all transactions contemplated hereby, and this Agreement has been duly authorized, executed and delivered by the Owner and constitutes the legal, valid and binding obligation of the Owner, enforceable against it in accordance with its terms.
- b) The authorization, execution, delivery and performance of this Agreement, the compliance with the terms and conditions hereof and the consummation of the transactions herein contemplated on part of the Owner do not and will not (i) violate any laws or any regulation, order, injunction or decree of any court, governmental body, agency or other instrumentality or (ii) result in a breach of any of the terms and conditions or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Owner pursuant to the terms of any agreement or other instrument to which the Owner is a party or by which the Owner or any of its properties is bound.
- c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened in writing, against or affecting the Owner or any basis thereof, wherein unfavorable decision ruling or finding would materially adversely affect the transactions contemplated hereby or that in any way would adversely affect the validity of enforceability of this Agreement.

SECTION V-INDEMNIFICATION

Company Indemnification:

Company shall indemnify, defend and hold the Owner and its officials, employees and agents (collectively, the "Owner Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Owner Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Company; or (b) the negligence or willful misconduct of Company, its agents, employees, and/or subcontractors arising out of the performance of this Agreement or the Services; provided, however, as to any of the foregoing, Company shall not be liable to the Owner Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims,

demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Owner Indemnified Parties.

Owner Indemnification:

Owner shall indemnify, defend and hold the Company and its officers, directors, employees, and agents (collectively, the "Company Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Company Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Owner; or (b) the negligence or willful misconduct of Owner; its officials, agents, employees, and/or contractors arising out of this Agreement or the Services; or (c) an Environmental Claim, any discharge, dispersal, release, or escape from the System, any flow into or upon land, the atmosphere or any water course or body of water; or (d) any violation by the Owner of any Applicable Law prior to the first date of the Term of this Agreement; provided, however, that as to any of the foregoing, Owner shall not be liable to the Company Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Company Indemnified Parties.

In the event that both the Owner and Company are negligent, then in such event each party shall be responsible the portion of the liability equal to its comparative share of the total negligence. Neither the Owner nor the Company shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence or willful misconduct.

Hazardous Materials:

Owner acknowledges that except as specifically stated in this Agreement, Company has no responsibility as a generator, treater, to storer or disposer of hazardous or toxic substances found or identified at a site. Owner agrees to defend, indemnify and hold harmless Company from any claim or liability, arising out of Company's performance of work under this Agreement and or brought against Company for any actual or threatened environmental pollution or contamination except to the extent that Company has negligently caused or contributed to any such pollution or contamination. This indemnification includes reasonable attorney fees and expenses incurred by Company in defense of such claim.

Consequential Damages:

Neither party shall be liable for any special, consequential, indirect or incidental damages relating in any way to this Agreement or the System, loss of actual or anticipated profits or revenue or cost of claims of customers.

Limitation of Liability:

Liability of Company to Owner under this Agreement shall be limited to the amount of the Annual Fee plus proceeds of applicable insurance. The foregoing limitation of liability shall not apply to claims of indemnification from third parties.

SECTION VI - INSURANCE

Company Insurance:

The Company shall obtain and maintain at its expense the insurance coverage described in Appendix F.

Owner's Insurance

Owner shall procure and maintain fire, property, and boiler and machinery insurance, on an all risk basis, on the System, in amounts equal to 100% of the value of their repair or replacement. The Owner agrees to provide the Company a waiver of subrogation on behalf of itself and its insurance carriers.

SECTION VII — COMPENSATION

Fee:

The initial Base Compensation for the operation, maintenance and management of the System as well as customer service shall be as set forth in Appendix D.

Maintenance Fund:

- a) **Maintenance Fund.** The Base Compensation includes a budgeted amount ("Annual Maintenance Cap") of Seven Hundred and Fifty Thousand dollars (\$750,000.00) to provide for necessary predictive, preventative, routine and minor corrective maintenance and repair ("Maintenance") required for the continued operation of the System in the first year of this Agreement, and have included that amount in the Annual Fee, to be paid Company in equal monthly installments. The Annual Maintenance Cap in each subsequent Agreement Year shall be adjusted in the same manner as the annual Base Compensation, unless otherwise agreed in writing by Owner and Company.
- b) In connection therewith, the Owner will allow the Company, where appropriate, to make use of its annual contracts for procuring goods and services necessary to complete the Maintenance work. Eligible Maintenance related costs for which the Company shall be entitled to charge against the Annual Maintenance Cap pursuant to this Section shall include the cost of all materials, supplies, equipment rental and subcontracting costs, plus fifteen percent (15%).
- c) All Maintenance that exceeds the Annual Maintenance Cap shall be the responsibility of the Owner.
- d) The Company shall include in its monthly status reports sufficient information for the Owner to monitor the amounts spent on such Maintenance during each Agreement Year and to determine when the Company is within approximately 80% of reaching the Annual Maintenance Cap. As soon as the Company reasonably believes that it may exceed the Annual Maintenance Cap, the Company shall so notify the Owner and shall promptly recommend a revised Annual Maintenance Cap for the Agreement Year sufficient to accomplish Maintenance of the System through the end of the Agreement Year, subject to the Owner's approval, which shall not be unreasonably withheld. The Annual Fee shall be adjusted to reflect such revision in the Annual Maintenance Cap. If the Owner does not approve the revised Annual Maintenance Cap recommended by the Company, the Owner shall indemnify, defend and hold the Company harmless, after one hundred percent (100%) of funds allocated for maintenance have been expended, from and against any and all loss, liability, damage, non-compliance, fine, penalty or enforcement action and reimbursement to the Company for additional costs incurred to operate and maintain the System arising from, related to or resulting from the Owner's rejection of the Company's recommended funding of the revised Annual Maintenance Cap.
- e) Any further individual expenditure or expenditures that would exhaust or exceed the Annual Maintenance Cap for any Agreement Year will require the Owner's written approval, and Company shall not be required to undertake any such expenditures without such written approval. In the event the Owner shall approve a proposed expenditure by the Company which causes expenditures for Maintenance to exceed the Annual Maintenance Cap, the Company shall proceed with the work and the Owner shall reimburse the Company for the cost of all materials,

supplies, equipment rental and subcontracting costs related to such work, plus fifteen percent (15%), no later than thirty-five (35) days from the date of receipt of an invoice therefore. Any Maintenance Fund monies not expended for Maintenance during an Agreement Year shall at the discretion of the Owner (a) be returned to the Owner at the onset of the subsequent Agreement Year or (b) be carried over to the subsequent Agreement Year, and any such monies which are not expended as of the end of this Agreement shall be returned to the Owner. In the event that the Owner determines that the money shall be returned to Owner in the subsequent Agreement Year, the Owner shall notify the Company in writing and Company shall return the money within forty-five (45) days.

Annual Adjustment to Base Compensation:

The Base Compensation for the operation, maintenance and management of the System as well as customer service shall be adjusted annually in accordance with the terms of Appendix D.

Payment Terms:

Monthly payments shall be made in an amount equal to 1/12 of the then current Base Compensation; Company shall invoice Owner on the first day of each month and Company shall be paid via wire transfer on the first day of the month after which services are provided. Company shall invoice the Owner in arrears for all other additional services provided and amounts due, if any. Such invoices shall be due and payable within thirty (30) days from the date received by the Owner. The Owner will review Company's invoices, and if the Owner questions any items, the Owner shall notify Company within twenty-one (21) days of receipt of the invoice. All amounts not in dispute will be paid when due. Payment not made within thirty days shall be subject to interest at the prime rate plus two percent (2%).

Change in Law:

Additional costs of operation and maintenance associated with a change in Applicable Law shall be equitably adjusted by the parties.

Non-Routine Services

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, including overtime at the rates set forth in Appendix D.

Public Health and Safety Emergencies:

Company may, without the Owner's prior written approval, act under an Emergency event and undertake emergency repairs or actions which may subsequently be considered changes in the scope of services under this Agreement when in its judgment Company believes public health and safety or regulatory compliance will be compromised and when time is of the essence and prior notification and written agreement by the Owner is not practical. In such instances, Company shall notify the Owner as soon as possible via email and phone of its actions and its intention to request additional compensation for such emergency services. The Owner shall promptly review Company's request and upon mutual agreement that there was a change in scope of services (which agreement shall not be withheld without good and sufficient cause), the Owner shall provide such compensation.

SECTION VIII - TERMINATION

Breach or Default:

Owner or Company may terminate this Agreement prior to the expiration of its terms, provided:

- a) The other party has materially breached the Agreement;
- b) The party claimed to have committed the breach is given thirty (30) days written notice specifically detailing the nature of the alleged breach;
- c) The party that is claimed to have breached the Agreement shall have the right to cure the breach within a reasonable time which in no event shall be more than ninety (90) days from the receipt of notice.

Convenience:

Either party may terminate this Agreement, with or without cause, by giving the other party ninety (90) days prior written notice, at the following times during the term of the Agreement:

- a) On the six (6) month anniversary of the Agreement Effective Date;
- b) On the twelve (12) month anniversary of the Agreement Effective Date;
- c) On the eighteen (18) month anniversary of the Agreement Effective Date;
- d) On the twenty fourth (24th) month anniversary of the Agreement Effective Date.

Thereafter, the Parties shall only have the right to terminate the Agreement or any extension thereof, for breach or default as outlined above.

Demobilization; Transition:

In the event that the Owner does exercise its rights to terminate for its convenience, Company shall be entitled to reimbursement for its reasonable demobilization costs (which in no event shall be less than one month's service fee).

In the event of termination by Owner, the Company shall be entitled to reimbursement for the modifications that the Company has completed on behalf of the Owner to the extent not previously reimbursed.

After the termination or expiration of this Agreement, Company shall assist the Owner with the orderly transition of duties to the Owner or its agent. Company shall, if requested by the Owner, continue to provide the services under this Agreement for up to ninety (90) days beyond the termination or expiration date and shall continue to receive its then current service fee on a pro rata basis for providing such services.

SECTION IX - ASSIGNMENT AND SUBCONTRACTING

Assignment:

Except as otherwise provided in this Agreement, neither party shall assign its rights, nor secure the assumption of its obligations under this Agreement, in whole or in part, without the prior written consent of the other party. The Owner shall have the right to withhold consent if it has reasonable grounds to believe that the assignee will not be able to fulfill the scope of services requirements. This Agreement shall ensure to the benefit of the parties hereto and their respective successors and permitted assigns.

Subcontracting:

Company may subcontract portions of work under this Agreement to any third party identified in Appendix G without the consent of the Owner. . In the event that Company subcontracts portions of the work under this Agreement to a third party that is not identified on Appendix G, Company shall notify the Owner of the subcontractor and shall receive Owner's prior written consent, before utilizing said subcontractor, provided the subcontractor is not being utilized for an Emergency event. The list identified in Appendix G may be updated from time to time throughout the Term of this Agreement upon the written consent of the Owner. Upon the occurrence of an Emergency event, Company may, without the Owner's prior written consent, undertake emergency repairs or actions utilizing a third party without the prior written consent of the Owner. Company shall ensure that all subcontractors obtain the requisite permits prior to performing work, provided however that upon the occurrence of an Emergency event, the Company shall ensure that the subcontractor obtains the requisite permit within a reasonable time after the work occurs.

SECTION X - UNCONTROLLABLE CIRCUMSTANCES

Uncontrollable Circumstances:

Except for payment of compensation, a party's performance under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of Uncontrollable Circumstances. In the event of any such Uncontrollable Circumstance, the party claiming relief from performance shall promptly notify the other party of the existence of same, shall perform those services under the Agreement that are not affected, and shall be required to resume performance of its obligations under this Agreement upon the termination of the Uncontrollable Circumstance. The compensation to Company shall be equitably adjusted for any increase or decrease in the Scope of Services due to Uncontrollable Circumstances.

Labor Disputes:

Labor disputes (strikes, stoppages, slowdowns) by Company employees shall not be considered an Uncontrollable Circumstance; however, Company shall be required to perform the Services on a best efforts basis during such labor dispute. If the Company is unable to meet its material obligations under this Agreement during such labor dispute, the Owner may terminate this Agreement pursuant to Section VIII.

Emergencies:

Company may, without the Owner's prior written approval, undertake emergency repairs or actions which may subsequently be considered changes in the Scope of Services under this Agreement when in its judgment Company believes public health and safety or regulatory compliance will be compromised and when time is of the essence and prior notification and written agreement by the Owner is not practical. In such instances, Company shall notify the Owner as soon as reasonably practicable of the emergency situation and of Company's actions in response thereto. Thereafter, Company shall provide Owner with an invoice for services rendered for the emergency situation; compensation shall be provided as a Non-Routine Service in accordance with this Agreement.

SECTION XI — GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law:

This Agreement shall be governed by and construed in accordance with the laws (and not the rules governing the conflict of laws) of the State where the Services are performed.

Dispute Resolution:

In the event that a dispute arises among the parties, the disputing party shall provide the other party with a good faith effort to work it out with a written notice of the dispute and within ten (10) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Each party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive shall also be included in the notice and response. The executives shall meet at a mutually acceptable time and place within fifteen (15) days of the date of the disputing party's notice and thereafter as they reasonably deem necessary to resolve the dispute. If the executives have not resolved the dispute through good faith efforts within thirty (30) days, before resorting to taking the case to court, the parties shall try in good faith to resolve the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. All costs attributed to mediation shall be borne equally by both parties.

Jurisdiction shall be proper in any state or federal court located in the State of New Jersey.

SECTION XII — MISCELLANEOUS

Relationship of the Parties; Beneficiaries:

This Agreement reflects an arms-length transaction. Nothing in this Agreement creates a fiduciary, partnership, joint venture or employment or other agency relationship among the parties. This Agreement is not entered into for the benefit of, nor are any rights granted to, any third party except as expressly provided herein.

Both parties understand and agree that neither this Agreement nor the performance hereof by Company shall render Company an "owner" or "operator" of the System as those terms are used in the Resource Conservation and Recovery Act, 42 U.S.C.6901 et seq., as amended, and the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601, et seq. or similar federal, state or local environmental legislation and Company's liability shall remain limited as defined in this Agreement. Owner shall execute any manifests or forms required by law or regulation in connection with the transportation, storage or disposal of hazardous or contaminated materials resulting from the Services or work at the site .

Waiver:

The failure of either party to enforce any of the terms of this Agreement on one or more occasions shall not constitute a waiver of the right to enforce such term on any other occasion or of the right of either party to enforce each and every term of the Agreement.

Notices:

All notices shall be in writing and shall be delivered, in person or transmitted by certified mail, return receipt requested, or national courier service providing proof of receipt, to the parties listed below. Either party may update such addresses on written notice to the other party. Notices shall be effective upon receipt.

To the Company:

**SUEZ Water Environmental Services Inc.
461 From Road, Paramus, NJ 07640
Attn: Legal Department**

And to:

**SUEZ Water Environmental Services Inc.
461 From Road, Paramus, NJ 07640
Attn: Chris Riat, General Manager**

To the Owner

**City of Orange
Township
Attn: (Finance Dept.)
29 North day Street
Orange, NJ 07050**

Entire Agreement; Modifications; Schedules:

The provisions of this Agreement (except captions, which are for convenience only and shall be ignored in interpreting this Agreement), including the Appendices annexed hereto shall (a) constitute the entire agreement between the parties, superseding all prior or contemporaneous negotiations, understandings or agreements and (b) not be modified in any respect except by express written agreement executed by the parties. The Appendices attached hereto are specifically made a part of this Agreement. The recitals set forth hereinabove at the outset of this Agreement are true and correct and are incorporated herein as though set forth in their entirety in the body of this Agreement.

Severability:

If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, provided the consideration for the agreement can be reasonably determined. In such event, the parties shall make good faith efforts to modify this Agreement to implement the intent of the parties embodied in this Agreement. Any resulting modification and the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Survival

The Sections of this Agreement pertaining to indemnification, payment and dispute resolution shall be deemed to survive the expiration or earlier termination of this Agreement.

Appendices:

- Appendix A — Description of System**
- Appendix B — Description of Customer Service Requirements**
- Appendix C — Scope of Services**
- Appendix D — Pricing**
- Appendix E — Definitions**
- Appendix F — Insurance**
- Appendix G- List of Approved Subcontractors**
- Appendix H- Staffing Plan**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first written above.

ATTEST:

Name: Daniell Capozzi

Title: Secretary

SUEZ WATER ENVIRONMENTAL SERVICES
INC.

Name: 


Title: President

ATTEST:

Name: 

Title: Deputy City Attorney

CITY OF ORANGE TOWNSHIP

Name: 

Title: Mayor

APPENDIX A

DESCRIPTION

The City of Orange Township is located in Essex County and bounded on the north by the City of West Orange, on the east by the City of East Orange and on the south and west by the City of South Orange. The City is comprised of a water supply, treatment and distribution system, a sanitary sewage collection system that drains to the Passaic Valley Sewerage Commissioners facility and a storm water collection system*.

***The Company's scope of services for each system is defined in Appendix C. Company has very limited scope of responsibility as it relates to storm water as further outlined in this Agreement.**

APPENDIX B

CUSTOMER SERVICE REQUIREMENTS

Services should include the following:

A. Meter Reading

- 1) Company shall read residential water meters in the cycles provided under the current reading/billing structure.
- 2) Company will perform all "special" meter readings, including re-reads for estimated accounts, final readings for property title transfer,
- 3) Company will utilize a customer information system with a computerized work order system that schedules and tracks appointments for all meter reading functions. The work order system will address the replacement of meters found not functioning properly. The system must provide reports to allow the Owner to assess water meter performance.
- 4) Meter readers assigned under this contract must be permanent employees of Company that are skilled in meter reading. All employees are to be uniformed and wear identification badges with the company logo, the employee's picture and name and the date the card was issued.

B. Billing

- 1) Company shall provide water billing services for the Owner, which shall include transmitting bills to all of the Owner's residential and commercial water customers on a quarterly basis. Where an actual reading cannot be obtained, Company shall send an estimated bill.
- 2) Company bills shall include the following minimum information: the billing date, service location, billing period, current and previous meter readings, units of usage, indication of actual or estimated billing, prior balance, total amount due, and due date. The mailing address to which payment shall be sent and telephone number(s) for inquiries shall also be included. The address and telephone number(s) shall be those of Company. In addition, Company may insert bill stuffers (to inform customers of charges in service, to relay public service announcements and the like) as is necessary and appropriate, provided the same shall be approved by the Mayor.
- 3) Company shall accommodate any rate changes effected by the Owner, but changes shall be limited to one rate change per calendar year without cost. Should the Owner adopt additional rate changes, Company shall accommodate such additional changes but shall bill the Owner for the costs thereof.

C. Reports.

- 1) Company shall submit a monthly report to the Owner on the tenth (10th) business day of each month, which shall include the following customer service related information: (a) a list of customer accounts in arrears for more than thirty (30) days; (b) a list of customer accounts for which a refund is due; and (d) any other relevant information reasonably requested by the Owner.
- 2) Company shall also include monthly reports regarding Aged Accounts Receivable, Accounts Receivable Roll Forward & Reconciliation, System Reconciliation, Daily Deposits, Billed Consumption by Cycle and Rate; and any special reports upon reasonable request, such as mailing lists, lien sale candidates, and certain account information other than in the canned reports as mentioned above.

D. Customer Services

- 1) Company shall respond to customer questions and complaints and make billing adjustments as necessary and appropriate for the resolution thereof. For this purpose, Company shall maintain a staff dedicated to assisting customers. Company's staff will be responsible for responding to customer phone calls and billing questions during the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday. All of the Customers will be provided with a toll free number to reach these representatives. Should customers call the Owner directly regarding customer service questions or complaints, the Owner should direct customers to Company's toll free customer service number.
- 2) Problems of an emergency nature such as water main breaks, sewer backups or lack of water service are to be reported by Company to the Owner via email and Company shall also call the Owner's Water Manager. Company shall email the DPW Director and shall put the Deputy Director, Chief of Staff and City attorney on copy.

E. Collection Procedures

- 1) Company shall mail appropriate notices to property owners for delinquent accounts. However, Company's obligation in this regard is limited to the mailing of two notices to any delinquent Customer over two consecutive months. If the Customer remains in arrears thirty (30) days after the second notice is mailed, the matter will be forwarded to the Owner for resolution.
- 2.) Customer shut offs for delinquent accounts will be coordinated and managed by the Owner in accordance with the Owner's written policy regarding shut offs. Upon Owner's request, the Company shall provide the Owner with recommendations for shut-offs. The parties understand however that the Owner is under no obligation to implement any such recommendations made by Company or include such recommendations into Owner's written policy. Additionally, and upon Owner's request, Company shall also provide reasonable coordination assistance to Owner for shut-offs for delinquent accounts as reasonably requested by Owner.

APPENDIX C
SCOPE OF SERVICES

Water System:

Company will perform the services needed to operate the Water system as follows:

- Basic operation and maintenance, which generally consists of:
- Landscaping to be maintained by system operator at specific locations (Wells# 2, 3, 4,6R, Beach St, Walker Rd). maintaining pumps, motors and instrumentation at intervals determined by the manufacturer annual hydrant flushing.
- Annual hydrant inspection .
- Provide the City with a monthly accounting of all hydrants that are out of service.
- Completion and filing of all NJDEP reports as required by licensed operators (i.e. distribution and other compliance reports)

Repair and Replacement as follows:

- Repairs and installation of service connections as required (which is from the main to the curb only; the house to the curb is the responsibility of the property owner). The parties recognize that the property owner owns the service line in its entirety and therefore is responsible, by law, to pay for and initiate all such repairs and connections. However, the parties have agreed that the Company will perform repairs and service connections from the main to the curb until such time as the Annual Maintenance Cap has been reached. At such time, The Company will invoice the Owner for the repairs. The Owner shall authorize the Company to add costs to the water bill of the property owner.
- Repairs of water mains
- Hydrant relocation, repair and maintenance
- Service investigations
- Service Turn-off and Service Turn-on
- Utility mark-outs as required.
- Provide recommendations for addressing problems related to un-accounted for water. (If the Owner implements any recommendations made by the Company, all such work shall be performed as a Non-Routine Service.)
- Leak detection program of the System for a three (3) year cycle in which one third (1/3rd) of the System will be inspected each year so that the ensure system will be inspected at the end of the three (3) year cycle.

Sanitary System:

- Sanitary Sewer: Television camera inspection (or such other method approved by the City) and documented on video tape shall be performed once every ten (10) years; therefore 21,200 feet of sewer pipe will be video camera inspected on an annual basis. Company will provide recommendations to the Owner for repairs.
- All repairs to the Sanitary System, except for manhole repairs, will be considered outside the scope of this Agreement and may be performed by Company as a Non-Routine Service.

Storm water System:

- Storm water: Perform television camera inspection and documented on known 'problematic areas' of the Storm water System and provide recommendations to the Owner for repairs. Whereas, 'problematic areas' shall be deemed those areas where there have been a history of complaints or inadequate system performance related to the storm water system.
- Semi- annual catch basin cleaning
- Catch basin repairs.

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- All other repairs to the Storm water System will be considered outside the scope of this Agreement and may be performed by Company as a Non-Routine Service.

General Reports:

Company will provide the Owner with a monthly report in a format mutually agreed upon by both parties. The report will be provided to the Owner on the fifth day of every month. Company and Owner will establish an Operations Committee (within a reasonable time after the Effective Date) with representatives from each party and the Operations Committee parties will meet to discuss the items in the report no later than the fifteenth (15th) day of each month, unless mutually agreed otherwise by the parties.

From time to time during the Term of this Agreement, the parties may mutually determine that additional services not specifically enumerated in the Scope of Services are necessary to achieve optimal or enhanced System performance and said services shall be performed by the Company for an additional cost to the Owner, mutually agreed upon by the parties prior to Company undertaking such services. Such services shall thereafter be specifically added to the Company's scope of services and the parties shall thereafter mutually determine if the fee shall be treated as one time payment or if the cost shall be added to the Base Compensation for the remainder of the then current Term. If the cost is treated as a one-time payment, the cost shall be the same as those costs paid for a Non-Routine Service in accordance with Appendix D. If the cost is added to the Base Compensation, the parties shall document the new Base Compensation for the remainder of the then current Term in a Memorandum of Understanding executed by both parties.

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APPENDIX D

PRICING

Base Compensation in First Agreement Year: \$1,649,000.00- One million six hundred and forty nine thousand dollars

Annual Adjustments: The Base Compensation consists of a Labor Cost Component, a Non Labor Cost Component, and an Energy/Chemicals Component. The Base Compensation for Years 2 and beyond shall be increased through the application of a set of readily available and national cost indices, as follows:

- a) Labor Cost Component, representing 33% of the Base Fee shall be escalated each year based upon the "ECI Index" for price-level changes.
 - b) Non-Labor Costs Component, representing 67% of the Base Fee shall be escalated each year based upon the "CPI Index" for price-level changes.
 - c) Escalation for Growth of Services. Each year, the Base Compensation shall be increased based upon the percentage of new customers added to the System.
- The ECI is the current Employment Cost Index, Northeast, Index ID CIU201000000210I (B), as published by the U.S. Department of Labor, Bureau of Labor Statistics.
 - The CPI is the current Consumer Price Index, Northeast Area, ID CUUR0100SA0, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

Non-Routine Services

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, including overtime. Materials and subcontractors will be invoiced to Owner by Company at cost, plus fifteen percent (15%) on the actual cost of materials to reimburse Company for administrative expenses. For Company labor not regularly assigned to the System, Owner shall pay Company actual wages plus benefits at 35% plus 20% for overhead and administration. There will be no additional charge for Company labor regularly assigned to the System performing non-routine services during the course of their normal working shift; however, if such employee performs services on an overtime basis, Owner shall pay Company actual wages plus 50% for overtime plus 20% for overhead and administration.

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APPENDIX E

DEFINITIONS

"Applicable Law" means any applicable statute, law, constitution, charter, ordinance, resolution, judgment, order, permit, industry standard or code, decree, rule, regulation, directive, interpretation, standard or similar binding authority, which has been enacted, promulgated, issued or enforced by any judicial, legislative, administrative, municipal or other governmental authority having jurisdiction as of the date of execution of this Agreement. A change in Applicable Law means the enactment, adoption, promulgation, modification, repeal or change of any Applicable Law which establishes new requirements or changes the requirements with respect to the operation or maintenance of the System or otherwise impacts a party's ability or cost of performance of its obligations under this Agreement. A change in Applicable Law shall include any change in any sales, use, and real property, ad valorem or excise tax or any tax paid by or on behalf of the Company which is imposed by the United States or another taxing authority, or any political subdivision thereof with respect to the Facilities or the performance of the Company's obligation hereunder, but shall not include taxes based on or measured by net income, any unincorporated business, incorporated business, payroll, franchise or employment taxes.

"Base Compensation" is the annual amount paid by Owner to Company for the standard services provided for in the Agreement. The Base Compensation shall be adjusted each year in accordance with Appendix D.

"Capital Improvement" means all costs related to the construction, installation, repair or replacement of any component of the System in excess of \$7,500 per item, which has a useful life exceeding 5 (five) years.

"Emergency event" shall mean an event that compromises public health and safety (including but not limited to damage to property, injury or loss) or regulatory compliance.

"Environmental Claim" means any civil, criminal or administrative action, suit, communication (written), demand, claim, hearing, citation, notice, warning, consent decree, contract right, notice of violation, investigation, judgment or order by any person or entity lawfully authorized to issue, bring, give or make the same alleging, claiming, concerning or finding liability or potential liability arising of, based on or resulting from, in whole or in part, the actual or alleged presence, threatened release, release, emission, disposal, storage, treatment, transportation, generation, manufacture or use of any hazardous substance or waste at or from any location.

"Non-Routine Services" means additional operation and maintenance outside the Scope of Services outlined in Appendix C, including the cost of labor, parts and subcontractors, considered non-routine under this Agreement or required as a result of Uncontrollable Circumstances.

"Operations Committee" means the committee which is comprised of representatives of the Company and the City, as mutually agreed by the parties, by at a minimum, shall include the Company Project Manager, the Owner's Chief of Staff, the Owner's DPW Supervisor, the Owner's City Attorney and the Owner's Deputy Director.

"Services" means those activities provided by Company to Owner as described in Appendix C.

"Uncontrollable Circumstances" means causes beyond either party's reasonable control, including, but not limited to, Acts of God, the imposition or increase of New Jersey Prevailing Wage Law (N.J.S.A. 34:11-56.25 et seq.), floods, quarantine restrictions, riots, strikes other than by employees of Company, commercial impossibility, failures of utilities, increases in tariff rates for electric and gas utilities, hurricanes, landslides, lightning, earthquakes, drought, epidemics, fires, explosions, bombings, casualties, acts of civil or military authority, sabotage, vandalism, acts of a public enemy or terrorists, changes in Applicable Law, receipt of Non-Specification Influent, damage to the system caused by third parties, or other events or circumstances beyond the control of the party

obligated to perform, whether such other causes or related or unrelated, similar or dissimilar, to any of the foregoing.

APPENDIX F

INSURANCE

The Company at its expense shall procure and maintain during the term of this Agreement the following insurance:

I. Insurance Types and Limits.

- 1) **Commercial General Liability Coverage** - A policy to provide coverage against of personal injury and property damage, including broad form contractual liability coverage and shall have a \$3,000,000 limit for personal injury and property damage per occurrence and \$3,000,000 in the aggregate
- 2) **Comprehensive Automobile Liability Coverage** — A policy to provide coverage against claims of personal injury or property damage covering all owned, leased, non-owned and hired vehicles used in the performance of work under this Agreement with a minimum limit per occurrence of \$1,000,000 for personal injury and property damage.
- 3) **Workers Compensation Insurance** — A policy to provide coverage as required by State law and Employers Liability coverage in the amount of \$1,000,000 per occurrence.
- 4) **Umbrella Liability Coverage** — A policy to provide coverage excess of General Liability and Automobile Liability in the amount of \$2,000,000. The Company may satisfy this requirement by providing additional limits under the primary policies.

II. Insurance Certification. All policies of liability insurance required to be maintained by the Company shall:

- 1) Be issued by insurers with an A.M. Best rating of not less than "A-VII".
- 2) Provide that coverage shall not be canceled or non-renewed until at least thirty (30) days prior notice has been given, except only ten (10) days' notice shall be provided for non-payment of premium.

Company shall annually provide Owner a certificate of insurance as evidence of the above coverage.

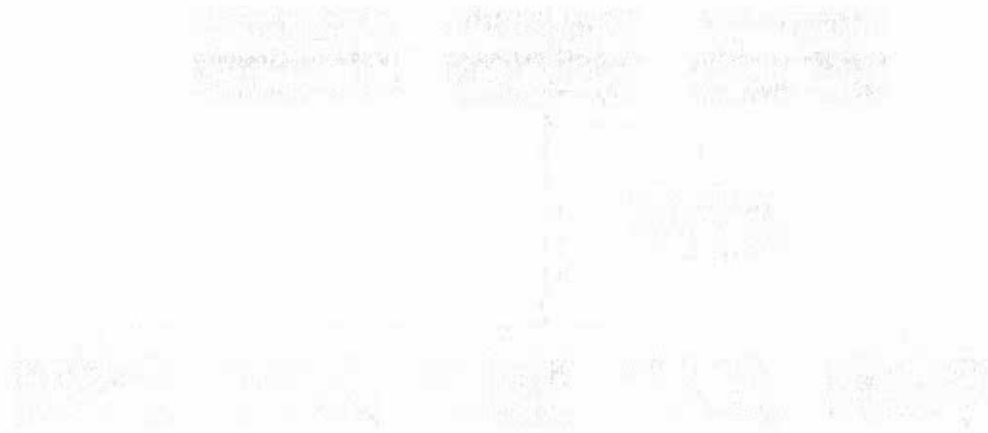
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APPENDIX G

LIST OF APPROVED SUBCONTRACTORS

- **Montana Construction**
- **J Cronce**
- **JF Kiely (South Jersey)**
- **CRJ Contracting**
- **Coppola (Services SWNJ Arlington Hills area primarily)**
- **Oswald Enterprises**
- **Subsurface Technologies Inc.**
- **Uni-Tech Drilling**
- **Rinbrand**
- **Layne Christensen**
- **The Shauger Group**
- **HW Alward**

APPENDIX H
STAFFING PLAN



**SUEZ Orange, NJ
Organizational Chart**

