



City of Wilmington

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Finance & Economic Development Committee

Charles "Bud" Freel, Chair
Ciro Adams
Linda M. Gray
Christofer C. Johnson
Zanthia Oliver
Loretta Walsh
Dr. Hanifa Shabazz, Ex-Officio Member

NOTICE

Finance & Economic Development Committee Meeting

Thursday March 12, 2020

5:00 p.m.

1st floor Council Committee Room

Agenda

- **Ord.# 20-008** To Authorize and Approve a Professional Services Agreement between the City of Wilmington, Delaware and Operations Management International, Inc. for the Management, Administration, Operation, and Maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems Associated with the Control of Combined Sewer Overflows (Including Global Optimal Real Time Control System), and Associated Infrastructure
- Presentation on Wilmington City Council's Strategic Plan Update Process by Raheemah Jabbar-Bey, Strategy and Policy Director, Wilmington City Council

Posted (02/28/2020)

If public comment is permitted during this committee meeting, any member of the public who wishes to speak during the committee meeting will be limited to three minutes per agenda item. If the public's permission to comment is abused, the Chair may exercise greater discretion in limiting public comment .

AN ORDINANCE TO AUTHORIZE AND APPROVE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF WILMINGTON, DELAWARE AND OPERATIONS MANAGEMENT INTERNATIONAL, INC. FOR THE MANAGEMENT, ADMINISTRATION, OPERATION, AND MAINTENANCE OF THE WILMINGTON WASTEWATER TREATMENT PLANT, RENEWABLE ENERGY AND BIOSOLIDS FACILITY, MAIN PUMP STATIONS, STORAGE AND CONTROL STRUCTURES AND SYSTEMS ASSOCIATED WITH THE CONTROL OF COMBINED SEWER OVERFLOWS (INCLUDING GLOBAL OPTIMAL REAL TIME CONTROL SYSTEM), AND ASSOCIATED INFRASTRUCTURE

#4774

Sponsor:

**Council
Member
Freel**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City publicly advertised a request for qualifications for a professional services agreement (Contract 20004PWPS) to manage, administer, operate, and maintain the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the Control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure (collectively, the “Managed Assets”) in order to develop a list of companies qualified to provide the aforementioned professional services to the City (the “Professional Services”); and

WHEREAS, the Department of Public Works and the Department of Finance, in consultation with engineers and industry experts, evaluated multiple submissions and developed a short list of companies that were invited to respond to the City’s request for proposals regarding Contract 20004PWPS (the “RFP”); and

WHEREAS, an evaluation committee assessed the proposals submitted in response to the RFP and ranked the proposal submitted by the Jacobs Engineering Group, Inc.

("Jacobs") as the highest ranked proposal that would provide the highest quality of technical expertise under the most economically feasible arrangement; and

WHEREAS, Jacobs seeks to perform the Professional Services through its affiliate, Operations Management International, Inc; and

WHEREAS, the Professional Services Agreement between the City of Wilmington, Delaware and Operations Management International, Inc. for the Management, Administration, Operation, and Maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure (the "Professional Services Agreement") is for a term of twenty (20) years from July 1, 2020 through June 30, 2040, with the possibility, through mutual agreement and reflected in a contract amendment, that the City and Operations Management International, Inc. may elect to extend the Professional Services Agreement for two (2) two-year renewal terms thereafter; and

WHEREAS, the estimated cost of the first year of the Professional Services Agreement is Nineteen Million, Nine Hundred Sixty-Two Thousand, Forty-Eight Dollars (\$19,962,048.00); and

WHEREAS, the cost of the Professional Services Agreement will increase annually based upon a designated blend of indices by a rate no less than one and one-quarter percent (1.25%) and no greater than three and three-quarters percent (3.75%), provided however, if in any two (2) consecutive Contract Years the actual adjustment calculated by the adjustment formulas set forth in the Professional Services Agreement is equal to or greater than six

percent (6%), then the City and Operations Management International, Inc. shall negotiate an appropriate adjustment to address such inflationary conditions; and

WHEREAS, the effective management, administration, operation, and maintenance of the Managed Assets and the wastewater system of which the Managed Assets are a part is of the utmost importance to matters of public health and thus to the welfare of the public, as well as a significant factor generally in assuring the collective well-being of citizens of the City by virtue of the prominence of this enterprise and these assets among the various public activities and elements of public infrastructure necessary to sustain the economic vitality of the City; and

WHEREAS, the Professional Services Agreement has been developed in accordance with the requirements of Section 8-200 of the City Charter and is otherwise in accordance with law; and

WHEREAS, it is the recommendation of the Department of Public Works that the City enter into the Professional Services Agreement.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. The Professional Services Agreement between the City of Wilmington, Delaware and Operations Management International, Inc. for the Management, Administration, Operation, and Maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure, a copy of which agreement, in substantial form, is attached hereto as Exhibit "A," for the period of twenty

(20) years from July 1, 2020 through June 30, 2040, at an estimated price in the first year of Nineteen Million, Nine Hundred Sixty-Two Thousand, Forty-Eight Dollars (\$19,962,048.00), with an annual increase of between one and one-quarter percent (1.25%) and three and three-quarters percent (3.75%) with potential adjustments for inflationary conditions, with the possibility of two (2) two-year extensions thereafter, is hereby approved.

SECTION 2. The Mayor, or his designee, is hereby authorized to execute as many copies of the Professional Services Agreement, as well as take all additional undertakings related thereto, as may be necessary.

SECTION 3. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... February 20, 2020
Second Reading..... February 20, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into a professional services agreement with Operations Management International, Inc. for the management, administration, operation, and maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the control of Combined Sewer Overflows (including

Global Optimal Real Time Control System), and Associated Infrastructure for a period of twenty (20) years, with the possibility of two (2) two-year extensions, through mutual agreement reflected in an amendment of the Professional Services Agreement.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a professional services agreement for twenty (20) years with two (2) two-year extension options with an estimated year one cost of Nineteen Million, Nine Hundred Sixty-Two Thousand, Forty-Eight Dollars (\$19,962,048.00). The cost of the agreement will increase annually at a minimum rate of one and one-quarter percent (1.25%) and a maximum rate of three and three-quarters percent (3.75%) as determined by the indices incorporated in the agreement; provided, however, in the event that the actual rate of increase as calculated by the indices equals or exceeds six percent (6%) for two consecutive years, then the parties shall negotiate an appropriate adjustment to address such inflationary conditions.

W0109561

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

DATED AS OF JULY 1, 2020

BETWEEN

CITY OF WILMINGTON, DELAWARE

AND

OPERATIONS MANAGEMENT INTERNATIONAL, INC.

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PROFESSIONAL SERVICES AGREEMENT

This SERVICE AGREEMENT is made and entered into this _____ day of _____, 2020, by and between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware (“City”) and Operations Management International, Inc., a California corporation (“Company”).

WHEREAS, the City owns a wastewater treatment facility, as more fully described herein (“Facility; and

WHEREAS, pending the fulfillment of the conditions precedent set forth herein, the City desires the Company, and the Company desires to, provide professional services for the management, administration, operation and maintenance of the Managed Assets on the terms and conditions set forth herein; and

WHEREAS, the City shall retain ownership and oversight of the Managed Assets, as more fully described herein; and

WHEREAS, the City shall have termination rights as provided herein.

NOW THEREFORE, in consideration of the aforesaid premises and the mutual agreements, covenants and assurances herein, and the terms and conditions herein stated, the City and the Company, intending to be legally bound, hereby agree as follows:

ARTICLE I – DEFINITIONS

Except as expressly provided herein, Capitalized terms shall have the meanings set forth below, and if not defined here, their ordinary meaning.

- 1.1 “Abnormal Substance” means a substance, material or object present in the Influent which cannot be removed or treated by the Managed Assets, including but not limited to those substances, materials or objects which are not susceptible of treatment at the Managed Assets or materially interfere with or obstruct the operations of the Managed Assets. As an example and not in limitation of what constitutes an Abnormal Substance, any substance, including (without limitation) metals, discharged by an SIU in violation of the MIPP or any Permit issued thereunder to an SIU is an Abnormal Substance; provided, however, that any such substance is not an Abnormal Substance if it is discharged in compliance with a duly authorized variance from the MIPP so long as such variance is consistent with Applicable Law and does not cause the Facility to fail to comply with Applicable Law.
- 1.2 “Affiliate” means, with respect to any Person, any other Person that controls, or is controlled by or under common control with such Person.
- 1.3 “Applicable Law” means any statute, law, charter, regulation, ordinance, rule, judgment, order, decree, permit, license, requirement, approval or restriction of the appropriate Governmental Authority, or any interpretation or administration of any of the foregoing by the appropriate Governmental Authority charged with the responsibility for the foregoing, applicable from time to time to the ownership, possession, operation, improvement, expansion, equipping, design or financing of the Managed Assets or the Collection System or the performance of obligations under this Service Agreement, whether now or hereinafter in effect; provided, however, that any such statute, law, charter, regulation, ordinance, rule, judgment, order, decree, permit, license, requirement, approval, restriction, interpretation, or administration is lawful and binding. Applicable Law includes, without limitation, Environmental Laws.
- 1.4 “Average Biochemical Oxygen Demand” means that number which represents the average daily number of pounds of Biochemical Oxygen Demand in Influent received at the Facility during any consecutive twelve (12) month period.
- 1.5 “Average Suspended Solids” means that number which represents the average daily number of pounds of Suspended Solids in Influent received at the Facility during any consecutive twelve (12) month period.
- 1.6 Reserved.
- 1.7 “Base Flow and Loads” means

Base BOD5 Load (lbs/day) 124,800

Base TSS Load (lbs/day) 121,400

Base Flow (mgd) 68

- 1.8 “Biosolids” means sludge and other process related materials which are produced at the Facility during, or result from, the processing of Influent received at the Facility, including (without limitation) material that settles out of Influent in the Facility.
- 1.9 “Biochemical Oxygen Demand” or “BOD” means the amount of oxygen required by bacteria while stabilizing decomposable organic matter in five (5) days under aerobic conditions, the analysis of which shall conform to the provisions of 40 CFR 136, “Test Procedures for the Analysis of Pollutants,” unless other test procedures have been specified in the NPDES permit.
- 1.10 “Business Day” means a day other than a Saturday or Sunday or day on which the City or the Company is required or permitted by Applicable Law to be closed for business (without consideration of whether the Facility is open or closed).
- 1.11 “Capital Items” means any addition, alteration, improvement, or other change to the Managed Assets including the installation of new structures, equipment, systems or technology.
- 1.12 “CFR” means the Code of Federal Regulations, as amended from time to time.
- 1.13 “Change in Law” means any of the following which shall occur after July 1, 2020: (a) the lawful enactment, adoption, promulgation, modification, repeal, or change in interpretation by the appropriate Governmental Authority charged with responsibility therefore of any Applicable Law (excluding Federal or State income tax law), provided that the Change in Law shall also include: (b) the order or judgment of any Governmental Body issued on or after the Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or (c) the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the standards in effect as of the Effective Date in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or

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

- 1.14 “Chemical Oxygen Demand” means oxygen equivalent of the organic matter that can be oxidized as measured by using a strong chemical oxidizing agent in an acidic medium, the analysis of which shall conform to the provisions of 40 CFR 136, "Test Procedures for the Analysis of Pollutants", unless other test procedures have been specified in the NPDES Permit.
- 1.15 “City” means City of Wilmington, a municipal corporation of the State of Delaware.
- 1.16 “City Code” means the Wilmington City Code, as amended from time to time.
- 1.17 “City Charter” means the Wilmington City Charter.
- 1.18 “City Fault” means any action, failure to act or circumstance described in any of clauses (a) or (b) of Section 10.3.
- 1.19 “City Uncontrollable Circumstances” means any act, event or condition beyond the reasonable control of the City and not the result of willful action or lack of reasonable diligence of the City. City Uncontrollable Circumstances shall include, but not be limited to, any of the following:
 - (a) An Act of God (except reasonably anticipated weather conditions normal for the geographic area of the Site), landslide, lightning, earthquake, hurricanes, flood, acts of a public enemy, war, blockade, insurrection, riot, civil disturbance or similar occurrence; or
 - (b) Any Company Fault.
- 1.20 “Clean Water Act” means Title 33 of the United States Code, Sections 1251-1387, as amended from time to time.
- 1.21 “Collection System” means the sewage collection system located in the Service Area within the boundaries of the City and connected to (but are not part of) the Managed Assets, including, without limitation, all interceptors, pumping stations and treatment facilities.
- 1.22 “Commencement Date” means the dates the conditions precedent set forth in Article VI are fulfilled or waived by the Company, or by the City.

- 1.23 “Company” means Operations Management International, Inc., and its successors and permitted assigns.
- 1.24 “Company’s Discounted Rate” means the discounted rates set forth in Exhibit 14 at a 2.6 labor multiplier for Company labor not permanently staffed at the Managed Assets plus reasonable costs and expenses. Construction, subcontractor, and materials costs for projects approved by the City will be compensated based on actual costs plus 10% or as otherwise negotiated, for overhead costs of the Company and its Affiliates.
- 1.25 “Company Fault” means any action, failure to act or circumstance described in any of clauses (a) through (e) of Section 10.2.
- 1.26 “Company Uncontrollable Circumstances” means any act, event or condition beyond the reasonable control of the Company and not the result of willful action or lack of reasonable diligence of the Company. Company Uncontrollable Circumstances shall include, but not be limited to, any of the following:
- (a) An Act of God (except reasonably anticipated weather conditions normal for the geographic area of the Site), landslide, lightning, earthquake, hurricanes, flood, acts of a public enemy, war, blockade, insurrection, riot, civil disturbance or similar occurrence; or
 - (b) A Change in Law; or
 - (c) Labor disputes other than disputes involving employees of the Company; or
 - (d) The loss or inability to obtain any utility services, including water, sewerage, fossil fuels and electric power necessary for operation of the Facility; or
 - (e) Receipt, treatment or disposal of Non-Specification Influent or any discharge in violation of the MIPP, or treatment or disposal of Effluent or Biosolids produced in whole or in part from the Non-Specification Influent; or
 - (f) Any City Fault; or
 - (g) A Pre-Existing Environmental Condition that materially impacts the Company’s ability to perform its obligations under this Service Agreement; or
 - (h) For the first eighteen (18) months of the Term only, latent defects in the thermal dryer or co-generation units, whether such defect has been disclosed to Company or not; or
 - (i) The Agreement between Cherry Island Renewable Energy, LLC and the Delaware Solid Waste Authority expires or terminates for whatever reason.

- 1.27 “Contract Administration Memorandum” or “CAM” means the principal formal tool duly executed by both parties for the administration of matters arising under this Service Agreement between the parties after communications have been concluded, to evidence the resolution reached by the City and the Company as to matters of interpretation and administration, including the performance of Capital Items contemplated by the Service Agreement.
- 1.28 “Contract Year” means the 12-month period commencing on July 1 of any calendar year and ending on June 30 of the succeeding calendar year during the Term.
- 1.29 “Corrective Maintenance” means any maintenance activity which is required to correct a failure that has occurred or is in the process of occurring. This activity includes maintenance (1) that is necessary to restore, repair or return a Managed Asset to the proper and safe operation or intended function after a failure or defect, or both, occurs; (2) identified from the performance of planned maintenance; or (3) required to address an emergency.
- 1.30 “Daily Flow” means the total amount of Influent received at the Facility in any calendar month divided by the number of days in the month that the Facility was operating, or in the event that such method of determining Influent received daily at the Facility is inconsistent with Applicable Law, such other method of determining Influent received daily at the Facility that is consistent with Applicable Law.
- 1.31 “Damages” shall have the meaning given this term in Section 12.1.
- 1.32 “Designated Representative” means one or more individuals (including a consultant to the City), but in no event more than five, authorized by the Mayor or the Commissioner of Public Works of the City from time to time in a written instrument delivered to the Company to act on behalf of the City under this Service Agreement.
- 1.33 “Dispute” shall have the meaning given this term in Section 14.1.
- 1.34 “DNREC” means the Delaware Department of Natural Resources and Environmental Control and its successors.
- 1.35 “Effective Date” means the date first above written on which this Service Agreement was made and entered into.
- 1.36 “Effluent” means Influent that is discharged from the Managed Assets, but not including Biosolids.
- 1.37 “Enforcement Response Plan” shall mean the City’s enforcement response plan, as more fully described in Section 9.1.

- 1.38 “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 out 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.
- 1.39 “Environmental Laws” means any and all Federal, State and local statutory or common laws, regulation, rules, ordinance, permits, authorizations, approvals, registrations and licenses, administrative orders, judicial decrees, judgments or requirements, relating to pollution or protection of the environment, natural resources or human health.
- 1.40 “EPA-Region III” means United States Environmental Protection Agency – Region III.
- 1.41 “Extraordinary Items Component” shall have the meaning given this term in Section 5.4.8
- 1.42 “Facility” means the wastewater treatment plant and REBF located in Wilmington, Delaware, on the Site and more fully described in Exhibit 1.
- 1.43 “Facility Flow” means that number which represents the average daily number of gallons of Influent received at the Facility in any consecutive twelve (12) month period, measured in accordance with Section 3.5 and rounded to the nearest one hundred thousand gallons.
- 1.44 “Federal Bankruptcy Code” means Title of the United States Code, as amended from time to time.
- 1.45 “Fiscal Year” means 12-month period commencing on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.
- 1.46 “Governmental Approvals” means all approval, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, and rulings required by or with any Governmental Authority in order to operate, maintain and improve the Managed Assets or otherwise meet the requirements of this Service Agreement.
- 1.47 “Governmental Authority” means any Federal, State, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.
- 1.48 “Guaranty Agreement” means the Guaranty Agreement of Jacobs Engineering Group, Inc. in substantially the form attached hereto as Exhibit 7.

- 1.49 “Hazardous Substance” means any chemical, pollutant, contaminant, toxic substance, hazardous or extremely hazardous material or substance, waste, radioactive material, or oil and petroleum product, as such terms or any similar terms are used under any applicable Environmental Laws.
- 1.50 “Influent” means domestic, commercial, institutional, industrial, and other wastewater, and inflow and infiltration of stormwater into the pipes, interceptors and other facilities which collect and transport such wastewater.
- 1.51 “Initial Company Investments” means Items that are required under this Service Agreement to be put in place upon the inception of this Service Agreement, and as more fully described in Exhibit 3.
- 1.52 “Long Term Control Plan” means the City’s Combined Sewer Overflow Final Long-Term Control Plan, dated September 2010, revised August 2013 and revised July 2015.
- 1.53 “Main Pump Stations” means the pump stations identified in Exhibit 1.
- 1.54 “Major Maintenance Account” means an account funded by the City to be used for Corrective Maintenance and Repair and Replacements, as more specifically set forth in Section 3.8.1.
- 1.55 “Managed Assets” means the Facility, the Main Pump Stations, storage and control structures and systems associated with the control of Combined Sewer Overflows (including the Global Optimal Real Time Control System) and REBF.
- 1.56 “mgd” means million gallons per calendar day.
- 1.57 “MIPP” means a Municipal/Industrial Pretreatment Program, as more fully described in 40 CFR Part 403 and in City Code Chapter 11, Article V.
- 1.58 “Multijurisdictional Agreement” means that certain Agreement between the City and New Castle County concerning the Wilmington Industrial Pretreatment Program, which shall be substantially in the form of the draft attached hereto as Exhibit 13 or in such other form as shall be approved by the Company (such approval not to be unreasonably conditioned or withheld).
- 1.59 “NPDES Permit” means the National Pollutant Discharge Elimination System wastewater discharge permit being NPDES Permit No. DE0051071 and Delaware Permit No. WPC 3063A/96 issued on May 7, 2013 and any future renewals, as issued and reissued by the DNREC for the Facility.
- 1.60 “Non-Specification Influent” means any Influent received at the Facility other than Specification Influent.

- 1.61 “Operating Items” means any expenditure that is reasonably necessary for operation, maintenance or administration of the Managed Assets that is not a Capital Item.
- 1.62 “Permits” means any and all permits and licenses necessary for the Company to fulfill its obligations under this Service Agreement, including without limitation, the Required Permits.
- 1.63 “Person” means a corporation, partnership, business trust, trust, joint venture, company, firm or individual or any Federal, State or local government.
- 1.64 “Planned Maintenance” means work under which Predictive and Preventative Maintenance is carried out on a pre-determined schedule. Planned Maintenance includes any maintenance activity for which a pre-determined job procedure has been documented, for which labor, materials, tools, and equipment required to carry out the task have been estimated, and their availability assured before the commencement of the task.
- 1.65 “Pre-Existing Environmental Condition” means the presence on the Site of any Hazardous Substances on or prior to the Commencement Date, including without limitation, any underground storage tanks that exist on the Site on or prior to the Commencement Date and are regulated under Environmental Laws.
- 1.66 “Predictive Maintenance” means the process of monitoring equipment condition, failure symptoms and/or performance, comparing against base conditions, and performing Preventative or Corrective Maintenance when the failure symptoms deteriorate past acceptable levels.
- 1.67 “Preventative Maintenance” means routine and/or repetitive activities required or recommended by the equipment supplier, manufacturer or Company to maximize the service life of the Managed Assets.
- 1.68 “Prime Rate” means the prime rate as published in The Wall Street Journal or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal or the method of computation thereof is substantially modified.
- 1.69 “Publicly Owned Treatment Works” means treatment works as defined in Section 212 of the Clean Water Act, which is owned by a state or municipality (as defined by Section 502(4) of the Clean Water Act).
- 1.70 “Real Time Control System” means the storage and flow control structures and associated electronic and electrical control systems added to the collection system for the purpose of managing Combined Sewer Overflows.

- 1.71 “Renewable Energy and Biosolids Facility” or “REBF” means the renewable energy and biosolids facility that is part of the wastewater plant, and as more fully described on Exhibit 1.
- 1.72 “Required Permits” means the Permits listed in Exhibit 2.
- 1.73 “Repair and Replacement” means repair or replacement or Corrective Maintenance to the Managed Assets not caused by the negligence or willful misconduct of Company, including, but not limited to general non-routine/non-repetitive activities required for operational continuity, safety, and performance generally resulting from failure or necessary to avert a failure of the Managed Assets or some component thereof.
- 1.74 “Scheduled Termination Costs” means the costs payable by the City to the Company upon early termination of this Service Agreement, as specified in Section 11.4.
- 1.75 “Septic Waste” means the liquid and solid material pumped from a septic tank or cesspool during cleaning and which is normally characterized by large quantities of grit and grease, a highly offensive odor, great capacity to foam upon agitation, poor settling and dewatering characteristics, and high solids and organic content.
- 1.76 “Service Agreement” means this Professional Services Agreement dated the Effective Date, by and between the City and the Company, as such agreement may be amended, restated or supplemented from time to time.
- 1.77 “Sewer Use Ordinance” means Chapter 11 of the City Code and any other municipal legislative enactment which (i) is enforceable in Federal, State, or local courts, (ii) authorizes or enables the City to apply and enforce the requirements of the Clean Water Act, and any requirements created by or pursuant to this Service Agreement, and (iii) establishes User Charges.
- 1.78 “Significant Industrial User” or “SIU” shall have the meaning given this term in City Code Section 11-200.4 and in 40 CFR 403.3(v), as amended from time to time.
- 1.79 “Site” means the site of the Managed Assets described in Exhibit 1.
- 1.80 “Specification Influent” means Influent possessing the following characteristics and not exceeding the following limits:
- (a) Characteristics:
 - (i) containing no Hazardous Substance in concentrations which exceed those allowed under Applicable Law; and
 - (ii) containing no Abnormal Substance.

- (b) Limits:
 - (i) Daily Flow – 105 mgd
 - (ii) Biochemical Oxygen Demand – 177,000 lbs/day
 - (iii) Suspended Solids – 188,000 lbs/day

The limits on Daily Flow, Biochemical Oxygen Demand and Suspended Solids are subject to the issuance and maintenance of an NPDES Permit which authorizes such limits. In the event that the NPDES Permit specifies limits for Daily Flow, BOD or Suspended Solids which correlate to lower limits than those stated above to be applicable, then such lower limits shall constitute the limits for Specification Influent.

It is acknowledged by the City and the Company that the calculation of the Daily Flow is on an average monthly basis and that the occurrence of precipitation or snow melt in the Wilmington, Delaware area may result in the receipt at the Facility during any twenty-four (24) hour period following such precipitation or snow melt of an amount of Influent significantly in excess of such average daily amount. Accordingly, provided that the Daily Flow limits set forth in the table above are not exceeded, Specification Influent shall include receipt at the Facility of up to 340 mgd of Influent during any twenty-four (24) hour period following the occurrence of precipitation or snow melt in Wilmington, Delaware, as reported by the Delaware Geological Survey for the City of Wilmington and vicinity or City successor reporting source, or in the event any such reporting source is discontinued, as reasonably determined by the City and the Company.

- 1.81 “State” means the State of Delaware.
- 1.82 “Subcontract” means any contract or purchase order made by Company, or by any Subcontractor to the Company, for services, equipment, labor, materials, supplies, or other items to perform the obligations of the Company under this Service Agreement.
- 1.83 “Subcontractor” means any Person, other than the employees of the Company or the City (as the case may be), who contracts with the Company or the City (as the case may be) to furnish services, equipment, materials, labor, supplies, or other items in connection with this Service Agreement.
- 1.84 “Suspended Solids” means solids that are in suspension in, wastewater, the analysis of which shall conform to 40 CFR 136, "Test Procedures for the Analysis of Pollutants."
- 1.85 “Term” shall mean, the period of time beginning on the Commencement Date and ending twenty (20) years after the Commencement Date.
- 1.86 “USC” means the United States Code, as amended from time to time.

- 1.87 “US EPA” means the United States Environmental Protection Agency.
- 1.88 “User Charge” means the rates and charges assessed, established or levied by the City' Council of Wilmington in accordance with the City Code, as amended from time to time, for wastewater for any purpose and at any point in or outside the City of Wilmington, either by meter, fixed charge or otherwise.
- 1.89 “User Charge System” means a system not inconsistent with 40 C.F.R. Part 35, designed to produce sufficient revenues required for operation and maintenance (including replacement) of the Managed Assets.
- 1.90 “Value Added Projects” means any Capital Item identified and agreed to in accordance with Section 3.9, the construction and operation of which results in substantial increased revenues to the Company or substantial decreased operating expenses for the Managed Assets; provided, however, that a Capital Item shall not be a Value Added Project if it is (i) an Initial Company Investment, or (ii) of the same general type, serving the same general purpose or performing the same general function as an Initial Company Investment, or (iii) essential for or directly related to the operation of the Managed Assets.

ARTICLE II- TERM AND PAYMENT OF CITY TRANSACTION COSTS

2.1 Payment of City Transaction Costs

The City and Company acknowledge that Company's Service Fee is reflective of its reimbursement to the City of Five Hundred Thousand Dollars (\$500,000) as reimbursement for the City's costs related to the procurement of the services of the Company and the negotiation, execution and delivery of this Service Agreement. Such payment shall be paid in equal 1/5th increments over the first five (5) years of the Term by a \$100,000 check payment due at the end of each Fiscal Year.

2.2 Term

The Term of this Service Agreement shall commence on the Commencement Date, which is anticipated to be July 1, 2020, and shall continue for a period ending twenty (20) years after the Commencement Date unless sooner terminated under any of the early termination provisions of this Service Agreement in Article XI of this Service Agreement, provided however, that the rights and obligations of the City and Company under Article VI of this Service Agreement shall commence on the Effective Date. The parties may elect to extend the term of this Service Agreement for two (2) two-year renewal terms, through mutual agreement and reflected in a contract amendment.

ARTICLE III- SCOPE OF SERVICES

3.1 Availability of Managed Assets

The City grants the Company the right to manage, operate, maintain and improve the Managed Assets in accordance with this Service Agreement and Applicable Law.

The Company and its employees, officers, agents, licensees, and invitees shall have unrestricted access to and from, and use of, the Site. The Designated Representative may visit and inspect the Managed Assets and the Site at any time without notice. In addition to the foregoing rights of access, representatives and agents of the City may visit or inspect the Managed Assets and the Site at any reasonable time during normal business hours after giving the Company twenty-four (24) hours' notice; provided, however, that the Company may exclude employees, agents or consultants of any Person (other than a consulting engineer retained by the City in connection with this Service Agreement) engaged in the business of constructing, or of being the owner or operator of, wastewater treatment facilities at all times except the following: (a) during an Event of Default hereunder, and (b) during the one- year period prior to either of the end of the Term, or any other date on which the City and the Company agree to terminate this Service Agreement. Any such visits shall be conducted in a manner that does not cause unreasonable interference with the Company's operations. The Company may require any Person on the Site to comply with its reasonable rules and regulations.

The City shall deliver to the Facility, and the Company shall receive at the Facility, Specification Influent originating in the Service Area and collected and delivered by the Collection System.

3.2 Permits

3.2.1 The City represents and warrants that (i) the Required Permits are the only Permits required as of the Effective Date by any Governmental Authority for the City to own, operate and maintain the Managed Assets, (ii) the Required Permits are in full force and effect except as set forth on Exhibit 2 and (iii) neither the City nor any co-permittee of the City's is in violation of any requirement of any of the Required Permits, except as disclosed in writing by the City to the Company prior to the Effective Date.

The City shall apply for and obtain any permits that are not in Exhibit 2. At the request of the City, the Company shall cooperate with the City in obtaining such permits, and the City shall reimburse the Company for the Company's documented related costs and expenses.

- 3.2.2 The City and the Company shall be co-permittees on the NPDES Permit (subject to satisfaction on or prior to the Effective Date, of the condition precedent set forth in Section 6.1.7). The City and the Company shall, to the extent required by Applicable Law, be co-permittees on all Permits in addition to the NPDES Permit relating to the Managed Assets. The City and the Company shall (i) each use its reasonable efforts to make the Company the co-permittee on the NPDES Permit and all other Permits as to which the Company is required by Applicable Law to be the co-permittee, (ii) cooperate with one another in applying for, obtaining and maintaining in effect all other Permits and (iii) not take any action or fail to take any action the taking or failure to take of which would cause the violation of any requirement of any Permit. Except as set forth in this Section 3.2.2, the Company shall at its expense apply for, obtain and maintain in effect all Permits.
- 3.2.3 The Collection System consists of combined and separate sewers. The City is required to manage and mitigate Combined Sewer Overflows in accordance with an approved Long-Term Control Plan (“LTCP”). The LTCP has an established goal of capturing and treating 85% of storm-related sewage flows in the Collection System.
- 3.2.4 The City shall at its expense, obtain and maintain in effect all permits, licenses and approvals required for the City to own, operate and maintain the Collection System and to perform its obligations under this Service Agreement.

3.3 Management, Operation and Maintenance

- 3.3.1 Except as otherwise provided herein, the Company shall (i) manage, operate, and maintain the Managed Assets in good working order and repair consistent with generally accepted industry principles and practices, (ii) process at the Facility Specification Influent in accordance with this Service Agreement and in compliance with the requirements of all Permits and Applicable Law, (iii) process at the Facility Non-Specification Influent as provided in Section 3.3.2 and as permitted by Applicable Law and (iv) mitigate CSOs consistent with the LTCP.
- 3.3.2 If the Facility receives Non-Specification Influent, the Company shall: (a) use all reasonable efforts consistent with industry standards to maintain Facility performance as if such Non-Specification Influent had not been received, (b) advise the City of such situation and the Company's planned course of action within thirty-six (36) hours of the Company's first knowing of the receipt of Non-Specification Influent; and (c) use reasonable efforts consistent with industry practice to return the Effluent to compliance with the requirements of the Permits as soon as reasonably possible, but, in any event, within thirty (30) days after the

Facility has ceased receiving Non-Specification Influent and assuming that during such thirty (30) day period the Facility has received only Specification Influent. Receipt of Non-Specification Influent shall constitute a Company Uncontrollable Circumstance and the City shall be responsible for the effect of such Non-Specification Influent on the Managed Assets and their operation and on Effluent and Biosolids and their treatment and disposal and the resulting costs and damages therefrom, to the extent that the receipt of such Non-Specification Influent could not have been prevented by reasonable effort consistent with industry standards on the part of the Company.

3.3.3 The scope of management, operation and maintenance services of the Company under this Service Agreement shall require the Company to undertake the following, subject to the terms and conditions set forth in this Service Agreement:

(a) Provide all personnel and associated wages, salaries, and benefits; chemicals; fuels; vehicles and vehicle expense items; materials, supplies, and other consumables; and other services necessary to manage, operate and maintain the Managed Assets: (i) in accordance with Applicable Laws, and (ii) in good working order and repair consistent with manufacturers' recommendations, applicable operation and maintenance manuals, and accepted industry standards.

(b) Employ predictive and preventive maintenance programs, to enforce existing equipment warranties, and maintain all warranties on equipment placed in service after the Commencement Date. Such programs shall include but not be limited to:

(i) Computer-based process control and management systems;

(ii) Professionally developed quality assurance systems;

(iii) Site, Facility and equipment security (based on current condition, inclusive of upgrades to IT security in proposed initial Capital Improvements); and

(iv) Building and grounds upkeep and maintenance including, but not limited to, repainting, minor/spot pavement repair and replacement, minor/spot roof repair. Major repairs and replacements are addressed as described in Section 3.8.

(c) Staff the Managed Assets with qualified personnel who meet the certification requirements of the State and provide continued upgrading, education, and training of such personnel in modern wastewater control, safety and equipment maintenance.

(d) Install a fully-functional computerized maintenance management system capable of providing a record of repair for each piece of equipment or line section; scheduling and controlling preventive maintenance; monitoring of predictive and corrective maintenance programs and associated costs; issuing work orders and purchase requests; maintaining spare parts inventory; and issuing exception, equipment status, and repair priority reports.

(e) Compile, maintain and provide to the City comprehensive records and reports for the Facility and systems operations, regulatory matters, laboratory analyses, maintenance plans and activities, related financial matters, permit and compliance results, equipment status, and other relevant information in accordance with Applicable Law. The Company shall also prepare and deliver to the City the following reports:

(i) Reports and notices as required by the NPDES Permit, and the filing of such reports with the appropriate Governmental Authority as required by Applicable Law and providing copies thereof to the City.

(ii) Computer-based records of all maintenance and repairs for the Facility, which the City shall have the right to inspect and copy during normal business hours.

(iii) Copies of routine operating reports showing flows and performance of the Main Pump Stations, and major unit treatment processes of the Facility. These reports shall be furnished on at least a quarterly basis.

(iv) Monthly reports indicating the metered flows received at the Facility.

(v) Periodic reports to the City and presentations regarding the progress of work as reasonably requested by City. The Company agrees to make timely responses to all reasonable requests for information from the City.

(vi) Annual management reports, including annual reports on the physical condition of the Facility and Managed Assets.

(vii) Yearly report that provides the Annual Operation and Maintenance Costs to the City for treatment and disposal at the WWTP based on flow (\$/MGD); Total Suspended Solids (TSS) (\$/lb); and Biochemical Oxygen Demand (BOD) (\$/lb). The Company will provide the City with a draft copy of the report with the opportunity to comment before finalizing said report. Company will assist City in any additional supporting information required for the unit cost values.

(f) At least quarterly, or as necessary, meet with the Designated Representative to review operations of the Managed Assets and the construction of key capital improvements to the Managed Assets which may affect service provided by the Managed Assets. Conduct annual comprehensive plant and system inspections with the Designated Representative to evaluate and document compliance with this Service Agreement by the Company.

(g) Prepare and revise as necessary a comprehensive emergency preparedness plan for interaction and coordination with City departments and offices including, but not limited to, Fire, Police, Public Works, and Emergency Management; agencies of the County; and other entities with which the City may have dealings.

(h) Maintain professional, responsible, and responsive working relationships with City customers; City departments and offices; representatives of the City; regulatory agencies; agencies of the County; and other entities with which the City may have dealings.

(i) Implement and maintain an employee safety program in compliance with all Applicable Law.

(j) Provide the City with a written transition and start up plan and schedule at least forty-five (45) days prior to the Commencement Date, or as soon thereafter as is reasonably practicable. The transition plan shall include scheduling of mobilization activities and technical program implementation. The Company agrees to review the plan with the City prior to implementation.

3.4 Septic and Other Imported Wastes

The Company shall not accept any Septic Waste or other imported wastes conveyed by truck or other vehicle to the Facility without specific, express written authorization from the City.

3.5 Metering and Weighing

The Company shall, at its expense, maintain in good working order and repair, and replace when necessary, devices for the Facility capable of (a) measuring the daily amount of Influent received at the Facility and Effluent and (b) weighing the daily amount of Biosolids leaving the Facility for disposal.

The measuring and weighing devices shall be calibrated in accordance with standard industry practices.

If at any time the measuring or weighing devices are incapacitated, the Company shall estimate as accurately as practicable the data required by the Company to perform its

obligations under this Service Agreement. The data provided by such devices or estimated by the Company shall be used for all purposes for which such data are required under this Service Agreement; provided, however, that the Company shall, at the request of the City, provide the City with such data and shall permit the City, at the City's expense, to take measurements regarding the amount of Influent received at the Facility, Effluent and Biosolids in order to confirm the data of the Company and, provided further, that the Company acknowledges that the data provided by the Company are subject to dispute resolution pursuant to Article XIV and Exhibit 6.

3.6 Laboratory Testing

The Company shall perform all laboratory sampling, testing, analyses, quality control and quality assurance required by any applicable Permits and as the Company determines is necessary in order to perform its obligations under this Service Agreement. The data provided by such laboratory testing shall be used for all purposes for which such data are required under this Service Agreement; provided however, that the Company shall, at the request of the City, provide the City with such data and shall permit the City, at the City's expense, to perform laboratory testing in order to confirm the data of the Company; and, provided further that the Company acknowledges that the data provided by the Company is subject to dispute resolution pursuant to Article XIV and Exhibit 6.

The Company shall from time to time (but no less often than required by Applicable Law) take representative samples of Influent received at the Facility, Effluent and Biosolids for laboratory testing in order to determine whether Non-Specification Influent has been received at the Facility and the chemical components of such Influent.

3.7 Biosolids Dewatering and Disposal

The Company shall dewater and dispose of Biosolids. The City and the Company shall reasonably cooperate to determine ways to reduce or maintain the cost of Biosolids management and disposal.

3.8 Repair and Replacement, Capital Items

3.8.1 Maintenance, Repair and Replacement

(a) The Company shall institute, and maintain in force for the duration of the Service Agreement, a sound asset management program designed to ensure that the City's facilities, processes and associated equipment (the "System") are maintained and replaced as needed to assure that (i) a safe work environment is maintained, (ii) structural defects in buildings and structures are repaired in a

timely manner, and (iii) the System is determined, through third party inspection, to be fully functional with critical electrical and mechanical components having an aggregate average remaining condition-based useful lives in excess of 5 (five) years at the end of the Service Agreement Term. Expenditures necessary to achieve this standard shall be handled as set forth in subsection (c) and (d), below.

(b) Preventative and Predictive Maintenance Costs: The Company shall bear all costs of performing Preventative and Predictive Maintenance of the Managed Assets.

(c) Repair and Replacement Costs: Corrective Maintenance, Repair and Replacements of the Managed Assets less than or equal to \$250,000 per event shall be the responsibility of the Company. Such per event threshold shall be escalated annually in accordance with the methodology set forth in Sections 5.4.2 (b) and Section 5.5. However, the per event threshold shall be adjusted in increments of \$25,000 once the cumulative effect of such annual escalations is equal or greater than the respective increment (e.g., \$275,000, \$300,000). The costs of such expenditure shall be based on the cost of materials and outside labor (if specialty skills are required which are beyond the ability of on-site Company labor), and excludes Company labor costs for staff regularly located at the project and costs for Company equipment cost for equipment regularly available at the Project, but includes overtime expenses or specialty equipment needed for any Corrective Maintenance or Repair and Replacement of the Managed Assets. Directly related pieces of a Managed Asset (i.e. pump and associated motor) required to make a Managed Asset or system operable shall be aggregated to constitute a single event. Notwithstanding the forgoing, the following Corrective Maintenance, Repair and Replacements shall be funded by the Major Maintenance Account (or as a Capital Item at the City's discretion) in their entirety: (i) Corrective Maintenance and Repair and Replacements of structures and underground assets such as, but not limited to, roofs, roadways, walls, tanks, force mains, underground piping, utility poles, tertiary pond dredging/disposal and re-lining regardless of costs.

(d) Major Maintenance Account: Corrective Maintenance and Repair and Replacement of the Managed Assets, that are not otherwise the responsibility of Company, as set forth above in Subsection (c) shall be funded in their entirety by the Major Maintenance Account or as a Capital Item, at City's discretion. The Major Maintenance Account amount shall be established by mutual agreement by the parties for each Contract Year and paid to Company in 1/12th installments and reconciled at the end of each Contract Year against actual expenditures. The City, in its sole discretion, shall request a refund of any unspent funds or roll any

unspent funds into the next Contract Year amount during the annual reconciliation. The Company shall not undertake any Corrective Maintenance, Repair and Replacement which is to be funded by the Major Maintenance Account without prior authorization from the City. Costs billed against the Major Maintenance Account shall be billed at Company's Discounted Rate. The Company will provide an itemized Monthly report of all Major Maintenance Account expenditures to date during a contract year and notify the City in writing when eighty-five percent (85%) of the established annual amount has been expended.

3.8.2 Capital Items

The parties acknowledge that it may be necessary or desirable from time to time during the term of this Service Agreement to modify, alter or improve the Managed Assets in their then-current condition at the request of the City due to growth, expansion or otherwise, or as a result of a City or Company Uncontrollable Circumstance. Such additional Capital Items shall be the general responsibility of the City. However, the Company shall be responsible for identifying any such Capital Items reasonably necessary for continuing compliance with Law or for maintaining the overall operations and efficiency of the Managed Assets.

(a) Capital Items at City Request. In the sole discretion of the City, the Company shall make any Capital Item requested by the City, not otherwise required by this Service Agreement, including an Expansion, if such Capital Item does not adversely affect the ability of the Company to perform its obligations under this Service Agreement and the City (i) agrees to pay the Company as set forth in the proposal to the City under Section (c), below, (ii) consents to the amendment of this Service Agreement or waives or modifies any obligations of the Company that it cannot perform because of such Capital Item, (iii) adjusts the Service Fee by the amount of any reasonable increases or decreases in the operation and maintenance expenses incurred by the Company because of such Capital Item, and (iv) pays any penalties or other similar charges that are payable because of the effect of such Capital Item on the Company's performance of obligations under this Service Agreement.

(b) Capital Items due to City or Company Uncontrollable Circumstances. In the sole discretion of the City, the Company shall make or cause to be made any Capital Item required as a result of a City or Company Uncontrollable Circumstance or to repair or replace any damaged or destroyed portion of the Managed Assets necessary for the Company to perform its obligations under this Service Agreement. Costs for Capital Items due to a City or Company Uncontrollable Circumstance shall be made in accordance with the Company's Discounted Rate for the repair, replacement or restoration of, or addition to, any portion of the Managed Assets necessitated by such

event. Notwithstanding the forgoing, nothing in this Section 3.8.2 (a) or (b) shall relieve the City of its obligation to make or cause to be made all Capital Items necessary for the Company to perform its obligations under this Service Agreement, unless such Capital Item is due to Company Fault.

(c) Procedure for Implementing Capital Items.

Company shall present to the City in writing (a) a statement of work with sufficient detail to enable a third party to evaluate the cost thereof; (b) a firm price quotation for design and construction, (c) an estimated completion schedule; (d) a schedule of payments (and termination payments when applicable); and (e) the effect, if any, of such Capital Item on the Company's obligations hereunder, including any adjustment to the Service Fee necessitated as a result of the Capital Item. Final agreed upon terms for the implementation of a Capital Item shall be memorialized in a CAM.

The City may, in its discretion, request that the Company obtain a price quotation by obtaining bids from at least three (3) qualified bidders and that it follow the procurement procedures provided to the Company in writing by the City; provided, however, that the Company shall not be required to follow such procedures to the extent that a City or Company Uncontrollable Circumstance requires the Company immediately to make changes to the Managed Assets which in the reasonable judgment of the Company and the City render such City procurement procedures impracticable within the time required for such changes to the Managed Assets to be made.

Capital Item proposals shall be deemed to have been accepted if the City, within sixty (60) days of receipt of the Company's proposal, has not provided the Company with written notice that it does not accept the proposal. Any disputes shall be resolved in accordance with Article XIV and Exhibit 6. The City reserves the right to award the project to an entity, other than the Company, or a Company Affiliate. The City shall reimburse the Company for the Company's reasonable cost of preparation of plans and specifications at the Company's Discounted Rate provided the City has given its prior approval to the cost of such preparation of plans and specifications. When requested to do so by the City, the Company shall provide to the City without remuneration, initial rough estimates of the cost of any Expansion.

3.8.3 The City shall have title to all Capital Items made to the Managed Assets.

3.8.4 Except as provided in Section 3.8.2 all Capital Items shall be performed by an Affiliate of Company on Company's behalf.

3.9 Value Added Projects

- 3.9.1 The City may engage Company at its discretion, to pursue specific value-added projects that offer economic and other benefits through the execution of a CAM. The City may require performance guarantees by the Company that assure that the payments made by the City for project costs are fully recovered (at a minimum) by the monetary benefits.
 - 3.9.2 The Company (through its Affiliate) shall be responsible for the design, construction, operation and maintenance of any value-added projects authorized by the City at the Company's Discounted Rate.
 - 3.9.3 In connection with the annual accounting of the Service Fee provided in Article V, the Company shall, by its chief financial officer or their designee, report on the financial performance of each completed project on an annual basis.
 - 3.9.4 All Value Added projects shall be agreed upon by the parties in writing and memorialized by a CAM as to scope, schedule, compensation, performance guarantees, termination payments (where applicable), and form of security required by the City, and any Value Added Project Savings or other impact to be reflected in the Service Fee.
- 3.10 Renewable Energy and Biosolids Facility
- 3.10.1 The Company shall assume full operational, maintenance and performance responsibility for the REBF upon initiation of this Service Agreement. The Parties intend that by the 5th Contract Year, the process for the processing, management and disposal of Biosolids will be revisited and the price guarantees related to the REBF biosolids drying will be revised to reflect on the approach decided on by the City at such time.
- 3.11 Company Investments
- 3.11.1 The Company shall complete an initial condition assessment report on major assets in the first year of this Service Agreement, and every three years thereafter (or other mutually agreed schedule) to develop capital investment needs over the term of the Service Agreement. The condition assessment report shall identify likely asset management investment needs over the ensuing three (3) years at a minimum.
 - 3.11.2 The Company shall conduct Technical Audit and Project Development studies to identify process improvements and additions that offer economic value and further the City's social and environmental goals, including achievement of net-zero energy performance. Each study shall include a conceptual engineering design for each improvement or addition considered. Each proposed project shall

include a schedule of life-cycle costs (capital and O&M), savings and revenues over the term of the agreement for each process improvement or addition considered in the analysis. The initial study shall be completed in year 1 of the Service Agreement and subsequent studies conducted every three years thereafter or other mutually agreed schedule.

3.11.3 The Company shall provide the Initial Capital Investments, set forth in Exhibit 3, at its expense. Additionally, the Company shall make the ongoing investments set forth in Exhibits 8 and 9 at its expense.

3.11.4 Company shall conduct, at its cost, an REBF Energy Study with the PJM grid and Delmarva Power (the “PJM Interconnect Study”) to examine improvements to the power side of the REBF to provide additional reliability and redundancy.

3.11.5 SCADA and CSO System Improvements:

The Company shall be responsible for the integrated operation of the wastewater plant and the Combined Sewer Overflow (CSO) mitigation systems. In this regard, the Company shall make investments in the SCADA and CSO Systems in accordance with Exhibit 8. The Company shall also develop and deploy modeling and integration tools, as more specifically described in Exhibit 3, to optimize the operation of the combined wastewater plant and CSO mitigation systems to achieve improvements in CSO capture efficiencies.

3.11.6 Annual Innovation Workshop:

The Company shall coordinate, staff and fund an annual innovation workshop aimed at continuous improvement towards the City’s short and long-term goals for the City system. The Company team shall include its Executive Sponsor, project leadership team and Company’s subject matter experts.

Except as otherwise provided in Article III all professional services contemplated by Article III shall be performed by Company’s Affiliate.

ARTICLE IV – CITY RESPONSIBILITIES

4.1 Transport of Sewage

The City shall provide the Collection System within the Service Area to collect, transport, and deliver to the Facility all Specification Influent originating in the Service Area. After the Effective Date, the City shall not divide or dispose of Specification Influent originating in the Service Area using any other method or facility other than the Facility so long as the Facility has the capacity under applicable Permits to process all such Specification Influent.

4.2 Maintenance of Collection System

The City shall at its expense maintain and repair in good working order the Collection System. The City shall maintain in effect, and amend as necessary from time to time, the requirements, rules, regulations and ordinances which currently exist in regard to the Collection System and which are applicable to the use of sewers, the construction of house laterals, the installation and maintenance of sewer connections and the control of infiltration and inflow in order to permit the City to meet its obligations under this Service Agreement and Applicable Law.

4.3 Sewer Use Ordinance and User Charge System

The City agrees to maintain and enforce a User Charge System and Sewer User Ordinance in accordance with Chapter 11 of the City Code and Title 40 of the CFR or any applicable successor regulations and Applicable Law and prudent industry practice. The revenues (and any reserve funds available) from said charges and the income from other sources available to the City in any year and appropriated by the City for such year for the purposes set forth below including, but not limited to, impact fees, connection charges, ancillary sewer charges and sewer assessments, shall at all times be at least sufficient to pay the payments required to be paid by the City to the Company under this Service Agreement and all reasonable expenses to adequately fund the Major Maintenance Account and Capital Items reasonably necessary to ensure the Managed Assets operate in accordance with Applicable Law and operate and maintain the Collection System.

4.4 Enforcement of MIPP

The City shall administer and enforce the MIPP in accordance with all prudent industry practice and Applicable Law, and as more fully described in Article VIII and Article IX.

4.5 LTCP Compliance

Unless modified by mutual agreement, the City shall retain responsibility for compliance with its Long-Term Control Plan for CSO mitigation in accordance with prudent industry practice. The Company and City shall mutually develop, agree to establish and execute an integrated approach to wastewater plant and CSO operations to maximize flow to the plant during wet weather.

4.6 Funding of Repair and Replacement Costs

The Major Maintenance Account, funds needed for Corrective Maintenance and Repairs and Replacements in excess of the Major Maintenance Account and Capital Items shall be funded by the City, as reasonably requested by the Company in order to maintain compliance with Applicable Law and to achieve the Company's end of term obligations as set forth in Section 3.8.1. The determination of needs shall be based on periodic condition assessment studies conducted by the Company and reviewed and approved by the City. Funding of such projects shall be either through the use of the Major Maintenance Account or through Capital Borrowings by the City. The City agrees to respond to all requests requiring its approval under the terms of this Service Agreement in a timely manner.

4.7 PJM Interconnect Study Capital Projects

The City shall fund the implementation of capital projects identified by the PJM Interconnect Study. If such projects are not performed by Company as a Capital Item, City shall ensure such improvements are completed and operational by the commencement of the third Contract Year.

4.8 Funding of Economically Justifiable Projects

The City shall be responsible for all investment costs in projects that are outcomes of the Technical Audit and Project Development Studies that it chooses to pursue, except to the extent necessary to comply with Applicable Law, in which case the City shall agree to fund in accordance with the terms of Article III.

4.9 Existing Condition of Facility, Inventory and Equipment

The City shall be responsible for ensuring the remedial items related to the condition of the facility are remediated by its outgoing contractor and providing Company with all inventory, spare parts, office equipment and heavy equipment in its outgoing contractor's possession which will become (or are) property of the City at the end of the outgoing contractor's term.

4.10 The City shall maintain Tetra Tech CSOFT agreements and licenses until successor systems are functional.

ARTICLE V – ANNUAL SERVICE FEE

5.1 Service Fee

From and after the Commencement Date, the City shall pay the Service Fee to the Company for the Company's provision of services under this Service Agreement. The Service Fee shall be calculated according to this Article V. Examples of the calculation of the Service Fee are included in Exhibit 4.

5.2 Annual Service Fee Estimate

On or before December 31 of each Fiscal Year, the Company shall determine and provide to the City an estimate of the Service Fee for the following Fiscal Year according to the provisions of this Service Agreement. The estimated Service Fee shall be based on the available information regarding the Facility Flow for the twelve (12) month period immediately preceding the calculation of the estimated Service Fee. The Company may amend its estimate at any time before March 1 of such Fiscal Year by a statement delivered to the City. Except with respect to adjustments to the Extraordinary Items Component of the Service Fee, the estimates made in accordance with this Section 5.2 will be the basis of all payments required to be made by the City under Section 5.3 during such Fiscal Year until the annual accounting provided in Section 5.3.

5.3 Monthly Payment; Annual Accounting; Prepayment

5.3.1 During each Fiscal Year the Company shall render an invoice to the City by the first (1st) of the month prior to the month of services being rendered for (a) one-twelfth (1/12) of the Service Fee for such Fiscal Year plus (b) any adjustments to the estimated Service Fee resulting from adjustments to the Extraordinary Items Component applicable to the month immediately preceding the month in which such invoice is rendered plus (c) any amounts in addition to (a) and (b) above payable by the City to the Company and not previously billed.

5.3.2 The Service Fee shall be due and paid within thirty (30) days of invoice date, and paid in the amount billed in each such invoice notwithstanding any circumstance, happening or event whatsoever, except to the extent otherwise provided in the provision in Section 19.17.2.

5.3.3 The Company shall provide to the City within forty-five (45) days after the end of each Fiscal Year an annual statement, which shall show for such Fiscal Year the computation of all amounts owed or payable to the Company by the City under this Service Agreement, all amounts owed or payable to the City by the Company under this Service Agreement, all amounts paid by the City to the Company under this Service Agreement and all amounts paid by the Company to the City under

this Service Agreement for such Fiscal Year, including corrections and reconciliations to actual values of all estimated amounts. If the annual statement reflects any balance owed by either the City or the Company to the other, such amount shall be paid within thirty (30) days after the delivery of such annual statement to the City.

5.4 Calculation of Service Fee

The annual total Service Fee shall be calculated in accordance with the following formula:

$$SF = BF + AMF + SDF + PW + SWU + EC + MMA + EIC$$

where,

SF	=	Service Fee
BF	=	Base Fee
AMF	=	Asset Management Fee
SDF	=	Sludge Disposal Fee
PW	=	Potable Water Component
SWU	=	Stormwater User Component
EC	=	Electricity Component
MMA	=	Major Maintenance Account
EIC	=	Extraordinary Items Component

Each component of the Service Fee shall be determined in accordance with this Article. All adjustments contemplated by this section shall be memorialized in a CAM.

5.4.1 Base Fee

- (a) For the first contract year, the Base Fee shall be \$13,804,578.
- (b) Annual Adjustment of Base Fee.

The Base Fee for each subsequent Contract Year shall be determined by multiplying (1) the Base Fee for the current Contract Year and (2) the Base Fee Adjustment Factor.

$$\text{Base Fee Adjustment Factor} = (1 + [((\text{CPI-WS}) .40 + (\text{ECI}) .50 + (\text{CPI-U}) 0.10)])$$

CPI-WS = The twelve-month percent change (from November of the prior year to November of the current year) in the Water and sewerage maintenance in U.S. city average, all urban consumers, not seasonally adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR0000SEHG01.

ECI = The twelve-month percent change (from the Third quarter of the prior year to the Third quarter in the current year) in the Employment Cost Index for Total Compensation for Civilian Workers, Not Seasonally Adjusted as published by U. S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID: CIU1010000000000A.

CPI-U = The twelve-month percent change (from November of the prior year to November of the current year) in the All Items in U.S. city average, all urban consumers, not seasonally adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR0000SA0

5.4.2 Asset Management Fee

- (a) The Asset Management Fee shall be \$1,548,780 for the first Contract Year.
- (b) Annual Adjustment of Asset Management Fee.

The Asset Management Fee in subsequent Contract Years shall be determined by multiplying (1) Asset Management Fee for the current Contract Year and (2) the Water- Sewer Adjustment Factor.

$$\text{Water Sewer Adjustment Factor} = (1 + [(CPI-WS)])$$

5.4.3 Sludge Disposal Fee

- (a) For the first Contract Year, the Sludge Disposal Fee shall be \$1,316,525. The Sludge Disposal Fee is based on a baseline sludge of 11,046 dry tons per year. Sludge disposal for sludge quantities in excess of the baseline amount shall be paid for through the Extraordinary Item Component of the Service Fee.
- (b) Annual Adjustment of Sludge Disposal Fee.

The Sludge Disposal Fee for the 2nd through 5th Contract Year (unless otherwise agreed to by the Parties) shall be determined by multiplying (1) the Sludge Disposal Fee for the current Contract Year and (2) the Water Sewer Fee Adjustment Factor.

$$\text{Water Sewer Adjustment Factor} = (1 + [(CPI-WS)])$$

After the 5th Contract Year, the Sludge Disposal Fee shall be negotiated and agreed upon by the Parties.

5.4.4 Potable Water Component

The Company shall pay directly for all potable water costs incurred in operation of the Managed Assets and shall be reimbursed for such costs in accordance with this Section 5.4.4.

(a) The Potable Water Component for the first Contract Year shall be \$481,305, which reflects the anticipated Potable Water fees which are to be incurred in the first Contract Year.

(b) For subsequent Contract Years, the Potable Water Component shall be established at the start of each Contract Year based on current year's actual use and subsequent year's projected use and taking into account any known rate increase.

(c) Annual Reconciliation of Potable Water Component.

At the end of each Contract Year, the Company's actual costs for potable water shall be reconciled with the Potable Water Component, in accordance with Section 5.3.3. The City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.

5.4.5 Stormwater User Fee Component

The Company shall pay directly for all stormwater user fees incurred in operation of the Managed Assets and shall be reimbursed for such costs in accordance with this Section 5.4.5.

(a) The Stormwater User Fee Component for the first Contract Year shall be \$162,641, which is the anticipated amount of stormwater user fees to be incurred in the first Contract Year.

(b) For subsequent Contract Years, the Stormwater User Fee Component shall be established at the start of each Contract Year based on current year's actual use and subsequent year's projected use and taking into account any known rate increase.

(c) Annual Reconciliation of Stormwater User Fee Component. At the end of each Contract Year, the Company's actual costs for stormwater user fees shall be reconciled with the Stormwater User Fee Component, in accordance with Section 5.3.3. The City shall issue payment to the Company for expenditures in excess of

the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.

5.4.6 Electricity Component

The Company shall pay directly for all electricity charges incurred in the operation of the Managed Assets. The estimated total Electricity Component fee for the first contract year is \$648,219 based on the projected costs listed in the Electricity Component calculation below.

5.4.6.1 Electricity Component Calculation

$$\text{Electricity Component} = \text{PS} + \text{DC} + \text{WVEC}$$

Where,

PS = The projected electricity usage cost for the Main Pump Stations for the Contract Year

DC = The projected costs for Demand Charges for all Managed Assets

WVEC = The projected cost for the Guaranteed Maximum Net Usage at the WWTP

$$\text{WVEC} = \text{GMU} \times \text{RU}$$

GMU = Guaranteed Maximum Net Usage at the WWTP (kW-hr)

RU = Base Electrical Usage Rate for the Contract Year (\$/kW-hr)

GMU will be fixed at 5,000,000 kW-hr/yr. for the first three Contract Years. Company intends to operate the cogeneration system to the best of its ability to produce electricity, until such time as mutually agreed upon with the City and Company that the units should be taken out of service. In Contract Years 2 through 3, where Company exceeds the GMU, Company will provide a payment to the City due to reduced gas usage equal to the GMU exceedance at a unit rate of \$0.02/kW-hr.

The GMU after Contract Year Three will be renegotiated based on the progress on the improvements recommended by PJM Interconnected Study.

GMU is based on a 250 kW minimum import and purchase requirement per Contract Year from the electrical grid. Any increase in the required minimum import and purchase shall be a Company Uncontrollable Circumstance.

Adjustments in the GMU will be negotiated between the Company and City in any year the cogeneration engines in the REBF undergo major regularly scheduled maintenance that requires significant downtime.

For the first Contract Year, RU is \$0.061/kW-hr. Subsequent years RU shall be based on the City's projections.

5.4.6.2 Annual Reconciliation of Electricity Component.

At the end of each Contract Year, the electricity costs shall be reconciled as follows:

(a) The actual Main Pump Station electricity use charges will be reconciled against the projected charges (PS). The City shall issue payment to the Company for costs in excess of the amount invoiced to the City or the Company will issue a credit to the City for invoiced amounts in excess of actual expenditures.

(b) The actual Demand Charges for the Managed Assets will be reconciled against the projected charges (DC). The City shall issue payment to the Company for costs in excess of the amount invoiced to the City or the Company will issue a credit to the City for invoiced amounts in excess of actual expenditures.

(c) The impacts of changes to the actual RU cost will be reconciled with the projected RU costs. Any resulting changes in the actual WWEC will be reconciled against the projected WWEC charges. The City shall issue payment to the Company for costs in excess of the amount invoiced to the City or the Company will issue a credit to the City for invoiced amounts in excess of actual expenditures.

(d) If the Company incurs costs for electricity use in excess of the GMU during a Contract Year, the current year RU will apply, and the Company will pay the actual charges.

(e) For any exceedance of the GMU in Contract Year(s) 2 and/or 3, the Company will provide a credit to the City for unused gas based on \$0.02/kW-hr above the GMU. If the minimum landfill gas purchase under the CIRE contract is not satisfied during the contract year, the credit to the City will be reduced based on the unused minimum purchase of landfill gas.

5.4.7 Major Maintenance Account.

The City shall fund the Major Maintenance Account annually to provide sufficient funding for expenditures which are the financial responsibility of the City as set forth in Section 3.8.

- (a) For the first Contract Year, the Major Maintenance Account amount shall be \$2,000,000.
- (b) Expenditures shall be billed against the Major Maintenance Account at Company's Discounted Rate and shall require the City's prior approval.
- (c) The Major Maintenance Account amount will be adjusted annually through mutual agreement based on Company's projection of City's infrastructure needs.
- (d) Annual Reconciliation of Major Maintenance Account.

Expenditures against the Major Maintenance Account shall be reconciled annually, and any unused amount can be either reimbursed to the City or rolled over to the subsequent Contract Year's amount, at the City's discretion.

- (e) The Major Maintenance Account shall not be a limitation of the City's obligations regarding Repair and Replacement and Corrective Maintenance. Repairs and Replacements or Corrective Maintenance expenditures in excess of the Major Maintenance Account shall be billed in the month following the expenditure, as an Extraordinary Item.

5.4.8. Extraordinary Item Component

The Extraordinary Items Component ("EIC") of the monthly Service Fee, which may be a charge or a credit, shall be equal to the sum of:

(1) the amounts payable by the City for increased operation, maintenance or other costs incurred on account of the occurrence of Company Uncontrollable Circumstances chargeable to the City hereunder, net of any operation and maintenance cost savings achieved by the Company during or as a result of a Company Uncontrollable Circumstance; plus

(2) All Repair and Replacement or Corrective Maintenance expenditures incurred on account of a Company Uncontrollable Circumstance, including any expenditures in excess of the Major Maintenance Account, as set forth in Section 5.4.7(e). The provisions of Exhibit 1 Section 2.1 regarding the Company's obligation for a \$250,000 (or such amounts as escalated annually) per event contribution to asset management costs shall not be operative; plus or minus

(3) any noncompliance charges or other Service Fee offsets due from the Company or payment due to Company; plus

(4) Cost for conditioning and disposal of a Class B biosolids product for dry sludge in excess of the amount set forth in Section 5.4.3; plus or minus

(5) any other increase or reduction in the monthly Service Fee provided for under any other Article of this Service Agreement including changes to the Facility implemented by the City using third-party contractors and Value-Added projects.

In the event of a City or Company Uncontrollable Circumstance that requires immediate response or immediate changes to the Managed Assets which otherwise constitute a Capital Item, the City may, on a temporary basis, direct the Company to proceed and promptly reimburse the Company for work undertaken at the Company's Discounted Rate while the procedures required under Section 3.8.2(c) are followed by the City and Company.

5.5. Annual Adjustment Limits on Escalation

The annual adjustment factors (Base Fee Adjustment Factor and Water Sewer Adjustment Factor) of the Service Fee elements set forth in Section 5.4.1, 5.4.2 and 5.4.3 shall be a minimum increase of 1.25%, and a maximum increase of 3.75%. However, if in any two consecutive Contract Years the actual adjustment calculated by the adjustment formulas set forth in Section 5.4.1, 5.4.2 and 5.4.3 is equal to or greater than 6%, the parties shall negotiate an adjustment to the Service Fee, the adjustment factors, or other remedy, to address the inflationary conditions. Any increases to the Service Fee under this Section 5.5 as a result of inflationary conditions equal to or greater than 6% shall be subject to cost substantiation. If the parties are unable to agree on an appropriate remedy, the issue shall be resolved in accordance with the dispute resolution provisions set forth in Article XIV and Exhibit 6.

5.6 Adjustments due to Facility Flow and Loads in Excess of Base Flow and Loads.

In the event Facility Flow and Loads are less than 90% or more than 110% of the Base Flow and Load in any Contract Year, the Company or City shall be entitled to an adjustment in the Service Fee for cost substantiated increases or decreases in costs associated with the Base Fee, the Asset Management Fee, and/or the Electricity Component. Such costs shall be reflected in the annual reconciliation.

5.7 Cost Substantiation.

The Company shall provide cost substantiation for such costs for which the City is financially responsible under this Section 5. The cost substantiation provided by the

Company shall include copies of such documentation as shall be necessary to reasonably demonstrate that the cost has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the City and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work, (1) the amount and character of materials, equipment, chemicals, laboratory supplies, and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery, transportation, and sales tax costs; (2) equipment used and any rental payable therefor; (3) any additional expense for water, electric, telephone, power, or other expense; and (4) additional Company employee hours, duties, and raw wages.

5.8 Interest

Except for payment of services rendered in the first month of each Contract Year, Company shall be entitled to interest on all amounts not paid by the City if the City fails to pay within thirty (30) days after the due date hereunder, at an interest rate equal to the Prime Rate, calculated based on the number of days such amounts remain unpaid after thirty (30) days after the due date thereof. Payment of services rendered in the first month of each Contract Year shall be entitled to a 15-day grace period.

5.9 Estimates and Unavailability of Data.

If the final value of the indices set forth in this Article V are not available for the applicable period when required hereunder, the amount of the adjustment to be made shall be estimated by using the preliminary value of the index for the applicable period or the final value of the index for the latest available period. Calculations and payments based on such estimate shall be adjusted as soon as reasonably practicable after the final value of the index for the applicable period is published. If an index is no longer published at the time that adjustment is to be calculated, or if the base or method of calculation used for an index is altered, the calculation shall be made using a comparable similar index or method reasonably satisfactory to the Company and the City. In the event that the parties are unable to reach agreement on a comparable similar index, or method of calculation, the comparable similar index or method of calculation shall be decided using the dispute resolution procedure set forth in Article XIV and Exhibit 6.

ARTICLE VI – CONDITIONS

6.1 The Company's obligations under this Service Agreement (except for the obligations contained in this Article VI) are subject to the satisfaction of the following conditions precedent (unless as otherwise set forth in this Article VI or otherwise waived in writing by the Company):

- 6.1.1 The City shall have delivered to the Company a certificate executed by a duly authorized agent or representative of the City, dated the Commencement Date, to the effect that each of the representations of the City set forth in Section 18.2 are true and correct as if made on such date.
- 6.1.2 Except as disclosed in writing to the Company by the City prior to the Effective Date, there shall be no actions, suits or proceedings pending against the City that would affect in any material respect (A) the validity, binding effect, or enforceability of (or seek to enjoin or assess penalties regarding) this Service Agreement, or any of the permits necessary to operate the Facility or the MIPP or the obligations of the City under the MIPP and any ordinances and/or resolutions related thereto; or (B) the operation of the Managed Assets by the Company; or (C) the condition of the Site, and there shall be no outstanding materially adverse judgement or administrative decision regarding the forgoing.
- 6.1.3 The City shall provide reasonable assistance to the Company in securing a commercial agreement substantially similar to that in place as that between the City and Cherry Island Renewable Energy, LLC (CIRE). In the event that the Company and CIRE are unable to reach agreement, the landfill gas will be provided by the City through the City's existing agreement, which will be managed by the Company.
- 6.1.4 The Multijurisdictional Agreement shall be in full force and effect.
- 6.1.5 There shall have been no Change in Law which, in the reasonable judgment of the Company, materially adversely affects the ability of the Company, or the City, to perform their respective obligations pursuant to or as contemplated by this Service Agreement, the MIPP or any of the Permits with respect to the Facility.
- 6.1.6 The City shall have the full right, power, and authority to execute and deliver this Service Agreement and shall have evidenced the same to the Company, in form and substance reasonably satisfactory to the Company.
- 6.1.7 The Company shall have been notified by the City that the City's former service provider or providers has or have been removed as a permittee to the permits or approvals necessary to operate the Managed Assets if such service provider or providers was or were previously listed as a permittee.
- 6.1.8 There has been no material adverse change in the Managed Assets or the Site from the Effective Date until the Commencement Date, except with respect to the condition of the thermal dryer, which upon the Commencement Date shall be in operable condition. In the event that this condition is not satisfied on the Commencement Date, Company agrees to treat such condition as a Company Uncontrollable Circumstance.

- 6.1.9 As of the Commencement Date, the portion of the Managed Assets constituting the REBF will be available for Company to fulfil its obligations under this Service Agreement. In the event that the portion of the Managed Assets constituting the REBF are unavailable, the Parties obligations will be carried out as set forth in Exhibit 15.
- 6.1.10 The City shall verify that the CHP Sludge Heating Exchangers and flow meters have been installed to the City specifications and standards and are functioning in the manner expected and that all certificates of occupancy or other material permits, licenses and approvals necessary for the use and operation of the Facility have been issued or obtained and are in full force and effect.
- 6.2 The City's obligations under this Service Agreement (except for the obligations in this Article VI) are subject to the complete satisfaction of the following conditions precedent (unless otherwise waived in writing by the City):
- 6.2.1 The Company shall have delivered to the City a certificate executed by a duly authorized officer, employee or agent of the Company, dated the Commencement Date, to the effect that each of the representations of the Company set forth in Section 18.1 are true and correct as if made on such date.
- 6.2.2 Except as disclosed in writing to the City by the Company prior to the Effective Date, there shall be no actions, suits or proceedings pending which question in any material respect the (A) validity, binding effect, or enforceability (or seek to enjoin or assess penalties) relating to any of the rights or obligations of the parties under this Service Agreement, (B) the operation of the Managed Assets by the Company; or (C) the condition of the Site to which the Company has been named a party, and there shall be no outstanding materially adverse judgment or administrative decision as to any of the foregoing.
- 6.2.3 There shall have been no Change in Law which, in the reasonable judgment of the City, materially adversely affects the ability of the City, or the Company, to perform their respective obligations pursuant to or as contemplated by this Service Agreement, the MIPP or any of the Permits with respect to the Facility.
- 6.2.4 The Company shall have delivered the Performance Bond referenced in Section 16.1, and the Guaranty referenced in Section 17.1.
- 6.2.5 The City shall have received an opinion of counsel selected by the Company and approved by the City, in form and substance satisfactory to the City, to the effect that:
- (a) The Service Agreement has been duly authorized, executed, and delivered by the Company and constitutes a legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as the enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting creditors' rights generally and by equitable principles of general application);

- (b) Except as otherwise disclosed in writing to the City prior to the Effective Date, neither the execution or delivery by the Company of the Service Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or thereby, or the fulfillment by the Company of the terms or conditions hereof or thereof (i) conflicts with, violates, or results in a breach of any constitution, charter, law, or governmental regulation applicable to the Company, or (ii) conflicts with, violates, or results in a breach of any term or condition of any order, judgment, or decree, or any agreement or instrument, to which the Company is a party, or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder; and
- (c) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery of this Service Agreement by the Company, except as such as have been duly obtained or made.

6.3 Failure to Satisfy Conditions Precedent.

6.3.1 Except as otherwise set forth in this Article VI, the Service Agreement shall become null and void without any liability on the part of either party, except with respect to any party that intentionally or willfully breaches its obligations hereunder, if the conditions precedent set forth in Sections 6.1 and 6.2 are not satisfied or waived within twelve (12) months of the Effective Date; provided, however, either party may extend such period for an additional six (6) months if their respective conditions precedent are not satisfied prior to the expiration of such 12 month period and this Service Agreement is still in effect.

ARTICLE VII – PERFORMANCE INCENTIVES

As Value-Add Projects are identified, the Parties shall mutually agree upon performance incentives for the contemplated improvements and approaches for shared savings.

ARTICLE VIII – MUNICIPAL INDUSTRIAL PRETREATMENT PROGRAM

8.1 The Municipal Industrial Pretreatment Program

The City shall continue to maintain, administer, and enforce a MIPP for the Service Area that complies with Applicable Law, including but not limited to the requirements contained in Chapter 11 of the City Code and in 40 CFR Part 403 or any other Federal, State, or local requirements needed to maintain the operational performance or permit compliance of the Managed Assets. The City shall promptly amend the MIPP to incorporate additional or changed requirements imposed under Applicable Law, and that, if so lawfully ordered by the DNREC, or any other Governmental Authority having jurisdiction, the City will amend the MIPP in order to comply with any requirements governing the content and implementation of an industrial pretreatment program.

8.2 Industrial Discharge Permits

The City shall continue to issue industrial discharge permits to each SIU as required by City Code Chapter 11, Article V and by all other Applicable Law.

8.3 Approval of Significant Industrial Users

8.3.1 Before the City approves a connection of any Person who may constitute a SIU to any sewer system that shall ultimately discharge into the Managed Assets, the City shall submit to the Company in writing all pertinent data in the City's possession concerning the proposed wastes from the potential SIU, such data to include estimates of flow and probable analysis. The Company shall reply in writing to the City within fifteen (15) days after receipt of the data indicating the Company's recommendation for approval of the proposed connection or its recommendation for disapproval with supporting reasons therefor. If the City does not concur with the Company's recommendation, it shall provide the following information: (i) the engineering reasons that a particular waste would neither violate the requirement of the MIPP nor result in Non-Specification Influent or whether the particular waste(s) would be acceptable if pretreatment facilities are constructed by the SIU.

8.3.2 The City shall not be bound by any findings or recommendations of the Company as to whether a person constitutes a SIU.

8.3.3 If the connection is approved by the City, the City shall provide the Company with an executed copy of any agreement, contract, permit of license developed as a result of this Section.

8.4 Monitoring of Significant Industrial Users

The Company shall monitor all SIUs in the City Owned Sewer Collection System through sampling and inspections in accordance with approved frequencies in order to obtain information, independent of information supplied by the SIUs, related to compliance with all terms and conditions of their discharge permits and the applicable sewer use ordinance. The Company shall be responsible for the costs of such monitoring and sampling as specified in this Section 8.4, as well as the cost of reports prepared based on this data. To the extent that the Company incurs costs for any consumables, operating expenses, Capital Items, sampling, monitoring or preparation of reports arising out of discharges in violation of the MIPP or any increase in the number of SIUs from the number existing on the Effective Date, the Company shall be reimbursed for said costs in accordance with Section 5.4.8 as an EIC for Operating Items. The Company shall provide the City a copy of the information obtained and any reports prepared pursuant to this Section 8.4 within forty-eight (48) hours after such information or reports are available.

8.5 Company Inspection of Collection System

The Company shall have the right at any time, and from time to time following notice to the City to observe, inspect, and sample any waste being discharged into the Collection System within the Service Area.

8.6 Pretreatment Limits Methodology

The Company shall review and participate in the development of any methodology the City plans to use to establish pretreatment limits, including, but not limited to, industrial waste surveys, sampling, identification of Hazardous Substances, identification of SIUs, allocation algorithms, reserve capacities, and default considerations. The City shall have the right to approve any such methodology and pretreatment limitations, and any modifications or revisions to the pretreatment limitations and any modifications or revisions thereto, notwithstanding any review or recommendations of the Company. Except as otherwise provided herein, costs of the program will be borne by the City and industrial users. No review by or comments of the Company shall relieve the City of any of its obligations under this Service Agreement or impose any liability on the Company.

8.7 Permits under MIPP

The City shall provide the Company with a copy of any Permits issued under the MIPP promptly after such Permits are issued.

8.8 Violations of MIPP or Permits

In the event the City fails to comply with limitations for Specification Influent with respect to Facility Flow, BOD or Suspended Solids, or any Person (including, without limitation, any Significant Industrial User) fails to comply with its permit requirements in accordance with the approved MIPP and the Company determines that a particular waste being discharged is in violation of the MIPP, then the Company shall notify the City of such noncompliance promptly after obtaining knowledge of it; provided, however, that any reasonable delay or immaterial failure of the Company to provide such notice to the City shall not relieve the City of any of its obligations under this Service Agreement or impose any liability on the Company. The City shall promptly prepare a compliance schedule and immediately initiate enforcement action in accordance with Article IX.

ARTICLE IX – MIPP ENFORCEMENT

9.1 Enforcement Response Plan

The City shall be responsible for enforcing the MIPP in accordance with CFR 403, City Code Chapter 11 Article 5, and the Enforcement Response Plan (“ERP”). In the event that the Public Works Commissioner, or any Designated Representative, has actual knowledge of the violation or noncompliance with the provisions of the MIPP by any Person, the City shall initiate an enforcement action against such Person to the extent of the City’s authority under the MIPP after the receipt of such knowledge within a reasonable period of time under the circumstances, in accordance with the ERP. The City shall report monthly to the Company regarding the progress of any active enforcement action and shall provide a written report regarding the results of such enforcement action within ten (10) days after the conclusion thereof. In the event that Non-Specification Influent is received at the Managed Assets which is suspected to be in violation of the MIPP, the City shall, within five (5) Business Days of the date that the Public Works Commissioner, or any Designated Representative, has obtained knowledge of the receipt of such Non-Specification Influent at the Managed Assets, commence an investigation to determine the identity of the source. The City shall report periodically to the Company regarding the progress of any such investigation and shall provide a written report regarding the results of such investigation action within ten (10) Business Days after the conclusion thereof. The scope and duration of any enforcement action and/or investigation action shall be determined by the City in its sole discretion.

9.2 Company Enforcement Cooperation

The Company shall cooperate fully with the City in connection with enforcing the MIPP, implementing the ERP and conducting any investigation action or enforcement action. The Company will provide applicable records and reports from its monitoring, sampling and reporting activities as described in Section 8.4 at no additional cost to the City. The Company shall provide other information and personnel as reasonably requested by the City, provided that any reasonable expenses of the Company in connection with such cooperation shall be paid to the Company by the City within thirty (30) days after receipt by the City of an invoice therefore from the Company.

9.3 Changes to the Enforcement Response Plan

The City shall promptly notify the Company of any material changes or revisions to the ERP.

ARTICLE X – BREACH

10.1 Breach

No party shall have the right to terminate its obligations under this Service Agreement for cause for any breach unless an Event of Default (as defined in Sections 10.2 and 10.3) on the part of the other party shall have occurred.

10.2 Company Events of Default

Each of the following shall constitute a Company Default with respect to the Company's obligations and duties to the City:

(a) The failure on the part of the Company to pay any amount required to be paid to the City under this Service Agreement within sixty (60) days after receipt by the Company of a statement therefor from the City;

(b) Except to the extent covered by items (i), (ii), or (iii), of this Section 10.2, the failure or refusal by the Company to fulfill any of its obligations to the City in accordance with this Service Agreement unless such failure or refusal shall be excused or justified by an Company Uncontrollable Circumstance; provided, however, that no such failure or refusal shall constitute an Event of Default unless and until:

(i) the City shall have given prior written notice to the Company stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exist, and

(ii) the Company shall have neither corrected such default nor initiated reasonable steps to correct the same, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within a reasonable period of time (which shall in any event be not more than forty-five (45) days from the date of the notice given pursuant to clause (i) of this Section 10.2(b)); provided, however, that if the Company shall have commenced to take reasonable steps to correct such default and diligently pursued such correction, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for as long as the Company is diligently continuing to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, and

(iii) in the event the Company disputes the occurrence of such default or defaults and has initiated dispute resolution pursuant to Article XIV and Exhibit 6 within a reasonable period of time (which shall in any event be not more than thirty-five (35) days from the date of the notice given pursuant to clauses (a) and (b) of this Section 10.2), a decision of the arbitrators has been rendered that a default or defaults by the Company exist and the Company shall have neither corrected such default nor initiated reasonable steps to correct the same, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within a reasonable period of time; provided, however, that if the Company shall have commenced to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for so long as the Company is continuing to take reasonable steps to correct such defaults, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring.

(c) The Guarantor shall have failed to maintain at least one of the following credit ratings for the Guarantor or the indebtedness of the Guarantor, as applicable: (i) "BBB" or better from Standard & Poor's Corporation or its successors ("Standard & Poor's"), (ii) "BBB" or better from Fitch Investors Services, L.P. or its successors ("Fitch"), or (iii) "Baa-2" or better from Moody's Investors Service or its successors ("Moody's"); provided, however, that if Standard & Poor's, Moody's or Fitch (collectively, the "Rating Agencies") changes its rating system (a "Replacement Rating System"), the credit ratings set forth above shall be replaced by the comparable credit rating under the Replacement Rating System;

(d) The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or of a major part of the Company's property, respectively, which order shall not have been discharged within one hundred twenty (120) days, or the issuance of a decree of such a court adjudicating the Company insolvent or sequestering a major part of the Company's property, respectively, which decree shall have continued undischarged and unstayed for one hundred twenty (120) days, or the filing against the Company of a petition to reorganize the Company pursuant to the Federal Bankruptcy Code or any similar statute

applicable to the Company which filing shall not be dismissed within one hundred twenty (120) days after such filing;

(e) The filing by the Company of a petition of involuntary bankruptcy under any provision of any bankruptcy law or the consenting of the Company to the filing of any bankruptcy or reorganization petition against the Company under any such law, or the filing by the Company of a petition to reorganize the Company pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company; or

10.3 City Events of Default

Each of the following shall constitute a City Default with respect to the City's obligations and duties to the Company:

(a) The failure on the part of the City to pay any amount required to be paid to the Company under this Service Agreement within sixty (60) days after receipt by the City of a statement therefor from the Company;

(b) Except to the extent covered by items (i), (ii), or (iii) of this Section 10.3, the failure or refusal by the City to fulfill any of its obligations to the Company in accordance with this Service Agreement, unless such failure or refusal shall be excused or justified by a City Uncontrollable Circumstance, provided however, that no such failure or refusal shall constitute an Event of Default unless and until:

(i) the Company shall have given prior written notice to the City stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exist, and

(ii) the City shall have neither corrected such default nor initiated reasonable steps to correct the same within a reasonable period of time (which shall in any event be not more than forty-five (45) days from the date of the notice given pursuant to clauses (a) and (b) of Section 10.3), provided however, that if the City shall have commenced to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take reasonable steps to correct such default, and

(iii) in the event the City disputes the occurrence of such default or defaults and has initiated dispute resolution pursuant to Article XIV and Exhibit 6 within a reasonable period of time (which shall in any event

be not more than thirty-five (35) days from the date of the notice given pursuant to clause (i) of this Section 10.3(b)), a decision of the arbitrators has been rendered that a default or defaults by the City exist and the City shall have neither corrected such default nor initiated reasonable steps to correct the same within a reasonable period of time; provided however, that if the City shall have commenced to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for so long as the City is continuing to take reasonable steps to correct such defaults, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring.

10.4 Termination on Default

If any party shall have a right of termination for cause in accordance with Section 10.1, the same may be exercised only by written notice of termination given to the party in default. Such notice shall describe in reasonable detail the Event of Default which is the basis for termination. The proper exercise of such right of termination shall be in addition to and not in substitution for such other remedies, whether damages or otherwise, as the party exercising the right of termination may have.

10.5 Survival of Certain Rights and Obligations

The rights and obligations of the parties under Article XI and Sections 12.1 and 12.2 shall survive any termination of this Service Agreement. No termination of this Service Agreement under Section 10.4 or otherwise hereunder shall limit or otherwise affect the respective rights and obligations of either party under this Service Agreement.

ARTICLE XI – TERMINATION

11.1 Termination by City for Breach

11.1.1 In the event the City terminates this Service Agreement pursuant to Section 10.1, the Company shall not be (a) entitled to any compensation subsequent to receiving notice of termination from the City or (b) required to continue to perform any services to the City under this Service Agreement subsequent to receiving notice of termination from the City, except as provided in Section 11.5.

11.1.2 Upon termination of this Service Agreement by the City pursuant to this Section 11.1, and simultaneously with the payment by the City to the Company pursuant to Section 11.1.3, the Company shall pay to the City any amount the Company owes the City pursuant to Section 12.1; and a onetime payment of three hundred thousand dollars (\$300,000); as escalated annually by the Base Fee Adjustment Factor. The onetime payment is to provide a means for the City to offset immediate transition expenses in the event of Company default but shall not be construed as a limitation of remedies otherwise available to the City under this Service Agreement or Applicable law.

11.1.3 In the event the City terminates this Service Agreement pursuant to Section 10.1, the City shall, simultaneous with the payment by the Company to the City pursuant to Section 11.1.2, pay to the Company the Scheduled Termination Costs and any termination costs due as a result of a Value-Add Project or Capital Item.

11.2 Termination by Company for Breach

11.2.1 In the event the Company opts to terminate this Service Agreement pursuant to Section 10.1:

(a) The City shall pay any amount the City owes the Company pursuant to Section 12.2, the Scheduled Termination Costs, and any termination costs due as a result of a Value-Add Project or a Capital Item.

(b) The City shall pay the Company a demobilization fee in the amount of Three Hundred Thousand Dollars (\$300,000), as escalated annually by the Base Fee Adjustment Factor. This payment is to provide a means for the Company to offset immediate transition expenses in the event of City default but shall not be construed as a limitation of remedies otherwise available to the Company under this Service Agreement or Applicable law.

11.2.2 The amounts payable by the City under Section 11.2.1 shall be due and payable within thirty (30) days of the date of termination.

11.3 Extraordinary Termination by the Company

In the event the Facility ceases to be regulated as a Publicly Owned Treatment Works for purpose of all Applicable Law or the Facility and those discharging to the Facility ceases to be eligible to avail themselves of the Domestic Sewage Exclusion set forth at 42 U.S.C. Section 6903 (27) and regulations related thereto at 40 C.F.R. Section 261(4)(a)(1) and Delaware Administrative Code Section A, the Company may terminate this Service Agreement by delivering to the City written notice thereof and this Service Agreement shall terminate immediately upon the delivery of such notice.

If the Company terminates this Service Agreement pursuant to this Section 11.3, the City shall pay the Company a demobilization fee in the amount of Three Hundred Thousand Dollars (\$300,000), as escalated annually by the Base Fee Adjustment Factor, the Scheduled Termination Costs, and any termination costs due as a result of a Value Add Project or an EIC Capital Item. The amounts payable by the City under this Section 11.3 shall be due and payable within thirty (30) days of the date of termination.

11.4 Scheduled Termination Costs

11.4.1 The Scheduled Termination Costs (“STC”) payable by the City to the Company upon early termination of this Service Agreement are as provided in Exhibit 5 attached hereto.

11.4.2 In the event that a termination date falls between two dates specified on Exhibit 5, the amount payable as of the termination date shall be determined by linear interpolation between the amounts otherwise payable on the two specified dates.

11.4.3 In the event that all or a portion of one or more Initial Company Investments has not been completed as of the termination date, and any such Initial Company Investments was designated for completion by such termination date (as determined by the applicable completion date specified in Exhibit 3), then the STC payable by the City to the Company as of such termination date shall be reduced by an amount equal to the cost of constructing or acquiring any such Initial Company Investments, or portion thereof, which has not been completed as of the termination date. The cost of constructing or acquiring any such Initial Company Investments, or portion thereof, shall be determined by a professional engineer (who may be an employee of or consultant to the Company), who shall provide a written statement to the City setting forth such

determination. Such determination shall be subject to dispute resolution by the City pursuant to Article XIV and Exhibit 6.

11.5 Carryover and Continued Operations

If this Service Agreement is terminated by the City or the Company, the Company agrees to furnish the services necessary to continue normal operations for a period of up to one hundred eighty (180) days after receiving notice of termination from the City. This one hundred eighty (180) day period will commence only at the City's request and shall be for the purpose of training and assisting new employees of the City or its new contractor in the management and operation of the Facility. In such event, the City agrees to pay to the Company a pro rata portion of the then current Service Fee for such one hundred eighty (180) day period. Upon termination by the City or the Company, the City or the City's new operations firm may employ all personnel in the employ of the Company, excluding the project director and project manager, for the management and operation of the Facility. If another contractor succeeds the Company, the new contractor may employ all personnel in the employ of the Company for the management and operation of the Facility. The Company is not entitled to any claim for compensation or damages on account of such employment of the Company's employees upon or after termination. This Section 11.5 shall survive the termination of this Service Agreement.

11.6 End of Term Obligations

11.6.1 Books and Records. Upon Termination of this Service Agreement by the City or the Company, the Company shall provide the City with a copy of all books and records in its possession relating to (a) reports and notices required by the NPDES Permit, (b) records of maintenance and repairs for the Managed Assets, (c) copies of plans and specifications for Capital Items and (d) information regarding the quantity of Influent, Effluent and Biosolids processed at the Facility.

11.6.2 Upon expiration or termination of this Service Agreement the Company shall: (1) take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property; (2) promptly remove from the Managed Assets all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including sheds, trailers, workshops and toilets), and repair any damage caused by such removal; (3) with respect to Capital Items, promptly deliver to the City a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet

incorporated in the Managed Assets; (4) deliver to the City the Operation and Maintenance Manual and all database files used at the Managed Assets in the performance of Company's obligations, including all revisions and updates thereto; (5) promptly deliver to the City copies of all Subcontracts, together with a statement of:

- (a) the items ordered and not yet delivered pursuant to each agreement;
- (b) the expected delivery date of all such items;
- (c) the total cost of each agreement and the terms of payment; and
- (d) the estimated cost of canceling each agreement;

(6) as directed by the City, transfer to the City by appropriate instruments of title, and deliver to the Managed Assets (or such other place as the City may specify), all special order items pursuant to this Service Agreement for which the City has made or is obligated to make payment; (7) provide the City with keys associated with the Managed Assets with identification of what each key is used for; and (8) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City's costs, and take no action which shall increase any amount payable by the City under this Service Agreement.

11.6.3 Within thirty (30) days after the Commencement Date, Company shall conduct an audit of the existing inventory of spare parts and consumables at the Managed Assets and provide report of inventory levels to the City. Upon expiration or termination of this Agreement, Company shall replenish consumable and spare parts inventories to the initial levels established by the Company's report.

11.6.4 The foregoing provisions of this Section 11.6 shall survive the expiration or termination of this Service Agreement.

11.7 Method of Payment by the City

11.7.1 All amounts payable by the City under Article XI shall be paid by cashiers' check or by electronic transfer within thirty (30) days of the date of termination.

11.7.2 The foregoing provisions of this Section 11.7 shall survive the termination of this Service Agreement.

ARTICLE XII – LIABILITY AND INDEMNIFICATION; LIMITATION ON DAMAGES

12.1 Indemnification of the City by the Company

The Company shall defend, indemnify, and save harmless the City, its elected and appointed officials, officers, members, employees, directors, subcontractors and agents from and against any and all claims, actions, suits, notices of violation, liabilities, losses, expenses, fines, penalties, and costs, including, without limitation, reasonable attorney's fees and the cost and expense of defending against any of the aforesaid (collectively, "Damages"), arising from or in connection with (or alleged to arise from or in connection with) injuries to persons (including death), damage to property (including the loss of use), or the breach of any Applicable Law, including, but not limited to the discharge of Effluent from the Managed Assets in the violation of any Applicable Law, to the proportionate extent resulting from (a) the negligence or willful misconduct of the Company, its employees, agents, or Subcontractors in connection with this Service Agreement or (b) the breach by the Company of this Service Agreement.

12.2 Indemnification of the Company by the City

The City shall defend, indemnify, and save harmless the Company, its officers, directors, employees, agents, and subcontractors from and against any and all Damages, arising from or in connection with (or alleged to arise from or in connection with) injuries to persons (including death), damage to property (including loss of use) or the breach of any Applicable Law, including, but not limited to the discharge of Effluent from the Managed Assets in violation of any Applicable Law to the proportionate extent resulting from (a) the negligence or willful misconduct of the City, its officials, employees, other contractors, and agents in connection with this Service Agreement, (b) the breach by the City of this Service Agreement (c) the receipt by the Facility of Non-Specification Influent, including (without limitation) violations of the NPDES Permit due to the Facility exceeding its permitted average flow capacity; (d) the failure of the City to enforce the MIPP or its Sewer Use Ordinance; or (e) the ownership, operation, maintenance or use of the Facility, or the Site prior to the Commencement Date (including, without limitation, (i) any Pre-Existing Environmental Condition, (ii) any actions or omissions to act on the part of the City, the City's employees, agents and subcontractors).

Notwithstanding the foregoing, in no event shall either party be obligated to defend, indemnify or save harmless the other for the non-indemnifying party's negligence, willful misconduct or breach of its obligations as set forth in this Service Agreement.

Nothing in this Section 12.2 shall be construed as relieving Company of its' obligations with respect to Non-Specification Influent as they are set forth in Section 3.3.2.

12.3 Authority to Contest

In the event of the imposition of fines or penalties against any party for violations of any Permit or Applicable Law, the party on which such fines or penalties are imposed shall be given full authority to contest such violations and the other party shall reasonably assist such party in all such proceedings. Provided, however, neither party shall be required to assist the other party, if the circumstances involved regarding the violation of any Permit, or Applicable Law also constitutes an Event of Default, or other violation of this Service Agreement.

12.4 Limitation on Scope of Liability

In the event of a breach by either party of an obligation under this Service Agreement, the other party shall, in addition to any other remedies provided in this Service Agreement, have the right to recover damages or to be reimbursed; provided, however, that except as provided in Articles V and XI of this Service Agreement and except in connection with indemnification provided under Article XII of this Service Agreement, neither the City nor the Company shall be liable for any special, consequential, indirect, punitive, incidental, or similar damages, loss of actual or anticipated profits or revenue, cost of temporary or substitute equipment or costs of claims of customers relating in any way to this Service Agreement.

12.5 General Indemnification Procedures

During the term of this Service Agreement, a party seeking indemnification pursuant to Article XII (an "Indemnified Party") shall give prompt written notice (a "Claim Notice") to the party from whom such indemnification is sought (the "Indemnifying Party") of the assertion of any claim, the incurrence or potential incurrence of any Damages, or the commencement of any action, suit or proceeding, of which the Indemnified Party has knowledge in respect of which indemnity may be sought hereunder, and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request; provided, that the failure of the Indemnified Party to give promptly such required notice shall relieve the Indemnifying Party of any liability hereunder only to the extent that the Indemnifying Party has suffered actual prejudice due to such failure to promptly give such written notice.

ARTICLE XIII – UNCONTROLLABLE CIRCUMSTANCES

13.1 Uncontrollable Circumstances

13.1.1 Notwithstanding anything to the contrary contained in this Service Agreement, the Company shall not be liable for its failure to perform or for delay in performance of its obligations hereunder (other than any payment obligation) when due to Company Uncontrollable Circumstances. The Company shall provide prompt notice to the City of the commencement and the cessation of such Company Uncontrollable Circumstances as provided in Section 13.1.2 below. At the conclusion of any Company Uncontrollable Circumstance, the obligations of the Company shall resume in full force and effect. In the event of a Company Uncontrollable Circumstance, the Company shall use reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom and resume performance under this Service Agreement. The City shall pay the Service Fee, including any Extraordinary Items Component, during the continuance of any Company Uncontrollable Circumstances.

13.1.2 The Company shall immediately notify the City informally (including, without limitation, by telephone), after the date the Company first knew of the commencement of a Company Uncontrollable Circumstance, followed within ten (10) days by a written description of (a) the beginning of such Company Uncontrollable Circumstance, (b) its estimated duration and the requirement for, and the amount of, any adjustment to the Service Fee or any Capital Item necessitated thereby and (c) its estimated impact on the obligations of the Company under this Service Agreement.

13.1.3 Notwithstanding anything to the contrary in this Section 13.1, no Capital Item shall be implemented by the Company so long as: (i) the Company Uncontrollable Circumstance is a Change in Law relating to such Capital Item, (ii) the City gives the Company notice of its intention to contest the validity or applicability of such Change in Law prior to the date on which the Company determines that it is necessary for the Company to take action to comply with such Change in Law, (iii) the City diligently prosecutes such contest at its sole expense in good faith and by appropriate proceedings, (iv) Applicable Law permits continued operation of the Managed Assets pending resolution of the contest, so that the Company shall have no liability as a result of its failure during such period to comply with such Change in Law. If the Company determines that it is necessary to take action to comply with such Change in Law, the Company shall give the City at least forty-five (45) days' notice of such determination prior to taking any such action so the City may seek an injunction or other stay hereunder. Notwithstanding anything to the contrary set forth herein,

the Service Fee shall be adjusted (through the Extraordinary Item Component) as provided in Section 5.4.8 of Article V to the extent that the Company reasonably expends any funds in order to comply with a Change in Law described in this Section 13.1.3.

ARTICLE XIV – DISPUTE RESOLUTION

14.1 Scope

To facilitate quick and efficient resolution of disputes that may arise under this Service Agreement, all claims, controversies and disputes arising out of or relating to this Service Agreement, or the breach thereof (“Dispute”), shall be decided by the dispute resolution procedure contained in this Article XIV and Exhibit 6.

14.2 Covenant to Continue Work

During the resolution of any Dispute, the Company and the City shall each continue to perform all of their respective obligations under this Service Agreement without interruption or delay. If the City disputes any invoice of the Company with respect to the Service Fee, the disputed portion of such invoice shall be effective immediately and until resolution of the Dispute. Accordingly, notwithstanding any other provision of this Service Agreement or, any Dispute with respect to an invoice, the City shall pay the entire amount of the Service Fee billed in such invoice when due. If the Company does not prevail in the Dispute resolution, the Company shall reimburse the City immediately after such resolution for the aggregate amount of the overpayment, plus interest at the Prime Rate calculated from the date on which the City paid such invoice.

14.3 Remedies

Notwithstanding any other term of this Service Agreement, the parties agree and understand that the remedy at law for any breach by the other party of this Service Agreement will be inadequate and that damages flowing from such breach are not readily susceptible to being measured in monetary terms. Accordingly, it is acknowledged that upon adequate proof of such breach, the non-breaching party shall be entitled to immediate injunctive relief and may obtain an order for specific performance or restraining any threatened or further breach. The rights and remedies available to a party at law and in equity under the terms and conditions of this Service Agreement are cumulative and not exclusive rights and remedies available to that party.

ARTICLE XV – INSURANCE

15.1 Company Insurance Coverage

The Company shall provide insurance coverage for itself and all of its employees used in connection with this Service Agreement, and for property connected to this Agreement as provided below. Such policies shall be issued by financially sound carriers with A.M. Best ratings of at least “A” and “stable” and licensed to do business in the State of Delaware and shall be subject to approval by the City. Such insurance shall be as follows:

- (a) Workers’ Compensation – Workers’ Compensation Insurance with statutory limits as required by Delaware Law for all employees. Employer’s Liability or “Stop Gap” insurance with limits of \$500,000.00 each accident, disease, and policy limit.
- (b) Commercial General Liability –Commercial General Liability Insurance covering claims for bodily injury, death, personal injury, or property damage occurring or arising out of the performance of this Service Agreement, including coverage for independent contractor’s protection, premises-operations, products/completed operations, and contractual liability with respect to the liability assumed by the Company hereunder. The limits of this insurance shall be:

Each Occurrence:	\$5,000,000.00
General Aggregate Limit:	\$10,000,000.00
Products-Completed Operations Limit:	\$5,000,000.00
Personal and Advertising Injury Limit –	\$2,000,000.00 each occurrence and aggregate
- (c) Automobile Liability Insurance – Automobile Liability Insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with the performance of this Service Agreement, with limits of \$1,000,000.00 combined single limit each accident for bodily injury and property damage.
- (d) Professional Liability Insurance—A limit of \$5,000,000 per claim and aggregate.
- (e) Contractor’s Pollution Liability Insurance—A limit of \$5,000,000 per claim and aggregate.
- (f) Excess/Umbrella Liability Insurance limit of \$5,000,000.00 per occurrence and aggregate.
- (g) Builders’ risk shall be negotiated and provided on a case by case basis through a CAM.

- (h) Insurance Limits and Certificates – The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. The Company will provide to the City certificate(s) of such insurance upon execution of this Service Agreement and on any renewal of such insurance while this Service Agreement is in effect. The certificate(s) shall provide that:
- a. The City, its elected and appointed officials, officers, members, employees, and directors are named as additional insured with respect to all liabilities as their interest may appear with respect to this Service Agreement except Workers' Compensation/Employer's Liability and Professional Liability;
 - b. With the exception of Workers' Compensation/Employer's Liability and Professional Liability, coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by the Company;
 - c. Waiver of Subrogation shall be provided for all coverages except Workers' Compensation and Professional Liability; and
 - d. Thirty (30) days' prior written notice of cancellation, material change or exclusions to the policy shall be given to the City.
- (i) Endorsements reflecting above coverage components shall be provided and attached to the Certificate(s) of Insurance.

ARTICLE XVI – PERFORMANCE BOND

16.1 Performance Bond

The Company shall provide to the City and keep in force during each Fiscal Year of the Term a performance bond in an amount equal to the amount of the Service Fee for each such Fiscal Year as estimated by the Company in accordance with Section 5.2. For the first Fiscal Year ending June 30, 2021 the bond shall be for an amount equal to the Service Fee for the First Contract Year. For each subsequent Fiscal Year, the bond shall be equal to the estimated Service Fee for that current Fiscal Year as determined in accordance with Section 5.2. The bond shall guarantee the Company's faithful performance of its duties and obligations to the City, under this Service Agreement and shall be in such form as has been approved by the City Solicitor. The City shall have the authority to approve or disapprove the surety company, which approval shall not be unreasonably withheld.

ARTICLE XVII– GUARANTY

17.1 Guaranty

The Company shall provide the Guaranty Agreement from Jacobs Engineering Group, Inc., the Guarantor which shall be mutually agreeable and in substantially the same form as that in Exhibit 7, which shall guarantee the performance of the Company's obligations under the terms of this Service Agreement.

If a guarantor under the Guaranty Agreement no longer directly or indirectly controls the Company, the Company shall be permitted to provide a successor guarantor, by assignment or otherwise, under the Guaranty Agreement, provided (i) such guarantor directly or indirectly controls the Company and (ii) such successor guarantor is consented to by the City, which consent shall not be unreasonably withheld.

If the Company provides a successor guarantor in accordance with this Section 17.1, the rights and obligations of the previous guarantor under the Guaranty Agreement shall be of no further force and effect, and the City shall execute such releases or further assurances in this regard as shall be reasonably requested by the Company.

ARTICLE XVIII – REPRESENTATIONS

18.1 Company Representations

The Company represents and warrants to the City as follows:

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

(b) This Service Agreement has been duly authorized, executed, and delivered by Company and constitutes a legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as the enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting creditors' rights generally and by equitable principles of general application).

(c) To the best of its knowledge, neither the execution or delivery by the Company of this Service Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or thereby, or the fulfillment by the Company of the terms or conditions hereof or thereof (a) conflicts with, violates, or results in a breach of any constitution, law, or governmental regulation applicable to the Company, or (b) conflicts with, violates, or results in a breach of any term or condition of any order, judgment, or decree, or any agreement or instrument, to which the Company is a party, or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery of this Service Agreement by the Company, except as such as have been duly obtained or made.

(e) Except as disclosed in writing to the City prior to the Effective Date, there is no action, suit, or proceeding, at law or in equity, before or by any court or Governmental Authority pending or to the best of its knowledge threatened against the Company, which might materially adversely affect the performance by the Company of its obligations hereunder or under the other transactions contemplated hereby, or which, in any way, questions the validity, legality, or enforceability of this Service Agreement.

(f) The Company has not made, nor caused any other Person to make any payment to any City employee or official to obtain this Service Agreement.

(g) None of the representations or warranties made by the Company in this Service Agreement contains or will contain any knowingly untrue statement of a material fact, or knowingly omits or will omit to state a material fact necessary to make any statement or fact contained herein or therein not misleading.

18.2 City Representations

The City represents and warrants to the Company as follows:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State of Delaware, with full legal right, power, and authority to enter into and perform its obligations under this Service Agreement.

(b) This Service Agreement has been duly authorized, executed, and delivered by City and constitutes a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms (except as the enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting creditors' rights generally and by equitable principles of general application).

(c) To the best of its knowledge, neither the execution or delivery by the City of this Service Agreement, nor the performance by the City of its obligations in connection with the transactions contemplated hereby or thereby, or the fulfillment by the City of the terms or conditions hereof or thereof (a) conflicts with, violates, or results in a breach of any constitution, law, or governmental regulation applicable to the City, or (b) conflicts with, violates, or results in a breach of any term or condition of any order, judgment, or decree, or any agreement or instrument, to which the City is a party, or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery of this Service Agreement by the City, except as such as have been duly obtained or made.

(e) Except as disclosed in writing to the Company prior to the Effective Date, there is no action, suit, or proceeding, at law or in equity, before or by any court or Governmental Authority pending or to the best of its knowledge threatened against the City, which might materially adversely affect the performance by the City of its obligations hereunder or under the other transactions contemplated hereby, or which, in any way, questions the validity, legality, or enforceability of this Service Agreement.

(f) Except as disclosed in writing to the Company prior to the Effective Date, to the best of its knowledge, there are no Environmental Claims pending or threatened against the City with respect to the Facility, Managed Assets or the Site.

(g) None of the representations or warranties made by the City in this Service Agreement contains or will contain any knowingly untrue statement of a material fact, or knowingly omits or will omit to state a material fact necessary to make any statement or fact contained herein or therein not misleading.

18.3 Knowledge Representations

(a) Wherever a representation or warranty is made to the knowledge of the City (whether modified by "to the best of its" or in some other manner), such representation or warranty shall be deemed to be made to the knowledge (however modified) of the City Solicitor, the Director of Water Division and the Commissioner of Public Works of the City, or any official of the City who succeeds to their responsibilities.

(b) Whenever a representation or warranty is made to the knowledge of the Company (whether modified by "to the best of its", or in some other manner) such representation or warranty shall be deemed to be made to the knowledge (however modified) of the Company's chief operating officer; and the chief legal officer and Vice President of Jacobs Engineering Group Inc. (or their equivalent).

ARTICLE XIX – MISCELLANEOUS

19.1 Records

The Company shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Service Agreement and such other records as may be deemed reasonably necessary by the City to assure proper accounting for all funds paid to the Company by the City. Such records shall be kept separate from other records maintained by the Company. Such records shall be made available for audit and inspection purposes to the City or its Designated Representative upon request during normal business hours. The City shall not disclose and shall keep confidential such records to the extent permitted by Applicable Law.

19.2 Business License

The Company shall obtain and maintain an appropriate business license from the City of Wilmington Department of Finance.

19.3 Taxes

The Company shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law. The Company will not be required to pay any real or personal property taxes with respect to the Managed Assets or any real property upon which the Managed Assets are located. The Company shall be responsible for paying City of Wilmington Head Tax and Net Profit Tax as applicable.

19.4 Use of Subcontractors

The Company shall not use any subcontractors to perform any of the services required under this Service Agreement, other than subcontractors for the design or construction of Capital Items, without the prior written approval of the City, which approval will not be unreasonably withheld; provided, however, that the Company may enter into a Subcontract with any Affiliate of the Company to perform any of the services required under this Service Agreement to be performed by the Company.

19.5 Discrimination

In the performance of this Service Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

19.6 Disadvantaged Business Enterprises

The Company shall use its good faith efforts to achieve a ten percent (10%) disadvantaged enterprises goal of the City. It is acknowledged and agreed that if the Company customarily performs the work required under this Service Agreement by workers regularly employed by the Company, the Company shall not be required to subcontract such work in order to comply with this Section.

19.7 Severability

This Service Agreement is intended to be performed in accordance with and only to the extent permitted by Applicable Law. If any provisions of this Service Agreement or the application thereof to any Person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Service Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by Applicable Law. If a court of competent jurisdiction determines that any provision of this Service Agreement is invalid or unenforceable, the parties will negotiate in good faith to amend this Service Agreement so that to the maximum extent practicable the Service Agreement will give effect to the intentions of the parties.

19.8 Independent Contractor

The Company shall at all times and for all purposes be an independent contractor and its employees, agents, and subcontractors shall not be employees or agents of the City.

19.9 No Third-Party Beneficiaries

Except as provided in Sections 19.14 and 19.17 hereof, no Persons other than the parties hereto shall derive any right, title, interest, or benefit in or from this Service Agreement.

19.10 Modification and Waiver

This Service Agreement may be modified only by written instrument executed by the City and by the Company. Any of the terms, covenants, and conditions of this Service Agreement may be waived at any time by the party entitled to the benefit of such term, covenant, or condition, provided however, such waiver must be in writing and executed by the party against whom such waiver is asserted.

19.11 Notice

All notices shall be in writing and (i) delivered in person, (ii) transmitted by certified mail, return receipt, postage prepaid, (iii) transmitted by nationally recognized overnight courier or (iv) transmitted by electronic mail; provided, however, that a hard copy of such electronic mail transmission shall be sent by one of the other means of transmission

described in the preceding clauses (i) through (iii). Notices delivered in person addressed as specified will be effective upon the date of delivery. Notices delivered by certified mail or overnight courier will be effective one (1) calendar day after being deposited in the US Mail or with the overnight courier addressed as specified. Notices delivered by electronic mail will be effective on the date sent, if sent during normal business hours of the recipient during a Business Day, or otherwise the next Business Day.

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

Department of Public Works
City of Wilmington
Louis L. Redding Building
800 French Street, 6th Floor
Wilmington, DE 19801
Attention: Commissioner
Telephone: (302) 576-3069
Email: kwilliams@wilmingtonde.gov

Department of Public Works
City of Wilmington
Louis L. Redding Building
800 French Street, 6th Floor
Wilmington, DE 19801
Attention: Deputy Commissioner
Telephone: (302) 576-3081
Email: vcarroccia@wilmingtonde.gov

With a copy to:

Law Department
City of Wilmington
Louis L. Redding Building
800 French Street, 9th Floor
Wilmington, DE 19801
Attention: City Solicitor
Email: rmgoff@wilmingtonde.gov

Notices required to be given to the Company shall be addressed at the following address:

Company: Jacobs Engineering Group Inc
Attn: Joseph Nattress, P.E.
2301 Chestnut Street
Philadelphia, PA 19103

Telephone: (215) 845-6908
Email: joe.nattress@jacobs.com

Jacobs Engineering Group, Inc.
Attn.: Caroline Cryer
9191 S Jamaica Street
Englewood, CO 80112
Telephone: (720) 286-4034
Email: Caroline.Cryer@jacobs.com

With a copy to:
Jacobs Engineering Group Inc.
Attn.: Lead Counsel, Americas
9191 S Jamaica Street, Suite 400
Englewood, CO 80112
Telephone: (720) 286 1278
Email: Jason.Adkisson@jacobs.com

Any of such addresses may be changed at any time upon notice of such change given in accordance with this Section to the other party by the party effecting the change.

19.12 Interpretation and Construction

This Service Agreement has been negotiated between the parties and their respective counsel, and the parties agree that no provision shall be construed against the drafter. As used herein, any gender includes the other gender; the singular includes the plural, and vice versa. Captions are for the convenience of the parties and do not affect the substance of this Service Agreement.

19.13 Entire Agreement

This Service Agreement, together with the Exhibits attached hereto and made a part of this Service Agreement, constitutes the entire agreement and understanding between the parties hereto, and, supersedes all prior agreements and understandings of the parties, with respect to the matters contemplated hereby or contemporaneous understandings, arrangements, commitments and representations, all or which, whether written or oral, are merged into this Service Agreement.

19.14 Assignment

This Service Agreement and all of the of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns, but neither this Service Agreement, nor any portion thereof, nor any of the rights,

interests, or obligations hereunder shall be assigned, sublet, or transferred by either party without the prior written consent of the other party hereto, except as provided in the following sentence. Notwithstanding anything to the contrary contained herein, the Company may, without the City's consent, assign this Service Agreement or any right, obligation or interest of the Company herein (including, without limitation, the right of the Company to receive the Service Fee and other payments hereunder) to any Affiliate of the Company, provided that in such event the Company shall remain liable hereunder, unless the City shall otherwise consent. Notwithstanding anything to the contrary contained herein, the City may, without the Company's consent, assign this Service Agreement to any municipal authority created by the City.

19.15 Reserved

19.16 Choice of Law

This Service Agreement shall be interpreted, governed and enforced under the laws of the State of Delaware. Subject to the dispute resolution procedures in Article XIV and Exhibit 6 of this Service Agreement, any and all suits for any claims or for any breach or dispute arising out of this Service Agreement shall be brought and maintained in a court of competent jurisdiction in New Castle County, Delaware.

19.17 City's Obligations

19.17.1 The City shall make all budgetary and other provisions or appropriations necessary to provide for and to authorize the payment of all amounts due to the Company from the City under this Service Agreement as the same become due and payable.

19.17.2 The City hereby pledges its full faith and credit for the payment of all amounts to be paid by it to the Company pursuant to this Service Agreement. It is understood and agreed that the obligation of the City to make payments in the amounts and at times specified in this Service Agreement shall be absolute and unconditional, shall not be subject to delay or diminution by reason of set-off, abatement, counterclaim, recoupment, defense (including, without limitation, (i) impossibility or impracticability of performance, (ii) existence, non- existence, occurrence or nonoccurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of the City, (iii) commercial frustration of purpose or (iv) contract of adhesion) or other right which the City may have against the Company or any other Person for any reason whatsoever, shall not be affected by any defect in the condition, design, fitness for use of or any damage or loss or destruction of the Managed Assets, the Collection System or any part thereof, shall not be affected by any interruption or cessation in the possession, use or operation of the Managed Assets, the Collection System or any

part thereof by the Company or the City, respectively, for any reason whatsoever, and shall not be affected for any other reason, including but not limited to, the failure or refusal, in whole or in part, by New Castle County to continue to deliver wastewater to the Facility or to pay for the provision of wastewater services of the Facility; provided, however, that the City may set off against amounts otherwise due and payable to the Company under this Service Agreement (i) any amount owed by the Company to the City as reflected in the annual statement provided by the Company in accordance with Section 5.3.3 and not paid within the period provided by such Section, (ii) any amount which upon conclusion of the dispute resolution procedures set forth in Article XIV and Exhibit 6, has been determined by the arbitrators in their decision to be owed by the Company to the City and which has not been paid by the Company within thirty (30) Business Days of receipt by the Company of such decision and (iii) any amount which the Company otherwise agrees in writing is due and payable by the Company to the City.

19.18 Payment

Except as expressly provided herein, all payments due under this Service Agreement shall be due and payable within thirty (30) days after receipt of statement therefor.

19.19 Counterparts

This Service Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

19.20 Negotiation of Electricity Rates

The City shall have sole and exclusive right to negotiate electricity rate with the Person who supplies electricity for use at the Managed Assets.

19.21 Immunity

This Service Agreement shall not be deemed to waive the City's statutory or common law immunity.

IN WITNESS WHEREOF, the City and the Company have, each and separately, caused this Service Agreement to be executed in each's respective behalf by their respective duly authorized officers indicated below, as of the day and year first above written in the City of Wilmington, Delaware.

[Remainder of this page intentionally left blank. Signature Pages Follow]

[signatures continued from previous page]

CITY OF WILMINGTON

Michael S. Purzycki, Mayor

STATE OF DELAWARE)
) ss:
COUNTY OF NEW CASTLE)

On this, the _____ day of _____, 20____, before me, the undersigned officer, personally appeared Michael S. Purzycki who acknowledged himself to be the Mayor of the City of Wilmington, and that as such Mayor, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing in the name of the City of Wilmington.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Printed Name of Notary:

Commission Expires:

EXHIBIT 1 – MANAGED ASSETS AND SITE DESCRIPTION

Exhibit 1- Managed Assets and Site Description

Section 1.0- Operation and Maintenance Scope of Work

1.1- Description of Managed Assets

The Managed Assets consist of multiple sites that the Company shall be responsible for the operation and maintenance, including:

- 1) Wastewater treatment plant, located at the intersection of 12th Street and Hay Road
- 2) Renewable Energy and Biosolids Facility (REBF), located on Hay Road,
- 3) Tertiary pump station, tertiary ponds, disinfection basins, outfall, and associated equipment between Hay Road and the Delaware River
- 4) Dewatered sludge storage pad/building along with piping, supports, and other mechanical items transporting dewatered solids to the storage pad area.
- 5) Wastewater pumping stations, consisting of:
 - a. 11th Street Pump Station
 - b. 12th Street Pump Station
 - c. 7th Street Pump Station
 - d. Justison Street Pump station
- 6) Wastewater force main from 11th Street pump station to the influent bar screens at the WWTP
- 7) Combined sewer overflow (CSO) mitigation facilities as listed in Table 1A.
- 8) Combined sewer overflow (CSO) site locations as listed in Table 1B.
- 9) Communication, monitoring, and control systems currently installed between remote facilities under the operational control of the Company and the main WWTP
- 10) Communication, monitoring, and control systems currently installed within the WWTP, REBF, and Tertiary treatment system boundaries.
- 11) Two (2) flow meters located at the WWTP to monitor flows from New Castle County force mains
- 12) New physical and electronic assets added to the wastewater assets as initial capital improvements (ICI), as further described in Exhibits 3 and 8.

1.2- Facilities excluded from Company Managed Assets

Facilities associated with the wastewater treatment systems that are excluded from the Company's scope of work include;

- 1) Collection system assets, with exception of those listed in Section 1.1.
- 2) Stormwater system assets in separate sewer areas of the City.
- 3) Gas treatment system, inclusive of all components. The system is owned, operated, and maintained by the current vendor for landfill gas, Cherry Island Renewable Energy (CIRE).
- 4) Public roads or right of ways outside of the property boundaries listed in Section 1.1.
- 5) Landfill gas pipeline from CIRE to the REBF.
- 6) Operation and maintenance of areas outside the general vicinity of the dewatered sludge storage pad/building.
- 7) Facilities associated with the New Castle County force main(s) into the WWTP, unless included in Section 1.1.

1.3 – Operation and Maintenance Requirements

- a) Company shall manage the operation and maintenance of all Managed Assets identified in this Service Agreement to meet the NPDES permit requirements and all other requirements of the Clean Water Act (CWA) and associated applicable regulations current at the time of contract execution.
- b) Company shall maintain adequate staff to provide oversight of all facilities 24 hours a day, 7 days per week, unless otherwise agreed to by the City and Company.
- c) Company shall maintain a Grade IV licensed operator in the State of Delaware who is responsible for the day to day operation and maintenance of the Managed Assets.
- d) At all times, the Company shall maintain appropriately licensed operations staff on-site for operation of the Managed Assets.
- d) For any capital projects, the Company shall employ a professional Engineer licensed in the State of Delaware who is responsible in charge from the design through the final commissioning of the project.
- e) Company shall be responsible for all laboratory testing and sampling presently required by permits and/or any federal, state, or local laws in effect at the time of this Service Agreement. Company may use outside laboratories for analysis, provided they are properly certified for such analyses by any national certification organization, acceptable to DNREC, such as NELAP.

- f) Company shall maintain a site-based lab at the WWTP responsible at a minimum for daily process and operational sampling to maintain performance.
- g) Company shall maintain a sufficient inventory as determined by Company standards of critical spare parts and materials required for operation of the Managed Assets.
- h) Company shall maintain an adequate amount of rolling stock as determined by Company standards to maintain and operate all Managed Assets
- i) Company shall maintain a comprehensive safety program for all Managed Assets, employees, and subcontractors in accordance with all applicable laws and regulations.
- j) Company shall be responsible for the generation of proposals to the City for Capital Projects, EIC, or other out of scope work, at its own expense, unless otherwise negotiated with the City.
- k) Company shall implement and maintain a maintenance management program and electronic system. Such data shall be available to the City upon request. An annual report shall be provided to detail each fiscal year spend and data on actual repairs and replacement.
- l) Company shall treat and dispose of biosolids in conformance with applicable law and permits.
- m) Company shall assist in the City's implementation of the MIPP in accordance with the Requirements of Articles VIII and IX of this Service Agreement.

1.4 Management of Contract

- a) The Company shall be responsible for meeting with the City on a periodic basis as requested, no less than monthly, to review the status of all capital projects and operational performance of the Managed Assets.
- b) The Company shall be responsible for attending meetings at the City request for Capital projects related to the Managed Assets or other non-managed wastewater system assets being performed by others, such as sewer interceptor rehabilitations.

Section 2.0 – Repair/Replacement of Equipment and Facilities

2.1 – Managed Assets Under Asset Management Fee

The Company is responsible for the rehabilitation and replacement of the following Managed Assets, up to a limit of \$250,000 per event. Such per event threshold shall be escalated annually in accordance with the methodology set forth in Sections 5.4.2 (b) and Section 5.5. However, the per event threshold shall be adjusted in increments of \$25,000

once the cumulative effect of such annual escalations is equal or greater than the respective increment (e.g., \$275,000, \$300,000).:

- a) All mechanical, electrical, and instrumentation equipment at the WWTP, REBF, and Tertiary Systems
- b) All control systems (software and hardware) at the WWTP, REBF, and Tertiary Systems
- c) All mechanical, electrical, and instrumentation equipment at the four (4) City-owned pump stations described in Section 1.1.
- d) All control systems (hardware and software) at the four (4) City-owned pump stations described in Section 1.1
- e) All communication systems between remote Managed Assets and the WWTP
- f) Mechanical, electrical, and control systems associated with the CSO mitigation facilities listed in Table 1A.

Exhibit 16 provides a preliminary list of all critical/major assets within the WWTP, REBF, and Pump Station Managed Assets that are included under the Asset Management Fee, subject to the \$250,000 per event limit as described in Article III. Such per event threshold shall be escalated annually in accordance with the methodology set forth in Sections 5.4.2 (b) and Section 5.5. However, the per event threshold shall be adjusted in increments of \$25,000 once the cumulative effect of such annual escalations is equal or greater than the respective increment (e.g., \$275,000, \$300,000). This list will be updated and agreed upon between the City and Company within 90 days of project commencement date and restated 60 days after the start of the new contract year.

2.2 – Managed Assets Excluded from the Asset Management Fee

The Company is not responsible for funding repair and replacement of the following Managed Assets which may be provided by the Major Maintenance Account described in Section III or by other means as directed by the City. The Company shall provide oversight and management of the rehabilitation and replacement of the excluded Managed Assets if funded by the MMA.

- a) All structures located at the WWTP, REBF, tertiary systems, and Dewatered Solids Storage facility
- b) All tanks and concrete pads located at the WWTP, REBF, tertiary systems, and dewatered solids storage facility.
- c) All buildings, tanks, and concrete pads located at the CSO mitigation facilities
- d) All roofs, roadways, and utility poles.
- e) All buried piping located at the WWTP, REBF, and tertiary system.

- f) All buried piping from the 11th Street Pump station to the WWTP
- g) All buried piping from the 12th Street Pump station to the WWTP
- h) All buried piping from the 7th Street Pump station into the City Collection System
- i) All buried piping from the Justison Street Pump station into the City Collection System.
- j) All buildings, tanks, and concrete pads at the four (4) City-Owned pump stations.
- k) All CSO regulator and tide gate structures.
- l) 8-inch potable water meter owned and maintained by the City.

2.3 Predictive and Preventative Maintenance

The Company is responsible for providing predictive and preventative maintenance services for all Managed Assets in accordance with Company standards.

Table 1A- CSO Mitigation Facilities Inventory

Name	Location	Description of Assets
Brandywine Siphon (upstream and downstream)		Control gates (9); level float switches (3); ultrasonic (3); Flowmeter (1)
Christina Siphon (upstream and downstream)		Control gates (6); level float switches (2); ultrasonic (5)
Rattlesnake Siphon (upstream and downstream)		Control gates (4); modulating gate (1); level float switches (1); level sensors (1)
Louis L Redding Building	800 French St	Rain gauge and communications relay
Fire Station #2		Rain gauge and telemetry
Fire Station #3		Rain gauge and telemetry
Fire Station #4		Rain gauge and telemetry
CSO 4a		Flowmeter (1); modulating gates (4); control gates (4); level sensors (3); float switches (2); overflow weir
F1618		Flowmeter in manhole
F2322c		Flowmeter in manhole
F4e4d		Flowmeter in manhole
Canby Park		Flowmeter in manhole; rain gauge with telemetry; control gate 2.7 MGal storage tank with internal piping, valves, flowmeters and controls
CSO-25		Control gates (2); flowmeter (1); level float switches (2); ultrasonic (1); overflow weir
CSO-30		Control gates (2); flowmeter (1); level float switches (2); modulating gate (4); emergency generator 1 MGal storage tank

Table 1B – CSO Inventory/Locations

CSO ID	CSO Outfall Location	Structure Type
2	12 St. Pump Station	Diversion Gate
3	11th St. Pump Station N. Side River	Regulator
4a	Foot of Locust	Regulator
4b	Foot of Church (DM @ Pine & 26th)	Diversion Structure
4c	Jessup near 16th St. Bridge	Diversion Manhole
4d	Race & Hutton St.	Regulator
4e	17th & Glen Ave.	Regulator
4f	Foot Wash. St. Bridge	Diversion Manhole
5	Foot of Orange	Regulator
6	Foot of Shipley	Diversion Manhole
7	Foot of Market	Diversion Manhole
9a	E. Side 4th Street Bridge	Diversion Manhole
9c	Lobdell & Bradford	Diversion Manhole
10	A Street at Locust	Regulator
11	Foot King & Water	Diversion Manhole
12	Foot French & Water	Diversion Manhole
13	Foot Lombard & Front	Regulator
14	Front & Church	Diversion Gate
15	Foot Front & Church N. side of river	Regulator
16	City Fire Boat Dock	Regulator
18	Foot of 9th S. Side River	Regulator
20	Kirkwood Park	Regulator
21a	Kirkwood Park 2	Regulator
21b	Foot of Pine	Regulator
21c	Foot of 14th S. Side of River	Regulator
22b	Foot of Walnut	Diversion Manhole
22c	Foot of King (DM @ King and Race)	Diversion Manhole
23	Foot of West & Park Dr.	Diversion Manhole
23a	Foot of Adams St.	Diversion Manhole
24	Foot of Jackson & Park Dr.	Diversion Manhole
25	Rattlesnake Run	Regulator
26	Elliot Run	Regulator
27	Lancaster & Webb	Regulator
28	Grant & Rodman	Regulator
29	Canby Park	Regulator
30	Madison St. Conectiv Yard	Regulator/Diversion Dam
31	35th & Bowers (DM @ Eastlawn & GP Blvd.)	Diversion Manhole

CSO ID	CSO Outfall Location	Structure Type
32	Kentmere and Union	Diversion Manhole
33	Foot of Rockford Rd.	Diversion Manhole
U01	N. Side E. 8th E. Side Wilm. Ind. Park	Tide gate
U03	A St. between Poplar & Lombard	Tide gate
U04	W. Market St. Brdg. S. Side of River	Outfall only
U05	C St. W. of Market @ River	Tide gate
U06	F St. W. of Market @ River	Tide gate
U09	E. of RR Bridge S. Side River	Tide gate
U10	N. Side E. 8th W. Side Wilm. Ind. Park	Tide gate
U15	Shellpot	Tide gate
U20	W. of RR Bridge S. Side River	Tide gate

EXHIBIT 2 – REQUIRED PERMITS AND APPROVALS

Required Permits are as follows:

- 1) WWTP and CSO: Permits: National Pollutant Discharge Elimination System (NPDES) Permit – State Permit No. WPCC3074E/74; NPDES Permit Number DE0020320, Effective October 1, 2014, Expires December 30, 2019.
- 2) REBF Title V Air Permit, 7 DE Admin Code 1130 (Title V) Operating Permit, Facility ID Number 1000300899, Permit Number: AQM-003/00899, dated September 24, 2018, Expires September 24, 2022.
- 3) WWTP Title V Air Permit, 7 DE Admin Code 1130 (Title V) Operating Permit, Facility ID 10003003389, Permit Number: AQM-003/00389- Renewal (4), dated August 7, 2019
- 4) Stormwater Permit: National Pollutant Discharge Elimination System (NPDES) Permit – State Permit No. WPCC 3063A/96; NPDES Permit Number DE0051071, Effective May 7, 2013, Expires May 6, 2018; Administratively extended by DNREC
- 5) Long Term CSO control plan incorporated by reference in NPDES Permit Number DE0020320.
- 6) City of Wilmington Municipal Industrial Pretreatment Program (MIPP) approval, incorporated by reference in NPDES Permit Number DE0020320.
- 7) Underground Storage Tank Registration, Facility 3-000596, Issued March 2006 for three heating oil tanks on-site.
- 8) General Permit (PAG-079611) issued by the Pennsylvania DEP for the beneficial reuse of “Exceptional Quality” (Class A) biosolids generated at the Wilmington WWTP issued May 20, 2019.
- 9) Delaware Solid Waste Transporter Permit, No. DE-SW-1280, Effective April 1, 2018, Expires March 31, 2023.

EXHIBIT 3 – INITIAL COMPANY INVESTMENTS

The Company commits to make certain one-time expenditures, not all of a capital nature, in the first 3 contract years:

- a) **Upgrade the existing SCADA systems** for the wastewater treatment plant and REBF as further described in Exhibit 8
- b) **Improve the CSO monitoring system** and integrate into the new SCADA improvements as further described in Exhibit 8
- c) **REBF and Cogeneration improvements**, including improvements to the gas transmission system, spare parts inventory, dried solids conveyance system, and other components as further described in Exhibit 9.
- d) **REBF Energy Study** in contract year 1 to examine improvements to the power side of the REBF to provide additional reliability and redundancy. The energy study will include:
 - Grid study by PJM Interconnect to determine ability to implement net metering or other grid-based options to move towards net zero energy.
 - Evaluation of alternate approaches to maximize cogeneration capacity that may or may not be implemented in conjunction with PJM Interconnect recommendations
 - Preliminary engineering and engineers' opinion of probable cost for capital improvements recommended from the energy study.
- e) **A dynamic hydraulic model (Replica®)** to create a fully integrated system across pump stations, CSO control/mitigation system and the WWTP. The goal of the model is to optimize overall control strategy of the Managed Assets to increase the CSO capture rate and prepare for future capture requirements for CSO. The modeling effort will include:
 - Development of baseline hydraulic model based on existing conditions
 - Scenario development for options to increase capture/maximize flow to the WWTP.
 - Utilization of model to confirm optimal locations for additional flow and level monitoring under the improvements to the CSO monitoring system
 - Development of a new operational approach for system operations.
 - Review of new operational approach with City for concurrence
 - Integration of new operational approach to SCADA systems
 - Utilization of model for training of operators
 - Model continuous improvement/optimization with additional system operation.
- f) **Interim FOG receiving station and digester mixing**, utilizing existing digester infrastructure. This will include:
 - Rehabilitation/replacement of existing digester mixing equipment as needed

- Design and installation of an interim FOG receiving station to feed FOG from haulers into one cleaned digester
 - If the City decides to implement a permanent FOG receiving station within the first 3 years of this contract as a new capital project, the interim FOG receiving station project will not be completed.
- g) **Cleaning of a target of two (2) digesters** during the first three years
- h) **Base Scope III initial Study and Report** to look forward at the potential for value-added improvements to the WWTP and associated infrastructure to minimize energy use and maximize plant solids capacity. This study will include:
- Workshop with key subject matter experts to analyze the opportunities for implementing new approaches or technologies
 - Preliminary engineering for the options selected for further evaluation
 - Engineer's opinion of probable cost and payback period for selected options
 - Review with City after preliminary engineering and costs are developed
 - Final report to document outcomes and selection of any items identified for further development/implementation.
- i) **Annual Innovation Workshop each year** to look for opportunities for continuous improvement, industry trends and apply lessons learned/advancements from other project sites to Wilmington. This will include:
- One to two-day workshop with key project team members, selected subject matter experts, and the City to evaluate the past year's performance and concepts to improve performance or reduce costs
 - Order of magnitude estimates of cost or performance impacts from ideas generated and selected to pursue further at workshop
 - Memorandum documenting outcomes from workshop and items selected for further investigation
 - Items identified as feasible and beneficial will be pursued with a schedule for implementation.

EXHIBIT 4 – SAMPLE SERVICE FEE CALCULATIONS

The total Service Fee for each contract year shall be calculated in accordance with the following formula:

$$SF_x = BF_x + AMF_x + SDF_x + PW_x + SWU_x + EC_x + MMA_x + EIC_x$$

where,

x	=	Contract Year
AF	-	Adjustment Factor
SF	=	Total Service Fee
BF	=	Base Fee
AMF	=	Asset Management Fee
SDF	=	Sludge Disposal Fee
PW	=	Potable Water Component – Established mutually prior to the new contract year
SWU	=	Stormwater User Component - Established mutually prior to the new contract year
EC	=	Electricity Component - Established mutually prior to the new contract year
MMA	=	Major Maintenance Account – Established mutually prior to the new contract year
EIC	=	Extraordinary Items Component

Base Fee Annual Adjustment:

The Base Fee for each subsequent Contract Year shall be determined by multiplying (1) the Base Fee for the current Contract Year and (2) the Base Fee Adjustment Factor.

$$\text{Base Fee Adjustment Factor} = (1 + [((\text{CPI-WS}).40 + (\text{ECI}).50 + (\text{CPI-U}).10)])$$

Twelve-month percent change for CPI-WS shall be calculated by:

CPI-WSp	=	Prior year November CPI-WS
CPI-WSc	=	Current year November CPI-WS
% Change	=	$(\text{CPI-WSc} - \text{CPI-WSp}) / \text{CPI-WSp}$

If:

CPI-WSp	=	557.447
CPI-WSc	=	574.961
% Change	=	$(574.961 - 557.447) / 557.447$

$$\text{CPI-WS} = 0.0314$$

The twelve-month percent change for ECI Q3 is as published by U.S. Department of Labor, Bureau of Labor Statistics.

Twelve-month percent change CPI-U shall be calculated by:

$$\text{CPI-Up} = \text{Prior year November CPI}$$

$$\text{CPI-Uc} = \text{Current year November CPI}$$

$$\% \text{ Change} = (\text{CPI-Uc} - \text{CPI-Up})/\text{CPI-Up}$$

If:

$$\text{CPI-Up} = 252.038$$

$$\text{CPI-Uc} = 257.208$$

$$\% \text{ Change} = (257.208 - 252.038)/252.038$$

$$\text{CPI-U} = 0.0205$$

Base Fee Adjustment Example as specified in Section 5.4.1.

$$\text{BF}_x = \text{New Base Fee}$$

$$= \text{BF}_c \times \text{AF}$$

$$\text{BF}_c = \text{Current Base Fee}$$

$$\text{AF} = (1 + [((\text{CPI-WS}) \cdot 0.40 + (\text{ECI}) \cdot 0.50 + (\text{CPI-U}) \cdot 0.10]))$$

If:

$$\text{CPI-WS} = 0.0314$$

$$\text{ECI} = 0.0281$$

$$\text{CPI-U} = 0.0205$$

$$\text{AF} = (1 + [(0.0314 \cdot 0.40) + (0.0281 \cdot 0.50) + (0.0205 \cdot 0.10)])$$

$$= (1 + [0.0126 + 0.0141 + 0.0021])$$

$$= 1.0288$$

$$\text{BF}_c = \$1,000,000.00$$

$$\text{BF}_x = \$1,000,000.00 \times 1.0288$$

$$\text{BF}_2 = \$1,028,800.00$$

Asset Management Fee Annual Adjustment:

Example as specified in Section 5.4.2.

$$\begin{aligned} \text{AMF}_x &= \text{New Asset Management Fee} \\ &= \text{AMF}_c \times \text{WSAF} \\ \text{AMF}_c &= \text{Current Asset Management Fee} \\ \text{WSAF} &= \text{Water Sewer Adjustment Factor} \\ &= (1 + \text{CPI-WS}) \end{aligned}$$

If:

$$\begin{aligned} \text{CPI-WS} &= 0.0314 \\ \text{AMF}_c &= \$500,000.00 \\ \text{AMF}_x &= \$500,000.00 \times (1 + 0.0314) \\ &= \$515,700.00 \end{aligned}$$

Sludge Disposal Fee Annual Adjustment:

Example as specified in Section 5.4.3.

$$\begin{aligned} \text{SDF}_x &= \text{SDF}_c \times \text{WSAF} \\ \text{SDF}_c &= \text{Current Sludge Disposal Fee} \\ \text{SDF}_x &= \text{New Sludge Disposal Fee} \\ \text{WSAF} &= \text{Water Sewer Adjustment Factor} \\ &= (1 + \text{CPI-WS}) \end{aligned}$$

If:

$$\begin{aligned} \text{CPI-WS} &= 0.0314 \\ \text{SDF}_1 &= \$800,000.00 \\ \text{SDF}_2 &= \$800,000.00 \times (1 + 0.0314) \\ &= \$825,120.00 \end{aligned}$$

Electrical Component Fee Calculation and Annual Reconciliation

The electrical component fee is a rebateable account that is reconciled at the end of each contract year. The contract year fee is an estimate based on the electrical component fee equation detailed below.

Electrical Component Fee:

$$EC = PS + DC + WWEC$$

Where,

PS = The projected electricity usage cost for the Main Pump Stations for the Contract Year

DC = The projected costs for Demand Charges for all Managed Assets

WWEC= The projected cost for the Guaranteed Maximum Net Usage at the WWTP

WWEC = GMU x RU

GMU = Guaranteed Maximum Net Usage at the WWTP (kWhr)

RU = Base Electrical Usage Rate for the Contract Year (\$/kWhr)

If:

PS = \$100,000.00

DC = \$200,000.00

GMU = 5,000,000 kWhr

RU = \$0.061/kWhr

WWEC = 5,000,000 kWhr * \$0.061/kWhr
= \$305,000.00

EC = PS + DC + WWEC

EC = \$100,000.00 + \$200,000.00 + \$305,000.00
= \$605,000.00

Electrical Component Annual Reconciliation

At the end of each contract year, the various components of the electricity component shall be reconciled as follows:

Pump Station (PS)

PS_{actual} – PS_{projected} = Payment to Jacobs (or credit to City)

Demand Charges (DC)

DC_{actual}- DC_{projected} = Payment to Jacobs (or credit to City)

Guaranteed Maximum Net Usage (GMU)

WWEC actual – WWEC projected = payment to Jacobs (or credit to the City)

If:

PSactual	=	\$110,000.00	
PSprojected	=	\$100,000.00	
DCactual	=	\$190,000.00	
DCprojected	=	\$200,000.00	
WWECactual	=	\$300,000.00	
WWECprojected	=	\$305,000.00	
PS Recon	=	\$110,000.00 - \$100,000.00	
	=	\$10,000.00	Payment to Jacobs
DC Recon	=	\$190,000.00 - \$200,000.00	
	=	(\$10,000.00)	Credit to the City
WWEC Recon	=	\$300,000.00 - \$305,000.00	
	=	(\$5,000.00)	Credit to the City

EXHIBIT 5 – SCHEDULED TERMINATION COSTS

The Scheduled Termination Costs as of any date of termination of this Service Agreement shall be as set forth below:

The Scheduled Termination Costs for Initial Capital Improvements (ICIs) as of any date of termination of this Service Agreement shall be as set forth in the tables below. Table 1 reflects the projected spending for the ICI through the first three contract years. If termination is executed in the first three contract years, values estimated in Table 1 will be cost substantiated to the City based on actual spending to the date of termination. Table 2 reflects the depreciation of the ICI through the course of the 20-year contract. Values shown in both tables are based on the end of the applicable contract year. As noted in Sections 11.4.2 and 11.4.3, if the termination falls within the contract year, the values in the tables below will be pro-rated.

Table 1. ICI Initial Spending Reimbursement

Contract Year	CSO	SCADA	REBF	Total
1	\$321,545	\$685,745	\$396,682	\$1,403,972
2	\$643,090	\$1,371,491	\$793,364	\$2,807,945
3	\$964,635	\$2,057,236	\$1,190,046	\$4,211,917

Table 2. ICI Termination Costs

Contract Year	CSO	SCADA	REBF	Total
4	\$907,892	\$1,936,222	\$1,120,043	\$3,964,158
5	\$851,149	\$1,815,209	\$1,050,041	\$3,716,398
6	\$794,406	\$1,694,195	\$980,038	\$3,468,638
7	\$737,662	\$1,573,181	\$910,035	\$3,220,878
8	\$680,919	\$1,452,167	\$840,032	\$2,973,118
9	\$624,176	\$1,331,153	\$770,030	\$2,725,358
10	\$567,433	\$1,210,139	\$700,027	\$2,477,599

Contract Year	CSO	SCADA	REBF	Total
11	\$510,689	\$1,089,125	\$630,024	\$2,229,839
12	\$453,946	\$968,111	\$560,022	\$1,982,079
13	\$397,203	\$847,097	\$490,019	\$1,734,319
14	\$340,460	\$726,083	\$420,016	\$1,486,559
15	\$283,716	\$605,070	\$350,014	\$1,238,799
16	\$226,973	\$484,056	\$280,011	\$991,039
17	\$170,230	\$363,042	\$210,008	\$743,280
18	\$113,487	\$242,028	\$140,005	\$495,520
19	\$56,743	\$121,014	\$70,003	\$247,760
20	\$0	\$0	\$0	\$0

City will also pay any agreed upon EIC reimbursements upon termination. Future projects with Capital Spending by the Company will include termination schedules as negotiated at that time within the CAM.

EXHIBIT 6 – DISPUTE RESOLUTION

- (a) Subject to Applicable Law and exhaustion of pre-dispute remedies set forth in this Service Agreement, any Disputes under this Service Agreement which are not resolved by direct discussions among senior representatives of the City and the Company shall be submitted to binding arbitration upon 10 days notice to the other party (the tenth day after such notice being herein called the "Original Submission Date"). Any such arbitration shall be conducted by a committee of three arbitrators (one appointed by the City, one appointed by the Company and one appointed by the other two so appointed), which shall be appointed within 30 days after the Original Submission Date. If the City and the Company-appointed arbitrators are unable to agree on the appointment of the other arbitrator within 30 days, then the other arbitrator shall be appointed by the American Arbitration Association. The arbitrators shall meet in Wilmington, Delaware, shall abide by the commercial arbitration rules of the American Arbitration Association and their decision shall be made within 45 days and shall be final and binding on all parties.
- (b) The City and the Company shall produce such records as the arbitrators shall request.
- (c) The decision of the arbitrators shall be in writing and shall include written findings of fact.
- (d) The City and the Company shall each bear their own costs and expenses (including attorneys' fees) in connection with any arbitration and the resolution of any dispute and shall each bear 50% of the costs and expenses of the third arbitrator.

EXHIBIT 7 – FORM OF CORPORATE GUARANTY

GUARANTY AGREEMENT

This **GUARANTY AGREEMENT** (this “**Guaranty**”) is made as of the ___ day of _____ 2020, by **Jacobs Engineering Group, Inc.**, (“**Guarantor**”), for the benefit of the City of Wilmington, Delaware (“**Owner**”). Guarantor and Owner are individually referred to herein as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, Operations Management International, Inc., a California corporation (“**Company**”) is a wholly owned subsidiary of Guarantor;

WHEREAS, Owner and Company have entered into a Professional Services Agreement for the Operation, Maintenance and Management of the Owner’s Wastewater Treatment Facility dated the date hereof (the “**Contract**”);

WHEREAS, pursuant to Section 17.1 of the Contract, Company is obligated to provide Owner with this Guaranty; and

WHEREAS, Guarantor as ultimate parent company of Company, is willing to enter into this Guaranty in consideration of and to satisfy the terms of the Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. In consideration of the award of the Contract by Owner to Company, Guarantor hereby guarantees to and for the benefit of Owner the full and timely performance of the obligations of the Company under the Contract when and if such obligations becomes due according to the terms of the Contract (“**Obligations**”). Guarantor shall not be required to cause such Obligations to be performed unless and until it receives Owner’s written demand for performance hereunder following the occurrence of an Event of Default, as such term is defined in the Contract. Guarantor shall have ten (10) days after notice of an Event of Default to commence its performance of such Obligations. Guarantor shall be entitled to assert any and all rights, remedies and defenses which would otherwise be available to Company under the Contract.

2. Any modification or amendment of any of the Obligations in accordance with the terms of the Contract shall not affect the liability of Guarantor hereunder.

3. Notwithstanding anything to the contrary herein, Guarantor's liability under this Guaranty shall not exceed Company’s liability under the Contract.

4. This Guaranty shall continue in full force and effect until all of the Obligations have been discharged.

5. This Guaranty shall be governed by the law of the State of Delaware governing the Contract, and any dispute under this Guaranty shall be finally settled under the dispute resolution provisions of the Contract.

6. The Guarantor expressly reserves the right to effectuate its obligations under this Guaranty through a properly licensed and registered corporate affiliate, as such licensure and registrations are required by applicable law.

7. There are no third-party beneficiaries of this Guaranty.

8. This Guaranty may not be assigned by Owner without Guarantor's prior written consent, provided however, prior written consent shall not be required in the event that the Guaranty is assigned to a municipal authority created by the Owner.

9. This Guaranty represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. This Guaranty may not be modified, amended or waived, except in writing signed by the Parties.

10. All notices, requests, demands, and other communications under this Guaranty shall be deemed to have been duly given (i) to Guarantor, if delivered in accordance with the requirements set forth in Section 19.11 of the Contract to the address below and (ii) to Owner, if delivered in accordance with the requirements set forth in Section 19.11 of the Contract to the address set forth therein.

To Guarantor:

Jacobs Engineering Group, Inc.
9191 South Jamaica Street
Englewood, CO 80112
Phone: _____
Fax: _____
Attn: Treasurer

This Guaranty Agreement has been duly executed by authorized representatives of each of the Parties as follows:

GUARANTOR:

Jacobs Engineering Group, Inc.

By: _____

Title: _____

OWNER:

By: _____

Title: _____

EXHIBIT 8 – SCADA AND CSO IMPROVEMENTS

Improvements to the SCADA system:

1. Engineering analysis, standards development, and design of improvements.
2. Initial patches of software needed for security.
3. Integrate the REBF Control system and Pump Station Control systems into the main WWTP SCADA
4. Replace current plant SCADA servers with three (3) new servers for SCADA including redundancy to host:
 - a. First server: primary Wonderware SCADA Galaxy Repository (GR); Wonderware SCADA Orchestra Object Server (AOS); I/O server(s) talking to the plant and remote hardware; backup iFIX server; the primary terminal servers or Web hosting servers for the above; primary Historians for the SCADA servers; domain controller backup to distribute the Active Directory functions.
 - b. Second server: backup Wonderware SCADA Galaxy Repository (GR); Wonderware SCADA Orchestra Object Server (AOS); I/O server(s) talking to the plant and remote hardware; primary iFIX server; backup terminal servers or Web hosting servers for the above; backup Historians for the SCADA servers; domain controller backup to distribute the Active Directory functions.
 - c. Third server: DMZ host jump box (Bomgar or similar) to act as an isolated, single function workstation for inside-the-perimeter development, diagnostics, and troubleshooting); backup server (likely running Veeam) to back up the other two servers as well as itself to a SAN (storage area network) or NAS (network attached storage); domain controller primary to handle user logons, authentication, and user/group management; Virtual Machine management console (vSphere) to handle the management and monitoring of all the hosts and their instances.
5. Provide a fourth server for the DMZ area for functions outside of SCADA:
6. Provide a fifth server for a SCADA development workstation to allow SCADA work to be completed without interrupting the actual Control systems;
7. Minimum of ten (10) wireless switches and telemetry to connect various on-site control subsystems to the plant-wide SCADA;
8. Nine (9) new cellular modems to connect the existing Real Time Control (RTC) and the three (3) current pump station sites to the main plant SCADA;
9. Six (6) new SCADA radios to connect the three current pump stations, two repeater sites, and a main radio at the WWTP;

10. Up to fifteen (15) redundant modems or radios for all remote sites depending on location and reliability needs;
11. On-site backup NAS drives for all server data/functions;
12. Up to twelve (12) thin client/operator workstations dispersed throughout the WWTP for connectivity to the plant wide SCADA and new clients for Administration Building main control room.
13. Add visibility to all CSO system monitoring, including newly installed equipment, to SCADA.

Improvements to the CSO system:

1. Engineering analysis and design of monitoring improvements
2. Level monitoring at all 35 unmonitored CSO sites;
3. Level monitoring at 9 additional tide gates and outfalls identified on the City's CSO inspection list that are used to determine if the river(s) are backing up into the collection system.
4. Three (3) new flowmeters in City-owned and operated interceptors.
5. Two (2) new level monitors in City-owned and operated trunk sewers.
6. Control equipment, panels, and telemetry from each site returning to the WWTP SCADA system and RTC system.

EXHIBIT 9 – REBF/COGEN IMPROVEMENTS

Improvements to the REBF systems:

1. Non-destructive testing, condition assessment and report of:
 - a. Feed hoppers, conveyors, pumps
 - b. Thermal fluid heater, blower, heat exchanger
 - c. SCADA, PLC and HMI control systems
 - d. Condenser, exhaust, and odor scrubber
 - e. Product conveyors, valves
 - f. Hot water backup boiler
 - g. Chemical feed skid for non-potable water
 - h. Potable water feasibility assessment and testing for REBF building sprinkler system
2. Design engineering and implementation of capital improvements:
 - a. Dryer cooling screw replacement(s)
 - b. Conveyor modifications
 - c. HVAC access for lubrication
 - d. Drain water pump replacement
 - e. Existing silo baghouse replacement
 - f. Existing dried solids conveyor (cup and chain) replaced
3. Critical spare parts to minimize downtime:
 - a. Conveyor splice kits, belt sections, scraper blades, v-belts, Dodge spares, motion and speed sensors, idler belt scale, and bearings
 - b. Dryer gearbox, motor, pump and RV VFDs, rotary joint gaskets and repair items, bearings and shims, solenoid valves, thermal sensors, oxygen analyzer
 - c. Hopper gearbox and motor
 - d. Cooling screw shrink disk, motor, and gearbox
 - e. Seepex feed pump stator, rotor, packing, and motor
 - f. Product silo thermocouples, filter bag cartridges, solenoid valves, discharge and transfer screw VFDs, chain assembly and spare links, feed screw gearbox and motor
 - g. Hot oil boiler pressure controller, pump strainers, recirculation pump and motor

- h. Lift station level detection and pumps
- i. Nonpotable water pump, motor, strainers

Improvements to Digester Gas Delivery:

1. Design engineering of improvements
2. Procurement, installation and startup of digester gas booster blowers:
 - a. Two blowers in a duty/standby arrangement with discharge pressure adequate to meet gas cleaning skid and cogeneration unit pressure requirements.
 - b. Booster blower pad and enclosure
 - c. Digester gas piping reroute, 6-inch diameter 316 SST, Schedule 5, estimated at 300 linear feet
 - d. Power, control wiring, and skid controls integrated as needed to the gas cleaning skid and cogeneration system.

Cogen Improvements

1. Generator spare parts (vendor recommended)
2. PJM Interconnection and Delmarva power study (to determine requirements that could allow feed of excess generator capacity to grid) and report of recommendations

EXHIBIT 10 – ADDITIONAL SCOPE AND ALLOWANCES FOR BASE FEE

At the request of the City, Jacobs has added the following scope items to the Base Fee reflected in this contract with allowances (where noted) for the work to be utilized each year. The allowances include Jacobs' cost-plus ten percent (10%). If the City-desired scope of work exceeds the provided allowances, then the additional costs plus Company's Discounted Rate will be treated as an Extraordinary Item for that Contract Year. Jacobs will cost-substantiate any of the allowance line items as requested by the City and rebate or reallocate any unspent funds at the City's direction.

Groundwater Monitoring

This scope of work includes collecting and analyzing up to five (5) samples once per year at the former HRI Biosolids Processing Facility. The sampling will be conducted in accordance with Duffield Associates May 2011 "Groundwater Monitoring Plan" prepared for the facility. An allowance of \$6,000 is included with Jacobs' base fee to cover this annual work.

Polychlorinated Biphenyls (PCB) Track Down Program

As part of the current NPDES surface water discharge permit, the City is required to perform an annual PCB Track down program that includes investigations, sampling at the WWTP, sampling/investigations in the collection system, and annual reporting. The City has historically used subcontractors for this work, including Synergistic Environmental Solutions for management and reporting, Environmental Standards for PCB sampling, along with Test America and Eurofins for laboratory analysis. Jacobs will continue to utilize this same set of subcontractors for Contract Year 1 (Fiscal year 2021) and evaluate the partners/subcontractors for this work for future contract years.

Based on historical costs, Jacobs has provided an allowance of \$250,000 in the base fee to cover this annual work. The final scope each year will be negotiated between the City, Jacobs, and any subcontractors to be within this allowance.

Title V Air Permit Annual Fees

The annual permit fees for the two (2) Title V air permits for the WWTP and the REBF will be paid for by Jacobs from an allowance of \$25,000. Any significant increase the current schedule of air permit annual fees published by the State of Delaware may necessitate an increase in this allowance.

EXHIBIT 11 -TRANSFERRED INVENTORY, OFFICE EQUIPMENT, AND
ROLLING STOCK

EXHIBIT 12 – SLUDGE AND CHEMICAL INVENTORIES AT COMMENCEMENT OF OPERATIONS

At the turnover of the project on July 1, 2020, a minimum inventory of chemicals shall be in place to effectively operate the WWTP. A maximum inventory of no more than 1 week of dewatered and/or dried solids under average conditions will be present on-site at the time of the turnover. In addition, the sludge inventory as defined by the MLSS and blanket levels in various tanks shall be within normal process targets to minimize compliance risk of stockpiling solids for cost avoidance. See Tables 1 and 2 for actual quantities.

In addition to treatment process chemicals, any/all lubricants remaining for existing equipment purchased by the current Operator shall remain at site.

Table 1. Chemicals

Chemical	Location	Quantity
Neat Polymer Solution	Thickening Building	Minimum two weeks storage
Dry Polymer	Dewatering Building	20,000 pounds
12% Sodium Hypochlorite	Chlorine Contact Chamber	Full storage tanks
Urea	REBF Building	700 gallons

Table 2. Solids

Solids Type	Location	Quantity (dry tons)
Dewatered Solids	Sludge Pad at adjacent property and storage silo at REBF	No more than 200 dry tons
Solids Holding Tanks (2)	Adjacent to dewatering building	50% capacity
Process Sludge Inventory	Primary Clarifiers, Aeration Tanks, Secondary Clarifiers, Gravity Thickeners	Within normal process targets (not to be used for excess sludge stockpiling)

EXHIBIT 13
MULTIJURISDICTIONAL AGREEMENT

EXHIBIT 14 – ANNUAL LABOR RATE TABLE

Staff Category	Raw Rate (low)	Raw rate (high)	Billing rate (low)	Billing Rate (high)	<i>Market rate (low)</i>	<i>Market rate (high)</i>
Program/Project Manager	\$70	\$110	\$182	\$286	<i>\$196</i>	<i>\$308</i>
Subject Matter Expert	\$80	\$115	\$208	\$299	<i>\$224</i>	<i>\$332</i>
Principal Engineer	\$65	\$90	\$169	\$234	<i>\$182</i>	<i>\$252</i>
Senior Engineer	\$60	\$80	\$156	\$208	<i>\$168</i>	<i>\$224</i>
Project Engineer	\$45	\$60	\$117	\$156	<i>\$126</i>	<i>\$168</i>
Staff Engineer	\$30	\$45	\$78	\$117	<i>\$84</i>	<i>\$126</i>
Senior Technician	\$45	\$55	\$117	\$143	<i>\$126</i>	<i>\$154</i>
Intermediate Technician	\$30	\$45	\$78	\$117	<i>\$84</i>	<i>\$126</i>
Staff Technician	\$20	\$30	\$52	\$78	<i>\$56</i>	<i>\$84</i>
Senior O&M Professional	\$50	\$80	\$130	\$208	<i>\$140</i>	<i>\$224</i>
Project O&M Professional	\$35	\$55	\$91	\$143	<i>\$98</i>	<i>\$154</i>
Staff O&M Professional	\$20	\$35	\$52	\$91	<i>\$56</i>	<i>\$98</i>
Administrative Professional	\$30	\$55	\$78	\$143	<i>\$84</i>	<i>\$154</i>
Administrative Staff	\$15	\$35	\$39	\$91	<i>\$56</i>	<i>\$98</i>
Notes:						
1) Billing rate based on discounted labor multiplier of 2.6, as compared to market labor multipliers of 2.8 to 3.0.						
2) Billing rate range valid through June 30, 2021 or by mutual agreement of City and Jacobs to extend current rate ranges.						

EXHIBIT 15 – INTERIM OPERATIONAL CONDITIONS

In the event that the REBF facility has not been turned over to the City by the Commencement Date, the obligations of the parties shall be modified as follows with respect to the Service Agreement until the REBF operations are assumed by Company and referred to as the “Interim Operating Period.” During the Interim Operating Period all contract obligations related to the operation and maintenance of the REBF, including obligations related to environmental permits shall not be applicable until the Company assumes the operation of the REBF.

1. Section 1.55 - The REBF and all associated systems are excluded from the definition of “Managed Assets” during the Interim Operating Period.
2. Section 2.2 – The term of the service contract is not modified by the Interim Operating Period.
3. Section 3.10- During the Interim Operating Period, the Company shall not be responsible for the Operation and Maintenance of the REBF.
4. Section 3.11.5, 3.11.6- Full implementation of the improvements set forth in Section 3.11.5, Exhibit 9, and the study set forth in Section 3.13 shall be completed upon the assumption of the REBF operations and maintenance. Additionally, the PJM study set forth in Exhibit 3 shall be performed, the results of which shall be considered proprietary and confidential between the City and Company.
5. Section 4.7- In the event that the Company does not assume the REBF operations on the Commencement date, the timeline for the completion of the improvements contemplated in Section 4.7 and Exhibit 9 shall be extended by the duration of the Interim Operating Period.
6. Section 5.4 Service Fee- for the Interim Operating Period, the Service Fee shall be implemented as set forth below.

$$SF = BF + AMF + SDF + PW + SWU + EC + MMA$$

where,

SF = Service Fee

BF = Base Fee

AMF = Asset Management Fee

SDF = Sludge Disposal Fee

PW = Potable Water Component

SWU = Stormwater User Component

EC = Electricity Component

MMA = Major Maintenance Account

Each component of the Service Fee shall be determined as set forth below

- a. Base Fee- The Base Fee for the Interim Operating Period shall be \$10,406,610, as calculated on a 12-month basis.
- b. Asset Management Fee – the Asset Management Fee for the Interim Operating Period shall be \$1,421,509, as calculated on a 12-month basis.
- c. The Company shall pay for Sludge Disposal during the Interim Operating Period. The Sludge Disposal Fee for the Interim Operating Period shall be \$2,928,782, as calculated on a 12-month basis. The Sludge Disposal Fee shall be based on Company's estimated expenditures for the 12-month period plus ten percent (10%). Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount plus ten percent (10%) or the Company will issue a credit to the City for budgeted amounts billed (inclusive of 10% markup) in excess of actual expenditures.
- d. The Company shall pay for Potable Water for the operation of the Managed Assets during the Interim Operating Period. The Potable Water Component for the Interim Operating Period shall be \$481,305, as calculated on a 12-month basis. The Potable Water Component shall be based on Company's estimated expenditures for the 12-month period. Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.
- e. The Company shall pay for Stormwater User Fees incurred during the Interim Operating Period for the Managed Assets. The Stormwater User Component for the Interim Operating Period shall be \$162,641, as calculated on a 12-month basis. The Stormwater User Fee Component shall be based on Company's estimated expenditures for the 12-month period. Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.
- f. The Company shall pay for Electricity incurred during the Interim Operating Period for the Managed Assets. The Electricity Component for the Interim Operating Period shall be \$648,219, as calculated on a 12-month basis. The Electricity Component shall be based on Company's estimated expenditures for the 12-month period. Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures. Any guarantees relating to electricity usage shall not be applicable in the Interim Operating Period.
- g. The Major Maintenance Component will be reduced to \$1,500,000.

The Interim Operating Period Service Fee shall be billed in equal 1/12th installments, based on the annual amounts set forth above (irrespective of the duration of the Interim Operating Period), as set forth in Section 5.3.1. Upon assumption of the REBF, the obligations of the parties will be

governed as agreed to in the Service Agreement. In the event that the Interim Operating Period continues for the full 12-month period, the Service Fee for the Second Contract Year shall be adjusted from the amounts set forth in Section 5.4 in accordance with the methodology for each component of the Service Fee.

In the event that Company has to remobilize to the REBF site after the Interim Operating Period, due to the termination of Company's operating agreement with Honeywell for the REBF site, there will be a one-time cost of Fifty Thousand Dollars (\$50,000).

Exhibit 16 – Major Assets Included in Asset Management Fee