AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES
for the
CITY OF NEW BEDFORD
WASTEWATER TREATMENT FACILITY
between
PROFESSIONAL SERVICES GROUP, INC.
and
THE CITY OF NEW BEDFORD, MASSACHUSETTS

DATED AS OF JUNE 1, 1998
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AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES

THIS AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES (this “Agreement”) is made and entered into as of the 1st day of June, 1998, by and between PROFESSIONAL SERVICES GROUP, INC. (the “Company”), a Minnesota corporation, and the CITY OF NEW BEDFORD, MASSACHUSETTS (the “City”) a municipal corporation existing under the laws of The Commonwealth of Massachusetts (the “Commonwealth”). The City or the Company or both may be referred to herein as the “Party” or the “Parties”, as the context of the usage of such term may require.

RECITALS:

WHEREAS, the City owns and operates a Class VI secondary wastewater treatment facility located within the municipal boundaries of the City (as herein more particularly described, the “Wastewater Facility”);

WHEREAS, pursuant to Massachusetts General Laws Chapter 30B, the City issued a Request for Proposals in August, 1997 for the long-term operation, maintenance and management of the Wastewater Facility;

WHEREAS, the City issued Addenda numbered 1-5 to the Request for Proposals on September 16, 1997, October 9, 1997, October 17, 1997, November 4, 1997 and November 7, 1997 respectively (the “Addenda”);
WHEREAS, in response to the Request for Proposals (as amended by the Addenda, being the “RFP”) the Company submitted a proposal for the management, operation and maintenance of the Wastewater Facility;

WHEREAS, the City has selected the Company, pursuant to the RFP as amended by the Addenda, and the Company’s proposal, to operate, maintain and manage the Wastewater Facility, in accordance with the terms, conditions and provisions of this Agreement and in reliance on the Company’s skill, expertise and past successful experience in performing operations, maintenance and management of facilities comparable to the Wastewater Facility;

WHEREAS, Air & Water Technologies Corporation and Vivendi (0'k/a Compagnie Generale des Eaux) (the “Guarantors”) shall execute the Guarantees in the respective forms set forth in Schedules 3A and 3B guaranteeing the Company’s performance of its obligations under this Agreement, as required by the RFP;

WHEREAS, the City desires to employ the services of the Company for the operation, maintenance and management of the Wastewater Facility and the Company desires to perform such services for the compensation provided herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and the terms and conditions hereinafter set forth, the Company and the City do hereby agree as follows:
ARTICLE I

DOCUMENTS

Section 1.01 Schedules.

The following Schedules are attached hereto and made a part of this Agreement.

In the event of a conflict or inconsistency between or among the Schedules and the Agreement, it is agreed that the provisions of the Agreement control over the Schedules.

Schedule 1 - Performance Standards and Guarantees
Schedule 2 - Operation and Maintenance Standards
Schedule 3A - Form of Guarantee - Air & Water Technologies Corporation
Schedule 3B - Form of Guarantee - Vivendi
Schedule 4 - Insurance
Schedule 5 - Operation and Maintenance Fee
Schedule 6 - Permits
Schedule 7 - Maximum Utilities Utilization
Schedule 8 - Maximum Costs for Wastewater Sludge Disposal
Schedule 9 - Equipment and Chemicals Inventory
Schedule 10 - Pass Through Costs
Schedule 11 - Personnel
Schedule 12 - Cost Adjustment Methodology
Schedule 13 - Form of Performance Bond
Schedule 14 - Capital Improvements in Progress
Schedule 15 - Wastewater Facility Description (including site description)

This Agreement, together with the foregoing Schedules, constitutes the entire Agreement between the Company and the City with respect to the management, operations and maintenance of the Wastewater Facility and shall govern exclusively the obligations of the Parties.
ARTICLE II
DEFINITIONS; TERMS GENERALLY

Section 2.01 Terms Generally.

Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The words “agree”, “agreement”, “approval” and “consent” shall be followed by the phrase “which shall not be unreasonably withheld or unduly delayed” except as the context may otherwise require.

Section 2.02 Definitions.

For purposes of this Agreement, the following-words and phrases shall have the following respective interpretations and meanings:

“Affiliate” means the Guarantors and any corporation, partnership, joint venture or other entity controlled by, controlling or under common control with, directly or indirectly, the Guarantors, the Company or any one of such entities.

“Applicable Law” means any law, rule, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by any governmental body having jurisdiction, applicable from time to time to the siting, design, possession, testing, operation, maintenance or repair of the Wastewater Facility, the acceptance, treatment, storage or discharge of wastewater, the transfer or handling of Wastewater Sludge or any other transaction or matter contemplated hereby.

“Article” means an Article of this Agreement.
“Authorized Representative” means the Company’s or the City’s representative, as the case may be, and any successors thereto designated pursuant to Section 13.07.

“Billing Month” means each calendar month in each Billing Year, except that (a) the first Billing Month shall begin on the Commencement Date, and (b) the last Billing Month shall end concurrently with the expiration or termination of this Agreement.

“Billing Year” means each fiscal year of the City during the Term of this Agreement, except that (a) the first Billing Year shall begin on the Commencement Date and end on June 30, 1999 and (b) the last Billing Year shall end concurrently with the end of the Term or, as applicable, the date of termination, of this Agreement.

“Capital Expenditure” means any expenditure for (a) the repair, renewal or replacement of any piece of Equipment or component of any Equipment or any other component of the Wastewater Facility that is estimated by the Company to cost more than $10,000 or (b) any capital addition to or change in the Wastewater Facility which the City elects to fund or finance and undertake as a special project for the upgrading or improving of the Wastewater Facility.

“Change in Law” means (a) the enactment, adoption, promulgation, modification or repeal after the Contract Date of any federal, State, or local law, ordinance, code, rule, regulation or other similar legislation or the change in official interpretation after the Contract Date, of any federal, State, or local law, ordinance, code, rule, regulation, official permit, license or approval by any regulatory or judicial entity having jurisdiction with respect to the operation, maintenance or management of the Wastewater Facility, or (b) the imposition, after the Contract Date, of any material conditions on the issuance,
modification or renewal of any official permit, license or approval necessary for the operation, maintenance or management of the Wastewater Facility, which, in the case of either (a) or (b), necessitates a Capital Expenditure or modifies the Company's obligations under this Agreement with respect to the Wastewater Facility by establishing requirements for operation, maintenance or management of the Wastewater Facility which are more or less burdensome than the most stringent requirements:

(i) in effect on the Contract Date,

(ii) agreed to by the City in any applications for official permits, licenses or approvals for the Wastewater Facility, other than any requirements set forth in said applications to comply with future laws, ordinances, codes, rules, regulations or similar legislation; or

(iii) set forth in this Agreement or any Schedule hereto.

For purposes of part (a) of this definition, no enactment, adoption, promulgation or modification of laws, ordinances, codes, rules, regulations or similar requirement or enforcement policy with respect to any such requirement shall be considered a Change in Law if, as of the Contract Date, such law, ordinance, code, rule, regulation or similar requirement or enforcement policy would have directly affected the continued operation, maintenance and management of the Wastewater Facility by the City after the Commencement Date in the absence of this Agreement and such law, ordinance, code, rule, regulation or other similar requirement was officially proposed by the responsible agency and published in final form in the Federal Register or equivalent federal, State or local publication and thereafter becomes effective without further action. In no event shall a change in any federal, State or local tax law be considered a Change in Law.
“C.M.R.” means Code of Massachusetts Regulations, as in effect from time to time.

“City” means the City of New Bedford, Massachusetts.

“City Fault” means any breach (including the untruth or breach of any City representation or warranty herein set forth), failure, nonperformance, noncompliance or any negligent or willful misconduct by the City under this Agreement (whether or not attributable to any elected or appointed official, officer, member, agent, employee, contractor, subcontractor of any tier, or any independent contractor of the City) which is not directly attributable to any Uncontrollable Circumstance or Company Fault, and which materially and adversely affects the Company’s rights and obligations or ability to perform under this Agreement.

“Commencement Date” means July 1, 1998 or such other date on which the City gives the Company notice pursuant to Section 3.03 that the last to be satisfied or waived of the conditions precedent enumerated in Sections 3.01 and 3.02 has been satisfied or waived. On and after the Commencement Date, the Company shall commence and continue its operation, maintenance and management obligations under this Agreement.

“Commonwealth” means the Commonwealth of Massachusetts and all of its relevant administrative, contracting and regulatory agencies and offices.

“Company” means Professional Services Group, Inc., a Minnesota corporation.

“Company Fault” means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, nonperformance, noncompliance or any negligent or willful misconduct by the Company under this Agreement (whether or not attributable to any officer, member, agent, employee, contractor, Subcontractor of any tier, or
independent contractor of the Company or any Affiliate of the Company) which is not directly attributable to any Uncontrollable Circumstance or City Fault.

“Consent Decree” means the agreement entered into by the EPA, the Commonwealth of Massachusetts, the Conservation Law Foundation and the City on December 7, 1987, including amendments (1990 Modified Consent Decree and Second Modified Consent Decree (1992)).


“Contract Date” means the date first written above.

“Cost Substantiation” means, with respect to any additional or incremental cost or expense necessarily incurred by the Company and not otherwise reimbursed by the City hereunder, a certificate signed by the Company Authorized Representative stating the reason for incurring such cost, the amount of such cost, and the event or Section of this Agreement giving rise to the Company’s right to incur such cost, and that such cost is, at a maximum, the fair market value price for the service or materials supplied (it is understood by the Parties that such services or materials may be provided by an Affiliate and it being further understood by the Parties that the fair market value price for services or materials supplied may include a profit allowance for the Company of up to 10% of the total price for the services and/or materials). Any certification provided by the Company shall include copies of all invoices or charges, together with any additional documentation of such cost or expense incurred which are necessary, in accordance with generally accepted accounting practices and procedures, to verify
such cost and expense and to demonstrate the basis for the amount claimed. All costs to be
substantiated shall be subject to the review and conclusive approval of the City.

"Date of Operation and Maintenance Fee Escalation" has the meaning set forth in
Schedule 5 hereto.

"DEP" means the Massachusetts Department of Environmental Protection or any
successor thereto.

"Dispute Resolution Committee" has the meaning set forth in Section 8.01.

"Enhanced Wastewater Standards" means specific limits pertaining to the effluent quality
from the Wastewater Facility set forth in Schedule 1 hereto that may be more stringent than those
imposed by Applicable Law from time to time.

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

"Equipment" means equipment, including operating and processing equipment, tools and
Rolling Stock, owned by the City and in use as of the Contract Date or subsequently procured
and/or provided by the City pursuant to this Agreement for use at or associated with the
Wastewater Facility (specifically excluding equipment and tools owned by the Company and used
by the Company to perform its obligations under this Agreement), all as more particularly set
forth in Schedule 15 hereto.

"Event of Default" means any one or more of those events described in Article X.

"Guarantees" means the agreements between the Guarantors and the City in the forms set
forth in Schedules 3A and 3B hereto.

"Guarantors" means Air & Water Technologies Corporation and Vivendi (f/k/a
Compagnie Generale des Eaux).
"Independent Engineer" means a consulting engineering firm having a national reputation for expertise in the field of design, construction and operation of wastewater treatment facilities to be designated by the City subject to the approval of the Company.

"Insurance" means insurance in the types and amounts more particularly described in Article IX and Schedule 4 hereto.

"M.G.L.,” means Massachusetts General Law.

"MOU” means the Memorandum of Understanding between the City and the Massachusetts Division of Marine Fisheries, dated March 27, 1992, as amended.

"Monthly Operating Report” means the monthly report to be prepared by the Company and delivered to the City in accordance with Section 2.4.1 of Schedule 2.

"NPDES” means National Pollutant Discharge Elimination System.

"Operation and Maintenance Fee” has the meaning specified in Section 6.03 and Schedule 5 hereto.

"Operation and Maintenance Fee Escalator” has the meaning set forth in Schedule 5 hereto.

"Operation and Maintenance Plan” means the plan for operation, maintenance and management of the Wastewater Facility to be prepared by the Company and submitted to the City in accordance with Section 2.5 of Schedule 2 hereto.

"Pass Through Costs” means the component of the Service Fee calculated pursuant to Section 6.04 and Schedule 10 hereto.

"Performance Bond” means a Performance Bond in the form set forth in Schedule 13 hereto.
“Permits” means all federal, state and local approvals and permits required to be obtained and/or maintained from time to time in connection with operation of the Wastewater Facility including, without limitation, the approvals and permits listed in Schedule 6.

“Person” means any natural or artificial entity including an individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

“Procurement Cost Reimbursement” means the sum of $250,000, an amount intended to reflect, in part, the costs incurred by the City in connection with the procurement, execution and delivery of this Agreement.

“Rolling Stock” means vehicular Equipment included in the Wastewater Facility and more particularly described in Schedule 15 hereto.

“Section” means a Section of this Agreement.

“Service Fee” means the amount payable to the Company by the City for the services provided under this Agreement calculated in accordance with Article VI.

“Services” means the operation, maintenance and management of the Wastewater Facility in accordance with the terms and provisions of the Agreement.

“Subcontractor” means any Person engaged by the Company, subject to Section 13.04, to perform any portion of the services on behalf of the Company.

“Term” has the meaning set forth in Section 13.02.

“Termination Fee” has the meaning set forth in Section 11.03.
"Transition Plan" means the written plan for transition of operation, maintenance and management of the Wastewater Facility operations from the current operator to the Company, which shall be in form and substance satisfactory to the City.

"Uncontrollable Circumstance(s)" means any act, event or condition to the extent that it impacts the cost of performance of or materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition, in light of the circumstances known or reasonably believed to exist at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or a lack of reasonable diligence of either party.

(a) Inclusions. Subject to the foregoing, such acts, events, or conditions shall include, but shall not be limited to, the following

1. an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Wastewater Facility), landslide, earthquake, fire, explosion, flood, hurricane, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance
2. a Change in Law;
3. the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
(4) the preemption, confiscation, diversion, destruction, or other interference in the delivery or supply of materials or services by, on behalf of, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Wastewater Facility; and

(5) strikes, work stoppages or labor disputes involving employees of non-Affiliates

(b) Exclusions. None of the following acts, events, or conditions shall constitute Uncontrollable Circumstances

(1) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations

(2) changes in the financial condition of the City, the Company, the Guarantors, or any of their Affiliates or subcontractors

(3) union work rules which increase the Company’s operating costs

(4) any impact of prevailing wage laws on the Company’s costs

(5) the consequences of Company error, including any errors of Company affiliates or subcontractors;

(6) failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to

(7) strikes, work stoppages or labor disputes involving employees of the Company or any Affiliate

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(8) failure of Equipment or of equipment owned or leased by the Company (unless caused by an Uncontrollable Circumstance);

(9) litigation against the Company or any Affiliate.

"Wastewater Facility" means the certified Class VI New Bedford Wastewater Treatment Facility located off South Rodney French Boulevard, New Bedford, Massachusetts, including the site, Equipment and related Wastewater Sludge disposal storage facilities, the outfall discharge chamber, and all accessory or appurtenant fixtures, equipment, tools, and other property, all as more particularly described on Schedule 15 hereto.

"Wastewater Sludge" means any liquid, semisolid or solid material resulting from the treatment of raw and combined sewage at the Wastewater Facility and which requires disposal as waste material, but excluding grit and screenings.

ARTICLE III

CONDITIONS PRECEDENT TO THE COMMENCEMENT DATE

Section 3.01 Company Obligations.

The Commencement Date shall be subject to the satisfaction by the Company of the following conditions precedent:

(a) The Guarantors shall have executed and delivered the Guarantees to the City simultaneously with the execution of and delivery of this Agreement.

(b) The Company shall have paid the City the Procurement Cost Reimbursement by certified or bank check, or by wire transfer, or by other means acceptable to the City.

$750,000
(c) The Company shall have delivered to the City (i) a certificate of an authorized officer of the Company, dated as of the Commencement Date, to the effect that each of the representations of the Company set forth in Section 12.02 of this Agreement is true and correct in all material respects as if made on such date and an (ii) opinion of counsel to the Company, in customary form and reasonably acceptable to the City, to the effect set forth in Sections 12.02(a), (b), (d) and (e).

(d) The City shall have received the documentation more particularly described in Section 9.01 as evidence that all policies of insurance required to be obtained by the Company pursuant to this Agreement have been obtained.

(e) If so requested by the City, the Company shall have delivered to the City a Performance Bond duly executed by its issuer.

(f) The Company shall have delivered to the City, and the City shall have approved, the Transition Plan.

(g) The Company shall have recruited, retained and employed all management and other personnel necessary for its performance of the Services hereunder, which personnel shall be duly licensed as and to the extent required by Applicable Law, and shall have delivered to the City a roster of all such personnel together with copies of the licenses of all personnel required to be licensed.

(h) The Company shall have obtained and shall have submitted to the City copies of all governmental approvals required to be obtained by the Company by Applicable Law as a condition of performing the Services hereunder.
Section 3.02 City Obligations.

The Commencement Date shall be subject to the satisfaction by the City of the following conditions precedent:

(a) The City shall have delivered to the Company a certificate of an authorized official of the City, dated as of June 1, 1998, to the effect that each of the representations of the City set forth in Section 12.01 of this Agreement is true and correct in all material respects as if made on such date and an opinion of the City’s Corporation Counsel, in customary form and reasonably acceptable to the Company, to the effect set forth in Sections 12.01(a), (b), (c) and (d).

Section 3.03 Satisfaction of Conditions Precedent.

The Company and City shall satisfy the conditions precedent identified in Section 3.01 and Section 3.02 on or before June 1, 1998 and each Party shall give the other prompt notice when any condition precedent has been satisfied. Upon satisfaction of all such conditions precedent, the City shall give written notice to the Company and the Commencement Date shall occur on the later of (i) such date or (ii) July 1, 1998 so long as, as of such date:

(a) No action, suit, proceeding or official investigation shall have been overtly threatened or publicly announced or commenced by any Person or federal, State or local governmental authority or agency other than the City in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to the City or the Company as a result of the City’s or the Company’s negotiation, execution, delivery or performance of the Agreement, provided, however, that any such action,
suit, proceeding or investigation would, if adversely determined, materially adversely affect this Agreement or the performance by the Parties of their respective obligations hereunder; or

(b) No changes shall have occurred after the Contract Date and on or before the Commencement Date in any applicable federal, State or local rule, regulation or ordinance thereunder, or in the interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the City or the Company of this Agreement or that would make compliance by the City or the Company with the terms and conditions of this Agreement, a violation of such law, rule, regulation or ordinance.

If all such conditions precedent are not so satisfied or waived on or before June 1, 1998, or if any circumstances described in clauses (a) or (b) above, if any, exist and continue as of July 1, 1998, then either Party, by notice in writing to the other, may terminate this Agreement. If either Party shall give written termination notice to the other, neither Party shall be liable to the other for the termination of this Agreement, except on account of the failure of a party to satisfy its respective conditions precedent set forth in Section 3.01 or 3.02, respectively, and each Party shall bear its respective costs and expenses attributable to the transactions herein contemplated.

ARTICLE IV

MANAGEMENT OPERATIONS, MAINTENANCE AND MANAGEMENT

Section 4.01 Overall Company Responsibilities.

On and after the Commencement Date and throughout the term of this Agreement:
(a) The Company shall operate, maintain and manage the Wastewater Facility to process domestic raw sewage, commercial and industrial wastewater, and any other influent delivered or caused to be delivered to the Wastewater Facility by the City, all in accordance with this Agreement (including, without limitation, the requirements set forth in the Schedules hereto) and Applicable Law.

(b) Except for Equipment, and other facilities and materials included in the Wastewater Facility as of the Commencement Date, and except for Capital Expenditures, the Company shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment (i.e. copiers, computers, etc.) fuel, chemicals, supplies, spare parts, expendables, consumables, testing and laboratory analysis and any other items required for operation, maintenance repair, replacement, renewal and management of the Wastewater Facility in accordance with this Agreement.

Section 4.02 Overall City Responsibilities.

On and after the Commencement Date and during the term of this Agreement:

(a) The City shall pay, or cause to be paid, the Service Fee to the Company in accordance with the terms and conditions of this Agreement for the Company's performance of its obligations under this Agreement.

(b) As between the Company and the City, the City shall procure and implement, or cause to be implemented, subject to the terms of this Agreement, all Capital Expenditures in accordance with Article V hereof.

(c) The City shall afford Company access to the Wastewater Facility to the extent necessary for the Company to perform its obligations hereunder.
(d) The City shall retain responsibility for the operation and maintenance of its wastewater collection system, the setting of rates and charges to system users, and the billing and collection of fees and charges therefrom. The City shall retain responsibility for its Industrial Pretreatment Program.

(e) The City shall make available to the Company Equipment warranty information, engineering drawings, calculations, maintenance manuals, operational records, logs, reports, submittals, repair records, audits, and sludge disposal and wastewater disposal information which may be in the City’s possession or that of its agents, relating to the design, condition, operation or maintenance of the Wastewater Facility from time to time.

(f) The City shall be responsible, at its cost, but subject to Section 6.04(d) for the disposal of Wastewater Sludge, grit and screenings and solid waste generated by the Wastewater Facility so long as such materials are made available to the City or its designated contractor(s) in the manner specified in Schedule 2 hereto.

(g) The City shall provide for maintenance and repair of all landscaping and roadways within the Wastewater Facility site and the snow plowing of Wastewater Facility roadways, access roadways and parking areas in the event that snow levels thereon exceed four (4) inches.

Section 4.03 Permits.

As between the Company and the City, the respective responsibilities with respect to Wastewater Facility Permits and other Permits required by the Company in order to perform the Services hereunder shall be as set forth in Schedule 6 hereto.
Section 4.04  Company Project Manager.

The Company has designated James P. Galipeau as the Company’s full-time Project Manager and such Project Manager, and any City-approved successor, shall, within ninety (90) days after the Commencement Date, reside either within the City or within fifty (50) miles of the Wastewater Facility. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Project Manager. Accordingly, the Company shall not, absent good cause, replace such Project Manager during the term of this Agreement, without the prior approval of the City. If such Project Manager or any City-approved successor shall retire, resign as Project Manager, request assignment to another location, or cease employment with the Company, the Company shall not appoint a successor Project Manager without the prior written approval of the City. If the City, in its sole discretion, determines that the Project Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Project Manager and the City shall arise, the Company, upon notice by the City of such circumstance, shall promptly replace such Project Manager with a successor acceptable to the City; provided, however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify to its satisfaction the adverse circumstance regarding the Project Manager.

Section 4.05  Liquidated Damages.

As set forth in Section 4.01 and Schedules 1 and 2 hereto, the Company is required to satisfy the requirements of Applicable Law and the Enhanced Wastewater Standards with respect to the quality of treated effluent discharged from the Wastewater Facility. Failure to satisfy such
requirements, or failure to operate the Wastewater Facility in such a manner as to minimize
public complaints concerning noise and/or odor emanating from the Wastewater Facility, may, at
the election of the City, result in the imposition on the Company of liquidated damages in the
manner, and in the amounts set forth in this Section 4.05.

(a) If the Wastewater Facility satisfies the treated effluent standards imposed by
Applicable Law but fails to satisfy any one or more of the Enhanced Wastewater Standards;

(1) the Company shall provide a plan to the City outlining corrective actions
for achieving compliance with the Enhanced Wastewater Standards within five (5) days after
written notice of noncompliance given by the City.

(2) the City will review and provide written comments on the plan within
forty eight (48) hours after receipt; and

(3) The Company shall immediately implement the plan, which shall address
the City's comments.

Failure to either provide a plan and/or implement the corrective actions set forth in the plan shall
result in Company liability for liquidated damages in the amount of $5,000 per day from such
time that either (i) the plan should have been submitted, or (ii) the date on which corrective
actions should have commenced pursuant to the plan. Neither the review of or comment on, nor
the failure of the City to comment on, any corrective action plan proposed by the Company, shall
relieve the Company of any of its responsibilities under this Agreement or be deemed to
constitute a representation by the City that the corrective actions proposed in any such plan will
cause the Wastewater Facility to be in compliance with the Enhanced Wastewater Standards, or
otherwise impose any liability on the City.
(b) If the Wastewater Facility fails to satisfy any provision of Applicable Law with respect to the quality of treated effluent, the Company shall be required to take the same measures set forth in Section 4.05(a) above in order to develop and implement a corrective action plan to cause the Wastewater Facility to be in compliance with Applicable Law. Failure to either provide a plan and/or implement the corrective actions set forth in the plan shall result in Company liability for liquidated damages in the amount of $5,000 per day from such time that either (i) the plan should have been submitted, or (ii) the date on which corrective actions should have commenced pursuant to the plan. In addition, the Company shall be responsible for payment of any fines or damages imposed on either the City or the Company by any regulatory or other governmental agency or an account of any other third party claim as a result of any non-compliance with Applicable Law. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement or be deemed to constitute a representation by the City that the corrective actions proposed in any such plan will cause the Wastewater Facility to be in compliance with Applicable Law, or otherwise impose any liability on the City.

(c) If during any Billing Year the Company and/or the City receive complaints of five (5) or more incidents concerning odor allegedly emanating from the Facility and, after investigation by the City in cooperation with the Company, such complaints are determined by the City to be substantiated and legitimate complaints concerning odor emanating from the Wastewater Facility, the Company shall be required to take the same measures set forth in Section 4.05(a) above in order to develop and implement a corrective action plan to abate any
such odor conditions and the Company shall be liable to the City for liquidated damages in the
same manner and in the same amounts as would be required in case of Company failure to
achieve an Enhanced Wastewater Standard. Neither the review of or comment on, nor the failure
of the City to comment on, any corrective action plan proposed by the Company, shall relieve the
Company of any of its responsibilities under this Agreement, be deemed to constitute a
representation by the City that the corrective actions proposed in any such plan will be sufficient
to abate any odor emanating from the Wastewater Facility or otherwise impose any liability on
the City.

(d) If during any Billing Year the Company and/or the City receives complaints of
five (5) or more incidents concerning noise allegedly emanating from the Wastewater Facility in
excess of normal operating levels, and, after investigation by the City in cooperation with the
Company, such complaints are determined by the City to be substantiated and legitimate
complaints concerning noise emanating from the Wastewater Facility in excess of normal
operating levels, the Company shall be required to take the same measures set forth in Section
4.05(a) above in order to develop and implement a corrective action plan to abate any such noise
conditions in excess of normal operating levels and the Company shall be liable to the City for
liquidated damages in the same manner and in the same amounts as would be required in case of
Company failure to achieve an Enhanced Wastewater Standard. Neither the review of or
comment on, nor the failure of the City to comment on, any corrective action plan proposed by
the Company, shall relieve the Company of any of its responsibilities under this Agreement or be
deemed to constitute a representation by the City that the corrective actions proposed in any such
plan will be sufficient to abate any noise in excess of normal operating levels emanating from the Wastewater Facility or otherwise impose any liability on the City.

(e) Liquidated damages, if any, payable by the Company pursuant to Sections 4.05(a), (b), (c) and (d) shall be cumulative, and not mutually exclusive, and, in addition, are supplemental to, and shall not diminish in any manner, the rights and remedies of the City under Articles X and XI hereof.

Section 4.06 Uncontrollable Circumstances: Company Fault.

(a) Except for payment obligations, and except for obligations of the Parties which by the specific terms of this Agreement are obligations incurred in response to Uncontrollable Circumstances, each Party shall be excused, subject to this Section 4.06, for failure or delay in performance by reason of any Uncontrollable Circumstance.

(b) If either Party shall rely on the occurrence of an act, event or condition as an Uncontrollable Circumstance as the basis for not performing its obligations under this Agreement, then the Party relying on such act, event or condition shall (i) provide prompt notice to the other Party of the occurrence of the act, event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder, (ii) exercise all reasonable efforts to continue to perform its obligations hereunder to the maximum extent possible, (iii) in accordance with this Agreement, expeditiously take action to correct or cure the act, event or condition preventing performance, (iv) exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests and (v) provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to its inability to perform.
(c) If, due to Company Fault, the Wastewater Facility shall be damaged to the extent of preventing Company performance in accordance with this Agreement, the Company shall comply with Section 4.06(b) (i) through (v) above. In the case of Company Fault, as between the Company and the City, the Company, notwithstanding any other provision in this Agreement, shall be responsible for promptly restoring or repairing the Wastewater Facility at its cost and expense. In connection with any such efforts, the Company shall be entitled to utilize the proceeds of property insurance coverages, if any, maintained by the City on the Wastewater Facility, and rights of recovery on claims with respect to such coverages, if any, shall not be impaired by operation of this subsection (c). The Company hereby acknowledges that the City does not presently maintain any property damage or loss insurance on the Wastewater Facility and further agrees and acknowledges that the City has no obligation to the Company to obtain or maintain any such insurance coverage. The City hereby acknowledges that the Company does not presently maintain any property damage insurance on the Wastewater Facility. The Company shall have no responsibility to restore or repair damage to the Wastewater Facility not due to Company Fault.

ARTICLE V
CAPITAL EXPENDITURES AND COST SAVINGS

Section 5.01. Capital Expenditures in Progress.

As of the Contract Date, the City is undertaking, or intends to undertake and complete, the Capital Expenditures more particularly described in Schedule 14 hereto. The City shall complete such Capital Expenditures at no cost to the Company and the Company shall cooperate with the City and its contractors so that such Capital Expenditures can be completed in a timely
manner; provided, however, that neither the City nor any such other City contractors shall unreasonably interfere with or impede the Company in performing its obligations hereunder. The Company's obligation to operate, maintain and manage the Wastewater Facility shall include the obligation to operate, maintain and manage the Wastewater Facility as it is modified by the Capital Expenditures described in Schedule 14 hereto. The Service Fee shall not be subject to adjustment on account of the undertaking or completion of the Capital Expenditures described in Schedule 14 hereto, provided that such Capital Expenditures are completed in accordance with their respective plans and specifications. The City shall provide to the Company copies of all operating manuals, maintenance manuals and equipment specifications required to be delivered to the City in connection with the implementation of any such Capital Expenditures and copies of "as built" drawings relating to any such Capital Expenditures.

Section 5.02 Capital Expenditures Report.

Within ninety (90) days after the Commencement Date, the Company shall conduct a physical audit of the Wastewater Facility and provide the City with a reasonably detailed report recommending, on a priority basis, Capital Expenditures and other services, if any, that the City should consider undertaking relative to preserving or upgrading of the Wastewater Facility to facilitate compliance with Applicable Law, including Applicable Law relating to safety. The Company shall update such information annually by conducting such an audit and preparing and filing such a report with the City within one hundred eighty (180) days after the close of each Billing Year during the Term of this Agreement. Notwithstanding anything in this Section 5.02 to the contrary, the City may at any time perform or contract for the performance by an
independent third party, of a Wastewater Facility Capital Expenditures audit. A copy of any such audit and report shall be provided to the Company.

Section 5.03 Elective Capital Expenditures.

The City may from time to time, upon the recommendation of the Company or otherwise, elect to make Capital Expenditures relating to the Wastewater Facility. The City shall be responsible for all planning, design and construction of any such Capital Expenditures and shall bear the entire financial responsibility therefor without contribution from the Company. The Company shall cooperate with the City in connection with any such Capital Expenditures implementation; provided, however, that any such implementation shall not unreasonably interfere with or impede the Company in the performance of its obligations hereunder. Further, no such Capital Expenditures shall alter or modify the scope of Services to be provided by the Company hereunder absent a corresponding adjustment to the Operation and Maintenance Fee pursuant to Section 6.02(d).

Section 5.04 Non-Elective Capital Expenditures.

(a) Except as provided in Section 5.04(b) and (c), the City shall be responsible for any Equipment or other component of the Wastewater Facility to the extent that any such repair, renewal or replacement requires a Capital Expenditure. The Company, in connection with its performance of the Services, shall advise the City from time to time as to any such repair, renewal or replacement that may be, or may become, necessary, in order to afford the City as much time as possible to arrange for the procurement of equipment, materials and services necessary to effect any such Capital Expenditure. Subject to the provisions of applicable public procurement law, the City may, but is not obligated, to engage the Company to effect any such
Capital Expenditure. The Company shall cooperate with the City in connection with any such Capital Expenditure implementation. To the extent that the City’s implementation of any Capital Expenditure pursuant to this Section 5.04, or the City’s failure to implement any Capital Expenditure pursuant to this Section prevents or unreasonably impedes or interferes with the Company’s performance of its obligations hereunder, such prevention, impediment or interference, as the case may be, shall constitute City Fault and the Company shall comply with the Section 4.06(b)(i) through (v) until such condition is abated.

(b) Notwithstanding Section 5.04(a) to the contrary, the first $10,000 (which amount shall be adjusted annually in accordance with the methodology set forth in Section 5.2 of Schedule 5) of costs incurred by the City for each Capital Expenditure described by clause (a) of the definition of Capital Expenditure set forth in Section 2.02, shall reduce by the amount of cost incurred by the City, not to exceed $10,000, the amount established by Section 6.07(a) from time to time as a basis for calculating a special annual payment by the Company to the City.

(c) Notwithstanding Section 5.04(a) to the contrary, the Company shall reimburse the City for all costs and expenses incurred by the City in connection with any Capital Expenditure, resulting from or necessitated by failure of the Company to perform predictive, preventative or corrective maintenance or repairs in accordance with its obligations hereunder. If the City has reason to believe that any such failure has occurred, the Company shall provide to the City access to the Company’s maintenance and/or repair records for the purpose of review the circumstances giving rise to the need for a Capital Expenditure. In connection with any such review, the Company shall have an opportunity to bring to the attention of the City factors, if
any, other than maintenance or repair related factors, that may have caused or contributed to such circumstances.

Section 5.05 Cost Savings.

The Company shall actively pursue improvements in the effectiveness and efficiency of Wastewater Facility operations and maintenance that may reduce the Operation and Maintenance Fee or Pass Through Costs. The Company shall prepare and file an annual report with the City within one hundred eighty (180) days after the close of each Billing Year after during the Term of this Agreement as to the steps it proposes to give effect to this Section 5.05. If the City approves any such proposal, and if implementation of any such proposal results in net savings to the City after taking into account any (i) decreases to the Operation and Maintenance Fee agreed to by the City and the Company subject to Section 6.02(e), (ii) any decreases in Pass Through Costs and (iii) any cost to the City associated with the implementation of any such proposal, the City shall, subject to Section 6.02(e), pay the Company an amount equal to forty percent (40%) of the aggregate net savings, if any, to the City resulting from the implementation of any such proposal. Such payment shall be consistent with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13, shall be made either in a lump sum, or in a series of installments over the then remaining Term of this Agreement, as elected by the City, and shall reflect the then present value (calculated on the basis of an annual discount rate equal to the City’s then current annual interest rate for borrowing capital funds) of the aggregate net savings, or portion thereof, as of the time of any such lump sum payment or installment.
ARTICLE VI
PAYMENTS

Section 6.01 Service Fee.

Commencing with the first Billing Month and for each Billing Month thereafter, the City shall pay to the Company a Service Fee for managing, operating and maintaining the Wastewater Facility pursuant to the terms and conditions of this Agreement. The Service Fee shall be computed in accordance with the following formula:

\[ SF = O&M + PT \pm MA. \]

where:

- \( SF \) = Service Fee
- \( O&M \) = Operation and Maintenance Fee
- \( PT \) = Pass Through Costs
- \( MA \) = Miscellaneous Adjustments

Section 6.02 Operation and Maintenance Fee.

(a) For any Billing Month, the Operation and Maintenance Fee shall be the amount set forth in Schedule 5.1, as adjusted on a pro rata daily basis for a short Billing Month, in the first and last Billing Years, and as further adjusted pursuant to this Section 6.02.

(b) The Operation and Maintenance Fee shall be adjusted from time to time in accordance with the provisions of Schedule 5.
Section 6.03 Pass Through Costs.

Pass Through Costs for any Billing Month shall be the sum of the costs and expenses set forth in Schedule 10 hereto which were incurred by the Company during such Billing Month, to the extent of Cost Substantiation, exclusive of profit to the Company or any Company Affiliate.

Section 6.04 Miscellaneous Adjustments.

The Miscellaneous Adjustments (MA) component of the Service Fee for any particular Billing Month shall be an amount equal to the sum of the amounts determined in accordance with this Section 6.04.

(a) The amount determined in accordance with the methodology set forth in Schedule 12 hereto in the event that the actual influent flow rates, or biological loadings of influent, depart from the baseline parameters set forth in Schedule 1 hereto.

(b) A negative amount equal to the amount of liquidated damages, if any, payable by the Company in respect of such Billing Month pursuant to Section 4.05.

(c) A negative amount equal to the cost, as estimated by the City, for any particular Billing Month of performing any required predictive or preventative maintenance specified in Schedule 2 hereto that the Company fails to perform.

(d) A negative amount equal to the amount, if any, expended by the City during such Billing Month for repair, renewal or replacement Capital Expenditures pursuant to Section 5.04(c) hereof and Section 2.4.5 of Schedule 2 hereto.

(e) A positive or negative amount as may be appropriate as a result of Capital Expenditures that may be made to the Wastewater Facility. However, no such amount shall constitute a Miscellaneous Adjustment component unless (i) agreed to by the Parties and (ii)
unless the City determines that inclusion of such amount as a Miscellaneous Adjustment component will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13.

(f) A negative amount, if any, equal to the amount that the City's aggregate cost for transportation and disposal of Wastewater Sludge exceeds the applicable budgeted amount for Wastewater Sludge transportation and disposal set forth in Schedule 8 hereto.

(g) A positive or negative amount, subject to Cost Substantiation, to reflect any increased or decreased costs incurred by the Company (net of any available insurance proceeds), in connection with its performance of the Services as a result of any Uncontrollable Circumstance; provided, however, that no such amount shall constitute a Miscellaneous Adjustment component unless the City determines that inclusion of such amount as a Miscellaneous Adjustment component will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and other official interpretation issued thereunder, including, without limitation, Revenue Procedure 97-13.

(h) A negative amount, determined in accordance with the agreement of the Parties to reflect any reduction in costs incurred by the Company as a result of the implementation of any operation and maintenance improvement proposed by the Company and approved by the City pursuant to Section 5.05. However, no such amount shall constitute a Miscellaneous Adjustment component unless (i) agreed to by the Parties and (ii) unless the City determines that inclusion of
such amount as a Miscellaneous Adjustment component any such reduction will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13.

(i) A negative amount equal to the amount, if any, determined to be payable by the Company to the City from time to time pursuant to the Addendum to Schedule 2 hereto.

Section 6.05 Billing and Payment of Company’s Invoices.

(a) The Company shall submit its invoice to the City for each preceding Billing Month no later than the tenth (10th) day after the close of each Billing Month. Each element necessary to calculate the Service Fee payment due to the Company shall be reflected in said invoice.

(b) The City shall pay the Company the Service Fee within thirty (30) days after the date of receipt by the City of a complete invoice for any Billing Month. If the City disputes any portion of a complete invoice, the City shall pay the undisputed amount and the dispute relating to the balance shall be resolved in accordance with Article VIII.

Section 6.06 Information, Data and Reports.

Together with the invoice to be submitted by the Company to the City pursuant to Section 6.05(a), the Company shall deliver to the City the Monthly Operating Report for the preceding Billing Month.
Section 6.07 Additional Payment Provisions.

(a) Within thirty (30) days following the end of any Billing Year, the Company shall pay the City sixty percent (60%) of the amount, if any, that Company costs and expenses for repair, renewal and replacement of equipment or other Wastewater Facility components not constituting Capital Expenditures were less than $250,000 (which amount shall be adjusted annually in accordance with the methodology set forth in Section 5.2 of Schedule 5) during such Billing Year (or a prorated portion of said amount if such Billing Year had less than twelve full calendar months). The foregoing costs and expenses shall be subject to Cost Substantiation and shall not include the cost of any Company or Company-affiliate labor.

(b) The City shall have the right to equitably adjust the Service Fee payment formula over the course of the Term, as necessary, to comply with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13. Any such adjustments shall be such that the fixed and variable components of the Service Fee are within the specified percentages allowed by the private activity limitations described in Section 141 of the Internal Revenue Code and regulations issued thereunder. Adjustments shall not entitle the Company to additional compensation, nor shall any adjustment reduce the aggregate compensation payable to the Company under this Agreement absent the consent of the Company. Should such adjustments not be possible so that continued compliance with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations issued thereunder is not possible, the City reserves the right to terminate this Agreement upon thirty
(30) days notice to the Company. Any such termination shall be deemed to be a Termination for Convenience pursuant to and governed by Section 11.03 hereof.

(c) The Service Fee may be otherwise adjusted by the Parties subject to (i) mutual agreement as to the amount and/or methodology and (ii) determination by the City that any such adjustment will not contravene the Applicable Law (including, without limitation, any law relating to procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13.

ARTICLE VII

INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 7.01 Indemnification.

To the fullest extent permitted by applicable law, the Company shall protect, defend, indemnify and save the City and its agents, officials, employees, servants and consultants, including contractors or subcontractors with whom the City may have contracted, harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, environmental pollution, judgments losses, costs, expenses, suits, actions, and causes of action of every kind and character, for claims based on negligence, willful misconduct, or omissions of the Company which may arise in favor of any third party on account of illness, disease, loss of property, services, wages, death or personal injuries resulting from the Company’s performance or non-performance of its obligations or operations under this Agreement, except to the extent any such damages arise out of injuries or property claims of third parties caused by the negligence or willful misconduct of the City, or its officials, directors,
employees or agents. Further, the Company hereby agrees to indemnify the City for all reasonable expenses, court costs and attorney’s fees including those incident to appeals incurred by or imposed upon the City in connection therewith for any loss, damage, injury or other casualty. The Company additionally agrees that the Company may, subject to the approval of the City, designate an attorney of the Company’s selection to appear and defend any such action, on behalf of the City, at the expense of the Company. The Company further agrees to pay all reasonable expenses and attorney’s fees incurred by the City in establishing the right to indemnity hereunder.

Section 7.02 Waiver.

The Company and the City hereby waive any and every claim arising pursuant to this Agreement for recovery from the other for any and all loss or damage to the other resulting from the performance of this Agreement, which loss or damage is covered by collected insurance policy proceeds and will require their respective insurers to waive all rights of recovery and subrogation against the City or the Company as the case may be.

Section 7.03 Limitation of Liability.

THE COMPANY AND THE CITY ACKNOWLEDGE AND AGREE THAT BECAUSE OF THE UNIQUE NATURE OF THE UNDERTAKINGS CONTEMPLATED BY THIS AGREEMENT, IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY THE CITY OR THE COMPANY AS A RESULT OF A BREACH OF THIS AGREEMENT BY THE CITY OR THE COMPANY. HOWEVER, IN NO EVENT, BECAUSE OF A BREACH OF THIS AGREEMENT OR ANY OTHER CAUSE, WHETHER BASED UPON
CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY,
DELAY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR
NONPERFORMANCE BY THE CITY OR THE COMPANY OF THEIR OBLIGATIONS
UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, SUITS BY THIRD
PERSONS, SHALL THE CITY OR THE COMPANY BE LIABLE FOR OR OBLIGATED IN
ANY MANNER, TO PAY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR
INDIRECT DAMAGES OF ANY NATURE INCURRED BY IT WHETHER OCCURRING
DURING OR SUBSEQUENT TO THE PERFORMANCE OF THIS AGREEMENT.

Section 7.04 Survival.

This Article VII shall survive the termination of this Agreement.

ARTICLE VIII

DISPUTE RESOLUTION

Section 8.01 Scope.

To facilitate the timely and effective resolution of any controversy claim or dispute that
may arise under this Agreement (each, a “Dispute”), the Parties shall establish, within thirty (30)
days after the Commencement Date, a Dispute Resolution Committee consisting of two senior
management representatives of each of the Company and the City; provided, however, that no
such representatives may be directly involved in the performance of City or Company
obligations, respectively, under this Agreement. Written notice of the appointment of such
representatives shall be delivered by each Party to the other not later than sixty (60) days after the
Commencement Date. The appointed representatives are subject to change, and written notice of
any such change by each Party shall be delivered to the other Party.

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The Dispute Resolution Committee shall meet as often as the circumstances may deem necessary, to resolve any Dispute. To the extent the Dispute Resolution Committee cannot, after good faith attempts, resolve any Dispute, either Party to the extent its interests are adversely impacted, may refer the matter to non-binding mediation to be conducted in the Commonwealth under the auspices of a firm or individual specializing in the mediation of contractual disputes. Each party shall bear one-half the costs and expenses of the mediation, but shall bear its own costs and expenses of representation in the mediation. If, despite the good faith efforts of the parties to resolve a Dispute, mediation does not conclude with a resolution of the Dispute, either Party may refer the Dispute to a court in the Commonwealth possessing competent jurisdiction, including, without limitation, the Federal District Court for the District of Massachusetts.

Section 8.02 Covenant to Perform.

The Parties shall continue to perform under this Agreement, without interruption or slowdown, pending resolution of any Dispute.

Section 8.03 Survival.

This Article VIII shall survive termination of this Agreement.

ARTICLE IX

INSURANCE AND PERFORMANCE BOND

Section 9.01 Insurance Coverages Certificates; Premium Payments.

Prior to the Commencement Date, the Company shall secure and continuously maintain through the term of this Agreement the insurance specified in Schedule 4 to protect the Company and the City from claims of the Company’s employees under Workers’ Compensation Acts and from claims for bodily injury, death or property damage which may arise out of or result from the
Company’s obligations and operations under this Agreement or anyone directly or indirectly employed by it for whose acts or omissions it may be liable. The City shall not establish and give any notice to the Company of the Commencement Date unless and until the Company shall have provided the City proof (including copies of policies if requested by the City) that the insurance coverages listed in Schedule 4 and required to be secured by the Company have been secured and will be in full force and effect on the Commencement Date. Certificates of insurance and copies of policies (if requested by the City), shall (i) be furnished to the City prior to the Commencement Date, (ii) be in a form and coverage satisfactory to the City, (iii) list the various coverages, and (iv) contain the statement requiring sixty (60) days prior written notice of cancellation, non-renewal or material change in the policies given to the City by registered mail, return receipt requested. All such notices shall name the City and identify this Agreement.

Section 9.02 Company Obligations and Policy Requirements.

(a) The Company’s insurers shall have no right of recovery or subrogation against the City or the Company, it being the intention of the Parties that any insurance policy so affected shall protect both Parties and be the primary coverage, to the extent of the Company’s obligations of indemnity herein, for any and all losses covered by the insurance listed in Schedule 4 hereto.

(b) The City shall be named as an additional named insured, to the extent of coverage afforded the Company, in all policies of insurance listed in Schedule 4 hereto, excepting workers’ compensation and employer’s liability coverages maintained by the Company.

(c) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums or for assessments under any form of policy.
(d) The Company shall assume and shall be solely responsible for the satisfaction of any and all deductibles and self insured retentions contained in its insurance coverages as well as any excluded loss or losses.

(e) All insurance required to be secured and maintained under this Agreement shall be procured from insurance companies authorized to do business in the Commonwealth, and all such insurers shall having a rating of at least A XII in the latest edition of Alfred M. Best’s Insurance Reports.

(f) If, at any time during the term of this Agreement, any policy listed in Schedule 4 hereto shall be or becomes unsatisfactory to the City as to form or substance or if an insurance company issuing any policy listed in Schedule 4 shall be or become unsatisfactory to the City, the Company, upon notice thereof from the City, shall immediately obtain a new and substitute policy, submit the same to the City for approval, and submit a certificate and copy of the policy, if requested, to the City as provided in Section 9.01.

(g) Failure of the Company to secure and/or maintain the insurance listed in Schedule 4 hereto shall not relieve it from any liability under this Agreement, nor shall the insurance requirements herein be construed or interpreted as conflicting with the indemnification obligations of the Company pursuant to Article VII.

(h) The Company’s obligation to secure, deliver and maintain the insurance policies and coverages specified in this Agreement shall be considered as “material” for purposes of Section 10.01.
Section 9.03 **Performance Bond.**

The Company shall provide to the City, not later than thirty (30) days after the execution of and delivery of this Agreement, a Performance Bond issued by a surety reasonably acceptable to the City. The Performance Bond shall be in an amount equal to 100% of the Service Fee for the previous Billing Year, or in respect of the first Billing Year, 100% of the Service Fee for the first Billing Year estimated by the City. The Performance Bond shall be continuously renewed, extended or replaced for as long as required by the City, any such renewal, extension or replacement to be effective not later than sixty (60) days prior to expiration of the then-effective Performance Bond.

**ARTICLE X**

**EVENTS OF DEFAULT**

Section 10.01 **Damages as Ordinary Remedy.**

The Parties agree, except as otherwise specifically provided for in this Agreement, that (1) neither Party shall have the right to terminate this Agreement, and (2) in the event that either Party breaches any obligation under this Agreement, or in the event any representation made by either Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages or the performance of any obligation hereunder, and that such right to recover damages or to secure the performance of such obligations as provided herein shall ordinarily constitute an adequate remedy for any breach of such obligation or any material untruth in any such representation.
Section 10.02 Events of Default by Company.

The following shall constitute Events of Default by the Company:

(a) persistent and repeated failure or refusal of the Company to perform timely any material obligation under this Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of this Agreement, provided, however, that insofar as any such failure or refusal relates to payment obligations of the Company, Section 10.02(c) shall govern; and provided further that failure by the Company to operate the Wastewater Facility in accordance with Applicable Law for more than ten (10) cumulative days in any Billing Year shall, ipso facto, constitute persistent and repeated failure or refusal;

(b) failure of the Company to pay any amount owed to the City under this Agreement within forty-five (45) days following the date any such amount has become due and payable;

(c) (i) the Company’s or any Guarantor’s being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Company or any Guarantor under the laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer by the Company or any Guarantor approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the Company or any Guarantor which shall substantially interfere with its performance hereunder;

(d) default of any Guarantor under its respective Guarantee;
(e) any failure by the Company to provide or renew the Performance Bond in accordance with the requirements of Section 9.03; or

(f) the Company’s abandonment or failure to operate the Wastewater Facility for more than one (1) day in any Billing Year.

Section 10.03 Events of Default by City.

The following shall constitute Events of Default on the part of the City:

(a) persistent and repeated failure or refusal of the City to perform timely any material obligation under this Agreement; provided, however, that insofar as any such failure or refusal relates to payment obligations of the City, Section 10.03 (b) shall govern;

(b) failure of the City to pay amounts owed to the Company under this Agreement within forty-five (45) days following the date any such amount has become due and payable; or

(c) (i) the City’s being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the City under the laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer by the City approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the City which shall substantially interfere with its performance hereunder.
Section 10.04 Default Notices.

Neither Party may exercise its termination rights pursuant to Sections 11.01 or 11.02, as applicable, on account of an Event of Default described in Section 10.02(a) or (b) or 10.03(a) or (b), respectively, unless and until such Party shall have given the other party written notice of its failure or refusal to perform. If an Event of Default specified in a required notice of default is cured within thirty (30) days after such notice or if such Event of Default cannot be cured within thirty (30) days through the exercise of due diligence but expeditious and substantive steps are taken within said thirty (30) day period to commence to cure the Event of Default and thereafter complete the cure pursuant with due diligence to completion, there shall be no right of termination with respect to such Event of Default under Section 11.01 or 11.02, as the case may be. Events of Default other than those described in Sections 10.02(a) or (b) and 10.03(a), shall not require any notice as a prerequisite to termination under Section 11.01 or 11.02, respectively.

ARTICLE XI

TERMINATION

Section 11.01 City Termination for Event of Default by Company.

(a) If the City shall have given the Company notice that an Event of Default has occurred pursuant to Section 10.02(a) or (b) and such Event of Default is not cured by the Company in accordance with Section 10.04 of this Agreement, the City may terminate this Agreement upon thirty (30) days prior notice to the Company.

(b) If an Event of Default has occurred pursuant to Section 10.02(c), (d), (e) or (f) the City may terminate this Agreement forthwith and, except as provided in Section 11.06, shall have no further monetary obligations to the Company.
(c) Termination by the City pursuant to this Section 11.01 shall not preclude the City from seeking recourse, subject to Section 7.03, for damages or any other relief available to it at law or in equity.

Section 11.02 Company Termination for Event of Default by City.

(a) If an Event of Default has occurred pursuant to Section 10.03(c), the Company may terminate this Agreement forthwith.

(b) If the Company shall have given the City notice that an Event of Default has occurred pursuant to Section 10.03 (a) or (b) and such Event of Default is not cured by the Company in accordance with Section 10.04 of this Agreement, the Company may terminate this Agreement upon ninety (90) days prior notice to the City.

(c) Termination by the Company pursuant to this Section 11.02 shall not preclude the Company from seeking recourse, subject to Section 7.03, for damages or any other form of relief available to it at law or in equity.

Section 11.03 Termination for Convenience.

The City shall have the right to terminate the Agreement, at its sole discretion, for its convenience and without cause (including, without limitation, on account of the City’s failure to appropriate funds to support the City’s payment obligations hereunder after the close of the first fiscal year of the City during the Term or on account of circumstances specified in Section 6.04(e)) at any time after the execution of this Agreement upon ninety (90) days’ written notice to the Company. If the City exercises its right to terminate the Agreement pursuant to this Section 11.03, the City shall, unless prohibited by Applicable Law, pay the Company a Termination Fee in addition to amounts, if any, due to the Company pursuant to Section 11.06.
The Termination Fee shall be $304,553 if termination pursuant to this Section 11.03 occurs within the first year of the Term. Thereafter, the Company shall be reimbursed a prorated amount of the Termination Fee (such pro-rata to reflect a decline by $1/10$ of the Termination Fee each year during the term of the Agreement). During the $11^\text{th}$ and $16^\text{th}$ year, if the City has exercised its option to enter into the first or second extension periods, the Termination Fee shall be one-half of the amount for the first year of Term, if termination pursuant to this Section 11.03 occurs during such years. Thereafter, the Company shall be reimbursed a pro-rated amount of the Termination Fee (such pro-ration shall reflect a decline by $1/5$ of the Termination Fee each year during each extension period of the Agreement). Except as provided in Section 11.06, the City shall have no additional monetary obligation to the Company.

Section 11.04 Termination for Labor Unrest.

If personnel employed by the Company and performing services pursuant to the Company’s obligations under this Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Company from performing its material obligations under this Agreement for a period in excess of three (3) days, the City may, in its sole discretion, by notice to the Company, terminate this Agreement forthwith, without any monetary obligation to the Company other than as set forth in Section 11.06.

Section 11.05 Termination for Uncontrollable Circumstances.

If an Uncontrollable Circumstance shall have the effect of preventing performance of a material obligation of the Company for a period of thirty (30) days, the City, upon notice to the Company, may, at its sole discretion, terminate this Agreement forthwith, notwithstanding that
such Uncontrollable Circumstance may only be cured by the City’s procurement or
implementation of a Capital Improvement which the City determines, in its sole discretion, not to
procure or implement. Upon any such termination, the City shall have no monetary obligation to
the Company except as provided in Section 11.06.

Section 11.06 Termination Transition.

(a) Upon a termination of the Company’s right to perform this Agreement pursuant to
Section 11.01 or 11.02 hereof or upon the expiration of the Term of this Agreement, the
Company shall, as applicable:

(i) cease the provision of Services, as applicable;

(ii) promptly take all action as necessary to protect and preserve all materials,
    equipment, tools, facilities and other City property at the Wastewater Facility;

(iii) promptly remove from the Wastewater Facility all equipment, implements,
    machinery, tools, temporary facilities of any kind and other property owned or leased by the
    Company (including, but not limited to sheds, trailers, workshops and toilets), and repair any
    damage caused by such removal, and generally restore the Wastewater Facility to its
    configuration and condition as of the Commencement Date, reasonable wear and tear and Capital
    Expenditures excepted.

(iv) clean the Wastewater Facility, and leave the same in a neat and orderly
    condition;

(vi) promptly remove all employees of the Company and any Subcontractors
    and vacate the Wastewater Facility site;
(vi) promptly deliver to the City copies of all subcontracts, together with a statement of:

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

(vii) deliver to the City promptly a list of:

- all special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Wastewater Facility; and
- all other supplies, materials, machinery, equipment, and other property previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Wastewater Facility;

(viii) unless the City directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

(ix) promptly transfer to the City all warranties given by any manufacturer or Subcontractor with respect to particular components of the Wastewater Facility;

(x) give written notice of termination, effective as of date of termination of this Agreement, promptly under each policy of Insurance (with a copy of each such notice to the City), but permit the City to continue such policies thereafter at its own expense, if possible; and
(xi) 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 Agreement.

(b) Upon termination of or expiration of this Agreement, the Company shall provide, and shall use its best reasonable efforts to cause its Subcontractors to provide, technological and design advice and support to the City or any replacement operator designated by the City. Such advice and support shall be for a period of twelve (12) months and shall include providing any plans, drawings, renderings, blueprints, operating manuals, or other information useful or necessary for the City or any replacement operator designated by the City or any such replacement operator to perform services comparable to the Services. If this Agreement is terminated by the City pursuant to Section 11.01 or 11.04 hereof, the Company shall be obligated to pay the costs and expenses of undertaking its post-termination responsibilities under this Section 11.06(b). 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 receipt of invoices or other substantiation. If this Agreement is terminated by the Company pursuant to Section 11.02 or by the City pursuant to Sections 11.03 or 11.05, the City shall pay to the Company within 60 days of the date of the Company's invoice supported by Cost Substantiation all reasonable cost and expenses incurred by the Company in satisfying the requirements of this Section 11.06(b).

(c) Notwithstanding the foregoing provisions of this Section 11.06 to the contrary, if the City or the Company shall terminate this Agreement prior to the end of the initial ten (10)
year Term or any exercised five (5) year extension Term, the Company shall, for up to ninety (90) days after the actual termination date (as opposed to the notice of termination date) make fully available its managers and employees performing services at the Wastewater Facility to continue to perform the Services contemplated in this Agreement, or such lesser amount of Services as the City shall determine, in order to provide a smooth and orderly transition of the management, operations and maintenance of the Wastewater Facility to City administrators, managers and personnel or, as applicable, the City’s successor contract operator; provided, however, in no event shall such provision of services by the Company extend beyond the twentieth (20th) anniversary of the Commencement Date. The Company shall fully cooperate with the City to effectuate such a transition, including the provision of training and “know how” in the procedures and techniques employed by the Company in meeting its obligations under Section 4.01. The City shall determine the number of days, if any, not to exceed ninety (90) days, that the Company shall comply with this Section 11.06(c).

(d) Notwithstanding the termination of this Agreement, the City shall compensate the Company for performing services requested pursuant to Section 11.06(c) in an amount equal to the Operation and Maintenance Fee calculated for the last full Billing Month immediately prior to the termination date; provided, however, such Operation and Maintenance Fee shall (i) be calculated on the basis of a daily Operation and Maintenance Fee and (ii) shall be reduced on a pro rata basis to reflect the number of Company employees performing services on a daily basis. To the extent the Company incurs Pass Through Costs for such period, the City shall pay or, as applicable, reimburse such amount to the Company. The Company shall invoice the City for such Operation and Maintenance Fee and Pass Through Costs as calculated pursuant to this
Section 11.06(d) within fifteen (15) days after the end of each calendar month after the
termination date, and the City shall pay to the Company the amount due and owing pursuant to
this Section 11.06(d) within forty-five (45) days thereafter. The Company shall comply with the
invoicing and date and information provisions of this Agreement in submitting any such invoice
to the City.

(e) The Company recognizes and understands that the transition outlined in this
Section 11.06 may well result in the City or any successor operator(s) designated by the City
employing or attempting to employ some or all of the managers and/or personnel employed by
the Company and performing services at the Wastewater Facility. The Company shall facilitate
the transfer and employment of any manager(s) and/or personnel who may desire to be employed
by the City or any successor operator designated by the City.

(f) All data and information collected, generated, prepared, or provided by the
Company as required by or pursuant to this Agreement shall be and remain the property of the
City and shall be turned over to the City within ten (10) days after the earlier to occur of the
termination or expiration of this Agreement. The Company shall also transfer any and all
computer software, hardware, licenses, source codes and other similar information used in
preparing or storing such data and information to the City, at no cost to the City other than future
license fees to third party licensors, upon the termination of this Agreement.

(g) The Company shall, upon the request of the City at the termination or expiration
of this Agreement, promptly deliver to the City, at no cost or expense to the City, two copies of
the then current Operation and Maintenance Plan. As built drawings shall be included in such
manuals and such manuals shall incorporate such drawings as they occur.
(h) This Section 11.06 shall survive the termination of this Agreement.

Section 11.07 Survival.

This Article XI shall survive the expiration or termination of this Agreement.

ARTICLE XII

REPRESENTATIONS

Section 12.01 Representations of City.

The City represents to the Company that:

(a) The City is duly organized and an existing entity under the laws of the Commonwealth and is duly authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(b) As of the Contract Date, the City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by the City (i) have been duly authorized by the City, acting by and through its City Council and Mayor, (ii) do not require any other approvals by any other governmental officer or body that has not been obtained, other than those permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) do not require any consent or referendum of voters, (iv) will not violate any judgment, order, law or regulation applicable to the City, and (v) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected

(c) This Agreement has been duly entered into by the City and, as of the Contract Date, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with
its terms, subject to (1) applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors' rights or remedies generally, (2) general equitable principles concerning remedies and (3) limitations on the enforceability of rights to indemnification by federal or State laws or regulations or public policy.

(d) To the best of the City's information and belief as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

Section 12.02 Representations of Company.

The Company hereby represents to the City that:

(a) The Company is qualified to do business in the Commonwealth and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(b) As of the Contract Date, the Company has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) do not require the approval of any governmental office or body, that has not been obtained other than applicable permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) will not violate any judgment, order, law or regulation applicable to the Company or any provisions
of the Company’s articles of incorporation and by-laws, and (iv) do not constitute a default under
or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of
the Company under any agreement or instrument to which the Company is a party or by which
the Company or its assets may be bound or affected.

(c) Since submittal of its proposal in response to the RFP, there has been no material
adverse change in the Company’s or the Guarantor’s financial condition which would impair the
Company’s ability to perform its obligations under this Agreement or the Guarantor’s ability to
fulfill its obligations under the Guarantee.

(d) This Agreement has been duly entered into and delivered and constitutes a legal,
valid and binding obligation of the Company, fully enforceable in accordance with its terms,
subject to (1) applicable bankruptcy, reorganization, moratorium or similar laws affecting
enforcement of creditors’ rights or remedies generally, (2) general equitable principles
concerning remedies and (3) limitations on the enforceability of rights to indemnification by
Applicable Law or public policy.

(e) To the best of Company’s information and belief, as of the Contract Date, there is
no action, suit or proceeding, at law or in equity, before or by any court or governmental
authority, pending or, to the best of the Company’s knowledge, threatened against the Company,
wherein an unfavorable decision, ruling or finding would materially adversely affect the
performance by the Company of its obligations hereunder, or which, in any way, would
adversely affect the validity or enforceability of this Agreement, or any other agreement or
instrument entered into by the Company in connection with the transaction contemplated hereby.
(f) As of the Contract Date, the Company’s proposal is genuine and not collusive, the Company has not colluded, conspired, or agreed directly or indirectly with any other proposer or person, firm or corporation, with any person, firm or corporation, to fix the unit prices of its proposal or proposals of any other proposer or to secure any advantage against any person, firm or corporation interested in this Agreement. All statements contained in the Company’s proposal are true and correct.

Section 12.03 Materiality of Representations.

The representations enumerated in Sections 12.01 and 12.02 are material for purposes of this Agreement.

ARTICLE XIII
MISCELLANEOUS

Section 13.01 Qualifying Management Contract.

It is the intent of the parties that this Agreement qualify as a management contract complying with the provisions and requirements of the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13. In the event that, in the reasonable determination of the City this Agreement is, or ceases to be, such a qualifying management contract, the City reserves its rights, pursuant to and in accordance with Section 6.04(j), to modify or terminate this Agreement.

Section 13.02 Term.

The term of this Agreement (the “Term”) shall commence on the Contract Date and shall terminate on the tenth (10th), fifteenth (15th), or twentieth (20th) anniversary of the
Commencement Date, unless earlier terminated in accordance with the terms and conditions hereof, and depending on whether or not the City exercises its option to enter into the first and second 5-year extension periods. On the ninth and fourteenth anniversaries of the Commencement Date, the City shall advise the Company in writing whether or not it will exercise its option to enter into a 5-year extension period for years 11 through 15, and years 16 through 20. The decision to enter into extension periods shall be at the City's sole option and made in accordance with applicable procurement law at the time of renewal. During the extension periods, the Operation and Maintenance Fee shall continue to escalate pursuant to Schedule 5. The Company shall not be entitled to any other adjustments in the Operation and Maintenance Fee during the extension periods.

Section 13.03 Assignment.

This Agreement shall not be assigned by either Party without the prior written consent of the other Party, as evidenced by or instrument in writing executed by its Authorized Representative; provided, however, that the Company may assign its interest without such consent to any Affiliate, successor or Parent of the Company if the Company shall remain liable for all obligations under this Agreement, and the Guarantor, pursuant to the Guarantee, fully guarantees the performance of such assignee's obligations under this Agreement. Additionally, the City may assign this Agreement, without the consent of the Company, to any validly constituted agency or authority of the City or the Commonwealth or a duly created public corporation or authority.
Section 13.04 Subcontractors.

(a) The City shall have the right, in its sole discretion, to approve all Subcontractors proposed to be engaged by the Company to perform any portion of the Services. The Company shall furnish the City written notice of its intention to engage any Subcontractor, together with all material information requested by the City or otherwise available to the Company. In the event the City fails to respond to any such notice of intention within twenty (20) days of receipt thereof, the City shall be deemed to have approved the proposed Subcontractor. 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 who, under Applicable Law and in accordance with standard procedures, is debarred, suspended or disqualified by the Commonwealth or the City from contracting for any services within the scope of the Services between the City and the Company, the Company shall be entirely responsible for the performance of its Subcontractors. The Company shall pay or cause to be paid all direct Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the City by virtue of this Agreement for labor, services, materials or equipment furnished. The Company acknowledges that its indemnity obligations under Section 7.01 hereof 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 Services.

(b) The Company shall take all reasonable actions to encourage minority-owned business enterprises and women-owned business enterprises to compete for portions of the Services that are proposed to be subcontracted by the Company.
Section 13.05 Further Assurances.

Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The City shall, and shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the Company and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.

Section 13.06 Relationship of the Parties.

Except as otherwise explicitly provided herein, neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, agent, employee or legal representative of any other Party or to create any fiduciary relationship between or among the Parties. The Parties agree that the Company has entered into this Agreement and shall be performing the services contemplated herein as an independent contractor.

Section 13.07 Notices and Authorized Representatives.

(a) Any notices or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail; postage prepaid, as follows:

To the Company: Professional Services Group, Inc.
200 Cordwainer Drive, Suite 303
Norwell, MA 02061
Attn: Regional Vice President, Client Services
Changes in the respective addresses to which such notices may be directed may be made from
time to time by any Party by written notice to the other Party.

(b) For purposes of this Agreement, the Parties’ respective Authorized
Representatives are as follows:

For Company: Regional Vice President, Client Services

For City: its Mayor

Either Party may change its Authorized Representative at any time by written notice to
the other Party.

Section 13.08 Waiver.

The waiver by either Party of a default or a breach of any provision of this Agreement by
the other Party shall not operate or be construed to operate as a waiver of any subsequent default
or breach. The making or the acceptance of a payment by either Party with knowledge of the
existence of a default or breach shall not operate or be construed to operate as a waiver of such
default or breach or any subsequent default or breach.
Section 13.09 **Entire Agreement: Modifications and Amendments.**

The provisions of this Agreement, including the present and all future Schedules, shall (a) constitute the entire agreement between the Parties for the operation, maintenance and management of the Wastewater Facility and supersedes any negotiation, proposal or agreement prior to the date of this Agreement, there being no agreements or understandings other than those written or specified herein, and (b) unless otherwise specifically recognized in this Agreement, shall not be modified or amended except by written agreement duly entered into and executed by the Authorized Representatives of the Parties with the same formality as this Agreement.

Section 13.10 **Headings.**

Captions and headings and the Table of Contents in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 13.11 **Governing Law.**

This Agreement and any questions concerning its validity, construction or performance shall be governed by the law of the Commonwealth, irrespective of the place of execution or of the order in which the signatures of the Parties are affixed or of the place or places of performance.

Section 13.12 **Counterparts.**

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original.

Section 13.13 **Severability.**

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith
and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

Section 13.14 Interest on Overdue Payments.

All payments to be made under this Agreement by either Party outstanding after the applicable due date shall bear simple interest at the maximum rate permitted by State law, if applicable, or at the prevailing prime rate of interest published from time to time in The Wall Street Journal, whichever rate is lower.

Section 13.15 Payment Disputes.

If any Party shall dispute an amount owing to the other Party, such Party shall give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and shall pay all undisputed amounts on the due date. Interest at the rate specified in Section 13.13 shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount, or any portions of such disputed amounts.

Section 13.16 No Liability of Officers and Employees.

No member of the City’s City Council nor any officer, agent, representative or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Agreement, because of either Party’s execution or attempted
execution or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

Section 13.17 **No Pledge of Credit.**

The Company shall not pledge the City's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Company further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

**APPROVED AS TO FORM**

**CITY OF NEW BEDFORD, MASSACHUSETTS**

By:

Frederick M. Kalisz, Jr.
Mayor

Professional Services Group, Inc.

By:

Patrick L. McMahon
President

Arthur J. Caron, Jr.
Corporation Counsel

**WITNESS:**

Sandra Herathine
June 30, 1998

City of New Bedford
133 William Street
New Bedford, Massachusetts 02740-6163

Re: Agreement for Operation, Maintenance and Management Services (June 1, 1998)

Gentlemen

I am furnishing this letter of opinion in my position as Vice President and General Counsel of Professional Services Group, Inc., a Minnesota corporation ("PSG"), in connection with the execution by PSG of the agreement to Operate, Maintain and Manage the wastewater facilities of the City of New Bedford, dated as of June 1, 1998 (the "Agreement") by and between PSG and the City of New Bedford ("City"). This opinion is being furnished to you in accordance with Section 3.01(c) (ii) of the Agreement. Capitalized terms not otherwise defined herein have the meanings attributed to them in the Agreement.

For the purpose of rendering this opinion, I have assumed that all records maintained by PSG or its agents, as well as all certificates, filing, payments and registrations of PSG are current, accurate and correct. I have also assumed the truth and accuracy of and relied upon the representations of fact contained in the Agreement, other documents signed and delivered in connection in the Agreement, and in the other documents signed and delivered in connection with the transactions contemplated thereby, but have made no independent investigation with respect thereto.

In rendering this opinion, I have also assumed that the City of New Bedford has the power and authority to execute, deliver and perform all agreements and documents executed by it, that the City has duly and validly executed and delivered such documents and agreements and that such documents and agreements are legally valid and binding on and enforceable against the City.

I have relied, with respect to certain factual matters, on the representations and warranties of representatives of the Project Guarantors.

Professional Services Group
14950 Heathrow Forest Parkway, Suite 200
Houston, Texas 77032-3842
(281) 449-1500 Fax: (281) 449-5970
I express no opinion as to the reasonableness of the foregoing reliance or assumptions. To render this opinion, I have relied solely upon the documents and certificates described in this opinion.

The opinion set forth herein is as of the date hereof. I assume no obligation to advise you of changes which may hereafter be brought to my attention. This opinion is based on statutory laws and judicial decisions that are in effect on the date hereof, and I do not opine with respect to any law, regulation, rule or governmental policy which may be enacted or adopted after the date hereof, nor do I assume any responsibility to advise you of future changes in this opinion.

Based upon and subject to the foregoing, I am of the opinion that:

(a) PSG is qualified to do business in the Commonwealth and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(b) As of the Contract Date, PSG has the power, authority and legal right to enter into and perform its obligations set forth in the Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) do not require the approval of any governmental office or body, that has not been obtained other than applicable permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) will not violate any judgment, order, law or regulation applicable to PSG or any provisions of PSG’s articles of incorporation and by-laws, and (iv) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of PSG under any agreement or instrument to which PSG is a party or by which PSG or its assets may be bound or affected.

(c) Since submittal of its proposal in response to the RFP, there has been no material adverse change in PSG’s financial condition or, to the best of my information and belief, the Project Guarantors’ financial condition which would impair PSG’s ability to perform its obligations under this Agreement or the Project Guarantors’ ability to fulfill their obligations under the respective guarantees.

(d) The Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of PSG, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors’ rights or remedies generally, (ii) general equitable principles concerning remedies, and (iii) limitations on the enforceability of rights to indemnification by applicable law or public policy.
(e) To the best of my information and belief, as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of my knowledge, threatened against PSG, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by PSG of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by PSG in connection with the transaction contemplated hereby.

The foregoing opinion is limited solely to the General Corporation Law of the State of Minnesota, the laws of the Commonwealth of Massachusetts and applicable federal laws of the United States. Provided, however, no opinion is given as to compliance with federal securities laws, and the rules and regulations promulgated thereunder, or any state "blue sky" laws, or federal antitrust, laws and regulations.

This opinion is intended solely for your use in connection with the Agreement and may not be disclosed, reproduced, filed publicly, or relied upon by you for any other purpose or by any other person for any purpose without my prior written consent.

Professional Services Group, Inc.

[Signature]

David L. McEwing  
Vice President and General Counsel

DLM: na
PERFORMANCE STANDARDS AND GUARANTEES

WASTEWATER TREATMENT REQUIREMENTS

The Company shall operate and maintain the Wastewater Facility in accordance with Applicable Law pertaining to wastewater treatment. The Wastewater Facility influent characteristics are identified in Table S1-1 below. The Operation and Maintenance Fee reflects that these characteristics are subject to ± 10% changes, and variance within such 10% range shall not be the basis of any adjustment to the Operation and Maintenance Fee, the Pass Through Costs any other monetary adjustment to the Service Fee. In addition, the Company shall operate the Wastewater Facility to be in compliance with the specific performance standards outlined in the Agreement and Schedules to the Agreement, including the performance standards and guarantees set forth within this Schedule 1. Specific compliance parameters with respect to effluent quality from the Wastewater Facility are included in Table S1-2. All analytical methods used to demonstrate compliance with these standards shall be according to methods approved by the City and DEP.

TABLE S1-1
WASTEWATER SYSTEM INFLUENT

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Influent Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOD5, lbs/day</td>
<td>43,730</td>
</tr>
<tr>
<td>TSS, lbs/day</td>
<td>31,137</td>
</tr>
<tr>
<td>Annual Average Flow (mgd)</td>
<td>22</td>
</tr>
<tr>
<td>Peak Flow (mgd)</td>
<td>75(1)</td>
</tr>
</tbody>
</table>

TABLE S1-2
WASTEWATER SYSTEM STANDARDS

<table>
<thead>
<tr>
<th>Parameter</th>
<th>NPDES Permit Limit</th>
<th>Contract Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average Monthly</td>
<td>Average Monthly</td>
</tr>
<tr>
<td>BOD, mg/l</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>TSS, mg/l</td>
<td>30</td>
<td>20</td>
</tr>
</tbody>
</table>

(1) The Wastewater Facility has an automatic peak flow regulator at the influent set at 75 mgd.
SCHEDULE 2
OPERATION AND MAINTENANCE STANDARDS

2.1 REQUIRED SERVICES

The Company shall perform the Services in a professional, efficient and economical manner and in accordance with the terms and provisions set forth in the Agreement and in compliance with Applicable Law and generally accepted practices, procedures and standards for municipal wastewater treatment facilities. The Company shall, at all times, keep the Wastewater Facility in good repair and working order. The Company shall provide uninterrupted Services and perform Services twenty-four (24) hours per day, seven (7) days per week.

Operational decision making shall always be based on the following overall objectives (not listed according to priority):

- Compliance with Applicable Law
- Protection of health and welfare of the public
- Protection of the health and safety of the operating staff
- Preservation of the long-term capability to supply wastewater treatment services
- Protection of the environment
- Protection and preservation of the Equipment and other components of the Wastewater Facility
- Maximization of operational efficiency and minimization of operational costs
- Achievement of the “zero tolerance” program objectives for odor control and noise at the Wastewater Facility.

2.2 OPERATIONS AND MAINTENANCE

On and after the Commencement Date and through the term of the Agreement, the Company shall manage, operate and maintain the Wastewater Facility in accordance with the Agreement and the requirements set forth in this Schedule 2. The Company shall operate the Wastewater Facility to process domestic raw sewage, commercial and industrial wastewater, and any future influent allowed by City in accordance with the NPDES Permit, the Consent Decree and the terms and provisions of this Agreement. The Company shall comply with the requirements of 314 CMR 12 (Operations and Maintenance of Sewer Systems and Maintenance of Sewer Systems and Wastewater Treatment Facilities), as applicable, and the policies of the Board of Certification of Operators of Wastewater Treatment Facilities.

The Company shall maintain the Wastewater Facility in good working order and repair and in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required). The Company shall maintain the aesthetic quality of the Facility as originally constructed and subsequently modified, with due allowance for reasonable wear and tear and depreciation. The Company shall perform all predictive, preventative and corrective maintenance procedures in accordance with Applicable Law, and generally accepted industry
maintenance practices, procedures and standards for municipal wastewater treatment facilities, but in no event less frequently and comprehensively than that recommended or specified in manufacturers’ warranties. The Company shall maintain on behalf of the City all manufacturers’ warranties on new Equipment purchased pursuant to this Agreement, and shall fully cooperate and assist the City, at the Company’s sole cost and expense, in enforcing existing Equipment warranties and guaranties relative to the Wastewater Facility.

The Company shall develop and implement, making use of the existing City-owned computer hardware and software at the Wastewater Facility to the extent determined to be appropriate by the Company, a comprehensive computer-based maintenance management program that develops readily available historical data, including an inventory of spare parts and provisions for enforcing existing equipment warranties and guarantees and maintaining all warranties on new equipment purchased after the Commencement of Operations. The Company shall implement such a maintenance management program to include preventative, predictive, and corrective maintenance for all components of the Wastewater Facility, including but not limited to:

- Buildings and structures
- Electrical systems and instrumentation
- Mechanical equipment
- Odor control systems
- Rolling Stock
- Laboratory, monitoring and sampling equipment
- Heating, ventilation, and air conditioning
- Communication equipment (i.e., telephones, facsimiles, etc)
- Computer systems (software and hardware)
- Chemical feed systems
- Pumping Systems
- Auxiliary power facilities
- Air pollution control devices
- SCADA facilities
- Other facilities and systems contained within the Wastewater Facility
- Other specialized tools and equipment

The Company shall perform maintenance of the Wastewater Facility to preserve long-term reliability and conservation of the Wastewater Facility. Such maintenance shall be performed in accordance with the terms and provisions of this Agreement, the Company’s Operation and Maintenance Plan, routine maintenance schedule, federal, State and local requirements, and industry standards. The Company shall maintain documentation of all maintenance activities.

The subsequent sections set forth requirements for the operation and maintenance for the major Wastewater Facility components. The sections below are intended to address the major activities required. The following sections, however, are not intended to include all specific activities that are necessary for meeting the performance requirements set forth in this Agreement and the Schedules hereto.
2.2.1 Wastewater Facility Effluent and By-Products

The Company shall operate, maintain, and manage the Wastewater Facility in accordance with this Agreement. The Company is responsible for ensuring that the effluent discharged from the Wastewater Facility complies with Applicable Law and within the standards set forth in the Agreement. Accordingly, the Company is responsible for reviewing historical City data including flow, concentration and loading variations (i.e., instantaneous, hourly, day and monthly, and yearly). The Company is responsible for monitoring and maintaining the balance of the HVAC system throughout the Wastewater Facility. The Company is responsible for reviewing all available information about the Wastewater Facility and should not rely solely on the information presented.

Solids Handling

The Company shall deliver all Wastewater Sludge to the containers specified for usage by Wheelabrator Clean Water Systems, Inc. or any successor Wastewater Sludge contractor designated by the City. The Company shall be responsible for guaranteeing that the Wastewater Sludge delivered complies with the requirements, (i.e., quantity, characteristics of sludge, percent solids) of the City’s contract with Wheelabrator Clean Water Systems, Inc. dated October 3, 1995. The Company shall deliver the Wastewater Sludge to the container in the sludge loadout facilities with the outside doors closed. The Company shall coordinate its management of Wastewater Sludge handling facilities with Wheelabrator Clean Water Systems Inc. or its successor, as the case may be, to minimize costs to City for Wastewater Sludge disposal. The maximum Wastewater Sludge disposal costs which shall be the responsibility of the City as a Pass Through Cost shall be limited to costs more particularly described in Schedule 8. Additional costs shall be paid by the City but reimbursed by the Company as a monthly credit against the months Operation and Maintenance Fee after the maximum allowable costs are incurred by the City.

Septage Receipt

Currently, the City does not receive septage at the Wastewater Facility. The City is planning the implementation of a new septage receiving facility to be located in the northern end of the City. Once constructed, the City intends to receive septage generated within the City at this septage receiving facility and to deliver such septage to the Wastewater Facility for processing by the Company as a component of the Services. The Company is not authorized to make separate arrangements for receipt of septage. Any receipt of septage will be at the sole discretion of the City and shall be coordinated with the Company.

Grit and Screening Handling

The Company shall deliver grit and screenings to the dumpster/container located in the headworks building of the Wastewater Facility. Within a reasonable time frame, the Company shall notify the City when the dumpster/container will reach capacity. Upon notification by the Company, the City shall remove the grit and screenings
dumpster/container from the headworks building and replace the dumpster/container.

Solid Waste Management

The Company shall be required to provide containers for the disposal of and collection of all solid waste from within the Wastewater Facility. The Company shall deliver all collected solid waste to the designated solid waste dumpsters located on the Wastewater Facility Site and shall notify the City within a reasonable time of when any such dumpster will reach capacity. The City shall be responsible for removing any filled dumpster and replacing it with another dumpster.

Odor Control Facilities

The Company shall be responsible for the continuous operation and maintenance of the odor control Equipment in accordance with established operating performance criteria for the various systems and equipment. The Company shall operate such Equipment consistent with the “zero tolerance” program objectives for odor control. Except for periods of preventative or emergency maintenance or for reduction of noise (Final Clarifier Fans only) between 8 p.m. and 6 a.m., odor control blowers are to be in operation at all times since continuous ventilation of the areas controlled by the blowers is required for safety and/or corrosion protection. The Company shall be responsible for optimizing the operation of the existing and future odor control system so that it performs to its designed capacity and capability.

The Company shall control all noise and odors generated from within the Wastewater Facility and be responsible for complying with air quality permit requirements. The Company shall develop a “zero odor tolerance” control program including procedures for responding to each complaint and notification to the City of odor complaints and their resolution, and documentation of such complaints. Such program shall be fully described in a monthly report submitted to the City. Specifically, the Company shall perform the following:

--- implementation of the recommendations contained in the “zero odor tolerance” program
--- regular monitoring of odor control system performance
--- on-site and off-site surveys by plant staff
--- development of a 24 hour per day odor hotline to be staffed at all times.
--- development of contingency plans for controlling odors in the event of mechanical failure or process upset
--- training for mechanical ventilation and scrubber systems.
--- housekeeping, preventive maintenance, and other standard operating procedures related to odor reduction.
--- development of a written complaint response procedure that would include the following elements: complainant name and address, time of day, weather conditions including wind speed and direction, odor description, duration of episode, and follow-up by plant staff
The Company shall organize regular public meetings to advise residents of ongoing odor control programs and to solicit community input. The Company shall also maintain an Odor Management Team consisting of representatives from the City; the Company and any other odor management consulting or other firm as determined appropriate by the City and the Company. The Odor Management Team shall meet in accordance with a schedule approved by the City.

The Company shall notify the City regarding any significant or unusual air circumstances effecting the operation of the Wastewater Facility. The Company shall obtain City approval prior to significant operational changes that could be reasonably foreseen to effect odor emissions.

The Company and the City shall jointly coordinate the establishment of a Citizen’s Odor and Noise Control Committee which shall have the authority set forth in the attached Addendum to this Schedule 2.

2.2.2 Analytical Services

The Company shall perform testing, sampling and any other analytical procedures to demonstrate compliance with its obligations under the Agreement, applicable regulatory requirements, and Permit provisions. Such testing shall include, but not be limited to, influent and effluent analytical testing, metals analysis and sludge cake analysis. The Company shall perform all applicable testing related to process control and wastewater monitoring. The Company shall be responsible and liable for conducting all necessary analyses whether the analyses are conducted at the on-site laboratory, at an off site laboratory operated by the Company, or through a subcontracted service. Any subcontracted laboratory must be appropriately certified to perform the required analyses and be subject to approval by the City in accordance with Section 13.04 of the Agreement. The Company shall prepare the data received from the testing laboratory for all applicable regulatory, Permit monitoring, and operating reports and shall forward the results from the laboratory to the appropriate State and regulatory agencies.

2.2.3 Equipment and Chemicals

The Company shall keep all Equipment in good operating condition and maintain adequate Equipment and spare parts in inventory in order to facilitate maintenance and repairs not constituting Capital Expenditures, in a timely fashion so as not to disrupt the operation of the Wastewater Facility. Any such repairs, shall, at a minimum, meet the specifications provided for Wastewater Facility plans and specifications.

The Company shall operate all used or useful Equipment, including Equipment placed in service, and perform all tests and testing as may be required or recommended pursuant to applicable warranties, commercial or industrial standards and Applicable Law. The Company shall make reasonable efforts to enforce, on behalf of the City, all warranties or agreements related to existing Equipment, materials and services that are at the Wastewater Facility as of the
Commencement Date, as well as any replacements thereof or additions thereto. The Company shall make reasonable efforts to obtain extensions of warranties or agreements, as appropriate. To the extent assumable Company shall assume various contracts for supplies and/or services, under the same terms and conditions, entered into by the City for the first Billing Year. The Company shall be responsible for promptly notifying the City in the event of any Equipment failure that necessitates or may necessitate a Capital Expenditure.

All Equipment, with the exception of Rolling Stock, and chemicals provided by the City or the Company on and after the Contract Date, including any Equipment and chemicals on order by the Company or the City for the Wastewater Facility, shall be deemed to be owned by the City and shall remain a part of the Wastewater Facility upon termination or expiration of this Agreement. All such Equipment including Rolling Stock shall be in good operating condition, subject to normal wear and tear.

Equipment and chemicals provided or to be provided by the Company pursuant to the provisions of this Agreement shall be restricted to the Company’s use as necessary in performance of its obligations under the Agreement.

2.2.4 Rolling Stock Maintenance

The Company shall operate and maintain the vehicles included in Schedule 15 to the Agreement, and/or any additional Rolling Stock provided by the Company as part of the Services. All maintenance on the Rolling Stock shall be performed in accordance with the Operations and Maintenance Plan, manufacturer warranties, and standard industry practice. If the Company wishes to reduce the existing inventory of Rolling Stock, the Company shall request the same from the City for review and approval. The procedures for disposition of such Rolling Stock shall be developed and appropriate adjustments to the Agreement made at that time. Proceeds from the sale of any such Rolling Stock shall be returned to the City. Schedule 15 shall be updated accordingly as a result of any approved sale and or replacement.

2.2.5 Buildings and Grounds Services

The City shall provide for maintenance and repair of landscaping and roadways associated with the Wastewater Facility in accordance with Section 4.02(g) of the Agreement.

The Company shall perform Services to maintain the current condition of the Wastewater Facility throughout the Term of the Agreement, reasonable wear and tear excepted, and at a level adequate for the efficient, long-term reliability and preservation of the City’s capital investment. The Company shall at a minimum perform the following maintenance activities relevant to the buildings and grounds:

a. Wash all windows twice per year or more frequently on an as-needed basis.
b. Repair all roof leaks within 10 days of discovery.
c. Implement regularly scheduled pest control measures.
d. Repair all plumbing leaks and failures immediately.
e. Damp mop all floors twice per week or more frequently on an as needed basis with a cleaning solution appropriate for use in such facilities. All spills are to be immediately cleaned.
f. Strip all floors and apply new floor finish on a periodic basis.
g. Apply floor finish to the extent necessary to maintain appearance and safety standards.
h. Wash down wall tiles and clean all other walls every sixth Billing Month commencing with the first Billing Month of this Agreement.
i. Apply paint as necessary and appropriate, but at a minimum every 5 years all paint surfaces will have a new paint job.
j. Clean offices and restrooms Monday through Friday.
k. Provide daily collection services for solid waste and other disposable items generated by the Wastewater Facility during performance of Services. A central location(s) shall be provided for storage. All solid waste shall be made available to the City for disposal on at least a weekly basis, in accordance with Section 2.2.1 of this Schedule 2.
l. Shovel all sidewalks to maintain access to the Wastewater Facility free of ice and snow.
m. Vacuum all carpeted areas on a weekly basis, shampoo all rugs/carpeted areas twice per year or more frequently on an as-needed basis.

2.2.6 Utilities

As of the Commencement Date, the Company shall be responsible for obtaining, supplying and paying for all utilities including but not limited to natural gas, heating, fuel oil, telephone and water. The cost for electricity shall be a Pass Through Cost up to the maximum usage limits more particularly described in Schedule 7.

2.2.7 Industrial Pretreatment Program

The Company shall coordinate with the designated person responsible for the City’s Industrial Pretreatment Program and shall notify the City promptly if it becomes aware of any known and/or suspected illegal discharges.

2.3 OPERATION AND MAINTENANCE COSTS

As set forth in Section 4.01(b) of the Agreement, the Company shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment (i.e., copiers, computers, etc.), fuel, chemicals, supplies, materials, spare parts, expendables, consumables, testing and laboratory analysis, and any items required for the Services, in accordance with the terms and provisions of the Agreement.
• The results of safety tests or other monitoring procedures conducted by staff or any governmental body

2.4.2 System Inspections

The City or its authorized agents and representatives from the governing regulatory agency (e.g., DEP) reserve the right to visit or inspect the Wastewater Facility at any time. The City or its authorized agents and representatives may call upon the Company at any time for an oral review of any matter pertaining to the Services. The Company shall provide the City and/or authorized agents and representatives adequate office working space during inspections and reviews as necessary.

The City or its authorized agents and representatives shall perform an annual inspection of the Wastewater Facility which shall be scheduled at a time mutually acceptable to the Company and the City and their authorized agents or representatives but in no event later than sixty (60) days after the close of each Billing Year. The purpose of this annual inspection is to verify that Services are being properly performed in accordance with the Agreement. At least two weeks prior to the annual inspection, the Company shall submit to the City three copies of the Company’s annual Operation and Maintenance Report. This report shall include detailed information about the completed year’s operation and maintenance of the Wastewater Facility and current conditions of the Wastewater Facility.

In the event that any such inspections reveal work not in accordance with the Agreement or a lack of necessary maintenance or repairs (other than reports necessitating Capital Expenditures) to the Wastewater Facility, the City or its authorized agent shall identity such items in writing to the Company. The Company shall perform the repairs and maintenance activities identified by the City on a mutually agreeable schedule.

The Company shall maintain and make available to City upon request, all records of operating data and information relevant to the Wastewater Facility, including accounting and financial records. The Company shall provide the City access to all such records upon request.

2.4.3 Operations Records

The Company shall maintain a computerized record keeping system for all operation and maintenance functions performed. Records shall include, but not be limited to, records of operations, operation and maintenance costs, maintenance procedures, emergency incidents, personnel, and inventory (equipment and chemicals). Records shall be maintained as required by the Consent Decree, and other Applicable Law. Such records shall include, but not be limited to, process evaluation and modification; operating and maintenance activities; detailed costs for operations and maintenance; and monthly and annual reports in a format reasonably requested by the City. The City shall have the right to inspect these records upon reasonable notice.
2.4.4 Meetings

The City and the Company shall cause their Authorized Representatives or their designees to meet on a monthly basis to discuss performance of the Services, maintenance issues, Equipment conditions, environmental and permit compliance, public relations, and other relevant issues. Minutes of these meetings shall be prepared by the Company and shall be distributed to all attendees. Representatives of the Company shall also be made available to attend and participate in any neighborhood and other community meetings (i.e., City Council, neighborhood civic groups) at the request of the City.

2.4.5 Audit of Facilities and Review at Expiration of Agreement

The City shall be responsible for all Capital Expenditures over the term of the Agreement pursuant to the terms and conditions of the Agreement. Within 30 days of the Commencement Date, the Independent Engineer shall conduct a complete Wastewater Facility assessment to determine the condition of the Wastewater Facility. Periodically, but in any event within sixty (60) days after the close of the fourth (4th), ninth (9th) and fourteenth (14th) Billing Years during the Term, and ninety (90) days prior to the expiration of the Term, a comparable assessment in accordance with the requirements of this Section 2.4.5 shall be conducted. The cost of services provided by the Independent Engineer shall be paid by the City.

The Independent Engineer will conduct a detailed, comprehensive survey and inspection of the Wastewater Facility to identify the physical and operational conditions and general status of maintenance and repair of all Equipment buildings, structures, pavements, grounds, utility lines and system, spare parts inventories, operation and maintenance records, etc. The Independent Engineer shall prepare a detailed report documenting the findings of the survey/inspection. The report will include an assessment of the current condition of each item or component, its estimated remaining service life, and whether the current condition is consistent with the maintenance and general upkeep requirements of the Agreement and expected normal wear and tear. An estimated cost for repair, renewal or replacement will be included for each item or component which is judged deficient. Estimates will include a reasonable contingency allowance that will vary depending on the nature of the work required.

A draft version of the Independent Engineer’s report will be provided to the City and Company for review and comment. In the case of disagreement between the City and Company as to the appraised condition of items or portions of the Wastewater Facility, or estimated cost for repair, renewal, or replacement, the Independent Engineer will make the final decision.

If the findings contained in the final Independent Engineer’s report indicate that any deficiency in any part of the Wastewater Facility is attributable to the failure of the Company to perform predictive, preventative or corrective maintenance, or repairs not necessitating Capital Expenditures in accordance with the requirements of this Agreement, the Company, subject to the provisions of Applicable Law governing public procurement, shall be given the option to make any indicated repair, renewal, or replacement, which shall be subject to inspection and approval by the Independent Engineer, or alternatively, shall reimburse the City the cost for
repair, renewal or replacement as set forth in the Independent Engineer’s report. Satisfactory rectification of deficiencies shall be a requirement on a timely basis, subject to the termination provisions of the Agreement for failure to rectify such deficiencies.

2.5 OPERATION AND MAINTENANCE PLAN

The Company shall prepare and submit to the City for review and comment a comprehensive Operation and Maintenance Plan within one hundred twenty (120) days after the Commencement Date. The Operation and Maintenance Plan shall specify all procedures and tests to be conducted for the performance of the Services, inclusive of all facilities and Equipment, throughout the Agreement. The Operation and Maintenance Plan shall be a comprehensive manual organized into separate sections addressing each of the unit process involved, the overall system operation and control, auxiliary system equipment and systems, and grounds and building maintenance for which the Company is responsible and shall reflect, at a minimum, generally accepted or recommended industry maintenance practices, procedures and standards for municipal wastewater facilities. At a minimum, this Operation and Maintenance Plan shall include the following:

a. Schedule of expected shutdowns for routine maintenance.

b. Emergency plan of operation, including on-call backup capability.

c. Copies of all permits, licenses, and other regulatory documents obtained for Company’s services, if not previously submitted.

d. Staffing plan showing a breakdown by staff classification of all personnel to be utilized during operations and maintenance.

e. Maintenance schedule for the Wastewater Facility.

f. Anticipated Capital Expenditures renewal and replacement plan for the Wastewater Facility over the Term of the Agreement.

g. Operation procedures for all major Equipment within the Wastewater Facility during normal, alternate, and emergency operation modes.

h. List of equipment and system manufacturers/suppliers Operation and Maintenance Manuals.

i. Forms and checklists to be used to monitor Equipment and process system operation and preventative maintenance.

j. Monitoring and reporting requirements.

k. A schedule for updating to the Operation and Maintenance Plan.
Each separate unit process, auxiliary system processes and grounds/building section of the Operation and Maintenance Plan shall include a detailed written explanation of the following:

- The process or system including its key components.

- The system function including its purpose and normal operating parameters.

- Equipment summary including nameplate data, supplier/local representative, and manufacturer.

- Description of instrumentation and control system, including an alarm summary.

- Description of normal system operations including startup and shutdown, adjustment of variable functions and settings, interface with other Wastewater Facility systems, routine monitoring checklists and record keeping forms.

- Emergency system operations including procedures to be followed in the event of probable plant upset conditions such as temporary power outages, chemical spills, localized or area-wide flooding, etc.

- Maintenance, including predictive and preventative maintenance for: process functions such as cleaning and hose down, flushing and inspection; mechanical functions such as changing lubricating fluids and filters, checking rotating equipment balance, and changing valve seals and packing; electrical functions such as checking tightness of wiring terminal connections, exercising breakers, and recalibrating meters; instrument and control functions such as sensor calibration, and structural maintenance such as crack repairs and restoration of surface corrosion protection systems.

- Trouble shooting system malfunctions.

- Safety and emergency procedures.

The City will review the draft Operation and Maintenance Plan and return one marked-up copy with comments and within thirty (30) days of the initial submittal. The Company shall submit five copies of a final version of the Operation and Maintenance Plan addressing the City’s comments within sixty (60) days following the return of the draft. Neither the review of or comment on, nor failure of the City to comment on, the draft Operation and Maintenance Plan or any modification thereto, shall relieve the Company of any of its responsibilities under the Agreement, be deemed to constitute a representation by the City that operation of the Wastewater Facility pursuant to the Operation and Maintenance Plan will cause the Wastewater Facility to be in compliance with this Agreement or Applicable Law, or otherwise impose any liability upon the City.

The Operation and Maintenance Plan shall dedicate a separate section to detail the Company’s maintenance and repair program. Such program shall contain a detailed description of and
maintenance and repair activities which would be required to be performed by the Company over the Term of the Agreement to maintain operability, durability and reliability of the Wastewater Facility. The Company shall make and complete all maintenance and repairs to the Wastewater Facility which are necessary to achieve such standard of repair by performing all such listed activities within time frame indicated in the Operation and Maintenance Plan.

2.6 CONTINUOUS OPERATION

The Company shall operate the Wastewater Facility on a continuous basis, twenty-four hours a day, seven days a week, in accordance with the terms and provisions of this Agreement, and in compliance with Applicable Law.

2.7 SAFETY AND SECURITY

The Company shall provide for and maintain security and safety of all facilities and structures associated with performance of Services at the Wastewater Facility. The Company shall develop and submit to the City a Safety and Security Plan within forty-five (45) days after the Commencement Date. The Company shall be responsible and obligated to enforce all safety, security and health laws, rules, regulations, and/or procedures. The Company shall implement an in-house safety program, including, but not limited to, operations, maintenance, safety, management skills, laboratory, energy management, chemical handling, confined space entry, emergency response, and safety equipment use. Any and all persons entering the Wastewater Facility shall be identified and provide appropriate documentation of authorization to have such access. The Company is responsible for providing the appropriate procedures to maintain a log of any and all persons accessing the Wastewater Facility.

The Company shall appoint a Safety Committee. The Safety Committee shall file a copy of any safety recommendation and accident reports. As part of its safety program, the Company shall institute safety standards including a safety information system, regional and corporate specialties, centralized safety equipment procurement system, degree hazard materials personnel, a safety information library and a computerized safety equipment preventative maintenance program.

Fences shall be maintained in neat order and structural integrity. Gates, access points, and doors to the facilities and structures at the Wastewater Facility shall be kept locked. Entrance to such facilities and structures shall be protected against unauthorized entry. The Company is responsible to maintain all security alarms in working order.

2.8 CITIZEN ACCESS AND EMERGENCY RESPONSE

The Company shall respond promptly (within 2 hours) and in a reasonable manner to all citizen problems and emergencies pertaining to the Wastewater Facility in accordance with this Agreement. The Company shall maintain a toll-free 24 hour telephone number throughout the term of the Agreement so that citizens can report any problems and emergencies. The Company shall notify the City of any activity, problem, or circumstance of which it becomes aware that
threatens safety or health or welfare. The Company shall maintain a log of all problems and emergencies identified and measures taken by the Company to remedy such problems and emergencies. Emergency procedures shall address at a minimum:

- Chemical Spills
- Personnel Emergencies
- Fire and Explosions
- Pipe, Valve, or Pump Failure
- Equipment and Process Failure
- Power Failure
- Acts of God (i.e., Hurricanes, Wind storms, and Floods)
- Wastewater bypass discharges
- Emergency Telephone Numbers
- Emergency Equipment Inventory
- Records Preservation
- Industrial Waste Inventory and Monitoring System
- Coordinating Instructions with Public Safety Agencies
- Troubleshooting Guides
- Odor Events
- Noise Events
Addendum to Schedule 2

CITIZENS' ODOR AND NOISE CONTROL COMMITTEE

The Company and the City shall mutually establish a Citizens' Odor and Noise Control Committee (the "Committee"). The Committee shall be made up of five (5) voting members and two (2) non-voting members (the non-voting members being the Ward 6 City Councillor and one member appointed by the Company). The voting members will be the Superintendent of Wastewater, and another member to be appointed by the Mayor, and three (3) New Bedford Citizens chosen annually by the Wastewater Treatment Odor and Noise Taskforce. Once each quarter, the City and the Company will meet to review odor and noise control program performance for the prior quarter and set odor and noise control objectives for the next quarter.

The purpose of the Committee shall be to monitor the effectiveness of the odor and noise control program, to provide feedback to the City, the Company and the neighborhood on the status of odor and noise control at the Wastewater Facility, and to make recommendations as to matters pertaining to odor and noise control. The Company shall document odor and noise complaints using a form to be developed by it, subject to the City's review and approval, and shall provide copies to the Committee, monthly, and to the City as part of the Monthly report.

The Citizens' Odor and Noise Control Committee may make recommendations to the City, based upon a majority vote of the Committee, to withhold up to a maximum of $200 per day during the occurrence of the objectionable odor or noise, up to a maximum of $3,000 per month from the amount due the Company if the Committee finds that the Company has not performed adequately in responding to and controlling odors and noise at the Wastewater Facility. The recommendation shall provide specific information to justify any recommendations regarding the withholding of any amount of the Service Fee due the Company. However, if the Company disagrees with the recommendation, the Company shall be provided an opportunity to contest the alleged non-performance before the City's independent odor and noise Consultant. The Consultant shall be selected by the City upon consultation with the Odor and Noise Control Committee. In the event any withholding is disputed by the Company, said Consultant, based upon a reasonable investigation and the information presented, shall determine whether a portion of the fee should be withheld and how much, subject to the above stated maximum. The Consultant's decision shall be binding upon the City, the Company and the Committee. The Consultant shall notify the Company and City in writing of its decision and the reasons therefor.

The Company shall be responsible to reimburse to the City for the cost of the Consultant for reviewing such disputes up to a maximum of an aggregate cost of $10,000 per Billing Year.

To avoid retroactive decisions regarding withholding, in no event may the Committee make a recommendation to withhold funds for any period except the three month period immediately preceding the date of the meeting of the Committee at which such a recommendation is made, and no funds may be withheld pursuant to this provision by the City, except upon such a recommendation by the Committee.
The Company understands that the City intends to hire an independent consultant to evaluate the operations of the Wastewater Facility and engineering and design issue relating to the cause and control of odor and noise at the Wastewater Facility. The Company agrees to reimburse to the City one-half of the fees and expenses of the designated odor and noise consultant(s) up to an aggregate of forty thousand dollars ($40,000.00) for the cost of performing the odor and noise study. In the event the Company fails to reimburse the City for such fees and expenses, the City, upon ten (10) days' notice, may deduct any such share of fees and expenses from any Service fees due the Company under this Agreement.

The Company shall be afforded the opportunity to have input into the scope of design and operation review, the right to make comments on draft reports and shall be provided a copy of any final report of such consultant.
AWT GUARANTEE

This Guarantee made as of the 30th day of June, 1998, by Air & Water Technologies Corporation a Delaware corporation ("Project Guarantor"), having its principal place of business in New York, New York, USA, to and for the benefit of the City of New Bedford ("City").

WITNESSETH:

WHEREAS, Professional Services Group, Inc., a Minnesota corporation, (the "Company") having an office at 14950 Heathrow Forest Parkway, Houston, Texas 77032, has entered into an Agreement for Operation, Maintenance and Management Services (the "Agreement") with the City dated as of June 1, 1998.

WHEREAS, Project Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement; and

WHEREAS, City would not enter into and perform its obligations under the Agreement unless the Project Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to the City to enter into the Agreement, the Project Guarantor agrees as follows:

1. Project Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company’s obligations under the Agreement in accordance with the terms and conditions therein.

2. This Guarantee shall be governed by the law of the Commonwealth of Massachusetts exclusive of the choice of law rules thereof and Project Guarantor hereby agrees to the service of process in the Commonwealth of Massachusetts for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

3. This Guarantee shall be binding upon and enforceable against the Project Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Project Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee and is for the benefit of the City, and any permitted successors and assigns under the Agreement.

4. This Guarantee may be enforced by the City without first resorting to any action against Company or exhausting any other remedies that the City may have.

5. Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the City as each cause of action arises. The Project Guarantor waives presentation to, demand of performance from and protest to the City of the obligations of the City under the Agreement. The Project Guarantor shall be entitled to assert, as defenses hereunder, any defenses available to the Company under the Agreement.
6. No failure or delay by the City in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

7. Project Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Project Guarantor. Notice of any such assignment shall be given in writing to the City within thirty (30) days of the effective date of any such merger, consolidation or transfer.

8. The respective obligations of Project Guarantor to the City set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that City first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Project Guarantor hereunder, and shall not be subject to any claim of Project Guarantor against any other Person including the City, other than a claim that the matter giving rise to the City’s claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State of Massachusetts.

9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Project Guarantor solely and exclusively for the benefit of the City, and may be enforced against Project Guarantor by the City.

10. Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

Project Guarantor at: Air & Water Technologies Corporation
800 Third Avenue, 38th Floor
New York, New York, 10022
Attn: Alain Brunais

with a copy to: Vivendi
42 avenue de Friedland
75008 Paris, France
Attn: Guillaume Hannego, Chief Financial Officer
and a copy to: Compagnie Generale des Eaux
52 rue d' Anjou
75384 Paris, France
Attn: F. Jobard/International Affairs

City at: City of New Bedford
133 William Street
New Bedford, MA 02744
Attn: Mayor

or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and if delivered by hand upon delivery.

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

ATTEST:

AIR & WATER TECHNOLOGIES CORPORATION
By: J.R. Vidal, Treasurer

ACCEPTED:

CITY OF NEW BEDFORD
By: Frederick M. Kalisz, Jr.

TRADOS: 1107859.1 (rev01.doc)
VIVENDI GUARANTEE

This Guarantee made as of the 3rd day of June, 1998, by Vivendi (Ek/la Compagnie Generale des Eaux), a French corporation ("Project Guarantor"), having its principal place of business at 42 avenue de Friedland, 75008 Paris, France, to and for the benefit of the City of New Bedford ("City").

WITNESSETH:

WHEREAS, Professional Services Group, Inc., a Minnesota corporation, (the "Company") having an office at 14950 Heathrow Forest Parkway, Houston, Texas 77032, has entered into an Agreement for Operation, Maintenance and Management Services (the "Agreement") with the City dated as of June 1, 1998.

WHEREAS, Project Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement; and

WHEREAS, City would not enter into and perform its obligations under the Agreement unless the Project Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to the City to enter into the Agreement, the Project Guarantor agrees as follows:

1. Subject to the limitations set forth in Section 12 below, Project Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company’s obligations under the Agreement in accordance with the terms and conditions therein and subject to the conditions of this Guarantee.

2. This Guarantee shall be governed by the law of the Commonwealth of Massachusetts exclusive of the choice of law rules thereof and Project Guarantor hereby agrees to the service of process in the Commonwealth of Massachusetts for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

3. This Guarantee shall be binding upon and enforceable against the Project Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Project Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee and is for the benefit of the City, and any permitted successors and assigns under the Agreement.

4. This Guarantee may be enforced by the City without first resorting to any action against Company or exhausting any other remedies that the City may have; provided, however, that notwithstanding anything to the contrary set forth in this Guarantee, the City may not commence enforcement of any rights that it may have under this Guarantee (i) during any cure period afforded to the Company under the Agreement and (ii) until ninety (90) days after written
notice to the Project Guarantor that the Company is in default under the Agreement which notice shall be rescinded by the City if the Company ceases to be in default under the Agreement during such ninety (90) day period.

5. Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the City as each cause of action arises. Project Guarantor waives presentation to, demand of performance from and protest to the City of the obligations of the City under the Agreement. The Project Guarantor shall be entitled to assert, as defenses hereunder, any defenses available to the Company under the Agreement.

6. No failure or delay by the City in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

7. Project Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Project Guarantor. Notice of any such assignment shall be given in writing to the City within thirty (30) days of the effective date of any such merger, consolidation or transfer. Project Guarantor may assign its obligations hereunder to a transferee of substantially all of the property relating to the water activity of the Project Guarantor only with the prior written consent of the City.

8. Except as set forth in Sections 4 and 5 above the, obligations of Project Guarantor to the City set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that City first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Project Guarantor hereunder, and shall not be subject to any claim of Project Guarantor against any other Person including the City, other than a claim that the matter giving rise to the City’s claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State of Massachusetts.

9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Project Guarantor solely and exclusively for the benefit of the City, and may be enforced against Project Guarantor by the City.

10. Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in
writing and shall be served personally or sent by certified mail, return receipt requested, to:

Project Guarantor at: Vivendi
42 avenue de Friedland
75008 Paris, France
Attn: Guillaume Hannego, Chief Financial Officer

with a copy to: Air & Water Technologies Corporation
800 Third Avenue, 38th Floor
New York, New York 10022
Attn: Alain Brunais

and a copy to: Compagnie Generale des Eaux
52 rue d' Anjou
75384 Paris, France
Attn: F. Jobard/International Affairs

City at: City of New Bedford
133 William Street
New Bedford, MA 02744
Attn: Mayor

or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and if delivered by hand upon delivery.

12. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS GUARANTEE, THE LIABILITY OF THE PROJECT GUARANTOR HEREUNDER, EXCLUSIVE OF COSTS INCURRED BY THE CITY TO ENFORCE ITS RIGHTS HERUNDER, SHALL NOT EXCEED U.S. $10,000,000.00.

13. This Guarantee shall come into force upon the execution of the Agreement and the issuance of a Guarantee in favor of the City by Air & Water Technologies Corporation and shall remain valid until the earlier to occur of (i) full performance by the Company of its obligations under the Agreement and full and final settlement of all accounts and disputes between the City and the Company and (ii) the term of the Agreement (i.e. a maximum of twenty years from the coming into force of the Agreement), and will thereafter become null and void.
IN WITNESS WHEREOF, Project Guarantor has executed this instrument the day and year first above written.

ATTEST:

VIVENDI

By: 
Guillaume Hannezo
Chief Financial Officer

CITY OF NEW BEDFORD

ACCEPTED:

By: 
Frederick M. Kalise, Jr.
Mayor
### Certificate of Insurance

**Certificate Number:** # 60316

**Producer:**
J&H Marsh & McLennan, Inc.
1166 Avenue of the Americas
New York, NY 10036-2774

This certificate is issued as a matter of information only and conveys no rights upon the certificate holder other than those provided in the policy. This certificate does not amend, extend or alter the coverage afforded by the policies listed herein.

**Companies Affording Coverage:**
- **A Indemnity Ins Co of N. America**
- **B National Union Fire Ins. Co.**
- **C Pacific Employers Ins Co**
- **D**

**Insured:**
Professional Services Group, Inc., A Part of Air & Water Technologies Corporation
14950 Heathrow Forest Parkway
Suite 200, Houston, TX 77032

This is to certify that policies of insurance listed herein have been issued to the insured named herein for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which the certificate may be issued or may pertain, the insurance afforded by the policies listed herein is subject to all the terms, conditions and exclusions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>CO</th>
<th>STATE</th>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFFECTIVE DATE (MM/DD/YY)</th>
<th>POLICY EXPIRATION DATE (MM/DD/YY)</th>
<th>LIMITS</th>
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<td>10/31/98</td>
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<td></td>
<td>Products-Dam/Deg</td>
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<td></td>
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<td></td>
<td>Personal &amp; Adv Injury</td>
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<td></td>
<td>Each Occurrence</td>
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<td></td>
<td>Fire Damage (Any one fire)</td>
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<td>Med. Expense (Any one person)</td>
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<td></td>
<td></td>
<td>Combined Single Limit</td>
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<td></td>
<td>Bodily Injury (Per person)</td>
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<tr>
<td></td>
<td></td>
<td>Bodily Injury (Per accident)</td>
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<tr>
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<td>Property Damage</td>
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<td></td>
<td></td>
<td>Auto Only - BA Accident</td>
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<td></td>
<td></td>
<td>Other Than Auto Only</td>
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<td></td>
<td></td>
<td>Each Accident</td>
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<td>Aggregate</td>
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<td></td>
<td></td>
<td>Each Occurrence</td>
<td>$5000000</td>
<td></td>
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<td>Aggregate</td>
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<tr>
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<td>Umbrella Form</td>
<td>BE3570150</td>
<td>10/31/97</td>
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<td>Other Than Umbrella Form</td>
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<td>C</td>
<td></td>
<td>Workers' Compensation and Employers Liability</td>
<td>WLRC4247579-1</td>
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<tr>
<td></td>
<td></td>
<td>Each Accident</td>
<td></td>
<td></td>
<td></td>
<td>$1000000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Disease - Policy Limit</td>
<td></td>
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<td></td>
<td>$1000000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Disease - Each Employee</td>
<td></td>
<td></td>
<td></td>
<td>$1000000</td>
</tr>
</tbody>
</table>

**Description of Operations/Locations/Vehicles/Special Items**

(See reverse and/or attached)

**Certificate Holder:**
City of New Bedford
133 William Street
New Bedford, MA 02740

**Cancellation:**
Should any of the policies listed herein be cancelled before the expiration date thereof, the insurer affording coverage will endeavor to mail 60 days written notice to the certificate holder named herein, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents or representatives, or the insurer of this certificate.

**J&H Marsh & McLennan, Incorporated**

**By:**
Mim 1 (6/95) Valid As Of: 6/29/96

**Page:** 1 of 2
Workers' Compensation

Statutory benefits as defined by Commonwealth statutes encompassing all operations contemplated by this contract or agreement to apply to all of the Company's officers, and employees regardless of number of employees. Employers Liability will have minimum limits for bodily injury by accident of $500,000 per accident and for bodily injury by disease with a $500,000 policy limit and $500,000 per employee.

Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures on an occurrence basis with minimum limits of $1,000,000 per occurrence, and $2,000,000 aggregate.

Business Automobile Liability

Coverage shall apply to Company-owned vehicles and/or hired and non-owned vehicles and employee non-ownership use with minimum limits of $1,000,000 CSL (combined single limit).

Umbrella Liability

Coverage shall apply to general liability, automobile liability and Employer's Liability conforming to the minimum underlying requirements of the umbrella. Minimum limits of $5,000,000 each occurrence.

Deductibles

Deductible amounts shall be reasonably satisfactory to the City.

Certificate of Insurance

The City shall be listed as a certificate holder and an Additional Insured with respect to Commercial General Liability, Business Automobile Liability and the Umbrella Liability coverages.
5.1 OPERATION OF OPERATION AND MAINTENANCE FEE

The Operation and Maintenance Fee to be paid to the Company for each Billing Month during the Term of the Agreement shall be one-twelfth (1/12th) of the annual amount set forth below in Table S5-1, as adjusted from time to time pursuant to Section 5.2 of this Schedule 5 and Section 6.02 of the Agreement.

<table>
<thead>
<tr>
<th>TABLE S5-1</th>
<th>OPERATION &amp; MAINTENANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Operation and Maintenance Fee(^{(1)})</td>
<td>$3,306,350</td>
</tr>
<tr>
<td>Date of Operation and Maintenance Fee Escalation(^{(2)})</td>
<td>July 1, 1999</td>
</tr>
<tr>
<td>Operation and Maintenance Fee Escalator (^{(2)})</td>
<td>100% of CPI</td>
</tr>
</tbody>
</table>

Note:
(1) Operation and Maintenance Fee stated as annual amount.
(2) Date of Operation and Maintenance Fee Escalation and Operation and Maintenance Fee Escalator shall be provided for Agreement Term of 10 years, with two 5-year options. (Escalation annual calculation is to be based on the March CPI escalator.)

5.2 ESCALATION OF OPERATION AND MAINTENANCE COSTS

For Term of the Agreement, the Operation and Maintenance Fee Escalator shall be used to adjust the Operation and Maintenance Fee component of the Service Fee on an annual basis as of the first day of each Billing Year. To effect the escalation for any particular Billing Year, the Operation and Maintenance Fee shall be adjusted by a factor equal to the change in the Operation and Maintenance Fee Escalator from the date of the Date of Operation and Maintenance Fee Escalation through the month of March preceding the date on which the escalation is to become effective.

For example, if the CPI for June 1999, is 170 and the CPI for March, 2000 is 175, the annual Operations and Maintenance fee shall be adjusted, as of July 1, 2000 as follows:

$$3,306,350 \times \frac{175}{170} = 3,403,595$$
6.1 RESPONSIBILITIES

City Permits

It is anticipated that the following Permits will be required to be maintained in the name of the City in connection with the operation of the Wastewater Facility:

National Pollutant Discharge Elimination System (NPDES) Permit MA 0100781

Massachusetts State Permit No. 120

Massachusetts Air Quality Permit No. 4P91055

The Company shall be responsible for assisting the City with renewing and/or obtaining and maintaining such Permits and all other applicable federal, State and local approvals and/or permits required for the Wastewater Facility and issued or to be issued in the name of the City. The Company shall be responsible for preparing all applicable reports pertaining to any and all such Permits in compliance with federal, state and local requirements for submission by the City to the appropriate agencies.

Company Permits

It is anticipated that the following Permits will be required to be maintained in the name of the Company in connection with its performance of the Services:

- Operator Licenses
- Electrical Permit ("C" license)
- CDL License
- Radio FCC Licenses
- Laboratory Certification

All such Permits and any other licenses, permits, and certificates issued or to be issued to the Company will be kept current by the Company. Any penalties associated with failure to obtain or keep current any required licenses, permit and certificates will be borne by the Company, without reimbursement from the City. The Company shall be responsible for preparing all applicable reports pertaining to any and all such Permits in compliance with federal, State and local requirements for submission to the appropriate agencies.

The Company shall comply with satisfy and pay all costs, fees or fines associated with any and all violators of regulatory requirements established by to the Permits, and shall be responsible for public notification in the event of non-compliance with wastewater treatment standards.
<table>
<thead>
<tr>
<th>Item</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>KWH/ year</td>
</tr>
<tr>
<td>Electricity</td>
<td>14,240,350</td>
</tr>
</tbody>
</table>
SCHEDULE 8

MAXIMUM COSTS FOR WASTEWATER SLUDGE DISPOSAL

Flows or loadings within "10% of the 12 month moving average flows and loadings set forth in Table S8-1 shall result in no adjustment to the Service Fee. Flows or loadings which exceed the "10% of the flows and loadings set forth in Table S8-1 on a 12-month moving average, shall result in an adjustment to compensation in the subsequent fiscal year.

Consistent with the baseline flow and loadings numbers specified below in Table S8-1, the Company shall be responsible for Wastewater Sludge disposal costs per the Bio-Gro contract which exceed the limits specified below in Table S8-2:

TABLE S8-1
BASELINE FLOW AND LOADINGS - 12-MONTH AVERAGE
JANUARY 1, 1997 THROUGH DECEMBER 31, 1997

<table>
<thead>
<tr>
<th>FLOW (MGD)</th>
<th>BOD lbs/day</th>
<th>TSS lbs/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>43,730</td>
<td>31,137</td>
</tr>
</tbody>
</table>

TABLE S8-2
MAXIMUM SLUDGE DISPOSAL COSTS FOR THE CITY
(PER BIO-GRO CONTRACT)

<table>
<thead>
<tr>
<th>Item</th>
<th>Annual Tonnage</th>
<th>1st Year Costs Per Bio-Gro Contract(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sludge</td>
<td>4,606</td>
<td>$1,197,560</td>
</tr>
</tbody>
</table>

(1) These costs to be adjusted annually based upon the inflationary adjustment specified in the Bio-Gro Contract.

(2) This cost is based on the Per Ton Fee Component as described in the Agreement for Out-of-City Primary Long-Term Sludge Disposition between the City and Wheelabrator Clean Water Systems dated as of October 13, 1995, and is subject to annual escalation for each year during the Term, including extensions, of this Agreement, on the basis set forth therein.
SCHEDULE 9
EQUIPMENT AND CHEMICALS INVENTORY

Within 30 days subsequent to the Commencement Date, the Company shall conduct a physical inventory and prepare an up-to-date report of spare parts and chemicals located at the Wastewater Facility. The inventory report shall be attached to this Schedule 9 and contain, but is not limited to, the following information relative to the Equipment and chemicals at the Wastewater Facility:

- Detailed description of items
- Date of purchase
- Identification number (i.e., serial number), if available
- Manufacturers name
- Quantity (i.e., gallons of chemicals)

For the term of the Agreement, the Company shall maintain a physical inventory of City's Rolling Stock, chemicals and Equipment in use at the Wastewater Facility. Unless otherwise approved by the City, the Company shall provide the City with the same dollar value of spare parts and chemicals upon termination of the Agreement.
Pass Through Costs shall be paid by the City as a component of the Service Fee pursuant to Sections 6.01 and 6.03 based on satisfactory Cost Substantiation documentation provided by the Company and satisfactory to the City demonstrating that such costs have been incurred and are applicable pursuant to the provisions of the Agreement. Pass Through Costs shall be identified on the City's monthly invoices as separate line items.

The following costs are Pass Through Costs pursuant to the Agreement:

1. The cost of electricity purchased for use in the Wastewater Facility in quantities not exceeding the maximum electricity usage allowed under Schedule 7 hereto.

2. The cost of any premiums paid by the Company for the Performance Bond, if any. Notwithstanding the foregoing, Pass Through Costs shall not include increases in Performance Bond premiums to the extent such increases are caused by extraordinary claims under other performance bonds issued on behalf of the Company, the Guarantor or any of their Affiliates other than claims arising from Uncontrollable Circumstances. The amount of any such extraordinary increases shall be for the account of the Company.
11.1 GENERAL

The Company shall provide staff qualified and experienced in the operation, maintenance, and management of wastewater treatment systems similar in nature and character to the Wastewater Facility. The Company shall also provide additional third party support, on an as needed basis, to perform its duties and obligations of this Agreement. Such third parties shall be equally qualified for the specific Services to be performed. The Company is responsible for maintaining the required number of staff and third party contractors as deemed appropriate to operate, maintain and manage the Wastewater Facility in accordance with the provisions and terms of this Agreement. The Company shall provide:

- Qualified management, supervisory, technical, laboratory, operations and maintenance personnel.
- Staff the Wastewater Facility with sufficient qualified, trained employees who have met the certification requirements of the DEP, as necessary, and meet Commonwealth minimum staffing level requirements.
- Duly licensed and certified personnel hired or contracted by the Company to perform the services defined in the Operator and Maintenance Plan and/or as required by the Commonwealth and any other applicable regulatory agencies.
- Specialists, as necessary, for process control, instrumentation, troubleshooting, emergency management, and other similar activities.
- A full-time, appropriately trained Odor Technician.
- Office and clerical support staff.
- Technical support to provide on-call backup and process expertise for process control, management, maintenance and repair, as necessary, to support operations and maintenance staff in performing the Services of this Agreement.
- In accordance with Section 4.04, a dedicated, on-site Project Manager to oversee and manage performance of Services including coordination with other City contractors (e.g., management contract for Wastewater Sludge).
- Provide a training program for all personnel, including operations, maintenance, safety, management skills, laboratory, and energy management. Such training shall include both plant specific and general treatment material.
- Recognize existing unions or other body selected by current employees as of the effective date of this Agreement.

11.2 EXISTING EMPLOYEES

The Company may offer, but is not obligated to offer, employment to employees of the City's current contract operator of the Wastewater Facility.
11.3 STAFFING PLAN

The Company shall submit to the City within 30 days after execution of the Agreement a staffing plan for the personnel requirements during both the transition phase and the long-term operations. The Company shall include, at a minimum, in this staffing plan the following in accordance with the provisions of this Agreement:

- Organization chart
- List of all personnel required
- Job classifications and wage rates
- Number of staff required for the transition phase and long term operations
- Resumes and qualifications of personnel assigned to perform Services
- The Company intends to utilize a staff of twenty-eight (28) personnel for operations of the Wastewater Facility. The company has a harmonious working relationship with the union representing members of the bargaining unit and has committed to continue its practice of fairness in dealing with that organization representing the staff at the Wastewater Facility.

11.4 TRAINING PROGRAMS

The Company shall provide training programs for all personnel employed for performance of Services for the Agreement. Such training shall include, but not limited to, modern process control, equipment operation, repair, and maintenance, sampling and analytical procedures, regulatory requirements, supervisory skills, and safety and occupational health procedures. The Company shall maintain records of all such training programs.

No later than 30 days prior to the Commencement Date, the Company shall submit five copies of a draft Operator Training Plan (Training Plan) for review and comment by City. The Training Plan shall clearly define the classroom and hands-on training curriculum for each operator position and classification. Calendar dates and milestones shall be assigned to each portion of the training and a training schedule shall be submitted in the Training Plan. The date and duration of on-site training by each of the equipment manufacturer’s technical representatives will be shown in the schedule.

The City shall review the draft Training Plan and return one marked up copy with comments and required corrections within 30 days of the initial submittal. The Company shall submit five copies of a final version of the Training Plan incorporating City requested changes and comments 30 days following the return of the draft version.

The Company shall comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; M.G.L. Chap. 151B; and all relevant administrative orders and executive orders.
SCHEDULE 12
COST ADJUSTMENT METHODOLOGY

The following methodology shall be employed to adjust the service fee for increases and decreases in flows and loads that exceed 10 percent of the base year influent parameters. The Service Fee shall be increased when flow and loads increase by more than 10 percent and the Service Fee shall be decreased when flow and loads decrease by more than 10 percent. This adjustment will apply only to the increment of flow and load in excess of the 10 percent limit.

Base year parameters are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Flow—MGD</th>
<th>BOD—lbs/day</th>
<th>TSS—lbs/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Year</td>
<td>22.0</td>
<td>43,730</td>
<td>31,137</td>
</tr>
<tr>
<td>10 percent floor</td>
<td>19.8</td>
<td>39,357</td>
<td>28,023</td>
</tr>
<tr>
<td>10 percent ceiling</td>
<td>24.2</td>
<td>48,103</td>
<td>34,251</td>
</tr>
</tbody>
</table>

Adjustment factors are as follows:

<table>
<thead>
<tr>
<th>Flow—MGD</th>
<th>BOD—lbs/day</th>
<th>TSS—lbs/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>$26,978</td>
<td>$ 3.22</td>
<td>$ 6.36</td>
</tr>
</tbody>
</table>

To illustrate the methodology, assume that in calendar year 2001, flows average 25.2 mgd, BOD averages 36,357 lbs per day and TSS averages 27,023 lbs per day. The adjustments would be as follows:

Flow Incremental flow = 25.2 mgd - 24.2 mgd
= 1 mgd
Flow fee adjustment = 1 mgd* $26,978
= $26,978 increase in service fee for the contract year commencing July 1, 2002

BOD Incremental BOD = 36,357 lbs/day - 39,357 lbs/day
= -3,000 lbs
= -3,000* $3.22
= -$9,660 decrease in BOD adjustment for the contract year commencing July 1, 2002

TSS Incremental TSS = 27,023 lbs/day - 28,023 lbs/day
= -1,000 lbs
= -1,000 * $6.36
= -$6,360 decrease in TSS adjustment for the contract year commencing July 1, 2002.
PERFORMANCE BOND

BOND NO. 53-0123-17277-98-2

KNOW ALL MEN BY THESE PRESENTS: That

PROFESSIONAL SERVICES GROUP, INC., 14950 HEATHROW FOREST PARKWAY, SUITE 200,
HOUSTON, TEXAS 77032 (hereinafter called the Principal), and

UNITED STATES FIDELITY AND GUARANTY COMPANY
Corporation of THE STATE OF MARYLAND (hereinafter called
the Surety), are held and firmly bound unto THE CITY OF NEW BEDFORD, MASSACHUSETTS

(herinafter called the Obligee), in the full and just sum of THREE MILLION, THREE HUNDRED SIX THOUSAND,
THREE HUNDRED FIFTY AND NO/100 Dollars ($3,306,350.00) to the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and each of their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated JUNE 1, 1998 entered into a contract with the Owner for THE OPERATION, MAINTENANCE AND MANAGEMENT OF THE OBLIGEE'S
WASTEWATER TREATMENT FACILITY

(20)
for a period of UP TO TWENTY year(s) which contract is hereby referred to and made a part hereof.

WHEREAS, the Obligee has agreed to accept a bond guaranteeing the performance of said contract for a period of one year.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the Principal shall well and truly perform each and every obligation in said contract at the time and in the manner specified during the term of this bond, and shall reimburse said Obligee all loss and damage which said Obligee may sustain by reason of failure or default on the part of said Principal, then this obligation shall be void, otherwise to remain in full force and effect.
PROVIDED, HOWEVER, That this bond is subject to the following conditions:

1. This bond is for the term beginning JULY 1, 1998 and ending JULY 1, 1999.

2. In the event of a default by the Principal in the performance of the contract during the term of this bond, the Surety shall be liable only for the loss to the Obligee due to actual excess costs of performance which occurred within the bond term up to the maximum penalty of this bond.

3. No claim, action, suit, or proceeding, except as hereinafter set forth, shall be had or maintained against the Surety on this instrument unless same be brought or instituted and process served upon the Surety within six months from termination or expiration of the bond term.

4. Neither nonrenewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond shall constitute loss to the Obligee recoverable under this bond.

5. The bond may be extended for additional terms at the option of the Surety, by continuation certificate executed by the Surety.

6. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrator or successors of Owner.

Signed and sealed this 7TH day of JULY AD 1998

PROFESSIONAL SERVICES GROUP, INC.

(Principal) (Seal)

By:
(Title)

UNITED STATES FIDELITY AND GUARANTY COMPANY

(Surety) (Seal)

By:
RONALD TUCKER Attorney-in-fact
CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF
COUNTY OF

On this 9th day of July, 1998 before me personally came

________________________________________
Patrick McMahon

to me known, who, being by me duly sworn, did depose and say that she/he resides in

________________________________________
Houston, Texas

that she/he is the

________________________________________
President

of the

Professional Services Group, Inc.

the corporation described in and which executed the above instrument that she/he knows the seal of
said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by
order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by
like order.

(SEAL) __________________________________________
Donna Enriquez
United States Fidelity and Guaranty Company

Power of Attorney

No. 110652

Know all men by these presents: That United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the State of Maryland and having its principal offices at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint Joseph Dobkowski, Jr., Thomas H. McNaught, Alice McLaughlin, Adrienne Scalera, Kathleen M. Cristino, Sandra K. Wolf and Ronald Tucker

of the City of Parsippany, State of New Jersey, its true and lawful Attorney-in-Fact, each in their separate capacity, if more than one is named above, to sign his name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons; guaranteeing the performance of contracts; and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, the said United States Fidelity and Guaranty Company, has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice President and Assistant Secretary, this 21st day of November, A.D. 1997.

United States Fidelity and Guaranty Company,

(Signed) By: [Signature]
Vice President

(Signed) By: [Signature]
Assistant Secretary

State of Maryland

Baltimore City

On this 21st day of November, A.D. 1997, before me, personally known to me, Gary A. Wilson, Vice President of United States Fidelity and Guaranty Company, and Thomas E. Hubbard, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me personally sworn, said that they, the said Gary A. Wilson and Thomas E. Hubbard, were respectively the Vice President and the Assistant Secretary of the said United States Fidelity and Guaranty Company, the corporation described in and which issued the foregoing Power of Attorney; that they have obeyed the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal; that it was so affixed by the said or the Board of Directors of said corporation; and that they signed their names thereto by the order as Vice President and Assistant Secretary, respectively, of the Company.

My Commission expires the 1st day of August, A.D. 1998.

(Signed) By: [Signature]
Notary Public

This Power of Attorney is granted under and is in conformity with the following Resolutions adopted by the Board of Directors of the United States Fidelity and Guaranty Company on September 24, 1992:

Resolved, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or an Executive Vice President, or a Senior Vice President, or a Vice President, or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officer or officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attested.

Resolved, that Attorney-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Thomas E. Hubbard, an Assistant Secretary of the United States Fidelity and Guaranty Company, do hereby certify that the foregoing are true excepts from the resolutions of the said Company as adopted by its Board of Directors on September 24, 1992 and that these resolutions are in full force and effect.

I, the undersigned Assistant Secretary of the United States Fidelity and Guaranty Company, do hereby certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Testimony Whereof, I have hereunto set my hand and the seal of the United States Fidelity and Guaranty Company, on this 7th day of July, 1998.

[Signature]
Assistant Secretary
Currently two Capital Expenditures are planned for the Wastewater Facility. The first is the installation of spray bars in all six of the final clarifiers, the second involves modifications to the existing polymer system.

To prevent build up of scum on the influent end of the clarifiers a system of water headers with spray nozzles will be installed in each of the final clarifiers. The use of the spray bar system is expected to reduce the amount of scum that accumulates on the surface which in turn will reduce the development of odor within the tank. Water sprayed on the clarifier surface will move floating material to the scum collection system at the effluent end of the clarifier.

To provide greater flexibility to the supplied polymer system, two additional self-contained liquid polymer preparation units will be installed. One will service the Wastewater Sludge dewatering system (centrifuges); the second will service the WAS thickening system (gravity belt thickeners). The second system will also act as a backup to the first. This change also will allow for the mixing of stored liquid polymer in the bulk storage tank.
United States Fidelity and Guaranty Company
(Commenced Business August 1, 1865)
HOME OFFICE: BALTIMORE, MD

FINANCIAL STATEMENT DECEMBER 31, 1997

(STATUTORY BASIS)

ASSETS

Cash ........................................................................................................ $100,094,114
Invested Assets:
  Bonds ......................................................................................... $4,917,074,168
  Preferred Stocks ....................................................................... 30,060,712
  Common Stocks ......................................................................... 804,495,537
  Mortgage Loans .......................................................................... 351,598,723
  Real Estate .................................................................................. 103,914,362
  Short-term Investments ............................................................. 232,881,710
  Other Invested Assets .............................................................. 310,385,785
  Total Invested Assets ................................................................ 6,749,610,797
Net Premiums in Course of Collection * ........................................... 548,889,299
Accrued Interest and Dividends ...................................................... 82,793,391
Other Admitted Assets .................................................................. 364,544,957
  Total Assets ................................................................................ $7,845,932,558

LIABILITIES AND POLICYHOLDERS' SURPLUS

Reserves:
  Losses and Loss Adjustment Expenses ..................................... $4,420,660,063
  Premium Taxes and Operating Expenses ................................... 181,886,268
  Federal and Foreign Income Taxes .............................................. 0
  Unearned Premiums .................................................................... 841,952,846
  Total Reserves ........................................................................... $5,444,499,177
Funds Held Under Reinsurance Treaties ........................................... 640,063,503
Other Liabilities ............................................................................ 299,624,326
  Total Liabilities .......................................................................... $6,384,187,006
Capital Stock - $2.50 par value .......................................................... $78,579,288
Surplus ........................................................................................... 1,459,966,114
Surplus Appropriated for Net Unrealized
  Capital Gains and (Losses) ........................................................... (68,799,850)
  Total Policyholders' Surplus ....................................................... $1,461,745,553
  Total Liabilities and Policyholders' Surplus ................................. $7,845,932,558

Investment values as prescribed by the National Association of Insurance Commissioners.
Cash and Securities in the amount of $408,508,394 in the statement are deposited as required by law.
*Excludes Premiums Receivable over 90 days old.

NORMAN P. BLAKE, JR.,
Chairman of the Board & President

THOMAS A. BRADLEY,
Vice President-Controller

County of Baltimore,
State of Maryland

On the 30th day of February, 1998 before me, Shirley Mahomes, a Notary Public in and for the City and State aforesaid, personally appeared Norman P. Blake, Jr. and Thomas A. Bradley, Chairman of the Board & President and Vice President-Controller, respectively, of the United States Fidelity and Guaranty Company, who, being by me severally duly sworn, did depose and say that they are such officers of the said company, and that the above and foregoing is a full, true and correct statement of the Assets and Liabilities of the said company, as they appeared upon the books of the said company on the 31st day of December A.D., 1997.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, the day and year aforesaid.

SHIRLEY MAHOMES,
Notary Public
CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY
COUNTY OF MORRIS

On this 7th day of July, 1998 before me personally came

RONALD TUCKER to me known, who, being by me duly sworn, did depose and say that he
resides in WEST CALDWELL, NEW JERSEY that he is the ATTORNEY-IN-FACT OF THE

UNITED STATES FIDELITY AND GUARANTY COMPANY

the corporation described in and which executed the above instrument; that he knows the seal of said
corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by
order of the Board of Directors of said corporation, and that he signed his name thereto by like
order.

(SEAL)

NOTARY

ADELLE C. KING
NOTARY PUBLIC OF NEW JERSEY
MY COMM. EXP. JUNE 13, 2002
The Wastewater Facility is a certified Class VI secondary treatment plant designed to treat average annual daily flows of 30 mgd and peak daily flows of 75 mgd. The Wastewater Plant commenced operation in August of 1996, following capital expenditures in excess of approximately $100 million.

The plant includes the following major components:

- Plant headworks including influent sewer, influent pumping and preliminary treatment;
- Primary treatment;
- Secondary treatment;
- Disinfection;
- Sludge processing facilities;
- Odor control facilities; and
- Plant utilities.

The treatment process is designed to reduce both biochemical oxygen demand (BOD) and total suspended solids (TSS) to less than 30 milligrams per liter (mg/l) in the effluent on a monthly average. The secondary treatment process used in the City's new facility is activated sludge with diffused air. The activated sludge process consists of two interdependent operations: aeration and clarification.

In the aeration process, air is mixed with the wastewater in aeration tanks to biologically reduce the waste concentration. The Wastewater Facility aeration tanks were sized to accommodate flows and loads expected at high groundwater average day flow conditions. Aeration equipment and blowers were sized to meet the oxygen demand at peak loading conditions. The total aeration tank volume is 7.3 million gallons and is divided into six tanks. These tanks are enclosed to contain any odors. Air is drawn from the aeration tanks through a wet scrubber for treatment prior to being released into the atmosphere through elevated stacks.

Following the aeration process, the wastewater flows to the secondary clarifiers where the biological solids are separated from liquid. The separated solids are removed from the clarifiers and recycled to the aeration tanks to maintain the biological process. The clarified water from the secondary clarifiers is disinfected and then discharged to the plant outfall. The City will use the existing outfalls, once rehabilitated, to discharge the wastewater to the Outer Harbor. The City is currently evaluating the advisability of constructing a diffuser. The contemplated diffuser is an extension of the main outfall (expected to be about 650 feet in length) that has small orifices allowing the Secondary Treatment Plant effluent to mix more smoothly with the receiving waters.

Construction Plans and Specifications and Manufacturer's Plans and Specifications for the Wastewater Facility are on file at the Wastewater Facility.
(a) The Company shall operate, maintain and manage the Wastewater Facility to process domestic raw sewage, commercial and industrial wastewater, and any other influent delivered or caused to be delivered to the Wastewater Facility by the City, all in accordance with this Agreement (including, without limitation, the requirements set forth in the Schedules hereto) and Applicable Law.

(b) Except for Equipment, and other facilities and materials included in the Wastewater Facility as of the Commencement Date, and except for Capital Expenditures, the Company shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment (i.e. copiers, computers, etc.) fuel, chemicals, supplies, spare parts, expendables, consumables, testing and laboratory analysis and any other items required for operation, maintenance repair, replacement, renewal and management of the Wastewater Facility in accordance with this Agreement.

Section 4.02 Overall City Responsibilities.

On and after the Commencement Date and during the term of this Agreement:

(a) The City shall pay, or cause to be paid, the Service Fee to the Company in accordance with the terms and conditions of this Agreement for the Company’s performance of its obligations under this Agreement.

(b) As between the Company and the City, the City shall procure and implement, or cause to be implemented, subject to the terms of this Agreement, all Capital Expenditures in accordance with Article V hereof.

(c) The City shall afford Company access to the Wastewater Facility to the extent necessary for the Company to perform its obligations hereunder.
(d) The City shall retain responsibility for the operation and maintenance of its wastewater collection system, the setting of rates and charges to system users, and the billing and collection of fees and charges therefrom. The City shall retain responsibility for its Industrial Pretreatment Program.

(e) The City shall make available to the Company Equipment warranty information, engineering drawings, calculations, maintenance manuals, operational records, logs, reports, submittals, repair records, audits, and sludge disposal and wastewater disposal information which may be in the City’s possession or that of its agents, relating to the design, condition, operation or maintenance of the Wastewater Facility from time to time.

(f) The City shall be responsible, at its cost, but subject to Section 6.04(d) for the disposal of Wastewater Sludge, grit and screenings and solid waste generated by the Wastewater Facility so long as such materials are made available to the City or its designated contractor(s) in the manner specified in Schedule 2 hereto.

(g) The City shall provide for maintenance and repair of all landscaping and roadways within the Wastewater Facility site and the snow plowing of Wastewater Facility roadways, access roadways and parking areas in the event that snow levels thereon exceed four (4) inches.

Section 4.03 Permits.

As between the Company and the City, the respective responsibilities with respect to Wastewater Facility Permits and other Permits required by the Company in order to perform the Services hereunder shall be as set forth in Schedule 6 hereto.
Section 4.04 Company Project Manager.

The Company has designated James P. Galipeau as the Company’s full-time Project Manager and such Project Manager, and any City-approved successor, shall, within ninety (90) days after the Commencement Date, reside either within the City or within fifty (50) miles of the Wastewater Facility. The City has selected the Company to perform the services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Project Manager. Accordingly, the Company shall not, absent good cause, replace such Project Manager during the term of this Agreement, without the prior approval of the City. If such Project Manager or any City-approved successor shall retire, resign as Project Manager, request assignment to another location, or cease employment with the Company, the Company shall not appoint a successor Project Manager without the prior written approval of the City. If the City, in its sole discretion, determines that the Project Manager is performing in an unsatisfactory manner, or if an unworkable relationship between the Project Manager and the City shall arise, the Company, upon notice by the City of such circumstance, shall promptly replace such Project Manager with a successor acceptable to the City; provided, however, the City represents that it will not give such notice to the Company unless and until the City, in its sole determination, has exercised reasonable good faith efforts to rectify to its satisfaction the adverse circumstance regarding the Project Manager.

Section 4.05 Liquidated Damages.

As set forth in Section 4.01 and Schedules 1 and 2 hereto, the Company is required to satisfy the requirements of Applicable Law and the Enhanced Wastewater Standards with respect to the quality of treated effluent discharged from the Wastewater Facility. Failure to satisfy such
requirements, or failure to operate the Wastewater Facility in such a manner as to minimize public complaints concerning noise and/or odor emanating from the Wastewater Facility, may, at the election of the City, result in the imposition on the Company of liquidated damages in the manner, and in the amounts set forth in this Section 4.05.

(a) If the Wastewater Facility satisfies the treated effluent standards imposed by Applicable Law but fails to satisfy any one or more of the Enhanced Wastewater Standards;

(1) the Company shall provide a plan to the City outlining corrective actions for achieving compliance with the Enhanced Wastewater Standards within five (5) days after written notice of noncompliance given by the City.

(2) the City will review and provide written comments on the plan within forty eight (48) hours after receipt; and

(3) The Company shall immediately implement the plan, which shall address the City’s comments.

Failure to either provide a plan and/or implement the corrective actions set forth in the plan shall result in Company liability for liquidated damages in the amount of $5,000 per day from such time that either (i) the plan should have been submitted, or (ii) the date on which corrective actions should have commenced pursuant to the plan. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement or be deemed to constitute a representation by the City that the corrective actions proposed in any such plan will cause the Wastewater Facility to be in compliance with the Enhanced Wastewater Standards, or otherwise impose any liability on the City.
(b) If the Wastewater Facility fails to satisfy any provision of Applicable Law with respect to the quality of treated effluent, the Company shall be required to take the same measures set forth in Section 4.05(a) above in order to develop and implement a corrective action plan to cause the Wastewater Facility to be in compliance with Applicable Law. Failure to either provide a plan and/or implement the corrective actions set forth in the plan shall result in Company liability for liquidated damages in the amount of $5,000 per day from such time that either (i) the plan should have been submitted, or (ii) the date on which corrective actions should have commenced pursuant to the plan. In addition the Company shall be responsible for payment of any fines or damages imposed on either the City or the Company by any regulatory or other governmental agency or an account of any other third party claim as a result of any non-compliance with Applicable Law. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement or be deemed to constitute a representation by the City that the corrective actions proposed in any such plan will cause the Wastewater Facility to be in compliance with Applicable Law, or otherwise impose any liability on the City.

(c) If during any Billing Year the Company and/or the City receive complaints of five (5) or more incidents concerning odor allegedly emanating from the Facility and, after investigation by the City in cooperation with the Company, such complaints are determined by the City to be substantiated and legitimate complaints concerning odor emanating from the Wastewater Facility, the Company shall be required to take the same measures set forth in Section 4.05(a) above in order to develop and implement a corrective action plan to abate any
such odor conditions and the Company shall be liable to the City for liquidated damages in the same manner and in the same amounts as would be required in case of Company failure to achieve an Enhanced Wastewater Standard. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement, be deemed to constitute a representation by the City that the corrective actions proposed in any such plan will be sufficient to abate any odor emanating from the Wastewater Facility or otherwise impose any liability on the City.

(d) If during any Billing Year the Company and/or the City receives complaints of five (5) or more incidents concerning noise allegedly emanating from the Wastewater Facility in excess of normal operating levels, and, after investigation by the City in cooperation with the Company, such complaints are determined by the City to be substantiated and legitimate complaints concerning noise emanating from the Wastewater Facility in excess of normal operating levels, the Company shall be required to take the same measures set forth in Section 4.05(a) above in order to develop and implement a corrective action plan to abate any such noise conditions in excess of normal operating levels and the Company shall be liable to the City for liquidated damages in the same manner and in the same amounts as would be required in case of Company failure to achieve an Enhanced Wastewater Standard. Neither the review of or comment on, nor the failure of the City to comment on, any corrective action plan proposed by the Company, shall relieve the Company of any of its responsibilities under this Agreement or be deemed to constitute a representation by the City that the corrective actions proposed in any such
plan will be sufficient to abate any noise in excess of normal operating levels emanating from the Wastewater Facility or otherwise impose any liability on the City.

(e) Liquidated damages, if any, payable by the Company pursuant to Sections 4.05(a), (b), (c) and (d) shall be cumulative, and not mutually exclusive, and, in addition, are supplemental to, and shall not diminish in any manner, the rights and remedies of the City under Articles X and XI hereof.

Section 4.06 Uncontrollable Circumstances: Company Fault.

(a) Except for payment obligations, and except for obligations of the Parties which by the specific terms of this Agreement are obligations incurred in response to Uncontrollable Circumstances, each Party shall be excused, subject to this Section 4.06, for failure or delay in performance by reason of any Uncontrollable Circumstance.

(b) If either Party shall rely on the occurrence of an act, event or condition as an Uncontrollable Circumstance as the basis for not performing its obligations under this Agreement, then the Party relying on such act, event or condition shall (i) provide prompt notice to the other Party of the occurrence of the act, event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder, (ii) exercise all reasonable efforts to continue to perform its obligations hereunder to the maximum extent possible, (iii) in accordance with this Agreement, expeditiously take action to correct or cure the act, event or condition preventing performance, (iv) exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests and (v) provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to its inability to perform.
(c) If, due to Company Fault, the Wastewater Facility shall be damaged to the extent of preventing Company performance in accordance with this Agreement, the Company shall comply with Section 4.06(b) (i) through (v) above. In the case of Company Fault, as between the Company and the City, the Company, notwithstanding any other provision in this Agreement, shall be responsible for promptly restoring or repairing the Wastewater Facility at its cost and expense. In connection with any such efforts, the Company shall be entitled to utilize the proceeds of property insurance coverages, if any, maintained by the City on the Wastewater Facility, and rights of recovery on claims with respect to such coverages, if any, shall not be impaired by operation of this subsection (c). The Company hereby acknowledges that the City does not presently maintain any property damage or loss insurance on the Wastewater Facility and further agrees and acknowledges that the City has no obligation to the Company to obtain or maintain any such insurance coverage. The City hereby acknowledges that the Company does not presently maintain any property damage insurance on the Wastewater Facility. The Company shall have no responsibility to restore or repair damage to the Wastewater Facility not due to Company Fault.

ARTICLE V

CAPITAL EXPENDITURES AND COST SAVINGS

Section 5.01. Capital Expenditures in Progress.

As of the Contract Date, the City is undertaking, or intends to undertake and complete, the Capital Expenditures more particularly described in Schedule 14 hereto. The City shall complete such Capital Expenditures at no cost to the Company and the Company shall cooperate with the City and its contractors so that such Capital Expenditures can be completed in a timely
manner; provided, however, that neither the City nor any such other City contractors shall unreasonably interfere with or impede the Company in performing its obligations hereunder. The Company's obligation to operate, maintain and manage the Wastewater Facility shall include the obligation to operate, maintain and manage the Wastewater Facility as it is modified by the Capital Expenditures described in Schedule 14 hereto. The Service Fee shall not be subject to adjustment on account of the undertaking or completion of the Capital Expenditures described in Schedule 14 hereto, provided that such Capital Expenditures are completed in accordance with their respective plans and specifications. The City shall provide to the Company copies of all operating manuals, maintenance manuals and equipment specifications required to be delivered to the City in connection with the implementation of any such Capital Expenditures and copies of "as built" drawings relating to any such Capital Expenditures.

Section 5.02 Capital Expenditures Report.

Within ninety (90) days after the Commencement Date, the Company shall conduct a physical audit of the Wastewater Facility and provide the City with a reasonably detailed report recommending, on a priority basis, Capital Expenditures and other services, if any, that the City should consider undertaking relative to preserving or upgrading of the Wastewater Facility to facilitate compliance with Applicable Law, including Applicable Law relating to safety. The Company shall update such information annually by conducting such an audit and preparing and filing such a report with the City within one hundred eighty (180) days after the close of each Billing Year during the Term of this Agreement. Notwithstanding anything in this Section 5.02 to the contrary, the City may at any time perform or contract for the performance by an
independent third party, of a Wastewater Facility Capital Expenditures audit. A copy of any such audit and report shall be provided to the Company.

Section 5.03 Elective Capital Expenditures.

The City may from time to time, upon the recommendation of the Company or otherwise, elect to make Capital Expenditures relating to the Wastewater Facility. The City shall be responsible for all planning, design and construction of any such Capital Expenditures and shall bear the entire financial responsibility therefor without contribution from the Company. The Company shall cooperate with the City in connection with any such Capital Expenditures implementation; provided, however, that any such implementation shall not unreasonably interfere with or impede the Company in the performance of its obligations hereunder. Further, no such Capital Expenditures shall alter or modify the scope of Services to be provided by the Company hereunder absent a corresponding adjustment to the Operation and Maintenance Fee pursuant to Section 6.02(d).

Section 5.04 Non-Elective Capital Expenditures.

(a) Except as provided in Section 5.04(b) and (c), the City shall be responsible for any Equipment or other component of the Wastewater Facility to the extent that any such repair, renewal or replacement requires a Capital Expenditure. The Company, in connection with its performance of the Services, shall advise the City from time to time as to any such repair, renewal or replacement that may be, or may become, necessary, in order to afford the City as much time as possible to arrange for the procurement of equipment, materials and services necessary to effect any such Capital Expenditure. Subject to the provisions of applicable public procurement law, the City may, but is not obligated, to engage the Company to effect any such
Capital Expenditure. The Company shall cooperate with the City in connection with any such Capital Expenditure implementation. To the extent that the City's implementation of any Capital Expenditure pursuant to this Section 5.04, or the City's failure to implement any Capital Expenditure pursuant to this Section prevents or unreasonably impedes or interferes with the Company's performance of its obligations hereunder, such prevention, impedence or interference, as the case may be, shall constitute City Fault and the Company shall comply with the Section 4.06(b)(i) through (v) until such condition is abated.

(b) Notwithstanding Section 5.04(a) to the contrary, the first $10,000 (which amount shall be adjusted annually in accordance with the methodology set forth in Section 5.2 of Schedule 5) of costs incurred by the City for each Capital Expenditure described by clause (a) of the definition of Capital Expenditure set forth in Section 2.02, shall reduce by the amount of cost incurred by the City, not to exceed $10,000, the amount established by Section 6.07(a) from time to time as a basis for calculating a special annual payment by the Company to the City.

(c) Notwithstanding Section 5.04(a) to the contrary, the Company shall reimburse the City for all costs and expenses incurred by the City in connection with any Capital Expenditure, resulting from or necessitated by failure of the Company to perform predictive, preventative or corrective maintenance or repairs in accordance with its obligations hereunder. If the City has reason to believe that any such failure has occurred, the Company shall provide to the City access to the Company's maintenance and/or repair records for the purpose of reviewing the circumstances giving rise to the need for a Capital Expenditure. In connection with any such review, the Company shall have an opportunity to bring to the attention of the City factors, if
any, other than maintenance or repair related factors, that may have caused or contributed to such circumstances.

Section 5.05 Cost Savings.

The Company shall actively pursue improvements in the effectiveness and efficiency of Wastewater Facility operations and maintenance that may reduce the Operation and Maintenance Fee or Pass Through Costs. The Company shall prepare and file an annual report with the City within one hundred eighty (180) days after the close of each Billing Year after during the Term of this Agreement as to the steps it proposes to give effect to this Section 5.05. If the City approves any such proposal, and if implementation of any such proposal results in net savings to the City after taking into account any (i) decreases to the Operation and Maintenance Fee agreed to by the City and the Company subject to Section 6.02(e), (ii) any decreases in Pass Through Costs and (iii) any cost to the City associated with the implementation of any such proposal, the City shall, subject to Section 6.02(e), pay the Company an amount equal to forty percent (40%) of the aggregate net savings, if any, to the City resulting from the implementation of any such proposal. Such payment shall be consistent with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13, shall be made either in a lump sum, or in a series of installments over the then remaining Term of this Agreement, as elected by the City, and shall reflect the then present value (calculated on the basis of an annual discount rate equal to the City's then current annual interest rate for borrowing capital funds) of the aggregate net savings, or portion thereof, as of the time of any such lump sum payment or installment.
ARTICLE VI
PAYMENTS

Section 6.01 Service Fee.

Commencing with the first Billing Month and for each Billing Month thereafter, the City shall pay to the Company a Service Fee for managing, operating and maintaining the Wastewater Facility pursuant to the terms and conditions of this Agreement. The Service Fee shall be computed in accordance with the following formula:

\[ SF = O&M + PT \pm MA. \]

where:

- \( SF \) = Service Fee
- \( O&M \) = Operation and Maintenance Fee
- \( PT \) = Pass Through Costs
- \( MA \) = Miscellaneous Adjustments

Section 6.02 Operation and Maintenance Fee.

(a) For any Billing Month, the Operation and Maintenance Fee shall be the amount set forth in Schedule 5.1, as adjusted on a pro rata daily basis for a short Billing Month, in the first and last Billing Years, and as further adjusted pursuant to this Section 6.02.

(b) The Operation and Maintenance Fee shall be adjusted from time to time in accordance with the provisions of Schedule 5.
Section 6.03  Pass Through Costs.

Pass Through Costs for any Billing Month shall be the sum of the costs and expenses set forth in Schedule 10 hereto which were incurred by the Company during such Billing Month, to the extent of Cost Substantiation, exclusive of profit to the Company or any Company Affiliate.

Section 6.04  Miscellaneous Adjustments.

The Miscellaneous Adjustments (MA) component of the Service Fee for any particular Billing Month shall be an amount equal to the sum of the amounts determined in accordance with this Section 6.04.

(a)  The amount determined in accordance with the methodology set forth in Schedule 12 hereto in the event that the actual influent flow rates, or biological loadings of influent, depart from the baseline parameters set forth in Schedule 1 hereto.

(b)  A negative amount equal to the amount of liquidated damages, if any, payable by the Company in respect of such Billing Month pursuant to Section 4.05.

(c)  A negative amount equal to the cost, as estimated by the City, for any particular Billing Month of performing any required predictive or preventative maintenance specified in Schedule 2 hereto that the Company fails to perform.

(d)  A negative amount equal to the amount, if any, expended by the City during such Billing Month for repair, renewal or replacement Capital Expenditures pursuant to Section 5.04(e) hereof and Section 2.4.5 of Schedule 2 hereto.

(e)  A positive or negative amount as may be appropriate as a result of Capital Expenditures that may be made to the Wastewater Facility. However, no such amount shall constitute a Miscellaneous Adjustment component unless (i) agreed to by the Parties and (ii)
unless the City determines that inclusion of such amount as a Miscellaneous Adjustment component will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13.

(f) A negative amount, if any, equal to the amount that the City’s aggregate cost for transportation and disposal of Wastewater Sludge exceeds the applicable budgeted amount for Wastewater Sludge transportation and disposal set forth in Schedule 8 hereto.

(g) A positive or negative amount, subject to Cost Substantiation, to reflect any increased or decreased costs incurred by the Company (net of any available insurance proceeds), in connection with its performance of the Services as a result of any Uncontrollable Circumstance; provided, however, that no such amount shall constitute a Miscellaneous Adjustment component unless the City determines that inclusion of such amount as a Miscellaneous Adjustment component will not contravene provisions of Applicable Law (including, without limitation, any law relating to public procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and other official interpretation issued thereunder, including, without limitation, Revenue Procedure 97-13.

(h) A negative amount, determined in accordance with the agreement of the Parties to reflect any reduction in costs incurred by the Company as a result of the implementation of any operation and maintenance improvement proposed by the Company and approved by the City pursuant to Section 5.05. However, no such amount shall constitute a Miscellaneous Adjustment component unless (i) agreed to by the Parties and (ii) unless the City determines that inclusion of
such amount as a Miscellaneous Adjustment component any such reduction will not contravene
provisions of Applicable Law (including, without limitation, any law relating to public
procurement) or the private activity limitations described in Section 141 of the Internal Revenue
Code and regulations and official interpretations issued thereunder, including, without limitation,

(i) A negative amount equal to the amount, if any, determined to be payable by the
Company to the City from time to time pursuant to the Addendum to Schedule 2 hereto.

Section 6.05 Billing and Payment of Company’s Invoices.

(a) The Company shall submit its invoice to the City for each preceding Billing
Month no later than the tenth (10th) day after the close of each Billing Month. Each element
necessary to calculate the Service Fee payment due to the Company shall be reflected in said
invoice.

(b) The City shall pay the Company the Service Fee within thirty (30) days after the
date of receipt by the City of a complete invoice for any Billing Month. If the City disputes any
portion of a complete invoice, the City shall pay the undisputed amount and the dispute relating
to the balance shall be resolved in accordance with Article VIII.

Section 6.06 Information, Data and Reports.

Together with the invoice to be submitted by the Company to the City pursuant to
Section 6.05(a), the Company shall deliver to the City the Monthly Operating Report for the
preceding Billing Month.
Section 6.07 Additional Payment Provisions.

(a) Within thirty (30) days following the end of any Billing Year, the Company shall pay the City sixty percent (60%) of the amount, if any, that Company costs and expenses for repair, renewal and replacement of equipment or other Wastewater Facility components not constituting Capital Expenditures were less than $250,000 (which amount shall be adjusted annually in accordance with the methodology set forth in Section 5.2 of Schedule 5) during such Billing Year (or a prorated portion of said amount if such Billing Year had less than twelve full calendar months). The foregoing costs and expenses shall be subject to Cost Substantiation and shall not include the cost of any Company or Company-affiliate labor.

(b) The City shall have the right to equitably adjust the Service Fee payment formula over the course of the Term, as necessary, to comply with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13. Any such adjustments shall be such that the fixed and variable components of the Service Fee are within the specified percentages allowed by the private activity limitations described in Section 141 of the Internal Revenue Code and regulations issued thereunder. Adjustments shall not entitle the Company to additional compensation, nor shall any adjustment reduce the aggregate compensation payable to the Company under this Agreement absent the consent of the Company. Should such adjustments not be possible so that continued compliance with the private activity limitations described in Section 141 of the Internal Revenue Code and regulations issued thereunder is not possible, the City reserves the right to terminate this Agreement upon thirty
(30) days notice to the Company. Any such termination shall be deemed to be a Termination for Convenience pursuant to and governed by Section 11.03 hereof.

(c) The Service Fee may be otherwise adjusted by the Parties subject to (i) mutual agreement as to the amount and/or methodology and (ii) determination by the City that any such adjustment will not contravene the Applicable Law (including, without limitation, any law relating to procurement) or the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13.

ARTICLE VII

INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 7.01 Indemnification.

To the fullest extent permitted by applicable law, the Company shall protect, defend, indemnify and save the City and its agents, officials, employees, servants and consultants, including contractors or subcontractors with whom the City may have contracted, harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, environmental pollution, judgments losses, costs, expenses, suits, actions, and causes of action of every kind and character, for claims based on negligence, willful misconduct, or omissions of the Company which may arise in favor of any third party on account of illness, disease, loss of property, services, wages, death or personal injuries resulting from the Company’s performance or non-performance of its obligations or operations under this Agreement, except to the extent any such damages arise out of injuries or property claims of third parties caused by the negligence or willful misconduct of the City, or its officials, directors,
employees or agents. Further, the Company hereby agrees to indemnify the City for all reasonable expenses, court costs and attorney’s fees including those incident to appeals incurred by or imposed upon the City in connection therewith for any loss, damage, injury or other casualty. The Company additionally agrees that the Company may, subject to the approval of the City, designate an attorney of the Company’s selection to appear and defend any such action, on behalf of the City, at the expense of the Company. The Company further agrees to pay all reasonable expenses and attorney’s fees incurred by the City in establishing the right to indemnity hereunder.

Section 7.02 Waiver.

The Company and the City hereby waive any and every claim arising pursuant to this Agreement for recovery from the other for any and all loss or damage to the other resulting from the performance of this Agreement, which loss or damage is covered by collected insurance policy proceeds and will require their respective insurers to waive all rights of recovery and subrogation against the City or the Company as the case may be.

Section 7.03 Limitation of Liability.

THE COMPANY AND THE CITY ACKNOWLEDGE AND AGREE THAT BECAUSE OF THE UNIQUE NATURE OF THE UNDERTAKINGS CONTEMPLATED BY THIS AGREEMENT, IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY THE CITY OR THE COMPANY AS A RESULT OF A BREACH OF THIS AGREEMENT BY THE CITY OR THE COMPANY. HOWEVER, IN NO EVENT, BECAUSE OF A BREACH OF THIS AGREEMENT OR ANY OTHER CAUSE, WHETHER BASED UPON
CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY, DELAY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE BY THE CITY OR THE COMPANY OF THEIR OBLIGATIONS UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, SUITS BY THIRD PERSONS, SHALL THE CITY OR THE COMPANY BE LIABLE FOR OR OBLIGATED IN ANY MANNER, TO PAY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY NATURE INCURRED BY IT WHETHER OCCURRING DURING OR SUBSEQUENT TO THE PERFORMANCE OF THIS AGREEMENT.

Section 7.04 Survival.

This Article VII shall survive the termination of this Agreement.

ARTICLE VIII

DISPUTE RESOLUTION

Section 8.01 Scope.

To facilitate the timely and effective resolution of any controversy claim or dispute that may arise under this Agreement (each, a “Dispute”), the Parties shall establish, within thirty (30) days after the Commencement Date, a Dispute Resolution Committee consisting of two senior management representatives of each of the Company and the City; provided, however, that no such representatives may be directly involved in the performance of City or Company obligations, respectively, under this Agreement. Written notice of the appointment of such representatives shall be delivered by each Party to the other not later than sixty (60) days after the Commencement Date. The appointed representatives are subject to change, and written notice of any such change by each Party shall be delivered to the other Party.
The Dispute Resolution Committee shall meet as often as the circumstances may deem necessary, to resolve any Dispute. To the extent the Dispute Resolution Committee cannot, after good faith attempts, resolve any Dispute, either Party to the extent its interests are adversely impacted, may refer the matter to non-binding mediation to be conducted in the Commonwealth under the auspices of a firm or individual specializing in the mediation of contractual disputes. Each party shall bear one-half the costs and expenses of the mediation, but shall bear its own costs and expenses of representation in the mediation. If, despite the good faith efforts of the parties to resolve a Dispute, mediation does not conclude with a resolution of the Dispute, either Party may refer the Dispute to a court in the Commonwealth possessing competent jurisdiction, including, without limitation, the Federal District Court for the District of Massachusetts.

Section 8.02  Covenant to Perform.

The Parties shall continue to perform under this Agreement, without interruption or slowdown, pending resolution of any Dispute.

Section 8.03  Survival.

This Article VIII shall survive termination of this Agreement.

ARTICLE IX

INSURANCE AND PERFORMANCE BOND

Section 9.01  Insurance Coverages Certificates; Premium Payments.

Prior to the Commencement Date, the Company shall secure and continuously maintain through the term of this Agreement the insurance specified in Schedule 4 to protect the Company and the City from claims of the Company’s employees under Workers’ Compensation Acts and from claims for bodily injury, death or property damage which may arise out of or result from the
Company’s obligations and operations under this Agreement or anyone directly or indirectly employed by it for whose acts or omissions it may be liable. The City shall not establish and give any notice to the Company of the Commencement Date unless and until the Company shall have provided the City proof (including copies of policies if requested by the City) that the insurance coverages listed in Schedule 4 and required to be secured by the Company have been secured and will be in full force and effect on the Commencement Date. Certificates of insurance and copies of policies (if requested by the City), shall (i) be furnished to the City prior to the Commencement Date, (ii) be in a form and coverage satisfactory to the City, (iii) list the various coverages, and (iv) contain the statement requiring sixty (60) days prior written notice of cancellation, non-renewal or material change in the policies given to the City by registered mail, return receipt requested. All such notices shall name the City and identify this Agreement.

Section 9.02  Company Obligations and Policy Requirements.

(a) The Company’s insurers shall have no right of recovery or subrogation against the City or the Company, it being the intention of the Parties that any insurance policy so affected shall protect both Parties and be the primary coverage, to the extent of the Company’s obligations of indemnity herein, for any and all losses covered by the insurance listed in Schedule 4 hereto.

(b) The City shall be named as an additional named insured, to the extent of coverage afforded the Company, in all policies of insurance listed in Schedule 4 hereto, excepting workers’ compensation and employer’s liability coverages maintained by the Company.

(c) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums or for assessments under any form of policy.
(d) The Company shall assume and shall be solely responsible for the satisfaction of any and all deductibles and self insured retentions contained in its insurance coverages as well as any excluded loss or losses.

(e) All insurance required to be secured and maintained under this Agreement shall be procured from insurance companies authorized to do business in the Commonwealth, and all such insurers shall having a rating of at least A XII in the latest edition of Alfred M. Best's Insurance Reports.

(f) If, at any time during the term of this Agreement, any policy listed in Schedule 4 hereto shall be or becomes unsatisfactory to the City as to form or substance or if an insurance company issuing any policy listed in Schedule 4 shall be or become unsatisfactory to the City, the Company, upon notice thereof from the City, shall immediately obtain a new and substitute policy, submit the same to the City for approval, and submit a certificate and copy of the policy, if requested, to the City as provided in Section 9.01.

(g) Failure of the Company to secure and/or maintain the insurance listed in Schedule 4 hereto shall not relieve it from any liability under this Agreement, nor shall the insurance requirements herein be construed or interpreted as conflicting with the indemnification obligations of the Company pursuant to Article VII.

(h) The Company's obligation to secure, deliver and maintain the insurance policies and coverages specified in this Agreement shall be considered as "material" for purposes of Section 10.01.
Section 9.03 Performance Bond.

The Company shall provide to the City, not later than thirty (30) days after the execution of and delivery of this Agreement, a Performance Bond issued by a surety reasonably acceptable to the City. The Performance Bond shall be in an amount equal to 100% of the Service Fee for the previous Billing Year, or in respect of the first Billing Year, 100% of the Service Fee for the first Billing Year estimated by the City. The Performance Bond shall be continuously renewed, extended or replaced for as long as required by the City, any such renewal, extension or replacement to be effective not later than sixty (60) days prior to expiration of the then-effective Performance Bond.

ARTICLE X

EVENTS OF DEFAULT

Section 10.01 Damages as Ordinary Remedy.

The Parties agree, except as otherwise specifically provided for in this Agreement, that (1) neither Party shall have the right to terminate this Agreement, and (2) in the event that either Party breaches any obligation under this Agreement, or in the event any representation made by either Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages or the performance of any obligation hereunder, and that such right to recover damages or to secure the performance of such obligations as provided herein shall ordinarily constitute an adequate remedy for any breach of such obligation or any material untruth in any such representation.
Section 10.02 Events of Default by Company.

The following shall constitute Events of Default by the Company:

(a) persistent and repeated failure or refusal of the Company to perform timely any material obligation under this Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of this Agreement, provided, however, that insofar as any such failure or refusal relates to payment obligations of the Company, Section 10.02(c) shall govern; and provided further that failure by the Company to operate the Wastewater Facility in accordance with Applicable Law for more than ten (10) cumulative days in any Billing Year shall, ipso facto, constitute persistent and repeated failure or refusal;

(b) failure of the Company to pay any amount owed to the City under this Agreement within forty-five (45) days following the date any such amount has become due and payable;

(c) (i) the Company’s or any Guarantor’s being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Company or any Guarantor under the laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer by the Company or any Guarantor approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the Company or any Guarantor which shall substantially interfere with its performance hereunder;

(d) default of any Guarantor under its respective Guarantee;
(e) any failure by the Company to provide or renew the Performance Bond in accordance with the requirements of Section 9.03; or

(f) the Company's abandonment or failure to operate the Wastewater Facility for more than one (1) day in any Billing Year.

Section 10.03 Events of Default by City.

The following shall constitute Events of Default on the part of the City:

(a) persistent and repeated failure or refusal of the City to perform timely any material obligation under this Agreement; provided, however, that insofar as any such failure or refusal relates to payment obligations of the City, Section 10.03 (b) shall govern;

(b) failure of the City to pay amounts owed to the Company under this Agreement within forty-five (45) days following the date any such amount has become due and payable; or

(c) (i) the City's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the City under the laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer by the City approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the City which shall substantially interfere with its performance hereunder.
Section 10.04 Default Notices.

Neither Party may exercise its termination rights pursuant to Sections 11.01 or 11.02, as applicable, on account of and Event of Default described in Section 10.02(a) or (b) or 10.03(a) or (b), respectively, unless and until such Party shall have given the other party written notice of its failure or refusal to perform. If an Event of Default specified in a required notice of default is cured within thirty (30) days after such notice or if such Event of Default cannot be cured within thirty (30) days through the exercise of due diligence but expeditious and substantive steps are taken within said thirty (30) day period to commence to cure the Event of Default and thereafter complete the cure pursuant with due diligence to completion, there shall be no right of termination with respect to such Event of Default under Section 11.01 or 11.02, as the case may be. Events of Default other than those described in Sections 10.02(a) or (b) and 10.03(a), shall not require any notice as a prerequisite to termination under Section 11.01 or 11.02, respectively.

ARTICLE XI

TERMINATION

Section 11.01 City Termination for Event of Default by Company.

(a) If the City shall have given the Company notice that an Event of Default has occurred pursuant to Section 10.02(a) or (b) and such Event of Default is not cured by the Company in accordance with Section 10.04 of this Agreement, the City may terminate this Agreement upon thirty (30) days prior notice to the Company.

(b) If an Event of Default has occurred pursuant to Section 10.02(c), (d), (e) or (f) the City may terminate this Agreement forthwith and, except as provided in Section 11.06, shall have no further monetary obligations to the Company.
(c) Termination by the City pursuant to this Section 11.01 shall not preclude the City from seeking recourse, subject to Section 7.03, for damages or any other relief available to it at law or in equity.

Section 11.02 Company Termination for Event of Default by City.

(a) If an Event of Default has occurred pursuant to Section 10.03(c), the Company may terminate this Agreement forthwith.

(b) If the Company shall have given the City notice that an Event of Default has occurred pursuant to Section 10.03 (a) or (b) and such Event of Default is not cured by the Company in accordance with Section 10.04 of this Agreement, the Company may terminate this Agreement upon ninety (90) days prior notice to the City.

(c) Termination by the Company pursuant to this Section 11.02 shall not preclude the Company from seeking recourse, subject to Section 7.03, for damages or any other form of relief available to it at law or in equity.

Section 11.03 Termination for Convenience.

The City shall have the right to terminate the Agreement, at its sole discretion, for its convenience and without cause (including, without limitation, on account of the City’s failure to appropriate funds to support the City’s payment obligations hereunder after the close of the first fiscal year of the City during the Term or on account of circumstances specified in Section 6.04(e)) at any time after the execution of this Agreement upon ninety (90) days’ written notice to the Company. If the City exercises its right to terminate the Agreement pursuant to this Section 11.03, the City shall, unless prohibited by Applicable Law, pay the Company a Termination Fee in addition to amounts, if any, due to the Company pursuant to Section 11.06.
The Termination Fee shall be $304,553 if termination pursuant to this Section 11.03 occurs within the first year of the Term. Thereafter, the Company shall be reimbursed a prorated amount of the Termination Fee (such pro-ration to reflect a decline by 1/10th of the Termination Fee each year during the term of the Agreement). During the 11th and 16th year, if the City has exercised its option to enter into the first or second extension periods, the Termination Fee shall be one-half of the amount for the first year of Term, if termination pursuant to this Section 11.03 occurs during such years. Thereafter, the Company shall be reimbursed a pro-rated amount of the Termination Fee (such pro-ration shall reflect a decline by 1/5th of the Termination Fee each year during each extension period of the Agreement). Except as provided in Section 11.06, the City shall have no additional monetary obligation to the Company.

Section 11.04 Termination for Labor Unrest.

If personnel employed by the Company and performing services pursuant to the Company’s obligations under this Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Company from performing its material obligations under this Agreement for a period in excess of three (3) days, the City may, in its sole discretion, by notice to the Company, terminate this Agreement forthwith, without any monetary obligation to the Company other than as set forth in Section 11.06.

Section 11.05 Termination for Uncontrollable Circumstances.

If an Uncontrollable Circumstance shall have the effect of preventing performance of a material obligation of the Company for a period of thirty (30) days, the City, upon notice to the Company, may, at its sole discretion, terminate this Agreement forthwith, notwithstanding that
such Uncontrollable Circumstance may only be cured by the City’s procurement or implementation of a Capital Improvement which the City determines, in its sole discretion, not to procure or implement. Upon any such termination, the City shall have no monetary obligation to the Company except as provided in Section 11.06.

Section 11.06 Termination Transition.

(a) Upon a termination of the Company’s right to perform this Agreement pursuant to Section 11.01 or 11.02 hereof or upon the expiration of the Term of this Agreement, the Company shall, as applicable:

(i) cease the provision of Services, as applicable;

(ii) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other City property at the Wastewater Facility;

(iii) promptly remove from the Wastewater Facility all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including, but not limited to sheds, trailers, workshops and toilets), and repair any damage caused by such removal, and generally restore the Wastewater Facility to its configuration and condition as of the Commencement Date, reasonable wear and tear and Capital Expenditures excepted.

(iv) clean the Wastewater Facility, and leave the same in a neat and orderly condition;

(vi) promptly remove all employees of the Company and any Subcontractors and vacate the Wastewater Facility site;
(vi) promptly deliver to the City copies of all subcontracts, together with a statement of:

the items ordered and not yet delivered pursuant to each agreement;

• the expected delivery date of all such items;
• the total cost of each agreement and the terms of payment; and
• the estimated cost of canceling each agreement;

(vii) deliver to the City promptly a list of:

• all special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Wastewater Facility; and
• all other supplies, materials, machinery, equipment, and other property previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Wastewater Facility;

(viii) unless the City directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

(ix) promptly transfer to the City all warranties given by any manufacturer or Subcontractor with respect to particular components of the Wastewater Facility;

(x) give written notice of termination, effective as of date of termination of this Agreement, promptly under each policy of Insurance (with a copy of each such notice to the City), but permit the City to continue such policies thereafter at its own expense, if possible; and
(xi) 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 Agreement.

(b) Upon termination of or expiration of this Agreement, the Company shall provide, and shall use its best reasonable efforts to cause its Subcontractors to provide, technological and design advice and support to the City or any replacement operator designated by the City. Such advice and support shall be for a period of twelve (12) months and shall include providing any plans, drawings, renderings, blueprints, operating manuals, or other information useful or necessary for the City or any replacement operator designated by the City or any such replacement operator to perform services comparable to the Services. If this Agreement is terminated by the City pursuant to Section 11.01 or 11.04 hereof, the Company shall be obligated to pay the costs and expenses of undertaking its post-termination responsibilities under this Section 11.06(b). 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 receipt of invoices or other substantiation. If this Agreement is terminated by the Company pursuant to Section 11.02 or by the City pursuant to Sections 11.03 or 11.05, the City shall pay to the Company within 60 days of the date of the Company's invoice supported by Cost Substantiation all reasonable cost and expenses incurred by the Company in satisfying the requirements of this Section 11.06(b).

(c) Notwithstanding the foregoing provisions of this Section 11.06 to the contrary, if the City or the Company shall terminate this Agreement prior to the end of the initial ten (10)
year Term or any exercised five (5) year extension Term, the Company shall, for up to ninety (90) days after the actual termination date (as opposed to the notice of termination date) make fully available its managers and employees performing services at the Wastewater Facility to continue to perform the Services contemplated in this Agreement, or such lesser amount of Services as the City shall determine, in order to provide a smooth and orderly transition of the management, operations and maintenance of the Wastewater Facility to City administrators, managers and personnel or, as applicable, the City’s successor contract operator; provided, however, in no event shall such provision of services by the Company extend beyond the twentieth (20th) anniversary of the Commencement Date. The Company shall fully cooperate with the City to effectuate such a transition, including the provision of training and “know how” in the procedures and techniques employed by the Company in meeting its obligations under Section 4.01. The City shall determine the number of days, if any, not to exceed ninety (90) days, that the Company shall comply with this Section 11.06(c).

(d) Notwithstanding the termination of this Agreement, the City shall compensate the Company for performing services requested pursuant to Section 11.06(c) in an amount equal to the Operation and Maintenance Fee calculated for the last full Billing Month immediately prior to the termination date; provided, however, such Operation and Maintenance Fee shall (i) be calculated on the basis of a daily Operation and Maintenance Fee and (ii) shall be reduced on a pro rata basis to reflect the number of Company employees performing services on a daily basis. To the extent the Company incurs Pass Through Costs for such period, the City shall pay or, as applicable, reimburse such amount to the Company. The Company shall invoice the City for such Operation and Maintenance Fee and Pass Through Costs as calculated pursuant to this
Section 11.06(d) within fifteen (15) days after the end of each calendar month after the termination date, and the City shall pay to the Company the amount due and owing pursuant to this Section 11.06(d) within forty-five (45) days thereafter. The Company shall comply with the invoicing and date and information provisions of this Agreement in submitting any such invoice to the City.

(e) The Company recognizes and understands that the transition outlined in this Section 11.06 may well result in the City or any successor operator(s) designated by the City employing or attempting to employ some or all of the managers and/or personnel employed by the Company and performing services at the Wastewater Facility. The Company shall facilitate the transfer and employment of any manager(s) and/or personnel who may desire to be employed by the City or any successor operator designated by the City.

(f) All data and information collected, generated, prepared, or provided by the Company as required by or pursuant to this Agreement shall be and remain the property of the City and shall be turned over to the City within ten (10) days after the earlier to occur of the termination or expiration of this Agreement. The Company shall also transfer any and all computer software, hardware, licenses, source codes and other similar information used in preparing or storing such data and information to the City, at no cost to the City other than future license fees to third party licensors, upon the termination of this Agreement.

(g) The Company shall, upon the request of the City at the termination or expiration of this Agreement, promptly deliver to the City, at no cost or expense to the City, two copies of the then current Operation and Maintenance Plan. As built drawings shall be included in such manuals and such manuals shall incorporate such drawings as they occur.
(h) This Section 11.06 shall survive the termination of this Agreement.

Section 11.07 Survival.

This Article XI shall survive the expiration or termination of this Agreement.

ARTICLE XII

REPRESENTATIONS

Section 12.01 Representations of City.

The City represents to the Company that:

(a) The City is duly organized and an existing entity under the laws of the Commonwealth and is duly authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(b) As of the Contract Date, the City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by the City (i) have been duly authorized by the City, acting by and through its City Council and Mayor, (ii) do not require any other approvals by any other governmental officer or body that has not been obtained, other than those permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) do not require any consent or referendum of voters, (iv) will not violate any judgment, order, law or regulation applicable to the City, and (v) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(c) This Agreement has been duly entered into by the City and, as of the Contract Date, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with
its terms, subject to (1) applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors' rights or remedies generally, (2) general equitable principles concerning remedies and (3) limitations on the enforceability of rights to indemnification by federal or State laws or regulations or public policy.

(d) To the best of the City's information and belief as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

Section 12.02 Representations of Company. The Company hereby represents to the City that:

(a) The Company is qualified to do business in the Commonwealth and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(b) As of the Contract Date, the Company has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) do not require the approval of any governmental office or body, that has not been obtained other than applicable permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) will not violate any judgment, order, law or regulation applicable to the Company or any provisions
of the Company’s articles of incorporation and by-laws, and (iv) do not constitute a default under
or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of
the Company under any agreement or instrument to which the Company is a party or by which
the Company or its assets may be bound or affected.

(c) Since submittal of its proposal in response to the RFP, there has been no material
adverse change in the Company’s or the Guarantor’s financial condition which would impair the
Company’s ability to perform its obligations under this Agreement or the Guarantor’s ability to
fulfill its obligations under the Guarantee.

(d) This Agreement has been duly entered into and delivered and constitutes a legal,
valid and binding obligation of the Company, fully enforceable in accordance with its terms,
subject to (1) applicable bankruptcy, reorganization, moratorium or similar laws affecting
enforcement of creditors’ rights or remedies generally, (2) general equitable principles
concerning remedies and (3) limitations on the enforceability of rights to indemnification by
Applicable Law or public policy.

(e) To the best of Company’s information and belief, as of the Contract Date, there is
no action, suit or proceeding, at law or in equity, before or by any court or governmental
authority, pending or, to the best of the Company’s knowledge, threatened against the Company,
wherein an unfavorable decision, ruling or finding would materially adversely affect the
performance by the Company of its obligations hereunder, or which, in any way, would
adversely affect the validity or enforceability of this Agreement, or any other agreement or
instrument entered into by the Company in connection with the transaction contemplated hereby.
(f) As of the Contract Date, the Company’s proposal is genuine and not collusive, the Company has not colluded, conspired, or agreed directly or indirectly with any other proposer or person, firm or corporation, with any person, firm or corporation, to fix the unit prices of its proposal or proposals of any other proposer or to secure any advantage against any person, firm or corporation interested in this Agreement. All statements contained in the Company’s proposal are true and correct.

Section 12.03 Materiality of Representations.

The representations enumerated in Sections 12.01 and 12.02 are material for purposes of this Agreement.

ARTICLE XIII

MISCELLANEOUS

Section 13.01 Qualifying Management Contract.

It is the intent of the parties that this Agreement qualify as a management contract complying with the provisions and requirements of the private activity limitations described in Section 141 of the Internal Revenue Code and regulations and official interpretations issued thereunder, including, without limitation, Revenue Procedure 97-13. In the event that, in the reasonable determination of the City this Agreement is, or ceases to be, such a qualifying management contract, the City reserves its rights, pursuant to and in accordance with Section 6.04(j), to modify or terminate this Agreement.

Section 13.02 Term.

The term of this Agreement (the “Term”) shall commence on the Contract Date and shall terminate on the tenth (10th), fifteenth (15th), or twentieth (20th) anniversary of the
Commencement Date, unless earlier terminated in accordance with the terms and conditions hereof, and depending on whether or not the City exercises its option to enter into the first and second 5-year extension periods. On the ninth and fourteenth anniversaries of the Commencement Date, the City shall advise the Company in writing whether or not it will exercise its option to enter into a 5-year extension period for years 11 through 15, and years 16 through 20. The decision to enter into extension periods shall be at the City’s sole option and made in accordance with applicable procurement law at the time of renewal. During the extension periods, the Operation and Maintenance Fee shall continue to escalate pursuant to Schedule 5. The Company shall not be entitled to any other adjustments in the Operation and Maintenance Fee during the extension periods.

Section 13.03 Assignment.

This Agreement shall not be assigned by either Party without the prior written consent of the other Party, as evidenced by or instrument in writing executed by its Authorized Representative; provided, however, that the Company may assign its interest without such consent to any Affiliate, successor or Parent of the Company if the Company shall remain liable for all obligations under this Agreement, and the Guarantor, pursuant to the Guarantee, fully guarantees the performance of such assignee’s obligations under this Agreement. Additionally, the City may assign this Agreement, without the consent of the Company, to any validly constituted agency or authority of the City or the Commonwealth or a duly created public corporation or authority.
Section 13.04 Subcontractors.

(a) The City shall have the right, in its sole discretion, to approve all Subcontractors proposed to be engaged by the Company to perform any portion of the Services. The Company shall furnish the City written notice of its intention to engage any Subcontractor, together with all material information requested by the City or otherwise available to the Company. In the event the City fails to respond to any such notice of intention within twenty (20) days of receipt thereof, the City shall be deemed to have approved the proposed Subcontractor. 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 who, under Applicable Law and in accordance with standard procedures, is debarred, suspended or disqualified by the Commonwealth or the City from contracting for any services within the scope of the Services between the City and the Company, the Company shall be entirely responsible for the performance of its Subcontractors. The Company shall pay or cause to be paid all direct Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the City by virtue of this Agreement for labor, services, materials or equipment furnished. The Company acknowledges that its indemnity obligations under Section 7.01 hereof 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 Services.

(b) The Company shall take all reasonable actions to encourage minority-owned business enterprises and women-owned business enterprises to compete for portions of the Services that are proposed to be subcontracted by the Company.
Section 13.05 Further Assurances.

Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The City shall, and shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the Company and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.

Section 13.06 Relationship of the Parties.

Except as otherwise explicitly provided herein, neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, agent, employee or legal representative of any other Party or to create any fiduciary relationship between or among the Parties. The Parties agree that the Company has entered into this Agreement and shall be performing the services contemplated herein as an independent contractor.

Section 13.07 Notices and Authorized Representatives.

(a) Any notices or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail; postage prepaid, as follows:

To the Company: Professional Services Group, Inc.
200 Cordwainer Drive, Suite 303
Norwell, MA 02061
Attn: Regional Vice President, Client Services
with a copy to: Professional Services Group, Inc.  
Suite 200  
14950 Heathrow Forest Parkway  
Houston, Texas 77032  
Attn: President

To the City: Project Manager  
New Bedford Water Pollution Control Facility  
1000 South Rodney French Blvd.  
New Bedford, MA 02744

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party.

(b) For purposes of this Agreement, the Parties’ respective Authorized Representatives are as follows:

For Company: Regional Vice President, Client Services

For City: its Mayor

Either Party may change its Authorized Representative at any time by written notice to the other Party.

Section 13.08 Waiver.

The waiver by either Party of a default or a breach of any provision of this Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of such default or breach or any subsequent default or breach.
Section 13.09 Entire Agreement: Modifications and Amendments.

The provisions of this Agreement, including the present and all future Schedules, shall (a) constitute the entire agreement between the Parties for the operation, maintenance and management of the Wastewater Facility and supersedes any negotiation, proposal or agreement prior to the date of this Agreement, there being no agreements or understandings other than those written or specified herein, and (b) unless otherwise specifically recognized in this Agreement, shall not be modified or amended except by written agreement duly entered into and executed by the Authorized Representatives of the Parties with the same formality as this Agreement.

Section 13.10 Headings.

Captions and headings and the Table of Contents in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 13.11 Governing Law.

This Agreement and any questions concerning its validity, construction or performance shall be governed by the law of the Commonwealth, irrespective of the place of execution or of the order in which the signatures of the Parties are affixed or of the place or places of performance.

Section 13.12 Counterparts.

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original.

Section 13.13 Severability.

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith
and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

Section 13.14 Interest on Overdue Payments.

All payments to be made under this Agreement by either Party outstanding after the applicable due date shall bear simple interest at the maximum rate permitted by State law, if applicable, or at the prevailing prime rate of interest published from time to time in The Wall Street Journal, whichever rate is lower.

Section 13.15 Payment Disputes.

If any Party shall dispute an amount owing to the other Party, such Party shall give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and shall pay all undisputed amounts on the due date. Interest at the rate specified in Section 13.13 shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount, or any portions of such disputed amounts.

Section 13.16 No Liability of Officers and Employees.

No member of the City’s City Council nor any officer, agent, representative or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Agreement, because of either Party’s execution or attempted
execution or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

Section 13.17 No Pledge of Credit.

The Company shall not pledge the City’s credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Company further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

APPROVED AS TO FORM

[Signature]
Arthur J. Caron, Jr. Corporation Counsel

WITNESS:

[Signature]

CITY OF NEW BEDFORD, MASSACHUSETTS

[Signature]
Frederick M. Kalisz, Jr. Mayor

[Signature]
Professional Services Group, Inc.

By: Patrick L. McMahon President
June 30, 1998

City of New Bedford
133 William Street
New Bedford, Massachusetts 02740-6163

Re: Agreement for Operation, Maintenance and Management Services (June 1, 1998)

Gentlemen

I am furnishing this letter of opinion in my position as Vice President and General Counsel of Professional Services Group, Inc., a Minnesota corporation ("PSG"), in connection with the execution by PSG of the agreement to Operate, Maintain and Manage the wastewater facilities of the City of New Bedford, dated as of June 1, 1998 (the "Agreement") by and between PSG and the City of New Bedford ("City"). This opinion is being furnished to you in accordance with Section 3.01(c) (ii) of the Agreement. Capitalized terms not otherwise defined herein have the meanings attributed to them in the Agreement.

For the purpose of rendering this opinion, I have assumed that all records maintained by PSG or its agents, as well as all certificates, filing, payments and registrations of PSG are current, accurate and correct. I have also assumed the truth and accuracy of and relied upon the representations of fact contained in the Agreement, other documents signed and delivered in connection in the Agreement, and in the other documents signed and delivered in connection with the transactions contemplated thereby, but have made no independent investigation with respect thereto.

In rendering this opinion, I have also assumed that the City of New Bedford has the power and authority to execute, deliver and perform all agreements and documents executed by it, that the City has duly and validly executed and delivered such documents and agreements and that such documents and agreements are legally valid and binding on and enforceable against the City.

I have relied, with respect to certain factual matters, on the representations and warranties of representatives of the Project Guarantors.
I express no opinion as to the reasonableness of the foregoing reliance or assumptions. To render this opinion, I have relied solely upon the documents and certificates described in this opinion.

The opinion set forth herein is as of the date hereof. I assume no obligation to advise you of changes which may hereafter be brought to my attention. This opinion is based on statutory laws and judicial decisions that are in effect on the date hereof, and I do not opine with respect to any law, regulation, rule or governmental policy which may be enacted or adopted after the date hereof, nor do I assume any responsibility to advise you of future changes in this opinion.

Based upon and subject to the foregoing, I am of the opinion that:

(a) PSG is qualified to do business in the Commonwealth and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(b) As of the Contract Date, PSG has the power, authority and legal right to enter into and perform its obligations set forth in the Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) do not require the approval of any governmental office or body, that has not been obtained other than applicable permits or approvals that may have to be renewed or reissued during the term of this Agreement, (iii) will not violate any judgment, order, law or regulation applicable to PSG or any provisions of PSG’s articles of incorporation and by-laws, and (iv) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of PSG under any agreement or instrument to which PSG is a party or by which PSG or its assets may be bound or affected.

(c) Since submittal of its proposal in response to the RFP, there has been no material adverse change in PSG’s financial condition or, to the best of my information and belief, the Project Guarantors’ financial condition which would impair PSG’s ability to perform its obligations under this Agreement or the Project Guarantors’ ability to fulfill their obligations under the respective guarantees.

(d) The Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of PSG, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors’ rights or remedies generally, (ii) general equitable principles concerning remedies, and (iii) limitations on the enforceability of rights to indemnification by applicable law or public policy.
(e) To the best of my information and belief, as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of my knowledge, threatened against PSG, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by PSG of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by PSG in connection with the transaction contemplated hereby.

The foregoing opinion is limited solely to the General Corporation Law of the State of Minnesota, the laws of the Commonwealth of Massachusetts and applicable federal laws of the United States. Provided, however, no opinion is given as to compliance with federal securities laws, and the rules and regulations promulgated thereunder, or any state “blue sky” laws, or federal antitrust, laws and regulations.

This opinion is intended solely for your use in connection with the Agreement and may not be disclosed, reproduced, filed publicly, or relied upon by you for any other purpose or by any other person for any purpose without my prior written consent.

Professional Services Group, Inc.

[Signature]

David L. McEwing
Vice President and General Counsel

DLM: ua
PERFORMANCE STANDARDS AND GUARANTEES

WASTEWATER TREATMENT REQUIREMENTS

The Company shall operate and maintain the Wastewater Facility in accordance with Applicable Law pertaining to wastewater treatment. The Wastewater Facility influent characteristics are identified in Table S1-1 below. The Operation and Maintenance Fee reflects that these characteristics are subject to \( \pm 10\% \) changes, and variance within such \( "10\% \) range shall not be the basis of any adjustment to the Operation and Maintenance Fee, the Pass Through Costs any other monetary adjustment to the Service Fee. In addition, the Company shall operate the Wastewater Facility to be in compliance with the specific performance standards outlined in the Agreement and Schedules to the Agreement, including the performance standards and guarantees set forth within this Schedule 1. Specific compliance parameters with respect to effluent quality from the Wastewater Facility are included in Table S1-2. All analytical methods used to demonstrate compliance with these standards shall be according to methods approved by the City and DEP.

TABLE S1-1
WASTEWATER SYSTEM INFUENT

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Influent Characteristics</th>
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<tbody>
<tr>
<td>BOD5, lbs/day</td>
<td>43,730</td>
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<tr>
<td>TSS, lbs/day</td>
<td>31,137</td>
</tr>
<tr>
<td>Annual Average Flow (mgd)</td>
<td>22</td>
</tr>
<tr>
<td>Peak Flow (mgd)</td>
<td>75(^{(1)})</td>
</tr>
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TABLE S1-2
WASTEWATER SYSTEM STANDARDS

<table>
<thead>
<tr>
<th>Parameter</th>
<th>NPDES Permit Limit</th>
<th>Contract Limit</th>
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<tbody>
<tr>
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<td>Average Monthly</td>
<td>Average Monthly</td>
</tr>
<tr>
<td>BOD, mg/l</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>TSS, mg/l</td>
<td>30</td>
<td>20</td>
</tr>
</tbody>
</table>

(1) The Wastewater Facility has an automatic peak flow regulator at the influent set at 75 mgd.
SCHEDULE 2
OPERATION AND MAINTENANCE STANDARDS

2.1 REQUIRED SERVICES

The Company shall perform the Services in a professional, efficient and economical manner and in accordance with the terms and provisions set forth in the Agreement and in compliance with Applicable Law and generally accepted practices, procedures and standards for municipal wastewater treatment facilities. The Company shall, at all times, keep the Wastewater Facility in good repair and working order. The Company shall provide uninterrupted Services and perform Services twenty-four (24) hours per day, seven (7) days per week.

Operational decision making shall always be based on the following overall objectives (not listed according to priority):

- Compliance with Applicable Law
- Protection of health and welfare of the public
- Protection of the health and safety of the operating staff
- Preservation of the long-term capability to supply wastewater treatment services
- Protection of the environment
- Protection and preservation of the Equipment and other components of the Wastewater Facility
- Maximization of operational efficiency and minimization of operational costs
- Achievement of the “zero tolerance” program objectives for odor control and noise at the Wastewater Facility.

2.2 OPERATIONS AND MAINTENANCE

On and after the Commencement Date and through the term of the Agreement, the Company shall manage, operate and maintain the Wastewater Facility in accordance with the Agreement and the requirements set forth in this Schedule 2. The Company shall operate the Wastewater Facility to process domestic raw sewage, commercial and industrial wastewater, and any future influent allowed by City in accordance with the NPDES Permit, the Consent Decree and the terms and provisions of this Agreement. The Company shall comply with the requirements of 314 CMR 12 (Operations and Maintenance of Sewer Systems and Maintenance of Sewer Systems and Wastewater Treatment Facilities), as applicable, and the policies of the Board of Certification of Operators of Wastewater Treatment Facilities.

The Company shall maintain the Wastewater Facility in good working order and repair and in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required). The Company shall maintain the aesthetic quality of the Facility as originally constructed and subsequently modified, with due allowance for reasonable wear and tear and depreciation. The Company shall perform all predictive, preventative and corrective maintenance procedures in accordance with Applicable Law, and generally accepted industry
maintenance practices, procedures and standards for municipal wastewater treatment facilities, but in no event less frequently and comprehensively than that recommended or specified in manufacturers’ warranties. The Company shall maintain on behalf of the City all manufacturers’ warranties on new Equipment purchased pursuant to this Agreement, and shall fully cooperate and assist the City, at the Company’s sole cost and expense, in enforcing existing Equipment warranties and guaranties relative to the Wastewater Facility.

The Company shall develop and implement, making use of the existing City-owned computer hardware and software at the Wastewater Facility to the extent determined to be appropriate by the Company, a comprehensive computer-based maintenance management program that develops readily available historical data, including an inventory of spare parts and provisions for enforcing existing equipment warranties and guarantees and maintaining all warranties on new equipment purchased after the Commencement of Operations. The Company shall implement such a maintenance management program to include preventative, predictive, and corrective maintenance for all components of the Wastewater Facility, including but not limited to:

- Buildings and structures
- Electrical systems and instrumentation
- Mechanical equipment
- Odor control systems
- Rolling Stock
- Laboratory, monitoring and sampling equipment
- Heating, ventilation, and air conditioning
- Communication equipment (i.e., telephones, facsimiles, etc)
- Computer systems (software and hardware)
- Chemical feed systems
- Pumping Systems
- Auxiliary power facilities
- Air pollution control devices
- SCADA facilities
- Other facilities and systems contained within the Wastewater Facility
- Other specialized tools and equipment

The Company shall perform maintenance of the Wastewater Facility to preserve long-term reliability and conservation of the Wastewater Facility. Such maintenance shall be performed in accordance with the terms and provisions of this Agreement, the Company’s Operation and Maintenance Plan, routine maintenance schedule, federal, State and local requirements, and industry standards. The Company shall maintain documentation of all maintenance activities.

The subsequent sections set forth requirements for the operation and maintenance for the major Wastewater Facility components. The sections below are intended to address the major activities required. The following sections, however, are not intended to include all specific activities that are necessary for meeting the performance requirements set forth in this Agreement and the Schedules hereto.
2.2.1 Wastewater Facility Effluent and By-Products

The Company shall operate, maintain, and manage the Wastewater Facility in accordance with this Agreement. The Company is responsible for ensuring that the effluent discharged from the Wastewater Facility complies with Applicable Law and within the standards set forth in the Agreement. Accordingly, the Company is responsible for reviewing historical City data including flow, concentration and loading variations (i.e., instantaneous, hourly, day and monthly, and yearly). The Company is responsible for monitoring and maintaining the balance of the HVAC system throughout the Wastewater Facility. The Company is responsible for reviewing all available information about the Wastewater Facility and should not rely solely on the information presented.

Solids Handling

The Company shall deliver all Wastewater Sludge to the containers specified for usage by Wheelabrator Clean Water Systems, Inc. or any successor Wastewater Sludge contractor designated by the City. The Company shall be responsible for guaranteeing that the Wastewater Sludge delivered complies with the requirements, (i.e., quantity, characteristics of sludge, percent solids) of the City’s contract with Wheelabrator Clean Water Systems, Inc. dated October 3, 1995. The Company shall deliver the Wastewater Sludge to the container in the sludge loadout facilities with the outside doors closed. The Company shall coordinate its management of Wastewater Sludge handling facilities with Wheelabrator Clean Water Systems Inc. or its successor, as the case may be, to minimize costs to City for Wastewater Sludge disposal. The maximum Wastewater Sludge disposal costs which shall be the responsibility of the City as a Pass Through Cost shall be limited to costs more particularly described in Schedule 8. Additional costs shall be paid by the City but reimbursed by the Company as a monthly credit against the months Operation and Maintenance Fee after the maximum allowable costs are incurred by the City.

Septage Receipt

Currently, the City does not receive septage at the Wastewater Facility. The City is planning the implementation of a new septage receiving facility to be located in the northern end of the City. Once constructed, the City intends to receive septage generated within the City at this septage receiving facility and to deliver such septage to the Wastewater Facility for processing by the Company as a component of the Services. The Company is not authorized to make separate arrangements for receipt of septage. Any receipt of septage will be at the sole discretion of the City and shall be coordinated with the Company.

Grit and Screening Handling

The Company shall deliver grit and screenings to the dumpster/container located in the headworks building of the Wastewater Facility. Within a reasonable time frame, the Company shall notify the City when the dumpster/container will reach capacity. Upon notification by the Company, the City shall remove the grit and screenings
dumpster/container from the headworks building and replace the dumpster/container.

Solid Waste Management
The Company shall be required to provide containers for the disposal of and collection of all solid waste from within the Wastewater Facility. The Company shall deliver all collected solid waste to the designated solid waste dumpsters located on the Wastewater Facility Site and shall notify the City within a reasonable time of when any such dumpster will reach capacity. The City shall be responsible for removing any filled dumpster and replacing it with another dumpster.

Odor Control Facilities
The Company shall be responsible for the continuous operation and maintenance of the odor control Equipment in accordance with established operating performance criteria for the various systems and equipment. The Company shall operate such Equipment consistent with the “zero tolerance” program objectives for odor control. Except for periods of preventative or emergency maintenance or for reduction of noise (Final Clarifier Fans only) between 8 p.m. and 6 a.m., odor control blowers are to be in operation at all times since continuous ventilation of the areas controlled by the blowers is required for safety and/or corrosion protection. The Company shall be responsible for optimizing the operation of the existing and future odor control system so that it performs to its designed capacity and capability.

The Company shall control all noise and odors generated from within the Wastewater Facility and be responsible for complying with air quality permit requirements. The Company shall develop a “zero odor tolerance” control program including procedures for responding to each complaint and notification to the City of odor complaints and their resolution, and documentation of such complaints. Such program shall be fully described in a monthly report submitted to the City. Specifically, the Company shall perform the following:

--- implementation of the recommendations contained in the “zero odor tolerance” program
--- regular monitoring of odor control system performance
--- on-site and off-site surveys by plant staff
--- development of a 24 hour per day odor hotline to be staffed at all times.
--- development of contingency plans for controlling odors in the event of mechanical failure or process upset
--- training for mechanical ventilation and scrubber systems.
--- housekeeping, preventive maintenance, and other standard operating procedures related to odor reduction.
--- development of a written complaint response procedure that would include the following elements: complainant name and address, time of day, weather conditions including wind speed and direction, odor description, duration of episode, and follow-up by plant staff
The Company shall organize regular public meetings to advise residents of ongoing odor control programs and to solicit community input. The Company shall also maintain an Odor Management Team consisting of representatives from the City; the Company and any other odor management consulting or other firm as determined appropriate by the City and the Company. The Odor Management Team shall meet in accordance with a schedule approved by the City.

The Company shall notify the City regarding any significant or unusual air circumstances effecting the operation of the Wastewater Facility. The Company shall obtain City approval prior to significant operational changes that could be reasonably foreseen to effect odor emissions.

The Company and the City shall jointly coordinate the establishment of a Citizen's Odor and Noise Control Committee which shall have the authority set forth in the attached Addendum to this Schedule 2.

2.2.2 Analytical Services

The Company shall perform testing, sampling and any other analytical procedures to demonstrate compliance with its obligations under the Agreement, applicable regulatory requirements, and Permit provisions. Such testing shall include, but not be limited to, influent and effluent analytical testing, metals analysis and sludge cake analysis. The Company shall perform all applicable testing related to process control and wastewater monitoring. The Company shall be responsible and liable for conducting all necessary analyses whether the analyses are conducted at the on-site laboratory, at an off site laboratory operated by the Company, or through a subcontracted service. Any subcontracted laboratory must be appropriately certified to perform the required analyses and be subject to approval by the City in accordance with Section 13.04 of the Agreement. The Company shall prepare the data received from the testing laboratory for all applicable regulatory, Permit monitoring, and operating reports and shall forward the results from the laboratory to the appropriate State and regulatory agencies.

2.2.3 Equipment and Chemicals

The Company shall keep all Equipment in good operating condition and maintain adequate Equipment and spare parts in inventory in order to facilitate maintenance and repairs not constituting Capital Expenditures, in a timely fashion so as not to disrupt the operation of the Wastewater Facility. Any such repairs, shall, at a minimum, meet the specifications provided for Wastewater Facility plans and specifications.

The Company shall operate all used or useful Equipment, including Equipment placed in service, and perform all tests and testing as may be required or recommended pursuant to applicable warranties, commercial or industrial standards and Applicable Law. The Company shall make reasonable efforts to enforce, on behalf of the City, all warranties or agreements related to existing Equipment, materials and services that are at the Wastewater Facility as of the
Commencement Date, as well as any replacements thereof or additions thereto. The Company shall make reasonable efforts to obtain extensions of warranties or agreements, as appropriate. To the extent assumable Company shall assume various contracts for supplies and/or services, under the same terms and conditions, entered into by the City for the first Billing Year. The Company shall be responsible for promptly notifying the City in the event of any Equipment failure that necessitates or may necessitate a Capital Expenditure.

All Equipment, with the exception of Rolling Stock, and chemicals provided by the City or the Company on and after the Contract Date, including any Equipment and chemicals on order by the Company or the City for the Wastewater Facility, shall be deemed to be owned by the City and shall remain a part of the Wastewater Facility upon termination or expiration of this Agreement. All such Equipment including Rolling Stock shall be in good operating condition, subject to normal wear and tear.

Equipment and chemicals provided or to be provided by the Company pursuant to the provisions of this Agreement shall be restricted to the Company’s use as necessary in performance of its obligations under the Agreement.

2.2.4 Rolling Stock Maintenance

The Company shall operate and maintain the vehicles included in Schedule 15 to the Agreement, and/or any additional Rolling Stock provided by the Company as part of the Services. All maintenance on the Rolling Stock shall be performed in accordance with the Operations and Maintenance Plan, manufacturer warranties, and standard industry practice. If the Company wishes to reduce the existing inventory of Rolling Stock, the Company shall request the same from the City for review and approval. The procedures for disposition of such Rolling Stock shall be developed and appropriate adjustments to the Agreement made at that time. Proceeds from the sale of any such Rolling Stock shall be returned to the City. Schedule 15 shall be updated accordingly as a result of any approved sale and or replacement.

2.2.5 Buildings and Grounds Services

The City shall provide for maintenance and repair of landscaping and roadways associated with the Wastewater Facility in accordance with Section 4.02(g) of the Agreement.

The Company shall perform Services to maintain the current condition of the Wastewater Facility throughout the Term of the Agreement, reasonable wear and tear excepted, and at a level adequate for the efficient, long-term reliability and preservation of the City’s capital investment. The Company shall at a minimum perform the following maintenance activities relevant to the buildings and grounds:

a. Wash all windows twice per year or more frequently on an as-needed basis.
b. Repair all roof leaks within 10 days of discovery.
c. Implement regularly scheduled pest control measures.
d. Repair all plumbing leaks and failures immediately.
c. Damp mop all floors twice per week or more frequently on an as needed basis with a cleaning solution appropriate for use in such facilities. All spills are to be immediately cleaned.
f. Strip all floors and apply new floor finish on a periodic basis.
g. Apply floor finish to the extent necessary to maintain appearance and safety standards.
h. Wash down wall tiles and clean all other walls every sixth Billing Month commencing with the first Billing Month of this Agreement.
i. Apply paint as necessary and appropriate, but at a minimum every 5 years all paint surfaces will have a new paint job.
j. Clean offices and restrooms Monday through Friday.
k. Provide daily collection services for solid waste and other disposable items generated by the Wastewater Facility during performance of Services. A central location(s) shall be provided for storage. All solid waste shall be made available to the City for disposal on at least a weekly basis, in accordance with Section 2.2.1 of this Schedule 2.
l. Shovel all sidewalks to maintain access to the Wastewater Facility free of ice and snow.
m. Vacuum all carpeted areas on a weekly basis, shampoo all rugs/carpeted areas twice per year or more frequently on an as-needed basis.

2.2.6 Utilities

As of the Commencement Date, the Company shall be responsible for obtaining, supplying and paying for all utilities including but not limited to natural gas, heating, fuel oil, telephone and water. The cost for electricity shall be a Pass Through Cost up to the maximum usage limits more particularly described in Schedule 7.

2.2.7 Industrial Pretreatment Program

The Company shall coordinate with the designated person responsible for the City’s Industrial Pretreatment Program and shall notify the City promptly if it becomes aware of any known and/or suspected illegal discharges.

2.3 OPERATION AND MAINTENANCE COSTS

As set forth in Section 4.01(b) of the Agreement, the Company shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, equipment, office equipment (i.e., copiers, computers, etc.), fuel, chemicals, supplies, materials, spare parts, expendables, consumables, testing and laboratory analysis, and any items required for the Services, in accordance with the terms and provisions of the Agreement.
2.4 OPERATIONS REVIEW

The City will actively participate in review of Services performed by the Company and any Subcontractor throughout the term of the Agreement.

2.4.1 Monthly Operating Reports

The Company shall prepare Monthly Operating Reports regarding the Services for submission to DEP and EPA, as applicable. The Monthly Operating Reports shall be prepared on or before the 10th day of each Billing Month for the previous Billing Month. The Monthly Operating Reports shall be submitted to the City for review and comment prior to submission to the DEP or EPA, as applicable. The Company shall prepare the Monthly Operating Reports in a format subject to approval by the City and DEP. Each Monthly Operating Reports shall include data pertaining to performance, including analysis of permit requirements, flows and any other information required by the applicable regulatory agencies. The Monthly Operating Reports shall also include a description of maintenance activities and emergency services performed during the previous month. The Company shall include the following categories of information in the Monthly Operating Reports:

- DEP Operations Report requirements (i.e., flow (mgd), high flow diversion, septic waste, primary sludge, aeration tanks, return sludge, waste sludge, solids, chlorine dosage, chlorine residual, fecal coliform, settled solids, BOD, COD, suspended solids, turbidity, temperature, pH, effective DO, Wastewater Facility effluent)
- Nutrient Report
- Nitrogen data
- Electrical usage
- Itemized listing of materials, chemicals and supplies used
- Volume of septage received and treated
- Insurance claims filed or pending disposition
- All correspondence, citations, notices, directives or similar information received from any federal, State or local governmental regulatory agencies having jurisdiction over the management, operations, maintenance or ownership of the Wastewater Facility not otherwise provided to the City by the Company
- Transaction records, data and information arranged or performed by the Company, or for the benefit of the City or the Company, relative to the Wastewater Facility
- Report of all citizen calls and responses
- Report of all citizen complaints and actions taken with respect to each such complaint
- Report describing compliance of the Wastewater Facility with Enhanced Wastewater Standards and Applicable Law, including a summary table of violations
- Summary of preventative maintenance performed
- Summary of unscheduled repairs and action taken
- Summary of scheduled inspections and repairs and action taken or postponed
- Explanations for unscheduled repairs and postponements of repairs
- Information on utility outages
• The results of safety tests or other monitoring procedures conducted by staff or any governmental body

2.4.2 System Inspections

The City or its authorized agents and representatives from the governing regulatory agency (e.g., DEP) reserve the right to visit or inspect the Wastewater Facility at any time. The City or its authorized agents and representatives may call upon the Company at any time for an oral review of any matter pertaining to the Services. The Company shall provide the City and/or authorized agents and representatives adequate office working space during inspections and reviews as necessary.

The City or its authorized agents and representatives shall perform an annual inspection of the Wastewater Facility which shall be scheduled at a time mutually acceptable to the Company and the City and their authorized agents or representatives but in no event later than sixty (60) days after the close of each Billing Year. The purpose of this annual inspection is to verify that Services are being properly performed in accordance with the Agreement. At least two weeks prior to the annual inspection, the Company shall submit to the City three copies of the Company’s annual Operation and Maintenance Report. This report shall include detailed information about the completed year’s operation and maintenance of the Wastewater Facility and current conditions of the Wastewater Facility.

In the event that any such inspections reveal work not in accordance with the Agreement or a lack of necessary maintenance or repairs (other than reports necessitating Capital Expenditures) to the Wastewater Facility, the City or its authorized agent shall identify such items in writing to the Company. The Company shall perform the repairs and maintenance activities identified by the City on a mutually agreeable schedule.

The Company shall maintain and make available to City upon request, all records of operating data and information relevant to the Wastewater Facility, including accounting and financial records. The Company shall provide the City access to all such records upon request.

2.4.3 Operations Records

The Company shall maintain a computerized record keeping system for all operation and maintenance functions performed. Records shall include, but not be limited to, records of operations, operation and maintenance costs, maintenance procedures, emergency incidents, personnel, and inventory (equipment and chemicals). Records shall be maintained as required by the Consent Decree, and other Applicable Law. Such records shall include, but not be limited to, process evaluation and modification; operating and maintenance activities; detailed costs for operations and maintenance; and monthly and annual reports in a format reasonably requested by the City. The City shall have the right to inspect these records upon reasonable notice.
2.4.4 Meetings

The City and the Company shall cause their Authorized Representatives or their designees to meet on a monthly basis to discuss performance of the Services, maintenance issues, Equipment conditions, environmental and permit compliance, public relations, and other relevant issues. Minutes of these meetings shall be prepared by the Company and shall be distributed to all attendees. Representatives of the Company shall also be made available to attend and participate in any neighborhood and other community meetings (i.e., City Council, neighborhood civic groups) at the request of the City.

2.4.5 Audit of Facilities and Review at Expiration of Agreement

The City shall be responsible for all Capital Expenditures over the term of the Agreement pursuant to the terms and conditions of the Agreement. Within 30 days of the Commencement Date, the Independent Engineer shall conduct a complete Wastewater Facility assessment to determine the condition of the Wastewater Facility. Periodically, but in any event within sixty (60) days after the close of the fourth (4th), ninth (9th) and fourteenth (14th) Billing Years during the Term, and ninety (90) days prior to the expiration of the Term, a comparable assessment in accordance with the requirements of this Section 2.4.5 shall be conducted. The cost of services provided by the Independent Engineer shall be paid by the City.

The Independent Engineer will conduct a detailed, comprehensive survey and inspection of the Wastewater Facility to identify the physical and operational conditions and general status of maintenance and repair of all Equipment buildings, structures, pavements, grounds, utility lines and system, spare parts inventories, operation and maintenance records, etc. The Independent Engineer shall prepare a detailed report documenting the findings of the survey/inspection. The report will include an assessment of the current condition of each item or component, its estimated remaining service life, and whether the current condition is consistent with the maintenance and general upkeep requirements of the Agreement and expected normal wear and tear. An estimated cost for repair, renewal or replacement will be included for each item or component which is judged deficient. Estimates will include a reasonable contingency allowance that will vary depending on the nature of the work required.

A draft version of the Independent Engineer’s report will be provided to the City and Company for review and comment. In the case of disagreement between the City and Company as to the appraised condition of items or portions of the Wastewater Facility, or estimated cost for repair, renewal, or replacement, the Independent Engineer will make the final decision.

If the findings contained in the final Independent Engineer’s report indicate that any deficiency in any part of the Wastewater Facility is attributable to the failure of the Company to perform predictive, preventative or corrective maintenance, or repairs not necessitating Capital Expenditures in accordance with the requirements of this Agreement, the Company, subject to the provisions of Applicable Law governing public procurement, shall be given the option to make any indicated repair, renewal, or replacement, which shall be subject to inspection and approval by the Independent Engineer, or alternatively, shall reimburse the City the cost for
repair, renewal or replacement as set forth in the Independent Engineer's report. Satisfactory rectification of deficiencies shall be a requirement on a timely basis, subject to the termination provisions of the Agreement for failure to rectify such deficiencies.

2.5 OPERATION AND MAINTENANCE PLAN

The Company shall prepare and submit to the City for review and comment a comprehensive Operation and Maintenance Plan within one hundred twenty (120) days after the Commencement Date. The Operation and Maintenance Plan shall specify all procedures and tests to be conducted for the performance of the Services, inclusive of all facilities and Equipment, throughout the Agreement. The Operation and Maintenance Plan shall be a comprehensive manual organized into separate sections addressing each of the unit process involved, the overall system operation and control, auxiliary system equipment and systems, and grounds and building maintenance for which the Company is responsible and shall reflect, at a minimum, generally accepted or recommended industry maintenance practices, procedures and standards for municipal wastewater facilities. At a minimum, this Operation and Maintenance Plan shall include the following:

a. Schedule of expected shutdowns for routine maintenance.

b. Emergency plan of operation, including on-call backup capability.

c. Copies of all permits, licenses, and other regulatory documents obtained for Company's services, if not previously submitted.

d. Staffing plan showing a breakdown by staff classification of all personnel to be utilized during operations and maintenance.

e. Maintenance schedule for the Wastewater Facility.

f. Anticipated Capital Expenditures renewal and replacement plan for the Wastewater Facility over the Term of the Agreement.

g. Operation procedures for all major Equipment within the Wastewater Facility during normal, alternate, and emergency operation modes.

h. List of equipment and system manufacturers/suppliers Operation and Maintenance Manuals.

i. Forms and checklists to be used to monitor Equipment and process system operation and preventative maintenance.

j. Monitoring and reporting requirements.

k. A schedule for updating to the Operation and Maintenance Plan.
Each separate unit process, auxiliary system processes and grounds/building section of the Operation and Maintenance Plan shall include a detailed written explanation of the following:

- The process or system including its key components.
- The system function including its purpose and normal operating parameters.
- Equipment summary including nameplate data, supplier/local representative, and manufacturer.
- Description of instrumentation and control system, including an alarm summary.
- Description of normal system operations including startup and shutdown, adjustment of variable functions and settings, interface with other Wastewater Facility systems, routine monitoring checklists and record keeping forms.
- Emergency system operations including procedures to be followed in the event of probable plant upset conditions such as temporary power outages, chemical spills, localized or area-wide flooding, etc.
- Maintenance, including predictive and preventative maintenance for: process functions such as cleaning and hose down, flushing and inspection; mechanical functions such as changing lubricating fluids and filters, checking rotating equipment balance, and changing valve seals and packing; electrical functions such as checking tightness of wiring terminal connections, exercising breakers, and recalibrating meters; instrument and control functions such as sensor calibration, and structural maintenance such as crack repairs and restoration of surface corrosion protection systems.
- Trouble shooting system malfunctions.
- Safety and emergency procedures.

The City will review the draft Operation and Maintenance Plan and return one marked-up copy with comments and within thirty (30) days of the initial submittal. The Company shall submit five copies of a final version of the Operation and Maintenance Plan addressing the City's comments within sixty (60) days following the return of the draft. Neither the review of or comment on, nor failure of the City to comment on, the draft Operation and Maintenance Plan or any modification thereto, shall relieve the Company of any of its responsibilities under the Agreement, be deemed to constitute a representation by the City that operation of the Wastewater Facility pursuant to the Operation and Maintenance Plan will cause the Wastewater Facility to be in compliance with this Agreement or Applicable Law, or otherwise impose any liability upon the City.

The Operation and Maintenance Plan shall dedicate a separate section to detail the Company’s maintenance and repair program. Such program shall contain a detailed description of and
maintenance and repair activities which would be required to be performed by the Company over the Term of the Agreement to maintain operability, durability and reliability of the Wastewater Facility. The Company shall make and complete all maintenance and repairs to the Wastewater Facility which are necessary to achieve such standard of repair by performing all such listed activities within time frame indicated in the Operation and Maintenance Plan.

2.6 CONTINUOUS OPERATION

The Company shall operate the Wastewater Facility on a continuous basis, twenty-four hours a day, seven days a week, in accordance with the terms and provisions of this Agreement, and in compliance with Applicable Law.

2.7 SAFETY AND SECURITY

The Company shall provide for and maintain security and safety of all facilities and structures associated with performance of Services at the Wastewater Facility. The Company shall develop and submit to the City a Safety and Security Plan within forty-five (45) days after the Commencement Date. The Company shall be responsible and obligated to enforce all safety, security and health laws, rules, regulations, and/or procedures. The Company shall implement an in-house safety program, including, but not limited to, operations, maintenance, safety, management skills, laboratory, energy management, chemical handling, confined space entry, emergency response, and safety equipment use. Any and all persons entering the Wastewater Facility shall be identified and provide appropriate documentation of authorization to have such access. The Company is responsible for providing the appropriate procedures to maintain a log of any and all persons accessing the Wastewater Facility.

The Company shall appoint a Safety Committee. The Safety Committee shall file a copy of any safety recommendation and accident reports. As part of its safety program, the Company shall institute safety standards including a safety information system, regional and corporate specialties, centralized safety equipment procurement system, degree hazardous materials personnel, a safety information library and a computerized safety equipment preventative maintenance program.

Fences shall be maintained in neat order and structural integrity. Gates, access points, and doors to the facilities and structures at the Wastewater Facility shall be kept locked. Entrance to such facilities and structures shall be protected against unauthorized entry. The Company is responsible to maintain all security alarms in working order.

2.8 CITIZEN ACCESS AND EMERGENCY RESPONSE

The Company shall respond promptly (within 2 hours) and in a reasonable manner to all citizen problems and emergencies pertaining to the Wastewater Facility in accordance with this Agreement. The Company shall maintain a toll-free 24 hour telephone number throughout the term of the Agreement so that citizens can report any problems and emergencies. The Company shall notify the City of any activity, problem, or circumstance of which it becomes aware that
threatens safety or health or welfare. The Company shall maintain a log of all problems and emergencies identified and measures taken by the Company to remedy such problems and emergencies. Emergency procedures shall address at a minimum:

- Chemical Spills
- Personnel Emergencies
- Fire and Explosions
- Pipe, Valve, or Pump Failure
- Equipment and Process Failure
- Power Failure
- Acts of God (i.e., Hurricanes, Wind storms, and Floods)
- Wastewater bypass discharges
- Emergency Telephone Numbers
- Emergency Equipment Inventory
- Records Preservation
- Industrial Waste Inventory and Monitoring System
- Coordinating Instructions with Public Safety Agencies
- Troubleshooting Guides
- Odor Events
- Noise Events
Addendum to Schedule 2

CITIZENS’ ODOR AND NOISE CONTROL COMMITTEE

The Company and the City shall mutually establish a Citizens' Odor and Noise Control Committee (the "Committee"). The Committee shall be made up of five (5) voting members and two (2) non-voting members (the non-voting members being the Ward 6 City Councillor and one member appointed by the Company). The voting members will be the Superintendent of Wastewater, and another member to be appointed by the Mayor, and three (3) New Bedford Citizens chosen annually by the Wastewater Treatment Odor and Noise Taskforce. Once each quarter, the City and the Company will meet to review odor and noise control program performance for the prior quarter and set odor and noise control objectives for the next quarter.

The purpose of the Committee shall be to monitor the effectiveness of the odor and noise control program, to provide feedback to the City, the Company and the neighborhood on the status of odor and noise control at the Wastewater Facility, and to make recommendations as to matters pertaining to odor and noise control. The Company shall document odor and noise complaints using a form to be developed by it, subject to the City's review and approval, and shall provide copies to the Committee, monthly, and to the City as part of the Monthly report.

The Citizens' Odor and Noise Control Committee may make recommendations to the City, based upon a majority vote of the Committee, to withhold up to a maximum of $200 per day during the occurrence of the objectionable odor or noise, up to a maximum of $3,000 per month from the amount due the Company if the Committee finds that the Company has not performed adequately in responding to and controlling odors and noise at the Wastewater Facility. The recommendation shall provide specific information to justify any recommendations regarding the withholding of any amount of the Service Fee due the Company. However, if the Company disagrees with the recommendation, the Company shall be provided an opportunity to contest the alleged non-performance before the City's independent odor and noise Consultant. The Consultant shall be selected by the City upon consultation with the Odor and Noise Control Committee. In the event any withholding is disputed by the Company, said Consultant, based upon a reasonable investigation and the information presented, shall determine whether a portion of the fee should be withheld and how much, subject to the above stated maximum. The Consultant's decision shall be binding upon the City, the Company and the Committee. The Consultant shall notify the Company and City in writing of its decision and the reasons therefor.

The Company shall be responsible to reimburse to the City for the cost of the Consultant for reviewing such disputes up to a maximum of an aggregate cost of $10,000 per Billing Year.

To avoid retroactive decisions regarding withholding, in no event may the Committee make a recommendation to withhold funds for any period except the three month period immediately preceding the date of the meeting of the Committee at which such a recommendation is made, and no funds may be withheld pursuant to this provision by the City, except upon such a recommendation by the Committee.
The Company understands that the City intends to hire an independent consultant to evaluate the operations of the Wastewater Facility and engineering and design issue relating to the cause and control of odor and noise at the Wastewater Facility. The Company agrees to reimburse to the City one-half of the fees and expenses of the designated odor and noise consultant(s) up to an aggregate of forty thousand dollars ($40,000.00) for the cost of performing the odor and noise study. In the event the Company fails to reimburse the City for such fees and expenses, the City, upon ten (10) days' notice, may deduct any such share of fees and expenses from any Service fees due the Company under this Agreement.

The Company shall be afforded the opportunity to have input into the scope of design and operation review, the right to make comments on draft reports and shall be provided a copy of any final report of such consultant.
AWT GUARANTEE

This Guarantee made as of the 30th day of June, 1998, by Air & Water Technologies Corporation, a Delaware corporation ("Project Guarantor"), having its principal place of business in New York, New York, USA, to and for the benefit of the City of New Bedford ("City").

WITNESSETH:

WHEREAS, Professional Services Group, Inc., a Minnesota corporation, (the "Company") having an office at 14950 Heathrow Forest Parkway, Houston, Texas 77032, has entered into an Agreement for Operation, Maintenance and Management Services (the "Agreement") with the City dated as of June 1, 1998.

WHEREAS, Project Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement; and

WHEREAS, City would not enter into and perform its obligations under the Agreement unless the Project Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to the City to enter into the Agreement, the Project Guarantor agrees as follows:

1. Project Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Agreement in accordance with the terms and conditions therein.

2. This Guarantee shall be governed by the law of the Commonwealth of Massachusetts exclusive of the choice of law rules thereof and Project Guarantor hereby agrees to the service of process in the Commonwealth of Massachusetts for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

3. This Guarantee shall be binding upon and enforceable against the Project Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Project Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee and is for the benefit of the City, and any permitted successors and assigns under the Agreement.

4. This Guarantee may be enforced by the City without first resorting to any action against Company or exhausting any other remedies that the City may have.

5. Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the City as each cause of action arises. The Project Guarantor waives presentation to, demand of performance from and protest to the City of the obligations of the City under the Agreement. The Project Guarantor shall be entitled to assert, as defenses hereunder, any defenses available to the Company under the Agreement.
6. No failure or delay by the City in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

7. Project Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Project Guarantor. Notice of any such assignment shall be given in writing to the City within thirty (30) days of the effective date of any such merger, consolidation or transfer.

8. The respective obligations of Project Guarantor to the City set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that City first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Project Guarantor hereunder, and shall not be subject to any claim of Project Guarantor against any other Person including the City, other than a claim that the matter giving rise to the City’s claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State of Massachusetts.

9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Project Guarantor solely and exclusively for the benefit of the City, and may be enforced against Project Guarantor by the City.

10. Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

Project Guarantor at: Air & Water Technologies Corporation
800 Third Avenue, 38th Floor
New York, New York, 10022
Attn: Alain Brunais

with a copy to: Vivendi
42 avenue de Friedland
75008 Paris, France
Attn: Guillaume Hannego, Chief Financial Officer

2
and a copy to: Compagnie Generale des Eaux
52 rue d' Anjou
75384 Paris, France

Attn: F. Jobard/International Affairs

City at: City of New Bedford
133 William Street
New Bedford, MA 02744

Attn: Mayor

or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and if delivered by hand upon delivery.

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

ATTEST:

AIR & WATER TECHNOLOGIES CORPORATION

By: J.R. Vidal, Treasurer

ACCEPTED:

CITY OF NEW BEDFORD

By: Frederick M. Kalisz, Jr.
VIVENDI GUARANTEE

This Guarantee made as of the 3rd day of June, 1998, by Vivendi (Sàrka Compagnie Generale des Eaux), a French corporation ("Project Guarantor"), having its principal place of business at 42 avenue de Friedland, 75008 Paris, France, to and for the benefit of the City of New Bedford ("City").

WITNESSETH:

WHEREAS, Professional Services Group, Inc., a Minnesota corporation, (the "Company") having an office at 14950 Heathrow Forest Parkway, Houston, Texas 77032, has entered into an Agreement for Operation, Maintenance and Management Services (the "Agreement") with the City dated as of June 1, 1998.

WHEREAS, Project Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement; and

WHEREAS, City would not enter into and perform its obligations under the Agreement unless the Project Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to the City to enter into the Agreement, the Project Guarantor agrees as follows:

1. Subject to the limitations set forth in Section 12 below, Project Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Agreement in accordance with the terms and conditions therein and subject to the conditions of this Guarantee.

2. This Guarantee shall be governed by the law of the Commonwealth of Massachusetts exclusive of the choice of law rules thereof and Project Guarantor hereby agrees to the service of process in the Commonwealth of Massachusetts for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

3. This Guarantee shall be binding upon and enforceable against the Project Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Project Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee and is for the benefit of the City, and any permitted successors and assigns under the Agreement.

4. This Guarantee may be enforced by the City without first resorting to any action against Company or exhausting any other remedies that the City may have; provided, however, that notwithstanding anything to the contrary set forth in this Guarantee, the City may not commence enforcement of any rights that it may have under this Guarantee (i) during any cure period afforded to the Company under the Agreement and (ii) until ninety (90) days after written
notice to the Project Guarantor that the Company is in default under the Agreement which notice shall be rescinded by the City if the Company ceases to be in default under the Agreement during such ninety (90) day period.

5. Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the City as each cause of action arises. Project Guarantor waives presentation to, demand of performance from and protest to the City of the obligations of the City under the Agreement. The Project Guarantor shall be entitled to assert, as defenses hereunder, any defenses available to the Company under the Agreement.

6. No failure or delay by the City in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

7. Project Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Project Guarantor. Notice of any such assignment shall be given in writing to the City within thirty (30) days of the effective date of any such merger, consolidation or transfer. Project Guarantor may assign its obligations hereunder to a transferee of substantially all of the property relating to the water activity of the Project Guarantor only with the prior written consent of the City.

8. Except as set forth in Sections 4 and 5 above the, obligations of Project Guarantor to the City set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that City first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Project Guarantor hereunder, and shall not be subject to any claim of Project Guarantor against any other Person including the City, other than a claim that the matter giving rise to the City's claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State of Massachusetts.

9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Project Guarantor solely and exclusively for the benefit of the City, and may be enforced against Project Guarantor by the City.

10. Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in
writing and shall be served personally or sent by certified mail, return receipt requested, to:

Project Guarantor at: Vivendi
42 avenue de Friedland
75008 Paris, France
Attn: Guillaume Hannego, Chief Financial Officer

with a copy to: Air & Water Technologies Corporation
800 Third Avenue, 38th Floor
New York, New York 10022
Attn: Alain Brunais

and a copy to: Compagnie Générale des Eaux
52 rue d’Anjou
75384 Paris, France
Attn: F. Jobard/International Affairs

City at:
City of New Bedford
133 William Street
New Bedford, MA 02744
Attn: Mayor

or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and if delivered by hand upon delivery.

12. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS GUARANTEE, THE LIABILITY OF THE PROJECT GUARANTOR HEREUNDER, EXCLUSIVE OF COSTS INCURRED BY THE CITY TO ENFORCE ITS RIGHTS HEREUNDER, SHALL NOT EXCEED U.S. $10,000,000.00.

13. This Guarantee shall come into force upon the execution of the Agreement and the issuance of a Guarantee in favor of the City by Air & Water Technologies Corporation and shall remain valid until the earlier to occur of (i) full performance by the Company of its obligations under the Agreement and full and final settlement of all accounts and disputes between the City and the Company and (ii) the term of the Agreement (i.e. a maximum of twenty years from the coming into force of the Agreement), and will thereafter become null and void.
IN WITNESS WHEREOF, Project Guarantor has executed this instrument the day and year first above written.

ATTEST:

VIVENDI

By: Guillaume Hammo
Chief Financial Officer

CITY OF NEW BEDFORD

By: Frederick M. Kalisz
Mayor

TRADOCK: 110786531 (ng@610!1.doc)
# Certificate of Insurance

## J&H Marsh & McLennan, Inc.

**Producer:**
J&H Marsh & McLennan, Inc.  
1166 Avenue of the Americas  
New York, NY 10036-2774

**Insured:**
Professional Services Group, Inc., A Part of Air & Water Technologies Corporation  
14950 Heathrow Forest Parkway  
Suite 200, Houston, TX 77032

## Companies Affording Coverage

- **A Indemnity Ins Co of N. America**
- **B National Union Fire Ins. Co.**
- **C Pacific Employers Ins Co**
- **D**

## Coverages

This is to certify that policies of insurance listed herein have been issued to the insured named herein for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which the certificate may be issued or may pertain, the insurance afforded by the policies listed herein is subject to all the terms, conditions and exclusions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>CO LETTER</th>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFFECTIVE DATE (MM/DD/YY)</th>
<th>POLICY EXPIRATION DATE (MM/DD/YY)</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>General Liability</td>
<td>HDOG1931622-1</td>
<td>10/31/97</td>
<td>10/31/98</td>
<td>General Aggregate: $200,0000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Products-Comp/Op Ass: $200,0000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Personal &amp; Adv Injury: $200,0000</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Each Occurrence: $200,0000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Fire Damage (Any one les): $1,000,000</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Med. Expense (Any one person): $10,000</td>
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<tr>
<td>A</td>
<td>Automobile Liability</td>
<td>ISAH0740215-6</td>
<td>10/31/97</td>
<td>10/31/98</td>
<td>Combined Single Limit: $100,0000</td>
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<td></td>
<td>Bodily Injury (Per Person): $500,000</td>
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<td></td>
<td>Bodily Injury (Per Accident): $500,000</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Property Damage: $500,000</td>
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<td></td>
<td>Garage Liability</td>
<td></td>
<td></td>
<td></td>
<td>Auto Only - EA Accident: $500,000</td>
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<tr>
<td></td>
<td></td>
<td></td>
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<td>Other Than Auto Only: $500,000</td>
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<td></td>
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<td></td>
<td>Each Accident: $500,000</td>
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<tr>
<td>B</td>
<td>Excess Liability</td>
<td>BE3570150</td>
<td>10/31/97</td>
<td>10/31/98</td>
<td>Aggregate: $500,0000</td>
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<td></td>
<td>Each Occurrence: $500,000</td>
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<tr>
<td>C</td>
<td>Workers' Compensation and Employers Liability</td>
<td>WLRC4247570-1</td>
<td>10/31/97</td>
<td>10/31/98</td>
<td>Statutory Limits: $100,0000</td>
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<td></td>
<td></td>
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<td></td>
<td>Each Accident: $100,000</td>
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<td></td>
<td>SCFG4247569-5</td>
<td>10/31/97</td>
<td>10/31/98</td>
<td>Disability - Policy Limit: $100,000</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Disability - Each Employee: $100,000</td>
</tr>
</tbody>
</table>

## Certificate Holder and Cancellation

**Certificate Holder:**
CITY OF NEW BEDFORD  
133 WILLIAM STREET  
NEW BEDFORD, MA 02740

**Cancellation:**
Should any of the policies listed herein be cancelled before the expiration date thereof, the insurer affording coverage will endeavor to mail 60 days written notice to the certificate holder named herein, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents or representatives, or upon issuer of this certificate.

J&H Marsh & McLennan, Incorporated

**Valid As Of:** 6/29/98

**Page:** 1 of 2
Workers' Compensation

Statutory benefits as defined by Commonwealth statutes encompassing all operations contemplated by this contract or agreement to apply to all of the Company's officers, and employees regardless of number of employees. Employers Liability will have minimum limits for bodily injury by accident of $500,000 per accident and for bodily injury by disease with a $500,000 policy limit and $500,000 per employee.

Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures on an occurrence basis with minimum limits of $1,000,000 per occurrence, and $2,000,000 aggregate.

Business Automobile Liability

Coverage shall apply to Company-owned vehicles and/or hired and non-owned vehicles and employee non-ownership use with minimum limits of $1,000,000 CSL (combined single limit).

Umbrella Liability

Coverage shall apply to general liability, automobile liability and Employer's Liability conforming to the minimum underlying requirements of the umbrella. Minimum limits of $5,000,000 each occurrence.

Deductibles

Deductible amounts shall be reasonably satisfactory to the City.

Certificate of Insurance

The City shall be listed as a certificate holder and an Additional Insured with respect to Commercial General Liability, Business Automobile Liability and the Umbrella Liability coverages.
5.1 OPERATION OF OPERATION AND MAINTENANCE FEE

The Operation and Maintenance Fee to be paid to the Company for each Billing Month during the Term of the Agreement shall be one-twelfth (1/12th) of the annual amount set forth below in Table S5-1, as adjusted from time to time pursuant to Section 5.2 of this Schedule 5 and Section 6.02 of the Agreement.

<table>
<thead>
<tr>
<th>TABLE S5-1</th>
<th>OPERATION &amp; MAINTENANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Operation and Maintenance Fee(1)</td>
<td>$3,306,350</td>
</tr>
<tr>
<td>Date of Operation and Maintenance Fee Escalation(2)</td>
<td>July 1, 1999</td>
</tr>
<tr>
<td>Operation and Maintenance Fee Escalator (3):</td>
<td>100% of CPI</td>
</tr>
</tbody>
</table>

Note:
(1) Operation and Maintenance Fee stated as annual amount.
(2) Date of Operation and Maintenance Fee Escalation and Operation and Maintenance Fee Escalator shall be provided for Agreement Term of 10 years, with two 5-year options. (Escalation annual calculation is to be based on the March CPI escalator.)

5.2 ESCALATION OF OPERATION AND MAINTENANCE COSTS

For Term of the Agreement, the Operation and Maintenance Fee Escalator shall be used to adjust the Operation and Maintenance Fee component of the Service Fee on an annual basis as of the first day of each Billing Year. To effect the escalation for any particular Billing Year, the Operation and Maintenance Fee shall be adjusted by a factor equal to the change in the Operation and Maintenance Fee Escalator from the date of the Date of Operation and Maintenance Fee Escalation through the month of March preceding the date on which the escalation is to become effective.

For example, if the CPI for June 1999, is 170 and the CPI for March, 2000 is 175, the annual Operations and Maintenance fee shall be adjusted, as of July 1, 2000 as follows:

\[ \frac{3,306,350 \times 175}{170} = 3,403,595 \]
6.1 RESPONSIBILITIES

City Permits

It is anticipated that the following Permits will be required to be maintained in the name of the City in connection with the operation of the Wastewater Facility:

National Pollutant Discharge Elimination System (NPDES) Permit MA 0100781
Massachusetts State Permit No. 120
Massachusetts Air Quality Permit No. 4P91055

The Company shall be responsible for assisting the City with renewing and/or obtaining and maintaining such Permits and all other applicable federal, State and local approvals and/or permits required for the Wastewater Facility and issued or to be issued in the name of the City.
The Company shall be responsible for preparing all applicable reports pertaining to any and all such Permits in compliance with federal, state and local requirements for submission by the City to the appropriate agencies.

Company Permits

It is anticipated that the following Permits will be required to be maintained in the name of the Company in connection with its performance of the Services:

Operator Licenses
Electrical Permit ("C" license)
CDL License
Radio FCC Licenses
Laboratory Certification

All such Permits and any other licenses, permits, and certificates issued or to be issued to the Company will be kept current by the Company. Any penalties associated with failure to obtain or keep current any required licenses, permit and certificates will be borne by the Company, without reimbursement from the City. The Company shall be responsible for preparing all applicable reports pertaining to any and all such Permits in compliance with federal, State and local requirements for submission to the appropriate agencies.

The Company shall comply with satisfy and pay all costs, fees or fines associated with any and all violators of regulatory requirements established by to the Permits, and shall be responsible for public notification in the event of non-compliance with wastewater treatment standards.
### TABLE S7-1
MAXIMUM UTILITIES UTILIZATION
WASTEWATER SYSTEM

<table>
<thead>
<tr>
<th>Item</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>KWH / year</td>
</tr>
<tr>
<td>Electricity</td>
<td>14,240,350</td>
</tr>
</tbody>
</table>
SCHEDULE 8

MAXIMUM COSTS FOR WASTEWATER SLUDGE DISPOSAL

Flows or loadings within "10% of the 12 month moving average flows and loadings set forth in Table S8-1 shall result in no adjustment to the Service Fee. Flows or loadings which exceed the "10% of the flows and loadings set forth in Table S8-1 on a 12-month moving average, shall result in an adjustment to compensation in the subsequent fiscal year.

Consistent with the baseline flow and loadings numbers specified below in Table S8-1, the Company shall be responsible for Wastewater Sludge disposal costs per the Bio-Gro contract which exceed the limits specified below in Table S8-2:

TABLE S8-1
BASELINE FLOW AND LOADINGS - 12-MONTH AVERAGE
JANUARY 1,1997 THROUGH DECEMBER 31,1997

<table>
<thead>
<tr>
<th>FLOW (MGD)</th>
<th>BOD lbs/day</th>
<th>TSS lbs/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>43,730</td>
<td>31,137</td>
</tr>
</tbody>
</table>

TABLE S8-2
MAXIMUM SLUDGE DISPOSAL COSTS FOR THE CITY
(PER BIO-GRO CONTRACT)

<table>
<thead>
<tr>
<th>Item</th>
<th>Annual Tonnage</th>
<th>1st Year Costs Per Bio-Gro Contract(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sludge</td>
<td>4,606</td>
<td>$1,197,560</td>
</tr>
</tbody>
</table>

(1) These costs to be adjusted annually based upon the inflationary adjustment specified in the Bio-Gro Contract.

(2) This cost is based on the Per Ton Fee Component as described in the Agreement for Out-of-City Primary Long-Term Sludge Disposition between the City and Wheelabrator Clean Water Systems dated as of October 13, 1995, and is subject to annual escalation for each year during the Term, including extensions, of this Agreement, on the basis set forth therein.
Within 30 days subsequent to the Commencement Date, the Company shall conduct a physical inventory and prepare an up-to-date report of spare parts and chemicals located at the Wastewater Facility. The inventory report shall be attached to this Schedule 9 and contain, but is not limited to, the following information relative to the Equipment and chemicals at the Wastewater Facility:

- Detailed description of items
- Date of purchase
- Identification number (i.e., serial number), if available
- Manufacturers name
- Quantity (i.e., gallons of chemicals)

For the term of the Agreement, the Company shall maintain a physical inventory of City’s Rolling Stock, chemicals and Equipment in use at the Wastewater Facility. Unless otherwise approved by the City, the Company shall provide the City with the same dollar value of spare parts and chemicals upon termination of the Agreement.
Pass Through Costs shall be paid by the City as a component of the Service Fee pursuant to Sections 6.01 and 6.03 based on satisfactory Cost Substantiation documentation provided by the Company and satisfactory to the City demonstrating that such costs have been incurred and are applicable pursuant to the provisions of the Agreement. Pass Through Costs shall be identified on the City's monthly invoices as separate line items.

The following costs are Pass Through Costs pursuant to the Agreement:

(1) The cost of electricity purchased for use in the Wastewater Facility in quantities not exceeding the maximum electricity usage allowed under Schedule 7 hereto.

(2) The cost of any premiums paid by the Company for the Performance Bond, if any. Notwithstanding the foregoing, Pass Through Costs shall not include increases in Performance Bond premiums to the extent such increases are caused by extraordinary claims under other performance bonds issued on behalf of the Company, the Guarantor or any of their Affiliates other than claims arising from Uncontrollable Circumstances. The amount of any such extraordinary increases shall be for the account of the Company.
11.1 GENERAL

The Company shall provide staff qualified and experienced in the operation, maintenance, and management of wastewater treatment systems similar in nature and character to the Wastewater Facility. The Company shall also provide additional third party support, on an as needed basis, to perform its duties and obligations of this Agreement. Such third parties shall be equally qualified for the specific Services to be performed. The Company is responsible for maintaining the required number of staff and third party contractors as deemed appropriate to operate, maintain and manage the Wastewater Facility in accordance with the provisions and terms of this Agreement. The Company shall provide:

- Qualified management, supervisory, technical, laboratory, operations and maintenance personnel.
- Staff the Wastewater Facility with sufficient qualified, trained employees who have met the certification requirements of the DEP, as necessary, and meet Commonwealth minimum staffing level requirements.
- Duly licensed and certified personnel hired or contracted by the Company to perform the services defined in the Operator and Maintenance Plan and/or as required by the Commonwealth and any other applicable regulatory agencies.
- Specialists, as necessary, for process control, instrumentation, troubleshooting, emergency management, and other similar activities.
- A full-time, appropriately trained Odor Technician.
- Office and clerical support staff.
- Technical support to provide on-call backup and process expertise for process control, management, maintenance and repair, as necessary, to support operations and maintenance staff in performing the Services of this Agreement.
- In accordance with Section 4.04, a dedicated, on-site Project Manager to oversee and manage performance of Services including coordination with other City contractors (e.g., management contract for Wastewater Sludge).
- Provide a training program for all personnel, including operations, maintenance, safety, management skills, laboratory, and energy management. Such training shall include both plant specific and general treatment material.
- Recognize existing unions or other body selected by current employees as of the effective date of this Agreement.

11.2 EXISTING EMPLOYEES

The Company may offer, but is not obligated to offer, employment to employees of the City's current contract operator of the Wastewater Facility.
11.3 STAFFING PLAN

The Company shall submit to the City within 30 days after execution of the Agreement a staffing plan for the personnel requirements during both the transition phase and the long-term operations. The Company shall include, at a minimum, in this staffing plan the following in accordance with the provisions of this Agreement:

- Organization chart
- List of all personnel required
- Job classifications and wage rates
- Number of staff required for the transition phase and long term operations
- Resumes and qualifications of personnel assigned to perform Services
- The Company intends to utilize a staff of twenty-eight (28) personnel for operations of the Wastewater Facility. The company has a harmonious working relationship with the union representing members of the bargaining unit and has committed to continue its practice of fairness in dealing with that organization representing the staff at the Wastewater Facility.

11.4 TRAINING PROGRAMS

The Company shall provide training programs for all personnel employed for performance of Services for the Agreement. Such training shall include, but not limited to, modern process control, equipment operation, repair, and maintenance, sampling and analytical procedures, regulatory requirements, supervisory skills, and safety and occupational health procedures. The Company shall maintain records of all such training programs.

No later than 30 days prior to the Commencement Date, the Company shall submit five copies of a draft Operator Training Plan (Training Plan) for review and comment by City. The Training Plan shall clearly define the classroom and hands-on training curriculum for each operator position and classification. Calendar dates and milestones shall be assigned to each portion of the training and a training schedule shall be submitted in the Training Plan. The date and duration of on-site training by each of the equipment manufacturer’s technical representatives will be shown in the schedule.

The City shall review the draft Training Plan and return one marked up copy with comments and required corrections within 30 days of the initial submittal. The Company shall submit five copies of a final version of the Training Plan incorporating City requested changes and comments 30 days following the return of the draft version.

The Company shall comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; M.G.L. Chap. 151B; and all relevant administrative orders and executive orders.
The following methodology shall be employed to adjust the service fee for increases and decreases in flows and loads that exceed 10 percent of the base year influent parameters. The Service Fee shall be increased when flow and loads increase by more than 10 percent and the Service Fee shall be decreased when flow and loads decrease by more than 10 percent. This adjustment will apply only to the increment of flow and load in excess of the 10 percent limit.

Base year parameters are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Flow—MGD</th>
<th>BOD—lbs/day</th>
<th>TSS—lbs/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Year</td>
<td>22.0</td>
<td>43,730</td>
<td>31,137</td>
</tr>
<tr>
<td>10 percent floor</td>
<td>19.8</td>
<td>39,357</td>
<td>28,023</td>
</tr>
<tr>
<td>10 percent ceiling</td>
<td>24.2</td>
<td>48,103</td>
<td>34,251</td>
</tr>
</tbody>
</table>

Adjustment factors are as follows:

<table>
<thead>
<tr>
<th>Flow—MGD</th>
<th>BOD—lbs/day</th>
<th>TSS—lbs/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 26,978</td>
<td>$ 3.22</td>
<td>$ 6.36</td>
</tr>
</tbody>
</table>

To illustrate the methodology, assume that in calendar year 2001, flows average 25.2 mgd, BOD averages 36,357 lbs per day and TSS averages 27,023 lbs per day. The adjustments would be as follows:

Flow — Incremental flow = 25.2 mgd - 24.2 mgd
    = 1 mgd
    Flow fee adjustment = 1 mgd * $26,978
    = $26,978 increase in service fee for the contract year commencing July 1, 2002

BOD — Incremental BOD = 36,357 lbs/day - 39,357 lbs/day
    = -3,000 lbs
    = -3,000 * $3.22
    = -$9,660 decrease in BOD adjustment for the contract year commencing July 1, 2002

TSS — Incremental TSS = 27,023 lbs/day - 28,023 lbs/day
    = -1,000 lbs
    = -1,000 * $6.36
    = -$6,360 decrease in TSS adjustment for the contract year commencing July 1, 2002.
PERFORMANCE BOND

BOND NO. 53-0123-17277-98-2

KNOW ALL MEN BY THESE PRESENTS: That

PROFESSIONAL SERVICES GROUP, INC., 14950 HEATHROW FOREST PARKWAY, SUITE 200,
HOUSTON, TEXAS 77032 (hereinafter called the Principal), and

UNITED STATES FIDELITY AND GUARANTY COMPANY

Corporation of THE STATE OF MARYLAND (hereinafter called
the Surety), are held and firmly bound unto THE CITY OF NEW BEDFORD, MASSACHUSETTS

(herinafter
called the Obligee), in the full and just sum of THREE MILLION, THREE HUNDRED SIX THOUSAND,
THREE HUNDRED FIFTY AND NO/100 Dollars ($ 3,306,350.00)
to the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and each of
their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated JUNE 1, 1998 entered into a contract with
the Owner for THE OPERATION, MAINTENANCE AND MANAGEMENT OF THE OBLIGEE'S
WASTEWATER TREATMENT FACILITY

for a period of UP TO TWENTY year(s) which contract is hereby referred to and made a part hereof.

WHEREAS, the Obligee has agreed to accept a bond guaranteeing the performance of said contract for a period of
one year.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the Principal shall
well and truly perform each and every obligation in said contract at the time and in the manner specified during the
term of this bond, and shall reimburse said Obligee all loss and damage which said Obligee may sustain by reason
of failure or default on the part of said Principal, then this obligation shall be void, otherwise to remain in full force
and effect.

H2951D03.DOC/1
PROVIDED, HOWEVER, That this bond is subject to the following conditions:

1. This bond is for the term beginning **JULY 1, 1998** and ending **JULY 1, 1999**.

2. In the event of a default by the Principal in the performance of the contract during the term of this bond, the Surety shall be liable only for the loss to the Obligee due to actual excess costs of performance which occurred within the bond term up to the maximum penalty of this bond.

3. No claim, action, suit, or proceeding, except as hereinafter set forth, shall be had or maintained against the Surety on this instrument unless same be brought or instituted and process served upon the Surety within six months from termination or expiration of the bond term.

4. Neither nonrenewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond shall constitute loss to the Obligee recoverable under this bond.

5. The bond may be extended for additional terms at the option of the Surety, by continuation certificate executed by the Surety.

6. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrator or successors of Owner.

Signed and sealed this 7TH day of JULY AD 1998

PROFESSIONAL SERVICES GROUP, INC.

(Principal)  (Seal)

By:

(Title)

UNITED STATES FIDELITY AND GUARANTY COMPANY

(Surety)  (Seal)

By:

RONALD TUCKER  Attorney-in-fact

United States Fidelity and Guaranty Company
2500 Westminster Boulevard
Wilmington, Delaware 19801
CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF
COUNTY OF

On this 9th day of July, 1998 before me personally came

Patrick McMahon

to me known, who, being by me duly sworn, did depose and say that she/he resides in

Houston, Texas

that she/he is the

President

of the

Professional Services Group, Inc.

the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she /he signed her/his name thereto by like order.

(SEAL)

Donna Erickson
United States Fidelity and Guaranty Company
Power of Attorney
No. 110652

Know all men by these presents: That United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the State of Maryland and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint Joseph Dobkowski, Jr., Thomas M. McNally, Alice McLaughlin, Adrienne Scalera, Kathleen M. Cristiano, Sandra K. Wolf and Ronald Tucker of the City of Parsippany, State of New Jersey, its true and lawful Attorney-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons; guaranteeing the performance of contracts; and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, the said United States Fidelity and Guaranty Company, has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice President and Assistant Secretary, this 21st day of November, A.D. 1997.

(Signed) By
Mary A. H. Martin
Vice President

(Signed) By
Thomas E. Hubrigsteine
Assistant Secretary

State of Maryland

Baltimore City

On this 21st day of November, A.D. 1997, before me personally came Gary A. Wilson, Vice President of United States Fidelity and Guaranty Company, and Thomas E. Hubrigsteine, Assistant Secretary of said Company, with whose seal I am personally acquainted, who being sworn, severally duly sworn, said, that they, the said Gary A. Wilson and Thomas E. Hubrigsteine were respectively the Vice President and the Assistant Secretary of the said United States Fidelity and Guaranty Company, the corporation described in and which executed the foregoing Power of Attorney, that they well know the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice President and Assistant Secretary, respectively, of the Company.

My Commission expires the 1st day of Affidavit, A.D. 1997.

(Signed) By
Wright
Notary Public

This Power of Attorney is granted under and in consideration of the following Resolutions adopted by the Board of Directors of the United States Fidelity and Guaranty Company on September 24, 1992:

Resolved, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities apponted as Attorney-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or an Executive Vice President, or a Senior Vice President, or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

Resolved, that Attorney(s)-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Thomas E. Hubrigsteine, an Assistant Secretary of the United States Fidelity and Guaranty Company, do hereby certify that the foregoing are true excerpts from the Resolutions of the said Company as adopted by its Board of Directors on September 24, 1992 and that these Resolutions are in full force and effect.

I, the undersigned Assistant Secretary of the United States Fidelity and Guaranty Company, do hereby certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Testimony Whereof, I have hereunto set my hand and the seal of the United States Fidelity and Guaranty Company, on this 7TH day of July, A.D. 1998.

Thomas E. Hubrigsteine
Assistant Secretary

PS 3(12/98)
Currently two Capital Expenditures are planned for the Wastewater Facility. The first is the installation of spray bars in all six of the final clarifiers, the second involves modifications to the existing polymer system.

To prevent build up of scum on the influent end of the clarifiers a system of water headers with spray nozzles will be installed in each of the final clarifiers. The use of the spray bar system is expected to reduce the amount of scum that accumulates on the surface which in turn will reduce the development of odor within the tank. Water sprayed on the clarifier surface will move floating material to the scum collection system at the effluent end of the clarifier.

To provide greater flexibility to the supplied polymer system, two additional self-contained liquid polymer preparation units will be installed. One will service the Wastewater Sludge dewatering system (centrifuges); the second will service the WAS thickening system (gravity belt thickeners). The second system will also act as a backup to the first. This change also will allow for the mixing of stored liquid polymer in the bulk storage tank.
United States Fidelity and Guaranty Company
(Commenced Business August 1, 1899)
HOME OFFICE: BALTIMORE, MD
FINANCIAL STATEMENT DECEMBER 31, 1997
(STATUTORY BASIS)

**ASSETS**

<table>
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<tr>
<th>Description</th>
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<tr>
<td>Cash</td>
<td>$100,094,114</td>
</tr>
<tr>
<td>Invested Assets:</td>
<td></td>
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<tr>
<td>Bonds</td>
<td>$4,917,074,168</td>
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<tr>
<td>Preferred Stocks</td>
<td>38,060,712</td>
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<tr>
<td>Common Stocks</td>
<td>804,495,337</td>
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<tr>
<td>Mortgage Loans</td>
<td>351,598,723</td>
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<td>Real Estate</td>
<td>103,914,362</td>
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<td>Short-term Investments</td>
<td>232,081,710</td>
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<tr>
<td>Other Invested Assets</td>
<td>310,385,785</td>
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<tr>
<td><strong>Total Assets</strong></td>
<td><strong>$7,845,932,558</strong></td>
</tr>
</tbody>
</table>

**LIABILITIES AND POLICYHOLDERS' SURPLUS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Reserves:</td>
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<tr>
<td>Losses and Loss Adjustment Expenses</td>
<td>$4,420,660,963</td>
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<tr>
<td>Premium Taxes and Operating Expenses</td>
<td>181,886,268</td>
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<tr>
<td>Federal and Foreign Income Taxes</td>
<td>0</td>
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<td>Unearned Premiums</td>
<td>841,552,846</td>
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<tr>
<td><strong>Total Liabilities</strong></td>
<td><strong>$5,444,499,177</strong></td>
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<tr>
<td>Funds Held Under Reinsurance Treaties</td>
<td>640,063,503</td>
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<tr>
<td>Other Liabilities</td>
<td>299,624,326</td>
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<tr>
<td><strong>Total Liabilities</strong></td>
<td><strong>$6,384,187,006</strong></td>
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<tr>
<td>Capital Stock - $2.50 par value</td>
<td></td>
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<tr>
<td>Surplus</td>
<td>$70,579,288</td>
</tr>
<tr>
<td>Surplus Appropriated for Net Unrealized</td>
<td>1,459,966,114</td>
</tr>
<tr>
<td>Capital Gains and (Losses)</td>
<td>(68,799,250)</td>
</tr>
<tr>
<td>Total Policyholders' Surplus</td>
<td>$1,461,745,552</td>
</tr>
<tr>
<td>Total Liabilities and Policyholders' Surplus</td>
<td><strong>$7,845,932,558</strong></td>
</tr>
</tbody>
</table>

Investment values as prescribed by the National Association of Insurance Commissioners.
Cash and Securities in the amount of $408,508,394 in the statement are deposited as required by law.
*Excludes Premiums Receivable over 90 days old.

**Norman P. Blake, Jr.,**
Chairman of the Board & President

**Thomas A. Bradley,**
Vice President-Controller

On the 20th day of February, 1998 before me, Shirley Mahomes, a Notary Public in and for the City and State aforesaid, personally appeared Norman P. Blake, Jr. and Thomas A. Bradley, Chairman of the Board & President and Vice President-Controller, respectively, of the United States Fidelity and Guaranty Company, who, being by me severally duly sworn, did depose and say that they are each officers of the said company, and that the above and foregoing is a full, true and correct statement of the Assets and Liabilities of the said company, as they appeared upon the books of the said company on the 31st day of December A.D., 1997.

In Witness Whereof, I have hereunto set my hand and official seal, the day and year aforesaid.

**Shirley Mahomes,**
Notary Public

**Notarial Seal**

Cert. 28 (12/97)
CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY
COUNTY OF MORRIS

On this 7TH day of JULY, 1998 before me personally came

RONALD TUCKER to me known, who, being by me duly sworn, did depose and say that he resides in WEST CALDWELL, NEW JERSEY that he is the ATTORNEY-IN-FACT OF THE

UNITED STATES FIDELITY AND GUARANTY COMPANY

the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(SEAL)

[Signature]

NOTARY

ADELLE O. KING
NOTARY PUBLIC OF NEW JERSEY
MY COMM. EXP. JUNE 13, 2002
SCHEDULE 15

WASTEWATER FACILITY DESCRIPTION

The Wastewater Facility is a certified Class VI secondary treatment plant designed to treat average annual daily flows of 30 mgd and peak daily flows of 75 mgd. The Wastewater Plant commenced operation in August of 1996, following capital expenditures in excess of approximately $100 million.

The plant includes the following major components:

- Plant headworks including influent sewer, influent pumping and preliminary treatment;
- Primary treatment;
- Secondary treatment;
- Disinfection;
- Sludge processing facilities;
- Odor control facilities; and
- Plant utilities.

The treatment process is designed to reduce both biochemical oxygen demand (BOD) and total suspended solids (TSS) to less than 30 milligrams per liter (mg/l) in the effluent on a monthly average. The secondary treatment process used in the City's new facility is activated sludge with diffused air. The activated sludge process consists of two interdependent operations: aeration and clarification.

In the aeration process, air is mixed with the wastewater in aeration tanks to biologically reduce the waste concentration. The Wastewater Facility aeration tanks were sized to accommodate flows and loads expected at high groundwater average day flow conditions. Aeration equipment and blowers were sized to meet the oxygen demand at peak loading conditions. The total aeration tank volume is 7.3 million gallons and is divided into six tanks. These tanks are enclosed to contain any odors. Air is drawn from the aeration tanks through a wet scrubber for treatment prior to being released into the atmosphere through elevated stacks.

Following the aeration process, the wastewater flows to the secondary clarifiers where the biological solids are separated from liquid. The separated solids are removed from the clarifiers and recycled to the aeration tanks to maintain the biological process. The clarified water from the secondary clarifiers is disinfected and then discharged to the plant outfall. The City will use the existing outfalls, once rehabilitated, to discharge the wastewater to the Outer Harbor. The City is currently evaluating the advisability of constructing a diffuser. The contemplated diffuser is an extension of the main outfall (expected to be about 650 feet in length) that has small orifices allowing the Secondary Treatment Plant effluent to mix more smoothly with the receiving waters.

Construction Plans and Specifications and Manufacturer's Plans and Specifications for the Wastewater Facility are on file at the Wastewater Facility.
May 1, 2008

Mr. Philip Ashcroft
Veolia Northeast, LLC
Metro South Executive Park
1115 West Chestnut Street, Suite 102
Brockton, MA 02301

REFERENCE: EXTENSION OF AGREEMENT FOR OPERATION,
MAINTENANCE AND MANAGEMENT SERVICES

Dear Mr. Ashcroft:

I am pleased to inform you that the City of New Bedford has decided to exercise its option to renew our current agreement for operation, maintenance and management services at the Wastewater Treatment Facility located at Fort Rodman.

ARTICLE XIII, Section 1302 of the current agreement dated June 1, 1998 provides for two additional five (5) year extension periods.

The City of New Bedford looks forward to our continued relationship.

Sincerely,

Scott W. Lang
Mayor

Cc: Ronald H. Labelle
Irene Schall

133 WILLIAM STREET • NEW BEDFORD, MA 02740 • TEL. (508) 991.1410 • FAX (508) 991.6189
AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES

for the

CITY OF NEW BEDFORD

WASTEWATER TREATMENT FACILITY

between

PROFESSIONAL SERVICES GROUP, INC.

and

THE CITY OF NEW BEDFORD, MASSACHUSETTS

DATED AS OF JUNE 1, 1998
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AGREEMENT FOR OPERATION, MAINTENANCE
AND MANAGEMENT SERVICES

THIS AGREEMENT FOR OPERATION, MAINTENANCE AND
MANAGEMENT SERVICES (this “Agreement”) is made and entered into as of the 1st
day of June, 1998, by and between PROFESSIONAL SERVICES GROUP, INC. (the
“Company”), a Minnesota corporation, and the CITY OF NEW BEDFORD,
MASSACHUSETTS (the “City”) a municipal corporation existing under the laws of The
Commonwealth of Massachusetts (the “Commonwealth”). The City or the Company or
both may be referred to herein as the “Party” or the “Parties”, as the context of the usage
of such term may require.

RECITALS:

WHEREAS, the City owns and operates a Class VI secondary wastewater
treatment facility located within the municipal boundaries of the City (as herein more
particularly described, the “Wastewater Facility”);

WHEREAS, pursuant to Massachusetts General Laws Chapter 30B, the City
issued a Request for Proposals in August, 1997 for the long-term operation, maintenance
and management of the Wastewater Facility;

WHEREAS, the City issued Addenda numbered 1-5 to the Request for Proposals
on September 16, 1997, October 9, 1997, October 17, 1997, November 4, 1997 and
November 7, 1997 respectively (the “Addenda”);
WHEREAS, in response to the Request for Proposals (as amended by the Addenda, being the “RFP”) the Company submitted a proposal for the management, operation and maintenance of the Wastewater Facility;

WHEREAS, the City has selected the Company, pursuant to the RFP as amended by the Addenda, and the Company’s proposal, to operate, maintain and manage the Wastewater Facility, in accordance with the terms, conditions and provisions of this Agreement and in reliance on the Company’s skill, expertise and past successful experience in performing operations, maintenance and management of facilities comparable to the Wastewater Facility;

WHEREAS, Air & Water Technologies Corporation and Vivendi (f/k/a Compagnie Generale des Eaux) (the “Guarantors”) shall execute the Guarantees in the respective forms set forth in Schedules 3A and 3B guaranteeing the Company’s performance of its obligations under this Agreement, as required by the RFP;

WHEREAS, the City desires to employ the services of the Company for the operation, maintenance and management of the Wastewater Facility and the Company desires to perform such services for the compensation provided herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and the terms and conditions hereinafter set forth, the Company and the City do hereby agree as follows:
ARTICLE I

DOCUMENTS

Section 1.01 Schedules.

The following Schedules are attached hereto and made a part of this Agreement.

In the event of a conflict or inconsistency between or among the Schedules and the Agreement, it is agreed that the provisions of the Agreement control over the Schedules.

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This Agreement, together with the foregoing Schedules, constitutes the entire Agreement between the Company and the City with respect to the management, operations and maintenance of the Wastewater Facility and shall govern exclusively the obligations of the Parties.
ARTICLE II
DEFINITIONS; TERMS GENERALLY

Section 2.01 Terms Generally.

Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The words “agree”, “agreement”, “approval” and “consent” shall be followed by the phrase “which shall not be unreasonably withheld or unduly delayed” except as the context may otherwise require.

Section 2.02 Definitions.

For purposes of this Agreement, the following-words and phrases shall have the following respective interpretations and meanings:

“Affiliate” means the Guarantors and any corporation, partnership, joint venture or other entity controlled by, controlling or under common control with, directly or indirectly, the Guarantors, the Company or any one of such entities.

“Applicable Law” means any law, rule, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by any governmental body having jurisdiction, applicable from time to time to the siting, design, possession, testing, operation, maintenance or repair of the Wastewater Facility, the acceptance, treatment, storage or discharge of wastewater, the transfer or handling of Wastewater Sludge or any other transaction or matter contemplated hereby.

“Article” means an Article of this Agreement.
“Authorized Representative” means the Company’s or the City’s representative, as the case may be, and any successors thereto designated pursuant to Section 13.07.

“Billing Month” means each calendar month in each Billing Year, except that (a) the first Billing Month shall begin on the Commencement Date, and (b) the last Billing Month shall end concurrently with the expiration or termination of this Agreement.

“Billing Year” means each fiscal year of the City during the Term of this Agreement, except that (a) the first Billing Year shall begin on the Commencement Date and end on June 30, 1999 and (b) the last Billing Year shall end concurrently with the end of the Term or, as applicable, the date of termination, of this Agreement.

“Capital Expenditure” means any expenditure for (a) the repair, renewal or replacement of any piece of Equipment or component of any Equipment or any other component of the Wastewater Facility that is estimated by the Company to cost more than $10,000 or (b) any capital addition to or change in the Wastewater Facility which the City elects to fund or finance and undertake as a special project for the upgrading or improving of the Wastewater Facility.

“Change in Law” means (a) the enactment, adoption, promulgation, modification or repeal after the Contract Date of any federal, State, or local law, ordinance, code, rule, regulation or other similar legislation or the change in official interpretation after the Contract Date, of any federal, State, or local law, ordinance, code, rule, regulation, official permit, license or approval by any regulatory or judicial entity having jurisdiction with respect to the operation, maintenance or management of the Wastewater Facility, or (b) the imposition, after the Contract Date, of any material conditions on the issuance,
modification or renewal of any official permit, license or approval necessary for the
operation, maintenance or management of the Wastewater Facility, which, in the case of
either (a) or (b), necessitates a Capital Expenditure or modifies the Company’s
obligations under this Agreement with respect to the Wastewater Facility by establishing
requirements for operation, maintenance or management of the Wastewater Facility
which are more or less burdensome than the most stringent requirements:

(i) in effect on the Contract Date,

(ii) agreed to by the City in any applications for official permits, licenses or approvals
for the Wastewater Facility, other than any requirements set forth in said applications to comply
with future laws, ordinances, codes, rules, regulations or similar legislation; or

(iii) set forth in this Agreement or any Schedule hereto.

For purposes of part (a) of this definition, no enactment, adoption, promulgation or
modification of laws, ordinances, codes, rules, regulations or similar requirement or enforcement
policy with respect to any such requirement shall be considered a Change in Law if, as of the
Contract Date, such law, ordinance, code, rule, regulation or similar requirement or enforcement
policy would have directly affected the continued operation, maintenance and management of the
Wastewater Facility by the City after the Commencement Date in the absence of this Agreement
and such law, ordinance, code, rule, regulation or other similar requirement was officially
proposed by the responsible agency and published in final form in the Federal Register or
equivalent federal, State or local publication and thereafter becomes effective without further
action. In no event shall a change in any federal, State or local tax law be considered a Change
in Law.
“C.M.R.” means Code of Massachusetts Regulations, as in effect from time to time.

“City” means the City of New Bedford, Massachusetts.

“City Fault” means any breach (including the untruth or breach of any City representation or warranty herein set forth), failure, nonperformance, noncompliance or any negligent or willful misconduct by the City under this Agreement (whether or not attributable to any elected or appointed official, officer, member, agent, employee, contractor, subcontractor of any tier, or any independent contractor of the City) which is not directly attributable to any Uncontrollable Circumstance or Company Fault, and which materially and adversely affects the Company’s rights and obligations or ability to perform under this Agreement.

“Commencement Date” means July 1, 1998 or such other date on which the City gives the Company notice pursuant to Section 3.03 that the last to be satisfied or waived of the conditions precedent enumerated in Sections 3.01 and 3.02 has been satisfied or waived. On and after the Commencement Date, the Company shall commence and continue its operation, maintenance and management obligations under this Agreement.

“Commonwealth” means the Commonwealth of Massachusetts and all of its relevant administrative, contracting and regulatory agencies and offices.

“Company” means Professional Services Group, Inc., a Minnesota corporation.

“Company Fault” means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, nonperformance, noncompliance or any negligent or willful misconduct by the Company under this Agreement (whether or not attributable to any officer, member, agent, employee, contractor, Subcontractor of any tier, or
independent contractor of the Company or any Affiliate of the Company) which is not directly attributable to any Uncontrollable Circumstance or City Fault.

"Consent Decree" means the agreement entered into by the EPA, the Commonwealth of Massachusetts, the Conservation Law Foundation and the City on December 7, 1987, including amendments (1990 Modified Consent Decree and Second Modified Consent Decree (1992)).


"Contract Date" means the date first written above.

"Cost Substantiation" means, with respect to any additional or incremental cost or expense necessarily incurred by the Company and not otherwise reimbursed by the City hereunder, a certificate signed by the Company Authorized Representative stating the reason for incurring such cost, the amount of such cost, and the event or Section of this Agreement giving rise to the Company’s right to incur such cost, and that such cost is, at a maximum, the fair market value price for the service or materials supplied (it is understood by the Parties that such services or materials may be provided by an Affiliate and it being further understood by the Parties that the fair market value price for services or materials supplied may include a profit allowance for the Company of up to 10% of the total price for the services and/or materials). Any certification provided by the Company shall include copies of all invoices or charges, together with any additional documentation of such cost or expense incurred which are necessary, in accordance with generally accepted accounting practices and procedures, to verify
such cost and expense and to demonstrate the basis for the amount claimed. All costs to be substantiated shall be subject to the review and conclusive approval of the City.

"Date of Operation and Maintenance Fee Escalation" has the meaning set forth in Schedule 5 hereto.

"DEP" means the Massachusetts Department of Environmental Protection or any successor thereto.

"Dispute Resolution Committee" has the meaning set forth in Section 8.01.

"Enhanced Wastewater Standards" means specific limits pertaining to the effluent quality from the Wastewater Facility set forth in Schedule 1 hereto that may be more stringent than those imposed by Applicable Law from time to time.

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

"Equipment" means equipment, including operating and processing equipment, tools and Rolling Stock, owned by the City and in use as of the Contract Date or subsequently procured and/or provided by the City pursuant to this Agreement for use at or associated with the Wastewater Facility (specifically excluding equipment and tools owned by the Company and used by the Company to perform its obligations under this Agreement), all as more particularly set forth in Schedule 15 hereto.

"Event of Default" means any one or more of those events described in Article X.

"Guarantees" means the agreements between the Guarantors and the City in the forms set forth in Schedules 3A and 3B hereto.

"Guarantors" means Air & Water Technologies Corporation and Vivendi (f/k/a Compagnie Generale des Eaux).
"Independent Engineer" means a consulting engineering firm having a national reputation for expertise in the field of design, construction and operation of wastewater treatment facilities to be designated by the City subject to the approval of the Company.

"Insurance" means insurance in the types and amounts more particularly described in Article IX and Schedule 4 hereto.

"M.G.L." means Massachusetts General Law.

"MOU" means the Memorandum of Understanding between the City and the Massachusetts Division of Marine Fisheries, dated March 27, 1992, as amended.

"Monthly Operating Report" means the monthly report to be prepared by the Company and delivered to the City in accordance with Section 2.4.1 of Schedule 2.

"NPDES" means National Pollutant Discharge Elimination System.

"Operation and Maintenance Fee" has the meaning specified in Section 6.03 and Schedule 5 hereto.

"Operation and Maintenance Fee Escalator" has the meaning set forth in Schedule 5 hereto.

"Operation and Maintenance Plan" means the plan for operation, maintenance and management of the Wastewater Facility to be prepared by the Company and submitted to the City in accordance with Section 2.5 of Schedule 2 hereto.

"Pass Through Costs" means the component of the Service Fee calculated pursuant to Section 6.04 and Schedule 10 hereto.

"Performance Bond" means a Performance Bond in the form set forth in Schedule 13 hereto.
“Permits” means all federal, state and local approvals and permits required to be obtained and/or maintained from time to time in connection with operation of the Wastewater Facility including, without limitation, the approvals and permits listed in Schedule 6.

“Person” means any natural or artificial entity including an individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

“Procurement Cost Reimbursement” means the sum of $250,000, an amount intended to reflect, in part, the costs incurred by the City in connection with the procurement, execution and delivery of this Agreement.

“Rolling Stock” means vehicular Equipment included in the Wastewater Facility and more particularly described in Schedule 15 hereto.

“Section” means a Section of this Agreement.

“Service Fee” means the amount payable to the Company by the City for the services provided under this Agreement calculated in accordance with Article VI.

“Services” means the operation, maintenance and management of the Wastewater Facility in accordance with the terms and provisions of the Agreement.

“Subcontractor” means any Person engaged by the Company, subject to Section 13.04, to perform any portion of the services on behalf of the Company.

“Term” has the meaning set forth in Section 13.02.

“Termination Fee” has the meaning set forth in Section 11.03.
"Transition Plan" means the written plan for transition of operation, maintenance and management of the Wastewater Facility operations from the current operator to the Company, which shall be in form and substance satisfactory to the City.

"Uncontrollable Circumstance(s)" means any act, event or condition to the extent that it impacts the cost of performance of or materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition, in light of the circumstances known or reasonably believed to exist at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or a lack of reasonable diligence of either party.

(a) Inclusions. Subject to the foregoing, such acts, events, or conditions shall include, but shall not be limited to, the following

(1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Wastewater Facility), landslide, earthquake, fire, explosion, flood, hurricane, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance

(2) a Change in Law;

(3) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
(4) the preemption, confiscation, diversion, destruction, or other interference in the delivery or supply of materials or services by, on behalf of, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Wastewater Facility; and

(5) strikes, work stoppages or labor disputes involving employees of non-Affiliates

(b) Exclusions. None of the following acts, events, or conditions shall constitute Uncontrollable Circumstances

(1) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations

(2) changes in the financial condition of the City, the Company, the Guarantors, or any of their Affiliates or subcontractors

(3) union work rules which increase the Company’s operating costs

(4) any impact of prevailing wage laws on the Company’s costs

(5) the consequences of Company error, including any errors of Company affiliates or subcontractors;

(6) failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to

(7) strikes, work stoppages or labor disputes involving employees of the Company or any Affiliate
(8) failure of Equipment or of equipment owned or leased by the Company (unless caused by an Uncontrollable Circumstance);

(9) litigation against the Company or any Affiliate.

"Wastewater Facility" means the certified Class VI New Bedford Wastewater Treatment Facility located off South Rodney French Boulevard, New Bedford, Massachusetts, including the site, Equipment and related Wastewater Sludge disposal storage facilities, the outfall discharge chamber, and all accessory or appurtenant fixtures, equipment, tools, and other property, all as more particularly described on Schedule 15 hereto.

"Wastewater Sludge" means any liquid, semisolid or solid material resulting from the treatment of raw and combined sewage at the Wastewater Facility and which requires disposal as waste material, but excluding grit and screenings.

ARTICLE III

CONDITIONS PRECEDENT TO THE COMMENCEMENT DATE

Section 3.01 Company Obligations.

The Commencement Date shall be subject to the satisfaction by the Company of the following conditions precedent:

(a) The Guarantors shall have executed and delivered the Guarantees to the City simultaneously with the execution of and delivery of this Agreement.

(b) The Company shall have paid the City the Procurement Cost Reimbursement by certified or bank check, or by wire transfer, or by other means acceptable to the City.
(c) The Company shall have delivered to the City (i) a certificate of an authorized officer of the Company, dated as of the Commencement Date, to the effect that each of the representations of the Company set forth in Section 12.02 of this Agreement is true and correct in all material respects as if made on such date and an (ii) opinion of counsel to the Company, in customary form and reasonably acceptable to the City, to the effect set forth in Sections 12.02(a), (b), (d) and (e).

(d) The City shall have received the documentation more particularly described in Section 9.01 as evidence that all policies of insurance required to be obtained by the Company pursuant to this Agreement have been obtained.

(e) If so requested by the City, the Company shall have delivered to the City a Performance Bond duly executed by its issuer.

(f) The Company shall have delivered to the City, and the City shall have approved, the Transition Plan.

(g) The Company shall have recruited, retained and employed all management and other personnel necessary for its performance of the Services hereunder, which personnel shall be duly licensed as and to the extent required by Applicable Law, and shall have delivered to the City a roster of all such personnel together with copies of the licenses of all personnel required to be licensed.

(h) The Company shall have obtained and shall have submitted to the City copies of all governmental approvals required to be obtained by the Company by Applicable Law as a condition of performing the Services hereunder.
Section 3.02 City Obligations.

The Commencement Date shall be subject to the satisfaction by the City of the following conditions precedent:

(a) The City shall have delivered to the Company a certificate of an authorized official of the City, dated as of June 1, 1998, to the effect that each of the representations of the City set forth in Section 12.01 of this Agreement is true and correct in all material respects as if made on such date and an opinion of the City’s Corporation Counsel, in customary form and reasonably acceptable to the Company, to the effect set forth in Sections 12.01(a), (b), (c) and (d).

Section 3.03 Satisfaction of Conditions Precedent.

The Company and City shall satisfy the conditions precedent identified in Section 3.01 and Section 3.02 on or before June 1, 1998 and each Party shall give the other prompt notice when any condition precedent has been satisfied. Upon satisfaction of all such conditions precedent, the City shall give written notice to the Company and the Commencement Date shall occur on the later of (i) such date or (ii) July 1, 1998 so long as, as of such date:

(a) No action, suit, proceeding or official investigation shall have been overtly threatened or publicly announced or commenced by any Person or federal, State or local governmental authority or agency other than the City in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to the City or the Company as a result of the City’s or the Company’s negotiation, execution, delivery or performance of the Agreement, provided, however, that any such action,
suit, proceeding or investigation would, if adversely determined, materially adversely affect this Agreement or the performance by the Parties of their respective obligations hereunder; or

(b) No changes shall have occurred after the Contract Date and on or before the Commencement Date in any applicable federal, State or local rule, regulation or ordinance thereunder, or in the interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the City or the Company of this Agreement or that would make compliance by the City or the Company with the terms and conditions of this Agreement, a violation of such law, rule, regulation or ordinance.

If all such conditions precedent are not so satisfied or waived on or before June 1, 1998, or if any circumstances described in clauses (a) or (b) above, if any, exist and continue as of July 1, 1998, then either Party, by notice in writing to the other, may terminate this Agreement. If either Party shall give written termination notice to the other, neither Party shall be liable to the other for the termination of this Agreement, except on account of the failure of a party to satisfy its respective conditions precedent set forth in Section 3.01 or 3.02, respectively, and each Party shall bear its respective costs and expenses attributable to the transactions herein contemplated.

ARTICLE IV

MANAGEMENT OPERATION, MAINTENANCE AND MANAGEMENT

Section 4.01 Overall Company Responsibilities.

On and after the Commencement Date and throughout the term of this Agreement:
June 12th, 2003

Mr. James Ricci
Superintendent Water / City Liaison
1000 S. Rodney French Blvd
New Bedford, MA 02744

Dear Mr. Ricci,

In reviewing past correspondence regarding the LOC, I have determined that there was an initial Letter of Credit issued 08/09/04 (a copy of which is included in this correspondence) and an amendment that increased the amount dated 08/23/05 (this copy is also included in this correspondence). The original Letter of Credit has an Evergreen clause that states: "This letter of credit shall be considered automatically extended without an amendment for a period of one year from the current or any future expiration date unless at least 30 days prior to the current expiration date, we notify you in writing that we elect not to renew this Letter of Credit for any additional periods. However, in no event shall this letter of credit be extended beyond 08/31/06."

My understanding is we are in the process of renewing or amending the current Letter of Credit. If I am correct in the calculation of the LCC fee, it is the new contract fee amount x 0.6%. The new fee effective July, 2003 is $4,110,167.13 x 0.006 = $24,661.00 per year or $6,165.25 per quarter. When I receive the amended renewal, I will be sure to forward to Mr. Labelle for the City of New Bedford's accounting department's records.

If you require any additional information, or if I can be of further assistance please do not hesitate to contact me at the facility.

Sincerely,

John P. Caron
Veolia Water NE LLC
New Bedford

Cc: Ron Labelle

John P. Caron
Veolia Water North America
1000 South Rodney French Blvd
Tel 508-991-6171 / Fax 508-991-6197
johnncaron@veoliawater.com
Bank of America

BANK OF AMERICA - CONFIDENTIAL

DATE: AUGUST 11, 2008

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68028565

ISSUING BANK
BANK OF AMERICA, N.A.
1 PLAZA WAY
PA-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
CITY OF NEW BEDFORD
133 WILLIAM STREET
NEW BEDFORD, MA 02740

APPLICANT
VEOLIA WATER N.A. OPERATING SERVICES, LLC
101 W. WASHINGTON ST. STE 1400 E
INDIANAPOLIS, IN 46204

AMOUNT
NOT EXCEEDING USD 4,110,167.13
NOT EXCEEDING FOUR MILLION ONE HUNDRED TEN THOUSAND ONE HUNDRED SIXTY SEVEN AND 13/100'S US DOLLARS

EXPIRATION
JUNE 30, 2009 AT OUR COUNTERS

GENTLEMEN:

BY ORDER OF:

VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC
101 WEST WASHINGTON STREET, SUITE 1400 EAST
INDIANAPOLIS, IN 46204

WE HEREBY OPEN IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT FOR THE ACCOUNT OF VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC (HEREINAFTER "VWNAOS") FOR A SUM OR SUMS NOT EXCEEDING A TOTAL OF US DOLLARS FOUR MILLION ONE HUNDRED TEN THOUSAND ONE HUNDRED SIXTY-SEVEN DOLLARS AND 13/100 (USD4,110,167.13) AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON OURSELVES, EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR COUNTERS ON 6/30/2009.

WE HAVE BEEN INFORMED THAT THIS LETTER OF CREDIT IS ISSUED PURSUANT TO THE AGREEMENT FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES BY AND BETWEEN THE CITY OF NEW BEDFORD, MA (THE "CITY") AND VWNAOS AS SUCCESSOR IN INTEREST TO PROFESSIONAL SERVICES GROUP, INC. DATED 7/1/2008 (HEREINAFTER THE "AGREEMENT").

DRAFT(S) MUST BE ACCOMPANIED BY:

A SWORN AFFIDAVIT SIGNED BY THE CITY’S CHIEF FINANCIAL OFFICER AND CITY SOLICITOR CERTIFYING:

ORIGINAL
THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68028565

"(1.) PURSUANT TO THE TERMS OF THE AGREEMENT, AN EVENT OF DEFAULT BY
VINNAOS HAS OCCURRED AND IS CONTINUING AND THE CURE PERIOD HAS
EXPIRED; AND

(2.) VINNAOS HAS BEEN NOTIFIED OF THE DEFAULT IN ACCORDANCE WITH THE
AGREEMENT AND EXHIBITS ATTACHED THERETO; AND

(3.) VINNAOS HAS NOT CURED OR ATTEMPTED TO CURE THE EVENT OF DEFAULT
AND THE CURE PERIOD HAS EXPIRED; AND

(4.) VINNAOS HAS NOT DISPUTED THAT AN EVENT OF DEFAULT HAS OCCURRED;
OR VINNAOS HAS DISPUTED THAT AN EVENT OF DEFAULT HAS OCCURRED AND
PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES SPECIFIED IN THE
AGREEMENT, HAVE REACHED SETTLEMENT."

EACH DRAFT LETTER MUST BEAR UPON ITS FACE THE CLAUSE "DRAWN UNDER
LETTER OF CREDIT NO. 68028565 DATED AUGUST 11, 2008.

THIS LETTER OF CREDIT SHALL BE CONSIDERED AUTOMATICALLY EXTENDED
WITHOUT AN AMENDMENT FOR A PERIOD OF ONE YEAR FROM THE CURRENT OR ANY
FUTURE EXPIRATION DATE UNLESS AT LEAST 30 DAYS PRIOR TO ANY
EXPIRATION DATE WE NOTIFY YOU IN WRITING AT THE ADDRESS ABOVE THAT WE
ELECT NOT TO RENEW THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD,
HOWEVER, IN NO EVENT SHALL THIS LETTER OF CREDIT BE EXTENDED BEYOND
6/30/2013, THE FINAL EXPIRATION DATE.

WE HEREBY AGREE THAT DRAFT(S) DRAWN UNDER AN IN COMPLIANCE WITH THE
TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO
THE ABOVE-MENTIONED DRAWEE BANK ON OR BEFORE THE EXPIRATION DATE
SPECIFIED ABOVE.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF
CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR
DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF
COMMERCE PUBLICATION NO. 600".

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS
TRANSACTION, PLEASE CALL 1-800-370-7519 OPT 1.

Authorized Signature

THIS DOCUMENT CONSISTS OF 2 PAGE(S).
BANK OF AMERICA - CONFIDENTIAL

DATE: AUGUST 11, 2008

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68028565

ISSUING BANK
BANK OF AMERICA, N.A.
1 FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
CITY OF NEW BEDFORD
133 WILLIAM STREET
NEW BEDFORD, MA 02740

APPLICANT
VEOLIA WATER N.A. OPERATING SERVICES, LLC
101 W. WASHINGTON ST. STE 1400 E
INDIANAPOLIS, IN 46204

AMOUNT
NOT EXCEEDING USD 4,110,167.13
NOT EXCEEDING FOUR MILLION ONE HUNDRED TEN THOUSAND ONE HUNDRED SIXTY
SEVEN AND 13/100’S US DOLLARS

EXPIRATION
JUNE 30, 2009 AT OUR COUNTERS

GENTLEMEN:

BY ORDER OF:

VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC
101 WEST WASHINGTON STREET, SUITE 1400 EAST
INDIANAPOLIS, IN 46204

WE HEREBY OPEN IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT
FOR THE ACCOUNT OF VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC
(HEREINAFTER "VWNAOS") FOR A SUM OR SUMS NOT EXCEEDING A TOTAL OF US
DOLLARS FOUR MILLION ONE HUNDRED TEN THOUSAND ONE HUNDRED SIXTY-SEVEN
DOLLARS AND 13/100 (US$4,110,167.13) AVAILABLE BY YOUR DRAFT(S) AT
SIGHT ON OURSELVES, EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR
COUNTERS ON 6/30/2009.

WE HAVE BEEN INFORMED THAT THIS LETTER OF CREDIT IS ISSUED PURSUANT
TO THE AGREEMENT FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES
BY AND BETWEEN THE CITY OF NEW BEDFORD, MA (THE "CITY") AND VWNAOS AS
SUCCESSOR IN INTEREST TO PROFESSIONAL SERVICES GROUP, INC. DATED
7/1/2008 (HEREINAFTER THE "AGREEMENT").

DRAFT(S) MUST BE ACCOMPANIED BY:

A SWORN AFFIDAVIT SIGNED BY THE CITY’S CHIEF FINANCIAL OFFICER AND
CITY SOLICITOR CERTIFYING:

ORIGINAL
THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68028565

"(1.) PURSUANT TO THE TERMS OF THE AGREEMENT, AN EVENT OF DEFAULT BY VWNNAOS HAS OCCURRED AND IS CONTINUING AND THE CURE PERIOD HAS EXPIRED; AND

(2.) VWNNAOS HAS BEEN NOTIFIED OF THE DEFAULT IN ACCORDANCE WITH THE AGREEMENT AND EXHIBITS ATTACHED THERETO; AND

(3.) VWNNAOS HAS NOT CURED OR ATTEMPTED TO CURE THE EVENT OF DEFAULT AND THE CURE PERIOD HAS EXPIRED; AND

(4.) VWNNAOS HAS NOT DISPUTED THAT AN EVENT OF DEFAULT HAS OCCURRED; OR VWNNAOS HAS DISPUTED THAT AN EVENT OF DEFAULT HAS OCCURRED AND PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES SPECIFIED IN THE AGREEMENT, HAVE REACHED SETTLEMENT."

EACH DRAFT LETTER MUST BEAR UPON ITS FACE THE CLAUSE "DRAWN UNDER LETTER OF CREDIT NO. 68028565 DATED AUGUST 11, 2008.

THIS LETTER OF CREDIT SHALL BE CONSIDERED AUTOMATICALLY EXTENDED WITHOUT AN AMENDMENT FOR A PERIOD OF ONE YEAR FROM THE CURRENT OR ANY FUTURE EXPIRATION DATE UNLESS AT LEAST 30 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU IN WRITING AT THE ADDRESS ABOVE THAT WE ELECT NOT TO RENEW THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD, HOWEVER, IN NO EVENT SHALL THIS LETTER OF CREDIT BE EXTENDED BEYOND 6/30/2013, THE FINAL EXPIRATION DATE.

WE HEREBY AGREE THAT DRAFT(S) DRAWN UNDER AN IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO THE ABOVE-MENTIONED DRAWEES ON OR BEFORE THE EXPIRATION DATE SPECIFIED ABOVE.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600".

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 1-800-370-7519 OPT 1.

[Signature]

AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 2 PAGE(S).

ORIGINAL
June 12th, 2008

Mr. James Ricci
Superintendent Water / City Liaison
1000 S. Rodney French Blvd
New Bedford, MA 02744

Dear Mr. Ricci,

In reviewing past correspondence regarding the LOC, I have determined that there was an initial Letter of Credit issued 06/09/04 (a copy of which is included in this correspondence) and an amendment that increased the amount dated 08/23/05 (this copy is also included in this correspondence). The original Letter of Credit has an Evergreen clause that states: "This letter of credit shall be considered automatically extended without an amendment for a period of one year from the current or any future expiration date unless at least 30 days prior to the current expiration date, we notify you in writing that we elect not to renew this Letter of Credit for any additional periods. However, in no event shall this letter of credit be extended beyond 05/31/08."

My understanding is we are in the process of renewing or amending the current Letter of Credit. If I am correct in the calculation of the LOC fee, it is the new contract fee amount x 0.6%. The new fee effective July, 2008 is $4,110,167.13 x 0.006 = $24,661.00 per year or $6,165.25 per quarter. When I receive the amended renewal, I will be sure to forward to Mr. Labelle for the City of New Bedford's accounting department's records.

If you require any additional information, or if I can be of further assistance please do not hesitate to contact me at the facility.

Sincerely,

John P. Caron
Veolia Water NE LLC
New Bedford

Cc: Ron Labelle

John P. Caron

Veolia Water North America
1000 South Rodney French Blvd
Tel 508-991-6164 / Fax 508-991-6167
johnp@veoliamerica.com
Amendment No. 1
Irrevocable Standby Letter of Credit No. 54108

Beneficiary:
City of New Bedford
133 William St.
New Bedford, MA 02740

Account Party:
USFilter
40-004 Cook Street
Palm Desert, CA 92211

The captioned letter of credit is hereby amended as follows:


All other terms and conditions remain unchanged.

Societe Generale,
New York.
February 1, 2011

Mr. Ronald H. Labelle
Commissioner of the Department of
Public Infrastructure
1105 Shawmut Avenue
New Bedford, MA 02744

Attn: Ronald H. Labelle (Commissioner DPI City of New Bedford)
Debra Travers (Purchasing Director City of New Bedford)

Re: Payment of Invoices for Services Rendered by Professional Services Group, Inc. ("PSG")
under the Agreement for Operation, Maintenance and Management Services dated June
1, 1998 (the "Operations Agreement"), by and between the City of New Bedford,
Massachusetts (the "City") and PSG

Dear Mr. Labelle,

You have recently received a notice from our Veolia Water's accounting department describing
upgrades to our accounting system that were effective January 1, 2011. Professional Services
Group, Inc. ("PSG") has long been one of many Veolia Water companies operating in North
America that are jointly managed by Veolia Water North America Operating Services, LLC
("Veolia Water"). The recent communication to you informs you that you will receive invoices
from Veolia Water's Central Processing Center in Indianapolis and notifying you of the many
more ways you have to pay your bill. You are hereby authorized by PSG to accept invoices from
Veolia Water on our behalf and to make payments on PSG's invoices as provided in the invoices
you receive from Veolia Water.

Please contact me or PSG’s project manager in the event that you have any questions regarding
the above.

Sincerely,

Kevin Nelson
Vice President/General Manager
SECRETARY'S CERTIFICATE
OF
PROFESSIONAL SERVICES GROUP, INC.

I HEREBY CERTIFY that I am the duly elected and authorized Secretary of
PROFESSIONAL SERVICES GROUP, INC. (the "Corporation").

I HEREBY FURTHER CERTIFY that Keavin Nelson is Vice President/General
Manager for Professional Services Group, Inc, and fully authorized to sign the foregoing letter on
behalf of and as an act of Professional Services Group, Inc.

DATED effective this 1st day of February, 2011.

[Signature]
Francis X. Ferrie
Secretary
(Please Print)
May 1, 2008

Mr. Philip Ashcroft
Veolia Northeast, LLC
Metro South Executive Park
1115 West Chestnut Street, Suite 102
Brockton, MA 02301

REFERENCE: EXTENSION OF AGREEMENT FOR OPERATION,
MAINTENANCE AND MANAGEMENT SERVICES

Dear Mr. Ashcroft:

I am pleased to inform you that the City of New Bedford has decided to exercise its option to renew our current agreement for operation, maintenance and management services at the Wastewater Treatment Facility located at Fort Rodman.

ARTICLE XIII, Section 1302 of the current agreement dated June 1, 1998 provides for two additional five (5) year extension periods.

The City of New Bedford looks forward to our continued relationship.

Sincerely,

Scott W. Lang
Mayor

Cc: Ronald H. Labelle
Irene Schall
Debra Travers

From: Ronald Labelle
Sent: Tuesday, June 17, 2008 12:44 PM
To: Debra Travers
Cc: Irene B. Schall; William Burns; James Ricci
Subject: FW: MAYORAL LETTER

Debbie:

It is my understanding that the contract is structured for two five year renewals the contract remains the same with all language and requirements binding.

Ron

Ronald H. Labelle
Commissioner
Department of Public Infrastructure
508-979-1556 (telephone)
508-961-3054 (fax)
RonaldL@newbedford-ma.gov

-----Original Message-----
From: Jo-Ann Soares
Sent: Tuesday, June 17, 2008 12:37 PM
To: Ronald Labelle
Subject: FW: MAYORAL LETTER

Jo-Ann Soares
Administrative Assistant
Department of Public Infrastructure
508-979-1556

jo-ann.soares@newbedford-ma.gov

-----Original Message-----
From: Debra Travers
Sent: Tuesday, June 17, 2008 12:24 PM
To: Jo-Ann Soares
Cc: William Burns; Irene B. Schall
Subject: RE: MAYORAL LETTER

thank you, but is this all that was done. What about the actual contract amendment/extension- Is this for the same amount of money. What about insurance certificates and bonds etc.

-----Original Message-----

6/17/2008
From: Jo-Ann Soares
Sent: Tuesday, June 17, 2008 12:16 PM
To: Debra Travers
Subject: MAYORAL LETTER

Attached is the letter that was sent to Veolia regarding an extension.

Jo-Ann Soares
Administrative Assistant
Department of Public Infrastructure
508-979-1556

jo-ann.soares@newbedford-ma.gov

6/17/2008
Debra Travers

From: Debra Travers
Sent: Tuesday, June 17, 2008 12:55 PM
To: Ronald Labelle
Cc: Irene B. Schall; William Burns; James Ricci
Subject: RE: MAYORAL LETTER

I understand that Bonds and Insurance certificates must be updated as well if they have expiration dates. A contract similar was just renewed for solid waste disposal and a contract amendment was done and sent around for the required signatures, I thought that this would be the case with all contract extensions and/or renewals.

-----Original Message-----
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Sent: Tuesday, June 17, 2008 12:44 PM
To: Debra Travers
Cc: Irene B. Schall; William Burns; James Ricci
Subject: FW: MAYORAL LETTER

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Commissioner
Department of Public Infrastructure
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RonaldL@newbedford-ma.gov

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Jo-Ann Soares
Administrative Assistant
Department of Public Infrastructure
508-979-1556

jo-ann.soares@newbedford-ma.gov

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Jo-Ann Soares
Administrative Assistant
Department of Public Infrastructure
508-979-1556

jo-ann.soares@newbedford-ma.gov

6/17/2008