

JERSEY CITY MUNICIPAL UTILITIES AUTHORITY

**PROFESSIONAL OPERATIONS
SERVICES AGREEMENT**

WITH

UNITED WATER JERSEY CITY INC

FOR

MUNICIPAL WATER SYSTEM

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- A. Minimum Distribution and Transmission Systems O&M Requirement
- B. City of Jersey City Technical Specifications and Construction Standards
- C. Mandatory Equal Employment Opportunity Agreement
- D. An Affirmative Action Employee Information Report (Form AA-302)
- E. Business Registration Certificate

EXHIBITS

- Exhibit 1 Water Meter Specifications
- Exhibit 2 List of Full-Time Employees Assigned to the Project
- Exhibit 3 Minimum Staffing Plan
- Exhibit 4 Topography Map of Water Treatment Facility and Watershed Property in front of Boonton Dam dated August 1998 prepared by Photogrammetric Methods
- Exhibit 5 Standard Operating Procedures: Billing and Collections

OPERATIONS SERVICES AGREEMENT

This AGREEMENT is made and entered into as of this 1st day of February, 2008 by and between the Jersey City Municipal Utilities Authority, located at 555 Route 440, Jersey City, New Jersey hereinafter referred to as MUA and United Water Jersey City Inc, with offices located at 200 Old Hook Road, Harrington Park, New Jersey 07640-1799, hereinafter referred to as CONTRACTOR, in the manner following:

WHEREAS, the MUA operates water facilities and wastewater systems on behalf of the City of Jersey City hereinafter referred to as City; and

WHEREAS, CONTRACTOR offers professional services for the management, administration, operation, and maintenance of water facilities and systems; and



WHEREAS, the MUA desires to employ CONTRACTOR for the management, administration, operation, and maintenance of water facilities and systems.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and subject to the terms and conditions herein stated, it is hereby understood and agreed by the parties hereto as follows:

ARTICLE I -- DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

1. **Agreement** means this Professional Operations Services Agreement ("POSA")
2. **Applicable Law** means any federal, state, local or any other law, rule, code, standard, regulation, requirement, consent order, permit, guideline, action, determination or order of, or legal entitlement issued or deemed to be issued by, any governmental body having jurisdiction or any professional or industry organization or society, applicable from time to time to any activities associated with the Project and any other obligations of the parties under the Agreement. Applicable Law includes, without limitation, US EPA rules and regulations, New Jersey Statutes Annotated, New Jersey Administrative Code, NJDEP rules and regulations, Federal and State water requirements, rules, laws and statutes, American Water Works Association Standards, OSHA regulations, and MUA's codes and resolutions.
3. **Capital Expenditure Fund** means a fund dedicated to major capital improvements or major extraordinary repairs funded with the proceeds of notes or bonds issued by the City and separate from the MMR&EF and Capital Outlay Fund.
4. **Capital Outlay Fund** means a fund dedicated to major capital improvements or extraordinary repairs funded from an appropriation by the MUA Commissioners and separate from the MMR&EF.
5. **Capital Plan** means a listing of projects and specific dollar amount requirements for MMR&EF prepared by the Operator, Capital Outlay Fund and Capital Expenditures Fund for the current fiscal year and the succeeding five-year period and each of the fiscal years included therein.

6. **Change in Applicable Law** means any of the following which shall become effective after the date of this Agreement:
- (a) the enactment, adoption, promulgation, modification, repeal, or change in interpretation of any federal, state or local law (excluding federal or state income tax law), ordinance, code, rule requirement, regulation or similar legislation;
 - (b) the issuance of an order, decree, or judgment of any federal, state or local court, administrative agency or governmental officer or body, if such order, decree, or judgment is not also the result of negligent or willful action or failure to act of the party relying thereon, provided that the contesting in good faith of any such order, decree, or judgment shall not constitute or be construed as a willful or negligent action of such party;
 - (c) the suspension, termination, interruption, denial, failure to issue, or failure of renewal of any permit, license, consent, authorization, or approval essential to the operation of the Facilities, if such an act or event is not also the result of negligent or willful action or failure to act of the party relying thereon, provided that the contesting in good faith of any such order shall not be construed as a negligent or willful action of such party;
 - (d) the imposition of any material conditions on the issuance or renewal of any official permit, license, or approval which establishes requirements making the operation costs of the Facilities financially more burdensome than the most stringent requirement in effect on the date of this Agreement; and/or
 - (e) any enactment, adoption, modification, repeal, or change in the interpretation of a provision or applicability thereof, or rates, including but not limited to minimum, prevailing or living wages, under, any federal, state, city, county, or other local law (excluding federal or state income tax law), ordinance, code, determination, rule, requirement, regulation or similar legislation affecting the Facilities, the Project, or the management, ownership, lease, operation, or maintenance thereof.
7. **Commencement Date** means as of ~~February~~ ^{April} 1, 2008. *Rji* 
8. **Contractor** means the firm or partnership providing O&M services under this Agreement.
9. **Designated Representative** means person or persons authorized by the MUA to act on behalf of the MUA under this Agreement.
10. **Effective Date** means as of ~~February~~ ^{April} 1, 2008. *Rji* 
11. **Facilities** means all existing watershed property; reservoirs; raw water pumps and transmission lines; water treatment plant, aqueduct; treated water distribution and transmission lines, pumps and tanks; water service lines and meters; water quality laboratories; and any other water facilities and systems owned by OWNER and operated by the MUA. All existing water facilities and systems so described, together with all future facilities, systems, improvements, expansions, extensions, upgrades, renewals, or replacements owned by OWNER and controlled, or operated by the MUA.

12. **Fiscal Year** means any year beginning January 1 and ending on December 31.
13. **Force Majeure** means any occurrence of the following events, provided such event was not caused by or contributed by an act, error or omission of the CONTRACTOR, which materially and adversely changes the tasks to be performed by the CONTRACTOR hereunder, and the effects of which could not have been prevented or avoided by due diligence if reasonable efforts had been expended by CONTRACTOR: an act of God, acts of the Government in either its sovereign or contractual capacity, fire, earthquake, epidemic, war, explosions, riots; an act of sabotage or terrorism causing the sudden and immediate contamination of the reservoir or major structural damage to the water treatment facility and filtration system. Wind, rain, strike or work stoppage (unless resulting in or from structural damage to dams), lightning, cold weather, snow, ice and other weather events are not Force Majeure occurrences.
14. **Governmental Approvals** means all approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, and rulings required by or with any Governmental Authority in order to operate the Facilities or otherwise meet the requirements of this Agreement.
15. **Governmental Authority** means any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body, or entity.
16. **Maintenance** means those routine, preventive or predictive tasks necessary to maximize the useful life, integrity and appearance of the Facilities. Preventive maintenance includes those tasks required or recommended by equipment manufacturers or CONTRACTOR. Predictive maintenance includes vibration, historical, thermal, oil analysis and other analyses used in the course of maintenance and repairs, as well as the annual Predictive Maintenance Evaluation.
17. **Major Maintenance, Repairs and Equipment Fund ("MMR&EF")** means a fund dedicated to major maintenance, repairs and equipment funded from an appropriation by the MUA Commissioners and administered in accordance with this Agreement and separate from Capital Outlay Fund.
18. **Meters:**
- Small Meter means:
- A water meter less than two (2) inches in diameter.
- Large Meter means:
- A water meter two (2) inches in diameter or greater.
19. **MUA** means the Jersey City Municipal Utilities Authority.
20. **O&M** means operations, maintenance, management and administration.
21. **Owner or City** means the City of Jersey City, New Jersey, a municipal corporation.

22. **Project** means the provision of professional management and administration, operations and maintenance of the Facilities in compliance with Applicable Law and this Agreement.
23. **Repairs** mean those non-routine/non-repetitive tasks including replacement required for operational continuity, safety, and performance generally due to failure or to avert a failure of the Facilities.
24. **Reports** shall mean those routine and non routine reports described more specifically in Article III Section B.14 as well as any additional written communications, data, or lists which may be reasonably required by the MUA or otherwise referred to in this Agreement.
25. **Residuals** means screening, grit, sludge, and other process related materials, which are removed from Facilities for transportation, processing, disposal, recycling, beneficial use, or utilization.
26. **Retail Revenue** shall mean retail water and sewer collections including all collections, but excluding collections from wholesale customers, interest on delinquent accounts, customer and tax lien holder refunds and returned customer checks.
27. **Retail Water Rate** means the current rate set by the MUA from time to time.
28. **State** means the State of New Jersey.
29. **Subcontract** means any contract or purchase order made by CONTRACTOR, or by any Subcontractor, for services, equipment, labor, materials, supplies, or other items to perform its obligations under this Agreement.
30. **Subcontractor** means any person, other than the employees of CONTRACTOR, who contracts with CONTRACTOR to furnish services, equipment, materials, labor, supplies, or other items in connection with this Agreement, and, unless specifically excluded, any person with whom any Subcontractor at any tier has further subcontracted.
31. **Day** means one (1) business day, unless otherwise specified in this Agreement.
32. **Term** shall mean the Commencement Date through ~~January~~ ^{March} 31, 2018 (the "Base Term"). There shall be two (2) renewal options, one (1) five-year extension and one (1) four-year extension; any such extension shall be made in writing, at the exclusive option of the MUA, with the CONTRACTOR reserving the right to refuse any such extension.
33. **Useable Billable Meter Readings** means a meter reading based upon actual water consumption used for billing either without adjustment, if accurate, or after adjustment for accuracy, if necessary, accepted by the MUA and CONTRACTOR as correct.

ARTICLE II -- TERM OF AGREEMENT

This Agreement shall take effect on the Effective Date and remain in effect from the Commencement Date until ^{March} ~~January~~ 31, 2018 (hereinafter referred to as the "Base Term") unless this Agreement is terminated earlier in accordance with its terms. There shall be two (2) renewal options, one (1) five-year extension and one (1) four-year extension; any such extension shall be made in writing, at the exclusive option of the MUA, with the CONTRACTOR reserving the right to refuse any such extension. All work under this Agreement shall commence on the Commencement Date. The parties hereto shall acknowledge the Commencement Date in writing. MUA and CONTRACTOR agree that, if called for, termination shall be accomplished in accordance with the provisions of this Agreement.

ARTICLE III -- SCOPE OF SERVICES

A. General

The CONTRACTOR agrees to:

1. Staffing. CONTRACTOR, at its own expense, will provide all labor, including the services of a full-time, on-site Project Manager and the required number of full time, on-site Licensed Operators with each license type and level required by the State for Facilities whose licenses are the licenses of record for OWNER's Facilities. The Project Manager may be a Licensed Operator. CONTRACTOR will provide adequate staff, in addition to the Project Manager and Licensed Operators, as is necessary to operate, maintain, administer and manage the Facilities continuously, twenty-four (24) hours per day, seven (7) days per week including holidays, in a professional, safe, efficient and economical manner and in accordance with this Agreement and Applicable Law. MUA will have the right to approve in writing any Project Manager, which approval will not be unreasonably withheld. CONTRACTOR will not decrease the number of full-time employees dedicated to the Project or the total number of man hours dedicated to the Project below the Minimum Staffing Plan proposed in CONTRACTOR'S proposal without the MUA's written approval. CONTRACTOR'S Minimum Staffing Plan will become part of this Agreement. MUA shall have the right to review and receive copies, upon request, of CONTRACTOR's Time Sheets for its full-time and part-time employees dedicated to the Project in order to monitor CONTRACTOR'S compliance with the Minimum Staffing Plan. A Time Sheet is a form that each employee fills out on a regular basis describing the allocation of the employee's time by project and task. If MUA gives approval to decrease staff below the Minimum Staffing Plan, it shall retain the right to rescind the approval in which case CONTRACTOR is required to increase the staff up to the level of the Minimum Staffing Plan within sixty (60) calendar days. CONTRACTOR will pay for all costs associated with labor including, but not limited to, salaries, wages, overtime pay, payroll taxes, benefits, and insurance of any type.
2. Except as set forth in this Agreement, provide all personnel and associated wages, salaries and benefits, chemicals, fuel and electricity, provided the MUA pays energy charges directly, and vehicle expense, materials and other consumables, and other services necessary to maintain watershed property, reservoirs, structures (e.g. buildings, pumping stations, transmission and distribution systems, meters) and equipment (e.g. mechanical, electrical, HVAC, vehicles, instrumentation, communications, computer systems) to assure efficient long-term reliability, and preservation of OWNER's capital investment. Maintenance shall be accomplished in accordance with manufacturers' recommendations, directives from the NJDEP, applicable O&M manuals, and accepted

industry standards. CONTRACTOR agrees to employ predictive and preventive maintenance programs, to enforce existing equipment warranties, and agrees to maintain all warranties on equipment placed in service after the Commencement Date of this Agreement. These programs shall include, but not be limited to:

- (a) computer-based maintenance management systems;
 - (b) professionally-developed quality assurance systems;
 - (c) site, facility, and equipment security;
 - (d) building and grounds up-keep and maintenance; and
 - (e) maintenance related to any improvements, including but not limited to repainting, pavement repair and replacement, and repair of roof leaks.. The five (5) million gallon storage tank shall be excluded from the painting requirement.
3. Except as set forth in this Agreement, provide all personnel and associated wages, salaries, and benefits; fuel and vehicle expense; utilities and other consumables; materials; and other services necessary to manage and support operation of Facilities including, but not limited to: Facilities management and support; computer-based accounting and management systems; and quality assurance systems.
 4. Vehicles and Rolling Stock. The CONTRACTOR, at CONTRACTOR'S sole expense, is responsible for providing all vehicles and rolling stock necessary for operating and maintaining the Facilities.
 5. Except as set forth in this Agreement, provide all personnel and associated wages, salaries, and benefits; materials; and other services necessary to administer, manage and perform engineering functions including, but not limited to: operations and inspections of the facilities, informal dam safety inspections in accordance with Applicable Law and NJDEP Directives, regulatory permit applications, reporting, mark-outs, leak detection program, in-house studies and designs and value engineering, studies and design, construction contract administration, inspection services, progress payment processing, project budget tracking and accounting, and dispute resolution for all MMR&EF and Capital Outlay projects and purchases, review of and report on engineering studies and designs and value engineering of designs and projects included in the Capital Plan and paid through the Capital Expenditures Fund.
 6. Install a fully functional computerized maintenance management system capable of providing the following: a record of repair for each piece of equipment or line section; scheduling and control of preventive maintenance; monitoring of routine distribution line operations; monitoring of predictive and corrective maintenance programs and associated costs; issuing of work orders; maintaining spare parts; and issuing without exception, equipment status, and repair priority reports. Records of maintenance and repair items within the water transmission and distribution system should also be maintained within the MUA's GIS system.
 7. Provide access to all systems, including but not limited to the maintenance management system.
 8. Except as set forth in this Agreement, provide all personnel and associated wages, salaries, and benefits; vehicle and fuel expense; materials and postage; and other

services necessary to manage and operate MUA's meter reading, valve exercising, and hydrant flushing, billing and collection for both water and sewer in the name of the MUA, and customer service functions including, but not limited to: management; meter reading; billing software and bill production; payment collection, processing, and accounting; maintenance of customer account database; professional and effective customer service and relations; and support and quality assurance systems. CONTRACTOR agrees that any revenues derived from these services shall be the property of the MUA.

9. Compile and maintain comprehensive monthly recording and reporting to MUA for Facilities' operations, regulatory matters, laboratory analyses, maintenance plans and activities, related financial matters, permit and compliance results, equipment status, and other relevant information in accordance with Applicable Laws and this Agreement.
10. At least monthly, or as necessary, meet with MUA's Designated Representative to review operations, reports, on-going cost information, and significant upcoming projects and/or operations which may impact the Project, service, deliveries or the public; conduct within six (6) months of the Commencement Date and annually thereafter comprehensive plant and system inspections with MUA's Designated Representative to evaluate and document conditions, safety, or other concerns.
11. Prepare and revise as necessary a comprehensive Emergency Preparedness Plan for interaction and coordination with the MUA's and OWNER's departments including, but not limited to, Fire, Police, Office of Emergency Maintenance and Public Works and Health and Human Services; agencies of Hudson County; and other respective jurisdictions; maintain, update and implement Emergency Action Plans, or Response Plans for the two (2) MUA dams; plan for and resolve any and all emergencies or abnormal conditions that may arise, and use best efforts to maintain and immediately restore delivery of water services to MUA's customers.
12. Maintain professional, responsible, and responsive working relationships with the MUA's customers, City's departments, representatives of the MUA, regulatory agencies, and other entities with which the MUA may have relationships.
13. Actively pursue improvements in effectiveness, efficiency, and the cost of operations and maintenance.
14. Implement and maintain an employee safety program in compliance with Applicable Law and make recommendations to MUA regarding the need for MUA to rehabilitate, expand, or modify Facilities to comply with all Applicable Law.
15. Operate and maintain a laboratory or contract with an outside laboratory to provide QA/QC programs, process control testing, customer requested testing, and regulatory and MUA reporting as required. CONTRACTOR agrees to provide the necessary laboratory sampling analysis in accordance with the latest approved revisions of Standard Methods for Water and Wastewater Analysis Procedures and in accordance with testing requirements of the New Jersey Department of Environmental Protection Laboratory Certification based on approved methods.
16. Provide adequate and reasonable security of the City's water supply system, including to make two (2) operators available in accordance with CONTRACTOR'S proposal except for the 24/7 coverage requirement for the J-1 control room.

17. In addition, CONTRACTOR agrees to pay for any disposal costs, fees and police enforcement associated with a condition that requires street digging, specifically:

Excavated Material. Excavated Material is unsuitable as backfill and must be disposed of outside the limits of the City. No additional compensation will be provided for costs associated with the disposal of this material except if excavated material or disposals are contaminated, then CONTRACTOR shall be compensated as required in Article III, Section B(9).

Traffic Direction. The CONTRACTOR shall employ Jersey City Police Officers at excavation sites for traffic direction. The CONTRACTOR must comply with the requirements for traffic direction. No additional compensation will be provided for costs associated with traffic direction except as set forth in Article III, Section B(8)(c).

Other Political Entities. The City owns facilities under the jurisdiction of other townships and counties. The CONTRACTOR must comply with all of the requirements of those entities such as building permits and street opening permits. No additional compensation will be provided for costs associated with this provision.

B. Other Requirements

1. **Watershed and Reservoirs.** CONTRACTOR agrees to operate and maintain watershed property and reservoirs consistent with requirements of Applicable Law and NJDEP Directives, and in a professional and cost-effective manner so as to continue the availability of necessary surface water for treatment and distribution to MUA's customers. CONTRACTOR agrees to secure watershed property and reservoirs in accordance with this Agreement. CONTRACTOR also agrees to make the Split Rock Reservoir available for approved and designated recreational uses.
2. **Raw Water Transmission and Storage.** CONTRACTOR agrees to operate and maintain the Facilities including but not limited to raw water transmission and storage system in a professional and cost-effective manner and in accordance with Applicable Law and NJDEP Directives, so as to continue the availability of necessary raw water to the water treatment plant for treatment and distribution to MUA's customers.
3. **Water Treatment Plant.** CONTRACTOR agrees to operate and maintain the Facilities including but not limited to the Jersey City Water Treatment Plant and auxiliary on-site equipment in a cost-effective and professional manner in accordance with Applicable Law and NJDEP Directives, and the highest professional practices for water treatment. In addition, CONTRACTOR agrees to:
 - (a) Develop and maintain written standard operating procedures ("SOPS") as necessary to clarify, refine, or supplement procedures provided in O&M manuals, or to describe operational practices which do not conform with O&M manuals.
 - (b) Treat influent raw water to meet Applicable Law, including the Federal Safe Drinking Water Act and the State Safe Drinking Water Act ("SDWA"), at a

maximum production rate not exceeding the effective design capacity of the Facilities.

- (c) Maintain and deliver to MUA upon termination of this Agreement process control data and information. Copies of this information will also be provided to the MUA from time to time in the format set by the MUA when requested by the MUA.
- (d) Maintain the security of the Facilities including the Water Treatment Plant and Water Distribution System in accordance with this Agreement and the Emergency Preparedness Plans.
- (e) Subject to review and approval by MUA, compile, print and issue at CONTRACTOR'S expense all public notices, required by the applicable rules and regulations, laws and statutes, of non-compliance with drinking water standards and requirements as required by any Governmental Authority.
- (f) Provide and maintain potable water quality in accordance with Applicable Law and NJDEP Directives.

4. **Transmission and Distribution System.** CONTRACTOR agrees to operate, maintain, and repair water transmission and distribution systems, including, but not limited to, pumps, aqueducts, transmission and distribution piping, treated water storage, meters and other appurtenances, including pavement, concrete sidewalks, raising of water valves and sod replacement, in accordance with generally accepted industry standards and environmental regulations, the City's ordinance, and in such a manner as to efficiently deliver treated water to customers. Similarly, CONTRACTOR agrees to operate, maintain, and repair service lines except to the extent that any portion of such service line is the responsibility of the property owner; provided, however, that shut off responsibility shall be that of the CONTRACTOR. The MUA shall reimburse the CONTRACTOR for those reasonable costs actually incurred by CONTRACTOR for repair or replacement of broken or defective water service lines which are the responsibility of the MUA's customer or property owner pursuant to local ordinance. At a minimum, operation and maintenance of the transmission and distribution systems should adhere to the requirements set forth in Appendix A. CONTRACTOR agrees to respond to and if required under the circumstances to initiate repair of any reported or identified water transmission or distribution system leak or break as soon as possible during normal business hours, but, in any event, within one (1) hour of being notified or otherwise learning of such leak or break. CONTRACTOR agrees to notify the MUA, City's Fire, Police and Traffic Departments of any scheduled water distribution system repairs. In the event of an emergency, the CONTRACTOR agrees to notify the MUA, City's Fire, Police, Health and Traffic Departments immediately.

CONTRACTOR further agrees to comply with the provisions of the Underground Facility Protection Act, as set forth in N.J.S.A. 48:2-73 et. seq.

5. **Meter Reading, Billing and Collections and Customer Service.** CONTRACTOR agrees to:

- (a) Read or estimate a reading for all meters on at least a quarterly basis for all Small Meters and at least a monthly basis for all Large Meters. Bimonthly billing for all Small Meters will continue until June 2009. Commencing July 2009, Small Meters will be read or estimated on a quarterly basis.

CONTRACTOR also agrees to perform meter installations and service connections, tap to water main, disconnect and tap water service, cut-offs, investigation of leaking meters and service lines, meter accuracy verification, Small Meter change outs, location of missing meters, investigation of illegal connections, investigation of meter plumbing, multi-metered applications, and respond to other customer inquiries and service work orders. Specific responses shall be as follows:

- (i) tap to water main within one (1) day;
- (ii) minor meter and service line leaks within one (1) day after proper notification to property owner;
- (iii) major meter and service line leaks immediately;
- (iv) meter read verifications within one (1) day; and
- (v) verify vacant accounts prior to being shut-off.

The MUA shall reimburse the CONTRACTOR for those reasonable costs actually incurred by CONTRACTOR for the repair or replacement of broken or defective water service lines which are the responsibility of the MUA's customer or property owner pursuant to local ordinance.

- (b) Prepare, print, and deliver utility bills to the post office for mailing within five (5) working days of meter read date, or prepare and provide online an electronic bill (e-Bill) within two (2) working days of the meter read. CONTRACTOR also agrees to generate service work orders based on meter reading data, coordinate the preparation of bills with other applicable MUA and City databases.
 - (c) Maintain the utility billing and collections office staffed to satisfactorily fulfill customer service requirements. Customers shall be served in a prompt and courteous manner. In addition, CONTRACTOR will receive service account deposits and address customer complaints including the generation of work orders for meter reading and transmission/distribution system maintenance staff.
 - (d) Provide for revenue collection, daily reconciliation of receipts, and evidence of deposits and maintenance of MUA's related accounts and databases.
 - (e) Maintain within the City's corporate limits at least one (1) location for payment of bills.
 - (f) Enforce the MUA's water shutoff policy for MUA customers who fail to pay water bills or fail to permit the testing and/or installation of Meters. The MUA's water shut off policy and fee schedule is incorporated herein by reference.
 - (g) Provide the City Tax collector with necessary and timely information in order to enforce collections.
 - (h) Comply with the MUA's water/sewer bill abatement and delinquency policies which are incorporated herein by reference.
 - (i) Provide access to all billing and collection databases and related information to the MUA through real time internet access using a standard browser.
6. **New Water Meter and Ancillary Equipment Installations.** Provided the MUA purchases and makes available all Meters in a timely manner, the CONTRACTOR

agrees to install new water Meters and ancillary equipment as required by the MUA in a timely manner and in no event later than the second working day after request for such installation.


6.1. **Comprehensive New Water Meter and Ancillary Equipment Installation Program.**

- (a) In addition to the services provided pursuant to Paragraph 6 above, unless otherwise agreed to by the parties in writing, beginning on February 1, 2008, provided the MUA purchases and makes available all Meters in a timely manner, the CONTRACTOR shall install new water Meters each year by no later than December 31st of that year in the following manner:

Every Small Meter shall be changed/replaced every fifteen (15) years, or if defective, and every Large Meter shall be tested on a five (5) year cycle. Large Meters shall be replaced on a case-by-case basis if testing determines that the meter is reading more than +/- 1.5% of actual flow.

These installations shall be performed in accordance with the following criteria:

- (1) All water Meters shall conform to those water Meter specifications attached hereto as Exhibit 1; and
 - (2) Notwithstanding the aforementioned, after testing by the CONTRACTOR, if the Meter is found to be defective, and still under warranty, then the CONTRACTOR will return to the manufacturer for replacement. If the Meter is not covered by the warranty, then the CONTRACTOR will maximize the use of the available Sensus discounted exchange price programs for all Meter size and models requiring replacement.
- (b) In addition to installing the new Meters and in accordance with the above described standards, the CONTRACTOR shall administer this program in accordance with the following standards:
- The CONTRACTOR shall develop and provide to the MUA an installation database from the existing customer information database.
 - The CONTRACTOR shall segment this database into cycles, in order to levelize the testing and replacement work over the Base Term of the Agreement.
 - The CONTRACTOR shall provide monthly invoices with installation reports with data on all completed installations, in electronic format which shall include the customer's account number, address, and Meter number, new Meter number, the installation date, and the old Meter test results.
 - The CONTRACTOR shall provide monthly management control reports, reflecting project completion status, and shall meet with City and MUA on a monthly basis to report and review program developments.

- The CONTRACTOR shall prepare and mail initial customer letters, and conduct subsequent contact efforts including telephone calls and notices dropped at customer premises.
 - The CONTRACTOR shall schedule appointments for all customers who desire this convenience and respond to contact attempts.
 - The CONTRACTOR shall maintain a project office with hours of 8:00 AM to 4:30 PM, staffed to respond to customer inquiries.
 - The CONTRACTOR shall provide experienced installation technicians who will install new water Meters.
 - The CONTRACTOR shall provide an on-site supervisor who will be the day-to-day contact for the City and the MUA.
 - The CONTRACTOR shall correct installation defects following the installation date.
 - The CONTRACTOR shall test all existing Meters being removed and track the test results.
 -  The CONTRACTOR shall make no more than one (1) estimated meter read per year per account. For accounts exceeding one (1) estimated read, the Contractor shall demonstrate that it has made attempts to contact the customer to gain access to the property to secure an actual read.
 - The CONTRACTOR shall return all old Meters removed to the MUA at a location designated by the MUA.
 - Provided the MUA purchases and makes available all Meters in a timely fashion, the CONTRACTOR shall maintain a level of inventory that is sufficient to meet the installation requirement that every Small Meter shall be changed/replaced every fifteen (15) years, or immediately if defective and every Large Meter shall be tested on a five (5) year cycle. CONTRACTOR shall maintain an inventory of tested and repaired Large Meters that are suitable for reinstallation and continued service.
- (c) In the event the MUA fails to make available the water Meters necessary to meet the requirements set forth herein, the CONTRACTOR may suspend the installation or replacement of same by giving the MUA ten (10) days notice of its intention to do so.

Notwithstanding the above, the MUA shall be entitled, in its sole and absolute discretion, to permanently or temporarily suspend the New Meter Installation Program by giving the CONTRACTOR thirty (30) days written notice of its intention to do so.

7. Maintenance and Repair -- CONTRACTOR Expense. CONTRACTOR, at CONTRACTOR'S sole expense, is responsible for undertaking, managing and completing the following:

- (a) By no later than April 1 of each calendar year, the CONTRACTOR shall undertake, manage and complete a thorough Predictive Maintenance Evaluation of the Facilities which will incorporate historical, vibration, oil analysis and thermal analyses and, as beneficial, other methods to predict which equipment and instrumentation needs non-routine Maintenance or Repair. It will also include, as appropriate, repair-replacement financial analyses.
- (b) All snow removal, trash removal, janitorial services and all cleaning of Facilities including, but not limited to, doors, walls, pipes, windows, ceilings, buildings, vehicles and equipment.
- (c) All routine preventive maintenance specified by manufacturers of equipment, instrumentation, generators, boilers, HVAC systems, and office equipment and computers including, without limitation, lubrication, oil changes, replacement of belts, fuses, filters, wires, probes, bulbs, hoses and other fluids.
- (d) All maintenance, repair and replacement of CONTRACTOR owned or leased equipment, vehicles or rolling stock, regardless of the amount of expenditure.
- (e) Incidental painting of equipment, building and other facilities on a continuing basis to maintain the appearance and the integrity of the facilities.
- (f) Grounds keeping and landscaping including without limitation, watering, mowing, fertilizing, weeding, replacing dead plants, and pruning so that the Facilities are at all times acceptable to the MUA and comply with Applicable Law.
- (g) Flushing of all water mains and all fire hydrants in accordance with the Unidirectional Flushing Program ("UDF"), divided into three (3) sectors with each sector flushed once every three (3) years, unless water restrictions are implemented by a Governmental Authority. In order to be considered flushed, each hydrant must be opened 100% before being closed.
- (h) Flushing of all water mains and all fire hydrants not considered a part of the UDF program, divided into three (3) sectors with each sector flushed once every three (3) years, unless water restrictions are implemented by a Governmental Authority. In order to be considered flushed, each hydrant must be opened 100% before being closed.
- (i) CONTRACTOR, at CONTRACTOR's expense, shall perform flow test at the request of the MUA for any new developers.
- (j) Exercising each Large valve sixteen (16) inches and larger on the aqueducts and distribution system to be exercised once per calendar year.
- (k) Exercising of distribution water valves four (4) inches to twelve (12) inches will be part of the UDF program and will be exercised once according to the valves outlined in that program over a three (3) year cycle.
- (l) Replacing and/or repairing all ancillary equipment discovered to be malfunctioning or non-functioning in the course of normal operations at the sole

expense of the MUA excluding CONTRACTOR'S labor costs for its employees which will be at the expense of the CONTRACTOR.

- (m) Maintain records and report the location of each valve exercised or hydrant flushed, the number and direction of turns, and any other relevant information, problems, or conditions to the MUA GIS system. The location of each valve and hydrant shall be GPS located and inserted into the MUA GIS as follows: twelve (12) inch and smaller valves will be inserted into the GIS as part of the UDF program over the three (3) year cycle; sixteen (16) inch and larger valves will be inserted into the GIS as part of the large valve program; hydrants and guard valves will be inserted in the GIS as part of the UDF program over the three (3) year cycle.
- (n) Develop and implement a leak detection program so that the entire water system is evaluated for leaks every four (4) years. Specific components of this leak detection program shall include:
 - (1) Sounding all hydrants and hydrant valves at least once tri-annually, including those hydrants considered a part of the UDF program as described in 7(h) above;
 - (2) Sounding each and every aqueduct and transmission line valve annually as part of CONTRACTOR'S large valve exercising program;
 - (3) Sounding each and every water main valve in the distribution system at least once tri-annually, including those valves considered a part of the UDF program as described in 7(g) above;
 - (4) Routine visual inspection of the remote areas along the aqueduct;
 - (5) Support and cooperate with the use of an independent consultant who will conduct leak detection programs. CONTRACTOR shall provide full-time experienced field personnel to assist the consultant. The decision to hire the consultant shall be left to the sole and absolute discretion of the MUA. The Cost of the Consultant shall be paid for by the MUA. The cost of CONTRACTOR'S support and cooperation with the Consultant shall be paid for by CONTRACTOR. Initiation of such a detection program shall be directed by MUA in its sole and absolute discretion;
 - (6) Cleaning, cleaning and grubbing of areas adjacent to fencing around Facilities as well as maintaining the watershed properties, the aqueduct right-of-way and aqueduct easements;
 - (7) Raise water valve boxes and manholes except as part of City capital improvement projects;
 - (8) All distribution and transmission system repairs up to and including twenty (20) inches in diameter involving the repair or replacement of up to one (1) entire length of pipe or less with up to two (2) contiguous joints, couplings or clamps, except where an individual repair or replacement exceeds \$5,000.00 excluding labor costs for CONTRACTOR'S personnel assigned full time to the Project which shall be deemed to be those employees listed on Exhibit 2 attached hereto;

- (9) For all service installations, the CONTRACTOR shall include the tap and shall make the connection to the water main pipeline at CONTRACTOR'S expense.

8. **Management of Maintenance, Repairs, and Capital Improvements - CONTRACTOR'S Expense.**

CONTRACTOR, at CONTRACTOR'S sole expense, shall provide the following:

- (a) Develop, update and implement a Capital Plan which shall include amounts for expenditures from the MMR&EF, Capital Outlay Fund, and Capital Expenditure Fund. Capital Improvements may be paid for out of the Capital Expenditure Fund or Capital Outlay Fund at the MUA's discretion. The initial Capital Plan shall be submitted within 120 days after the Commencement Date. Thereafter, annual updates to the Capital Plan for the succeeding five (5) years shall be submitted to MUA by April 1 of each year.
- (b) Maintain a continuous property record of all capital equipment.
- (c) While performing any replacement, maintenance, or repair required by this Agreement, CONTRACTOR agrees to comply with Applicable Law. CONTRACTOR will be responsible for obtaining any and all necessary permits. All fees in connection with obtaining City permits will be waived by the City. In addition, when CONTRACTOR is required by state or local law to provide uniformed police for any replacement, maintenance or repair job, the MUA shall reimburse CONTRACTOR for such costs so long as CONTRACTOR exercises commercially reasonable efforts to control such costs by paying not more than the prevailing wage rate for such services.
- (d) CONTRACTOR agrees to perform all routine Maintenance and Repairs in a timely manner. If, in the opinion of the MUA, Maintenance or Repairs have been unreasonably delayed, MUA shall inform the CONTRACTOR. CONTRACTOR agrees to respond within three (3) working days outlining the reason for delay. If MUA determines that the delay is within the control of the CONTRACTOR, CONTRACTOR shall be so notified, and CONTRACTOR shall complete the necessary work within ten (10) working days or by a date certain beyond ten (10) days of notification with approval of MUA. If CONTRACTOR fails to complete the work, MUA may take steps to have the specific items of work which have not been performed completed in accordance with those procedures described in Article III, Section C.
- (e) Develop estimates and proposals and solicit quotes and proposals for capital expenditures as mutually agreed by both MUA and CONTRACTOR. Nothing in this sentence shall prohibit the MUA from soliciting or using other contractors or its own forces for capital improvements to the Facilities. CONTRACTOR agrees to make capital expenditures on behalf of, and as directed by OWNER/MUA. CONTRACTOR agrees to cooperate with OWNER/MUA to determine the necessity and cost for such capital expenditures (See this Article III.B.(25)).
- (f) When authorized and directed to make capital expenditures on behalf of OWNER/MUA that are funded by the Capital Expenditure Fund, CONTRACTOR acknowledges that the provisions of N.J.S.A. 40A:11-1 et seq., the Local Public Contracts Law, shall govern and that if CONTRACTOR uses a subcontractor to

perform the work or services, any applicable provisions set forth within N.J.S.A. 34:11-56.25 et seq., the Prevailing Wage Rate Act shall apply.

- (g) Develop and maintain written standard maintenance procedures as necessary to clarify, refine, or supplement procedures provided in O&M manuals or manufacturer's literature, or to describe maintenance procedures which do not conform with these manuals.
 - (h) Pay for Maintenance and Repairs costing less than \$5,000 per item. Provide recommendations and analysis for the repair or replacement of equipment or other facilities costing more than \$5,000 excluding all labor costs for CONTRACTOR'S personnel normally assigned to the Project which shall be deemed to be those employees listed on Exhibit 2 attached hereto. The decision to repair or replace shall be made by the MUA, in its sole and absolute discretion.
 - (i) Undertake, manage and complete Maintenance and Repairs of Facilities as set forth herein so as to assure the readiness and availability of equipment, processes and systems on a consistent basis, and provide a safe and clean working environment.
 - (j) Manage the Maintenance, Repair and capital improvement of Facilities in an economical and cost-efficient manner so as to ensure the greatest long-term value from such expenditures and in such a manner that at the termination date of this Agreement Facilities are returned to the MUA in the same or better condition than at the Commencement Date, normal wear and tear excepted. CONTRACTOR at CONTRACTOR'S expense shall coordinate its activities with the implementation of any construction, modifications or additions to the Facilities.
9. **Maintenance, Repairs and Equipment/Capital Expenditures – MUA/City Expense.** CONTRACTOR, at the MUA's expense by means of the Major Maintenance, Repair and Equipment Fund (MMR&EF) or Capital Outlay Fund, is responsible for undertaking, managing and completing all Maintenance and Repairs costing over \$5,000 on an item-by-item basis, excluding all labor costs for CONTRACTOR'S personnel normally assigned to the Project which shall be deemed to be those employees listed on Exhibit 2. Capital expenditures shall be paid for by the City or the MUA. CONTRACTOR will be responsible for testing, removal and disposal of contaminated soil. MUA will reimburse CONTRACTOR for the cost of testing, removal and disposal of contaminated soil (as defined by the NJDEP) incurred by CONTRACTOR in the course of excavation for Repair and Maintenance. Disposal of transmission distribution spoils (unusable soil) is at the CONTRACTOR's expense.
10. **MMR&EF/Capital Outlay Funds Administration.** Each month CONTRACTOR will, as part of its Monthly Report, include an itemized accounting of the MMR&EF and Capital Outlay requests, expenditures or encumbrances that occurred that month and for the year to date. CONTRACTOR shall use the following purchase procedures when purchasing any item with MMR&EF or Capital Outlay funds except in the case of an emergency:
- (a) All expenditures require prior written authorization by the MUA except in the case of an emergency after which CONTRACTOR shall notify the MUA of the nature and amount of the expenditure by the end of the next business day.
 - (b) Items costing over \$5,000 require three (3) quotes prior to MUA's approval.

- (c) MUA has the right to waive the requirements for multiple quotes, when CONTRACTOR can demonstrate to MUA's satisfaction that the item is not available from more than one supplier.
- (d) At all times CONTRACTOR will seek to minimize the cost and maximize the value of expenditures.
- (e) CONTRACTOR shall submit requests for expenditures in the format specified by the MUA.

11. **Maintenance Management System.** CONTRACTOR agrees to maintain the existing fully functional computerized maintenance management system that provides for the following services: access to the management system; a record of repair and repair history for each piece of equipment or line section; control of preventive and predictive maintenance; monitoring of routine transmission and distribution line operations; monitoring of corrective maintenance programs; issuing of work orders; maintaining spare parts; and issuing of exception, equipment status, and repair priority reports. All maintenance and operations information is the property of the MUA.

12. **Communications.** CONTRACTOR agrees to maintain routine communications with:

- (a) MUA and OWNER'S departments which may have an interest in operations of Facilities. Such departments and their interest may include but are not limited to:

Fire	main breaks, main and hydrant cut-ins and shut-offs, water distribution system repairs requiring emergency vehicle detour, storage available for emergency use, system pressure problems, etc;
Police	water distribution system repairs requiring traffic and emergency vehicle detour, etc.,
Public Works	new service installation, water transmission system, and distribution system repairs requiring traffic detour, etc.
Health and Human Services	problems which may affect the quality of drinking water.

- (b) **Governmental Authorities.** All written and oral communication with Governmental Authorities concerning the day-to-day operation of Facilities, permit requirements or modifications, capacity of facilities, special studies, and monitoring programs shall be the responsibility of the CONTRACTOR. CONTRACTOR agrees to provide MUA with copies of all such correspondence simultaneously with the submission of such reports.
- (c) **News media.** CONTRACTOR agrees to consult with MUA prior to responding to inquiries regarding operation of Facilities or other activities of MUA or of CONTRACTOR with regard to services under this Agreement.
- (d) **Other communications.** CONTRACTOR may not utilize the name of the Jersey City Municipal Utility Authority or City of Jersey City or any of its Facilities, employees, officers or Council members or Commissioners in any advertising,

brochures, public relations documents, or news releases without the express written consent of MUA. CONTRACTOR may furnish its prospective clients with the MUA's name, address, and telephone number for the purpose of providing client references.

- (e) Consumer Confidence Reports. CONTRACTOR, at CONTRACTOR'S expense, shall prepare and distribute annual Consumer Confidence Reports to each retail and wholesale customer as required by Applicable Law.
 - (f) Consumer Information. MUA reserves the right to place any leaflet into customer water/sewer bills, provided the MUA pay the cost of such leaflets and postage, should postage increase.
 - (g) Public Notices. CONTRACTOR, at CONTRACTOR'S expense, shall issue appropriate public notices required by Applicable Law resulting from water quality violations, health concerns or any other required public notifications.
13. **Rates and Charges.** The MUA retains responsibility for setting water and sewer rates and charges. CONTRACTOR agrees to implement revised rates and charges on a date specified by the MUA not less than thirty (30) days after notification from the MUA.
14. **Reports.** CONTRACTOR agrees to provide Reports as follows:
- (a) General Reporting Requirements. Contractor will provide the MUA with Reports as described below as well as any additional Reports required by the MUA. If a Report is not specifically required herein, MUA may specially request a Report to be provided within two (2) working days of the request. By written communication, MUA may specify or change the content, data format, list, delivery date and delivery method of any Reports.
 - (b) Situation Reports. Contractor will notify MUA of any sudden changes, serious problems, equipment failures, violations or possible violations of water or wastewater permit requirements, inspections, environmental discharges or spills, health or safety threatening situations, chemical changes at the plant, OSHA or any other regulatory violations, acts of sabotage, vandalism, willful misconduct, threatening conditions, or any other important event or situation or imminent situation by phone and by fax. The notification will be on a standardized fax form and may be handwritten. For emergency situations and major situations, as determined by the MUA, notification will be within two (2) hours from the time the Contractor's Project Manager or acting manager in charge first becomes aware of the situation. Otherwise, notification shall be within one (1) day.
 - (c) Monthly Operations Status Report. The content of these reports will, at a minimum, include: (1) an itemized list of expenditures for the month from the MMR&EF and other MMR&EF information in accordance with this Agreement; (2) amount of and total cost of electricity used; (3) quantity of sludge and other residuals disposed of in wet tons, percent solids and dry tons; (4) quantity (product and active basis) of each major chemical used by application point; (5) monthly average and daily raw water and finished water flows, and flow entering the City; (6) number of Small and Large Meters installed; (7) major events of the month; (8) newly determined possible capital improvement needs; (9) recommendations; (10) CONTRACTOR'S emergency contact phone list within its

own organization and Emergency Plan contact list for the Facilities; (11) summary of any access or security codes that have been changed (actual code mailed separately, confidentially); (12) anticipated or planned major events for next month; (13) length of water mains flushed, number of water main break repairs, number of valves exercised, number of hydrants flushed; (14) Maintenance and Repair activities for the month; and (15) status of each capital improvement project listed in the Capital Plan for that year. The Monthly Operations Status Report shall be delivered to the MUA by the fifteenth (15th) day of each month for the preceding month.

- (d) **Monthly Billing and Collection Reports.** The computer software used to manage billing and collection will be able to follow payment histories, calculate interest, retroactively adjust accounts, send bills to owner's address if different than the billing address, send separate bills to multiple residents of a single billing address, follow changes in addresses to individuals receiving bills including previous owners and residents, automatically send multiple pre-worded collection notices in sequence, calculate bills based on a combination of payment calculation methods, apply multiple discounts, record and follow the resolution of customer complaints or inquiries, and produce detailed reports and summary reports on: (1) Trial Balance Report with support information and summaries no more than once every six (6) months; (2) Aging by Account (categories must be mutually acceptable to CONTRACTOR and the MUA); (3) Account History; (4) Monthly System Reconciliation (receivable, billings, collections, current month start and end balance, current period adjustments, prior period adjustments, beginning receivables); (5) Print the above reports in order of different ranking criteria such as by the amount owed or by the amount outstanding beyond a specific period of time; (6) New accounts; (7) Customer Service Inquiries by date and type of inquiry and summarized for the month and year; and (8) Comparison of current year with prior years statistics. These reports will be provided monthly by the fifteenth day of each month for the preceding month. In addition, Contractor will provide the MUA with both a computer diskette and hard copy of the customer billing and collection database by the last day of each quarter of each calendar year. The format of the computerized copy shall be mutually agreed to by the parties.
- (e) **Monthly Useable Meter Read Reports.** CONTRACTOR will supply to the MUA monthly a report that includes the following: (1) monthly and quarterly meter cycles read during the month, (2) number of meters included in each cycle, (3) number of meters read in each cycle, (4) number of meter reads accepted by the Wins CIS system, (5) number of reads rejected by the Wins CIS system, (6) number of system rejections resolved and actual reads utilized, (7) number of estimated bills issued, (8) number of accounts cancelled and re-billed each month with reason codes, and (9) the percentage of bills by cycle based on actual reads.
- (f) **Capital Plan Report.** This report will tabulate future capital expenditures the CONTRACTOR and MUA anticipate will be needed, their estimated cost, their economic benefit, stat benefit and their relative importance (rank) as compared to all other potential capital projects. No two capital projects may be given the exact same rank. CONTRACTOR shall bear no liability for the accuracy of these cost

estimates. The Capital Plan shall be delivered to MUA and OWNER by April 1 of each year.

- (g) **Predictive and Major Maintenance Report.** Each year, the findings of the Predictive Maintenance Evaluation as described in Article III.B, Section 7(a) including the predicted schedule of needed Maintenance and Repairs will be reported, either as part of the Capital Plan Report or just prior to it as a separate report by April 1 of each year.
 - (h) **Annual Report and Presentation.** All the above reports will be summarized into one (1) year-end report, matching one (1) calendar year, and will be delivered by April 1 of each year for the preceding year. It will include the final statement of the MMR&EF, the yearly totals for all numerical items in the Monthly Reports and, as attachments, the Capital Plan and Predictive and Major Maintenance Report. The presentation shall be delivered electronically, unless the MUA request another-format and audience for the presentation.
 - (i) **Report Deadlines.** Any deadlines for the delivery of any Reports as described are Time of the Essence. The CONTRACTOR'S failure to comply with the deadlines described above shall subject the CONTRACTOR to those damages stipulated in Article XVI, Section J.
15. **Warranties.** CONTRACTOR will maintain and enforce any warranties or guarantees on any equipment owned by OWNER or MUA or purchased on behalf of the OWNER or MUA and used by CONTRACTOR in carrying out this Agreement. Any and all warranties and guarantees should be obtained and maintained in the name of the OWNER and the MUA.
16. **Owner Information.** MUA agrees to make available to the CONTRACTOR warranty information; treatment facility, transmission, and distribution system drawings; calculations; maintenance manuals; operational records, logs, reports and submittals; laboratory test records; repair records; cost records audits; and general correspondence which may be in OWNER's or MUA's possession, related to the design, condition, or operation of the Facilities. CONTRACTOR shall maintain a hard copy of every regulatory report and all regulatory correspondence at the Boonton water treatment facility office located at 640 Greenbank Road, Parsippany-Troy Hills, NJ.
17. **Residuals Disposal.** Current production of water screenings, grit, and residual sludge shall be hauled, processed and disposed of by CONTRACTOR at processing and/or disposal site(s) authorized by the MUA and approved by the NJDEP. The MUA shall be responsible for any and all costs associated with the hauling, processing and disposal of the material produced after the Commencement Date. The CONTRACTOR agrees to solicit three (3) proposals prior to awarding any and all contracts with respect to the hauling, processing or disposal of the residuals. MUA agrees to pay all costs directly within forty-five (45) days of receipt of invoice so the residual hauling, processing or disposal does not interfere or delay with the treatment plant process or residual and production storage.
18. **Technical Assistance.** CONTRACTOR will have the right, at its own expense, to provide review comments and technical assistance regarding any new or improved water treatment process systems. CONTRACTOR'S comments may address such

subjects as compatibility, operability, plant capacity, operation and maintenance problems, cost, water quality or other items as they relate to Facilities. MUA will not be obligated to accept or use such comments or recommendations, but may do so.

19. **Safety Program.** CONTRACTOR will implement a proven, formal safety program including, but not limited to, written procedures, policies, and periodic employee meetings.
20. **Monthly Meetings.** CONTRACTOR agrees to meet a minimum of three (3) times a month with MUA's and OWNER's representatives, one financial meeting, one technical meeting and one operational meeting, and other meetings the MUA determines to be necessary. The purpose of the meetings will be to discuss the issues relative to the management, administration, finances, operation and maintenance of the Facilities.
21. **Appearance of Buildings and Structures.** CONTRACTOR agrees to submit and obtain MUA's approval for any modifications or major maintenance affecting the appearance of any of the Facilities. The CONTRACTOR recognizes the concern of MUA about the appearance of the grounds, buildings, and structures and agrees to maintain the cleanliness and appearance of the plant site in a professional manner once every five (5) years including, but not limited to hydrants, interior and exterior of buildings, exposed pipe, and metal services, and tanks other than the five (5) million gallon water storage tank.
22. **Noise Control.** CONTRACTOR agrees to operate Facilities and systems in a manner so as to prevent and/or minimize the generation of noise through ongoing control programs and in compliance with local ordinances.
23. **Community Commitment.** To the extent possible, CONTRACTOR will be encouraged to abide by the provisions of the OWNER'S "First Source" objectives.
24. **Annual Maintenance Evaluation.** CONTRACTOR agrees to, at least annually, or as requested by Owner, evaluate buildings, structures, plant equipment, etc., and notify MUA of specific capital expenditure needs for replacement, maintenance, repair, upgrading of structures, equipment, etc. The evaluation shall include a cost-effectiveness analysis and/or other documentation in support of any replace/repair/upgrade recommendations made by the CONTRACTOR. The findings of this evaluation shall be included in the Predictive and Major Maintenance Report as described herein.
25. **Inventory of Equipment and Spare Parts.** CONTRACTOR agrees to maintain at all times a sufficient inventory on hand of chemicals, spare and repair parts, pipe, valves, Meters if purchased by the MUA in a timely manner, manhole rings and covers, etc. to operate and maintain the Facilities. Prior to the Commencement Date, the MUA and CONTRACTOR will agree to an inventory of the above items. At termination or expiration of this Agreement, a financial adjustment relating to the value the inventory will be made.
26. **Bulk Sale of Surplus Water.** During the Base Term of this Agreement, the MUA does not grant CONTRACTOR the authority to initiate, negotiate and finalize the terms for a bulk sale of surplus water to wholesale customers.

C. **CONTRACTOR'S Non-Performance.**

In the event the CONTRACTOR fails to properly or substantially complete any of those management, operational, maintenance, or such other services and activities required by this Agreement in a timely, professional and/or workmanlike manner meeting all standards of Applicable Law, the MUA shall be entitled to retain in its possession a portion of the annual ASF charge that is equal to the value of the operations, maintenance, services or activities not properly or timely completed; but only after the MUA provides the CONTRACTOR with written notice and a full thirty (30) days to cure such failure to perform and the CONTRACTOR fails to cure within the thirty-day (30) period. The amount that the MUA shall be entitled to retain shall be determined by the Executive Director, in his sole and absolute discretion; however, under no circumstances shall the MUA be entitled to retain an amount in excess of ten (10%) percent of the annual ASF charge. The severity of the penalty will be based upon the cost estimated by the MUA, to have the requirements completed. Upon written notice from the MUA to the CONTRACTOR of any requirement, the CONTRACTOR shall have thirty (30) days to rectify the problem and conform with this Agreement. If the requirement is not completed within thirty (30) days and/or the efforts, solution, submittal, or work required does not fully satisfy the requirement of this Agreement, a written notification of request to impose penalty, along with the amount of the penalty, will be submitted to the Executive Director. Upon concurrence of the Executive Director, notification and penalty shall be presented to the MUA Board of Commissioners in resolution form, for its consideration. If said resolution is adopted by the Board of Commissioners, the penalty is to be withheld from the next regularly scheduled payment to the CONTRACTOR. The imposition of said penalty in no way absolves CONTRACTOR from completing the requirements and obligations set forth in this Agreement. If the requirement is not completed within thirty (30) days of adoption of the resolution, an additional penalty doubling the initial fine, will be imposed through an adopted resolution. This penalty process shall continue until the requirement is completed, to the reasonable satisfaction of the MUA. If at the expiration of ninety (90) days from the date of CONTRACTOR'S receipt of the initial written notice, the CONTRACTOR has not corrected its non-performance, incomplete performance, or inadequate or unworkmanlike performance, the CONTRACTOR forfeits to the MUA the retained amount. The MUA may then use the retained amount to correct such non-performance, incomplete or inadequate performance and pay all costs and expenses therefrom. If prior to the expiration of the aforementioned ninety (90) day period the CONTRACTOR corrects its failure to perform, the MUA shall promptly pay CONTRACTOR the retained amount.

The MUA's rights pursuant to the above paragraph are cumulative and concurrent with all rights granted to it by law and equity and the MUA's exercise of its rights pursuant to the above paragraph shall not in any way preclude or limit the MUA from, and the MUA shall be entitled to, proceed against the CONTRACTOR for any actual damages which it may suffer or terminate this Agreement pursuant to Article XIII, as a result of the CONTRACTOR'S failure to properly or timely perform the operations, maintenance, services, or activities described in Article III.

ARTICLE IV - CONSIDERATION AND COMPENSATION

A. Compensation to CONTRACTOR.

1. The MUA agrees to pay CONTRACTOR, as compensation for the services to be performed as described in the Scope of Services, an Annual Service Fee ("ASF"), in the amount of twelve million nine hundred thirty-three thousand eight hundred and forty nine dollars (\$12,933,849) for the first twelve (12) months of this Agreement. Monthly payments of one-twelfth (1/12) of the ASF shall be due at the end of the month following the month in which services are rendered. At the end of the first twelve (12) months of this Agreement and in each subsequent year thereafter, on the Effective Date, the Annual Service Fee shall be increased using the weighted average of the following three component indices: The U.S. Department of Labor, Bureau of Labor Statistics, Employee Cost Index ("ECI"), Series D - CIU201000000000I, Compensation - Total Compensation, Northeast Sector Private Industry, Industry Occupation - All Workers at 53.9%, The U.S. Department of Labor, Consumer Price Index ("CPI") for all urban consumers in the Northeast area, ID CUUR0100SA0 at 37.6% and The U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index ("PPI"), series ID WPS061 Group - Chemicals and allied products, Item - Industrial Chemicals at 8.6%. There shall be no gap or ceiling on price increases or decreases.

2. When the volume production exceeds 55 mgd on an annual basis, the MUA shall compensate the CONTRACTOR for any additional chemical costs linked to the increased volume. When the volume production falls below 45 mgd on an annual basis, the CONTRACTOR shall credit the MUA on a pro rata basis for any reductions in chemical costs linked to the decreased volume.

The MUA shall pay directly for any and all costs and charges related to energy and residuals as set forth in this Agreement and in the RFP.

3. Beginning on the Effective Date of year 5 (February 1, 2012), an increase up to \$250,000 to the Annual Service Fee ("ASF") shall be added reflecting a change in billing cost. Once implemented on February 1, 2012, the increase to the Annual Service Fee shall be modified annually by the same escalation and de-escalation factors set forth in Article IV, Section A(1). The increase implemented in year 5 shall be in addition to any increase in the ASF or decrease to the ASF in accordance with Article IV Section A (2).

B. Reimbursement to CONTRACTOR

1. **Major Maintenance, Repairs, and Equipment Fund ("MMR&EF").** The MUA agrees to reimburse CONTRACTOR from an amount to be set aside into a "Major Maintenance, Repairs, and Equipment Fund."
 - (a) The MMR&EF will be used for expenditures (as defined herein) for maintenance, repairs and capital expenditures of the Facilities subject to prior approval of the MUA.
 - (b) The CONTRACTOR shall recommend and the City shall approve an annual expenditure from the MMR&EF for each subsequent Fiscal Year. Expenditures from the MMR&EF shall exclude any labor costs for CONTRACTOR'S personnel assigned to the Project.

- (c) At no time will CONTRACTOR, in an effort to utilize the Capital Expenditures Fund, delay necessary maintenance or repairs; avoid necessary maintenance or repairs; or fail to perform services required by this Agreement.
2. **Capital Outlay Fund.** MUA agrees to reimburse CONTRACTOR from an amount to be set aside into a "Capital Outlay Fund."
- (a) The Capital Outlay Fund will be used for capital expenditures, Maintenance and Repairs as defined herein. Expenditures from this fund shall be subject to prior approval and appropriation of funds by the MUA.
- (b) The CONTRACTOR shall recommend and the MUA may approve an annual Capital Outlay Fund for each subsequent Fiscal Year. Expenditures from the Capital Outlay Fund shall exclude any labor costs for CONTRACTOR'S personnel assigned to the Project which shall be deemed to be those employees listed on Exhibit 2.
- (c) At no time will CONTRACTOR, in an effort to utilize the Capital Outlay Fund, delay necessary Maintenance or Repairs; avoid necessary Maintenance or Repairs; or fail to perform services required by this Agreement.
3. **Capital Expenditures Fund.** MUA agrees to reimburse CONTRACTOR from an agreed-upon amount to be set aside into a "Capital Expenditures Funds."
- (a) The Capital Expenditures Funds will be used for capital expenditures in accordance with Article III. Expenditures of this fund shall be subject to prior approval by the MUA.
- (b) The CONTRACTOR shall recommend and the MUA shall approve an annual Capital Expenditures Funds for each subsequent Fiscal Year. Expenditures from the Capital Expenditures Fund shall exclude any labor costs for CONTRACTOR'S personnel assigned to the Project which shall be deemed to be those employees listed on Exhibit 2.
- (c) At no time will CONTRACTOR, in an effort to utilize the Capital Expenditures Fund, delay necessary maintenance or repairs; avoid necessary maintenance or repairs; or fail to perform services required by this Agreement.
4. **CONTRACTOR Invoices.** CONTRACTOR agrees to submit monthly invoices for amounts expended by the CONTRACTOR for which the CONTRACTOR is entitled to reimbursement under this Article. MUA agrees to pay CONTRACTOR after approval of an invoice. Overdue and unpaid invoices shall bear interest at 0.75% per month; provided that CONTRACTOR'S invoice was originally received by the MUA at least fifteen (15) days prior to the MUA's monthly meeting. If any portion of an invoice is disputed by the MUA, the MUA agrees to pay when due, any portion not in dispute. In the event it is determined that all or a portion of the disputed amount was properly charged, MUA agrees to pay such amount with interest not to exceed 0.75 % per month accrued during the time the amount was in dispute. No interest will accrue on any disputed amount later determined to have been improperly charged.

ARTICLE V -- CONDITIONS PRECEDENT

The parties' obligations under this Agreement (except for the obligation contained in this Article V) are subject to the complete satisfaction of the Conditions Precedent (unless otherwise waived in writing by the party for whom the condition is a benefit). Each party agrees to use good faith and due diligence in causing the Conditions Precedent to be satisfied, if they are not waived.

1. Each agent to bind each party, dated the Commencement Date, to the effect that each of the representations of the MUA or CONTRACTOR, as the case may be, set forth in Article XII are true and correct as if made on such date and an opinion or opinions of counsel, dated such date and in form and substance reasonably acceptable to the same effect.
2. There shall be no action, suit, proceeding, or official investigation pending which questions in any material respect the validity, binding effect, or enforceability (or seeks to enjoin or assess penalties) relating to any of the obligations of the parties under this Agreement.
3. There shall have been no Change in Applicable Law which, in the reasonable judgment of CONTRACTOR, or the MUA materially adversely affects the ability of CONTRACTOR, or the MUA, to perform their respective obligations pursuant to or as contemplated by this Agreement or any of the permits or approvals.
4. The MUA shall have the full right, power, and authority to execute and deliver all documents and agreements with respect to the transactions contemplated by this Agreement to which the MUA is a party and shall have evidenced the same to CONTRACTOR, in form and substance reasonably satisfactory to CONTRACTOR (including opinions of counsel).
5. CONTRACTOR shall have delivered the required Certificate of Insurance and the Corporate Guaranty.
6. MUA shall have secured an opinion from its Bond Counsel that this Agreement has no adverse effect on the tax exempt status of the City and/or MUA existing or future debt.
7. MUA shall have secured regulatory approvals of the Agreement as required by New Jersey Water Supply Public-Private Contracting Act, L. 1995, c. 101 (N.J.S.A. 58:26-19 et seq.). The Act requires various reviews and approvals from the NJ Board of Public Utilities, the NJDEP, and the Local Finance Board within the Division of Local Government Services in the Department of Community Affairs.

ARTICLE VI CHANGE IN SCOPE OF SERVICES OR SERVICE TYPE

A. General

Any material change in scope of management or operations services, Change in Applicable Law, water quality, equipment change, water treatment processes, residuals handling, processing methods or amounts, Force Majeure, SDWA requirements, NJDEP Directives, reporting requirements, or personnel qualifications or mandatory wages or benefits payable to Contractor's or Owner's Leased Employees required by MUA or by a

governmental federal or state agency or court having jurisdiction to order such changes shall be a change in scope of services.

B. Non-Standard Operations and Emergency Conditions

1. In the event of an emergency situation or conditions, which require expenditures for services not included in the annual budget, CONTRACTOR agrees to make every effort to contact MUA to obtain authorization for emergency expenditures. Should MUA not be available to authorize emergency expenditures, CONTRACTOR is authorized to make reasonable and necessary expenditures to alleviate the emergency situation. If such expenditures are made, CONTRACTOR agrees to provide MUA a written report detailing actions taken within forty-eight (48) hours of such occurrence. Compensation for emergency expenditures shall be in accordance with Article IV.B(4), provided that such emergency situation was not due to the negligence, faulty operation, error or omission of CONTRACTOR. In the event that such emergency was due to the negligence, faulty operation, error or omission of CONTRACTOR, no additional compensation is due CONTRACTOR.
2. Emergency conditions shall include any act, event or condition beyond the reasonable control of CONTRACTOR and shall include, but not be limited to, any of the following:
 - (a) a Force Majeure event;
 - (b) a Change in Applicable Law on or after the date of this Agreement;
 - (c) labor disputes during any construction or operation of Facilities other than labor disputes involving only employees of CONTRACTOR, unless such dispute relates to the interpretation of workplace laws by the federal and/or New Jersey State Department of Labor or a court of competent jurisdiction regarding the wage rates paid to or benefits granted to Contractor's or Owner's leased employees performing services pursuant to this Agreement;
 - (d) the loss of or inability to obtain any utility services, including fossil fuels and electric power necessary for operation of Facilities;
 - (e) the presence of any material on or below the surface of a site at which or adjacent to which Facilities are located, which was not due to an act, error or omission of CONTRACTOR, or a subsurface release from Facilities.

ARTICLE VII -- PERFORMANCE REVIEW

MUA retains the right to conduct a formal written performance review of CONTRACTOR. During the first year of this Agreement two (2) performance reviews may be performed, one (1) at the end of six (6) months, and the second in the eleventh month of this Agreement. Thereafter, performance reviews shall be performed in the eleventh month of each contract year. MUA agrees to provide a copy of the performance review to CONTRACTOR and schedule a meeting to review the findings with CONTRACTOR. If at any time, however, MUA determines that performance has not been in compliance with the provisions of this Agreement, MUA will establish remedial steps for CONTRACTOR to gain compliance with this Agreement. CONTRACTOR shall initiate necessary remedial actions within five (5) working days, unless an emergency condition exists or life or property is threatened.

ARTICLE VIII -- OWNER'S EMPLOYEES

CONTRACTOR agrees that during the Base Term of this Agreement, it shall either (i) reimburse the OWNER for the full wage and benefit costs actually incurred on behalf of all active employees of the water utility on roll as of the Commencement Date as identified in Exhibit 2, or (ii) if the Rule Relaxation is not continued CONTRACTOR shall guarantee employment to such employees at comparable wage and benefit levels. Twelve (12) active employees have been previously transferred to the CONTRACTOR pursuant to the existing POSA Agreement. The twelve employees shall continue to be transferred to the CONTRACTOR as of February 1, 2008 under this Agreement (the "Owner's Leased Employees"). The CONTRACTOR will recognize and abide by the terms and provisions of the Rule Relaxation approved by the State of New Jersey Department of Personnel and the CONTRACTOR will recognize and abide by the terms and provisions of the Agreement between the OWNER and the Unions representing its water utility employees.

ARTICLE IX -- LIABILITY AND INDEMNITY

A. General

1. **Hold Harmless Agreement.** CONTRACTOR hereby agrees to defend, indemnify, protect, hold and save harmless, the MUA and the City, their elected or appointed officials, officers and employees from and against any damage, order, claim, demand, fine, penalty, proceedings, liability, judgment, settlement, award, loss, expense, or cost, including reasonable attorneys' fees as well as costs and expenses of investigation, and expert fees (all collectively hereinafter referred to as "Damage") arising from or in connection with any management, maintenance, or other operation of the Facility by CONTRACTOR or service provided to the Project by CONTRACTOR pursuant to this Agreement whether any alleged Damage is for or related to injury to person or damage to property, to the extent said Damage was caused by any negligent act, error, or omission of the CONTRACTOR, its officers, directors, agents, servants, employees, subcontractors, consultants, CONTRACTOR'S direction or on Contractor's behalf.

CONTRACTOR, the MUA and the City agree to follow the Standard Operating Procedures related to claims and litigations arising from billing and collections services provided to the Project. Such Standard Operating Procedures has been agreed upon by the parties and are attached hereto as Exhibit 5.

It is expressly understood that the aforementioned indemnification and hold harmless is a material term of this Agreement without which the MUA would not have entered into same.

2. **Environmental Indemnification.** CONTRACTOR assumes responsibility for maintaining potable water quality in accordance with Applicable Law as described in Article III. CONTRACTOR agrees to defend, indemnify, protect, hold and save harmless the MUA and the City, their elected and appointed officials, and against any damage, order, claim, demand, fine, penalty, proceeding, liability, judgment, settlement, award, loss, expense, or cost including reasonable attorneys' fees as well as costs and expenses of investigation and expert fees, any contamination affecting or relating to the Project or any natural resource or the environment, and the cost of any required or necessary repair, cleanup, or detoxification at the Project or to any natural resource or the environment (all hereinafter referred to as Damage) arising from, or in connection with, directly or indirectly the generation, use, handling, production, transportation,

disposal, discharge, or storage of any hazardous material or substance as defined by Applicable Law in or at the Project or pursuant to this Agreement or in connection with any failure to provide and/or maintain, at all times, potable water in accordance with Applicable Law whether the generation, use, handling, production, transportation, disposal, discharge, or storage of any such hazardous substance or material or the failure to provide and maintain potable water was occasioned by CONTRACTOR, its officers, directors, agents, servants, employees, subcontractors, consultants, professionals, or any other person at Contractor's request or subject to CONTRACTOR'S direction or on CONTRACTOR'S behalf. Notwithstanding the above, the CONTRACTOR shall not be responsible for indemnifying the MUA for any Damage resulting from Force Majeure events or events caused by the acts of others or third parties not acting under the CONTRACTOR'S control or on CONTRACTOR'S behalf.

It is expressly understood that the aforementioned indemnification and hold harmless is a material term of this Agreement without which the MUA would not have entered into same.

The aforementioned indemnification and hold harmless shall survive the expiration or termination of this Agreement for a period of five (5) years as to any claim of Damage which is based upon CONTRACTOR'S conduct during the term of this Agreement.

CONTRACTOR shall not be liable to indemnify the MUA for Damages, fines and penalties which have been or which may be assessed for periods or conditions that existed prior to the Commencement Date of this Agreement, or that resulted from Force Majeure events or events caused by the acts of others or third parties not acting under the CONTRACTOR'S control or on CONTRACTOR'S behalf.

3. **Environmental Violations.** CONTRACTOR is liable for any violation of Applicable Law in connection with potable water quality, including any Governmental Authority notice requirements to the extent such liability for such fine, notice requirement or other requirement or liability is the result of the negligent acts, operations, errors, or omissions of the CONTRACTOR. CONTRACTOR reserves the right to contest, at its own expense, any fines in administrative and/or court proceedings prior to payment. CONTRACTOR shall not be liable to indemnify the OWNER and MUA for fines and penalties which have been or which may be assessed for periods prior to the Commencement Date. The MUA is liable for any violation of Applicable Law in connection with potable water quality, including any Governmental Authority notice requirements when liability for such fine, notice requirement or other requirement or liability is wholly or partially the result of the negligent acts, operations, errors, or omissions of the MUA, or a Force Majeure event.

In circumstances where a violation of Applicable Law is partially the result of the negligence of each party, the liability for any penalty or fine shall be apportioned in accordance with each party's respective degree (i.e., percentage) of negligence.

B. Compliance with Laws and Regulations

CONTRACTOR agrees to abide by all Applicable Laws including but not limited to those relating to hazardous substances. CONTRACTOR agrees to indemnify, defend and hold harmless the MUA and the City and its agents, officers and employees, both elected and appointed, from and against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, orders or other decrees, whether by CONTRACTOR, its employees or its subcontractors, or which may arise out of or

resulting from operations under this Agreement. This clause shall apply not only during the Base Term of this Agreement, or any extension thereof, but also as to any claim, liability or damages which are based on the CONTRACTOR'S conduct during the Base Term of this Agreement, or any extension thereof, and in the event the MUA and/or the City is charged with the responsibility, jointly or severally, for the aforementioned conduct as a successor to the CONTRACTOR. Notwithstanding anything to the contrary herein contained, CONTRACTOR shall not be liable to indemnify the MUA and/or the City for claims, damages, losses or expenses resulting from OWNER'S or MUA's failure to abide by all Applicable Laws which have been or may be incurred for periods prior to the Commencement Date.

C. Non-Liability of CONTRACTOR

The CONTRACTOR shall not be liable to the MUA or OWNER for any Damages, cost or expense incurred by CONTRACTOR or MUA resulting from MUA's determination not to implement any MMR&EF or capital expenditure proposed by the CONTRACTOR in the Capital Plan to maintain the structural and/or mechanical integrity of the Facilities equipment and infrastructure; provided, however, the CONTRACTOR shall be liable to indemnify MUA and/or City from all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of CONTRACTOR'S failure to implement repairs and/or maintenance otherwise required hereunder.

D. Limitation on Damages

The CONTRACTOR shall not be liable to the OWNER or the MUA for any consequential, indirect, incidental, or special damages or losses relating in any way to this Agreement, whether arising in contract, warranty, tort, strict liability, or otherwise, including but not limited to loss of use, profits, business, reputation, or financing.

The MUA and the OWNER shall not be liable to the CONTRACTOR for any consequential, indirect, incidental, or special damages or losses relating in any way to this Agreement, whether arising in contract, warranty, tort, strict liability, or otherwise, including but not limited to loss of use, profits, business, reputation or financing.

ARTICLE X -- INSURANCE

A. General

1. The CONTRACTOR shall purchase and maintain for the entire Term of this Agreement, General Liability, Workers' Compensation, Automobile Liability Insurance, Umbrella Insurance and other insurance as specified and any other insurance as is appropriate for the services being performed pursuant to this Agreement and as will provide protection from claims set forth below which may arise out of or result from the Contractor's performance of services pursuant to this Agreement or for work of any kind at or for the Project, whether it is to be performed by the CONTRACTOR, any subcontractor or supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
2. Upon CONTRACTOR'S execution of the Agreement, the CONTRACTOR shall provide the MUA with a Certificate of Insurance in evidence of current Insurance Policies and

Certificates of Insurance for all coverage set forth above which must contain the provision that the policy shall not be canceled for any reason except after thirty (30) days written notice (except ten (10) days notice for nonpayment of premium) to the MUA, 555 Route 440, Jersey City, NJ 07305, Attn: Mr. Kevin Carr, RPPO, Purchasing Officer, and City of Jersey City, Office of Risk Management, 280 Grove Street, Jersey City, NJ 07302.

B. Minimum Insurance Requirements

1. CONTRACTOR shall provide insurance coverage in compliance with the requirements as described below.
2. Insurance with coverage not less than the following amounts or greater where required by law shall be as follows:
3. **Workers' Compensation Coverage.**

CONTRACTOR agrees to maintain, during the Term of this Agreement, workers' compensation coverage for all its employees employed in the management, administration, operation, and maintenance of Facilities and, if any work is subcontracted, CONTRACTOR agrees to require its subcontractors similarly to provide workers' compensation coverage for all of the subcontractor's employees. If any class of employees engaged in work under this Agreement at Facilities is not protected under any workers' compensation law, CONTRACTOR agrees to provide, and agrees to cause each subcontractor to provide, adequate coverage for the protection of employees not otherwise protected.

The statutory limits for the State of New Jersey with Coverage B (Employer's Liability):

Bodily Injury by Accident (per accident) \$ 500,000
Bodily Injury by Disease (per employee) \$ 500,000
Bodily Injury by Disease (policy limit) \$ 500,000

CONTRACTOR shall not be responsible for the costs associated with the work related injuries of OWNER'S Leased Employees.

4. **Commercial General Liability with a Per Project Aggregate**
 - 4.1 **Bodily Injury and Property damage.**

\$1,000,000 each occurrence
\$2,000,000 aggregate, including products/completed operations
\$2,000,000 general aggregate
 - 4.2 The above insurance policies shall include explosion, collapse and underground coverage (x, c & u coverage).
 - 4.3 The MUA, the OWNER, the members thereof, their successors, officers, and employees are to be included as Additional Insureds.

5. **Automobile Liability/Truck Liability**

5.1 Bodily Injury and Property Damage covering all owned and non-owned and hired vehicles.

\$1,000,000 combined single limit

6. **Commercial Umbrella Liability**

\$ 5,000,000 each occurrence/aggregate

7. The CONTRACTOR shall provide Environmental/Impairment Liability coverage, if applicable to the work performed, for not less than the following amount:

\$10,000,000 each occurrence

8. All Insurance Policies shall be endorsed to provide that in the event of cancellation, non-renewal or material modification, MUA shall receive thirty (30) days written notice thereof (except ten (10) days notice shall be provided for non-payment of premiums).

9. All Insurance Policies shall be written with insurance companies licensed to do business in the State of New Jersey and rated no lower than "A-IX" in the most current edition of AM Best Property Casualty Key Rating Guide.

10. CONTRACTOR is responsible for the insurance on all tools, machinery, and equipment (owned, borrowed or leased by the CONTRACTOR OR THEIR EMPLOYEES) TO THE FULL REPLACEMENT VALUE THEREOF DURING THE FULL TERM OF THIS AGREEMENT. This insurance shall insure against damage or loss caused by fire and all other perils covered by a standard "ALL RISK" insurance policy. CONTRACTOR agrees to waive its right of subrogation against OWNER and the MUA. The Property Insurance policy shall allow for a Waiver of Subrogation in favor of OWNER and the MUA. Any failure of the CONTRACTOR to secure and maintain adequate coverage required herein shall not obligate the OWNER and the MUA or its agents or employees for any losses.

11. The CONTRACTOR shall deliver to the MUA insurance certificates evidencing compliance with all insurance provisions made reference to above.

12. **Renewal of all Insurance Policies**

The CONTRACTOR shall deliver to the MUA and the City proof that all Insurance Policies required pursuant to this Article X have been renewed prior to the expiration of any Insurance Policy. Said proof of insurance renewal shall be in the form of an Insurance Certificate only, unless either the CONTRACTOR or its insurer has made material modifications to any policy or in the event CONTRACTOR has changed policies or insurance carriers. The aforementioned insurance Certificate or new policies shall be delivered to the MUA, 555 Route 440, Jersey City, NJ 07305, Attn: Kevin J. Carr, RPPO, Purchasing Agent and City of Jersey, Office of Risk Management, 280 Grove Street, Jersey City, NJ 07302 prior to the expiration of any Insurance Policy.

In the event the CONTRACTOR shall fail to deliver proof of renewal of insurance prior to the date of the expiration of any Insurance Policy, the MUA or the CITY shall have the

right but shall not be obligated to obtain the required insurance policies as to which the CONTRACTOR has failed to provide proof of coverage, at the CONTRACTOR'S sole cost and expense (including reasonable attorney's fees, expert and consultant fees), regardless of whether the CONTRACTOR has actually obtained said coverages or not. Any and all insurance premiums and such other costs and expense incurred by the MUA or the CITY in placing, obtaining, or securing coverages for which the CONTRACTOR has failed to provide proof of renewal as required by this paragraph shall be paid for by the CONTRACTOR in the form of a deduction from the monthly ASF charge.

C. Property Insurance

The MUA or the OWNER shall purchase and maintain property damage insurance for all Facilities contemplated by this Agreement. Any decision by the MUA or the OWNER to obtain property damage insurance shall not release, alleviate or mitigate the CONTRACTOR'S liability for property damage which occurs as a result of the -negligence, in whole or in part, of the CONTRACTOR, its officers, directors, agents, servants, employees, subcontractors, consultants, professionals or any other person or entity acting on CONTRACTOR'S behalf. The MUA shall cause all Property Insurance Policies covering the Facilities to contain a waiver of subrogation clause on behalf of itself or its insurers in favor of the CONTRACTOR.

ARTICLE XI -- GUARANTY

In the event of a permitted assignment of this Agreement under Article XVID, the CONTRACTOR will guarantee the performance of CONTRACTOR'S assignee in form and substance acceptable to MUA and CONTRACTOR.

Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of the CONTRACTOR to the MUA and the City under this Agreement during the Term shall not exceed One Hundred Million Dollars (\$100,000,000), regardless of whether such liability arises out of breach of contract, guaranty or warranty, tort, product liability, indemnity, contribution, strict liability, or any other legal or equitable theory, provided, however, that the above limitation shall exclude and shall not be diminished by or on account of any claims or amounts paid through insurance coverages required to be maintained by the CONTRACTOR during the Term of this Agreement.

ARTICLE XII - REPRESENTATIONS

A. CONTRACTOR'S Representations

CONTRACTOR represents and warrants to the MUA as follows:

1. CONTRACTOR is duly organized and validly existing under the laws of the state of New Jersey with full legal right, power, and authority to enter into and perform its obligations under this Agreement.
2. This Agreement has been duly authorized, executed and delivered by CONTRACTOR and constitutes a legal, valid, and binding obligation of CONTRACTOR, enforceable against CONTRACTOR in accordance with its terms.
3. Neither the execution nor delivery by CONTRACTOR of this Agreement, nor the performance by CONTRACTOR of its obligations in connection with the transactions

contemplated hereby or thereby, or the fulfillment by CONTRACTOR of the terms or conditions hereof or thereof (i) conflicts with, violates, or results in a breach of any constitution, law, or governmental regulation application to CONTRACTOR, or (ii) conflicts with, violates or results in a breach of any term or condition of any order, judgment, or decree or any agreement or instrument, to which CONTRACTOR is a party, or by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default thereunder.

4. No approval, authorization, order or consent of, or declaration, registration, or filing with any Governmental Authority is required for the valid execution and delivery of this Agreement by CONTRACTOR, except as such as have been duly obtained or made.
5. 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 CONTRACTOR'S knowledge, threatened against CONTRACTOR, which might materially adversely affect the performance by CONTRACTOR of its obligations hereunder or under the other transactions contemplated hereby, or which, in any way, questions the validity, legality, or enforceability of this Agreement or any other agreement or instrument entered into by CONTRACTOR in connection with the transactions contemplated hereby.
6. The CONTRACTOR certifies that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the MUA shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
7. The CONTRACTOR certifies that no person who is or who shares in legal or factual or has been convicted within the five (5) years immediately prior to the date of this Agreement in a state or federal court for an offense involving moral turpitude arising out of the person's relationship with a Governmental Authority. If this representation is subsequently determined to be false, this Agreement shall be subject to immediate termination.
8. The CONTRACTOR certifies compliance with affirmative action plan. This Agreement shall not become effective and CONTRACTOR shall provide no services under the Agreement until it has executed the following documents:
 - (a) A Mandatory Equal Employment Opportunity Agreement pursuant to N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1.1 et seq.
 - (b) An Affirmative Action Employee Information Report (form AA-302).
9. If any of the representations made by the CONTRACTOR change after the date this Agreement is executed, the CONTRACTOR shall notify the MUA in writing within ten (10) business days of the date the change occurs. Failure to notify the MUA of a change shall be a reason to terminate the Agreement for cause in accordance with Article XIII B.

B. MUA's Representations

The MUA represents and warrants to CONTRACTOR as follows:

1. It is a Municipal Utility Authority duly organized and validly existing under the laws of the State of New Jersey, with full legal right, power, and authority to enter into and perform its obligations under this Agreement.
2. This Agreement has been duly authorized, executed, and delivered by the MUA and constitutes a legal, valid, and binding obligation of the MUA, enforceable against it in accordance with its terms.
3. Neither the execution or delivery by the MUA of this Agreement, nor the performance by the MUA of its obligations in connection with the transactions contemplated hereby or the fulfillment by the MUA of the terms or conditions hereof (i) conflicts with, violates, or results in a breach of any constitution, law, or governmental regulation applicable to the MUA, or (ii) conflicts with, violates, or results in a breach of any term or condition of any order, judgment, or decree, or any agreement or instrument, to which the MUA is a part or by which the MUA or any of its properties or assets are bound, or constitutes a default thereunder.
4. No approval, authorization, order or consent of, or declaration, registration, or filing with, any Governmental Authority or referendum of voters is required for the valid execution and delivery by the MUA of the Agreement or the performance by the MUA of its payment or other obligations hereunder except such as have been duly obtained or made.
5. There is no action, suit or proceeding, at law or in equity, before or by any court or Governmental Authority, or proceeding for referendum or other voters' initiative, pending or, to the best of the MUA's knowledge, threatened against the MUA, which might materially adversely affect the performance by the MUA of its obligations hereunder or under the other transactions contemplated hereby, or which, in any way, questions the validity, legality, or enforceability of this Agreement.

ARTICLE XIII -- TERMINATION

A. Emergency Replacement of CONTRACTOR

In the event of any emergency condition involving the Facilities which is found by the MUA to present a significant and immediate danger to the public health, whether caused by the CONTRACTOR or otherwise, and CONTRACTOR is either unable or unwilling to correct such condition, the MUA may replace in whole or in part at the MUA's discretion the CONTRACTOR without notice during the emergency condition, provided that at the conclusion of any such condition, the CONTRACTOR shall be reinstated in whole or in part at the MUA's sole discretion by the MUA; provided further, however, that the MUA shall not be obligated to reinstate the CONTRACTOR at the conclusion of the condition and may terminate this Agreement if the CONTRACTOR'S inability or unwillingness to correct such condition itself constitutes grounds for termination of this Agreement as otherwise provided in this Article XIII. CONTRACTOR is not entitled to any compensation after the date upon which MUA replaces the CONTRACTOR under this Article XIII.A. The MUA shall have the right to utilize the staff and employees of

CONTRACTOR during the emergency conditions and until the conclusion of each condition.

B. Termination for Cause

In the event the performance by the CONTRACTOR of the services provided for under this Agreement is unsatisfactory to the MUA, the MUA agrees to notify the CONTRACTOR, and the CONTRACTOR agrees to within thirty (30) days rectify the unsatisfactory condition or performance. Should the unsatisfactory performance or condition not be rectified within thirty (30) days of notice being given, the MUA shall at its sole option be entitled to terminate this Agreement immediately upon written notice to the CONTRACTOR unless rectification of such unsatisfactory performance or condition cannot reasonably be completed within such thirty (30) day period but the CONTRACTOR shall have commenced to rectify such unsatisfactory condition or performance within such thirty (30) day period and shall be diligently pursuing such cure; provided that such unsatisfactory performance or condition shall be cured no later than ninety (90) days after the date on which the CONTRACTOR was first notified thereof. MUA will enforce penalties as described in between thirty (30) and ninety (90) days. CONTRACTOR is not entitled to any compensation subsequent to receiving notice of termination from the MUA. CONTRACTOR shall pay to the MUA (i) a one-time payment equivalent to the difference in the estimated present value (at a 6.25% discount factor) of the ASF for the balance of the Term and the estimated present value (at the same discount factor) of facilities operations and maintenance by the MUA, if the facilities are to be operated by the MUA, or under any new service agreement with a replacement operator, if the facilities are to be operated pursuant to such an agreement, in either case for a period equal to the balance of the Term at the time of termination, and (ii) all reasonable costs incurred by the MUA in procuring and negotiating and implementing a new service agreement with a replacement operator.

In the event the MUA fails to pay the ASF or other compensation in accordance with Article IV and Article VI hereof, the CONTRACTOR shall give the MUA written notice and ninety (90) days to make such payment. In the event the MUA has not made such payment by the expiration of such ninety (90) days, the CONTRACTOR may cancel this Agreement by giving the MUA thirty (30) days written notice. Upon CONTRACTOR'S cancellation of the Agreement, CONTRACTOR shall comply with Article XIII, Sections C, D and F hereof.

C. Carryover Operations

If this Agreement expires or is terminated by either party for any reason under this Article, CONTRACTOR agrees to furnish the services necessary to continue normal operations for a period of sixty (60) days after the termination date. This sixty (60) day period will commence only at the MUA's request and shall be for the purpose of training and assisting new employees of MUA or its new contractor in the management and operation of Facilities. In such event, MUA agrees to pay to CONTRACTOR currently existing compensation pursuant to the Agreement for the equivalent of a sixty (60) day pay period.

D. Existing Personnel

Upon termination by either party for any reason under this Article XIII including Section B, the MUA or MUA's new operations firm may employ all personnel in the employ of

CONTRACTOR for the management and operation of Facilities. CONTRACTOR is not entitled to any claim for compensation or damages on account of such employment of CONTRACTOR'S employees upon or after termination.

E. Owner to Recover Possession

Upon termination of this Agreement or expiration of the contract Term, the MUA shall have the right to recover immediate possession of all its facilities, equipment, and all intangible assets.

F. Software and Data Recovery

CONTRACTOR shall provide MUA with copies of all software programs, all computerized data, and all other data and records ("Transfer") in the following schedule:

- (a) If the CONTRACTOR is terminated under the provisions of Emergency Replacement, Article XIII.A of this Agreement, the Transfer shall occur within ten (10) working days following the Emergency Replacement;
- (b) If the CONTRACTOR is terminated under the provisions of Termination for Cause, Article XIII.B of this Agreement, Transfer shall occur ten (10) calendar days before the end of the thirty (30) or ninety (90) day period given to CONTRACTOR to rectify the unsatisfactory condition or performance; and
- (c) If the CONTRACTOR provides Carryover Operations, Article XIII.C of this Agreement, a second Transfer shall occur between three (3) and ten (10) calendar days prior to the date the Project ends. The second Transfer is for all data and records since the previous Transfer.

All software programs developed by the CONTRACTOR in connection with the services provided under this Agreement shall remain the property of the CONTRACTOR. At the expiration or termination of the Agreement, the CONTRACTOR agrees to grant to the MUA a royalty-free license to use software programs developed by the CONTRACTOR in connection with the operation and maintenance of the System for the duration of the Term of this Agreement, or for the amount of time MUA requires. The MUA may not sell, license or authorize any third party to use such software programs. Any software programs purchased from third parties shall remain the property of the software vendor, and the MUA shall be responsible for all applicable third-party license fees associated with such third-party software. The CONTRACTOR shall coordinate with such third-party vendors so as to transfer the CONTRACTOR'S rights to third-party software to the MUA.

All software and computerized data shall be clean, working copies in a format that the MUA has specified and CONTRACTOR is capable of producing. The CONTRACTOR'S failure to Transfer all software, records and data shall subject CONTRACTOR to pay all MUA's costs to reproduce the data, records and software. MUA reserves the right to deduct said costs from the retainage of all outstanding sums owed to CONTRACTOR by MUA.

ARTICLE XIV - ENTIRE AGREEMENT

A. Entire Agreement

This Agreement expresses the entire agreement including any and all Appendices between MUA and CONTRACTOR and supersedes any previous or contemporaneous communications, representations, or agreements. In the event of any dispute as to the meaning or intent of any provision contained in this Agreement, reference shall be made to the Request for Proposal ("RFP"), the addenda to the RFP, the CONTRACTOR'S proposal, and any amendments or clarifications thereto.

B. Amendment and Non-Waiver

This Agreement may be amended or modified only by written agreement signed by both parties. The failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.

C. Partial Validity

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

D. Governing Law

The CONTRACTOR and the MUA agree that this Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

E. Appendices and Exhibits

Appendices A through E contain additional documents which are incorporated into this Agreement.

Exhibits 1 through 5 contain additional documents which are incorporated into this Agreement.

In the event of any conflict between the terms and provisions of the Appendices and/or Exhibits and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail.

ARTICLE XV -- DISPUTE RESOLUTION

A. Dispute Resolution Procedure

1. All disputes arising under this Agreement, whether involving law or fact or both, or extra work, or claims for alleged breach of this Agreement shall within ten (10) calendar days of commencement of the dispute be presented in writing by the CONTRACTOR to the MUA's Executive Director for decision. All papers pertaining to a claim shall be filed in duplicate. A CONTRACTOR'S notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, the CONTRACTOR shall proceed with the

work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived except that if the claim is of a continuing character and notice of the claim is not given within ten (10) calendar days of its commencement, the claim will be considered only for a period commencing ten (10) calendar days prior to the receipt by the MUA of notice thereof.

2. The Executive Director's decision shall be in writing and will be delivered to the CONTRACTOR in accordance with the provisions of Article XVI.F.
3. Any disputes over the interpretation of this Agreement shall be settled amicably, if possible, through negotiations between the CONTRACTOR and the Executive Director.
4. If the CONTRACTOR does not agree with any decision of the Executive Director or if a dispute over the interpretation of this Agreement cannot be settled amicably, then pursuant to the New Jersey Water Supply Public-Private Contracting Act, P.L. 1995, c. 101 (N.J.S.A. 58: 26-19 et seq.), either party may file with the Superior Court a request for an order either to terminate this Agreement or for an order for other appropriate relief to the dispute. This filing shall be in the Superior Court of the State of New Jersey in the County of Hudson. This Agreement shall in all respects be interpreted and construed and the rights of the parties thereto shall be governed by the laws of the State of New Jersey. The CONTRACTOR specifically waives all rights to institute legal action of any nature in any other venue or jurisdiction. This provision has been bargained for between the parties and is intended to confer exclusive jurisdiction upon the court named above.

B. Continuance of Performance

At all times during the course of any dispute, CONTRACTOR agrees to continue to perform as directed by the MUA in a diligent manner and without delay and agrees to be governed by the provisions of this Agreement.

ARTICLE XVI -- MISCELLANEOUS

A. Work Stoppage

In the event concerted activities by labor groups (e.g., picketing) result in CONTRACTOR'S employees not entering and working at the Facilities, the MUA and CONTRACTOR shall seek appropriate administrative or court orders to return operations to normal. During such a period, CONTRACTOR agrees to operate all Facilities at full capacity until labor relations are normalized.

B. Independent Contractor

It is understood that the relationship of CONTRACTOR to MUA is that of an independent contractor and CONTRACTOR is responsible for the payment of all taxes, assessments, and charges on its activities carried out pursuant to this Agreement.

C. Force Majeure

CONTRACTOR shall be excused from strict performance hereunder, to the extent that such performance is impeded or prevented by occurrence of Force Majeure. In the event the CONTRACTOR is prevented from performing this Agreement pursuant to this clause it shall immediately notify the MUA in writing of the cause for such non-performance and

the anticipated extent of any such delay. The CONTRACTOR shall use its best efforts to remove or remedy the Force Majeure and shall resume performance of this Agreement as soon as practicable after the Force Majeure ceases to exist.

D. Assignment

CONTRACTOR shall not assign, subcontract, or transfer its interest in this Agreement without the written consent of the MUA. Notwithstanding any such assignment, CONTRACTOR shall remain fully liable to MUA hereunder, jointly and severally, with any such assignee.

The MUA reserves the right to assign or transfer its interest in this Agreement to the City of Jersey City or any other such government or autonomous agency or body it deems, in its sole and absolute discretion, appropriate without the consent of the CONTRACTOR. The MUA shall give the CONTRACTOR notice within ten (10) days of any assignment or transfer of the name of the new party administering this Agreement. Upon CONTRACTOR'S receipt of such notice of assignment or transfer, the CONTRACTOR shall cooperate in all respects in order to effectuate such assignment or transfer. Upon CONTRACTOR'S receipt of such notice, the new party only and not the MUA shall be responsible in all respects for complying with any and all obligations under this Agreement.

E. Equipment

All equipment or facilities added to Facilities during the Term of the Agreement shall become the property of the OWNER.

F. Notices

All notices shall be in writing and delivered in person or transmitted by Certified Mail, return receipt, postage prepaid. Notices delivered in this manner will be effective one (1) calendar day after being deposited in the U.S. Mail addressed as specified. Notice given by facsimile transmission is effective when received if a signed original is deposited in the U.S. Mail within two (2) business days after transmission. Written notice given in any other reasonable means is effective upon receipt.

Notices required to be given to MUA shall be addressed to the designated representative identified below:

Mr. Daniel Becht, Esq.
Executive Director
Jersey City Municipal Utility Authority
555 Route 440
Jersey City, NJ 07305

With a copy to:

City Clerk of the City of Jersey City
Office of the City Clerk
280 Grove Street
Jersey City, NJ 07302

Notices required to be given to CONTRACTOR shall be addressed to the designated representative identified below:

Thomas M. Neilan
Project Executive
United Water
60 DeVoe Place
Hackensack, NJ 07601

With a copy to:

United Water
Legal Department
200 Old Hook Road
Harrington Park, NJ 07640

or such other designated representatives and addresses as may be specified by written notice by either party to the other, and acknowledged by the other.

The name and address of CONTRACTOR'S agent for service of process is:

Robert A. Gerber
General Counsel
United Water
200 Old Hook Road
Harrington Park, NJ 07640

In the event of any change of the agent for service of process, the CONTRACTOR will immediately notify the MUA of the name and address of the agent.

G. Interpretation

As used herein, any gender includes each other gender; the singular includes the plural, and vice versa. Captions are for the convenience of the reader and do not affect the substance of this Agreement. The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent and no rule of strict construction will be applied against either party.

H. Right of Ownership

All data, reports, records, existing and future facilities, equipment and systems within Facilities and appurtenances shall remain the property of OWNER, and such property cannot be disposed of by CONTRACTOR without the express written consent of OWNER. The physical facilities, offices, all related equipment and systems, and appurtenances thereto provided to CONTRACTOR for the Term of this Agreement shall be returned upon completion of the Agreement in the same condition as they were provided to CONTRACTOR, except for normal wear.

Any equipment provided by CONTRACTOR, at its sole expense, shall remain the property of CONTRACTOR; however, the OWNER shall have the option to purchase the equipment at its depreciated value at the termination of the Agreement.

I. Inspection

MUA and OWNER, its employees, its designated representative, independent contractors, and agents reserve the right to enter on any of the Facilities covered by this Agreement at any time, with or without notice, to observe, inspect or audit any of CONTRACTOR'S operations, activities, or financial and operating records. MUA and OWNER agree to comply with CONTRACTOR'S operating and safety procedures when entering any of the Facilities covered by this Agreement. MUA shall also have the right to require samples of water for testing at MUA's expense.

J. Stipulated Damages

It is hereby understood, acknowledged and stipulated by CONTRACTOR that the deadlines set forth in Article III.B.14 and throughout the Agreement for the delivery of certain reports are intended to be Time of the Essence and that the delivery of those reports listed in Article III.B.14, as well as such other reports (herein collectively the "Reports") in accordance with the deadlines set forth in Article III.B.14 and in this Agreement are integral, essential terms of this Agreement without which the MUA would not have entered into same.

The CONTRACTOR further stipulates, acknowledges and agrees that the Reports are essential because without same, the MUA cannot reasonably and properly evaluate and understand certain aspects of the services being provided by CONTRACTOR pursuant to this Agreement all of which interferes with the MUA's ability to ensure that its rate payers are receiving safe, efficient and cost-effective water services.

CONTRACTOR hereby represents, acknowledges, agrees and stipulates as follows:

- (1) that the deadlines set forth in Article III.B.14 and throughout the Agreement for the delivery of Reports are reasonable and that CONTRACTOR has the capability to comply with same;
- (2) that CONTRACTOR has sufficient staff to provide the Reports in accordance with the deadlines set forth in Article III.B.14 and the Agreement for each Report;
- (3) that CONTRACTOR'S staff has sufficient expertise to understand, obtain, retrieve that data which is necessary to properly complete the Reports in accordance with the deadlines set forth in Article III.B.14 and the Agreement for each Report;
- (4) that CONTRACTOR has and is employing technology that is fully capable of providing its employees with any and all data required for the preparation and delivery of the Reports in accordance with the deadlines set forth in Article III.B.14 and throughout the Agreement;
- (5) that as a result of the MUA's execution of this Agreement, the information contained in each Report, as well as the underlying information, is primarily in the custody, control and possession of CONTRACTOR and that said information cannot readily be obtained by the MUA unless it assigns its own employees and retains professionals, experts and consultants and hires equipment to obtain the information in and for the Reports, all a great expense to the MUA;

- (6) that the MUA should not be required to take the action described in Paragraph 5 of this Article XVI, Section J or bear those expenses which would be attributable to the aforementioned action;
- (7) that it would be impracticable and extremely difficult to fix and ascertain the actual costs and damages which the MUA would sustain in the event it was required to take the action described in Paragraph 5 of this Article XVI, Section J; and
- (8) that the Reports contain information which is not proprietary to the CONTRACTOR and which rightfully belongs to the MUA.

As such, the CONTRACTOR does hereby stipulate and agree that if CONTRACTOR fails to deliver any Report to the MUA in accordance with any deadline set forth in Article III.B.14 and throughout this Agreement, it shall be in breach of this Agreement and, therefore, it shall pay to the MUA the sum of \$500 per day per Report for each and every calendar day until the day each Report is delivered. The CONTRACTOR further stipulates, agrees and acknowledges that the aforementioned amount is not a penalty but constitutes stipulated damages which are a reasonable estimate of those damages which the MUA will actually sustain as a result of CONTRACTOR'S failure to deliver the Reports in accordance with the deadlines described in Article III.B.14 and throughout the Agreement. CONTRACTOR further acknowledges that by executing this Agreement, it is stipulated and agreed to the aforementioned estimate of damages and that same constitutes a fair and efficient remedy against the CONTRACTOR for the benefit of the MUA.

The CONTRACTOR expressly waives any and all right which it may possess to challenge the enforceability of the aforementioned stipulation of damages in any court or other agency having jurisdiction over this Agreement.

The remedy set forth above is not exclusive but is in addition to the remedy in Article XIII, and nothing in this section shall in any way prohibit the MUA from exercising any rights which it may have pursuant to Article XIII of this Agreement to terminate the Agreement in the event the CONTRACTOR fails to comply with the Report deadlines set forth in Article III.B.14 of the Agreement.

No delay on the part of the MUA in exercising any right, granted to it in this section shall operate as a waiver of or otherwise affect any such right, nor any single partial exercise thereof or preclude any further exercise of the MUA's rights under this section or Article XIII at any future time.

IN WITNESS WHEREOF, four (4) identical counterparts of this Agreement, each of which counterparts shall, for all purposes, be deemed an original of said Agreement, have been duly executed by the parties hereinabove named on the day and year first hereinabove written.

**JERSEY CITY
MUNICIPAL UTILITIES AUTHORITY**

WITNESS:

By: DANIEL BECHT, ESQ.
Executive Director

Shay Corvino

WITNESS:

CONTRACTOR
Robert J. Salullo

By: Robert J. SALULLO
President

IN WITNESS WHEREOF, four (4) identical counterparts of this Agreement, each of which counterparts shall, for all purposes, be deemed an original of said Agreement, have been duly executed by the parties hereinabove named on the day and year first hereinabove written.

JERSEY CITY
MUNICIPAL UTILITIES AUTHORITY

Kurtine Palke
WITNESS:

[Signature]
By: DANIEL BECHT, ESQ.
Executive Director

CONTRACTOR

WITNESS:

By: