

RESOLUTION NO. 2307

A RESOLUTION OF THE CITY OF WILSONVILLE BY ITS CITY COUNCIL ACTING ALSO IN ITS CAPACITY AS THE LOCAL CONTRACT REVIEW BOARD AUTHORIZING THE AWARD OF THE DESIGN-BUILD-OPERATE AGREEMENT FOR WASTEWATER TREATMENT PLANT IMPROVEMENTS (PROJECT NO. 2082) TO CH2M HILL ENGINEERS, INC., A DELAWARE CORPORATION, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY OF WILSONVILLE

WHEREAS, the City Council, acting in its capacity as the Local Contract Review Board, duly adopted Resolution No. 2131 on August 18, 2008, authorizing the use of the alternative method of contracting of Design-Build-Operate (DBO) and the request for proposal for an owner's representative to develop a request for proposal for the DBO contract and to provide owner's representative services for design-build-operate deliverables; and

WHEREAS, Resolution No. 2131 made certain findings in regards to selecting the DBO form of alternative contracting, including but not limited to (1) the DBO contract should meet certain specified goals, namely:

- ♦ Completing a \$50 million capital expansion on time and within budget
- ♦ Uninterrupted plant operation
- ♦ Increase the plant's efficiency
- ♦ Achieve lifecycle cost reductions, e.g., high quality, low maintenance equipment
- ♦ Modernize equipment and controls
- ♦ Meet and exceed regulatory requirements
- ♦ Clearly understand the liabilities and risks during design, construction, and operation and protect the City to fullest extent
- ♦ Through design and construction, integrate long term operations and maintenance cost control

(2) the contracting company should provide jobs to affected bargaining unit city employees with a package of salary and benefits that is comparable to or better than current applicable employment, and to agree to protect the affected employees from involuntary transfers and termination without cause, and (3) that a competitive procurement takes place that (a) is unlikely

to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and (b) the awarding of the public improvements project will likely result in substantial cost savings to the contracting agency; and

WHEREAS, Resolution No. 2159, adopted January 26, 2009, authorized the award of a Professional Services Agreement, with RW Beck, Inc. as the owner's representative, to assist the City to develop a request for proposal for a DBO contract and to perform services for DBO deliverables; and

WHEREAS, RW Beck, Inc. assisted the City in a competitive solicitation of qualifications for companies to respond to a request for qualifications and to which four companies responded and three were found to be technically and financially qualified; and

WHEREAS, RW Beck, Inc. assisted the City in a competitive solicitation for request for proposals from the three qualified proposers, two of which responded with competitive proposals meeting the goals and requirements of Resolution 2131 and the Request for Proposals; and

WHEREAS, as part of the request for proposal, a proposed DBO contract was prepared with the assistance of the law firm of Hawkins Delafield & Wood LLP, whose legal specialty is large design-build and design-build-operate projects and contracts, and which the proposers responded to as well as responding to a series of technical appendices of requirements, which RW Beck, Inc. and its technical subcontractor, Brown & Caldwell, assisted in preparing; and

WHEREAS, after a complete and thorough review of the two proposals, the reviewing team presented its findings and recommendations to the City Council that negotiations continue with CH2M Hill Engineers, Inc. (CH2M Hill) as the preferred proposer, and receiving Council's direction to continue to negotiate with CH2M Hill, and having done so, on June 29, 2011, met with the City Council, acting in its capacity as the Local Contract Review Board, in work session to provide the following information to the Council/Board:

(1) That the award of contract meets each of the goals of Resolution No. 2131 as recited above;

(2) That the contract meets the required provisions of a comparable package of wages and benefits for affected employees and protects the affected employees from involuntary transfer and termination without cause;

(3) That a competitive procurement did take place and the pricing for the design-build and operating phases resulted in substantial cost savings, with the project coming in at an

estimated \$41.8 million (does not include \$5 million interim debt to be financed), which is substantially under the projected \$50 million capital expansion cost estimate contained in Resolution No. 2131. The proposal also provides operation cost savings of approximately \$1.9 million over the 15-year life of the operational portion of the contract, when compared to current operating costs projected over the same time span, including approximately \$800,000 of cost savings over the first three years and a projected lessening of the repair and maintenance life cycle costs of new equipment and process to be installed rather than that projected with repair, maintenance and replacement of current equipment and processes; and

(4) That there is a favorable interest climate for bonding, utilizing a Limited Tax General Obligation (LTGO) combined with certain funds on hand, and a supportive rate increase, reasonable and prudent financing is available to fund the project and contract; and

WHEREAS, as provided in the public record materials provided by staff at the work session June 29, 2011, significant public outreach has been provided, leading up to the public hearing of July 7, 2011 accompanying this Resolution; and

WHEREAS, there is an identified cost benefit of using CH2M Hill's corporate insurance and endorsements of approximately \$1.3 million on the design-build portion of the project and \$176,000 yearly on the operations portion; provided however, because CH2M Hill has certain confidentiality requirements regarding the corporate policies, the City Attorney's Office, together with the City's insurance consultant, have arranged a review of the policies and endorsements and bonding and surety information on July 13, 2011 at the CH2M Hill offices in Colorado and, therefore, staff recommends any contract approval be subject to and contingent upon acceptable findings based on that review; and

WHEREAS, the Council finds that there is currently a favorable interest climate to bond for the project, as well as a favorable construction climate for labor and materials, and therefore, time is of the essence;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council Acting in Its Capacity of Local Contract Review Board has been fully advised in the premises, has had the opportunity to be present at or review the matters of public record in this regard, has had the opportunity to review the request for proposals, the proposals, and the proposed DBO contract, and has been presented with staff reports and recommendations in regard to the

proposals, preferred proposer, and the DBO contract and alternative methods of financing.

2. The above recitals are incorporated as the Council/Board's findings as if fully set forth herein.
3. The City Manager is authorized, on behalf of the City of Wilsonville, to enter into the DBO contract, a copy of which is marked as **Exhibit A**, attached hereto, and incorporated by reference as if fully set forth herein, subject to the following contingencies:
 - 3.1. Review of CH2M's proposed corporate insurance policy coverage by the City Attorney's Office and the City's insurance consultant, Tom BeLusko Jr. of WSC Insurance, to ensure conformance with required endorsements, coverage requirements, and bonding capacity and surety ratings; and to determine acceptable conformance to the contract requirements or to negotiate satisfactory adjustment or additions thereto, as necessary to achieve contract conformance and reasonable risk mitigation, as a precondition to the City Manager's execution of the contract;
 - 3.2. Approval of the City Attorney's Office, as to final form of the contract, authorizing the City Attorney's Office to correct any scrivener's errors, make clarifying changes to the contract based on insurance review, correction of any discovered obvious errors in language, grammatical and other modifications that are not substantive in nature, and minor conforming changes between the appendices and the contract, should any inconsistencies or ambiguities be discovered prior to execution of the contract.

4. The City's Finance Director is directed to provide a Resolution to the City Council on July 18, 2011 authorizing Limited Tax General Obligation financing of the wastewater treatment plant project amount of \$46.8 million, together with approximately \$3.0 million for the Frog Pond collection line (design, property acquisition, and permits) and \$2 million for the Memorial Park Lift Station upgrade; and is directed to use the following funds to finance the wastewater treatment plant project and lower the total obligation amount to be financed: \$4

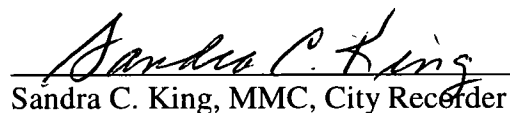
million from sewer operations, \$1 million from sewer system development charges, \$2 million from urban renewal east side, and \$1 million from a general fund interfund loan to the sewer fund (loan authorized but intended to be held for plant contingency and subject to further Council determination).

This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 7th day of July, 2011, and filed with the Wilsonville City Recorder this date.


Tim Knapp, Mayor

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Núñez	Yes
Councilor Hurst	Yes
Councilor Goddard	Yes
Councilor Starr	Yes

Attachments: Exhibit A – DBO Contract



City of
WILSONVILLE
in OREGON



Design-Build-Operate Agreement
For
Wastewater Treatment Plant Improvements
Project #2082

between
City of Wilsonville, Oregon
and
CH2M HILL Engineers, Inc.

7/13/11

Note: Due to the size of
this contract, the final
version is held in the
office of the City Recorder
and not duplicated here.

July 7, 2011

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Draft of July 7, 2011

DESIGN-BUILD-OPERATE AGREEMENT
FOR
WASTEWATER TREATMENT PLANT IMPROVEMENTS
Project No. 2082

between

THE CITY OF WILSONVILLE, OREGON

and

CH2M HILL ENGINEERS, INC.

Dated

July 7, 2011

CITY OF WILSONVILLE WWTP PROJECT NO. 2082

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2. Transition Plan, Transition Period Schedule and Designated Employees
3. Performance Guarantee Requirements and Liquidated Damages
4. Technical Specifications
5. Construction Requirements
6. Governmental Approvals
7. Quality Program
8. Acceptance Test Procedures and Standards
9. City Review/Submittals
10. Operation and Maintenance
11. Asset Management
12. Payment Schedules
13. Asset Evaluation Protocol
14. Exit Test Procedures and Standards
15. Key Personnel and Approved Subcontractors

TRANSACTION FORMS

- A. Form of Guaranty Agreement
- B. Form of Management Services Performance Bond
- C. Form of Design-Build Work Performance Bond
- D. Form of Labor and Materials Payment Bond

REFERENCE DOCUMENTS

- A. National Pollutant Discharge Elimination System (NPDES) Permit No. 101888
- B. City of Wilsonville Wastewater Facility Plan Update (November 2004)
- C. Task 1.3.1 Technical Memorandum: Geotechnical Report, dated December 16, 2009, prepared by Brown and Caldwell and GeoDesign.

DESIGN-BUILD-OPERATE AGREEMENT
FOR
WASTEWATER TREATMENT PLANT IMPROVEMENTS

THIS DESIGN-BUILD-OPERATE AGREEMENT FOR WASTEWATER TREATMENT PLANT IMPROVEMENTS is made and entered into as of this ____ day of _____, 2011 between the City of Wilsonville, Oregon, a political subdivision organized and existing under the laws of the State of Oregon (the "City"), and CH2M HILL Engineers, Inc., a corporation organized and existing under the laws of the State of Delaware, and authorized to business in the State of Oregon (the "Company").

PARTIES

COMPANY: CH2M HILL Engineers, Inc.
Address: 2020 South West 4th Avenue
3rd Floor
Portland, Oregon 97201-4958
Contact: Joseph Glicker, P.E. Telephone: (503) 736-4378
Facsimile: (503) 736-2022

OWNER: City of Wilsonville
Address: 29799 S.W. Town Center Loop E.
Wilsonville, OR 97070
Contact: Public Works Director Telephone: (503) 570-1542
Facsimile: (503) 682-8816

EFFECTIVE DATE: [_____]

RECITALS

(A) The City owns, operates and maintains the City's wastewater treatment plant, lift stations and collection system.

(B) Pursuant to NPDES Permit No. 101888, the City is authorized to discharge treated wastewater from the wastewater treatment facility into the Willamette River.

(C) The City has determined it is in the City's best interests to contract with a private entity on a long-term basis to operate, maintain, repair, replace, improve and manage the City's wastewater treatment plant and lift stations and to design, construct, start-up and test certain capital improvements to the wastewater treatment plant to meet the requirements of applicable law (collectively, the "Contract Services").

(D) Pursuant to Section 2.314 of the City Code, Sections 279(C).300 and 279(C).335 of the Oregon Revised Statutes, and Resolution No. 2131 which was adopted by the City Council on August 18, 2008, the City issued a request for qualifications ("RFQ") on September 10, 2009.

(E) The City pre-qualified three firms that submitted responses to the RFQ for receipt of a request for proposals ("RFP") for the Contract Services, and issued the RFP on October 15, 2010. RFP Addenda were issued on November 22, 2010 and December 21, 2010.

(F) Following the receipt of all proposals submitted in response to the RFP, the City's evaluation committee assigned a rating to each proposal based on the comparative evaluation criteria set forth in the RFP, and forwarded its evaluation to the City's Contract Administrator, who duly advised the City Council.

(G) Based on the evaluations submitted by the City's evaluation committee, the City's Contract Administrator, upon duly advising the City Council, on April 27, 2011, notified the proposers that the City had made a preliminary determination that the proposal submitted by the Company was most advantageous in accordance with Section 279C.410(8) of the Oregon Revised Statutes.

(H) After the above notification of April 27, 2011, the City initiated contract negotiations with the Company for performance of the Contract Services, which have concluded with this DBO Agreement.

(I) On July 7, 2011, the City Council acting in its capacity as the Local Contracting Review Board approved this DBO Agreement and authorized its execution and delivery.

(J) CH2M HILL Companies, Ltd., an affiliate of the Company, will guarantee the performance of the obligations of the Company under this DBO Agreement pursuant to a separate guaranty agreement executed concurrently herewith.

(K) The City desires to receive, and the Company desires to provide, the Contract Services under the terms of this DBO Agreement.

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

ARTICLE I

DEFINITIONS AND INTERPRETATION

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

"Acceptable Disposal Site" means either a sanitary landfill or other waste disposal or management facility or a beneficial reuse facility, which: (1) is located in the United States; (2) does not appear on any federal or state list of sites, such as but not limited to the National Priority List or the CERCLIS list under CERCLA, maintained for the purpose of designating landfills which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Materials; and (3) is being operated at the time of disposal or delivery in accordance with Applicable Law, as evidenced by the absence of any significant regulatory sanctions or any significant enforcement actions with respect to material environmental matters.

"Acceptance" means demonstration by the Company in accordance with Article XI (Acceptance of the Wastewater System Capital Improvements) and Appendix 8 (Acceptance Test Procedures and Standards) that the Acceptance Tests have been conducted, the Acceptance Test Procedures and Standards have been achieved and the other Acceptance Date Conditions set forth in Section 11.3 (Acceptance Date Conditions) have been achieved.

"Acceptance Date" means the date on which Acceptance has occurred or is deemed to have occurred under Article XI (Acceptance of the Wastewater System Capital Improvements).

"Acceptance Date Conditions" means the preconditions for Acceptance set forth in Section 11.3 (Acceptance Date Conditions).

"Acceptance Test Plan" means the plan for the performance of the Acceptance Tests to be developed by the Company in accordance with Appendix 8 (Acceptance Test Procedures and Standards).

"Acceptance Test Procedures and Standards" means the test procedures and standards for Acceptance, as set forth in Appendix 8 (Acceptance Test Procedures and Standards).

"Acceptance Test Report" means the written test report prepared by the Company following performance of any Acceptance Tests which certifies the results of such Acceptance Tests in accordance with subsection 11.2(E) (Acceptance Test Report).

"Acceptance Testing" means the performance of the Acceptance Tests by the Company.

"Acceptance Tests" means the applicable test for Acceptance to be performed by the Company in accordance with Article XI (Acceptance of the Wastewater System Capital Improvements), Appendix 8 (Acceptance Test Procedures and Standards) and the Acceptance Test Plan.

"Actual Annual Electricity Costs" means the sum of all actual annual electricity costs resulting from the Company's performance of the Management Services with respect to the WWTP, as reflected in the electricity bills paid by the City and excluding any charges or penalties imposed by the electricity provider that are required to be reimbursed by the Company to the City on a monthly basis as provided in subsection 6.11(A) (Electricity Supply and Consumption).

"Adjustment Factors" means the CPI Adjustment Factor and the ECI Adjustment Factor.

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

"Annual Settlement Statement" means the annual settlement statement prepared by the Company setting forth the actual aggregate Service Fee payable with respect to a Contract Year and a reconciliation of such amount with the amounts actually paid by the City with respect to such Contract Year in accordance with Section 9.8 (Annual Settlement).

"Appendix" means any of the Appendices and, as applicable, any attachments thereto, that are appended to this DBO Agreement and identified as such in the Table of Contents.

"Applicable Law" means: (1) any federal, state or local statute, law, code, ordinance or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, practice, policy, guidance, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented in writing by such Governmental Body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement between the City and the EPA, DEQ or any other Governmental Body, in each case having the force of law and applicable from time to time: (a) to the siting, permitting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation, maintenance, repair, replacement or management of the Wastewater System; (b) to the conveyance, treatment, storage or discharge of influent and effluent to and from the Wastewater System; (c) to the air emissions from the Wastewater System; (d) to the transfer, handling, processing, transportation or disposal of Residuals; (e) to the health and welfare of individuals at or visiting the Managed Assets; and (f) to any other transaction or matter contemplated hereby (including any of the foregoing which pertain to wastewater treatment, wastewater collection, residuals and waste disposal, processing or marketing, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination).

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

"Baseline Asset Evaluation" means the initial evaluation of the Managed Assets following Acceptance conducted in accordance with subsection 8.3(B) (Baseline Asset Evaluation Following the Acceptance Date).

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

"Biosolids" means treated Sludge meeting the Biosolids quality requirements set forth in Section 7.5 (Biosolids Guarantee).

"Biosolids Guarantee" means the Company's guarantee of performance set forth in Section 7.5 (Biosolids Guarantee).

"Biosolids Management Plan" means the plan for the management and beneficial reuse of Biosolids developed by the Company pursuant to Appendix 10 (Operation and Maintenance).

"BOD₅" or "Biochemical Oxygen Demand" means the five-day measure of the amount of oxygen required for the stabilization of decomposable carbonaceous organic matter and the bioxidation of nitrogenous material under aerobic conditions, the analysis of which shall conform to 40 C.F.R. 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants," unless other test procedures have been specified in the NPDES Permit.

"Capital Improvement Sites" means the parcels of real property described or referred to in Appendix 1 (Description of Wastewater System) on which the above-ground improvements and below-ground improvements constituting the Wastewater System Capital Improvements are to be located.

"Capital Maintenance Account" means the separate account to be established by the City for the payment of the Capital Maintenance Charge in accordance with Section 9.4 (Maximum Annual Capital Maintenance Charge).

"Capital Maintenance Charge" means all payments to the Company during the Term for Major Maintenance, Repair and Replacement under subsections 8.1(C) (Major Maintenance, Repair and Replacement) and 8.2(B) (Major Maintenance, Repair and Replacement Schedule) in accordance with Section 9.4 (Maximum Annual Capital Maintenance Charge).

"Capital Modification" means any material change made to any part of the Managed Assets following Acceptance, including the installation of new structures, equipment, systems or technology and any additions or expansions to the Managed Assets, as addressed in Article XIII (Capital Modifications).

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

"Change in Law" means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferences with, delays or increases the cost of performing the obligations of either party:

(a) except as specifically excluded from this definition below, the adoption, amendment, promulgation, issuance, modification, or repeal of any Applicable Law, or the written change in administrative or judicial interpretation of any Applicable Law, on or after the Change in Law Baseline Date, unless such Applicable Law was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

(b) except as specifically excluded from this definition below, the order or judgment of any Governmental Body issued on or after the Change in Law Baseline Date, enforcing any Change in Law described in subsection (a) of

this definition to the extent such order or judgment is not the result of intentional 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 an intentional or negligent action, error or omission or lack of reasonable diligence; or

(c) except as specifically excluded from this definition below, the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement on or after the Change in Law Baseline 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 intentional 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 an intentional or negligent action or lack of reasonable diligence.

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

(i) acts, events and circumstances with respect to the Governmental Approvals to the extent that the Company has expressly assumed the permitting risk under Section 10.9 (Design-Build Work Permitting Responsibilities) of this DBO Agreement;

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

(iii) any increase in any fines or penalties provided for under Applicable Law in effect as of the Change in Law Baseline Date; and

(iv) any act, event or circumstance that would otherwise constitute a Change in Law but that does not change the requirements imposed on the Company by the Contract Standards in effect as of the Contract Date; provided, however, that, for the purposes of this provision, the Contract Standards in effect as of the Contract Date shall include Applicable Law as of the Change in Law Baseline Date but not any Change in Law between the Change in Law Baseline Date and the Contract Date.

"Change in Law Baseline Date" means July 1, 2011, which is the date established by the parties as the date for the conclusion of negotiations prior to the Contract Date.

"Change Order" means a written order issued by the City and agreed to in writing by the Company making a Design and Construction Requirement Change whether made at Company request, due to Uncontrollable Circumstances, as a result of a term or condition imposed by a Governmental Body, or at the direction of the City, or otherwise making a Fixed Design-Build Price Adjustment, an adjustment to the Scheduled Acceptance Date or other change to the terms and conditions of this DBO Agreement relating to the Design-Build Work. A Change Order shall be deemed to constitute a DBO Agreement Amendment.

"City" means the City of Wilsonville, Oregon, a municipal corporation organized and existing under the laws of the State of Oregon.

"City Building Permits" means the Governmental Approvals with respect to which the City is listed as the permit issuing entity in the "Governmental Body" column in Table 6-1 of Appendix 6 (Governmental Approvals) and which are required to be obtained by the Company in accordance with Article X (Permitting, Design and Construction of the Wastewater System Capital Improvements).

"City Engineering Representative" means an engineer registered in the State and either (1) employed by the City, or (2) a consulting engineer or firm of consulting engineers under contract with the City, having experience with respect to the design, construction, testing, operation, maintenance, repair, replacement and management of wastewater systems, designated as the City Engineering Representative from time to time in writing by the City.

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

"City Indemnitee" means the City, and its elected officials, appointed officers, employees, representatives, agents, consultants and contractors.

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

"Class A Biosolids" means Biosolids that meet the Part 503 Regulations for Class A pathogen reduction.

"Class A Biosolids Performance Standards" means the standards for successful completion of the Class A Biosolids Performance Test, as set forth in Appendix 8 (Acceptance Test Procedures and Standards).

"Class A Biosolids Performance Test" means the tests required to demonstrate compliance with the Class A Biosolids Performance Standards, as more particularly described in Appendix 8 (Acceptance Test Procedures and Standards).

"Class A Biosolids Performance Test Plan" means the testing protocols, procedures and processes for the performance of the Class A Biosolids Performance Tests prepared by the Company and approved by the City in accordance with Appendix 8 (Acceptance Test Procedures and Standards) and Section 11.7 (Class A Biosolids Performance Testing).

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

"Collection System" means the City's sanitary sewer collection system and the real property on which the above-ground structures constituting part of such system are located, as described in Appendix 1 (Description of Wastewater System), consisting generally of sanitary sewers, clean-outs, outlets, manholes, lift stations, pump stations, pumps, force

mains, on-site generators, pipes, lateral connection pipes, flowmeters, flow splitters, weirs and interceptors, and associated SCADA and telemetry system together with all improvements thereto acquired, installed, constructed or reconstructed from time to time.

“Commencement Date” means the date upon which the City gives the Company a written Notice to Proceed in accordance with Article IV (Transition Period), authorizing the Company to commence the performance of the Management Services and the Design-Build Work.

“Commencement Date Conditions” means the preconditions for establishment of the Commencement Date set forth in Section 4.4 (Commencement Date Conditions).

“Company” means CH2M HILL Engineers, Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

“Company Fault” means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, non-performance or non-compliance by the Company with respect to its obligations and responsibilities under this DBO Agreement to the extent not attributable to any Uncontrollable Circumstance, and which materially and adversely affects the City’s rights, obligations or ability or costs to perform under this DBO Agreement.

“Construction Date” means the date, following satisfaction of the Construction Date Conditions by the Company, upon which the Company shall have the right to proceed with the physical construction of the Wastewater System Capital Improvements, as determined in accordance with Section 10.2 (Construction Date).

“Construction Date Conditions” means the preconditions for the establishment of the Construction Date set forth in subsection 10.2(B) (Company Obligations).

“Construction Plan” means the Company’s plan for the performance of the construction portion of the Design-Build Work to be developed in accordance with the requirements set forth in Appendix 5 (Construction Requirements).

“Consumables” means those materials, supplies and similar consumables used in connection with the operation and management of the Managed Assets, which may include fuel oil, diesel fuel, liquid chlorine, liquid defoamant, lubricants, polymers, office supplies and other chemicals, fuels, materials, supplies and similar consumables used in connection with the Management Services.

“Contract Administration Memorandum” means the principal formal tool for the administration of routine matters arising under this DBO Agreement between the parties that do not require a DBO Agreement Amendment, as provided for under subsection 17.4(B) (Contract Administration Memoranda).

“Contract Administrator” means the individual or firm, designated from time to time in writing by the City, to administer this DBO Agreement and act as the City’s liaison with the Company in connection with the Contract Services.

“Contract Date” means the date this DBO Agreement is fully executed and delivered by the parties hereto.

“Contract Representative” means, in the case of the Company, the individual specified in writing by the Company as the representative of the Company from time to time for

all purposes of this DBO Agreement and, in the case of the City, the Public Works Director or such other representative as shall be designated in writing by the City from time to time.

“Contract Services” means the Management Services and the Design-Build Work.

“Contract Standards” means the standards, terms, conditions, methods, techniques, and practices imposed or required by: (1) Applicable Law; (2) the Technical Specifications; (3) the Performance Guarantees; (4) Prudent Engineering and Construction Practice; (5) Prudent Industry Practice; (6) the Construction Plan; (7) the Design-Build Quality Management Plan; (8) the Operation and Maintenance Plan; (9) the Operation and Maintenance Manual; (10) applicable equipment manufacturers’ specifications; (11) applicable Insurance Requirements; and (12) any other standard, term, condition or requirement specifically provided in this DBO Agreement to be observed by the Company. Subsection 1.2(O) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability, stringency and consistency of the Contract Standards.

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

“Cost Substantiation” means the process of providing evidence of actual costs in accordance with Section 17.10 (Cost Substantiation of Work Already Performed).

“CPI” or “Consumer Price Index” means the annual value in a given calendar year for the Not Seasonally Adjusted Consumer Price Index for all Urban Consumers, All Items, Portland-Salem, OR, as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

“CPI Adjustment Factor” means the adjustment factor for the annual adjustment of the Service Fee and any other amounts specified in this DBO Agreement as subject to adjustment by the CPI Adjustment Factor, as calculated in accordance with subsection 9.3(C) (CPI Adjustment Factor).

“DBO Agreement” means this Design-Build-Operate Agreement for Wastewater Treatment Plant Improvements, including the Appendices, as the same may be amended or modified from time to time in accordance herewith.

“DBO Agreement Amendment” means a written amendment to this DBO Agreement, duly authorized, approved or ratified by the City (as and to the extent required by Applicable Law) and duly authorized by the Company.

“Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Company to the City under this DBO Agreement, including those materials specifically required under Appendix 9 (City Review/Submittals) relating to the Design-Build Work.

“DEQ” means the Oregon Department of Environmental Quality.

“Design and Construction Requirement Change” means a change in the Design and Construction Requirements made by a Change Order or a Unilateral Change Directive (1) as a result of a Company request agreed to by the City, (2) on account of Uncontrollable Circumstances, (3) as a result of a term or condition imposed by a Governmental Body, or (4) at the direction of the City.

“Design and Construction Requirements” means those portions of the Technical Specifications designated as the “Design and Construction Requirements” in Appendix 4 (Technical Specifications).

“Designated Employee” means the employees of the City currently employed at the WWTP to whom the Company shall provide an offer of employment pursuant to Section 5.1 (Company Employment of Designated Employees) and Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees).

“Design-Build Letter of Credit” means a letter of credit provided in lieu of retainage by the Company in accordance with subsection 12.2(F) (Design-Build Letter of Credit) meeting all of the requirements specified in Section 16.3 (Design-Build Letter of Credit).

“Design-Build Manager” means the employee of the Company, any Affiliate of the Company, or the Company’s Subcontractor that is designated by the Company to be primarily responsible for the design or construction of the Wastewater System Capital Improvements, who shall be present on the Capital Improvement Sites with any necessary assistants on a full-time basis when the Company or any Subcontractor is performing the Design-Build Work, and meets all of the requirements set forth in subsection 10.16(B) (Design-Build Manager).

“Design-Build Period” means the period from and including the Commencement Date through the achievement of Final Completion.

“Design-Build Price” means the Fixed Design-Build Price and any Fixed Design-Build Price Adjustments made pursuant to subsection 12.1(C) (Fixed Design-Build Price Adjustments).

“Design-Build Quality Management Plan” means the Company’s plan for quality assurance and quality control in implementing the Design-Build Work to be developed in accordance with the requirements set forth in Appendix 7 (Quality Program).

“Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and Acceptance of the Wastewater System Capital Improvements by the Company pursuant to this DBO Agreement during the Design-Build Period. Design-Build Work includes, subject to the terms and conditions hereof, the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Company’s design, engineering, construction, start-up, commissioning, Acceptance Testing, Class A Biosolids Performance Testing, obtaining and maintaining Governmental Approvals and related obligations with respect to each Wastewater System Capital Improvement during the Design-Build Period under this DBO Agreement, including all completed structures, assemblies, fabrications, acquisitions and installations, and all of the Company’s administrative, accounting, record-keeping, notification and similar responsibilities of every kind whatsoever under this DBO Agreement pertaining to such obligations. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires, and shall include all Design and Construction Requirement Changes authorized by a Change Order or Unilateral Change Directive.

“Design-Build Work Performance Bond” means the performance bond to be provided by the Company, as security for the performance of the Design-Build Work, in accordance with Section 16.2 (Bonds).

“Development Review Board” or “DRB” means the City’s Development Review Board responsible for conducting hearings and rendering decisions on all aspects of land-use applications, including land divisions, planned development, site level review of specific development proposals, design review applications, street naming and vacations, zoning variances, conditional use permits and quasi-judicial amendments to the City’s comprehensive plan designations or zoning.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Managed Asset Sites that materially differ from the geotechnical conditions reasonably anticipated by the data and information set forth in the geotechnical baseline conditions included in Reference Document C (Geotechnical Report).

“ECI” or “Employment Cost Index” means the annual value in a given calendar year for the Not Seasonally Adjusted Total Compensation Employment Cost Index for Civilian Workers, All Workers category, as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

“ECI Adjustment Factor” means the adjustment factor for the annual adjustment of the Service Fee and any other amounts specified in this DBO Agreement as subject to adjustment by the ECI Adjustment Factor, as calculated in accordance with subsection 9.3(D) (ECI Adjustment Factor).

“Effluent” means all treated wastewater discharged from the Managed Assets to the Willamette River or for reclaimed water purposes.

“Effluent Guarantee” means the Company’s guarantee of performance set forth in Section 7.2 (Effluent Guarantee).

“Emergency Response and Disaster Recovery Plan” means the plan to be prepared by the Company in accordance with Appendix 10 (Operation and Maintenance) for responding to emergency conditions affecting the Managed Assets.

“Encumbrance” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, stop-notice, attachment or encumbrance of any kind with respect to the Managed Assets.

“Engineer-of-Record” means the professional engineer licensed in the State in good standing who is designated by the Company and acceptable to the City, in its reasonable discretion, and is responsible for the preparation, signing, dating, sealing and issuing of the engineering documents relating to a portion of or all of the Design-Build Work.

“Environmental Guarantee” means the Company’s guarantee of performance set forth in Section 7.6 (Environmental Guarantee).

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

“Event of Default” means, with respect to the Company, those items specified in Section 14.2 (Events of Default by the Company), and with respect to the City, those items specified in Section 14.5 (Events of Default by the City), which may lead to termination of this DBO Agreement upon election of the non-defaulting party.

“Exit Test Procedures and Standards” means the test procedures and standards regarding the Managed Assets to be conducted by the Company prior to termination or expiration of this DBO Agreement in accordance with Section 14.9 (Obligations of the Company Upon Termination or Expiration).

“Extension Period” means the period commencing on the day after the Scheduled Acceptance Date and ending 90 days following the Scheduled Acceptance Date, or in the event of one or more delays caused by Uncontrollable Circumstances occurring during such period, the date determined by adding to such 90-day period the aggregate number of days of delay caused by such Uncontrollable Circumstances.

“Extraordinary Item” means the component of the Service Fee, which may be a charge or a credit, and 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 an Uncontrollable Circumstance in accordance with Section 15.2 (Uncontrollable Circumstances), net of any operation, maintenance or other cost savings achieved by the Company in mitigating the effects of the occurrence of the Uncontrollable Circumstance; plus or minus (2) any adjustments to the Service Fee resulting from a Capital Modification under the provisions of Article XIII (Capital Modifications); minus (3) any liquidated damages or reimbursement payments owed by the Company due to non-performance specifically provided for under Article VII (Performance) or any other provision hereof; minus (4) any indemnification payments owed by the Company pursuant to Section 15.3 (Indemnification) or any other provision hereof; minus (5) an amount equal to any reimbursement to the City based upon Actual Annual Electricity Costs exceeding the Guaranteed Maximum Annual Electricity Costs in any Contract Year, calculated in accordance with subsection 9.8(B) (Annual Settlement of Electricity Costs); minus (6) an amount equal to any reimbursement to the City based upon the costs incurred by the City for providing any Required Insurance pursuant to subsection 15.1(K) (Maintenance of Insurance Coverage); minus (7) an amount equal to the actual and direct expenses associated with additional insurance (without markup for profit, administration or otherwise) incurred by the Company in accordance with subsection 15.1(L) (Changes in Insurance Coverage); and, plus or minus (8) any other increase or reduction in the Service Fee provided for under any other Article of this DBO Agreement.

“Facilities Plan” means the City’s Wastewater Facility Plan Update (November 2004) approved by the City Council in adopting Ordinance No. 571 in August 2004, as amended by Ordinance No. 591 in November 2005, and attached as a Reference Document hereto.

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

“Final Completion” means completion of all Design-Build Work by the Company, including satisfaction of the specific requirements set forth in subsection 10.21(A) (Requirements).

“Final Punch List” means the statement of repairs, corrections and adjustments of the Design-Build Work to be completed by the Company as a condition of achieving Final Completion, subject to the requirements set forth in Section 10.20 (Final Punch List).

“Fixed Design-Build Price” means \$35,707,414, which shall be payable to the Company in accordance with and subject to the terms and conditions set forth in Article XII (Payment of the Design-Build Price).

“Fixed Design-Build Price Adjustments” means the adjustments to the Fixed Design-Build Price provided for in subsection 12.1(C) (Fixed Design-Build Price Adjustments).

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

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

“Grit and Screenings” means materials such as scum, grease, grit and screenings, and other solid waste generated at the WWTP other than Sludge and Biosolids.

“Guaranteed Maximum Annual Electricity Costs” means the Company’s guaranteed maximum annual electricity costs for which the City is responsible hereunder and which are calculated based on the applicable Guaranteed Maximum Electricity Utilization, Guaranteed Maximum Electricity Demand, the annual flow and loadings at the WWTP and the electric rate schedule in place for the particular Contract Year.

“Guaranteed Maximum Electricity Demand” means 1,069 kilowatts.

“Guaranteed Maximum Electricity Utilization” means 3,493,742 kilowatt-hours per year.

“Guarantor” means CH2M HILL Companies, Ltd., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

“Guaranty Agreement” or “Guaranty” means the Guaranty Agreement entered into concurrently with this DBO Agreement from the Guarantor to the City in the form set forth in the Transaction Forms, as the same may be amended from time to time in accordance therewith.

“Hazardous Material” means any waste, substance, object or material deemed hazardous under Applicable Law, including “hazardous substances” as defined in CERCLA and “hazardous waste” as defined in RCRA.

“Independent Evaluator” means a qualified independent evaluator or evaluation firm with demonstrated skill and experience in the evaluation of utility property similar to the Managed Assets, not otherwise associated with the transactions contemplated hereby, selected with the mutual consent of the parties for the purpose of evaluating and determining the condition of the Managed Asset Structures and the weighted average useful life of the Managed Asset Equipment in accordance with Section 8.3 (Managed Asset Evaluations). The Independent Evaluator may be an engineer or other technical professional, who is licensed as appropriate in the State, in good standing, and competent to perform such services.

“Initial Term” means the initial term of this DBO Agreement which shall commence on the Contract Date and continue in effect for 15 years following the Commencement Date, as further discussed in Section 3.1 (Effective Date and Initial Term).

“Influent” means all flows reaching the WWTP through the Collection System from all connected sources, including residential, commercial, municipal and industrial

sources, and all City vactor truck waste delivered by the City to the WWTP pursuant to subsection 7.1(E) (City Vactor Truck Waste).

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any insurance company that has issued a policy of Required Insurance under this DBO Agreement or by any insurance company that has issued a policy of insurance required to be obtained and maintained by the City in accordance with subsection 15.1(A) (Company and City Insurance), as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

"Labor and Materials Payment Bond" means the labor and materials payment bond to be provided by the Company, as security for the Company's payment obligations in connection with the performance of the Design-Build Work, in accordance with Section 16.2 (Bonds).

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

"Lien" means any and every lien against the Managed Assets or against any monies due or to become due from the City to the Company under this DBO Agreement, for or on account of the Contract Services, including mechanics', materialmen's, laborers' and lenders' liens.

"Lift Stations" means the eight lift stations, and the associated supervisory control and data acquisition (SCADA) and telemetry system, constituting a part of the City's sanitary sewer collection system, including the Lift Stations Sites and extending out to the further of the check valve or five feet, as described in Appendix 1 (Description of Wastewater System), together with all improvements thereto acquired, installed, constructed or reconstructed from time to time.

"Lift Stations Sites" means the parcels of real property described or referred to in Appendix 1 (Description of Wastewater System) on which the above-ground improvements and below-ground improvements constituting part of the Lift Stations are located.

"Loss-and-Expense" means and is limited to any and all actual losses, liabilities, forfeitures, obligations, damages, fines, penalties, judgments, deposits, Taxes and Fees, charges, costs or expenses, including all Fees and Costs, except as explicitly excluded or limited under any provision of this DBO Agreement, relating to third party claims for which the Company is obligated to indemnify the City Indemnitees pursuant to this DBO Agreement.

"Major Maintenance, Repair and Replacement" means any renewal, repair or replacement of the machinery, equipment, structures or improvements constituting a part of the WWTP and having a cost (excluding overhead, profit and all costs associated with the labor of the Company or any of its Affiliates) equal to or greater than \$25,000.

"Major Maintenance, Repair and Replacement Schedule" means the detailed schedule of Major Maintenance, Repair and Replacements which would be required to be performed by the Company over the Term in order to achieve the standard of overall WWTP maintenance and repair deemed essential by the parties for the proper operability, durability and reliability of the WWTP over its expected useful life, as set forth in Appendix 11 (Asset Management).

"Managed Asset Equipment" means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, other than Managed Asset

Structures, constituting part of the Managed Assets, including pumps, bar screens, grit handling equipment, sludge handling equipment, odor control systems, chemical feed and storage equipment.

“Managed Assets” means the WWTP, the Lift Stations and the Managed Asset Sites, and, subject to subsection 10.1(G) (Title and Risk of Loss), shall include the Wastewater System Capital Improvements and all Capital Modifications, both when under construction and after being placed in service as part of the Managed Assets.

“Managed Asset Sites” means the WWTP Site, the Lift Stations Sites and the Capital Improvement Sites.

“Managed Asset Structures” means all structures, buildings, roofing systems, concrete tanks and metal tanks, tank covers and above- and below-ground pipes constituting part of the Managed Assets other than Managed Asset Equipment.

“Management Period” means the period from and including the Commencement Date to and including the last day of the Term.

“Management Services” means everything required to be furnished and done for and relating to the operation and management of the Managed Assets by the Company pursuant to this DBO Agreement during Management Period. Management Services include, subject to the terms and conditions hereof, the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Company’s operation, maintenance, repair, replacement, management and related obligations under this DBO Agreement, and all of the Company’s administrative, accounting, record-keeping, reporting, notification and similar responsibilities of every kind whatsoever under this DBO Agreement pertaining to such obligations.

“Management Services Performance Bond” means the performance bond to be provided by the Company as a Commencement Date Condition, as described in and maintained pursuant to Section 16.2 (Bonds), in the form set forth in the Transaction Forms.

“Maximum Annual Capital Maintenance Charge” means the maximum amount payable to the Company in any Contract Year for Major Maintenance, Repair and Replacement in accordance with Sections 8.1 (Maintenance, Repair and Replacement Generally) and 8.2 (Maintenance, Repair and Replacement Plan and Major Maintenance, Repair and Replacement Schedule), as determined in accordance with Section 9.4 (Maximum Annual Capital Maintenance Charge).

“Mediator” means any third-party professional engineer, attorney or other professional serving as a mediator of disputes hereunder pursuant to Section 14.13 (Dispute Resolution Procedures).

“Natural Resources Damage” means the injury to, destruction of, or loss of natural resources resulting from any toxic or Regulated Substance release or construction or operational activities. The measure of damage is the cost of restoring injured natural resources to their pre-Regulated Substance release baseline condition, compensation for the interim loss of injured natural resources pending recovery, and the reasonable cost of a damage assessment as determined or assessed by the applicable Governmental Body. Natural resources include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State, an Indian tribe, or a local government.

"Non-Binding Mediation" means the voluntary system of dispute resolution through third-party mediation established by Section 14.13 (Dispute Resolution Procedures) for the resolution of disputes arising under this DBO Agreement.

"Non-Compliant Influent" has the meaning set forth in subsection 3.3.2 of Appendix 3 (Performance Guarantee Requirements and Liquidated Damages).

"Notice to Proceed" means a written notice given by the City pursuant to Section 4.5 (Closing the Transition Period) directing the Company to commence performing the Management Services and the Design-Build Work.

"NPDES" means the National Pollutant Discharge Elimination System.

"NPDES Permit" means NPDES Permit No. 101888, including any renewals, revisions, modifications or amendments thereto.

"Odor Citation" means the citation the City shall have the right to issue the Company upon receipt of information surrounding any Odor Incident if the City reasonably believes that the Company has violated the Odor Guarantee, subject to the terms and conditions set forth in subsection 7.3(F) (Citations for Odor Incidents).

"Odor Control Plan" means the plan to be prepared by the Company in accordance with Appendix 10 (Operation and Maintenance) for controlling odors at the Managed Assets.

"Odor Control Standards" means the standards pertaining to odor control at the Managed Assets described in Appendix 3 (Performance Guarantee Requirements and Liquidated Damages).

"Odor Guarantee" means the Company's guarantee of performance set forth in Section 7.3 (Odor Guarantee).

"Odor Incident" means an odor condition of limited duration emanating from the WWTP, to the extent not caused by Uncontrollable Circumstances, which is verified by the Company or the City in accordance with Appendix 3 (Performance Guarantee Requirements and Liquidated Damages).

"Odor Response Plan" means the plan to be prepared by the Company in accordance with Appendix 10 (Operation and Maintenance) for responding to odor complaints and the occurrence of an Odor Incident during the Term.

"Operating Charge" means the portion of the Service Fee that represents the Company's base compensation for the performance of the Management Services, excluding the performance of Major Maintenance, Repair and Replacement, as set forth in Section 9.3 (Operating Charge).

"Operation and Maintenance Manual" means the manual and related computer programs prepared by the Company containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Management Services, developed and maintained in accordance with Article VI (Management and Operation) and Appendix 10 (Operation and Maintenance).

"Operation and Maintenance Plan" means the plan to be prepared by the Company in accordance with Appendix 10 (Operation and Maintenance) describing the activities for all aspects of the performance of the Management Services, including operation,

maintenance, management, process control, compliance monitoring, odor control, Residuals management, safety, security, reporting and the efficient operation and optimum performance of the Managed Assets.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate, whichever is lower.

“Owner’s Representative” or “OREp” means the management-consulting team (R.W. Beck, Inc. and Brown and Caldwell) retained by the City for this project.

“Part 503 Regulations” means 40 C.F.R. Part 503, as in effect on the Contract Date.

“Performance Guarantees” means the guarantees of performance made by the Company specifically set forth in Article VII (Performance) and Appendix 3 (Performance Guarantee Requirements and Liquidated Damages).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with generally accepted accounting principles;

(2) any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability to construct the Wastewater System Capital Improvements or to operate the Managed Assets;

(3) any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with generally accepted accounting principles;

(4) servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which will not in the aggregate materially and adversely impair the construction of the Wastewater System Capital Improvements or the operation of the Managed Assets;

(5) zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction of the Wastewater System Capital Improvements or the operation of the Managed Assets;

(6) encumbrances which are created by a Change in Law on or after the Contract Date; and

(7) any encumbrance created by an act or omission by the City or with respect to which the City has given its consent.

"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.

"Principal Designated Operator" means the Company's full-time manager of the WWTP and all of the other Managed Assets, subject to the requirements set forth in subsection 6.6(A) (Company's Principal Designated Operator).

"Proposal" means the documents submitted by the Company in response to the RFP.

"Prudent Engineering and Construction Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as prudent design, engineering, equipping, installation, construction, commissioning and testing practices for the design, construction and improvement of capital assets in the municipal wastewater industry as followed in the State.

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

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

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

"Reference Documents" means those documents listed as Reference Documents in the Table of Contents.

"Regulated Site Condition" means, and is limited to, (1) surface or subsurface structures, materials or conditions having historical, archaeological or similar significance; (2) the presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law; (3) the presence anywhere in, on or under the Managed Asset Sites on the Contract Date of wells, dry wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances (in each of items (1), (2) and (3), however, only to the extent not disclosed to the Company as of the Contract Date), and (4) the presence of Regulated Substances in environmental media anywhere in, on or under the Managed Asset Sites (including presence in surface water, groundwater, soils or subsurface strata), whether or not disclosed to the Company.

"Regulated Substance" means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by, and is subject to regulation under, any Applicable Law. Regulated Substances include Hazardous Materials. Regulated Substances do not include Influent.

“Renewal Term” means the additional term of five years following the Initial Term, if this DBO Agreement is renewed at the option of the City, as provided in Section 3.2 (City Renewal Option).

“Required Design-Build Period Insurance” means the Design-Build Period insurance required to be provided by the Company in accordance with Section 15.1 (Insurance).

“Required Insurance” means the Required Management Period Insurance and the Required Design-Build Period Insurance.

“Required Management Period Insurance” means the Management Period insurance required to be provided by the Company in accordance with Section 15.1 (Insurance).

“Requisition” means a written submission by the Company on the form of requisition as agreed to by the parties, requesting progress payments or final payment with respect to the Design-Build Price, together with all supporting documentation required by Article XII (Payment of the Design-Build Price).

“Residuals” means Biosolids, Sludge and Grit and Screenings.

“Residuals Management Guarantee” means the Company’s guarantee of performance set forth in Section 7.4 (Residuals Management Guarantee).

“Response Action” means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Regulated Substance. “Response Actions” include any action which constitutes a “removal”, “response”, or “remedial action” as defined by Section 101 of CERCLA.

“Rev. Proc. 97-13” has the meaning set forth in subsection 9.10(A) (Payments to the Company).

“RFP” means the City’s Request for Proposals for Wastewater Treatment Plant Improvements Design-Build-Operate Project, CIP # 2082, issued on October 15, 2010, as amended.

“RFQ” means the City’s Request for Qualifications for Wastewater Treatment Plant Improvements Design-Build-Operate Project, CIP # 2082 and amendments thereto, issued by the City on September 9, 2009, soliciting qualifications and other information for the project.

“Scheduled Acceptance Date” means March 15, 2014, as such Scheduled Acceptance Date may be adjusted in accordance with this DBO Agreement due to the occurrence of Uncontrollable Circumstances.

“Secondary Technical Criteria” means those portions of the Technical Specifications designated as “Secondary Technical Criteria” in Appendix 4 (Technical Specifications).

“Security Instruments” means the Guaranty Agreement, the Design-Build Work Performance Bond, the Labor and Materials Payment Bond, and the Management Services Performance Bond.

“Senior Supervisors” means the corporate officials of the Company and the Guarantor with direct, senior supervisory responsibility for the performance of this DBO Agreement, as identified in accordance with subsection 17.6(A) (Company’s Senior Supervisors).

“Service Fee” means the annual service fee payable by the City to the Company, from and after the Commencement Date, as compensation for the performance by the Company of the Management Services under this DBO Agreement, in accordance with and subject to the terms and conditions set forth in Article IX (Service Fee).

“Service Territory” means all areas within which customers are served by the Wastewater System, as described in Appendix 1 (Description of Wastewater System).

“Sludge” means any solid, semi-solid or liquid residue, byproduct or other waste streams removed during the treatment of Influent by the WWTP other than Grit and Screenings.

“Small Scale Capital Modification” means a Capital Modification requested by the Company, and not required as a result of Uncontrollable Circumstances or directed by the City, that has a cost of less than \$25,000.

“Specified Subsurface Condition” means (1) any latent or patent defect, flaw, error, inoperability, inadequacy or other condition or aspect of the design or existing condition of the Subsurface Managed Assets to the extent not disclosed to the Company prior to the Contract Date; (2) conditions associated with subsurface structures at the Managed Asset Sites that materially differ from the conditions described as existing or assumed to exist in Appendix 1 (Description of the Wastewater System), and the BIM model and ground penetrating radar data provided to the Company prior to the Contract Date; or (3) subsurface geological conditions, but only to the extent that such geological condition causes or has the potential to cause structural damage to the Managed Assets existing as of the Commencement Date; in each case, to the extent that such condition could not reasonably have been identified or detected by the Company through its inspections and investigations of the Managed Assets Sites in connection with the preparation of its Proposal.

“SROZ” or “Significant Resource Overlay Zone” means the area of the WWTP Site indicated as being located in the SROZ in Figures 6-2 and 6-3 of Appendix 6 (Governmental Approvals) in which certain Governmental Approvals will be required for the Design-Build Work in accordance with Appendix 6 (Governmental Approvals).

“State” means the State of Oregon.

“Subcontract” means an agreement or purchase order by the Company or a Subcontractor to the Company, as applicable, entered into in connection with the performance of the Contract Services.

“Subcontractor” means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly in privity with the Company (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

“Substantial Completion” means substantial completion of the Design-Build Work by the Company, including satisfaction of the requirements set forth in Section 10.19 (Substantial Completion).

"Subsurface Managed Assets" means the subsurface pipelines, manholes and catch basins comprising a part of the WWTP or Lift Stations.

"Sustained Odor Condition" means an Odor Incident, or combination of Odor Incidents, occurring over the course of three or more consecutive days.

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

"Technical Specifications" means the Technical Specifications set forth or referenced in Appendix 4 (Technical Specifications), which is comprised of the Design and Construction Requirements and the Secondary Technical Criteria.

"Term" means collectively the Initial Term and any Renewal Term.

"Termination Date" means the last day of the Term.

"Toxic Substance" means any toxic, hazardous, chemical, industrial, explosive, flammable, volatile, reactive, corrosive or radioactive waste, material or substance which, alone or in combination with other substances, is contained in sufficiently high concentrations or volumes in Influent received at the WWTP, so as:

(1) to cause a material and adverse effect on the operation of the WWTP and the performance of the Contract Services (including any substance or combination of substances contained in the Influent in a sufficiently high concentration so as to interfere with the biological or other processes necessary for the removal of the organic and chemical contents of the Influent required to meet the Effluent Guarantee);

(2) to endanger human health or safety; or

(3) to cause Effluent or Residuals to become a Hazardous Material or a Hazardous Residual, if any such result could not reasonably have been prevented by the management of the Managed Assets in accordance with the Contract Standards.

"Transaction Form" means any of the Transaction Forms appended to this DBO Agreement.

"Transferred Employees" means those Designated Employees who accept the Company's offer of employment pursuant to Section 5.1 (Company Employment of Designated Employees) and become employees of the Company.

"Transferred Property" means all vehicles, rolling stock, spare parts, hand tools, furniture and fixtures, computers and communications equipment and Consumables in stock at the Managed Assets and having operational utility which are to be transferred to the Company on the Commencement Date for its use, as further described in Appendix 2 (Transition Plan, Designated Employees and Transition Period Schedule).

"Transition Period" means the period from the Contract Date to and including the day preceding the Commencement Date, during which the parties will carry out their transition obligations under Article IV (Transition Period).

"Transition Period Schedule" means the schedule of Transition Period activities included as part of Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees).

"Transition Plan" means the plan for the transition of operating responsibility for the Managed Assets from the City to the Company, as developed by the Company and set forth in Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees).

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

"Uncontrollable Circumstance" means any act, event or condition that (1) is beyond the reasonable control of the party relying on it as justification for not performing an obligation or complying with any condition required of such party under this DBO Agreement, and (2) materially expands the scope of, materially interferes with, materially delays, or materially increases the cost of, performing the party's obligations under this DBO Agreement, to the extent that such act, event or condition is not the result of the intentional or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this DBO Agreement on the part of the party claiming the occurrence of an Uncontrollable Circumstance.

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

(a) a Change in Law, except as otherwise provided in the definition thereof and subject to the provisions of subsection 15.2(F) (Change in Law Pertaining to Taxes) and subsection 15.2(G) (Change in Law Pertaining to Prevailing Wages);

(b) the receipt of Non-Compliant Influent or the occurrence of an Upset at the WWTP, each to the extent provided in Section 7.9 (Upsets and Non-Compliant Influent Affecting Company Compliance with Performance Guarantees);

(c) with respect to the performance of the Management Services, the existence of a Regulated Site Condition or a Specified Subsurface Condition, each to the extent provided in Section 6.5 (Site Conditions Affecting the Performance of the Management Services)

(d) with respect to the performance of the Design-Build Work, the existence of Differing Site Conditions, Regulated Site Conditions or Specified Subsurface Conditions, each to the extent provided in Section 10.4 (Site Conditions Affecting the Performance of the Design-Build Work);

(e) contamination of the Managed Asset Sites from groundwater, soil or airborne Regulated Substances migrating from sources outside the Managed Asset Sites to the extent not caused by Company Fault;

(f) naturally occurring events (except weather conditions that should in the exercise of reasonable care be expected at the Managed Assets Sites based on historical weather records) such as landslides, underground movement, earthquakes, volcanic eruptions, lightning, fires, tornadoes, hurricanes, floods, epidemics, and other acts of God, subject to the limitations set forth in subsection 15.2(E) (Limitations on Relief for Naturally Occurring Events Outside the State);

(g) explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil

disturbance, except as provided in the exclusions to this definition with respect to acts, events or circumstances occurring outside of the United States;

(h) labor disputes, except labor disputes involving employees of the Company, its Affiliates, or Subcontractors;

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

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

(k) any failure of title to the Managed Assets or any placement or enforcement of any Encumbrance (other than Permitted Encumbrances) on the Managed Assets or a portion of the Managed Assets not consented to in writing by, or arising out of any action of, or agreement entered into by, the party adversely affected thereby;

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

(m) with respect to the Company, any City Fault and City-requested Change Orders not due to Company Fault; or

(n) with respect to the City, any Company Fault.

(2) Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

(a) any act, event or circumstance with respect to which the Company has assumed the "as-is" risk under Section 6.4 (Managed Assets Condition Confirmation);

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

(c) changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other economic conditions;

(d) with respect to the City, any changes in the financial condition of the City, and with respect to the Company, any changes in the financial condition of the Company, the Guarantor, or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

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

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

(g) any impact of prevailing wage or similar laws, customs or practices on the Company's costs associated with the performance of the Design-Build Work;

(h) weather conditions that should in the exercise of reasonable care be expected at the Managed Asset Sites based on historical weather records;

(i) any and all surface, subsurface or other conditions at the Managed Assets Sites affecting the performance of the Management Services, except those constituting Regulated Site Conditions or Specified Subsurface Conditions to the extent provided in Section 6.5 (Site Conditions Affecting the Performance of the Management Services);

(j) any and all surface, subsurface or other conditions at the Managed Asset Sites affecting the performance of the Design-Build Work, except those constituting Regulated Site Conditions, Specified Subsurface Conditions or Differing Site Conditions to the extent provided in Section 10.4 (Site Conditions Affecting the Performance of the Design-Build Work);

(k) any act, event, circumstance or Change in Law occurring outside of the United States;

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

(m) power outages caused by Company Fault; or

(n) failure of the Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the Contract Services.

"Unilateral Change Directive" means a written order, prepared and signed by an authorized representative of the City and approved by the City Manager, or his or her designee, directing a Design and Construction Requirement Change pursuant to Section 10.8 (Unilateral Change Directive).

"Upset" has the meaning given such term in 40 C.F.R. 122.41(n)(1).

"Utilities" means any and all utility services and installations whatsoever (including gas, water, electricity, telephone, internet, cable and any other telecommunications), and all piping, wiring, conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith. Utilities shall not include the Collection System.

"Vectors" means insects, rodents and any other living organisms that may transmit an infectious agent constituting a threat to the public health.

“Wastewater System” means the City’s wastewater collection and treatment facilities, including the WWTP, the Lift Stations and the Collection System.

“Wastewater System Capital Improvements” means the improvements to the Managed Assets to be designed, constructed, installed, started up and tested by the Company in accordance with this DBO Agreement, as more particularly described in Appendix 4 (Technical Specifications).

“Willamette River Greenway Zone” means the area of the WWTP Site indicated as being located in the Willamette River Greenway Zone in Figures 6-2 and 6-3 of Appendix 6 (Governmental Approvals) in which certain Governmental Approvals will be required for the Design-Build Work in accordance with Appendix 6 (Governmental Approvals).

“WWTP” means the City’s Wastewater Treatment Plant and the real property on which it is located, as described in Appendix 1 (Description of Wastewater System). The WWTP consists generally of that separate and contiguous part of the Wastewater System comprising buildings, structures, equipment, the associated supervisory control and data acquisition (SCADA) and telemetry system, and the roads, grounds, fences and landscaping appurtenant thereto, utilized for preliminary treatment, primary treatment and secondary treatment of Influent, Effluent disinfection, Residuals treatment, laboratory functions and administration and management of the Managed Assets, including the Wastewater System Capital Improvements and any Capital Modifications made thereto from time to time. The WWTP is located at 9275 SW Tauchman Road, Wilsonville, Oregon and discharges Effluent to the Willamette River.

“WWTP Site” means the parcel of real property described or referred to in Appendix 1 (Description of Wastewater System) on which the above-ground structures constituting the WWTP are located.

SECTION 1.2. INTERPRETATION. In this DBO Agreement notwithstanding any other provision hereof:

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

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

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

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

(E) Entire Agreement. This DBO Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this DBO Agreement. Without limiting the generality of the foregoing, this DBO Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFP, the Proposal of the

Company submitted in response thereto, and any amendments or supplements to the RFP or the Proposal.

(F) Technical Specifications. The Technical Specifications, including the Design and Construction Requirements and the Secondary Technical Criteria, are intended to include the basic design principles, concepts and requirements for the Design-Build Work but do not include the final, detailed design, plans, drawings or specifications or indicate or describe each and every item required for full performance of the physical Design-Build Work and for achieving Acceptance and the Class A Biosolids Performance Standards. The Company agrees to prepare all necessary complete and detailed designs, plans, drawings and specifications and to furnish and perform, without additional compensation of any kind, all Design-Build Work in conformity with the Technical Specifications and the final designs, plans, drawings and specifications based thereon. The Company further agrees that it shall not have the right to bring any claim whatsoever against the City or any of its consultants or subcontractors, arising out of any technical memoranda, design drawings, specifications or design and construction requirements included in the RFP or made available during the procurement process. Except as specifically provided in this DBO Agreement, the parties agree that no error or omission in any such information shall provide a basis for Uncontrollable Circumstance relief hereunder or otherwise relieve the Company from any of its obligations or entitle the Company to any increase in compensation hereunder.

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

(H) Technical Standards and Codes. All references in this DBO Agreement to professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Technical Specifications and (2) if any material revision occurs, to the Company's knowledge, after the Contract Date, and prior to completion of the applicable Design-Build Work, the Company shall notify the City. If so directed by the City pursuant to Sections 10.7 (Changes to the Design and Construction Requirements) or 10.8 (Unilateral Change Directives), the Company shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code or specification as long as the Company is provided such schedule relief (including any appropriate adjustment to the Scheduled Acceptance Date) as is necessary to comply with such revision and compensated on a lump sum or Cost Substantiated basis, as appropriate, for any additional cost or expense attributable to any such revision.

(I) Liquidated Damages. This DBO Agreement provides for the payment of liquidated damages in certain circumstances of nonperformance, breach and default. Each party agrees that the damaged party's actual damages in each such circumstance would be difficult or impossible to ascertain and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred. Such liquidated damages shall constitute the only remedy in such circumstances against the nonperforming, breaching or defaulting party, regardless of legal theory. This limitation,

however, is not intended to limit any of the other remedies for breach specifically provided for in Article XIV (Breach, Default, Remedies and Termination). The parties acknowledge and agree that the additional remedies specifically provided for in this DBO Agreement are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. All liquidated damages provided for herein shall be at the sole discretion of the City, which shall have the right, exercisable in its sole discretion, to waive any Company obligation to pay liquidated damages hereunder.

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

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

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

(M) Interpolation. If any calculation hereunder is to be made by reference to a chart, index or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(N) Prudent Industry Practice and Prudent Engineering and Construction Practice. Prudent Industry Practice and Prudent Engineering and Construction Practice shall be utilized hereunder, among other things, to implement, and in no event displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Prudent Industry Practice or Prudent Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Company, the Company shall be relieved of its obligation to comply with such evolved Prudent Industry Practice and Prudent Engineering and Construction Practice (but not Prudent Industry Practice and Prudent Engineering and Construction Practice as of the Contract Date) unless the City agrees to adjust the Service Fee or the Fixed Design-Build Price, as appropriate, to account for such additional costs. Any such adjustment relating to the performance of the Design-Build Work shall be reflected in a Change Order and any such adjustment relating to the performance of the Management Services shall be reflected in a DBO Agreement Amendment. Except to the extent that the Company is relieved of its obligation to comply with such evolved Prudent Industry Practice or Prudent Engineering and Construction Practice, as provided above, in no event shall any evolution of Prudent Industry Practice or Prudent Engineering and Construction Practice, or any City election to pay or not pay any such additional costs, relieve the Company of its obligations hereunder.

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

(P) Delivery of Documents in Digital Format. In this DBO Agreement, the Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Company agrees that all such documents shall be submitted to the City both in printed form (in the number of copies indicated) and, at the City's request, in digital form. Digital copies shall consist of computer readable data submitted in Autocad, Microsoft Word, Microsoft Access, and Microsoft Excel or in any other similar standard interchange format which the City may reasonably request to facilitate the administration and enforcement of this DBO Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

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

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

(S) No Third Party Rights. This DBO Agreement is exclusively for the benefit of the City and the Company and shall not provide any third parties (with the exception of any City Indemnitee to the extent provided in Section 15.3 (Indemnification)) with any remedy, claim, liability, reimbursement, cause of action, or other rights.

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

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

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

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

(X) Counterparts. This DBO Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same DBO Agreement.

(Y) Governing Law. This DBO Agreement shall be governed by and construed in accordance with the applicable laws of the State.

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

SECTION 1.3. ABBREVIATIONS. As used in this DBO Agreement, the following abbreviations shall have the meanings set forth below:

“ACM” means asbestos-containing material.

“ADA” means Americans with Disabilities Act.

“ADWF” means average dry weather flow.

“BIM” means building information modeling.

“BOD” means biochemical oxygen demand.

“CCTV” means closed-circuit television.

“CMMS” means computerized maintenance management system.

“CMOM” means capacity, management, operations, and maintenance.

“D/T” means dilutions to threshold.

“DBO” means Design-Build-Operate.

“DEQ” means Oregon Department of Environmental Quality.

“fc” means compressive strength.

“GC/CM” means General Contractor/Construction Manager.

“H₂S” means hydrogen sulfide.

“HUA” means human use allowance.

“HVAC” means heating, ventilation, and air conditioning.

“I&C” means instrumentation and controls.

“IFC” means Industry Foundation Classes.

“IS” means information system.

“LBP” means lead-based paint.

“LOD” means level of development.

“MCC” means motor control center.

“mgd” means million gallons per day.

“NPDES” means National Pollutant Discharge Elimination System.

- “O&M” means operations and maintenance.
- “OAR” means Oregon Administrative Rules.
- “ODOT” means Oregon Department of Transportation.
- “ORS” means Oregon Revised Statutes.
- “PAC” means process automation controller.
- “PAS” means process automation system.
- “PFRP” means Processes that Further Reduce Pathogens.
- “PGE” means Portland General Electric.
- “PLC” means programmable logic controller.
- “ppmv” means parts per million by volume.
- “psi” means pounds per square inch.
- “PSRP” means Processes to Significantly Reduce Pathogens.
- “PVC” means polyvinyl chloride.
- “QA/QC” means quality assurance/quality control.
- “RBC” means rotating biological contactor.
- “RFP” means Request for Proposals.
- “RFQ” means Request for Qualifications.
- “SCADA” means supervisory control and data acquisition.
- “SOQ” means Statement of Qualifications.
- “SROZ” means Significant Resource Overlay Zone.
- “TMCP” means Traffic Management Control Plan.
- “TMDL” means total maximum daily load.
- “TSS” means total suspended solids.
- “U.S.C.” means United States Code.
- “UV” means ultraviolet.
- “WLA” means waste load allocation.
- “WWTP” means wastewater treatment plant.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) Existence and Powers. The City is a political subdivision of the State, organized and existing under and by virtue of the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this DBO Agreement.

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

(C) City Ownership Interests in the Managed Asset Sites. The City owns the Managed Asset Sites in fee simple subject to the easements and other exceptions to title indicated in Appendix 1 (Description of Wastewater System).

(D) No Conflict. To the best of its knowledge, neither the execution and the delivery by the City of this DBO Agreement nor the performance by the City of its obligations in connection with the transactions contemplated hereby or the fulfillment by the City of the terms or conditions hereof: (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City; or (2) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decrees, or any contract, 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 material default under any of the foregoing.

(E) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the City of this DBO Agreement or the performance by the City of its payment or other obligations hereunder except otherwise as such have been duly obtained or made or, if not required as of the Contract Date, are expected to be obtained in due course.

(F) No Litigation. Except as disclosed in writing to the Company, to the best of its knowledge, there is no Legal Proceeding before any Governmental Body pending or overtly threatened or publicly announced against the City, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this DBO Agreement by the City or the validity, legality or enforceability of this DBO Agreement against the City, or on the ability of the City to perform its obligations hereunder.

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

(A) Existence and Powers. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this DBO Agreement.

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

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

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this DBO Agreement by the Company or the performance of its payment or other obligations hereunder except as such have been duly obtained or made or, if not required as of the Contract Date, are expected to be obtained in due course.

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

(F) Claims and Demands. Except as disclosed in writing to the City, to the best of its knowledge after due inquiry, there are no material and adverse claims or demands based in environmental or tort law, or based on breach of contract, pending or threatened against the Company with respect to any wastewater plant providing service to the general public designed, constructed, operated; maintained or managed by the Company, the Guarantor or any Affiliate that would have a material and adverse effect upon the ability of the Company to perform the Contract Services.

(G) Applicable Law Compliance. Except as disclosed in writing to the City, to the best of its knowledge after due inquiry, neither the Company, the Guarantor nor any Affiliate is not in material violation of any law, order, rule or regulation applicable to any wastewater plant providing service to the general public designed, constructed, operated, maintained or managed by the Company, the Guarantor or any Affiliate the violation of which may have a material and adverse affect on the ability of the Company to perform its obligations hereunder or on the ability of the Guarantor to perform its obligations under the Guaranty Agreement.

(H) Practicability of Performance. The Technical Specifications, the technology and the construction and management practices to be employed in the construction of the Wastewater System Capital Improvements and the operation of the Managed Assets as so improved are furnished exclusively by the Company pursuant to the terms of this DBO Agreement, and, subject to the terms and conditions hereof, the Company assumes and shall

have exclusive responsibility for their efficacy, notwithstanding the inclusion of design principles or other terms and conditions in the RFP or the negotiation of the terms of the Technical Specifications, the Acceptance Test Procedures and Standards, the Class A Biosolids Performance Standards and the Performance Guarantees between the Company and the City. The Company assumes the risk of the practicability and possibility of performance of the Wastewater System Capital Improvements on the scale, within the time for completion and in the manner required hereunder, and of treating Influent (other than Non-Compliant Influent) through the operation of the Managed Assets as so improved in a manner which meets all of the requirements hereof, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or circumstances (other than Uncontrollable Circumstances) which may be different from those assumed by the Company in entering into this DBO Agreement, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Fixed Design-Build Price and the Service Fee. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance.

(I) Patents and Licenses. The Company owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Wastewater System Capital Improvements without any known material conflict with the rights of others. The Company further represents and warrants that all such patent rights, licenses, franchises, trademarks or copyrights, and the technology necessary for the performance of the Contract Services, are or will be readily transferable to the City or otherwise authorized for the City's unrestricted use in connection with the continued operation of the Managed Assets, at no additional cost to the City, in the event of any termination or expiration of this DBO Agreement.

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

(K) Guaranty Agreement. Concurrently with the execution of this DBO Agreement, the Company has provided the City with the Guaranty Agreement as security for the faithful performance and payment of its obligations hereunder. The Guaranty Agreement is in the form set forth in the Transaction Forms, and is in compliance with the requirements of Article XVII (Security for Performance).

(L) Compliance with Tax Laws. The Company certifies, under penalty of perjury, that the Company is not in violation of any tax laws described in Section 305.380(4) of the Oregon Revised Statutes.

ARTICLE III

TERM

SECTION 3.1. EFFECTIVE DATE AND INITIAL TERM. This DBO Agreement shall become effective on the Contract Date, and shall continue in effect for 15 years following the Commencement Date or, if renewed at the option of the City as provided in Section 3.2 (City Renewal Option), until the last day of the Renewal Term, unless earlier terminated pursuant to the termination provisions of Article XIV (Breach, Default, Remedies and Termination), in which event the Term shall be deemed to have ended as of the date of such termination. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. The City shall have no obligation to make Service Fee payments or to pay any portion of the Design-Build Price to the Company prior to the Commencement Date. At the end of the Term, all obligations of the parties hereunder shall terminate, except as provided in Sections 14.9 (Obligations of the Company Upon Termination or Expiration) and 14.10 (Survival of Certain Provisions Upon Termination).

SECTION 3.2. CITY RENEWAL OPTION. This DBO Agreement may be renewed and extended for an additional period of five years at the sole option of the City. During the Renewal Term, the City shall have the right in its sole discretion to terminate this DBO Agreement for its convenience in accordance with subsection 14.7(B) (City Convenience Termination Right Following the Acceptance Date) without any requirement of paying the Company a convenience termination fee. Except as provided in this Section with respect to the City's convenience termination rights, the terms and conditions governing the Renewal Term shall be the same terms and conditions governing the Initial Term. The Company shall give the City written notice of the approaching expiration of the Initial Term no later than 180 days prior to such expiration. The City, not later than 120 days prior to the expiration of the Initial Term, shall give the Company written notice of its intent whether or not to exercise its renewal option.

ARTICLE IV

TRANSITION PERIOD

SECTION 4.1. TRANSITION PERIOD GENERALLY. The primary purpose of the Transition Period is to enable the parties to provide for a smooth and orderly transition of management of the Managed Assets from the City to the Company, including the transfer of the Designated Employees from City employment to Company employment, all in accordance with Applicable Law and the terms and conditions of this DBO Agreement. As indicated in Section 6.4 (Managed Assets Condition Confirmation), the Company performed all due diligence necessary to commence the performance of the Management Services in accordance with this DBO Agreement prior to the Contract Date. While the Company may perform further investigations of the Capital Improvement Sites during the Transition Period in accordance with subsection 10.3(C) (Managed Asset Sites Investigations During the Transition Period), the completion of any such further investigations of the Capital Improvement Sites is not a precondition of the Commencement Date and the Company may continue such investigations following the Commencement Date as part the Design-Build Work. Accordingly, the parties anticipate that the Transition Period will be of a limited duration and agree to work together through the diligent performance of their respective Transition Period responsibilities, as set forth in this Article, to cause the Commencement Date to occur within 60 days following the Contract Date in accordance with the Transition Period Schedule. In no event shall the Company be entitled to any portion of the Design-Build Price or the Service Fee until the establishment of the Commencement Date in accordance with this Article and the Transition Period Schedule. No delay in the establishment of the Commencement Date shall entitle the Company to any adjustment to the Fixed Design-Build Price or the Service Fee.

SECTION 4.2. COMPANY TRANSITION PERIOD RESPONSIBILITIES.

(A) Obligation to Proceed. The Company shall satisfy the following Transition Period responsibilities as soon as practicable after the Contract Date, each of which shall be a condition precedent to the occurrence of the Commencement Date:

(1) Transfer of Designated Employees. The Company shall carry out and complete its obligations with respect to the Designated Employees, as set forth in Section 5.1 (Company Employment of Designated Employees) and Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees), and shall demonstrate and certify completion of such obligations and compliance with the requirements of Section 5.1 (Company Employment of Designated Employees) and Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees) to the satisfaction of the City;

(2) Implementation of the Transition Plan. The Company shall carry out all of its responsibilities under the Transition Plan set forth in Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees) to ensure the orderly transfer of management responsibility for the Managed Assets from the City to the Company and shall provide all management, technical, administrative, labor relations and other personnel necessary in connection therewith. The Company shall demonstrate and certify compliance with the Transition Plan to the satisfaction of the City;

(3) Plans for the Performance of the Contract Services. The Company shall prepare, finalize and provide to the City the plans required pursuant to Appendix 10 (Operation and Maintenance) for the performance of the Contract Services to the extent such plans are preconditions of the Commencement Date.

(4) Governmental Approvals. The Company shall submit complete applications and take all other steps which are necessary under Applicable Law to

obtain all Governmental Approvals required to be obtained by the Company to commence the performance of the Management Services, or certify to the City that no such Governmental Approvals are required;

(5) Management Services Performance Bond. The Company shall obtain and deliver to the City a Management Services Performance Bond, as required by subsection 16.2(B) (Management Services Performance Bond), in the form set forth in the Transaction Forms;

(6) Contact Information. The Company shall submit to the City the contact information specified in Section 6.6 (Service Coordination and Contract Administration);

(7) Required Management Period Insurance. The Company shall submit to the City certificates of insurance naming the City as an "additional insured" for all Required Management Period Insurance specified in Section 15.1 (Insurance);

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

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

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

(B) Applicable Law Compliance. The Company shall comply with all requirements of Applicable Law in performing its obligations during the Transition Period.

(C) Access to Managed Assets during Transition Period. The execution of this DBO Agreement shall be deemed to constitute the granting to the Company of a right of access to the Managed Assets for the purposes of (1) carrying out its responsibilities pursuant to the Transition Plan, and (2) performing all necessary on-site activities pursuant to this Section and subsection 10.3(C) (Managed Asset Sites Investigations During the Transition Period). Such right of access shall be subject to the City's prior approval, which shall not be unreasonably withheld as to time and scope, and shall be exercised in a manner consistent with the performance obligations of the City. The Company shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the City Indemnitees from and against all Loss-and-Expense resulting therefrom to the extent caused by the Company's negligence or willful misconduct. Following the Commencement Date, the Company shall have all access rights to the Managed Asset Sites as are necessary for the performance of the Contract Services during the Term and such access rights shall not be subject to prior City approval; provided, however, that the Company shall not be entitled to proceed with the physical construction of the Wastewater System Capital Improvements until the establishment of the Construction Date in accordance with Section 10.2 (Construction Date).

(D) Notice of Default. The Company shall provide to the City, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval, Subcontract, Security Instrument or other transaction agreement pertaining to the Contract Services during the Transition Period.

SECTION 4.3. CITY TRANSITION PERIOD RESPONSIBILITIES. The City shall use reasonable efforts to satisfy the following City responsibilities as soon as practicable after the Contract Date, each of which shall be a condition precedent to the occurrence of the Commencement Date:

(1) Governmental Approvals. The City, subject to the limitations set forth in subsection 10.9(F) (Limited Permitting Assistance by the City), shall cooperate with and assist the Company in obtaining any Governmental Approvals required to be obtained by the Company pursuant to Section 4.2 (Company Transition Period Responsibilities);

(2) Operation of the Wastewater System. The City shall operate and maintain the Wastewater System prior to the Commencement Date in accordance with Prudent Industry Practice and Applicable Law. The City shall consult with the Company prior to hiring any additional employees who may become Designated Employees and prior to entering into any agreement with a third party that is expected to extend beyond the Commencement Date for the provision of services, supplies or materials in connection with the Managed Assets.

(3) Transfer of Management Responsibility for the Managed Assets. The City shall prepare for the transfer of possession of and operating responsibility for the Managed Assets to the Company as of the Commencement Date, and shall provide for an orderly transfer of responsibility to the Company in accordance with the Transition Plan and Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees);

(4) Survey. The City shall deliver to the Company currently available survey information relating to the Managed Assets; and

(5) Representations. The representations of the City set forth in Section 2.1 (Representations and Warranties of the City) shall be true and correct in all material respects as of the Commencement Date as if made on and as of the Commencement Date, and the City shall deliver to the Company a certificate of an authorized officer to that effect.

SECTION 4.4. COMMENCEMENT DATE CONDITIONS.

(A) Commencement Date Conditions Defined. The obligations of the Company and the City to proceed with their respective obligations hereunder during the Management Period and the Design-Build Period, respectively, shall not commence until all of the following conditions (the "Commencement Date Conditions") are satisfied or waived by both parties:

(1) Company Transition Period Responsibilities. The Company shall have fulfilled all of its responsibilities with respect to the Transition Period under Section 4.2 (Company Transition Period Responsibilities);

(2) City Transition Period Responsibilities. The City shall have fulfilled all of its responsibilities with respect to the Transition Period under Section 4.3 (City Transition Period Responsibilities);

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

(4) Inventory and Valuation. Attachments 2-1 and 2-2 of Appendix 2 (Transition Plan, Designated Employees and Transition Period Schedule) provide a preliminary listing of Transferred Property to be utilized by the Company in the performance of the Management Services. The City and the Company shall have worked together to update the information set forth in Attachments 2-1 and 2-2 of Appendix 2 to establish a complete inventory and valuation of all Transferred Property as of the Commencement Date. Notwithstanding the foregoing, Transferred Property with a value of less than \$2,500, as determined by the City in its sole discretion, shall not be subject to the itemization and inventory requirements set forth in this subsection;

(5) Acceptability and Effectiveness of Documents. All of the documents and instruments identified in this Section shall be in form and substance reasonably satisfactory to both parties, and shall be valid, in full force and effect and enforceable against each party thereto on the Commencement Date. It is understood that any such document, instrument or agreement, the form of which is set forth in a Transaction Form, that is executed and delivered in substantially such form, is and shall be deemed to be in form and substance satisfactory to the parties. No such document, instrument or agreement shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Commencement Date. No party to any such document, instrument or agreement shall have repudiated or be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested;

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

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

(B) Commencement Date Conditions for which Both Parties Have Responsibility. The City and the Company shall each use all reasonable efforts in taking such actions as may reasonably be under their control in order to satisfy the Commencement Date Conditions set forth in items (3), (4), (5), (6) and (7) of subsection (A) of this Section as soon as practicable following the Contract Date.

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

SECTION 4.5. CLOSING THE TRANSITION PERIOD.

(A) Establishment of Commencement Date. The parties shall give each other prompt notice when each Commencement Date Condition has been achieved. Upon the satisfaction or waiver of all of such Commencement Date Conditions, the parties shall hold a formal closing on a date and at a location determined by the City acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Commencement Date has occurred. The date of such closing shall be deemed to be the Commencement Date hereunder, and thereupon the City shall issue the Notice to Proceed and the Management Period and the Design-Build Period each shall commence. Written documents or instruments constituting or evidencing satisfaction of the Commencement Date Conditions shall be furnished to each party for review prior to the Commencement Date to the extent practicable.

(B) Failure of Conditions. If by the first anniversary of the Contract Date (as such date may be extended day-for-day by any third party Legal Proceeding that has a material bearing upon the ability of the parties to proceed with the transactions contemplated hereby, but not later than the second anniversary of the Contract Date), or such later date upon which the City and the Company may agree, any of the Commencement Date Conditions are not satisfied, or have not been waived, either party may, by notice in writing to the other party, terminate this DBO Agreement, effective on the date stated in the notice. Neither party shall be liable to the other for the termination of this DBO Agreement pursuant to this Section (including any termination resulting from a Legal Proceeding which has the effect of invalidating this DBO Agreement or the City's authorization thereof) except to the extent that such party breaches its obligations under Sections 4.2 (Company Transition Period Responsibilities) or 4.3 (City Transition Period Responsibilities), respectively, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the Commencement Date Conditions.

SECTION 4.6. EXISTING CITY CONTRACTS. Table 4-6 lists the contracts to which the City is a party, as of the Contract Date, for the provision of goods and services with respect to the Managed Assets. Commencing on the Commencement Date, the Company shall administer and perform the City's obligations under such existing contracts on behalf of the City, including all payment obligations except those which accrued with respect to goods and services provided prior to the Commencement Date. The City, at the reasonable direction of the Company, shall enforce performance by the counterparty of all such existing contracts. Upon the expiration or termination of each such contract, the Company, either directly or by its own Subcontract with the previous provider or a new provider, shall be responsible for providing the goods or services which had been provided under the expired or terminated contract to the extent necessary to provide the Contract Services.

Table 4-6

Contract Counterparty	Scope of Service	Annual Cost (Three Year Average)	Expiration Date
Crorey Mechanical Engineering & Construction, Inc. P.O. Box 1066 Canby, OR 97013	Odor Control BioReactions System	\$33,300.00	June 30, 2011 ⁽¹⁾
Comarco Industrial, Inc. 1949 Willamette Falls Drive, Suite B West Linn, OR 97068	Aqua Disk Filter	\$32,280.00	December 31, 2011 ⁽²⁾

(1) The City has the option to extend the contract for one additional one-year extension.
(2) The City has the option to extend the contract for two additional one-year extensions.

ARTICLE V

DESIGNATED EMPLOYEES

SECTION 5.1. COMPANY EMPLOYMENT OF DESIGNATED EMPLOYEES.

(A) Employee Orientation. Within 15 days following the Contract Date, the Company shall have completed the employee orientation workshops described in Appendix 2 (Transition Plan, Transition Period Schedule and Designated Employees) for the purpose of familiarizing Designated Employees with the obligations of the Company under this DBO Agreement, and the Company's hiring and promotion policies, compensation and benefits offer and plan for providing the Contract Services. The workshops shall provide each Designated Employee with information sufficient to make an informed decision as to whether to accept the Company's offer of employment, including a written statement of the compensation and benefits.

(B) Offer and Terms of Employment. The Company shall offer full time, regular employment to all Designated Employees, to be effective as of the Commencement Date, and shall employ such employees throughout the Term, subject to subsection (G) of this Section. Except as specifically provided in this subsection with respect to pre-employment drug testing, the Company's offer of employment shall be unconditional, shall not be subject to any health, competency or any other test, fact or circumstance relating to individual employees, and shall be made no later than 21 days preceding the Commencement Date. The Company acknowledges that the City intends to terminate its employment of the Designated Employees on the Commencement Date. The Company's offer of employment may be conditioned upon the Company's hiring policies related to pre-employment drug testing.

(C) Wages and Benefits. The Company's offer of employment to each Designated Employee shall include (1) hourly wages and health benefits which, as a package, are equal to or higher or better than the combined hourly wages paid and health benefits provided by the City to such Designated Employee as of the Contract Date, (2) life insurance and long-term disability benefits which are equal to or better than the life insurance and long-term disability benefits provided by the City to such Designated Employee as of the Contract Date, and (3) a pension or retirement savings benefit program that will provide the Designated Employee, upon retirement, with a pension or retirement savings benefit program the value of which, in the aggregate and taken together with the value of the pension or retirement savings benefits accrued by the Designated Employee from his or her service with the City through the Commencement Date, is reasonably projected to equal or exceed the value of the pension or retirement savings benefits the Designated Employee would receive were the Designated Employee to remain in the employ of the City through the date upon which the Designated Employee retires from service to the Company. Any social security benefits due a Designated Employee, at the time of retirement, shall not be included in the calculation of such equivalent pension or retirement savings benefit program, and shall be for the benefit of the Designated Employee. The Company's employee health benefits shall be made available to the Transferred Employees without any elimination periods, pre-existing condition provisions or other limitations on full and immediate coverage.

(D) Post-Retirement Health Benefits. The Company shall offer post-retirement health benefits to the Designated Employees which are equivalent or better than those which the City is offering to its retirees as of the Contract Date, recognizing that the Designated Employees are and shall remain responsible for the cost of the selected benefits.

(E) Crediting Years of Service. The Company shall recognize each Transferred Employee's years of service with the City (determined as of the Commencement Date without regard to any accrued annual leave, accrued sick leave or accrued compensatory time) as years of service with the Company for the following purposes: (1) any job-related

matter based on seniority (such as off-days, shift preference, and overtime) to the extent that the Company uses seniority for such job-related matters; (2) determining eligibility for and vesting under (but not benefit accrual or contributions to) the Company's employee benefit plans; and (3) determining eligibility for and the amount of vacation, sick leave and any other payroll policies of the Company.

(F) Accrued Sick Leave. The Company shall assume and give each Transferred Employee credit for accrued but unused sick leave that he or she had accumulated as of the Commencement Date (as determined by the City and provided to the Company), subject to a maximum amount of 80 hours per Transferred Employee. Following the Commencement Date, the Company may submit to the City appropriate documentation of the costs related thereto as an Extraordinary Items charge to the City. Upon receipt of the Company's invoice for such costs, the City shall reimburse the Company for those costs in accordance with Section 9.6 (Billing and Payment).

(G) Termination of Employment of Transferred Employees. The Company may not terminate the employment of any Transferred Employee unless: (1) the Transferred Employee voluntarily quits; (2) the Transferred Employee voluntarily elects an early retirement, severance or other incentive termination package sponsored and funded by the Company; or (3) the Transferred Employee is dismissed for just cause. No Transferred Employee shall be involuntarily transferred to a Company location other than the Managed Assets.

(H) Accuracy of Certain Information. The labor and employment-related obligations of the Company hereunder shall extend only to the Designated Employees, and are predicated upon the accuracy of the information provided by the City with respect to each such Designated Employee. If any such information proves to be materially inaccurate, and as a result thereof the Company incurs additional costs or liabilities, such costs and liabilities shall be deemed to have arisen from Uncontrollable Circumstances and the Company shall be entitled to appropriate relief in accordance with Section 15.2 (Uncontrollable Circumstances). Additional City employees may be added as Designated Employees upon mutually agreeable terms and conditions.

(I) Adjustment to the Service Fee. The parties acknowledge that the number of Designated Employees may be reduced prior to the Commencement Date as a result of termination or resignation during the Transition Period. In the event of any such reduction in the number of Designated Employees, the parties shall negotiate an equitable reduction in the Service Fee to reflect the appropriate reduction, if any, in the amount allocated for Company payments to Designated Employees as a result of such reduction in the number of Designated Employees. Any such reduction in the Service Fee shall be reflected as an Extraordinary Item credit to the City.

SECTION 5.2. INDEMNIFICATION FOR DESIGNATED EMPLOYEE CLAIMS. The Company shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against any Loss and Expense which may result from any claim, demand, grievance or Legal Proceeding made or filed, at any time during or after the Term hereof, by any Designated Employee or labor organization representing a Designated Employee resulting from any action taken or omitted by the Company in contravention of this Article with respect to a Designated Employee. The City shall retain responsibility for any of its actions taken prior to the Commencement Date with respect to the Designated Employees. The Company shall be responsible for any Loss and Expense which may result from any claim, demand, grievance or Legal Proceeding made or filed, at any time during or after the Term, by any Designated Employee or labor organization representing a Designated Employee resulting solely from the act of terminating the Designated Employee.

ARTICLE VI

MANAGEMENT AND OPERATION

SECTION 6.1. OWNERSHIP AND USE OF THE MANAGED ASSETS.

(A) City Ownership. The Managed Assets are and shall be owned by the City throughout and following the Term, and the Company shall have no ownership interest therein; provided that title to the Wastewater System Capital Improvements shall vest with the City in accordance with subsection 10.1(G) (Title and Risk of Loss). The Company shall perform the Contract Services as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Wastewater System, the Managed Assets, the Wastewater System Capital Improvements or any Capital Modification.

(B) Use. Beginning on the Commencement Date, the Company may enter upon, occupy and use the Managed Assets to operate, maintain, repair, replace and manage the Managed Assets, and to design, construct, install, start-up and test the Wastewater System Capital Improvements and any Capital Modifications authorized pursuant to Article XIII (Capital Modifications), all to provide the Contract Services in accordance herewith, and for no other purpose. Prior to the Commencement Date, the Company's access to the Managed Assets shall be governed by subsection 4.2(C) (Access to Managed Assets during Transition Period).

(C) Administrative Space. The Company shall provide the City with administrative space at the WWTP during the Management Period in accordance with the provisions set forth in Appendix 10 (Operation and Maintenance). The Company shall be responsible for all costs of Utilities associated with such administrative space.

(D) Use of Transferred Property. The Company shall have the right at no additional cost to use and consume in the performance of the Contract Services at the Managed Assets the spare parts and Consumables constituting part of the Transferred Property. The City hereby grants the Company a license to use in the performance of the Management Services the vehicles and rolling stock identified in Attachment 2-2 of Appendix 2 (Transition Plan, Designated Employees and Transition Period Schedule) constituting part of the Transferred Property, and the Company shall be responsible for obtaining and maintaining insurance for such vehicles and rolling stock in accordance with Section 15.1 (Insurance). The Company shall be responsible for all necessary maintenance for such vehicles and rolling stock in accordance with the Contract Standards. The Company shall also be responsible for recapitalizing and replacing all such vehicles and rolling stock over the Term, as necessary to perform the Contract Services.

(E) Encumbrances. At all times during the Term, the Company shall keep the Managed Assets free from any and all Encumbrances (excluding Permitted Encumbrances) arising out of or in connection with (1) the Contract Services, or (2) any acts, omissions or debts of the Company, the Guarantor, their Affiliates and their Subcontractors.

(F) Company Property. The Company shall have the right to deliver to, station at, and remove from the Managed Assets personal property of the Company for use in connection with the performance of the Contract Services, subject to the obligations of the Company upon the expiration or earlier termination of this DBO Agreement under subsection 8.3(C) (Final Valuation of Vehicles, Rolling Stock, Spare Parts and Consumables).

SECTION 6.2. COMPANY OBLIGATIONS GENERALLY.

(A) Management and Operation Responsibility. Commencing on the Commencement Date, the Company shall operate, manage and maintain the Managed Assets

on a 24-hour per day, 7-day per week basis, and shall collect, receive and treat Influent, discharge Effluent, handle, transfer, transport, manage, and dispose of Residuals in accordance with Section 7.4 (Residuals Management Guarantee), process and treat all Sludge at the WWTP to produce Biosolids and provide for the beneficial reuse of all Biosolids in accordance with Section 7.5 (Biosolids Guarantee), control odor, provide all information necessary to secure Governmental Approvals, and otherwise manage and operate the Managed Assets so as to comply with the Contract Standards applicable to such activities.

(B) Transfer and Application of Industry Experience. The Company shall use all reasonable efforts to transfer to and apply at the Managed Assets the benefit of the advances and improvements in technology, management practices and operating efficiencies that are developed by the Company, the Guarantor and their Affiliates through the operation of their worldwide wastewater treatment businesses and industry research and development activities conducted during the Term, and that are useful and appropriate in the good faith judgment of the Company for carrying out the Contract Services in a manner that improves upon the Contract Standards; provided, however, that such obligations shall not obligate the Company to: (i) undertake any physical modifications to the Managed Assets (including any Capital Modification); (ii) incur any additional operating, maintenance, repair or replacement costs; or (iii) accept any additional risk or liability beyond those imposed under the Contract Standards in effect as of the Contract Date, unless the City agrees to compensate the Company in a manner acceptable to the Company for undertaking such obligations.

SECTION 6.3. CITY OBLIGATIONS GENERALLY. The City, in addition to the obligations it has accepted elsewhere in this DBO Agreement, shall:

(1) Cooperate with the Company in carrying out its Transition Plan responsibilities;

(2) Make available to the Company upon request all information relating to the Managed Assets that is in the possession of the City and material to the Company's performance hereunder;

(3) Grant and assure the Company access to the Managed Assets in accordance herewith for the performance of its obligations hereunder;

(4) Make available for the Company's use hereunder all Consumables and spare parts in inventory at the Managed Assets as of the Commencement Date;

(5) Comply with Applicable Law pertaining to the City as owner of the Wastewater System;

(6) Maintain, administer and enforce the existing rules, regulations and ordinances constituting the City's industrial pretreatment program in accordance with Applicable Law;

(7) Pay the Service Fee and the Design-Build Price to the Company in accordance with the terms and conditions of this DBO Agreement; and

(8) Provide billing and revenue collection services with respect to the use of the Wastewater System.

SECTION 6.4. MANAGED ASSETS CONDITION CONFIRMATION.

(A) Familiarity with Managed Assets. The Company acknowledges that: (1) the Company's agents and representatives have visited, inspected, observed and are familiar

with the Managed Assets (other than the Subsurface Managed Assets), their design, and their physical condition relevant to the obligations of the Company pursuant to this DBO Agreement, including structural and operating conditions, roads, Utilities, topographical conditions and historical Influent, Effluent and Residuals quality conditions; (2) the Company is familiar with all current local conditions that may be material to the Company's performance of its obligations under this DBO Agreement (including transportation; seasons, climate and ambient air; access, availability, handling, storage and disposal of materials, supplies and equipment; and availability and quality of labor and Utilities); (3) the Company has received and reviewed the documents included in the RFP and all other records and information pertaining to the Managed Assets that it has deemed necessary to receive and review for the purposes of entering into and performing this DBO Agreement, and, except as set forth in subsection (C) of this Section, assumes the risk of the incompleteness or inaccuracy of any information provided to it by the City or third parties in the process of entering into this DBO Agreement; and (4) based on the foregoing, the Managed Assets can be managed, operated, maintained, repaired and replaced so as to comply with the Contract Standards.

(B) "As-Is" Condition of Managed Assets. Based on its review of the design drawings, plans, specifications, technical memoranda (including electrical, condition assessment, and subsurface assessment memoranda), and the building information modeling pertaining to the Managed Assets, its inspections of the Managed Assets, and other inquiries and investigations made by the Company prior to the Contract Date, which the Company acknowledges to be sufficient for this purpose, the Company assumes the risk of the adequacy and sufficiency of the design of the Managed Assets and the existing, "as-is" condition of the Managed Assets as such design or condition may affect the ability of the Company to perform the Management Services in accordance with the Contract Standards on the schedule and for the compensation provided for herein. The Company agrees that any latent or patent defect, flaw, error, inoperability, inadequacy or other condition or aspect of the design or existing condition of the Managed Assets that exists as of the Contract Date or that may be revealed during the performance hereof shall not be an Uncontrollable Circumstance. The Company's assumption of risk under this subsection is subject to the limitations provided in subsection (C) of this Section.

(C) Limitations on the Company's Assumption of "As-Is" Risk; Uncontrollable Circumstances. It is specifically understood that the Company's assumption of the "as-is" risk of the condition of the Managed Assets as provided in subsection (B) of this Section shall not extend to the following: (1) Regulated Site Conditions, and (2) Specified Subsurface Conditions. The Company shall be entitled to Uncontrollable Circumstance relief in accordance with and to the extent provided in Section 15.2 (Uncontrollable Circumstances) in the event the Company encounters a Regulated Site Condition or Specified Subsurface Condition in the performance of the Management Services, subject to Section 6.5 (Site Conditions Affecting the Performance of the Management Services). The Company acknowledges that Differing Site Conditions relief pertains solely to the performance of the Design-Build Work in accordance with subsection 10.4(B) (Differing Site Conditions).

SECTION 6.5. SITE CONDITIONS AFFECTING THE PERFORMANCE OF THE MANAGEMENT SERVICES.

(A) Company Obligations. The Company represents and warrants that, as of the Contract Date, it has no knowledge of any Regulated Site Condition or Specified Subsurface Condition other than those disclosed by the City prior to the Contract Date. In performing the Management Services, the Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition or Specified Subsurface Condition after the location and existence of such condition has been disclosed to the Company or becomes actually known by the Company through physical observation. Upon encountering a Regulated Site Condition or Specified Subsurface Condition, the Company shall provide

prompt written notice to the City of such condition, which notice shall not be later than five days after such condition is first encountered or known to the Company. The Company shall, to the extent reasonably possible, provide such notice before the Regulated Site Condition or Specified Subsurface Condition has been disturbed or altered. Except for the Company's failure to provide such notice and exercise due care with respect to such disclosed or known Regulated Site Condition or Specified Subsurface Condition, the Company shall not be responsible for any Regulated Site Condition or Specified Subsurface Condition and shall be entitled to Uncontrollable Circumstance relief in connection therewith in accordance with and to the extent provided in Section 15.2 (Uncontrollable Circumstances). The parties acknowledge and agree, however, that Regulated Site Conditions shall not include any condition involving Regulated Substances used, stored or otherwise brought to the Managed Asset Sites by the Company or any Subcontractor. The Company shall comply, and shall cause all Subcontractors to comply, with the Contract Standards in using or storing any Regulated Substances on the Managed Asset Sites and shall assume all risks associated with such activities and indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in subsection 15.3(A) (Indemnification by the Company) from and against all Loss-and-Expense resulting therefrom.

(B) City Obligations. If at any time a Regulated Site Condition or Specified Subsurface Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Management Services, or (3) increases the cost to the Company of performing the Management Services, then the City shall within 60 days after written notice from any Governmental Body or the Company of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary under Good Industry Practice to dispose of, remediate or otherwise correct the Regulated Site Condition or Specified Subsurface Condition or otherwise make the Regulated Site Condition or Specified Subsurface Condition comply with Applicable Law. The City shall have the right to contest any determination of a Regulated Site Condition or Specified Subsurface Condition and shall not be required to take any action under this subsection so long as: (i) the City is contesting any determination of a Regulated Site Condition in good faith by appropriate proceedings conducted with due diligence; and (ii) Applicable Law permits continued performance of the relevant Contract Services pending resolution of the contest, so that the Company shall have no liability as a result of the failure of the City to dispose of, remediate or otherwise correct such Regulated Site Condition during the period of contest. Notwithstanding any of the foregoing, the City shall have no obligation to take any action pursuant to this subsection with respect to any Specified Subsurface Condition as long as the Company is able to continue to perform the Contract Services in accordance with Applicable Law and the City provides the Company with appropriate price, performance or schedule relief to the extent necessary to address the Specified Subsurface Condition in accordance with Section 15.2 (Uncontrollable Circumstances).

SECTION 6.6. SERVICE COORDINATION AND CONTRACT ADMINISTRATION.

(A) Company's Principal Designated Operator. The Company shall appoint a Principal Designated Operator who shall be trained, experienced and proficient in the management and operation of wastewater treatment systems comparable to the Wastewater System, shall have a State Class IV wastewater treatment system operator's certification and a State Class III wastewater collection system operator's certification and be otherwise appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Company's performance of the Management Services. The Principal Designated Operator shall be deemed the principal designated operator for the entire Wastewater System for purposes of compliance with all DEQ requirements, subject to the terms and conditions of this DBO Agreement. The Company acknowledges that the

performance of the individual serving from time to time as the Principal Designated Operator will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the City and the Principal Designated Operator will be essential to effectuating the intent and purposes of this DBO Agreement. Accordingly, not fewer than 60 days prior to the date on which any candidate for Principal Designated Operator from time to time during the Term is proposed by the Company to assume managerial responsibility for the Managed Assets, the Company shall: (1) provide the City with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and (2) afford the City an opportunity to interview the candidate with respect to such matters. The City shall have the right within 30 days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The initial Principal Designated Operator shall be Robert Watts, who shall not be replaced, unless otherwise approved by the City in its sole discretion, absent death, disability, retirement, resignation or cessation of employment with the Company or any Affiliate of the Company. The Company shall notify DEQ of the identity of the initial Principal Designated Operator prior to the Commencement Date and shall notify DEQ of the identity of any subsequent Principal Designated Operator prior to such subsequent Principal Designated Operator's assumption of managerial responsibility for the Managed Assets. The Company shall replace the Principal Designated Operator at the request of the City, after notice and a reasonable opportunity for corrective action, in the event the City determines in its sole discretion that an unworkable relationship has developed between the Principal Designated Operator and the City. The Company shall report any change to the Principal Designated Operator to DEQ in accordance with Applicable Law.

(B) Communications and Meetings. The Company shall inform the City of the telephone, cellular telephone, fax and beeper numbers, e-mail addresses and other means by which the Principal Designated Operator, Company's Contract Representative and Senior Supervisors may be contacted. The Principal Designated Operator shall be reachable 24 hours a day, seven days a week and shall, at the City's request, attend weekly meetings with the City's Public Works department staff. The City shall furnish to the Company comparable communications information with respect to the Contract Administrator. The Company shall meet with the City each week for an operations process control and coordination meeting, and as part of such weekly meetings, on a monthly basis to review the contents of the operations reports required to be prepared pursuant to Section 6.18 (Periodic Reports). The Principal Designated Operator and, if requested by the City, the Company's Contract Representative and Senior Supervisors each shall personally attend such weekly meetings with the City, and all City special meetings that the City may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Managed Assets and this DBO Agreement. Any issue in dispute which the parties are unable to resolve at such weekly and special meetings may be referred to the dispute resolution procedures set forth in Section 14.13 (Dispute Resolution Procedures), and the resolution of any issue resolved at such meetings or through such dispute resolution procedures shall be reflected in a Contract Administration Memorandum or a DBO Agreement Amendment, as applicable.

(C) Complaints and Communications. The Company shall respond in a timely and effective manner to all complaints and communications received by the Company or the City regarding the performance of the Contract Services, odor and air emissions, noise, light emissions, construction or any other matter related to the Management Services. The Company shall investigate each such complaint and communication and, if it has a valid basis, the Company shall promptly rectify the matter. Complaints and communications concerning spillages, leaks, breaks, noise, light emissions and emergencies relating to the Managed Assets shall be responded to within one hour, and all other communications within 24 hours. All such complaints and communications shall be immediately logged and promptly responded to in writing, faxed or emailed to the City on a daily basis, and reported to the City as part of the

monthly operations reports delivered pursuant to Section 6.18 (Periodic Reports). The parties acknowledge that the City shall establish and maintain a 24-hour emergency telephone number for purposes of receiving customer or citizen complaints and communications. The Company shall receive and respond to customer or citizen complaints and communications received through such 24-hour emergency telephone number established by the City during all times when City staff are unavailable to receive and respond to such calls. The City and Company shall work together to establish the appropriate manner in which the Company shall receive and respond to customer or citizen calls from such 24-hour emergency telephone number established by the City. The Company shall also provide to the City a telephone number or numbers, e-mail address and mailing address to which the City may direct customer or citizen complaints and communications received while City staff are available to receive such complaints and communications from the 24-hour emergency telephone number established by the City.

(D) Damage to Customers. Except to the extent caused by an Uncontrollable Circumstance (including the action or inaction of a customer or other third party), the Company shall be responsible for damage caused to the property and businesses of customers of the Wastewater System, such as damage resulting from sewer backups in basements, which is caused by the failure of the Company to perform the Contract Services in accordance with the Contract Standards.

SECTION 6.7. OPERATION AND MAINTENANCE PLAN.

(A) Company Responsibility. The Company shall develop, provide and maintain the Operation and Maintenance Plan in accordance with the Contract Standards and the specific requirements of Appendix 10 (Operation and Maintenance). The Operation and Maintenance Plan shall address all topics indicated in Appendix 10 in the manner required therein and consistent with the Contract Standards. The City shall have the right to review and comment on the Operation and Maintenance Plan in the manner set forth in Appendix 9 (City Review/Submittals). The Management Services shall be performed substantially in compliance with the Operation and Maintenance Plan. The Company shall keep the Operation and Maintenance Plan current and shall supply the City with appropriate updates, supplements or revisions thereto annually or at any earlier time that a material change to the Operation and Maintenance Plan is made, to be reviewed and commented on in accordance with Appendix 9 (City Review/Submittals). Such updates shall preserve the standards set forth in the initial Operation and Maintenance Plan. Notwithstanding any such review and comment by and discussion with the City, the Operation and Maintenance Plan shall remain, at all times, the responsibility of the Company. Neither the review of or comment upon, nor the failure of the City to comment upon, the Operation and Maintenance Plan shall: (1) relieve the Company of any of its responsibilities under this DBO Agreement; (2) be deemed to constitute a representation by the City that operating the Managed Assets pursuant to the Operation and Maintenance Plan will cause the Managed Assets to be in compliance with this DBO Agreement or Applicable Law; or (3) impose any liability upon the City.

(B) Supplements for Wastewater System Capital Improvements and Capital Modifications. The Company shall prepare supplements and revisions to the Operation and Maintenance Plan which are required due to the design, construction and installation of the Wastewater System Capital Improvements and all Capital Modifications. Such supplements and revisions shall be provided, reviewed and approved in the same manner as provided in this Section with respect to the initial Operation and Maintenance Plan. The cost and expense of all such supplements and revisions shall be borne by the Company, except with respect to supplements and revisions necessitated by Capital Modifications directed by the City or required by an Uncontrollable Circumstance, or by any Capital Modifications not undertaken by the Company.

SECTION 6.8. OPERATION AND MAINTENANCE MANUALS.

(A) Company Responsibility. The Company shall develop, provide and maintain the Operation and Maintenance Manual for the Managed Assets in accordance with the Contract Standards and the specific requirements of Appendix 10 (Operation and Maintenance). Prior to the finalization of the Company's Operation and Maintenance Manual in accordance with subsection (B) of this Section, the Company shall use and follow the procedures set forth in the City's operation and maintenance manuals for the Managed Assets. The content of the Operation and Maintenance Manual shall be reviewed and approved by DEQ in accordance with Applicable Law.

(B) Finalization of the Operation and Maintenance Manual. The Company shall review and discuss in good faith with the City and DEQ any aspect of the draft Operation and Maintenance Manual and shall deliver the final Operation and Maintenance Manual to the City and DEQ in accordance with the schedule and requirements set forth in Appendix 10 (Operation and Maintenance) and Appendix 9 (City Review/Submittals). The Company shall be fully responsible for obtaining DEQ approval of the Operation and Maintenance Manual. The Company shall keep the Operation and Maintenance Manual current and shall supply the City and DEQ with appropriate updates, supplements or revisions thereto annually or at any earlier time required by Applicable Law or that a material change to the Operation and Maintenance Manual is made, subject to review and comment by the City in accordance with the procedures described in this Section and Appendix 9. Such updates shall preserve the standards set forth in the initial Operation and Maintenance Manual and must be approved by DEQ. Notwithstanding any review and comment by and discussion with the City, the Operation and Maintenance Manual shall remain at all times the responsibility of the Company. Neither the review of or comment upon, nor the failure of the City to review or comment upon, the Operation and Maintenance Manual shall: (1) relieve the Company of any of its responsibilities under this DBO Agreement; (2) be deemed to constitute a representation by the City that operating the Managed Assets pursuant to the Operation and Maintenance Manual will cause the Managed Assets to be in compliance with this DBO Agreement or Applicable Law; or (3) impose any liability upon the City.

(C) Supplements for Wastewater System Capital Improvements and Capital Modifications. The Company shall prepare supplements and revisions to the Operation and Maintenance Manual that are required due to the design, construction and installation of the Wastewater System Capital Improvements and all Capital Modifications. Such supplements and revisions shall be provided to the City for review and comment in the same manner as provided in this Section with respect to the initial Operation and Maintenance Manual. The cost and expense of all such supplements and revisions shall be borne by the Company, except with respect to supplements and revisions necessitated by Capital Modifications directed by the City or required by an Uncontrollable Circumstance, or by any Capital Modifications not undertaken by the Company. The Company shall be responsible for obtaining DEQ approval of all supplements or revisions to the Operation and Maintenance Manual, except with respect to supplements or revisions required by any Capital Modification not undertaken by the Company.

SECTION 6.9. STAFFING AND PERSONNEL TRAINING.

(A) Staffing. Subject to the specific requirements of Article V (Designated Employees), the Company shall staff the Managed Assets during the Term with qualified personnel who meet the licensing and certification requirements of the State under a staffing plan which is consistent with the Contract Standards, including the requirements set forth in Appendix 10 (Operation and Maintenance). Subject to the specific requirements of Article V (Designated Employees), the Company shall discipline or replace, as appropriate, any employee of the Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct.

The Company shall notify the City of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely affect the ability of the Company to provide the Contract Services in accordance with the Contract Standards. The Company shall use its best effort to maintain a stable work force with low turnover, particularly in key positions.

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

(C) Training. The Company shall be responsible for training the Principal Designated Operator, operations supervisors and all other Company personnel. The Company shall submit to the City for its review and comment a personnel training program in accordance with Appendix 10 (Operation and Maintenance), which the Company proposes to institute in order to ensure that the Managed Assets are managed and operated in accordance with this DBO Agreement. Such personnel training program shall include, at a minimum, the personnel training guidelines, policies and procedures established: (1) by the City, DEQ and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; (3) in any other Applicable Law; and (4) by any applicable equipment manufacturer.

SECTION 6.10. TRAINING OF CITY PERSONNEL.

(A) Emergency Preparedness. The Company acknowledges that, notwithstanding the execution of this DBO Agreement, the City will retain the responsibility for treating wastewater received from the Collection System and serving the public health, safety and welfare needs of its ratepayers. The City accordingly shall have the right to designate up to three officers or employees for the purpose of receiving emergency preparedness training from the Company. Such training shall be regularly repeated and renewed so as to be sufficient to enable any such officers or employees to be familiar with the equipment, supplies, processes, operations and performance of the Managed Assets at a level which will permit such officers or employees to properly respond to any operating emergency. The Company shall provide such training in accordance with Prudent Industry Practice to ensure that the City's designees receive appropriate emergency preparedness training. In addition, the City may request the Company to direct the Company's employees to participate in emergency preparedness training and exercises directed by the City, subject to such terms and conditions as shall be mutually agreeable to the parties.

(B) Ongoing Training. The City shall have the right to send not more than three City employees to any Company-provided training programs on-site at the Managed Assets pursuant to subsection 6.9(C) (Training). The Company shall provide the City with notice of each personnel training program at least 15 days prior to the scheduled date or dates thereof. The City shall notify the Company, prior to the commencement of any such training program, of the names of those City employees scheduled to attend such program. Such employees may include any of the individuals designated by the City for emergency preparedness training as provided in subsection (A) of this Section. The Company shall be responsible for the cost of training such City employees, and the City shall be responsible for all employee expenses (wages, travel, lodging, meals, etc.) incurred while participating in such training programs.

(C) Permanent Operations. The Company shall, on not less than 30 days' prior written notice from the City, conduct a training program for the City and its designees in order to enable the City to assume operating and management responsibility for the Managed Assets at the expiration or earlier termination of this DBO Agreement. The program shall train supervisory and operating personnel in sufficient numbers and job classifications so as to allow the City and its designees to operate and manage the Managed Assets in accordance herewith and with the same degree of skill and performance as the Managed Assets are required to be operated by the Company during the Term hereof. The training afforded to City employees or designees shall be substantially equivalent to the training afforded the Company's and Subcontractor's employees in connection with the start-up of the Managed Assets, as improved by the Wastewater System Capital Improvements, prior to the Acceptance Tests. In addition, the Company shall permit City supervisory and operating personnel to observe the Company's operation of the Managed Assets for a period of up to six months prior to expiration or termination of this DBO Agreement, which observation activities shall not interfere unreasonably with the Company's performance of the Contract Services. All costs pertaining to the observation activities of City supervisory and operating personnel shall be borne by the City.

(D) Compensation. Unless otherwise stated herein, the cost and expense of providing the required training pursuant to this Section shall be borne by the Company and included in the Service Fee without additional reimbursement from the City.

SECTION 6.11. UTILITIES.

(A) Electricity Supply and Consumption. The City shall have the exclusive right at any time to arrange for the supply of electricity to the Managed Assets, to determine the electricity suppliers, and to negotiate and establish electric rates with the electricity suppliers. The Company shall cooperate with and assist the City in making such arrangements, and the City shall give reasonable consideration to any requests and recommendations made by the Company as to the terms and conditions of electricity supply. The City shall pay all electricity bills in a timely manner; provided, however, that following the Acceptance Date, such payments shall be subject to annual reimbursement by the Company in accordance with subsection (B) of this Section. Notwithstanding the preceding sentence, the Company shall reimburse the City on a monthly basis in an amount equal to any charges or penalties imposed by any electricity provider as a result of Company Fault. The Company shall operate the Managed Assets in a manner which minimizes, to the maximum extent reasonably practicable in light of its obligation to provide the Management Services, charges for electricity use, demand, transmission and distribution which are payable by the City hereunder.

(B) Payment for Electricity Costs Following Acceptance. The parties' respective rights and obligations set forth in subsection (A) of this Section shall continue following Acceptance. Notwithstanding the foregoing, following the Acceptance Date, the City's payments for electricity costs shall be subject to annual reimbursement by the Company as part of the Annual Settlement Statement process set forth in Section 9.8 (Annual Settlement) in the event that the Guaranteed Maximum Annual Electricity Costs are exceeded as provided in subsection 9.8(B) (Annual Settlement of Electricity Costs).

(C) All Other Utilities. Except as provided in subsection (A) of this Section with respect to the supply of electricity, the Company shall have the right and the responsibility to arrange for the supply of all Utilities required to perform the Management Services, including natural gas, propane gas, water, telephone and telecommunications, and to negotiate and establish rates and terms of service with the respective suppliers. The Company shall pay all such Utility bills in a timely manner. The Company acknowledges that the Operating Charge of the Service Fee includes all compensation to which the Company is entitled on account of such Utility service.

SECTION 6.12. SAFETY AND SECURITY.

(A) Safety. The Company shall maintain the safety of the Managed Assets at a level consistent with the Contract Standards. Without limiting the foregoing, the Company shall: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Managed Assets to, (a) all employees working at the Managed Assets and all other persons who may be involved with the operation, construction, maintenance, repair and replacement of the Managed Assets, (b) all visitors to the Managed Assets, (c) all materials and equipment under the care, custody or control of the Company on the Managed Asset Sites, (d) other property constituting part of the Managed Assets, and (e) City Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Managed Assets whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State and City officials; (5) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movement; and (7) develop and carry out a sites-specific safety program, including employee training and periodic inspections, designed to implement the requirements of this Section. The Company shall implement, as of the Commencement Date, a safety plan in accordance with the Company's corporate safety policy, Applicable Law, and the provisions set forth in Appendix 10 (Operation and Maintenance).

(B) Security. The Company shall be responsible for the security of the Managed Assets in accordance with the Contract Standards and shall maintain suitable fences, gates and locks at the Managed Assets. The Company shall comply with all Applicable Law guidelines regarding security measures for terrorist threats and activities. The Company shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Managed Assets in accordance with the Contract Standards. The Company shall provide the City, upon request, all information necessary to assist the City and the EPA with respect to any vulnerability assessment required under Applicable Law.

SECTION 6.13. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. Subject to the Company's rights to compensation and other relief in accordance with Section 15.2 (Uncontrollable Circumstances) in the event of a Change in Law, the Company shall perform the Management Services in accordance with Applicable Law, and shall cause all Subcontractors to comply with Applicable Law. The Company shall comply with the terms of all Governmental Approvals and all other Applicable Law pertaining to the performance of the Management Services, notwithstanding the fact that the Company may not be a permittee or co-permittee with respect to some or all of such Governmental Approvals. The Company's obligations under this Section shall apply regardless of the extent to which the City complied with Applicable Law with respect to the Managed Assets prior to the Commencement Date; provided, however, that the City shall retain sole responsibility for any of its omissions or actions taken prior to the Commencement Date with respect to its ownership operation and management of the Wastewater System, including any failure to comply with Applicable Law.

(B) Sampling, Testing and Laboratory Work. The Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories

shall be certified by the appropriate State agency and the EPA, as applicable, for the applicable test, shall be operated in accordance with Prudent Industry Practice, and shall be audited and monitored by the Company for compliance with EPA standard test methods. All sampling and test data shall be available for review by, and reported to, the City in accordance with Section 6.18 (Periodic Reports) and Appendix 10 (Operation and Maintenance). The Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Company shall permit the City, at the City's expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Managed Assets or otherwise.

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

(D) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Managed Assets, the Influent, the Effluent, air emissions, odor, Residuals or other environmental or operating condition, the Company shall, without limiting any other remedy available to the City upon such an occurrence and notwithstanding any other provision of this DBO Agreement: (1) promptly correct such failure and resume compliance with Applicable Law; (2) indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense resulting therefrom; (3) pay or reimburse the City for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all capital investments, improvements or modifications and changes in operating and management practices which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law. Any capital investment, improvement or modification required to be made pursuant to this subsection, reasonably expected to result in a material change to the Managed Assets, shall be considered a Capital Modification subject to Section 13.4 (Capital Modifications Required to Remedy Company Fault).

(E) No Nuisance Covenant. The Company shall keep the Managed Assets neat, clean and litter-free at all times, and ensure that the operation of the Managed Assets does not create any odor, litter, noise, fugitive dust, Vectors or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition exist after the Commencement Date that is not caused by Uncontrollable Circumstances, the Company shall promptly remedy the

condition, pay any regulatory fines or penalties relating thereto, make all Capital Modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense resulting therefrom. Notwithstanding the foregoing, the Company shall not be required to make any capital investment, improvement or modification to the Lift Stations pursuant to this subsection. Nothing in this subsection shall be deemed to limit or otherwise affect the Company's rights to compensation and other relief in accordance with Section 15.2 (Uncontrollable Circumstances) in the event of a Change in Law relating to a nuisance condition under Applicable Law. Any capital investment, improvement or modification required to be made pursuant to this subsection, reasonably expected to result in a material change to the Managed Assets, shall be considered a Capital Modification subject to Section 13.4 (Capital Modifications Required to Remedy Company Fault). Notwithstanding any of the foregoing, (1) the obligations of the Company with respect to odor prior to the Acceptance Date shall be as set forth in subsection 7.3(B) (Contract Limits Applicable Prior to the Acceptance Date), and (2) the Company's liability for a nuisance condition associated with odor pursuant to this subsection prior to the Acceptance Date shall be limited to the extent caused by (a) a failure of the Company to keep the Managed Assets neat, clean and litter-free at all times, or (b) a failure of the Company to perform its obligations under subsection 7.3(B).

SECTION 6.14. THIRD-PARTY LAWSUITS PERTAINING TO COMPLIANCE WITH THE NPDES PERMIT.

(A) Generally. The Company acknowledges and agrees that Applicable Law enables a third party to file a lawsuit in federal court against the City, as the owner of the Managed Assets and the permittee on the NPDES Permit, for alleged violations of the NPDES Permit. The Company further acknowledges and agrees that any such lawsuit is subject to the Company's indemnification obligations under Section 15.3 (Indemnification) to the extent that the underlying violations of the NPDES Permit result from a failure of the Company to comply with its obligations under this DBO Agreement. The parties recognize that, before the third-party lawsuit can be filed in federal court, the plaintiff(s) must give the City a 60-day notice of intent to sue under the federal Clean Water Act, which notice contains information about the alleged violations of the NPDES Permit. Applicable Law provides for a defense(s) against any such third-party lawsuit in the event that any alleged violations of the NPDES Permit are corrected prior to the filing of such lawsuit in federal court and provided that there are no ongoing violations during the pendency of the litigation. Accordingly, without limiting any of the Company's obligations under Section 6.13 (Compliance with Applicable Law) with respect to violations of Applicable Law or the Company's rights to Uncontrollable Circumstance relief under Section 15.2 (Uncontrollable Circumstances), the parties agree to work together in accordance with this Section upon the City's receipt of a 60-day notice of intent to sue under the federal Clean Water Act or other notification of a violation of the NPDES Permit in order to correct any violations or noncompliance with the NPDES Permit within such 60-day notice timeframe and the parties agree to continue to work together in accordance with this Section to conduct themselves so as to maximize the opportunity to defend against any lawsuit filed under the federal Clean Water Act.

(B) Corrective Measures. The City and the Company shall meet promptly, but in no event later than five days, after (1) obtaining knowledge that the Managed Assets are not in compliance with the NPDES Permit, (2) the receipt by the City of a 60-day notice of intent to sue under the federal Clean Water Act alleging a violation of the NPDES Permit, or (3) any other notification of a violation of the NPDES Permit. The purpose of the meeting shall be to develop mutually acceptable corrective measures to correct any noncompliance with the NPDES Permit, including any deficiencies that are referenced in the 60-day notice or other notice of violation. The Company shall implement any such corrective measures and use its best efforts to bring the Managed Assets and the Management Services into compliance with

the NPDES Permit as soon as is reasonably practicable in accordance with the Contract Standards, with the objective of achieving compliance no later than 60 days after the date of a 60-day notice of intent to sue under the federal Clean Water Act or other notice of violation is received. The cost and expense associated with any such corrective measures shall be borne by the Company to the extent that the failure of compliance results from the failure of the Company to comply with the terms and conditions of this DBO Agreement and by the City to the extent that the failure of compliance results from the occurrence of an Uncontrollable Circumstance.

(C) Resolution of Responsibility for Noncompliance with the NPDES Permit. The implementation of corrective measures by the Company pursuant to this subsection shall not be deemed an admission of guilt or responsibility by the Company with respect to the failure to comply with the NPDES Permit. The parties shall resolve responsibility for the failure of compliance with the NPDES Permit based on the underlying facts and circumstances relating to the failure of compliance following the implementation of corrective measures pursuant to subsection (B) of this Section in accordance with the terms and conditions of this DBO Agreement. Nothing in this Section shall limit or otherwise affect the Company's indemnification obligations under Section 15.3 (Indemnification).

SECTION 6.15. OPERATING GOVERNMENTAL APPROVALS.

(A) Applications and Submittals. The Company shall make all filings, applications and reports reasonably necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained by or in the name of the Company or the City under Applicable Law in order to operate the Managed Assets, including any required renewal of the NPDES Permit. With respect to Governmental Approvals which are required to be obtained in the name of the City, the Company shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions of such Governmental Approvals; (4) attend all required meetings and hearings; and (5) take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms of such Governmental Approvals. All permit and filing fees required in order to obtain and maintain Governmental Approvals shall be paid by the Company, regardless of the identity of the applicant or permittee, except Governmental Approvals required in connection with an Uncontrollable Circumstance. The Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or unreasonable burden on the City or that would materially contravene any City policies with respect to the matters contained therein. The City reserves the right to modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Company which would have the effect described in the preceding sentence. The final terms and conditions of any Governmental Approval shall be subject to the City's approval, which approval shall not be unreasonably withheld or delayed.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Management Services shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the City as the legal and beneficial owner of the Managed Assets and primary permittee. The data and information supplied by the Company to the City and all Governmental Bodies shall be correct and complete in all material respects, and shall be submitted in draft form to the City sufficiently in advance to allow full and meaningful review and comment by the City in accordance with Appendix 10 (Operation and Maintenance). The Company shall be responsible for any schedule and cost consequences that may result from the submission of materially incorrect or incomplete information. The Company shall not knowingly take any action in any application, data submittal or other

communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost, risk or burden on the City. The City reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Company which would have the effect described in the preceding sentence.

(C) Non-Compliance and Enforcement. The Company shall report to the City, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Managed Assets and shall have all obligations and responsibilities with respect thereto as set forth in Section 6.13 (Compliance with Applicable Law). The City shall have the right independently to enforce compliance with the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body.

(D) Reports to Governmental Bodies. The Company shall prepare all periodic and annual reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Managed Assets, including sampling and testing results and monthly discharge monitoring reports. Such reports shall contain all signatures and information required by the Governmental Body, and may be identical to comparable reports prepared for the City, if such are acceptable to the Governmental Body. The Company first shall provide the City (no later than one day prior to submittal to the applicable Governmental Body) with copies of such regulatory reports for review, comment and signature, as applicable, in accordance with Appendix 10 (Operation and Maintenance).

(E) Potential Regulatory Change. The Company shall keep the City regularly advised as to potential changes in regulatory requirements affecting the Managed Assets, and provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the City should a Change in Law actually occur.

SECTION 6.16. CITY ACCESS TO MANAGED ASSETS. The City and all appropriate Governmental Bodies shall have the right at any time, on a 24-hour per day, 365-day per year basis, to visit and inspect the Managed Assets and observe and assess the Company's performance of the Contract Services. The Company shall permit and facilitate access to the Managed Assets for such purposes by City personnel and by agents and contractors designated by the City. Keys or passwords, as applicable, for the facilities or structures constituting the Managed Assets shall be provided to the Contract Administrator by the Company in accordance with the Company's physical security plan and key control program. All visitors shall comply with the Company's reasonable operating and safety procedures and rules, and shall not interfere with the Company's operations of the Managed Assets. When visiting any portion of the Managed Assets that is staffed by the Company at the time of the visit, all City employees, agents and contractors (except those identified on a pre-approved list on file with the Company) shall announce themselves to the staff and Company employees may elect to accompany any City employees, agents and contractors during the visit. The parties agree that the City shall have immediate access to the Managed Assets and no Company rule or procedure shall impede, impair or delay such access; provided that the City and its respective agents and contractors shall at all times comply with the site-specific health and safety plan and rules. The Company shall maintain a visitors' log during the Term and shall require that all visitors to the Managed Assets (other than visitors on organized tours or Company personnel) sign in and sign out in the visitors' log.

SECTION 6.17. ASSET AND FINANCIAL RECORDS.

(A) Managed Assets Records. The Company, on and after the Commencement Date, shall establish and maintain computerized information systems with respect to the Managed Assets for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this DBO Agreement and demonstrate compliance with the Contract Standards. The Company shall promptly provide the City, upon reasonable request, with copies of all operations and maintenance data and other information kept by the Company in its performance of the Contract Services.

(B) Availability of Managed Assets Records to City. The Company shall make available to the City all operations, maintenance, performance, odor complaint tracking and Residuals management, process control and similar records and data as are available to the Principal Designated Operator. The City shall have real time, continuous computer access to such records and data, and hardcopy reproduction capability.

(C) Record Documents and Mapping. The Company shall maintain at the WWTP and make available to the City upon request for review and copying: (1) all designs, drawings, blueprints, plans, specifications and “as-built” or record drawings and documents pertaining to the Managed Assets that are in the possession of the Company or are required to be developed by the Company under the terms of this DBO Agreement; and (2) similar documents relating to the Wastewater System Capital Improvements and any Capital Modifications. The Company shall: (1) keep current all such Managed Assets records to show any changes to the Managed Assets (including valves, pipes, pumps, meters and other assets) made by the Company in the performance of the Contract Services; and (2) provide advice and assistance to the City, based on such records, in establishing and maintaining any City geographic mapping and information systems.

(D) Financial Records. The Company shall prepare and maintain proper, accurate, complete and current financial books, records and accounts, in accordance with generally accepted accounting principles, with respect to all aspects of the Managed Assets and Contract Services, including direct and indirect personnel expenses, Subcontractor costs, the costs of material, equipment and supplies, maintenance, repair and replacement items, operating expenses and overhead. These financial records shall be in form and substance sufficient to support all financial reporting, including Cost Substantiation, required hereunder. In the event the Company fails to prepare or maintain any books, records or accounts as required under this Section, the Company shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Company shall keep the relevant portions of the books, records and accounts maintained with respect to each Contract Year until at least the sixth anniversary of the last day of each such Contract Year (or such longer period as may be appropriate to account for any dispute then pending). For those circumstances that require Cost Substantiation under Section 17.10 (Cost Substantiation of Work Already Performed), the Company shall make such books and records available to the City for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the City to determine to its reasonable satisfaction the accuracy, completeness, currency and propriety of any charge or request for payment hereunder. The City acknowledges and agrees that the preceding sentence shall not require the Company to produce books and records associated with the Operating Charge of the Service Fee, the Fixed Design-Build Price or the costs for which the parties have negotiated a lump sum price, all as and to the extent provided in Section 17.9 (Negotiated Fixed Price Work). Additionally, the Company shall not be required to provide the City any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the City through the Cost Substantiation process. Notwithstanding any of the foregoing, the Company shall produce all books and records

required to be maintained pursuant to this subsection to the extent that such books and records pertain directly to contract performance if there is any indication of fraud, gross abuse or corrupt practices. The provisions of this Section shall survive the termination of this DBO Agreement.

(E) Company Financial Reports. The Company shall furnish the City, within 90 days, or as soon as such statements are available if later than 90 days, after the end of each Company fiscal year consolidated balance sheets and income statements for the Company attached to the audited year-end financial statements reported upon by the Company's independent certified public accountant. If applicable, the Company shall, at the request of the City, also furnish the City with copies of the quarterly and annual reports and other filings of the Company filed with the Securities and Exchange Commission. If the Company is not required to file quarterly reports with the Securities and Exchange Commission, the Company shall, at the request of the City, provide the City with unaudited quarterly financial statements within 60 days following the end of each quarter based on the Company's fiscal year. If the Company's financial information is consolidated with that of the Guarantor, the Company may satisfy the requirements of this subsection by providing the information required pursuant to subsection 16.1(B) (Reports and Notifications Concerning the Financial Condition of the Guarantor).

(F) Inspection, Audit and Adjustment. The City shall have the right to perform or commission an inspection or an independent audit of the Company's billing statements and, with respect to items subject to Cost Substantiation, the financial information required to be kept under this Section, subject to possible reimbursement as provided in this Section. If an inspection or audit reveals that the City has overpaid any amount subject to Cost Substantiation, then the Company shall, at the election of the City, either immediately reimburse to the City or offset against future Service Fee payments, as a Service Fee adjustment, the overpaid amount, in addition to interest at the Overdue Rate from the time such amount was initially overpaid until reimbursed or credited to the City. If an inspection or audit contemplated by this Section discloses an overpayment to the Company of \$5,000 or more of the total amount that should have been properly paid by the City for the item audited, then the Company shall, in addition to the reimbursement or credit of such overstated amount, with interest, reimburse the City for any and all Fees and Costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the City may have, including remedies for an Event of Default by the Company.

SECTION 6.18. PERIODIC REPORTS.

(A) Monthly Operations. The Company shall provide the City with monthly operations reports no later than 15 days after the end of each Billing Period in a form approved by the City, in accordance with the provisions set forth in Appendix 10 (Operation and Maintenance).

(B) Annual Operations and Maintenance Reports. The Company shall furnish the City, within 30 days after the end of each Contract Year, an annual report in accordance with the provisions set forth in Appendix 10 (Operation and Maintenance), including a summary of the information contained in the monthly operations reports. The Company shall also perform and report to the City, as part of its annual operations report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the management of the Managed Assets. The Company shall also furnish the City, as part of its annual operations report, a listing of any forecasted or planned Major Maintenance, Repair and Replacements the Company anticipates it will perform in accordance with subsections 8.1(C) (Major Maintenance, Repair and Replacements) and 8.3(B) (Major Maintenance, Repair and Replacement Schedule)

during the upcoming Contract Year, and shall correlate such activities with the Major Maintenance, Repair and Replacement Schedule.

(C) Default Reports. The Company shall provide to the City, promptly after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any material contract entered into by the Company in connection with the Contract Services.

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

SECTION 6.19. EMERGENCIES.

(A) Emergency Response and Disaster Recovery Plan. No later than 60 days following the Commencement Date (or on such earlier date as may be required by any Governmental Body under Applicable Law), the Company shall provide the City with the Emergency Response and Disaster Recovery Plan to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions in accordance with the Contract Standards and the specific requirements of Appendix 10 (Operation and Maintenance). The plan shall: (1) provide for appropriate notifications to the City and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency Response Actions by the City and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; and (3) assure the timely availability of all personnel required to respond to any emergency (no later than one hour during nights, weekends or holidays). The Emergency Response and Disaster Recovery Plan shall be reviewed by the parties annually as part of the review of the annual operations report and updated when necessary.

(B) Emergency Action. Notwithstanding any requirement of this DBO Agreement requiring City approval or consent to reports or submittals, if at any time the Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Managed Assets, or to mitigate the immediate consequences of an emergency event, then the Company shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Company shall notify the City of the event at an emergency phone number from a list supplied by the City, and the Company's response thereto. The cost of the Company's response measures shall be borne by the Company except to the extent the emergency event was caused by an Uncontrollable Circumstance, in which case the City shall bear the cost in accordance with and to the extent provided in Section 15.2 (Uncontrollable Circumstances), subject to Cost Substantiation.

(C) Use of Company Employees for Municipal Services. The City may request the Company to direct the Company's employees to perform municipal services previously performed by City employees, subject to such terms and conditions as shall be mutually agreeable to the parties.

SECTION 6.20. COST REDUCTION AND SERVICE IMPROVEMENT. In the event either party offers the other party any idea, approach or concept for lowering the Company's cost, reducing the City's Service Fee or total costs, or improving the Company's service, the other party shall reasonably consider and explore the development and implementation of the concept. Neither party shall be obligated to propose or accept any such idea, approach or concept or to negotiate or to agree to amend this DBO Agreement to effectuate any such idea, approach or concept except in its sole discretion and upon terms and conditions acceptable to it.

ARTICLE VII

PERFORMANCE

SECTION 7.1. MANAGED ASSETS PERFORMANCE GENERALLY.

(A) Reliance. The Company acknowledges that the City, as the owner of the Wastewater System, is relying on the performance by the Company of its obligations hereunder in order to provide the essential public service of serving the wastewater treatment needs of the Service Territory.

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

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

(D) Limitations on Company Rights. The Company shall not treat wastewater other than Influent, as defined herein, and shall not use the Managed Assets for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than the City and its customers in the Service Territory. The Company shall not impose a fee or charge on any third party for the treatment of Influent or any other waste, and shall not provide services on private property served by the Wastewater System without the approval of the City. The only compensation payable by the City to the Company for providing the Management Services shall be the Service Fee payable by the City hereunder.

(E) City Vector Truck Waste. The Company shall accept, process and treat at the WWTP, as directed by the City from time to time, waste delivered to the WWTP by City vector trucks, up to a maximum of 31 cubic yards per Contract Year. All such waste delivered by City vector trucks shall constitute Influent for all purposes under this DBO Agreement. Except to the extent the Company is relieved as provided in Sections 7.9 (Upsets and Non-Compliant Influent Affecting Company Compliance with Performance Guarantees) and 15.2 (Uncontrollable Circumstances), the Company shall accept, process and treat all such vector truck waste delivered in accordance with this subsection, in compliance with the requirements of the Effluent Guarantee. The Operating Charge contains full compensation from the City for such services.

SECTION 7.2. EFFLUENT GUARANTEE.

(A) Applicable Law Requirements. Except to the extent relieved as provided in Section 7.9 (Upsets and Non-Compliant Influent Affecting Company Compliance with Performance Guarantees) or otherwise due to the occurrence of an Uncontrollable Circumstance in accordance with Section 15.2 (Uncontrollable Circumstances), the Company shall operate the WWTP on a continuous, uninterrupted 24-hour per day, 7-day per week basis so as to receive and treat all Influent and discharge Effluent in compliance with the requirements of Applicable Law, including the NPDES Permit. The Company acknowledges that this covenant shall apply at all times following the Commencement Date, notwithstanding

the fact that the Company must also design, construct and Acceptance Test the Wastewater System Capital Improvements in accordance with the terms and conditions of this DBO Agreement during the period between the Commencement Date and the Scheduled Acceptance Date. Notwithstanding the foregoing, the Company's obligations with respect to the Temperature Requirements prior to the Acceptance Date shall be as set forth in subsection (F) of this Section.

(B) Effluent to be Used for Reclaimed Water Purposes. In addition to the foregoing requirements of the Effluent Guarantee, the Company shall ensure that all Effluent that is to be used for reclaimed water purposes, whether prior to or after the Acceptance Date, meets all requirements of Applicable Law, including all DEQ requirements for Class A reclaimed water.

(C) Liquidated Damages for Non-Compliance with Effluent Guarantee. Except to the extent the Company's obligation to comply with the Effluent Guarantee is relieved as provided in subsection (F) of this Section, Section 7.9 (Upsets and Non-Compliant Influent Affecting Company Compliance with Performance Guarantees) or otherwise due to the occurrence of an Uncontrollable Circumstance in accordance with Section 15.2 (Uncontrollable Circumstances), the Company shall pay liquidated damages in the amounts set forth in Table 3-10 of Appendix 3 (Performance Guarantee Requirements and Liquidated Damages) for the violations indicated therein relating to the Effluent Guarantee. All dollar amounts set forth in Table 3-10 of Appendix 3 (Performance Guarantee Requirements and Liquidated Damages) for such liquidated damages shall be adjusted annually on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by the CPI Adjustment Factor.

(D) Indemnity for Loss-and-Expense from Non-Complying Effluent. In the event that any Effluent discharged by the Company fails to comply with the Effluent Guarantee, except to the extent such failure of compliance is caused by an Uncontrollable Circumstance and except as provided in subsection (F) of this Section, the Company, in addition to its obligations under Section 7.8 (City Remedies for Non-Compliance with Performance Guarantees) and subsection (B) of this Section, shall pay all fines and penalties assessed by any Governmental Body and shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense resulting from the discharge of such non-complying Effluent. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any person from exposure to such non-complying Effluent based on any theory of recovery, including theories of toxic tort or environmental impairment.

(E) Change in Law Affecting Effluent. The parties acknowledge that a Change in Law, including any additional or more stringent terms and conditions imposed in connection with any renewal of the NPDES Permit, may affect Effluent standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. Except as specifically provided in this subsection with respect to costs associated with mitigation measures, in the event a Change in Law occurs, the Company shall not be entitled to performance relief or additional compensation under Section 15.2 (Uncontrollable Circumstances) unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Effluent characteristic or parameter which is (i) more stringent or burdensome to comply with than the Contract Standards applicable to such characteristic or parameter, or (ii) requires equipment or processes not then utilized, in place or practiced at the Managed Assets, and (2) the Company is unable, after taking all mitigation measures required under Section 15.2 (Uncontrollable Circumstances) with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation. In the event the Company incurs additional costs in implementing the mitigation measures required to respond to a Change in

Law pursuant to this subsection, the Company shall be entitled to cost relief for such additional costs, subject to Cost Substantiation and the terms and conditions of Section 15.2 (Uncontrollable Circumstances).

(F) Temperature Requirements. During the period between the Commencement Date and the Acceptance Date, the Company shall operate and maintain the Managed Assets in accordance with the Operation and Maintenance Manual to produce Effluent in compliance with the Willamette River Temperature Total Maximum Daily Load (TMDL) requirements set forth in the NPDES Permit (the "Temperature Requirements"). However, except to the extent that the Company fails to operate the Managed Assets in accordance with the Operation and Maintenance Manual, the Company shall not be responsible for a violation of the Temperature Requirements prior to the Acceptance Date. The City shall work with DEQ to negotiate a "Mutual Agreement Order" with respect to the Temperature Requirements in an attempt to develop an interim solution for meeting the Temperature Requirements in the performance of the Management Services prior to the Acceptance Date, and the City shall be responsible for the costs of any interim capital improvement or interim operational changes necessitated by such interim solution. Notwithstanding any of the foregoing, the Company shall be fully responsible for meeting the Temperature Requirements as of the Acceptance Date, as the Company must ensure that the Managed Assets, as improved by the Wastewater System Capital Improvements, meet all requirements of the Effluent Guarantee, including the Temperature Requirements. In addition, nothing in this subsection shall be construed as a limitation on the Company's obligations in the event of a failure of the Company to achieve Acceptance by the Scheduled Acceptance Date. Accordingly, if the Company is not able to demonstrate that the Managed Assets, as improved by the Wastewater System Capital Improvements, meet the requirements of the Effluent Guarantee, including the Temperature Requirements, through the performance of the Acceptance Tests, the Company (and not the City) shall be responsible for any required capital investments, improvements, or modifications, repairs and replacements and operating and management practices changes necessary to achieve Acceptance in accordance with subsection 11.4(B) (Acceptance Date Disagreement), as well as continued compliance with the Performance Guarantees following Acceptance in accordance with subsection 7.8(A) (Remedies).

SECTION 7.3. ODOR GUARANTEE.

(A) Applicable Law Limits. Except to the extent relieved as provided in Section 7.9 (Upsets and Non-Compliant Influent Affecting Company Compliance with Performance Guarantees) or otherwise due to the occurrence of an Uncontrollable Circumstance in accordance with Section 15.2 (Uncontrollable Circumstances), the Company shall comply with all limits and requirements established by Applicable Law with respect to odor control in connection with the performance of the Management Services. The Company acknowledges that this covenant shall apply at all times following the Commencement Date, notwithstanding the fact that the Company must also design, construct and Acceptance Test the Wastewater System Capital Improvements in accordance with the terms and conditions of this DBO Agreement during the period between the Commencement Date and the Scheduled Acceptance Date.

(B) Contract Limits Applicable Prior to the Acceptance Date. In addition to the requirements set forth in subsection (A) of this Section, during the period between the Commencement Date and the Acceptance Date, the Company shall (1) operate and maintain the Managed Assets to minimize odor, including complying with the odor control measures set forth in the Company's Construction Plan and in Appendix 5 (Construction Requirements); (2) comply with the requirements of the Odor Control Plan relating to controlling odor during the Design-Build Period; and (3) to the maximum extent practicable, as set forth in the Company's Construction Plan, Appendix 5 (Construction Requirements) and the Company's schedule for the Design-Build Work, shall manage the construction of all Wastewater System Capital

Improvements following the Construction Date in such a manner that odor levels during construction do not exceed those which would occur were the construction not taking place. Such construction management efforts shall include, but not be limited to, the testing and verifying of the proper functionality of odor-control equipment associated with any component of the Wastewater System Capital Improvements by the Company prior to the Company placing such component of the Wastewater System Capital Improvements into operation. Notwithstanding the foregoing, both parties recognize that there may be periods during construction of the Wastewater System Capital Improvements when short-term odor levels may exceed those which would occur were the construction not taking place due to unavoidable and customary construction activities. The Company's Construction Plan shall provide for public notification in advance of construction activities that may cause such short-term increases in odor levels.

(C) Contract Limits Applicable On and After the Acceptance Date. In addition to the requirements set forth in subsection (A) of this Section and except to the extent relieved as provided in Section 7.9 (Upsets and Non-Compliant Influent Affecting Company Compliance with Performance Guarantees) or otherwise due to the occurrence of an Uncontrollable Circumstance in accordance with Section 15.2 (Uncontrollable Circumstances), on and after the Acceptance Date, the Company shall operate, maintain and manage the Managed Assets in compliance with the Odor Control Standards so that there is no odor emanating from the WWTP which causes an Odor Incident or a Sustained Odor Condition in accordance with Appendix 3 (Performance Guarantee Requirements and Liquidated Damages) (the "Odor Guarantee").

(D) Odor Control Practices Report. The Company shall submit, together with the monthly operations report required by Section 6.18 (Periodic Reports), a monthly odor control practices report to the City in accordance with Appendix 10 (Operation and Maintenance).

(E) Preventing Recurrence of Violations Generally. The general remedies for exceeding odor limits are set forth in Section 7.8 (City Remedies for Non-Compliance with Performance Guarantees) and this Section and may include termination as and to the extent provided in Section 14.2 (Events of Default by the Company). With respect to odor particularly, the parties acknowledge the extreme importance of this issue to the general public based on prior experience at the Managed Assets, and the difficulties in establishing meaningful monetary remedies for odor control violations. The Company further acknowledges that, in the proposal process leading to the execution of this DBO Agreement, the Company had a full opportunity to propose additional capital improvements for odor control to be made at the City's expense, and by making its Proposal and by executing this DBO Agreement, the Company has assumed the risk that the WWTP, as improved by the Wastewater System Capital Improvements, is capable of controlling odor to a level required by the Contract Standards absent the receipt of Non-Compliant Influent or the occurrence of other Uncontrollable Circumstances. Accordingly, in the event the Company fails to comply with its odor control obligations set forth or referred to in this Section, and is not excused by Uncontrollable Circumstances, the Company shall be obligated to make and implement such capital investments, improvements or modifications, repairs and replacements, and changes in operating and management practices, as shall be necessary, in light of the nature, extent and repetitiveness of such non-compliance, to assure that the odor violation will not recur. Any capital investment, improvement or modification required to be made pursuant to this subsection, reasonably expected to result in a material change to the Managed Assets, shall be considered a Capital Modification subject to the provisions of Section 13.4 (Capital Modifications Required to Remedy Company Fault). Nothing in this Section shall be construed to limit the Company's obligation to respond to any odor complaint in the manner and within the time requirements established by subsection 6.6(C) (Complaints and Communications).

(F) Citations for Odor Incidents. Upon receipt of information surrounding any Odor Incident, the City shall have the right to issue an Odor Citation to the Company if the City reasonably believes that the Company has violated the Odor Guarantee. Prior to issuing an Odor Citation, the City shall give written notice of the proposed issuance of the Odor Citation to the Company, together with a written statement as to the basis of the determination. The Company shall have seven days after receipt of the City's written notice to respond in writing to the City. The Company may, in its written statement, present information in refutation of the proposed City determination that an Odor Incident has occurred, including information as to the role of any Uncontrollable Circumstances in any odor condition, other mitigating factors, and any possible assessment of liquidated damages which may result from the City's issuance of an Odor Citation. The City may exercise discretion in making its final determination of whether to issue an Odor Citation, and if so, the amount of liquidated damages to be assessed, if any. The limitations of this discretionary power are described in subsection (H) of this Section. In exercising this discretion, the City shall consider the number, frequency, legitimacy and forcefulness of odor complaints logged; the size of the area or magnitude of the number of individuals affected; and the degree of impact on the individuals affected. In exercising this discretion, the City shall also consider the information presented by the Company (including information concerning the efforts of the Company to correct the odor condition).

(G) Liquidated Damages for Odor Citations. The Company shall pay liquidated damages for each Odor Citation issued by the City in the amounts set forth in Table 3-10 of Appendix 3 (Performance Guarantee Requirements and Liquidated Damages). The City shall have the right in its discretion to set the Service Fee reduction within such parameters. Each such dollar amount set forth in Table 3-10 of Appendix 3 (Performance Guarantee Requirements and Liquidated Damages) shall be adjusted annually on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by the CPI Adjustment Factor.

(H) City Monitoring. The City shall have the right at any time to monitor or hire a third party for the purpose of monitoring the Managed Assets for odor and emissions. The City or any third party hired for the purpose may perform odor panel testing or sampling and monitoring. All costs relative to any third party hired for the purpose shall be borne by the City.

(I) Disregarding Prior Odor Citations. In the event that a period of 365 or more days elapses following the issuance of an Odor Citation without any further Odor Citations being issued by the City, all previous Odor Citations regardless of number shall be disregarded for the purposes of the City's termination rights pursuant to Section 14.2 (Events of Default by the Company) and for determining Service Fee reductions under subsection (G) of this Section, and the next Odor Citation, if any, which occurs shall be deemed to be the "first Odor Citation" for such Service Fee reduction purposes.

(J) Sustained Odor Condition Determination. In the event that the City believes a Sustained Odor Condition exists, it shall have the right to make a determination that a Sustained Odor Condition has occurred. Prior to making a Sustained Odor Condition determination, the City shall give written notice of the proposed determination to the Company, together with a written statement as to the basis of the determination. The Company shall have five days after receipt of the City's written notice to respond in writing to the City. The Company may, in its written statement, present information in refutation of the proposed City determination that a Sustained Odor Condition has occurred, including information as to the role of any Uncontrollable Circumstances in any odor condition and as to other mitigating factors. The City shall consider any such information presented by the Company (including the efforts of the Company to correct the odor condition) in making its final determination as to whether a Sustained Odor Condition has occurred and if so, the amount of liquidated damages to be assessed, if any.

(K) Liquidated Damages for Sustained Odor Condition Determination. The Company shall pay liquidated damages upon a Sustained Odor Condition determination made by the City, in the amount set forth in Table 3-10 of Appendix 3 (Performance Guarantee Requirements and Liquidated Damages) determined by the City. Such dollar amount shall be adjusted annually on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by the CPI Adjustment Factor.

(L) City Termination Rights Based on Odor Citations or a Sustained Odor Condition Determination. The City shall have the right, but not the obligation, to terminate this DBO Agreement based upon Odor Citations or upon a Sustained Odor Condition determination by the City pursuant to and in accordance with Section 14.2 (Events of Default by the Company). The rights of the City to collect liquidated damages, or to terminate this DBO Agreement based on Odor Citations or a Sustained Odor Condition determination, shall not be exclusive, and the City shall have all of the other remedies provided herein in the event of a breach of this DBO Agreement relating to odor, including the right to require the Company to prevent the recurrence of odor violations as provided in subsection (E) of this Section.

(M) Concurrent Odor Incidents and Sustained Odor Conditions. Notwithstanding the pendency of proceedings relating to the issuance of an Odor Citation, the City shall have the right to give notice of a Sustained Odor Condition (whether based on the continuance of the Odor Incident giving rise to the possible issuance of the Odor Citation or based upon other odor conditions). In any such event the Company shall have the rights set forth in subsection (J) of this Section with respect to the occurrence of a Sustained Odor Condition.

(N) Number of Odor Citations and Sustained Odor Condition Determinations. Nothing in this Section limits the number of Odor Incidents or Sustained Odor Condition Determinations that the City may declare if circumstances warrant hereunder.

SECTION 7.4. RESIDUALS MANAGEMENT GUARANTEE.

(A) General Obligations. Except to the extent relieved in accordance with Section 15.2 (Uncontrollable Circumstances) due to the occurrence of Uncontrollable Circumstances, the Company shall be responsible for the processing and management of all Residuals at the WWTP Site and the transportation and disposal of all Residuals in accordance with the Contract Standards, including the specific requirements set forth in Appendix 10 (Operation and Maintenance).

(B) Storage, Transportation and Disposal. The Company shall not store in any manner Residuals on the WWTP Site unless (1) fully covered or enclosed, and (2) odor protected. The Company acknowledges that the primary purpose of this provision is to minimize odors. No vehicle containing Residuals loaded for storage or transport shall remain at the WWTP Site for more than eight hours; provided, however, that such restriction shall not apply to vehicles partially loaded with Residuals as long as such vehicles are fully covered or enclosed and odor protected. Residuals shall not be stored or stockpiled at a location off the WWTP Site in any manner, and shall be transported in accordance with Applicable Law directly from the Managed Assets to an Acceptable Disposal Site, or in the case of Biosolids, to an end-user for beneficial reuse in accordance with Section 7.5 (Biosolids Guarantee).

(C) Residuals Processing and Management Information. The Company shall keep and maintain such logs, records, testing results or other documents pertaining to Residuals as are necessary or appropriate to comply with Applicable Law and to monitor and confirm compliance by the Company with the requirements of this Section, and shall collect and promptly provide the City with a copy of all weights and measures data and information relating to quantities of Residuals generated, processed or managed hereunder.

(D) Title to Residuals. The Company shall be considered to be the owner and generator of (1) Residuals bypassed, released, leaked or spilled on or into, the environment in contravention of the Company's obligations under Section 7.11 (Releases, Leaks and Spills), except to the extent caused by Uncontrollable Circumstances; (2) Residuals containing Hazardous Materials introduced by the Company; (3) Residuals containing Hazardous Materials as a result of a failure of the Company to perform the Management Services in accordance with the Contract Standards; (4) Residuals containing Hazardous Materials that are not properly disposed of by the Company in accordance with Applicable Law; and (5) Residuals containing known Hazardous Materials if the Company has failed to notify the City of the known Hazardous Materials. The City shall be considered to be the owner and generator of all other Residuals produced by or at the WWTP.

(E) Hazardous Waste Manifests; Limited City Indemnification. The Company shall be responsible for executing hazardous waste manifests required with respect to Residuals containing Hazardous Materials to the extent that the Company is considered to be the owner and generator thereof pursuant to subsection (D) of this Section. With respect to all other Residuals containing Hazardous Materials, the Company shall, at the request of the City, act as the City's agent for the sole purpose of executing hazardous waste manifests on behalf of the City; provided, however, that such execution shall not serve to transfer title, risk of loss or other incidents of ownership from the City to the Company. To the extent permitted by law and solely with respect to Residuals that the City is considered to be the owner and generator of pursuant to subsection (D) of this Section, the City shall indemnify and hold the Company harmless from any costs or damages to the extent arising from title, risk of loss and all other incidents of ownership relating to Residuals containing Hazardous Materials. Nothing in this subsection shall require the City to indemnify or hold the Company harmless from any costs or damages arising from Company Fault.

SECTION 7.5. BIOSOLIDS GUARANTEE.

(A) Biosolids Guarantee Prior to Acceptance. For the period beginning on the Commencement Date and ending on the Acceptance Date, the Company shall operate and maintain the Managed Assets to process and treat all Sludge at the WWTP to produce Biosolids that meet the Part 503 Regulations for Class B pathogen reduction and shall be responsible for complying with the City's Biosolids management program, including the Biosolids Management Plan, in effect as of the Contract Date for the management, transportation and land application of all Biosolids, as more particularly described in Appendix 10 (Operation and Maintenance).

(B) Required Class A Biosolids Capital Improvements. Appendix 4 (Technical Specifications) includes the Technical Specifications associated with the Wastewater System Capital Improvements necessary to treat and process Sludge to produce Class A Biosolids following the Acceptance Date in accordance with this Section. The Company shall design, construct and test such Wastewater System Capital Improvements in accordance with Article X (Permitting, Design and Construction of the Wastewater System Capital Improvements) and Article XI (Acceptance of the Wastewater System Capital Improvements) at the WWTP Site as part of its Design-Build Work responsibilities under this DBO Agreement. The Design-Build Price shall be the Company's sole compensation for the performance of these obligations. The Company acknowledges that implementing the Wastewater System Capital Improvements associated with the production of Class A Biosolids at the WWTP Site is a critical component of the City's sustainability objectives and an essential part of the overall consideration for this DBO Agreement. Accordingly, the Company agrees to use these Wastewater System Capital Improvements for the processing and treatment of all Sludge in accordance with subsection (C) of this Section. In no event shall the Company provide for the processing or treatment of Sludge or Biosolids, in whole or in part, at any off-site facility in order to comply with its obligations to produce Class A Biosolids in accordance with subsection (C) of this Section.

(C) Biosolids Guarantee Beginning on the Acceptance Date. The Company acknowledges that environmental sustainability is a primary objective and material inducement of the City in entering into this DBO Agreement and that the continuous treatment and processing of all Sludge to produce Class A Biosolids at the WWTP Site following the Acceptance Date is a critical component of this objective. Accordingly, commencing upon the Acceptance Date, the Company shall process and treat all Sludge at the WWTP Site in accordance with subsection (B) of this Section to produce Class A Biosolids that meet: (1) the Part 503 Regulations for Class A pathogen reduction, and (2) the additional Class A Biosolids quality requirements set forth in Appendix 3 (Performance Guarantee Requirements and Liquidated Damages). The Company shall be fully responsible for the transporting, marketing and beneficial reuse of all Class A Biosolids in accordance with the Biosolids Management Plan and the Contract Standards. Absent written approval by the City in its sole and absolute discretion, in no event shall the Company dispose of Class A Biosolids at a landfill or otherwise provide for anything other than the beneficial reuse of Class A Biosolids in accordance with the Biosolids Management Plan, notwithstanding any cost overruns the Company might incur or the fact that landfill disposal may be or become less expensive than providing for the beneficial reuse of Class A Biosolids. The Company acknowledges that this covenant shall be deemed critical to the City's sustainability objectives and the Company explicitly agrees to bear the risk of any cost overruns associated with providing for the beneficial reuse of all Class A Biosolids, except to the extent provided in this DBO Agreement with respect to Changes in Law or other Uncontrollable Circumstances. The Service Fee, as adjusted upon the Acceptance Date in accordance with subsection 9.3(B) (Adjustment to the Operating Charge on the Acceptance Date), shall be the Company's sole compensation for complying with its obligations under this subsection. For purposes of this subsection, "beneficial reuse" means the use of Class A Biosolids in accordance with Applicable Law (1) for any agricultural, horticultural, reclamation, or similar use as a soil amendment, mulch, or component of a medium for plant growth; (2) as landfill cover, (3) in utilization for energy recovery, or (4) for any other alternative use approved in writing by the City in its sole and absolute discretion.

(D) Failure to Comply with the Biosolids Guarantee. In the event that the Company fails at any time to comply with the Biosolids Guarantee, the Company shall, without limiting any other remedy available to the City upon such an occurrence and notwithstanding any other provision of this DBO Agreement: (1) promptly correct such failure and resume compliance with the Biosolids Guarantee; (2) transport and dispose of all Sludge that does not meet the Biosolids or Class A Biosolids quality requirements set forth in subsection (A) or (C) of this Section, as applicable, at an Acceptable Disposal Site lawfully able to accept such Sludge at the Company's sole cost and expense (except that the Company shall be entitled to cost relief in accordance with Section 15.2 (Uncontrollable Circumstances) to the extent the Company demonstrates that such Sludge does not meet the Biosolids Guarantee as a result of an Uncontrollable Circumstance), (3) pay the City the applicable liquidated damages set forth in Table 3-10 (as adjusted annually on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by the CPI Adjustment Factor) of Appendix 3 (Performance Guarantee Requirements and Liquidated Damages), and (4) indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense resulting therefrom.

SECTION 7.6. ENVIRONMENTAL GUARANTEE. Except to the extent relieved due to the occurrence of Uncontrollable Circumstances, the Company shall do all things necessary in accordance with Prudent Industry Practice to assure that the Managed Assets meet all requirements of Applicable Law and as set forth in Appendix 3 (Performance Guarantee Requirements and Liquidated Damages) and Appendix 10 (Operation and Maintenance) with respect to the control of noise, fugitive dust, traffic, litter, lighting, stormwater, Vectors, negative visual impacts of the Managed Assets, and other adverse environmental effects on the surrounding community (the "Environmental Guarantee").

SECTION 7.7. LIFT STATIONS PERFORMANCE GUARANTEE. Except to the extent relieved due to the occurrence of Uncontrollable Circumstances, the Company shall operate and maintain the Lift Stations and provide routine repair in accordance with Appendix 10 (Operation and Maintenance), to meet the requirements of Applicable Law. In addition, the Company shall be responsible for compliance with the specific requirements set forth in Appendix 3 (Performance Guarantee Requirements and Liquidated Damages).

SECTION 7.8. CITY REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Remedies. If the Company fails to comply with any Performance Guarantee and is not excused from performance as provided in Section 7.9 (Upsets and Non-Compliant Influent Affecting Company Compliance with Performance Guarantees) or 15.2 (Uncontrollable Circumstances), the Company shall, without relief under any other Performance Guarantee, and in addition to any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body: (1) promptly notify the City within 24 hours of the Company's having knowledge of any such non-compliance; (2) promptly provide the City within 24 hours with copies of any notices sent to or received from the EPA, DEQ or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law; (3) pay any liquidated damages to the City provided for herein; (4) pay any other resulting third party damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom; (5) take any action (including making all capital investments, improvements, modifications, repairs and replacements and operating and management practices changes) necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent the recurrence of non-compliance with such Performance Guarantee; (6) promptly prepare all public notifications required by Applicable Law, and submit such notifications for publication; and (7) assist the City with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings. Any capital investment, improvement or modification required to be made pursuant to this subsection, reasonably expected to result in a material change to the Managed Assets, shall be considered a Capital Modification subject to Section 13.4 (Capital Modifications Required to Remedy Company Fault).

(B) Performance Testing. In addition to any performance testing required to be performed at the cost and expense of the Company in accordance with the Contract Standards, the City, at any time, may require a performance test to be conducted by the Company, at the City's cost and expense, to demonstrate that the Managed Assets are operating in compliance with the Performance Guarantees. The performance tests shall be conducted in the manner to be developed at such time and conducted as mutually agreed to by the parties. If the test is not successfully passed, the Company shall reimburse the City and, at its own cost and expense, take all necessary corrective action in accordance with subsection (A) of this Section, and the test shall be re-performed (to the extent practicable, only for such portion of the Managed Assets which was found to be not in compliance with the Performance Guarantees) at the Company's sole cost and expense. The City's Public Works Director or his or her designee shall verify each test and inspection.

(C) Indemnification. The Company shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense that may result from a failure of the Company to comply with the Performance Guarantees.

SECTION 7.9. UPSETS AND NON-COMPLIANT INFLUENT AFFECTING COMPANY COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Relief Generally. Subject to the provisions of subsection (B) of this Section and Section 15.2 (Uncontrollable Circumstances), the Company shall be relieved of its obligation to comply with a Performance Guarantee to the extent and for any period during which the operation of the Managed Assets is affected by the occurrence of an Upset, the receipt of Non-Compliant Influent or any other Uncontrollable Circumstance.

(B) Required Demonstration. The determination of an Uncontrollable Circumstance associated with the occurrence of an Upset or the receipt of Non-Compliant Influent, and the Company's entitlement to relief with respect thereto, shall be conditioned on the following, as affirmatively demonstrated by the Company through properly signed, contemporaneous operating logs, or other relevant evidence:

(1) an Upset actually occurred or Non-Compliant Influent was actually received; and

(2) the occurrence or receipt thereof could not have been prevented by compliance with the Contract Standards.

Absent such demonstration, the occurrence of an Upset or the receipt of Non-Compliant Effluent shall not be considered an Uncontrollable Circumstance and the Company shall not be entitled to any relief under Section 15.2 (Uncontrollable Circumstances) or otherwise.

(C) Response Measures to Upsets and Non-Compliant Influent. If an Upset occurs or the WWTP receives Non-Compliant Influent, the Company shall, without limiting its obligations under the Contract Standards: (1) use all efforts consistent with Prudent Industry Practice to maintain WWTP performance as if the Upset had not occurred or Non-Compliant Influent had not been received; (2) immediately advise the City of the situation (in any event within two hours after the Company's first knowing of the occurrence of an Upset or the receipt of Non-Compliant Influent); (3) advise the City of the Company's planned course of action within four hours after the Company's first knowing of the occurrence of an Upset or the receipt of Non-Compliant Influent; (4) submit any notice thereof required by Applicable Law; and (5) use all efforts consistent with Prudent Industry Practice to return the Effluent to compliance with the requirements of Applicable Law and the Performance Guarantees as soon as reasonably possible in accordance with the Contract Standards.

(D) Service Fee Impact. To the extent the occurrence of an Upset or the receipt of Non-Compliant Influent constitutes an Uncontrollable Circumstance under subsection (B) of this Section, the Service Fee shall be increased by an amount equal to the reasonable costs incurred by the Company with respect to such Uncontrollable Circumstance, including the reasonable costs incurred by the Company in responding to the effect of the Uncontrollable Circumstance on the Managed Assets and on the performance of the Contract Services but excluding any such increased costs which would have been avoided had the Company complied with any remedial measures required under Applicable Law and appropriate mitigating measures required by Section 15.2 (Uncontrollable Circumstances).

SECTION 7.10. TESTING, METERING AND WEIGHING.

(A) Testing. The Company shall conduct all tests of Influent, Effluent, Residuals, air emissions and odor in accordance with the Contract Standards, including the requirements set forth in Appendix 10 (Operation and Maintenance). The tests shall be made at State certified laboratories to the extent required by the Contract Standards and shall be conducted at the Company's sole cost and expense, except to the extent such tests are required

by a Change in Law or any other Uncontrollable Circumstance and are not required under the terms hereof as of the Contract Date.

(B) Metering and Weighing. The Company shall maintain in good working order, and repair and replace when necessary, devices at the Managed Assets capable of (1) metering the continuous and daily total volume of Influent and Effluent, (2) metering or weighing the daily amount of Residuals leaving the Managed Assets for disposal, and (3) any other metering or weighing requirement imposed by the Contract Standards. The City shall have full access to such meters, instruments, controls, recorders, scales and other metering and weighing devices. All operating data produced by such metering and weighing devices shall be subject to audit, and shall be summarized in the monthly operations reports delivered to the City pursuant to Section 6.18 (Periodic Reports). All such metering and weighing devices shall be calibrated to the accuracy required by, and shall be operated and maintained in accordance with the requirements of, the Contract Standards. To the extent any metering or weighing device is incapacitated or is being tested, the Company shall estimate as accurately as practicable the data required by the Company to perform the Contract Services. This estimate and methodology shall, with the City's approval, be used as the basis for determining the operating data required hereunder during the outage. The City shall have the right to monitor, inspect and test such metering and weighing devices which are part of the Managed Assets at any time and for any purpose and to take measurements regarding Influent, Effluent, and Residuals at the City's cost without unreasonably interfering with the Company's ordinary operations.

SECTION 7.11. RELEASES, LEAKS AND SPILLS.

(A) Unauthorized Releases Prohibited. The Company shall operate the Managed Assets in such a manner that Influent, Effluent, Residuals and Hazardous Materials shall not contaminate or be bypassed, released, leaked or spilled on or into the environment other than as permitted by Applicable Law.

(B) Notification and Reporting. The Company shall notify all Governmental Bodies with regulatory jurisdiction in accordance with Applicable Law upon the occurrence of any unauthorized release of Influent, Effluent, Residuals or Hazardous Materials into the environment from or in connection with its operation and management of the Managed Assets and shall fulfill all applicable reporting requirements established by Applicable Law with respect thereto. Immediately following the initial notification of the applicable Governmental Body or, to the extent practicable, concurrently therewith, the Company shall notify the City of any such unauthorized release. The Company shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the City, along with any documents provided to the relevant Governmental Body regarding the release.

(C) Cleanup and Costs. The Company shall coordinate with the City and all appropriate Governmental Bodies in effectuating the prompt remediation of any unauthorized release. The Company shall, in the most expeditious manner possible under the circumstances, cause any Influent, Effluent, Residuals or Hazardous Materials released in violation of this Section to be cleaned up and remediated in accordance with Applicable Law. All costs associated with performing any such cleanup and remediation measures shall be borne by the Company, except to the extent the unauthorized release of Influent, Effluent, or Residuals resulted from an Uncontrollable Circumstance, in which case the appropriate portion of such costs shall be borne by the City on a reimbursement basis subject to Cost Substantiation.

(D) Indemnification. The Company shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3

(Indemnification) from and against all Loss-and-Expense that may result from a failure to comply with this Section.

SECTION 7.12. ADMINISTRATIVE SANCTIONS.

(A) Compliance Failures. The Company shall perform the Contract Services in accordance with the Contract Standards. Except to the extent the Company is relieved for Uncontrollable Circumstances, the Company shall be subject to liquidated damages in accordance with subsection (B) of this Section for the Company's failures of compliance indicated below:

- (1) failure to report any violation of any Governmental Approval or Applicable Law as required in accordance with the Contract Standards;
- (2) failure to calibrate or verify calibration of flow meters as required by the Contract Standards;
- (3) failure to respond within three days to a written request for information related to this DBO Agreement made by the Contract Administrator and designated as a "priority request";
- (4) failure to provide any plan, proposal, report or other deliverable required hereunder with respect to Uncontrollable Circumstances or any regulatory matter by the deadline agreed upon by the parties with respect thereto;
- (5) failure to keep monthly maintenance logs as required by Section 8.1 (Maintenance, Repair and Replacement Generally);
- (6) failure of Company staff to attend City meetings as reasonably requested, with adequate advance notice from the City;
- (7) failure to provide any reports required hereunder within three days after the due date;
- (8) failure to maintain proper certification as required by any Governmental Body;
- (9) failure to respond to alarms at the Managed Assets as required hereunder; and
- (10) failure to properly sample, test or report the results thereof as required by Applicable Law.

(B) Liquidated Damages. If the Company fails to comply with any of its performance obligations as set forth in subsection (A) of this Section, the City, within 30 days of its discovery of such violation, shall notify the Company in writing of its alleged failure to perform. The Company shall have the right to cure any violation described items (2), (4), and (7) above within 15 days after receipt of the City's notice of violation; any other such violation shall not be subject to cure. The Company shall be subject to liquidated damages for failures of performance under this Section in the following amounts (which amounts shall be subject to escalation annually by the CPI Adjustment Factor):

- (1) \$1,000 for the second failure to perform in any Contract Year.
- (2) \$2,000 for the third failure to perform in any Contract Year.

- (3) \$3,000 for the fourth failure to perform in any Contract Year.
- (4) \$4,000 for the fifth and each subsequent failure to perform in any Contract Year.

The Company shall have the right to contest the occurrence of any alleged violation or alleged failure to cure and the Company shall have no obligation to pay such contested amounts until the contest is resolved. In no event shall the payment of liquidated damages by the Company for any failure of performance under this Section relieve the Company from the performance of the particular obligation.

ARTICLE VIII

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 8.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Predictive, Preventative and Corrective Maintenance. The Company shall perform all predictive, preventative and corrective maintenance of the machinery, equipment, structures, improvements and all other property constituting the Managed Assets, shall keep the Managed Assets in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards, and shall maintain the aesthetic quality of the Managed Assets as originally constructed and in accordance with the Technical Specifications, and shall comply with the operation and maintenance requirements set forth in Appendix 10 (Operation and Maintenance) and Appendix 11 (Asset Management). The Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, Consumables and services which are necessary for the normal and ordinary maintenance of the Managed Assets and shall conduct predictive, preventive and corrective maintenance of the Managed Assets as required by the Contract Standards. The Company shall keep monthly maintenance logs in accordance with the repair and replacement plan and asset management plan set forth in Appendix 11 (Asset Management).

(B) Repair and Maintenance of Site Grounds. The Company, in accordance with the Contract Standards, shall keep the grounds of the Managed Asset Sites in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required) and in accordance with Appendix 10 (Operation and Maintenance). The Company shall also maintain and repair all Managed Asset fencing and signage. In addition, the Company shall provide lawn mowing, leaf raking, and brush cutting services for the Managed Asset Sites, and provide winter maintenance and snow removal for all parking lots, roadways, walk-ways, and building entrances and exits at the Managed Asset Sites.

(C) Major Maintenance, Repair and Replacements. The Company shall perform all Major Maintenance, Repairs and Replacement of the machinery, equipment, structures, improvements and all other property constituting the WWTP during the Term required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as "major" or "capital" in nature in accordance with subsection 8.2(B) (Major Maintenance, Repair and Replacement Schedule). The City's approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification, in which event the City shall have the approval rights set forth in Article XIII (Capital Modifications). The obligations of the Company under this Article are intended to assure that the WWTP is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency, and that in any event the WWTP is returned to the City at the end of the Term in a condition which does not require the City to undertake a significant overhaul or immediate replacements in order to continue to provide reasonably priced and efficient wastewater collection and treatment services. Nothing in this subsection shall limit the Company's obligations with respect to the required condition of the Managed Assets at the end of the Term under Section 8.3 (Managed Asset Evaluations). Notwithstanding the foregoing provisions of this subsection, the parties acknowledge and agree that the Company's obligations hereunder shall not include the performance of maintenance, repair and replacement of the machinery, equipment, structures or improvements constituting a part of the Lift Stations, which may be characterized as "major" or "capital" in nature, except to the extent provided in subsection (D) of this Section.

(D) Maintenance, Repair and Replacement of the Lift Stations. Without limiting any of the foregoing, the Company acknowledges that its maintenance, repair and replacement obligations hereunder with respect to the Managed Assets include the obligation to maintain, repair and replace the Lift Stations and that proper maintenance of the Lift

Stations will be critical to the overall performance of the Managed Assets and the ability of the Company to meet the Performance Guarantees. Accordingly, the Company shall maintain, repair and replace the Lift Stations in accordance with the Contract Standards, including the specific requirements associated with the Lift Stations set forth in Appendix 10 (Operation and Maintenance). The parties acknowledge and agree that the Company's obligations under this subsection shall apply to the first \$25,000 (excluding overhead, profit and all costs associated with the labor of the Company or any of its Affiliates) relating to each and every Incident (as defined in subsection (G) of this Section) of maintenance, repair and replacement of the machinery, equipment, structures or improvements constituting a part of the Lift Stations, with no annual limit on the number of Incidents. The parties acknowledge and agree that the City shall pay for the amount in excess of \$25,000 (excluding overhead, profit and all costs associated with the labor of the Company or any of its Affiliates) relating to each and every Incident of maintenance, repair and replacement of the machinery, equipment, structures or improvements constituting a part of the Lift Stations which are integral to the operations of the Managed Assets, and where:

- (1) such maintenance, repair and replacement is not the result of the Company's negligence or failure to perform its predictive, preventative and corrective maintenance obligations pursuant to this Section or other Company Fault; and
- (2) the cost for such maintenance, repair and replacement is reasonable, in the opinion of the City;

except that, if the Incident is caused by the occurrence of an Uncontrollable Circumstance, in accordance with and to the extent provided in Section 15.2 (Uncontrollable Circumstances), the City shall be responsible for all costs of maintenance, repair and replacement of the Lift Stations related to such Incident.

(E) Compensation for Maintenance, Repair and Replacements. The Company shall bear all costs of performing its maintenance, repair and replacement obligations under this Section. The only compensation payable by the City to the Company for performing the Contract Services (including such obligations) is the Service Fee, including the Company's right to requisition amounts in the Capital Maintenance Account to pay for Major Maintenance, Repair and Replacements through the Capital Maintenance Charge, in accordance with Section 9.4 (Maximum Annual Capital Maintenance Charge).

(F) Repair and Replacements by the City. The City shall perform or cause to be performed all maintenance, repair and replacement of all City Property located outside the Managed Asset Site boundaries, which are integral to the operations of the Managed Assets, including the Collection System. The City shall bear the cost and expense of such maintenance, repair and replacement.

(G) Incident Defined. For purposes of this Section, an Incident of maintenance, repair and replacement shall mean:

- (1) a random failure of a single item, or a part thereof, of machinery, equipment, structures or improvements constituting a part of the Lift Stations that causes an adverse impact either immediately, or in the long term, upon the integrity of the functionality of that item or part thereof; or
- (2) a failure of a single, or multiple, items of machinery, equipment, structures or improvements constituting a part of the Lift Stations, the failure of which can be shown to be caused by a specific event which is outside the control of the Company, including an Uncontrollable Circumstance, and is outside the normal

operating conditions for the particular item or items of machinery, equipment, structures or improvements constituting a part of the Lift Stations.

SECTION 8.2. MAINTENANCE, REPAIR AND REPLACEMENT PLAN AND MAJOR MAINTENANCE, REPAIR AND REPLACEMENT SCHEDULE.

(A) Maintenance, Repair and Replacement Plan. Appendix 10 (Operation and Maintenance) and Appendix 11 (Asset Management) contain requirements for preparing the Company's plans and schedules for the maintenance, repairs and replacements of the Managed Assets, as improved by the Wastewater System Capital Improvements. The plans are intended to establish a minimum standard by which to measure the Company's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs with respect to the Managed Assets, as improved by the Wastewater System Capital Improvements. The Company shall incorporate a maintenance, repair and replacement plan that is in compliance with the requirements set forth in Appendix 10 (Operation and Maintenance) and Appendix 11 (Asset Management) into the Operation and Maintenance Manual. The Company shall adhere to these plans as incorporated in the Operation and Maintenance Manual, except where it can demonstrate to the City that changes are reasonable under Prudent Industry Practice. The timing and extent of maintenance, repair and replacement activities performed by the Company hereunder with respect to the Managed Assets, as improved by the Wastewater System Capital Improvements, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 10 (Operation and Maintenance) and Appendix 11 (Asset Management), as incorporated in the Operation and Maintenance Manual. The Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

(B) Major Maintenance, Repair and Replacement Schedule. Without limiting any of the Company's obligations under this Article, the Company shall make and complete all Major Maintenance, Repair and Replacements which are necessary to achieve such standard of repair and replacement by performing Major Maintenance, Repair and Replacement in accordance with the Major Maintenance, Repair and Replacement Schedule, as such schedule may be altered or amended pursuant to this subsection. The parties acknowledge that, in light of the long term nature of this DBO Agreement and the practical limitations on predicting with specificity the useful life of any particular asset, it may be appropriate from time to time to alter the Major Maintenance, Repair and Replacement Schedule. Accordingly, the Company shall have the right to request City approval of alterations to the Major Maintenance, Repair and Replacement Schedule at any time during the Term, provided that no such alterations shall be made unless the Company demonstrates to the satisfaction of the City that the sum of all Major Maintenance, Repair and Replacements performed to date by the Company, and all Major Maintenance, Repair and Replacements to be performed under any such alterations, shall result in a standard of overall Managed Asset maintenance, repair and replacement which is equal to or better than the standard represented by the activities to be performed under the Major Maintenance, Repair and Replacement Schedule. Any alterations to the Major Maintenance, Repair and Replacement Schedule shall be reflected in a Contract Administration Memorandum. The Company shall cooperate with the City in identifying any such alterations which may be desirable in order to anticipate or address the technical obsolescence of any component, system or process of the Managed Assets, and in proposing such alterations for the City's approval. In no event shall any such alteration of the Major Maintenance, Repair and Replacement Schedule result in an increase in the amount to be funded or otherwise paid by the City pursuant to Section 9.4 (Maximum Annual Capital Maintenance Charge) for any particular Contract Year.

SECTION 8.3. MANAGED ASSET EVALUATIONS.

(A) Appointment and Compensation of Independent Evaluator. The City shall appoint from time to time as required hereunder the person to serve as the Independent Evaluator for the purposes of this Section. The Company shall have the right to approve the City's selection, the exercise of which shall not be unreasonably withheld or delayed. The Independent Evaluator shall be engaged jointly by the parties. The expense of the Independent Evaluator for all services performed pursuant hereto shall be borne equally by the parties. The Company shall afford the Independent Evaluator full access to the Managed Assets in accordance with Section 6.16 (City Access to Managed Assets).

(B) Baseline Asset Evaluation Following the Acceptance Date. Not later than 90 days following the Acceptance Date, the Company shall conduct the Baseline Asset Evaluation in accordance with Appendix 13 (Asset Evaluation Protocol). The purpose of the Baseline Asset Evaluation shall be to establish an informational baseline for determining compliance by the Company with its maintenance, repair and replacement obligations under this Article.

(C) Final Valuation of Vehicles, Rolling Stock, Spare Parts and Consumables. Prior to the Termination Date, the City and the Company shall work together to prepare and agree to an itemized inventory and valuation of all Transferred Property in stock at the Managed Assets having operational utility at the Managed Assets which is to be transferred to the City on the Termination Date; provided, however, that the City shall have the right to elect to require the final inventory and valuation of the Transferred Property to be performed by an Independent Evaluator, subject to subsection (A) of this Section. Valuations of vehicles, rolling stock, computers, furniture and fixtures, and hand tools shall be based on original cost less depreciation, and other Transferred Property shall be valued on last invoiced cost. The cost of the final evaluation of the Transferred Property shall be borne equally by the parties. The final valuation amount shall be compared to the initial valuation amount prepared in accordance with subsection 4.4(A)(4) (Commencement Date Conditions Defined), as adjusted annually by the CPI Adjustment Factor over such period. The amount of any valuation shortfall or excess shall be paid by the Company to the City or by the City to the Company as appropriate, on or before the Termination Date. Notwithstanding the foregoing, upon the return of the Managed Assets to the City, the Company shall be obligated to furnish to the City property of the kind constituting Transferred Property in quantities and of a character which will reasonably permit the City to assume the continued operability of the Managed Assets in accordance with Prudent Industry Practices.

(D) Final Evaluation of the Managed Assets. Not later than one year prior to the Termination Date resulting from the expiration of this DBO Agreement, the City shall cause the Independent Evaluator to conduct a final evaluation of the Managed Assets in accordance with Appendix 13 (Asset Evaluation Protocol). The evaluation shall be conducted using the same methodology as the Baseline Asset Evaluation and shall include a final inventory of the Managed Assets. The evaluation of the Managed Asset Structures shall determine and establish the physical condition of the Managed Asset Structures. The evaluation of the Managed Asset Equipment shall determine and establish the weighted average useful life of the Managed Asset Equipment as of the date of evaluation (expressed as a single number of years, carried to one decimal place), taking into account the performance capability and value of each piece of Managed Asset Equipment. The final evaluation shall exclude the value of any Capital Modifications, which shall be evaluated separately in accordance with subsection (F) of this Section.

(E) Required Condition of Managed Asset Structures Upon Return to the City. The Managed Asset Structures shall be returned to the City in good condition, working order and repair, taking into account their condition and state of repair on the Commencement

Date (as improved by the Wastewater System Capital Improvements) and with ordinary wear and tear excepted, and recognizing the Company's maintenance, repair and replacement obligations under this Article. If the final evaluation establishes that there are Managed Asset Structures which fail to meet structural integrity and functionality rankings of 3 or greater, as defined in Appendix 13 (Asset Evaluation Protocol), the Company shall, at the election of the City, either remedy the deficiency or make a cash payment to the City sufficient to enable the City to remedy the deficiency.

(F) Required Condition of Managed Asset Equipment Upon Return to the City. The Managed Asset Equipment shall be returned to the City in a condition and state of repair such that, in the aggregate, the weighted average useful life of the Managed Asset Equipment at the end of the Term is equal to or greater than five years. In the event the final audit establishes a maintenance, repair or replacement deficiency under this Section, the Company shall, at the election of the City, in its sole discretion, either remedy the deficiency or make a cash payment to the City sufficient to enable the City to remedy the deficiency.

(G) Capital Modifications. In the event that Capital Modifications constituting Managed Assets Structures are made during the Term, such assets shall be returned to the City on the Termination Date in good condition, working order and repair, with ordinary wear and tear excepted, recognizing the maintenance, repair and replacement obligations of the Company set forth in the DBO Agreement. In the event that Capital Modifications constituting Managed Asset Equipment are made during the Term and are paid for by the City, such Capital Modifications shall be disregarded in preparing the final evaluation of the Managed Assets pursuant to subsection (D) of this Section. The weighted average useful life of all such assets as an aggregate which are paid for by the City, however, shall be separately determined in the final asset evaluation (in accordance with Appendix 13 (Asset Evaluation Protocol)), and shall be equal to or greater than five years. Reasonable conventions may be adopted in the weighting analysis to take account of the varying dates of installation. Capital Modifications and other maintenance, repairs and replacements paid for by the Company, including computer and other replacement systems installed based on advances in technology, shall be included in the Managed Assets evaluated in the final asset evaluation conducted pursuant to subsection (D) of this Section, and their remaining useful life included in such final evaluation.

(H) Effect of Election to Renew. If the City elects to renew this DBO Agreement at the end of the Initial Term, the final asset evaluation required by this Section shall not be performed at the end of the Initial Term, but instead shall be performed at the end of the Renewal Term. The standards established by this Section for the condition of the Managed Assets upon its return to the City, as well as the City's remedies for the failure to meet such standards, shall apply notwithstanding any such renewal.

(I) Disputes. Disputes arising under this Section may be referred to the Independent Evaluator appointed by the City in accordance with subsection (A) of this Section. The final determination by the Independent Evaluator as to any matter arising under this Section involving amounts less than \$250,000 which is in dispute between the City and the Company shall be final and binding upon the parties. For disputes involving amounts greater than \$250,000, the Independent Evaluator's determination shall be advisory only, and such dispute shall be determined as provided in Sections 14.13 (Dispute Resolution Procedures) or 14.14 (Forum for Legal Proceedings).

SECTION 8.4. PERIODIC MAINTENANCE INSPECTIONS.

(A) Annual Maintenance Inspection. The City may, upon reasonable written notice, perform an inspection of the Managed Assets and relevant records of the Company each Contract Year to determine compliance with the Contract Standards. The Company shall

cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services.

(B) Full-Scale Triennial Inspections. Commencing upon the third anniversary of the Commencement Date, and every third year thereafter during the Term, there shall be a full-scale inspection and review of the state of repair, working condition and performance capability of the Managed Assets. The inspection and review shall be performed by or on behalf of the City at the City's expense, and shall take place at such time as the City shall determine upon three months' written notice to the Company. The principal purpose of the inspection and review shall be to permit the City to ascertain on a comprehensive and focused basis the extent to which the Managed Assets are being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports. The Company shall cooperate fully with the inspections and reviews, which shall not interfere unreasonably with the Company's performance of the Contract Services.

(C) Remediation. Based on the annual operations and maintenance reports submitted by the Company pursuant to Section 6.18 (Periodic Reports), the annual or triennial inspections and reviews conducted pursuant to this Section, or the unscheduled inspections conducted pursuant to subsection (D) of this Section, the City may submit a statement to the Company detailing any deficiencies found and requiring the Company to submit a plan of remediation. Deficiencies identified by the City shall be limited to (1) Managed Asset Structures which fail to meet structural integrity and functionality ratings of 3 or greater, as defined in Appendix 13 (Asset Evaluation Protocol), and (2) items that, if not addressed, could directly affect the performance of the Managed Assets and are vital to the successful operation of the Managed Assets in accordance with Prudent Industry Practice. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Managed Assets will be promptly brought into compliance with the requirements of this Article. If the City accepts the remediation plan, the Company shall thereupon correct all deficiencies noted in accordance therewith. Failing such corrective action, the Service Fee shall be reduced in accordance with subsection 9.6(C) (City Service Fee Offset Rights) by the amount of the City's estimated cost of remediation, the City shall have the right to perform any necessary corrective action to bring the Managed Assets into compliance with this Article, and the Company shall be responsible for any actual costs incurred by the City in excess of the amount by which the Service Fee has been reduced pursuant to this subsection, subject to Cost Substantiation. Any disputes with respect to the cause or amounts specified in the City's statement, not resolved to the mutual satisfaction of the parties, shall be determined as provided in Sections 14.13 (Dispute Resolution Procedures) or 14.14 (Forum for Legal Proceedings).

(D) Unscheduled Inspections. Nothing in this Section shall limit the City's right, on an unscheduled basis, at any time to inspect the Managed Assets and relevant records of the Company to determine compliance with this Article. The Company acknowledges that the City's inspection rights pursuant to this Section are intended solely for the informational purposes of the City to monitor the Company's compliance with its obligations under this Article and agrees that no inspection by the City pursuant to this Section, nor any failure of the City to inspect the Managed Assets in accordance with this Section, shall serve to transfer the maintenance, repair and replacement responsibility for the Managed Assets from the Company to the City or to limit or otherwise affect the Company's full responsibility for the maintenance, repair and replacement of the Managed Assets in accordance with this Article.

SECTION 8.5. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.
The Company shall utilize the City's computerized maintenance management system or install new computerized maintenance management system software, and shall maintain, upgrade, repair and replace, as appropriate throughout the Term, such computerized maintenance

management system in accordance with the Contract Standards and the specific requirements set forth in Appendix 11 (Asset Management). The computerized maintenance management system shall be operational at all times during the Term, shall be updated to reflect the Baseline Asset Evaluation, shall constitute part of the Managed Assets, and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Managed Assets. The Company shall utilize the computerized maintenance management system to provide the City with documentation which allows it to efficiently monitor compliance by the Company with its maintenance obligations hereunder. The City shall have computer-based real time, read-only access to such system. The Company shall permit all electronic data to be replicated and provided to the City for review by the City Engineering Representative.

SECTION 8.6. DISPOSAL OF SURPLUS EQUIPMENT. The Company may, at the direction of the City in accordance with applicable City procedures, remove, dispose of and sell, in accordance with Applicable Law, equipment constituting part of the Managed Assets that is unused or obsolete and no longer needed. All proceeds from any sale, net of the Company's expense in arranging the sale, shall be the property of the City. The Company shall not store or stockpile any such removed equipment at the Managed Assets and shall use reasonable efforts to remove such equipment as soon as practicable.

SECTION 8.7. WARRANTIES. During the Term, the Company shall be responsible for meeting the City's maintenance obligations under all manufacturer's written warranties and guarantees effective during the Term, including all warranties and guarantees on new equipment purchased and installed in the Managed Assets by the City or by the Company, and shall be the agent of the City in enforcing any written equipment warranties and guarantees. All warranties shall be vested with the City. The Company shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion with the City's written authorization, which shall not be unreasonably withheld or delayed. The Company shall cooperate with and assist the City if the City seeks to enforce warranties and guarantees through litigation. No manufacturers' warranty of any Managed Asset Equipment shall relieve the Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee, the Fixed Design-Build Price or excuse any non-performance of the Management Services unless such failure is itself attributable to an Uncontrollable Circumstance.

SECTION 8.8. LOSS, DAMAGE OR DESTRUCTION TO THE MANAGED ASSETS.

(A) Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the Managed Assets from loss, damage or destruction. The Company shall report to the City and the insurers, immediately upon obtaining knowledge thereof, any loss, damage or destruction to the Managed Assets and as soon as practicable thereafter shall submit a full report to the City. The Company shall also submit to the City within 24 hours of receipt copies of all accident and other reports filed with, or given to the Company by, any person, insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Managed Assets to at least the character and condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Articles XIII (Capital Modifications) and XVI (Insurance, Uncontrollable Circumstances and Indemnification), as applicable. The City shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company as if such work constituted Design-Build Work hereunder.

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

(C) Uninsured Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Managed Assets shall be for the account of the City, and the City shall use such funds to pay the costs of repairing, replacing and restoring the Managed Assets in accordance with this Section. The City shall be responsible for the costs of repairing, replacing and restoring the Managed Assets in accordance with this Section in excess of such funds to the extent required due to the occurrence of Uncontrollable Circumstances; provided, however, that costs not covered by insurance proceeds or third party payments shall be borne by the Company to the extent the loss, damage or destruction was caused by the actions, errors or omissions of the Company or any of its Subcontractors or to the extent the Company failed to obtain or maintain any applicable policy of Required Insurance.

(D) Repair of City and Private Property. The Company shall promptly repair or replace all City Property and all private property damaged by the Company or any officer, director, employee, representative or agent of the Company in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements, to the maximum extent reasonably practicable, shall restore the damaged property to its character and condition existing immediately prior to the damage.

ARTICLE IX

SERVICE FEE

SECTION 9.1. SERVICE FEE GENERALLY. From and after the Commencement Date, the City shall pay the Company an annual service fee in accordance with this Article (the "Service Fee") as compensation for the performance by the Company of the Management Services under this DBO Agreement. The Service Fee shall be calculated and paid to the Company in accordance with this Article.

SECTION 9.2. SERVICE FEE FORMULA. The Service Fee shall be calculated in accordance with the following formula:

$$\text{ASF} = \text{OC} + \text{CMC} \pm \text{EI}$$

Where,

ASF = Annual Service Fee

OC = Operating Charge (see Section 9.3)

CMC = Capital Maintenance Charge (see Section 9.4)

EI = Extraordinary Items Charge or Credit (see Section 9.5)

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

SECTION 9.3. OPERATING CHARGE.

(A) Generally. The Operating Charge applicable for the Contract Year in which the Commencement Date occurs shall be \$1,395,605. The Operating Charge shall be adjusted on July 1 of each subsequent Contract Year (beginning the July 1 following the Commencement Date) by multiplying the Operating Charge applicable in the prior Contract Year by the Adjustment Factors applicable for the upcoming Contract Year, as determined in accordance with subsections (C) and (D) of this Section. That is:

$$\text{OC}_n = \text{OC}_{(n-1)} \times [\text{CPIAF}_n + \text{ECIAF}_n]$$

Where

OC_n = Operating Charge for Contract Year "n"

CPIAF_n = CPI Adjustment Factor applicable for Contract Year "n."

ECIAF_n = ECI Adjustment Factor applicable for Contract Year "n."

(B) Adjustment to the Operating Charge on the Acceptance Date. On the Acceptance Date, the Operating Charge shall be adjusted in accordance with this subsection to reflect the level of service associated with operating and maintaining the Managed Assets, as improved by the Wastewater System Capital Improvements. The amount to be added to the Operating Charge following the Acceptance Date shall be \$475,760 (the "Acceptance Date Adjustment"). The Acceptance Date Adjustment shall be adjusted on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) until the Acceptance Date by the Adjustment Factors in the same manner as provided in subsection (A) of this Section with respect to the Operating Charge.

(C) CPI Adjustment Factor. The “CPI Adjustment Factor” for purposes of this DBO Agreement shall be determined as follows:

$$\text{CPIAF}_n = 0.5 \times [\text{CPI}_{n-1} \div \text{CPI}_{n-2}]$$

Where,

CPIAF_n = The CPI Adjustment Factor for Contract Year “n”.

CPI_{n-1} = The average of the 12-month CPI values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder.

CPI_{n-2} = The average of the 12-month CPI values occurring in the Contract Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder.

If the final value of any component of the formula for the CPI Adjustment Factor is 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. All 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. The Company shall set forth the calculation of the estimated values of the index in its monthly invoices until the final values are published. The Company shall set forth the calculation of the final values of the index and the resulting calculation of the adjustment, if any, to payments made based on the estimated values during the Contract Year in an invoice as soon as practicable after the final value is published. Any dispute as to the estimated values, the final values or the calculation of payment adjustments shall be governed by Section 14.13 (Dispute Resolution Procedures). If the Consumer Price Index is no longer published at the time that adjustment is to be calculated, or if the base or method of calculation used for the Consumer Price Index is substantially altered, the calculation shall be made using a comparable similar index or method mutually agreed upon by the Company and the City.

(D) ECI Adjustment Factor. The “ECI Adjustment Factor” for purposes of this DBO Agreement shall be determined as follows:

$$\text{ECIAF}_n = 0.5 \times [\text{ECI}_{n-1} \div \text{ECI}_{n-2}]$$

Where,

ECIAF_n = The ECI Adjustment Factor for Contract Year “n”.

ECI_{n-1} = The average of the 12-month ECI values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder.

ECI_{n-2} = The average of the 12-month ECI values occurring in the Contract Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder.

If the final value of any component of the formula for the ECI Adjustment Factor is 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. All 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. The Company shall set forth the calculation of the estimated values of the index in its monthly invoices until the final values are

published. The Company shall set forth the calculation of the final values of the index and the resulting calculation of the adjustment, if any, to payments made based on the estimated values during the Contract Year in an invoice as soon as practicable after the final value is published. Any dispute as to the estimated values, the final values or the calculation of payment adjustments shall be governed by Section 14.13 (Dispute Resolution Procedures). If the Employment Cost Index is no longer published at the time that adjustment is to be calculated, or if the base or method of calculation used for the Employment Cost Index is substantially altered, the calculation shall be made using a comparable similar index or method mutually agreed upon by the Company and the City.

SECTION 9.4. MAXIMUM ANNUAL CAPITAL MAINTENANCE CHARGE.

(A) Generally. The City shall pay the Company for Major Maintenance, Repair and Replacement solely in accordance with this Section. The Maximum Annual Capital Maintenance Charge shall be the maximum amount payable by the City in any Contract Year for Major Maintenance, Repair and Replacement in accordance with Article VIII (Maintenance, Repair and Replacement). The Maximum Annual Capital Maintenance Charge shall be determined in accordance with subsection (B) of this Section. Actual payments to the Company against the Maximum Annual Capital Maintenance Charge shall be made from the Capital Maintenance Account in accordance with this Section and shall be deemed the Capital Maintenance Charge of the annual Service Fee.

(B) Calculating the Maximum Annual Capital Maintenance Charge. As of the Contract Date, the Maximum Annual Capital Maintenance Charge payable by the City for each Contract Year shall be the amounts set forth in Exhibit 11-2 of Appendix 11 (Asset Management). Each such amount shall be adjusted on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by multiplying each entry's dollar amount by the CPI Adjustment Factor, subject to the limitations set forth in this subsection. In the event that the Company does not submit certified requisitions to the City in accordance with subsection (D) of this Section for the full amount of the Maximum Annual Capital Maintenance Charge in any Contract Year, the difference between the Maximum Annual Capital Maintenance Charge applicable in the Contract Year and the amount actually requisitioned by the Company in accordance with subsection (D) of this Section for the Contract Year shall be carried forward to the next Contract Year. Subject to subsection (C) of this Section, any amount carried forward to the next Contract Year shall remain in the Capital Maintenance Account to be used for Major Maintenance, Repair and Replacement until such amount is paid to the Company as part of the Capital Maintenance Charge of the annual Service Fee in accordance with this Section. In no event shall any amount carried forward to the next Contract Year in accordance with this subsection be subject to adjustment by the CPI Adjustment Factor.

(C) Capital Maintenance Account. On or before the Commencement Date, the City shall establish a separate account (the "Capital Maintenance Account") into which the City shall pay one-twelfth of the Maximum Annual Capital Maintenance Charge on a monthly basis, which payments shall accrue in the Capital Maintenance Account over the Term, subject to the terms and conditions of this Section. The Capital Maintenance Account shall be the property of the City and all interest accrued on the funds included in the Capital Maintenance Account shall be for the benefit of the City. Upon the expiration or earlier termination of this DBO Agreement, any amount remaining in the Capital Maintenance Account that has not been paid to the Company and that is not due and owing to the Company in accordance with this Section shall be retained by the City; provided, however, that any amount remaining in the Capital Maintenance Account upon expiration or earlier termination of this DBO Agreement, excluding any accrued interest, shall first be available to reimburse the Company for third party expenses (excluding any Affiliate of the Company and without markup for profit, administration or otherwise) paid or incurred by the Company in satisfying its obligation to

remedy any deficiency in the condition of the Managed Asset Structures or Managed Asset Equipment in accordance with Section 8.3 (Managed Asset Evaluations).

(D) Payments to the Company for Major Maintenance, Repair and Replacement. Following the performance of Major Maintenance, Repair and Replacement in accordance with Sections 8.1 (Maintenance, Repair and Replacement Generally) and 8.2 (Maintenance, Repair and Replacement Plan and Major Maintenance, Repair and Replacement Schedule), the Company may submit a certified requisition to the City for the payment of amounts against the Maximum Annual Capital Maintenance Charge as part of its invoice for the Service Fee in accordance with Section 9.6 (Billing and Payment). The Company's certified requisitions shall state that the Company has incurred costs in excess of \$25,000 for amounts paid or incurred to third parties (excluding any Affiliate of the Company and without markup for profit, administration or otherwise) for the performance of Major Maintenance, Repair and Replacement in accordance with Sections 8.1 (Maintenance, Repair and Replacement Generally) and 8.2 (Maintenance, Repair and Replacement Plan and Major Maintenance, Repair and Replacement Schedule). The Company's certified requisitions shall not include any costs of Managed Assets operations and maintenance personnel of the Company. Payments against the Maximum Annual Capital Maintenance Charge pursuant to this subsection shall be under the Capital Maintenance Charge component of the Service Fee. All such expenses set forth in the Company's certified requisitions submitted pursuant to this subsection shall be subject to Cost Substantiation. Any dispute between the parties regarding the City's approval of the Company's certified requisitions under this Section may be referred to the dispute resolution procedures established in accordance with Section 14.13 (Dispute Resolution Procedures). In no event shall the City withdraw funds from the Capital Maintenance Account prior to the end of the Term for any purpose other than to pay the Company in accordance with this Section.

(E) No Limitation on Company Obligations. The Company acknowledges that the Maximum Annual Capital Maintenance Charge applicable in any Contract Year shall not serve as a limitation of the Company's obligations with respect to Major Maintenance, Repair and Replacement under Article VIII (Maintenance, Repair and Replacement). Except to the extent relieved due to the occurrence of Uncontrollable Circumstances in accordance with and to the extent provided in Section 15.2 (Uncontrollable Circumstances), the Company shall be solely responsible for all costs of Major Maintenance, Repair and Replacement above the Maximum Annual Capital Maintenance Charge calculated pursuant to subsection (B) of this Section for such Contract Year.

SECTION 9.5. EXTRAORDINARY ITEMS CHARGE OR CREDIT. For purposes of compliance with Section 9.10, (Private Business Use Restrictions), upon the occurrence of any event giving rise to an Extraordinary Item and in advance of the payment of any Extraordinary Item, the City and the Company agree, in consultation with the City's bond counsel, to treat and designate the particular Extraordinary Item in one of the following ways:

- (1) an ongoing adjustment to the Operating Charge in a stated dollar amount to be effective in a specified Contract Year;
- (2) a one-time adjustment to the Operating Charge in a stated dollar amount to apply for a specified Contract Year;
- (3) an amount in the nature of actual and direct expenses (without markup for profit, administration or otherwise) paid by the Company to unrelated third parties in connection with the Extraordinary Item;
- (4) a one-time amount or an amount to be paid annually for each remaining Contract Year in the Initial Term, resulting from a Capital Modification either directed by the City or caused by an Uncontrollable Circumstance that is in the nature of a

capital expenditure for acquisition, construction, improving or equipping of the Managed Assets, as contrasted with a payment in the nature of compensation for services in managing or operating the Managed Assets; or

(5) an amount in the nature of liquidated damages, indemnification payments or other payments of a similar, but specifically described, nature to be paid by the Company to the City.

SECTION 9.6. BILLING AND PAYMENT.

(A) Billing. The City shall pay the Service Fee in monthly installments in an amount equal to the sum of: (1) one-twelfth of the annual Operating Charge; (2) any monthly Capital Maintenance Charge; (3) any Extraordinary Items determined on a monthly basis; (4) one-twelfth of any Extraordinary Items determined on an annual basis in accordance with Section 9.5 (Extraordinary Items Charge or Credit) and (5) any adjustments, plus or minus, to reconcile any prior monthly Service Fee payments. Any overpayment from prior months shall be credited against the monthly Service Fee payment.

(B) Payment. The Service Fee for each month shall be on account of the Contract Services rendered during the prior month. If the Company provides the City with an invoice by the fifteenth day of each month which sets forth the monthly portion of the Service Fee for the prior month and which shows the annual Service Fee and each component thereof as calculated for the then current Contract Year, together with the accumulated payments for each component to the date of such invoice and such other documentation or information as the City may reasonably require to determine the accuracy and appropriateness of the invoice, then the City shall pay the invoice within 30 days of receipt, subject to the City's rights to dispute the invoice pursuant to Section 9.9 (Billing Statement Disputes).

(C) City Service Fee Offset Rights. Once it is determined that liquidated damages or other reimbursements are owed to the City in accordance with the terms and conditions of this DBO Agreement, the City shall notify the Company and the Company shall include such liquidated damages and other reimbursements as an Extraordinary Item in the next monthly invoice provided to the City in accordance with this Section. In the event the Company does not include such liquidated damages or other reimbursements in the next monthly invoice provided to the City in accordance with this Section, the City shall have the right to offset the Service Fee otherwise payable for such monthly invoice by the amount of such liquidated damages or other reimbursements. Notwithstanding any of the foregoing, the City shall have the right to offset the Service Fee otherwise payable to the Company for the final monthly invoice of the Term by the amount of any liquidated damages or other reimbursements due to the City in accordance with the terms and conditions of this DBO Agreement.

SECTION 9.7. ESTIMATES AND ADJUSTMENTS.

(A) Pro Rata Adjustments. Any computation made on the basis of a stated period shall be adjusted on a pro rata basis to take into account any initial or final period which is a partial period. For purposes of this subsection, a month shall be taken as a month containing 30 days and a year shall be taken as a year containing 360 days.

(B) Budgeting. For City budgeting purposes, no later than the January 15th preceding each Contract Year, the Company shall provide to the City a written statement setting forth for such Contract Year its reasonable estimate of the aggregate Service Fee, including each component thereof, the CPI Adjustment Factor and the ECI Adjustment Factor. The Company's written statement shall include the Company's anticipated schedule, on a month by month basis, for Major Maintenance, Repair and Replacement for the Contract Year.

The Company's estimate shall not be binding on the Company but shall establish the basis for monthly billing for such Contract Year, subject to annual settlement pursuant to this Article.

SECTION 9.8. ANNUAL SETTLEMENT.

(A) Generally. Within 30 days after the end of each Contract Year, the Company shall provide to the City an Annual Settlement Statement. The City or the Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Company shall file with the City an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

(B) Annual Settlement of Electricity Costs Following the Acceptance Date. Following the Acceptance Date and as part of the annual settlement process described in subsection (A) of this Section, the City shall, within 30 days after the end of each Contract Year, calculate the Actual Annual Electricity Costs and the Guaranteed Maximum Annual Electricity Costs. The Company acknowledges that the calculation of the Guaranteed Maximum Annual Electricity Costs will include any basic service charges imposed by the electricity provider, and will exclude any charges and penalties imposed by the electricity provider and reimbursed by the Company pursuant to subsection 6.10(A) (Electricity Supply and Consumption). If the Actual Annual Electricity Costs resulting from the Company's operation of the WWTP for a Contract Year is greater than the Guaranteed Maximum Annual Electricity Costs, the Company shall reimburse the City in an amount equal to such excess costs through an Extraordinary Items credit in accordance with Section 9.5 (Extraordinary Items Charge or Credit).

SECTION 9.9. BILLING STATEMENT DISPUTES. If the City disputes any amount billed by the Company, the City may either (1) pay the disputed amount when otherwise due, and provide the Company with a written objection indicating the amount that is being disputed and providing all reasons then known to the City for its objection to or disagreement with such amount, or (2) pay the undisputed amount, and withhold the disputed amount, when due, and provide the Company with written objection as aforesaid within the time when the disputed amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the City to the Company of amounts withheld or reimbursement to the City by the Company of amounts paid under protest is required, such payment or reimbursement shall be made within 45 days after the date of resolution, with interest at the Overdue Rate calculated from the date on which the payment was or would have been paid to the date on which the payment is reimbursed or paid.

SECTION 9.10. PRIVATE BUSINESS USE RESTRICTIONS.

(A) Payments to the Company. It is the intent of the City and the Company that this DBO Agreement shall be construed and applied so as to constitute a management contract that does not result in private business use of property financed by the City within the meaning and intent of the applicable regulations and rulings of the Internal Revenue Service. In particular, the City and the Company agree that, notwithstanding any provision of this DBO Agreement to the contrary, the City shall be under no obligation to, and shall not, pay compensation for services to the Company for any Contract Year, if such payment, or any portion thereof, would result in less than 80% of the Company's compensation for services for such Contract Year being based on a periodic fixed fee or would result in any portion of the Company's compensation being based on net profit, as such terms are defined in Internal

Revenue Service Revenue Procedure 97-13 (“Rev. Proc. 97-13”). The payment by the City of any reimbursable costs to the Company pursuant to Section 9.4 (Maximum Annual Capital Maintenance Charge) shall not constitute “compensation for services” for purposes of this Section. The City and the Company further agree that any such payment or portion thereof that is not made by virtue of this subsection shall be paid to the Company, without interest, during the next annual period in which such payment will not result in less than 80% of the Company’s compensation being based on a periodic fixed fee or in which such payment will not be based on net profit, all as defined by Rev. Proc. 97-13; provided, however that the Company shall have no right to amounts earned by the Company during the course of the Term and not paid to the Company as of the end of the Term due to the restrictions imposed by this Section, and the City shall not pay such amounts to the Company.

(B) Retesting of the Service Fee. If, at any time or from time to time, during the Management Period, (1) the scope of the Management Services is increased or reduced pursuant to the terms of this DBO Agreement and (2) there is an adjustment to the Operating Charge due to such increase or reduction in the Management Services, the parties shall retest, as of the date of such adjustment, the Service Fee for compliance with Rev. Proc. 97-13 and the requirements of this Section. Any such adjustment of the Operating Charge and retesting of the Service Fee shall, at the City’s cost, be subject to the review and approval of the City’s Law Department or legal counsel with expertise in public finance tax matters for confirmation that such adjustment will not adversely affect the tax-exempt status of any obligations issued by the City with respect to the Wastewater System.

SECTION 9.11. TAX EXEMPTION OF MANAGED ASSETS. It is the intent of the parties that the Managed Assets shall be municipally owned property and not subject to real property or possessory interest taxation. If the Company is nonetheless required to pay any real property or possessory interest tax on account of the Managed Assets, the Company shall be entitled to recover the amount paid as an Extraordinary Item charge pursuant to Section 9.5 (Extraordinary Items Charge or Credit).

SECTION 9.12. TAXES AND FEES. Except as provided in Section 9.11 (Tax Exemption of Managed Assets), the Company shall be responsible for all federal, State, county and municipal Taxes and Fees and any other tax or fee imposed in connection with its performance of the Contract Services, including all City taxes and business license fees. The Company acknowledges that these Taxes and Fees have been priced into the Fixed Design-Build Price and the Service Fee, as applicable, and agrees to pay all such Taxes and Fees without reimbursement from the City.

ARTICLE X

PERMITTING, DESIGN AND CONSTRUCTION
OF THE WASTEWATER SYSTEM CAPITAL IMPROVEMENTS

SECTION 10.1. DESIGN-BUILD GENERALLY.

(A) Commencement of Design-Build Work. On the Commencement Date, the Company shall promptly proceed to undertake, perform and complete the Design-Build Work in accordance with the Contract Standards. The Company shall be paid the Fixed Design-Build Price pursuant to Article XII (Payment of the Design-Build Price) as its entitlements to portions of the Fixed Design-Build Price arise in accordance with that Article. The time for completion of the Company's performance of the Design-Build Work shall be computed from the Commencement Date. The Company's failure to achieve Acceptance on or before the Scheduled Acceptance Date shall result in the assessment of delay liquidated damages under Section 11.5 (The Scheduled Acceptance Date and Delay Liquidated Damages). Failure to achieve Acceptance by the end of the Extension Period shall constitute a Company Event of Default upon which the City may terminate this DBO Agreement for cause in accordance with Section 14.2 (Events of Default by the Company).

(B) Elements of the Design-Build Work. In performing the Design-Build Work generally, the Company shall, in accordance with the Contract Standards, and without limitation: (1) apply for, obtain and maintain all Governmental Approvals required for the Design-Build Work; (2) comply with all reporting obligations set forth herein; (3) prepare and excavate the Managed Asset grounds to the extent necessary to construct the Wastewater System Capital Improvements; (4) demolish and remove existing improvements to the extent necessary to construct the Wastewater System Capital Improvements; (5) re-route or replace any underground Utilities to the extent necessary to construct and operate the Wastewater System Capital Improvements; (6) remove from the Managed Asset Sites and dispose of any demolition or construction debris resulting from the Design-Build Work and any unused soil excavated therefrom; (7) design and construct the Wastewater System Capital Improvements; (8) conduct commissioning and start up operations for the Wastewater System Capital Improvements; (9) conduct the Acceptance Tests and achieve Acceptance; and (10) achieve Final Completion, all so that the Wastewater System Capital Improvements are suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Managed Asset Sites, or at other locations approved by the City and the DRB and arranged and paid for by the Company.

(C) Sequencing and Staging of Design-Build Work. The Company shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. The City understands and acknowledges that the Company intends to complete the Design-Build Work in stages whereby particular segments of the Design-Build Work will be designed and built prior to the completion of the design of the Wastewater System Capital Improvements as a whole. Although this DBO Agreement does not require the Company to fully complete the entire design of the Wastewater System Capital Improvements prior to proceeding with particular segments of the physical construction of the Wastewater System Capital Improvements, the Company must comply with all requirements of Applicable Law in performing the Design-Build Work and must comply with the design submittal requirements set forth in subsection 10.5(C) (City Review and Comment on Design Documents). The Company shall comply with Prudent Engineering and Construction Practice in all aspects of the performance of the Design-Build Work. In no event shall the Company proceed with the physical construction of any segment of the Wastewater System Capital Improvements prior to the Construction Date established in accordance with Section 10.2 (Construction Date).

(D) Schedule and Reports. The Company shall prepare and provide the City with the “critical path method” schedule for the Design-Build Work in accordance with Appendix 5 (Construction Requirements). Throughout the Design-Build Period the Company shall submit to the City a monthly progress schedule and report in accordance with the requirements of Appendix 9 (City Review/Submittals). The Company agrees that the Company’s submission of the monthly progress schedule and report (or any revised progress schedule and report) is for the City’s information only and shall not limit or otherwise affect the Company’s obligations to achieve Acceptance by the Scheduled Acceptance Date. The City’s acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the City in any manner. Thus, the City’s acceptance of the monthly progress schedule and report (or any revised monthly progress schedule and report) shall not imply City approval or consent to any of the matters set forth therein. Notwithstanding any of the foregoing, the Company acknowledges and agrees that it has a material obligation to provide the City with, and to update, maintain and revise, the critical path schedule for the performance of the Design-Build Work throughout the Design-Build Period in accordance with the Contract Standards.

(E) Quality Assurance and Quality Control. The Company shall develop the Design-Build Quality Management Plan in accordance with the requirements set forth in Appendix 7 (Quality Program). The Company shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan.

(F) Subcontracts. Section 17.11 (Subcontractors) shall be applicable to the Company’s use of Subcontracts and Subcontractors in connection with the performance of the Design-Build Work.

(G) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Wastewater System Capital Improvements shall pass to the City upon incorporation in the Managed Assets or payment therefor by the City, whichever first occurs, free and clear of all Encumbrances, as provided in subsection (H) of this Section. The Company shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until Acceptance has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds, and except to the extent caused by City Fault. The procedures set forth in Section 10.17 (Damage to the Wastewater System Capital Improvements During the Design-Build Period) shall be applicable in the event of any damage to, loss or the destruction of the Design-Build Work at the Managed Asset Sites. Notwithstanding anything set forth in this subsection or Section 10.17 (Damage to the Wastewater System Capital Improvements During the Design-Build Period), the Company shall bear all risk of loss concerning any structures, improvements, fixtures, machinery, equipment or materials stored at any location other than the Managed Asset Sites, regardless of whether the City has paid for any such structures, improvements, fixtures, machinery, equipment or materials.

(H) Encumbrances. The Company shall not directly or indirectly, without the City’s consent, create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance arising on the Wastewater System Capital Improvements, Capital Improvement Sites, Managed Asset Sites or Design-Build Work, other than Permitted Encumbrances, arising out of the performance of the Design-Build Work.

(I) Interfaces. The Company shall determine the notification protocol for all Utility providers for shut down and shall coordinate with the City and all applicable Utility providers for shutdowns required to complete all interfaces with other components of the Wastewater System in performing the Contract Services

(J) Software Programming. The Company's obligation to perform the Design-Build Work includes the obligation to provide all software programming for the monitoring instrumentation and controls relating to the Managed Assets, as specifically set forth in subsection 4.4.16 of Appendix 4 (Technical Specifications).

(K) Environmental Requirements. All Design-Build Work shall be performed in accordance with the environmental requirements set forth in Appendix 4 (Technical Specifications).

(L) Surplus Equipment. Section 8.6 (Disposal of Surplus Equipment) shall be applicable to any salvage or disposal of structures, improvements, fixtures, machinery and equipment having a resale or salvage value and which are rendered obsolete or surplus by the construction of the Wastewater System Capital Improvements.

(M) Payment of Costs. The Company shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee but excluding permitting fees associated with the City Building Permits); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments and Required Insurance; payments due under Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar taxes on building supplies, materials and equipment; Utilities required for the performance of the Design-Build Work; general supervision by the Company of all Design-Build Work; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Final Completion. The Company acknowledges and agrees that the Design-Build Price shall be the only compensation and reimbursement payable to the Company for the performance of its obligations under this Article.

(N) Notice of Default. The Company shall provide to the City, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval, Subcontract, Security Instrument or other transaction agreement pertaining to the Managed Assets (including the Wastewater System Capital Improvements).

(O) Required Engineer-of-Record Certification and Licensing Requirements. Any engineering notice, certification, report or application delivered by the Company to the City in connection with the Design-Build Work, or payment therefor, under this Article, Article XI (Acceptance of the Wastewater System Capital Improvements), Article XII (Payment of the Design-Build Price) or any Appendix relating to the performance of the Design-Build Work shall be accompanied by a signed and sealed certificate of the Engineer-of-Record affirming the accuracy thereof to the best of his or her knowledge. The form of certification required pursuant to this subsection shall comply with all requirements of Applicable Law. Architects, operators, and engineers engaged by the Company for design services shall be licensed to practice in the State if required by Applicable Law and shall be experienced and qualified to perform such services. In addition, all Design-Build Work shall be performed under the responsible charge of individuals licensed to practice in the State if required by Applicable Law. The Engineer-of-Record shall stamp all drawings and specifications.

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

(9) Emergency Personnel Access. The Company shall at all times during the Term provide access to any federal, State or local, as applicable, emergency personnel and vehicles, including but not limited to police, fire and other safety personnel and vehicles, requiring access to the Managed Assets or the Managed Asset Sites, and shall not interfere in any manner with emergency operations performed by such emergency personnel at the Managed Assets or the Managed Asset Sites.

SECTION 10.2. CONSTRUCTION DATE.

(A) Construction Date Generally. The Construction Date shall be established pursuant to subsection (C) of this Section following satisfaction by the Company of its obligations pursuant to subsection (B) of this Section. The requirements and conditions set forth in subsection (B) of this Section shall be the "Construction Date Conditions" hereunder.

(B) Company Obligations. In no event shall the Company commence with the physical construction of the Wastewater System Capital Improvements prior to the satisfaction of the following Construction Date Conditions:

(1) The Company shall have delivered to the City the Design-Build Work Performance Bond and the Labor and Materials Payment Bond and each such bond shall be in full force and effect and in compliance with the requirements of Section 16.2 (Bonds).

(2) The Company shall have provided the City with copies of all Required Design-Build Period Insurance in accordance with Section 15.1 (Insurance), and shall certify that all such policies are in full force and effect and in compliance with the requirements of Section 15.1 (Insurance).

(3) The Company shall have delivered to the City a property line survey of the Managed Asset Sites prepared by a surveyor licensed in the State, based on the surveys provided by the City pursuant to Section 4.3 (City Transition Period Responsibilities), showing: (a) that the proposed locations of the Wastewater System Capital Improvements on the Capital Improvement Sites are in compliance with all applicable building and setback lines and do not encroach on or interfere with existing easements (whether on, above or below ground); and (b) no encroachments from the WWTP, as improved by the Wastewater System Capital Improvements, extending to adjacent property or from adjacent property onto the WWTP, as improved by the Wastewater System Capital Improvements, nor any gaps, gores, projections, protrusions or other survey defects created by the location of the Wastewater System Capital Improvements;

(4) The Company shall have certified that it has completed all pre-construction requirements set forth in Appendix 5 (Construction Requirements) and shall have provided the City with a final master schedule for the performance of the Design-Build Work in accordance with Appendix 5 (Construction Requirements).

(5) The Company shall have made all arrangements necessary to secure the availability of all Utilities required to construct and operate the Managed Assets, as improved by the Wastewater System Capital Improvements in the capacities required hereunder;

(6) The Company shall have satisfied all requirements of Applicable Law with respect to the commencement of construction and shall have obtained all Governmental Approvals to the extent required for the commencement of the physical

construction of the Wastewater System Capital Improvements and all such Governmental Approvals shall be in full force and effect.

(7) The Company shall have submitted the design submittal protocol in accordance with the requirements of Appendix 9 (City Review/Submittals) and shall have complied with the design submittal requirements set forth in subsection 10.5(C) (City Review and Comment on Design Documents) to the extent necessary to commence with the physical construction of the Wastewater System Capital Improvements.

(8) The Company shall have registered with the Construction Contractors Board, as required by Section 701.26 of the Oregon Revised Statutes, and such registration shall be in full force and effect.

(9) The Company shall have paid the fee to the Commissioner of the Bureau of Labor and Industries, as provided in Section 279C.825(1) of the Oregon Revised Statutes under the administrative rule of the commissioner, and shall have certified such payment to the City.

(10) The Company shall have filed a public works bond with the Construction Contractors Board, unless exempt under Sections 279C.836(4), (7), (8) or (9) of the Oregon Revised Statutes. Furthermore, the Company shall include in every Subcontract a provision requiring the applicable Subcontractor to have a public works bond filed with the Construction Contractors Board prior to starting any work, unless exempt under Sections 279C.836(4), (7), (8) or (9) of the Oregon Revised Statutes.

(C) Establishment of the Construction Date. The Company shall provide 10 days' written notice to the City as to the satisfaction of the Construction Date Conditions and the date it proposes to establish as the Construction Date hereunder. The date proposed by the Company shall constitute the Construction Date hereunder unless the City, by written notice to the Company delivered not later than three days prior to the Construction Date proposed by the Company, determines that the Construction Date Conditions have not been satisfied. In no event shall the Construction Date be established prior to the satisfaction by the Company of the Construction Date Conditions. In the event the City determines that the Company has not satisfied the Construction Date Conditions, notwithstanding the Company's notice pursuant to this Section, the City shall indicate which conditions the Company has failed to satisfy in its notice to the Company pursuant to this subsection, and the Company shall satisfy all such conditions prior to the establishment of the Construction Date. Absent the occurrence of Uncontrollable Circumstances as and to the extent provided in this DBO Agreement, no delay in the establishment of the Construction Date shall entitle the Company to any price, schedule or performance relief hereunder. Upon the establishment of the Construction Date, the Company shall have the right to proceed with the physical construction of the Wastewater System Capital Improvements.

SECTION 10.3. SUITABILITY OF THE CAPITAL IMPROVEMENT SITES.

(A) Familiarity with the Capital Improvement Sites. The Company acknowledges that the Company's agents, representatives and Subcontractors have visited, inspected and are familiar with the Capital Improvement Sites, their subsurface and surface physical condition relevant to the obligations of the Company pursuant to this DBO Agreement, including surface conditions, soil conditions, roads, telemetry, emergency equipment, utilities, topographical conditions and air and water quality conditions; that the Company is familiar with all local and other conditions that may be material to the Company's performance of its obligations under this DBO Agreement (including transportation and parking; seasons and climate; access, lighting, availability, disposal, handling and storage of materials and equipment; structures and availability and quality of labor and Utilities), and has received and

reviewed all information regarding the Capital Improvement Sites provided to it as part of the Capital Improvement Sites related information or obtained in the course of performing its obligations hereunder; and that based on the foregoing, the Capital Improvement Sites constitute acceptable and suitable sites for the construction and operation of the Wastewater System Capital Improvements in accordance herewith, and the Wastewater System Capital Improvements can be constructed on the Capital Improvement Sites within the Fixed Design-Build Price and by the Scheduled Acceptance Date.

(B) Independent Verification. The Company acknowledges that, except with respect to the geotechnical baseline conditions set forth Reference Document C (Geotechnical Report), the Company is responsible for the independent verification and confirmation of all information supplied to it by or on behalf of the City and upon which it elects to rely in connection herewith. No error or omission in any information supplied to the Company by or on behalf of the City shall constitute an Uncontrollable Circumstance, or relieve the Company from any of its obligations or entitle the Company to any increase in compensation hereunder, except to the extent provided in Section 10.4 (Site Conditions Affecting the Performance of the Design-Build Work) with respect to Regulated Site Conditions and Differing Site Conditions.

(C) Sites Investigations During the Transition Period. The Company shall have access to the Managed Asset Sites during the Transition Period in accordance with subsection 4.2(C) (Access to Managed Assets during Transition Period) for the purposes set forth therein and for the purposes of performing such engineering and analysis, including such additional subsurface and geotechnical studies or tests as deemed necessary by the Company for the performance of the Design-Build Work.

SECTION 10.4. SITE CONDITIONS AFFECTING THE PERFORMANCE OF THE DESIGN-BUILD WORK.

(A) General. The only relief to which the Company shall be entitled hereunder due to any surface or subsurface condition encountered in the performance of the Design-Build Work shall be relief based on the discovery of Differing Site Conditions, Regulated Site Conditions or Specified Subsurface Conditions. The Company shall be entitled to Uncontrollable Circumstance relief in the event of the discovery of Differing Site Conditions, Regulated Site Conditions or Specified Subsurface Conditions as and to the extent provided in this Section and Section 15.2 (Uncontrollable Circumstances).

(B) Differing Site Conditions. The Company and the City have assumed the existence of certain surface and subsurface geotechnical conditions at the Managed Asset Sites, as reflected in the geotechnical baseline conditions set forth in Reference Document C (Geotechnical Report). The Company represents and warrants that, as of the Contract Date, it has no knowledge of any surface or subsurface geotechnical conditions that would constitute Differing Site Conditions hereunder. In the event that the Company encounters a Differing Site Condition in the performance of the Design-Build Work, the Company shall provide prompt written notice to the City of such condition, which notice shall not be later than five days after such condition is first known to the Company. The Company shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been disturbed or altered and shall notify the City of its intended course of action to address the Differing Site Condition. The City shall then promptly investigate or cause to be investigated the alleged Differing Site Condition set out in the Company's notice. The Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Section 15.2 (Uncontrollable Circumstances) in the event that it encounters a Differing Site Condition

(C) Company Obligations with Respect to Regulated Site Conditions and Specified Subsurface Conditions. The Company represents and warrants that, as of the Contract Date, it has no knowledge of any Regulated Site Conditions or Specified Subsurface

Condition other than those disclosed by the City prior to the Contract Date. In performing the Design-Build Work, the Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition or Specified Subsurface Condition after the location and existence of such condition has been disclosed to the Company, or becomes known by the Company through physical observation (including any such observation made during excavations). Upon encountering a Regulated Site Condition or Specified Subsurface Condition, the Company shall provide prompt written notice to the City of such condition, which notice shall not be later than five days after such condition is first known to the Company. The Company shall, to the extent reasonably possible, provide such notice before the Regulated Site Condition or Specified Subsurface Condition has been disturbed or altered. Except for the Company's failure to provide such notice and exercise due care with respect to such disclosed or known Regulated Site Condition or Specified Subsurface Condition, the Company shall not be responsible for any Regulated Site Condition or Specified Subsurface Condition and shall be entitled to Uncontrollable Circumstance relief in connection therewith in accordance with and to the extent provided in Section 15.2 (Uncontrollable Circumstances). The parties acknowledge and agree, however, that Regulated Site Conditions shall not include any condition involving Regulated Substances used, stored or otherwise brought to the Site by the Company or any Subcontractor. The Company shall comply, and shall cause all Subcontractors to comply, with the Contract Standards, including the specific requirements set forth in Appendix 10 (Operation and Maintenance), in using or storing any Regulated Substances on the Managed Asset Sites and shall assume all risks associated with such activities and indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense resulting therefrom.

(D) City Obligations with Respect to Regulated Site Conditions or Specified Subsurface Condition. If at any time a Regulated Site Condition or Specified Subsurface Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Design-Build Work, or (3) increases the cost to the Company of performing, or the time necessary for the Company to perform, the Design-Build Work, then the City shall promptly, after written notice from any Governmental Body or the Company of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary under Prudent Engineering and Construction Practice to dispose of, remediate or otherwise correct the Regulated Site Condition or Specified Subsurface Condition or otherwise make the Regulated Site Condition or Specified Subsurface Condition comply with Applicable Law. The City shall have the right to contest any determination of a Regulated Site Condition or Specified Subsurface Condition and shall not be required to take any action under this subsection so long as: (i) the City is contesting any determination of a Regulated Site Condition or Specified Subsurface Condition in good faith by appropriate proceedings conducted with due diligence; and (ii) Applicable Law permits continued design or construction of the Wastewater System Capital Improvements pending resolution of the contest, so that the Company shall have no liability as a result of the failure of the City to dispose of, remediate or otherwise correct such Regulated Site Condition or Specified Subsurface Condition during the period of contest. Notwithstanding any of the foregoing, the City shall have no obligation to take any action pursuant to this subsection with respect to any Specified Subsurface Condition as long as the Company is able to continue to perform the Contract Services in accordance with Applicable Law and the City provides the Company with appropriate price, performance or schedule relief to the extent necessary to address the Specified Subsurface Condition in accordance with Section 15.2 (Uncontrollable Circumstances).

SECTION 10.5. COMPANY DESIGN WORK.

(A) Performance of the Design Work. The Company agrees to undertake, perform, and complete the designs and plans in accordance with the Contract Standards. The

Company shall make design submittals to the City in accordance with Appendix 9 (City Review/Submittals). All Company working and final Design Documents shall comply with the Design and Construction Requirements and shall ensure that the Wastewater System Capital Improvements are constructed to a standard of quality, workmanship integrity, durability, sustainability and reliability which is equal to or better than the standard established by the Design and Construction Requirements. The Company shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Design Documents and shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the Design Documents.

(B) Design Risk. The Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Wastewater System Capital Improvements hereunder, notwithstanding the Contract Standards or the fact that the RFP included certain minimum conceptual design criteria for the Design-Build Work and certain performance standards that the Wastewater System Capital Improvements would be required to meet. The Company acknowledges that, in the proposal and clarification process leading to the execution of this DBO Agreement, the Company had the unrestricted right and opportunity not to submit a Proposal, and not to execute this DBO Agreement if the Company had determined that such minimum conceptual design criteria would in any manner or to any degree impair the Company's ability to perform the Design-Build Work or the Management Services in compliance herewith. Without limiting the Company's right to claim relief in the event of Uncontrollable Circumstances as and to the extent provided in this DBO Agreement, all risks relating to the design, construction and performance of the Managed Assets, as improved by the Wastewater System Capital Improvements, including all risks of design defects, constructability and efficacy, have been transferred to the Company under this DBO Agreement.

(C) City Review and Comment on Design Documents. The Company shall provide the City with the design submittal protocol in accordance with the specific requirements set forth in Appendix 9 (City Review/Submittals). The City shall have the right to review and comment on all Design Documents as provided in Appendix 9 (City Review/Submittals) in order to confirm the compliance and consistency of the Design Documents with the Design and Construction Requirements and the Secondary Technical Criteria. In no event shall the Company proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the design submittal protocol and Appendix 9 (City Review/Submittals). The Company shall give due consideration and provide written responses, in the time and manner provided in Appendix 9 (City Review/Submittals), to any comments delivered by the City as to the Company's design submittals. Neither compliance by the Company with the Design and Construction Requirements and the Secondary Technical Criteria, nor review and comment by the City of the Company's Design Documents, nor any failure or delay by the City in commenting on any design submittals shall in any way relieve the Company of full responsibility for the design, construction, performance and operation of the Wastewater System Capital Improvements in accordance with the Contract Standards. The parties acknowledge and agree that the review and comment rights of the City under this subsection are intended for the informational purposes of the City and for the City to determine whether the Design Documents comply with the Technical Specifications.

(D) Changes to the Technical Specifications. The Company acknowledges the City's material interest in each provision of the Design and Construction Requirements and, notwithstanding the Acceptance Test Procedures and Standards, the Class A Biosolids Performance Standards and Performance Guarantees of the Company and the associated non-performance remedies of the City, agrees that no change to the Design and Construction Requirements shall be made except with the written consent of the City solely in accordance with Sections 10.7 (Changes to the Design and Construction Requirements) and 10.8

(Unilateral Change Directives). Changes to the Secondary Technical Criteria shall be made solely in accordance with Section 10.6 (Secondary Technical Criteria).

(E) Documents at the Capital Improvement Sites. The Company shall maintain at each Capital Improvement Site in a safe and dry location one record copy of all drawings, specifications, addenda, Change Orders, graphic or written instructions, interpretations and clarifications, and all other documents related to the Design-Build Work, in good order, up to date and marked currently to record all changes made during construction, together with blueprints, general arrangements, manufacturing and shop drawings and product data and samples applicable to the Design-Build Work. These documents shall be available to the City for reference, copying and use, and a complete set thereof shall be delivered to the City upon completion of the Design-Build Work.

SECTION 10.6. SECONDARY TECHNICAL CRITERIA.

(A) Relation to Design and Construction Requirements. The Secondary Technical Criteria contained in Appendix 4 (Technical Specifications) are provided in order to establish in further detail (1) the manner in which the design work, as of the Contract Date, is reasonably expected to be developed and carried to full completion and (2) the standards of quality, workmanship, integrity, durability and reliability to which the Wastewater System Capital Improvements are to be constructed.

(B) Permissible Variations. The Design-Build Work shall be completed in accordance with the Secondary Technical Criteria. In light of the design-build-operate nature of this DBO Agreement and the partially completed level of the design work as of the Contract Date, however, reasonable, minor variations from the Secondary Technical Criteria shall be permitted in the final design of the Wastewater System Capital Improvements, to the extent such variations do not diminish the quality, workmanship, integrity, durability, functionality and reliability of the Wastewater System Capital Improvements. Examples of elements of the Secondary Technical Criteria from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms and buildings (to the extent overall functionality is not impaired or total square footage decreased); routes and depth of pipe conduit work; exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical, power and control cables, switchgear, transformers and control panels. No such variations shall be inconsistent with the Design and Construction Requirements, with the purposes of the Secondary Technical Criteria as set forth in subsection (A) of this Section, or with any limits specifically provided in the Secondary Technical Criteria regarding the range or nature of permissible variations or with any standards or principles regarding permissible deviations set forth therein. Variations in the final design from the Secondary Technical Criteria that conform to the provisions of this Section shall not require affirmative City consent; provided, however, that any such variations that do not conform to the provisions of this Section shall require the consent of the City. The Company shall notify the City of any variations to the Secondary Technical Criteria and shall clearly show and mark any such variations on the Design Documents submitted to the City pursuant to subsection 10.5(C) (City Review and Comment on Design Documents). The Company shall be responsible for correcting any Design Documents reflecting variations that do not conform to the provisions of this Section unless the City consents to such variations. The City's consent to any such variation shall be reflected in a Change Order and shall be noted as changed on the record drawings.

SECTION 10.7. CHANGES TO THE DESIGN AND CONSTRUCTION REQUIREMENTS.

(A) Changes Made at Company Request. The Company shall have the right to propose Design and Construction Requirement Changes for the City's consideration. The

City shall have the absolute right to accept, reject or modify any Design and Construction Requirement Change proposed by the Company pursuant to this subsection. Any such Design and Construction Requirement Change accepted or modified by the City, and any related change in the terms and conditions of this DBO Agreement, shall be reflected in a Change Order.

(B) Changes Made Due To Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance prior to the Acceptance Date, the City shall promptly proceed, subject to the terms, conditions and procedures set forth in Section 15.2 (Uncontrollable Circumstances), to make or cause to be made all Design and Construction Requirement Changes reasonably necessary to address the Uncontrollable Circumstance. The Company shall consult with the City concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and the City shall cooperate in order to minimize any delay, lessen any additional cost and modify the Design-Build Work so as to permit the Company to continue providing the Contract Services in light of such Uncontrollable Circumstance. The design and construction costs resulting from any such Design and Construction Requirement Change and any related operation, maintenance, repair and replacement costs, shall be borne by the City to the extent provided in Section 15.2 (Uncontrollable Circumstances). Without limiting the right of the City to issue a Unilateral Change Directive under Section 10.8 (Unilateral Change Directives), any Design and Construction Requirement Change made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of this DBO Agreement, shall be reflected in a Change Order.

(C) Changes Required By Governmental Bodies. The parties recognize that a Governmental Body may impose terms and conditions in connection with a Governmental Approval that require a Design and Construction Requirement Change. In the event of the imposition of any such additional terms and conditions imposed by a Governmental Body, the City shall promptly proceed to make or cause to be made all Design and Construction Requirement Changes reasonably necessary to comply with such additional terms and conditions, or the City may elect to contest any such additional terms and conditions if such terms and conditions are not acceptable to the City; provided, however, that, if such contest by the City delays the performance of the Design-Build Work, the Company shall be entitled to Uncontrollable Circumstance relief to the extent provided in Section 15.2 (Uncontrollable Circumstances). Pursuant to and to the extent provided in Sections 10.5 (Company Design Work) and 10.9 (Design-Build Work Permitting Responsibilities), the Company shall bear the risk of the imposition of any such additional terms and conditions imposed by a Governmental Body in connection with a Governmental Approval. Accordingly, the design and construction costs resulting from any Design and Construction Requirement Change required under this subsection, and any related operation, maintenance, repair and replacement costs, shall be borne by the Company to the extent provided in Sections 10.5 (Company Design Work) and 10.9 (Design-Build Work Permitting Responsibilities). Without limiting the right of the City to issue a Unilateral Change Directive under Section 10.8 (Unilateral Change Directive), any such Design and Construction Requirement Change and any related change in the terms and conditions of this DBO Agreement shall be reflected in a Change Order.

(D) Changes Required by the City. The City shall have the right to make Design and Construction Requirement Changes at any time prior to Final Completion at its own discretion for any reason whatsoever, whether and however the exercise of such rights affects this DBO Agreement so long as the Company's rights are protected as provided in this subsection. The Company shall be entitled to a Change Order providing appropriate price, schedule, performance and other relief in the event of a Design and Construction Requirement Change made at the direction of the City under this subsection, including, as appropriate, any price or performance relief associated with the impact of any such Design and Construction Requirement Change on the performance of the Management Services, if any; provided,

however, that the Company shall not be entitled to any such price, schedule, performance or other relief to the extent that any such Design and Construction Requirement Change is required due to Company Fault. The City shall have no obligation to make any Design and Construction Requirement Change under this Section.

SECTION 10.8. UNILATERAL CHANGE DIRECTIVES.

(A) Generally. The parties intend to negotiate the terms of any Change Order providing for a Design and Construction Requirement Change pursuant to Section 10.7 (Changes to the Design and Construction Requirements) prior to the Company incurring any costs with respect to any such change or adjustment. The Company shall consult with the City concerning possible means of addressing any proposed Design and Construction Requirement Change pursuant to Section 10.7 (Changes to the Design and Construction Requirements) and, without limiting any of the rights of the City under subsection 10.7(A) (Changes Made at Company Request), the Company and the City shall cooperate in order to minimize any delay and lessen any additional cost in light of such proposed Design and Construction Requirement Change. However, notwithstanding the foregoing, the City shall have the right to issue a written order, prepared and signed by an authorized representative of the City and approved by the City Manager, or his or her designee, directing a Design and Construction Requirement Change pursuant to this Section (a "Unilateral Change Directive"). Upon receipt of a Unilateral Change Directive, the Company shall promptly proceed with the performance of any change in the Design-Build Work, as instructed and shall promptly advise the City in writing of the Company's agreement (or disagreement) with any price, performance or schedule relief, if any, as may be proposed by the City in the Unilateral Change Directive. If the Company receives a written communication signed by the City, which the Company believes is a Unilateral Change Directive that is not so identified, it shall not proceed with the purported change in the Design-Build Work, until it receives written confirmation from the City that such communication is in fact a Unilateral Change Directive. A Unilateral Change Directive that is signed by the Company and the City reflecting the scope of work and any price, schedule and performance relief, if any, shall be deemed a Change Order. All Unilateral Change Directives shall address the impact (including cost), if any, such change will have on the Management Services.

(B) Disagreement with Terms of a Unilateral Change Directive. If the Company disagrees in writing with the suggested price, schedule or performance relief, if any, set out in the Unilateral Change Directive, either party may elect to initiate dispute resolution procedures in accordance with Section 14.13 (Dispute Resolution Procedures). In such case, the Company shall keep and present, in such form as the City may request, an itemized accounting to go with the appropriate supporting data with respect to the Company's position. The Company shall provide notice of any disagreement pursuant to this subsection within 10 days after receipt of the Unilateral Change Directive.

SECTION 10.9. DESIGN-BUILD WORK PERMITTING RESPONSIBILITIES.

(A) Applications and Submittals. The Company shall prepare and make all filings, applications and reports and take all other action necessary to obtain and maintain, and shall obtain and maintain, all Governmental Approvals necessary to commence, continue and complete the Design-Build Work and achieve Acceptance in accordance with Appendix 6 (Governmental Approvals). Where required under Applicable Law or requested by the City in its sole discretion, Governmental Approvals shall be obtained in the name of the City, name the City as a co-permittee or recognize the City as beneficiary of the Governmental Approval, and in connection therewith, the Company shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions thereof; (4) attend all required meetings and hearings and, at the request of the City, assume the lead role in handling any such meetings and hearings; and (5) take all other action necessary in obtaining, maintaining, renewing,

extending and complying with the terms thereof. All permit and filing fees required in order to obtain and maintain the Governmental Approvals (other than Governmental Approvals required as a result of an Uncontrollable Circumstance), shall be paid by the Company, regardless of the identity of the applicant or permittee; provided, however, that the City shall pay the permitting fees associated with the City Building Permits in accordance with subsection (F) of this Section. The Company shall not disadvantage the City in any application, data submittal or other communication with any Governmental Body regarding any Governmental Approval. The City shall have the right to attend any proceedings associated with a Governmental Approval. The Company shall provide written notice of meetings, as well as agendas and written materials presented in connection with such Governmental Approval meetings, to the City at least seven days prior to any such meeting. The Company shall prepare meeting notes during any meetings with Governmental Bodies and shall submit such meeting notes to the City no later than five days after any such meetings. The final terms and conditions of any Governmental Approval to be obtained and maintained by the Company shall be subject to the City's approval, which approval shall not be unreasonably withheld or delayed.

(B) Data and Information. All data, information and action required to be supplied or taken by the Company in connection with the Governmental Approvals shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the City as the legal and beneficial owner of the Managed Assets. The data, information and meeting agendas supplied by the Company to the City and all Governmental Bodies in connection therewith shall be correct and complete in all material respects, and shall be submitted in draft form to the City at least seven days prior to submitting such data and information to the applicable Governmental Body to allow full and meaningful review and comment by the City. The Company shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information.

(C) Non-Compliance and Enforcement. The Company shall report to the City and, as appropriate, other Governmental Bodies, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Managed Assets. The City shall have the right to independently enforce compliance with this DBO Agreement regarding the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body.

(D) Reports to Governmental Bodies. The Company shall prepare all reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Design-Build Work. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the City, if such are acceptable to the Governmental Body. The Company first shall provide the City with copies of such regulatory reports for review, comment and signature, as applicable, at least five days before their filing with the Governmental Body, and then with the Governmental Body; provided, however, that in the event that Applicable Law requires immediate filing with the Governmental Body, the Company shall provide such copies to the City concurrently with the filing with the Governmental Body. The Company shall certify to the City the accuracy and completeness of all reports, submittals, data and other information proposed for filing.

(E) Potential Regulatory Change. The Company shall keep the City regularly advised as to potential changes in regulatory requirements affecting the Design-Build Work of which the Company has knowledge, and shall provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the City should a Change in Law actually occur.

(F) Limited Permitting Assistance by the City. The Company shall be responsible for obtaining the City Building Permits in accordance with this Section notwithstanding the fact that the City shall pay the permitting fees associated with the City Building Permits. The City shall not be responsible for any other Company costs associated with the City Building Permits. The City shall provide reasonable assistance to the Company in connection with the Company's obligation to obtain and maintain the Governmental Approvals required to be obtained by the Company, including signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing the Governmental Approvals, and providing the Company with existing relevant data and documents that are within the City's custody or control or are reasonably obtainable by the City and which are reasonably required for such purpose; provided, however, that the City's obligation to provide such reasonable assistance shall be limited, in light of the Company's primary role in the permitting and development of the Wastewater System Capital Improvements, only to those actions which are legally required to be taken by the City as permittee or co-permittee or which involve providing information which is in the possession of or reasonably obtainable by the City. Any such assistance shall be provided only upon the reasonable request of the Company made directly to the City, and the City shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the City to staff the Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Wastewater System Capital Improvements, or to affirmatively seek to obtain the issuance of the Governmental Approvals required to be obtained by the Company pursuant to this Section.

(G) Company Assumption of Permitting Risk. The Company explicitly assumes the risk of obtaining and maintaining the Governmental Approvals required to be obtained by the Company pursuant to this Section, including the risk of delay, non-issuance or the imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Company shall be afforded relief from the assumption of such risk in the event of the occurrence of any Change in Law described in items (a) and (b) of the definition thereof and to the extent provided under subsections (H) and (I) of this Section. In assuming this risk, the Company acknowledges in particular that (except as otherwise specifically provided in this Section) the delay or non-issuance of any Governmental Approval required for the commencement of construction will have the effect of compressing the period within which the completion of construction, testing and all other Design-Build Work must be completed hereunder in order to avoid delay-liquidated damages pursuant to Section 11.5 (The Scheduled Acceptance Date and Delay Liquidated Damages) and termination pursuant to Sections 11.6 (Failure to Achieve Acceptance) and 14.2 (Events of Default by the Company). The Company further acknowledges that a Governmental Body, in issuing any Governmental Approval, may impose terms and conditions which require the Company to make changes or additions to the Design-Build Work which may increase the cost, time or risk to the Company of performing the Design-Build Work or the Contract Services, all of which costs, delays or risks shall be for the account of and borne by the Company (except as otherwise specifically provided in this Section).

(H) Uncontrollable Circumstance Relief Associated with Certain Permitting Obligations. If in seeking to obtain a Governmental Approval set forth in subsection (G) of this Section, (1) the Company has complied with the requirements of this DBO Agreement; (2) the Company has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Governmental Approval; (3) the Company has in all respects used its best efforts to obtain the Governmental Approval; (4) the Company has consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar permits in a timely

manner in light of the discretion accorded Governmental Bodies under administrative law; and (5) there has been a failure to issue a Governmental Approval by the Assumed Approval Issuance Date set forth in Table 6-1 of Appendix 6 (Governmental Approvals), then the Company shall be entitled to an adjustment to the Scheduled Acceptance Date to the extent provided in subsection (F) of this Section.

(I) Assumed Approval Issuance Dates. The Company shall submit completed applications for each of the Governmental Approvals listed in Table 6-1 of Appendix 6 (Governmental Approvals) by the applicable "Governmental Approval Application Date". The "Assumed Approval Issuance Date" is the date by which the applicable Governmental Approval is expected to be obtained, as measured by adding the number of days indicated in Table 6-1 of Appendix 6 (Governmental Approvals) to the applicable Governmental Approval Application Date and assuming completed application submittals in accordance with Applicable Law and the adopted administrative practice of the applicable Governmental Body by the applicable Governmental Approval Application Date. The Scheduled Acceptance Date shall be adjusted to account for the number of days of delay by a Governmental Body in issuing any required Governmental Approval listed in Table 6-1 of Appendix 6 (Governmental Approvals) beyond the Assumed Approval Issuance Date, reduced by (i) the number of days of Company delay in submitting a complete application in accordance with this Section beyond the applicable Governmental Approval Application Date, and (ii) the number of days of any Governmental Body delay in issuing the required Governmental Approval due to the failure of the Company to exercise reasonable diligence in accordance with this Section in securing the Governmental Approval following submittal of the complete application, but only to the extent any such Governmental Body delay actually causes delay in the Company's critical path completion schedule after the exercise of all commercially reasonable mitigation efforts by the Company. The Company shall bear the burden of proving any claim of entitlement to an adjustment under this Section, and shall promptly and regularly inform the City as matters arise which may culminate in any such claim in order to permit timely intervention by the City should it so elect. Except as specifically provided for in this Section, no delay by a Governmental Body in issuing a required Governmental Approval shall entitle the Company to any price adjustment, schedule relief or any other relief from its performance obligations hereunder.

SECTION 10.10. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance with Applicable Law. In designing, constructing, commissioning, starting up and testing the Wastewater System Capital Improvements the Company shall comply with Applicable Law, shall construct and operate all equipment and systems comprising the Wastewater System Capital Improvements in accordance with the Contract Standards, and shall observe the same safety standards as are set forth in Section 6.12 (Safety and Security) (with respect to the operation of the Managed Assets and such other safety requirements set forth in Appendix 10 (Operation and Maintenance)).

(B) Registration, Licensing and Certification Requirements. The Company shall ensure that all persons performing Design-Build Work, including all Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body.

(C) Compliance with Conditions in Governmental Approvals. The Company shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the continuance of the Design-Build Work.

(D) Governmental Approvals Necessary for Continued Construction. The Company shall make all necessary filings, applications and reports necessary to obtain and maintain all Governmental Approvals, including all renewals and extensions, required to be made, obtained, maintained, renewed or extended under Applicable Law in connection with the

continuance of the Design-Build Work once commenced. The City, subject to the limitations set forth in subsections 10.9(F), as applicable, shall cooperate with the Company in connection with the foregoing undertaking.

(E) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Design-Build Work, the Company shall: (1) promptly respond to any notice of non-compliance, warning letter, notice of violation or other enforcement and seek amicable resolution of the issues; (2) immediately correct such failure and resume compliance with Applicable Law; (3) pay any resulting fines, assessments, levies, impositions, penalties or other charges; (4) indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense resulting therefrom; (5) make all changes in performing the Design-Build Work that are necessary to assure that the failure of compliance with Applicable Law will not recur; and (6) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law.

SECTION 10.11. COMPANY CONSTRUCTION PRACTICE. The Company shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this DBO Agreement, and, in particular, Appendix 5 (Construction Requirements). The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Company to provide the following construction requirements: temporary offices and construction trailers; temporary construction related odor control measures; required design certifications; required approvals; weather protection; dewatering; Capital Improvement Sites clean-up and housekeeping; construction trade management; temporary parking, vehicle traffic, pedestrian safety, safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; Capital Improvement Sites security; temporary Utilities; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

SECTION 10.12. ENGAGEMENT OF CONTRACT ADMINISTRATOR AND CITY ENGINEERING REPRESENTATIVE.

(A) Duties. The Company shall fully cooperate with any Contract Administrator and City Engineering Representative in connection with the administration of this DBO Agreement and the performance of the duties of the Contract Administrator and City Engineering Representative hereunder. In the performance of such services, the Company agrees that the Contract Administrator and City Engineering Representative may, without limiting other possible services to the City: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the Design-Build Work; review proposed changes to the Design and Construction Requirements and proposed variations in the Secondary Technical Criteria; review plans, drawings and specifications of the Wastewater System Capital Improvements for compliance with the Technical Specifications; monitor the Acceptance Tests and Class A Biosolids Performance Tests undertaken by the Company and review the Company's certified test reports to determine whether the Acceptance Test Procedures and Standards and the Class A Biosolids Performance Standards have been satisfied pursuant to Article XI (Acceptance of the Wastewater System Capital Improvements) and Appendix 8 (Acceptance Test Procedures and Standards); review the validity of the Company's written notice that an Uncontrollable Circumstance has occurred; review the

Company's submissions with respect to Capital Modifications pursuant to Article XIII (Capital Modifications); and provide certificates and perform such other duties as may be specifically conferred on the Contract Administrator and City Engineering Representative hereunder. Except as provided in Sections 10.6 (Secondary Technical Criteria) and 10.7 (Changes to the Design and Construction Requirements), it is understood that the services intended to be provided by the Contract Administrator and City Engineering Representative shall be of an observational and review nature only, and that the Contract Administrator and City Engineering Representative shall not have authority to interfere with, halt or delay in any way the construction of the Wastewater System Capital Improvements or to require or approve changes to the Technical Specifications or the Company's plans and specifications made in accordance therewith.

(B) Fees. The fees of the Contract Administrator and City Engineering Representative shall be paid by the City, except that the Company shall reimburse the City, on a Cost Substantiated basis, for any services performed by the Contract Administrator and City Engineering Representative in connection with each repetition of all or any portion of the Acceptance Tests or the Class A Biosolids Performance Tests unless and to the extent any such additional Acceptance Tests occur during the Extension Period or are required as a result of Uncontrollable Circumstances. The parties acknowledge and agree that the liquidated damages provided for in subsection 11.5(C) (Acceptance Subsequent to Scheduled Acceptance Date; Liquidated Damages) are intended, in part, to reimburse the City for the expenses reasonably anticipated to be incurred by the City as a result of a delay by the Company in achieving Acceptance by the Scheduled Acceptance Date, including the costs associated with any services to be performed by the Contract Administrator and City Engineering Representative during the Extension Period. Accordingly, during the Extension Period, the Company shall be required to pay liquidated damages in accordance with and to the extent provided in subsection 11.5(C) (Acceptance Subsequent to Scheduled Acceptance Date; Liquidated Damages), but shall not otherwise be required to reimburse the City for the actual costs of the Contract Administrator and City Engineering Representative incurred during the Extension Period.

SECTION 10.13. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observation and Design-Build Work Review Protocol. During the progress of the Design-Build Work through Final Completion, the Company shall at all times during normal working hours afford designated representatives of the City, the Contract Administrator and the City Engineering Representative every reasonable opportunity for observing all Design-Build Work and shall comply with the Design-Build Work review procedures set forth in Appendix 9 (City Review/Submittals). During any such observation, all representatives of the City, the Contract Administrator and the City Engineering Representative shall comply with all reasonable safety and other rules and regulations applicable to presence in or upon the Capital Improvement Sites or the Wastewater System Capital Improvements, and shall in no material way interfere with the Company's performance of any Design-Build Work.

(B) Company Tests and Inspections. The Company shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Company shall give the City and the City Engineering Representative reasonable advance notice of tests or inspections prior to the conduct thereof. In no event shall the inability, failure or refusal to attend or be present of the City or the City Engineering Representative at or during any such test or inspection delay the conduct of such test or inspection, delay the performance of the Design-Build Work, or otherwise serve as the basis for relief from the Company's obligations hereunder. The Engineer of Record shall conduct or witness any such test or inspection to the extent required by the Contract Standards. All

analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the written approval of the City, which consent shall not be unreasonably withheld. Acceptance Testing and Class A Biosolids Performance Testing shall be conducted in accordance with Article XI (Acceptance of the Wastewater System Capital Improvements).

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

(D) Certificates and Reports. The Company shall secure and deliver to the City promptly, within 7 days, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract Standards.

(E) Notice of Covering Design-Build Work. The Company shall give the City notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least seven days) before such covering and completion. In no event shall the Company cover any Design-Build Work prior to any required inspection by a Governmental Body under Applicable Law. The City shall give the Company reasonable notice (a minimum of 72 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion. At the City's written request, the Company shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the City's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the City as to whether the previously covered or completed Design-Build Work complies with the requirements of this DBO Agreement. The cost of uncovering, taking apart, or replacing such Design-Build Work, along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(1) by the Company, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which the City was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

(2) in all other cases, as follows:

(a) by the Company, if such observation or test reveals that the Design-Build Work does not comply with this DBO Agreement; or

(b) by the City, if such observation or test reveals that the Design-Build Work complies with this DBO Agreement.

Except as provided in item (1) of this subsection, in the event such Design-Build Work does comply with this DBO Agreement, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be borne by the City (through and only through a Fixed Design-Build Price Adjustment).

(F) Meetings and Design-Build Review. During the Design-Build Period, the Company and the City shall conduct meetings on a monthly basis at a minimum in accordance with Appendix 9 (City Review/Submittals). At such meetings, discussions shall be held concerning all aspects of the Design-Build Work including construction schedules, progress payments, Capital Modifications, shop drawings, catalogued and dated progress photographs, and any soil boring data and shop test results. Monthly progress reports containing all relevant information shall be prepared by the Company and provided to the City at least 10 days prior to each monthly meeting, together with an agenda for the meeting. The Company shall also attend any on-call meeting which may be required by the City from time to time in connection with the Design-Build Work, provided that the Company has at least 24 hours' notice of such meeting. The Company shall further prepare and track summary documentation and action items relating to such meetings and distribute the same to all attendees within seven days following such meeting. The Company shall ensure that meetings do not occur on weekends or City-designated holidays, unless the Company reimburses the City for compensation for any extra costs incurred, including travel time.

SECTION 10.14. CORRECTION OF NON-CONFORMING DESIGN-BUILD WORK.

(A) Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, the Company shall, at its sole cost and expense, complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work that does not conform with the Contract Standards.

(B) Election to Accept Non-Conforming Design-Build Work. The City may, in its discretion, elect by Change Order, at the Company's request, to accept non-conforming Design-Build Work and charge the Company (through a Fixed Design-Build Price Adjustment, adjustment to the Service Fee, or both, as appropriate) for the amount agreed upon by the parties by which the value of the Company's services or Design-Build Work has been reduced. The City shall have no obligation to accept non-conforming Design-Build Work pursuant to this subsection.

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Company's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Company under this DBO Agreement. This Section is intended to supplement (and not to limit) the Company's obligations under and with respect to the Acceptance Test Procedures and Standards, the Class A Biosolids Performance Standards, the Performance Guarantees and any other provisions of this DBO Agreement or Applicable Law.

SECTION 10.15. DELIVERABLE MATERIAL. As the Design-Build Work progresses (or upon the termination of the Company's right to perform the Design-Build Work), the Company shall deliver to the City all Deliverable Material required to be delivered under Appendix 9 (City Review/Submittals). The provisions of Section 17.7 (Property Rights) shall apply to any Deliverable Material used by the Company in the Design-Build Work that is proprietary in nature or otherwise subject to the property rights of a third party. The City shall

have the right from and after the Contract Date and notwithstanding any termination of this DBO Agreement to use (or permit use of) all such Deliverable Material, all oral information received by the City in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material without additional compensation. The City's use of any such Deliverable Material for any purpose other than in connection with the continued development, implementation, operation or expansion of the Wastewater System Capital Improvements shall be at its own risk and the Company shall have no liability therefor. The provisions of this Section shall survive any termination of this DBO Agreement.

SECTION 10.16. PERSONNEL.

(A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company's employees and all Subcontractors. All persons engaged by the Company for Design-Build Work shall have the requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. All firms and personnel performing Design-Build Work, including Subcontractor firms and personnel, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Design-Build Manager. The Design-Build Manager shall be present on the Capital Improvement Sites with any necessary assistants on a full-time basis when the Company or any Subcontractor is performing the Design-Build Work. The Design-Build Manager shall, among other things:

- (1) be familiar with the Design-Build Work and all requirements of this DBO Agreement;
- (2) be assigned for the duration of the Design-Build Work;
- (3) be in charge of all other personnel performing the Design-Build Work;
- (4) coordinate the Design-Build Work with the Management Services and give the Design-Build Work regular and careful attention and supervision;
- (5) maintain a daily status log of the Design-Build Work; and
- (6) attend all monthly construction progress meetings with the City, the Contract Administrator and the City Engineering Representative.

The Company represents and warrants that the Design-Build Manager shall be vested with the authority to act on behalf of the Company in connection with the performance of the Design-Build Work and to bind the Company with respect to any certification required under this DBO Agreement to be made by the Design-Build Manager.

(C) City Rights with Respect to Key Design-Build Work Personnel. The Company acknowledges that the identity of the key Design-Build Work management and supervisory personnel proposed by the Company and its Subcontractors in its Proposal submitted in response to the RFP was a material factor in the selection of the Company to perform this DBO Agreement. Such personnel and their affiliations are set forth in Appendix 15 (Key Personnel and Approved Subcontractors). The Company shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects for the Company or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement or resignation. In the event of any such permissible unavailability, the Company shall utilize replacement key management and supervisory personnel of equivalent skill, experience and

reputation. Any on-site personnel change shall be proposed to the City for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

(D) Labor Disputes. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company or its Subcontractors, whether pertaining to organization of the Design-Build Work, arrangement or subdivision of the Technical Specifications, employee hiring, or any other matters. The City shall have no responsibility whatsoever for any such disputes or issues and the Company shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense resulting from any such labor dispute.

(E) Prevailing Wages. The Company shall take all action necessary directly and through its Subcontractors to assure that all laborers performing services in connection with the Design-Build Work are paid minimum, prevailing wage rates, in accordance with Sections 279C.830 and 279C.840 of the Oregon Revised Statutes. In January and July of each year, the State's Bureau of Labor and Industries publishes the *Prevailing Wage Rates for Public Works Contracts in Oregon* which indicates the prevailing wage rates that are required to be paid to workers on non-residential public works projects in the State under Sections 279C.830 and 279C.840 of the Oregon Revised Statutes. Quarterly updates are published by the Bureau of Labor and Industries in April and October of each year. The Company shall comply with the applicable prevailing wage rates as published by the Bureau of Labor and Industries. As of the Contract Date, the publication *Prevailing Wage Rates for Public Works Contracts in Oregon* may be accessed at <http://www.oregon.gov/BOLI/WHD/PWR>. Certified payrolls and other relevant information shall be furnished to the City on a monthly basis in order to permit the City to monitor compliance by the Company with the requirements set forth in this subsection.

(F) Employee Drug Testing Program. The Company shall develop and maintain an employee drug testing program in accordance with Section 279C.505(2) of the Oregon Revised Statutes.

(G) Work Hours and Overtime. In accordance with Section 279C.450 of the Oregon Revised Statutes, the Company shall not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, such person shall be paid at least time and a half pay:

(1) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(2) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(3) For all work performed on Saturday, Sunday and on any legal holiday specified in a collective bargaining agreement or in Section 279C.540(1)(B) to (G) of the Oregon Revised Statutes.

The Company shall take all action necessary directly and through its Subcontractors to give notice in writing to employees performing the Design-Build Work, either at the time of hire or before commencement of work at the Managed Asset Sites, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that such employees may be required to work. In accordance with Section 279C.545 of the Oregon

Revised Statutes, the Company shall post a circular at the Managed Asset Sites setting forth the applicable time limits employees have to file claims with the Company for the payment of overtime. Notwithstanding the foregoing, the Company shall comply with subsection 5.3.7 of Appendix 5 (Construction Requirements) with respect to the acceptable days and hours for performance of construction activities in connection with the Design-Build Work.

(H) Payment for Medical Care. The Company shall take all action necessary directly and through its Subcontractors to promptly, as due, make payment to any person furnishing medical, surgical and hospital care services or other needed care and attention, in relation to sickness or injury, to the employees of the Company or Subcontractor, as applicable, of all sums that the Company or Subcontractor, as applicable, agrees to pay for such services and all moneys and sums that the Company or Subcontractor, as applicable, collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services.

(I) Workers' Compensation. The Company shall comply with Section 656.017 of the Oregon Revised Statutes with respect to all subject workers who perform Design-Build Work in the State under this DBO Agreement and provide the required Workers' Compensation coverage, unless otherwise exempt under Section 656.126 of the Oregon Revised Statutes. The Company shall require each of the Subcontractors engaged for the performance of the Design-Build Work to comply with the requirements set forth in this subsection.

(J) Safety Plan. The Company shall provide a project specific safety plan during construction for all employees, Subcontractors and visitors in accordance with Applicable Law. The Company shall provide safety presentations to all visitors in accordance with Applicable Law prior to providing such visitors access to any areas in which Design-Build Work is being performed.

SECTION 10.17. DAMAGE TO THE WASTEWATER SYSTEM CAPITAL IMPROVEMENTS DURING THE DESIGN-BUILD PERIOD.

(A) Damage Prevention. In performing the Design-Build Work, the Company shall use care and diligence, and shall take all appropriate precautions to protect the Wastewater System Capital Improvements from loss, damage or destruction in accordance with the Contract Standards.

(B) Restoration. During the Design-Build Period, in case of damage to the Wastewater System Capital Improvements, and regardless of the extent thereof or the estimated cost of restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, the Company shall promptly undertake and complete restoration of the damage to the Wastewater System Capital Improvements to the character and condition existing immediately prior to the damage and in accordance with the procedures set forth herein, as applicable, regarding Uncontrollable Circumstances, Change Orders and Unilateral Change Directives. The City shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company in accordance with this Article. If the Company fails to undertake restoration of the damage, or having so commenced fails to complete restoration in accordance with this DBO Agreement, the City may (but shall not be obligated to) undertake or complete restoration at the Company's expense to the extent applicable.

(C) Notice and Reports. The Company shall notify the City, any other appropriate Governmental Body, and the insurers under any applicable Required Insurance of any damage to the Wastewater System Capital Improvements, or any accidents on the Managed Asset Sites related to the Design-Build Work or otherwise caused by the Company, as promptly as reasonably possible after the Company learns of any such damage or

accidents; and, as soon as practicable after learning of any such occurrence (but in no event later than 72 hours), the Company shall submit a full and complete written report to the City Engineering Representative and the City. Such report shall be updated on a weekly basis and upon culmination of all tests, analysis and reviews, a final report incorporating all of the tests, analysis and reviews and the findings thereof shall be submitted to the City. The Company shall also submit to the City Engineering Representative and the City copies of all accident and other reports filed with (or given to the Company by) any insurance company, adjuster, or Governmental Body or otherwise prepared or filed in connection with the damage or accident. Prior to resuming work, the Company shall provide written authorization from OSHA (and any other Governmental Body required under Applicable Law) and a report of a qualified independent engineer certifying that it is safe to resume such work.

(D) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each party shall assist each other in exercising such rights as it may have to effectuate such recovery. Each party shall provide the other with copies of all relevant documentation, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims.

(E) Payment for Restoration Work and Uninsured Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Wastewater System Capital Improvements, including proceeds from all policies of Required Design-Build Period Insurance, shall be for the account of the City. The City shall pay the Company for restoration work required pursuant to this Section with such proceeds and recoveries in accordance with the Change Order provisions of this Article and the payment provisions of Article XII (Payment of the Design-Build Price). All costs not covered by insurance proceeds or third-party payments shall be borne by the Company to the extent the loss, damage or destruction was caused by the actions, errors or omissions of the Company or any of its Subcontractors or to the extent insurance proceeds are not available due to a failure of the Company to obtain or maintain any applicable policy of Required Design-Build Period Insurance. The Company shall be responsible for the payment of all deductibles under the Required Design-Build Period Insurance in accordance with Section 15.1 (Insurance).

SECTION 10.18. WARRANTIES. The Company warrants to the City that the structures, improvements, fixtures, machinery, equipment and materials incorporated in the Wastewater System Capital Improvements will be new, of recent manufacture, of good quality, free from faults and defects, suitable for their intended purpose and in conformity with Appendix 4 (Technical Specifications) and the Contract Standards. The Company shall, for the protection of the City, obtain from all Subcontractors, vendors, suppliers and other persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Wastewater System Capital Improvements such warranties and guarantees as are customarily provided with respect thereto and as are specifically required by the Contract Standards, each of which shall be assigned (to the extent permissible thereunder) to the City to the full extent of the terms thereof. All such warranties shall commence on the date of beneficial use and shall remain in effect for a period of not less than one year following the date of beneficial use. No such warranty shall relieve the Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Fixed Design-Build Price, the Service Fee or excuse any non-performance of the Design-Build Work unless such failure is itself attributable to an Uncontrollable Circumstance.

SECTION 10.19. SUBSTANTIAL COMPLETION.

(A) Conditions to Substantial Completion. Substantial Completion shall occur only when all of the following conditions have been satisfied, unless waived by the City:

(1) the Company has submitted and the City has approved in writing, such approval not to be unreasonably withheld, a certification by the Company that construction of the Wastewater System Capital Improvements is physically complete and all other Design-Build Work pertaining to the Wastewater System Capital Improvements, except the Acceptance Tests, the Class A Biosolids Performance Tests and the items on the Final Punch List, is complete and in all respects is in compliance with this DBO Agreement;

(2) a preliminary or temporary certificate of occupancy has been issued for the Wastewater System Capital Improvements;

(3) all Utilities specified or required under this DBO Agreement to be arranged for by the Company are connected and functioning properly;

(4) the Company and the City have agreed in writing upon the Final Punch List in accordance with Section 10.20 (Final Punch List) (or, if they are unable to agree, the City shall have prepared and issued the Final Punch List to the Company within 30 days of the Company having submitted its proposed Final Punch List to the City);

(5) the Company has delivered to the City written certification from the equipment manufacturers (including manufacturers of information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Wastewater System Capital Improvements have been properly installed and tested in accordance with the manufacturers' recommendations and requirements;

(6) the Company has delivered to the City a claims statement setting forth in detail all claims of every kind whatsoever of the Company connected with, or arising out of, the Design-Build Work pertaining to the Wastewater System Capital Improvements, and arising out of or based on events prior to the date when the Company gives such statement to the City;

(7) the Company has delivered to the City the DEQ-approved Operation and Maintenance Manual relating to the Managed Assets, as improved by the Wastewater System Capital Improvements, in accordance with Section 6.8 (Operation and Maintenance Manuals);

(8) the Company is authorized by all appropriate Governmental Bodies, including the DEQ, to perform the procedures necessary to achieve Acceptance and to conduct the Acceptance Tests under Applicable Law, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended; and

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

Alternatively, Substantial Completion shall occur on any date certified by the City, which shall have discretion to waive any of the foregoing conditions.

(B) Notice of Substantial Completion. The Company shall give the City's Contract Representative at least 30 days' prior written notice of the expected date of Substantial Completion.

SECTION 10.20. FINAL PUNCH LIST. The Company shall submit a proposed Final Punch List to the City, the Contract Administrator and the City Engineering

Representative when the Company believes that the Design-Build Work has been substantially completed in compliance with this DBO Agreement. The City shall have 30 days to review the punch list and amend it. The "Final Punch List" shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work (excluding the performance of the Acceptance Tests, and the Class A Biosolids Performance Tests), which in the Company's opinion:

(1) the Company can complete before the Final Completion deadline provided in Section 10.21 (Final Completion), and with minimal interference to the occupancy, use and lawful operation of the Managed Assets, as improved by the Wastewater System Capital Improvements; and

(2) would represent, to perform or complete, a total cost of not more than 1.0% of the portion of the Fixed Design-Build Price applicable to the construction of the Wastewater System Capital Improvements (unless the City determines that a higher percentage is acceptable).

In no event shall the Final Punch List contain any incomplete items necessary for full operations of the Managed Assets, as improved by the Wastewater System Capital Improvements. The City shall have the right to approve the Final Punch List. Completion of the Final Punch List work shall be verified by a final walk-through of the Wastewater System Capital Improvements conducted by the City, the Contract Administrator and the City Engineering Representative with the Company and the Design-Build Manager.

SECTION 10.21. FINAL COMPLETION.

(A) Requirements. The Company shall achieve Final Completion within 180 days after the Acceptance Date. "Final Completion" shall occur when all of the following conditions have been satisfied:

(1) Acceptance Achieved. The Company has achieved Acceptance of the Wastewater System Capital Improvements in accordance with Article XI (Acceptance of the Wastewater System Capital Improvements);

(2) Achievement of Class A Biosolids Performance Standards. The Company has demonstrated that the Wastewater System Capital Improvements meet the Class A Biosolids Performance Standards through the performance of the Class A Biosolids Performance Test in accordance with Section 11.7 (Class A Biosolids Performance Testing);

(3) Design-Build Work Completed. All Design-Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this DBO Agreement;

(4) Certificate of Occupancy Issued. A final certificate of occupancy has been issued for the Wastewater System Capital Improvements or any component thereof, if required by Applicable Law;

(5) Deliverable Material. The Company shall have delivered to the City all Deliverable Material required by Section 10.15 (Deliverable Material);

(6) Final Record Drawings. The Company shall have delivered to the City a final and complete set of construction record drawings, in accordance with Appendix 9 (City Review/Submittals);

(7) Spare Parts In Storage. All spare parts required by the Contract Standards with respect to the Wastewater System Capital Improvements have been delivered, inventoried and are in storage at the WWTP; and

(8) Payment of Claims. The Company has either certified to the City that all of its claims against the City have been paid or specifically identified in writing all claims that remain unsettled or unpaid.

(B) Failure to Achieve Final Completion. The Company shall achieve Final Completion within 180 days after the Acceptance Date. If the Company fails to achieve any of the items set forth in subsection (A) of this Section by the last day of such period, an Event of Default by the Company will be deemed to have occurred under Section 14.2 (Events of Default by the Company) notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the City shall thereupon have the right to terminate this DBO Agreement upon written notice to the Company. The City's right of termination under this Section shall apply notwithstanding the earlier occurrence of Acceptance. Upon any such termination, the City shall have all of the rights provided in Article XV (Breach, Default, Remedies and Termination) upon a termination of the Company for cause.

ARTICLE XI

ACCEPTANCE OF THE WASTEWATER SYSTEM CAPITAL IMPROVEMENTS

SECTION 11.1. COMMISSIONING.

(A) Generally. Subject to any limitation imposed by the Contract Standards, the Company may commission and start-up the Wastewater System Capital Improvements, test equipment and subsystems, and conduct post-start-up operations at its election at any time in compliance with Applicable Law. The cost of all such commissioning activities, regardless of their extent or duration, has been priced into the Fixed Design-Build Price.

SECTION 11.2. ACCEPTANCE TESTING.

(A) Submittal of Acceptance Test Plan. With respect to any Wastewater System Capital Improvement for which an Acceptance Test is required under Appendix 8 (Acceptance Test Procedures and Standards), at least 180 days before the Scheduled Acceptance Date or the date when the Company intends to commence the performance of the Acceptance Tests, the Company shall prepare and submit to the City for its approval a detailed Acceptance Test Plan, which shall conform to the requirements of Appendix 8 (Acceptance Test Procedures and Standards) in all respects. If the Company and City are unable to agree upon an acceptable Acceptance Test Plan within 90 days of such submittal, either party may elect to initiate dispute resolution procedures in accordance with Section 14.13 (Dispute Resolution Procedures).

(B) Notice of Commencement of Acceptance Test. The Company shall provide the City with at least 30 days' prior written notice of the expected initiation of the applicable Acceptance Test in accordance with the requirements of Appendix 8 (Acceptance Test Procedures and Standards). At least 10 days prior to the actual commencement of the Acceptance Tests, the Company shall certify in writing that it is ready to begin the Acceptance Tests in accordance with the Acceptance Test Plan and Appendix 8 (Acceptance Test Procedures and Standards). The Company shall provide notice of the commencement of Acceptance Testing in accordance with Appendix 8 (Acceptance Test Procedures and Standards).

(C) Conditions to Commencement of the Acceptance Tests. The Company shall not commence the Acceptance Tests until the following events have occurred:

- (1) The requirements of subsections (A) and (B) of this Section have been met and the City has approved the Acceptance Test Plan;
- (2) Substantial Completion has occurred;
- (3) All Governmental Approvals, including those relating to changes to or exemptions from the requirements included in the NPDES Permit or other approved operating procedures, necessary to perform the Acceptance Tests have been obtained; and
- (4) The Company has certified that it has complied with the pre-Acceptance Test requirements of Appendix 8 (Acceptance Test Procedures and Standards).

(D) Conduct of the Acceptance Test. The Company shall conduct the Acceptance Test in accordance with Appendix 8 (Acceptance Test Procedures and Standards) and the Acceptance Test Plan, and shall notify the City when testing shall occur. The Company shall permit the Contract Administrator, City Engineering Representative and any other designated representatives of the City to inspect the preparations for the Acceptance Test

and to be present for the conduct of the Acceptance Tests for purposes of ensuring compliance with the Acceptance Test Plan and the integrity of the Acceptance Test results.

(E) Acceptance Test Report. Within 30 days following the last day of any Acceptance Test, the Company shall furnish the City, the Contract Administrator and the City Engineering Representative with ten copies of a written, signed and sealed Acceptance Test Report consistent with the requirements specified in Appendix 8 (Acceptance Test Procedures and Standards), certified as true, complete and correct by the Design-Build Manager and the Engineer-of-Record. The failure of the Company to furnish the certified Acceptance Test Report within such 30-day period shall constitute a breach of this DBO Agreement and such failure shall not operate to extend the Extension Period or affect the City's rights to assess liquidated damages and terminate this DBO Agreement pursuant to Sections 11.5 (The Scheduled Acceptance Date and Delay Liquidated Damages), 11.6 (Failure to Achieve Acceptance) and 14.2 (Events of Default by the Company).

(F) Acceptance. In order to achieve Acceptance, the Company must satisfy the Acceptance Date Conditions set forth in Section 11.3 (Acceptance Date Conditions), including, in particular, demonstration that each of the Wastewater System Capital Improvements has met the Acceptance Test Procedures and Standards.

SECTION 11.3. ACCEPTANCE DATE CONDITIONS. The following conditions shall constitute the "Acceptance Date Conditions," each of which must be satisfied in all material respects by the Company in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date (unless otherwise agreed to by the parties in writing):

(1) Achievement of Acceptance Test Procedures and Standards. The Company shall have completed all required Acceptance Tests and such tests shall have demonstrated that the Wastewater System Capital Improvements have met the Acceptance Test Procedures and Standards;

(2) Operation and Maintenance Manual. The Company shall have delivered to the City an updated and integrated Operation and Maintenance Manual as set forth in Section 6.8 (Operation and Maintenance Manuals) for the Managed Assets, as improved by the Wastewater System Capital Improvements;

(3) Operating Governmental Approvals. All applicable Governmental Approvals required under Applicable Law that are necessary for the continued routine operation of the Managed Assets, as improved by the Wastewater System Capital Improvements, shall have been duly obtained and shall be in full force and effect. Certified copies of all such Governmental Approvals, to the extent not in the City's possession, shall have been delivered to the City; and

(4) Equipment Warranties and Manuals. The Company shall be in possession of, and shall have delivered to the City copies of, the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Wastewater System Capital Improvements required to be obtained under Section 10.18 (Warranties) together with all related operating manuals supplied by the applicable supplier; and

(5) No Default. The Company has certified that there is no Event of Default by the Company under this DBO Agreement or by the Guarantor under the Guaranty Agreement, or event which, with the giving of notice or the passage of time, would constitute an Event of Default by the Company hereunder or an Event of Default by the Guarantor under the Guaranty Agreement.

SECTION 11.4. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.

(A) Acceptance Date Concurrence. The "Acceptance Date" shall be the day on which all Acceptance Date Conditions have been achieved. If the Company certifies in its written Acceptance Test Report delivered pursuant to subsection 11.2(E) (Acceptance Test Report) that all applicable Acceptance Test Procedures and Standards have been achieved with respect to each of the Wastewater System Capital Improvements, the City shall determine as soon as practicable but in no event later than 30 days from the date of the City's receipt of such report, whether it concurs in such certification. The Company shall not be liable for delay liquidated damages during such 30-day City review period unless it is subsequently determined that the Acceptance Date Conditions have not been satisfied. If the City states in writing that it concurs with the Company's certification, all Wastewater System Capital Improvements shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on the date of the Company's original certification of the Acceptance Date.

(B) Acceptance Date Disagreement. If the City determines at any time during such 30-day review period that it does not concur with such certification, the City shall immediately send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by the City, either party may elect to initiate dispute resolution procedures in accordance with Section 14.13 (Dispute Resolution Procedures). Acceptance shall not be deemed to have been achieved unless the Acceptance Test, conducted in a unified and continuous manner as provided in the Acceptance Test Plan and in Appendix 8 (Acceptance Test Procedures and Standards), demonstrates that all of the Acceptance Test Procedures and Standards with respect to each of the Wastewater System Capital Improvements have been met. In the event the Company, in conducting the Acceptance Tests, does not successfully meet the Acceptance Test Procedures and Standards, the Company shall, at its sole cost and expense, take all action necessary (including making all capital investments, improvements or modifications, repairs and replacements and operating and management practices changes) in order for the Wastewater System Capital Improvements to comply with the Acceptance Test Procedures and Standards and shall re-test the Wastewater System Capital Improvements in accordance with Appendix 8 (Acceptance Test Procedures and Standards). The City, shall have the right, in its sole discretion, to permit the Company to re-test the Wastewater System Capital Improvements for compliance only with the Acceptance Test Procedures and Standards not previously achieved through an earlier Acceptance Test. The Company shall provide the City with at least three days' written notice of any re-performance of the Acceptance Tests. The Company shall be responsible for the fees of the Contract Administrator and the City Engineering Representative in connection with any re-performance of the Acceptance Tests to the extent provided in subsection 10.12(B) (Fees). Any capital investment, improvement or modification required to be made pursuant to this subsection, reasonably expected to result in a change to the Design and Construction Requirements, shall be subject to the City's rights under Section 10.7 (Changes to the Design and Construction Requirements).

SECTION 11.5. THE SCHEDULED ACCEPTANCE DATE AND DELAY LIQUIDATED DAMAGES.

(A) Schedule for Achieving Acceptance. The Company shall achieve Acceptance by the Scheduled Acceptance Date. In the event of one or more delays caused by Uncontrollable Circumstances, the Scheduled Acceptance Date shall be the date determined by adding to the Scheduled Acceptance Date the aggregate number of days of delay caused by such Uncontrollable Circumstance, subject to the requirements and limitations set forth in Section 15.2 (Uncontrollable Circumstances). In the event of any such adjustment, delay liquidated damages payable by the Company under this Section, if any, shall be payable from the adjusted Scheduled Acceptance Date.

(B) Acceptance Prior to Scheduled Acceptance Date. In the event that Acceptance occurs prior to the Scheduled Acceptance Date, the Company shall have no obligation to pay delay liquidated damages hereunder. The Company shall, however, following the Acceptance Date, be responsible for all performance-related damages provided for in this DBO Agreement during the Management Period related to the operation of the Managed Assets, as improved by the Wastewater System Capital Improvements.

(C) Acceptance Subsequent to Scheduled Acceptance Date; Delay Liquidated Damages. In the event that Acceptance occurs subsequent to the Scheduled Acceptance Date, the Company shall pay to the City daily delay liquidated damages in accordance with this subsection for each day that the Acceptance Date falls after the Scheduled Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this DBO Agreement for an Event of Default. The amount of daily delay liquidated damages payable by the Company pursuant to this Section shall be \$4,000 for each day of delay in achieving the Acceptance Date. Such damages shall be payable on the first day of each month and, upon any termination for failure to achieve Acceptance, upon the date of termination.

SECTION 11.6. FAILURE TO ACHIEVE ACCEPTANCE. Unless, as of the last day of the Extension Period, Acceptance has been achieved in accordance with this Article, an Event of Default by the Company shall be deemed to have occurred under Section 14.2 (Events of Default by the Company) notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the City shall thereupon have the right to terminate this DBO Agreement upon written notice to the Company. Upon any such termination, the City shall have all of the rights provided in Article XV (Breach, Default, Remedies and Termination) upon a termination of the Company for cause. During the Extension Period, the Company shall be responsible for and shall pay any fines and penalties assessed by a Governmental Body against the City or the Company due to the failure to achieve Acceptance of the Wastewater System Capital Improvements, together with liquidated damages, as set forth in subsection 11.5(C) (Acceptance Subsequent to Scheduled Acceptance Date; Liquidated Damages).

SECTION 11.7. CLASS A BIOSOLIDS PERFORMANCE TESTING.

(A) Class A Biosolids Performance Testing Generally. The Company shall demonstrate that the Wastewater System Capital Improvements necessary for the production of Class A Biosolids meet the Class A Biosolids Performance Standards within 180 days following the Acceptance Date through the successful completion of the Class A Biosolids Performance Test in accordance with this Section. Demonstration of compliance with the Class A Biosolids Performance Standards shall be a condition of Final Completion. Notwithstanding the fact that the Class A Biosolids Performance Test will occur after the Acceptance Date and notwithstanding any delay or failure to successfully demonstrate compliance with the Class A Biosolids Performance Standards pursuant to this Section, the Company shall be required to comply with all Performance Guarantees beginning on the Acceptance Date, including the Biosolids Guarantee set forth in subsection 7.5(C) (Biosolids Guarantee Beginning on the Acceptance Date).

(B) Submittal of Class A Biosolids Performance Test Plan. At least 90 days before the earlier of the Scheduled Acceptance Date or the date upon which the Company plans to begin Acceptance Testing, the Company shall prepare and submit to the City for its approval a detailed Class A Biosolids Performance Test Plan, which shall conform to the requirements of Appendix 8 (Acceptance Test Procedures and Standards) in all respects. If the Company and the City are unable to agree upon an acceptable Class A Biosolids Performance Test Plan within 30 days following such submission, either party may elect to initiate dispute resolution procedures in accordance with Section 14.13 (Dispute Resolution Procedures).

(C) Notice of Commencement of Class A Biosolids Performance Test. The Company shall provide the City with at least 30 days' prior written notice of the expected initiation of the Class A Biosolids Performance Test. At least 10 days prior to the actual commencement of the Class A Biosolids Performance Test, the Company shall certify in writing that it is ready to begin Class A Biosolids Performance Testing in accordance with the Class A Biosolids Performance Test Plan and Appendix 8 (Acceptance Test Procedures and Standards).

(D) Conduct of Class A Biosolids Performance Test. The Company shall conduct the Class A Biosolids Performance Test in accordance with Appendix 8 (Acceptance Test Procedures and Standards) and the Class A Biosolids Performance Test Plan, and shall notify the City when any such test shall occur. The Company shall permit the designated representatives of the City and the City Engineering Representative to inspect the preparations for the Class A Biosolids Performance Test and to be present for the conducting of the Class A Biosolids Performance Test for purposes of evaluating compliance with the Class A Biosolids Performance Test Plan and the integrity of the Class A Biosolids Performance Test results.

(E) Class A Biosolids Performance Test Report. Within 30 days following the conclusion of the Class A Biosolids Performance Test, the Company shall furnish the City and the City Engineering Representative with 10 copies of a certified written report describing and certifying (1) the results of the Class A Biosolids Performance Test and (2) the level of satisfaction of the Class A Biosolids Performance Standards. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the Class A Biosolids Performance Test, and copies of laboratory reports conducted in conjunction with the Class A Biosolids Performance Test, including all laboratory sampling and test results.

(F) Concurrence with Test Report. If the Company certifies in its written report delivered pursuant to subsection (E) of this Section that all Class A Biosolids Performance Standards have been achieved, the City shall determine, within 30 days following its receipt of the report, whether it concurs in such certification. If the City states in writing that it concurs with the Company's certification, the Wastewater System Capital Improvements shall be deemed to have met the Class A Biosolids Performance Standards.

(G) Disagreement with Test Report. If the City determines at any time during such 30-day review period that it does not concur with such certification, the City shall immediately send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by the City, either party may elect to initiate dispute resolution procedures in accordance with Section 14.13 (Dispute Resolution Procedures). The Company shall not be deemed to have achieved the Class A Biosolids Performance Standards unless the Class A Biosolids Performance Test, conducted in a unified and continuous manner as provided in the Class A Biosolids Performance Test Plan and in Appendix 8 (Acceptance Test Procedures and Standards), demonstrates that all of the Class A Biosolids Performance Standards have been met.

(H) Remedies for Failure to Meet the Class A Biosolids Performance Standards. In the event that the Company fails to demonstrate that the Wastewater System Capital Improvements meet the Class A Biosolids Performance Standards through the performance of the Class A Biosolids Performance Test in accordance with this Section, the Company shall be required to take all action necessary (including making all capital investments, improvements or modifications, repairs and replacements and operating and management practices changes) in order for the Wastewater System Capital Improvements to comply with the Class A Biosolids Performance Standards. Failure of the Company to demonstrate compliance with the Class A Biosolids Performance Standards in accordance with this Section within 180 days following the Acceptance Date shall be an Event of Default by the Company under Section 14.2 (Events of Default by the Company) notwithstanding any absence

of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the City shall thereupon have the right to terminate this DBO Agreement upon written notice to the Company. Upon any such termination, the City shall have all of the rights provided in Article XIV (Breach, Default, Remedies and Termination) upon a termination of the Company for cause.

SECTION 11.8. NO ACCEPTANCE, WAIVER OR RELEASE. Unless other provisions of this DBO Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as the City's acceptance of any Design-Build Work which is defective, incomplete, or otherwise not in compliance with this DBO Agreement, as the City's release of the Company from any obligation under this DBO Agreement, as the City's extension of the Company's time for performance, as an estoppel against the City, or as the City's acceptance of any claim by the Company:

(1) any payment by the City to the Company or any other person with respect to the Wastewater System Capital Improvements;

(2) the City's review, approval or acceptance of any drawings, submissions, punch lists, other documents, certifications (other than City approval relating to Acceptance of the Wastewater System Capital Improvements), or Design-Build Work of the Company or any Subcontractor;

(3) the City's review of (or failure to review or prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design-Build Work;

(4) the City's entry at any time on the Managed Asset Sites (including any area in which the Design-Build Work is being performed);

(5) any inspection, testing, or approval of any Design-Build Work (whether finished or in progress) by the City or any other person prior to Acceptance;

(6) the failure of the City or any City consultant to respond in writing to any notice or other communication of the Company;

(7) any other exercise of rights or failure to exercise rights by the City hereunder; or

(8) any observation of any Design-Build Work (whether finished or in progress) by the City hereunder.

ARTICLE XII

PAYMENT OF THE DESIGN-BUILD PRICE

SECTION 12.1. DESIGN-BUILD PRICE.

(A) Design-Build Price Generally. The Company shall be entitled to receive the Design-Build Price for the performance of the Design-Build Work on a progress payment basis in accordance with the terms of this Article and Appendix 12 (Payment Schedules). The Design-Build Price shall be the Fixed Design-Build Price, as adjusted by any Fixed Design-Build Price Adjustments in accordance with subsection (C) of this Section.

(B) Fixed Design-Build Price. The Fixed Design-Build Price is \$35,707,414. Except as provided in subsection (C) of this Section, the Fixed Design-Build Price shall not be subject to adjustment in any manner whatsoever. The Fixed Design-Build Price is inclusive of all Taxes and Fees payable in connection with the performance of the Design-Build Work.

(C) Fixed Design-Build Price Adjustments. Each adjustment to the Fixed Design-Build Price provided for in this subsection shall be deemed a "Fixed Design-Build Price Adjustment" and shall be reflected in a Change Order. The Fixed Design-Build Price shall be adjusted only for the following:

(1) Adjustment for Change Orders. The Fixed Design-Build Price shall be adjusted to account for the cost of any Change Orders or Unilateral Change Directives issued by the City with respect to Design and Construction Requirement Changes pursuant to and to the extent provided in Sections 10.7 (Changes to the Design and Construction Requirements) and 10.8 (Unilateral Change Directives).

(2) Adjustment for Uncontrollable Circumstances. The Fixed Design-Build Price shall be adjusted to account for costs resulting from Uncontrollable Circumstances not reflected in item (1) above, as and to the extent provided in Section 15.2 (Uncontrollable Circumstances).

(D) Limitation on Payments for Costs of the Design-Build Work. The Company agrees that the Design-Build Price shall be the Company's entire compensation and reimbursement for the performance of the Design-Build Work, including the payment of any Taxes and Fees by the Company in connection with the Design-Build Work, obtaining all Utilities that the Company will require to perform the Design-Build Work, commissioning and starting up the Wastewater System Capital Improvements, operating the Managed Assets during the Acceptance Tests and prior to the Acceptance Date, achieving the Class A Biosolids Performance Standards and Final Completion, correcting all nonconforming Design-Build Work and performing all other elements of the Design-Build Work described in this DBO Agreement. In no event shall the Company be entitled to any payment for Design-Build Work costs in excess of the Design-Build Price, notwithstanding any cost overruns the Company may incur. The Company shall finance and pay for any such excess cost of the Design-Build Work in any manner it chooses without reimbursement from or other claim upon the City. In no event shall any such Company financing create, grant or in anyway establish any mortgage, Lien, security interest or other Encumbrance on or in this DBO Agreement, the Managed Assets or any City Property.

(E) Financing of the Fixed Design-Build Price. The City shall secure the availability of all funds necessary to pay the Fixed Design-Build Price in a timely manner, whether through the authorization or issuance of revenue obligations of the City or otherwise as determined by the City. The Company shall cooperate with and assist the City in providing any information, certifications or documents, and in attending meetings, hearings or forums,

which may be reasonably required in connection with obtaining the funds necessary to pay the Fixed Design-Build Price.

SECTION 12.2. PAYMENT PROCEDURE.

(A) Progress Payments. The Company shall be paid the Fixed Design-Build Price in accordance with the terms and conditions of this Section and Appendix 12 (Payment Schedules).

(B) Meetings. Prior to the submission of each certified Requisition, the Company shall provide the City with a draft Requisition and the Company and the City shall meet to review the Company's draft Requisition and estimate of the percentage of Design-Build Work completed in accordance with the Design-Build Work schedule.

(C) Construction Disbursement Procedure. Following each meeting described in subsection (B) of this Section, the Company shall be entitled to submit Requisitions and receive from the City the payments, which (1) shall be made based on a percentage of work completed for each milestone in accordance with Appendix 12 (Payment Schedules), (2) shall be subject to the maximum drawdown limitations specified in Appendix 12 for each major milestone (Payment Schedules), and (3) shall be subject to the conditions to payment set forth in this Section; provided, however, that, on the Acceptance Date, the Company shall be entitled to receive all payments due for completed work (which is unencumbered) that remain unpaid as of such date except for the payment conditioned on achievement of Final Completion. Each Requisition must be accompanied by a monthly requisition report, which shall include:

(1) a reasonably detailed description of all Design-Build Work actually completed to date and the work expected to be completed in the upcoming month;

(2) a certification that all work has been completed in accordance with the DBO Agreement;

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

(4) revisions to the cost-loaded critical path schedule, which shall reflect changes in the critical path schedule since the date of the last Requisition;

(5) construction progress photographs in accordance with Appendix 9 (City Review/Submittals);

(6) a signed and sealed certificate of the Design-Build Manager and the Engineer-of-Record certifying (1) the portion of the Fixed Design-Build Price which is payable to the Company, (2) that the Company is neither in default under this DBO Agreement nor in breach of any material provision of this DBO Agreement such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (3) that all items applicable to the work entitling the Company to the requested payment under the schedule in Appendix 12 (Payment Schedules) have been completed in accordance therewith and with the Design and Construction Requirements;

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

(8) notice of any Encumbrances which have been filed together with evidence that the Company has discharged or bonded against any such Encumbrances; and

(9) any other documents or information relating to the Design-Build Work or this DBO Agreement requested by the City, the Contract Administrator or the City Engineering Representative or as may be required by Applicable Law, this DBO Agreement or generally accepted accounting practices or principles.

The City shall review the Company's certified Requisitions which must be submitted by the fifth day of the month following completion of the work for each Fixed Design-Build Price payment promptly upon receipt. If the City determines that the work has progressed as indicated in the Company's certified Requisition, the City shall pay the Company all amounts due within 15 days following such determination (but in no event later than 30 days after the City's original receipt of the Company's certified Requisition, subject to the City's right to dispute payment in accordance with this DBO Agreement and Applicable Law). Disputes regarding payments of the Fixed Design-Build Price shall be resolved in accordance with subsection (D) of this Section. The City shall pay any undisputed amounts of the Fixed Design-Build Price in accordance with this DBO Agreement and Applicable Law.

(D) Disbursement Dispute Procedures. If the City determines, pursuant to subsection (C) of this Section, that the work required for any payment has not progressed as indicated by the Company, or otherwise disputes any Requisition, the City shall provide prompt written notice to the Company as to the City's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Company may make the necessary corrections and resubmit a certified Requisition to the City, or the Company and the City may agree on a revised amount, in which case the City shall promptly pay such revised amount. If the Company is unable to reach agreement with the City as to the progress of work, the Company may exercise its right to contest the City's determination in accordance with the dispute resolution procedures set forth in Section 14.13 (Dispute Resolution Procedures). Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if (1) the Company demonstrates to the City that the work has proceeded as indicated in the certified Requisition giving rise to the dispute or that any disputed certified Requisition is correct, and (2) the City concurs with such demonstration. The Company shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection. In the event that upon resolution of any such dispute, it is determined that the Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Company shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount for the period of dispute calculated at the Overdue Rate.

(E) Retainage. Unless the Design-Build Letter of Credit is approved by the City and provided by the Company in accordance with subsection (F) of this Section, each construction drawdown payment will be subject to a 5% retainage holdback until Acceptance is achieved in accordance with Article XI (Acceptance of the Wastewater System Capital Improvements). If requested in writing, the retainage will be placed in an interest-bearing account as provided by Section 279C.560 of the Oregon Revised Statutes and any such earnings on the account will accrue to the Company. Consistent with Oregon Revised Statutes Section 279C.560, the Company may, after 50 percent of the value of the work is completed, request that the City reduce the amount of retention or eliminate retainage on any remaining work. Any decision to reduce retainage or eliminate retainage on remaining work shall be at the sole discretion of the City. Upon Acceptance, the City shall release to the Company the accumulated funds retained from all prior drawdown payments (excluding interest); provided, however, that to the extent items are contained on the Final Punch List, the City, the Contract

Administrator or the City Engineering Representative shall reasonably estimate the cost to make each correction or to complete each such item and the City shall be entitled to withhold from payment of the retained funds an amount equal to 200% of the aggregate value of such items, in addition to the amount of unresolved or unbonded claims by third parties or Encumbrances in connection with the Design-Build Work. Within 30 days after Final Completion has occurred and so long as authority contained in the Governmental Approvals to operate the Managed Assets, as improved by the Wastewater System Capital Improvements, remains unimpaired, the City shall release to the Company all remaining retained funds, including any interest accrued on the amount of the retained funds which interest shall be for the account of the Company.

(F) Design-Build Letter of Credit. As an alternative to the withholding of retainage by the City pursuant to subsection (E) of this Section, the Company may elect to provide a Design-Build Letter of Credit in accordance with Section 16.3 (Design-Build Letter of Credit), subject to the approval of the City as to the form of the Design-Build Letter of Credit. If so elected by the Company and approved by the City, the Design-Build Letter of Credit shall be in the initial stated amount of 5% of the maximum aggregate amount of the first three monthly Requisitions following the Construction Date, as reasonably estimated by the Company and approved by the City, plus 5% of the amount paid or payable to the Company for Design-Build Work performed prior to the Construction Date. The Company shall increase the stated amount of the Design-Build Letter of Credit on a quarterly basis (with such increased Design-Build Letter of Credit delivered with the Requisition submitted by the Company in the first month of each calendar quarter) so that the stated amount remains equal to (1) 5% of the aggregate amount of all Requisitions invoiced by the Company through the date the Company delivers the increased Design-Build Letter of Credit, including the Requisition submitted by the Company with the increased Design-Build Letter of Credit, plus (2) 5% of the maximum aggregate amount of the next three monthly Requisitions, as reasonably estimated by the Company and approved by the City. After 50 percent of the value of the work is completed, the Company shall have the same rights to request a reduction to the Design-Build Letter of Credit as are provided under subsection (E) of this Section with respect to the reduction or elimination of retainage on remaining work in the City's sole discretion; provided, however, that in no event shall the Company reduce the Design-Build Letter of Credit without the express written consent of the City. The Company shall have the right to reduce the stated amount of the Design-Build Letter of Credit upon receipt of written concurrence of the City as to the achievement of the Acceptance Date in accordance with subsection 11.4(A) (Acceptance Date Concurrence); provided, however, that such reduction shall be effectuated by and conditioned upon the delivery by the Company of an amendment to or replacement of the Design-Build Letter of Credit which shall be in the stated amount determined pursuant to subsection (E) of this Section with respect to the City's right to retain funds following the Acceptance Date. The City shall have the right to draw on the Design-Build Letter of Credit to the extent provided in Section 16.3 (Design-Build Letter of Credit). Within 30 days after Final Completion has occurred and so long as authority contained in the Governmental Approvals to operate the Managed Assets, as improved by the Wastewater System Capital Improvements, remains unimpaired, the City shall return the Design-Build Letter of Credit to the Company.

SECTION 12.3. PERMISSIBLE WITHHOLDINGS. The City may disapprove and withhold and retain all or any portion of any payment requested in any Requisition in an amount equal to the sum of:

- (1) any amounts which are permitted under Section 12.2 (Payment Procedure) to be withheld from any payment requested in any Requisition;
- (2) any amounts which are due the City hereunder, including any liquidated damages which are payable by the Company under Section 11.5 (The Scheduled

Acceptance Date and Delay Liquidated Damages) and any indemnification amounts which are due and owing to the City under Section 15.3 (Indemnification);

- (3) any other deductions which are required by Applicable Law;
- (4) any payments with respect to which documents to be delivered in connection therewith are not correct and complete;
- (5) any payments with respect to which the Design-Build Work covered by such Requisition (or any previous Requisition) does not comply with this DBO Agreement;
- (6) any payments with respect to which any person has asserted a Lien resulting from the acts or omissions of the Company in performing the Design-Build Work and such Lien remains unreleased or unbonded;
- (7) all requisitioned payments, if an Event of Default of the Company has occurred under Section 14.2 (Events of Default by the Company); and
- (8) in the event the Company fails to pay any taxes, assessments, penalties or fees imposed by any Governmental Body, then the Company authorizes the City to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body. It is agreed that this provision shall apply to Taxes and Fees imposed by City ordinance.

SECTION 12.4. FINAL REQUISITION AND PAYMENT.

(A) Final Requisition. Upon achieving Final Completion in accordance with Section 10.21 (Final Completion), the Company shall prepare and submit to the City a final Requisition. The final Requisition shall enclose:

- (1) AIA Document G707 (Consent of Surety Company to Final Payment) certifying the surety agrees that final payment of the Design-Build Price shall not relieve the Surety of any of its obligations under the Design-Build Work Performance Bond or the Labor and Materials Payment Bond;
- (2) a contractor's affidavit regarding settlement of claims and complete and legally effective releases or waivers acceptable to the City in the full amount of the Fixed Design-Build Price, or if any Subcontractor refuses or fails to furnish such release or waiver, a bond or other security acceptable to the City to indemnify the City Indemnitees against any payment claim; and
- (3) a list of all pending property damage and personal injury or death insurance claims arising out of or resulting from the Design-Build Work or identifying the claimant and the nature of the claim.

(B) Final Payment. If based on the Contract Administrator's and City Engineering Representative's (1) observation of the Design-Build Work, (2) final inspection, and (3) review of the final Requisition and other documents required by subsection (A) of this Section, the Contract Administrator and City Engineering Representative are satisfied that conditions for Final Completion have been satisfied, the Contract Administrator and City Engineering Representative shall, within 10 days after receipt of the final Requisition, furnish to the City and the Company, the Contract Administrator's and City Engineering Representative's recommendation of final payment and Final Completion. If the Contract Administrator and City Engineering Representative are not satisfied, the Contract

Administrator and City Engineering Representative shall, within 15 days of receipt of the Company's final Requisition, return the final Requisition to the Company, indicating in writing the reasons for not recommending final payment, in which case the Company shall make the necessary corrections and resubmit the final Requisition.

(1) City Concurrence. If the City concurs with the Contract Administrator's and City Engineering Representative's recommendation of final payment, the City shall, within 15 days, file a written notice of Final Completion and notify the Company and the Contract Administrator and City Engineering Representative of such concurrence. As soon as reasonably practicable (but in no event later than 30 days after the City's original receipt of the Company's final Requisition, subject to the City's right to dispute payment in accordance with this DBO Agreement and Applicable Law) after filing such notice, the City shall pay to the Company the balance of the Fixed Design-Build Price subject to any withholdings and any other provisions governing final payment specified herein.

(2) City Non-Concurrence. If the City does not concur with the Contract Administrator's and City Engineering Representative's determination, the City shall return the Requisition to the Company (in no event later than 15 days after the City's original receipt of the Company's final Requisition), through the Contract Administrator and City Engineering Representative, indicating in writing its reasons for refusing final payment and Final Completion. The Company shall promptly make the necessary corrections and resubmit the Requisition to the Contract Administrator and City Engineering Representative. The City's written determination shall bind the Company, unless the Company delivers to the City, through the Contract Administrator and City Engineering Representative, written notice of a claim within 30 days after receipt of that determination.

Any dispute regarding final payment of the Design-Build Price shall be resolved in accordance with subsection 12.2(D) (Disbursement Dispute Procedures). Final payment does not constitute a waiver by the City of any rights relating to the Company's obligations under this DBO Agreement. Final payment constitutes a waiver of all claims by the Company against the City relating to the Design-Build Work, the payment of the Design-Build Price, or otherwise in connection with the Design-Build Period, other than those previously filed in writing with the City on a timely basis and still unsettled.

SECTION 12.5. PAYMENT TO SUBCONTRACTORS

(A) Prompt Payment. The Company shall pay its Subcontractors in accordance with Applicable Law. The Company shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Company on account of the Subcontractor's work, the amount to which the Subcontractor is entitled, reflecting the percentage actually retained or withheld, if any, from payments to the Company on account of the Subcontractor's work. The Company shall, by an appropriate agreement in each Subcontract, require each Subcontractor to make payments to its sub-subcontractors in a similar manner. The City may, on request and if it has a reasonable basis to believe the Company is not making the required payments, furnish to any Subcontractor, information regarding the percentages of completion or the amounts applied for by the Company and the action taken on the application by the City on account of work done by the Subcontractor.

(B) Interest Upon Failure to Make Payments When Due. In the event the Company or any first-tier Subcontractor of the Company fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Design-Build Work within 30 days after receipt of payment from the City or the Company, as applicable, the Company or first-tier Subcontractor shall owe such person the amount due plus interest

charges commencing at the end of the 10-day period that payment is due and ending upon final payment, unless payment is subject to a good faith dispute. The rate of interest charged to the Company or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes the State on the date that is 30 days after the date when payment was received from the City or the Company, as applicable, but the rate of interest shall not exceed 30%. The amount of interest may not be waived.

(C) Complaints. In the event the Company or any Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Design-Build Work, the parties acknowledge that such person may file a complaint with the Construction Contractors Board.

(D) Payment Terms in Subcontracts. The Company shall include in each Subcontract for property or services entered into by the Company and any first-tier Subcontractor, including a material supplier, for the purpose of performing the Design-Build Work:

(1) A payment clause that obligates the Company to pay the first-tier Subcontractor for satisfactory performance under its Subcontract within 10 days out of such amounts as are paid to the Company by the City in accordance with this Article; and

(2) An interest penalty clause that obligates the Company, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the Subcontract. The Company or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Company or the first-tier Subcontractor did not make payment when payment was due is that the Company or the first-tier Subcontractor, as applicable, did not receive payment from the City or the Company, as applicable, when payment was due. The interest penalty shall be

(a) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(b) computed at the rate specified in subsection (B) of this Section.

The Company shall include in each of its Subcontracts a provision requiring every first-tier Subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in this Section in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor.

(E) Payment of Claims by the City. In the event the Company fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Company or a Subcontractor by any person in connection with the Design-Build Work as such claim becomes due, the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Company by reason of this DBO Agreement.

SECTION 12.6. AUDIT BOOKS AND RECORDS.

(A) Audit. All payments whatsoever by the City to the Company and all Design-Build Work of the Company shall be subject to audit at any time by the City. Any audit

of the Company's costs of performing the Design-Build Work shall be subject to the provisions of subsection (B) of this Section.

(B) Construction Books and Records. The Company shall prepare and maintain proper, accurate and complete books and records regarding the Design-Build Work and all other transactions related to the design, permitting, construction, start-up, commissioning and testing of the Design-Build Work, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, delivery tickets, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Design-Build Work, this DBO Agreement, any Subcontract or any operations or transactions in which the City has or may have a financial or other material interest hereunder. All financial records of the Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The Company shall produce such books and records for examination and copying in connection with the costs of Change Orders, Unilateral Change Directives, Uncontrollable Circumstance costs, or other costs in addition to the Fixed Design-Build Price, under circumstances in which such costs are required to be Cost Substantiated pursuant to this DBO Agreement and excluding circumstances in which work is performed on a negotiated, fixed price basis. In the event the Company fails to prepare or maintain any books, records or accounts as required under this subsection, the Company shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Company shall keep and maintain all construction books and records for the Wastewater System Capital Improvements separate and distinct from other records and accounts, and shall maintain such books and records for at least seven years after the Acceptance Date, or such longer period during which any Legal Proceeding with respect to the Design-Build Work commenced within seven years after the Acceptance Date may be pending. Notwithstanding any of the foregoing, the Company shall produce all books and records required to be maintained pursuant to this subsection to the extent that such books and records pertain directly to contract performance if there is any indication of fraud, gross abuse or corrupt practices. The provisions of this Section shall survive the termination of this DBO Agreement.

ARTICLE XIII

CAPITAL MODIFICATIONS

SECTION 13.1. CAPITAL MODIFICATIONS GENERALLY.

(A) Purpose. The parties acknowledge that it may be necessary due to an Uncontrollable Circumstance, or desirable from the standpoint of either party, to make Capital Modifications. Capital Modifications may be desirable, for example, to improve the performance or increase the capacity of the Managed Assets, to address or anticipate the obsolescence of portions of the Managed Assets, to reduce the cost to the Company of performing this DBO Agreement or to reduce the Service Fee payable by the City as provided in subsection (E) of this Section.

(B) City Approval and Change Orders. The City shall have the right, in its sole discretion, to approve all Capital Modifications; provided, however, that the Company may implement Small Scale Capital Modifications that meet the specific requirements set forth in Section 13.2 (Capital Modifications at Company Request) without City approval. All Capital Modifications shall be made and implemented in accordance with this Article. The City shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom or upon any further term or condition that the City may seek to establish with respect thereto.

(C) Party Responsible for Costs. The Company shall bear the cost and expense of all Capital Modifications required in accordance with Sections 13.3 (Maintenance, Repair and Replacement Capital Modifications) and 13.4 (Capital Modifications Required to Remedy Company Fault). The responsibility for the cost and expense of any Capital Modifications requested by the Company in accordance with Section 13.2 (Capital Modifications at Company Request) shall be determined by the City in its sole discretion in accordance with its approval rights under this Section. The City shall bear the cost and expense of all Capital Modifications required as a result of an Uncontrollable Circumstance, as discussed in Section 13.5 (Capital Modifications Due to Uncontrollable Circumstances), and all City-directed Capital Modifications, as discussed in Section 13.6 (Capital Modifications at City Direction).

(D) Third Party Borrowing or Financing. Unless otherwise approved by the City in its sole discretion, the Company shall not borrow from any third party to finance any cost or expense required to be borne by the Company under subsection (C) of this Section. In no event shall the Company have any ownership interest in the Managed Assets as a result of any Capital Modification undertaken by the Company under this Article. The City shall have the right to condition its approval of any third party borrowing or financing on any stipulation, term or condition that the City considers necessary or desirable in order to maintain its interest in and ownership of the Managed Assets. Notwithstanding the foregoing, the Company may borrow from an Affiliate of the Company to finance any cost or expense required to be borne by the Company under subsection (C) of this Section without the approval of the City; provided however, that no such borrowing may create, grant or in anyway establish any mortgage, lien or security interest in this DBO Agreement, the payments to be received by the Company under this DBO Agreement, the Managed Assets or any City Property.

(E) Cost Savings. In the event any Capital Modification is reasonably expected to result in a net cost savings to the Company, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the City, and the Service Fee shall be reduced accordingly.

SECTION 13.2. CAPITAL MODIFICATIONS AT COMPANY REQUEST.

(A) City Approval of Capital Modifications. The Company shall have the right to propose Capital Modifications for consideration by the City, whether before or after Acceptance of the Wastewater System Capital Improvements. The City shall have the absolute right to accept, reject or modify any Capital Modification proposed by the Company. In no event shall the rejection or modification of any such Capital Modification by the City relieve the Company of its obligations under this DBO Agreement. Any such Capital Modification accepted or modified by the City, and any related change in the terms and conditions of this DBO Agreement, shall be reflected in a DBO Agreement Amendment. The Company shall not be entitled to any adjustment in the terms of this DBO Agreement as a result of any such Capital Modification unless approved by the City.

(B) Small Scale Capital Modifications. Notwithstanding subsection (A) of this Section, the Company shall have the right to make Small Scale Capital Modifications without City approval; provided that the Small Scale Capital Modification (1) does not diminish the capacity of the Managed Assets to be operated so as to meet the Contract Standards, (2) does not impair the quality, integrity, durability and reliability of the Managed Assets, (3) is reasonably necessary for the Company to fulfill its obligations under the DBO Agreement, and (4) is feasible. The Company shall provide the City with reasonable advance written notice (not less than 30 days) prior to implementing any Small Scale Capital Modification. The Company shall not be entitled to any adjustment in the terms of this DBO Agreement as a result of a Small Scale Capital Modification.

SECTION 13.3. MAINTENANCE, REPAIR AND REPLACEMENT CAPITAL MODIFICATIONS. In the event that any repair or replacement proposed to be performed by the Company in satisfaction of its obligations under Article VIII (Maintenance, Repair and Replacement) can be reasonably expected to result in a material change to the Managed Assets, such repair or replacement shall constitute a Capital Modification in accordance with this Article. The City shall have all approval rights provided under this Article with respect to any such Capital Modification, including the right to accept, reject or modify any such Capital Modification. In no event shall the rejection or modification of any such Capital Modification by the City relieve the Company of its obligations under this DBO Agreement. Except as otherwise agreed to by the City in its sole discretion, the design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Company. Any such Capital Modifications, and any related change in the terms and conditions of this DBO Agreement, shall be reflected in a DBO Agreement Amendment.

SECTION 13.4. CAPITAL MODIFICATIONS REQUIRED TO REMEDY COMPANY FAULT. In the event that any capital investment, improvement or modification, required to be made by the Company in order to remedy a breach of this DBO Agreement can be reasonably expected to result in a material change to the Managed Assets, such capital investment, improvement or modification shall constitute a Capital Modification under this Article. The City shall have all approval rights provided under this Article with respect to any such Capital Modifications, including the right to accept, reject or modify any such Capital Modification. In no event shall the rejection or modification of any such Capital Modification by the City relieve the Company of its obligations under this DBO Agreement. The design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Company. Any such Capital Modification, and any related change in the terms and conditions of this DBO Agreement, shall be reflected in a DBO Agreement Amendment.

SECTION 13.5. CAPITAL MODIFICATIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of an Uncontrollable Circumstance, the parties shall promptly proceed, subject to the terms, conditions and procedures set forth in this Article and

Section 15.2 (Uncontrollable Circumstances), to make or cause to be made all Capital Modifications reasonably necessary to address the Uncontrollable Circumstance. The Company shall consult with the City concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and the City shall cooperate in order to minimize any delay, lessen any additional cost and modify the Managed Assets so as to permit the Company to continue providing the Contract Services in light of such Uncontrollable Circumstance. The design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the City to the extent provided in Section 15.2 (Uncontrollable Circumstances). Any such Capital Modification made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of this DBO Agreement, shall be reflected in a DBO Agreement Amendment.

SECTION 13.6. CAPITAL MODIFICATIONS AT CITY DIRECTION. The City shall have the right to make Capital Modifications at any time and for any reason whatsoever, whether and however the exercise of such rights affects this DBO Agreement so long as the Company's rights are protected as provided in Section 13.10 (Company Non-Impairment Rights). The design and construction costs of any such Capital Modification made at the City's direction under this Section, and any related operation, maintenance, repair and replacement costs, shall be borne by the City, through an adjustment to the Service Fee, through City financing, or both, as elected by the City pursuant to Sections 13.7 (Primary Procedure for Implementing Capital Modifications), 13.8 (Alternative Procedures for Implementing Capital Modifications) and 13.9 (Financing Capital Modifications). The City shall have no obligation to direct the Company to make any Capital Modification.

SECTION 13.7. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. Unless the City determines pursuant to Section 13.8 (Alternative Procedures for Implementing Capital Modifications) that an alternative implementation procedure is to be employed, the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications.

(B) Company Conceptual Plan and City Review. At the request of the City and at the cost and expense of (i) the Company if the Capital Modification is a Company-requested Capital Modification, or a Capital Modification required due to Company Fault; or (ii) the City if the Capital Modification is a City-directed Capital Modification or a Capital Modification required as a result of an Uncontrollable Circumstance, the Company shall prepare and deliver to the City a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Company or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Company is recommending. The City shall review the Company's conceptual plan and recommendations, and undertake discussions with the Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the City and, except with respect to Capital Modifications pursuant to Sections 13.2 (Capital Modifications at Company Request), 13.3 (Maintenance, Repair and Replacement Capital Modifications) and 13.4 (Capital Modifications Required to Remedy Company Fault), at the City's expense, the Company shall submit a formal implementation proposal to the City for its consideration. With respect to any

Capital Modification to be undertaken at the City's expense and as otherwise required by Applicable Law, the implementation proposal shall contain (1) a Company services element, to be implemented through a DBO Agreement Amendment, and (2) a third-party construction services element, to be implemented through third-party contracting.

(1) Company Services Element. The Company services element shall contain: (a) the Company's offer to perform design, construction management and acceptance testing services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through an acceptance test and a guaranteed maximum construction price if so requested by the City and agreed to by the Company; and (b) as applicable, the Company's offer to operate, maintain, repair, replace, obtain and maintain Governmental Approvals for, and manage the Capital Modification following construction and acceptance for a fixed fee to be added to the Operating Charge of the Service Fee, and shall include long-term performance guarantees with respect to the Capital Modification.

(2) Third-Party Construction Services Element. The third-party construction services element shall be a proposal by the Company to conduct, to the extent permitted under Applicable Law, a bidding or competitive proposal process for the construction work or the design-build work involved in completing the Capital Modification. The bidding process shall include an advertisement for bids and a construction contract award to the lowest responsible bidder, and shall be conducted in accordance with the requirements of Applicable Law which govern construction projects undertaken by the City. The resulting construction or design-build contract shall be held by and executed in the name of the City or the Company, as determined by the City in compliance with Applicable Law. A "competitive proposal process" referred to herein may include a request for proposals and a design-build contract award to the proposer whose proposal is determined to provide the best value considering the relative importance of price and other evaluation factors included in the request for proposals. The Company may participate in the competitive proposal process by submitting its bid or proposal to the City concurrently with the receipt of, and prior to the opening of, any other bids or proposals for the construction work or the design-build work involved in completing the Capital Modification, but in such event the City, in its sole discretion, shall determine whether or not (a) the Company is the lowest responsible bidder, or (b) the Company's proposal represents the best value to the City.

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

(D) Negotiation and Finalization of Company Implementation Proposal. The parties shall proceed, promptly following the City's review of the Company's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this DBO Agreement required under Section 13.10 (Company Non-Impairment Rights). Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable: (1) design requirements; (2) construction management services; (3) acceptance tests, standards and procedures; (4) a guarantee of completion and acceptance; (5) performance guarantees; (6) exit tests standards and procedures; (7) any changes to the Performance Guarantees or other Contract Standards to take effect as a consequence of the Capital Modification; (8) a payment schedule for the design and construction management-related services; (9) provisions for review by the City Engineering Representative and any Contract Administrator; (10) any adjustments to the Service Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs; (11) a financing plan; and (12) any other appropriate amendments to

this DBO Agreement. The Company shall not be obligated to undertake any Capital Modification under Section 13.5 (Capital Modifications Due to Uncontrollable Circumstances) or 13.6 (Capital Modifications at City Direction) except following agreement as to such negotiated adjustments. Except as provided in subsections (B) and (C) of this Section with respect to the preparation of the conceptual plan and formal implementation proposal, the City shall have no obligation to reimburse the Company for any costs incurred pursuant to this Section except as part of a negotiated amendment to this DBO Agreement.

(E) Implementation Procedures and Company Performance. With respect to each Capital Modification to be made by the Company other than Small Scale Capital Modifications, the City shall have the same substantive and procedural rights that it has with respect to the design, construction and acceptance of the Wastewater System Capital Improvements, as set forth in Articles X (Permitting, Design and Construction of the Wastewater System Capital Improvements), XI (Acceptance of the Wastewater System Capital Improvements) and XII (Payment of the Design-Build Price) and in Appendices 4 (Technical Specifications), 5 (Construction Requirements), 9 (City Review/Submittals) and 8 (Acceptance Test Procedures and Standards). The Company shall comply with Applicable Law and all other Contract Standards in connection with any Capital Modification undertaken by the Company pursuant to this Article.

SECTION 13.8. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS. With respect to any Capital Modification to be undertaken at the City's expense and as otherwise required by Applicable Law, the City shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 13.7 (Primary Procedure for Implementing Capital Modifications), and may instead, in its sole discretion, utilize any other implementation procedure available to it or required under Applicable Law. Alternative implementation procedures may include, to the extent permissible under Applicable Law: (1) contracting with the Company on a sole source basis to implement the Capital Modification on a design-build or design-build-operate basis; (2) contracting with the Company to manage a competition for design-build services to implement the Capital Modification; and (3) contracting with third parties for the implementation of the Capital Modification on a traditional design-bid-build basis, with the City rather than the Company responsible for the design and construction of the Capital Modification, or with the Company acting as the City's agent in the design-bid-build process. While it is the intention of the City to have the Company operate, maintain, repair, replace and manage Capital Modifications on an integrated basis with the Managed Assets, the City is not obligated to do so and may contract for such services with a third-party. The City may determine to proceed with an alternative implementation procedure for a Capital Modification at any time, whether before or after entering into negotiations with the Company under the primary implementation procedure specified under Section 13.7 (Primary Procedure for Implementing Capital Modifications). No alternative implementation procedure for Capital Modifications shall impair the Company's rights under Section 13.10 (Company Non-Impairment Rights).

SECTION 13.9. FINANCING CAPITAL MODIFICATIONS. Unless otherwise agreed to by the parties, the City shall provide financing for any Capital Modification for which it is financially responsible under this Article, and shall make the proceeds of the financing available to the Company to pay the negotiated price based on the requirements of Applicable Law. The Company shall finance and pay for any Capital Modification for which it is financially responsible under this Article without reimbursement from or other claim upon the City, subject to the limitations set forth in subsection 13.1(D) (Third Party Borrowing or Financing). The City in its sole discretion may voluntarily, if requested by the Company, provide financing for the Capital Modifications for which the Company is financially responsible hereunder, on terms and conditions established by the City in its sole discretion.

SECTION 13.10. COMPANY NON-IMPAIRMENT RIGHTS. No Capital Modification, other than a Company-requested Capital Modification or a Capital Modification

under Sections 13.2 (Capital Modifications at Company Request) and 13.3 (Maintenance, Repair and Replacement Capital Modifications), shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the Company hereunder, including operating, maintenance, repair and replacement costs related to such Capital Modification. The Company shall have no right to object to any such Capital Modification, however, if the City affords the Company appropriate price, schedule, performance and other relief necessary to avoid any such material effect. Nothing in this Section shall impair the rights of the Company under Section 15.2 (Uncontrollable Circumstances) to schedule price and performance relief upon the occurrence of an Uncontrollable Circumstance.

ARTICLE XIV

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 14.1. REMEDIES FOR BREACH. The parties agree that, except as otherwise provided in this Article with respect to termination rights, in the event that either party breaches this DBO Agreement, the other party may exercise any legal rights it has under this DBO Agreement, under the Security Instruments and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this DBO Agreement for cause except upon the occurrence of an Event of Default.

SECTION 14.2. EVENTS OF DEFAULT BY THE COMPANY.

(A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Company upon which the City, by notice to the Company, may terminate this DBO Agreement without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Company to obtain or maintain in full force and effect any Security Instrument required by Article XVII (Security for Performance) as security for the performance of this DBO Agreement (unless the City has released the Company from its obligation to provide a Security Instrument pursuant to Section 16.4 (Cost of Providing Security for Performance)), subject to the terms and conditions of Sections 16.1 (Guarantor) and 16.2 (Bonds);

(2) Failure to Achieve Acceptance. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Company to achieve Acceptance of any individual Wastewater System Capital Improvement, as described in Appendix 4 (Technical Specifications), prior to the end of the Extension Period;

(3) Failure to Achieve Final Completion. Except to the extent due to the occurrence of Uncontrollable Circumstances, the failure of the Company to achieve Final Completion by the date set forth in Section 10.21 (Final Completion).

(4) Failure to Achieve the Class A Biosolids Performance Standards. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Company to achieve the Class A Biosolids Performance Standards within 180 days following the Acceptance Date;

(5) Failure to Meet the Effluent Guarantee. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Company to meet the Effluent Guarantee on a 12-month rolling average basis unless caused by Uncontrollable Circumstances;

(6) Failure to Meet the Odor Guarantee. Following the Acceptance Date, the issuance by the City of (1) a fourth or any subsequent Odor Citation (taking into account the provisions of subsection 7.3(I) (Sustained Odor Condition Determination), and provided that in order for such termination to occur such fourth or subsequent Odor Citation must be at least the second such Odor Citation in any calendar year); (2) a Sustained Odor Condition lasting 14 or more consecutive days; or (3) a second Sustained Odor Condition determination, in either case based on determinations made in accordance with the applicable provisions of Section 7.3 (Odor Guarantee);

(7) Abandonment. The abandonment or failure to operate all or a substantial portion of Managed Assets for two or more consecutive days in any Contract Year, unless caused by Uncontrollable Circumstances;

(8) Misrepresentation. The intentional misrepresentation by the Company of information and facts relating to the Company's performance of the Contract Services and the performance of the Managed Assets;

(9) Insolvency. The insolvency of the Company or the Guarantor as determined under the Bankruptcy Code;

(10) Voluntary Bankruptcy. The filing by the Company or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company or the Guarantor to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor under the Bankruptcy Code; or the filing by the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code;

(11) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or the Guarantor or of a major part of the Company's or the Guarantor's property, respectively, or the filing against the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively; or

(12) Default of the Guarantor. The failure of the Guarantor to perform any obligation under the Guaranty Agreement in a timely manner.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Company upon which the City may terminate this DBO Agreement, by notice to the Company, if: (1) any representation or warranty of the Company hereunder or the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this DBO Agreement or the Guaranty Agreement or the ability of the Company to carry out its obligations hereunder or the ability of the Guarantor to carry out its obligations under the Guaranty Agreement is thereby adversely affected; or (2) the Company fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the City under this DBO Agreement within 30 days following the due date for such payment, or (b) to perform any material obligation under this DBO Agreement, including compliance with Applicable Law and the other Performance Guarantees not otherwise specified in Subsection (A) of this Section (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein), except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the City the right to terminate this DBO Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the Company stating that in its opinion a specified default exists which gives the City a right to terminate this DBO Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and describing the default in reasonable detail; and

(2) The Company has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice delivered pursuant to item (1) of

this subsection) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the Company shall have initiated within such reasonable time and continued with good faith and due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time as the Company shall continue with due diligence to carry out to completion all such actions. Notwithstanding the foregoing, a failure of the Company to cure the default within 60 days following the initial default notice delivered pursuant to item (1) of this subsection shall be an Event of Default by the Company upon which the City may terminate this DBO Agreement; provided, however, that the City may agree to a longer period of time for the Company to cure the default pursuant to a written plan of corrective action submitted by the Company in response to the initial default notice. Any such agreement of the City shall be in the City's sole discretion and shall specify in writing the date by which the default must be cured. In the event of such an agreement, the failure of the Company to cure the default by the date specified by the City shall be an Event of Default by the Company upon which the City may terminate this DBO Agreement.

(C) Other Remedies Upon Company Event of Default. The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. If this DBO Agreement is terminated by the City for an Event of Default by the Company, the City shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this DBO Agreement, under the Security Instruments and under Applicable Law. The Company shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

(D) Relationship to Liquidated Damages. Any liquidated damages payable by the Company under this DBO Agreement shall cease to accrue on the Termination Date. The Company shall be liable for all liquidated damages that have accrued up to the Termination Date. The parties acknowledge and agree that such liquidated damages are intended solely to compensate the City for costs and expenses associated with the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that the City is likely to suffer in the event of a Company Event of Default under this Article. Accordingly, except as specifically provided in Section 14.3 (Limitation on Company Liability) and except with respect to damages relating solely to the specific circumstances for which liquidated damages are provided under this DBO Agreement, the payment of any such liquidated damages by the Company shall not serve to limit or otherwise affect the City's right to pursue and recover damages under subsection (C) of this Section.

SECTION 14.3. LIMITATION ON COMPANY LIABILITY.

(A) Initial Stated Monetary Limitation. The Company's aggregate liability under this DBO Agreement and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages to the City arising out of the performance or unexcused nonperformance of the Contract Services for the period beginning on the Contract Date and ending on the date which is three years after the Acceptance Date, as a consequence of (1) a claim or suit initiated by the City or (2) the payment of liquidated damages and other reimbursements (excluding indemnification payments) specifically required to be paid to the City pursuant to this DBO Agreement, shall not exceed an amount equal to the Design-Build Price. The parties acknowledge and agree that, notwithstanding the reductions to the aggregate limit of liability provided for under subsections (D) and (E) of this Section with respect to the later years of this DBO Agreement, the initial stated monetary limitation of liability established pursuant to this subsection shall be applicable to any claim or suit

initiated by the City with respect to latent defects associated with the Design-Build Work, regardless of when the claim or suit is initiated; provided, however, that the claim or suit is filed within the applicable statute of limitations associated with latent defects.

(B) Limitation on Liquidated Damages for Delay. The Company's aggregate liability under this DBO Agreement and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to the payment of liquidated damages pursuant to subsection 11.5(C) (Acceptance Subsequent to Scheduled Acceptance Date; Delay Liquidated Damages) shall not exceed an amount equal \$1,460,000. The stated monetary limitation on the liability of the Company and the Guarantor set forth in subsection (A) of this Section shall be reduced by the amount of any such payments to the City. No such payments, however, shall serve to reduce the stated monetary limitations on liability set forth in subsections (D) (E) or (F) of this Section.

(C) Relationship to Security for Performance of Design-Build Work. Pursuant to Section 16.2 (Bonds), the Company has provided or will provide a Labor and Materials Payment Bond and a Design-Build Work Performance Bond in the amount of 100% of the Fixed Design-Build Price. Nothing in this Section shall limit the security provided by either the Design-Build Work Performance Bond or the Labor and Materials Payment Bond.

(D) Stated Monetary Limitation Commencing Three Years Following the Acceptance Date through Eight Years Following the Acceptance Date. Except as provided in subsection (A) of this Section with respect to latent defects associated with the Design-Build Work, the Company's aggregate liability under this DBO Agreement and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages to the City arising out of the performance or unexcused nonperformance of the Contract Services for the period beginning on the date which is three years after the Acceptance Date and ending on the date which is eight years after the Acceptance Date, as a consequence of (1) a claim or suit initiated by the City or (2) the payment of liquidated damages and other reimbursements (excluding indemnification payments) specifically required to be paid to the City pursuant to this DBO Agreement, shall not exceed an amount equal to \$20,000,000, as adjusted annually on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by the CPI Adjustment Factor.

(E) Stated Monetary Limitation Commencing Eight Years Following the Acceptance Date through the end of the Term. Except as provided in subsection (A) of this Section with respect to latent defects associated with the Design-Build Work, the Company's aggregate liability under this DBO Agreement and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages to the City arising out of the performance or unexcused nonperformance of the Contract Services for the period beginning on the date which is eight years after the Acceptance Date and continuing until the end of the Term, as a consequence of (1) a claim or suit initiated by the City or (2) the payment of liquidated damages and other reimbursements (excluding indemnification payments) specifically required to be paid to the City pursuant to this DBO Agreement, shall not exceed an amount equal to \$10,000,000, as adjusted annually on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by the CPI Adjustment Factor.

(F) Liability for Liquidated Damages to the City Relating to the Management Period. The Company's aggregate liability under this DBO Agreement and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to the payment of liquidated damages provided for under Article VII (Performance) shall not exceed an amount equal to \$6,000,000, as adjusted annually on July 1 of each Contract Year (beginning the July 1 following the Commencement Date) by the CPI Adjustment Factor. The stated monetary limitation on the liability of the Company and the Guarantor set forth in subsections (D) and

(E) of this Section shall be reduced by the amount of any such liquidated damage payments to the City.

SECTION 14.4. APPLICABILITY AND INTERPRETATION OF THE LIMITATIONS ON LIABILITY. The limitation on liability provided for in Section 14.3 (Limitation on Company Liability) apply solely to (1) the liability of the Company and the Guarantor for damages to the City arising out of the performance or unexcused nonperformance of this DBO Agreement as a consequence of a claim or suit initiated by the City, and (2) the liability of the Company and the Guarantor for certain liquidated damage and reimbursement payments (excluding indemnification payments) to the City, as specifically provided for under this DBO Agreement. The limitations on liability provided for in Section 14.3 (Limitation on Company Liability) do not apply to any other liability, loss, damage, cost or expense that may be incurred by the Company or the Guarantor in connection with this DBO Agreement, including any of the following liabilities, losses, damages, costs or expenses:

- (1) Any loss, cost or expense sustained by the Company in the performance of the Design-Build Work or the Management Services (including any obligations for payment to laborers, suppliers and other Subcontractors), or any other loss sustained by the Company, the Guarantor, or any other party in connection with this DBO Agreement, the Guaranty Agreement or other agreement relating to the Contract Services;
- (2) Any loss, cost or expense sustained by the Company, the Guarantor, or the Company's surety in seeking to cure or prevent any breach of this DBO Agreement by the Company;
- (3) Any fines or penalties levied or imposed by any Governmental Body;
- (4) Any claims, losses or penalties incurred by the Company or the Guarantor to third parties in any Legal Proceedings;
- (5) Any indemnity payment (resulting from third party claims) made by the Company or the Guarantor to the City or to any Indemnitee;
- (6) Payment of any defense costs, including reasonable attorney's fees, to, for, or on behalf of the City or any City Indemnitee with respect to any third party claim under the Company's indemnification obligations of this DBO Agreement;
- (7) Any payments made to the City or to any City Indemnitee in connection with any Required Insurance under this DBO Agreement; and
- (8) Any claims, losses, penalties or settlement payments paid to the City in connection with any tort claim by the City against the Company based on gross negligence, intentional misconduct, fraud, misrepresentation or false claims.

SECTION 14.5. EVENTS OF DEFAULT BY THE CITY.

(A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the City upon which the Company, by notice to the City, may terminate this DBO Agreement:

- (1) Representations and Warranties. Any representation or warranty of the City hereunder was false or inaccurate in any material respect when made, and the

legality of this DBO Agreement or the ability of the City to carry out its obligations hereunder is thereby adversely affected;

(2) Failure to Pay or Perform. The failure, refusal or other default by the City in its duty: (1) to pay the amount required to be paid to the Company under this DBO Agreement within 30 days following the due date for such payment; or (2) to perform any other material obligation under this DBO Agreement (unless such default is excused by an Uncontrollable Circumstance); or

(3) Bankruptcy. The authorized filing by the City of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the City shall not in and of itself constitute an Event of Default hereunder.

(B) Notice and Cure Opportunity. No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Company the right to terminate this DBO Agreement for cause under this subsection unless:

(1) The Company has given prior written notice to the City stating that a specified default has occurred which gives the Company a right to terminate this DBO Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The City has neither challenged in an appropriate forum the Company's conclusion that such default has occurred or constitutes a material breach of this DBO Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than 30 days from the date of the notice given pursuant to item (1) above (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take such steps to correct such default).

(C) Termination Liquidated Damages Upon City Event of Default. If this DBO Agreement is terminated by the Company for cause as a result of an Event of Default by the City during the Term, the City shall pay the Company, as liquidated damages upon any such termination, the amounts specified in subsections 14.6(B) (City Convenience Termination Right Prior to the Acceptance Date) or 14.7(B) (City Convenience Termination Right option Following the Acceptance Date), as applicable (calculated as provided therein), which would be payable if this DBO Agreement were terminated during the Term, according to the date of termination, at the election of the City for convenience and without cause.

(D) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Contract Services performed prior to the Termination Date to be paid as part of the Fixed Design-Build Price or Service Fee, as applicable, but not yet paid as of the Termination Date.

SECTION 14.6. CITY CONVENIENCE TERMINATION PRIOR TO THE ACCEPTANCE DATE.

(A) City Termination for Cause. The City shall have the right during the Design-Build Period to terminate this DBO Agreement for cause and to pursue all remedies available pursuant to this Article, without cost or liability to the City, based upon the

occurrence of any Event of Default by the Company under Section 14.2 (Events of Default by the Company) during the Design-Build Period.

(B) City Convenience Termination Right Prior to the Acceptance Date. The City shall have the right at any time prior to the Acceptance Date, exercisable in its sole discretion, for its convenience and without cause, to terminate this DBO Agreement upon 30 days' written notice to the Company. Upon any such termination, the City shall pay the Company an amount equal to \$1,000,000, after settlement of payments owing the Company as of the Termination Date under subsection (C) of this Section.

(C) Payment of Amounts Owed Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Contract Services performed prior to the Termination Date to be paid as part of the Design-Build Price or Service Fee, as applicable, but not yet paid as of the Termination Date.

(D) Delivery of Work Product to the City. Concurrently with payment by the City to the Company of the amount due upon any termination of this DBO Agreement under this Section, the Company shall deliver to the City its entire Design-Build Period work product produced hereunder during the Term, which work product immediately shall become the property of the City. The City's use of any such work product for any purpose other than the Design-Build Work shall be at its own risk and the Company shall have no liability therefor.

SECTION 14.7. CITY CONVENIENCE TERMINATION FOLLOWING THE ACCEPTANCE DATE.

(A) City Termination for Cause. The City shall have the right at any time during the Management Period following the Acceptance Date to terminate this DBO Agreement for cause and to pursue all remedies available pursuant to this Article, without cost or liability to the City, based upon the occurrence of any Event of Default by the Company under Section 14.2 (Events of Default by the Company).

(B) City Convenience Termination Right Option Following the Acceptance Date. The City shall have the right at any time following the Acceptance Date, exercisable in its sole discretion, for its convenience and without cause, to terminate this DBO Agreement upon 60 days' written notice to the Company. If the City exercises its right to terminate this DBO Agreement pursuant to this Section, the City shall pay the Company a convenience termination fee equal to \$1,000,000, reduced by 1/180 of such amount for each month which has elapsed following the Commencement Date to and including the month in which the Termination Date occurs. If this DBO Agreement is renewed pursuant to Section 3.2 (City Renewal Option), then the convenience termination fee payable during the Renewal Term shall be zero.

(C) Uncontrollable Circumstances. In the event an Uncontrollable Circumstance causes a total constructive loss of the Managed Assets, or in the event an Uncontrollable Circumstance causes an extraordinary increase in City costs, and thereupon the City elects to exercise its right of convenience termination under this Section, the City shall not be required to pay the termination fee to the Company specified in subsection (B) of this Section. A "total constructive loss" for this purpose shall be deemed to have occurred: (1) if so determined by the casualty insurance carrier; or (2) if the Managed Assets are substantially inoperable for a period of at least six months following the occurrence of the Uncontrollable Circumstance. An "extraordinary increase" in City costs shall be deemed to have occurred for this purpose if costs proposed to be paid to the Company resulting from the Uncontrollable Circumstance would cause an increase of more than 20% from the prior Contract Year in the total Service Fee payable under this DBO Agreement (excluding the amortization of any debt incurred by the Company for Capital Modifications resulting from Uncontrollable

Circumstances) when compared to such amounts that would have been payable during the comparable periods had no Uncontrollable Circumstances occurred.

(D) Changes in Guarantor Financial Condition. The City shall have the right to terminate this DBO Agreement for its convenience under this Section and shall not be required to pay the Company the convenience termination fee set forth in subsection (A) of this Section in the event of a determination by the City in accordance with Section 16.1 (Guarantor) that a change to the financial condition of the Guarantor materially reduces the security for performance provided by the Guaranty Agreement. The City's convenience termination right under this subsection shall be subject to the terms and conditions set forth in subsection 16.1(C) (City Convenience Termination Rights Associated with the Financial Condition of the Guarantor).

(E) Payment of Amounts Owning Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid, subject to Section 14.8 (General Provisions Regarding Convenience Termination), all amounts due for the Management Services performed prior to the Termination Date and to be paid as part of the Service Fee but not yet paid as of the date of termination.

SECTION 14.8. GENERAL PROVISIONS REGARDING CONVENIENCE TERMINATION.

(A) Termination Fee Payment Contingent Upon Surrender of Possession. The City shall have no obligation to pay the applicable termination fee provided for in Sections 14.6 (City Convenience Termination prior to the Acceptance Date) and 14.7 (City Convenience Termination Following the Acceptance Date), except concurrently with the surrender of possession and control by the Company of the Managed Assets to the City.

(B) Adequacy of Termination Payment. The Company agrees that the applicable termination fee provided in Sections 14.6 (City Convenience Termination prior to the Acceptance Date) and 14.7 (City Convenience Termination Following the Acceptance Date) shall fully and adequately compensate the Company and all Subcontractors for all costs of undertaking their obligations under subsection 14.9(A) (Company Obligations), foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Company's right to perform this DBO Agreement. With respect to the City's rights to terminate this DBO Agreement for its convenience without the requirement of paying the applicable termination fee under the circumstances specified in subsections (C) and (D) of Section 14.7, the Company acknowledges that such rights constitute an essential part of the overall consideration for this DBO Agreement and agrees to waive any right to compensation for the losses, costs and expenses associated with the termination of the Company's right to perform this DBO Agreement, as described in this subsection, except as provided in subsection 14.7(E) (Payment of Amounts Owning Through the Termination Date) with respect to payment of amounts owed to the Company through the Termination Date and the reimbursement of reasonable termination costs under subsection 14.9(E) (City Payment of Certain Costs).

(C) Consideration for Convenience Termination Payment. The right of the City to terminate this DBO Agreement for its convenience and in its sole discretion in accordance with this Article constitutes an essential part of the overall consideration for this DBO Agreement, and the Company hereby waives any right it may have under Applicable Law to assert that the City owes the Company a duty of good faith dealing in the exercise of such right.

(D) Completion or Continuance by City. After the date of any termination under this Article, the City may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including entering into contracts with other operators and contractors.

(E) Employment. Upon the exercise by the City of its right of convenience termination under Sections 14.6 (City Convenience Termination prior to the Acceptance Date) and 14.7 (City Convenience Termination Following the Acceptance Date), the City shall have the right to offer, and shall have the right to cause any successor operator of the Managed Assets to offer, employment to employees of the Company then employed at the Managed Assets on terms and conditions which are reasonable at the time of convenience termination, taking into account then-current Applicable Law, Prudent Industry Practice, any collective labor agreements and the continuing obligations of the City to provide utility services to its customers.

SECTION 14.9. OBLIGATIONS OF THE COMPANY UPON TERMINATION OR EXPIRATION.

(A) Company Obligations. Upon any termination of the Company's right to perform this DBO Agreement, or upon the expiration of this DBO Agreement under Section 3.1 (Effective Date and Initial Term), the Company shall, as applicable:

- (1) stop the Contract Services on the date and to the extent specified by the City;
- (2) promptly deliver to the City all Design Documents and construction record drawings prepared by the Company in carrying out the Design-Build Work which have not previously been delivered to the City, and all supporting design notebooks, calculations, record files, design meeting memoranda, and construction meeting memoranda;
- (3) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property, including all of the items described in item (8) below;
- (4) 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;
- (5) clean the Managed Assets, including the Managed Asset Sites, and leave the Managed Assets in a neat and orderly condition;
- (6) subject to subsection (B) of this Section, promptly remove all employees of the Company and any Subcontractors and vacate the Managed Assets;
- (7) promptly remediate any unauthorized release in accordance with Section 7.11 (Releases, Leaks and Spills);
- (8) 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;

(9) provide the City with a 45-day supply of chemicals and other Consumables and a reasonable supply of spare parts in light of the nature and condition of the Managed Assets as of the Termination Date;

(10) deliver to the City the Operation and Maintenance Manual and all computer programs and software, including any software licenses, used at the Managed Assets in the performance of Contract Services, including all revisions and updates thereto;

(11) provide the City with a list of all files relevant to the Managed Assets and access and security codes with instructions and demonstrations which show how to open and change such codes;

(12) deliver to the City a copy of all books and records in its possession relating to the performance of the Contract Services;

(13) deliver to the City fully updated drawings of the WWTP, Wastewater System Capital Improvements and any Capital Modifications;

(14) advise the City promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(15) 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;

(16) assign to the City any Subcontract that the City elects in writing, at its sole election and without obligation, to have assigned to it. The City shall assume, and the Company shall be relieved of its obligations under, any Subcontract so assigned;

(17) unless the City directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

(18) provide the City with a list of all Managed Asset Equipment subject to patents, licenses, franchises, trademarks or copyrights and the associated royalties and license fees associated therewith which the City will be responsible for paying on or after the Termination Date;

(19) as directed by the City, transfer to the City by appropriate instruments of title, and deliver to the WWTP (or such other place as the City may specify), all special order items pursuant to this DBO Agreement for which the City has made or is obligated to make payment;

(20) promptly transfer to the City all warranties given by any manufacturer or Subcontractor with respect to particular components of the Management Services or the Design-Build Work;

(21) notify the City promptly in writing of any Legal Proceedings against the Company by any Subcontractor or other third parties relating to the termination of the Management Services or the Design-Build Work (or any Subcontracts);

(22) give written notice of termination, effective as of the date of termination of this DBO Agreement, promptly under each policy of Required Insurance (with a copy of each such notice to the City), but permit the City to elect to continue such policies in force thereafter at its own expense, if possible;

(23) arrange its dealings with employees to the extent permitted under Applicable Law such that no “successor clause” or accrued benefit liability will bind the City in the event the City determines to offer employment to the Company’s employees at the Managed Assets following the Termination Date; and

(24) 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 to the City under this DBO Agreement.

(B) Hiring of Company Personnel. Upon the termination or expiration of this DBO Agreement under any provision hereof, the City or any successor operator of the Managed Assets designated by the City shall have the right to offer employment on any terms it may choose to any Company employee employed full time at the Managed Assets. No Company employment agreement, job offer, letter or similar document may contravene this right. The City or its designated successor operator shall extend any such job offer within 30 days of the expiration or termination of this DBO Agreement. The Company shall assist and cooperate with any such employee transition in the same manner as provided in Article V (Designated Employees) with respect to the employee transition from the City to the Company.

(C) Continuity of Service and Technical Support. Upon any termination of the Company’s right to perform this DBO Agreement, or upon the expiration of this DBO Agreement under Section 3.1 (Effective Date and Initial Term), the Company, at the request and direction of the City in its sole discretion, shall provide for an effective continuity of service and the smooth and orderly transition of management to the City or any replacement operator designated by the City. Such service shall be for a period of up to 180 days and shall include providing technological and design advice and support and delivering any plans, drawings, renderings, blueprints, operating manuals, computer programs, spare parts or other information useful or necessary for the City or any replacement operator designated by the City to carry out and complete the Design-Build Work and to perform the Management Services. In addition, the Company shall provide the City and any replacement operator with a one-time training program relating to the operation and maintenance of the Managed Assets, including any Capital Modifications thereto.

(D) Company Payment of Certain Costs. If termination is pursuant to Section 14.2 (Events of Default by the Company), the Company shall be obligated to pay the costs and expenses of undertaking its obligations under subsection (C) of this Section. If the Company fails to comply with any obligation under this Section, the City may perform such obligation and the Company shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

(E) City Payment of Certain Costs. If termination is for the convenience of the City under Section 14.6 (City Convenience Termination prior to the Acceptance Date) or 14.7 (City Convenience Termination Following the Acceptance Date) or due to a City Event of Default pursuant to Section 14.5 (Events of Default by the City), or upon the expiration of this

DBO Agreement under Section 3.1 (Effective Date and Initial Term), the City shall pay to the Company within 60 days of the date of the Company's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by the Company in satisfying its obligations under subsection (C) of this Section.

(F) Exit Test. Not later than 180 days following the Acceptance Date, the Company shall prepare and submit to the City for its approval a plan for exit testing of the Managed Assets, which shall conform to the requirements of Appendix 14 (Exit Test Procedures and Standards) in all respects. The City shall submit its comments on the exit testing plan to the Company within 30 days after receipt thereof, and the Company thereafter shall prepare a final exit testing plan, incorporating the City's comments, for submission to the City within 30 days. In the event the Company has not been in full compliance with the Performance Guarantees for the twelve consecutive months preceding the Termination Date, the Company (or a third party at the City's option), at the request of the City and after reasonable notice to the Company, shall perform the exit test of the Managed Assets for compliance with the Exit Test Procedures and Standards in the first month of the 3-month period preceding the Termination Date. If such test shows that the Managed Assets are operating out of compliance with the Exit Test Procedures and Standards, then within 14 days after such test results, the Company shall submit to the City a plan for remediation and retesting. The City shall have 14 days to approve such plan, which approval shall not be unreasonably withheld. The Company shall make all capital investment, repairs, replacements, renewals and operating changes necessary and take all other actions which may be necessary to enable the Managed Assets to meet the Exit Test Procedures and Standards. The Managed Assets shall then be retested to demonstrate that the necessary corrective action has been taken and the Managed Assets is in compliance with the Exit Test Procedures and Standards. No such testing or retesting shall relieve the Company of its obligations under this DBO Agreement during the performance of the test or retest. Any capital investment, improvement or modification required to be made pursuant to this subsection, reasonably expected to result in a material change to the Managed Assets, shall be considered a Capital Modification subject to the provisions of Section 13.4 (Capital Modifications Required to Remedy Company Fault).

SECTION 14.10. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION. All representations and warranties of the parties hereto contained in Article II (Representations and Warranties), the Company's indemnity obligations in this DBO Agreement with respect to events that occurred prior to the Termination Date or during the Company's provision of the transition services under Section 14.9 (Obligations of the Company Upon Termination or Expiration), and all other provisions of this DBO Agreement that so provide shall survive the termination of this DBO Agreement. No termination of this DBO Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 14.11. NO WAIVERS. No action of the City or Company pursuant to this DBO Agreement (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this DBO Agreement. No course of dealing or delay by the City or Company in exercising any right, power or remedy under this DBO Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Company under this DBO Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 14.12. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the

other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this DBO Agreement, or the material falsity or inaccuracy of any representation made in this DBO Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages under this Section is intended to apply to only disputes and claims as between the City and the Company, and specifically is not intended to limit the scope of the indemnity provisions in Section 15.3 (Indemnification), which indemnity includes all claims by third parties irrespective of the nature thereof or the relief sought thereby.

SECTION 14.13. DISPUTE RESOLUTION PROCEDURES.

(A) Generally. Except as provided in subsection (G) of this Section, each party shall follow the dispute resolution procedures set forth in this Section to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the parties. The dispute resolution procedures set forth in this Section are intended to encourage a negotiated resolution of disputes in a prompt and efficient manner without resort to arbitration or litigation, which should be a last resort.

(B) Informal Negotiations. Representatives of the City and the Company with day-to-day involvement in the administration of this DBO Agreement and the performance of the Contract Services shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this DBO Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of this DBO Agreement. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted and such party may request Non-Binding Mediation in accordance with this Section.

(C) Rights to Request and Decline Non-Binding Mediation. Subject to the requirements of subsection (B) of this Section, either party may request Non-Binding Mediation of any dispute arising under this DBO Agreement, whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such Non-Binding Mediation shall be divided equally between the City and the Company.

(D) Procedure. The Mediator shall be mutually acceptable to the parties and shall have no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

(E) Alternative Procedure – Dispute Review Board. As an alternative to the single Mediator procedure set forth in subsection (D) of this Section, either party may request the establishment of a standing dispute review board, to be comprised of three Mediators with no interest in or connection to the Contract Services, to serve as an advisory board for the resolution of significant disputes arising under this DBO Agreement. The terms, conditions and procedures associated with any such dispute review board shall be subject to the mutual

agreement of the City and the Company, consistent with the terms and conditions of this Section. The non-requesting party may decline the request for the creation of a standing dispute review board in its sole discretion, in which case the procedure established pursuant to subsection (D) of this Section shall govern Non-Binding Mediation under this DBO Agreement. Any agreement as to the creation of a standing dispute review board pursuant to this subsection shall be reflected in a Contract Administration Memorandum.

(F) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this DBO Agreement. No Mediator, including any dispute review board established pursuant to subsection (E) of this Section, shall be empowered to render a binding decision.

(G) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this DBO Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 14.14. FORUM FOR LEGAL PROCEEDINGS. It is the express intention of the parties that all Legal Proceedings related to this DBO Agreement or to the Managed Assets or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the courts of the State located in Clackamas County, provided however, when circumstances allow for federal jurisdiction (based on diversity of citizenship or otherwise), all such Legal Proceedings shall be solely and exclusively maintained in federal court having jurisdiction over Clackamas County. The Company and the City each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such action or proceeding.

ARTICLE XV

INSURANCE, UNCONTROLLABLE CIRCUMSTANCES
AND INDEMNIFICATION

SECTION 15.1. INSURANCE.

(A) Company and City Insurance. At all times during the Term, the Company shall obtain and maintain or cause to be obtained and maintained the Required Insurance in accordance with the requirements set forth in this Section and shall pay all premiums with respect thereto as the same become due and payable. The City shall remain responsible for obtaining and maintaining: (1) for the period from the Contract Date to the Acceptance Date, property insurance covering loss, damage or destruction to the existing facilities at the Managed Asset Sites (excluding the Design-Build Work); and (2) for the period on an after the Acceptance Date, property insurance covering loss, damage or destruction to the Managed Assets. The City may provide for such property insurance through commercial insurance policies, through a joint program with Clackamas County or through a program of self insurance, as determined by the City in its sole discretion. The City shall be responsible for the payment of any deductibles or self-insured retention amounts under any policy of insurance provided by the City pursuant to this subsection; provided, however, that the Company shall be responsible for the payment of such amounts to the extent required to be paid due to Company Fault.

(B) Insurers and City Rights. All insurance required by this Section shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in this subsection. The insurers issuing policies of Required Insurance shall be authorized to write such insurance in the State and shall be selected by the Company. Except for any policy of professional liability insurance required pursuant to subsections (H) or (I) of this Section, the Company shall obtain the Required Insurance from insurers that carry an AM Best "A-VII" equivalent or better rating. The Company shall obtain policies of professional liability insurance required pursuant to subsections (H) or (I) of this Section from insurers that carry an AM Best "A-IX" equivalent rating or better. All policies evidencing such insurance shall provide for prior written notice of the cancellation thereof to the Company and the City in accordance with subsection (C) of this Section. All policies of insurance required by this Section shall be primary insurance without any right of contribution from any other insurance carried by the City. The City shall have the right to participate in, and be kept informed of, all insurance claim settlement negotiations and to have input into the negotiations prior to any insurance settlement being finalized.

(C) Certificates, Policies and Notice. The Required Insurance, including any renewals thereof, shall be evidenced by certificates of insurance and appropriate endorsements issued or countersigned by a duly authorized representative of the insurer and delivered to the City as provided in this subsection. No later than the 30 days prior to the issuance date of each policy of Required Insurance, including any renewals thereof, the Company shall provide the City with a draft certificate of insurance for review and approval, and shall deliver the final, approved certificate of insurance to the City promptly following its issuance. Not later than 30 days prior to the beginning of each Contract Year throughout the Term, the Company shall furnish certificates of insurance to the City to confirm the continued effectiveness of the Required Insurance. The certificates of insurance shall provide for 30 days' written notice to the City of cancellation, intent not to renew, or any significant changes in its coverage by the insurer. Along with the certificate of insurance, the Company's risk manager shall provide the City with a written notarized certification that the certificate of insurance being provided accurately reflects the coverages in existence for the upcoming year and that there have been no material changes in coverage or limits, except as evidenced by the current provided certificate of insurance. If required, a new Additional Insured Endorsement and Notice of Cancellation Endorsement (as described in subsection (D) of this Section) shall be provided to

the City at the same time as the new certificate of insurance is provided. Upon request of the City, the Company shall deliver proof of payment of premiums for any policy of Required Insurance. Whenever a Subcontractor is utilized, the Company shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of subsection (F) of this Section and shall provide the City with certificates evidencing such insurance. The Company shall maintain current certificates of all Required Insurance at the WWTP at all times throughout the Term. In addition, the Company shall provide the City, upon request, with certified copies of all Project-specific policies of Required Insurance. All Required Insurance furnished through the Company's corporate insurance policies shall be made available for review by the City or its designated representatives at a location acceptable to the City upon the reasonable request of the City; provided, however, that, in order to help protect the confidentiality of such corporate insurance policies, the Company shall not be required to provide the City with copies of such policies (other than as mandated by Applicable Law) and may redact pricing information and provisions unrelated to the Project from such policies prior to review. Notwithstanding the foregoing, the City accepts no responsibility for the confidentiality of the Company's corporate insurance policies and shall not be liable in any manner for any inadvertent disclosure of such policies to any third party.

(D) Additional Insureds. The Company shall name the City and its officers, elected officials, agents, volunteers and employees, as additional insureds (the "Additional Insureds") on all policies of Required Insurance (other than those policies required by subsections 15.1(H)(1), (2) and (8) and subsections 15.1(I)(1) and (2)). Additional insured status shall be evidenced through an additional insured endorsement (ISO 2010 or its equivalent), and the City shall be provided with a notification endorsement as an Additional Insured. The City shall consider additional insured and notification endorsements on a case-by-case basis at the City's sole discretion. Notices to the City as an additional insured shall be given to the City in accordance with subsection (C) of this Section and Section 17.18 (Notices). All direct Subcontractors performing work at the Managed Asset Sites must also name the City as an additional insured and provide the City with an additional insured endorsement. If a form 8511 is not available certain other commercially available endorsements may be required by the City.

(E) Waiver of Subrogation and Non-Recourse Provision. The Company shall obtain from its insurance carriers endorsements waiving their respective subrogation rights in favor of the City on all policies of Required Insurance, except for professional liability. In addition, all policies of Required Insurance (excepting Professional Liability) shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverage provided by mutual coverage liability insurance policies required pursuant to this Section shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Company or its Subcontractors, or their respective suppliers, employees, agents, representatives, or invitees, that fall within this coverage and also within the coverage of any liability insurance or self-insurance program maintained by the City.

(F) Subcontractors. The Company shall be responsible for ensuring that all Subcontractors performing any portion of the Contract Services: (i) secure and maintain all insurance coverages (including workers' compensation insurance), licenses, and other financial sureties required by the Applicable Laws of the State in connection with their presence and the performance of their duties pursuant to this DBO Agreement; and (ii) secure and maintain all insurance coverage required by Applicable Law and other insurance commensurate with the scope of their services. Unless otherwise approved by the City, in writing, no direct Subcontractor performing Contract Services valued at \$1,000,000 or more at the Managed Asset Sites shall be allowed to carry commercial general liability insurance limits less than two

million dollars (\$2,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. The Company shall deliver to the City evidence of such insurance coverages for each Subcontractor prior to such Subcontractor performing any portion of the Contract Services. Subcontractors shall all be required to maintain and provide proof of worker's compensation insurance and automobile liability coverage.

(G) Deductibles. The insurance coverage required by the Section may be written with deductible or self-insured retention amounts within the limits provided in subsections (H) and (I) of this Section, and the Company shall be responsible for paying any deductible or self-insured retention amounts. The Company shall also be responsible for any excluded losses if such losses are within the liability of the Company hereunder. All deductibles applicable to the Required Insurance shall be agreed upon by the Company and the City, if different from those specified in subsections (H) and (I) of this Section. Notwithstanding the fact that the City shall be an Additional Insured on policies of Required Insurance in accordance with subsection (D) of this Section, the City shall not be obligated to pay any premium or deductible amount payable under such policies. With respect to the deductibles under such policies of Required Insurance, such policies shall be written with no premium or assessment and no deductible amount payable by the City.

(H) Required Design-Build Period Insurance. The Company shall obtain, pay for, and maintain the insurance coverage listed in this subsection throughout the Design-Build Period in connection with the WWTP and the performance of the Design-Build Work without any reimbursement obligation on the part of the City.

(1) Workers' Compensation Insurance. The Company shall provide workers' compensation insurance in amounts required by Applicable Laws of the State, as amended from time to time, covering all of the employees of the Company engaged in the performance of the Contract Services. The required workers' compensation insurance shall also include other states' statutory coverage, voluntary compensation coverage, and federal longshoreman and harborworkers coverage, if applicable.

(2) Employer's Liability Insurance. The Company shall provide employer's liability insurance with limits of \$2,000,000 per accident or employee disease.

(3) Commercial General Liability and Property Damage Insurance. The Company shall provide commercial general liability and property damage insurance, with contractual liability and products completed operations coverage, with a (i) per occurrence limit of liability of \$2,000,000 for bodily injury and for property damage, with a deductible amount not to exceed (without the express written consent of the City) \$500,000, (ii) \$5,000,000 general aggregate limit, (iii) \$2,000,000 products and completed operations aggregate limit, (iv) \$1,000,000 personal injury and advertising injury limit, and (v) \$2,000,000 fire damage legal limit. Commercial general liability insurance shall include premises-operations, blanket contractual, products and completed operations, personal injury and advertising injury, host liquor liability, explosion, collapse, underground hazards, broad form property damage including completed operations, fire damage, legal, supplementary payments and independent contractors coverages. Property damage coverage shall insure the interests of the City regardless of any breach or violation of warranties, declarations or conditions contained in any such policies, any action or inaction of the Company, the City or others, or any foreclosure relating to the WWTP or a change in ownership of all or any portion of the WWTP.

(4) Comprehensive Automobile Liability Insurance. The Company shall provide comprehensive automobile liability insurance, including owned, non-owned and

leased or hired vehicles, with a \$1,000,000 combined single limit for bodily injury and property damage and with a deductible to be determined by the Company.

(5) Excess Liability Insurance. The Company shall provide excess liability insurance above the required commercial general, automobile and employer's liability insurance to result in overall liability coverage in the amount of \$10,000,000 per occurrence and an annual aggregate limit of \$10,000,000.

(6) Pollution Liability Insurance. The Company shall provide pollution liability insurance written on a Contractor's Pollution Liability form, or other form acceptable to the City, providing coverage for sudden, accidental, and gradual pollution and remediation with a policy limit of \$15,000,000 per claim and an annual aggregate limit of \$15,000,000. Coverage for pollution legal liability shall include coverage for bodily injury sustained (including death); property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; Natural Resources Damages; defense, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims; and losses that arise from the performance of the Design-Build Work. Such coverage shall apply to a pollution events arising from a covered or completed operation including the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water, which results in bodily injury and property damage. Contractors Pollution Liability insurance shall be maintained at all times during the Term in accordance with this Section and subsection (I)(7) of this Section. Pollution Liability coverage is currently maintained on a claims made basis. As long as such insurance remains on a claims made policy (as opposed to occurrence based policy) such policy shall be maintained for five years following both Substantial Completion and cessation of operations. If such policy is cancelled for any reason during such five year period, then prior to cancelation, the Company shall purchase an Extended Reporting or Tail Coverage policy that provides the same or better coverage to the City for the remainder of such time period.

(7) Builder's Risk. The Company shall provide builder's risk insurance covering all Design-Build Work other than design (including testing and commissioning) at the Managed Asset Sites, while in transit and at any temporary off-site location; all materials, supplies, machinery, fixtures and equipment intended to become a permanent part of the WWTP or for permanent use in the WWTP or incidental to the construction; all temporary structures at the Managed Asset Sites that are to be used in or incidental to the fabrication, erection, testing or completion of the Design-Build Work to the extent the cost thereof is included in the Fixed Design-Build Price, as adjusted pursuant to subsection 12.1(C) (Fixed Design-Build Price Adjustments), while on or about the Managed Asset Sites awaiting or during construction. The builders' risk coverage shall not include any co-insurance provisions and shall be written on a completed value form, subject to sublimits in coverage for (i) inland transit (\$5,000,000 sublimit), (ii) offsite storage (\$5,000,000 sublimit), and (iii) earthquake and flood (\$10,000,000 sublimit); and further subject to deductibles of \$100,000 for earthquake, flood, and "hot (operational) testing" and \$50,000 for all other perils.

(8) Professional Liability Insurance. The Company shall provide professional liability errors and omissions insurance policy on a policy form appropriate to the Company's profession (must provide coverage for architects, engineers, and other licensed professionals providing services in connection with the Design-Build Work)

with limits of \$15,000,000 per claim and an aggregate of \$15,000,000. During the Design-Build Period, the Company shall maintain professional liability insurance for damages alleged to be as a result of errors, omissions, or negligent acts of the Company and such policy shall have an extended reporting or discovery "tail" period, or be renewed for a period of not less than (i) two years from Substantial Completion or abandonment for claims that are known or in the exercise of reasonable care should have been known, and (ii) ten years after Substantial Completion for latent defects. Such policy shall have a retroactive date effective before the commencement of any design work by the Company. Professional Liability Insurance coverage is currently maintained on a claims made basis. As long as such insurance remains on a claims made policy (as opposed to occurrence based policy) such policy shall be maintained for five (5) years following both Substantial Completion and cessation of the Management Services. If such policy is cancelled for any reason during that five (5) year period, then prior to cancelation, the Company shall purchase an Extended Reporting or Tail Coverage policy that provides the same or better coverage to the City for the remainder of that time period.

(I) Required Management Period Insurance. The Company shall obtain, pay for, and maintain the insurance coverage listed in this subsection during the Management Period with respect to the operation of the WWTP without any reimbursement obligation on the part of the City.

(1) Workers' Compensation Insurance. The Company shall provide workers' compensation insurance in amounts required by Applicable Laws of the State, as amended from time to time, covering all of the employees of the Company engaged in the performance of the Contract Services. The required workers' compensation insurance shall also include other states' statutory coverage, voluntary compensation coverage, and federal longshoreman and harborworkers coverage, if applicable.

(2) Employer's Liability Insurance. The Company shall provide employer's liability insurance with limits of \$2,000,000 per accident or employee disease.

(3) Commercial General Liability and Property Damage Insurance. The Company shall provide commercial general liability and property damage insurance, with limits of liability of (i) \$5,000,000 general aggregate; (ii) \$1,000,000 personal injury and advertising injury; (iii) \$2,000,000 per occurrence for bodily injury and for property damage, with a deductible amount not to exceed (without the express written consent of the City) \$500,000; and (iv) \$2,000,000 fire damage legal liability. Commercial general liability insurance shall include premises-operations, blanket contractual, products and completed operations, personal injury and advertising injury, host liquor liability, explosion, collapse, underground hazards, broad form property damage including completed operations, fire damage, legal, supplementary payments and independent contractors coverages. Property damage coverage shall insure the interests of the City regardless of any breach or violation of warranties, declarations or conditions contained in any such policies, any action or inaction of the Company, the City or others, or any foreclosure relating to the WWTP or a change in ownership of all or any portion of the WWTP.

(4) Comprehensive Automobile Liability Insurance. The Company shall provide comprehensive automobile liability insurance, including owned, non-owned and leased or hired vehicles, with a \$1,000,000 combined single limit for bodily injury and property damage and with a deductible to be determined by the Company.

(5) Excess Liability Insurance. The Company shall provide excess liability insurance above the required commercial general, automobile and employer's liability insurance to result in overall liability coverage in the amount of \$10,000,000 per occurrence and an annual aggregate limit of \$10,000,000.

(6) Contingent Business Interruption. The Company shall provide contingent business interruption insurance in an amount equal to the annual Service Fee for 12 months, subject to a deductible waiting period of 90 days.

(7) Pollution Liability Insurance. The Company shall provide pollution liability insurance written on a Contractor's Pollution Liability form, or other form acceptable to the City, providing coverage for sudden, accidental, and gradual pollution and remediation with a policy limit of \$15,000,000 per claim and an annual aggregate limit of \$15,000,000. Coverage for pollution legal liability shall include coverage for bodily injury sustained (including death); property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; Natural Resources Damages; defense, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims; and losses that arise from the performance of the Management Services. Such coverage shall apply to sudden and accidental non-sudden pollution conditions including the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water, which results in bodily injury and property damage. Contractors Pollution Liability insurance shall be maintained at all times during the Term in accordance with this Section and subsection (H)(6) of this Section, and for five years following the Termination Date. Pollution Liability coverage is currently maintained on a claims made basis. As long as such insurance remains on a claims made policy (as opposed to occurrence based policy) such policy shall be maintained for five years following both Substantial Completion and cessation of the Management Services. If such policy is cancelled for any reason during such five year period, then prior to cancellation, the Company shall purchase an Extended Reporting or Tail Coverage policy that provides the same or better coverage to the City for the remainder of such time period.

(J) Maintenance of Insurance Coverage. If the Company fails to pay any premium or self-insured retention for Required Insurance, or if any insurer cancels any Required Insurance policy and the Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the City's election (but without any obligation to do so), the City, following notice to the Company, may pay such premium or self-insured retention or procure similar insurance coverage from another company or companies and upon such payment by the City the amount thereof shall be immediately reimbursable to the City by the Company. If the City elects to arrange for and pay premiums for any insurance coverage pursuant to this subsection, the following requirements shall apply:

(1) the City shall provide written notice to the Company at least 90 days prior to the Contract Year during which the City shall assume such responsibilities, or at least 90 days prior to the expiration date of the applicable insurance policy obtained by the Company, whichever is more reasonably practical;

(2) the City may at any time during the Term, upon 90 days' written notice prior to any Contract Year, require the Company to assume the responsibility to obtain any policy of Required Insurance;

(3) the City shall name the Company and the Guarantor as additional insureds under any policies obtained by the City pursuant to this subsection;

(4) the City shall pay any cancellation penalty (or short-rate) arising out of canceling any policy of Required Insurance provided by the Company prior to such policies expiration date; and

(5) the City shall be entitled to a reimbursement by the Company for any costs incurred by the City for providing the Required Insurance pursuant to this subsection, that would otherwise be the responsibility of the Company pursuant to this Section, through an Extraordinary Items credit in an amount equal to such costs.

The Company shall not perform Design-Build Work during any period when any policy of Required Design-Build Period Insurance is not in effect. The Company shall comply with all applicable Insurance Requirements and take all steps necessary to assure the Managed Assets, including the Wastewater System Capital Improvements, remain continuously insured in accordance with the requirements of this DBO Agreement during the Term hereof. The failure of the Company to obtain and maintain any Required Insurance shall not relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Company shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense arising out of such failure. The purchase of the Required Insurance to satisfy the Company's obligations under this Section shall not be a satisfaction of any Company liability under this DBO Agreement or in any way limit, modify or satisfy the Company's indemnity obligations hereunder.

(K) Changes in Insurance Coverage. The Company shall use its best efforts to obtain any insurance in addition to the Required Insurance that the City may request the Company provide from time to time during the Term. The actual and direct expenses associated with such additional insurance (without markup for profit, administration or otherwise) incurred by the Company shall be paid by the City through an Extraordinary Items charge in an amount equal to such expenses.

SECTION 15.2. UNCONTROLLABLE CIRCUMSTANCES.

(A) Relief from Obligations. Except as expressly provided under the terms of this DBO Agreement, neither party to this DBO Agreement shall be liable to the other for any loss, damage, delay, default nor failure to perform any obligation, to the extent it results from an Uncontrollable Circumstance. The parties agree that the relief for an Uncontrollable Circumstance described in this Section shall apply to all obligations in this DBO Agreement, except to the extent specifically provided otherwise, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this DBO Agreement but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this DBO Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance. The City shall pay the Service Fee during the continuance of any Uncontrollable Circumstance, adjusted to account for any cost reductions achieved through Company mitigation measures required by subsection (B) of this Section, as well as for any cost increases to which the Company is entitled under subsection (C) of this Section.

(B) Notice and Mitigation. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone, facsimile, or email (if followed by a telephone call to, and acknowledgment of receipt from, the other party) on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of

the occurrence thereof, followed within 15 days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the affected party shall also provide the other party with a description of: (i) the amount, if any, by which the Fixed Design-Build Price or the Service Fee is proposed to be adjusted as a result of such Uncontrollable Circumstance; (ii) any areas where costs might be reduced and the approximate amount of such cost reductions; and (iii) its estimated impact on the other obligations of such party under this DBO Agreement. The affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as practicable, use all reasonable efforts to eliminate the cause therefor, reduce costs and resume performance under this DBO Agreement. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by an Uncontrollable Circumstance shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

(C) Conditions to Performance, Schedule and Fixed Design-Build Price or Service Fee Relief. In the event of an Uncontrollable Circumstance, the Company shall, subject to the limitations specifically provided for in this DBO Agreement, be entitled to relief from the performance of its obligations hereunder, an extension of schedule or an increase in the Fixed Design-Build Price or the Service Fee, or any combination thereof, which properly reflects the interference with performance, the time lost or the amount of the increased cost (including Cost Substantiated costs associated with the mitigating measures undertaken by the Company pursuant to subsection (B) of this Section), in each case as a result thereof, but only to the minimum extent reasonably forced on the Company by the event, and the Company shall perform all other Contract Services. Price relief associated with an Uncontrollable Circumstance shall not include profit to the Company. The proceeds of any Required Insurance available to meet any such increased cost, and the payment by the Company of any deductible or self-insured retention, shall be applied to such purpose prior to any determination of cost increase payable by the City under this Section. Any cost reduction achieved through the mitigating measures undertaken by the Company pursuant to subsection (B) of this Section upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Fixed Design-Build Price or the Service Fee would have otherwise been increased or shall serve to reduce the Fixed Design-Build Price or the Service Fee to reflect such mitigating measures, as applicable. In the event that the Company believes it is entitled to any relief on account of an Uncontrollable Circumstance, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Company the City shall issue a written determination as to the extent, if any, it concurs with the Company claim for performance, price or schedule relief, and the reasons therefor. The Company acknowledges that its failure to mitigate, or to give timely notice pertaining to, an Uncontrollable Circumstance as required under this Section may adversely affect the City. To the extent the City asserts that any such adverse effect has occurred and that the relief to the Company or the additional cost to be borne by the City under this subsection should be reduced to account for such adverse effect, the Company shall have the affirmative burden of refuting the City's assertion. Absent such refutation, the reduction in relief to the Company and the reduction in additional cost to the City asserted by

the City in such circumstances shall be effective. The agreement of the parties as to the specific relief to be given the Company hereunder on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum, DBO Agreement Amendment or Change Order, as applicable.

(D) Schedule Relief during the Design-Build Period. In order to be entitled to an adjustment to the Scheduled Acceptance Date, the Extension Period or to the number of days allowed for the achievement of Final Completion, the Company must demonstrate the impact of the Uncontrollable Circumstance on the Company's critical path completion schedule, as updated, maintained and revised by the Company in accordance with subsection 10.1(D) (Schedule and Reports). In no event shall the Company be entitled to relief pursuant to this Section for delays caused by Company Fault or otherwise not attributable to an Uncontrollable Circumstance impacting the Company's critical path completion schedule.

(E) Limitations on Relief for Naturally Occurring Events Outside the State. Naturally occurring events (as more particularly described in Item (i) of the Inclusions to the definition of Uncontrollable Circumstances) occurring outside the State shall entitle the Company to schedule relief, subject to the limitations set forth in subsection (D) of this Section, but shall not entitle the Company to price or other performance relief hereunder. Nothing in this subsection shall limit or otherwise affect the Company's obligations under this DBO Agreement in the event of the occurrence of an Uncontrollable Circumstance, including the Company's obligations under this Section to mitigate the Uncontrollable Circumstance, notify the City and bear the burden of proving the occurrence of an Uncontrollable Circumstance and its impact on the Company.

(F) Change in Law Pertaining to Taxes. The Company shall be entitled to Change in Law relief under this Section for a Change in Law pertaining to taxes only to the extent such Change in Law (1) imposes a new State or local tax on the private provision of wastewater treatment services or on any possessory interest or right to use or occupancy conveyed under this DBO Agreement, (2) acts as a franchise, utility or similar tax, or (3) imposes a State or local sales tax on building materials used in the construction of the Wastewater System Capital Improvements. Nothing in this subsection shall limit or otherwise affect the Company's obligations under this DBO Agreement in the event of the occurrence of an Uncontrollable Circumstance, including the Company's obligations under this Section to mitigate the Uncontrollable Circumstance, notify the City and bear the burden of proving the occurrence of an Uncontrollable Circumstance and its impact on the Company.

(G) Change in Law Pertaining to Prevailing Wages. The Company shall be entitled to Change in Law relief under this Section for a Change in Law pertaining to prevailing wages only to the extent such Change in Law imposes a prevailing wage requirement with respect to Company employees performing Management Services at the Managed Assets. It is the understanding of the parties that Applicable Law does not impose such a requirement as of the Change in Law Baseline Date. Accordingly, any formal interpretation by a Governmental Body of Applicable Law in effect as of the Change in Law Baseline Date, which has the effect of imposing a prevailing wage requirement with respect to Company employees performing Management Services at the Managed Assets, shall be deemed a Change in Law under this subsection.

(H) Capital Modifications. Before proposing any adjustment to the Service Fee in its notice of requested relief under this Section, the Company shall determine whether any increased costs of operation and maintenance of the WWTP resulting from an Uncontrollable Circumstance can reasonably and prudently be reduced by the undertaking of a Capital Modification. In the event that the Company makes such a determination, the Company shall so advise the City in accordance with Sections 13.5 (Capital Modifications Due

to Uncontrollable Circumstances) and 13.7 (Primary Procedure for Implementing Capital Modifications). The City shall thereupon determine, in its sole discretion, whether such a Capital Modification shall be undertaken and shall so advise the Company within 60 days of receipt of such notice by the Company. In no event shall the Company undertake such a Capital Modification except at the express written direction of the City.

(I) Acceptance of Relief Constitutes Release. The Company's acceptance of any performance, price or schedule relief (or a combination thereof) under this Section shall be construed as a release of the City by the Company (and all persons claiming by, through, or under the Company) for any and all loss or expense resulting from, or otherwise attributable to, the event giving rise to the adjustment claimed.

SECTION 15.3. INDEMNIFICATION. The Company shall indemnify, defend and hold harmless the City Indemnitees, from and against (and pay the full amount of) any and all Loss-and-Expense incurred by a City Indemnitee to third parties arising from or in connection with (or alleged to arise from or in connection with) (1) any failure by the Company to perform its obligations under this DBO Agreement; or (2) the negligence or intentional misconduct of the Company or any of its officers, directors, employees, agents, representatives or Subcontractors in connection this DBO Agreement. The Company shall also indemnify the City Indemnitees as and to the extent provided elsewhere in this DBO Agreement. The Company's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Company which is intended to respond to such events. The Company shall not, however, be required to reimburse or indemnify any City Indemnitee for any Loss-and-Expense to the extent caused by a failure of the City to perform its obligations under the NPDES Permit or Applicable Law, the negligence or willful misconduct of any City Indemnitee or to the extent caused by any Uncontrollable Circumstance. A City Indemnitee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Company shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the City Indemnitees only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this DBO Agreement.

ARTICLE XVI

SECURITY FOR PERFORMANCE

SECTION 16.1. GUARANTOR.

(A) Guaranty Agreement. The Company shall cause the Guaranty Agreement to be provided on or before the Contract Date and maintained by the Guarantor during the Term substantially in the form attached hereto as a Transaction Form.

(B) Reports and Notifications Concerning the Financial Condition of the Guarantor. The Company shall furnish the City, within 180 days after the end of each fiscal year of the Guarantor, consolidating balance sheets and income statements for the Guarantor attached to the audited year-end financial statements for that fiscal year reported upon by the Guarantor's independent public accountant. If applicable, the Company shall, at the request of the City, also furnish the City with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission. If the Guarantor is not required to file quarterly reports with the Securities and Exchange Commission, the Company shall, at the request of the City, provide the City with unaudited quarterly financial statements within 60 days following the end of each quarter based on the Guarantor's fiscal year. In addition, the Company shall provide reasonable notice to the City of any change to the financial condition of the Guarantor that would reasonably be anticipated to impair the ability of the Guarantor to meet its obligations under the Guaranty Agreement.

(C) City Convenience Termination Rights Associated with the Financial Condition of the Guarantor. The City shall notify the Company of any determination by the City of the occurrence of a change to the financial condition of the Guarantor that actually has or is reasonably likely to have a material impact on the Guarantor's ability to perform its obligations under the Guaranty Agreement. Such determination may be based on any of the information required to be provided by the Company pursuant to subsection (B) of this Section or based on any publicly available information concerning the financial condition of the Guarantor. The Company shall provide the City with a written response concerning the City's determination within 10 days following the City's notification and the parties shall meet within a reasonable time thereafter (not to exceed an additional 10 days following the City's original notification unless otherwise agreed to by the City) to discuss the City's determination and the Company's response. Following such meeting, if the City determines in its reasonable discretion that the change to the financial condition of the Guarantor materially reduces the security for performance provided by the Guaranty Agreement, the City shall have the convenience termination right provided in subsection 14.7(D) (Changes in Guarantor Financial Condition). The parties acknowledge and agree that the City shall have the convenience termination right provided by this subsection and subsection 14.7(D) notwithstanding full compliance by the Company with the terms and conditions of this DBO Agreement. Notwithstanding any of the foregoing, in no event shall the City have the right to convenience terminate this DBO Agreement pursuant to this Section and subsection 14.7(D) if the Company or the Guarantor, at its sole cost and expense, is able to obtain and maintain either a shadow or actual investment grade credit rating for the Guarantor on its senior debt from one or more of the Rating Agencies. Any credit rating analysis by any of the Rating Agencies pursuant to this Section shall assume a hypothetical borrowing by the Guarantor of an amount at least equal to the then applicable limit of liability provided for under Section 14.3 (Limitation on Company Liability). For purposes of this subsection "investment grade" means a rating of at least BBB- from S&P or Fitch and a rating of at least Baa3 from Moodys.

SECTION 16.2. BONDS.

(A) Design-Build Work Performance Bond and Labor and Materials Payment Bond. On or before the Commencement Date, the Company shall provide the Design-Build

Work Performance Bond and the Labor and Materials Payment Bond, each in an amount equal to the Fixed Design-Build Price, as financial security for the faithful performance and payment of its Design-Build Work obligations hereunder. The Design-Build Work Performance Bond and the Labor and Materials Payment Bond shall remain in effect until the date which is six months after the date of Final Completion. The Company shall provide for an increase in the Design-Build Work Performance Bond and the Labor and Materials Payment Bond to reflect any Fixed Design-Build Price Adjustments, as a condition of its entitlement to the Fixed Design-Build Price Adjustment. The Design-Build Work Performance Bond and the Labor and Materials Payment Bond shall be substantially in the form set forth in the Transaction Forms and shall be issued by a surety company: (1) approved by the City and having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a valid certificate of authority to transact surety business in the State. On or before the date any Capital Modification is undertaken by the Company, the Company shall provide a performance bond and a payment bond, each in an amount equal to the price relating to the Capital Modification work and meeting the requirements set forth in this Section for the Design-Build Work Performance Bond and the Labor and Materials Payment Bond, as financial security for the faithful performance and payment of its obligations hereunder relating thereto. Any such performance bond and payment bond shall remain open until the work relating to the Capital Modification has achieved final completion.

(B) Management Services Performance Bond. On or before the Commencement Date, the Company shall provide the Management Services Performance Bond substantially in the form attached as a Transaction Form hereto. The Management Services Performance Bond shall serve as security for the performance of the Management Services by the Company, and shall be in the initial stated amount equal to the annual Service Fee, shall be for a term of one year, and shall be continuously renewed, extended or replaced so that it remains in effect for the entire Term; provided, however, that the stated amount of the Management Services Performance Bond shall be adjusted each Contract Year by the CPI Adjustment Factor. The Management Services Performance Bond shall be issued by a surety company: (1) approved by the City and having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a valid certificate of authority to transact surety business in the State. If the Management Services Performance Bond expires or is terminated prior to the expiration of this DBO Agreement, prior to such expiration or termination, the Company shall provide a substitute Management Services Performance Bond in the amount and in accordance with the provisions of this subsection such that there is no gap in coverage. The liability of the surety under the Management Services Performance Bond shall not be cumulative from year to year. Neither non-renewal by the surety, nor failure, nor inability of the Company to provide a Management Services Performance Bond for a subsequent year shall constitute loss to the City recoverable under the Management Services Performance Bond. In no event shall the Management Services Performance Bond serve as a limitation on the liability of the Company under this DBO Agreement

(C) Monitoring of Sureties. The Company shall be responsible during the Term for monitoring the financial condition of any surety company issuing bonds under this DBO Agreement and for making inquiries no less often than annually to confirm that each such surety company meets the qualifications specified in this Section. In the event of any issuing surety company no longer meets the qualifications specified in this Section, the Company shall promptly notify the City of such event and shall promptly take steps to ensure continued compliance with this Section, by either furnishing or arranging for the furnishing of a substitute or an additional bond of a surety company meeting the qualifications specified in

this Section, unless the City agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the Company of such an event, the City shall not unreasonably withhold its approval of such assurance. The City recognizes that the Company intends to provide the bonds required under this Section pursuant to a co-surety arrangement whereby three surety companies meeting the qualifications specified in this Section as of the Contract Date will be jointly and severally liable for the obligations of the surety under the bond. Accordingly, it shall not be an Event of Default by the Company under subsection 14.2(A)(1) (Security for Performance) if one or more of the three surety companies no longer meet the qualifications specified by this Section as long as one of the three surety companies continues to meet such qualifications and to maintain the bond in accordance with this Section.

SECTION 16.3. DESIGN-BUILD LETTER OF CREDIT.

(A) Terms and Purpose of the Design-Build Letter of Credit. If the Company elects to provide the Design-Build Letter of Credit in lieu of retainage in accordance with subsection 12.2(F) (Design-Build Letter of Credit), the Company shall provide the City with the Design-Build Letter of Credit in accordance with subsection 12.2(F) at least 10 days prior to the Construction Date and in any event prior to any payment to the Company for work performed after the Construction Date. The parties acknowledge and agree that the Design-Build Letter of Credit is intended to satisfy the retainage requirements of Section 279C.560 of the Oregon Revised Statutes. The Design-Build Letter of Credit shall be an irrevocable, standby direct pay letter of credit issued by an insured institution, as defined in Section 706.008 of the Oregon Revised Statutes, whose long-term debt is rated "A" or better by any of the Rating Agencies and which maintains a banking office in the Portland metropolitan area so that all draws may be made locally. The Design-Build Letter of Credit shall be continuously renewed, extended or replaced in accordance with subsection 12.2(F) so that it remains in effect until 30 days after Final Completion has occurred in accordance with Section 10.21 (Final Completion), and shall be issued in a form consistent with the terms and conditions of this Section and otherwise acceptable to the City. The Company shall provide the City with a form of the Design-Build Letter of Credit for its approval prior to the Construction Date. The stated amount of the Design-Build Letter of Credit, as determined in accordance with subsection 12.2(F), shall in no way limit the amount of damages to which the City may be entitled for any breach of the Company's Design-Build Work obligations under this DBO Agreement. If the letter of credit is cancelled or terminated for any reason or if any draw is refused or disputed, the City shall have the absolute right to immediately reinstate the retainage requirement for the full 5% in accordance with subsection 12.2(E) (Retainage) for all subsequent payments of the Design-Build Price.

(B) City Drawing Rights. The Design-Build Letter of Credit shall authorize the City to draw amounts required to cover: (1) any unpaid taxes, assessments, penalties or fees imposed by any Governmental Body on the Company in connection with the performance of the Design-Build Work; (2) any unresolved or unbonded claims by third parties or Encumbrances in connection with the performance of the Design-Build Work; (3) any claims of the City associated with the failure of the Company to achieve Final Completion in accordance with this DBO Agreement; (4) any breach of this DBO Agreement by the Company, including any failure of the Company to pay liquidated damages associated with a failure to achieve Acceptance by the Scheduled Acceptance Date pursuant to the terms and conditions of Article XI (Acceptance of the Wastewater System Improvements); and (5) the full amount of the Design-Build Letter of Credit in the event of a failure to increase or replace the Design-Build Letter of Credit in accordance with subsection 12.2(F) (Design-Build Letter of Credit). Drawing instructions shall simply state that the Company has breached the DBO Agreement and as a result thereof the City is entitled to draw against the Design-Build Letter of Credit in the amount it claims is due to the City. Notwithstanding the foregoing, the City shall not draw on the Design-Build Letter of Credit to cover the items in (1) and (2) above to the extent that the

City has withheld payment with respect to such items under Section 12.3 (Permissible Withholdings).

(C) Effect of Final Determination of Damages. In the event that, subsequent to any drawing on the Design-Build Letter of Credit, it is determined by any court of competent jurisdiction in a final non-appealable decision that such drawing was not to any extent permitted hereunder, the City shall pay the amount wrongfully drawn to the Company together with interest thereon at the Overdue Rate calculated from the date of drawing to the date of payment to the Company.

SECTION 16.4. COST OF PROVIDING SECURITY FOR PERFORMANCE.

(A) Generally. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Company's obligations hereunder is included in the Fixed Design-Build Price or Service Fee, as applicable, and shall be borne by the Company without further reimbursement from the City.

(B) Release of Management Services Performance Bond. The City shall have the right at any time to release the Company from its obligation to provide the Management Services Performance Bond required under this Article. Upon any such release, the Operating Charge of the annual Service Fee shall be reduced on an ongoing basis (1) in an amount equal to \$8,564 for the period prior to the Acceptance Date, and (2) for the remainder of the Term following the Acceptance Date by an amount equal to \$11,312. Both amounts set forth in this subsection shall be adjusted annually on July 1 of each Contract Year (beginning on the July 1 following the Commencement Date) prior to any such release by the CPI Adjustment Factor.

ARTICLE XVII

MISCELLANEOUS PROVISIONS

SECTION 17.1. OWNERSHIP OF THE MANAGED ASSETS AND INDEPENDENT CONTRACTOR STATUS. The Managed Assets shall be owned by the City at all times. The Company shall perform the Design-Build Work and Management Services provided for herein as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Managed Assets.

SECTION 17.2. RELATIONSHIP OF THE PARTIES. The Company is an independent contractor of the City and the relationship between the parties shall be limited to performance of this DBO Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this DBO Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers' compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this DBO Agreement or the performance thereof.

SECTION 17.3. LIMITED RECOURSE TO CITY. No recourse shall be had to the general fund or general credit of the City for the payment of any amount due the Company hereunder, whether on account of the Service Fee, any indemnity payment, or for any payment or claim of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the Company for all such amounts shall be to the funds held in the City's sanitary sewer operating fund. All amounts held in the City's enterprise fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the Company.

SECTION 17.4. DBO AGREEMENT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this DBO Agreement.

(B) Contract Administration Memoranda. Contract Administration Memoranda shall be utilized for the administration of routine matters arising under this DBO Agreement between the parties which do not require a DBO Agreement Amendment. A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation or application of this DBO Agreement in particular circumstances or conditions; (2) calculations required to be made; (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (4) other similar routine contract administration matters.

(C) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the City reflecting the

resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Contract Representative of each party, and, at the request of the City, co-signed by a Senior Supervisor for the Company. The City and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the DBO Agreement Amendments and all other documents relating to the administration and performance of this DBO Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this DBO Agreement, subject to the limitations set forth in subsection 17.5(A) (Amendments Generally).

SECTION 17.5. DBO AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 17.4 (DBO Agreement Administration), no material change, alteration, revision or modification of the terms and conditions of this DBO Agreement shall be made except through a DBO Agreement Amendment.

(B) Procedure. DBO Agreement Amendments shall be serially numbered, dated and signed by a Senior Supervisor for the Company and by the City Manager or his or her designee. The City and the Company each shall maintain a parallel, identical file of all DBO Agreement Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this DBO Agreement.

SECTION 17.6. CONTRACT REPRESENTATIVES.

(A) Company's Senior Supervisors. The Company shall appoint and inform the City from time to time of the identity of the Senior Supervisors. The Company shall promptly notify in writing to the City of the appointment of any successor Senior Supervisors. The Senior Supervisors and the Company's Contract Representative shall cooperate with the City in any reviews of the performance of the Design-Build Manager and the Principal Designated Operator which the City may undertake from time to time, and shall give full consideration to any issues raised by the City in conducting such performance reviews.

(B) City's Contract Administrator and Contract Representative. The Company understands and agrees that the Contract Administrator and the City's Contract Representative have only limited authority with respect to the implementation of this DBO Agreement, and cannot bind the City with respect to any DBO Agreement amendment or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Company shall be entitled to rely on the written directions of the Contract Administrator or the City's Contract Representative. The Contract Administrator or the City's Contract Representative shall have the right at any time to issue the Company a written request for information relating to this DBO Agreement. Any written request designated as a "priority request" shall be responded to by the Company within three days.

(C) City Approvals and Consents. When this DBO Agreement requires any approval or consent by the City to a Company submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) of this Section, be given by the City's Contract Representative or Contract Administrator in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the City with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this DBO Agreement, and except for requests, reports and submittals made by the Company that do not, by their terms or the terms of this DBO Agreement, require a response or action, if the

City does not find a request, report or submittal acceptable, it shall provide written response to the Company describing its objections and the reasons therefor within 30 days of the City's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the City's approval or consent may not be unreasonably delayed by the express terms hereof, and the Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the City pursuant to some specific term of this DBO Agreement shall be deemed acceptable to the City if the City shall not have objected thereto within 30 days of the receipt thereof

SECTION 17.7. PROPERTY RIGHTS.

(A) Protection from Infringement. The Company shall pay all royalties and license fees payable in connection with the performance of the Contract Services during the Term. The Company shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the performance of, the Contract Services. The Company shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe; provided, however, that any such modification or replacement shall be subject to the City's approval, which shall not be unreasonably withheld or delayed. The provisions of this Section shall survive termination of this DBO Agreement. The Company's obligation to indemnify the City Indemnitees pursuant to this subsection shall apply only when infringement occurs or is alleged to occur from the intended use for which the Deliverable Material, process or equipment was provided by the Company to the City pursuant to this DBO Agreement and shall not apply to (1) infringement resulting from City-directed Change Orders, (2) infringement resulting from unauthorized additions, changes or modifications to the Deliverable Material, process or equipment made or caused to be made by the City subsequent to the delivery of such by the Company, or (3) any claimed infringement which is settled without the consent of the Company. Notwithstanding the foregoing, the Company shall have the obligation to conduct reasonable due diligence and notify the City of any potential infringement that might result from City-directed Change Orders.

(B) Intellectual Property Developed by the Company. All intellectual property developed by the Company at or through the use of the Managed Assets or otherwise in connection with the performance of the Contract Services shall be owned by the Company subject to the terms and conditions of this Section, and is hereby licensed to the City on a non-exclusive cost free, perpetual basis for use by the City and any successor operator of the Managed Assets (but, with respect to any successor operator, only in connection with the operation of the Managed Assets). Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. The City shall have an irrevocable, perpetual and unrestricted right to use such intellectual property for any City purpose, whether before or following the Termination Date. The City shall not license, transfer or otherwise make available such intellectual property to any third-party without the consent of the Company, which consent is hereby granted for the purposes of operating the Project following the Termination Date. The City's use of any such intellectual property for purposes other than in connection with the Managed Assets shall be at its own risk and the Company shall have no liability therefor.

SECTION 17.8. INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of

interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 17.9. NEGOTIATED FIXED PRICE WORK.

(A) Operating Charge of the Service Fee and Fixed Design-Build Price. The Operating Charge of the Service Fee and the Fixed Design-Build Price have been fixed and agreed to by the parties based on the Company's proposal submitted in response to the RFP, and are not subject to Cost Substantiation. Notwithstanding the foregoing sentence, the Company shall furnish the City with all cost information required by the City for the payment of the Design-Build Price under Article XII (Payment of the Design-Build Price).

(B) Negotiated Lump Sum Pricing of Work for Which the City is Financially Responsible. This DBO Agreement obligates the City to pay for certain costs resulting from Uncontrollable Circumstances and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the City will pay for such costs on a negotiated, lump sum basis, and that the lump sum price will be negotiated in advance of the Company's performance of the work. For example, if a Change in Law occurs, as required under Section 15.2 (Uncontrollable Circumstances) the parties will assess the impact of the Change in Law, take all appropriate mitigation steps, determine any necessary Capital Modifications and operating changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Company shall furnish the City with all information reasonably required by the City regarding the Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Company's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Company's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 17.10. COST SUBSTANTIATION OF WORK ALREADY PERFORMED.

(A) Cost Substantiation Generally. The Company shall provide Cost Substantiation for the costs for which the City is financially responsible hereunder, other than the Operating Charge of the Service Fee, the Fixed Design-Build Price and the costs for which the parties have negotiated a lump sum price, all as and to the extent provided in Section 17.9 (Negotiated Fixed Price Work). In incurring costs which are or may be subject to Cost Substantiation, the Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes in accordance with the City purchasing manual), and shall enter into subcontracts on commercially reasonable terms and prices in light of the work to be performed and the City's potential obligation to pay for it.

(B) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Company. Examples of costs which require substantiation include (1) work done on an emergency basis to respond to an Uncontrollable Circumstance, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work; and (2) work done by the Company under subsection 14.9(C) (Continuity of Service and Technical Support) upon the expiration or termination of this DBO Agreement, to the extent such costs are the responsibility of the City under subsection 14.9(E) (City Payment of Certain Costs). Cost Substantiation shall also be required where the parties agree that the Company shall perform work on a cost-plus basis, subject to the limitations set forth in subsection (F) of this Section.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this DBO Agreement under which such cost is chargeable to the City, shall describe the competitive or other process utilized by the Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this DBO Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the 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 and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property taxes; (2) a statement of the equipment used and any rental payable therefor; (3) employee hours, duties, wages, salaries, benefits and assessments; and (4) profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The Company's entitlement to reimbursement of Cost Substantiated costs of the Company shall be subject to the limitations set forth in this Section.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs required to be Cost Substantiated, copies of timesheets, invoices, checks, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the City, with the request for reimbursement of such costs.

(E) Mark-Ups. With respect to all costs subject to Cost Substantiation, the Company shall be entitled to a maximum mark-up not to exceed 10% for a combination, of overhead, risk, profit and contingency for costs of its own personnel, and a maximum mark-up not to exceed 5% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors. No mark-up will be added to the Company's costs for lodging and meals or travel. Construction and operation Subcontractors similarly will have no mark-ups for costs for their subcontractors' lodging and meals or travel. The price payable to all Subcontractors, including Subcontractor overhead and mark-ups for risk and profit, shall be commercially reasonable. Notwithstanding any of the foregoing, in no event shall the Company be entitled to any mark-up for work performed by Subcontractors in connection with an Uncontrollable Circumstance. The only mark-up the Company shall be entitled to with respect to work performed in connection with an Uncontrollable Circumstance is the Company's 10% mark-up applied solely to the direct labor costs of the Company associated with the Uncontrollable Circumstance.

SECTION 17.11. SUBCONTRACTORS.

(A) Use Restricted. The Company shall operate the Managed Assets with its own employees and fully in accordance with the requirements of Article VI (Management and Operation). Subcontractors may be used to perform other Contract Services, subject to the City's right of approval set forth in subsection (B) of this Section.

(B) Limited City Review and Approval of Permitted Subcontractors. The City shall have the right, based on the criteria provided below in this Section, to approve all Subcontractors which the Company is permitted to engage under subsection (A) of this Section for Contract Services valued in excess of \$50,000 annually (as adjusted annually on July 1 of each Contract Year (beginning on the July 1 following the Commencement Date) by the CPI Adjustment Factor), which approval shall not be unreasonably withheld. City approval of Subcontractors as provided in the preceding sentence shall not be required for: (1) Affiliates of the Company; (2) equipment suppliers; (3) Governmental Bodies; (4) approved Subcontractors listed on Appendix 15 (Key Personnel and Approved Subcontractors); and (5) Subcontractors

hired by the Company for purposes of remedying an emergency situation. The Company shall furnish the City written notice of its intention to engage such Subcontractors requiring City approval under this Section, together with all information reasonably requested by the City pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest; (2) any record of felony criminal convictions or pending felony criminal investigations; (3) any final judicial or administrative finding or adjudication of illegal employment discrimination; (4) any unpaid federal, State, City or local Taxes and Fees; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the City or the State. The approval or withholding thereof by the City of any proposed Subcontractor shall not create any liability of the City to the Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State or City contracting for any services similar in scope to the Contract Services. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State, City or local contracting for any services similar in scope to the Management Services, the Design-Build Work.

(C) Subcontract Terms and Subcontractor Actions. The Company shall retain full responsibility to the City under this DBO Agreement for all matters related to the Contract Services notwithstanding the execution or terms and conditions of any Subcontract. Except as provided in Item (i) of the definition of Uncontrollable Circumstances, no failure of any Subcontractor used by the Company in connection with the provision of the Contract Services shall relieve the Company from its obligations hereunder to perform the Contract Services. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Company or inflicted on the Company or a Subcontractor by the actions of another Subcontractor.

(D) Indemnity for Subcontractor Claims. The Company shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the City for labor, services, materials or equipment furnished for the Contract Services. The Company acknowledges that its indemnity obligations under Section 15.3 (Indemnification) shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services.

(E) Assignability. All Subcontracts entered into by the Company with respect to the Managed Assets shall be assignable to the City, solely at the City's election and without cost or penalty, upon the expiration or termination of this DBO Agreement.

SECTION 17.12. FAIR EMPLOYMENT AND CONTRACTING POLICY.

(A) Compliance with City Non-Discrimination Policy. During the Term, the Company agrees as follows:

(1) The Company will not discriminate against any employee, applicant for employment, Subcontractor, guest, visitor or invitee, because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless allowed by Applicable Law as a bona fide occupational qualification. The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) Subsection (1) of this Section shall be interpreted in a manner that is consistent with the United States Constitution, the State Constitution and applicable

State and federal statutes governing workplace discrimination. The terms used in this Section shall have the same meaning as defined in State statutes governing the same subject matter.

(3) Nothing in this Section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable State and federal law and reasonably necessary to the normal operation of City employment or contracting. Nothing in this Section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

(B) Compliance with Statutes. The Company agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act of 1990, and any State, City or local laws pertaining to fair employment practices.

(C) Indemnification. The Company shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in Section 15.3 (Indemnification) from and against all Loss-and-Expense which any of them may incur arising from any claim of harassment, including sexual harassment, arising from the conduct of the Company or any of the Company's officers, employees, agents or Subcontractors. In the event of a harassment complaint against the Company or any of the Company's officers, employees, agents, or Subcontractors, the Company shall take immediate and appropriate action in response to such complaint, including termination or appropriate discipline of an officer, employee, agent or Subcontractor. This is a continuing obligation that survives the termination of this DBO Agreement

SECTION 17.13. ACTIONS OF THE CITY IN ITS GOVERNMENTAL CAPACITY.

(A) Rights as Government Not Limited. Nothing in this DBO Agreement shall be interpreted as limiting the rights and obligations of the City under Applicable Law in its governmental or regulatory capacity (including police power actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Company to bring any action against the City, not based on this DBO Agreement, arising out of any act or omission of the City in its governmental or regulatory capacity.

(B) No City Obligation to Issue Governmental Approvals. The City retains all issuance and approval rights it has under Applicable Law with respect to any Governmental Approval required with respect to the Managed Assets, the Design-Build Work or the Management Services, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this DBO Agreement. The City shall not be deemed to be in breach or default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval.

SECTION 17.14. ASSIGNMENT.

(A) By the Company. The Company shall not assign, transfer, convey, lease, encumber or otherwise dispose of this DBO Agreement, its right to execute the same, or its right, title or interest in all or any part of this DBO Agreement or any monies due hereunder whatsoever prior to their payment to the Company, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the City. Any such approval given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of the City to any further assignment. Any such assignment of this DBO Agreement which is approved by the City, shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this DBO Agreement, and no such assignment shall relieve the Guarantor of any of its

obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term hereof. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under this DBO Agreement unless such approval specifically provides otherwise.

(B) By the City. The City may not assign its rights or obligations under this DBO Agreement without the prior written consent of the Company. The City may, however, assign its rights and obligations under this DBO Agreement, without the consent of the Company, to another Governmental Body if such assignee assumes, and is legally capable of discharging the duties and obligations of the City hereunder.

SECTION 17.15. CONFIDENTIALITY.

(A) Confidential Nature of Information. The Company shall treat all information obtained from the City in the performance of this DBO Agreement as confidential and proprietary to the City to the extent permitted by law.

(B) Limitation on Use and Disclosure. The Company shall not use any information obtained as a consequence of the performance of the Contract Services for any purpose other than fulfillment of the Company's scope of work. The Company shall not disclose any information obtained from the City or obtained as a consequence of the performance of the Contract Services to any person other than its own employees, agents or Subcontractors who have a need for the information for the performance of work under this DBO Agreement, unless such disclosure is specifically authorized in writing by the City.

(C) Security Plan. If requested by the City, the Company shall, at its sole cost and expense, prepare a security plan to assure that information obtained from the City or as a consequence of the performance of the Contract Services is not used for any unauthorized purpose or disclosed to unauthorized persons. The Company shall advise the City of any request for disclosure of information or of any actual or potential disclosure of information.

(D) Survival. The Company's obligations under this paragraph shall survive the termination of this DBO Agreement.

SECTION 17.16. COMPLIANCE WITH MATERIAL AGREEMENTS. The Company shall comply with its obligations under agreements of the Company which are material to the performance of its obligations under this DBO Agreement. The City shall comply with its obligations under agreements of the City which are material to the performance of its obligations hereunder.

SECTION 17.17. BINDING EFFECT. This DBO Agreement shall bind and inure to the benefit of and shall be binding upon the City and the Company and any assignee acquiring an interest hereunder consistent with Section 17.14 (Assignment).

SECTION 17.18. NOTICES.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this DBO Agreement shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally recognized overnight courier service with signed verification of delivery; (3) given by facsimile transmission, if a signed original is deposited in the United States Mail within two days after transmission, or (4) by email if a signed original is deposited in the United States Mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with

respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) Company Notice Address. Notices required to be given to the Company shall be addressed as follows:

CH2M HILL Engineers, Inc.
2020 South West 4th Avenue, 3rd Floor
Portland, OR 97201

Attn: Joe Glicker, PE
Design-Build-Operate Director

Phone No.: (503) 736-4378
Facsimile No.: (503) 736-2022
Email: joseph.glicker@ch2m.com

with a copy to:

CH2M HILL Engineers, Inc.
9191 S. Jamaica St.
Englewood, CO 80112

Attn: Catherine Lang, Esq.
Corporate Counsel

Phone No.: (720) 286-4205
Facsimile No.: (720) 286-8305
Email catherine.lang@ch2m.com

(C) City Notice Address. Notices required to be given to the City shall be addressed as follows:

City of Wilsonville
Office of the City Manager
29799 SW Town Center Loop E
Wilsonville, OR 97070

Attn: Bryan Cosgrove
City Manager

Phone: (503) 570-1503
Facsimile No.: (503) 682-1015
Email: cosgrove@ci.wilsonville.or.us

with a copy to:

City of Wilsonville
Legal Department
29799 SW Town Center Loop E
Wilsonville, OR 97070

Attn: Michael Kohlhoff, Esq.
City Attorney

Phone: (503) 570-1507
Facsimile No.: (503) 682-1015
Email kohlhoff@ci.wilsonville.or.us

(D) Contract Administrator Notice Address. Notices required to be given to the Contract Administrator shall be addressed as follows:

City of Wilsonville
Community Development Department
29799 SW Town Center Loop E
Wilsonville, OR 97070

Attn: Michael Bowers
Community Development Director

Phone: (503) 682-4960
Facsimile No.: (503) 682-1015
Email: bowers@ci.wilsonville.or.us

with a copy to:

City of Wilsonville
Public Works Department
29799 SW Town Center Loop E
Wilsonville, OR 97070

Attn: Delora Kerber, P.E.
Public Works Director

Phone No.: (503) 570-1542
Facsimile No.: (503) 682-8816
Email: kerber@ci.wilsonville.or.us

with a copy to the City at the address provided in (C) above.

(E) City Engineering Representative Notice Address. Notices required to be given to the City Engineering Representative shall be addressed as follows:

City of Wilsonville
Engineering Division
29799 SW Town Center Loop E
Wilsonville, OR 97070

Attn: Michael Stone, P.E.
City Engineer

Phone No.: (503) 682-4960
Facsimile No.: 503-682-1015
Email: stone@ci.wilsonville.or.us

with a copy to the City at the address provided in (C) above.

SECTION 17.19. NOTICE OF LITIGATION. In the event the Company or City receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Managed Assets, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings.

SECTION 17.20. FURTHER ASSURANCES. The City and Company each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this DBO Agreement. The City and the Company, in order to carry out this DBO Agreement, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this DBO Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this DBO Agreement to be executed by their duly authorized representatives as of the day and year first above written.

City of Wilsonville, Oregon

CH2M HILL Engineers, Inc.

By: _____

By:

Name: Bryan Cosgrove

Name: _____
Printed

Title: City Manager

Title: _____

[Company Seal]

ATTEST:

ATTEST:

City Recorder

Printed Name: _____

APPROVED AS TO FORM:

City Attorney

TRANSACTION FORMS
TO THE
DESIGN-BUILD-OPERATE AGREEMENT
FOR
WASTEWATER TREATMENT PLANT IMPROVEMENTS
Project No. 2082

between

THE CITY OF WILSONVILLE, OREGON

and

CH2M HILL ENGINEERS, INC.

Dated as of

_____, 2011

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TRANSACTION FORM A
FORM OF GUARANTY AGREEMENT

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GUARANTY AGREEMENT

from

CH2M HILL COMPANIES, LTD.

to

THE CITY OF WILSONVILLE, OREGON

Dated as of

_____, 2011

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of _____, 2011, between CH2M HILL Companies, Ltd., a corporation organized and existing under the laws of the State of Delaware (together with any permitted successors and assigns hereunder, the "Guarantor"), and the City of Wilsonville, Oregon, a municipal corporation organized and existing under and by virtue of the laws of the State of Oregon (the "City").

In order to induce the execution and delivery of the Design-Build-Operate Agreement for Wastewater Treatment Plant Improvements, Project No. 2082, dated as of _____, 2011, between the Company and the City of Wilsonville, Oregon (the "DBO Agreement") by the City and in consideration thereof, the Guarantor agrees as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the DBO Agreement.

"Obligations" means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of the DBO Agreement.

"Transaction Agreement" means any agreement entered into by the Company or the City in connection with the transactions contemplated by the DBO Agreement, including the DBO Agreement and any supplements thereto.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms "hereto", "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

(B) Plurality. Words importing the singular number mean and include the plural number and vice versa.

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

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Except as provided in the DBO Agreement with respect to the City Indemnitees, nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

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

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of Oregon.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

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

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

(3) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to the City, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the DBO Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE CITY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the DBO Agreement (including all amendments and supplements thereto) to, or for the account of, the City, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, (i) the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty; and the combined liability of the Guarantor under this Guaranty and the Company under the DBO Agreement shall be subject to the applicable limitations set forth in Section 14.3 of the DBO Agreement.

SECTION 3.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City: (1) file suit or proceed to obtain a personal judgment against the Company or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the DBO Agreement or required to be given to the Company under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the DBO Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the City's right to proceed directly against the Guarantor, the City (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in

accordance with their respective terms and conditions, and, except as provided in Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the City or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor), except as provided in Section 3.4:

(1) the extension or renewal of this Guaranty or the DBO Agreement up to the specified Terms of each agreement;

(2) any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Guaranty or the DBO Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(3) any permitted transfer or assignment of rights or obligations under the DBO Agreement or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Managed Assets or in, to or under any of the Transaction Agreements;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or any other person in any Transaction Agreement or in the Managed Assets;

(5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;

(6) any failure of title with respect to all or any part of the respective interests of any person in the Managed Asset Sites or the Managed Assets;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Section 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

(9) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the City to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the DBO Agreement;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the DBO Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the DBO Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the DBO Agreement or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the DBO Agreement or the Guarantor has expressly waived in Sections 3.3 and 3.5 hereof), and the obligations of the

Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the DBO Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the City of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the DBO Agreement or Applicable Law as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Company) or security;
- (7) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;
- (8) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Company; and
- (9) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder, unless such omission or delay would relieve or discharge the Company from such obligations under the DBO Agreement.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the City on demand all Fees and Costs, incurred by or on behalf of the City in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that the City

incurs in performing any of its obligations under the DBO Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the DBO Agreement, or any applicable Transaction Agreement or the Company's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it; or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Oregon, and (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (2) any such transaction does not result in a change in the Guarantor's financial condition that would adversely affect the ability of the Guarantor to perform its obligations under this Guaranty Agreement.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section.

SECTION 4.2. ASSIGNMENT. Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of the City.

SECTION 4.3. QUALIFICATION IN OREGON. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of Oregon.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the courts of the State located in Clackamas County, provided however, when circumstances allow for federal jurisdiction (based on diversity of citizenship or otherwise), all such Legal Proceedings shall be solely and exclusively maintained in federal court having jurisdiction over Clackamas County, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of

such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and the Guarantor.

SECTION 4.7. LIABILITY. It is understood and agreed to by the City that nothing contained herein shall create any obligation of, or right to look, to any director, officer, employee or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES.

(A) Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) City Notice Address. Notices required to be given to the City shall be addressed as follows:

City of Wilsonville
Office of the City Manager
29799 SW Town Center Loop E
Wilsonville, OR 97070

Attn: Bryan Cosgrove
City Manager

Phone: (503) 570-1503
Facsimile No.: (503) 682-1015
Email: cosgrove@ci.wilsonville.or.us

with a copy to:

City of Wilsonville
Legal Department
29799 SW Town Center Loop E

Wilsonville, OR 97070

Attn: Michael Kohlhoff, Esq.
City Attorney

Phone: (503) 570-1507
Facsimile No.: (503) 682-1015
Email kohlhoff@ci.wilsonville.or.us

(C) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

[GUARANTOR]
[ADDRESS]
Attn: _____

Facsimile No.: _____

with a copy to:

[GUARANTOR]
[ADDRESS]
Attn: _____

Facsimile No.: _____

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

CH2M Hill Companies, Ltd.,
as Guarantor

By: _____

Name: Steven Mathews

Title: Treasurer

ACCEPTED AND AGREED TO BY:
City of Wilsonville, Oregon

By: _____

Name: Bryan Cosgrove

Title: City Manager

ATTEST:

City Recorder

APPROVED AS TO FORM:

City Attorney

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TRANSACTION FORM B
FORM OF MANAGEMENT SERVICES PERFORMANCE BOND

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MANAGEMENT SERVICES PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That, we, CH2M HILL Engineers, Inc., (hereinafter called the "Company"), as principal, and _____, a corporation duly organized under the laws of the State of _____, having its principal place of business at _____, and authorized as a surety in the State of Oregon (hereinafter called the "Surety"), as surety, are held and firmly bound unto the City of Wilsonville, Oregon (hereinafter called the "Obligee"), as obligee, in the sum of [AMOUNT EQUAL TO THE CURRENT ONE-YEAR ANNUAL SERVICE FEE Dollars (\$_____)], for the payment of which we, the Company and the Surety, bind ourselves, our heirs, representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Company has entered into the annexed Design-Build-Operate Agreement for Wastewater Treatment Plant Improvements, Project No. 2082, dated _____, with the City of Wilsonville, Oregon, that includes certain "Management Services" as defined in the DBO Agreement, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Company shall well and truly keep, do and perform each and every, all and singular, the matters and things related to such Management Services as defined in the DBO Agreement set forth and specified to be by the Company kept, done and performed, at the times and in the manner in the DBO Agreement specified, or shall pay over, make good and reimburse to the above named Obligee, all loss and damage (subject to the terms, conditions and limitations set forth in the DBO Agreement) which the Obligee may sustain by reason of failure or default on the part of the Company so to do, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect, subject, however, to the following conditions:

- 1) No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
- 2) The liability of the Company and the Surety under this bond is limited to the performance of the DBO Agreement for the term _____ to _____. The dates covered by this bond may be extended for annual periods, all such extensions to be evidenced by a continuation certificate or by a new bond, duly executed by an authorized representative of the Surety and the Company. However, in no event will the Surety be held liable under this bond for its failure to provide extension certificates and/or additional bonds for any subsequent period.
- 3) The liability of the Surety shall not be cumulative from year to year, regardless of the original term of the DBO Agreement, or number of extensions hereto.

- 4) The liability of the Surety shall not exceed the penal sum above stated.
- 5) The Surety may, at its option, make any payment under the bond by check issued jointly to the joint Obligees.

No claim, suit or action under this bond by reason of any such default shall be brought against the Surety unless asserted or commenced within 24 months after the effective date of any termination or cancellation of this bond.

Nonpayment of the bond premium shall not invalidate this bond nor shall the City be obligated for the payment thereof.

IN WITNESS WHEREOF, the above bounded Company and the above bounded Surety have hereunto set their hands this ____ day of _____, 2011.

(Seal)

CH2M HILL Engineers, Inc.,
Company

By _____

Title

(Surety's Corporate Seal)

Fidelity and Deposit Company of Maryland
Zurich American Insurance Company
Federal Insurance Company
Liberty Mutual Insurance Company,
Surety

By _____

Title

1400 American Lane, Schaumburg, IL
60196; 1400 American Lane, Schaumburg,
IL 60196; 15 Mountain View Road, Warren,
NJ 07059; 175 Berkeley Street, Boston, MA
02116,
Address of Surety

Approved:

Bryan Cosgrove, City Manager
City of Wilsonville

Approved as to form and execution:

City Attorney, City of Wilsonville

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT OF MANAGEMENT SERVICES PERFORMANCE BOND

State of _____ }
County of _____ } ss.

On _____, before me, _____
Date (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared _____,
Name(s) of Signer(s)

personally known to me, or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

(Attach proof of authority of attorney in fact of Surety, if applicable.)

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TRANSACTION FORM C
FORM OF DESIGN-BUILD WORK PERFORMANCE BOND

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DESIGN-BUILD WORK PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, CH2M HILL Engineers, Inc. (the "Company"), as principal, and _____, a corporation duly organized under the laws of the State of _____, having its principal place of business at _____, and authorized as a surety in the State of Oregon (the "Surety"), as surety, are held and firmly bound unto the City of Wilsonville, Oregon (the "City"), in the sum of _____ dollars (\$_____) lawful money of United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, representatives, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Company has been awarded and is about to enter the annexed Design-Build-Operate Agreement for Wastewater Treatment Plant Improvements, Project No. 2082, dated _____, with the City of Wilsonville, Oregon, which includes design obligations and performance guarantees, and is required by the City to give this bond in connection with the execution of the DBO Agreement, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, if the Company shall well and truly do and perform all of the covenants and obligations of the DBO Agreement with respect to the Design-Build Work during the Design-Build Period and any alteration thereof made as therein provided, on its part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect during the Design-Build Period inclusive of the entire Design-Build Work warranty period; provided, however, that the obligations of the Surety shall not apply to those obligations that are solely and distinctly for operation and management of the project as stated in the DBO Agreement.

Any alterations in the work to be done, or the material to be furnished, which may be made pursuant to the terms of the DBO Agreement, shall not in any way release either the Company or the Surety thereunder, nor shall any extensions of time granted under the provisions of the DBO Agreement release either the Company or the Surety, and notice of such alterations or extensions of the DBO Agreement is hereby waived by the Surety.

If the City shall declare the Company to be in default of the DBO Agreement, and shall so notify the Surety, the Surety shall, within a reasonable time that shall not exceed 14 days, notify the City in writing of the manner in which the Surety will satisfy its obligations under this bond.

Nonpayment of the bond premium shall not invalidate this bond nor shall the City be obligated for the payment thereof.

IN WITNESS WHEREOF, the above bounded Company and the above bounded Surety have hereunto set their hands this _____ day of _____, 2011.

(Seal)

CH2M HILL Engineers, Inc.,
Company

By _____

Title

(Surety's Corporate Seal)

Fidelity and Deposit Company of Maryland
Zurich American Insurance Company
Federal Insurance Company
Liberty Mutual Insurance Company,
Surety

By _____

Title

1400 American Lane, Schaumburg, IL
60196; 1400 American Lane, Schaumburg,
IL 60196; 15 Mountain View Road, Warren,
NJ 07059; 175 Berkeley Street, Boston, MA
02116,
Address of Surety

Approved:

Bryan Cosgrove, City Manager
City of Wilsonville

Approved as to form and execution:

City Attorney, City of Wilsonville

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT OF DESIGN-BUILD WORK PERFORMANCE BOND

State of _____ }
County of _____ } ss.

On _____, before me, _____
Date (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared _____,
Name(s) of Signer(s)

personally known to me, or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

(Attach proof of authority of attorney in fact of Surety, if applicable.)

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TRANSACTION FORM D
FORM OF LABOR AND MATERIALS PAYMENT BOND

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LABOR AND MATERIALS PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, CH2M HILL Engineers, Inc. (the "Company"), as principal, and _____ a corporation duly organized under the laws of the State of _____, having its principal place of business at _____, and authorized as a surety in the State of Oregon (the "Surety"), as surety, are held and firmly bound unto the City of Wilsonville, Oregon (the "City"), for the use and benefit of claimants as hereinafter defined, in the sum of _____ dollars (\$ _____) lawful money of United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, representatives, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Company has been awarded and is about to enter the annexed Design-Build-Operate Agreement for Wastewater Treatment Plant Improvements, Project No. 2082, dated _____, with the City of Wilsonville, Oregon, which includes design obligations and performance guarantees, and is required by the City to give this bond in connection with the execution of the DBO Agreement, which is hereby referred to and made a part hereof as if fully set forth herein.

WHEREAS, the contract is a public contract, subject to the provisions of ORS Chapter 279C.

NOW, THEREFORE, if the Company, or its subcontractors, fails to pay any of the claimants as hereinafter defined for any materials, provisions, provender, equipment, or other supplies, used in, upon, for or about the performance of the Design-Build Work contracted to be done, or for any Design-Build Work or labor thereon of any kind, the Surety will pay for the same, in an amount not exceeding the sum specified above, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court; provided, however, that the obligations of the Surety shall not apply to those obligations that are solely and distinctly for operation and management of the project as stated in the DBO Agreement.

Any alterations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of the DBO Agreement, shall not in any way release either the Company or the Surety thereunder, nor shall any extensions of time granted under the provisions of the DBO Agreement release either Company or the Surety, and notice of such alterations or extensions of the DBO Agreement is hereby waived by the Surety.

A claimant is defend as a person claiming to have supplied labor or materials for the prosecution of the work provided for in the DBO Agreement, including any person having a direct contractual relationship with the Company or any Subcontractor (as defined in the DBO

Agreement), or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the State Unemployment Compensation Trust Fund or the Department of Revenue in connection with the performance of the DBO Agreement.

The Principal and the Surety hereby jointly and severally agree with the City that every claimant as herein defined who has not been paid in full before the expiration of a period of 90 days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, has an action on this bond for such sum or sums as may be justly due claimant, and may have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit or action.

No suit or action shall be commenced hereunder by any claimant:

- (a) Unless the claimant has sent the written notice required under ORS 279C.600 to Principal and to the City Attorney by registered or certified mail, or by hand delivery, no later than 120 days after the claimant last provided labor or furnished materials, or within 150 days if the claim is for a required contribution to a fund of an employee benefit plan;
- (b) Later than two years after the claimant last provided labor or materials;
- (c) Other than in a State court of competent jurisdiction in and for the county or other political subdivision of the State in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

Nonpayment of the bond premium shall not invalidate this bond nor shall the City be obligated for the payment thereof.

IN WITNESS WHEREOF, the above bounded Company and the above bounded Surety have hereunto set their hands this _____ day of _____, 2011.

(Seal)

CH2M HILL Engineers, Inc.,
Company

By _____

Title

(Surety's Corporate Seal)

Fidelity and Deposit Company of Maryland
Zurich American Insurance Company
Federal Insurance Company
Liberty Mutual Insurance Company,

Surety

By _____

Title

1400 American Lane, Schaumburg, IL
60196; 1400 American Lane, Schaumburg,
IL 60196; 15 Mountain View Road, Warren,
NJ 07059; 175 Berkeley Street, Boston, MA
02116,
Address of Surety

Approved:

Bryan Cosgrove, City Manager
City of Wilsonville

Approved as to form and execution:

City Attorney, City of Wilsonville

Notice: No substitution or revision to this bond form will be accepted

ACKNOWLEDGMENT OF OPERATIONS PERFORMANCE BOND

State of _____ }
County of _____ } ss.

On _____, before me, _____
Date (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared _____,
Name(s) of Signer(s)

personally known to me, or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

(Attach proof of authority of attorney in fact of Surety, if applicable.)

APPENDICES



Design-Build-Operate Agreement
For
Wastewater Treatment Plant Improvements
Project #2082

Appendices 1 through 15

July 7, 2011

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**Appendices to the Design-Build-Operate Agreement
For
Wastewater Treatment Plan Improvements
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Appendix 1 Description of Wastewater System

1.1 Purpose of Appendix

This appendix provides site location and mapping information for the City of Wilsonville's Wastewater System, including the existing Wilsonville Wastewater Treatment Plant (WWTP) Site and the Collection System, including the Lift Stations Sites. The Company shall perform Design-Build Work and/or Management Services at these locations as described in the DBO Agreement.

1.2 WWTP Site Location and Legal Description

The existing WWTP is located at 9275 SW Tauchman Street, Wilsonville, Oregon.

Figure 1-1 within **Appendix 1** shows the WWTP Site vicinity and location maps. The WWTP is located immediately adjacent to Interstate 5, a residential community, and a public park.

Figure 1-2 within **Appendix 1** shows the site map of the WWTP. The legal description for the WWTP Site is included in **Figures 1-3a** and **1-3b** within **Appendix 1**.

The Wastewater System Capital Improvements shall be constructed on the WWTP Site as described in **Appendix 4**.

1.3 Collection System

The City maintains over 66 miles of pipeline for collection and conveyance of sewage to the WWTP. There are 8 sewage Lift Stations in the City's Wastewater System as well. **Figure 1-4** within **Appendix 1** shows the majority of the Collection System, including the locations of the sewage Lift Stations, force mains, and gravity sewers. In addition, **Figure 1-5** within **Appendix 1** shows the pipe sizes for the existing public and private sewers as well as for the force mains. Locations of all existing manholes are also shown on this figure.

The Wastewater System Capital Improvements shall not include capital improvements to the Lift Stations.

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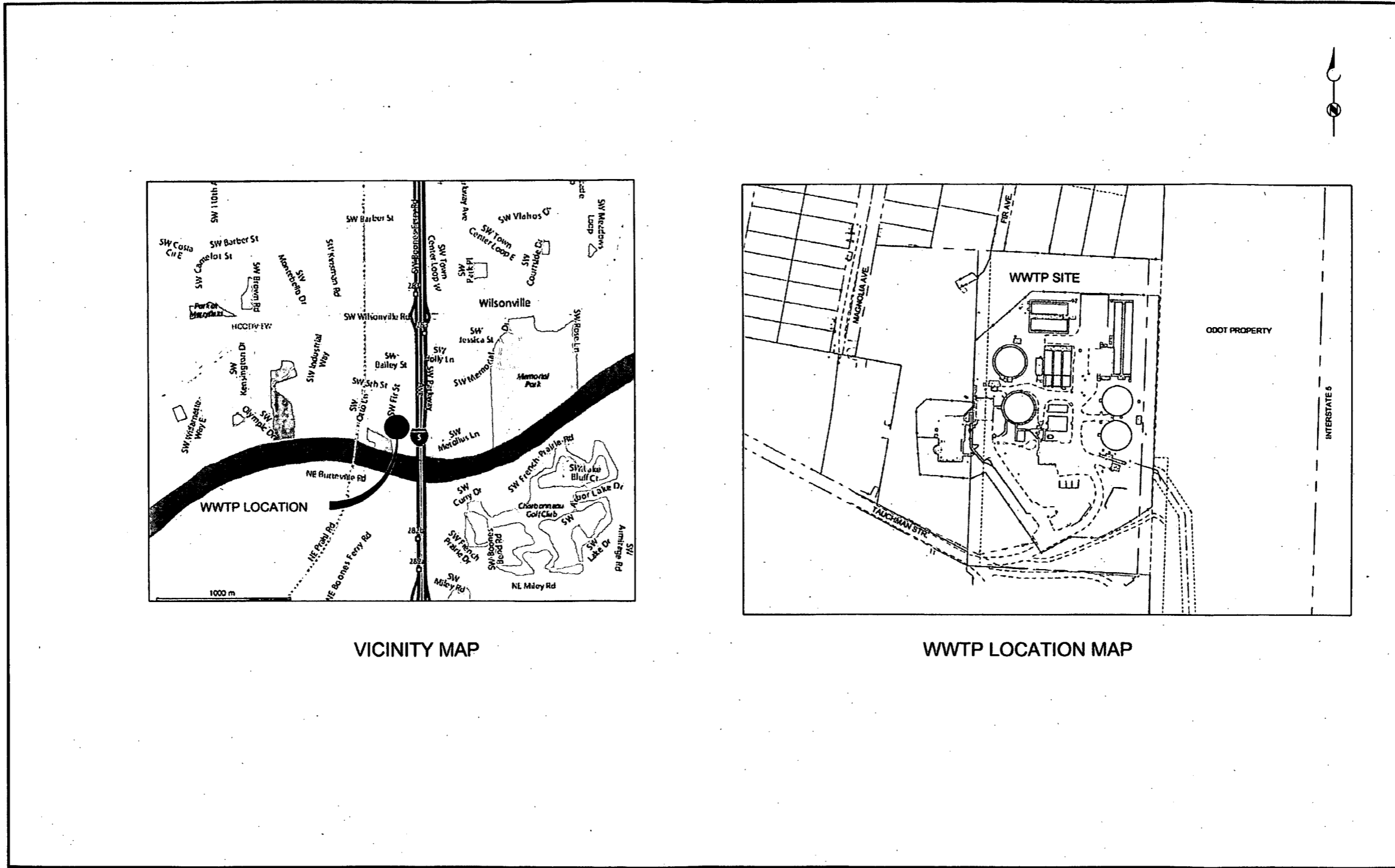


Figure 1-1. WWTP Site Vicinity and Location Maps

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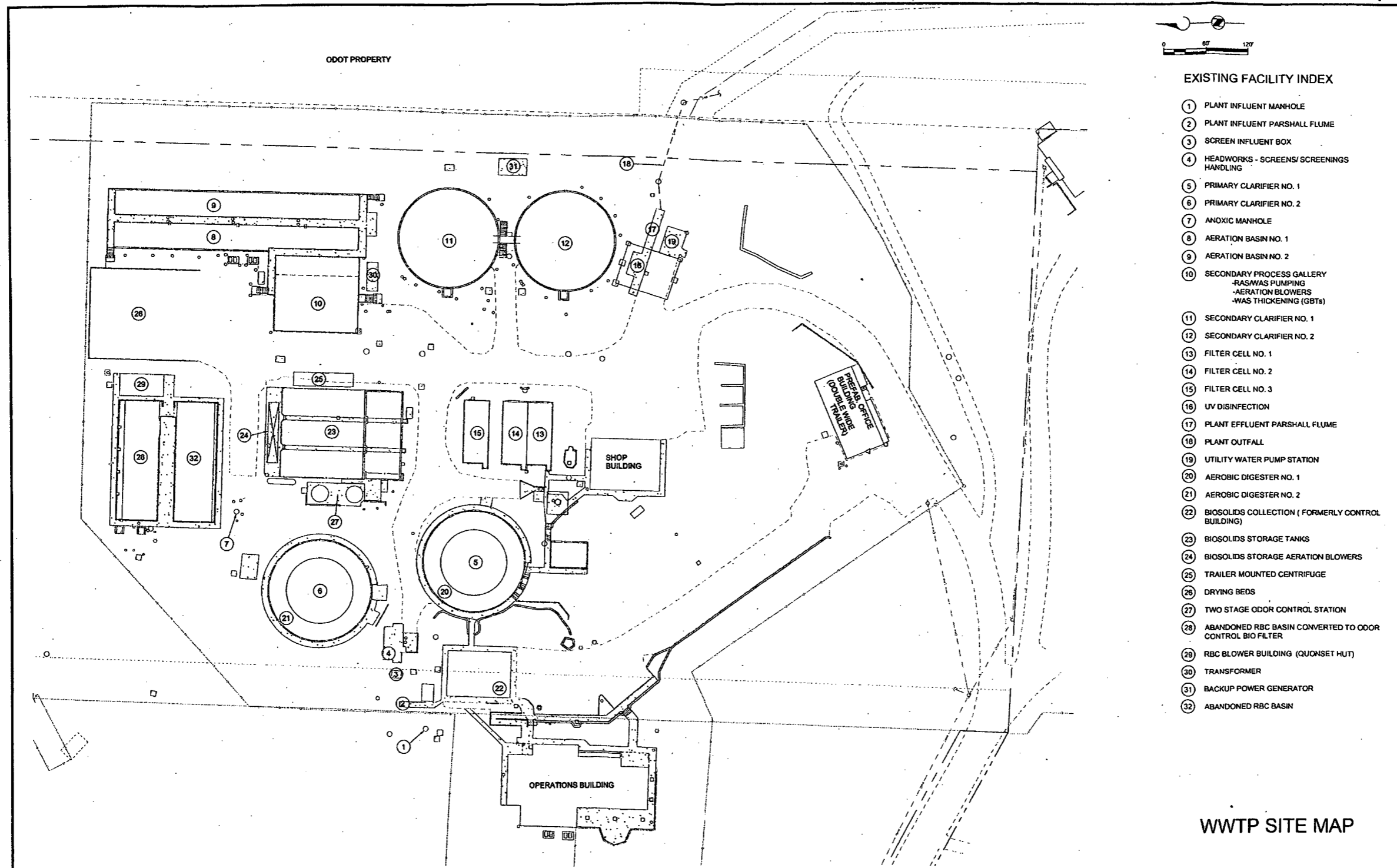
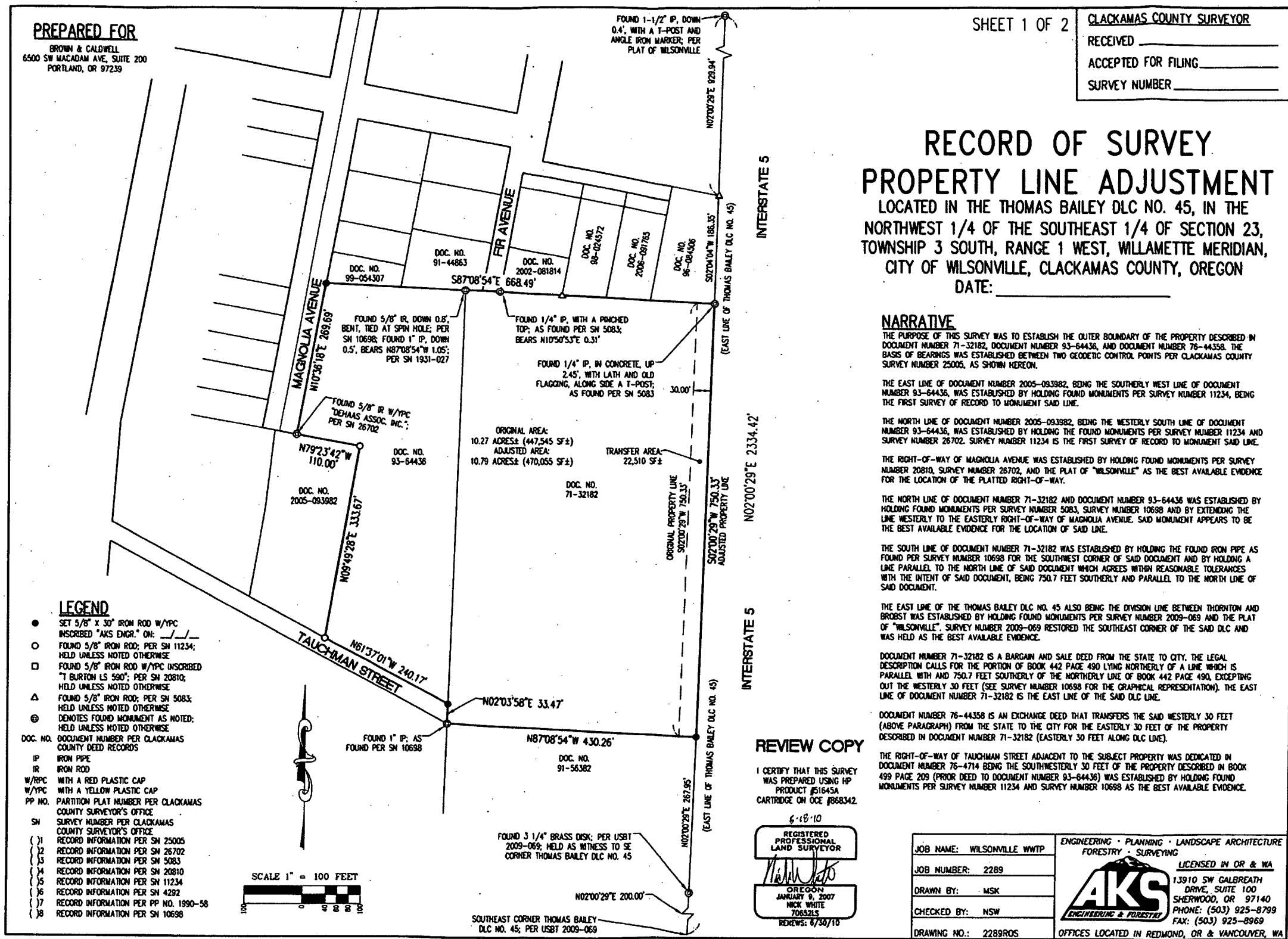


Figure 1-2. WWTP Site Map

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SHEET 1 OF 2
 CLACKAMAS COUNTY SURVEYOR
 RECEIVED _____
 ACCEPTED FOR FILING _____
 SURVEY NUMBER _____

RECORD OF SURVEY

PROPERTY LINE ADJUSTMENT

LOCATED IN THE THOMAS BAILEY DLC NO. 45, IN THE
 NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23,
 TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,
 CITY OF WILSONVILLE, CLACKAMAS COUNTY, OREGON
 DATE: _____

NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO ESTABLISH THE OUTER BOUNDARY OF THE PROPERTY DESCRIBED IN DOCUMENT NUMBER 71-32182, DOCUMENT NUMBER 93-64436, AND DOCUMENT NUMBER 76-44358. THE BASIS OF BEARINGS WAS ESTABLISHED BETWEEN TWO GEODETIC CONTROL POINTS PER CLACKAMAS COUNTY SURVEY NUMBER 25005, AS SHOWN HEREON.

THE EAST LINE OF DOCUMENT NUMBER 2005-093982, BEING THE SOUTHERLY WEST LINE OF DOCUMENT NUMBER 93-64436, WAS ESTABLISHED BY HOLDING FOUND MONUMENTS PER SURVEY NUMBER 11234, BEING THE FIRST SURVEY OF RECORD TO MONUMENT SAID LINE.

THE NORTH LINE OF DOCUMENT NUMBER 2005-093982, BEING THE WESTERLY SOUTH LINE OF DOCUMENT NUMBER 93-64436, WAS ESTABLISHED BY HOLDING THE FOUND MONUMENTS PER SURVEY NUMBER 11234 AND SURVEY NUMBER 26702. SURVEY NUMBER 11234 IS THE FIRST SURVEY OF RECORD TO MONUMENT SAID LINE.

THE RIGHT-OF-WAY OF MAGNOLIA AVENUE WAS ESTABLISHED BY HOLDING FOUND MONUMENTS PER SURVEY NUMBER 20810, SURVEY NUMBER 26702, AND THE PLAT OF "WILSONVILLE" AS THE BEST AVAILABLE EVIDENCE FOR THE LOCATION OF THE PLATTED RIGHT-OF-WAY.

THE NORTH LINE OF DOCUMENT NUMBER 71-32182 AND DOCUMENT NUMBER 93-64436 WAS ESTABLISHED BY HOLDING FOUND MONUMENTS PER SURVEY NUMBER 5083, SURVEY NUMBER 10698 AND BY EXTENDING THE LINE WESTERLY TO THE EASTERLY RIGHT-OF-WAY OF MAGNOLIA AVENUE. SAID MONUMENT APPEARS TO BE THE BEST AVAILABLE EVIDENCE FOR THE LOCATION OF SAID LINE.

THE SOUTH LINE OF DOCUMENT NUMBER 71-32182 WAS ESTABLISHED BY HOLDING THE FOUND IRON PIPE AS FOUND PER SURVEY NUMBER 10698 FOR THE SOUTHWEST CORNER OF SAID DOCUMENT AND BY HOLDING A LINE PARALLEL TO THE NORTH LINE OF SAID DOCUMENT WHICH AGREES WITHIN REASONABLE TOLERANCES WITH THE INTENT OF SAID DOCUMENT, BEING 750.7 FEET SOUTHERLY AND PARALLEL TO THE NORTH LINE OF SAID DOCUMENT.

THE EAST LINE OF THE THOMAS BAILEY DLC NO. 45 ALSO BEING THE DIVISION LINE BETWEEN THORNTON AND BROBST WAS ESTABLISHED BY HOLDING FOUND MONUMENTS PER SURVEY NUMBER 2009-069 AND THE PLAT OF "WILSONVILLE". SURVEY NUMBER 2009-069 RESTORED THE SOUTHEAST CORNER OF THE SAID DLC AND WAS HELD AS THE BEST AVAILABLE EVIDENCE.

DOCUMENT NUMBER 71-32182 IS A BARGAIN AND SALE DEED FROM THE STATE TO CITY. THE LEGAL DESCRIPTION CALLS FOR THE PORTION OF BOOK 442 PAGE 490 LYING NORTHERLY OF A LINE WHICH IS PARALLEL WITH AND 750.7 FEET SOUTHERLY OF THE NORTHERLY LINE OF BOOK 442 PAGE 490, EXCEPTING OUT THE WESTERLY 30 FEET (SEE SURVEY NUMBER 10698 FOR THE GRAPHICAL REPRESENTATION). THE EAST LINE OF DOCUMENT NUMBER 71-32182 IS THE EAST LINE OF THE SAID DLC LINE.

DOCUMENT NUMBER 76-44358 IS AN EXCHANGE DEED THAT TRANSFERS THE SAID WESTERLY 30 FEET (ABOVE PARAGRAPH) FROM THE STATE TO THE CITY FOR THE EASTERLY 30 FEET OF THE PROPERTY DESCRIBED IN DOCUMENT NUMBER 71-32182 (EASTERLY 30 FEET ALONG DLC LINE).

THE RIGHT-OF-WAY OF TAUCHMAN STREET ADJACENT TO THE SUBJECT PROPERTY WAS DEDICATED IN DOCUMENT NUMBER 76-4714 BEING THE SOUTHWESTERLY 30 FEET OF THE PROPERTY DESCRIBED IN BOOK 499 PAGE 209 (PRIOR DEED TO DOCUMENT NUMBER 93-64436) WAS ESTABLISHED BY HOLDING FOUND MONUMENTS PER SURVEY NUMBER 11234 AND SURVEY NUMBER 10698 AS THE BEST AVAILABLE EVIDENCE.

REVIEW COPY

I CERTIFY THAT THIS SURVEY WAS PREPARED USING HP PRODUCT #51645A CARTRIDGE ON OCE #868342.

6-18-10
 REGISTERED PROFESSIONAL LAND SURVEYOR
 Nick White
 OREGON
 JANUARY 9, 2007
 NICK WHITE
 7065215
 RENEWS: 6/30/10

JOB NAME: WILSONVILLE WWTP	ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE FORESTRY • SURVEYING
JOB NUMBER: 2289	LICENSED IN OR & WA
DRAWN BY: MSK	13910 SW GALBREATH DRIVE, SUITE 100 SHERWOOD, OR 97140
CHECKED BY: NSW	PHONE: (503) 925-8799 FAX: (503) 925-8969
DRAWING NO.: 2289ROS	OFFICES LOCATED IN REDMOND, OR & VANCOUVER, WA

Figure 1-3a. Legal Description of WWTP Site

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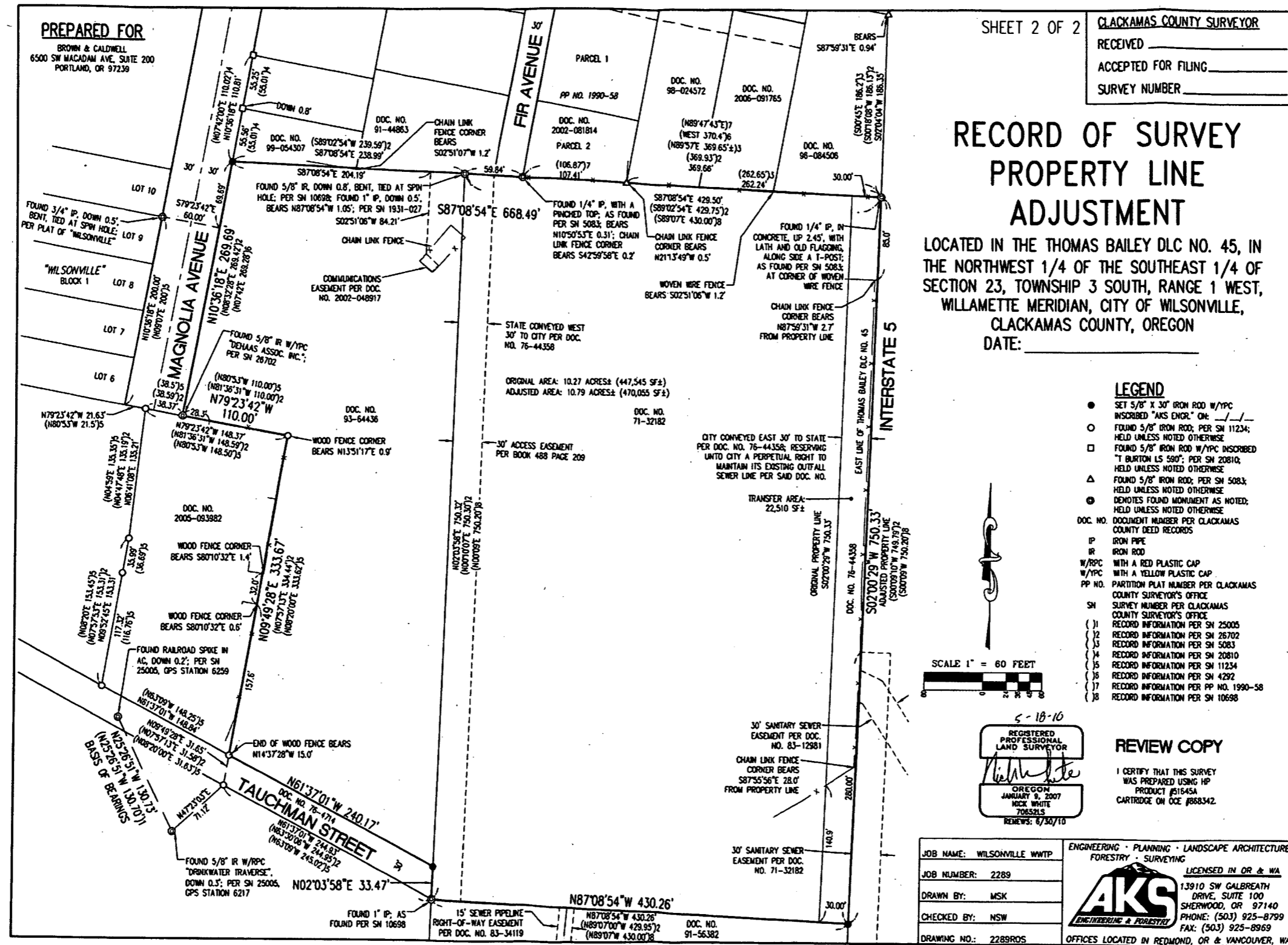
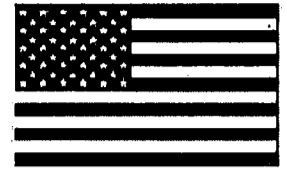


Figure 1-3b. Legal Description of WWTP Site

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City of Wilsonville



Wastewater Treatment and Collection System

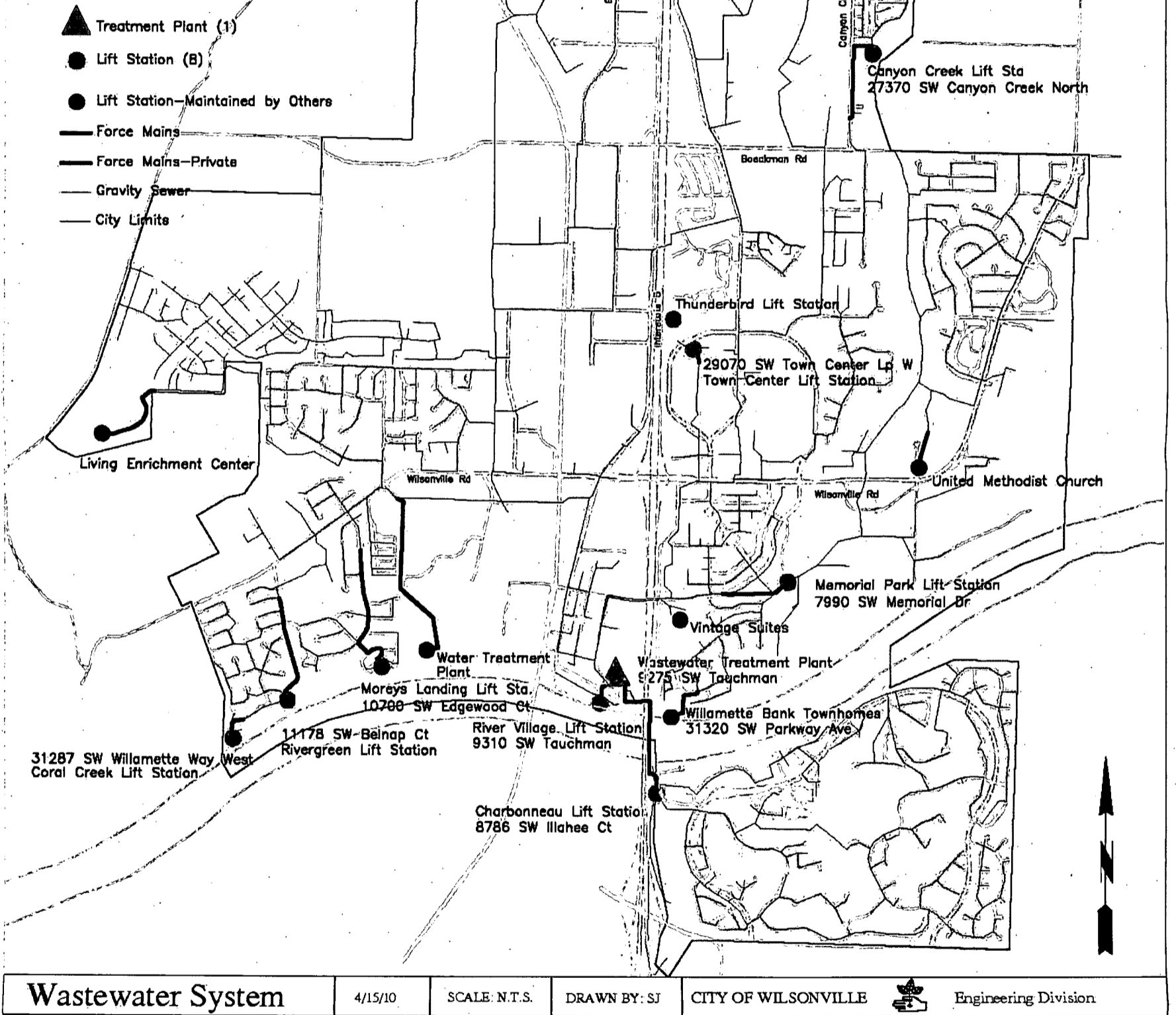


Figure 1-4. Collection System and WWTP Map

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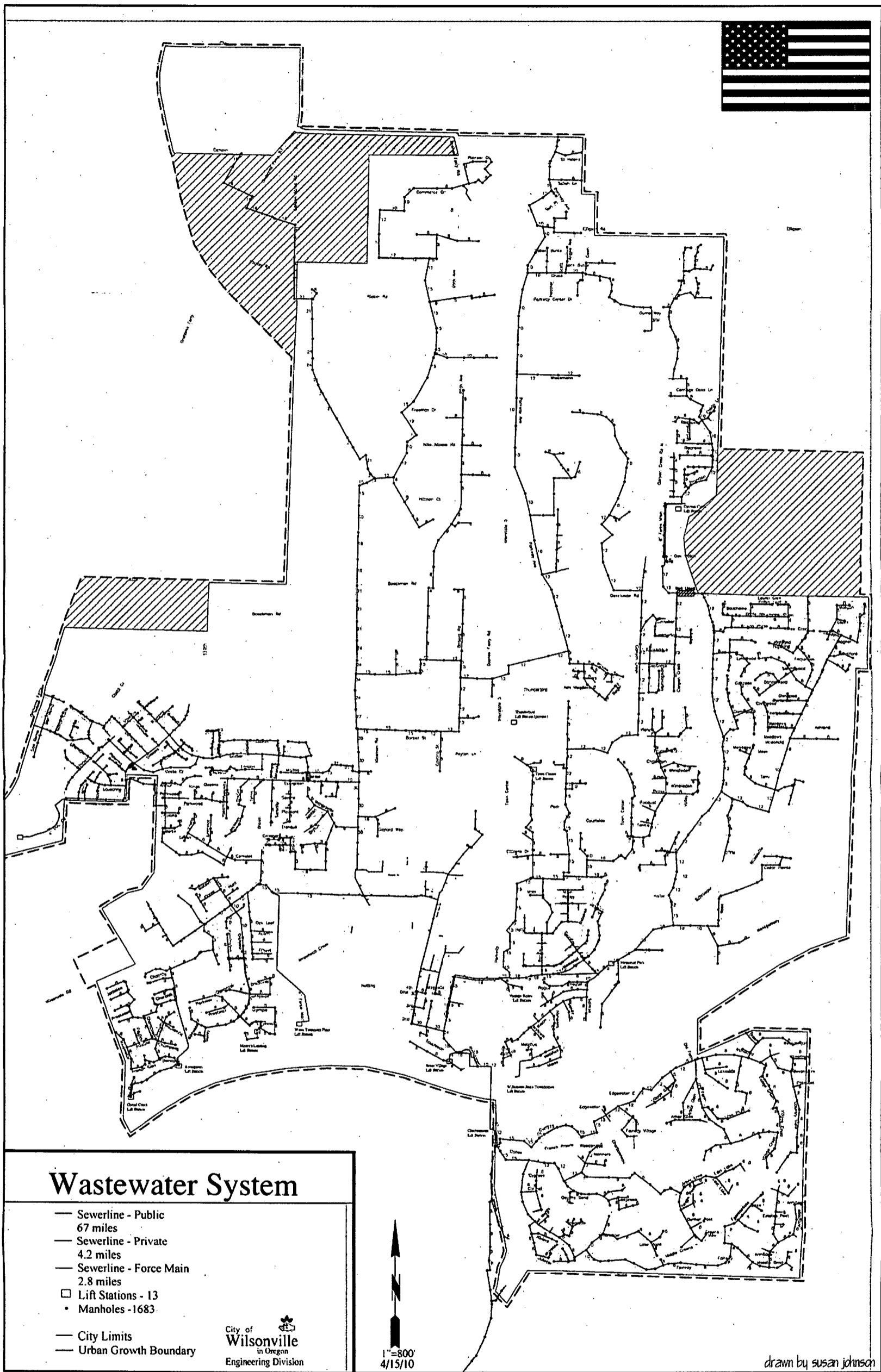


Figure 1-5. Collection System Pipe Sizes and Manhole Location

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Appendix 2 Transition Plan, Transition Period Schedule and Designated Employees

2.1 Purpose of Appendix

This appendix supplements **Articles IV** and **V** of the DBO Agreement and presents the Company's Transition Plan for the transfer of Managed Assets, the Company's responsibilities related to the integration of the Designated Employees into the private operations of the Company, and the Company's Transition Period schedule. The Transition Plan includes the asset management responsibilities of rolling stock, major equipment, fixed assets, inventory of supplies, as well as the Company's assumption of oversight of existing City contracts with outside service providers at the WWTP.

2.2 Transition Plan and Transition Period Schedule

Exhibit 2-1 within **Appendix 2** presents the Company's Transition Plan including the Transition Period schedule. This plan describes in detail when and how the Company shall meet the requirements of **Article IV, subsection 4.2(A)** of the DBO Agreement during the Transition Period in terms of the transfer of Designated Employees from City employment to Company employment and of the transfer of Managed Asset responsibilities. The Transition Plan and Transition Period schedule includes:

- description of all meetings, orientations, workshops, correspondence, and other procedures or activities required to be performed by the Company during the Transition Period in accordance with **Article V** in order to provide a smooth integration of the Designated Employees into the private operations of the Company
- description of management, technical, administrative, labor relations and other personnel necessary for the Company to ensure orderly transfer of management responsibilities for each category of Managed Assets (including rolling stock, major equipment, fixed assets, inventory of supplies, and other categories of Transferred Property identified by the City or the Company) from the City to the Company in accordance with **Article IV** and as it relates to **Attachments 2-1 and 2-2** of this Appendix and the Company's preliminary Asset Management Plan in **Exhibit 11-1** within **Appendix 11**
- submittal of the draft O&M Plan update for pre-Acceptance
- submittal of draft and final Asset Management Plans for pre-Acceptance
- schedule of meetings and activities required to accomplish the transfer of Managed Assets within the Transition Period
- clear delineation of responsibilities of Company and City
- discussion of Managed Asset inventory compiled jointly by the City and the Company and condition assessment that shall occur in accordance with **Article IV, subsection 4.4(A)(4)** of the DBO Agreement

- assumption of oversight and/or integration of existing services at the WWTP currently performed by outside service providers under separate contract as noted in **Article IV, Section 4.6**
- notification of DEQ within 30 days of the Contract Date of any changes to the Principal Designated Operator
- application and estimated approval dates for Governmental Approvals (if any) that the Company must obtain prior to the Commencement Date; and
- submittal dates for the Company to provide bonds and insurance to the City.

In accordance with **Article IV, Sections 4.2 and 4.4**, the Transition Plan must be implemented prior to the Commencement Date.

2.3 Designated Employees Salary and Benefits

The Company shall submit their compensation structure for all Designated Employees for City approval prior to the Commencement Date. This information shall be confidential.

Exhibit 2-1. Transition Plan and Transition Period Schedule

The following is the anticipated schedule for activities during the Transition Period. Actual timing of activities may vary from the anticipated schedule based upon the actual situations encountered during the Transition Period. Company shall notify the City regarding any deviations from the schedule below.

Week	Major Transition Period Activities
Week 1	<ol style="list-style-type: none"> 1. The Company will begin implementing its responsibilities under the Transition Plan set forth in the DBO Agreement and Exhibit 2-1 to ensure the orderly transfer of management responsibility for the Managed Assets from the City to the Company. 2. The Company will submit to the City the contact information specified in Article VI, Section 6.6 (Service Coordination and Contract Administration). 3. The Company transition staff begins organizing transition activities. 4. The Company and the City review and synchronize transition plans and set dates for milestone meetings. 5. The Company will provide audited financial statements of the Company for the most recently completed fiscal year and quarterly period. 6. The Company will provide to the City a certificate of an authorized officer of the Company and the Guarantor confirming representations of each set forth in Article II, Section 2.1. 7. The City will provide to the Company a certificate of an authorized officer of the City confirming representations set forth in Article II, Section 2.1. 8. The Company and the City exchange contract documents pertaining to existing service contracts with the City, to be assumed by the Company per Article IV, Section 4.6. The City will also provide to the Company a comprehensive listing of all other vendors, service providers and suppliers. 9. The Company and the City prepare and send information letter to vendors, services, and goods providers informing them that the operator transition will take place on the Commencement Date. 10. The Company and the City set schedule for a weekly transition milestone meeting to review transition activities and progress; meetings will be onsite or via telephone conference call. 11. The City assembles lists of WWTP projects or activities underway or scheduled to start and: <ul style="list-style-type: none"> o are scheduled to be completed before the Commencement Date o scheduled to start and be completed before the Commencement Date o are underway or will start before the Commencement Date but are not expected to be completed before the Commencement Date 12. The Company posts job opportunity advertisements (if needed to supplement staffing plan).
Week 2	<ol style="list-style-type: none"> 13. The Company evaluates SCADA and related I&C systems and begins developing recommendations. 14. The Company contacts all vendors, services and goods providers, and new suppliers which will be managed by the Company to arrange accounts for the Company as required. 15. The Company arranges for meeting with DEQ for formal introductions and to discuss transition plans, including any changes to the Principal Designated Operator. 16. The Company interviews prospective candidates needed to meet its staffing plan. 17. The Company begins work on treatment, management, and regulatory systems orientation; thorough health and safety review; laboratory practices and policies evaluation; housekeeping plan; maintenance management; I&C evaluation; process control evaluation; chemical utilization evaluation; energy audit, along with strategies for control improvements that could save energy or increase process performance, and other administrative activities. 18. The Company will also begin preparing a communications plan, and developing the Emergency Response Plan, which will be completed by the end of the Transition Period.

Week	Major Transition Period Activities
Week 3	<ul style="list-style-type: none"> 19. The Company and the City meet to review progress of Transition Plan. 20. The Company will submit to the City certificates of insurance naming the City as an "additional insured" for all Required Management Period Insurance specified in the DBO Agreement. 21. The Company issues offer of employment to selected operator position(s) candidate(s) with an employment start date of the Commencement Date. 22. The Company informs the City of finalized staffing roster. 23. The Company holds project staff orientation. 24. The Company and City issue information notices to all system customers regarding transition of services to the Company effective on the Commencement Date, and important contact information is provided with notices.
Week 4	<ul style="list-style-type: none"> 25. The Company and the City meet to review progress of Transition Plan. 26. The Company will obtain and deliver to the City a Management Services Performance Bond, as required by the Agreement. 27. The Company conducts operator shadowing, vendor training, etc. 28. The Company confirms with all vendors and goods and services suppliers that all arrangements are completed to facilitate uninterrupted service and supply from the Commencement Date forward.
Week 5	<ul style="list-style-type: none"> 29. The Company will prepare drafts and provide to the City the plans required pursuant to Appendix 10 to the extent such plans are preconditions of the Commencement Date. This includes the Company's preparation of an update to the City's existing Operation and Maintenance (O&M) Plan for City review noting any deviations from the City's existing O&M Plan that will be implemented by the Company between the Commencement Date and the Construction Date as well as a draft Asset Management Plan pursuant to Appendix 11 for the period from the Commencement Date until Acceptance.
Week 6	<ul style="list-style-type: none"> 30. The Company starts first week of steady-state O&M. 31. The Company and the City meet to review final details of transition activity to tie up loose ends. 32. The Company commences installation of CMMS and other project and data management systems. 33. The Company submits complete applications and takes all other steps which are necessary to obtain all Governmental Approvals required to be obtained to begin Management Services.
Week 7	<ul style="list-style-type: none"> 34. The Company steady-state operations takeover begins. 35. The Company begins review of CMMS and other project and data management systems.
Week 8	<ul style="list-style-type: none"> 36. The Company finalizes transfer of Designated Employees. The Company completes its transition obligations with respect to the Designated Employees, as set forth in the DBO Agreement. 37. The Company will finalize and provide to the City the final Asset Management Plan for the period from the Commencement Date until Acceptance. 38. Completion of inventory and valuation in accordance with Article IV, subsection 4.4(A)4.

Additional Tasks Related to Transfer of Designated Employees

The Company will also meet with Designated Employees for a comprehensive treatment, management, and regulatory systems orientation. The purpose of this orientation will be to apprise the Company of any ongoing operations and compliance issues that require special attention, and to develop an understanding of the priority hierarchy of technical issues affecting operations and compliance.

Job descriptions for each WWTP operator position will be refined after a needs assessment for each position. A revised, in-depth list of skill sets will specify the ideal combination of experience and skills needed for each position.

The Company will advertise, recruit, and source candidates for any positions that will not be filled by Designated Employees.

For Designated Employees, the Company will work with the City to prepare employee communications and materials. Workshops and meetings will be used to communicate important information about the project and the transition process, as well as important information about the Company to each Designated Employee. Each Designated Employee will receive a schedule for informational workshops. These workshops, for employees and their spouses, will introduce the Company's culture, compensation, and benefits programs.

Each Designated Employee will have an interview with the Company to discuss the employee's personal job history and experience, and their specific ideas for improving facility performance. This interactive process will allow individuals to ask any specific questions that they may have regarding the Company, their job, and their compensation potential. The Company also will provide Designated Employees access to representatives from the Company's Employee Assistance Program to help them manage personal stress related to the project transition.

Every qualifying new employee will receive a specific job offer clearly detailing a job title, pay rate, exempt or non-exempt status, and a complete position description. The Company's human resources and benefits specialists will provide a benefits enrollment package and help new employees complete enrollment paperwork.

At the Commencement Date, the Company will conduct a New Employee Satisfaction Survey. Based on this survey, the Company will make every effort to answer and alleviate any continuing concerns employees may have. Six months after the Commencement Date, the Company will survey employees again to see if employee expectations have been met. As necessary, a Morale Improvement Plan will be updated and the Company will continue to survey employees as necessary to address any ongoing issues.

Once the Designated Employee staff transition is complete and ongoing roles are established, the Company will implement ongoing training and development with an initial target for every employee to receive approximately 30 hours of training within the first year and every year thereafter (including 10 hours of safety training). This will include training in health and safety, operations/ technical and administrative procedures, quality management, certification, and other courses designed to improve skills.

Attachment 2-1. Lab Equipment Inventory

Equipment	Value	Purchase Date	Condition (Poor-Fair-Good)
Thelco Lab Oven (TSS)	\$ 2,600	Nov-98	Good
Idexx Quanti-tray sealer	\$ 4,000	Aug-00	Good
VWR 535 Coliform incubator	\$ 3,000	Sep-01	Good
Market Forge Autoclave	\$11,000	2009	Good
Thermolyne 48000 Muffle Furnace	\$ 3,000	Feb-98	Fair
Hach 2100N Turbidimeter	\$ 2,000	Sep-01	Good
Hach DR 2800 Colorimeter	\$ 3,200	Jul-07	Good
Orion 720 A pH/ammonia meter	\$ 1,300	Jul-06	Fair
Orion 720 A+ pH meter	\$ 1,300	Aug-06	Fair
Thermo BOD 815 incubator	\$ 4,500	Nov-97	Good
Sartorius Balance (TSS)	\$ 2,500	Feb-98	Good
Sartorius Balance (TS)	\$ 1,500	Aug-99	Good
Lab Line Sample Refrigerator	\$ 6,000	Feb-98	Good
#1 ISCO Model 3710 Composite Samplers	\$ 4,700	2001?	Good
#2 ISCO Model 3710 Composite Samplers	\$ 4,700	2001?	Good
#3 ISCO Model 3710 Composite Samplers	\$ 4,700	2001?	Fair
#4 ISCO Model 3710 Composite Samplers	\$ 4,700	prior to 1997	Fair
#5 ISCO Model 3710 Composite Samplers	\$ 4,700	prior to 1997	Fair
Barnstead Nanopure Ultrapure Water System	\$ 5,000	Feb-98	Good
Labconco Steam Dishwasher	\$ 9,000	May-97	Poor
#1 Boekel 1493 Water Baths (each)	\$ 2,000	Nov-97	Fair
#2 Boekel 1493 Water Baths (each)	\$ 2,000	Nov-97	Fair
Hach HQ 40D BOD DO Meter	\$ 1,700	Feb-09	Good
Other Equipment			
Tuttenauer 2540E Autoclave	-	Jul-01	-
Lindberg Blue M Waterbath	-	Apr-98	-
Hach DR 3000 Spectrophotometer	-	-	-

Attachment 2-2. Rolling Stock and Mobile Equipment

Auto/ Item #	Year	Make/Description	VIN#	Serial #	Model #	Dept.	Auto	Equip.	Comp	Coll.	Value
0047	-	Onan Generator	-	0672461527	-	S1	-	-	-	-	\$ 23,000
0055	-	Thompson Diaphragm	-	4DGB17	-	S9	-	-	-	-	\$ 4,500
0060	-	John Deere Pump	-	T04045T422133	-	S14	-	-	-	-	\$ 11,750
0062	-	Ehco Hose Reel	-	9371832	-	S16	-	-	-	-	\$ 25,700
0084	1998	John Deere Tractor	-	L0210V81234	6210	S15	-	-	-	-	\$ 31,500
0086	-	John Deere Tractor	-	L06410V2883	6410	S19	-	-	-	-	\$ 34,000
0149	1986	Go-Gator	-	3001322	3004	Env Serv	-	-	-	-	\$ 23,650
0154	-	Kawasaki Mule Utility	-	JK1AFBC143	550	S12	-	-	-	-	\$ 4,000
-	-	RamEject Biosolids Cake Trailer	-	-	-	S23	-	-	-	-	-
-	-	RamEject Biosolids Cake Trailer	-	-	-	S22	-	-	-	-	-
-	-	Irrigation pipe trailer	-	-	-	S06	-	-	-	-	-
-	-	LeRoi trailer mounted air compressor	-	-	-	-	-	-	-	-	-
-	-	Cat trailer mounted generator	-	-	-	-	-	-	-	-	-
These items are not rolling stock, but shop tools:											
0050	-	Spray Pressure Washer	-	I-132326	-	S4	-	-	-	-	\$ 4,500
0155	-	Miller Welder/Generator	-	LB159075	-	S20	-	-	-	-	\$ 4,400

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Appendix 3 Performance Guarantee Requirements and Liquidated Damages

3.1 Purpose of Appendix

This appendix sets forth the Performance Guarantee requirements for the Contract Services and the liquidated damages that may be assessed against the Company for failure to meet the Performance Guarantees set forth in **Article VII** of the DBO Agreement.

3.2 Effluent Guarantee Requirements

Table 3-1 and **Table 3-2** within **Appendix 3, Section 3.2** identify the treatment-related Effluent Guarantee requirements for the dry and wet weather seasons, respectively, prior to Acceptance. The performance values listed on these tables are the requirements that are currently in the City's Wastewater Discharge National Pollutant Discharge Elimination System (NPDES) Permit. This NPDES Permit is included as a Reference Document as noted in the table of contents of the DBO Agreement; more information on the existing NPDES Permit and its pending renewal is presented in **Appendix 6, Sections 6.2** and **6.5**. Effluent grab and composite samples and measurements are taken following UV disinfection.

Table 3-1. Effluent Guarantee Requirements, Dry Weather Season (May 1 – October 31) Prior to Acceptance

Parameter	Performance value					Sample type	Frequency
	Average effluent concentrations (mg/L)		Monthly average (lb/day) ^a	Weekly average (lb/day) ^a	Daily max (lb/day) ^a		
	Monthly	Weekly					
Carbonaceous 5-day (BOD ₅)	≤10	≤15	≤190	≤280	≤380	24-hr composite	2/week
Total suspended solids (TSS)	≤10	≤15	≤190	≤280	≤380	24-hr composite	2/week
<i>E coli</i> bacteria	Shall not exceed 126 organisms per 100 mL monthly geometric mean. No single sample shall exceed 406 organisms per 100 mL.					Grab	2/week
pH	Shall be within the range of 6.0–9.0					Grab	3/week
BOD ₅ and TSS Removal Efficiency	Shall not be less than 85 percent monthly average for BOD ₅ and 85 percent monthly average for TSS					Calculation	Monthly

a. DEQ calculates the mass load limits for the WWTP Effluent based on a design average dry weather flow (ADWF) to the WWTP of 2.25 mgd.

Table 3-2. Effluent Guarantee Requirements, Wet Weather Season (November 1 – April 30) Prior to Acceptance

Parameter	Performance value					Sample type	Frequency
	Average effluent concentrations (mg/L)		Monthly average (lb/day) ^a	Weekly average (lb/day) ^a	Daily max (lb/day) ^a		
	Monthly	Weekly					
Total 5-day (BOD ₅)	≤30	≤45	≤560	≤840	≤1100	24-hr composite	2/week
Total suspended solids (TSS)	≤30	≤45	≤560	≤840	≤1100	24-hr composite	2/week
<i>E coli</i> bacteria	Shall not exceed 126 organisms per 100 mL monthly geometric mean. No single sample shall exceed 406 organisms per 100 mL.					Grab	2/week
pH	Shall be within the range of 6.0–9.0					Grab	3/week

a. DEQ calculates the mass load limits for the WWTP Effluent based on a design average dry weather flow (ADWF) to the WWTP of 2.25 mgd.

As described in **Appendix 6, subsection 6.5.1**, the Company must apply for a modification to the NPDES Permit (subject to DEQ and Environmental Quality Commission approval) for the upgraded WWTP to account for the higher design average dry weather flow (ADWF) of 4.0 mgd. **Table 3-3** and **Table 3-4** within **Appendix 3, Section 3.2** reflect the performance value requirements for the treatment-related Effluent Guarantee for the dry and wet weather seasons, respectively, following Acceptance. It is assumed that the mass load limits will not be increased when the NPDES permit is renewed for the upgraded WWTP; the average effluent concentrations have been revised accordingly.

Table 3-3. Effluent Guarantee Requirements, Dry Weather Season (May 1 – October 31) Following Acceptance

Parameter	Performance value					Sample type	Frequency
	Average effluent concentrations (mg/L)		Monthly average (lb/day) ^a	Weekly average (lb/day) ^a	Daily max (lb/day) ^a		
	Monthly	Weekly					
Carbonaceous 5-day (BOD ₅)	≤5	≤8	≤190	≤280	≤380	24-hr composite	2/week
Total suspended solids (TSS)	≤5	≤8	≤190	≤280	≤380	24-hr composite	2/week
<i>E coli</i> bacteria	Shall not exceed 126 organisms per 100 mL monthly geometric mean. No single sample shall exceed 406 organisms per 100 mL.					Grab	2/week
pH	Shall be within the range of 6.0–9.0					Grab	3/week
BOD ₅ and TSS Removal Efficiency	Shall not be less than 85 percent monthly average for BOD ₅ and 85 percent monthly average for TSS					Calculation	Monthly
Excess Thermal Load (ETL)	Limits (June 1 through September 30) are calculated based on ETL limit options A, B, or C, as defined in Schedule A of NPDES Permit, Note 3					Calculation	Daily (as a rolling 7-day average starting June 7)

a. DEQ calculates the mass load limits for the WWTP Effluent based on a design average dry weather flow (ADWF) to the WWTP of 2.25 mgd.

Table 3-4. Effluent Guarantee Requirements, Wet Weather Season (November 1 – April 30) Following Acceptance

Parameter	Performance value					Sample type	Frequency
	Average effluent concentrations (mg/L)		Monthly average (lb/day) ^a	Weekly average (lb/day) ^a	Daily max (lb/day) ^a		
	Monthly	Weekly					
Total 5-day (BOD ₅)	≤16	≤25	≤560	≤840	≤1100	24-hr composite	2/week
Total suspended solids (TSS)	≤16	≤25	≤560	≤840	≤1100	24-hr composite	2/week
<i>E coli</i> bacteria	Shall not exceed 126 organisms per 100 mL monthly geometric mean. No single sample shall exceed 406 organisms per 100 mL.					Grab	2/week
pH	Shall be within the range of 6.0–9.0					Grab	3/week

a. DEQ calculates the mass load limits for the WWTP Effluent based on a design average dry weather flow (ADWF) to the WWTP of 2.25 mgd.

In addition to meeting the requirements given in **Table 3-1** through **Table 3-4** within **Appendix 3, Section 3.2**, Effluent from the WWTP shall meet any additional monitoring and reporting requirements imposed by the NPDES Permit or otherwise under Applicable Law as described further in **Appendix 6**. In addition, Effluent that is to be used for reclaimed water purposes must meet all Department of Environmental Quality (DEQ) requirements for Class A reclaimed water.

All Effluent sampling and reporting shall be conducted in accordance with **Appendix 10**. All sample results shall be certified by the WWTP operations manager or other company personnel authorized to certify that the results were obtained in accordance with the accepted sampling and testing standards and procedures. In the event that a particular parameter does not have a method approved by the State, methods currently accepted by the EPA, or contained in the most current edition of “Standard Methods for the Examination of Water and Wastewater,” shall be acceptable.

3.2.1 Ammonia Requirement

Effluent from the upgraded WWTP shall not exceed a daily maximum ammonia concentration of 20 mg/L during the dry weather season.

3.3 Influent

This section presents the flow and loading characteristics for which the Company is responsible for treating Influent in compliance with all Performance Guarantee requirements, Applicable Law and Government Approvals during the Term. This section also outlines the relief from the Performance Guarantee requirements in the event of Non-Compliant Influent.

3.3.1 Influent Quantity and Quality Parameters

Table 3-5 within **Appendix 3, subsection 3.3.1** identifies influent flow peaking factors and corresponding design flows. The reference design ADWF for **Table 3-5** within **Appendix 3, subsection 3.3.1** is 4.0 million gallons per day (mgd). Design flows are calculated by multiplying the design ADWF by the corresponding peaking factor. For example, the average

annual flow is calculated by multiplying 4.0 mgd by 1.12, which equals 4.48 mgd. **Table 3-6** within **Appendix 3, subsection 3.3.1** sets forth the maximum monthly average of other influent parameters.

Peaking factor	Value	Design Flow ^a (mgd)
Average annual flow	1.12	4.48
Average dry weather flow	1.00	4.00
Average wet weather flow	1.18	4.72
Maximum month dry weather flow ^b	1.18	4.72
Maximum month wet weather flow ^b	1.67	6.68
Peak day flow ^b	2.65	10.60

a. For a design ADWF of 4.0 mgd.

b. Based on DEQ-developed guidelines to calculate sewage flows based on rainfall: 1-in-10 year rainfall accumulation for maximum month dry weather flow and 1-in-5 year rainfall accumulation for maximum month wet weather flow and 5-year, 24 hour storm event for peak day flow.

Parameter	Maximum Monthly Dry Weather Season Average	Maximum Monthly Wet Weather Season Average
BOD ₅ , lb/day	12,900	12,500
TSS, lb/day	11,400	12,500

BOD₅ = 5-day biological oxygen demand

TSS = total suspended solids

Influent flow and BOD and TSS loadings shall be measured in accordance with City practice implemented prior to the Contract Date, unless the Wastewater System Capital Improvements require a change; such change must be approved by the City and the Oregon Department of Environmental Quality (DEQ). Monthly average flows shall be calculated for calendar months.

3.3.2 Conditions for Performance Relief Due to Non-Compliant Influent

The Company shall be required to treat all Influent regardless of flow or characteristics.

Non-Compliant Influent is defined as:

- Influent containing Toxic Substances or Hazardous Material, or
- Influent average dry weather flow exceeding the value set forth in **Table 3-5** within **Appendix 3, subsection 3.3.1**, or
- Influent maximum month flows exceeding the values set forth in **Table 3-5** within **Appendix 3, subsection 3.3.1** within the designated season (wet or dry weather) more than once every two years, or
- Influent peak day flow exceeding the value set forth in **Table 3-5** within **Appendix 3, subsection 3.3.1** more than once every two years, or

- Influent wastewater characteristic exceeding the maximum monthly averages set forth in **Table 3-6** within **Appendix 3, subsection 3.3.1** on three separate events over three consecutive calendar months within the designated (wet or dry weather) season.

The Company shall be entitled to performance relief or additional compensation in accordance with **Article VII, Section 7.9** of the DBO Agreement if the Influent provided to the WWTP during the Management Period is deemed to be Non-Compliant Influent.

3.4 Biosolids Guarantee Requirements

The end-product Biosolids created onsite following Acceptance must meet Class A standards and must be beneficially reused as described in **Article VII, subsection 7.5(C)** of the DBO Agreement.

For any other liquid stream process train that does not include primary clarifiers, the end product shall be biological solids (no primary) partially stabilized through a biological process with a Class A, dust free end product at 92 to 95 percent (90 percent minimum) solids concentration and a maximum temperature of 120°F.

3.5 Odor Guarantee Requirements

The Company shall design, construct, operate and maintain the Wastewater System Capital Improvements and Wastewater System in a manner that minimizes the occurrence of an Odor Incident or a Sustained Odor Condition following Acceptance.

The thresholds for determining an Odor Incident at the WWTP are:

- The measurements taken at the WWTP stack(s) exceed the maximum allowable stack discharge emission rates established in **Appendix 4, subsection 4.4.6** and documented in the Odor Control Plan as described in **Appendix 10, subsection 10.3.2**
- A perceptible odor emanating from the WWTP Site is detected by any party at the WWTP Site fence line or stack(s); or
- Three or more independent reports are made within a 24 hour period to either the Company and/or the City from members of the surrounding community of a perceptible odor emanating from the WWTP Site.

An "Odor Incident" is defined as an odor condition emanating from the WWTP Site to the extent not caused by Uncontrollable Circumstances, which is verified by the Company or the City, to be an odor condition.

The Company shall demonstrate compliance with the fence line 5 D/T and 0.005 ppm_v hydrogen sulfide threshold by measuring emissions from sources at the WWTP Site, including but not limited to all odor control discharge stacks and surfaces, and all wastewater treatment, Biosolids treatment and dewatering processes. These measurements shall be compared to the stack limits

established by the Company using an Environmental Protection Agency (EPA) approved dispersion model as set forth in **Appendix 4, subsection 4.4.6**.

For purposes of these Odor Guarantee requirements, a "Sustained Odor Condition" is any Odor Incident, or combination of Odor Incidences, occurring over the course of three consecutive days.

3.6 Operational Reliability Guarantee Requirements

The Company shall be responsible for managing the operations of the Managed Assets during the Term to:

- maximize the operational efficiency of the WWTP and the Lift Stations, while complying with the effluent standards
- operate all equipment and treatment processes in the manner for which they were designed, at all times, unless expressly provided otherwise in the DBO Agreement
- operate the Managed Assets in a manner that preserves the condition and the expected useful life of the Managed Assets and that is consistent with the requirements of the DBO Agreement.

3.7 Environmental Guarantee Requirements

The Company shall keep the Managed Assets neat, clean, litter-free and shall be responsible for managing the Managed Assets to be a good neighbor and environmental steward by minimizing environmental nuisances through compliance with the Environmental Guarantee requirements, as set forth below, for stormwater, noise, Vector, dust and light emitted from the WWTP Site or other adverse environmental effects constituting a nuisance condition under Applicable Law during the Term. The Company shall not be required to perform regular monitoring of these parameters unless there is a complaint filed with the City or the Company regarding noise, dust, litter and Vector or light levels emitted from the WWTP Site. The City may monitor these parameters at any time during the Term.

3.7.1 Stormwater

The Company shall treat and discharge all stormwater in accordance with the Contract Standards, including NPDES requirements.

3.7.2 Lighting

All new permanent and temporary lighting shall comply with City requirements including City of Wilsonville Ordinance No. 649.

3.7.3 Dust

Dust generated from excavation operations, material transport and vehicle traffic shall be controlled at all times. No uncovered storage areas containing fine or unbound materials shall be allowed. Water sprays shall be used as necessary, and as allowable by Applicable Law, to control dust.

3.7.4 Noise

Construction noise levels shall comply with the limits specified in **Appendix 5, subsection 5.6.2**. If noise exceeds specified levels, the Company will be required to implement additional treatments until noise is reduced to the required level.

Noise levels during operation of the Managed Assets shall comply with the requirements set forth below. If noise exceeds specified levels, the Company will be required to implement additional treatments until noise is reduced to the required level.

Total sound emissions from the WWTP (including, but not limited to: process equipment, portable engine-driven equipment, delivery and haulage trucks, and maintenance equipment) shall not exceed the permissible sound levels shown in **Table 3-7** within **Appendix 3, subsection 3.7.4** at neighboring residential properties.

Table 3-7. Permissible Sound Pressure Levels at Residential Properties from Facility Operation, dBA re: 20 µPa

Descriptor	Daytime (7:00 a.m.–10:00 p.m.)	Nighttime (10:00 p.m.–7:00 a.m.)
L50	55	50
L10	60	55
L01	75	60

Source: Oregon Administrative Rules 340-35-0035, Table 8

In addition to these statistical broadband sound level limits, total sound emissions from the WWTP shall not exceed the median sound levels in each 1-octave frequency band as noted in **Table 3-8** within **Appendix 3, subsection 3.7.4** at neighboring residential properties, including sound levels from existing equipment to remain.

Table 3-8. Permissible Sound Level Spectra at Residential Properties from Facility Operation, dBA re: 20 µPa

Descriptor and time period	31.5	63	125	250	500	1,000	2,000	4,000	8,000	dBA
L50: daytime (7:00 a.m – 10:00 p.m.)	68	65	61	55	52	49	46	43	40	55
L50: nighttime (10:00 p.m. – 7:00 a.m.)	65	62	56	50	46	43	40	37	34	50

Source: Oregon Administrative Rules 340-35-0035, Table 10

The Company shall design facilities to control worker noise exposure and to comply with maximum 8-hour 50 percent dose levels for working areas set forth by the federal Occupational Safety and Health Administration and the Oregon Occupational Safety and Health Administration, which is an 8-hour time-weighted average of 85 dBA.

3.7.5 Litter

The Company shall inspect the WWTP Site on a daily basis to remove litter and maintain the WWTP Site litter-free.

3.7.6 Traffic

The Company shall control vehicular traffic generated during the Term to minimize disruption to surrounding residents and businesses.

3.7.7 Vectors

The Company shall monitor as necessary and implement all reasonable measures to prevent Vectors at the Managed Assets and promptly control such Vectors if discovered at the Managed Assets.

3.8 Lift Stations Guarantee Requirement

The Company's Lift Stations Guarantee Requirement for the CMOM Program during the Term is:

- Management of sanitary sewer overflows in accordance with Oregon DEQ's Internal Management Directive on Sanitary Sewer Overflow (SSO) Enforcement, dated November 2010.

3.9 Liquidated Damages

If the Company fails to meet any of the Performance Guarantee requirements identified hereto, except as otherwise excused by the occurrence of an Uncontrollable Circumstance or Non-Compliant Influent, the Company shall be subject to Liquidated Damages in the amount set forth in **Table 3-9** within **Appendix 3, Section 3.9**.

Table 3-9. Performance Guarantee Liquidated Damages

Non-compliance event	Monitoring period	Liquidated damages^a for non-compliance
Treated Effluent performance value requirement, parameters and ranges presented in Tables 3-1 through 3-4 , as relevant, are not met	Daily	\$ 1,000
	Weekly	\$2,500
	Monthly	\$ 5,000
Treated Effluent ammonia requirement not met following Acceptance	Daily	\$1,000
	Monthly	\$5,000
Failure to produce Class A Biosolids onsite and/or failure to implement beneficial reuse	Monthly	\$ 5,000
Violations Requiring Public Notification ^b	--	\$30,000
Odor Incident Determination	for the first Odor Incident during a 365 day period	\$5,000
	for the second Odor Incident during a 365 day period	\$10,000
	for the third Odor Incident during a 365 day period	\$15,000
	for the fourth and subsequent Odor Incident(s) during a 365 day period	\$20,000
Sustained Odor Condition Determination	Per event	\$25,000

- a. Except where otherwise noted, all Liquidated Damages are per occurrence per parameter and are additive. The Liquidated Damages set forth herein do not include any regulatory penalties, if any, that may be assessed by a Governmental Body.
- b. Public Notification refers to discharge events from the Managed Assets that cause or have the potential to cause a public health impact, water quality problem (such as fish kills or oil sheens) or an impact on use (such as fishing bans or other restrictions on recreation or beneficial uses) and for which the Company is required by Applicable Law or ordered by a Governmental Body to issue a public notification.

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Appendix 4 Technical Specifications

4.1 Purpose of Appendix

This appendix sets forth certain Technical Specifications in accordance with **Article X** for the Wilsonville Wastewater Treatment Plant (WWTP) Design-Build Work including but not limited to codes and standards to be used, functional requirements, design criteria, and material specifications to be met. However, these requirements are not intended to be all inclusive of the design requirements needed to meet the Performance Guarantee requirements set forth in **Appendix 3**. Nothing in these Technical Specifications shall relieve the Company of its obligations to meet the Performance Guarantee requirements.

Exhibit 4-1 within **Appendix 4** sets forth drawings and diagrams of the Wastewater System Capital Improvements and the upgraded WWTP and is bound as a separate document. **Exhibit 4-2** within **Appendix 4** contains specifications of the major equipment and systems. The Wastewater System Capital Improvements shall not include capital improvements to the Lift Stations.

4.1.1 Design and Construction Requirements and Secondary Technical Criteria

The Technical Specifications include the Design and Construction Requirements and the Secondary Technical Criteria. The Design and Construction Requirements shall consist of all requirements set forth in the main body of **Appendix 4** including the information identified within this subsection. All other requirements and information set forth in Exhibits to **Appendix 4** shall be Secondary Technical Criteria.

The following information, generally shown and described included in **Exhibits 4-1 and 4-2** within **Appendix 4** shall be Design and Construction Requirements:

Influent Screens

- (1) Number of Units: 2
- (2) Unit Capacity: 8 mgd
- (3) Size/Dimensions: 3/8" bar spacing

Screenings Washer-Compactors

- (1) Number of Units: 2 (1 duty, 1 standby)

Grit Basin Mechanism

- (1) Number of Units: 1
- (2) Unit Capacity: 16 mgd
- (3) Type: Turbo air blowers

Grit Pump

- (1) Number of Units: 1

Grit Cyclone-Classifier

- (1) Number of Units: 2

RAS Stabilization Basins

- (1) Number of units: 2

Aeration Basins

- (1) Number of units: 2 existing, 1 new

Aeration Basin Anoxic Mixers

- (1) Number of units: 4

Secondary Clarifier

- (1) Number of units: 1
- (2) Diameter: 70'
- (3) Sidewater Depth: 16'

Variable Speed Turbo Air Blowers

- (1) Number of units : 3
- (2) Type: Turbo air blowers

Diffusers

- (1) Size/Dimensions: 9" circular
- (2) Type: Fine Bubble Membrane

RAS Pumps

- (1) Number of Units: 4 (3 duty, 1 standby)
- (2) Type: Screw-Induced Flow Centrifugal
- (3) Control Description: Adjustable Speed

WAS Pumps

- (1) Number of Units: 2 (1 duty, 1 standby)
- (2) Control Description: Adjustable Speed

Secondary Effluent Pumps

- (1) Number of Units: 3 (2 duty, 1 standby)
- (2) Control Description: Adjustable Speed

Cooling Tower

- (1) Number of Units: 1
- (2) Unit Capacity: 3,423 gpm (nominal)
- (3) Type: Open Cooling Tower
- (4) System Capacity: Effluent cooling to meet Maximum Temperature Waste Load Allocation as defined by the NPDES Permit

Secondary Effluent Filter

- (1) Number of Units: 2
- (2) Unit Capacity: Maximum flow 4,305 gpm (nominal)
- (3) Type: Cloth medial disk filters
- (4) System Capacity: Maximum day dry weather flow of 6.2 mgd

UV Disinfection System

- (1) Number of Units: 1
- (2) Unit Capacity: 8 mgd
- (3) Type: Low-Pressure, high-output

Dewatering Centrifuge System

- (1) Number of Units: 2

Dryer

- (1) Number of Units: 1
- (2) Type: Indirect Thermal Dryer

Odor Control System

- (1) Biofilter
 - (a) Number of Beds: 2
 - (b) Minimum Bed Retention Time: 45 seconds
 - (c) Engineered Media
- (2) Foul Air Exhaust Fans
 - (a) Number of Units: 2

- (3) Biofilter Stack Fans
 - (a) Number of Units: 2
- (3) Aeration Basin Exhaust Fans
 - (a) Number of Units: 2

Standby Generator

- (1) Number of Units: 1
- (2) Unit Capacity: 1500 kW
- (3) Extent to which standby power is provided
- (4) Extent to which UPS systems are provided

Architecture

- (1) Architectural theme shown in **Exhibit 4-1** within **Appendix 4**
- (2) Interior architectural materials
- (3) Exterior architectural materials

Site/Civil

- (1) General arrangement of the facilities on the site including buildings, structures, roads, parking areas, fences, walls, and gates
- (2) General arrangement of stormwater management/drainage facilities on the site

Treatment Process

- (1) All information shown on the liquid stream and sludge handling process flow diagrams (Drawings I-01 and I-02)
- (2) General arrangement of the treatment facilities on the site
- (3) The extent that gravity and pumped flow are used throughout the Facility
- (4) Type and extent of covers and enclosures over process units
- (5) Materials of construction for pipes, valves, pumps, tanks and structures

Instrumentation and Control Systems

- (1) All information on the P&ID drawings (Drawings I-03 – I-20) except that the exact locations of valves and instrumentation, the number and types of valves and instruments, and the exact sizing of pipes shall be Secondary Technical Criteria.

4.2 Overall Objectives and General Requirements

The Company shall perform the Design-Build Work such that the upgraded WWTP is in compliance with the Contract Standards including the requirements of the Oregon Department of Environmental Quality (DEQ) and the following objectives and general requirements:

- Design and construct the upgraded WWTP to include all necessary unit processes, process control, monitoring and control, hydraulic components, and redundancy to meet the Performance Guarantee requirements set forth in **Appendix 3** for an average dry weather flow (ADWF) flow of 4 million gallons per day (mgd).
- Design the capability to produce Class A Biosolids onsite.
- Design to maximize available space for future expansion.
- Demonstrate that the WWTP is expandable to achieve a build-out flow capacity of 7 mgd ADWF on the existing WWTP Site.
- Provide significantly improved odor control using proven technology(ies) and minimize odor-related complaints from adjacent neighborhood.
- Design based on multiple units for each major process treatment such that the upgraded WWTP can be efficiently and effectively operated at design flows and with one major equipment or process unit out of service in accordance with EPA guidelines as defined in **Appendix 6, subsection 6.6.3**.
- Design using an integrated systems approach. Design shall take into account the functional and hydraulic interrelationships of the upgraded WWTP with the existing facilities, including SCADA, and shall provide for efficient WWTP-wide operation during and after construction.
- Design to utilize gravity flow through the WWTP whenever feasible.
- Design using materials that are intended to achieve a 50-year physical service life, based on industry standard practices for major components such as buildings, structures, and pipelines.

4.3 Applicable Codes, Standards, Ordinances, Policies and Guidelines

Unless otherwise indicated in this or other Appendices, the Company shall perform the Design-Build Work in accordance with the most recent editions of all applicable codes, standards, ordinances, policies, and industry standards and guidelines including, but not limited to, the following:

- American Association of State Highway and Transportation Officials (AASHTO)
- American Concrete Institute (ACI)
- American Institute of Architects (AIA)
- American Institute of Steel Construction (AISC)
- American Iron and Steel Institute (AISI)
- American National Standards Institute (ANSI)
- American Society of Civil Engineers (ASCE)
- American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)
- American Society of Mechanical Engineers (ASME)

- American Society for Testing and Materials (ASTM)
- American Water Works Association (AWWA)
- American Welding Society (AWS)
- Americans with Disabilities Act (ADA)
- Factory Mutual (FM)
- Hydraulic Institute
- Illuminating Engineering Society of North America (IESNA)
- Instrument Society of America
- International Building Code (IBC)
- International Organization for Standardization (ISO)
- Institute of Electrical and Electronics Engineers (IEEE)
- National Electrical Code (NEC)
- National Electrical Manufacturer's Association (NEMA)
- National Electrical Testing Association
- National Fire Protection Association (NFPA)
- Occupational Safety and Health Administration (OSHA)
- Oregon Building Code (OBC)
- Oregon Structural Specialty Code (OSSC)
- Precast Concrete Institute
- Underwriters' Laboratories, Inc. (UL)
- Uniform Mechanical Code (UMC)
- Wilsonville Development Code.

4.4 Requirements for Upgraded WWTP

This section summarizes general design requirements for the upgraded WWTP.

4.4.1 Demolition, Removal, Relocation and/or Replacement of Existing WWTP Components

In accordance with the requirements of this subsection and **Appendix 5, subsection 5.4.6**, the Company shall be responsible for demolition, removal, relocation and/or replacement of existing buildings, structures, and equipment as required for construction of the Wastewater System Capital Improvements in accordance with the Company's design.

At a minimum, the Company shall demolish and remove the following existing buildings, structures and equipment on the existing WWTP Site as part of the Design-Build Work and then,

the Company shall replace same if required as part of the Company's design for the Wastewater System Capital Improvements:

- all foul air collection and treatment systems including the discharge plenum, bioscrubber, biotrickling filter, and biofilter
- influent sewer from headworks to upstream manhole including channel and Parshall flume
- headworks channels, structures and equipment including headworks filter screen, headworks compactor, Suboscreen, and Muffin Monster
- abandoned chlorine contact chambers
- primary clarifiers and digesters structures and all equipment within and outside of tanks, including all associated pumps and blowers
- structures associated with tertiary sand filters including backwash tank, and all tertiary sand filters including associated pumps
- biosolids collection (formerly control) building and all mechanical and electrical equipment located within the building.
- rotating biological contactor (RBC) blower building (Quonset hut) and all mechanical and electrical equipment located within the building
- north and south (abandoned) RBC structures
- centrifuge and trailer.

If the Company determines that any existing structures slated for demolition can effectively be retained and employed as part of the Wastewater System Capital Improvements, the Company shall demonstrate to the satisfaction of the City that the structure has a minimum of 40 years of useful remaining life following Acceptance.

The Company shall upgrade all heating and ventilating (HVAC) equipment in the existing administration building, including the laboratory, in accordance with the Contract Standards, including **Appendix 4, subsection 4.4.13**. The Company shall remove the existing double-wide trailer following Acceptance as described in **Appendix 5, subsection 5.3.5**.

4.4.2 [Not Used]

4.4.3 Liquid Stream

The Company shall provide an ultraviolet (UV) disinfection process.

The Company shall provide grit removal at the headworks as appropriate for the Company's selected treatment process(es).

Blending shall not be allowed as part of the Wastewater System Capital Improvements.

The Company shall design the Wastewater System Capital Improvements to utilize a cooling tower in order to meet the temperature limit of the Effluent Guarantee. The City has conducted

limited temperature modeling to identify the expected range of future conditions requiring use of a cooling tower and made this available to the Company. The Company shall conduct temperature modeling to support the design of the cooling tower. The modeling shall include utilizing the maximum 7-day moving average effluent and river temperature profiles in the Willamette River based on the historical period for which the City has daily effluent temperature data. This shall be used to determine the expected timing of utilization of the cooling tower and to estimate the annual quantity of effluent discharged from the cooling tower.

The Wastewater System Capital Improvements shall be designed to meet a daily maximum Effluent ammonia concentration during the dry weather season of less than 20 mg/L.

4.4.4 Solids Stream

The Company shall operate grit and screenings residuals treatment equipment to maximize the performance of the equipment and minimize the organic and water content.

The Biosolids end product produced at the WWTP shall be a Class A product meeting Part 503 Regulations upon completion of the construction of the Wastewater System Capital Improvements and must meet the Performance Guarantee requirements specified in **Appendix 3, Section 3.4** and Applicable Law.

All solids unit processes shall be based on proven technology with successful operating experience at facilities of comparable size. Candidate solids process technologies meeting Class B Processes to Significantly Reduce Pathogens (PSRP) standards include aerobic digestion and anaerobic digestion. Process technologies meeting Class A Processes to Further Reduce Pathogens (PFRP) requirements include a variety of thermal drying systems. All technologies proposed shall be energy-efficient, safe, and odor-free. Alkaline stabilization process technologies are specifically excluded from consideration due to potential for odor from the process or end product.

The dewatering equipment shall be permanently installed in an enclosed, ventilation-controlled building.

4.4.5 Hydraulic Modeling

The Company shall perform all necessary hydraulic modeling and analysis and relevant design of the upgraded WWTP to ensure that the Performance Guarantee requirements in **Appendix 3** are met. The Company shall provide hydraulic calculations in accordance with the timeframes in the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the hydraulic calculations and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. The hydraulic calculations shall demonstrate that the WWTP can handle the range of design flows. Freeboard requirements shall be noted with the hydraulic calculations submittal. The Company shall provide all necessary facilities and equipment (including pumping systems) to meet the Contract Standards.

4.4.6 Odor Control

In accordance with **Appendix 4, subsection 4.4.1**, the Company shall demolish and remove all existing odor control systems and equipment at the WWTP. Odor-causing compounds entering the atmosphere from wastewater surfaces and solids processing and handling facilities at all locations including areas of turbulence such as screens, flow direction changes, and process air introduction shall be controlled. The Company shall design and implement odor control system(s) and technologies, suitable for expansion, to minimize the release of fugitive odorous emissions from all existing and potential odor sources at the WWTP Site and as required to meet the Odor Guarantee requirement specified in **Article VII, Section 7.3 and Appendix 3, Section 3.5**.

At a minimum, the Company shall cover, enclose and treat air from the headworks, primary treatment, solids handling, and vector screening facilities. The odorous emissions from these facilities shall be contained by covering the equipment and related tanks and ventilating the space below the covers with the exhaust air receiving odor control treatment.

Odor control system(s) shall be air exhaust and treatment systems capable of reducing odors such that the odor threshold, defined as the Odor Guarantee requirement in **Appendix 3, Section 3.5**, shall not be exceeded at the WWTP stack(s) or fence line. Acceptance Testing, in accordance with **Appendix 8, subsection 8.4.2**, will allow analysis of exhaust air streams to be modeled as described below as part of the demonstration of conformance with the Odor Guarantee requirement.

A negative pressure under equipment covers or decks shall be maintained at 0.10 inch water column, not to exceed 0.50 inch, on a continuous basis. Ventilation shall be provided at a minimum rate of 12 air changes per hour, or in accordance with National Fire Protection Association (NFPA) 820, for process areas where personnel perform routine operation and maintenance (O&M). The Company shall be responsible for installing and operating all odor control equipment associated with the management of residuals generated by the WWTP. Any containers used for temporary storage of residuals shall be located in fully-enclosed structures operated under negative pressure with evacuated air routed to an operating odor control system. The Wilsonville WWTP currently receives material removed from its sanitary and stormwater collection system in the drying beds that are open to the atmosphere. The Company shall provide an enclosed receiving area for these drying beds as part of the Wastewater System Capital Improvements in the existing location or in a new location on the WWTP Site. The enclosed receiving area may be designed so that the contents can be emptied while the vector truck is parked outside as long as the contents are discharged into the enclosed area through a sealed system.

Air Dispersion Modeling

The Company shall set up a dispersion model of the WWTP Site to be used to verify that the design and operation of the upgraded WWTP, including short and long term odor control systems, meet the Odor Guarantee requirement. The model shall be a U.S. Environmental Protection Agency-approved dispersion model such as AERMOD, and shall include provisions that consider downward air flows.

The Company shall set up a dispersion model of the WWTP Site to be used to verify that the design and operation of the upgraded WWTP, including short and long term odor control systems, meet the Odor Guarantee requirement. The model shall be a U.S. Environmental Protection Agency-approved dispersion model such as AERMOD, and shall include provisions that consider downward air flows.

Air dispersion modeling shall be conducted during the design phase for sizing and selection of odor control systems and during Acceptance Testing to provide demonstration and confirmation of compliance with the Odor Guarantee. Additional information on Acceptance Test Procedures related to odor control systems is set forth in **Appendix 8, Section 8.4**. Model inputs for each model run are summarized as follows:

- Design Phase:
 - Odor levels from process areas developed from the Company's data base
 - Most recent 5 years of meteorological data
 - Higher atmospheric data from Salem
 - Terrain data specific to the vicinity
- Acceptance Testing Phase:
 - Sample data will be used as odor level inputs. All WWTP odor sources will be measured, including process facilities and odor treatment stacks, during 5 consecutive days during the warm season for both H₂S and general odor (D/T). Continuous H₂S monitors will be employed and Tedlar bag samples taken for laboratory odor panel analysis per American Society of Testing and Materials (ASTM) E679-9 and EN 13725-2003. A minimum of five samples will be taken for each odor source. Flux chambers will be used for open water holding tanks.
 - Most recent 5 years of meteorological data
 - Higher atmospheric data from Salem
 - Terrain data specific to the vicinity

The dispersion model shall be set up to predict maximum hourly impacts. Dispersion modeling of all existing and proposed future odor emission sources from the WWTP Site shall be conducted. The dispersion modeling shall demonstrate conformance with the Odor Guarantee requirement at the WWTP Site fence line of:

- General Odor: 5 D/T (maximum)
- Hydrogen Sulfide: 0.005 ppmv H₂S (maximum).

The dispersion model shall be used to identify the maximum allowable stack discharge concentration needed to achieve compliance with the Odor Guarantee with odor control equipment and systems sized and selected accordingly. In addition, any significant wastewater treatment process and solids dewatering and handling odor sources not treated for odor control,

shall be shown by dispersion modeling to result in compliance with the Odor Guarantee prior to design and implementation.

If the acceptance testing phase dispersion modeling results predict Odor Guarantee exceedances, additional odor control measures will be employed and dispersion testing re-run to demonstrate compliance.

4.4.7 Noise Mitigation

The Company shall be responsible for designing, installing and implementing all noise mitigation measures required to meet the Environmental Guarantee requirements for noise summarized in **Appendix 3, Subsection 3.7.4**.

This includes noise-attenuating equipment that shall be installed on all portable engine-driven equipment. Such portable engine-driven equipment shall include air compressors, generators, air intakes, pumps and other diesel and gasoline powered equipment.

4.4.8 Geotechnical

The Company shall employ a professional engineer licensed in the state of Oregon specializing in soil mechanics to provide recommendations for appropriate temporary and permanent slope stabilization measures for the north side of the WWTP Site to be implemented during the Design-Build Period.

All structural designs will be based on current Oregon Structural Specialty Code (OSSC) requirements as adapted by a final site-specific geotechnical report and City requirements, with ground motions determined in accordance with OSSC, United States Geological Survey (USGS), and the final site-specific and seismic hazard geotechnical engineering report recommendations and requirements.

Preliminary seismic criteria, prior to site-specific analysis and recommendation, will be at a minimum:

- Occupancy Category III
- $SS = 0.867g$; $S1 = 0.320g$
- $I = 1.25$
- Seismic Site Class D

Basement, foundation, and hydraulic basin walls backfilled against soil and retaining walls will be designed to resist seismic loads caused by static and dynamic lateral earth pressures. In addition, hydraulic basin walls will be designed for the effects of seismic sloshing loads from internal contents in accordance with ACI 350.3 and ASCE 7.

Mitigation of slope instability of the north end of the WWTP Site will be completed by backfilling to achieve a final slope of approximately 2H:1V. Mitigation efforts will focus on the area in the northwest corner of the WWTP Site where grades exceed 2H:1V and slope movement has been observed. Backfilling will be completed using select borrow material obtained from

onsite excavations. Vegetation on the existing slope will be removed prior to fill placement. The stabilized slope will be vegetated or covered with an erosion control product.

4.4.9 Landscaping

This section describes Technical Specifications related to landscape preparation, plantings, and tree preservation and protection. **Exhibit 4-1** within **Appendix 4** includes the Company's preliminary Landscaping Plan. The Company shall prepare a draft and final Landscaping Plan as required in the current version of **Exhibit 9-1** within **Appendix 9** illustrating the location of existing and planned trees and plantings. The City will review the Landscaping Plan and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. All landscaping and planting shall be in accordance with the Contract Standards, including the applicable land use standards and approvals.

Landscape Preparation

The Company shall perform all work required for final grading, placing topsoil, seeding, fertilizing, mulching, watering/irrigating, and maintaining all areas on the WWTP Site that remain after paving and structures are constructed. All portions of the WWTP Site that are not dedicated to buildings, treatment processes, roads or other paved or gravel surfaces shall be landscaped and irrigated in accordance with applicable land use standards and approvals. If an insufficient quantity of acceptable topsoil material is on the WWTP Site to landscape the required areas, the Company shall provide the additional required topsoil material from an approved offsite source. Topsoil shall be free of pests, pest larvae, and weeds; free-draining; friable; and shall contain sufficient organic matter and nutrients to support seeding and planting consistent with the Company's Landscaping Plan.

The Company shall maintain vegetation on the WWTP Site to control nuisance growth and make ready for final landscaping in accordance with applicable land use standards and approvals.

Plantings

Plantings shall be in accordance with applicable land use standards and approvals as well as cumulatively provide aesthetic value and beneficial habitat for birds or wildlife. Seed and container plants as well as mulch shall be fresh, free of pests, and free of noxious weeds.

The Company shall be responsible for establishment and growth of plantings during the Term.

The Company shall provide trees of the type and in the number required by applicable City policy and codes and applicable land use standards and approvals. The Company is encouraged to provide drought-resistant native plants.

It is anticipated that the Landscaping Plan shall include a vegetative buffer that provides screening of the WWTP between the Interstate 5 freeway and the WWTP Site.

Tree Preservation and Protection

The Company shall comply with the City's tree preservation and protection policies and codes as summarized in **Appendix 6, subsection 6.4.2**.

4.4.10 Civil Site Work

The upgraded WWTP design shall be compatible with the design flows and treatment requirements as specified in **Appendix 3** and the constraints of the WWTP Site. In addition, the WWTP shall be designed to accommodate future expansion to 7 mgd ADWF on the existing WWTP site. Accordingly, the Company shall design the WWTP Site in compliance with Contract Standards to meet the following general civil site work objectives and design criteria:

- The Company shall locate and design facility structures to balance cut-and-fill to the maximum extent feasible. The Company is encouraged to use suitable excess excavated material for landscaping purposes on the WWTP Site.
- The facility shall be designed and constructed in a manner that is both environmentally compatible with the WWTP Site and environmentally sustainable.
- The facility shall be designed in a manner to provide for easy and efficient operation, maintenance, and monitoring, and to optimize the collection, storage, and use of operating data.
- The facility shall be arranged on the WWTP Site to provide for efficient and safe access into and throughout the WWTP Site, including compliance with fire and safety vehicle requirements. The Company shall cluster individual buildings and facilities to the extent practicable.
- The facility shall be designed to applicable American Society of Civil Engineers (ASCE) seismic standards for Occupancy Category III facilities.
- Equipment selection, building design, landscaping, and other facility elements shall be selected to minimize the frequency of maintenance while presenting a well-kept and pleasing appearance.
- The design shall maximize the available space for future expansion (including but not limited to the planned expansion to 7 mgd ADWF).
- Demolish and remove existing buildings and structures (at a minimum) as described in **Appendix 4, subsection 4.4.1**.

Specific Civil Site Design Criteria

Specific design criteria for the civil site work at the WWTP Site are as follows:

- Arrange the WWTP Site layout so that facilities follow a development pattern that allows for future expansion and consideration of WWTP Site constraints such as WWTP Site access, facility hydraulic profile, and location of existing influent and effluent conveyance facilities.
- Provide required open space for future facility expansion and locate such that construction of future facilities at the facility shall not impact ongoing operations.
- Maintain minimum setbacks required by zoning classification as described in **Appendix 6, subsection 6.4.2**.

- Assume that the WWTP Site includes the 30 feet of property shown on **Figure 1-3a** within **Appendix 1** between the existing fence line (adjusted property line) and the original property line (see also **Appendix 6, subsection 6.6.4**).
- Provide operator access to all equipment (walk-up access to all equipment; provide cart access to all equipment greater than 100 pounds).
- Provide access for tote deliveries.
- Provide operator restroom in close proximity to the process gallery on the east side of the WWTP Site. Restroom shall have at least one exterior window.
- Maintain vehicular maintenance access to all facilities and equipment (boom truck/flat bed/vactor truck).
- Ensure that the height of both temporary and permanent structures is in compliance with City requirements.
- Contain and treat all surface runoff within the developed WWTP Site including runoff from all access driveways serving the WWTP Site in accordance with Contract Standards. Surface runoff shall not be piped back into the WWTP unless the Company obtains the required permits for a combined sewer system.
- Separately contain and treat surface runoff from areas that may contain spills from treatment processes.
- Provide or maintain space (not necessarily dedicated), including desks, meeting areas, computers, etc. as needed, for all administration staff on the WWTP Site.
- Maintain area for lab activities (including testing required for the Industrial Pretreatment Program to be conducted by the City) on the WWTP Site that is equivalent to or better than existing.

Site Tour

To help educate and bring awareness about innovative wastewater treatment, the Company will host tours of the upgraded WWTP by request. The Company shall propose a tour route as part of the Design-Build Work that maximizes the educational and visual experience of the visitor balanced with the need for visitor safety and the costs of the provision of visitor accessibility. The proposed tour route must comply with ADA accessibility requirements. During the design process, the Company shall coordinate with the City to finalize the tour design and route to be utilized following completion of the Design-Build Work.

Roads, Sidewalks, Parking, and Traffic Circulation

The Company shall design, construct, and maintain the WWTP Site road system to meet the following objectives:

- Adequate onsite roadways, parking, and maneuvering areas shall efficiently and safely provide for anticipated traffic levels including facility staff, visitors, standard trucks (H-20), vactor trucks, and semi-trailers used for chemical and other deliveries, residuals

hauling, and for emergency and rescue vehicles, including firefighting and rescue equipment.

- Circulation patterns and onsite roadways shall be established in a manner that minimizes the interaction of commercial vehicles with staff and visitor vehicles.
- Paved onsite walkways and sidewalks shall be located to facilitate routine foot traffic between unit processes and around those units where washdown or other operations shall be conducted from the ground level.
- Parking for visitors shall be clearly marked and located to provide easy access to administrative facilities. A minimum number of visitor parking spaces shall be provided as required in City design standards, including handicapped accessible stalls.
- A minimum number of facility staff parking spaces shall be provided as required in City design standards, including handicapped accessible stalls.
- Site design shall be ADA compliant.
- Construction and operations traffic shall be considered during design. The overall approach shall consolidate construction traffic to minimize WWTP Site and surrounding neighborhood impacts, and ensure efficiencies in deliveries and pickups, and employee and visitor traffic during and after the Design-Build Period.
- Ingress and egress locations to the WWTP Site shall be designed with adequate sight distances and turning radii to allow for control and safety of all turning movements.
- The roadway width, radii of curvature, sight distances, grades, and vertical curves of onsite roadways shall, at a minimum, conform to City and the American Association of State Highway and Transportation Officials (AASHTO) requirements.
- Onsite roadways and pavement design shall be in accordance with City requirements for residential street design and any additional recommendations by the geotechnical design engineer. Sub-base and pavement design shall be appropriate for the type and level of use, especially with respect to use by heavy trucks and soil conditions. Prior to placement of any pavement materials, the sub-base shall be adequately prepared and stabilized.
- Signage, constructed to City design standards, shall clearly direct visitors to the administrative facilities and delivery trucks to the chemical/delivery and storage areas. All buildings shall be clearly identified with individual numbers and/or letters per the fire code.
- The Company shall grade adjoining surfaces at road and pavement edges, and provide subsurface intercept drains as necessary to prevent runoff to the pavement of precipitation and snowmelt and that could result in icing of pavement surfaces in cold weather.
- The Company shall preserve the existing bike trail on the south side of the WWTP Site during the Term, including during construction.

Fencing

The Company shall provide fencing in accordance with applicable land use standards and approvals to ensure the security of the WWTP Site and safeguard operations of the facility. A perimeter fence shall enclose the entire WWTP Site and provide for a remote-controlled, motorized gated entrance at the current gate location. The Company may use, replace or relocate the existing fence to meet the Contract Standards as appropriate to the Company's design and as acceptable to the City. The perimeter fence shall be locked at all times. The perimeter fence shall be a 6-foot-high chain-link fence designed in accordance with applicable land use standards and approvals. The fence shall be designed and installed to prevent trespass by animals, but shall not cause danger to the animals.

Additional features of the proposed fencing are described below related to security measures on the WWTP Site and in **Appendix 4, subsection 4.4.16** related to SCADA.

Stormwater Management and Erosion Control

The Company shall design, construct, manage and maintain all drainage systems necessary to accommodate drainage from all access driveways serving the WWTP Site during the Management Period. The Company shall prepare a draft and final Stormwater Management Plan for the WWTP Site that shall comply with the City's policies and regulations as required in the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the Stormwater Management Plan and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

The plan shall address surface and roof drainage as well as the quality and quantity of storm runoff. The Stormwater Management Plan shall follow the minimum design criteria as set forth in the City's stormwater guidelines. Existing stormwater facilities may be modified to address the new facility layout and design.

Additional stormwater permitting requirements are described in **Appendix 6**.

Lighting Control

Facility lighting shall be designed in accordance with Occupational Safety and Health Administration (OSHA) requirements and shall minimize offsite impacts, yet provide a safe working environment for the staff. Photo-electrically controlled, low-level (intensity), low-glare exterior lighting meeting Illuminating Engineering Society of North America foot candle level requirements as stated in the Recommended Practice Manual, shall be provided at the WWTP Site entrance, along all walkways where routine maintenance will be required, and along roadways, parking areas, and sidewalks to enhance security and allow for safe movement in the dark. Switch-controlled task lighting shall be provided in the immediate vicinity of unit processes and other areas that may require maintenance and operation at night. All lighting shall be in accordance with the City Code as described further in **Appendix 6, subsection 6.4.2**.

Security

A variety of security measures shall be used, including aforementioned perimeter fencing. Closed-circuit television (CCTV) shall be provided at the gated entrance to the WWTP Site.

WWTP Site security effectively shall employ access control and video monitoring technologies to accomplish the following objectives:

- Delay or deter potential adversaries.
- Detect potential problems in a timely manner.
- Respond quickly before extensive damage is done.

Critical areas of the facility can be seen on **Figure 1-2** within **Appendix 1** and include the existing operations building, control building, solids building, shop, electrical rooms, hatches, and other major equipment; and the future buildings, electrical rooms, and major equipment. Security for these areas shall include card access readers and intercom systems for communications with the SCADA room to allow access for deliveries and haul trucks. No outside speakers, alarms, or rings shall be allowed. **Appendix 4, subsection 4.4.16** contains additional requirements for instrumentation, control and SCADA related to security.

Security Control and Monitoring

The SCADA room within the operations building shall serve as a central monitoring and assessment space for the access control and CCTV systems. This room shall contain alarms and security equipment, including the following:

- card access controller panel, workstation, and integrated badging system for access control
- gate intercom or phone system and control panel to provide voice communications and access for deliveries and haul trucks
- console-mounted CCTV monitors and SCADA displays for security point alarms
- digital video recorders with a 30 day storage for video record and mounting racks for CCTV components.

Onsite Access Control

All exterior gates shall be locked at all times and shall be equipped with card readers and cameras to enable entry for WWTP staff and operations personnel. All exterior gates shall be equipped for remote observation and operation from a staffed operation location and operable through the use of electronic access cards or passkeys. The Company shall assign each authorized person a unique access card or passkey that shall be logged into a database to track access card entry. Remote control of, and voice communications via phone with, all entrance gates from the control room in the operations building shall be provided. The Company shall also provide electronic access cards or passkeys to the entrance gate to the fire department and other emergency response agencies whose jurisdiction includes the WWTP.

Cathodic Protection

All buried steel components shall be protected from corrosion by cathodic protection, unless the Company provides documentation that the protection is not required at a specific location.

Utility Requirements

This section describes minimum utility requirements, including non-potable, potable, irrigation, and fire water; natural gas; and other support services.

Non-Potable Water (W-3)

The Company shall provide non-potable water within the WWTP at pressures of 60–80 pounds per square inch (psi) normally, with localized booster pressure up to 100–105 psi as needed. A non-potable water flow meter shall be provided. Flow rate and totalized flow shall be displayed locally and transmitted to the WWTP SCADA system for display and recording.

Potable Water (W-1)

Potable water shall be provided for administrative and laboratory functions (e.g., sinks, showers, laboratory, water fountains, emergency eyewash, and toilets). In addition, potable water shall be used in the hot water boilers. A backflow preventer shall be installed in any location where potable water discharges to a non-potable system in accordance with plumbing code. Backflow prevention and system design and construction shall conform to City standards. Flow rate and totalized flow shall be displayed locally and transmitted to the WWTP SCADA system for display and recording.

The Company shall provide potable water to the WWTP Site from existing water mains. The Company shall use other existing potable water infrastructure in any locations where the Company determines that the existing infrastructure meets all Contract Standards and is adequate and compatible with the Design-Build Work.

Irrigation Water

Onsite reclaimed water may be used for irrigation of landscaping and grass-covered areas. The supply pressure shall be coordinated with the landscaping requirements. Chlorine residuals needed to meet reuse requirements shall be maintained. An underground drip system with buried drip lines shall be provided to enhance WWTP Site aesthetics and reduce the opportunity for potential vandalism.

Fire Water

The Company shall provide a fire water system sized to meet the needs of the existing and planned future growth of the facility and to meet the requirements of Tualatin Valley Fire and Rescue. This system shall be separate from the other water supply systems and shall be fed directly from water mains around the WWTP Site. Facility access for firefighting and the number and location of fire hydrants shall comply with Tualatin Valley Fire and Rescue requirements.

Fire Protection

The Company shall provide all necessary interior fire suppression systems, hydrants and mains to serve the upgraded WWTP as required by the city of Wilsonville Fire Marshall. The Company shall relocate any existing hydrants as necessitated by the Design-Build Work.

Fire extinguishers rated for A-, B-, and C-type fires shall be located in all buildings. Fire suppression systems for hazardous areas, such as chemical storage rooms, shall be provided in accordance with IBC.

Natural Gas

Natural gas service is not currently available at the WWTP Site, but is available from Northwest Natural Gas near the WWTP Site along Boones Ferry Road at the intersection of Tauchman Street. The Company is responsible for establishing service at the WWTP if needed for the upgraded WWTP.

Propane Gas

The Company shall be responsible for establishing propane gas service at the WWTP if needed for the upgraded WWTP.

Other Support Services

The Company shall be responsible for coordinating cable (internet service) and telephone services with the respective utility companies and connecting the upgraded WWTP to these systems, both of which are currently available at the WWTP Site. Provide cell phone repeater(s), as required, so that cell phone reception is available in all buildings.

4.4.11 Structural

This section describes Technical Specifications related to structural elements.

Structural Design

All structural design work shall be prepared under the direct supervision of a professional engineer licensed in the state of Oregon. The Company shall design all new facility construction for a service life of not less than 50 years in accordance with the most current applicable codes and standards.

Existing Structures

Existing structures modified as part of the Company's work shall comply with Chapter 34 of the most current version of the Oregon Structural Specialty Code (OSSC). Rehabilitation shall not only meet the OSSC, but specifically address WWTP Site foundation conditions as well.

Demolition

Minimum requirements for demolition of existing structures are set forth in **Appendix 4, subsection 4.4.1** and **Appendix 5, subsection 5.4.6**.

New Structures

The structural design of new structures shall conform to the most current version of the OSSC and any modifications adopted by the City in effect when applying for the building permit required to perform the Design-Build Work. The Company shall also meet the requirements of generally accepted specialized codes or standards as identified herein that apply to the design of the given structural component.

New structures shall be designed to facilitate efficient removal and/or replacement of process equipment (e.g., ceiling apertures) and hoists.

Concrete

Concrete water/wastewater containing structures shall be designed to meet the requirements of the latest edition of American Concrete Institute (ACI) 350 – Code Requirements for Environmental Engineering of Concrete Structures. The appropriate American Water Works Association (AWWA) design standards shall be used for design of steel water/wastewater containing structures, steel or concrete conveyance pipes, conduits, and free standing tanks.

Unless specifically stated otherwise, all structures, buildings, building-like structures, other structures, basins, tanks, and their interconnecting systems shall meet the requirements of Occupancy Category III, per the latest OSSC.

Watertightness, durability, and serviceability criteria shall govern the concrete mix design, the structural design, the quantity of reinforcement, the joint placement, and the detailing for concrete wastewater bearing structures. The minimum serviceability requirements include crack control and durability. Crack control shall be adequate to prevent leakage out of water/wastewater containing structures or into dry structures. The durability of the concrete structure shall be adequate to: resist freeze-thaw cycles; resist abrasion from moving equipment and fluids; resist penetration into the concrete by chemicals, including chlorine solutions; protect the reinforcement from water/wastewater, chemical and atmospheric attack; and maintain appearance. Watertightness shall be defined and tested per the latest addition of ACI 350. Adjacent basins shall be able to be drained individually for maintenance purposes.

The concrete mix design shall meet serviceability and durability criteria and achieve strength requirements.

Structural concrete mix design for wastewater bearing structures shall meet the following minimum standard: a minimum 28-day compressive strength ($f'c$) of 4,500 psi; a maximum water to cementitious material ratio of 0.40 with superplasticizer and 0.44 without superplasticizer; and pozzolan (type F fly ash) based on total cementitious content by weight shall be 15 to 25 percent. Structural concrete for all other structures shall meet the following minimum standard: a minimum compressive strength of 4,000 psi, except for structural concrete for secondary concrete structures, such as curbs, sidewalks, and pipe/conduit encasements, which shall meet a minimum standard of 3,000 psi at 28 days; and maximum water to cementitious material ratio of 0.45.

Masonry

Masonry shall be designed in accordance with ACI 530. All masonry structures shall be of reinforced and solid grouted construction. Masonry shall not be used for the below grade support of soil loads or in earth retaining structures.

Metals

All metals exposed to weather or in corrosive environments shall be type 316 stainless steel, or 6061-T6 aluminum. Hot-dipped galvanized steel shall be provided in all other applications. All stainless steel bolts shall be ASTM A320 or better.

4.4.12 Architectural

This section describes the design and construction considerations related to architecture, including aesthetic qualities and in accordance with applicable land use standards and approvals.

All building designs shall meet all requirements of the City of Wilsonville Planning and Land Development Ordinance as described further in **Appendix 6, subsection 6.4.2**. Specifically, the design shall meet the requirements for setbacks, signs, and landscaping. Additional landscaping requirements are included in **Appendix 4, subsection 4.4.9**.

The Company shall develop and deliver a consistent architectural theme that is reflective of the permanent nature of the municipal services being provided, provides durable, industrial finishes and enhances the existing architecture on the WWTP Site. The architectural aesthetics of the facility shall be compatible with the scale of the built environment of the host neighborhood, and complementary to the functional needs of providing wastewater treatment (e.g., the covering of treatment process areas as required to meet the Odor Guarantee requirement and integration of treated air stacks). **Exhibit 4-1** within **Appendix 4** includes the Company's preliminary architectural rendering(s) that illustrates the architectural approach.

The WWTP is surrounded by tall trees and is currently visible from the Interstate 5 freeway and the adjacent public trail system. The property to the south of the WWTP is occupied by a mobile home park neighborhood along the Willamette River and adjacent to Boones Ferry City Park. The mobile home park property is currently for sale and may be redeveloped in the future for single family or multi-family residential homes or other uses. Portions of the redeveloped mobile home park could have views of the WWTP.

The existing WWTP buildings are simple forms with no reference or attempt to match the architectural context of the development on SW Boones Ferry Road. Existing WWTP buildings are purpose-built, with the newer administration/lab building attempting to stay within the forms, materials and finishes of older structures.

The Company shall provide new furniture up to an allowance of \$20,000 and in coordination with City input on selections.

4.4.13 Building Service: HVAC System

In addition to upgrading the HVAC systems in the existing administration building in accordance with **Appendix 4, subsection 4.4.1**, the Company shall design heating and ventilating systems in accordance with American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) and other design standards, including NFPA, where applicable, and in compliance with applicable provisions of regulatory agencies. The Company shall provide adequate air conditioning and ventilation in offices and other normally occupied areas as necessary to provide adequate temperature control and air quality in

compliance with ASHRAE Standards 55 and 62. Equipment shall be provided such that occupied spaces can be mechanically cooled during summer months so that a maximum temperature of 72°F and a relative humidity of 59 percent can be maintained in offices, laboratories, electrical rooms, and computer rooms. The Company shall provide separate air systems for the sludge handling rooms so that any returns are not mixed with the flows to the clean rooms. Laboratory and electrical and computer rooms shall have dedicated systems.

Other features of the HVAC systems shall include the following:

- Flexible ductwork shall be limited to no more than 6 feet for final connection to ceiling diffusers.
- Ducted, return air systems shall be provided instead of ceiling plenum return air systems.
- HVAC equipment, ductwork, and air distribution devices serving corrosive areas shall be provided with protective coatings and/or constructed from corrosion-resistant materials.
- Outside air ventilation shall be provided for process areas and non-occupied areas.

Fire extinguishers shall be provided as described in **Appendix 4, subsection 4.4.10**.

4.4.14 Mechanical

The Company shall provide all equipment and appurtenances to provide complete and fully functional systems and meet the requirements of all reference standards, particularly Uniform Mechanical Code (UMC). The Company shall provide the number and capacity of all equipment to ensure sufficient redundancy and continued Influent treatment. To the maximum extent practical, similar pieces of equipment, including but not limited to pumps, valves, and gates, shall be furnished by the same manufacturer to maintain uniformity.

General

The design and construction of the Wastewater System Capital Improvements shall incorporate the equipment and piping system layout guidelines as follows:

- Provide access to equipment components in accordance with applicable codes and safety requirements and recognized industry standards of good practice. The minimum clear space around equipment shall also allow the equipment to be completely removed without dismantling adjacent equipment.
- Provide access for removal of pumps and equipment for maintenance purposes.
- Allow ample space for access to and removal of valve and gate operators. Provide adequate clearance for rising stem valves and gates in all positions.
- Generally lay out electrical conduits and piping so that it can be supported easily and provide for an easily expanded facility.
- Provide labels (including material and direction of flow, as applicable) for all equipment and piping.

- Leave adequate clearance at pipe flanges to facilitate disassembly of piping and provide for an easily expanded facility.
- Provide flexible connections for easily assembling and disassembling piping and for connections to equipment. Ensure that adequate thrust restraint is provided at each flexible coupling.
- Provide washdown drains and secondary drains for proper maintenance of equipment and buildings.
- Provide adequate space, pipe stubs, conduit runs, and other features for installing future equipment for the planned future expansions of the WWTP.
- Arrange equipment and piping to prevent tripping hazards.
- Locate all equipment and associated panels and cabinets on reinforced concrete equipment bases, which shall be a minimum 4 inches high and extend a minimum of 2 inches outside the equipment, panels, or cabinets, except for electrical cabinets where a shorter base is necessary to avoid interference above the cabinet.
- Provide stairs, catwalks, platforms, hatches and cranes for maintenance and operational accessing and removing equipment and for operation of valves. Generally, ladders shall not be used for this purpose where frequent access is required.
- Provide hoists, monorails, or cranes where necessary for disassembling or removing major pieces of equipment, and where the use of appropriately sized and configured mobile lifting equipment is not possible or practical. Where cranes are required to remove equipment, provide adequate space for boom truck and crane access.
- Provide lifting eyes for equipment weighing 100 pounds or more, where applicable.
- Locate washdown drains and secondary drains for proper maintenance of equipment and buildings.
- Minimize the number of confined spaces.
- Water lines or ductwork shall not be run over electrical rooms or electrical equipment.
- Use 316 stainless steel for anchor bolts, fasteners, and supports.
- Minimum requirements for existing equipment removal are set forth in **Appendix 4, subsection 4.4.1.**

Piping and Valves

Provide piping and valves that meet all applicable codes. Piping and valves design shall meet the following guidelines:

- all piping with unbalanced thrust forces shall be mechanically restrained
- have a minimum expected service life of 50 years (excluding nonmetallic pipes and valves)
- constructed of materials that are compatible with the fluid transported within the pipe and for the environment in which the pipe is installed

- provide isolation of each treatment unit, process train, and piece of equipment, such that maintenance activities can be accomplished while other units remain operable.

Pumps

The Company shall provide all pumps necessary to convey Influent flows including ancillary systems. All pumping systems shall be designed to meet the design flow requirements with at least one pump not in service. Pumps shall be selected for optimum efficiency in the range of flows most frequently expected and shall be capable of operating over the full ranges required to meet Performance Guarantee requirements.

Pumps shall be designed and installed in accordance with the criteria described below:

- Pumps shall be heavy duty selected for long and trouble free service.
- Pumps shall be removable for inspection or service requiring no bolts, nuts, or other fastenings to be disconnected or need for personnel to enter the tank or wetwell.
- Motors shall be sized to operate within their nameplate horsepower ratings under all conditions of operation and provide a 1.15 service factor.
- Motors shall be suitable for continuous operation in a 40°C ambient temperature.

4.4.15 Electrical

In general, new electrical systems shall use standard manufactured materials, software application packages and equipment normally used in industrial facilities. New materials and equipment shall withstand the corrosive and hazardous conditions associated with wastewater treatment plants.

Electrical Design

The electrical systems shall be designed in strict compliance with local building code requirements and portions of the codes and standards applicable at the time of permit approval for construction. Provide required ventilation and cooling systems.

The electrical systems for the Wastewater System Capital Improvements, in general, shall be heavy-duty industrial type with design emphasis placed on safety, reliability, maintainability, and economics.

Electric Power Service

Existing Service

Electric power service is delivered by the local electric utility, Portland General Electric. The existing 12.47-kilovolt, 3-phase service for the facility is routed underground to a 1500-kilovolt-ampere utility transformer located to the south of the process gallery Building. The transformer secondaries feed an existing 480 volt, 3000 ampere switchgear SWBD-1 located in the electrical room of the Process Gallery Building which, in turn, feeds the switchboards and motor control centers located at facilities throughout the WWTP. The existing switchgear feeds all the current

electrical requirements of the WWTP. Minimum requirements for existing electrical equipment removal are set forth in **Appendix 4, subsection 4.4.1.**

Upgraded Service and Distribution

The existing utility service, standby generation system, and power distribution shall be upgraded to cope with the new and increased WWTP load. Larger or additional utility transformer(s) will be required to be pad-mounted on the WWTP Site in an inconspicuous area.

New Power Distribution

Service to Motor Control Centers (MCCs). The internal power distribution system shall be designed such that no single fault or loss of a power source will result in extended disruption of electrical service to more than one motor control center associated with the essential components requiring backup power.

Division of Loads at MCCs. Essential process and safety loads of the same type serving the same function shall be divided as equally as possible between at least two motor control centers connected to both normal and standby power sources. Nonessential loads shall be connected to the normal utility power source only.

Standby Power

A backup power supply system shall be provided to power critical processes in the event of an outage of normal utility power. Standby power shall be provided by engine-generator set(s) located at the WWTP Site. It shall be connected through automatic transfer switch(es) to power all essential WWTP loads including a lighting and ventilation level adequate for staff safety and convenience. The generator(s) shall automatically provide power during utility outages and shall operate at full load for a period of 24 hours without refueling.

Reliability Criteria

U.S. Environmental Protection Agency System Design Criteria and Oregon DEQ require that two separate and independent sources of electric power shall be provided for essential WWTP loads. These separate power sources shall be either from two separate utility substations or a single substation and one site-based generator. The closest utility substation, other than that which currently supplies power, is located at SW Boeckman Road and SW Parkway Ave. The Company is responsible for identifying the essential loads to which these technical specifications apply.

Existing Standby Power

An existing 500-kilowatt diesel engine-generator set is located at the east perimeter of the WWTP. It is connected to a main breaker at the existing switchgear SWBD-1. Upon loss of utility power, a transfer scheme at the SWBD-1 automatically starts the generator, opens the utility main breaker and closes the generator main breaker to re-energize the WWTP on standby power. This existing generator is marginally sized for the current WWTP loads.

New Standby Power

Currently the existing engine generator supplies standby power to the entire WWTP electrical system, essential and non-essential loads alike. To facilitate economy in equipment sizing and

operating costs, consideration should be given to segregating the new electrical system into essential and non-essential loads such that standby power could be provided for the essential loads only as allowed by DEQ. An evaluation shall be conducted during the early stages of detailed design to confirm which existing and new WWTP loads are essential, and to determine the minimum capacity of the standby generation system required to supply these loads. The current physical condition and remaining lifespan of the existing standby engine-generator shall also be examined during this evaluation to determine if it can be reused or should be replaced.

Electrical Construction Materials

Conduit

All exposed surface-wiring circuits shall be run in metal conduits or armor-clad cables for physical protection and for maximum isolation from noise. Indoor exposed circuits in non-corrosive areas shall run in metal conduits. Options for exposed circuits in corrosive process areas and all outdoor areas are polyvinyl chloride (PVC)-coated galvanized rigid steel conduits or rigid aluminum conduits. Power and control wiring can be run in Schedule 80 PVC conduits where fully embedded in concrete. To provide enhance noise immunity, analog signal and digital communications cabling shall run in PVC-coated metal conduits where embedded in concrete. Class and voltage of contained circuits shall be installed in conduits in the following manner:

- 480-volt power conductors between inverter drives and motors shall be routed in separate metallic raceways to isolate harmonics and high frequency noise.
- 480-volt power conductors between MCCs and motors shall be routed in separate raceways dedicated to the load equipment served.
- 480-volt power conductors for large feeder circuits shall be routed in separate raceways.
- Other 480-volt power conductors for small feeders and branch circuits shall be run in common raceways with cable sizes compatible for pulling.
- 120-volt branch circuits for power and lighting shall be run in common raceways with cable sizes compatible for pulling.
- Control and signal conductors between inverter drives or MCCs and motors shall be run in separate raceways dedicated to the load served.
- Other control and signal conductors shall be run in common raceways segregated by voltage potential level with cable sizes compatible for pulling.
- DC power conductors shall be run in separate raceways.
- Analog signal conductors shall be run in separate metallic raceways.
- Telephone and communications conductors shall be run in separate metallic raceways.
- Data highway cables shall be run in separate metallic raceways.
- Conduits between structures on the WWTP Site shall be routed underground organized in concrete-encased duct banks. Steel reinforcing shall be installed in the concrete to minimize damage from earthquakes, vehicular traffic, settling, or future excavations.

Panels

All electrical panels shall be stainless steel, unless special corrosion resistance is required. All indoor/outdoor, corrosion resistant panels shall be NEMA 250, Type 4X that does not exchange cabinet interior air with ambient air. Outdoor, door-in-door panels shall comply with NEMA 250, Types 3R and 12 requirements except dust test.

Power and Control Wire

Copper conductors shall be used exclusively. Insulation shall be ethylene-propylene rubber (EPR) and/or cross-linked polyethylene (XHHW-2), the best available industrial grade wiring types for longevity and severe duty usage.

Analog Instrument Signal Cable

Signal cable shall be twisted shielded pairs or triads of #16 AWG 7-strand copper wire with 600-volt PVC insulation, 100 percent aluminum-Mylar tape shield, #18 AWG tinned copper drain wire with an overall PVC outer jacket.

Data Highway Cables

Data highway cables shall be of two types, copper conductor drop cables for use within control panels and office areas and optical fiber cables for use as trunk cables between control panels in process areas and buildings.

Drop cables shall be EIA/TIA 568A Category 5 (CAT5) UTP data cable. Drop cables shall be UL-listed as Type CMP. Drop cable conductors shall be 4 pair #24 AWG solid copper with FEP Teflon insulation and a fluorocopolymer overall jacket.

The network trunk cables shall be armored tight-buffered fiber-optic cable. Trunk cables shall be UL-listed as Type OFNR. The cable shall be Type BX severe duty rated for outdoor damp location use, PVC jacketed with Kevlar strength members capable of withstanding at least 500-pound pull tension.

Motor Controls

New MCCs shall be provided for all motor controls and starters.

Motor control centers shall be 90 inches high, 20-inch-wide by 20-inch-deep sections, front accessible only, tin-plated copper bus, with NEMA IIB wiring.

Variable frequency drives rated 75 horsepower and smaller shall be packaged within standard MCC sections. Variable frequency drives rated larger than 75 horsepower shall be packaged within free-standing floor mounted enclosures.

Grounding

A ground grid shall be established at all new structures by driving ground rods and interconnecting them with buried copper cables. Any available metal cold water piping, slab reinforcing steel and building structural steel shall be bonded together as part of this grid. Each new duct bank shall contain a bare copper cable connected at both ends to existing grids. The new ground grid shall be solidly bonded to the existing WWTP grounding system to integrate

and improve grounding WWTP-wide. Ground grid connections to ground rods shall be accessible within monument case vaults with traffic rated covers in at least two places at each building or structure.

Sensitive electronic control, instrumentation, and communications systems shall be equipped with an adequate grounding system. In addition to good wiring practices, such as shielding, conduit and cable routing, and voltage separation, proper grounding shall be implemented to minimize interference.

Lighting

Lighting fixtures shall use quality components and shall be selected for highest efficiency and minimum maintenance. Fluorescent ballasts shall be electronic; lamps shall be the latest T8 (1-inch diameter) energy-savers with high color-rendering. Outdoor fixture housings and hardware shall be non-corrosive such as fiberglass resin or stainless steel. Shielding lenses shall be tempered glass or impact-resistant acrylic plastic. Care shall be taken to minimize the unwanted effects of outdoor lighting illuminating areas beyond the boundaries of the WWTP Site. Minimum illumination levels will be as follows:

Area	Maintained foot candles (fc)
Indoor process areas	20 to 40 fc
Outdoor process areas	5 to 10 fc
Conference Rooms	50 fc
Electrical Rooms	40 fc
Outdoor Substation Areas	2 fc
Mechanical Equipment Areas	20 to 40 fc
Maintenance Areas	60 fc
Labs	100 fc
Offices	75 fc
Restrooms	20 fc
Street Lighting	0.1 to 1 fc

In the event of a conflict between the illumination levels in the City of Wilsonville Ordinance No. 649 and those defined in **Table 4-1** within **Appendix 4, subsection 4.4.15** the ordinance requirements shall prevail.

Light Switching

Lighting fixtures in indoor process areas and non-occupied building spaces shall be provided with manual switches. Lighting fixtures in indoor occupied building spaces shall be operated with motion sensor switches. A minimum number of nightlight fixtures will remain on at all times for personnel safety.

Emergency Lighting

As a minimum, nightlights shall be connected to the standby generator for continuous lighting during a utility outage. In other areas, emergency lighting shall be provided in the form of self-

contained battery-powered units with sealed-beam floodlights. These batteries shall be maintenance-free with alarm/testing feature.

Exterior Lighting

Exterior fixtures shall be controlled by photocells with override switches. The photocells shall permit energy savings during daylight hours. The override switches shall permit testing of lamps during daylight hours or additional energy savings by leaving selected lights off at night when not needed.

4.4.16 Instrumentation and Control and SCADA

The Company shall provide process instrumentation, controllers, analytical devices, computers, software, data networks, interconnecting media and other necessary equipment and materials for complete and fully functional Process Automation System (PAS), Information Systems (IS) and SCADA for the upgraded WWTP and the Lift Stations. The Company shall provide a reliable installation that is secure and robust in design that meets the ongoing process needs of the WWTP and Lift Stations and also serve the reporting and data access needs of the WWTP and Lift Stations operations.

The PAS shall be the primary process control mechanism for the WWTP consisting of field instrumentation, motor and valve controllers, equipment status and alarm monitoring devices connected to local Process Automation Controllers (PAC) or Programmable Logic Controllers (PLCs). The controllers shall receive input from the WWTP operators and field devices executing programmed logic that determines control parameters that are directed to field equipment such as pumps, valves and other process mechanical equipment. Operators shall interface with the control system using SCADA graphic workstation screens and/or local hand controls.

The SCADA system shall be the general manager for the accumulated data from the PAS. The SCADA system shall translate and relay operational details and process alarms to remote display locations. The SCADA system shall include local operator interfaces, communications networks, data collection databases and provides automatic report generation tools for the Company, the City and regulatory agencies.

IS shall include computer and server equipment, office programs, engineering programs, financial management systems, asset management systems, laboratory information systems, maintenance management systems, and data historian, remote access and alarm call-out systems that shall derive input and make decisions from the SCADA system database.

The Company shall provide secure, wireless, remote access station to the SCADA system at the Public Works Administration Building. The Company shall also provide physical access at all times at the WWTP Site for one City staff to utilize an onsite computer to access the SCADA system data, all Asset Management data, all WWTP performance data, and laboratory information.

The DBO Agreement anticipates a substantial rework or redesign of the existing process automation system for the WWTP. All functional units new and existing shall be provided for in a single IS and PAC structure.

Reliable operation and security of interconnected electrical, instrumentation and SCADA systems must be provided. To this end, the Company shall provide a design that provides protection from local process control failure and resistance to cyber attack (vandalism).

The PAC system design shall be based upon a structured networked bus design that permits expansion or improvements that are yet to be determined. Support for inclusion of smart and multi-parameter instrumentation into the system shall be included to provide the ability to include future requirements of control monitoring that may be dictated by regulatory agencies such as DEQ.

The PAC system shall be designed with distributed local control able to maintain critical local operations in the event of individual process control module or communication failure.

The Company shall purchase and own all of the process automation hardware and software required for operating the Managed Asset Sites under the DBO Agreement. The Company shall register the software in the City's name, hold all software licenses for the City for the Term, and turn over the licenses to the City at the end of the Term. The Company shall maintain all the system hardware and software, and make the determination of when to upgrade to the latest software revision or hardware model during the Term. The Company shall maintain legal, valid and updated licenses for all software used.

The Company shall maintain and troubleshoot all IS and SCADA systems included in the DBO Agreement for the Managed Assets. The DBO Agreement shall include periodic audits by the City of the systems throughout the Term to ensure they are being properly maintained, the desired data is being archived and all distribution level communication physical channels are secure and fully functional.

General Design Criteria

In accordance with the timeframe in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall provide an overall instrumentation and control strategy document outlining the basis of design for the proposed system. The provided system shall interface with the City's existing SCADA facilities and data collection requirements. The City has recently installed a SCADA system based upon Wonderware Intouch v.10.0 software. The Company must provide all available functionality attendant to this existing SCADA system architecture with all future developments of same.

Additional security requirements are included in **Appendix 4, subsection 4.4.10**.

Control Hierarchy

Equipment shall be controlled from either PAC supervised local control panels at the equipment or via the automation system operator interface for all supervised systems in the WWTP control room.

Local Control Stations

Local equipment control station requirements shall be developed by the Company. The Company shall provide a comprehensive standard for LOCAL/REMOTE control functions. The standard shall also include SCADA system interface and monitoring requirements for local controls.

Motor Controls

All unit controls for MCCs, stand-alone enclosed variable frequency drives and starters, shall be on a networked control bus supervised by the local PAC and displayed on the SCADA system. Local panel front operator interface device requirements shall be developed by the Company.

Process Automation System

The PAS shall operate via a distributed block-type control strategy with process controllers in local areas dedicated by process related groupings. Each process controller and local operator interface shall be provided with backup uninterruptible power supply to maintain online status during power failure transitions to standby power.

The Company shall provide, configure, program, operate and maintain the WWTP PAS, and communication networks, including radio links, for the entire process during the Term. The Company shall program any new equipment with the existing systems being retained to provide a fully coordinated control and data acquisition system among the Managed Asset Sites. The Company shall program the PAC and SCADA systems to share the required process control data and operating information among the Managed Asset Sites. Interfaces shall be provided using common process control read/write data tables or process tags.

Communication links between all WWTP PAC units and SCADA shall be continuously monitored and safe local operating modes initiated whenever a communication failure has occurred. Normal operation modes shall automatically resume when communications have been restored.

Safety Interlocks

All safety and equipment protection shutdown/lockout interlocks shall be implemented through hardwired connection to the motor control circuit. Interlocking for personnel and equipment safety and equipment protection shall not be done through the automation control system. Interlock logic shall include a hardwired RESET pushbutton function. Acknowledgement may be by hardwired pushbutton or SCADA graphic screen interface. Shutdown/lockout and RESET functions shall be monitored by the local PAS and relayed to SCADA to provide coordinated, automated system operation and network notification in the event of a shutdown occurrence. The Company shall develop a shutdown/lockout/notification procedure and identify the location of equipment safety disconnect switches.

General Equipment Monitoring Requirements

Equipment status and selected operating modes shall be displayed on the local operator interface graphic display. Individual equipment runtime shall be accumulated, historically logged, and displayed by the local PAC and SCADA systems. No local access rights shall be provided for

resetting these values. All alarms shall be annunciated and displayed on the local operator interface graphic display and forwarded to SCADA. Field annunciation panels shall only be used for personnel or operational safety or if they are included in equipment manufacturer's local control panels.

SCADA System Architecture

The local SCADA system architecture shall utilize a server computer with multiple redundant hard disks or using latest alternate redundant storage technology with utmost compatibility between the server and the client operator workstation computers. The configuration shall provide supervisory-level monitoring, control and data collection applications via a distributed and scalable architecture. The multiple, redundant storage media in the server computer shall automatically provide hot backup to each other in the event that one fails. Each storage unit shall be able to be replaced under power without having to shutdown the server or take the application offline.

A redundant communication network shall provide network access at each building and/or PAC location on the WWTP and Lift Stations Sites. The configuration shall provide for redundant, self-healing network paths in the event of segment problems or failure of individual network devices. Communications with all process automation controller components shall also be provided with redundant interconnections. The Company shall complete the installation of the communication equipment and any interconnection media. The Company shall perform end-to-end testing of all network communication connections and access ports. Network bus systems shall be designed in redundant ring topology, reconfigurable, self-healing at the distribution level and expandable at the functional level.

Local alarms requiring operator attention or intervention shall be annunciated locally and reported to the SCADA system. The Company shall develop a response protocol for alarms requiring various levels of outside response, i.e., operational assistance, fire, rescue, haz-mat, police, etc. Such alarms shall be relayed immediately to SCADA. Alarm dispatch and response notification shall be resident within the SCADA system. No loudspeakers or outside alarms shall be used in the communication systems.

The SCADA system software shall facilitate the collection and archiving of all WWTP process historical trending and reporting data. This data shall be stored in the WWTP CMMS or other database using industry standard database format and selectively made available to the City for operational trends and reports on a daily, monthly, annual, and on "as requested" basis. All trends, reports and supporting data shall be the property of and be provided to the City for special studies and long term strategic planning. Detailed trend data shall be kept for all analog process measurements.

All PAC and local server design shall be OPC (formerly Object Linking and Embedding for Process Control) Unified Architecture compliant as defined by the OPC Foundation. PAS software shall utilize IEC-61131-3, Open Control Standard & Software.

Operator Interface Graphics

The Company shall develop operator interface screen graphic design during the system planning process to include all operation parameters, alarms and data recording.

4.4.17 Building Information Modeling (BIM)

The Company shall utilize 3-dimensional (3-D) BIM for design and construction of the Wastewater System Capital Improvements and provide submittals in accordance with the current version of **Exhibit 9-1** within **Appendix 9** and the design submittal protocol described in **Appendix 9, subsection 9.4.2**. The City provided the Company with BIM developed for the existing WWTP that meets Level 500 of the American Institute of Architects' (AIA) Level of Development (LOD) per Document E202TM-2008, "Building Information Modeling Protocol Exhibit." The Company may utilize the City's existing BIM model at the Company's risk to provide information for their design. The Company's 3-D BIM model shall include all new buildings, structures, yard piping, and site work as well as existing facilities that are modified or rehabilitated as part of the Design-Build Work.

4.4.18 Public Outreach

The Company shall support the City's efforts in terms of public outreach and education during the Design-Build Period. This shall include responding to questions from the City's Contract Administrator, providing written materials for public meetings and presentations as requested, and attendance at same as requested by the City. The Company shall also provide a weekly update to the Contract Administrator for the project Web site.

Exhibit 4-1. Drawings and Diagrams

In the event of a conflict between **Appendix 4** and the drawings and diagrams included in **Exhibit 4-1**, the requirements listed in **Appendix 4** shall take precedence over **Exhibit 4-1**.

Several drawings in **Exhibit 4-1** include hand markups. These markups have been reviewed by the City and the Company.

Exhibit 4-1 is included in the DBO Agreement as a separate bound document.

Exhibit 4-2. Specifications for Major Equipment and Systems

General Information

Company-Specific Information

Name of Equipment/System	<u>Influent Screens</u>
Manufacturer	<u>Headworks Inc; Huber, JWC Environmental, or equal</u>
Country of Manufacturer	<u>United States</u>
Identification/Model No.	<u>Headworks, Mahr Model MS-2 Bar Screen</u>
Number of Units	<u>2</u>
Analytical/Instrumentation Requirements	<u>Level elements</u>
Control Description	<u>Cleaning cycle based on differential level</u>

Design/Operational Parameters

Company-Specific Information

Unit Capacity	<u>8 mgd</u>
Size/Dimensions	<u>3/8" bar spacing</u>
Power Requirements/Voltage	<u>2 HP/480V</u>

<u>Component</u>	<u>Materials of Construction</u>	<u>Company-Specific Information</u>
<u>Influent Screen</u>	<u>SST</u>	
<u>Sluice Trough</u>	<u>SST</u>	

Other Features

General Information**Company-Specific Information**

Name of Equipment/System

Screenings Washer-Compactors

Manufacturer

Headworks Inc.; Huber, JWC
Environmental, or equal

Country of Manufacturer

United States

Identification/Model No.

Headworks, Screwactor SW W320

Number of Units

2

Analytical/Instrumentation Requirements

Control Description

Manufacturer system control panel

Design/Operational Parameters**Company-Specific Information**

Unit Capacity

5-10 ft³/hr

Size/Dimensions

Power Requirements/Voltage

2 HP/480V

Component**Materials of
Construction****Company-Specific Information**

Washer Compactor

Steel Screw;
SST Housing

Other Features

General Information

Company-Specific Information

Name of Equipment/System

Grit Basin Mechanism

Manufacturer

Smith and Loveless; U.S. Filter, or equal

Country of Manufacturer

United States

Identification/Model No.

Smith and Loveless, Pista Model 20

Number of Units

1

Analytical/Instrumentation Requirements

Control Description

Manual ON/OFF

Design/Operational Parameters

Company-Specific Information

Unit Capacity

16 mgd

Size/Dimensions

16 ft diameter

Power Requirements/Voltage

2 HP/480V

Component

Materials of Construction

Company-Specific Information

Other Features

General Information

Name of Equipment/System

Manufacturer

Country of Manufacturer

Identification/Model No.

Number of Units

Analytical/Instrumentation Requirements

Control Description

Company-Specific Information

Grit Pump

Smith and Loveless; Wemco, or equal

United States

Smith and Loveless, top-mounted turbo
pump; recessed impeller type

1

Vacuum-priming system

Timer based operation

Design/Operational Parameters

Unit Capacity

Size/Dimensions

Power Requirements/Voltage

Company-Specific Information

200-220 gpm

4" pump

15 HP/480V

Component**Materials of
Construction****Company-Specific Information**

Vacuum-priming system

1/8-HP air compressor and 1/6-HP
vacuum pump

Other Features

General Information**Company-Specific Information**

Name of Equipment/System

Grit Cyclone-Classifier

Manufacturer

WEMCO; Westech, Schloss, or equal

Country of Manufacturer

Identification/Model No.

WEMCO, Hydrogritter 12S 1000C

Number of Units

1

Analytical/Instrumentation Requirements

Control Description

Manual ON/OFF

Design/Operational Parameters**Company-Specific Information**

Unit Capacity

Cyclone: 200-220 gpm per final grit pump
sizing

Size/Dimensions

Cyclone: 10" (4" inlet)
Classifier: 12" Screw

Power Requirements/Voltage

2 HP/480V

Component**Materials of
Construction****Company-Specific Information**

Other Features

General Information

Name of Equipment/System

Manufacturer

Country of Manufacturer

Identification/Model No.

Number of Units

Analytical/Instrumentation Requirements

Control Description

Company-Specific InformationAeration Basin Anoxic MixersPhiladelphia, Lightnin, Hayward Gordon,
EnviropaxUnited StatesPhiladelphia, Model 4040 PTOS4Remote monitoring and controlConstant Speed

Design/Operational Parameters

Unit Capacity

Size/Dimensions

Power Requirements/Voltage

Company-Specific Information25,000 gpm80 inch impeller1HP/460V

Component**Materials of
Construction****Company-Specific Information**ImpellerSSTShaftSST

Other Features

General Information**Company-Specific Information**

Name of Equipment/System

Variable Speed Turbo Air Blowers

Manufacturer

K-Turbo, HSI, APG-Neuros

Country of Manufacturer

United States

Identification/Model No.

K-Turbo, TB75-08.S

Number of Units

3

Analytical/Instrumentation Requirements

Remote Monitoring and Control

Control Description

Variable Speed to maintain discharge
pressure setpoint

Design/Operational Parameters**Company-Specific Information**

Unit Capacity

1300 scfm

Size/Dimensions

32" x 70"

Power Requirements/Voltage

75HP/460V

Component**Materials of
Construction****Company-Specific Information**

Blower components

Appropriate for
service conditions
as defined by mnfr

Fasteners

SST

Other Features

General Information

Name of Equipment/System
Manufacturer
Country of Manufacturer
Identification/Model No.
Number of Units
Analytical/Instrumentation Requirements
Control Description

Company-Specific Information

Diffusers
ITT Sanitaire, EDI, SSI Aeration
United States
ITT Sanitaire, Silver Series II
Varies by manufacturer
N/A
N/A

Design/Operational Parameters

Unit Capacity
Size/Dimensions
Power Requirements/Voltage

Company-Specific Information

3 scfm/diffuser
9" circular
N/A

<u>Component</u>	<u>Materials of Construction</u>	<u>Company-Specific Information</u>
Piping	CPVC	
Membranes	EPDM	

Other Features

General Information

Name of Equipment/System
Manufacturer
Country of Manufacturer
Identification/Model No.
Number of Units
Analytical/Instrumentation Requirements
Control Description

Company-Specific Information

RAS Pumps
Hayward Gordon, WEMCO Hidrostral
USA
WEMCO, Hidrostral E5K
4
None
Adjustable Speed

Design/Operational Parameters

Unit Capacity

Size/Dimensions
Power Requirements/Voltage

Company-Specific Information

Minimum: 400 gpm @ 18 ft TDH
Maximum: 1000 gpm @ 27 ft TDH

20 hp/460

<u>Component</u>	<u>Materials of Construction</u>	<u>Company-Specific Information</u>
Pump Body	Cast Iron	
Impeller	Cast Iron	
Pump Shaft	Type 304 stainless steel	

Other Features

General Information**Company-Specific Information**

Name of Equipment/System

WAS Pumps

Manufacturer

Fairbanks Morse, Flowserve, Hayward
Gordon

Country of Manufacturer

USA

Identification/Model No.

Hayward Gordon, XCS

Number of Units

2

Analytical/Instrumentation Requirements

None

Control Description

Adjustable Speed

Design/Operational Parameters**Company-Specific Information**

Unit Capacity

Minimum: 100 gpm @ 18 ft TDH

Maximum: 200 gpm @ 21 ft TDH

Size/Dimensions

Power Requirements/Voltage

10 hp/460

<u>Component</u>	<u>Materials of Construction</u>	<u>Company-Specific Information</u>
Pump Body	Cast Iron	
Impeller	Cast Iron	
Pump Shaft	Type 304 stainless steel	

Other Features

General Information

Name of Equipment/System
Manufacturer
Country of Manufacturer
Identification/Model No.
Number of Units
Analytical/Instrumentation Requirements
Control Description

Company-Specific Information

Secondary Effluent Pumps
Fairbanks Morse, Flowserve, Goulds,
Fulzer Johnston, Weir/Floway, Morrison
USA
Flowserve, 16ENL
3
None
Adjustable Speed
Trial

Design/Operational Parameters

Unit Capacity
Size/Dimensions
Power Requirements/Voltage

Company-Specific Information

1,100 GPM at 75 feet of head, 1770 RPM
8" column, single stage
30 HP

Component**Materials of Construction****Company-Specific Information**

Pump Body

Iron

Column

Painted steel insid
and out

Discharge head

Flanged, welded
steel

Other Features

General Information

Company-Specific Information

Name of Equipment/System

Cooling Tower

Manufacturer

Marley, Baltimore Air Coil, Evapco

Country of Manufacturer

USA

Identification/Model No.

Marley, NC 8409VLN1

Number of Units

One

Analytical/Instrumentation Requirements

None

Control Description

Start Stop

Design/Operational Parameters

Company-Specific Information

Unit Capacity

3,423 GPM

Size/Dimensions

22.5' x 14' x 12' high

Power Requirements/Voltage

60 HP, 460 V, 3 Phase

Component

Materials of Construction

Company-Specific Information

Structure

Galvanized steel construction

Other Features

General Information

Name of Equipment/System
Manufacturer
Country of Manufacturer
Identification/Model No.
Number of Units
Analytical/Instrumentation Requirements

Company-Specific Information

Secondary Effluent Filter
Aqua Aerobics, Siemens Envirex
USA
Aqua Aerobics, ADFP-54X10E-PC
2
Each filter will be provided with a turbidity meter for measuring turbidity of the filtered effluent
Manual butterfly valves are opened on the inlet and outlet of the filter to allow the effluent to flow thru. As material collects on the filters the pressure drop across the filter will increase causing level in the tank to rise. At a preset level, the systems controls will initiate an automatic filter backwash cycle.

Control Description

Design/Operational Parameters

Unit Capacity
Size/Dimensions
Power Requirements/Voltage

Company-Specific Information

Maximum flow-4,305 GPM/ unit
24' x 7.5' x 9.33' high
2 hp, 25 hp ea. unit,/

<u>Component</u>	<u>Materials of Construction</u>	<u>Company-Specific Information</u>
Filter tank and cover	Painted carbon steel inside and out	
Backwash water booster pump	iron and stainless steel	Grundfos multistage centrifugal pump, Provided with package
Filter elements	fabric filter panels placed on polyethylene frame	Provided with package
Center tube assembly	304 stainless steel	Provided with package
Filter base	Painted carbon steel inside and out	Provided with package

Other Features

General Information**Company-Specific Information**

Name of Equipment/System

UV Disinfection System

Manufacturer

Siemens, Ozonia, Trojan, Wedeco

Country of Manufacturer

Canada

Identification/Model No.

Siemens, V-48E-A300

Number of Units

1

Analytical/Instrumentation Requirements

Refer to P&ID Drawings in Volume x for associated Instrumentation

Control Description

UV intensity modulates based on process flow and transmissivity

Design/Operational Parameters**Company-Specific Information**

Unit Capacity

8 mgd

Size/Dimensions

30" Channel Width

Power Requirements/Voltage

47 kW

Component**Materials of Construction****Company-Specific Information**

All metal components

SST

Components exposed to UV light

Type 304, Type 214 quartz, Viton, EPDM or Teflon

Other Features

General Information

Name of Equipment/System
Manufacturer
Country of Manufacturer
Identification/Model No.
Number of Units
Analytical/Instrumentation Requirements
Control Description

Company-Specific Information

Dewatering Centrifuge System (Skid)
Andritz, Alfa-Laval, Westfalia Separator
USA & France
Andritz, D4L-series skid system
2
Flowmeter included
Package-system controlled via fully automatic PLC with touch screen, with Plant Control system monitoring available.

Design/Operational Parameters

Unit Capacity

Size/Dimensions
Power Requirements/Voltage

Company-Specific Information

Solid throughput of 765 dry lbs/hr;
Hydraulic throughput of 35 gpm w/ 4.5% dry solids concentration feed
8-ft wide x 23-ft long x 8.5-ft high
40-Hp main drive; 10 Hp backdrive; 480V

<u>Component</u>	<u>Materials of Construction</u>	<u>Company-Specific Information</u>
Centrifuge - Bowl/Scroll & Wetted PartsSkid	316L stainless steel	
Centrifuge - Control Panel	NEMA 4X stainless steel	
Feed Sludge Macerator	mfr's standard	
Polymer makedown system	stainless steel, thermoplastic	
Centrifuge Discharge Conveyor	stainless steel	
Skid	A36 carbon steel, painted	
Skid Piping	304 stainless steel, thermoplastic	

Other Features

General Information

Name of Equipment/System

Manufacturer

Country of Manufacturer

Identification/Model No.

Number of Units

Analytical/Instrumentation Requirements

Control Description

Company-Specific InformationDryerTherma-Flite, Komline-Sanderson, FentonUSATherma-Flite IC Series Bio-Scru Dryer
System, Model IC 36001Level and temperature sensors includedPackage-system controlled via fully
automatic PLC with touch screen, with
Plant Control system monitoring available.

Design/Operational Parameters

Unit Capacity

Size/Dimensions

Power Requirements/Voltage

Company-Specific Information3600 lbs/hr of water evaporation 1200
lbs/hr; 25 ft3/hrApproximate footprint of 33-ft x 31-ft100-Hp total of all motors; 480V

<u>Component</u>	<u>Materials of Construction</u>	<u>Company-Specific Information</u>
<u>Feed hopper with integrated feed screw</u>	<u>carbon steel</u>	
<u>Bio-Scru Dryer</u>	<u>carbon steel</u>	
<u>Thermal Fluid Heater</u>	<u>carbon steel</u>	
<u>Cooling Screw</u>	<u>carbon steel</u>	
<u>Scrubber / Condenser</u>	<u>carbon steel</u>	
<u>Control Panel</u>	<u>NEMA 12 stainless steel</u>	
<u>Skid Frame and Support System</u>	<u>carbon steel</u>	

Other Features

Appendix 5 Construction Requirements

5.1 Purpose of Appendix

This appendix identifies and establishes minimum requirements in accordance with **Article X** for construction of the Design-Build Work, including verification of site conditions, safety and environmental controls, the Company's responsibilities related to maintenance of the WWTP operations during construction, mitigation of construction impacts, and restoration of disturbed areas. This appendix also lists the necessary components of the Company's target implementation schedule for the permitting, design, construction, start-up, commissioning, and Acceptance Testing of the Design-Build Work.

5.2 Surveys, Limits of Construction and Signage

The Company shall perform all work and services necessary for or incidental to the performance and completion of survey work necessary for construction. This work shall include surveys needed to establish and maintain benchmarks, in addition to benchmark locations shown on **Figures 1-3a** and **1-3b** within **Appendix 1**, to establish the limits of construction and to make measurements to verify the location of completed construction.

Prior to construction, the Company shall conduct surveys and other activities necessary to define the limits of the construction and lay out the work at the WWTP Site.

The Company shall adhere to the limits of construction defined as the area inside of the existing chain link fence at the WWTP Site. The Company shall provide adequate worker training, flagging, staking, and monitoring to ensure that the limits of construction are observed in the field.

The City has a number of easements associated with the WWTP as shown on **Figures 1-3a** and **1-3b** within **Appendix 1**. For any work located outside of City property, the Company shall be responsible for gaining all rights-of-entry, easements, or other approvals necessary from property owners. For work potentially affecting existing easements, the Company shall comply with the requirements of **Appendix 6, subsections 6.4.2** and **6.6.4**. The Company shall provide the City with copies of all new easements or approvals that the Company has acquired.

The Company shall post appropriate signage throughout the WWTP Site identifying construction and construction traffic areas including but not limited to the following:

- road closures and appropriate detour routes
- gate closures and redirection of traffic for incoming visitors and deliveries to the WWTP Site
- internal traffic revisions required to avoid interfering with construction-related activities
- City staff and visitor parking changes

- any other signage the Company deems necessary to minimize the impacts of construction-related traffic to other activities at the WWTP Site.

Additional requirements for access, parking, and traffic routing are included in **Appendix 5, subsection 5.3.2.**

Additional signage shall include a project sign that identifies the work being done and by whom. The sign shall be 4-by-8-foot multicolored signboard with a multicolored "City of Wilsonville" emblem. The signboard shall be provided with 1¼-by-4-inch edging constructed of exterior-grade, high-density overlaid plywood, and mounted and located in an acceptable manner that will permit public viewing. Details of information to be included on the sign shall be coordinated with the City. The sign shall be painted with a white background and black lettering and the emblem colors shall be as directed by the City. Sign support shall be 4-by-6-inch posts painted black, set a minimum of 3 feet, 6 inches into the ground. Paint shall be exterior type.

5.3 Coordination and Management of Construction Work

The Company shall coordinate with the City with respect to all construction activities, especially those activities that may affect operations of the WWTP. At all times during construction, the Company shall provide City staff with access to the WWTP Site as needed. The following sections describe the requirements for the Design-Build Work schedule and the Construction Plan as well as other coordination and activities that will be required during construction.

5.3.1 Design-Build Work Schedule

In accordance with the timeframe set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall prepare and submit to the City a Design-Build Work schedule as described in **Article X, Section 10.1** and **Appendix 9, Section 9.2** and within this appendix. A copy of the Company's preliminary Design-Build Work schedule is attached to this appendix as **Exhibit 5-1** within **Appendix 5**.

At a minimum, the Company's Design-Build Work schedule shall include the following milestones:

- Commencement Date
- for all Governmental Approvals: submittal date(s) for City review of applications, City review period, application submittal date(s) to permitting agencies, and assumed permit approval and issuance date(s)
- submittal dates for various draft and final plans required prior to Construction Date including: Construction Plan (including all components identified herein), Quality Management Plan, and Safety Plan
- submittal dates for various draft and final plans and calculations required during the Design-Build Period in accordance with **Appendices 4 and 9** including: Pre-Design Report, hydraulic calculations, Landscaping Plan, Stormwater Management Plan, City Planning and Land Development Review Plan, and Operation and Maintenance (O&M) Plan

- major design package submittals required under **Appendix 9, Section 9.4** and City review periods
- anticipated Construction Date
- major construction milestone completion dates for all facilities and systems as well as start-up dates and dates for completion of equipment commissioning
- start-up, operation, commissioning, and functional testing timing and durations for major facility components completed prior to Acceptance Testing
- Operation and Maintenance Manual
- staff training
- Acceptance Testing (including submittal date for Acceptance Testing Plan in accordance with **Article XI, subsection 11.2(A)**)
- Scheduled Acceptance Date and guaranteed maximum duration from the Commencement Date

The Design-Build Work schedule shall coincide with the major milestones set forth in **Exhibit 12-1** within **Appendix 12**. The Design-Build Work schedule shall also illustrate available float for all major schedule activities.

During the Design-Build Period, the Company shall update the Design-Build Work schedule to track and manage Design-Build Work progress. The Company shall provide an updated schedule to the City as follows:

- at least once every month (along with the Company's Monthly Progress Report as described in **Appendix 9, subsection 9.2.2**) based upon interim updates prepared on a daily and weekly basis for use by the Company's Construction Manager
- whenever major changes to the Design-Build Work implementation approach are proposed that would affect the Scheduled Acceptance Date(s); and
- whenever major changes to the Design-Build Work implementation approach are proposed that would affect the milestones included **Exhibit 12-1** within **Appendix 12**.

5.3.2 Construction Plan

The Company shall develop a Construction Plan which describes the coordination and management of all construction work during the Design-Build Period. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall develop and submit copies of a draft and final detailed Construction Plan to the City for review. The City will review the Construction Plan drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. At a minimum, this plan shall address the following information:

- coordination with existing WWTP operations
- Odor Control Plan during construction

- tie-ins to existing pipes and facilities
- planned partial bypasses
- methods for maintaining staff and visitor access to critical WWTP operations, maintenance, and administrative areas during construction
- equipment and material deliveries and storage affecting WWTP access or operations
- plans for incorporating operations input into design/construction planning
- construction staging areas
- employee and trailer parking
- site access security measures
- spill prevention and control
- notification protocols for routine and emergency conditions
- plan to address shoring and dewatering at excavation locations (see **Appendix 5, subsection 5.4.2**)
- any additional items the Company believes are necessary to minimize impacts on WWTP operations and maintenance.

The Construction Plan shall meet all requirements of this appendix. Several components of the Construction Plan listed above are described in greater detail below. The Construction Plan, including its components, shall be updated as needed as construction progresses.

The Company shall plan and schedule its construction work, including any planned bypasses, partial shutdowns, and/or full shutdowns, considering seasonal variations in flow to the WWTP, and shall make every effort to minimize the need for these bypasses or shutdowns.

Coordination with Existing WWTP Operations

The Company shall coordinate the construction of the Design-Build Work with the operation of the existing WWTP during construction of the Wastewater System Capital Improvements to ensure continuous compliance with the Wastewater Discharge National Pollutant Discharge Elimination System (NPDES) Permit. The Company shall take no actions during construction that adversely affect the WWTP's compliance with the requirements of the City's Wastewater Discharge NPDES Permit, including monitoring requirements. A copy of this permit is included in as a Reference Document as listed in the table of contents of the DBO Agreement. The Company shall plan construction activities to not adversely affect the Company's ability to monitor flow and water quality in accordance with the Wastewater Discharge NPDES Permit requirements as described in **Appendix 6, subsection 6.5.1**.

The Company shall develop and implement a section of the Construction Plan that describes the coordination of all construction and operation activities from the Construction Date until Final Completion, including checkout and commissioning of new equipment and systems and the successful completion of a 30-day Acceptance Test. This section shall reference the Design-Build Work schedule as appropriate.

This section of the Construction Plan shall contain sufficient detail that all aspects of WWTP operation, start-up, commissioning, and testing during the Design-Build Period are addressed, including Company and City roles. The Company shall conduct the planning work in close coordination with the City. This section of the Construction Plan shall at a minimum define, in detail, how the existing WWTP will be operated, how the existing WWTP operation will be modified to accommodate construction schedules, and how the WWTP operations will transition upon Acceptance with all Wastewater System Capital Improvements online.

The Company shall update this section of the Construction Plan periodically as needed by project circumstances, and shall respond to City comments through a process of regularly scheduled coordination meetings with the City. Additional requirements required in this section of the Construction Plan include:

- Systematic methods and procedures for tracking and ensuring the successful completion of all operational protocols, installation, start-up, commissioning, and preliminary testing activities shall be provided, as well as details for the collection of comprehensive supporting documentation, which is a prerequisite to proceeding with the Acceptance Test.
- The requirements for and development of supporting documents required prior to initiating Acceptance Testing as defined in **Appendix 8**, including O&M Manuals, Acceptance Test Plan, staff training plan, and permits required for Acceptance Testing.
- The Company's approach for receiving Department of Environmental Quality (DEQ) approval of any short-term exemption to the City's Wastewater Discharge NPDES Permit for the purpose of Acceptance Testing.
- Protocols for the start-up and commissioning of equipment and systems, including procedures for bringing certain Wastewater System Capital Improvements online prior to the 30-day Acceptance Test. Such procedures shall detail testing and commissioning prior to bringing the new facilities online, and operating, maintenance, repair, and documentation protocols agreed upon between the Company and the City. The Construction Plan shall specifically address standards for Company O&M of equipment prior to the 30-day Acceptance Test and any checkouts required to demonstrate that the facilities are acceptable to begin Acceptance Testing. The Construction Plan shall specify the schedule for the start-up and commissioning of major equipment and systems, including but not limited to the following facility components:
 - newly constructed or refurbished pipelines, channels, and all associated valves, gates, and other equipment for controlling and directing flows through the WWTP
 - liquid treatment process systems and all associated equipment, including screens, grit removal system, primary clarifiers, biological treatment systems, secondary clarifiers, disinfection system, and filtration or tertiary treatment systems (as applicable)
 - odor control systems
 - secondary effluent pumps
 - electrical equipment

- supervisory control and data acquisition (SCADA), computer control, and instrumentation and control systems
- concrete wastewater retaining structures
- solids treatment process systems and all associated equipment, including solids pumps, heat exchangers, thickening equipment, dewatering equipment, drying equipment, solids transfer equipment, and solids return pipelines (as applicable)
- ancillary water systems and all associated equipment for in-WWTP wash down water, fire protection water, potable water, and reclaimed or reuse water (as applicable).
- Comprehensive program and schedule for training operations staff.
- Any other activities necessary to ensure continuous and smooth operation of the WWTP from the before and after Acceptance.

Odor Control Plan

The Construction Plan shall include a section detailing the Company's Odor Control Plan during construction that describes the measures to be taken to monitor, minimize, mitigate and control fugitive odors in order to meet the Odor Guarantee requirements during construction and to meet the City's objective, which is to minimize objectionable odors and odor complaints during construction. The Odor Control Plan shall also include descriptions of how each odor control system installed as part of the Wastewater System Capital Improvements will be tested and brought online.

Odor Control Strategy During Construction

To control and mitigate odors prior to and during construction, the Company shall:

- Keep the existing two-stage odor treatment system online until the Construction Date.
- At the start of construction, keep the first stage bioscrubber system operational and remove the second stage biofilter system to allow construction activities in this area.
- Provide interim carbon adsorption second stage system and discharge treated air via a stack.
- Continue to ventilate sludge holding basins and other odor sources as necessary during construction.
- Take one of the sludge holding basins offline and retrofit to an engineered biofilter system.
 - Once startup commences for the new WWTP process facilities, begin acclimating new engineered biofilter.
 - The existing bioscrubber system shall be demolished at this time.
 - During biofilter acclimation, odor removal performance will be limited. Therefore, a portion of air flows from high odor level sources, including primary clarifiers and sludge holding tanks, shall be routed to the interim carbon system during acclimation period to allow dilution air flows to be added to other sources served by the new

engineered biofilter and reduce discharge stack emission levels to continue to meet offsite odor goals.

- As acclimation progresses, more air flow from the primary clarifiers and sludge holding tanks shall be added to the engineered biofilter system until full acclimation is achieved.
- Once acclimated, biofilter system shall be performance-tested.
- Once the engineered biofilter acclimation is complete, the interim carbon system shall be removed.

Operation and maintenance of the existing bioscrubber system and second stage carbon system shall be ongoing during construction. O&M activities shall include the following:

- Fan bearing lubrication, as necessary.
- Fan belt tightening or replacement, as necessary.
- Ammonia additive, as necessary.
- Performance confirmation: Once monthly the Company shall provide hydrogen sulfide (H₂S) sampling to confirm system performance. Samples shall be taken using a portable device such as a Jerome meter or OdaLog unit. Samples shall be taken at the odor system inlet, bioscrubber outlet, and carbon unit outlet.

It is not anticipated that bioscrubber media or carbon media will require replacement during the construction phase.

Other measures to monitor, minimize, and mitigate odors during construction to meet offsite odor goals shall include:

- Keep odor sources covered and contained under all normal operations.
- Provide daily odor monitoring at fence line locations using hand-held, low-level H₂S monitors
- Develop and implement a thorough Odor Response Plan in accordance with **Appendix 10.**

Temporary Utilities

The Company shall be responsible for providing all temporary and construction utilities required by the Company and its Subcontractors during construction, including electricity, potable water, and sanitary facilities. All temporary and construction facilities shall meet Portland General Electric (PGE) and local codes and requirements for such installations. The Company shall also bear the cost of paying for all utilities and utility usage required for the construction.

The Company may tie into existing WWTP utilities as follows:

- **Potable water:** Provide separate water meter and backflow preventer.

- **Power:** All electricity usage for construction shall be separately metered from the electricity used for WWTP operations. The Company shall be solely responsible for determining if the existing WWTP electrical equipment is suitable and adequate for construction purposes, equipment testing, or Acceptance Testing. The Company shall be solely responsible for any repair or replacement required of the existing WWTP electrical equipment in the event that it is in any way damaged or destroyed during construction activities.
- **Sewer:** The Company may connect to the WWTP's onsite sanitary sewer system. Any temporary or permanent connection shall be coordinated with the City to ensure that capacity is available for the increased sewer discharge.
- **Telephone.** The Company may use the existing WWTP telephone system with City-provided telephone service at the existing WWTP from the Commencement Date until the Acceptance Date or until the Company-installed telephone system is ready for use, whichever comes first. However, this City-provided service will not include or facilitate data communication (e.g., internet). Data communication, if needed, shall be provided separately by the Company following the Commencement Date.

Immediately following completion of construction, the Company shall disconnect or arrange for the disconnection and removal of all temporary utility connections and services.

Coordination of Service Disruptions

The Company shall be responsible for coordinating with the City and utility providers in the event that work will require utility service interruption. The Company shall provide the City with at least one week notice prior to a service interruption.

Construction Staging

The WWTP Site has limited space for construction staging and construction trailers. The Company's use of the WWTP Site for construction staging and construction trailers shall not impact the safety of City staff or Company workers or impact the operations of the WWTP. For the purpose of this DBO Agreement, construction staging includes contractor vehicle and equipment parking/storage and materials storage in addition to parking for contractor personnel and contractor trailers. All construction staging and stockpiling must occur on the WWTP Site unless the Company makes other arrangements acceptable to the City. The Company's proposed staging plan shall be included in the Construction Plan. The Company shall maintain all staging and stockpiling areas in an organized fashion and shall keep them kept clear of debris. As described in **Appendix 5, subsection 5.3.5**, the Company may use the existing double-wide trailer on the WWTP Site for field offices.

Construction Traffic Management

The Company shall prepare a Traffic Management Control Plan (TMCP) as part of the Construction Plan. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall develop and submit copies of a draft and final TMCP to the City for review. The City will review the TMCP drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9**,

subsection 9.2.1. The TMCP shall describe all anticipated temporary changes in traffic control equipment, street or road closures, detours, etc. The Company shall provide weekly estimated schedules of equipment and materials delivery to and from the WWTP Site. The TMCP shall identify the following information:

- The access point(s) to the WWTP Site.
- Security controls for access points during after-hours construction. At a minimum, this shall include provisions such that no gate remains open after normal business hours without the Company providing manned guardhouses at gate(s) for security purposes and the City being provided notification of such action.
- Routing of construction traffic within the WWTP Site to the areas of construction and directing construction traffic from offsite appropriately to the areas of work.
- Designated worker parking areas consistent with the requirements of this appendix.

No work shall commence until the TMCP has been reviewed and approved by all applicable Governmental Bodies, including the City's Department of Public Works, Department of Public Safety, Wilsonville School District, and any other City/government department(s) that may be affected. The Company shall update the TMCP to the extent required by the City or applicable law and forward these changes to such Governmental Bodies for approval. The TMCP shall be prepared by an engineer experienced in traffic control design and licensed in the state of Oregon. The Company shall take all necessary measures, such as providing signage as described in **Appendix 5, Section 5.2**, fencing, and barricades, and construction crew training, to prevent travel on non-designated roads and areas such as sidewalks and landscaping areas within the WWTP Site.

During construction, the Company shall schedule deliveries of equipment and materials and shall provide all necessary traffic control equipment and personnel in order to minimize interference with other traffic within the WWTP Site and on offsite access roads, and to provide safe traffic conditions. The Company shall post signs alerting motorists to ongoing construction traffic and shall provide flaggers as needed to maintain public safety. All traffic control equipment (such as signs, signals, and barricades) shall meet or exceed all applicable federal and state regulations for accident prevention. In addition, any lane closure required to streets adjacent to the WWTP Site, including but not limited to Tauchman Street and Boones Ferry Road, shall be reviewed and approved by the City's traffic engineer. Following construction, the Company shall repair roads, parking, and staging/stockpile areas to their original condition or better as a condition for Final Completion.

Site Access and Parking

In general, Tauchman Street, all other City streets, City parks and public areas, and private property may NOT be used for employee parking, or construction material and equipment storage.

Access to the WWTP Site for construction equipment and vehicles and employee vehicles shall only be permitted via Tauchman Street. The Company shall control onsite parking of employee vehicles and construction vehicles to prevent interference with public traffic, parking, or access,

or access by emergency vehicles. The Company shall monitor parking of construction personnel's private vehicles to maintain free vehicular access to and through the public parking area and prohibit parking on or adjacent to public access roads or in non-designated areas.

All employee and trailer parking must occur on the WWTP Site unless the Company makes other arrangements acceptable to the City.

Site Security

The Company shall maintain all existing perimeter fencing and gates during construction or, if they are disturbed by construction, the Company shall provide temporary fencing and gates providing security equivalent to that provided by the existing fencing and gates. All employees and subcontractors working on the WWTP Site shall present appropriate visual identification upon request in order to allow the City to easily identify the Company personnel permitted to be on the WWTP Site.

Spill Prevention and Control

The Company shall prepare a Construction Spill Containment and Response Plan as part of the Construction Plan that describes the spill control and response measures to be used during construction. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall develop and submit copies of a draft and final Construction Spill Containment and Response Plan to the City for review. The City will review the Construction Spill Containment and Response Plan drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

The Company shall be responsible for the prevention and control of spills including petroleum, chemical, and other hazardous materials and/or pollutants. Special precautions shall be taken and best efforts shall be exerted to prevent spills from entering sensitive areas, including sewers, drains, wetlands, creeks, and drainage areas. The Company shall comply with all water quality standards during construction. Oil-absorbent pads, booms, and other materials and equipment to absorb and contain spills shall be kept at the WWTP Site at all times. If a spill occurs either on or off the WWTP Site as a result of the Company's activities, the Company shall bear the cost of all hazardous and non-hazardous materials cleanup and disposal.

The Company shall manage all petroleum and chemical products to be used on the WWTP Site and shall provide suitable measures for the prevention and control of spills in accordance with its Construction Spill Containment and Response Plan. Petroleum-based products shall not be thrown, spread, or otherwise discharged on or beneath the surface of the ground.

The Construction Spill Containment and Response Plan shall include the description, placement, and contents of spill kits; procedures for notification, cleanup, and handling of disposable materials from spill events; containment of stationary equipment; reporting of spill events; and procedures for notifying the Company's spill response firm.

The Company shall provide spill kits at construction or existing locations where chemical and/or fuel are stored or transferred. Spill kits shall be easily carried by two workers and transported in

the bed of a pickup truck. Boxes shall be painted safety yellow and labeled "SPILL CONTAINMENT KIT—EMERGENCY USE ONLY."

Spill kits shall include the following items at a minimum:

- 100 feet of portable oil-containment boom
- 100 feet of oil-absorbent sweep boom
- 50 feet of oil-absorbent boom
- five 5-gallon empty containers with lids
- 25 plastic garbage bags
- map of the area (WWTP Site property drainage map and any off-property areas used showing sanitary and storm sewer)
- Emergency Response/Disaster Recovery Plan with notification phone numbers and emergency response procedures (this is a subsection of the Construction Spill Containment and Response Plan)
- kiddie pools (containment)
- floor sweep
- peat
- pads
- drain mats.

The Company shall enter into an agreement with an environmental cleanup firm prior to the start of construction. The cleanup firm shall be capable of responding to spills 24 hours per day.

The Company shall not store fuel (e.g., diesel) onsite at any time. The Company shall utilize a fuel truck for the refueling of onsite equipment.

5.3.3 Construction Testing

The Company shall be responsible for performing all inspections and tests as required to verify compliance with the Company's construction specifications and Technical Specifications in **Appendix 4**. The Company shall engage the services of independent inspection and testing agencies, including testing laboratories, which are prequalified as complying with "Recommended Requirements for Independent Laboratory Qualification" by the American Council of Independent Laboratories. The testing laboratory shall specialize in the types of inspections and tests to be performed, shall be authorized by authorities having jurisdiction to operate in the state of Oregon, and shall be approved by the City.

The Company shall provide the results of all inspections and tests to the City for review, including retests verifying that a subsequent test has passed for work previously identified as out of compliance with specified criteria. Specific tests and a more detailed description of

construction related quality assurance and quality control requirements are provided in **Appendix 7, subsection 7.5.4.**

5.3.4 Coordination of Work with Offsite Construction at Nearby Facilities

During the Design-Build Period, several construction projects will be underway in the area that may affect access to the WWTP Site and traffic along Lower Boones Ferry Road south of Wilsonville Road. The following known projects could affect access to the WWTP Site:

- Fred Meyer is developing the site bounded by Wilsonville Road on the north, Interstate 5 to the east, Bailey Road to the south, and Boones Ferry Road to the west. The development will include a new Fred Meyer store, Garden Center, and retail/office buildings, including a 54-unit multifamily residential building, and renovation of the historic United Methodist Church.
- The Oregon Department of Transportation (ODOT) is modifying the northbound and southbound on-ramps and off-ramps to Interstate 5, as well as Wilsonville Road under Interstate 5.

The Company will need to consider these construction activities with regard to incoming and outgoing traffic to the WWTP Site.

5.3.5 Field Offices

The Company shall have access to the existing double-wide trailer on the south end of the WWTP Site and to the existing City staff offices at the WWTP for use as the field office; the existing double-wide trailer must be removed by the Company following Acceptance. These facilities and any additional onsite field office space provided by the Company shall be completely sealed from the weather, and shall be equipped with adequate lighting, City proprietary door lock, electricity, heat, hot and cold running water, toilet, air conditioning, sanitary facilities, telephone service, and ventilation. Adequate office equipment and furnishings shall also be provided, including facsimile, photocopying, computing and telephone equipment; two desks; four swivel chairs; four 4-drawer locking filing cabinets; locking flat file storage cabinets; desktop computer with Internet access; color printer; refrigerator; microwave; and water cooler. A minimum of one parking space for exclusive use by the City's Contract Administrator shall be provided. Office space shall also be provided for the City's Contract Administrator. No payment requests will be processed until the office is set up and furnished. The Company shall be responsible for payment of all installation and monthly service charges for electricity, heating fuel, maintenance service, internet and telephone service.

5.3.6 Verification of Underground Utility Locates

The Building Information Model (BIM) provided by the City to the Company shows the approximate sizes and locations of all underground utilities known by the City and the limits of construction for the WWTP Site. The Company shall be responsible for potholing and other measures to confirm the location of utilities for design purposes and prior to excavating. Once the utilities are located, the Company shall exercise due caution to prevent damage to the utilities during its work.

5.3.7 Acceptable Days and Hours of Construction

Work shall not be permitted on Sunday or the following holidays recognized by the City:

- New Year's Day (January 1)
- Martin Luther King Day (third Monday of January)
- President's Day (third Monday of February)
- Memorial Day (the last Monday in May)
- Independence Day (July 4)
- Labor Day (the first Monday in September)
- Thanksgiving Day (the fourth Thursday in November)
- The day after Thanksgiving Day (Friday following the fourth Thursday in November)
- Christmas Day (December 25)
- Monday, when any of the above holidays falls on the preceding Sunday; and Friday, when any of the above holidays falls on the succeeding Saturday.

Work shall not be performed outside the following days/hours without written permission of the City.

Monday through Friday
7:00 a.m. - 7:00 p.m.

Saturday
9:00 a.m. - 6:00 p.m.

Operating hours for impact hammer(s) or blasting shall be limited to 9:00 a.m. - 4:00 p.m. on all work days.

5.3.8 Site Maintenance

During construction, the Company shall be responsible for overall maintenance of the construction site and along construction access areas approaching and within the WWTP Site. The Company shall clean up and remove all rubbish and materials from the WWTP Site as they accumulate and shall not allow rubbish and other materials to be scattered about and accumulate. Cleanup and trash/rubbish removal shall occur at a minimum daily, or more frequently as needed, to meet the previous requirement.

The Company shall contact Allied Waste to obtain services for solid waste (i.e., non-construction trash and rubbish) disposal and recycling services needed for and generated by the Design-Build Work. The Company shall pay all costs associated with solid waste disposal.

The Company shall make its own accommodations for disposing of construction debris. The Company shall pay all costs associated with construction debris disposal.

The Company shall schedule and conduct the work such that it shall not impede any sewage collection and treatment, create potential hazards to operating equipment or to Company and City personnel, or cause odors or other nuisances.

5.3.9 Landscape Protection and Site Restoration

The Company shall make best efforts to avoid disturbance to existing landscaping and specifically to protect the onsite trees. Removal of trees must adhere to the City's ordinances governing tree removal and the planting of new and/or replacement trees and landscaping as described in **Appendix 6, subsection 6.4.2.**

The Company shall restore all areas impacted by construction to pre-construction conditions or better. The Company shall restore and landscape the WWTP Site to meet the requirements of **Appendix 4, subsection 4.4.9.**

5.4 Site Work

The Company shall be responsible for taking all precautions, providing all programs, and taking all actions necessary to protect the work and all public and private property and facilities from damage located within or adjacent to the limits of the WWTP Site. Surface structures include all existing buildings, structures, and other facilities above and below the ground surface including the foundations or any extension below the surface. Structures include, but are not limited to, buildings, tanks, walls, bridges, roads, dams, channels, open drainage, piping, electrical wiring and conduits, duct banks, HVAC ductwork, poles, wires, posts, signs, markers, curbs, walks, and all other facilities.

The Company shall provide barricades, fences, lights, warning signs, and danger signals, and shall take other precautionary measures for the protection of persons or property and of the work when work is performed on or adjacent to any roadway, right-of-way, or public place. Any existing surface facilities, including but not limited to guardrails, posts, guard cables, signs, poles, markers, and curbs, which were temporarily removed to facilitate installation of the Wastewater System Capital Improvements, shall be replaced and restored to their original condition by the Company. The Company shall also protect existing trees, shrubs, and plants on or adjacent to the WWTP Site that are shown or designated to remain in place against unnecessary cutting, breaking, or skinning of trunk, branches, bark, or roots. **Appendix 5, subsection 5.3.9** provides more information on landscape protection.

The Company shall provide all labor and materials to construct subsurface pipes for water, sewer, recycled water, stormwater drainage, electrical and control conduits and ducts, and fiber-optic conduit as set forth in **Appendix 4.**

The Company shall provide all labor and materials to connect existing utilities to the utilities required for the Design-Build Work, including electricity, natural gas, telephone, cable, and other utilities.

5.4.1 Clearing, Geotechnical, Excavation, and Soils Disposal Including Contaminated Soils

The Company shall be responsible for all clearing and grubbing necessary for construction at the WWTP Site and associated road and utility improvements, including the removal and disposal of

all rocks, stumps, trees, roots, abandoned construction material, subsurface structures and pipes, and unsuitable soil materials from the WWTP Site.

The Company shall perform all operations in connection with excavation of materials, regardless of the character of that material, and backfilling necessary for the construction of new facilities or the modification of existing facilities, including furnishing all supervision, labor, tools, materials, and equipment in connection therewith. Excavation and backfilling activities including fill and backfill material, compaction, subgrade preparation and stabilizing, shoring and dewatering methods shall be approved by a professional engineer specializing in soil mechanics and licensed in the state of Oregon.

The Company shall be responsible for obtaining all fill, backfill, topsoil, and other materials as needed to achieve final grade lines and otherwise complete the Design-Build Work. Backfill material shall consist of suitable clean soil. All materials shall have been tested for conformance with the design and approved by a licensed professional engineer specializing in soil mechanics. Where soils are not suitable for sustaining design loads, the Company shall take appropriate action in accordance with the requirements of appropriate established codes and accepted engineering practice. Backfill material shall not be placed against concrete walls until the walls have obtained sufficient strength to safely withstand the pressure of the fill material and water-retaining structures have been leak tested as required in **Appendix 4, subsection 4.4.11**.

The Company shall maintain a stable excavation as described in **Appendix 5, subsection 5.4.2**; all disturbances to the WWTP Site shall be conducted in dry conditions and the Company shall prevent the foundation area of existing and new structures from becoming destabilized due to the flow of water into the excavation. Excavations for footings shall be made sufficiently wide for the installation of form work and to the depths required.

The Company shall also employ a professional engineer licensed in the state of Oregon specializing in soil mechanics to provide recommendations for appropriate temporary and permanent slope stabilization measures for the north side of the WWTP Site to be implemented during the Design-Build Period.

The Company shall prepare the WWTP Site to be free of non-draining depressions or abrupt elevation changes and to be smooth to allow for topsoil placement. Hollows, depressions, and gullies in the subgrade, unless called for in the Company's approved plans, shall be filled with acceptable material free from stones, cinders, rubbish, and other unsuitable material. Subgrades shall be established in a manner that does not result in drainage problems or burying curbs, pavement, access holes, and other structures.

To the maximum extent possible, the Company shall locate facilities to balance cut-and-fill and place surplus excavated materials above that required for backfilling in areas of the WWTP Site consistent with the Company's clearing and grading plans. The Company is encouraged to use excess excavated material for landscaping features or other beneficial purposes on the WWTP Site. To the extent that excess excavated or fill material cannot be placed in these areas, the Company shall be responsible for all activities necessary to dispose of the excess material in accordance with Applicable Laws at an approved offsite location.

The Company shall test all soils requiring offsite disposal for contaminants in accordance with minimum requirements established by the Oregon Department of Environmental Quality (DEQ), other Applicable Law, and the landfill selected by the Company for contaminated soils disposal. Soil shall be disposed of at appropriately permitted facilities with records maintained by the Company and copies provided to the City. Excavated contaminated materials shall be separated from the rest of the excavated material and removed, tested, and disposed of by the Company in accordance with all Applicable Law.

If contaminated soil is encountered and required for removal, the construction workers involved in excavation and site work shall meet OSHA 1910 training and experience requirements, and at a minimum, have 40-hour hazardous waste operations training and three days' field experience under direct supervision of a trained, experienced supervisor.

5.4.2 Shoring and Dewatering

The Company shall be responsible for the design, planning, installation, maintenance, and removal (if necessary) of all shoring required to support the sides of any excavation and all other measures to prevent settlement of surrounding areas or any movement that may damage adjacent facilities, delay the work, or endanger life or health. The Company shall incorporate settlement monitoring into its construction work when excavating adjacent to existing structures.

The method of shoring shall be the Company's design and the shoring system shall comply with all applicable codes, ordinances, and requirements of agencies having jurisdiction. Shoring systems shall be designed by a professional engineer appropriately licensed in the state of Oregon.

The Construction Plan shall include a Dewatering Plan as described in **Appendix 5, subsection 5.3.2**. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall develop and submit copies of a draft and final Dewatering Plan to the City for review. The City will review the Dewatering Plan drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

The Company shall be responsible for supplying all work and equipment necessary for dewatering work areas during construction to maintain all excavations free from water during construction. The static groundwater level shall be drawn down such that foundation soils remain in an undisturbed state free from "boils" or other groundwater-related problems. The dewatering system shall be installed and operated so that the groundwater level outside the excavation is not reduced to the extent that would cause damage or endanger adjacent structures or pipelines.

The Company shall provide a means to facilitate sampling and visual observation of groundwater flows prior to discharge and any other facilities required to meet permit requirements. Water removed from excavations shall be disposed of in a manner to prevent flooding, erosion, and property damage, and in accordance with any permits or approvals.

ODOT will be constructing water quality ponds for stormwater control and treatment on the property east of the WWTP Site. The Company shall determine if groundwater monitoring is necessary as part of its groundwater control system, and implement as appropriate.

The Company shall bear sole responsibility for proper design, installation, operation, maintenance, and any failure of any component of the groundwater control system for the duration of the Design-Build Work. The Dewatering Plan shall be designed and stamped by a professional engineer licensed in the state of Oregon.

5.4.3 Abandoned Pipe

Any buried pipe abandoned as a result of the Company's design shall be removed or filled with control density fill or sand. All abandoned pipe and conduit within 48 inches of the ground surface shall be removed.

5.4.4 Confined-Space Entry

The Company shall comply with all applicable federal, state, and local laws related to confined-space entry during construction.

5.4.5 Hazardous Materials

To the extent that the Design-Build Work necessitates the disturbance, handling, or removal and disposal of hazardous material, including asbestos-containing material (ACM) and lead-based paint (LBP), the Company shall contract with licensed asbestos and lead contractors who employ Oregon State Certified Asbestos Removal Workers and/or Hazardous Waste Workers to perform all such work. ACM and LBP disposal records shall be submitted to the City in accordance with Applicable Law.

The biosolids collection (formerly control) building has been identified by the City as having ACM in the floor tile and/or the pipe insulation. To the extent that Design-Build Work in this area (including demolition and removal of the biosolids collection building in accordance with **Appendix 4, subsection 4.4.1**) results in disturbance, handling, or removal and disposal of ACM and/or LBP (or of items presumed to be ACM or LBP) from the identified sites, the costs thereof shall be included in the Fixed Design-Build Price. Work to remove and dispose of ACM and/or LBP from areas not specifically identified, or to remove and dispose of other hazardous materials from sites unknown or from dump sites for which the dumped materials are unknown, shall be considered extra work that is not included in the original Fixed Design-Build Price.

Prior to maintenance and/or disposal of metal fire doors, the Company shall test the interior of the doors for ACM insulation. Prior to disposal of asphalt roofing vapor-barrier paper, the Company shall test the vapor barrier between the roof deck and insulation board for ACM. Prior to disposal of anaerobic digester roofing material, the Company shall test roofing materials for asbestos and lead-based paint. The Company shall profile all LBP for leachability prior to disposal in a landfill in accordance with Resource Conservation and Recovery Act solid waste regulations.

5.4.6 Demolition, Salvage, and Disposal

The Company shall be responsible for demolition required for Wastewater System Capital Improvements construction and the disposal of all demolition and construction debris and equipment at appropriately permitted facilities and as required by state and local code and ordinances.

For all facilities, systems, or structures abandoned as part of the Design-Build Work, the Company shall remove and dispose of all exposed piping and equipment (including pumps, valves, gates, electrical panels, and other equipment) from abandoned facilities, systems, or structures.

The minimum requirements for demolition and removal are set forth in **Appendix 4, subsection 4.4.1**.

5.5 Management of Onsite Water and Sanitation Facilities During Construction

This section identifies and establishes minimum requirements for managing surface water and stormwater on the WWTP Site and minimum requirements for managing sanitation facilities during construction.

5.5.1 Sources of Construction Water

The Company shall provide for the detention, treatment, and discharge of all water generated during construction. Construction water will include surface water runoff and water removed from excavated areas as described in **Appendix 5, subsection 5.4.2**. The Company shall plan and schedule its construction activities to minimize the amount of construction water to be managed in a given period.

5.5.2 Temporary Drainage Features

The Company's design of temporary detention, treatment, and discharge facilities shall account for the maximum disturbed area and maximum amount of construction water to be generated. At a minimum, temporary features shall be sized per Contract Standards.

5.5.3 Surface Water Quality and the Industrial Stormwater Permit

The Company shall take no actions that could lead to a violation of surface water quality standards, or to a violation of any of the requirements of the Governmental Approvals required for the Design-Build Work as identified in **Appendix 6**. The Company shall employ all measures needed to comply with the WWTP's Industrial Stormwater Permit, if needed in the future. The City does not currently have a 1200-Z Industrial Stormwater Permit from DEQ for stormwater generated at the WWTP Site.

Discharge of untreated or partially treated sewage to surface waters or drainage courses and systems is prohibited during construction. Any and all discharges of untreated or partially treated sewage to surface water or drainage courses and systems shall be immediately reported to the City. In the event that accidental discharge is caused by the Company's operations, the City

shall immediately be entitled to employ others to stop the discharge prior to giving written notice to the Company. Potable water shall not be discharged to the storm sewer system. Disposal from dewatering activities shall comply with the requirements of this appendix.

5.5.4 Stormwater 1200-C NPDES Permit for Construction Activities

The Company shall prepare and submit all required applications and plans to the DEQ in accordance with the requirements of the Stormwater 1200-C NPDES Permit (1200-C NPDES Permit) for Construction Activities. The Company shall comply with the terms and conditions of the 1200-C NPDES Permit requirements and shall be responsible for providing necessary material and for taking appropriate measures to minimize pollutants in stormwater runoff from the WWTP Site. The Company shall install and maintain all structural and nonstructural items utilized to comply with the permit requirements for stormwater and groundwater management during all phases of construction. The Company shall implement and maintain best management practices at all times. The Company shall prepare, update, and revise, as necessary, the Erosion and Sediment Control Plan required by the permit. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall develop and submit copies of a draft and final Erosion and Sediment Control Plan to the City for review. The City will review the Erosion and Sediment Control Plan drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

The Company shall be responsible for installing and maintaining adequate drainage to prevent soil erosion at construction areas. Prior to the beginning of construction, drainage/erosion control measures sufficient to contain and treat runoff shall be installed. As construction progresses, soil erosion features shall be maintained and modified in accordance with the needs of the changing site conditions. Temporary erosion control and protection measures shall be in place at all times and shall be inspected prior to and throughout the rainy season. Soil stockpiles shall be immediately covered. As permanent drainage structures are installed, the Company shall protect the intakes to avoid clogging. The Company shall monitor and maintain the effectiveness of the runoff protection at all times, but particularly during and after anticipated rains/snows. The Company shall maintain an adequate supply of erosion control materials on site for immediate use.

The Company shall provide tire cleaning for all construction vehicles that may track mud, prior to leaving the construction area and returning to public roads or areas of the WWTP Site outside of active construction. Trucks carrying soil/debris shall be covered and secured prior to offsite travel.

Construction runoff shall be collected, detained, treated, and discharged in an approved manner necessary to keep sediments and other pollutants from being transported from construction areas and to keep sediments and other pollutants from being transported to the existing site stormwater system and the Willamette River. Discharges from detention and treatment facilities shall be routed through the existing onsite surface water infiltration system, or through temporary facilities constructed for this purpose if the existing facilities do not have adequate hydraulic or treatment capacity or hauled to an approved disposal site. Direct discharges to the Willamette River shall not occur.

5.5.5 Groundwater

Dewatering discharge generated during construction activities shall not be discharged to the storm drain system without adequate treatment. Treatment of the dewatering water must be provided in accordance with the 1200-C NPDES Permit requirements and limitations as described in **Appendix 5, subsections 5.4.2 and 5.5.4**. Discharge to the sanitary sewer will not be allowed. Disposal of all water removed from excavations shall be conducted in a manner that prevents flooding, erosion, property damage, and turbidity and/or sediment contamination of surface waters.

5.5.6 Surface Water Management Monitoring

The Company shall be responsible for supplying all labor and equipment necessary for providing the minimum monitoring and record-keeping requirements defined by the 1200-C NPDES Permit. The Company's monitoring and self-inspection activities shall identify all activities or practices that have led to, or could lead to, a violation of the permit requirements. The Company shall immediately address all deficiencies that are identified.

5.5.7 Sanitation Facilities

The Company shall install, operate, and maintain sanitation facilities for its construction and management staff. Use of existing WWTP sanitation facilities shall not be allowed. The Company will be allowed to discharge directly to the onsite wastewater collection system either at the headworks or upstream of the headworks. There will be no City fee for connecting to the City sanitary Collection System. Construction or dewatering water shall not be discharged via the sanitation facilities.

Upon completion of construction activities, the Company shall remove the temporary sanitation facilities. At that time, Company staff may use the new or existing permanent sanitation facilities at the WWTP Site.

5.6 Other Construction Measures

This section contains other miscellaneous construction measures to be implemented by the Company during construction.

5.6.1 Dust Control and Light Control

The Company shall be responsible for furnishing all labor, materials, and equipment for dust and light control. Dust control measures shall include applying dust suppressants (e.g., water), properly cleaning all track-out areas (sweeping, etc.), and providing adequate physical stabilization (gravel, recycled asphalt, etc.). The Company shall use these methods to control fugitive dust generation from all work areas, including construction areas, vehicle and equipment parking areas, material storage areas, haul and access roadways, track-out areas, and all other areas where the Company will be working, storing, or parking vehicles, equipment, and materials. The use of petroleum or chemical products for dust control is prohibited. Paved streets adjacent to work areas shall be swept daily as necessary to remove mud, dirt, or rock originating from the work area. Street flushing is prohibited. Equipment shall be properly equipped and maintained to reduce air pollutants.

Without limiting any of the foregoing, the Company shall comply with the following requirements:

- Maintain dust control procedures during construction.
- Minimize the amount of open ground disturbed at any given time.
- Use silt fences to capture low-flying dust and debris.
- Perform jobsite cleaning activities as work is completed.

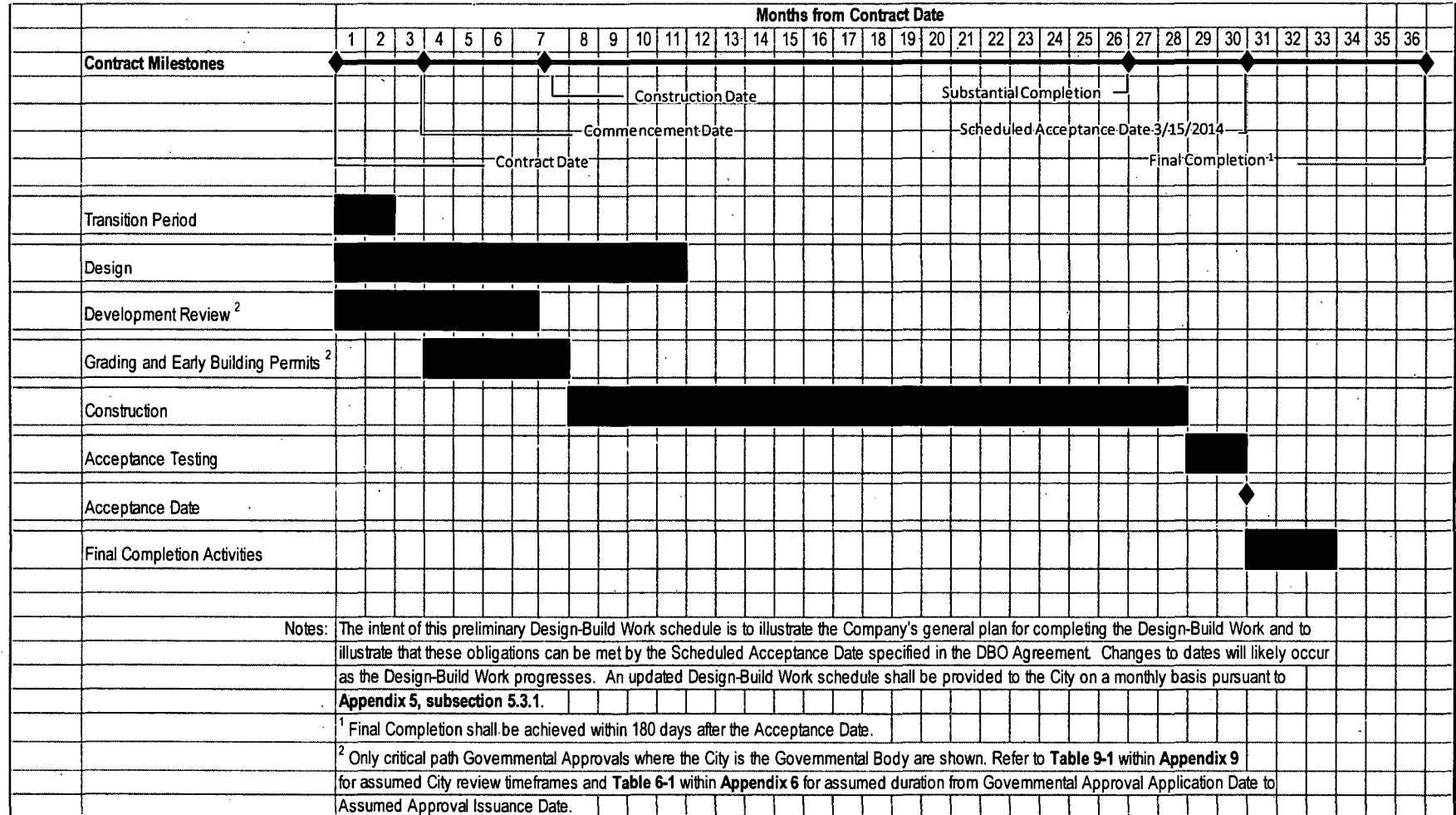
The Company shall dispose of construction debris at permitted disposal facilities. Burning shall be prohibited.

5.6.2 Noise Control

The Company shall be responsible for furnishing all labor, materials, and equipment necessary for noise control. The Company shall minimize construction noise throughout the Design-Build Work by incorporating mitigation measures into work plans as needed to meet the noise limits established in this section. The Company shall work with the City to address any particular needs the neighboring community has, and include noise-related updates through public notification. The Company shall reduce the use of air-powered equipment, use rubber-tired equipment in lieu of track-type equipment whenever possible, and ensure that its equipment is fitted with noise mufflers, where applicable. In addition, the Company shall monitor noise and take corrective measures as needed.

The Company shall be responsible to ensure that no on-site construction equipment or activities (including haulage and delivery trucks) exceed an A-weighted, maximum root-mean-square broadband sound pressure level with a 125-ms time constant (LAF_{max}) of 85 dBA at any point 50 feet from the construction equipment or activity. The following equipment is exempt from this requirement: pile drivers, pavement breakers, scrapers, concrete saws, and rock drills.

Exhibit 5-1. Preliminary Design-Build Work Schedule



Appendix 6 Governmental Approvals

6.1 Purpose of Appendix

This appendix defines the responsibilities of the Company and the City for obtaining and maintaining the Governmental Approvals required for the performance of the Contract Services in accordance with **Articles IV, VI, X, XI and XIII**.

6.2 Overall Responsibilities for Obtaining and Maintaining Governmental Approvals

Responsibilities for obtaining and maintaining Governmental Approvals for the Company and the City are detailed in the following sections. The timeframes for permit application submittals by the Company are set forth in the current version of **Exhibit 9-1** within **Appendix 9**. Permit application review times for the City are set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. Additional discussion of the City's review of permit applications is summarized in **Appendix 9, Section 9.3**.

6.2.1 Company Responsibilities

The Company shall act as the City's agent and be responsible for identifying, preparing applications for, obtaining and maintaining all Governmental Approvals necessary for the development, design, construction, and operation of the Managed Assets, except for those Governmental Approvals specifically indicated as the City's responsibility to obtain in **Table 6-1** within **Appendix 6, subsection 6.2.1**. When the City is the responsible lead party for obtaining a Governmental Approval, the Company shall provide the information, plans, and support requested to assist the City in obtaining those Governmental Approvals (including renewals) at the City's request. The Company shall be responsible for continuous compliance with all Governmental Approvals obtained by the City related to the performance of the Contract Services.

The Design-Build Work schedule in the current version of **Exhibit 5-1** within **Appendix 5** includes the Company's schedule for submitting all Governmental Approval applications to the City for review and to the Governmental Body.

With the exception of the application fees for City Building Permits, the Company shall pay all application, issuance, maintenance, and renewal fees and furnish any documentation, bonds, security, or deposits required for all applicable Governmental Approvals required for the performance of the Contract Services regardless of responsibilities assigned in **Table 6-1** within **Appendix 6, subsection 6.2.1**. All fees associated with Government Approvals paid by the Company shall be reimbursed by the City at cost. The Company shall provide copies of all documents to the City upon request.

Should aspects of the Company's design necessitate additional permits, the Company shall be responsible for obtaining them. Should aspects of the Company's design or other project

Table 6-1. Responsibility for Obtaining and Maintaining Governmental Approvals for Management Services and Design-Build Work

Governmental Approval^a	Governmental Body	Responsibility	Governmental Approval Application Date (Days from Commencement Date)	Duration from Application Date to Assumed Approval Issuance Date^b (Days)
Operations				
Stormwater annual reports related to MS4 Permit ^c	DEQ	City	-	NA
Wastewater Discharge NPDES Permit ^d	DEQ	Company	-	NA
1200-Z Industrial Stormwater Permit ^e	DEQ	Company	-	NA
Operator Certification	DEQ	Company	-	NA
Vehicle Operators License	Department of Motor Vehicles	Company	-	NA
Updates to plans and annual reports required by NPDES Permits, e.g., Operation and Maintenance Plan, Safety and Security Plan, Biosolids Management Plan, Inflow and Infiltration Report, Air Permit Annual Report	DEQ	Company	-	NA
Updates to plans and annual reports required by NPDES Permits, e.g., Industrial Pretreatment Program	DEQ	City	-	NA
Collection System Management Plan (CMOM), including updates and annual reports required by NPDES Permits	DEQ	City	-	NA
Permit(s) related to indirect discharge to surface water	DEQ (and others as necessary)	Company	-	NA
All others		Company	-	NA
Design and Construction				
Stormwater MS4 NPDES Permit and renewals ^f	DEQ	City	255	60
Cultural resources review, if required	State Office of Archaeology and Historic Preservation	City	95	120
Application for Pre-Application Conference ^g	City	Company	15	14 (days to pre-application conference)
Conditional Use Permit Application for onsite conditional use of RA-H zoning ^g	City	Company	78	120
Conditional Use Permit Application for Willamette River Greenway ^g	City	Company	78	120
Stage 1 Master Plan (including construction phasing through the expansion to 7 mgd ADWF) ^g	City	Company	78	120
Land Use Site Design Plan (primarily for architectural and landscaping review) ^g	City	Company	78	120
Significant Resource Impact Report for Significant Resource Overlay Zone (SROZ) impacts (including tree, habitat and wetland impacts) ^g	City	Company	78	120
Tree Preservation and Mitigation Plan and Permit Application ^g	City	Company	78	120
Temporary Use Permit (if necessary) ^g	City	Company	As needed	As needed
Wastewater Discharge NPDES Permit and renewals ^d	DEQ	Company	-	NA
Pre-Design Report	DEQ	Company	49	60

Table 6-1. Responsibility for Obtaining and Maintaining Governmental Approvals for Management Services and Design-Build Work

Governmental Approval ^a	Governmental Body	Responsibility	Governmental Approval Application Date (Days from Commencement Date)	Duration from Application Date to Assumed Approval Issuance Date ^b (Days)
Final design	City	Company	-	NA
Short-term exemption to certain Wastewater Discharge NPDES Permit provisions or other approvals needed for Acceptance Test	DEQ	Company	As needed	As needed
404 Permits, if required	U.S. Army Corps of Engineers	Company	95	120
Removal/fill permits, if required	Oregon Department of State Lands	Company	95	120
Biological Assessment/ESA compliance, if required	National Marine Fisheries Service (NOAA Fisheries); U.S. Fish and Wildlife Service	Company	95	120
Stormwater 1200-C NPDES Permit for Construction Activities	DEQ	Company	179	60
Transportation permit for oversized trucks, if required	ODOT	Company	As needed	As needed
Air Contaminant Discharge Permit	DEQ	Company	255	60
Permit(s) related to indirect discharge to surface water	DEQ (and others as necessary)	Company	179	60
Grading permits, including erosion control	City	Company	122	120
Early Building Permit Package, including structural permits	City	Company	144	60
Building permits, including structural, mechanical and plumbing permits, pressure vessel permits, fire approvals, etc.	City	Company	255	60
Electrical permits	Clackamas County	Company	255	60
All others		Company	-	NA

ADWF = average dry weather flow
 DEQ = Oregon Department of Environmental Quality
 LUBA = Land Use Board of Appeals
 ODOT = Oregon Department of Transportation
 MS4 = Municipal Separate Storm Sewer System

CMOM = capacity, management, operations, and maintenance
 EPA = U.S. Environmental Protection Agency
 NPDES = National Pollutant Discharge Elimination System
 OWR = Oregon Water Resources

- a. See **Table 9-1** within **Appendix 9, subsection 9.2.1** for City review timeframes and the current version of **Exhibit 5-1** within **Appendix 5** for application due dates for the Company.
- b. See **Article X, subsection 10.9 (I)** for conditions under which delays to the assumed approval issuance date for certain permits may result in schedule relief for the Company.
- c. If needed, see **Appendix 6, subsection 6.5.2** for details.
- d. The Company is responsible for maintaining continuous compliance with the City's current Wastewater Discharge NPDES Permit for the existing WWTP and any renewals or modifications to the City's NPDES Permit. The Company is also responsible for preparing future Wastewater Discharge NPDES Permit renewal or modification applications for the upgraded WWTP as required according to the five year permit cycle. See **Appendix 6, subsection 6.5.1** for additional details.
- e. The City does not currently have a 1200-Z Industrial Stormwater Permit for the WWTP. See **Appendix 6, subsection 6.5.2** for additional information.
- f. The Company is required to comply with the City's MS4 Stormwater NPDES Permit requirements and manage onsite stormwater appropriately. **Appendix 6, subsection 6.5.2** presents additional information on this permit.
- g. This application/plan shall be submitted by the Company as part of the Planning and Land Development Approval process that shall be conducted in coordination with the City, as described further in **Appendix 6, subsection 6.4.2**.

requirements as defined in the DBO Agreement necessitate an amendment to any of the City-obtained Governmental Approvals, the Company shall be responsible for preparing amendment applications and obtaining the required approvals. Should aspects of the Company's design necessitate supplemental environmental review, the Company shall be responsible for drafting, revising, and finalizing any supplemental environmental review documents on behalf of the City as required to support its design and Governmental Approvals applications.

The Company shall be responsible for verifying any and all permits required to perform the Contract Services. Omission of any required Governmental Approvals from this appendix does not relieve the Company of responsibility for identifying and obtaining any and all permits required for performance of the Contract Services, except for those expressly listed as a City responsibility, and from paying their associated costs.

The Company shall conduct all testing and prepare all reports and applications and other information as required to obtain and to maintain all Governmental Approvals required by Applicable Law for the performance of the Contract Services.

The Company shall provide the City assistance in the following permit-related tasks:

- collection and presentation of operational data to support information needs and the maintenance and continuance of historical record-keeping activities required to establish and document the impact of existing operational activities
- analysis and projection of the capacity and capability of unit processes to meet projected needs, such as waste activated sludge thickening, to meet projected production rates
- sharing of information and insight on compliance and regulatory issues addressed by other Company projects and communities served, but such obligation shall not include any major data collection effort
- evaluation of existing City policies to enhance operation and maintenance, environmental compliance, and documentation
- input into regulatory review processes
- advance notification of potential changes and modifications to legislation or regulations that affect the performance of the Contract Services
- development of alternative plans or scenarios to address new regulations and legislation related to the performance of the Contract Services
- attendance at hearings and meetings by informed representatives of the Company with the City and regulators, as may be reasonably requested.

6.2.2 City Responsibilities

The City is responsible for those Governmental Approvals required for the performance of the Contract Services indicated **Table 6-1** within **Appendix 6, subsection 6.2.1**.

The City shall, upon the Company's request, assist the Company in the Company's efforts to obtain Governmental Approvals, provided that in no event shall the City's level of assistance be construed as City fault for the failure of the Company to secure permits, notwithstanding the Company's obligations to obtain all permits unless specifically identified as the responsibility of the City in **Table 6-1** within **Appendix 6, subsection 6.2.1**.

The City will assist the Company by providing supporting information for permit applications, reviewing permit applications, and attending key permitting agency meetings at the request of the Company for those permits identified as the Company's responsibility within the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. Supporting information shall include information that the City has already developed or that is readily available to the City. When the Company requests assistance from the City, the Company shall notify the City in a timely manner regarding upcoming Company meetings that the City should attend. In addition, the City may attend permit hearings and pre-application meetings at its sole discretion.

The City will pay the application fees for City Building Permits.

6.3 Required Governmental Approvals for Management Services

Table 6-1 within **Appendix 6, subsection 6.2.1** lists permits that will be required for the operation and maintenance of the Managed Assets. The Company shall operate and maintain the existing wastewater treatment plant (WWTP) and the Lift Stations and the upgraded WWTP in accordance with Governmental Approvals identified, but not limited to, those listed in **Table 6-1** within **Appendix 6, subsection 6.2.1**.

The Company shall, in a timely manner, generate, file in an organized and readily retrievable manner, store, sign as the Principal Designated Operator, and provide to all Governmental Bodies all information, applications, renewals, or modifications of permits, including City permits, notices, and reports, including operational data and reports, maintenance and continuance of historical record-keeping activities required to establish and document the impact of operational activities, and sampling or testing results. The Company shall not conduct any sampling or testing not required by Applicable Law without the prior written approval of the City, except in case of an emergency. The Company shall certify in writing at the time of filing that review copy or data, reports, and information is true, accurate, and complete to the best of the knowledge of the Company.

The Company shall immediately notify the City with any and all information as it becomes available relative to any activity, problem, event, or circumstance that is an abnormal condition, including overflows and bypasses in the conveyance and treatment system, that threatens or may threaten compliance with permit requirements or the public health, safety, or welfare, or disrupts operations or requires notification to regulatory agencies.

The Company is responsible for maintaining all existing permits, certifications, approvals, warranties, guarantees, easements, and licenses related to performance of the Contract Services that have been granted to the City.

6.4 Required Governmental Approvals for Design-Build Work

Table 6-1 within **Appendix 6, subsection 6.2.1** lists Governmental Approvals that will be required for the design and construction of the Wastewater System Capital Improvements. In addition to the design packages required under **Appendix 9, Section 9.4**, the Company shall be responsible for developing any design packages required by the appropriate Governmental Body. Certain permits may be in the name of the City but the Company is responsible to obtain and maintain these permits. The City will handle any communication with ODOT.

6.4.1 Pre-Design Report for DEQ Review

As noted on **Table 6-1** within **Appendix 6, subsection 6.2.1**, the Company is responsible for obtaining conditioned approval from the Oregon Department of Environmental Quality (DEQ) of a Pre-Design Report described herein and in **Appendix 9, Section 9.4** which will summarize the Company's proposed design for the Wastewater System Capital Improvements. Subsequent to this conditioned approval, further detailed design review will be provided by the City with support from the Owner's Representative (OREP) team. However, a revised Pre-Design Report may be required by DEQ in the event of major design changes subsequent to the conditioned approval.

Following the Contract Date, the Company shall attend one meeting with DEQ and the City in order for DEQ to communicate with the Company regarding the content of the Pre-Design Report and any aspects of the Company's proposal that may require further discussion. The Company shall prepare a Pre-Design Report in accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the Pre-Design Report and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. The Company shall then submit a revised Pre-Design Report to DEQ for review. Based on the City's discussions with DEQ, the Company shall assume that the DEQ review period will be two months and that the Company may proceed with design during this review period.

The Pre-Design Report shall include a brief narrative accompanied by design drawings that reflect approximately a 30 percent design and at a minimum include the following:

- anticipated flows and loads
- existing WWTP Site condition drawings
- WWTP Site plan showing existing facilities (to remain in place) and new facilities
- construction sequencing and phasing including:
 - descriptions of how temporary treatment processes (if applicable) will be integrated with the existing operations during construction
 - redundancy available during construction (if different from existing operations)
 - sampling locations during construction
 - temporary odor control during construction (if applicable)

- design data sheets for major equipment to be installed as part of the Design-Build Work and for major equipment to be installed as part of the future expansion to 7 mgd ADWF
- basis of design for liquid and solids stream processes
- process design
- design for odor control systems
- design for auxiliary and ancillary systems
- process redundancy and backup power
- design for electrical systems including standby power generation
- design for instrumentation and control systems
- design for site work
- cost estimates.

6.4.2 City Planning and Land Development Approvals

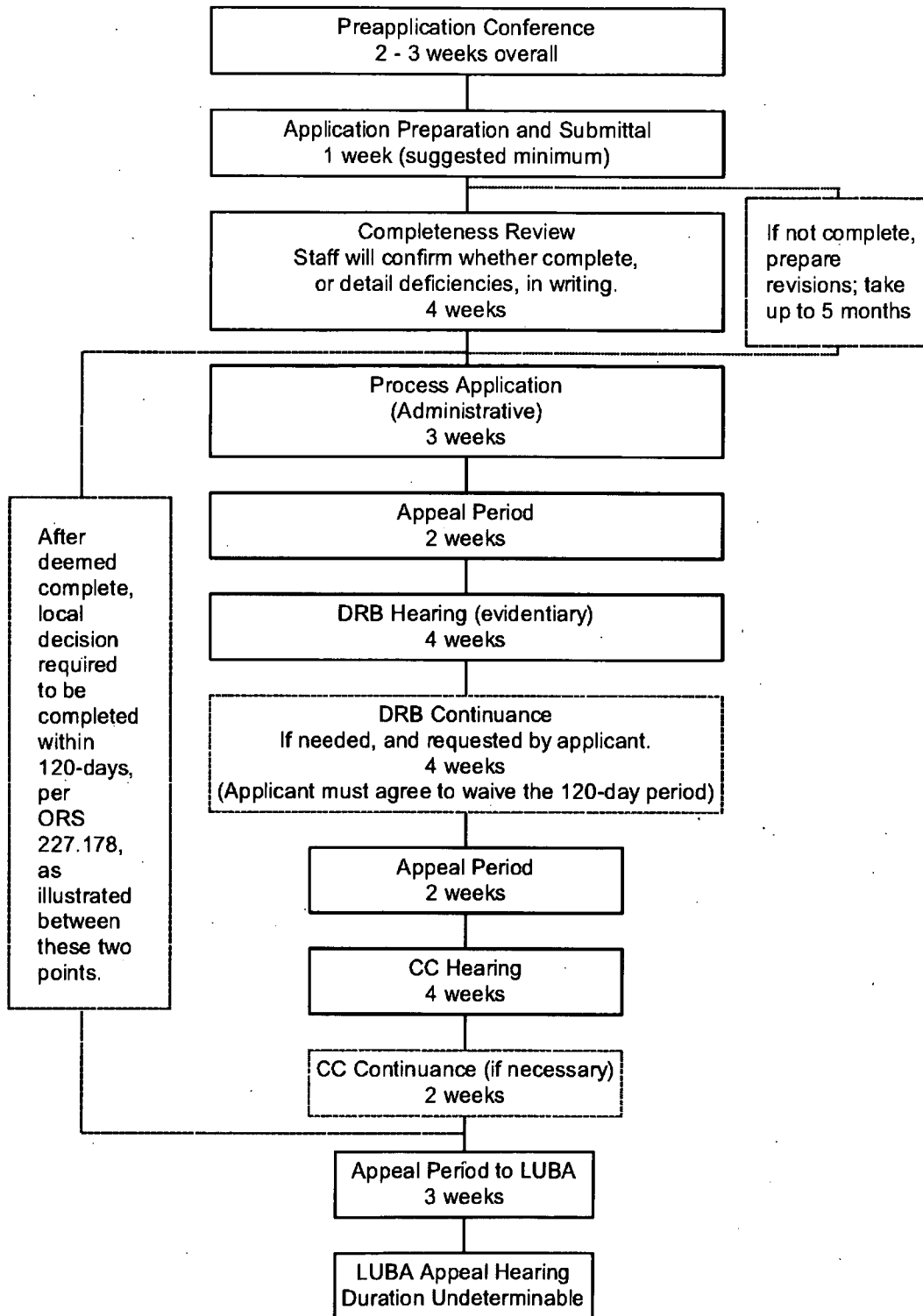
The Company shall be responsible for meeting all requirements of the City of Wilsonville Planning and Land Development Ordinance and obtaining all applicable City approvals and local permits. This process is summarized here, but the Company is responsible for ensuring that all requirements are fulfilled. The Company shall be responsible for submitting the following permit applications and plans:

- Application for Pre-Application Conference
- Conditional Use Permit Application for onsite conditional use of RA-H zoning
- Conditional Use Permit Application for Willamette River Greenway
- Stage 1 Master Plan (including construction phasing through the expansion to 7 mgd ADWF)
- Land Use Site Design Plan (primarily for architectural and landscaping review)
- Significant Resource Impact Report for Significant Resource Overlay Zone (SROZ) impacts (including tree, habitat and wetland impacts)
- Tree Preservation and Mitigation Plan and Permit Application
- If necessary, application for Temporary Use Permit for off-site storage of materials, vehicle parking and job shacks.

The process for compliance with the Planning and Land Development Ordinance is summarized in **Figure 6-1** within **Appendix 6, subsection 6.4.2**. The permit applications and plans submitted by the Company will be reviewed by the City Planning Division and presented by the Company and the City to the Development Review Board (DRB) at a public hearing.

Figure 6-1. Typical Development Review Process and Overall Duration

Abbreviations: DRB = Development Review Board CC = City Council LUBA = Oregon Land Use Board of Appeals
 Note: All durations are approximate; 120 days = 17 wks + 1 day



As the owner of the WWTP, the City has an interest in any presentations that are made to the DRB, any recommendations made by the DRB, and how such recommendations are addressed. As noted in **Table 6-1** within **Appendix 6, subsection 6.2.1** the Company shall conduct the Planning and Land Development Approval process in coordination with the City. The City shall work in conjunction with the Company to present the permit applications and plans to the DRB and to address the recommendations, if any, of the DRB. The DRB will review submitted permit applications and plans and set conditions for approval.

The Company shall prepare a City Planning and Land Development Review Plan in accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the draft City Planning and Land Development Review Plan and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. The City Planning and Land Development Review Plan shall summarize the Company's approach to coordinating and interacting with the City to prepare for this review process, including the contents of the DRB public hearing presentation. This plan shall address the roles and responsibilities of the City and the Company during this process and how conditions from the DRB will be incorporated into the design. The plan should include City review times for all documents produced for this review process.

Zoning Code and Comprehensive Plan

Compliance with the Planning and Land Development Ordinance includes addressing requirements in the Zoning Code and Comprehensive Plan. The Wilsonville WWTP is located within zoning designation RA-H (Residential Agriculture Holding) and within the Willamette River Greenway, as illustrated in **Figures 6-2 and 6-3** within **Appendix 6, subsection 6.4.2**. Portions of the WWTP Site are located within the Significant Resource Overlay Zone (SROZ). The Comprehensive Plan Designation for the WWTP property is "Public Lands. Significant Resource Overlay Zone."

All properties in the City that border the Willamette River are affected by the Willamette River Greenway overlay zone. Generally, the Willamette River Greenway is 150 feet from the ordinary low water line up the bank on either side of the river. The intent of the Willamette River Greenway overlay zone is to enhance and protect the scenic view of the river; consequently, tree cutting in this zone requires a conditional use permit which will be granted by the DRB following approval of the permit application.

The SROZ protects the most important natural resources in the City. All proposed tree cutting in the SROZ requires a Significant Resource Impact Report prior to any tree removal. Prior to tree cutting activities in the SROZ, the Company shall coordinate with members of the City's Planning Division and Natural Resources Program.

Should the Company's design or construction extend to areas outside of the current WWTP site property boundaries, the Company shall be responsible for obtaining all necessary permits and approvals to use these offsite properties. Extending improvements outside of current property boundaries is not anticipated for the performance of the Contract Services and will require special approval by the City.

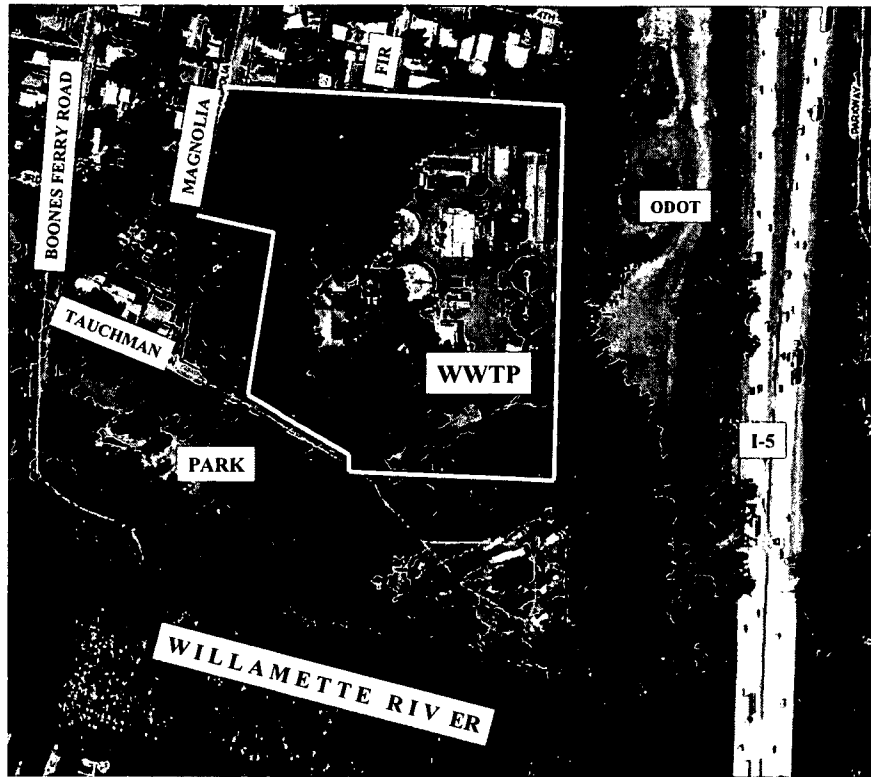


Figure 6-2. Parcel Overview for Wilsonville WWTP Site



Figure 6-3. Zoning Overview for Wilsonville WWTP Site

Tree Preservation and Protection Ordinance

The City has a Tree Preservation and Protection Ordinance (Wilsonville City Code 4.600-4.640.20). The City has conducted a detailed tree survey at the WWTP Site. The Company is responsible for applying for a Tree Removal Permit for any trees planned for removal as a part of the performance of the Contract Services. If required by the City as a condition of the Tree Removal Permit, the Company is responsible for developing and implementing a Tree Mitigation Plan to mitigate for the removal of trees at the WWTP Site during construction.

The applicable review criteria for the Design-Build Work to meet the requirements of the Planning and Land Development Ordinance are presented in the City Code and summarized in **Table 6-2** within **Appendix 6, subsection 6.4.2**.

Table 6-2. Review Criteria for City Planning and Land Development Approval

Zoning code section	Name of section
Section 4.014	Burden of Proof
Section 4.015	Findings and Conditions
Section 4.120.03	RA-H Zone, Conditional Use Permits for government buildings.
Section 4.131	Planned Development Commercial Zone
Section 4.139	Significant Resource Overlay Zone
Section 4.140 – 4.400	Planned Development Regulations
Section 4.155	General Regulations - Parking, Loading and Bicycle Parking
Section 4.171	Protection of natural Features and Other Resources
Section 4.175	Public Safety and Crime Prevention
Section 4.176 (as applicable)	Landscaping, Screening and Buffering
Section 4.178	Sidewalk and Pathway Standards
Section 4.179 (as applicable)	Mixed Solid Waste and Recyclables Storage in New Multi-residential and Non-Residential Buildings
Section 4.184.03	Conditional Use for government buildings
Sections 4.199 – 4.199.60	Outdoor Lighting
Sections 4.400 through 4.440	Site Design Review
Sections 4.500 – 4.514	Conditional Use – Willamette River Greenway
Sections 4.610.40	Type 'C' Permit

6.5 Status of Existing Governmental Approvals

This section provides an overview of the current status and impending renewals of the City's existing NPDES Permits for the WWTP.

6.5.1 Wastewater Discharge NPDES Permit Requirements

The City has a Wastewater Discharge NPDES Permit for the existing WWTP from DEQ. The current Wastewater Discharge NPDES Permit is included as a Reference Document listed in the table of contents of the DBO Agreement.

The following sections describe in greater detail the Company's general responsibilities and requirements related to the City's Wastewater Discharge NPDES Permit, including those related

to renewals for the upgraded WWTP. If the NPDES Permit requirements are more stringent for the upgraded WWTP than assumed herein, then this shall be considered a Change in Law and the Company may be entitled to relief in accordance with **Article X, Section 10.9** and **Article XV, Section 15.2**.

Company Responsibilities

The Company shall be responsible for maintaining ongoing adherence to the requirements of the Wastewater Discharge NPDES Permit under which the existing WWTP operates and any future NPDES Permit renewals. These duties include, but shall not be limited to, the maintaining of all permit requirements related to effluent quality. Additionally, the Company shall maintain and provide all reports required by the state of Oregon and the U.S. Environmental Protection Agency (EPA) of the Wastewater Discharge NPDES Permit.

The Company shall be responsible for assisting the City in preparing the NPDES Permit renewal applications every five years during the Term and for assisting the City during any necessary negotiations with DEQ. If a permit modification is needed prior to the permit expiration, the Company shall complete the permit modification for the City. The Company shall provide a draft Wastewater Discharge NPDES Permit renewal application to the City for review 18 months prior to permit expiration and a completed application for City review 9 months prior to permit application.

NPDES Permit Renewals for Upgraded WWTP

As previously stated, the Company shall be responsible for preparing NPDES Permit renewal applications for the WWTP during the Term. Permit renewal applications shall, at a minimum, address the effluent concentrations and mass load limits associated with the higher design average dry weather flow (ADWF), as well as the mixing zone and ammonia requirements for the upgraded WWTP as described in the following sections.

Effluent Concentrations and Mass Load Limits

It is assumed that the mass load limits in the NPDES Permit renewals following the upgrade of the WWTP will not change from those presented in **Tables 3-1** and **3-2** within **Appendix 3, Section 3.2**.

Tables 3-3 and **3-4** within **Appendix 3, Section 3.2** reflect the average effluent concentrations corresponding to the increased ADWF and assuming no increase in the current mass load limits.

Mixing Zone and Ammonia

DEQ will perform a mixing zone analysis meeting the DEQ Regulatory Mixing Zone Internal Management Directive (effective July 2008) associated with the permit renewal for the upgraded WWTP. This mixing zone analysis will then be used to perform a reasonable potential analysis related to the average dry weather flow of 4.0 mgd (and maximum day dry weather flow of 5.29 mgd) to demonstrate the maximum dry weather season effluent ammonia concentration that can be discharged from the upgraded WWTP without violating Water Quality Standards. It is anticipated that DEQ may set an ammonia limit in the NPDES Permit renewal for the upgraded WWTP based on their reasonable potential analysis; it is assumed that this limit would not be

less than 20 mg/L daily maximum associated with the maximum day dry weather flow of 5.29 mgd.

6.5.2 Municipal Separate Storm Sewer System Requirements (MS4) NPDES Permit

The City has a Municipal Stormwater NPDES Permit from DEQ. The City has a Stormwater Management Plan that includes stormwater pollutant controls associated with City operations. The Company will be responsible for implementing operational practices at the WWTP that conform to the City's Stormwater Management Plan. The City expressly acknowledges that the Company's responsibilities do not include stormwater systems outside of the WWTP Site.

As shown in **Table 6-1** within **Appendix 6**, the City does not currently have a 1200-Z Industrial Stormwater Permit from DEQ for stormwater generated at the WWTP site. Stormwater is managed onsite through surface discharge to a gravel infiltration area. If future modifications to the WWTP result in discharge of stormwater offsite, the Company is responsible for obtaining a 1200-Z Industrial Stormwater Permit and maintaining continuous compliance with the permit.

6.5.3 Industrial Pretreatment Program

The City currently administers an industrial pretreatment program and will maintain responsibility for the pretreatment program throughout the Term. For more information see its Web page at <http://www.ci.wilsonville.or.us/Index.aspx?page=517>.

6.6 Additional Requirements for the Performance of the Contract Services

The following section presents a discussion of the status of other permits, laws, and potential future regulations as they relate to the Wilsonville WWTP.

6.6.1 Biosolids Regulations and Requirements

The City's current practice includes production of Class B Biosolids onsite and subsequent beneficial reuse. The Company may continue to produce Class B Biosolids onsite in accordance with the City's current 2009 Biosolids Management Plan and land application site authorizations until Acceptance, unless otherwise approved by DEQ and the City at the Company's request. The Company shall be responsible for permitting and maintaining land application sites.

The Company shall be required to produce Class A Biosolids onsite upon Acceptance. An updated Biosolids Management Plan shall be developed by the Company for the Class A Biosolids program and submitted to DEQ for approval prior to Acceptance. The updated and approved Biosolids Management Plan shall be included in the Company's Operation and Maintenance Plan as described in **Appendix 10, subsection 10.3.5**.

The Biosolids Management Plan is specific to the City and is an extension of the WWTP's Wastewater Discharge NPDES Permit. The Company is responsible for keeping plans current and on file with the Wastewater Discharge NPDES Permit. With regard to land application, the Company is responsible for submitting specific site information to DEQ for evaluation, notifying neighbors about the land application activity, and conducting a public comment process with any site that may be sensitive to residential housing or have runoff potential.

6.6.2 Toxics

Senate Bill 737 (SB 737), passed by the 2007 Oregon Legislature, required DEQ to develop an inventory of priority persistent pollutants for Oregon. DEQ currently requires the City to conduct two sampling events for the SB 737 listed pollutants that might be found in municipal effluent. One sampling event must be conducted under low-flow (summer) conditions and one event under high-flow (winter) conditions. The Company shall not be responsible for conducting sampling related to SB 737 for the City during the Term.

6.6.3 EPA Works Design Criteria for Redundancy and Reliability

The Company shall be required to comply with EPA policy that requires new or expanding treatment works that discharge to a receiving stream to meet minimum standards for mechanical, electrical, fluid systems, and component reliability.

The Company shall provide the minimum backup equipment requirements for the upgraded WWTP in accordance with the EPA's Works Design Criteria, Reliability Class I, for sewage treatment plants.

6.6.4 Easements

Should the Company's design or construction activities require modification of an existing easement agreement, the Company shall be responsible for negotiating any such modifications with both parties to the easement or, if unsuccessful, modifying its design to avoid the need for such a modification.

The current WWTP Site fence line includes approximately 30 feet of property the City does not own. The Company assumes it shall be granted access to the 30 feet of property within 30 days of the Contract Date.

6.6.5 CMOM

The Company shall develop a CMOM program, specific to the Lift Stations, as part of the Contract Services that is consistent with the anticipated changes to the NPDES Permit requirements in terms of CMOM provisions. Sanitary sewer overflow compliance related to the Lift Stations shall be addressed as part of this program. This Company-developed Lift Station CMOM program will be incorporated into the City's CMOM program developed for all other components of the Collection System.

Appendix 7 Quality Program

7.1 Purpose of Appendix

This appendix describes the minimum requirements for the Company's overall Quality Program (Quality Program) including its Design-Build-Operate Quality Management Plan (QMP) in accordance with **Article X, Section 10.1**. The QMP shall define quality control (QC) and quality assurance (QA) procedures that shall be implemented during permitting, design, construction, start-up, commissioning, Acceptance Testing, operation, maintenance, and asset management of the Managed Assets. The QMP shall describe the delivery system which includes the processes and procedures for permitting, engineering, project management, project controls, purchasing, construction, construction management, and operations. The QMP shall describe the processes that support the project execution. These processes include safety, document control, internal auditing, corrective action, and record control.

7.2 City's Quality Objectives

The Company's overall Quality Program, including quality control and quality assurance, shall be consistent with and support the City's overall expectation of high quality and the following overall quality objectives:

- Ensure that the Company implements a well-developed quality program to help meet the City's and Company's objectives for the performance of the Contract Services.
- Ensure that permitting, design, construction, transition planning, start-up, commissioning, Acceptance Testing, operation, maintenance, and asset management of the Managed Assets are consistent with the DBO Agreement.
- Integrate and coordinate scientists, designers, engineers, operators, permitting personnel, and construction contractors into all development, design, and review phases of the Design-Build Work to verify quality of work.
- Provide durable, dependable, and high-quality materials, installation, and equipment compatible with and proven in wastewater treatment applications.
- Develop and implement systems to assure that problems are discovered early, resolved in a timely manner, corrected adequately, and do not recur.
- Complete work in accordance with schedules and deadlines.
- Provide independent oversight equipped with adequate resources to assure that quality is not compromised.

7.3 Company's Quality Management Responsibilities

The development and implementation of the overall Quality Program shall be the responsibility of the Company, which recognizes the City's emphasis on high quality for the performance of

the Contract Services. The Quality Program shall integrate permitting, design, construction, operation, maintenance, and asset management and shall include detailed quality control and assurance programs, staffing assignments and communication protocols, training, and other aspects as defined below.

The Company's Quality Program shall define how the Company will ensure that the City's quality objectives are met, including provisions for involving City representatives in discussions related to quality and provisions for reporting quality assurance findings to the City. In addition, the Company's Quality Program shall ensure that:

- Project staff, including Subcontractors, are qualified to perform their duties and meet all necessary regulatory and project-specific training requirements.
- Each significant Subcontractor establishes and implements a quality control program as a contractual requirement.
- The Company commits to reviewing Subcontractors' quality plans, audit Subcontractors' work (including inspections and verification testing), and provide feedback regarding audit results and recommendations for areas of work that do not meet requirements or could be improved.
- A strong emphasis is placed on selection of quality materials and equipment during the design and on quality workmanship during construction.
- Items and services procured for the performance of the Contract Services meet all necessary quality requirements.
- Communication and coordination procedures among team members are clearly defined and implemented, particularly if team members are located in different offices.
- Quality control work is documented and documents are properly managed and controlled.
- Work is properly planned and implemented according to established procedures.
- Work is reviewed and quality processes are audited by the Company for effectiveness.
- Deficiencies are documented and effective corrective action is promptly completed.
- Work processes are continually improved through analysis of root causes and feedback of lessons learned.

To achieve these goals, the Company shall:

- **Develop an overall Quality Management Plan.** The QMP shall describe in detail the Company's comprehensive program to ensure that the Company's Quality Program responsibilities and the City's quality objectives will be met.
- **Provide adequate resources dedicated exclusively to the Quality Management Plan's implementation.** QA/QC staff must function independently of production staff and be empowered to enforce the Quality Program's objectives, define quality expectations, independently verify quality, and investigate the causes of poor-quality work.

- **Define roles and responsibilities.** The Company shall clearly define and communicate the roles and responsibilities and quality standards among all parties performing the Contract Services, including Subcontractors, to ensure quality standards are met.
- **Manage documentation.** The Company shall ensure accurate and complete documentation and records management using a comprehensive Web-based document management system and project record filing system, described further in **Appendix 7, Section 7.7** and in **Appendix 9, Section 9.7**.

7.4 Submittals

The Company's preliminary QMP outline for meeting the requirements of this section is attached as **Exhibit 7-1** within **Appendix 7**. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall submit copies of a draft and final QMP, including expanded QA/QC plans for the permitting, design, construction, and operation phases, as well as for asset management services, to the City for review. The City will review the QMP drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. The QMP shall show how quality will be managed for all permitting, design, construction, operation, and management activities. Completion of the final construction and operation QA/QC plans, incorporating the City comments, is a Construction Date Condition.

Revisions and updates to the Company's QMP may be proposed by the Company as the performance of the Contract Services progresses. Changes to the Quality Program or QMP shall require the approval of the City. These revisions and updates may occur in one or more iteration within the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9** and **Table 9-1** within **Appendix 9, subsection 9.2.1**. The Company shall not initiate any of the work under a proposed change to the Quality Program or QMP until reviewed and an acceptable Quality Program change is in place.

7.5 Minimum Requirements for Company's Quality Management Plan

7.5.1 Overall Plan Requirements

The Company's preliminary QMP and subsequent revisions shall include, at a minimum, the following information for each phase of the project:

- the Company's overall quality approach, including its QC and QA philosophy and approach for each phase and a discussion of methods that will be used to assure that contracting and subcontracting relationships will support the Company's and the City's quality objectives
- minimum staffing and resource commitments for QC and QA activities for each phase, including fully explained responsibilities and authorities
- organization charts for each phase showing the relationship and reporting plan for the QC manager, special inspectors, field engineers, design engineers, subcontractors, the City,

and others, including descriptions of the relationships of QC and QA staff to the monitored organizations performing the work

- definition of design change process during construction describing the sequence of events to implement a design change and documentation of the design change which incorporates the City's right to review and reject, at any time, any design change that is not in accordance with the DBO Agreement
- a description of the Company's process to identify, document, and reach concurrence on corrective action for incidents of construction nonconformance
- procedures to monitor budget and schedules
- procedures to monitor project deliverables by each project phase in terms of facility, process, due date, status, and certification, and organized by responsible manager
- other QA and QC procedures and documentation requirements in detail.

7.5.2 Permitting QA/QC Plan

The Company's permitting QA/QC plan shall also be presented in detail in its QMP. The permitting QA/QC plan shall, at a minimum, address the following:

- roles and responsibilities for permitting
- documentation of assumptions
- standards and methods to be used
- procedures for communicating permitting-related information and design constraints to the design engineer
- procedures for ensuring that permit requirements are incorporated into design and construction documents and for verifying compliance during construction and operation.

7.5.3 Design QA/QC Plan

The Company's design QA/QC plan shall be presented in detail in its QMP.

The design QA/QC plan shall identify the roles, responsibilities, and procedures necessary to ensure that design quality is maintained during the development, review, and approval processes.

Controls shall be established to ensure design development is coordinated with permit requirements and to obtain input from the Company's construction and permitting teams.

Coordination shall include all parties involved in the design development and review process, including interdisciplinary reviews and constructability reviews, as well as the verification process used to ensure that changes are clearly and consistently shown on all affected design documents. Methods shall be incorporated to ensure that all design issues and reviewer comments are identified and tracked until they have been addressed and/or incorporated into the design. Tracking documents shall be developed, maintained, and be available to the City for review.

QA/QC reviewers, which includes qualified engineers, architects, and construction and operations specialists that are separate from and independent of the design production team, shall provide written comments on the design documents for major design and permitting submittals, including the 30 percent, 60 percent, and 95 percent design submittals. The Company's Engineer of Record shall respond in writing to each comment.

Specific quality review procedures may include the following:

- use of checklists and review guides for drawings, specifications, cost estimates, and code analysis for the architectural, civil, structural, mechanical, HVAC, plumbing, and fire protection aspects of the Design-Build Work
- use of continuous quality control reviews, design checks, and document control procedures
- intradisciplinary checking of calculations and design deliverables
- interdisciplinary coordination and design review
- review of drawings and specifications by qualified construction and operation specialists to review the project for constructability and operability.

The design QA/QC plan shall provide for continuous QA/QC reviews and allow QA/QC reviews to occur concurrent with City review.

The design QA/QC plan shall specifically include provisions meeting the International Building Code (IBC) requirements of seismic quality assurance plans.

Measures shall be taken to ensure that designs are not released to construction until authorized and approved by the Engineer of Record. Design documents shall clearly show detailed quality requirements such as:

- construction tolerances
- requirements from codes and standards that are to be followed during construction
- equipment model numbers
- ASTM and industry standards, as applicable to define equipment level of quality
- material requirements
- any test reports or certifications required from the manufacturers.

7.5.4 Construction QA/QC Plan

The Company's construction QA/QC plan is presented in its preliminary QMP and shall be revised in more detail prior to construction.

The Company shall ensure and certify that the construction of all Design-Build Work is consistent with Contract Standards, including construction standards. This effort shall include

shop drawing review and the construction oversight activities. Internal audits shall be conducted to ensure compliance with QA/QC procedures, the project delivery framework, and Quality Program.

During the construction, engineering personnel involved in making design decisions shall remain involved (including receiving periodic updates on the progress of the construction and making site visits during key points in the construction related to their respective design expertise) to ensure that the Design-Build Work design complies the Construction Standards. Each person in the Company's organizational structure for the project shall have a specific scope of responsibility, accountability, and authority for quality achievement.

The Company's construction QA/QC plan shall incorporate the construction quality control procedures and manuals. Leadership from all phases of the project shall develop a quality plan during a team chartering session that shall focus on what type of effort it will take to meet the City's expectations and requirements of the DBO Agreement. The construction quality control activities shall address the following as applicable:

- concrete
- subsurface foundations
- pre-stressed concrete tanks
- structural and miscellaneous steel
- piping
- process equipment
- odor control equipment
- electrical power and lighting installation
- electrical/pneumatic instrumentation, and control system installation
- architectural
- non-process and miscellaneous items.

The Company shall be responsible for controlling the quality of all work, including work of its Subcontractors and suppliers, and for ensuring that the required quality is achieved. The construction QA/QC program shall describe the Company's approach to:

- onsite quality
- offsite quality (manufacturing, fabrication, and assembly)
- construction QA/QC organization
- programs for orienting and training staff and Subcontractors
- methods and procedures used to assure that quality is achieved during all stages of construction

- quality control, including inspection and testing.

Procedures shall clearly define QA/QC activities, including responsible parties, roles, and work products ensuring that the work is constructed as specified and required. Inspections shall be performed by inspectors who are not responsible, in whole or in part, for the scheduling or construction of the work being inspected. The construction QA/QC plan shall include a QA/QC work plan that details the QA/QC submittals for construction. These requirements shall be written with sufficient clarity to allow the City to verify that the construction QA/QC plan is being fully implemented, all work is inspected, and that all deficiencies are being identified and resolved promptly. The Company shall provide sufficient notice to the City's Contract Administrator in advance of covering any work to allow the Contract Administrator to verify the work conforms to the DBO Agreement requirements.

The construction QA/QC plan shall include clearly defined instructions for performing inspections including:

- the work attributes to be inspected and tested
- Performance Guarantee requirements
- frequency of inspections and testing
- the requirements for documenting the inspection results.

Inspection and test records shall be kept current (not less frequently than daily), and shall have sufficient detail to enable the City's Contract Administrator to identify inspections and tests that have been performed, and the results. The plan shall show methods to be implemented to identify and track all unsatisfactory, deviating, and nonconforming work until the required repair, rework, or replacement is performed, and the work has been re-inspected and accepted. The City shall be informed of all unsatisfactory and nonconforming conditions, and the Company's plan for corrective action. The plan shall assure the quality of all material and equipment. Procedures shall be implemented to verify that the procurement documents meet all Construction Standards, and that quality has been controlled during the manufacture and testing of all major or critical equipment being fabricated specifically for the performance of the Contract Services. The plan shall require receipt inspection of all material and equipment to ensure that it meets all Construction Standards. The plan shall include preparatory inspections of materials and equipment prior to incorporation into the construction to ensure compliance with the Contract Standards.

Initial inspection at the start of each new phase of construction shall occur to ensure methods, techniques, and standards of workmanship are in compliance with the Contract Standards. Follow-up inspections on a frequent basis shall occur as necessary to ensure that construction is proceeding in accordance with the Contract Standards.

The plan shall include a process to identify, document, track, and close out all field nonconformances so that any deficient work is identified, tracked, repaired, and re-inspected for acceptance. The Company's quality team shall perform workmanship reviews to prevent

deficiencies and nonconformance of work by monitoring those activities that affect quality during the design and construction. The Company shall provide feedback to the City regarding audit results and recommendations for areas of work that do not meet QMP requirements, or that could be improved.

The City shall be given access to all offsite manufacturer and storage locations for the purpose of observing fabrication and offsite testing and storage. The Company shall advise the City of the schedule for all offsite testing of equipment and materials.

The construction QA/QC plan shall include monitoring procedures to ensure that material and equipment is being stored and maintained according to requirements of the designer and the manufacturer. Documentation such as material test reports, certifications, and equipment test results must be received to demonstrate compliance with the approved design. The Company shall organize all results for archiving by the City consistent with the file coding system provided by the City.

The Company shall provide full-time construction inspection and testing for the performance of the Contract Services. Construction inspectors, who shall be provided with the latest designs released to construction, shall perform initial verification of procurement and construction activities, so that any nonconforming work will be identified at an early stage. In this regard, the plan shall clearly identify the circumstances under which the Company's soils engineer will be involved in construction quality oversight.

Controls shall be provided to ensure that inspections and testing are being performed using the latest approved design documents and shop drawings. Procedures shall ensure that an adequate number of inspection personnel (as defined by the Company's QMP) are available at all times, and that all inspectors are qualified, trained, and proficient in performing inspections for the work to which they are assigned.

The Company shall perform all testing and inspections as required by the DBO Agreement, approved design documents, codes, regulations, and standards (such as ACI and ASTM). If there are any conflicts in the testing requirements between the DBO Agreement and the design documents, and recommendations or requirements shown by codes, regulations, or standards, the more stringent testing requirements shall apply as determined by the City.

All testing shall be performed by individuals who are qualified and experienced in providing these testing services. Equipment used to perform tests shall be of the stipulated type and model, and shall have been calibrated according to requirements in the testing procedure. The Company shall hire a certified independent testing laboratory to perform all laboratory testing. Lab tests include:

- the proposed concrete mix design
- concrete aggregate tests
- strength of concrete field test cylinders
- gradation and moisture density relationship of soils

- others as required by the Company's Engineer of Record.

The certified testing laboratory(s) shall also perform onsite tests that the Company is not experienced, qualified, or certified to perform. Onsite tests include:

- concrete slump
- concrete air entrainment
- concrete temperature
- casting of concrete test cylinder specimens
- in-place testing of concrete strength
- compaction density testing of soils
- coating thickness measurements
- anchor bolt pull tests
- structural bolting torque
- welds
- coatings
- others as required by the Company's Engineer of Record.

7.5.5 Operations and Maintenance QA/QC Plan

The Company's operations and maintenance QA/QC plan shall be presented in the QMP. The QMP for operations shall differentiate any elements that differ before and after Acceptance. The operations and maintenance QA/QC plan shall, at a minimum, address the following:

- rules and responsibility for operation
- record-keeping and other documentation
- how Performance Guarantee requirements will be met
- procedures for addressing operations problems and/or permit requirements.

The Company's operations and maintenance QA/QC plan should also describe the Company's sampling and collecting procedures. The sampling and collecting of samples shall be based on the following standards to ensure the collection of representative samples and the integrity of samples:

- Automatic composite samplers shall be calibrated at least once per quarter for individual sample volume.
- All samples will be properly preserved and analyzed within the required holding times in accordance with the latest approved edition of Standard Methods.

- The refrigeration temperature for all automatic samplers and sample storage units shall be checked daily to ensure proper sample storage temperature.
- Standard Operating Procedures (SOPs) shall be developed and implemented for all sampling procedures, including sample preservation, sample container cleaning, replacement of automatic sampler tubing, and automatic sampler operation.
- Chain-of-custody protocols shall be utilized.

The Company shall also develop and implement a QA/QC plan to ensure the accuracy of all laboratory results obtained in the Company's laboratory and shall audit the QA/QC procedures of outside laboratories that are utilized for sample analysis. A copy of the QA/QC plan shall be provided to the City for review and comment in the draft QMP. This plan shall include, but not be limited to, the following:

- written programs, procedures, and standards for laboratory activities
- annual laboratory audits to be conducted by an independent audit agency
- annual laboratory review and systems audit conducted by Company laboratory specialists covering sampling, sample custody, sample storage and preservation, sample preparation, analytical methodology, project management, and data validation
- precision and accuracy testing with every batch of analyses conducted each day in accordance with the QA/QC program and "Standard Methods for the Examination of Water and Wastewater," latest approved edition
- required use of bound, numbered bench sheets for recording laboratory information
- use of good laboratory practice in testing, record-keeping, validating, reporting, and selection of chemicals and glassware.

The City, at its sole expense and cost, may also perform testing, sampling, and analytical procedures as it deems necessary.

7.5.6 Asset Management QA/QC Plan

The Company's asset management QA/QC plan shall also be presented in detail in its QMP. The asset management QA/QC plan shall, at a minimum, address the following:

- consistent and continued pursuit of improvement
- timely identification of performance changes
- local, state, and federal regulatory compliance
- legally defensible documentation
- triggers for outside technical support
- analytical accuracy fully supported by documented QA/QC
- organized and scheduled responses to regulatory and client requests.

The asset management QA/QC plan shall include an inspection/audit system to identify and report on deficiencies and then develop a plan for correcting those deficiencies and preventing their reoccurrence. This plan shall provide a system that manages and tracks all samples, analyses, quality assurance records, and equipment recordings. It shall ensure that the data generated is both accurate and precise from the standpoint of all certification and regulatory standards.

7.6 City Role in Quality Assurance

The City intends to have a full-time Contract Administrator during construction. The City intends this individual to be a part of the City's independent quality assurance program. The Company shall be fully responsible for implementing its own comprehensive Quality Program (including quality assurance and quality control) and shall not depend in any way on the observations of the City's representative to substitute for its own obligations.

The City shall be provided in a timely manner with duplicate copies of all Quality Program documentation including:

- quality control inspection reports
- quality control test reports
- nonconformance reports
- quality assurance reports
- pile driving blow count records
- equipment test reports
- material test reports
- quality control personnel qualifications and certifications.

7.7 Document Control

The QMP shall also include the Company's method for maintaining document control, including staff responsibilities. The Company shall use a Web-based document management software as described in **Appendix 9, Section 9.7**. The Company shall include in the QMP its methods for staff checking out files and preventing correspondence files and documents from being lost, stolen, or misplaced.

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Appendix 8 Acceptance Test Procedures and Standards

8.1 Purpose of Appendix

This appendix sets forth the requirements for Acceptance Testing of the Design-Build Work in accordance with **Article XI**. The purpose of the Acceptance Test is to demonstrate the ability of the upgraded wastewater treatment plant (WWTP), as operated, maintained, and managed by the Company, to satisfy all Performance Guarantee requirements and Technical Specifications and to ensure that the subsurface pipelines (including sewers, treated effluent, and water pipes) on the WWTP Site satisfy the Technical Specifications.

8.2 Acceptance Testing Activities

The primary activities comprising Acceptance Testing are the WWTP Hydraulic Test and the 30-day WWTP Acceptance Test. The 30-day Acceptance Testing must be initiated after the WWTP Hydraulic Test is completed. The objectives of these activities are summarized below.

- **WWTP Hydraulic Test:** Evaluation of the ability of the WWTP to satisfactorily convey flows at the design average and peak hour influent flows for the required monitoring periods as described in **Appendix 8, subsection 8.4.1**
- **30-day Acceptance Test:** This test consists of the following subtests as described in **Appendix 8, subsection 8.4.2:**
 - **Liquid treatment train testing:** Demonstration of the ability to reliably treat the Influent processed through the WWTP and meet the Technical Specifications and Performance Guarantee requirements, which include all Applicable Laws, at the design average, maximum months, and peak day influent flows for the required monitoring periods.
 - **Solids processing testing:** Demonstration of the ability of the WWTP to reliably process residuals, particularly Biosolids, and to meet the Technical Specifications and Performance Guarantee requirements, which include all Applicable Laws, for the required monitoring periods.
 - **Odor control system testing:** Demonstration of the ability of the odor control equipment to collect and treat odorous air from the WWTP and meet the Technical Specifications and Odor Guarantee requirements for the required monitoring periods.

8.3 Acceptance Test Plan

The Acceptance Test Plan defines the test program as related to each specified objective. The Acceptance Test Plan shall define the following information:

- equipment and systems to be operated

- procedures to be used to fully test the WWTP even if Influent quantities are below WWTP capacity
- procedures to be used for testing all influent treatment and ancillary systems including residuals handling and treatment systems and odor control systems in accordance with manufacturers' recommendations
- procedures for testing the standby power capabilities of the WWTP
- parameters to be monitored, including the proposed use of permanent and temporary instrumentation
- specific sample collection, handling, and analytical procedures to be implemented, including quality assurance and quality control (QA/QC) procedures
- testing schedule, including the O&M schedule during testing
- response procedures for unsuccessful test results including definition of threshold results that constitute overall Acceptance Test failure
- all alarm functions for WWTP components and systems on the programmable logic controller (PLC)/SCADA/human-machine interface system, including alarm autodialing system.

The Acceptance Test Plan shall also describe methods for demonstrating compliance with the Performance Guarantee requirements, including the following:

- A list of all parameters to be monitored and measurements to be made.
- Identification of equipment calibrations to be performed, descriptions of calibration techniques to be used, and timing of calibrations relative to Acceptance Testing.
- Description of analytical methods and techniques that will be utilized to confirm that all Performance Guarantee requirements are met. These methods and techniques shall comply with applicable regulatory requirements, including applicable data handling requirements.
- SCADA, PLC, and information system monitoring and control functions.
- A listing of all samples requested by the City and a protocol for delivering samples to the City for its own testing program if the City elects to have such a program during Acceptance Testing.

Exhibit 8-1 within **Appendix 8** presents the Company's preliminary Acceptance Test Plan outline. In accordance with the timeframes set forth in **Article XI, subsection 11.2(A)** and in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall submit copies of a draft and final Acceptance Test Plan to the City for review. The City will review the Acceptance Test Plan drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

The Company shall not conduct Acceptance Testing until the Acceptance Test Plan is approved by the City.

During the tests, the Company shall operate all systems within the WWTP under normal operating conditions, including, but not limited to, routine equipment operation, maintenance services, and chemical usage.

8.4 Acceptance Test Procedures

The following sections set forth the Acceptance Test Procedures to be completed, at a minimum, to demonstrate the ability of the WWTP to perform as designed and meet the Performance Guarantee requirements.

If the City determines that the performance of the WWTP or any equipment is unsatisfactory at any time during the Acceptance Test, the Company shall take immediate action to ensure that Effluent does not violate Applicable Law or pose a threat to human health or the environment. In the event that the Acceptance Test demonstrates that the WWTP is not in compliance with the Acceptance Test Standards, Acceptance Testing shall cease until compliance is restored and then the Acceptance Test shall be repeated.

8.4.1 WWTP Hydraulic Test

Hydraulic testing shall include the evaluation of the ability of the WWTP to convey flows at the design average and peak hour flows. Testing shall also demonstrate the ability to convey peak hour flows of influent for three minimum 1-hour periods separated by at least 8 hours between test periods, while demonstrating the WWTP's ability to function as designed.

The Company may vary the number of units in service or furnish temporary electric/gas pumps to achieve the design test flows through each process unit, as applicable. Hydraulic testing does not need to be performed during the same time frame as the 30-day Acceptance Test described herein. If the WWTP Hydraulic Test performed outside of the 30-day Acceptance Test is terminated, that WWTP Hydraulic Test shall be repeated in its entirety.

8.4.2 30-Day Acceptance Test

The 30-day Acceptance Test of the WWTP shall demonstrate the treatment of Influent to meet the Effluent Guarantee requirements for a minimum of 30 continuous days. The Company shall vary the number of treatment components in service to demonstrate the performance at higher hydraulic and organic loading rates to demonstrate operation at all design conditions. If the 30-day Acceptance Test is ceased, it shall be restarted at the beginning of Day 1 of the 30-day Acceptance Test, and the entire 30-day Acceptance Test shall be repeated. For treatment units that are designed based on maximum day, the units shall be tested at maximum day conditions for a minimum of one day prior to the 30-day Acceptance Test.

During the 30-day Acceptance Test, the Influent, Effluent, residuals, and odor control systems will be regularly monitored for parameters in the Performance Guarantee requirements. The following sections describe the requirements of each respective Acceptance Test. The 30-day Acceptance Test includes, but is not limited to, the testing activities described in this subsection.

Liquid Treatment Train Testing

During the 30-day Acceptance Test, the Company shall demonstrate the ability of the WWTP to handle and treat Influent as intended at the design loading rates and meet the Performance Guarantee requirements. The Company may vary the number of treatment components in service to demonstrate the performance at higher influent loading. As the maximum month summer and maximum month winter conditions cannot be tested during the same 30-day period, for the season not included in the 30-day Acceptance Test the Company may perform the additional maximum month test at a later time during the appropriate season or model the condition using calibrated data to verify the performance during the additional period.

Solids Processing Testing

During the 30-day Acceptance Test, the Company shall demonstrate the ability of the solids processing equipment to handle and treat solids as intended at the design loading rates and meet the Performance Guarantee requirements for Class A Biosolids. Daily samples before and after each treatment unit and treatment sidestreams shall be collected at least four times per shift and composited. Solids and sidestream samples shall be monitored for parameters identified in the Company's Acceptance Test Plan and to demonstrate that the Contract Standards are met. Samples shall be analyzed by a certified laboratory agreed to by both the Company and the City, using standard laboratory analytical quality control procedures. The WWTP and solids processing shall be operated under normal influent loadings for 180 after the 30-Day Acceptance Test to verify the reliability of the performance.

Odor Control System Testing

The odor control system Acceptance Test has two components. The first component is to demonstrate that the Odor Guarantee requirements are met at the WWTP Site fence line based on input of odor source sampling results into the dispersion model and odor panel testing. The second component is to test individual odor control equipment for removal of atmospheric hydrogen sulfide (H₂S) from inlet air.

Dispersion Model Demonstration

The Company shall measure odor and atmospheric H₂S emission rates from all sources for input to the dispersion model that was prepared as part of the odor control design work summarized in **Appendix 4, subsection 4.4.6**. The sources shall include odor control system discharges and any unit processes. Area source emissions shall be determined using U.S. Environmental Protection Agency (EPA) isolation flux chambers. Samples for dilutions-to-threshold (D/T) shall be analyzed for odor panel testing per American Society for Testing and Materials (ASTM) E679-9 1 and EN 13725-2003 using a dynamic dilution forced-choice olfactometer. H₂S shall be measured using a measuring device, such as the Arizona Instruments Jerome meter, that can accurately measure H₂S as low as 0.001 parts per million by volume (ppm_v).

The sampling shall be conducted for five consecutive days during the warmest wastewater period that occurs following the individual odor control treatment equipment Acceptance Tests. This period shall be based on historical WWTP wastewater temperature data. If the warmest wastewater periods occur more than 30 days after the odor equipment test period, the City shall direct the Company to perform these tests at a later time or to artificially increase the level of

odorous compounds in the inlet to odor control systems in order to simulate increased odor emission levels. Odor emissions shall be measured at each odor source at the WWTP for each of the five days. The sampling shall be conducted during the time of day that is determined to be characteristic of the highest odor emissions based on five days of continuous H₂S monitoring. Continuous H₂S monitors shall be put in place at each location with potential odor emission. H₂S concentrations shall be recorded at a frequency of one measurement per minute.

A minimum of five samples shall be collected from each odor discharge point for the odor panel testing. Samples shall be collected in either Tedlar sample bags or evacuated stainless steel cylinders. The samples shall be collected and stored so as to ensure that contamination, dilution, absorption effects, and sample deterioration are minimized. Samples shall be subjected to odor panel evaluation within 24 hours' maximum time lapse of the sample being taken.

Offsite impacts shall be determined by input of the measured D/T emission rates into the dispersion model as described in **Appendix 4, subsection 4.4.6**. H₂S emission concentrations shall be converted to D/T values for input into the dispersion model at a rate of 1.0 ppm_v H₂S per 1,000 D/T. Emission rates for the sources that are input to the dispersion model shall be the maximum measured values. The Company shall submit a revised dispersion modeling protocol utilizing measured emission rates to the City for review before conducting the modeling work. The Company shall provide a revised dispersion modeling protocol in accordance with the timeframes in the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the dispersion modeling protocol and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

The dispersion model shall be used to predict maximum hourly impacts. If the results of the dispersion modeling for the measured emissions determine odor impacts above 5 D/T or 0.005 ppm_v H₂S at or beyond the WWTP Site fence line, the Company shall install all necessary odor control measures, at its own effort and cost, to provide compliance with the Odor Guarantee requirements. After installation of any necessary additional odor control measures, odor emission rates shall be obtained for the new odor control equipment and the dispersion modeling shall be re-run to demonstrate compliance with the Odor Guarantee requirements as described in **Appendix 4, subsection 4.4.6**.

Odor Equipment Testing

The Company shall perform an 8-hour limited duration Acceptance Test and a minimum 20-day Acceptance Test to demonstrate the ability of each odor control system to handle and treat odorous air from all WWTP Site odor sources for which it is designed and meet the Technical Specifications and Performance Guarantee requirements. For a biological odor control system, including compost filter beds, the odor control Acceptance Test shall be performed following a process acclimation period as determined and mutually agreed upon by the Company and the City. The odor control Acceptance Test shall be performed during the time when the climate conditions are expected to be warmest and the influent characteristics have the most potential for generating H₂S odors at the WWTP. If warmest influent temperatures occur more than 30 days after completion of the other WWTP Acceptance Tests, the City may direct the Company to perform the odor equipment tests at that time or at a later time, or to artificially increase the level of odorous compounds in the inlet to odor control systems in order to simulate increased odor

emission levels that would be expected from the warmest influent conditions. The odor control Acceptance Test shall be performed with all ductwork and odor control fan systems properly balanced and the odor control systems installed and functioning normally. The Company may perform testing for odor control concurrently with the general Acceptance Testing.

During the 8-hour test, the inlet air side of each odor control unit shall be augmented with supplemental H₂S as necessary to produce an inlet H₂S gas concentration not less than the design maximum H₂S concentration. Such design concentration shall be based on the highest H₂S concentration determined from the methods described below to determine the biofilter inlet H₂S concentration:

- Process inlet H₂S concentrations demonstrate the requirements for minimum removal of 99 percent of H₂S from the inlet air or discharge of an outlet concentration of 0.1 ppm_v, whichever is greater; i.e., inlet H₂S concentrations shall be greater than 10 ppm_v in order to calculate the H₂S removal performance.
- The H₂S number shall be the weighted sum of the highest H₂S ppm_v level measured in a building odor duct and the highest H₂S ppm_v level measured in the aeration tank odor duct over a 2-week monitoring period. The air in a given building and aeration tank odor ducts shall each be monitored downstream of the inlet sources for each duct twice per day during normal working hours for a period of at least two weeks. The sum of the greatest H₂S measurements from the two sources shall be a weighted sum based on the design airflows from the building and aeration tank. During the H₂S monitoring period there shall be no chemical addition at upstream pump stations for odor/wastewater sulfide control for at least two weeks prior to the start of H₂S monitoring and during the monitoring and testing period, unless otherwise deemed necessary to control odors emanating from the pump station and/or force mains, as determined by the City.

The Company shall provide sufficient H₂S gas cylinders as necessary for the duration of the limited duration test, including an acclimation period. H₂S gas cylinders shall be Oregon Department of Transportation (ODOT) approved and the regulators and manifolds shall be Occupational Safety and Health Administration (OSHA) approved.

For both the 8-hour limited duration and the 20-day Acceptance Test, the H₂S concentration inlet and outlet shall be monitored and recorded for each odor control unit utilizing constant readout electrochemical-type sensors, such as the OdaLog gas logger. The inlet sensor shall have a 0.0- to 50.0-ppm measurement range and the outlet exhaust sensor shall have a 0.00- to 2.00-ppm measurement range. The inlet and outlet H₂S levels shall be recorded at 10-minute intervals.

For both the 8-hour and the 20-day Acceptance Test, the air flow rate through each odor control unit shall be recorded daily at the start and end of each day.

8.5 Acceptance Test Standards

During Acceptance Testing, the WWTP must demonstrate achievement of the Acceptance Test Procedures listed in **Appendix 8, Section 8.4** hereof and the following Acceptance Test Standards:

- The WWTP operates properly, with the normal complement of employees included in the Company's staffing plan for the WWTP, with the exception of additional Company staffing related to collection and analysis of samples and other test data.
- The WWTP complies with all Performance Guarantee requirements and applicable Governmental Approvals at all times.
- The WWTP operates at design capacity.
- All operations are consistent with Contract Standards.
- The WWTP operates properly during manual and automatic shutdown and start-up.
- The WWTP operates with automated and computerized systems in full and continuous operation.
- The residuals handling system operates as intended and in accordance with the Biosolids Guarantee requirements.
- The process and treatment systems operate as intended and in accordance with the Operation and Maintenance Plan.
- All odor control equipment operates properly and as intended.

8.6 Acceptance Test Report

The Company shall prepare the Acceptance Test Report that shall be submitted in accordance with the timeframes set forth in **Article XI, subsection 11.2(E)** and in the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the Acceptance Test Report in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. The Acceptance Test Report shall include the following information, and include, at a minimum:

- a certification stating that testing was conducted in accordance with the approved Acceptance Test Plan
- a certification of the results of each Acceptance Test, including a determination of the extent to which the results comply with the DBO Agreement and the Performance Guarantee requirements, and for each Performance Guarantee, a determination of the extent to which the WWTP complies with the Performance Guarantee requirements
- all required data measured and recorded during the Acceptance Test, including all laboratory analyses, chemical consumption, instrument calibrations, pressures, and other measurements
- all necessary certifications relating to testing, evaluation, analyses, and performance
- a record of all equipment failures, repairs, and preventive maintenance
- a summary of all data and calculations demonstrating the ability of the WWTP to meet the requirements of the Performance Guarantee requirements
- a summary of test results and conclusive evidence of compliance with all Acceptance Test requirements

- any additional data reasonably requested by the City to be included in the Acceptance Test Report.

All certifications required in the Acceptance Test Report shall be signed by the Company and signed and sealed by an engineer employed by the lead design firm and licensed in the state of Oregon.

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Appendix 9 City Review/Submittals

9.1 Purpose of Appendix

This appendix sets forth the submittal requirements for the Design-Build Period in accordance with **Article X** and describes the City's overall intent with respect to its right to review Deliverable Materials, or project documents. Project documents include items such as permit applications, design packages (i.e., 30 percent, 60 percent and 95 percent plans and specifications for components packaged together for the purpose of obtaining building permits), various plans and reports, and other required submittals. The primary purpose of the City's review is to ensure that the project documents are developed to conform to the requirements of the DBO Agreement.

9.2 General

This section describes the general obligations for the City and Company with respect to submittal requirements as well as outlining submittal requirements for periodic activities such as monthly status reports and monthly invoices.

9.2.1 City and Company Obligations Generally

The Company shall provide required project documents for review consistent with the submittal dates included in the current version of the Company's Design-Build Work schedule set forth in the current version of **Exhibit 5-1** within **Appendix 5**. The Company acknowledges that City review will often involve input from a number of individuals. Therefore, should submittal dates to the City be delayed from those shown on the current version of the Company's Design-Build Work schedule, updated monthly as required under **Appendix 5**, the Company shall provide prompt notice to the City's Contract Administrator of the delay. In no case shall this notice be given less than 10 calendar days prior to the scheduled submittal date.

The City will provide timely review and comment on all required submittals in order not to delay the progress of the work. Unless otherwise specified herein or waived by the City during the course of the project, the City will review all submittals and return consolidated comments to the Company in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. Additional discussion on the right of the City to review submittals can be found in **Article X, Section 10.5** of the DBO Agreement.

Table 9-1. City Review Timeframes

Type of Submittal	Reference	City Review / Response Time (calendar days)	Notes
Invoices and Supporting Documents	Subsection 9.2.2	5 days	Includes monthly progress reports
Design Review Packages	Subsection 9.4.2	14 days	Aprx. 30%, aprx. 60%, aprx 95% packages and after building permits; City comments will be incorporated into subsequent submittals (rather than in revised review packages)

Table 9-1. City Review Timeframes

Type of Submittal	Reference	City Review / Response Time (calendar days)	Notes
Draft Permit Applications	Section 9.3	21 days; 14 days for select/critical permit applications, as identified in the design submittal protocol 7 days for revised applications.	
Monthly Progress Meeting Minutes	Subsection 9.2.3	7 days	
O&M Manual	Section 10.4	30 days (Preliminary and Draft) 21 days (Final)	Electronic and hard copies
Construction Record Drawings	Subsection 9.5.1	21 days	
Plans and related updates prepared by the Company in accordance with the Appendices	Various Appendices	14 days	Review times also applies to review of any revised drafts
Final Punch List	Article X, subsection 10.20 of DBO Agreement	15 days	City to provide Final Punch List within 15 days of the Company's proposed Final Punch List
Acceptance Test Report Review	Appendix 8	14 days	

9.2.2 Monthly Progress Reports – Design-Build Period

Throughout the Design-Build Period, the Company shall furnish the City with a monthly progress report that summarizes all aspects of the completed month and cumulative work progress in accordance with the timeframes in the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the monthly progress reports in accordance with the timeframes shown in **Table 9-1** within **Appendix 9, subsection 9.2.1**. The monthly progress report shall include the following subsections:

- Executive Summary
- Summary Progress Schedule
- Engineering, Design and Permitting
- Health and Safety
- Construction Management.

The objectives of the monthly progress report are to:

- provide a reliable and readily accessible summary record of project activities and accomplishments during the month

- provide a detailed description of all Design-Build Work actually completed to date including submittals and construction progress; revisions to the progress schedule which shall reflect changes in the Company's Design-Build Work schedule since the date of the last Requisition; as required under the DBO Agreement and **Appendix 5, subsection 5.3.1**
- address short- and long-term scheduling and cash-flow forecasting
- provide requests for information or clarification and Change Orders
- identify issues and problems requiring action by the City or Company, including issues of conflicting priorities
- provide information to help substantiate monthly pay request.

9.2.3 Monthly Progress Meetings – Design-Build Period

Monthly progress meetings shall be held at mutually agreed upon times and locations during the Design-Build Period in accordance with **Article X**. The progress meetings shall be used to resolve any differences between the parties arising from the review and response process. The Company's engineering manager and/or construction manager, and other Company representatives familiar with the matters being reviewed, shall attend the progress meetings. If requested by the City or at the Company's discretion, one or more of the Senior Supervisors shall attend the progress meetings. The Company shall prepare in advance of each progress meeting its monthly progress report as outlined in this section. The Company shall distribute copies of the meeting agenda, information to be discussed and the documented minutes from each prior progress meeting at least ten calendar days before the scheduled meeting.

9.2.4 Quarterly Progress Report Information

The Company shall provide the City information to support the City's quarterly progress report. The Company shall also provide information requested by permitting and regulatory agencies.

9.2.5 Monthly Invoicing Requirements

The Company shall identify the following types of work on its monthly invoices, as applicable:

- Design-Build Work, which will be paid for as described in **Appendix 12**; invoices shall append sufficient information to demonstrate achievement of the milestones identified in **Exhibit 12-1** within **Appendix 12**.
- Extra Design-Build Work that has been negotiated subsequent to the Contract Date.

9.3 Permit Application Reviews

The Company shall act as the City's agent in obtaining and maintaining Governmental Approvals or amendments thereto for the performance of the Design-Build Work as defined in **Appendix 6** and identified by the Company. The City shall have the right to review and comment on Company submittals as provided herein and in the DBO Agreement.

In accordance with the current version of **Exhibit 9-1** within **Appendix 9** or as otherwise agreed to by the parties, if required, the Company shall provide draft copies of permit or permit amendment applications to the City for review and comment. The City will review the draft copies of permit or permit amendment applications and return one marked up copy with comments in accordance with the timeframes shown in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

The City's review will not be conducted for the purposes of approval, acceptance or rejection, and will not affect the Company's responsibility to achieve the complete and timely satisfaction of all relevant Governmental Bodies.

The City may attend and observe Company meetings with permitting agencies and is available to assist the Company in arranging for agency reviews and meetings. The Company may request that the City attend such meetings.

9.4 Design Reviews

This section describes the intent of the City review of design submittals as well as the requirements of the design submittals from the Company.

9.4.1 City Design Review Intent

The City will review design documents described in **Appendix 9, subsection 9.4.2** for consistency with the Performance Guarantee requirements and Technical Requirements of the DBO Agreement. All changes from the Performance Guarantee requirements or Technical Requirements shall require City approval. Such approval will not, however, relieve the Company of its performance obligations under the DBO Agreement.

The City's input to the design process shall be solicited by the Company on a regular basis, including during the design progress meetings and at key stages in the design preparation based on the design document submittal packages. All design calculations shall be made available to the City upon request.

The Company shall make design submittals to the City for review in accordance with the current version of **Exhibit 9-1** within **Appendix 9**. The City shall complete its review of each design submittal in accordance with the timeframes in **Table 9-1** within **Appendix 9, subsection 9.2.1** for any initial submittal of new or substantially revised design documents, or such longer or shorter period as the parties may agree. The City shall notify the Company of any concerns, problems, non-acceptance or noncompliance of such submittal within that time.

Comments that cannot practically be responded to in writing shall be responded to at a design progress meeting or conference call. If a resubmittal by the Company is required, the City's subsequent review and comment period shall be a maximum of 14 days following receipt of such resubmittal. If a resubmittal is not required, the City's comments shall be addressed in the subsequent design submittal package. In all cases, the Company shall provide responses to comments regardless of whether a resubmittal is required.

9.4.2 Design Submittal Protocol

The Company shall submit a design submittal protocol in accordance with **Article X, subsection 10.2(B)(7)**. The design submittal protocol shall include an updated version of the preliminary Submittal Plan set forth in **Exhibit 9-1** within **Appendix 9** and, at a minimum, the following:

- identify the major design document submittal packages and all permit applications to be prepared by the Company and the expected submittal dates for each
- identify the content of each design document submittal package
- identify the Governmental Bodies having final acceptance or approval responsibilities
- identify management plans to be prepared in accordance with the DBO Agreement and the schedule for preparation and the review and approval by the City and Governmental Bodies to obtain necessary approvals
- establish procedures outlining the documentation and disposition of all review comments received on the design packages
- indicate the schedule for the design submittal reviews, the return of comments from the City and the design progress meetings
- establish a project master schedule and Design-Build Work progress schedule.

9.4.3 Required Design-Related Submittals

The City recognizes that the Design-Build process requires that the Company and the City work cooperatively to assure timely design review and that design work will continue after the Construction Date. The City also recognizes that the Company may decide to segregate the project into various work packages and that multiple 30 percent or 60 percent or 95 percent submittals may be provided by the Company to correspond to the way it has segregated the work.

The Company shall prepare all reports, plans, drawings, technical specifications, blueprints and other documents that comprise the design documents described herein to design and construct the Wastewater System Capital Improvements in accordance with the Contract Standards. At a minimum, the Company shall prepare and submit to the City for its review all submittals that are required to obtain the Governmental Approvals and the following design documents:

- thirty percent (30 percent) design documents (including BIM model, if used)
- Pre-Design Report described in **Appendix 6, subsection 6.4.1** for DEQ (Company may use components of the 30 percent design documents as appropriate for this report)
- sixty percent (60 percent) design documents (including BIM model, if used)
- pre-final ninety-five percent (95 percent) design documents (including BIM model, if used)
- final design documents (after building permits) (including BIM model, if used).

The minimum components of the Pre-Design Report, the 30 percent, 60 percent, 95 percent and final design packages are summarized in the design submittal protocol described in **Appendix 9, subsection 9.4.2**. The Company shall facilitate an "over-the-shoulder" review of BIM by the City during design review meetings.

Prior to all submittals, the Company shall perform a complete quality control review of all documents to ensure they are complete and accurate. Design drawings to be included as part of the design packages shall be submitted in 11" x 17" format. The number of hard copies to be provided for each submittal (if any), as well as when electronic copies are required shall be defined as part of the design submittal protocol described in **Appendix 9, subsection 9.4.2**. Electronic formats may include electronic searchable PDF, JPEG, formats compatible with Microsoft Office 2007 and/or Bentley View software, and other formats approved by the City. All documents, including those with color figures shall be reproducible and legible in black and white copies.

9.5 Construction Reviews

9.5.1 Construction Review Intent

The City intends to assign a full-time Contract Administrator for the Term. During the Design-Build Period, the City's Contract Administrator will, in accordance with the terms and conditions of the DBO Agreement, periodically review construction activities and participate in construction progress meetings as needed to verify Company compliance with the DBO Agreement, including construction quality and workmanship, and to verify pay items.

The City's review and involvement during construction is intended to be an independent Quality Assurance Program and shall not be viewed by the Company as an integral part of the Company's Quality Management Program.

Notwithstanding the possible intermittent nature of the City's oversight of construction progress given the overall duties of the City's representative, the City may provide verbal and/or written observations whenever it observes that the progress or quality of the construction is believed not to be in conformance with the Performance Guarantee requirements and Technical Specifications.

When the Company receives such comment from the City, the Company shall act promptly to investigate the circumstances and merits of City comments and act to rectify those aspects of the work that are not in conformance with the Contract Standards. The Company shall promptly report to the City on Company actions taken in response to such City comments. When disagreements cannot be resolved directly between the City and Company, they shall be resolved in accordance with the DBO Agreement.

In accordance with the DBO Agreement, the City's Contract Administrator shall have access to the WWTP Site during normal working hours to observe all Design-Build Work. The City shall be permitted at the City's sole cost and expense to take onsite construction photographs. The City's Contract Administrator shall be permitted to participate in any formal inspections and

witness all tests conducted at the WWTP Site or at the equipment manufacturers' test facilities to verify compliance with the DBO Agreement. The City shall be responsible for all expenses related to City witnessing of tests. Shop tests of equipment shall be verified through certified testing documents submitted to the City's Contract Administrator no later than fifteen (15) days after such testing is completed. In addition, the City's Contract Administrator will monitor progress of construction to review and approve the Company's requisitions for payment of the Fixed Design-Build Price. The Company shall provide a working office space for the City's Contract Administrator throughout the Design-Build Period as set forth in **Appendix 5, subsection 5.3.5.**

9.5.2 Construction Submittals

The Company shall make available to the City at the WWTP Site all construction-related documents including, but not limited to copies of construction permits, shop test results, factory test results, shop drawings, samples, and other relevant test results, inspection reports and other data to document conformance with the Contract Standards. The Company shall submit each construction related submittal pertaining to major equipment, including electrical and instrumentation, in accordance with the DBO Agreement and **Appendix 9, Section 9.7.** Hard copies shall be provided upon request by the City. The City reserves the right to identify additional documents to be submitted to the City. The City's Contract Administrator shall have the opportunity to provide written comments to the Company on any construction-related document no later than fifteen (15) days after receipt of the construction submittal. If the Company disagrees with the results of the City's Contract Administrator's review, then, not later than five (5) business days after receipt of the City's comments, the Company shall notify the City's Contract Administrator of such disagreement and within seven (7) business days thereafter, the City's Contract Administrator and the Company shall meet to mutually resolve any disagreement.

9.5.3 Design Change Authority of the Engineer-of-Record

The Company's Engineer-of-Record shall be responsible for authorizing design changes during construction necessary to complete all project elements for their intended purposes. All such changes shall be implemented in accordance with the Change Order process described in the DBO Agreement. The Company's Engineer-of-Record is not authorized to unilaterally institute changes that result in a deviation from the project requirements established in the DBO Agreement or the approved building permits, unless such changes have been reviewed and approved in advance by the City's Contract Administrator and all government entities with jurisdiction.

9.5.4 Construction Record Drawings and Optional Building Information Model (BIM)

As the construction work progresses, the Company shall maintain an updated set of design documents, including the design drawings, specifications (or Appendices to the DBO Agreement as appropriate), equipment vendor design drawings, and construction drawings (Record Documents). This set shall be updated on a continuous basis, and shall never be more than 14 calendar days behind the current state of the design and construction. At a minimum, every 14 days a duplicate copy shall be created and stored in a sufficiently separate location, with equally

well-protected measures, such that fire, flood, vandalism, or other calamity shall not imperil the copy.

The City will verify the up-to-date maintenance of both sets of documents on a monthly basis or more frequently as part of the condition precedent to approving the monthly progress payment disbursement process.

Upon completion of all Design-Build Work, the Company shall submit to the City two sets of record drawings and specifications (Record Drawings). The Record Drawings shall be required to achieve Final Completion pursuant to the DBO Agreement.

Record Drawings shall be on Mylar (22" x 34") and on compact discs in the AutoCAD Release 2007 format or the latest release then in use by the City. Record Drawings shall be drafted in accordance with standards approved by the City.

The drawings shall be designated in the revision block as "construction record" drawings and shall be checked and signed by the Engineer of Record to verify that the field changes shown are accurate and consistent with the design intent. Any applicable specifications or Appendices shall be on compact discs, modified to clearly and accurately show all changes made during construction. The Record Documents submittal shall also include a complete set of all Change Orders, numbered and bound in chronological order of issuance.

Upon completion of all construction work, the Company shall submit to the City the complete building information model (Record BIM) with a level of development that includes the following:

- location
- dimensions
- material type
- pipe sizes
- valve types
- quantities of components (e.g., volume of concrete, length of pipe, number of valves, etc.)
- equipment and instrument tags.

Record BIM shall be submitted to the City in formats compatible with Bentley View software via a DVD.

9.6 Other Submittals Requiring City Review

Other required submittals, in addition to the submittals described above, may be required by the City. The Company shall provide revised drafts of documents as needed to address City comments.

9.7 Document Management Requirements

The Company shall use Web-based document management software for tracking documents during the Design-Build Period. Documents to be tracked include calendars, schedules, meeting summaries, information library, mapping, presentations, correspondence, billings, subcontracts, requests for information, submittal reviews, specifications, drawings, design change notices, shop drawings, material test reports, field test results, shop test results, factory test results, special inspection results, daily reports, punchlists, field administration, inspection reports, project photos, construction progress photographs, quality plans, health and safety plans, manufacturer O&M manuals, and equipment warranty information. All documents must be available as searchable pdfs at a minimum.

All correspondence received by or transmitted from the Company shall be filed using document management software. The Company shall also maintain and review daily a summary of all project action items, trends, issues, and responses. The Construction Manager and project administrative staff shall maintain a file log that lists the documents in each individual file. Logs shall also be maintained for work authorizations, information requests, change orders, back charges, outstanding claims, purchase orders, payment certificates, construction personnel reports, construction progress reports, construction schedules, and system turnover packages. The Company shall develop methods for staff checking out files and preventing correspondence files and documents from being lost, stolen, or misplaced.

Upon completion of the Design-Build Work, the Company shall provide all project-related files stored in the document management software on DVDs for the City's archives.

Exhibit 9-1. Preliminary Submittal Plan

Item	Section reference	Notes/Required timeframe for submittal
Transition Plan and Transition Period Schedule	Appendix 2, Section 2.2 and Exhibit 2-1	Updates provided to the City when schedule deviates from Exhibit 2-1
Designated Employee Compensation Structure	Appendix 2, Section 2.3	Submit within 15 days of the Contract Date for City approval
Hydraulic Calculations - Draft	Appendix 4, Section 4.4.5	
Hydraulic Calculations - Final	Appendix 4, Section 4.4.5	
Odor Control Dispersion Modeling Demonstration - Draft	Appendix 4, Section 4.4.6 and Appendix 8, Section 8.4.2	Not less than 180 days prior to Scheduled Acceptance Date
Odor Control Dispersion Modeling Demonstration - Final	Appendix 4, Section 4.4.6 and Appendix 8, Section 8.4.2	Not less than 30 days prior to Scheduled Acceptance Date
Landscaping Plan - Draft	Appendix 4, Section 4.4.9	
Landscaping Plan - Final	Appendix 4, Section 4.4.9	
Stormwater Management Plan - Draft	Appendix 4, Section 4.4.10	
Stormwater Management Plan - Final	Appendix 4, Section 4.4.10	
Instrumentation and control strategy document	Appendix 4, Section 4.6.16	
Design-Build Work Schedule and Updates	Appendix 5, Section 5.3.1 and Article X, Section 10.1	Submit within 30 days of the Contract Date; Provide no less than 10 calendar days notice to City's Contract Representative or delays to any submittal dates. Provide updates monthly from Contract Date; provide with Monthly Progress Reports as: (1) hard copy and (2) electronic searchable PDF
Construction Plan - Draft	Appendix 5, Section 5.3.2	Prior to Construction Date
Construction Plan - Final	Appendix 5, Section 5.3.2	

Item	Section reference	Notes/Required timeframe for submittal
Construction Plan - Updates	Appendix 5, Section 5.3.2	As needed as construction progresses - applies to all components below
Odor Control Plan (included in Construction Plan) - Draft	Appendix 5, Section 5.3.2	Prior to Construction Date
Odor Control Plan (included in Construction Plan) - Final	Appendix 5, Section 5.3.2	
Traffic Management Control Plan (included in Construction Plan) - Draft	Appendix 5, Section 5.3.2	Prior to Construction Date
Traffic Management Control Plan (included in Construction Plan) - Final	Appendix 5, Section 5.3.2	
Construction Spill Containment and Response Plan (included in Construction Plan) - Draft	Appendix 5, Section 5.3.2	Prior to Construction Date
Construction Spill Containment and Response Plan (included in Construction Plan) - Final	Appendix 5, Section 5.3.2	
Dewatering Plan (included in Construction Plan) - Draft	Appendix 5, Section 5.4.2	Prior to Construction Date
Dewatering Plan (included in Construction Plan) - Final	Appendix 5, Section 5.4.2	
Asbestos-Containing Material and Lead-based Paint Disposal Records	Appendix 5, Section 5.4.5	
Erosion and Sediment Control Plan (ESCP) (included in Construction Plan) - Draft	Appendix 5, Section 5.5.4	Prior to Construction Date
Erosion and Sediment Control Plan (ESCP) (included in Construction Plan) - Final	Appendix 5, Section 5.5.4	
Pre-Design Report (for DEQ review)	Appendix 6, Section 6.3.1	Submit draft for City review
Pre-Design Report (for DEQ review)	Appendix 6, Section 6.3.1	Submit final for DEQ review following City review
City Planning and Land Development Review Plan - Draft	Appendix 6, Section 6.3.2	
City Planning and Land Development Review Plan - Final	Appendix 6, Section 6.3.2	
Quality Management Plan (QMP) and Updates (QA/QC Plans for Permitting, Design, Construction, and Operation) - Draft	Appendix 7, Section 7.4 and 7.5	Due 30 days after Contract Date
Quality Management Plan (QMP) and Updates (QA/QC Plans for Permitting, Design, Construction, and Operation) - Final	Appendix 7, Section 7.4 and 7.5	Within 30 days of City comments
Quality Management Plan (QMP) and Updates (QA/QC Plans for Permitting, Design, Construction, and Operation) - Updates	Appendix 7, Section 7.4 and 7.5	Without exception, proposed revisions or updates shall be provided to City no later than 45 days from the start of work to which the revisions apply.
Acceptance Test Plan - Draft	Appendix 8, Section 8.4 and Article XI, Section 11.2(A)	Not less than 180 days prior to Scheduled Acceptance Date

Item	Section reference	Notes/Required timeframe for submittal
Acceptance Test Plan - Final	Appendix 8, Section 8.4 and Article XI, Section 11.2(A)	Not less than 90 days prior to Scheduled Acceptance Date
Air Dispersion Modeling Protocol (revised)	Appendix 8, Section 8.4.2	
Acceptance Test Report - Final	Appendix 8, Section 8.7	Within 30 days following the last day of an Acceptance Test
Submittal Plan	Appendix 9, Section 9.4.2	Within 30 days following Contract Date
Invoices including Supporting Documents and Monthly Progress Reports	Appendix 9, Section 9.2	Monthly from Commencement Date; Provide 7 days prior to monthly progress meetings during the Design-Build Period.
Governmental Approval Applications	Appendix 9, Section 9.3	No later than 21 days prior to submittal to Governmental Body.
Governmental Approval Schedule/Status Updates		Monthly from Contract Date while Design and Permitting is ongoing; Provide with Monthly Progress Reports
Building Information Model (BIM)	Appendix 9, Section 9.4	"Over the shoulder" review with 30% design review
Building Information Model (BIM)	Appendix 9, Section 9.4	"Over the shoulder" review with 60% design review
Building Information Model (BIM)	Appendix 9, Section 9.4	"Over the shoulder" review with 95% design review
Building Information Model (BIM)	Appendix 9, Section 9.4	Record BIM
30% Design Document Submittal Package	Appendix 9, Section 9.4.2 and 9.4.3	Company's design submittal protocol to list content of design submittal package
60% Design Document Submittal Package	Appendix 9, Section 9.4.2 and 9.4.3	Company's design submittal protocol to list content of design submittal package
95% Design Document Submittal Package	Appendix 9, Section 9.4.2 and 9.4.3	Company's design submittal protocol to list content of design submittal package
After Building Permits Design Document Submittal Package	Appendix 9, Section 9.4.2 and 9.4.3	Company's design submittal protocol to list content of design submittal package
Record Drawings	Appendix 9, Section 9.5.4	

Item	Section reference	Notes/Required timeframe for submittal
Operation and Maintenance Plan - Draft Pre-Acceptance	Appendix 10, Section 10.3	See Exhibit 2-1
Operation and Maintenance Plan - Final Pre-Acceptance	Appendix 10, Section 10.3	
Operation and Maintenance Plan - Draft Post-Acceptance	Appendix 10, Section 10.3	
Operation and Maintenance Plan - Final Post-Acceptance	Appendix 10, Section 10.3	
Electronic O&M Manual - Preliminary	Appendix 10, Section 10.4	180 days prior to Scheduled Acceptance Date
Electronic O&M Manual - Draft	Appendix 10, Section 10.4	Not less than 100 days prior to Final Completion
Electronic O&M Manual - Final	Appendix 10, Section 10.4	30 days after receipt of City comments
Electronic O&M Manual (draft to DEQ at 50% construction completion)	Appendix 10, Section 10.4	Draft to DEQ at 50% construction completion
Monthly O&M Report (including Odor Control Practices Report) [part of O&M Plan]	Appendix 10, Section 10.3.13	
Annual O&M Report (including Annual Financial Report) [part of O&M plan]	Appendix 10, Section 10.3.14	
Asset Management Plan - Draft Pre-Acceptance	Appendix 11, Section 11.3.4	See Exhibit 2-1
Asset Management Plan - Final Pre-Acceptance	Appendix 11, Section 11.3.4	See Exhibit 2-1
Asset Management Plan - Draft Post-Acceptance	Appendix 11, Section 11.3.4	Prior to Acceptance
Asset Management Plan - Final Post-Acceptance	Appendix 11, Section 11.3.4	Within 90 days of Acceptance
Asset Evaluation Report - Baseline	Appendix 13, Section 13.2	Following completion of the Design-Build Work
Asset Evaluation Report - Final	Appendix 13, Section 13.3	Not more than 12 months prior to and not later than 6 months prior to the end of the Initial Term
Exit Test Plan - Draft	Appendix 14, Section 14.2 and Article XIV, subsection 14.9 (F)	Not later than 180 days following the Acceptance Date

Item	Section reference	Notes/Required timeframe for submittal
Exit Test Plan - Final	Appendix 14, Section 14.2 and Article XIV, subsection 14.9 (F)	Within 30 days of City comments
Proposed Final Punch List	Article X, Section 10.20	Provide prior to Substantial Completion

Appendix 10 Operation and Maintenance

10.1 Purpose of Appendix

This appendix sets forth requirements for the operation and maintenance (O&M) of the Managed Assets during the Management Period in accordance with the DBO Agreement. This appendix addresses certain major O&M activities required for the Managed Assets under the terms of the DBO Agreement. Additional Asset Management requirements are set forth in **Appendix 11**.

10.2 Operational and Maintenance Objectives

The Company shall operate the Managed Assets in accordance with the Contract Standards at all times. Operation and management decision-making shall be based on the following objectives:

- protection of health and welfare of the public
- protection of the environment
- protection of the health and safety of the Managed Assets' operating staff
- compliance with the Contract Standards
- compliance with the state-issued Wastewater National Pollutant Discharge Elimination System (NPDES) Permit during the Management Period
- compliance with the U.S. Environmental Protection Agency (EPA) and Oregon Department of Environmental Quality (DEQ) capacity, management, operation, and maintenance (CMOM) requirements throughout the duration of the Term
- maximization of the WWTP's and Lift Stations' operational efficiency, including utility efficiency
- minimization of operational costs
- protection and preservation of the Managed Assets
- preservation of the long-term capability to supply wastewater treatment services
- continuous good housekeeping to preserve aesthetics and protect against deterioration.

The Company shall conduct predictive, preventive, and routine equipment maintenance of the Managed Assets in order to achieve the following overall objectives:

- preserve the warranty on all equipment while ensuring that the as-installed configuration is within specifications and consistent with the expected operating conditions
- perform predictive and preventive maintenance on all equipment in accordance with the recommendations of the manufacturer
- perform preventive maintenance in such a manner that the operation of the Managed Assets is not affected and the Performance Guarantees are not threatened

- minimize emergency repairs
- perform maintenance in accordance with the Contract Standards
- develop standard maintenance procedures in accordance with maintenance and reliability best practices defined in the Company's Asset Management Plan and in **Appendix 11, subsection 11.3.4**
- provide maintenance training to support vendor-provided training through classroom instruction, videotaped maintenance, online training, and hands-on training.

10.3 Operation and Maintenance Plan

The Company shall prepare an Operation and Maintenance Plan that contains subsections for the requirements set forth in this appendix. Applicable subsections of the O&M Plan may be incorporated into the O&M Manual described in **Appendix 10, Section 10.4**. The subsections of the O&M Plan shall include:

- operational and maintenance requirements
- odor control and response
- noise control procedures
- laboratory protocols
- residuals management and disposal/utilization
- Biosolids management
- staffing plan
- training
- license management
- emergency response and disaster recovery plan
- safety plan
- security
- meetings and City access to records and administrative space
- monthly O&M reporting
- annual O&M reporting
- annual O&M inspection
- preventive and predictive maintenance procedures.

Exhibit 10-1 within **Appendix 10** contains the Company's preliminary O&M Plan. In accordance with the timeframes set forth in **Exhibit 2-1** within **Appendix 2**, and in **Article VI, Section 6.7**, the Company shall submit copies of a draft O&M Plan update for City review noting any deviations from the City's existing O&M Plan that will be implemented by the Company between the Commencement Date and the Construction Date. The City will review

the O&M Plan draft update and return one marked-up copy with comments in accordance with the timeframes shown in **Table 9-1** within **Appendix 9, subsection 9.2.1**. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall submit copies of the final O&M Plan update for the existing WWTP to be implemented prior to Acceptance.

In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall submit copies of a draft and final O&M Plan for the upgraded WWTP to be implemented following Acceptance. The City will review the O&M Plan draft and return one marked-up copy with comments in accordance with the timeframes shown in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

10.3.1 Operational and Maintenance Requirements

The following sections summarize the ongoing operational and maintenance requirements for the Managed Assets that the Company shall address in the operational and maintenance requirements section of the O&M Plan.

Existing Sanitary Sewer Collection System (including Lift Stations)

Attachment 10-1 within **Appendix 10** sets forth the Collection System responsibility assignments between the Company and the City. This table lists each activity, adds clarifications as relevant, and then indicates the responsible party as of the Commencement Date. The last column indicates which component of the Service Fee will be used to pay for the activity, if applicable; this is further described in detail in **Article IX**.

Existing and Upgraded WWTP and Existing Lift Stations

The Company shall review and build upon the City's existing WWTP and Lift Stations process control, operation, and maintenance material. Where applicable, the Company will optimize procedures to allow for maximum effectiveness and efficiency in maintaining the existing facilities before and after Acceptance. The Company shall also describe operation and maintenance activities and establish goals for efficient operation and maintenance of both the existing and upgraded WWTP, as well as the Lift Stations. This subsection of the plan shall address the following topics for the Management Period:

- process control strategies and software for all process areas including preliminary treatment, primary treatment, secondary treatment, secondary effluent filtration, disinfection, effluent reuse, effluent discharge, odor emissions management, residuals management, and Biosolids management
- NPDES Permit compliance sampling and analysis
- equipment and procedures related to instrumentation and control, Information Systems, and SCADA in accordance with the requirements of **Appendix 4, subsection 4.4.16**
- start-up and shutdown procedures
- operator and management responsibilities

- process-by-process maintenance responsibilities and commitments, including schedule, frequency, and duration of all maintenance activities
- reporting forms
- equipment and vendor manuals for all process equipment
- communications
- records and reports as necessary to indicate compliance with the Contract Standards
- process for adjusting operation activity frequencies to maintain and/or improve Lift Stations condition and system performance
- approach for addressing unplanned activities such as emergency response and loss of power.
- public notification and Emergency Response/Disaster Recovery Plan (response to sanitary sewer overflows [SSOs] related to the Lift Stations)
- Company and City management responsibilities (based on **Attachment 10-1** within **Appendix 10**)
- communication plan between Company and City (including coordination between the Company and the City relative to the Collection System responsibilities that the City will maintain or direct, as well as communication between the Company and the City's pretreatment program coordinator)
- support public outreach efforts led by the City
- process for communicating and integrating with the City-led pretreatment and fats, oils, and grease programs
- approach to update O&M Plan on a regular basis.

The O&M Plan shall describe the Company's approach to developing and performing routine, preventive, and predictive maintenance procedures for the Managed Assets, including upgraded mechanical, electrical and instrumentation equipment. Preventive maintenance procedures shall also be developed for all WWTP unit processes, Lift Stations, buildings and housekeeping activities, and landscaping activities. Preventive maintenance shall include, but not be limited to, the following activities:

- lubrication
- maintenance of oil levels
- drainage of condensate
- verification of proper equipment operation
- inspection and replacement of normal wearing parts
- overhauls required by manufacturers
- activities required at the Lift Stations for preventing SSOs

- any additional activities related to the Lift Stations required to address CMOM requirements related to anticipated changes to the National Pollutant Discharge Elimination System (NPDES) permit
- activities required to maintain the structural and operational condition of Lift Stations at a level equal to their 2010 condition.

Preventive maintenance procedures shall be developed for each piece of equipment that identifies frequency, a step-by-step description, applicability, and any warranty issues. All required maintenance, frequencies of activities, material, parts, and tools shall be included in the preventive maintenance procedures. The computerized maintenance management system (CMMS) shall be used to log information on preventive maintenance activities, including work order issue date, completion date, operator performing the work, duration, and parts used.

The O&M Plan shall also describe the establishment of baseline conditions for each critical piece of equipment and the monitoring of the performance criteria for the equipment. The plan shall identify the types of diagnostic tools and the schedule or conditions that initiate diagnostic testing. Predictive maintenance procedures shall be performed by the Company or personnel who are qualified to perform such tests and analyze the results. The results of all predictive maintenance tests shall be maintained at the WWTP and entered into the CMMS for evaluation and to develop trend reports as a maintenance tool.

As further described in **Appendix 11, Section 11.4**, the Company shall furnish, install, configure, and implement a CMMS package that will be used to maintain an asset inventory of physical and operational conditions, maintain maintenance history, track resource usage, track failures by use of failure codes, identify trends of maintenance problems, develop summary reports, and analyze data.

Landscape Maintenance

During the Management Period, the Company shall regularly maintain all landscaping at the WWTP Site and Lift Stations Sites. The Company shall be responsible for all activities required for establishment and long-term maintenance of seeded and planting areas as necessary to sustain growth, provide a neat appearance, and avoid the creation of bare areas, washouts and erosion, and rutted areas.

An integrated pest management strategy shall be implemented that minimizes or eliminates the application of chemical herbicides and pesticides. The Company shall comply with applicable City and state of Oregon pesticide policies and requirements.

The Company shall be responsible for supplying and applying soil amendments and fertilizers if necessary in order to achieve vigorous and sustained long-term growth. Phosphorus and nitrogen shall not be used in any fertilizer or amendment unless soil testing confirms that the soil is deficient for proper vegetative health and growth. If needed, phosphorus and nitrogen shall be used only in required minimum agronomic quantities.

10.3.2 Odor Control and Response

The Company shall be responsible for the operation and maintenance of all odor control facilities related to the WWTP from the Contract Date until the end of the Term. The Company shall be responsible for minimizing odors at the WWTP and at the Lift Stations during the Term through the proper operation and maintenance of all treatment processes, the odor control systems, and any other measures that may be required. The Company shall be responsible for operating and maintaining each odor control system so that it performs to its designed capacity and capability.

Odor Control Plan

The Company's Odor Control Plan shall be included as part of the O&M Plan and shall be updated as noted in **Appendix 10, Section 10.3**. This plan demonstrates how the Company will meet the Contract Standards before Acceptance with the existing odor control facilities and any proposed interim odor control facilities (see also **Appendix 5, subsection 5.3.2**), and how the Company will meet the Contract Standards after Acceptance. The Odor Control Plan shall include an Odor Response Plan as described below and odor control practices reporting procedures as described in **Appendix 10, subsection 10.3.13**. The Odor Control Plan shall address, at a minimum, the following topics as they relate to the existing and upgraded WWTP:

- documentation of the results of the air dispersion testing modeling conducted as part of the Design-Build Work described in **Appendix 4, subsection 4.4.6** which indicates the maximum allowable stack discharge rates
- daily WWTP stack(s) survey (continuous monitoring of H₂S) and Lift Stations property line survey
- utilization of two portable hydrogen sulfide (H₂S) detectors at strategic locations to monitor and record the air quality and to trigger an alarm when levels exceeding pre-set limits are detected at the WWTP
- utilization of a weather station at the WWTP to continuously monitor and record weather conditions, including wind direction and speed, air temperature, barometric pressure, humidity, and precipitation
- implementation of odor control operating, maintenance, and housekeeping procedures at the WWTP to ensure compliance with the Odor Guarantee requirements and at the Lift Stations to minimize odors
- the Odor Guarantee requirements that the Company must meet
- development and implementation of an operating checklist or log forms to record the status of odor control system equipment for each odor control system
- standard operating procedures (SOPs) to optimize the performance of all odor control systems
- maintenance schedule and procedures for all odor control systems
- procedures to address odor control when an odor control system is out of service for preventive or corrective maintenance

- procedures to confirm that air is being properly collected from individual process units through pressure monitoring and smoke testing.

These topics shall be addressed for the existing WWTP odor control systems and for the Wastewater System Capital Improvements as appropriate.

Odor Response Plan

The Company's objective is to minimize odors from the WWTP and the Lift Stations. However, the Company shall establish an Odor Response Plan subsection to the Odor Control Plan to describe its procedures for investigating all odor complaints related to the Managed Assets. The City shall be notified of an odor complaint within a reasonable timeframe and always within four hours after the Company's receipt of the complaint. The site of the alleged odor shall be visited by the Company as soon as possible and no later than one hour after receipt of the complaint. The Company shall obtain H₂S and other appropriate measurements using a portable meter and make other qualitative observations of odor intensity and character to establish the presence of H₂S and other odorous compounds at the site of the alleged odor. The Company shall concurrently, with the dispatching of a Company representative to the location of the detected odor, conduct an immediate review of the WWTP and/or Lift Stations to attempt to identify the source of the odor.

When the source of the alleged odor is found, and if such alleged odor is determined to be coming from the WWTP or Lift Stations, the Company shall determine the cause and take the appropriate action to eliminate the source of the odor.

The Company shall maintain a record of every odor complaint and shall document the complaints using an odor complaint registration/response form (and questionnaire). The odor complaint registration/response form shall include, but not necessarily be limited to, the following information:

- nature and location of the complaint
- description of the odor that elicited the complaint
- date and time the complaint was received
- name of Company staff receiving the complaint
- complainant contact information (name; street, mailing, and e-mail addresses; telephone and fax numbers)
- complaint location, documented on a WWTP vicinity GIS basemap (Company shall provide data for City staff to incorporate locations and descriptions into City's GIS database)
- other complaints registered by the complainant or specific to the property in question
- manner in which the complaint was filed: indirect (through City or another party), anonymously, or identified in person by telephone, fax, e-mail, or writing

- operating condition at the time the odor was detected, including odor control systems, (normal operations, certain processes “in trouble,” unusual influent conditions, equipment offline for maintenance, variance in normal operations, etc.)
- weather conditions at the time the odor was noticed, including wind speed and direction, temperature, barometric pressure, and relative humidity as recorded at the WWTP
- date and time of response and name of employee responding to the complaint
- operator and complainant observations at the site where the odor was noticed
- description of remedial/mitigation action taken by the Company in response to the complaint and its effectiveness
- description of the follow-up with the complainant: in person verbally, follow-up telephone call, e-mail, or letter
- disposition of the person registering the complaint (i.e., satisfied/dissatisfied with the response, cooperative and understanding, impatient, confrontational, or other)
- day and time the City’s representative received verbal notice of the complaint and day and time the City received the complaint form and follow-up and response information.

If the results of the odor monitoring and other investigations establish the continued presence of odorous compounds generated from the WWTP or Lift Stations, then the Company shall undertake the additional investigations to determine the nature and source of odors.

10.3.3 Noise Control Procedures

The Company shall develop Noise Control Procedures as a subsection to the O&M Plan that meet the Contract Standards. The Company shall minimize noise impacts in accordance with prudent industry practice, Company standard programs, and City ordinances. The Company shall train employees and subcontractors to identify and monitor for disallowed activities; and utilize appropriate noise attenuation, noise barriers, and other techniques for reducing noise to meet the permissible sound levels established in **Appendix 3, subsection 3.7.4**.

10.3.4 Laboratory Protocols

The Company shall develop laboratory protocols as a subsection to the O&M Plan that address the Contract Standards. The analytical laboratory utilized for NPDES reporting requirements must be certified for all analyses performed in accordance with state requirements. The Company may perform these services itself or elect to utilize a contracted, state-certified laboratory to perform any or all of the analytical testing. All laboratory operations shall be set up, audited, and monitored to ensure compliance with EPA standard test methods and any state requirements. All laboratory methods shall use the latest edition of federal and any applicable state standards. A quality assurance/quality control (QA/QC) program shall be implemented to produce accurate; reliable and reproducible; and certifiable and legally defensible data as described in **Appendix 7, subsection 7.5.5**. The Company shall utilize a laboratory information management system program for data tracking and reporting.

Metering and Analytical

The Company shall also provide for all sampling, testing, and analytical procedures in accordance with Applicable Law and to demonstrate compliance with the Contract Standards. In addition, the Company shall perform all sampling and testing related to operational process control at its own expense. Such process control testing shall be as defined in the Company's O&M Plan. All analysis required to be performed to demonstrate compliance with Applicable Law or the occurrence of an Uncontrollable Circumstance shall be conducted by a laboratory certified by the appropriate Governmental Body with all analyses performed in accordance with Standard Methods or other Governmental Body-approved procedures. The Company shall arrange for independent, certified technicians to perform calibration of the analytical instruments. The Company shall be responsible for payment of all associated fees and expenses for the calibration services.

10.3.5 Residuals Management and Disposal/Utilization

The Company shall develop a Residuals Management and Disposal/Utilization Plan as a subsection to the O&M Plan that meets the Contract Standards.. The Residuals Management and Disposal/Utilization Plan shall describe the management of grit, screenings, and other residuals that are not Biosolids.

The Company shall be responsible for the full management (e.g., processing, handling, storage, transport, and disposal and/or utilization) of all residuals generated by the performance of the Contract Services. Onsite storage of residuals shall be managed so as to not violate provisions of the DBO Agreement. Biosolids product storage shall be limited to a maximum of three days at the WWTP. The Company shall identify and implement a beneficial reuse of the Class A Biosolids produced onsite.

The Company shall cover/tarp all transport containers for residuals, including grit and screenings and Biosolids. All vehicles shall be sufficiently secure so as to prevent any release of material, including dust, or leakage of liquid during transport of residuals. The Company shall furnish and maintain all licenses and permits required for the transportation of residuals throughout the Term. All residuals including Biosolids, hauling trucks, and transportation to their ultimate disposal and/or utilization site shall be in compliance with all Applicable Law and required disposal characteristics.

The Company shall provide all sampling, analysis, record-keeping, and reporting for residuals in accordance with Applicable Law and to provide the monthly report information. The Company shall sample and routinely have the Biosolids analyzed to ensure compliance with the Part 503 Regulations for Class A Biosolids in accordance with the Biosolids Management Plan.

This subsection of the O&M Plan shall also include a Residuals Handling Plan and a Spill Prevention and Cleanup Plan associated with the residuals transport shall be provided as a subset of the O&M Plan. The Company is responsible for all cleanup work and associated costs of residuals spills.

Biosolids Management

Typically, the Company shall prepare a separate Biosolids Management Plan as described in **Appendix 6, subsection 6.6.1** and required by the NPDES Permit to be included as a subsection to the O&M Plan. The City's 2009 Biosolids Management Plan which accompanies the pending NPDES Permit may be used by the Company for the production of Class B Biosolids on the WWTP Site until Acceptance. Any changes that the Company makes to the City's current plan shall be approved by the City and DEQ.

An updated Biosolids Management Plan shall be developed by the Company for the Class A Biosolids program.

10.3.6 Staffing Plan

The Company shall prepare a staffing plan as a subsection of the O&M Plan that describes the integration of Designated Employees and roles and responsibilities of Designated Employees and additional operation and management staff, key management staff, and technical and support staff for the Managed Assets. The plan shall include an organization chart, job descriptions, required certifications and qualifications of operation and management staff, and a description of the staff training programs. The staffing plan shall reflect the percentage of time each key staff person is committed to being onsite and working at the WWTP as set forth in **Exhibit 15-1** within **Appendix 15**.

The staffing plan shall be updated periodically and as requested by the City to reflect changes in staff and staffing needs.

10.3.7 Training

The Company shall prepare a training subsection of the O&M Plan. The Company shall provide training programs for staff for safety, regulatory compliance, and process control to address O&M and staff needs.

10.3.8 License Management

The O&M Plan shall include a subsection describing the Company's license management. The Company shall ensure that all required federal, state, and local approvals, licenses, and certifications necessary to operate, maintain, and manage the Managed Assets are met and keep the certification requirements current.

10.3.9 Emergency Response and Disaster Recovery Plan

The Company shall prepare a site-specific Emergency Response/Disaster Recovery Plan as a subsection of the O&M Plan for the Managed Assets based on the guidelines stipulated by the City as well as applicable federal, state, and local agencies. The Company must coordinate this plan with the City's current Emergency Management Plan. This plan shall be regularly reviewed and modified to ensure that it continues to meet applicable regulations. The Company shall also coordinate with local emergency programs and work with City fire, police, and other public agencies to resolve any conflicts.

The Emergency Response/Disaster Recovery Plan shall address hazards and emergencies that include the following:

- chemical spills
- personnel emergencies
- fire and explosions
- pipe, valve, or pump failures
- equipment and process failures and overflows
- power utilities service failures
- acts of God (earthquakes, windstorms, and floods)
- wastewater and recycled water bypass discharges
- toxic loadings in wastewater streams.

These plans shall include the following information:

- emergency telephone numbers
- emergency equipment inventory
- records preservation procedures
- industrial waste inventory
- coordinating instructions and communication with public safety agencies and the City
- agency and public notification procedures (as directed by the City)
- troubleshooting guides
- chain-of-command
- evacuation locations
- action plans: disasters and terrorism
- outside service respondents listing
- priority repair listing
- identifying and maintaining alternative supplies of parts, equipment, goods, and services
- emergency preparedness and response training
- site maps
- level of response effort and activities to maintain operations
- follow-up and closure procedures.

The Emergency Response/Disaster Recovery Plan shall also include a section on troubleshooting during an emergency. The plan, at a minimum, shall define the person(s) responsible during an

emergency, their duties, the response effort, the reporting requirements, and preventive measures. WWTP staff shall evaluate this document regularly to ensure its effectiveness.

The Company shall review the Emergency Response/Disaster Recovery Plan annually with its employees, the City, and local emergency personnel and update the plan to reflect any changes that have been identified.

The Company shall conduct emergency response drills in accordance with the timing laid out in the Emergency Response/Disaster Recovery Plan with the Company staff, City personnel (as appropriate), local safety personnel, and others as appropriate. The drills will familiarize all parties with the Emergency Response/Disaster Recovery Plan.

10.3.10 Safety Plan

The Company shall develop and implement a safety plan in accordance with the Company's corporate safety policy, applicable federal, state, and local regulations, and all Contract Standards, including those set forth in **Article VI, subsection 6.12(A)**. This shall be included as a subsection to the O&M Plan.

The safety plan shall contain or address the following items specific to the Managed Assets:

- purpose, including safety goals, standards, and guidelines
- safety coordinator designation and responsibilities
- identification of Company personnel to monitor new and pending regulations and the personnel to implement changes to the safety program
- description of safety programs
- preparation of a Health and Safety Manual and intended dissemination to employees
- personal protective equipment, including equipment provided to staff and training on use of equipment
- safety inspection program, including internal and external audits
- hazard communications program, including information on chemical inventories, material safety data sheets, employee training, and hazardous material labeling
- spill prevention and control measures
- communication to staff through written materials, weekly meetings, and other forums
- training programs conducted monthly and annually
- reporting of accidents.

The safety plan shall be reviewed and updated annually, and as changes to the Managed Assets or applicable federal, state, and local regulations are completed.

10.3.11 Security

The Company shall develop security procedures and protocols as a subsection of the O&M Plan. The Company shall ensure security in compliance with federal, state, and local regulations with respect to guarding against terrorist and security threats. Fences shall be maintained in neat order and with proper structural integrity.

10.3.12 Meetings and City Access to Records and Administrative Space

The Company shall develop one subsection of the O&M Plan that includes a description of meetings to be held between the Company and the City, and that also outlines the City's access to records.

The City and the Company shall meet on a monthly basis at the WWTP or other mutually agreed upon location to discuss the prior monthly report and project performance, including maintenance issues, conditions of Managed Assets, environmental and permit compliance, invoicing issues, public relations, and other relevant issues. Copies of documentation of these meetings shall be the responsibility of the Company and shall be distributed to all attendees within seven calendar days following the meeting. In addition, the City and the Company shall meet as needed on a weekly basis for project updates and to discuss any immediate concerns.

The Company shall provide and maintain space (not necessarily dedicated), including desks, meeting areas, computers, etc. as needed, for all administration staff on the WWTP Site in accordance with the requirements of **Appendix 4, subsection 4.4.10**. The Company shall also provide and maintain physical access at all times at the WWTP Site for one City staff to utilize an onsite computer to access the SCADA system data, all Asset Management data, all WWTP performance data, and laboratory information in accordance with **Appendix 4, subsection 4.4.16**. The Company shall also provide and maintain secure, wireless, remote access station to the SCADA system at the Public Works Administration Building.

10.3.13 Monthly O&M Reporting

The O&M Plan shall include a subsection summarizing the required monthly O&M Report. The Company shall prepare or otherwise make available through the Internet or other means a monthly O&M Report. The Company should provide the type of information that is currently included in monthly operations reports prepared by the City. This includes information on the following topics:

- wastewater treatment
- Biosolids program activities
- Lift Stations activities
- interface with the industrial pretreatment program
- maintenance
- refurbishment and replacement
- health and safety training

- budget and finance
- administrative fines, penalties, and consent orders
- forecast of future activities
- odor complaints (see below)
- other support services (Company provided only).

Odor Control Reporting

The Company shall prepare and submit to the City, on a monthly basis, an Odor Control Practices Report. This report shall include the following information:

- A listing of all odor complaints received during the month. This Excel-based odor complaint log shall detail the name and address of complainant; time of complaint; nature, characteristics, and intensity of the complaint; and the meteorological conditions at the time of the complaint.
- Results of measurements of the odor indicators at the WWTP, including daily stack monitoring.
- A description of all investigations conducted and the action or mitigation steps taken or planned in response to each complaint.
- The date that the complainant was contacted to explain the results.
- Evidence showing compliance with the odor control operating practices required by this DBO Agreement.
- The quantity of odor control chemicals used during the month, if any.
- A summary of maintenance activities that resulted in abnormal odor conditions and mitigation that was taken.
- A summary of disruptions to the operation of any odor control equipment.
- Major maintenance activities planned for the coming month if the activities could lead to odor events and corresponding mitigation measures that will be taken.
- Other information pertaining to odor control that the City may reasonably require from time to time.

10.3.14 Annual O&M Reporting

The Company shall prepare an Annual O&M Report. This report shall include detailed information about the completed billing year's O&M and current condition of the WWTP and Lift Stations. The report shall include, at a minimum:

- an assessment of the condition and remaining life of the Managed Assets, details of any modifications made (design details and as-built drawings), and an analysis of the effectiveness of any repairs, replacements, or upgrades
- a summary of the information provided in the monthly reports

- a summary of environmental, safety, and regulatory compliance
- an assessment of outstanding issues, including any recommendations for changes to Managed Asset operations
- a 3-year moving forecast of refurbishment and replacement plans
- Biosolids report
- inflow and infiltration (I/I) report
- operating budget summary
- annual Settlement Statement for electricity utilization.

The Company shall also prepare an Annual Financial Report at the end of each Contract Year that summarizes the O&M costs for the Managed Assets. The Annual Financial Report shall be submitted with the Annual O&M Report.

10.3.15 O&M Inspections

The City or its authorized agents and representatives anticipate performing periodic maintenance inspection of the Managed Assets in accordance with **Article VIII, subsection 8.4**. The anticipated periodic inspections shall be described in a subsection of the O&M Plan.

The Company shall maintain all records of operating data and information relevant to the Managed Assets and performance of the Contract Services, including accounting and financial records. The Company shall provide the City access to all such records upon reasonable request.

10.4 O&M Manual

The Company shall provide an electronic, interactive O&M Manual for the Wastewater System Capital Improvements that meets DEQ requirements and the requirements of **Article VI, Section 6.8**. The Company may use the components of the O&M Plan described above to develop the O&M Manual. In accordance with the timeframes set forth in the current version of **Exhibit 9-1** within **Appendix 9**, the Company shall develop and submit copies of a preliminary, draft, and final O&M Manual to the City for review. The City will review the O&M Manual drafts and return one marked-up copy with comments in accordance with the timeframes set forth in **Table 9-1** within **Appendix 9, subsection 9.2.1**. When construction is 50 percent complete, the Company shall submit the draft O&M Manual to DEQ for review and approval.

10.5 Site Tour

To help educate and bring awareness about innovative wastewater treatment, the Company will host tours of the upgraded WWTP by request. The Company shall coordinate with the City during the Design-Build Period to finalize the tour route and associated design and construction in accordance with **Appendix 4, subsection 4.4.10**.

Exhibit 10-1. Preliminary Operation and Maintenance Plan

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- 3.0 Staffing Plan
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- 14.0 Monthly O&M Reporting
- 15.0 Annual O&M Reporting
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Attachment 10-1. Collection System Responsibility Assignments

Core Utility Activities	Clarifications	Responsible Party as of Commencement Date	Service Fee Component (if applicable)^a
Handling Customer Requests			
Customer Service			
New Service Requests	Customer calls related to change of ownership or renter	City	NA
Permit Issuance	Issuance of permit to property owners to connect to system	City	NA
Billing	Questions related to the size of bill, where to pay, etc.	City	NA
Late Payment Collections	Implementing City procedures to collect delinquent accounts	City	NA
Claims	Claims made by customers against City due to back ups	City	NA
Back ups/Emergency Response			
- Collection System (except Lift Stations)	Receiving complaint and responding, including after hours calls	City	NA
- Lift Stations	Receiving complaint and responding, including after hours calls	Company	Operating Charge
Odor Complaints Tracking			
- Collection System (except Lift Stations)	Receiving complaint and responding back to public	City	NA
- Lift Stations	Receiving complaint and responding back to public; inform City	Company	Operating Charge
Odor Complaint Investigation	Investigating complaints and responding back to public, including after hours calls	Company	Operating Charge
Field Services			
Service Locates	Customer request to locate laterals or service connections	City	NA
Odor Mitigation/Complaint			
- Collection System (except Lift Stations)	Implementing fixes to address odor issues	City	NA
- Lift Stations	Implementing fixes to address odor issues; inform City	Company	Operating Charge
- Sewers and manholes	Implementing fixes to address odor issues	City	NA
Back ups/Emergency Response			
- Collection System (except Lift Stations)	Investigating plugged lines including laterals up to the right-of-way line, making repairs, implementing clean-up, may require CCTV and cleaning equipment to investigate and respond to problems during after hour calls	City	NA
- Lift Stations	Investigating and responding to alarms and/or problems, making repairs, implementing clean-up including after hour calls	Company	Operating Charge (except for repair and replacement work > \$25K)
Code Enforcement			
Field Services			
Lateral Inspections	Testing of new service connections; requires CCTV	City	NA
Ensuring Code Compliance	Inspections to assure private systems meet City code	City	NA
New Manhole and Sewer Inspections	Inspection and testing; requires CCTV	City	NA
Regulatory Reporting of Spills			
- Collection System (except Lift Stations)	City reports to DEQ directly; informs Company	City	NA
- Lift Stations	Company reports to DEQ directly; informs City	Company	Operating Charge
Pre-Treatment			
FOG Mitigation	Interface with businesses and apartment owners to reduce FOG discharge	City	NA
Industrial Pre-treatment Program	Enforcement of City Pretreatment Ordinance	City	NA
Public Education and Outreach	Communications with customers to manage what they discharge	City	NA
Economic Development			
Developer Extensions	Interface with developers and private property owners	City	NA
Connection Fees	Setting of and collection of connection fees	City	NA
Plan Review	Reviewing plans for new development.	City	NA
Capacity Evaluation	System hydraulic evaluation and developer-triggered capacity analysis	City	NA
Master Plan Development	Developing plan to address growth and land use changes	City	NA
I/I Mitigation	Program to quantify and manage I/I	City	NA
Flow Measurements	System flow monitoring to identify available capacity (City provides data to Company)	City	NA
Operations and Maintenance			
Sewer Conditions Assessments	Info collected by City System flow monitoring to identify available capacity including CCTV inspections.	City	NA
Manhole Inspection	Physical inspection	City	NA
Routine Line Flushing	Maintaining service of problematic lines; requires specialized cleaning equipment	City	NA
Root Cutting	Cutting of roots in problematic segments; requires specialized cleaning equipment	City	NA
FOG Cleaning	Sewer flushing to remove FOG from the collection system; requires specialized cleaning equipment	City	NA
Lift Station O&M			
- Mech/Elec/I&C Inspection	Assessment of condition, performance and obsolescence	Company	Operating Charge
- Mech O&M and Repair	Maintenance and repair of mechanical systems	Company	Operating Charge
- I&C O&M	Maintenance, repair and programming of I & C systems	Company	Operating Charge
- Elect O&M	Maintenance and repair of electrical systems	Company	Operating Charge
- Cleaning wet wells		Company	Operating Charge
- Operational optimization		Company	Operating Charge
- SCADA and telemetry Maintenance		Company	Operating Charge
- Site and Building Maintenance	Building and landscape maintenance	Company	Operating Charge
GIS Inventory	Updating and maintaining as-built data	City	NA
CMMS	Lift Stations only	Company	Operating Charge
Criticality Analysis			
- Collection System (except Lift Stations)	Identifying and categorizing asset criticality	City	NA
- Lift Stations	Identifying and categorizing asset criticality	Company	Operating Charge
Repair and Replacement/CIP			
Sewer Replacement/Lining		City	NA
Manhole Replacement/Lining		City	NA
Sewer and Force Main Repair	Spot repairs of sewers and force mains, including planned and emergency spot repairs	City	NA
All other R&R field services for Collection System (except Lift Stations)	Replacement and/or refurbishment and/or replacement	City	NA
Lift Station R&R			
- Standby power	Replacement and/or refurbishment of existing standby power	Company <\$25K; City >\$25K	Operating Charge < \$25K; NA > \$25K
- Mechanical Equipment	Replacement and /or refurbishment of existing Mechanical Assets		
- Electrical Equipment	Replacement and /or refurbishment of existing Electrical Assets		
- I&C Equipment	Replacement and /or refurbishment of existing I/C Assets		
Refurbishment Timing	Identifying asset refurbishment replacement schedule and finding (excluding lift stations and force mains)	City	NA
CIP Prioritization	Process of evaluating potential capital projects to be included in City CIP	City	NA
Customer Rates Study	Development of new rate schedule and charges	City	NA

^a. The details of the Service Fee structure are presented in Article IX.

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Appendix 11 Asset Management

11.1 Purpose of Appendix

This appendix sets forth requirements for the maintenance, repair, replacement, and management of the Managed Assets and is intended to address certain major activities required under the terms of the DBO Agreement within **Article VIII**. Additional maintenance requirements are set forth in **Appendix 10**. Collection System responsibilities are set forth in **Attachment 10-1** of **Appendix 10**.

11.2 Objectives

The Company shall maintain, repair, replace, and manage the Managed Assets in accordance with the Contract Standards. Repair and replacement decision-making shall be based on the operational and maintenance objectives set forth in **Appendix 10, Section 10.2** as well as the following:

- prudent renewal and replacement of major equipment
- cost-effective upgrades of obsolete equipment and systems
- application and use of maintenance and performance management information systems
- use of industry best practice for asset management.

11.3 Asset Management Program

The Company shall develop an asset management approach for how to develop and implement an asset management program. The focus of this program will be on maintenance, repair and replacement of the Managed Assets. The Company shall evaluate the City's current asset management practices and, where appropriate, build upon the business tools and processes established by the City. The items listed in **Table 11-1** within **Appendix 11, Section 11.3** are considered basic asset management items that the Company is expected to have in its asset management program. The asset management program shall also include any necessary staff training.

The Company asset management programs shall also include the following elements:

- asset inventory
- asset management team
- needs assessment
- Asset Management Plan.

Expectations for these elements are defined in the subsequent subsections.

Table 11-1. Asset Management Best Management Practice Items

Asset management strategy	A strategy for asset management covering the development and implementation of plans and programs for asset creation, operation, maintenance, rehabilitation/replacement, disposal, and performance monitoring to ensure that the desired levels of service (LOS) and other operational objectives are achieved at optimum cost.
LOS goals	The defined service quality for a particular activity or service area against which service performance can be measured. Service levels usually relate to quality, quantity, reliability, responsiveness, environmental acceptability, and cost.
Key performance indicators	A qualitative or quantitative measure of a service or activity used to compare actual performance against a standard or other target. Performance indicators commonly relate to statutory limits, safety, responsiveness, cost, comfort, asset performance, reliability, efficiency, environmental protection, and customer satisfaction.
Risk management strategy	The application of a formal process to the range of possible values relating to key factors associated with a risk in order to determine the resultant ranges of outcomes and their probability of occurrence.
Business case evaluation	A process to determine the need for and best configuration of a capital project in terms of service levels, economics, and risk.
Financial strategy	A strategy for determining how much capital, operations and maintenance (O&M), and rehabilitation and replacement funding will be needed to maintain assets optimally.
Asset criticality assessment	Managed Assets for which the financial, business, or service level consequences of failure are sufficiently severe to justify proactive inspection and rehabilitation. Critical assets have a lower threshold for action than non-critical assets.
Maintenance and reliability strategy	Collated information, policies, and procedures for the optimum maintenance of an asset or group of assets. The maintenance strategy should address predictive and preventive maintenance practices and incorporate principles of reliability-center maintenance if deemed applicable by the Company.
Failure codes	Code for describing a discrete mode of failure.
Failure modes and effects analysis (FMEA)	A technique for analyzing and evaluating a design to ensure that the application has the desired reliability characteristics by obviating those critical failure modes through employment of redundancy, providing alternate modes of operation, de-rating, or any other means.
Condition assessment	The process of evaluating an asset to estimate its remaining useful life, or its probability of failure. Assessments are tied to asset failure modes and are usually expressed numerically.
Data management strategy	A strategy for collecting, analyzing, and using data to optimize the O&M of assets.
Rehabilitation and replacement/remaining useful life strategy	A strategy for determining when to refurbish and repair assets and determine the interval between the time an asset is placed in service and the expected date of replacement.
Spare parts strategy	A strategy for keeping the optimal amount of parts available for critical asset rehabilitation and replacement as well as routine maintenance.
Annual reporting	A list of what information will be provided to the City on an annual basis for the Company to show that it is managing assets effectively and efficiently.

11.3.1 Asset Inventory

The Company shall build upon the existing Managed Asset inventory provided by the City to define the level of Managed Asset information it will collect and maintain. Where enhancements are proposed, the benefits to the City shall be identified.

During the Design-Build Period and prior to the Construction Date, the Company shall develop an asset numbering system for its Managed Asset inventory that assigns individual identification numbers to each asset including but not limited to all existing facilities and equipment that will remain at the WWTP following Acceptance, all components of the Wastewater System Capital Improvements, and all components of the Lift Stations.

Appendix 2, Attachments 2-1 and 2-2 present the lab equipment inventory and the inventories for rolling stock and mobile equipment, respectively.

11.3.2 Establish Team

The Company shall present a strategy for developing and maintaining an asset management program at the City. The Company shall utilize a cross-functional team and work closely with the City to determine the needs and goals of the program.

11.3.3 Needs Assessment

The Company shall perform a “needs assessment” for the asset management program to establish the Asset Management Plan. The needs assessment is a gap analysis that will look at the City’s current asset management activities and compare these activities to best practice. Where a “gap” between the City’s activities and best practice is revealed, the Company will develop a list of “needs.” The Company shall develop a ranking of all WWTP and Lift Stations equipment in terms of criticality and document the criticality ranking results against each piece of equipment.

The Company shall review the existing service levels, equipment and process performance, maintenance program, and computerized maintenance management system (CMMS) data for the needs assessment as well as all other items presented in **Table 11-1** within **Appendix 11, Section 11.3**. Based on this needs assessment, an Asset Management Plan will be developed to identify how the Company intends to address the gaps identified in the needs assessment.

11.3.4 Asset Management Plan

The Company shall produce an Asset Management Plan that defines which gaps the Company will prioritize and address first by establishing 1-, 5-, and 10-year action plans. As an example, a short-term action might be to collect and store additional Managed Asset data in the CMMS for maintainable Managed Assets not currently listed in the Managed Asset inventory. The Asset Management Plan shall define all activities, resources, milestones and timelines for implementing the Asset Management Program, including repair and replacement.

Exhibit 11-1 within **Appendix 11** presents the Company’s preliminary Asset Management Plan for pre- and post-Acceptance. In accordance with the timeframes in **Exhibit 2-1** within **Appendix 2**, the Company shall submit copies of a draft and final pre-Acceptance Asset Management Plan to the City for review. The Company shall submit copies of a draft and a final post-Acceptance Asset Management Plan to the City for review in accordance with the current version of **Exhibit 9-1** within **Appendix 9**. The City will review the Asset Management Plan drafts and return one marked-up copy with comments in accordance with the timeframes shown in **Table 9-1** within **Appendix 9, subsection 9.2.1**.

Maintenance Plan

The Company shall include a section within the Asset Management Plan describing the Company’s maintenance plan for Managed Assets before and after Acceptance as required in **Appendix 10** (including **Attachment 10-1**) and as further discussed in **Appendix 11, Section 11.4** below. This section of the Asset Management Plan shall be reviewed annually and updated to reflect new or changed information.

Repair and Replacement Plan

The Company shall include a section within the Asset Management Plan describing the Company's repair and replacement plan for Managed Assets before and after Acceptance. This section of the Asset Management Plan shall be reviewed annually and updated to reflect new or changed information.

The repair and replacement plan section shall contain the following subsections describing the requirements for repair and replacement activities to be performed as part of the Contract Services. The Company shall coordinate with the City to provide input into repairs and replacement planning.

Existing WWTP

The Company shall follow and build upon existing repair and replacement schedules for the existing WWTP in accordance with industry best practices. Where applicable, the Company shall optimize schedules to allow for maximum effectiveness and efficiency in sustaining the existing facilities.

This section shall include the Company's plan and schedule for repair and replacement activities that will occur prior to Acceptance and shall reference the Company's Major Maintenance, Repair, and Replacement plan and schedule described below as appropriate.

Existing Lift Stations

The Company shall follow and build upon existing repair and replacement schedules in accordance with industry best practices for the existing Lift Stations in accordance with **Appendix VIII, Sections 8.1 and 8.2.**

Upgraded WWTP

The Company shall provide repair and replacement services for the upgraded WWTP in accordance with industry best practices. The repair and replacement plan shall address the objectives and the approach to protect and preserve the upgraded WWTP following Acceptance. This plan shall include the following:

- a detailed repair schedule
- a detailed replacement schedule
- monitoring procedures for repair work performed by subcontractors
- information to assist the City in its periodic inspections
- methods to optimize repair work
- schedule for anticipated refurbishment and replacement of all critical assets.

This section shall also include the Company's Major Maintenance, Repair and Replacement plan and schedule as presented in **Exhibit 11-2** within **Appendix 11**, including activities before and after Acceptance in accordance with **Article VIII, Section 8.2.**

11.4 Computerized Maintenance Management System

The Company shall access the City's CMMS, MP-2, and determine if it wants to continue to utilize the existing CMMS or implement a new system. The Company shall utilize data management software and platforms that are compatible with Wonderware V10.0 HMI/SCADA and Wonderware Historian. At a minimum, the Company will utilize a CMMS system for the following activities:

- generate a record of repair and replacement of the Managed Assets on a detailed, item-by-item basis
- schedule, carry out, monitor, report, and control the Company's predictive, preventive, and corrective maintenance programs
- maintain accountability on completion of tasks and create a historical database to be used to track and predict equipment performance and potential equipment failure
- control spare parts and inventory system
- manage equipment inventory utilizing an asset numbering system as described in **Appendix 11, subsection 11.3.1**
- generate work order reports
- generate job completion reports
- track repair warranties
- track failures by failure type (using established failure codes)
- generate issue exception, equipment status, and repair priority reports
- integrate into other Managed Assets functions such as operations, laboratory, management, and administration
- generate custom reports, including management summary reports, life cycle costs, and staff utilization
- provide adequate staff training in how to maximize the effectiveness and functionality of the CMMS system.

The repair and replacement plan shall describe activities to utilize the CMMS to benchmark monthly maintenance performance.

The Company shall maintain a spare parts inventory control system as part of the CMMS to optimize and track the inventory of spare parts and materials. The Company will develop a spare parts strategy with consideration of asset criticality, spare part lead time, and cost. The spare parts inventory control system shall identify all necessary information regarding: inventory item, inventory status, including critical items, spare parts suppliers and lead time to obtain an item. Minimum and maximum inventory levels shall be identified as part of the inventory control system.

Exhibit 11-1. Preliminary Asset Management Plan

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Pre-Acceptance Asset Management Plan

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 - 2.1 Baseline Condition Rating System
 - 2.2 Assessment Factors
 - 2.3 Data Collection and Assessment Process
 - 2.3.1 Assessment Preparation
 - 2.3.2 Field Assessment
 - 2.3.3 Quality Review
 - 2.4 Results of Condition Assessment
- 3.0 Asset Risk Assessment
 - 3.1 Impact of Failure
 - 3.1.1 Development of Impact Matrix
 - 3.1.2 Calculation of Impact Score
 - 3.1.3 Summary of Impact Calculations
 - 3.2 Likelihood of Failure
 - 3.2.1 Development of Likelihood Matrix
 - 3.2.2 Calculation of Likelihood Scores
 - 3.2.3 Summary of Likelihood Calculations
 - 3.3 Risk Analysis
 - 3.4 Risk Management Strategy
- 4.0 1-Year Action Plan

- 5.0 Maintenance Plan
 - 5.1 Maintenance and Reliability Strategy
 - 5.2 Review and Update Preventive and Corrective Maintenance Schedules
- 6.0 Repair and Replacement Plan
 - 6.1 Existing WWTP (1-year action plan)
 - 6.2 Existing Lift Stations (1-year action plan)
- 7.0 Rehabilitation and Replacement: Remaining Useful Life Strategy
- 8.0 Risk Reduction: Results of Asset Criticality Workshop (Risk Analysis)

Post –Acceptance Asset Management Plan

- 1.0 Introduction
- 2.0 Baseline Condition Assessment
 - 2.1 Baseline Condition Rating System
 - 2.2 Assessment Factors
 - 2.3 Data Collection and Assessment Process
 - 2.3.1 Assessment Preparation
 - 2.3.2 Field Assessment
 - 2.3.3 Quality Review
 - 2.4 Results of Condition Assessment
 - 2.5 Pump Performance Testing
- 3.0 Asset Risk Assessment
 - 3.1 Impact of Failure
 - 3.1.1 Development of Impact Matrix
 - 3.1.2 Calculation of Impact Score
 - 3.1.3 Summary of Impact Calculations

- 3.2 Likelihood of Failure and Triggers
 - 3.2.1 Development of Likelihood and Trigger Matrix
 - 3.2.2 Calculation of Likelihood and Trigger Score
 - 3.2.3 Summary of Likelihood Calculations
- 3.3 Risk Analysis
- 3.4 Risk Management Strategy
- 4.0 1-Year Action Plan
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 - 8.3.6 Schedule for Refurbishment and Replacement of Critical Assets
- 9.0 Rehabilitation and Replacement: Remaining Useful Life Strategy
- 10.0 Risk Reduction: Asset Criticality Assessment

Exhibit 11-2. Major Maintenance, Repair and Replacement Schedule for the WWTP

Year	Activity/Equipment⁽¹⁾	Costs⁽²⁾⁽³⁾
1.		\$ 0
2.		\$ 0
3.		\$ 0
4.		\$ 10,210
5.		\$ 20,234
6.		\$ 36,324
7.		\$ 49,716
8.		\$ 69,293
9.	Likely year of replacement of existing aeration basin blowers and existing UV equipment.	\$ 81,757
10.		\$ 86,695
11.		\$ 74,295
12.		\$ 65,682
13.	Likely year of replacement of biosolids discharge conveyor.	\$ 68,445
14.	Likely year of replacement of existing secondary clarifier mechanisms.	\$ 97,814
15.	Likely year of replacement of screenings compactor.	\$ 139,393
	Total for Initial Term	\$ 799,858

Year	Activity/Equipment ⁽¹⁾	Costs ⁽²⁾⁽³⁾
16.		\$ 184,303
17.		\$ 273,449
18.	Likely year of replacement of automatic bar screens, centrifuges.	\$ 325,062
19.		\$ 369,135
20.	Likely year of replacement of grit removal mechanism, new aeration blowers, aeration basin scum skimmer mechanisms, new UV system, biosolids dryer, disk filter rotating assemblies, cooling tower, secondary effluent pumps, emergency generators.	\$ 441,972
	Total for Renewal Term	\$ 1,593,921

Notes:

- (1) Activities are limited to maintenance, repair, and replacement in excess of \$25,000.
- (2) Corresponding itemized costs for unused portions may be carried over into the next year in accordance with the DBO Agreement.
- (3) Costs are in current dollars (as of January 31, 2011). Only equipment and parts costs included. No add on for labor, overhead or profit is permitted.

Appendix 12 Payment Schedules

12.1 Purpose of Appendix

The purpose of this appendix is to define the major milestones and maximum cumulative drawdown payments for the major milestones that the City will pay for the Design-Build Work (including cost of all warranty obligations) in accordance with **Article XII**.

12.2 Design-Build Period Drawdown Schedule and Milestones

Exhibit 12-1 within **Appendix 12** is a listing of major milestones during the Design-Build Period. The values listed in **Exhibit 12-1** within **Appendix 12** are included in the Fixed Design-Build Price and cover all Design-Build Work to be conducted and all warranty work. These values also represent the maximum cumulative drawdown payment that will be made for each major milestone during the Design-Build Period. Monthly payments shall be made by the City based on the actual percentage of work completed and/or the equipment procured and/or installed for each major milestone identified in **Exhibit 12-1** within **Appendix 12**, subject to the maximum amounts for each major milestone.

Exhibit 12-1. Maximum Design-Build Period Drawdown Schedule and Milestones

Calendar Days From Contract Date	MAJOR MILESTONES	MAXIMUM AMOUNT	% OF FIXED DESIGN- BUILD PRICE
60	Bonds & Insurance	\$776,500	2.2
180	Engineering Design & Planning	\$2,300,000	6.4
210	Permitting	\$ 344,000	1.0
180	Preconstruction Services	\$ 950,000	2.7
210	Early Procurement	\$1,000,000	2.8
215	Site Preparation Mobilization	\$1,449,337	4.1
270	Filter Equipment Procurement	\$ 590,000	1.7
240	Cooling Tower and Pump Station Equipment	\$ 230,000	0.6
240	Aeration Basin and Stabilization Tank Equipment	\$ 515,000	1.4
250	Existing Process Gallery Equipment	\$ 185,000	0.5
270	Blower Building Equipment	\$ 247,100	0.7
285	Secondary Clarifier Equipment	\$ 197,000	0.6
320	Headworks Equipment	\$ 867,000	2.4

MAJOR MILESTONES		MAXIMUM AMOUNT	% OF FIXED DESIGN- BUILD PRICE
Calendar Days From Contract Date			
275	Biofilter Equipment	\$ 307,000	0.9
330	Dewatering Building Equipment	\$2,606,000	7.3
310	UV Equipment	\$ 522,000	1.5
375	Site Development/Electrical Relocation	\$3,000,000	8.4
365	Filters and Flow Control	\$ 175,000	0.5
365	Cooling Tower and Effluent Pump Station	\$ 516,000	1.4
375	Aeration Basin	\$2,470,000	6.9
385	Stabilization Tank	\$ 762,000	2.1
385	Existing Process Gallery	\$1,069,000	3.0
385	Blower Building	\$ 256,700	0.7
510	New Secondary Clarifier	\$1,195,300	3.3
540	Headworks	\$1,730,000	4.8
510	BioFilter	\$ 588,000	1.6
730	Dewatering Building	\$1,482,000	4.2
700	Operations Building	\$ 150,000	0.4

MAJOR MILESTONES		MAXIMUM AMOUNT	% OF FIXED DESIGN-BUILD PRICE
Calendar Days From Contract Date			
700	UV Disinfection	\$ 384,000	1.1
700	Sludge Storage	\$ 139,000	0.4
700	Truck Scale	\$ 97,000	0.3
650	Yard Piping	\$1,380,000	3.9
785	Administration	\$3,272,000	9.2
785	I&C Design, Programming, and Integration	\$1,740,000	4.9
785	Services During Construction	\$1,000,000	2.8
785	Project Closeout	\$ 250,000	0.7
Acceptance Test	Successful Completion of Acceptance Test (Acceptance Date)	\$ 965,477	2.7
TOTAL FIXED DESIGN-BUILD PRICE		\$35,707,414	100%
MAXIMUM GUARANTEED CONSTRUCTION PERIOD FROM NOTICE TO PROCEED TO ACCEPTANCE DATE		982 ⁽¹⁾	calendar days

(1) Assuming a Notice to Proceed on July 7, 2011 and a Scheduled Acceptance Date of March 15, 2014.

Appendix 13 Asset Evaluation Protocol

13.1 Purpose of Appendix

This appendix details the protocol and procedures to be followed by the Company to evaluate and measure the condition of the upgraded WWTP for compliance with its obligations under **Article VIII, Section 8.3** the DBO Agreement.

13.2 Baseline WWTP Record

This and subsequent sections describe components of the asset evaluation protocol.

13.2.1 WWTP Equipment

The Company shall provide the City with a baseline status of all WWTP equipment following completion of the Design-Build Work including asset number, asset name, asset manufacturer and model number, date installed, price of installed equipment, service life (in years), condition/status and any additional descriptions of condition/comments; this baseline status shall include new equipment and existing equipment not removed or replaced as part of the Wastewater System Capital Improvements. The Company's estimation of service life (in years) shall be subject to the approval of the City. The Company shall keep a record of documentation supporting the data provided in the Baseline WWTP Record and maintain this record through the performance of the final asset evaluation. Such documentation shall include records of labor and material costs, vendor invoices, etc., to substantiate the price of installed equipment. A copy of the record of documentation shall be provided to the City along with the Baseline WWTP Record. In accordance with the DBO Agreement, all upgraded WWTP equipment shall have a baseline condition/status as "New equipment; fully functioning in excellent condition." In accordance with the DBO Agreement, the Company shall continue to inspect the WWTP equipment annually following Acceptance and update the Baseline WWTP Record and the record of supporting documentation accordingly.

13.2.2 WWTP Structures

The Company shall make an initial record of the WWTP structures, including new structures and existing structures not removed or replaced as part of the Wastewater System Capital Improvements, following completion of the Design-Build Work. As part of the initial record, a photographic and video record shall be made of the exterior and interior of the WWTP structures, where possible. In accordance with the DBO Agreement, the Company shall perform the evaluations of WWTP structures annually following Acceptance and update the Baseline WWTP Record accordingly. If new structures are added, the photographic and video record shall also be updated by addition of the new structures. All WWTP structures shall have an initial functionality and structural integrity rating of 5 based on the rating system presented in **Appendix 13, subsection 13.3.2** hereof. The Company shall also provide the City with record copies of photographs and videos on CD as requested.

13.3 Final Evaluation of the WWTP

Not more than 12 months prior to and not later than six months prior to the end of the Initial Term, as required by the DBO Agreement, the Company shall perform a final evaluation of the WWTP. As provided by the DBO Agreement, the WWTP equipment are required to be returned to the City in a condition and state of repair such that, in the aggregate, the remaining useful life (Weighted Average Useful Life) of the WWTP equipment at the end of the Initial Term is equal to or greater than five years.

Pursuant to the DBO Agreement, the WWTP structures are required to be returned to the City in good condition, working order and repair as when new, with ordinary wear and tear excepted as determined in light of the Company's maintenance, repair and replacement obligations under the DBO Agreement.

13.3.1 Final WWTP Equipment Evaluation

Step 1: Estimate Service Life and Remaining Life of WWTP Equipment

For the final WWTP equipment evaluation, the Company, the City, and an Independent Evaluator shall verify the accuracy, including the proper designation of each asset, and the completeness and accuracy of the Baseline WWTP Record prepared and maintained by the Company in accordance with **Appendix 13, Section 13.2** hereof. Assets removed from service but left in place shall continue to be shown in the Baseline WWTP Record. However, the initial value, replacement value, and remaining life of these assets will be set to zero. These assets shall be designated as not included in the evaluations. An Independent Evaluator shall then estimate, for the purposes of the final asset evaluation, the service life and the remaining life of all the WWTP equipment having a replacement value equal to or greater than \$5,000 listed in the Baseline WWTP Record, as provided below.

Remaining Life at the End of the Initial Term Evaluation and Method of Calculation

The Independent Evaluator shall estimate the remaining life at the end of the Initial Term (in years, rounded to the nearest whole number) of all the WWTP equipment using the following methods and procedures.

The parties shall pre-agree on a method for converting the remaining life of an asset to its remaining life at the end of the Initial Term. If the parties cannot agree, the remaining life at the end of the Initial Term for an asset shall equal the remaining life for that asset at the time of the evaluation (prior to rounding) minus the time period in years rounded to one decimal place between the time of the evaluation and the end of the Initial Term. After this calculation is performed, remaining life after the Initial Term shall be determined by rounding. In addition, should the length of the Initial Term be less than 15 years for any reason, this calculation shall be performed as if the length of the Initial Term is equal to 15 years.

The remaining life of an asset shall be based upon its ability to perform its intended function, taking into consideration its performance history, physical condition, availability, replacement costs, and maintenance costs. In determining the remaining life of an asset, the Independent

Evaluator shall not consider whether an asset is outmoded and, if replaced, would enhance the capabilities of the WWTP.

The Independent Evaluator shall conduct the following procedures to establish the remaining life of the WWTP equipment:

- Visually inspect the WWTP equipment.
- Monitor related instrumentation to determine the assets' physical condition and operation characteristics.
- Collect any measurements, readings, or other pertinent information which the Independent Evaluator deems appropriate.
- Review all repair, rebuild, and replacement records, and consult with manufacturers.
- Inspect all readily accessible parts and surfaces for any installation problems; excessive vibration, noise, or temperature; the condition of coatings; signs of wear or corrosion; and leakage of any fluids.

These inspection activities shall be conducted while motor-driven equipment is in operation.

If the Independent Evaluator cannot estimate the remaining life of any asset using the procedures detailed above, then, as a last resort and only with the concurrence of the City and the Company, the Independent Evaluator may calculate the remaining life by subtracting the age of the asset from the original service life of the asset as determined by the Independent Evaluator. If the age of the asset is greater than the service life, then the remaining life shall be equal to zero years. The age of the asset shall be the number of days between the date it was placed into service and the date of the evaluation divided by 365, rounded to the nearest whole number.

The service life and remaining life at the end of the Initial Term of the WWTP equipment shall be added to the Baseline WWTP Record. The development of the service life and remaining life shall take into consideration the following:

- Spare parts and Consumables included in the spare parts and Consumables inventory are not included in the calculation of the Weighted Average Useful Life.
- Obsolete and unused assets are not included in the calculation of the Weighted Average Useful Life.
- Assets comprising the WWTP structures are not included in the calculation of the Weighted Average Useful Life.

Service Life Evaluation

The Independent Evaluator shall estimate the original service life value (in years, rounded to the nearest whole number) of all WWTP equipment using Company-provided information, other available vendor information, and trade/professional reference materials.

Step 2: Determining Weights to be Applied to Each Asset

The "Weighting Factor" for an asset is the current replacement value of the asset (the "replacement value") divided by the sum of the replacement values of all WWTP equipment. Weighting Factors to be applied to each asset shall be calculated using the following equation:

$$F_i = V_i / (\Sigma V_i)$$

where:

F_i = Weighting Factor of asset "i"

V_i = replacement value of asset "i" in current dollars as of the evaluation date

ΣV_i = the sum of the replacement values of all assets comprising the WWTP equipment

Note: Weighting Factors should not be rounded when calculating the weighted remaining life.

The Independent Evaluator shall determine the replacement value of each piece of WWTP equipment using standard valuation techniques. If the replacement value of an asset cannot be readily determined, then the Independent Evaluator shall inflate the initial installed cost of the asset by the same rate of change as the Engineering News Record Construction Cost Index from the year the asset was installed (or purchased if equipment was not installed) to the year for which the replacement value is being calculated. The initial installed cost for an asset may be estimated using the following methods that are listed in order of preference:

- actual, as-built vendor information (i.e., labor and materials invoices);
- historical vendor bid and quotation documents; or
- other means of determining initial value of various assets, if approved by all parties.

It is expected that initial installed cost will be provided by the Company with labor and invoice documentation as part of the record of documentation for both the Baseline WWTP Record and as part of annual updates any new installed (or purchased if not installed) equipment.

Step 3: Determine Weighted Remaining Life

The weighted remaining life shall be calculated by multiplying the remaining life at the end of the Initial Term of an asset by the Weighting Factor for that asset as shown in the following equation:

$$W_i = (F_i)(L_i)$$

where:

W_i = weighted remaining life of asset "i" in years

L_i = remaining life of asset "i" in years

Note: Independent Evaluator shall not round the weighted remaining life for any asset when calculating the Weighted Average Useful Life for all of the WWTP equipment.

The Weighted Average Useful Life is the sum of the weighted remaining life values for assets constituting the WWTP equipment having a replacement value greater than \$5,000.

The Weighting Factor and weighted remaining life of the WWTP equipment shall be added to the Baseline WWTP Record.

13.3.2 Final WWTP Structures Evaluation

Functionality Evaluation

The functionality evaluation shall determine if the operating WWTP structures operate properly and perform the function for which they were intended. As part of the functionality evaluation of each WWTP structure, a functionality rating of 1 to 5 will be assigned to each of the applicable WWTP structures. The rating shall utilize the following criteria:

- 5 – Excellent overall condition. Asset fully functional as designed with no visible defects or wear.
- 4 – Good overall condition. Asset functions as needed for current operating conditions, has visible signs of minor defects, and wear is less than expected.
- 3 – Fair overall condition. Asset functions as needed for current operating conditions, has visible signs of moderate defects and expected wear.
- 2 – Poor overall condition. Asset operable, but does not function as needed for current operating conditions. Asset has visible signs of major defects and wear is more than expected. There may be personnel safety issues.
- 1 – Inoperable. Asset is non-functional and requires major repair or replacement to restore operation.

The findings of the functionality evaluation shall be tabulated on a spreadsheet such as in the Baseline WWTP Record.

Structural Integrity Evaluation

The structural integrity evaluation shall include visual inspection with photographic and video recording of all WWTP structures, including, but not limited to:

- buildings and concrete structures, both above and below ground, including doors, hatches, stairways, and windows
- walkways, roads and other paved areas
- fencing
- finish system – paint, sealants and other liquid applied finishes
- floor, ceiling, roofs and wall system – tiles, carpeting, raised floors and drop ceilings.

Structures and paved areas shall be checked for structural defects and damage, such as cracks and concrete deterioration that could reduce their service life. Finish systems shall be visually inspected to assure that they provide adequate coverage and afford the desired protection. Occurrence of flaking, corrosion, rot, and inadequate coverage should be noted. Floor, ceiling, roofs, and wall systems shall be visually inspected for excess wear and damages.

As part of the structural integrity evaluation of each WWTP structure, a structural integrity rating of 1 to 5 shall be assigned to each of the applicable WWTP structures. The rating shall utilize the following criteria:

- 5 – Excellent overall condition. No visible defects, cracking, or wear.
- 4 – Good overall condition. Visible signs of minor defects, and wear is less than expected.
- 3 – Fair overall condition. Visible sign of moderate defects and expected wear.
- 2 – Poor overall condition. Visible signs of major defects and wear is more than expected.
- 1 – Imminent failure. Extremely poor overall condition; may be significant safety or structural concerns.

The findings of the structural integrity evaluation shall be tabulated on a spreadsheet such as in the Baseline WWTP Record. Videotape records made of the initial condition of assets, whether or not structural or other physical defects are revealed, shall be included as part of the Final Asset Evaluation. The location on the videotape corresponding to any listed defect shall be entered in the spreadsheet with each listing.

13.4 Evaluation Reports and Products

The procedures followed, together with the findings and results of the final asset evaluation process, shall be presented in a final asset evaluation report (the "Final Asset Evaluation"). Text, spreadsheets, and databases shall all be prepared using a computer software program mutually agreed to by the parties. The Independent Evaluator shall provide the City and the Company with preliminary drafts of all documents for review and comment.

Both parties shall sign final documents on each page for authentication and shall receive an authenticated copy of all final reports, databases, spreadsheets, video documentation, and handwritten notes.

The Final Asset Evaluation shall consist of at least the following clearly delineated sections:

- Initial Baseline WWTP Record
- Final Baseline WWTP Record
- Weighted Average Useful Life of the WWTP equipment
- Functionality and Structural Integrity of the WWTP structures

- Supplemental information as may be determined by the Independent Evaluator.

13.4.1 Baseline WWTP Record

This section of the Final Asset Evaluation shall include the Initial Baseline WWTP Record and the Final Baseline WWTP Record.

13.4.2 WWTP Equipment

The WWTP equipment section of the Final Asset Evaluation shall include the listing of all assets to be included in the calculation of the Weighted Average Useful Life together with the corresponding values for each asset for service life, remaining life, and remaining life at the end of the Initial Term. The procedures used to determine which assets to include in or exclude from the schedule shall be detailed. The basis for establishing service life for each asset shall be described. This section of the Final Asset Evaluation shall provide the weighted remaining life of the WWTP equipment and summarize the steps followed by the Independent Evaluator to establish the Weighted Average Useful Life at the end of the Initial Term. All calculations performed to determine Weighting Factors and the Weighted Average Useful Life at the end of the Initial Term shall be included with the Final Asset Evaluation.

13.4.3 WWTP Structures

The WWTP structures section of the Final Asset Evaluation shall provide the results of the functionality evaluation and the structural integrity evaluation of the WWTP structures. Those assets that do not exhibit physical or structural defects shall be noted as such in the Final Asset Evaluation with a statement regarding the overall condition. The findings of the functionality evaluation shall be tabulated on a spreadsheet. For the purposes of determining the Company's obligations pursuant to the DBO Agreement, the Independent Evaluator shall, for structures with a functionality or structural integrity rating less than 3 as defined in **Appendix 13, subsection 13.3.2** hereof, indicate in each instance what repairs would be needed to bring both functionality and structural integrity ratings to a minimum level of 3.

13.4.4 Supplemental Information

This section of the Final Asset Evaluation shall include all supplemental information used by the Independent Evaluator, including, but not limited to, results of diagnostic testing, values of Engineering News Record Construction Costs indices used, equipment supplier information, and notes and calculations to support its findings and conclusion. This supplemental information may be included as appendices or attachments to the Final Asset Evaluation.

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Appendix 14 Exit Test Procedures and Standards

14.1 Purpose of Appendix

This appendix sets forth the requirements for the Exit Test Procedures and Standards of the Wastewater Treatment Plant (WWTP) required in accordance with **Article XIV, subsection 14.9(F)** of the DBO Agreement.

14.2 Exit Test Plan

The Company shall prepare and submit to the City for its review and approval the Exit Test Plan, which includes the following minimum requirements:

- procedures for demonstrating compliance with Performance Guarantee requirements
- procedures for testing all process, treatment, and ancillary systems
- procedures for testing the standby power capabilities of the WWTP, including operation of the WWTP on standby power
- use of permanent and temporary instrumentation
- organization of the test team, including responsibilities, authority, and decision making protocols
- response procedures for unsuccessful test results including definition of threshold results that constitute overall Exit Test failure
- testing schedule
- operating and maintenance schedule during testing
- procedures for demonstrating compliance with every Exit Test Procedure and Standard
- descriptions of all parameters to be monitored and measurements to be made that states sampling frequencies and includes but is not limited to:
 - A list of all parameters to be monitored and a schedule of monitoring, describing analytical methods and sampling frequencies at which parameters will be monitored on a continuous or other defined basis.
 - Identification of equipment calibrations to be performed, including but not limited to descriptions of:
 - all calibration techniques to be used
 - timing of calibrations relative to Exit Testing (including adherence to all manufacturers' requirements for calibration of instruments used in Exit Testing operations and to monitor and evaluate Exit Testing)
 - calibration practices, including the frequency and accuracy requirements

- consideration of intermediate spot and cross checks, in addition to the formal calibration periods
- QA/QC procedures (including those to be utilized for all equipment used for testing and measuring different parameters within the treatment process and at the in-house laboratory and contract laboratories).
- A full description of any analytical methods and techniques that will be utilized to ensure that all Applicable Law and Performance Guarantees are met. In addition, descriptions of how data collected will be compared with Performance Guarantees shall be provided and shall be in a manner that complies with City requirements and regulatory requirements. Provide examples of any tools such as flow charts, check sheets or any other data presentation and evaluation techniques that will be utilized.
- SCADA system monitoring and control functions.
- A list of real-time data fields that will be provided to the City during Exit Testing.
- A listing of all samples requested by the City and a protocol for delivering samples to the City for the City's own testing program should the City elect to have such a program during Exit Testing.

The Exit Test Plan shall also specify the form and contents of a report to summarize and communicate the results of the Exit Test (Exit Test Report) and include specific, detailed sampling protocols to be utilized while conducting the Exit Tests. Preliminary tests may be conducted at the Company's expense; however, the results of such tests shall not be made part of the Exit Test Report.

In accordance with the timeframes set forth in **Article XIV, subsection 14.9(F)** of the DBO Agreement, the Company shall submit copies of a draft and final Exit Test Plan to the City for review and the City will review the Exit Test Plan draft and return one marked-up copy with comments.

14.3 Exit Test Procedures

14.3.1 General

Exit Test Procedures include:

- demonstration of the ability of all components of the WWTP to meet the influent design capacity for a 24-hour period
- determination of the ability of the WWTP to produce Class A Biosolids that meet the Performance Guarantee requirements for an uninterrupted period of at least 14 days at throughputs requested by the City, which will be equal to or less than the design capacity of the WWTP (i.e., 14-day testing)

- demonstration of the proper function of the WWTP upon loss of power, loss of control system, manual start-up and shutdown, and automatic shutdown
- demonstration that all wastewater treatment systems function as intended
- demonstration that all control systems function as intended without interruption
- demonstration that the WWTP otherwise complies with all of the Performance Guarantee requirements.

14.3.2 Exit Test

The Exit Test shall have a minimum duration of 14 days and shall also have duration sufficient to demonstrate that all WWTP operations over the Exit Test period are in full and continuous compliance with the Performance Guarantee requirements when the WWTP is operating at design capacity with all normally operating units in continuous service.

If feasible, the City may deliver to the WWTP different sources or blends of sources of wastewater subject to the requirements of **Appendix 3** to reflect as best as possible the full future range of influent characteristics the WWTP is required to treat.

If the 14-day Exit Test is terminated, it shall be restarted at the beginning of Day 1 of the 14-day Exit Test and the entire 14-day Exit Test shall be run.

14.3.3 Monitoring Requirements

During the Exit Test, the Company shall regularly monitor the effluent for specified key parameters in order to evaluate the performance of the WWTP. These key parameters include those needed to demonstrate compliance with the Performance Guarantee requirements. All samples shall be analyzed by a state-certified independent laboratory agreed to by both the Company and the City, using laboratory analytical quality control standard procedures. Sample analyses performed during the Exit Test shall be performed by an independent state-certified laboratory approved by the City.

The City may collect its own samples and analyze them during Exit Testing to confirm the results of the Company's analyses.

14.4 Exit Test Standards

The ability of the WWTP to meet the following Exit Test Standards shall be demonstrated during Exit Testing, including demonstration of the following:

- The WWTP operates properly with only the normal complement of employees included in the Company's staffing plan for the WWTP, with the exception of additional Company staffing related to collection and analysis of samples and other test data.
- The WWTP complies with all Performance Guarantee requirements and applicable Governmental Approvals at all times. The results of all samples taken during Exit Testing shall be reported and included in the calculation of reported averages or

other evaluations applicable to determining compliance with Performance Guarantees.

- The WWTP operates at design capacity.
- All operations are consistent with Contract Standards.
- The WWTP operates properly during manual and automatic shutdown and start-up.
- The WWTP operates with automated and computerized systems in full and continuous operation.
- The residuals handling system operates as intended, including production of Class A Biosolids, and in accordance with the Performance Guarantee requirements.
- The process and treatment systems operate as intended and in accordance with the Operation and Maintenance Plan.
- All odor control equipment operates properly and as intended.

14.4.1 Exit Test Report

The Exit Test Report shall be prepared in accordance with the Exit Test Procedures and Standards and include at a minimum:

- A certification that testing was conducted in accordance with the approved Exit Test Procedures and Standards.
- A certification of the results of the testing with respect to each of the Exit Test Procedures and Standards. Each of the Exit Test Procedures and Standards shall be addressed separately and the basis for the determination shall be presented. This certification of the results of the testing shall include a determination of the extent to which the WWTP complies with the applicable Performance Guarantee requirements.
- All data measured and recorded during the tests including laboratory analyses, instrument calibrations, and measurement.
- Record of equipment outages, failures, and preventative maintenance.
- Summary of test results and conclusive evidence of compliance with all test requirements.
- All calculations used in determining test results.
- Any other data reasonably requested by the City to be included in such reports.

All certifications shall be signed by the Company.

14.5 Failure of the Exit Test

Failure to continuously demonstrate the Exit Test Procedures and Standards during the period of the Exit Test shall constitute a failure of the Exit Test. Any failure of an Exit Test shall require

(a) correction of those components or conditions that resulted in the failure, (b) performance of a repeat of the Exit Test after proper notification is provided to the City.

Any failure to meet Exit Test Procedures and Standards during the 14-day testing shall require a repeat of the 14-day test.

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Appendix 15 Key Personnel and Approved Subcontractors

15.1 Purpose of Appendix

The purpose of this appendix is to define the Company's commitment of key personnel and Subcontractors and to identify those personnel and Subcontractors for whom City approval of any changes shall be required in accordance with **Article X, Section 10.16** and **Article XVII, Section 17.11**.

15.2 Key Personnel

Exhibit 15-1 within **Appendix 15** presents the key personnel, their project assignments, and the percentages of their time that, at a minimum, they are expected to spend on the project during the Management Period, the Design-Build Period, and during start-up and Acceptance Testing. Percentage of time estimates are based on 100 percent of the hours available over the entire phase, assuming 40 hours per week, minus time for vacations, sick leave, training, and professional societies and conferences as a basis.

The Company shall obtain City approval for any changes in personnel in accordance with the DBO Agreement.

Exhibit 15-2 within **Appendix 15** provides an organization chart indicating the reporting relationships of these key personnel and other team members.

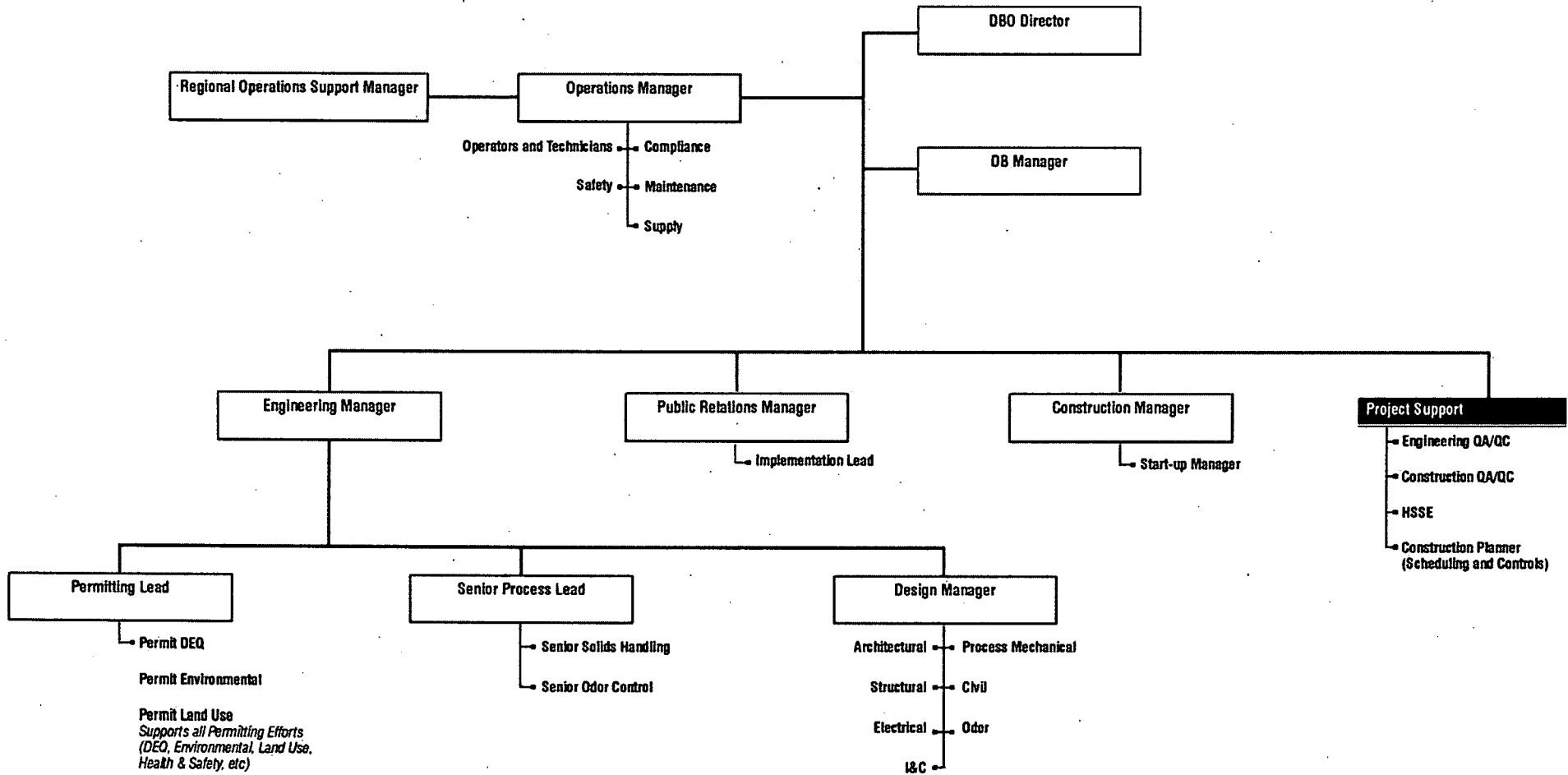
15.3 Approved Subcontractors

There are no Subcontractors that have been pre-approved by the City prior to the Contract Date.

Exhibit 15-1. Key Personnel Commitments of Time

Name	Title/Role in Project	Transition Period (percent)	Management Period Prior to Acceptance (percent)	Management Period After Acceptance (percent)	Design-Build Period (percent)	Start-up and Acceptance Testing (percent)
Joe Glicker, PE	DBO Director	30	10	10	30	30
Michelle Burkhart, PE	Engineering Manager	30	20	1	90	80
Robert Pieper	DB Manager	30	30	0	100	100
Bob McKay	Construction Manager	0	30	0	100	100
Robert Watts	Operations Manager	100	100	100	100	100
Scott Cowden	Odor Control Engineer	10	20	1	50	50

Exhibit 15-2. Company's Project Organization Chart



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CITY COUNCIL MEETING AGENDA ITEM SUMMARY

Resolution No. 2307 WWTP Design-Build-Operate (DBO) Contract Award

Meeting Date: July 7, 2011

Report Date: July 5, 2011
Source of Item: Admin

Contact: Jeanna Troha
Gary Wallis, Delora Kerber, and Mike Kohlhoff
Contact Telephone Number: 503-570-1520
Contact E-Mail: troha@ci.wilsonville.or.us

ISSUE STATEMENT

The City received two qualified proposals for the waste water treatment plant project and selected CH2M Hill as the preferred proposer. City staff has been engaged in contract negotiations with CH2M Hill over the last several weeks. The City Council directed staff on June 29th to prepare a resolution to award the contract to CH2M Hill at the City Council's July 7th meeting.

BACKGROUND

In 2008, the Wilsonville City Council passed Resolution 2131 authorizing the use of an alternative procurement method of design-build-operate (DBO) and to issue a request for proposals (RFP) for the Wastewater Treatment Plant (WWTP) project. The City selected RW Beck to serve as the City's owner's representative in preparing the RFP and reviewing the two submitted proposals.

City staff, with the assistance of RW Beck has been engaged in negotiations with CH2M Hill regarding the contract agreement between the City and the Company. During this time, the City has also engaged in public outreach regarding the project and projected rate increases. Public outreach included the Boones Ferry Messenger, Town Hall Meetings for residents and businesses, informational video, citizen survey, plant tours and staff presentations at various public venues such as Rotary, Neighborhood BBQs, and Community Events. The project has also been endorsed by the Wilsonville Chamber of Commerce.

At the June 29th Council Work Session, staff presented information regarding various financing options for this project. The City Council indicated that this was a strong economic climate with low interest rates and a favorable time to issue bonds for this type of infrastructure project with a desire to move forward to the next step in the process to award the DBO contract to

CH2M Hill.

CONTRACT UPDATE

Staff recently concluded our negotiations with CH2M Hill which resulted in changes to the document the City Council was provided on June 29th. The negotiations resulted in very little substantive changes but there are several minor changes being made to the contract. The changes from the negotiations are being made to the contract document at this time and will not be ready until Thursday afternoon, just prior to the Council Meeting. As a result, staff is providing Council with a summary of the substantive changes in this staff report. We will provide Council with the final document when staff receives it on Thursday.

Substantive Changes to the Contract Include:

1. Inclusion of the final negotiated Fixed Design-Build Price (Article I and Article XII, Section 12.1(B)) and Operating Charge (Article IX, Section 9.3(A) and (B))
2. Inclusion of the Guaranteed Maximum Electricity Demand/Utilization (Article 1 - Definitions)
3. Transition period reduced from 90 to 60 days (Article IV, Section 4.1)
4. Addition to Article V, Section 5.1(C) related to life insurance and long-term disability benefits for Designated Employees
5. Addition of Article V, Section 5.1(F) related to Accrued Sick Leave for Designated Employees
6. Addition of Article VII, Section 7.4(E) related to Hazardous Waste Manifests and Limited City Indemnification
7. Revisions to Article X, Section 10.18 requiring that Subcontractor warranties start on the date of beneficial use and extend for not less than 1 year (rather than Acceptance Date)
8. Revision to Article XII, Section 12.2(E) which allows the Company to provide a letter of credit for retainage
9. Revisions to Article XIV, Section 14.2(A)(6) related to conditions under which failure of the Company to meet the Odor Guarantee could result in determination of an event of default not requiring previous notice or further cure opportunity.
10. Revisions to Article XIV, Section 14.2(B)(2), last paragraph
11. Reduction of the limit on liquidated damages from \$30,000,000 to \$20,000,000 for years 3 to 8 following Acceptance in Article XIV, Section 14.3(D).
12. Reduction of the limit on liquidated damages from \$15,000,000 to \$10,000,000 for years 8 following Acceptance through the end of the Term in Article XIV, Section 14.3(E).
13. Revisions to Article 15, Section 15.1(F) related to the insurance requirements for Subcontractors performing \$1,000,000 or more of work at the site.
14. Revisions to Article 15, Section 15.1(H)(3) and 15.1(I)(3) related to the fire damage legal limit.
15. Revisions to Article XVI, Section 16.2(C) which clarify the co-surety relationships
16. Addition to Article XVI, Section 16.3(B) of the amounts by which the Service Fee would be reduced if the City releases the Company from its obligation to provide Management Services Performance Bond.

17. Additions to Article XVII, Section 17.7 (A) and (B) related to infringement and intellectual property.

CONTRACT COSTS

The total cost of construction for the WWTP is \$41.8 million, which does not include the refinance of the interim loan. This also does not include the two projects staff identified as priority sewer projects (\$2 million Memorial Park Lift Station and \$6.5 million Frog Pond line).

Amount (millions)	Purpose
\$35.7	Construction
\$3.6	10% contingency
\$1.9	Owners rep, construction inspectors, system commissioning, technical services
<u>\$0.6</u>	Bond issuance costs (underwriter, legal, financial advisor, rating agency, offering statements, etc)
\$41.8	Subtotal – Future related costs
<u>\$5.0</u>	Refinance/repay interim loan
\$46.8	Maximum debt

Based on Council discussion at June 29th work session, the City will pursue Limited Tax General Obligation bonds (LTGO) to take advantage of the current low interest rates. The Council also discussed other financing options such as use of east side urban renewal, general fund reserves as a loan to the sewer fund, sewer SDC's, and sewer operating funds. The financing piece of this project will come before the Council at the July 18th Council Meeting in the form of a resolution.

The DBO contract provides for one company to design, build, and operate the wastewater treatment plant. With this approach the private company is responsible for ensuring the design and construction of the upgraded plant is done in a way that provides for efficient long-term operations. The operational savings from this approach is:

- 1st year: \$350,000
- 2nd year: \$350,000
- 3rd year: \$100,000
- 4th and beyond: about the same

RECOMMENDATION

Staff recommends the City Council approve the attached resolution authorizing the City Manager to execute the DBO contract with CH2M Hill for the wastewater treatment plant project. Staff recommends that Council directs the financing resolution be brought before the Council July 18, 2011 with the fund uses as determined by Council.

RESOLUTION NO. 2307

A RESOLUTION OF THE CITY OF WILSONVILLE BY ITS CITY COUNCIL ACTING ALSO IN ITS CAPACITY AS THE LOCAL CONTRACT REVIEW BOARD AUTHORIZING THE AWARD OF THE DESIGN-BUILD-OPERATE AGREEMENT FOR WASTEWATER TREATMENT PLANT IMPROVEMENTS (PROJECT NO. 2082) TO CH2M HILL ENGINEERS, INC., A DELAWARE CORPORATION, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY OF WILSONVILLE

WHEREAS, the City Council, acting in its capacity as the Local Contract Review Board, duly adopted Resolution No. 2131 on August 18, 2008, authorizing the use of the alternative method of contracting of Design-Build-Operate (DBO) and the request for proposal for an owner's representative to develop a request for proposal for the DBO contract and to provide owner's representative services for design-build-operate deliverables; and

WHEREAS, Resolution No. 2131 made certain findings in regards to selecting the DBO form of alternative contracting, including but not limited to (1) the DBO contract should meet certain specified goals, namely:

- ♦ Completing a \$50 million capital expansion on time and within budget
- ♦ Uninterrupted plant operation
- ♦ Increase the plant's efficiency
- ♦ Achieve lifecycle cost reductions, e.g., high quality, low maintenance equipment
- ♦ Modernize equipment and controls
- ♦ Meet and exceed regulatory requirements
- ♦ Clearly understand the liabilities and risks during design, construction, and operation and protect the City to fullest extent
- ♦ Through design and construction, integrate long term operations and maintenance cost control

(2) the contracting company should provide jobs to affected bargaining unit city employees with a package of salary and benefits that is comparable to or better than current applicable employment, and to agree to protect the affected employees from involuntary transfers and termination without cause, and (3) that a competitive procurement takes place that (a) is unlikely

to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and (b) the awarding of the public improvements project will likely result in substantial cost savings to the contracting agency; and

WHEREAS, Resolution No. 2159, adopted January 26, 2009, authorized the award of a Professional Services Agreement, with RW Beck, Inc. as the owner's representative, to assist the City to develop a request for proposal for a DBO contract and to perform services for DBO deliverables; and

WHEREAS, RW Beck, Inc. assisted the City in a competitive solicitation of qualifications for companies to respond to a request for qualifications and to which four companies responded and three were found to be technically and financially qualified; and

WHEREAS, RW Beck, Inc. assisted the City in a competitive solicitation for request for proposals from the three qualified proposers, two of which responded with competitive proposals meeting the goals and requirements of Resolution 2131 and the Request for Proposals; and

WHEREAS, as part of the request for proposal, a proposed DBO contract was prepared with the assistance of the law firm of Hawkins Delafield & Wood LLP, whose legal specialty is large design-build and design-build-operate projects and contracts, and which the proposers responded to as well as responding to a series of technical appendices of requirements, which RW Beck, Inc. and its technical subcontractor, Brown & Caldwell, assisted in preparing; and

WHEREAS, after a complete and thorough review of the two proposals, the reviewing team presented its findings and recommendations to the City Council that negotiations continue with CH2M Hill Engineers, Inc. (CH2M Hill) as the preferred proposer, and receiving Council's direction to continue to negotiate with CH2M Hill, and having done so, on June 29, 2011, met with the City Council, acting in its capacity as the Local Contract Review Board, in work session to provide the following information to the Council/Board:

(1) That the award of contract meets each of the goals of Resolution No. 2131 as recited above;

(2) That the contract meets the required provisions of a comparable package of wages and benefits for affected employees and protects the affected employees from involuntary transfer and termination without cause;

(3) That a competitive procurement did take place and the pricing for the design-build and operating phases resulted in substantial cost savings, with the project coming in at an

estimated \$41.8 million (does not include \$5 million interim debt to be financed), which is substantially under the projected \$50 million capital expansion cost estimate contained in Resolution No. 2131. The proposal also provides operation cost savings of approximately \$1.9 million over the 15-year life of the operational portion of the contract, when compared to current operating costs projected over the same time span, including approximately \$800,000 of cost savings over the first three years and a projected lessening of the repair and maintenance life cycle costs of new equipment and process to be installed rather than that projected with repair, maintenance and replacement of current equipment and processes; and

(4) That there is a favorable interest climate for bonding, utilizing a Limited Tax General Obligation (LTGO) combined with certain funds on hand, and a supportive rate increase, reasonable and prudent financing is available to fund the project and contract; and

WHEREAS, as provided in the public record materials provided by staff at the work session June 29, 2011, significant public outreach has been provided, leading up to the public hearing of July 7, 2011 accompanying this Resolution; and

WHEREAS, there is an identified cost benefit of using CH2M Hill's corporate insurance and endorsements of approximately \$1.3 million on the design-build portion of the project and \$176,000 yearly on the operations portion; provided however, because CH2M Hill has certain confidentiality requirements regarding the corporate policies, the City Attorney's Office, together with the City's insurance consultant, have arranged a review of the policies and endorsements and bonding and surety information on July 13, 2011 at the CH2M Hill offices in Colorado and, therefore, staff recommends any contract approval be subject to and contingent upon acceptable findings based on that review; and

WHEREAS, the Council finds that there is currently a favorable interest climate to bond for the project, as well as a favorable construction climate for labor and materials, and therefore, time is of the essence;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council Acting in Its Capacity of Local Contract Review Board has been fully advised in the premises, has had the opportunity to be present at or review the matters of public record in this regard, has had the opportunity to review the request for proposals, the proposals, and the proposed DBO contract, and has been presented with staff reports and recommendations in regard to the

proposals, preferred proposer, and the DBO contract and alternative methods of financing.

2. The above recitals are incorporated as the Council/Board's findings as if fully set forth herein.
3. The City Manager is authorized, on behalf of the City of Wilsonville, to enter into the DBO contract, a copy of which is marked as **Exhibit A**, attached hereto, and incorporated by reference as if fully set forth herein, subject to the following contingencies:
 - 3.1. Review of CH2M's proposed corporate insurance policy coverage by the City Attorney's Office and the City's insurance consultant, Tom BeLusko Jr. of WSC Insurance, to ensure conformance with required endorsements, coverage requirements, and bonding capacity and surety ratings; and to determine acceptable conformance to the contract requirements or to negotiate satisfactory adjustment or additions thereto, as necessary to achieve contract conformance and reasonable risk mitigation, as a precondition to the City Manager's execution of the contract;
 - 3.2. Approval of the City Attorney's Office, as to final form of the contract, authorizing the City Attorney's Office to correct any scrivener's errors, make clarifying changes to the contract based on insurance review, correction of any discovered obvious errors in language, grammatical and other modifications that are not substantive in nature, and minor conforming changes between the appendices and the contract, should any inconsistencies or ambiguities be discovered prior to execution of the contract.

4. The City's Finance Director is directed to provide a Resolution to the City Council on July 18, 2011 authorizing Limited Tax General Obligation financing of the wastewater treatment plant project amount of \$46.8 million, together with \$6.5 million for the Frog Pond collection line and \$2 million for the Memorial Park Lift Station upgrade; and is directed to use the following funds to finance the wastewater treatment plant project and lower the total obligation amount to be financed: \$4 million from sewer operations, \$1 million from sewer

system development charges, \$2 million from urban renewal east side, and \$1 million from a general fund interfund loan to the sewer fund.

This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 7th day of July, 2011, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Núñez
Councilor Hurst
Councilor Goddard
Councilor Starr

Attachments: Exhibit A – DBO Contract