CITY OF
FORT LAUDERDALE

All-America City

Memorandum

Memorandum No: 23-001

Date: January 4, 2023

To: Honorable Mayor, Vice Mayor, and Commissioners

From: Greg Chavarria, City Manager Greg Chavarria (Jan 4, 2023 16:16 EST)

Re: Prospect Lake Water Treatment Plant

The purpose of this memorandum is to provide an update on the Prospect Lake Water Treatment Plant Project (WTP), including an overview of the draft Comprehensive Agreement, draft Labor Services Agreement, and financial impacts associated with the project. The WTP is being considered as a Public Private Partnership (P3) between the City of Fort Lauderdale and the Project Team, formed by Prospect Lake Holdings, LLC, (Ridgewood Infrastructure) and IDE PLCWC, Inc (IDE; together with Ridgewood Infrastructure), to meet long term, clean water treatment needs for the City.

On December 21, 2020, the City received an unsolicited proposal from the Project Team pursuant to Section 255.065, Florida Statutes, followed by a second unsolicited proposal on May 17, 2021, to design, construct, operate, and maintain one or more new water treatment plants and associated systems for the City's water utility.

On June 1, 2021, the City Commission approved Resolution 21-108, providing notice of intent to enter into a Comprehensive Agreement for a qualifying project submitted as an unsolicited proposal to design, construct, operate, and maintain one or more new water treatment plants and associated systems for the City's water utility, and notice of intent to accept other proposals for the same project. The period to accept other proposals ran for 90 days from the initial date of publication of June 9, 2021, to September 7, 2021. During that time, two additional proposals were received.

On January 18, 2022, City staff and Ernst & Young Infrastructure Advisors, LLC presented results of a technical and financial analysis, followed by presentations by the four proposers at the March 1, 2022, Conference Meeting. On March 1, 2022, the City Commission approved Resolution 22-57, providing notice of the decision to proceed with the unsolicited proposal submitted by the Project Team and authorizing negotiations of a proposed Interim Agreement or Comprehensive Agreement or both in accordance with Section 255.065 Florida Statutes.

Comprehensive Agreement:

The draft Comprehensive Agreement (Agreement), together with its 23 Annexes, is attached. The Agreement is the result of over 6 months of negotiations between the City, its legal, financial, and technical advisors, and the Project Team in order to memorialize contract terms and conditions. These working drafts are still in coordination between City staff and the Project Team and are not in final execution form for consideration by the City Commission. The Agreement provides detailed terms and conditions for financing, design, construction, operation, and maintenance of a Water Treatment Plant (WTP) (referred to as "The Project") capable of producing 50 Million Gallons per Day (MGD) at the Prospect Lake Wellfield site, generally located north of Prospect Road and west of NW 31st Ave. The Project Team, utilizing Kiewit Corporation as design-builder and an IDE Americas, Inc. affiliate as the Operations and Maintenance (O&M) services provider, will collectively deliver the Project to the City in a 42-month construction period followed by 30-year operational period. The City will retain legal ownership of the site and the Project throughout the term of the agreement.

The proposed Project has an aggregate, fixed project cost of $485M, which provides for construction of a treatment facility utilizing a combination of nanofiltration membrane and ion exchange technologies capable of producing 50 MGD of treated water, connections to both the existing raw groundwater wellhead network pipe and production water delivery pipe, chemical storage tanks, one deep injection well, backup generators, control room, laboratory, and administrative and warehouse space. Annex M identifies design requirements and construction standards for each element of the facility, while Annex C contains performance testing and commissioning plans for acceptance of the facility.

Connecting the Project into the City's existing water system requires additional infrastructure investments and improvements beyond what is in the proposal. Integration of the new treatment plant into the City's existing water system and adapting the proposed design for existing site conditions requires an additional investment of approximately $181M for infrastructure elements, referred to as the Project Enabling Works, which is separate from the Project Team's original scope of responsibility under the Project. These additional investments, identified in Annex B and Section and 11.02(b), are to be fully funded by the City but will be constructed, or cause to be constructed, by either the City or the Project Team, with the City fully or partially retaining cost, schedule, and performance risk for the scope which shall remain under the city, while the Project Team shall retain such risks for scope performed under its responsibility. Improvements include modifications to the existing wellfield raw water supply pipelines, construction of a new 54" product water transmission line connecting the Prospect WTP to the existing Fiveash distribution system, upgrades to the Fiveash distribution pumps, a 13.2 kV electrical power feed and transformer building, water and wastewater utility connections, and a communication system to allow plant operators to synchronize wellfield raw water withdrawals and finished water distribution. In addition, Section 8.01 and 11.02 identify infrastructure necessary to accommodate existing wellfield conditions and finished water

standards, including a pretreatment facility to boost pressure and filter sand and debris from the wellheads, as well as a second injection well and providing certain Chemical Systems to meet Florida Department of Environmental Protection (FDEP) requirements and City standards for providing high quality water to residents.

In order to leverage the City's financing power and to maximize the potential for lowering the water tariff to residents and customers, the City determined it would provide 75% of the initial Capital Expense (CapEx) with the Project Team providing 25% of CapEx for construction of the Project. The City will also provide 100% of funding for all Project Enabling Works. The Project Team assumes risk for cost overruns or delays associated with the Project. Annex A of the agreement identifies relief events that are beyond the control of the Project Team for which the City will assume risk should they occur. Section 4.04 and 4.07 authorize the City to review and approve Project design documents and inspect work as completed to ensure it meets City standards. Sections 8.02 and 8.03 provide a process to approve change orders to the approved design standards and construction standards, if requested by either the City or the Project Team, if necessary due to unforeseen environmental conditions, new regulatory requirements, or other requirements. As construction ends, Annex C identifies responsibilities for commissioning and performance testing, and final acceptance, while Section 4.06 provides a one-year warranty for the Project. Should the Project Team fail to complete construction and begin commercial operations within 48 months after Notice-To-Proceed, Section 4.10 provides liquidated damages until commercial operations are achieved. This construction period may be adjusted should any relief events or approved changes occur.

The Commercial Operations Date marks the end of the construction phase and beginning of the 30-year operational phase. In this phase the Project Team will be responsible for 100% of the inflation risk related to operation and maintenance of the facility, with exception of electricity, chemical, and labor costs.

The Project will produce up to 50 MGD of potable water for delivery to the City's water distribution system in accordance with an operational schedule provided two months in advance by the City in accordance with Section 6.03. Annexes G and H contain specific water quality standards for raw water entering the plant and production water being delivered to the City's water distribution system, respectively. These standards ensure that production water will meet or exceed all current regulatory requirements and City standards, with water testing completed on a daily schedule to ensure conformance. The Project Team will be responsible for planning and conducting all repairs, replacement, and maintenance of the plant as well as completing documentation necessary to meet regulatory requirements, thereby shifting these operating risks over the term of the operational phase to the Project Team as established in Annex F. While operational management will be provided by the Project Team, the City will provide a labor force of approximately 40 employees, for daily operations, as well as providing chemicals and electrical service to operate the Project, thereby taking advantage of the City's purchasing power for these services that result in a lower water rate for its customers.

Annex W provides that the City will make a monthly availability payment to the Project Team during the operating phase of the agreement related to the achieved/City approved construction, ongoing operations, and maintenance of the Project. This payment will be reduced in any month that the Project Team fails to deliver the agreed upon amount of water, the water fails to conform to water quality standards identified in the Agreement or other amounts are owed to the City under the Agreement. The Project Team has provided guaranteed maximum consumption rates for both electricity and chemicals during operations and is responsible for any exceedances in accordance with Annex L.

A key aspect of this Public Private Partnership is shifting cost inflation risk during construction and the 30-years of operations from the City to the Project Team. Since the September 6, 2022, presentation, the Project Team has held its fixed Project price. The Agreement includes details of the financing strategy to provide funding for the Project CapEx, Project Enabling Works, and operational costs throughout the 30-year period. The City will fund 75% of the $485M CapEx and 100% of the $181M Project Enabling Works costs, while the P3 will provide 25% of the $485M CapEx funding. The City will make an initial availability payment of $80,500 per day, which escalates by 5% annually for the first 5 years and then by 2.5% for the remaining 25 years of the agreement, equating to an initial rate of $1.61 per 1,000 gallons produced by the Project if operating at full capacity. When input into the City's water and sewer financial model, the water rate is projected to increase from $31 per month in 2022 to $75 per month in 2032, or a 143% increase over the ten-year period. If the City were to complete this project without the risk transfer benefits provided by the Project Team (e.g., an expedited timeline, inflation de-risking, among others) the 2032 water rate is estimated to be $73 per month or 2.7% lower.

The Labor Services Agreement (Annex N) provides terms for City employees to work at the Project under the operational control of the Project Team. The Project Team will provide technical and operational supervisory positions while approximately 40 City employees will staff the facility to provide for daily operations and maintenance requirements. A City appointed onsite liaison will serve as single point of contact for labor issues, with the City retaining authority for salaries and benefits, hiring and promotion decisions, disciplinary actions, and any actions related to the respective Union Collective Bargaining Agreements. The Project Team shall be responsible for providing training for the employees, and the City shall agree to maintain stability in employees assigned to the Project to the extent possible.

City staff, their external consultants, and the Project Team continue to review and finalize terms of the Comprehensive Agreement with annexes, including the Labor Services Agreement. The City has initiated discussions with the Teamsters to discuss any union concerns and ensure City employees are involved in this process. The City plans to conduct a town hall meeting for the public and establish a public website with all documents and presentations to increase awareness of the project with our residents.

The Comprehensive Agreement and Labor Services Agreement tentatively scheduled for City Commission consideration on February 7, 2023.

Attachments:
Comprehensive Agreement for the Prospect Lake Clean Water Center in Fort Lauderdale, Florida (draft)
Annex A Definitions
Annex B City Infrastructure Obligations
Annex C Commissioning Obligations, Performance Testing, and Transition Plan
Annex D Form of Construction Progress and Operations Period Reports
Annex E Site Description, Studies and Inspections, and Required Easements
Annex F O&M Standards
Annex G Feedstock Water Specifications
Annex H Product Water Legal and Contractual Standards and Non-Conforming Product Water Deductions
Annex I Government Approvals
Annex J Baseline Water Specifications
Annex K Required Insurance
Annex L Guaranteed Maximum Electricity and Chemical Consumption
Annex M Design Requirements and Construction Standards
Annex N Form of Labor Services Agreement
Annex O Authorized Representatives
Annex P Form of Subordinate Bond (tbd)
Annex Q Security Plan
Annex R Legal Opinion (tbd)
Annex S End of Term Handback Requirements
Annex T Form of Payment and Performance Bonds
Annex U Form of Funding Request
Annex V Communications Protocol
Annex W Availability Payment Rate

c: Anthony G. Fajardo, Assistant City Manager
Susan Grant, Assistant City Manager
D'Wayne M. Spence, Interim City Attorney
David R. Soloman, City Clerk
Patrick Reilly, City Auditor
Department Directors
CMO Managers

December [•], 2022

Comprehensive Agreement

for the Prospect Lake Clean Water Center

in Fort Lauderdale, Florida

between

Prospect Lake Water, L.P.
in its capacity as the Project Company,

Prospect Lake Holdings, L.P. and IDE PLCWC, Inc.
in their capacity as Equity Providers

and

The City of Fort Lauderdale

Annex O:	Authorized Representatives
Annex P:	Form of Subordinate Bond
Annex Q:	Site Security and Cybersecurity Plan
Annex R:	Form of Legal Opinion of Nabors, Giblin & Nickerson, P.A.
Annex S:	End of Term Handback Requirements
Annex T:	Forms of Payment and Performance Bonds
Annex U	Form of Funding Request
Annex V	Communications Protocol
Annex W	Availability Payment Amount

This Comprehensive Agreement (this "**Agreement**") is entered into this ___ day of December, 2022 by and between the CITY OF FORT LAUDERDALE, FLORIDA, a Florida municipal corporation (the "**City**"), PROSPECT LAKE WATER, L.P., a limited partnership formed under the laws of the State of Delaware (the "**Project Company**"), and PROSPECT LAKE HOLDINGS, L.P. and IDE PLCWC, INC. (each, an "**Equity Provider**" and collectively the "**Equity Providers**" and together with the City and the Project Company, the "**Parties**" and each a "**Party**"), pursuant to Section 255.065(7), Florida Statutes.

W I T N E S S E T H :

WHEREAS on December 21, 2020, the City received the Unsolicited Proposal from Affiliates of the Project Company pursuant to Section 255.065(3), Florida Statutes, to design, construct, operate and maintain an advanced water treatment facility known as the Prospect Lake Clean Water Center (the "**Project**");

WHEREAS, pursuant to Resolution No. 21-108, the City Commission, at its meeting of June 1, 2021, determined that the Unsolicited Proposal serves a public purpose as a water treatment plant to produce clean drinking water which will be consumed by the public at large and, as proposed, constitutes a qualifying project pursuant to Section 255.065, Florida Statutes;

WHEREAS, the City Commission, at its meeting of March 1, 2022, selected the Unsolicited Proposal as the preferred and first ranked proposal in accordance with Section 255.065(5)(c), Florida Statutes, thereby authorizing the City to commence negotiation of a comprehensive agreement with the Project Company in respect of the Project;

WHEREAS, on May 16, 2022, the City, Ridgewood and IDE entered into an Interim Agreement (the "**Interim Agreement**") regarding access to the Site prior to execution of this Agreement; and

WHEREAS, the City Commission, at its meeting of December [•], 2022, adopted Resolution No. [•] authorizing the execution and delivery of this Agreement by the City.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

Section 1.01 Definitions.

Definitions used in this Agreement have the meanings specified in Annex A (*Definitions*).

Section 1.02 Interpretation. Unless the context clearly requires otherwise:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

(b) Whenever the context may require, any pronouns shall include the corresponding masculine, feminine, and neuter terms;

(c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(d) The verb "will" shall be construed to have the same meaning and effect as the verb "shall";

(e) Any definition of or in reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);

(f) Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be;

(g) The words "herein," "hereunder," "hereof" and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(h) All references herein to Sections, Parts, and Annexes shall be construed to refer to Sections, Parts, and Annexes of this Agreement. The Annexes to this Agreement are an integral part hereof. The provisions of this Agreement shall prevail over the provisions of the Annexes to the extent of any inconsistency; and

(i) References to this Agreement or to any other agreement or document relating to the Project shall include a reference to this Agreement, or, as the case may be, such other agreement or document as amended from time to time.

Section 1.03 Headings.

The captions of the articles, sections and subsections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

ARTICLE II

TERM

Section 2.01 Effective Date and Term.

(a) Effective Date. This Agreement shall be in full force and effect, and shall be binding upon the Parties, as of the date of signature hereof by all Parties hereto ("**Effective Date**"), and is specifically intended to comply with the provisions of Section 8.17 of the City Charter. The Parties acknowledge that, as of the Effective Date, (i) the City and the O&M Contractor have entered into the Labor Services Agreement and such agreement is in full force and effect and (ii) the City has delivered to the Project Company a legal opinion of its external counsel Nabors, Giblin & Nickerson, P.A. in the form attached hereto as Annex R (*Form of Legal Opinion of Nabors, Giblin & Nickerson, P.A.*).

(b) Term. The term of this Agreement ("**Term**") shall commence on the Effective Date and shall continue to the Termination Date.

(c) Conditions Subsequent. No later than 30 days after the Effective Date, the Project Company shall deliver written notice to the City confirming that the Project Company has obtained (i) the Project Company Required Insurance that is required to be in effect for the DB Period in accordance with Annex K (*Required Insurance*) and Section 9.01(a) (*Required Insurance Policies and Coverage*) as of the Conditions Subsequent Date and (ii) the payment and performance bonds from the DB Contractor in accordance with Section 4.06(b) (*DB Performance Security*). Such written notice shall attach certificates of insurance evidencing that the provisions of Annex K (*Required Insurance*) have been complied with in full in connection with such Project Company Required Insurance and evidence (which may be in the form of a letter from the applicable insurance broker) that the relevant premiums for such Project Company Required Insurance have either been paid or reasonable arrangements for payment of such premiums have

been made, as well as copies of the DB Contractor's payment and performance bonds demonstrating that such bonds satisfy the requirements of Section 4.06(b) (*DB Performance Security*).

ARTICLE III

SITE

Section 3.01 Description of Site; Ownership; Rate Setting.

(a) The City hereby represents and warrants that:

(i) A true, correct and complete description of the Site is attached hereto as Annex E-1 (*Site Description*).

(ii) (A) the Site is available for the purposes of this Agreement and (B) the City has good and valid title to the Site, free and clear of all Liens other than Permitted Liens, sufficient in all respects to grant to the Project Company-Related Entities the Right to Utilize the Site under this Agreement, subject only to the terms and conditions of this Agreement.

(b) Notwithstanding anything else in this Agreement, the City shall retain legal ownership of the Site and the Project throughout the Term. The Site and the Project shall constitute a part of the System as defined in and for purposes of the Bond Resolution, and the City shall retain all rights to set rates with respect to customers of the System as contemplated by Section 8.16 of the City Charter.

Section 3.02 License to Use the Site.

(a) The City hereby grants the Project Company-Related Entities, effective as of the Effective Date, and agrees that thereafter throughout the Term the Project Company-Related Entities shall enjoy, the Right to Utilize the Site, subject to the terms and conditions of this Agreement, and free and clear of all Liens other than Permitted Liens. The Parties agree that the Right to Utilize the Site is granted in consideration for the terms and conditions of this Agreement, and no other fee, payment, tax, or other consideration is or shall be necessary to maintain the Right to Utilize the Site throughout the Term. Except as expressly set forth in this Agreement, the foregoing right and license is exclusive to the Project Company-Related Entities and irrevocable by the City during the Term.

(b) The City shall ensure that, as of the Conditions Subsequent Date, the Site is in a condition so that the Project Company-Related Entities are able to commence promptly and thereafter continue the DB Work. Prior to the Commercial Operation Date, the City shall ensure access to the Site via the roads and access points existing on the Effective Date. The Project Company shall implement the roadway access improvements that constitute part of the DB Work as specified in Annex M (*Design Requirements and Construction Standards*). Following the Commercial Operation Date, the City shall ensure access to the Site via roads and access points appropriate for the number and type of vehicles and equipment to be used at the Site consistent with the Site Access Plan and such roadway access improvements implemented by the Project Company. Throughout the Term, the City shall ensure that such access is continued uninterrupted. The City shall respond promptly to any notification from a Project Company-Related Entity that access to the Site has been interrupted in any manner (any such interruption being an "**Interruption Event**") and cause the source of such Interruption Event to be removed or eliminated.

(c) The City agrees that the Project Company-Related Entities, subject to the terms and conditions of this Agreement, shall be entitled to undisturbed use and access to, and shall have the right of quiet and peaceful enjoyment of, the entire Site throughout the Term free of any act or acts of the City or anyone claiming by, through or under the City, except as expressly agreed upon in this Agreement. The City shall, at all times during the Term, defend (a) the City's title in the Site and (b) the Right to Utilize the

Site granted by the City hereunder, or any portion thereof, in each case, against any Person claiming any fee, leasehold or other interest adverse to the City or the Project Company in the Site, or any portion thereof, as applicable, except where such adverse interest arises as a result of the act or omission by the Project Company or any other Project Company-Related Entity in breach of the provisions of this Agreement or the negligence, willful misconduct or violation of Applicable Law by the Project Company or any other Project Company-Related Entity in any material respect.

(d) The Project Company-Related Entities shall not use the Site for any purpose other than in furtherance of the Right to Utilize the Site and otherwise for the purposes of carrying out its obligations under this Agreement and the Key Contracts to which it is a party with respect to the Project.

(e) Following the grant by the City of the Right to Utilize the Site in accordance with subsection (a) above and subject to the City's obligations under subsection (b) above, the Project Company shall have the sole responsibility for the Site and the ongoing maintenance thereof (including cleaning and securing the Site and, to the extent necessary, moving or removing any construction thereon) (in each case, other than with respect to the City facilities identified on Annex E-1 (*Site Description*) as "City Facilities"), subject to the terms and conditions of this Agreement, including the right of the City to conduct Oversight and the City's right, if the City reasonably expects an emergency to be imminent that threatens human life or safety, to reasonably access the Project Site to mitigate any such emergency. Any costs and expenses incurred by the Project Company in relation to such responsibilities for the Site shall be borne by the Project Company.

(f) Notwithstanding the foregoing, on the date when Final Acceptance is achieved, the Project Company shall be deemed to have relinquished the Right to Utilize the Site in connection with the Construction Access and Laydown Areas, and such Construction Access and Laydown Areas shall cease to constitute part of the Site for all purposes of this Agreement (other than with respect to any areas subject to a Required Access Right pursuant to Section 3.06 (*License to Use*)).

Section 3.03 Taxes.

(a) Except as provided in subsection (c) below, the City agrees that it shall not impose, and shall not assert that the Project Company is required to pay, any Taxes with respect to the Project or the Site, including:

(i) any property Tax on the Project or the Site;

(ii) any Tax on or related to Feedstock Water or Product Water;

(iii) any possessory interest or similar Tax imposed with respect to the Project; and

(iv) any Tax with respect to selling water to the City.

(b) The Project Company agrees not to claim depreciation or other Tax ownership of the Project or the Site.

(c) The Project Company shall be required to pay certain Taxes imposed in connection with the construction or operation of the Project in accordance with Applicable Law, including any sales or use tax imposed on building materials incorporated in the Project, operating or maintenance supplies and services, whether any such Tax exists on the Effective Date or is imposed at any time during the Term. For the avoidance of doubt, the Project Company shall not pay any Taxes associated with Chemicals or electricity provided by the City pursuant to Section 14.03 (*Coordination and Payment of Electricity and Chemical Supply*), which Taxes, if any, shall be paid by the City.

(d) Except as described above, there shall be no adjustment of the Availability Payment, and no relief from any obligation of the Project Company hereunder on account of (i) any ability of the Project Company to fully utilize any income tax credits which may have been assumed on account of the transactions contemplated hereby or (ii) any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Project Company in connection with such transactions.

Section 3.04 Site Conditions.

(a) If the Project Company encounters any Archeological Remains prior to or following commencement of the Work, other than Excluded Site Conditions, the Project Company shall notify the City as soon as practicable. The Project Company shall then follow the reasonable directions of the City in relation to the activities to be taken in response to the discovery of such Archeological Remains, subject to the Project Company's rights under Article X (*Relief Events*), and if so directed shall allow the City to enter the relevant part of the Site for purposes of such response.

(b) If either Party discovers any Environmental Condition prior to or following commencement of the Work, such Party shall notify the other Party as soon as practicable. The Project Company shall then carry out all Work related to removal, remediation and clean-up of Environmental Conditions in accordance with the provisions of this Agreement and the Project Requirements, subject to the Project Company's rights under Article X (*Relief Events*) in connection with Third Party Environmental Conditions. Neither the Project Company nor the DB Contractor shall be deemed to be the generator of any Hazardous Material relating to Third Party Environmental Conditions. If any Project Company Environmental Condition arises, the Project Company shall (i) pay any resulting fines, assessments, levies, impositions, penalties and other charges imposed by any Governmental Authority on the Project Company, (ii) indemnify, defend and hold harmless the City in accordance with Section 18.08 (*Indemnification*) of this Agreement from any loss and expense incurred by the City in connection therewith and (iii) comply with any corrective action plan filed with or mandated by any Governmental Authority in order to remedy a failure of the Project Company, DB Contractor or any subcontractor to comply with Applicable Law.

(c) If the Project Company discovers any Geological Obstructions or Endangered Species prior to or following commencement of the Work, other than Excluded Site Conditions, it shall notify the City as soon as practicable. The Project Company shall then carry out all Work notwithstanding the discovery of any Geological Obstructions or Endangered Species in accordance with the provisions of this Agreement and the Project Requirements, subject to the Project Company's rights under Article X (*Relief Events*).

(d) At any time during the Term, the Project Company may submit a Relief Event Claim in accordance with Article X (*Relief Events*) if the discovery of any Adverse Site Condition delays or increases the cost of, , completion of the Work, causes the Project Company to undertake any Extra Work, or if the City carries out, or engages third-party contractors to carry out, any remediation work that materially interrupts or interferes with the Project Company's performance of the Work.

Section 3.05 Safety and Security of Site.

The Project Company shall maintain the safety of the Site during the Project Company's performance of the Work in accordance with the terms of this Agreement, consistent with Applicable Law and otherwise in accordance with the Project Requirements. Without limiting the foregoing, the Project Company shall:

(a) take reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury or loss by reason of or related to the Work to, (A) all employees performing the Work and other Persons who may be directly affected thereby, (B) all visitors to the Site, (C) all materials

and equipment under the care, custody or control of the Project Company on the Site, (D) other property constituting part of the Project, and (E) any property of the City affected by the Work;

(b) give all notices and comply with Applicable Law relating to the safety of Persons or property or their protection from damage, injury or loss while on the Site;

(c) designate a qualified and responsible management-level employee of the Project Company (or, during the DB Period, the DB Contractor or, during the Operations Period, the O&M Contractor; provided, that the O&M Contractor may designate a City Employee in accordance with the Labor Services Agreement) whose duty shall be the development and implementation of safety and health requirements at the Site, the prevention of fires and accidents and the coordination of such activities, with federal, State, and City officials;

(d) operate all equipment in a manner consistent with the manufacturer's safety requirements;

(e) develop and implement a health and safety program that includes a written Site-specific health and safety plan designed to implement the requirements of this Section 3.05 (*Safety and Security of Site*);

(f) prepare, and keep current throughout the Term, a security plan for the Project in accordance with the requirements of Annex Q (*Site Security and Cybersecurity Plan*) (the "**Security Plan**"); and

(g) purchase, transport, install, operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Project, and conduct vulnerability assessments, in accordance with the Security Plan.

Section 3.06 License to Use.

The City agrees to provide the Project Company-Related Entities with licenses to access and use and vacant possession of certain parcels of land outside the Site (after the Construction Access and Laydown Areas cease to constitute part of the Site pursuant to Section 3.02(f) (*License to Use the Site*)), the locations and intended uses of which are listed on Annex E-3 (*Required Access Rights*) (such licenses constituting the "**Required Access Rights**"). The Project Company shall determine the scope of such parcels of land as being adequate based on the Design Requirements and Construction Standards and the O&M Standards, and the Parties agree to modify Annex E-3 (*Required Access Rights*) from time to time to reflect the final dimensions and boundaries of such parcels of land as necessary. The City hereby acknowledges and agrees that the parcels of land described in the final Annex E-3 (*Required Access Rights*) shall constitute part of the Site and automatically included in the Right to Utilize the Site granted in Section 3.02 (*License to Use the Site*) of this Agreement. The Project Company shall coordinate with applicable Utility Owners regarding any Utilities and Utility Adjustment Work on land over which the Project Company has been granted access pursuant to this Section 3.06 (*License to Use*) and Annex E-3 (*Required Access Rights*).

ARTICLE IV
DESIGN-BUILD PERIOD

Section 4.01 City DB Period Rights and Responsibilities.

(a) Utilities. The City shall provide or cause to be provided to the Project Company an adequate supply of electricity, water, sewer and other Utility services required for the performance of the DB Work in the amounts and by the dates specified in Annex B (*City Infrastructure Obligations*). The Project Company shall pay for the costs related to the use of such Utilities prior to the Commercial

Operation Date, other than the supply of electricity and the supply of potable water, which supply the City shall pay for.

(b) City Infrastructure Obligations. The City shall undertake and complete the City Infrastructure Obligations in accordance with the schedule and other requirements specified in Annex B (*City Infrastructure Obligations*). The City shall not modify the schedule or any other aspect of the City Infrastructure Obligations specified in Annex B (*City Infrastructure Obligations*) without the Project Company's prior written consent.

(c) City-Managed Approvals. The City shall (i) no later than 60 days after the Effective Date, cause Section 47-10.10 of the Florida Unified Land Development Regulations – List of Permitted and Conditional Uses – Commerce Center (CC) District to be amended to add a water treatment plant to the use table as described in the City's Planning and Zoning Board Case Number UDP-T22004 and (ii) until Final Acceptance has occurred, obtain and maintain light and noise variances from the City Building Department (provided, that the Project Company has submitted to the City the applicable waiver request), in each case of (i) and (ii) on terms and conditions reasonably acceptable to the Project Company.

Section 4.02 Project Company DB Period Rights and Responsibilities.

(a) Commencement and Prosecution of the DB Work.

(i) Following the Effective Date, the Project Company shall promptly proceed to undertake, perform and complete the DB Work in accordance with the Project Requirements. Notwithstanding the foregoing, the Project Company shall not commence any construction work at the Site prior to the delivery of the written notice specified in Section 2.01(c) (*Conditions Subsequent*). If the Project Company fails to deliver such written notice or as a result of the Project Company being late delivering such notice, within the period specified in Section 2.01(c) (*Conditions Subsequent*), the Project Company shall not be entitled to the remedies set forth in Article X (*Relief Events*) in connection with any Relief Event that occurs in the period during which the Project Company was late in delivering such written notice, to the extent such Relief Event would have been insured by the Project Company Required Insurance for the DB Period or such Relief Event would not have occurred if the written notice had been timely delivered.

(ii) Without prejudice to the City's express obligations under this Agreement, the City shall have no responsibility to perform and complete the DB Work for the Project.

(b) Design Build Subcontractor(s). The Project Company is permitted to subcontract the performance of the DB Work. The Project Company shall not be relieved of any of its obligations, liabilities or responsibilities under this Agreement by reason of its obligations being carried out by any subcontractor, and the Project Company shall require any such subcontractor to comply with the Project Requirements applicable to the portion of the DB Work being performed by such subcontractor. The provision of consent by the City to the appointment of any subcontractor (if such consent is required) shall not relieve the Project Company of any of its obligations, liabilities or responsibilities under this Agreement or render the City liable in any way to such Person or in any way bound by the terms of any subcontract or replacement thereof.

Section 4.03 Project Schedule. On the Effective Date, the Project Company has delivered to the City a Project Schedule demonstrating that the Project Company is projected to achieve the Commercial Operation Date on or before the Commercial Operation Longstop Date. The Project Company shall, as required from time to time until the Commercial Operation Date, but no less than once per calendar month, update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of the Project Company's plans for the completion of the DB Work in accordance with the requirements of this Agreement.

Section 4.04 Design Submittals.

(a) The Project Company shall, at its sole cost, prepare and submit each Design Submittal to the City within the time period set out in the Design Submittal Requirements and in accordance with the other requirements set out therein. The Project Company shall prepare the Design Submittals in compliance with the Design Requirements and Construction Standards, Applicable Law and Governmental Approvals so as to ensure that the Project, when commissioned, is capable of operating in compliance with the O&M Standards. In accordance with and to the extent required by the Design Submittal Requirements, the City shall review, comment and approve each such Design Submittal.

(b) Any Dispute arising between the City and the Project Company in relation to the compliance of any Design Submittal with the requirements of this Agreement may be referred by either such Party for resolution in accordance with the Dispute Resolution Procedure. The City shall not be required to provide any response or approval in connection with such Design Submittal pending the resolution of such Dispute pursuant to the Dispute Resolution Procedure.

Section 4.05 Governmental Approvals.

(a) Each of the City and the Project Company shall obtain and maintain all Governmental Approvals required by Applicable Law to be obtained by such Party for the performance of the Work, including those in respect of which such Party is indicated as the signing party on Annex I (*Governmental Approvals*); provided, that the Project Company shall also obtain and maintain those Governmental Approvals in respect of which the City is indicated as the signing party but the Project Company is indicated as the responsible party (or the "permit application generator") on Annex I (*Governmental Approvals*) (the "**Project Company-Managed Approvals**"). The City shall pay the costs of all Governmental Approvals to be obtained by the City (excluding the Project Company-Managed Approvals) and except to the extent arising in connection with a Relief Event, the Project Company shall pay the costs of all Governmental Approvals to be obtained by the Project Company hereunder (including Project Company-Managed Approvals).

(b) Each of the City and the Project Company shall provide the other Party with copies of all Governmental Approvals for which the first Party is responsible, and related applications.

(c) Each of the City and the Project Company shall manage the process of obtaining such Party's applicable Governmental Approvals in a manner which affords the other Party a reasonable opportunity, in advance of submittal, to review and comment upon all material documentation submitted to and issued by the Governmental Authority in connection therewith. Notwithstanding the foregoing, no such opportunity for review by such other Party shall shift responsibility from the Party obligated to obtain the applicable Governmental Approval. Provided that the Project Company has satisfied its obligations under this Section 4.05(c) (*Governmental Approvals*), the City shall promptly (and, in any event, within -ten Business Days of receipt of a complete application or submittal) execute any application or other submittal provided by the Project Company to the City for purposes of obtaining or maintaining a Project Company-Managed Approval. The Project Company shall not, unless required by Applicable Law, knowingly take any action in connection with any Governmental Approvals under the Project Company's responsibility that would impose an unreasonable cost or material burden on the City in its capacity as a recipient of Product Water under this Agreement.

(d) Each of the City and the Project Company shall provide reasonable assistance to the other Party in connection with the other Party's obligation to obtain and maintain the applicable Governmental Approvals, including attending public hearings and meetings of the Governmental Authorities charged with issuing such Governmental Approvals, and providing the other Party with existing relevant data and documents that are within the first Party's custody or control or are reasonably obtainable by such Party and which are required for such purpose. Any such assistance shall be provided only upon

the request of one Party made directly to the other, and neither the City nor the Project Company shall have any affirmative obligation independently to initiate such assistance. Neither the City nor the Project Company shall take any action which seeks to cause the denial or delay of any application for any Governmental Approval.

Section 4.06 DB Warranties and Performance Security.

(a) DB Warranties. The Project Company shall obtain from the DB Contractor representations, warranties and guarantees with respect to design, materials, workmanship, equipment, tools and supplies furnished by the DB Contractor. The warranties from the DB Contractor shall be for a period of not less than one year from the Commercial Operations Date. All representations, warranties, guarantees and obligations of the DB Contractor (a) shall be written so as to survive all City inspections, tests and approvals and (b) shall provide that such representations, warranties, guarantees and obligations shall also be for the benefit of and enforceable by the City and its successors and assigns; provided, that, except upon the occurrence and continuance of a Project Company Default, the City shall agree to forbear from enforcing such warranties to the extent that the Project Company is already enforcing such warranties.

(b) DB Performance Security. In accordance with Section 205.065(5)(b) and (7)(a)(1), Florida Statutes, no later than 30 days after the Effective Date, the Project Company shall obtain from the DB Contractor performance and payment bonds substantially in the form of Annex T (*Forms of Payment and Performance Bonds*) in an amount equal to the DB Contract price. Such bonds shall be written by a surety licensed to do business in the State that is rated, at the time such bonds are issued, as "A-1" or better as to general policy holders rating as reported in the then most current Best Key Rating Guide, published by A.M. Best Company, Inc. the Project Company shall (or shall cause the DB Contractor to) record such bonds in the Public Records of Broward County, Florida prior to the commencement of any DB Work on the Site. Such bonds (including any multiple obligee rider in respect thereof) shall expressly name the City as an additional obligee or other applicable type of beneficiary of such bonds with the right to enforce such bonds if this Agreement is terminated and the City succeeds to the position of the Project Company as a party to the DB Contract in accordance with Section 16.08(c) (*Treatment of Key Contracts*).

Section 4.07 City Oversight During DB Period.

(a) Oversight Generally. Subject to (1) reasonable safety precautions and execution of waivers of liability acceptable to the Project Company on the part of all visitors to the Site and (2) reasonable prior notice requirements, the City shall have the right at all times to conduct Oversight of the DB Work to the extent the City deems necessary or advisable, in its sole discretion; provided, that the City shall conduct any such Oversight in a manner that does not interfere with the DB Work. The City may, in its sole discretion, designate any Person or entity to carry out such Oversight on its behalf.

(b) Periodic Meetings.

(i) Throughout the DB Period, the Project Company shall conduct regular monthly progress meetings, in which the Project Company shall invite the City to participate. At the City's request, the Project Company shall require relevant Contractors or other subcontractors of the Project Company to attend such meetings.

(ii) In addition to such meetings, the City and the Project Company shall, through their respective Authorized Representatives, meet from time to time at the other Party's request to discuss and resolve matters relating to the DB Work.

(iii) The Project Company shall use commercially reasonable efforts to schedule all regular monthly progress meetings at a date, time and place reasonably convenient to both

Parties and, except in cases of urgency, shall provide the City with written notice and a meeting agenda at least five Business Days in advance of each meeting.

(c) Periodic Reporting. The Project Company shall provide the City with monthly construction progress reports no later than 15 days following the end of each Contract Month during the DB Period substantially in the form attached hereto as Annex D-1 (*Form of Construction Progress Report*).

Section 4.08 Commissioning and Performance Testing.

(a) Commissioning Work. At least 120 days before the date on which Commissioning Work is scheduled to commence in accordance with the Project Schedule, the Project Company shall deliver to the City a detailed schedule and plan for the performance of the Commissioning Work (the "**Commissioning Plan**"). The Commissioning Plan shall set out the Project Company's Feedstock Water Requirements for the performance of the Commissioning Work. The City shall, within 30 days of receiving the Commissioning Plan, provide the City's approval of the Commissioning Plan (such approval not to be unreasonably withheld, conditioned or delayed) or provide any objections the City may have in writing to the Project Company. If the City does not respond within such 30 day period the Commissioning Plan shall be deemed complete and correct and approved by the City. If the Project Company does not agree with such objections, the Project Company may refer the disagreement to the Technical Panel in accordance with the Dispute Resolution Procedure. The City shall supply, at the Feedstock Water Delivery Point, all Feedstock Water required by the Project Company for the performance of the Commissioning Work, in the amounts, at the flow rates and on the dates specified in the Commissioning Plan, and otherwise satisfying the quality, pressure and other requirements set out in Annex G (*Feedstock Water Specifications*) (as verified by the Feedstock Water Flow Meter), it being understood that the Design Requirements and Construction Standards do not take into account any substance in or condition of the Feedstock Water that is not specifically identified in Annex G (*Feedstock Water Specifications*) and, as such, if the Feedstock Water provided by the City contains any substance that is not specifically identified in Annex G (*Feedstock Water Specifications*), the presence of such substance shall be considered a Feedstock Water Deviation. The City shall also undertake and complete the activities in connection with the Commissioning Work specified as obligations of the City in Annex C-1 (*Commissioning Obligations*) in accordance with the requirements set forth therein and otherwise in accordance with the Commissioning Plan.

(b) Performance Testing.

(i) The Parties agree that the plan for conducting the Performance Test Work (the "**Performance Test Plan**") is specified in Annex C-2 (*Performance Testing*) and has been developed by the Parties taking into account the limitations on the City's ability to supply sufficient Feedstock Water for the Project Company to carry out a single performance test in respect of the entirety of the Project and the Project Company's ability to dispose of the entire amount of treated water that would arise from such a single performance test.

(ii) The Project Company shall deliver to the City the Performance Test Protocol in accordance with Annex C-2 (*Performance Testing*), in which the Project Company shall set out the Feedstock Water Requirements for the performance of the Performance Test Work. The City shall supply, at the Feedstock Water Delivery Point, all such Feedstock Water required by the Project Company for the performance of the Performance Test Work, in the amounts, at the flow rates and on the dates specified in the Performance Test Protocol, and otherwise satisfying the quality, pressure and other requirements set out in Annex G (*Feedstock Water Specifications*) (as verified by the Feedstock Water Flow Meter), it being understood that the Design Requirements and Construction Standards do not take into account any substance in or condition of the Feedstock Water that is not specifically identified in Annex G (*Feedstock Water Specifications*) and, as such, if the Feedstock Water provided by the City contains any substance that is not specifically identified in Annex G (*Feedstock Water Specifications*), the presence of

such substance shall be considered a Feedstock Water Deviation. The City shall undertake and complete the other activities in connection with the Performance Test Work specified as obligations of the City in Section 3 of Annex C-2 (*Performance Testing*) in accordance with the requirements set forth therein and otherwise in accordance with the Performance Test Protocol (including the City's obligation to make available qualified and authorized representatives to observe the Performance Tests). The Parties may mutually agree on modifications to the requirements of the Performance Test Work set out in Annex C-2 (*Performance Testing*).

(iii) The City shall not interfere with the conduct of any Performance Test. The Project Company shall deliver Performance Test Reports in respect of the iterations of the Performance Test set out in Annex C-2 (*Performance Testing*) within the times and otherwise in accordance with the requirements specified in Annex C-2 (*Performance Testing*). Within five days following the City's receipt of a Performance Test Report, the City shall provide written notice to the Project Company either acknowledging that such Performance Test Report is complete and correct, or specifying the deficiencies of the Performance Test Report. If the Project Company does not agree with such written notice provided by the City, the Project Company may refer the disagreement to resolution in accordance with the Dispute Resolution Procedure. The City shall not be required to provide any comments or approval in connection with a disputed Performance Test pending the resolution of such dispute pursuant to the Dispute Resolution Procedure. If the City does not respond within the aforementioned five day period the Performance Test Report shall be deemed complete, correct and approved by the City. When the City has sent its final acknowledgement in respect of the Performance Test Report relating to the final iteration of the Performance Test as set forth above, or when a final resolution has been reached in accordance with the Dispute Resolution Procedure in respect of such Performance Test Report or such Performance Test Report is otherwise deemed complete, correct and approved as set forth above, the Project Company shall deliver to the City a Performance Test Certificate confirming that the Project is fit for commercial operation.

Section 4.09 Conditions to Commercial Operation Date.

(a) Conditions to Commercial Operation Date. The "**Commercial Operation Date**" shall occur when all of the following conditions have been satisfied:

(i) Performance Testing. The Project Company shall have completed the Performance Test Work and shall have delivered to the City Performance Test Reports demonstrating that the Process Trains have achieved the applicable Performance Criteria, as evidenced by the Project Company's delivery of the Performance Test Certificate.

(ii) FDEP Clearance. The Project Company shall have received confirmation of clearance to place the Project into operation in accordance with Section 62-555.900(9) of the Florida Administrative Code from FDEP, and shall have provided evidence of the same to the City.

(iii) Warranties. The Project Company shall have delivered to the City electronic copies of the warranties referenced in Section 4.06(a) (*DB Warranties*) and all other warranties of equipment constituting a part of the Project received from the equipment suppliers, together with copies of all related operating manuals supplied by the equipment suppliers.

(iv) Training of City Employees. The Project Company and the City shall have each received a certification from the O&M Contractor that the required City Employees have been trained to the specifications set forth in the training plan provided to the City pursuant to Section 3.05 of the Labor Services Agreement (the "**Training Plan**"). The Project Company shall have set out in an attachment to the Notice of Commercial Operation Date any additional required City Employees who have not been fully trained to the Training Plan specifications, and shall have specified a reasonable time period in which such training is to be completed (such period to be agreed between the Project Company and the City).

(v) O&M Manuals. The Project Company shall have delivered to the City electronic copies of any operations and maintenance manuals supplied by the DB Contractor to the Project Company.

(vi) Physical Completion. Except with respect to Punch List Work, the Project Company shall have completed all DB Work in accordance with the provisions of this Agreement and the Project Requirements. The Project Company shall have set out in an attachment to the Notice of Commercial Operation Date the Punch List Work which has not been completed in full and shall have specified a reasonable time period in which such Work is to be completed (such period to be approved by the City, such approval not to be unreasonably withheld, conditioned or delayed).

(vii) Operations Period Approvals. The Project Company shall have obtained all O&M Governmental Approvals required under Applicable Law to be obtained by the Project Company as of the Commercial Operation Date and such O&M Governmental Approvals shall be in full force and effect. The Project Company shall have delivered to the City true and correct copies of all such O&M Governmental Approvals (to the extent not in the City's possession).

(viii) No Liens. The Site and the Project shall be free and clear of any and all Liens arising out of or in connection with the performance of the DB Work, except for Permitted Liens.

(ix) Insurance. The Project Company shall have delivered to the City certificates of insurance with respect to the Required Insurance required to be in effect on the Commercial Operation Date and specified as the Project Company's or the O&M Contractor's responsibility on Annex K (*Required Insurance*), evidencing that the provisions of Annex K (*Required Insurance*) have been complied with in full, and evidence (which may be in the form of a letter from the applicable insurance broker) that the relevant premiums for such Required Insurance have either been paid or reasonable arrangements for payment of such premiums have been made.

(b) Achievement of Commercial Operation.

(i) Approximately 30 days prior to the date on which the Project Company expects to achieve the Commercial Operation Date, the Project Company shall provide written notice to the City of the date on which the Project Company is expected to achieve the Commercial Operation Date consistent with the conditions set forth in Section 4.09(a) (*Conditions to Commercial Operation Date*) (together with any request for a waiver by the City of any such condition) so as to allow the City to promptly commence its review of those conditions to the Commercial Operation Date capable of being reviewed at the time of such notice.

(ii) When the Project Company believes that it has achieved the Commercial Operation Date, the Project Company shall deliver to the City a written notice thereof (the "**Notice of Commercial Operation Date**"). Within three Business Days following delivery of the Notice of Commercial Operation Date, the City shall (A) deliver to the Project Company its written acknowledgment that the Commercial Operation Date has been achieved, or (B) notify the Project Company in writing that the Commercial Operation Date has not been achieved, stating in detail the reasons therefor. In the case of (B), the Project Company may withdraw the Notice of Commercial Operation Date and resubmit such notice at a later date; provided, that if the Project Company does not agree with such written notice provided by the City, the Project Company may refer the disagreement for resolution in accordance with the Dispute Resolution Procedure. The City shall not be required to provide any comments or approval in connection with a disputed Commercial Operation Date pending the resolution of such dispute pursuant to the Dispute Resolution Procedure. If the City does not provide timely notice of objection to the initial or any resubmitted Notice of Commercial Operation Date within three Business Days of receipt thereof, the City shall be conclusively deemed to have delivered a written acknowledgment that the Commercial Operation Date has been achieved.

(iii) The Commercial Operation Date shall be the date on which the conditions in Section 4.09(a) (*Conditions to Commercial Operation Date*) have been met by the Project Company or waived by the City.

Section 4.10 Delayed Commercial Operation.

(a) Scheduled Commercial Operation Date. If the Project Company does not achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, such failure shall not constitute a Project Company Default and the Project Company shall pay the Liquidated Damages Amount for each day of delay in achieving the Commercial Operation Date from the six month anniversary of the Scheduled Commercial Operation Date through the Commercial Operation Longstop Date. Each of the Parties acknowledges that the monetary deductions assessed in accordance with this Section 4.10(a) (*Scheduled Commercial Operation Date*) are reasonable liquidated damages in order to compensate the City for, and shall constitute the City's sole remedy in respect of, the Project Company's failure to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date. The Liquidated Damages Amount shall be paid on a monthly basis as accrued within 20 Business Days after the end of the applicable month.

(b) Commercial Operation Longstop Date. If the Project Company does not achieve the Commercial Operation Date within 18 months following the Scheduled Commercial Operation Date (the "**Commercial Operation Longstop Date**"), such failure shall result in an immediate Project Company Default and the City may terminate this Agreement in accordance with the provisions of Section 16.02 (*Termination by City for Project Company Default*).

Section 4.11 Conditions to Final Acceptance.

(a) Conditions to Final Acceptance. "**Final Acceptance**" shall occur when all of the following conditions have been satisfied:

(i) Commercial Operation Date. The Project Company has achieved the Commercial Operation Date in accordance with Section 4.09 (*Conditions to Commercial Operation Date*);

(ii) DB Work Completed. The Project Company has completed all DB Work described in the Punch List delivered pursuant to Section 4.09(a)(vi) (*Physical Completion*) and performed all cleanup and removal of construction materials and demolition debris in compliance with this Agreement;

(iii) Record Drawings. The Project Company has delivered to the City a final and complete set of as-built construction record drawings, prepared in accordance with the Project Requirements, and signed and sealed by a Florida registered professional engineer; and

(iv) DB Contractor. The Project Company has certified to the City in writing (and provided such documentary evidence as the City may reasonably require) that no amounts owing to the DB Contractor remain unpaid (except disputed amounts for which the Project Company has established adequate reserves in accordance with GAAP) and final settlement (other than any such disputed amounts) of the DB Contract has occurred.

(b) When the Project Company believes that it has achieved Final Acceptance, the Project Company shall deliver to the City a written notice thereof (the "**Notice of Final Acceptance**"). The Notice of Final Acceptance shall contain a report in a form reasonably acceptable to the City demonstrating the achievement by the Project Company of all conditions to Final Acceptance set forth in Section 4.11(a) (*Conditions to Final Acceptance*).

(c) The City shall, within 20 days following receipt of the Notice of Final Acceptance, inspect the Project, review the report submitted by the Project Company and either (i) deliver to the Project

Company the City's written acknowledgment that the Project Company has achieved Final Acceptance, or (ii) notify the Project Company in writing that Final Acceptance has not been achieved, stating in detail the reasons therefor. In the case of (ii), the foregoing procedure shall be repeated or the report withdrawn; provided, that if the Project Company does not agree with such written notice provided by the City, the Project Company may refer the disagreement for resolution in accordance with the Dispute Resolution Procedure. The City shall not be required to provide any comments or approval in connection with a disputed Final Acceptance pending the resolution of such dispute pursuant to the Dispute Resolution Procedure. If the City does not provide timely notice of objection to the initial or any resubmitted Notice of Final Acceptance within 20 days of receipt thereof, the City shall be conclusively deemed to have delivered a written acknowledgment that the Final Acceptance has been achieved.

ARTICLE V

OPERATIONS PERIOD

Section 5.01 Project Company Operations Period Obligations Generally.

(a) Operation and Management Responsibility. Commencing on the Commercial Operation Date, the Project Company shall operate and manage the Project, treat Feedstock Water and deliver Product Water to the City, provide all information necessary to secure and maintain all Governmental Approvals required by Applicable Law to be obtained by the Project Company for the performance of the O&M Work (the "**O&M Governmental Approvals**") to the extent required under this Agreement and otherwise operate and manage the Project so as to comply with Applicable Law and the other Project Requirements applicable to such activities. Except to the extent arising in connection with a Relief Event, the Project Company shall pay the cost of all O&M Governmental Approvals.

(b) Operation and Management Standards. The Project Company shall carry out the O&M Work in accordance with (i) Good Management Practice, (ii) the requirements, terms and conditions set forth in this Agreement (including the O&M Standards), (iii) all Applicable Law (subject to the provisions of Article X (*Relief Events*) with respect to any Change in Law) and (iv) the requirements, terms and conditions set forth in the O&M Governmental Approvals. In the event and to the extent of a conflict between subsections (i)-(iv), the Project Company shall comply first with Applicable Law, then Governmental Approvals, then the terms and conditions of this Agreement (including O&M Standards) and then Good Management Practice. If a Governmental Authority takes any regulatory action against the City arising from a breach of Applicable Law by the Project Company in connection with the Project Company's performance of the O&M Work, and such breach is not excused pursuant to the terms of this Agreement, the Project Company shall pay to the City any fines imposed by such Governmental Authority on the City. The City intends to treat the O&M Work as a "qualified management contract" pursuant to the Code, and the Project Company agrees to, at the City's request, make adjustments hereto to maintain such status, without derogation of the rights of the Project Company, if any, pursuant to Article X (*Relief Events*); provided, that (i) the actions required for such adjustment are commercially reasonable and (ii) such adjustments do not adversely and materially impact the business arrangement of the Parties made pursuant hereto.

(c) O&M Governmental Approvals.

(i) Applications and Submittals. The Project Company shall make all filings, applications and reports necessary to obtain and maintain the O&M Governmental Approvals. Except to the extent arising in connection with a Relief Event, the Project Company shall pay all permit and filing fees required in order to obtain and maintain such O&M Governmental Approvals, regardless of the identity of the applicant.

(ii) Data and Information. The Project Company shall supply all data and information and take all action required to be supplied or taken in connection with the O&M Governmental Approvals in accordance with Applicable Law. The data and information supplied by the Project Company to the City and all regulatory agencies in connection therewith shall be correct and complete in all material respects. The Project Company shall provide all material documentation to be submitted to a Governmental Authority in connection with the O&M Governmental Approvals for the City's review and comment at least seven days prior to submission to the applicable Governmental Authority. If the Project Company submits any materially incorrect or incomplete information, the Project Company shall be responsible for any schedule and cost consequences which may result therefrom. Unless required under Applicable Law, the Project Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Authority regarding O&M Governmental Approvals or the terms and conditions thereof that would impose an unreasonable cost or material burden on the City in its capacity as a recipient of Product Water under this Agreement. The Project Company shall make available for review and copying by the City, upon request, copies of the O&M Governmental Approvals and related applications. The City shall promptly execute any applications, prepared by the Project Company, for O&M Governmental Approvals in respect of which the applicable Governmental Authority requires the signature of the owner of the Project.

(iii) Non-Compliance and Enforcement. The Project Company shall comply in all material respects with the O&M Governmental Approvals, and shall report to the City, promptly following knowledge thereof, all notices or communications that the Project Company receives with respect to violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Project. The City, as the owner of the Project, shall report to the Project Company, promptly following knowledge thereof, all notices or communications that the City receives with respect to violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Project.

(iv) Reports to Governmental Authorities. The Project Company shall, in accordance with the Project Requirements, (i) prepare all periodic reports, make all information submittals and provide all notices to all Governmental Authorities to the extent required by any O&M Governmental Approvals and under Applicable Law with respect to the Project, including sampling and testing results and (ii) as promptly as practicable following the City's request therefor, provide the City with all information and data necessary for the City to satisfy the City's reporting obligations under Applicable Law. Such reports referred to in clause (i) shall contain all information expressly required by the applicable Governmental Authority, and may be identical to comparable reports prepared for the City, if such are acceptable to such Governmental Authority. The Project Company first shall provide the City with copies of any such regulatory reports referred to in clause (i) prior to their filing as and to the extent required pursuant to Section 5.01(c)(ii) (*Data and Information*).

(d) Guaranteed Maximum Monthly Electricity and Chemical Consumption. The Project Company shall use commercially reasonable efforts to comply with the Guaranteed Maximum Monthly Electricity Consumption and Guaranteed Maximum Monthly Chemical Consumption each month ending after the end of the Transition Period set forth in Section 6.03(b) (*Transition Period*). If such Guaranteed Maximum Monthly Electricity Consumption or Guaranteed Maximum Monthly Chemical Consumption is exceeded, the Project Company shall compensate the City for such excess consumption in accordance with Section 7.04 (*Settlement*).

(e) O&M Subcontractor(s). The Project Company is permitted to subcontract the performance of the O&M Work. The Project Company shall not be relieved of any of its obligations, liabilities or responsibilities under this Agreement by reason of its obligations being carried out by any subcontractor. The provision of consent by the City to the appointment of the O&M Contractor or any subcontractor thereof (if such consent is required) shall not relieve the Project Company of any of its obligations, liabilities or responsibilities under this Agreement or render the City liable in any way to such

Person or in any way bound by the terms of the O&M Contract or any other subcontract. The Project Company shall make all payments, and incur any other liabilities, to the O&M Contractor, and the City shall have no responsibility in relation thereto other than to the extent expressly set forth in the O&M Contract.

(f) O&M Contractor Replacement.

(i) The O&M Contract shall contain provisions granting the Project Company the right to terminate the O&M Contract if (A) the City is required pursuant to Applicable Law to issue any "boil water" notice with respect to Product Water, (B) the O&M Contractor thereunder fails to meet the same parameter of the Contract Standards for a period of 180 consecutive days or (C) the O&M Contractor thereunder fails to meet any of the "Primary Drinking Water Standards" (as specified on Annex H-1 (*Product Water Legal Standards*)) for a period of 90 consecutive days, in each case (A) and (B), resulting from the action or omission of the O&M Contractor and not caused by a Relief Event. Upon the occurrence of any such event as specified in sub-clauses (A), (B) or (C) of this Section 5.01(f)(i) (*O&M Contractor Replacement*), or upon early termination of the Labor Services Agreement due to an event of default under the Labor Services Agreement applicable to the O&M Contractor, the City may deliver a written request to the Project Company requiring the Project Company to terminate the O&M Contract and enter into a replacement O&M Contract pursuant to the requirements of Section 5.01(f)(ii) (*O&M Contractor Replacement*) below. The Project Company shall not have the ability to replace the O&M Contractor absent a default by the O&M Contractor under the O&M Contract.

(ii) If the Project Company seeks to replace the O&M Contractor at any time (for the reasons specified in Section 5.01(f)(i) (*O&M Contractor Replacement*) or otherwise), the new O&M Contractor shall be subject to the consent and approval of the City Commission, not to be unreasonably withheld, conditioned or delayed; provided, that the City may reasonably withhold, condition or delay its consent if the proposed replacement O&M Contractor does not have at least five years of experience operating water infrastructure projects utilizing membrane-based technology. If this criteria is met but the City Commission does not approve of the new O&M Contractor proposed by the Project Company, the parties shall use commercially reasonable efforts to agree on a replacement O&M Contractor within 90 days after the City Commission's rejection of the initially proposed new O&M Contractor, during which period the City shall continue to pay the Availability Payment to the Project Company. If the City and the Project Company cannot agree on a replacement O&M Contractor, either Party may submit such Dispute for resolution in accordance with the Dispute Resolution Procedure.

(g) Access to Project. Subject to (i) reasonable safety precautions and execution of waivers of liability on the part of all visitors to the Site, (ii) reasonable prior notice requirements required by the Project Company, (iii) reasonable limitations imposed by the Project Company for purposes of assuring minimum disruption to operations of the Project (in all cases to be established in the O&M Standards) and (iv) the provisions of the Labor Services Agreement, the City and its Authorized Representatives shall have the right at any time to visit and inspect the Project and related records and observe the Project Company's performance of the O&M Work in order to determine compliance with Applicable Law or Good Management Practice, including the Project Company's obligations under Section 5.03 (*Maintenance, Repairs and Replacement*); provided, that unless a Project Company Default shall have occurred and be continuing arising directly from an alleged failure of the Project Company to act in accordance with Applicable Law or Good Management Practice, or other exigent circumstances exist which, in the City's reasonable opinion, create an imminent risk to health and safety, any such visitation rights shall be limited to normal business hours, except for visits in and around the Product Water Delivery Point. The City shall give reasonable prior notice to the Project Company of any visit outside the immediate vicinity of the Product Water Delivery Point and afford the Project Company a reasonable opportunity to enable an Authorized Representative of the Project Company to accompany any visit by City personnel. To the extent City personnel visit or inspect the Project unaccompanied, such City personnel (including

Authorized Representatives, agents and contractors) shall announce themselves to the staff and O&M Contractor employees that may be present at or near each location visited. The Project Company shall permit and facilitate access to the Project for such purposes by City personnel and by agents and contractors designated by the City. All visitors to the Site and on-Site City personnel shall comply with the Site-specific health and safety plan and rules created by the Project Company pursuant to Section 3.05(e) (*Safety and Security of Site*), and shall not interfere with the Project Company's operation of the Project.

(h) Duty to Maintain Records. The Project Company shall retain and maintain all the records (including superseded records) required by Applicable Law or pursuant to the terms of this Agreement to be kept by the Project Company, in chronological order and in a form that is capable of audit. The Project Company shall make such records (other than books of account) available to the City and the City's employees, agents and representatives for inspection, at the City's expense, during normal business hours upon reasonable notice of not less than ten Business Days.

(i) Wherever practical and unless otherwise agreed, the Project Company shall retain and maintain original records in electronic form and, to the extent legally required, in hard copy form. True copies of the original records may be kept by the Project Company if it is not practicable to retain original records.

(ii) The Project Company shall retain and maintain all such records for the duration of this Agreement, or such longer period as may be required by Applicable Law; provided, that the Project Company may dispose of any such records so long as (A) such records are more than ten years old, (B) the Project Company first notifies the City in writing and (C) the City consents to such disposal or elects to receive delivery of such records within thirty days of such notification.

(iii) On the expiration of such period or at the earlier request of the City, the Project Company shall deliver such records (or, if such records are required by statute to remain with the Project Company or any Contractor, copies thereof) to the City in the manner and at the location as the City specifies, acting reasonably. The City shall make available to the Project Company for inspection during normal business hours all records the Project Company delivers pursuant to this Section 5.01(h) (*Duty to Maintain Records*) upon reasonable notice.

(iv) All records of the City and the Project Company in connection with a matter that has been referred to the Dispute Resolution Procedure shall be maintained by the relevant Party until the final resolution of such Dispute.

(i) Reporting.

(i) Monthly Operations Report. The Project Company shall provide the City (separate from any reports the Project Company is required by Applicable Law to provide to any Governmental Authority) with monthly operations reports no later than 15 days following the end of each Contract Month ending after the Commercial Operations Date, in the form attached hereto as Annex D-2 (*Form of Operations Period Report*).

(ii) Default Reports. The Project Company shall provide to the City, promptly following the receipt thereof, copies of any written notice of a material default, breach or noncompliance received or sent under or in connection with any Key Contract entered into by the Project Company in connection with the O&M Work.

(iii) Cityworks-Required Data. After the Commercial Operations Date, the Project Company shall provide the City with monthly reports regarding the scheduled and unscheduled maintenance activities performed by the Project Company. The Project Company shall provide such reports electronically in Excel file to enable the City to update the City's asset management system.

(iv) Financial Statements. The Project Company shall provide to the City copies of its annual audited financial statements within 200 days after the end of each fiscal year of the Project Company ending on or after the Commercial Operation Date.

(v) Other Information. The Project Company shall provide to the City, in electronic format, (A) together with each monthly operations report delivered pursuant to Section 5.01(i)(i) (*Monthly Operations Report*), any supporting data that the Project Company has utilized to prepare such report and (B) within a reasonable time following the City's written request therefor, membrane normalization data. The Project Company shall deliver to the City, following expiration or early termination of this Agreement, all data referred to in the preceding clauses (A) and (B), in electronic files in native format.

(j) Releases, Leaks and Spills. The Project Company shall operate the Project in accordance with this Agreement in such a manner that Feedstock Water following the Feedstock Water Delivery Point, Product Water prior to the Product Water Delivery Point and any Product Water by-products and chemicals utilized by the Project Company to treat Feedstock Water shall not contaminate, or be released, leaked or spilled on or into, or discharged to the environment, to the extent prohibited by Applicable Law. The Project Company shall fulfill all notification and reporting requirements established by Applicable Law related to any such unauthorized release. The Project Company shall provide to the City copies of documents provided to the relevant Governmental Authority regarding any such unauthorized release.

(k) Disposal of Wastewater. The Project Company shall manage all process wastewater produced at the Project, as well as any Product Water or residuals that require discharge before reaching the Product Water Delivery Point for any reason, in accordance with Applicable Law. The City shall have no obligation to receive, treat or dispose of any such process wastewater.

(l) No Nuisance Covenant. The Project Company shall ensure that the operation of the Project does not create any material odor, litter, noise, rust, corrosion, fugitive dust, excessive light or other adverse environmental condition that is prohibited by Applicable Law. Should any such condition arise (and subject to the Project Company's rights under Article X (*Relief Events*) in the case of a Change in Law, it being understood and agreed that a Change in Law shall be deemed to occur if residential housing is built closer than 500 feet to the Site, which results in more stringent standards relating to such conditions being applied to the Site pursuant to Applicable Law than the standards applicable on the Effective Date, notwithstanding that Applicable Law has not changed), the Project Company shall, within the time required by Applicable Law, remedy such condition and pay any fines or penalties imposed by any Governmental Authority as a result of such condition, make all commercially reasonable capital investments, improvements or modifications in operating and management practices necessary to prevent a recurrence of such condition, and indemnify and hold harmless the City from any loss or expense related thereto in the manner set forth in Section 18.08 (*Indemnification*) hereof.

(m) Utilities. The Project Company shall pay for the use of gas, water and sewer and other Utility services required for the performance of the O&M Work, other than Feedstock Water and electricity service, which shall be governed by the provisions of Section 5.02(a) (*Feedstock Water*) and Section 14.03 (*Coordination and Payment of Electricity and Chemical Supply*); provided, that the City must perform the work necessary to bring such Utilities to the applicable Tie-In Points as specified in Annex B (*City Infrastructure Obligations*).

(n) Emergency Plan. Within 90 days prior to the Scheduled Commercial Operation Date, the Project Company shall provide the City with a plan of action to be implemented in the event of an emergency (an "**Emergency Plan**"), including fire, weather, environmental, health, safety, power outage and other potential emergency conditions. Such Emergency Plan shall (i) provide for appropriate

notifications to the City and all other Governmental Authorities having jurisdiction over the Project or the Site and for measures which facilitate coordinated emergency response actions by the City and all other applicable Governmental Authorities, (ii) specifically include spill and response measures, and (iii) assure the timely availability of all Project Company personnel required to respond to any emergency (no later than one hour during nights, weekend and holidays). The City and the Project Company shall review the Emergency Plan annually as part of the review of the annual operations report, and the Project Company shall update the Emergency Plan when necessary.

(o) City-Directed Curtailments and Shutdowns. The Project Company acknowledges that, notwithstanding Sections 6.03(c)(i) and 6.03(c)(ii) (*Requested Quantities; Daily Plan*), operating conditions in the City's water distribution system may require the City to immediately curtail receipt of Product Water, and that such conditions may therefore necessitate the issuance by the City of a written directive requiring the immediate curtailment or cessation of ordinary operations at the Project. Such conditions may occur as a result of mechanical or structural failure within the City distribution system, emergency conditions originating in the City distribution system or other unexpected factors. The issuance of any such directive shall constitute a Relief Event. In responding to any curtailment or shutdown directive issued by the City under this Section 5.01(o) (*City-Directed Curtailments and Shutdowns*), the Project Company shall use reasonable efforts to meet the curtailed water delivery level directed by the City in accordance with all of the other requirements of this Agreement; provided, however, that the Project Company shall be under no obligation to do so unless such requirements can be met while operating the Project in accordance with the Project Requirements. The Project Company shall resume full operations of the Project (i) in case the City has directed the Project Company to curtail or shutdown operations for less than 48 hours, within 24 hours of receipt by the Project Company of a written directive issued by the City and (ii) in case the City has directed the Project Company to curtail or shutdown operations for more than 48 hours and Project equipment is undergoing preventive maintenance, as promptly as the Project Company can reasonably do so in compliance with Applicable Law after receipt by the Project Company of a written directive issued by the City.

Section 5.02 City Operations Period Obligations Generally.

(a) Feedstock Water. The City shall supply feed water to the Project (the "**Feedstock Water**") on and after the Commercial Operation Date:

(i) at the designated delivery point identified as TP-01 on Annex E-1 (*Site Description*) (the "**Feedstock Water Delivery Point**");

(ii) (A) prior to the end of the Transition Period specified in Section 6.03(b) (*Transition Period*), in accordance with the requirements specified in Section 6.03(b) (*Transition Period*) and (B) thereafter, in sufficient quantity and flow rate each day to allow the Project to produce the Required Quantity *plus* any applicable Make-Up Units, as verified by the Feedstock Water Flow Meter and in accordance with the Feedstock Water Daily Plan; and

(iii) in compliance with the water quality, pressure and other criteria set forth on Annex G (*Feedstock Water Specifications*), as verified by the Feedstock Water Flow Meter to be furnished, installed and maintained by the Project Company in accordance with this Agreement, it being understood that the Design Requirements and Construction Standards do not take into account any substance in or condition of the Feedstock Water that is not specifically identified in Annex G (*Feedstock Water Specifications*); and as such, if the Feedstock Water provided by the City contains any substance that is not specifically identified in Annex G (*Feedstock Water Specifications*), the presence of such substance shall be a Feedstock Water Deviation.

(b) Risk of Loss of Feedstock Water. The Project Company shall be responsible for any lost Feedstock Water between the Feedstock Water Delivery Point and the Project during the

Operations Period; provided, that discharge from the nanofiltration stream and water used for regeneration of the ion exchange system, process equipment cleaning routines and other process effluent and other maintenance and testing activities, shall not constitute lost Feedstock Water.

(c) City Labor Specialist. The City shall at all times during the Operations Period maintain a City Labor Specialist (as defined in the Labor Services Agreement) to serve as the primary point of contact between the City and the O&M Contractor.

(d) Labor Services Agreement. The City shall comply with all provisions of the Labor Services Agreement at all times throughout the Term. Upon any replacement of the O&M Contractor pursuant to Section 5.01(f) (*O&M Contractor Replacement*), the new O&M Contractor shall assume the rights and responsibilities of the previous O&M Contractor under the existing Labor Services Agreement on the effective date of such replacement, and the City shall promptly execute any documentation reasonably requested by the Project Company to implement such assumption. The City shall negotiate in good faith (taking into account any union or collective bargaining requirements), and may agree to amendments to the Labor Services Agreement with respect to any deviations reasonably requested by the new O&M Contractor that are not adverse to the Project Company.

(e) City Storage Tanks.

(i) The City acknowledges and agrees that it shall make the City Storage Tanks available to the Project Company in accordance with Section 6.03(e) (*Failure to Deliver Product Water*) as a source of replacement Product Water to enable the Project Company to perform maintenance activities while satisfying its Product Water delivery obligations set out in Section 6.03 (*Product Water Quantity*). At any time the City Storage Tanks are filled to less than 90% capacity, the City shall request the Project Company to deliver additional Product Water in accordance with terms of Section 6.03(c) (*Requested Quantities; Daily Plan*) and Section 6.03(d) (*Changes to Daily Plan*), promptly and as many times as necessary, to replenish the City Storage Tanks to at least 90% capacity.

(ii) The City shall operate and maintain the City Storage Tanks in accordance with Applicable Law and those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, construction, operation, maintenance and management of drinking water treatment facilities as observed in the State.

Section 5.03 Maintenance, Repairs and Replacement.

(a) Maintenance, Repairs and Replacement Generally.

(i) Ordinary Maintenance, Repairs and Replacements. During the Operations Period, the Project Company shall perform all ordinary maintenance of the machinery, equipment, structures, improvements and all other property constituting the Project and shall keep the Project in good working order, condition and repair and in a neat and orderly condition and in accordance with Applicable Law and the O&M Standards. The Project Company shall provide or make provisions for all materials, supplies, equipment, spare parts, and services which are necessary for the ordinary maintenance of the Project and shall conduct predictive, preventive and corrective maintenance of the Project as required by the Project Requirements. The Project Company shall keep maintenance logs in accordance with the O&M Standards.

(ii) Major Maintenance, Repairs and Replacements. The Project Company shall perform all major maintenance, repair and replacement of the machinery, equipment, structures, improvements and all other property constituting the Project during the Operations Period, including all maintenance, repair and replacement which may be characterized as "major" or "capital" in nature, in

accordance with the O&M Standards. The obligations of the Project Company under this Section 5.03(a)(ii) (*Major Maintenance, Repairs and Replacements*) are intended to assure that the Project is properly and regularly maintained, repaired and replaced in order to preserve the long-term reliability, durability and efficiency of the Project.

(b) Periodic Maintenance Inspections.

(i) Annual Maintenance Inspection. The City may, at its own expense and upon reasonable prior written notice (and otherwise in all respects in accordance with the O&M Standards and the access requirements set out in Section 5.01(g) (*Access to Project*)), perform an inspection of the Project and relevant records of the Project Company each Contract Year following the Commercial Operation Date to assess compliance with the O&M Standards. The City's annual inspection may include the inspection of: (1) the Project and the Site; (2) all areas where Chemicals are stored or used; and (3) all operations, maintenance, repair and replacement records kept by the Project Company.

(ii) Non-Interference. The Project Company shall cooperate fully with all inspections conducted pursuant to this Section 5.03(b)(ii) (*Non-Interference*), which shall not materially interfere with the Project Company's performance of the Work and shall not impose any costs on the Project Company.

ARTICLE VI

DELIVERY OF PRODUCT WATER

Section 6.01 Product Water Quality Standards.

(a) Legal Standards. Following the Commercial Operation Date, the Project Company shall deliver to the City at the Product Water Delivery Point, Feedstock Water that has been treated by the Project ("**Product Water**") that meets the quality standards and requirements for drinking water imposed by Applicable Law (including those enacted by the Florida Department of Environmental Protection and the U.S. Environmental Protection Agency), as specified in Annex H-1 (*Product Water Legal Standards*) hereto (the "**Legal Standards**"), subject to the provisions of Section 5.01(o) (*City-Directed Curtailments and Shutdowns*), Section 6.01(c) (*Conflicting Standards*), Section 6.03 (*Product Water Quantity*) and Article X (*Relief Events*).

(b) Contract Standards. Following the Commercial Operation Date, the Project Company shall deliver to the City at the Product Water Delivery Point, Product Water meeting the additional quality standards and requirements described in Annex H-2 (*Product Water Contract Standards*) hereto (the "**Contract Standards**", and together with the Legal Standards, the "**Product Water Quality Guarantee**"), subject to the provisions of Section 5.01(o) (*City-Directed Curtailments and Shutdowns*), Section 6.03 (*Product Water Quantity*) and Article X (*Relief Events*).

(c) Conflicting Standards. The City acknowledges that the Project Company's compliance with certain Contract Standards set out in Annex H-2 (*Product Water Contract Standards*) could result in the Product Water delivered by the Project Company failing to meet certain Legal Standards set out in Annex H-1 (*Product Water Legal Standards*). The City agrees to protect, defend, indemnify and hold harmless the Project Company and its Affiliates and the Project Company's and such Affiliates' members, officers, directors, employees and agents from and against any and all claims, demands, causes of action, lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees and costs through trial and the appellate level, or losses and liabilities of every kind, nature or degree arising out of or in connection with any third-party claims related to a failure of the Project Company to deliver Product Water satisfying any Legal Standard to the extent such Product Water satisfies any similar and higher Contract Standard required under this Agreement. The City and the

Project Company agree that, for all purposes of this Agreement and notwithstanding anything in this Agreement to the contrary, any Product Water delivered by the Project Company to the City that fails to satisfy any Legal Standard but that satisfies the Contract Standard applicable to the same parameter shall be conclusively deemed to satisfy the Product Water Quality Guarantee and shall not constitute Non-Conforming Product Water.

Section 6.02 Failure to Meet Quality Standards.

(a) If the Project Company delivers any Non-Conforming Product Water to the City and is not otherwise excused from its obligation to deliver Product Water in compliance with the Product Water Quality Guarantee pursuant to Section 5.01(o) (*City-Directed Curtailments and Shutdowns*), Section 6.03 (*Product Water Quantity*) or Article X (*Relief Events*), the City shall have the right to impose deductions on the O&M Payment in accordance with Annex H-3 (*Non-Conforming Product Water Deductions*). The Project Company shall pay (or reimburse the City for) any fines or penalties of any Governmental Authority resulting from the Project Company delivering Non-Conforming Product Water to the City. Without prejudice to the City's rights under Article XVI (*Termination*), each of the Parties acknowledges that the monetary penalties assessed in accordance with this Section 6.02(a) (*Failure to Meet Quality Standards*) are reasonable liquidated damages in order to compensate the City for, and shall constitute the City's sole remedy in respect of, the Project Company's failure to achieve to deliver Product Water meeting the Product Water Quality Guarantee, subject to the provisions of Section 15.03 (*Project Company Default*).

(b) Testing.

(i) Notwithstanding any of the other provisions of this Agreement, if the Project produces Non-Conforming Product Water the Project Company shall notify the City promptly after obtaining knowledge of such Non-Conforming Product Water.

(ii) The Project Company shall conduct all tests of Feedstock Water and Product Water in accordance with the Project Requirements and in accordance with Annex F (*O&M Standards*), at testing locations meeting the requirements and with samples taken from the locations specified in Annex F (*O&M Standards*). The City shall have the right to request that such testing be conducted at a State-certified testing lab selected by the City; provided, that if such request is made, the Project Company shall have the right to conduct parallel testing at the Project Company's own NELAP-certified testing lab. In the case of a material conflict in the results of such parallel tests, the City and the Project Company agree to conduct confirmatory testing at a mutually agreed third-party testing lab selected within five Business Days of the City's receipt of written notice from the Project Company, and the results of this confirmatory test shall apply for all purposes under this Agreement. In the case of a conflict in the results of such parallel tests that is not material, the results of the tests conducted at the State-certified testing lab selected by the City shall apply for all purposes under this Agreement.

(iii) The City shall have no obligation, prior to or following taking delivery of any Product Water, to conduct tests to determine whether such Product Water meets the Product Water Quality Guarantee or is Non-Conforming Product Water. The City may, however, conduct tests to make such a determination by independently testing Product Water samples taken at the Product Water Delivery Point or such other applicable sampling point specified in Annex F (*O&M Standards*).

Section 6.03 Product Water Quantity.

(a) Delivery Point. On and after the Commercial Operation Date, the Project Company shall deliver, to the designated delivery point as marked on Annex E-1 (*Site Description*) (the "**Product Water Delivery Point**"), such quantity of Product Water that the Project Company is required to deliver to the City in accordance with this Section 6.03 (*Product Water Quantity*). The City hereby grants (or shall

cause the grant of, as the case may be) any necessary access rights, licenses or permits for use of the interconnection system as may be required for any interconnections at the Product Water Delivery Point. The City shall be solely responsible for any lost Product Water following delivery by the Project Company at the Product Water Delivery Point. At the Project and prior to the Product Water Delivery Point, the Project Company shall bear the risk of loss of Product Water; provided, that discharge from the nanofiltration stream and water used for regeneration of the ion exchange system, process equipment cleaning routines and other process effluent and other maintenance and testing activities, shall not constitute lost Product Water; provided, further, that any Product Water delivered by the Project Company at the Product Water Delivery Point that the City is unable to take or the City directs the Project Company to divert or dispose shall not constitute lost Product Water.

(b) Transition Period. The Project Company shall deliver the Transition Plan to the City at the time specified and satisfying the other requirements set out in Annex C-3 (*Transition Plan*). During the Transition Period specified in the Transition Plan, the City shall deliver Feedstock Water to the Project Company at the Feedstock Water Delivery Point that satisfies the quality, pressure and other requirements set out in Annex G (*Feedstock Water Specifications*) (it being understood that the Design Requirements and Construction Standards do not take into account any substance in or condition of the Feedstock Water that is not specifically identified in Annex G (*Feedstock Water Specifications*) and, as such, if the Feedstock Water provided by the City contains any substance that is not specifically identified in Annex G (*Feedstock Water Specifications*), the presence of such substance shall be considered a Feedstock Water Deviation), and the Project Company shall deliver Product Water to the City at the times and in the flow rates and quantities specified in the Transition Plan. The City shall undertake and complete the other activities in connection with such Transition Period specified as obligations of the City in Section 3 of Annex C-3 (*Transition Plan*) in accordance with the requirements set forth therein and otherwise in accordance with the Transition Plan. Following the end of such Transition Period, the Project Company shall deliver to the City the daily quantities of Product Water requested by the City pursuant to the procedures set out in Section 6.03(c) (*Requested Quantities; Daily Plan*) and Section 6.03(d) (*Changes to Daily Plan*).

(c) Requested Quantities; Daily Plan.

(i) Two months in advance of the date on which the Commercial Operation Date is expected to occur in accordance with the Project Schedule, in respect of the remaining months in the calendar year in which the Commercial Operation Date occurs which follow the end of the Transition Period set forth in Section 6.03(b) (*Transition Period*), and three months in advance of each calendar year thereafter, the City shall deliver to the Project Company a daily plan schedule (as such plan may be updated pursuant to Section 6.03(d)(iii) (*Changes to Daily Plan*), the "**Daily Plan**") specifying the daily quantities of Product Water that the City is requiring the Project Company to deliver in the upcoming calendar year in accordance with this Section 6.03 (*Product Water Quantity*) (for each day, the "**Daily Quantity Requested**").

(ii) The City shall not require the Project Company to deliver any Daily Quantity Requested that exceeds 50 MGD (the "**Maximum Daily Requirement**") or is less than 17 MGD (the "**Minimum Daily Requirement**"); provided, that the Project Company shall use reasonable efforts to deliver any such Daily Quantity Requested. On any day that the Project Company delivers a Daily Quantity Requested falling outside of the preceding limits in accordance with this Section 6.03(c)(ii) (*Requested Quantities; Daily Plan*), (A) the Project Company shall be excused from its obligation under this Agreement to satisfy the Subject Parameters listed on Annex H-2 (*Product Water Contract Standards*) and (B) in the case of any Daily Quantity Requested that exceeds the Maximum Daily Requirement, the amount of Chemicals and electricity consumed by the Project Company shall be disregarded for purposes of the calculation of Actual Monthly Chemical Consumption and Actual Monthly Electricity Consumption.

(iii) The City shall not retroactively adjust any Daily Quantity Requested pursuant to a Daily Plan.

(d) Changes to Daily Plan.

(i) No later than 12:00 noon EST or EDT (as applicable) on the day before a Product Water delivery is scheduled to occur pursuant to the Daily Plan, the City may submit a request to the Project Company (with a copy to the O&M Contractor) to deliver a different quantity of Product Water than the Daily Quantity Requested (the "**Revised Daily Quantity Requested**") for such following day. The Project Company shall not be required (but shall use reasonable efforts) to deliver any Revised Daily Quantity Requested that is (A) more or less than 15% of the initial Daily Quantity Requested, (B) less than the Minimum Daily Requirement or (C) in excess of the Maximum Daily Requirement. On any day that the Project Company delivers all or any part of a Revised Daily Quantity Requested falling outside of any of the preceding limits in accordance with this Section 6.03(d)(i) (*Changes to Daily Plan*), (1) the amount of Chemicals and electricity consumed by the Project Company shall be disregarded for purposes of the calculation of Actual Monthly Chemical Consumption and Actual Monthly Electricity Consumption and (2) the Project Company shall be excused from its obligation under this Agreement to satisfy the Subject Parameters listed on Annex H-2 (*Product Water Contract Standards*).

(ii) If the City requests the Project Company to deliver a Revised Daily Quantity Requested on the same day, the Project Company shall use reasonable efforts to deliver the Revised Daily Quantity Requested. If the Project Company delivers all or any part of a Revised Daily Quantity Requested in accordance with this Section 6.03(d)(ii) (*Changes to Daily Plan*), (A) the amount of Chemicals and electricity consumed by the Project Company shall be disregarded for purposes of the calculation of Actual Monthly Chemical Consumption and Actual Monthly Electricity Consumption and (B) the Project Company shall be excused from its obligation under this Agreement to satisfy the Subject Parameters listed on Annex H-2 (*Product Water Contract Standards*).

(iii) At least five Business Days before the beginning of any calendar month and subject to the limitations set out in Sections 6.03(c)(ii) and (iii) (*Requested Quantities; Daily Plan*), the City may deliver to the Project Company a revised Daily Plan specifying modified Daily Quantities Requested in respect of such calendar month and the remainder of the calendar year thereafter.

(e) Failure to Deliver Product Water. If the Project Company fails to deliver in full (i) during the Transition Period set forth in Section 6.03(b) (*Transition Period*), the quantity set forth in the Transition Plan for such day or (ii) after the Transition Period set forth in Section 6.03(b) (*Transition Period*), (A) the Daily Quantity Requested that the Project Company is required to deliver pursuant to Section 6.03(c) (*Requested Quantities; Daily Plan*) or (B) if applicable, the Revised Daily Quantity Requested that the Project Company is required to deliver pursuant to Section 6.03(d) (*Changes to Daily Plan*) (each of (i) and (ii), the "**Required Quantity**") and, in either case of (i) and (ii), the Project Company is not otherwise excused from its obligation to deliver the Required Quantity pursuant to Section 5.01(o) (*City-Directed Curtailments and Shutdowns*) or Article X (*Relief Events*), the City shall draw the deficiency from the City Storage Tanks. The Project Company shall use reasonable efforts to deliver Make-Up Units as promptly as reasonably practicable (and in any event within ten days following the day on which the deficiency occurred, or such longer period agreed to by the City) in an aggregate amount equal to such deficiency in order to replenish the City Storage Tanks. If the Project Company complies with its obligation with respect to the City Storage Tanks as set forth in this Section 6.03(e) (*Failure to Deliver Product Water*), the Project Company shall have been deemed to have delivered the entire Required Quantity, and the deduction set forth in Section 7.02(b)(ii) (*Product Water Shortfalls*) shall not be assessed with respect to such deficiency.

(f) Feedstock Water Daily Plan. Within 30 days of the Project Company's receipt of the Daily Plan, the Project Company shall deliver to the City a daily plan schedule (as such plan may be updated in accordance with this Section 6.03(f) (*Feedstock Water Daily Plan*), the "**Feedstock Water Daily Plan**") specifying the daily quantities of Feedstock Water that the Project Company shall require the City to deliver in the upcoming calendar year in order for the Project Company to produce the Daily Quantity Requested. The Project Company may update the Feedstock Water Daily Plan and request the City to deliver a different quantity of Feedstock Water than that set out in the initial Feedstock Water Daily Plan (i) no later than 11:59 pm EST or EDT (as applicable) on the day before a Feedstock Water delivery is scheduled to occur, (A) if the City has requested the Project Company to deliver a different quantity of Product Water than that set out in the Daily Plan for such following day in accordance with Section 6.03(d)(i) (*Changes to Daily Plan*), (B) if the Project Company is required to comply with Section 6.03(e) (*Failure to Deliver Product Water*) regarding the delivery of Make-Up Units or (C) if the Project Company is undertaking any scheduled or unscheduled maintenance activities and (ii) as promptly as practicable, after the City has requested the Project Company to deliver a different quantity of Product Water than that set out in the Daily Plan for the day of the City request in accordance with Section 6.03(d)(ii) (*Changes to Daily Plan*). Within 30 days of the Project Company's receipt of a revised Daily Plan from the City in accordance with Section 6.03(d)(iii) *(Changes to Daily Plan),* the Project Company shall deliver to the City an updated Feedstock Water Daily Plan taking into account the City's revised Daily Plan.

(g) Controls and Communications with the City Wellfield. The Parties acknowledge that the City shall permit the Project Company to draw Feedstock Water from the City Wellfield with the purpose of satisfying the City's obligation to provide Feedstock Water to the Project Company in accordance with the Feedstock Water Daily Plan. Notwithstanding the foregoing, the City shall be exclusively responsible for the operation and maintenance of the City Wellfield and shall bear any and all risks and liabilities related to any direction the City issues to the Project Company in connection with the drawing of Feedstock Water from the City Wellfield, including, any direction to change or rotate wells or to draw Feedstock Water from wells that do not produce sufficient Feedstock Water to meet the Feedstock Water Daily Plan or that supply Feedstock Water that does not meet the standards set out in Annex G (*Feedstock Water Specifications*), all of which shall be a Relief Event. At least 120 days before the date on which the Commercial Operation Date is scheduled to occur in accordance with the Project Schedule, the Project Company shall deliver to the City a protocol for the communications between the Project Company and the City in connection with the drawing of Feedstock Water from the City Wellfield, which protocol shall comply with the principles set out in Annex V (*Communications Protocol*).

Section 6.04 Metering.

(a) Project Meters. The Project Company shall design, calibrate, test, and install the Project Meters in accordance with the Design Requirements and Construction Standards. Following Final Acceptance, the Project Company shall conduct the routine servicing and maintenance of the Project Meters and appurtenant field mounted instruments, and all major maintenance, repairs and replacements with respect thereto.

(b) Meter Inspections. The Project Company shall engage a qualified third-party inspection firm to confirm the accurate calibration and proper functioning of the Project Meters within 60 days following each calendar year ending after the Commercial Operation Date. The Project Company shall instruct the inspection firm to perform quarterly inspections and provide copies of the inspection reports promptly to the City and to the Project Company.

(c) Project Company Estimates During Meter Incapacitation or Testing. To the extent any Project Meter is incapacitated or is being tested (a "**Meter Outage**"), the Project Company shall estimate, as accurately as practicable, based on all available relevant information, the data required by the Project Company to perform the O&M Work and to invoice the City. The Project Company shall utilize

such estimate to perform the O&M Work in accordance with the O&M Standards and shall indicate the basis for such estimate in any invoices delivered to the City.

(d) Extended Project Meter Incapacitation. The Project Company shall repair or replace the relevant Project Meter as soon as practicable if a Meter Outage occurs. If any Meter Outage extends beyond 24 hours, and if the City (i) believes the estimate provided by the Project Company pursuant to Section 6.04(c) (*Project Company Estimates During Meter Incapacitation or Testing*) is inaccurate, and (ii) provides measurements from any City-owned meter that show a difference of not more than 5 MGD from the Project Company's estimate, the City's measurement shall prevail and the Project Company shall revise and re-issue any associated invoices covering any time periods during such Meter Outage. If the City's measurements show a difference of more than 5 MGD from the Project Company's estimate, the Parties shall submit such Dispute for resolution in accordance with the Dispute Resolution Procedure.

ARTICLE VII

PAYMENT FOR PRODUCT WATER

Section 7.01 Availability Payment and Its Components.

(a) Availability Payment.

(i) Following the Commercial Operation Date, the City shall pay the Project Company (A) for the period between the Commercial Operation Date and the start of the next Contract Month, a *pro rata* amount of the Availability Payment Amount due for the first Contract Month following the Commercial Operation Date in respect of the number of days in such month that the Project was operational, and (B) starting with the first full Contract Month following the Commercial Operation Date, an amount per Contract Month (each such payment, an "**Availability Payment**") equal to the Availability Payment Amount for such Contract Month in accordance with Section 7.01(b) (*O&M Payment and Separate Payment*) below.

(ii) The Availability Payment is a limited obligation of the City, to be paid solely from and secured by Revenues or Net Revenues (each as defined in the Bond Resolution) as and to the extent described in Section 7.01(b) (*O&M Payment and Separate Payment*). The Project Company shall not have the right to require the City to pay the Availability Payment from other sources available to the City or to require the City to levy ad valorem taxes to make any payment under this Agreement; provided, that the City acknowledges and agrees that all payment obligations of the City under this Agreement consisting of the Separate Payment described below and the City's obligation to pay the Termination Payment pursuant to Section 16.07 (*Termination Payments*), [shall constitute Subordinated Indebtedness under and as defined in the Bond Resolution and amounts required to be deposited into the Subordinated Indebtedness Account (as defined in the Bond Resolution) pursuant to the Bond Resolution (other than the O&M Payment, which shall constitute Current Expense under and as defined in the Bond Resolution, as set forth in Section 7.01(b) (*O&M Payment and Separate Payment*))].[1]

(b) O&M Payment and Separate Payment.

(i) The Parties agree that each Availability Payment is comprised of an O&M Payment and a Separate Payment. The "**Separate Payment**" consists of the scheduled payments of principal and interest pursuant to the Subordinate Bond. The "**O&M Payment**" consists of the remainder of the Availability Payment.

[1] **NTD:** Source of funds for payment obligations of the City in respect of claims made under the City's self-insurance policies to be confirmed by City.

(ii) The City shall treat the O&M Payment in all respects as a Current Expense under and as defined in the Bond Resolution and shall pay the O&M Payment from Revenues (as defined in the Bond Resolution) on the same basis as other Current Expenses (as defined in the Bond Resolution) of the City's Water and Sewer System (as defined in the Bond Resolution). The City shall pay the Project Company the O&M Payment, subject to the provisions of Section 7.02 hereof, so long as the Project is operational and the Project Company is delivering Product Water in accordance with the terms of this Agreement (or the Project Company is excused from performing its obligations under this Agreement in accordance with the provisions of Section 5.01(o) (*City-Directed Curtailments and Shutdowns*), Section 6.01(c) (*Conflicting Standards*), Section 6.03 (*Product Water Quantity*) or Article X (*Relief Events*)).

(iii) The City shall treat the Separate Payment in all respects as Subordinated Indebtedness under and as defined in the Bond Resolution and shall pay the Separate Payment on the same basis as other Subordinated Indebtedness (as defined in the Bond Resolution) of the City.

(iv) On the Commercial Operation Date, the City shall deliver to the Project Company (A) a duly authorized and executed bond substantially in the form of Annex P (*Form of Subordinate Bond*) (the "**Subordinate Bond**") evidencing the City's obligation to repay the Separate Payment, (B) a duly authorized and adopted resolution, which shall serve as a series resolution pursuant to the Bond Resolution (such resolution to be substantially in the standard form of such series resolutions previously adopted by the City, authorizing the issuance of the Subordinate Bond (the "**Supplemental Bond Resolution**") and (C) an opinion of bond counsel to the City, in the standard form of bond counsel opinion previously issued by such bond counsel in connection with other series resolutions adopted by the City pursuant to the Bond Resolution, with respect to the City's authority to issue the Subordinate Bond, the legal, valid and enforceable nature thereof, and (if any portion of the Subordinate Bond is issued as a tax-exempt instrument in accordance with the terms thereof) that the interest on such portion of the Subordinate Bond shall be excluded from the gross income of the holder thereof for U.S. federal income tax purposes. The Parties acknowledge and agree that (1) the Bond Resolution, together with this Agreement, shall constitute a Subordinated Indebtedness Instrument under and as defined in the Bond Resolution that benefits from the pledge of the Net Revenues (as defined in the Bond Resolution) of the City's Water and Sewer System (as defined in the Bond Resolution) pursuant to the Bond Resolution, (2) the Separate Payment shall be a limited obligation of the City payable and secured solely by Net Revenues (as defined in the Bond Resolution) of the City's Water and Sewer System (as defined in the Bond Resolution), (3) the faith and credit of the City shall not be pledged to the payment of the Separate Payment and (4) the issuance of the Subordinate Bond shall not obligate the City to levy or pledge any taxes or to make any appropriation for the payment of the Separate Payment, except as provided in the Bond Resolution and herein.

(c) Covenants of the City in respect of the Separate Payment. For as long as the Subordinate Bond remains outstanding, the City shall:

(i) provide notice to the Project Company of any proposed amendment to the Bond Resolution;

(ii) not modify or rescind the Bond Resolution in a manner that would be materially adverse to the interests of the Project Company as a payee of Current Expenses and Subordinated Indebtedness (each as defined in the Bond Resolution); provided, that if the Project Company has not objected to a proposed amendment on the grounds that such proposed amendment is materially adverse to the interests of the Project Company within 30 days of the City's delivery of such notice, such amendment shall be deemed not to be materially adverse to the interests of the Project Company for purposes of this Section 7.01(c)(ii) (*Covenants of the City in respect of the Separate Payment*); and

(iii) fix, charge and collect reasonable rates and charges for the use of the services and facilities furnished by the Water and Sewer System (as defined in the Bond Resolution) and, from time to time and as often as it shall appear necessary, to adjust such rates and charges so that, in each case, the Net Revenues (as defined in the Bond Resolution) received in each Fiscal Year (as defined in the Bond Resolution) (excluding from the computation of Current Expenses (as defined in the Bond Resolution) for any Fiscal Year (as defined in the Bond Resolution) any amount received from any source other than Revenues (as defined in the Bond Resolution) and applied to the payment of Current Expenses (as defined in the Bond Resolution) in such Fiscal Year) are sufficient to provide an amount in such Fiscal Year (as defined in the Bond Resolution) at least equal to (A) 125% of the Principal and Interest Requirements (as defined in the Bond Resolution) for such Fiscal Year (as defined in the Bond Resolution) on account of the Bonds (as defined in the Bond Resolution) then Outstanding (as defined in the Bond Resolution) and (B) 100% of all amounts required to be deposited to the Reserve Account (as defined in the Bond Resolution), the Rate Stabilization Account (as defined in the Bond Resolution), the Subordinated Indebtedness Account (as defined in the Bond Resolution) (after taking into account all amounts required to be deposited into the Subordinated Indebtedness Account (as defined in the Bond Resolution) pursuant to Section 7.01(a)(ii) (*Availability Payment*) of this Agreement) and the Renewal, Replacement and Improvement Account pursuant to clauses (c), (d), (e) and (f) of Section 505 of the Bond Resolution, respectively, for such Fiscal Year (as defined in the Bond Resolution).

(d) Covenants of the Project Company in respect of the Separate Payment. The Project Company shall not transfer the Subordinate Bond other than as expressly permitted by the terms of the Subordinate Bond.

Section 7.02 Deductions.

(a) O&M Payment Deductions. Without prejudice to Section 7.07 (*Set-off*), the City shall assess deductions to the O&M Payment in respect of any Contract Month as follows:

(i) in respect of shortfalls in the quantity of Product Water delivered by the Project Company in such Contract Month, as calculated pursuant to Section 7.02(b) (*Product Water Shortfalls*);

(ii) in respect of Non-Conforming Product Water, to the extent set forth in Section 6.02(a) (*Failure to Meet Quality Standards*) and as calculated pursuant to Annex H-3 (*Non-Conforming Product Water Deductions*); and

(iii) in respect of any other final and undisputed amount the City is owed by the Project Company under this Agreement (excluding, for the avoidance of doubt, any amounts owed by the Project Company to the City pursuant to the terms of the Subordinate Bond).

(b) Product Water Shortfalls.

(i) If the daily quantity of Product Water made available at the Product Water Delivery Point ("**Daily Quantity Delivered**") meets the Required Quantity, the City shall pay the O&M Payment to the Project Company in full.

(ii) If the Daily Quantity Delivered is less than the Required Quantity and the Project Company has failed to meet its obligation with respect to the City Storage Tanks in accordance with Section 6.03(e) (*Failure to Deliver Product Water*), the City shall pay to the Project Company a percentage of the O&M Payment calculated according to the ratio between the Daily Quantity Delivered and the Maximum Daily Requirement.

Section 7.03 Invoicing.

(a) The Project Company shall provide the City with an invoice for each partial or full Contract Month in respect of amounts due by the City pursuant to Section 7.01 (*Availability Payment and Its Components*) by the fifteenth Business Day following the end of such Contract Month; provided, that the City's receipt of an invoice from the Project Company shall not be a condition to the payment by the City of the Separate Payment in accordance with the terms of the Subordinate Bond. The invoice shall set forth the Availability Payment Amount (or *pro rata* portion thereof) due with respect to such Contract Month, calculations of any deductions from the O&M Payment assessed pursuant to Section 7.02 (*Deductions*) and the aggregate amount of the O&M Payments incurred by the City in the then-current Contract Year to the date of such invoice. The Project Company shall also deliver such other documentation or information as the City may reasonably require to determine the accuracy and appropriateness of the amounts related to the O&M Payment included in such invoice in accordance with this Agreement. The City shall pay the invoice in full within 45 days after the Project Company delivers such invoice to the City, except as provided in Section 7.05 (*Billing Statement Disputes*).

(b) If the City fails to make an invoiced Availability Payment when due under Section 7.03(a) (*Invoicing*), interest shall accrue and be payable thereon, as and to the extent provided in Section 7.06 *(Interest on Overdue Amounts*).

Section 7.04 Settlement.

(a) Monthly Tracking Accounts; Annual Settlement.

(i) Monthly Tracking and Annual Settlement of Electricity Consumption. Subject to Section 5.01(o) (*City-Directed Curtailments and Shutdowns*), Section 6.03(c) (*Requested Quantities; Daily Plan*), Section 6.03(d) (*Changes to Daily Plan*), Section 10.04(a) (*Availability Payment Impacts; Monetary Compensation*) and the other express terms of this Agreement, the Project Company shall, within ten Business Days following the end of each month ending after the Transition Period set forth in Section 6.03(b) (*Transition Period*), calculate the Actual Monthly Electricity Consumption and the Guaranteed Maximum Monthly Electricity Consumption for the immediately preceding month. If, in any such month, the Actual Monthly Electricity Consumption is greater than the Guaranteed Maximum Monthly Electricity Consumption, the Project Company shall record a deficit in the Electricity Consumption Tracking Account in the amount of such excess consumption and, conversely, if the Guaranteed Maximum Monthly Electricity Consumption is greater than the Actual Monthly Electricity Consumption, the Project Company shall record a credit in the Electricity Consumption Tracking Account in the amount of such savings; provided, that at the end of each Contract Year, if the balance of the Electricity Consumption Tracking Account is negative, the Project Company shall pay the City an amount calculated in accordance with Annex L-1 (*Guaranteed Maximum Electricity Consumption*) to compensate the City for such excess consumption. The Electricity Consumption Tracking Account shall be cleared and its balance shall be deemed to be zero at the start of each Contract Year.

(ii) Monthly Tracking and Annual Settlement of Chemical Consumption. Subject to Section 5.01(o) (*City-Directed Curtailments and Shutdowns*), Section 6.03(c) (*Requested Quantities; Daily Plan*), Section 6.03(d) (*Changes to Daily Plan*), Section 10.04(a) (*Availability Payment Impacts; Monetary Compensation*) and the other express terms of this Agreement, the Project Company shall, within five Business Days following the end of each month ending after the Transition Period set forth in Section 6.03(b) (*Transition Period*), calculate the Actual Monthly Chemical Consumption and the Guaranteed Maximum Monthly Chemical Consumption for the immediately preceding month in respect of each Chemical. If, in any such month, the Actual Monthly Chemical Consumption is greater than the Guaranteed Maximum Monthly Chemical Consumption for any Chemical, the Project Company shall record a deficit in the Chemical Consumption Tracking Account in the amount of such excess consumption

and, conversely, if the Guaranteed Maximum Monthly Chemical Consumption for any Chemical is greater than the Actual Monthly Chemical Consumption, the Project Company shall record a credit in the Chemical Consumption Tracking Account in the amount of such savings; provided, that at the end of each Contract Year, if the balance of the Chemical Consumption Tracking Account is negative, the Project Company shall pay the City an amount calculated in accordance with Annex L-2 (*Guaranteed Maximum Chemical Consumption*) to compensate the City for such excess consumption. The Chemical Consumption Tracking Account shall be cleared and its balance shall be deemed to be zero at the start of each Contract Year.

(b) Annual Settlement Statement and Overall Settlement. Within 60 days following the end of each Contract Year, the Project Company shall deliver an annual settlement statement (the "**Annual Settlement Statement**") to the City setting forth (i) the actual aggregate O&M Payment payable with respect to such Contract Year in accordance with Section 7.02 (*Deductions*) and a reconciliation of such amount with the amounts actually paid by the City with respect to such Contract Year and (ii) the balances of the Electricity Consumption Tracking Account and the Chemical Consumption Tracking Account at the end of each Contract Month of such Contract Year and at the end of such Contract Year and any amount owed by the Project Company to the City in accordance with Section 7.04(a)(i) (*Monthly Tracking and Annual Settlement of Electricity Consumption*) or Section 7.04(a)(ii) (*Monthly Tracking and Annual Settlement of Chemical Consumption*). If any amount is not known definitively at the time the Annual Settlement Statement is due (other than by reason of a dispute pursuant to Section 7.05 (*Billing Statement Disputes*) that remains unresolved), the Project Company shall include a good faith estimate by the Project Company of such amount. The City or the Project Company, as appropriate, shall pay all amounts not disputed in good faith within 60 days following receipt or delivery, respectively, of the Annual Settlement Statement. Section 7.05 (*Billing Statement Disputes*) shall apply if the City disputes in good faith any amount included in the Annual Settlement Statement as payable by the City.

Section 7.05 Billing Statement Disputes.

If the City disputes in good faith any amount billed by the Project Company, the City shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount being disputed and the reasons then known to the City for the dispute. When any billing dispute is finally resolved, if payment by the City to the Project Company of amounts withheld is required, such payment shall be made within 45 days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 7.06 (*Interest on Overdue Amounts*).

Section 7.06 Interest on Overdue Amounts.

If payment of any amount payable by the City or the Project Company under this Agreement is not made when due, simple interest shall be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from the date such payment is due (or was determined to have been due, in the case of amounts being disputed by the City) under this Agreement until paid. The Party to whom payment is owed and overdue shall notify the Party liable for such payment at least quarterly of the overdue amount.

Section 7.07 Set-off.

Each of the City and the Project Company may set off any amount due and payable by the other Party under this Agreement against any amount due and payable to such Party under this Agreement; provided, that any amounts so deducted and set off shall not be the subject of a Dispute. Each such Party shall provide the other Party prior written notice of its intention to deduct and set off any amounts in accordance with this Section 7.07 (*Set-off*). For the avoidance of doubt, the City may not set off any amounts due and payable by the Project Company to the City pursuant to the terms of the Subordinate Bond against any amount due and payable to the City under this Agreement.

ARTICLE VIII

CHANGES IN THE WORK.

Section 8.01 Required Scope Items.

(a) Pre-Treatment and Booster Pumps Work. Each of the Parties hereby acknowledges and agrees that: (i) the Feedstock Water from the City Wellfield may not meet the specifications (including the minimum flow rate and pressure) set out in Annex G (*Feedstock Water Specifications*) that are necessary to enable the Project Company to produce Product Water from such Feedstock Water at the quantity and quality specified in Section 6.01 (*Product Water Quality Standards*) and Section 6.03 (*Product Water Quantity*) on the basis of the existing Design Requirements and Construction Standards, (ii) the City has instructed the Project Company to arrange for the testing of the quality and pressure of the Feedstock Water available from the City Wellfield during [normal City Wellfield operating conditions][2] (the "**Project Company Feedstock Water Analysis**") by a qualified consultant acceptable to the City and at the City's own cost and expense, (iii) the Parties agree that any Revised Feedstock Water Specifications established pursuant to the Project Company Feedstock Water Analysis shall supersede going forward the corresponding values set out as of the Effective Date in Annex G (*Feedstock Water Specifications*), and (iv) in accordance with and as set forth in Section 8.01(d) (*Procedure for Implementing Changes Related to the Pre-Treatment and Booster Pumps Work*), the Project Company shall submit to the City certain deliverables to establish the amount of any Extra Work necessary to (1) add pre-treatment processes to treat the Feedstock Water from the City Wellfield to address the Revised Feedstock Water Specifications and (2) add booster pumps within the Site to increase the pressure of the Feedstock Water to the levels specified in Annex G (*Feedstock Water Specifications*) ((1) and (2), the "**Pre-Treatment and Booster Pumps Work**").

(b) OCCT Work. Each of the Parties hereby acknowledges and agrees that: (i) one of the Project Company-Managed Approvals is a permit to construct issued by FDEP pursuant to Chapter 62-555.900, Florida Statutes ("**FDEP Construction Permit**"), (ii) to obtain such FDEP Construction Permit, Applicable Law requires the Project Company to submit to FDEP an optimal corrosion control treatment study in respect of the Feedstock Water available from the City Wellfield, (iii) the City has instructed the Project Company to arrange for the performance of such study (the "**Project Company OCCT Study**") by a qualified consultant acceptable to the City and at the City's own cost and expense, (iv) the Parties agree that any Revised Contract Standards established pursuant to the Project Company OCCT Study shall supersede going forward the corresponding values set out as of the Effective Date in Annex H-2 (*Product Water Contract Standards*), and (v) in accordance with and as set forth in Section 8.01(e) (*Procedure for Implementing Changes Related to the OCCT Work*), the Project Company shall submit to the City certain deliverables to establish the amount of any Extra Work necessary to treat Feedstock Water from the City Wellfield to the optimal specifications recommended by the Project Company OCCT Study (as reflected in the revised draft of Annex H-2 (*Product Water Contract Standards*) delivered to the City by the Project Company pursuant to Section 8.01(e) (*Procedure for Implementing Changes Related to the OCCT Work*)) as required to obtain the FDEP Construction Permit (the "**OCCT Work**" and, together with the Pre-Treatment and Booster Pumps Work, the "**Required Scope Work**").

(c) Schedule and Cost Relief. The City shall be responsible for any Extra Work Costs, the cost of the Project Company Feedstock Water Analysis, the cost of the Project Company OCCT Study and any changes to the Project Schedule deriving from the Required Scope Work as reflected in the Required Scope Work Deliverables; provided, that the City shall only be responsible for any Extra Work Costs related to the DB Costs associated with the Pre-Treatment and Booster Pumps Work (other than the cost of the Project Company Feedstock Water Analysis) up to the Pre-Treatment and Booster Pumps Work

[2] **NTD:** Under the Sponsors' review and subject to refinement.

Funding Amount Cap. Project Company shall have no responsibility for any deficiency or inaccuracy in the Project Company Feedstock Water Analysis or Project Company OCCT Study as performed by the applicable City-approved qualified consultant. If the City believes the Project Company Feedstock Water Analysis report or Project Company OCCT Study report prepared by the applicable City-approved qualified consultant contains inaccuracies or deficiencies, the City may elect to engage a new qualified consultant, at the City's own cost and expense, to audit the initial Project Company Feedstock Water Analysis or Project Company OCCT Study (respectively), or complete a new Project Company Feedstock Water Analysis or Project Company OCCT Study.

(d) Procedure for Implementing Changes Related to the Pre-Treatment and Booster Pumps Work.

(i) Within 30 days of the Project Company's receipt of relevant data from the Project Company Feedstock Water Analysis, the Project Company shall deliver to the City: (A) a basis of design that provides a description of the changes to the Design Requirements and Construction Standards necessary to produce Product Water meeting the Product Water Quality Guarantee based on the Revised Feedstock Water Specifications ("**Partially Revised Design Requirements and Construction Standards**"), which, following approval thereof by the City in accordance with this Section 8.01(d) (*Procedure for Implementing Changes Related to the Pre-Treatment and Booster Pumps Work*) and implementation of the amendment to this Agreement set out in Section 8.01(d)(v) (*Procedure for Implementing Changes Related to the Pre-Treatment and Booster Pumps Work*), shall thereafter constitute the Design Requirements and Construction Standards for all purposes of this Agreement, (B) a description of the changes to Annex G (*Feedstock Water Specifications*) reflecting the Revised Feedstock Water Specifications, (C) a description of the changes to Annex L-1 (*Guaranteed Maximum Electricity Consumption*) and Annex L-2 (*Guaranteed Maximum Chemical Consumption*) arising from the Pre-Treatment and Booster Pumps Work (together, the "**Partially Revised Electricity and Chemicals Consumption Calculations**") and (D) a description of the incremental increase in O&M Costs associated with the Pre-Treatment and Booster Pumps Work ("**PTBPW Incremental O&M Costs**" and, together with the Partially Revised Design Requirements and Construction Standards and the Partially Revised Electricity and Chemicals Consumption Calculations, the "**Pre-Treatment and Booster Pumps Work Initial Deliverables**").

(ii) The City shall have a period of 14 days from receipt of the Pre-Treatment and Booster Pumps Work Initial Deliverables to approve the same or notify the Project Company in writing of any comments the City may have. The Project Company shall revise such Pre-Treatment and Booster Pumps Work Initial Deliverables and re-submit the same to the City for review of such revisions; provided, that the Project Company shall only be required to incorporate the City's comments to the extent such comments comply with the limitations set out in Section 8.02(b) (*City-Initiated Changes*) (other than with respect to Section 8.02(b)(v)(C) (*City-Initiated Changes*), solely to the extent the City agrees to bear such cost). If the City has not provided notice of its approval or any comments to the Project Company prior to the expiry of the aforementioned 14-day period, or in the case of resubmissions of a Pre-Treatment and Booster Pumps Work Initial Deliverable, no later than seven days following such resubmission, the Pre-Treatment and Booster Pumps Work Initial Deliverables shall be deemed to have been approved by the City.

(iii) Within 14 days of the City's approval (or deemed approval) of the Pre-Treatment and Booster Pumps Work Initial Deliverables, the Project Company shall deliver to the City: (A) a revised Project Schedule updated to reflect the additional time necessary to complete the additional DB Work related to the Pre-Treatment and Booster Pumps Work (the "**Partially Revised Project Schedule**") and (B) a description of the incremental increase in DB Costs associated with the Pre-Treatment and Booster Pumps Work ("**PTBPW DB Costs**" and, together with the Partially Revised Project Schedule, the "**Pre-Treatment and Booster Pumps Work Subsequent Deliverables**"; the Pre-Treatment and Booster Pumps

Work Initial Deliverables and the Pre-Treatment and Booster Pumps Work Subsequent Deliverables being referred to collectively as the "**Pre-Treatment and Booster Pumps Work Deliverables**").

(iv) The City shall have a period of 14 days from receipt of the Pre-Treatment and Booster Pumps Work Subsequent Deliverables to approve the same or notify the Project Company in writing of any comments the City may have. The Project Company shall revise the Pre-Treatment and Booster Pumps Work Subsequent Deliverables and re-submit the same to the City for review of such revisions; provided, that the Project Company shall only be required to incorporate the City's comments to the extent such comments comply with the limitations set out in Section 8.02(b) (*City-Initiated Changes*) (other than with respect to Section 8.02(b)(v)(C) (*City-Initiated Changes*), solely to the extent the City agrees to bear such cost). If the City has not provided notice of its approval or any comments to the Project Company prior to the expiry of the aforementioned 14-day period, or in the case of resubmissions of a Pre-Treatment and Booster Pumps Work Subsequent Deliverable, no later than seven days following such resubmission, the Pre-Treatment and Booster Pumps Work Subsequent Deliverables shall be deemed to have been approved by the City.

(v) Within 45 days of the City's approval (or deemed approval) of the Pre-Treatment and Booster Pumps Work Subsequent Deliverables, the Parties shall execute an amendment to this Agreement pursuant to the requirements of Section 18.01(a) (*Amendments and Waivers*), which shall set forth (A) a revised definition of Scheduled Commercial Operation Date and a revised definition of Commercial Operation Longstop Date, each consistent with the approved Partially Revised Project Schedule, (B) a revised definition of Pre-Treatment and Booster Pumps Work Funding Amount specifying the amount thereof consistent with the approved PTBPW DB Costs, (C) a replacement Annex W (*Availability Payment Amount*) providing for revised amounts of the Availability Payment consistent with the approved PTBPW Incremental O&M Costs, (D) a replacement Annex L-1 (*Guaranteed Maximum Electricity Consumption*) and a replacement Annex L-2 (*Guaranteed Maximum Chemical Consumption*), each consistent with the approved Partially Revised Electricity and Chemicals Consumption Calculations, (E) a replacement Annex M (*Design Requirements and Construction Standards*) consistent with the approved Partially Revised Design Requirements and Construction Standards, (F) a replacement Annex G (*Feedstock Water Specifications*) consistent with the Revised Feedstock Water Specifications and (G) any other changes to the terms and conditions this Agreement mutually acceptable to the Parties necessary to enable the Project Company to perform the Pre-Treatment and Booster Pumps Work in accordance with the terms of this Agreement in a manner consistent with the approved Pre-Treatment and Booster Pumps Work Deliverables. The Parties shall also utilize the amendment to this Agreement specified in this Section 8.01(d)(v) (*Procedure for Implementing Changes Related to the Pre-Treatment and Booster Pumps Work*) to revise this Section 8.01 (*Required Scope Items*) so to eliminate the change process set out herein with respect to the Treatment and Booster Pumps Work and all related defined terms.

(e) Procedure for Implementing Changes Related to the OCCT Work.

(i) Within 75 days of the Project Company's receipt of relevant data from the Project Company OCCT Study, the Project Company shall deliver to the City: (A) a further update to the Partially Revised Design Requirements and Construction Standards that provides a description of the additional changes to the PTBPW Design Requirements and Construction Standards necessary to address the recommendations of the Project Company OCCT Study ("**Fully Revised Design Requirements and Construction Standards**"), which, following approval thereof by the City in accordance with this Section 8.01(e) (*Procedure for Implementing Changes Related to the OCCT Work*) and implementation of the amendment to this Agreement set out in Section 8.01(e)(v) (*Procedure for Implementing Changes Related to the OCCT Work*), shall thereafter constitute the Design Requirements and Construction Standards for all purposes of this Agreement, (B) a description of the changes to Annex H-2 (*Product Water Contract Standards*) reflecting the Revised Contract Standards, (C) a further update to the Partially Revised Electricity and Chemicals Consumption Calculations that provides a description of the additional changes

to Annex L-1 (*Guaranteed Maximum Electricity Consumption*) and Annex L-2 (*Guaranteed Maximum Chemical Consumption*) arising from the OCCT Work ("**Fully Revised Electricity and Chemicals Consumption Calculations**") and (D) a description of the incremental increase in O&M Costs associated with the OCCT Work ("**OCCTW Incremental O&M Costs**" and, together with the Fully Revised Design Requirements and Construction Standards and the Fully Revised Electricity and Chemicals Consumption Calculations, the "**OCCT Work Initial Deliverables**").

(ii) The City shall have a period of 14 days from receipt of the OCCT Work Initial Deliverables to approve the same or notify the Project Company in writing of any comments the City may have. The Project Company shall revise such OCCT Work Initial Deliverables and re-submit the same to the City for review of such revisions; provided, that the Project Company shall only be required to incorporate the City's comments to the extent such comments comply with the limitations set out in Section 8.02(b) (*City-Initiated Changes*) (other than with respect to Section 8.02(b)(v)(C) (*City-Initiated Changes*), solely to the extent the City agrees to bear such cost). If the City has not provided notice of its approval or any comments to the Project Company prior to the expiry of the aforementioned 14-day period, or in the case of resubmissions of an OCCT Work Initial Deliverable, no later than seven days following such resubmission, the OCCT Work Initial Deliverables shall be deemed to have been approved by the City.

(iii) Within 14 days of the City's approval (or deemed approval) of the OCCT Work Initial Deliverables, the Project Company shall deliver to the City: (A) a further update to the Partially Revised Project Schedule that reflects the additional time necessary to complete the additional DB Work related to the Pre-Treatment and Booster Pumps Work (the "**Fully Revised Project Schedule**") and (B) a description of the incremental increase in DB Costs associated with the OCCT Work ("**OCCTW DB Costs**" and, together with the Fully Revised Project Schedule, the "**OCCT Work Subsequent Deliverables**"; the OCCT Work Initial Deliverables and the OCCT Work Subsequent Deliverables being referred to collectively as the "**OCCT Work Deliverables**").

(iv) The City shall have a period of 14 days from receipt of the OCCT Work Subsequent Deliverables to approve the same or notify the Project Company in writing of any comments the City may have. The Project Company shall revise the OCCT Work Subsequent Deliverables and re-submit the same to the City for review of such revisions; provided, that the Project Company shall only be required to incorporate the City's comments to the extent such comments comply with the limitations set out in Section 8.02(b) (*City-Initiated Changes*) (other than with respect to Section 8.02(b)(v)(C) (*City-Initiated Changes*), solely to the extent the City agrees to bear such cost). If the City has not provided notice of its approval or any comments to the Project Company prior to the expiry of the aforementioned 14-day period, or in the case of resubmissions of an OCCT Work Subsequent Deliverable, no later than seven days following such resubmission, the OCCT Work Subsequent Deliverables shall be deemed to have been approved by the City.

(v) Within 14 days of the City's approval (or deemed approval) of the OCCT Work Subsequent Deliverables, the Parties shall execute an amendment to this Agreement pursuant to the requirements of Section 18.01(a) (*Amendments and Waivers*), which shall set forth (A) a revised definition of Scheduled Commercial Operation Date and a revised definition of Commercial Operation Longstop Date, each consistent with the approved Finally Revised Project Schedule, (B) a revised definition of OCCT Work Funding Amount specifying the amount thereof consistent with the approved OCCTW DB Costs, (C) a replacement Annex W (*Availability Payment Amount*) providing for revised amounts of the Availability Payment consistent with the approved OCCTW Incremental O&M Costs, (D) a replacement Annex L-1 (*Guaranteed Maximum Electricity Consumption*) and a replacement Annex L-2 (*Guaranteed Maximum Chemical Consumption*), each consistent with the approved Fully Revised Electricity and Chemicals Consumption Calculations, (E) a replacement Annex M (*Design Requirements and Construction Standards*) consistent with the approved Fully Revised Design Requirements and Construction Standards, (F) a replacement Annex H-2 (*Product Water Contract Standards*) consistent with the Revised Contract

Standards and (G) any other changes to the terms and conditions this Agreement mutually acceptable to the Parties necessary to enable the Project Company to perform the OCCT Work in accordance with the terms of this Agreement in a manner consistent with the approved OCCT Work Deliverables. The Parties shall also utilize the amendment to this Agreement specified in this Section 8.01(e)(v) (*Procedure for Implementing Changes Related to the Pre-Treatment and Booster Pumps Work*) to delete this Section 8.01 (*Required Scope Items*) in its entirety and all associated defined terms.

(f) Open Book Basis; Disputes. The Project Company shall conduct all discussions with the City with respect to the Required Scope Work Deliverables and shall share with the City all data, documents and information pertaining thereto, on an Open Book Basis. Any Dispute arising between the City and the Project Company in relation to any Required Scope Work Deliverable may be referred by either Party for resolution in accordance with the Dispute Resolution Procedure. The City shall not be required to provide any comments or approval in connection with a disputed Required Scope Work Deliverable pending the resolution of such Dispute pursuant to the Dispute Resolution Procedure.

Section 8.02 City-Initiated Changes.

(a) The City shall have the right to make, at any time prior to or during the progress of the Work, alterations or changes in the Work as the City may find reasonably necessary to ensure proper functionality of the Project (each, a "**City Change**"), subject to the limitations set forth in Section 8.02(b) (*City-Initiated Changes*). The City shall compensate the Project Company for any such City Changes and the Project Company shall be entitled to an extension of the Scheduled Commercial Operation Date and the Commercial Operation Longstop Date in connection with any delays in the performance of the DB Work associated with the implementation of any such City Changes, in each case in accordance with Article X (*Relief Events*). Such City Changes shall not constitute a breach of or invalidate this Agreement. The Project Company agrees to perform the Work, as altered or changed, as if the same had been a part of this Agreement originally. Any such City Change shall be the subject of a written Change Proposal in accordance with Section 8.04 (*Procedures for Implementing Changes to the Work*).

(b) The City shall not, in the exercise of any of its rights hereunder, at any time during the Term require, and the Project Company may refuse to implement, a City Change which: (i) would be contrary to Applicable Law or Good Management Practice; (ii) would render any policy of Required Insurance void or voidable (unless the City agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company); (iii) would cause the revocation of any Governmental Approval required for the Project Company to perform its obligations under this Agreement; (iv) would require a new Governmental Approval for the Project Company to perform the Project Company's obligations under this Agreement which Governmental Approval would not, using reasonable efforts, be obtainable; or (v) would materially and adversely affect (A) the risk allocation among the Parties under this Agreement, (B) the Project Company's ability to perform (including any material increase in the risk of non-performance of) the Project Company's obligations under this Agreement or (C) the Project Company's cost of performance under this Agreement with respect to the Work.

(c) The City shall enter into any agreement reasonably requested by the Project Company to protect the Project Company's rights under this Section 8.02 (*City-Initiated Changes*) in connection with a proposed City Change.

Section 8.03 Project Company-Initiated Changes.

(a) At any time during the Term, the Project Company may request the City to approve modifications to the Design Requirements and Construction Standards or the O&M Standards that, in the Project Company's opinion, would improve the efficiency or value of the Project, enable the Project Company to better manage the risks assumed by it under this Agreement or otherwise benefit the City (each,

a "**Project Company Change**"). Any such Project Company Change shall be the subject of a written Change Proposal in accordance with Section 8.04 (*Procedures for Implementing Changes to the Work*).

(b) The City, in its sole discretion may accept or reject any Project Company Change. If such Project Company Change is accepted by the City, the Project Company shall implement the change in accordance with all applicable Project Requirements (as amended pursuant to Section 8.04 (*Procedures for Implementing Changes to the Work*), if applicable, to reflect the City-approved Project Company Change).

(c) Unless agreed otherwise, the Project Company shall be solely responsible for payment of any increased DB Costs, additional risks and any Project Schedule delays or other impacts resulting from a Project Company Change accepted by the City.

Section 8.04 Procedures for Implementing Changes to the Work.

(a) When either the City or the Project Company requests a change as set forth in Section 8.02 (*City-Initiated Changes*) or Section 8.03 (*Project Company-Initiated Changes*), the Project Company shall prepare a written notice of such change in a Change Proposal, and submit such Change Proposal to the City to allow reasonable opportunity to review and comment upon, such Change Proposal. The Change Proposal shall contain:

(i) sufficient information for the City and the Project Company to determine that the applicable change: (1) does not diminish the capacity of the Project to be operated so as to meet the Product Water delivery obligations set forth in Article VI (*Delivery of Product Water*); (2) does not impair the safety, quality, integrity, durability and reliability of the Project; and (3) is technically feasible;

(ii) in the case of any proposed City Change, (x) sufficient information for the City and the Project Company to determine that the applicable change meets the limitations set forth in Section 8.02 (*City-Initiated Changes*) and (y) the Project Company's detailed estimate of the cost impact of the requested change; and

(iii) details of how the proposed change will impact the Project, including any schedule impact with respect to a change that is proposed prior to the Commercial Operations Date.

(b) The Parties shall negotiate each Change Proposal in good faith until each Party is satisfied that the conditions of Section 8.04(a) (*Procedures for Implementing Changes to the Work*) and (in the case of a proposed City Change) Section 8.02 (*City-Initiated Changes*) are satisfied. Any such Change Proposal, as accepted or modified by the City and the Project Company and any related change in the terms and conditions of this Agreement, shall be memorialized in a signed writing pursuant to the requirements of Section 18.01(a) (*Amendments and Waivers*).

ARTICLE IX

INSURANCE

Section 9.01 Required Insurance Policies and Coverage.

(a) The Project Company shall obtain and maintain, or cause the DB Contractor and the O&M Contractor to obtain and maintain, during the Term, insurance for the Project at its sole cost and expense, and strictly in accordance with the minimum coverage requirements and terms of coverage as set out in Parts 1 and 2 of Annex K (*Required Insurance*) (the "**Project Company Required Insurance**"). The Project Company shall obtain the Project Company Required Insurance as set forth on Annex K (*Required Insurance*) by the dates set forth therein; provided, that the Project Company must obtain the Project Company Required Insurance in respect of the DB Period within 30 days after the Effective Date.

(b) The City shall obtain and maintain during the Term, insurance for the Project at its sole cost and expense, and strictly in accordance with the minimum coverage requirements and terms of coverage (including in respect of any permitted self-insurance) as set out in Annex K (*Required Insurance*) as the City's responsibility (the "**City Required Insurance**"). The City shall obtain the City Required Insurance as set forth on Annex K (*Required Insurance*) by the dates set forth therein.

(c) The Insurance Providing Party shall bear the risk that the premiums payable or the terms and conditions for insuring the risks to be covered thereby in connection with Required Insurance required to be obtained and maintained hereunder by such Insurance Providing Party are to any degree in excess or more burdensome than the premiums, terms and conditions existing on the date of this Agreement.

(d) If an Insurance Providing Party fails to pay or cause to be paid any premium for Project Company Required Insurance or City Required Insurance, as applicable, or if any Insurer cancels a Required Insurance policy and the Insurance Providing Party fails to obtain replacement coverage within 15 days after notice from the Non-Insurance Providing Party, the Non-Insurance Providing Party may pay such premium or procure similar insurance coverage from another Insurer, by providing simultaneous notice of such action to the Insurance Providing Party, and upon such payment and notice the amount thereof shall be immediately reimbursable to the Non-Insurance Providing Party from the Insurance Providing Party. The failure of the City or the Project Company to obtain and maintain any Required Insurance shall not relieve such Party of its liability for any losses, be a satisfaction of any liability hereunder or in any way limit, or modify or satisfy such Party's obligations hereunder.

Section 9.02 Prosecution of Claims.

(a) Unless otherwise directed by the Non-Insurance Providing Party in writing with respect to the Non-Insurance Providing Party's insurance claims, each Insurance Providing Party shall be responsible for reporting and processing all potential claims by such Insurance Providing Party or by the Non-Insurance Providing Party against the Required Insurance required to be obtained and maintained hereunder by such Insurance Providing Party. Each Insurance Providing Party agrees to report timely to the Insurers any and all matters which may give rise to an insurance claim by such Insurance Providing Party or the Non-Insurance Providing Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. Each Insurance Providing Party shall enforce all legal rights against the Insurer under the applicable Required Insurance and Applicable Law in order to collect thereon, including pursuing necessary litigation and enforcement of judgments; provided, that the Insurance Providing Party shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

(b) Each Non-Insurance Providing Party agrees to promptly notify the Insurance Providing Party of incidents, potential claims and matters which may give rise to an insurance claim under Required Insurance under the responsibility of such Insurance Providing Party, to tender to the Insurer the Non-Insurance Providing Party's defense of the claim (if applicable) under such Required Insurance and to cooperate with the Insurance Providing Party as necessary for the Insurance Providing Party to fulfill its duties hereunder.

(c) If the Project Company has not performed its obligations with respect to insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Required Insurance or to prosecute claims diligently, then for purposes of determining the Project Company's liability and the limits thereon or determining reductions in compensation due from the City to the Project Company on account of available insurance, the Project Company shall be treated as if the Project Company has elected to self-insure up to the full amount of insurance coverage which would have been available had the Project Company performed such obligations.

(d) If an Insurer providing any of the Required Insurance required by this Agreement becomes the subject of bankruptcy proceedings, becomes insolvent or is the subject of an order or directive limiting its business activities given by any Governmental Authority, including the State Office of Insurance Regulation, the applicable Insurance Providing Party shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in Annex K (*Required Insurance*) so as to avoid any lapse in insurance coverage.

(e) If in any instance the Insurance Providing Party has not promptly performed its obligation to report to applicable Insurers and process any potential insurance claim tendered by the Non-Insurance Providing Party, then the Non-Insurance Providing Party may report the claim directly to the Insurer and thereafter seek coverage under the relevant policy.

(f) If the Project Company makes a claim against the City under any City Required Insurance that the City has elected to self-insure in accordance with Annex K (*Required Insurance*), the City shall pay to the Project Company, promptly after the City's receipt of the Project Company's claim, the covered amount in respect of such claim owed by the City to the Project Company in accordance with Annex K (*Required Insurance*).

Section 9.03 Application of Insurance Proceeds.

(a) Subject to Section 9.03(b) (*Application of Insurance Proceeds*), all insurance proceeds received by the Project Company for physical property damage to the Project under any Required Insurance under Annex K (*Required Insurance*), other than any business interruption or delay in startup insurance maintained by the Project Company whether or not as part of such Required Insurance, shall be first applied by the Project Company to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Project in respect of which such proceeds were received. In such event, if the Project suffers damage or destruction that is likely to cost more than $5,000,000 to repair and restore, the Project Company shall produce a plan to repair and restore the Project to at least the character or condition thereof existing immediately prior to the damage or destruction, in compliance with Applicable Law, which plan shall be subject to the City's review and approval. Subject to the arrangements in Section 9.02(c) (*Prosecution of Claims*) (insofar as the Project Company is obligated to maintain property insurance for the Project as part of the Project Company Required Insurance), any obligation the Project Company may have under this Agreement to repair and restore the Project shall apply only if, when and to the extent that the Project Company receives the proceeds of property insurance covering the Project under any Required Insurance under Annex K (*Required Insurance*), other than any business interruption or delay in startup insurance maintained by the Project Company whether or not as part of such Required Insurance, are made available to the Project Company. In the event any such insurance proceeds are received following and during the continuance of a Project Company Default, such proceeds shall be (i) retained by the Project Company, to be applied within 60 days of receipt to restore the Project and remediate any outstanding Project Company Default and, to the extent not so applied, (ii) paid to the City.

(b) If the Project Company receives proceeds of Required Insurance in connection with a Relief Event (other than any business interruption or delay in startup insurance maintained by the Project Company whether or not as part of such Required Insurance) and the City has already funded the Extra Work Costs arising from such Relief Event in accordance with Section 10.04 (*Consequences of Relief Event*), the Project Company shall, promptly following receipt of such Required Insurance proceeds, turn over such proceeds to the City.

Section 9.04 Property Damage Caused by Named Windstorm or Terrorism.

(a) Subject to the provisions in this Section 9.04 (*Property Damage Caused by Named Windstorm or Terrorism*) the City shall, in addition to any obligation the City may have under this Article IX (*Insurance*) to timely report and submit any claim of the City or the Project Company against Required

Insurance maintained by the City in accordance with this Agreement, as of the Completion Date and continuing throughout the Term, pay for the Extra Work Costs to repair or replace tangible property damage to the Project caused by a Named Windstorm or Terrorism. However, the City shall not be required to pay for the Extra Work Costs to repair or replace tangible property damage to any tools, machinery, equipment, protective fencing, job trailers or other items used in the performance of the Work but not intended for permanent installation into the Project that is caused by a Named Windstorm or Terrorism.

(b) If tangible property damage to the Project is caused by a Named Windstorm or Terrorism, the Project Company shall, within five Business Days of such occurrence, submit to the City written notice thereof. Together with any Relief Event Claim the Project Company is required to submit in accordance with Section 10.02(d) (*Relief Event Claims*), or within a longer period of time as the City and the Project Company agree is reasonable under the circumstances notwithstanding the terms of Section 10.02(d) (*Relief Event Claims*), the Project Company shall submit to the City complete written and photographic documentation supporting its Relief Event Claim, and provide detailed quantification of the damages caused thereby. Such written documentation shall include detailed identification of the tangible property damage, the scope of necessary repair work, the proposed approach to performing the necessary repair work, and the projected costs of repair together with a supporting cost-loaded repair schedule. The City shall within 21 days, or such extended period of time as the City and the Project Company agree is reasonable under the circumstances, evaluate the documentation supplied by the Project Company and, without prejudice to the Project Company's rights under Section 10.04 (*Consequences of Relief Event*), provide the City's provisional determination of the cost to repair the tangible property damage to the Project. The Project Company shall comply with any City request for explanation, elaboration or additional information reasonably necessary to facilitate the City's analysis.

ARTICLE X

RELIEF EVENTS

Section 10.01 General Responsibilities of the Parties.

Wherever this Agreement expressly provides that the Project Company is entitled to seek additional compensation, time extension or other relief in respect of a Relief Event, the provisions of this Article X (*Relief Events*) shall apply. The Project Company unconditionally and irrevocably waives the right to any claim against the City and its successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees, for any monetary compensation, schedule or other relief with respect to the occurrence of Relief Events except in accordance with this Article X (*Relief Events*). The provisions of this Section 10.01 (*General Responsibilities of the Parties*) shall not limit the Project Company's rights under Article XVII (*Governing Law; Dispute Resolution*); provided, that no award of compensation or damages shall be duplicative and, except as set forth in Section 10.04(a)(ii) (*Availability Payment Impacts; Monetary Compensation*), no change to the Availability Payment shall occur.

Section 10.02 Relief Event Claims.

(a) The Project Company shall comply with the claims procedures and requirements set forth in Sections 10.02(b) and (d) (*Relief Event Claims*). The Project Company's compliance with Sections 10.02(b) and (d) (*Relief Event Claims*) shall be a condition precedent to the Project Company's right to receive any compensation, time extension or other relief under Section 10.04 (*Consequences of Relief Event*) in connection with such Relief Event, and failure by the Project Company to comply with Sections 10.02(b) or (d) (*Relief Event Claims*) shall constitute a full, complete, absolute and irrevocable waiver by the Project Company of its right to receive any such relief in connection with such Relief Event; provided, that any delay in providing the required notices shall not constitute a waiver of the Project

Company's rights under this Article X (*Relief Events*) to the extent the City's rights hereunder are not prejudiced by such delay.

(b) Within twenty Business Days of the Project Company first becoming aware of the occurrence of a Relief Event, the Project Company shall notify the City in writing (a "**Claim Notice**") of the Project Company's intention to make a claim with respect to such Relief Event, setting forth in reasonable detail, to the extent such information is then available: (i) the nature and date of occurrence of the Relief Event; (ii) the nature of any Extra Work resulting or anticipated to result therefrom; (iii) the commencement date of any delay and the key workstreams affected by such delay; (iv) the Project Company's preliminary estimate of Extra Work Costs, and length of delay of key workstreams, including any extension sought of any Completion Deadline; and (v) a description of any other relief sought from the Project Company's obligations under this Agreement. The Project Company shall provide the City periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to a Relief Event. In particular, the Project Company shall notify the City as soon as the Relief Event has ceased and of the time performance of the Project Company's affected obligations can be resumed.

(c) Upon submitting a Claim Notice, the Project Company shall keep daily records of all labor, material and equipment costs incurred for operations affected by the Relief Event. The Project Company shall identify in such daily records each operation and specific location affected by the Relief Event. The City may also keep records of all labor, material and equipment used on the operations affected by the Relief Event. The Project Company shall provide to the City a copy of the Project Company's daily records on a weekly basis and shall be entitled to receive a copy of the City's daily records upon written request. Copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

(d) As a condition precedent to any entitlement of the Project Company to additional compensation, time extension or other relief under Article X (*Relief Events*), the Project Company shall submit a written claim, certified by an Authorized Representative of the Project Company (a "**Relief Event Claim**") to the City with respect to the Relief Event that is the subject of the Claim Notice not later than the date which is the earliest to occur of the following: (x) 30 days following elimination of the subject delay, if applicable; (y) 180 days following Final Acceptance, if the Relief Event Claim arises out of DB Work; and (z) if applicable, expiry of the statutory limitations set out in Florida Statutes § 255.05(10). The Project Company shall include in the Relief Event Claim, at a minimum, the following information:

(i) a detailed description of the Relief Event, including the date(s) on which the Relief Event occurred or when conditions resulting in the Relief Event Claim became evident, and dates, locations and items of Work affected by the Relief Event;

(ii) identification of all pertinent documents and the substance of any material oral communications relating to such Relief Event Claim and the name of the Persons making such material oral communications;

(iii) identification of the provisions of this Agreement which support the Relief Event Claim and a statement of the reasons why such provisions support the Relief Event Claim;

(iv) if the Project Company is seeking relief for the City's alleged breach of this Agreement, the Project Company shall identify the provisions of this Agreement which allegedly have been breached and the actions constituting such breach;

(v) a detailed compilation of the amount of any compensation sought and a breakdown of the amount sought as follows: (A) documented additional cost of materials and supplies; (B) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each; (C) to the extent applicable, documented costs of idle equipment cost and indirect costs, expenses

and profit thereon; (D) any other additional direct costs or damages and the documentation in support thereof; and (E) any additional indirect costs or damages and the documentation in support thereof;

(vi) any effect of the Relief Event on the Project Company's ability to perform any of its obligations under this Agreement that would otherwise result in a Project Company Default, assessment of monetary deductions for Non-Conforming Product Water or other O&M Payment adjustments under Section 7.02(a) (*O&M Payment Deductions*) or assessment of liquidated damages under Section 4.10(a) (*Scheduled Commercial Operation Date*), as applicable, and include details of the relevant obligations, the effect on each such obligation, the duration of that effect and the relief sought under Section 10.04 (*Consequences of Relief Event*);

(vii) an explanation of the measures the Project Company has taken to mitigate the consequences of the Relief Event, including steps taken in accordance with Good Management Practice; and

(viii) the type and amount of insurance applicable and amounts that have been or are anticipated to be collected under such insurance.

(e) If the City disagrees with the Project Company's entitlement to a Relief Event or the amount of time or cost relief claimed in the Relief Event Claim by the Project Company, the City shall notify the Project Company in writing of such disagreement within 30 days following the delivery of the Relief Event Claim and the Project Company and the City shall commence good faith negotiations to resolve the Dispute within 120 days following the delivery of the City's notice of disagreement. If the Dispute cannot be resolved within such 120 days, either Party may submit the Dispute for resolution pursuant to Article XVII (*Governing Law; Dispute Resolution*); provided, that the City shall proceed to make payment to the Project Company of the undisputed portion of the Relief Event Claim (if applicable) in accordance with Section 10.04(a) (*Availability Payment Impacts; Monetary Compensation*) and any undisputed schedule extension shall be granted, in each case without regard to the Dispute Resolution Procedure.

Section 10.03 Mitigation; Insurance.

(a) The Project Company shall take all steps necessary on a commercially reasonable basis to mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Management Practice.

(b) Any entitlement of the Project Company to compensation with respect to a Relief Event shall be net of: (i) all insurance proceeds received by the Project Company pursuant to any Required Insurance (inclusive of the Project Company's obligation to pay any applicable deductible with respect to Required Insurance under the Project Company's responsibility but not under the City's responsibility hereunder); (ii) any amounts which the Project Company is deemed to have self-insured pursuant to Section 9.02(c) (*Prosecution of Claims*) and (iii) any Extra Work Costs that can reasonably be mitigated by the Project Company acting in accordance with Section 10.03(a) (*Mitigation; Insurance*).

Section 10.04 Consequences of Relief Event.

(a) Availability Payment Impacts; Monetary Compensation.

(i) If a Relief Event occurs, the City shall pay an amount equal to Extra Work Costs actually incurred by the Project Company as a result of the Relief Event in the performance of the Project Company's contractual obligations, including due to undertaking Extra Work (as specifically set forth in the Relief Event Claim).

(ii) In addition to any compensation to which the Project Company is entitled under Section 10.04(a)(i) (*Availability Payment Impacts; Monetary Compensation*), in the case where the Commercial Operation Date is delayed due to a Relief Event, from and after the Commercial Operation Date the Availability Payment Amount shall be increased by an amount equal to the return that the Project Company would have earned, assuming a 6% rate of return, on the Availability Payments that the Project Company would otherwise have invoiced the City (pursuant to Section 7.03 (*Invoicing*)) for each Contract Month (or portion thereof) following the date on which the Commercial Operation Date would otherwise have occurred but for the Relief Event until the date when the Commercial Operation Date is achieved and payment of such increased Availability Payment is made, as reflected on a revised Annex W (*Availability Payment Amount*) provided to the City by the Project Company, such revision subject to approval by the City, such approval not to be unreasonably delayed or withheld, and applicable hereunder thereafter.

(iii) In addition to any compensation to which the Project Company is entitled under Sections 10.04(a)(i) or (ii) (*Availability Payment Impacts; Monetary Compensation*), on any day that a Relief Event has occurred and is continuing and during the period necessary for the Project Company to resume normal operation of the Project in compliance with Applicable Law after such Relief Event has abated, the amount of Chemicals and electricity utilized by the Project Company in the performance of its obligations under this Agreement on such day shall be disregarded for purposes of the calculation of Actual Monthly Chemical Consumption and Actual Monthly Electricity Consumption, respectively. In the case where a Relief Event results in a permanent increase in the amount of electricity or Chemicals required, the Guaranteed Maximum Monthly Electricity Consumption or Guaranteed Maximum Monthly Chemical Consumption (as applicable) shall be increased by the amount of such permanent increase, which increased amount shall be applicable hereunder thereafter.

(iv) The City shall compensate the Project Company for Extra Work Costs as progress payments invoiced as such Extra Work is completed. The Project Company shall provide the City with an invoice for each Contract Month in which such Extra Work is completed by the fifteenth Business Day following the end of such Contract Month, and the City shall pay such invoice in full within 45 days after the Project Company delivers the invoice to the City.

(b) Extension of Scheduled Deadlines; Damages for Delay. If a Relief Event occurs during the DB Period, the Parties agree that the Scheduled Commercial Operation Date and the Commercial Operation Longstop Date, as specifically set out in the relevant Relief Event Claim, shall be extended day-for-day for any delays in the performance of the DB Workt.

(c) Exemption from Legal Standards and Contract Standards. If a Relief Event occurs that would impact the Project Company's ability to comply with Legal Standards or Contract Standards with respect to its delivery of Product Water, the Project Company shall be excused for its inability to comply with such obligations resulting from the Relief Event and no deductions pursuant to Section 7.02(a) (*O&M Payment Deductions*) shall be assessed for the duration of the Relief Event or the consequences thereof (as such is specifically set out in the Relief Event Claim).

(d) Exemption from Daily Quantities. If a Relief Event occurs that would impact the Project Company's ability to deliver the Required Quantity for any given day during the continuation of the Relief Event (or the effects thereof), the Project Company shall be excused for its inability to comply with such obligations resulting from the Relief Event and no deductions pursuant to Section 7.02(b) (*Product Water Shortfalls*) shall be assessed for the duration of the Relief Event or the consequences thereof (as such is specifically set out in the Relief Event Claim).

(e) Other Exemptions. The Parties agree that the Project Company shall be excused from complying with any of its other obligations under this Agreement that is directly affected by the occurrence of a Relief Event, and no deductions shall be assessed, or other remedies enforced, on account

of such noncompliance (to the extent specifically set out in the Relief Event Claim); provided, that the occurrence of a Relief Event shall not excuse the Project Company or the City from timely payment of monetary obligations pursuant to this Agreement or, except as set forth in Section 10.04 (*Consequences of Relief Event*), from compliance with the Project Requirements.

(f) Feedstock Water Deviations.

(i) Significant Modification; Corrective Measures. If, following a Feedstock Water Deviation, the Project Company is not able to operate the Project and produce Product Water as required by this Agreement without the City implementing a Significant Modification:

(A) City may elect to implement such Significant Modification at its own cost and shall be entitled to interrupt or suspend the operation of the Project and production of Product Water as shall be reasonably necessary for effecting the Significant Modification; provided, that City shall pay to the Project Company (1) the reasonably documented preservation, demobilization and remobilization costs arising from such interruption or suspension and (2) a *pro rata* portion of the Availability Payment Amount applicable to the relevant Contract Month for each day of interruption or suspension; or

(B) City may elect not to implement any Significant Modification, and the Project Company shall continue to operate the Project, taking all such reasonable steps and measures (including the implementation of variations and/or additions to the Project equipment), whether temporary, permanent, continuous or recurring, as shall be required for eliminating, reducing or overcoming the adverse effect of such Feedstock Water Deviation on the Project's equipment and for achieving production of Product Water as required by this Agreement ("**Corrective Measures**"). The Corrective Measures proposed to be taken by the Project Company shall require the prior approval of City, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall compensate the Project Company for such Corrective Measures, including the cost of any additional equipment required in order to implement the Corrective Measures, as Extra Work Costs pursuant to Section 10.04(a)(i) (*Availability Payment Impacts; Monetary Compensation*).

(C) Following the occurrence of a Feedstock Water Deviation and, subsequently, following the implementation of such Corrective Measures and/or Significant Modification pursuant to Sections 10.04(f)(i)(A) and/or (B) (*Significant Modification; Corrective Measures*), the City and the Project Company shall mutually agree the testing procedure that the Project Company shall undertake to verify and reestablish the Project's performance.

(ii) If the operation of the Project following the occurrence of a Feedstock Water Deviation could reasonably be expected to cause significant damage to the Project's equipment, the Project Company may suspend the operation of the Project until the potential of such damage is removed or ameliorated (so long as such action is justified in light of the extent of such reasonably-expected damage). If the Parties disagree on the reasonableness of the Project Company's determination to suspend the operation of the Project, either Party may refer the disagreement to resolution in accordance with the Dispute Resolution Procedure (and the operation of the Project shall remain halted until a final resolution is obtained in accordance with the Dispute Resolution Procedure). The City shall pay to the Project Company (1) the reasonably documented preservation, demobilization and remobilization costs arising from such interruption or suspension and (2) a *pro rata* portion of the Availability Payment Amount applicable to the relevant Contract Month for each day of such suspension of operations. Any suspension of operation of the Project where the Feedstock Water Deviation is outside the manufacturer's recommended parameters for the membranes shall be deemed to be reasonable.

ARTICLE XI

FINANCING PLAN

Section 11.01 Project Company Funding. The Project Company shall request and the Equity Providers shall make, in response to any such request from the Project Company and on a *pro rata* basis according to each Equity Provider's Percentage Interest, from time to time, Capital Contributions in an aggregate amount equal to the Project Company Funding Amount (the "**Equity Provider Funding Contributions**"). The Project Company shall apply such Equity Provider Funding Contributions toward the payment of Project Costs. The Project Company shall notify the City at least 15 days in advance of the Project Company Funding Amount being fully spent on Project Costs, and shall deliver to the City such back-up documentation and detail as the City may reasonably request.

Section 11.02 City Funding.

(a) The City shall make available to the Project Company, from sources available to the City, an aggregate amount equal to 75% of the Aggregate Project Costs (the "**Base City Funding**"). Any increase in Aggregate Project Costs shall be the Project Company's responsibility, subject to the Project Company's entitlement to Extra Work Costs following the occurrence of a Relief Event pursuant to Article X (*Relief Events*).

(b) In addition to the amounts set forth in Section 11.02(a) (*City Funding*), the City shall pay, from Net Revenues (as defined in the Bond Resolution) or other non-ad valorem sources legally available to the City, 100% of each of the Modified Water Standards Funding Amount (subject to the Modified Water Standards Funding Amount Cap), the Pre-Treatment and Booster Pumps Work Funding Amount (subject to the Pre-Treatment and Booster Pumps Work Funding Amount Cap) , the OCCT Work Funding Amount and the Second Disposal Well Funding Amount. The remainder of the Modified Water Standards Funding Amount above the Water Standards Funding Amount Cap and the Pre-Treatment and Booster Pumps Work Funding Amount above the Pre-Treatment and Booster Pumps Work Funding Amount Cap shall be paid by the Project Company.

(c) All City Funding Amounts shall be made available to the Project Company on a progress payment basis at such times and in such amounts as the Project Company may request in accordance with Section 11.03 (*City Funding Amount Payments*). The City shall be entitled to apply any grants, subsidies or other aids in contractions that it receives in its discretion, provided, that the application of any such grants, subsidies or other aids towards the City's obligation to provide City Funding Amounts shall not adversely affect the Project Schedule or impose additional Work costs on the Project Company.

Section 11.03 City Funding Amount Payments.

(a) As a condition to any payment by the City of City Funding Amounts, the Project Company shall first submit to the City a funding request substantially in the form attached hereto as Annex U (*Form of Funding Request*) (the "**Funding Request**"). The Project Company may submit a Funding Request to the City at a frequency not to exceed once every month per type of City Funding Amount; provided, that the Project Company may not submit any Funding Request in respect of the Base City Funding until the Project Company Funding Amount has been fully spent.

(b) Each Funding Request shall (i) be signed by two Authorized Representatives of the Project Company, (ii) include certifications from the Project Company that (A) requested amounts shall be used only to pay or reimburse the Project Company for a prior payment of Project Costs in accordance with Section 11.02 (*City Funding*), (B) no Project Company Default has occurred and is continuing under this Agreement, (C) the Project Company has used all payments of City Funding Amounts of the same type as indicated on such Funding Request prior to the

submission of such Funding Request for payment of Project Costs in accordance with Section 11.02 (*City Funding*) and (C) that the DB Work associated with the Funding Request has been performed in compliance with the requirements of this Agreement, (iii) attach (A) conditional waivers and releases upon payment from DB Contractor and all subcontractors under the DB Contract with respect to subcontracts with a value of at least $1,000,000, from whom the Project Company has obtained such releases pursuant to the DB Contract, in the amount of the requested payment and (B) an unconditional waiver and release upon payment from the DB Contractor and all subcontractors under the DB Contract with respect to subcontracts with a value under $1,000,000, from whom the Project Company has obtained such releases pursuant to the DB Contract, for DB Work billed and paid through the date of the Funding Request and (iv) specify the account of the Project Company for payment of the requested amounts.

(c) Within five Business Days following the City's receipt of a properly completed Funding Request, the City shall notify the Project Company of the City's approval or disapproval of the Funding Request, stating in detail the reasons for any disapproval. If the Project Company does not agree with any written notice of disapproval provided by the City, the Project Company may refer the Dispute to resolution in accordance with the Dispute Resolution Procedure. The City shall not be required to provide any comments or approval in connection with a disputed Funding Request pending the resolution of such dispute pursuant to the Dispute Resolution Procedure. If the City does not respond within the aforementioned five Business Days the Funding Request shall be deemed approved by the City. Within two Business Days of the City's approval or deemed approval of the Funding Request, the City shall transfer the requested amounts to the account of the Project Company by wire transfer of immediately available funds. Any disapproved amounts shall be made available in a subsequent payment if the reasons for disapproval are satisfied or if it is determined pursuant to the Dispute Resolution Procedure that the City was not entitled to disapprove such amounts.

ARTICLE XII

ASSIGNMENT AND CHANGE OF CONTROL

Section 12.01 Restrictions on Assignment of Agreements.

(a) The Project Company shall not assign, transfer or otherwise dispose of any interest in this Agreement except:

(i) until the second anniversary of the Commercial Operation Date, with the City's consent, as evidenced by action of the City Commission, in the City's sole discretion; or

(ii) from and after the second anniversary of the Commercial Operation Date, with the City's consent, as evidenced by action of the City Commission, which shall not be unreasonably withheld, conditioned or delayed, it being understood that it shall be reasonable for the City to withhold its consent if the proposed transferee does not satisfy the requirements set out in Section 12.02(b) (*Restrictions on Changes of Control*);

provided, that in the case of any assignment under this Section 12.01(a) (*Restrictions on Assignment of Agreements*), the assignee assumes all of the obligations of the Project Company under this Agreement.

(b) The City shall not assign, transfer, or otherwise dispose of any interest in this Agreement except with the Project Company's prior written consent, in its sole discretion.

(c) Any purported assignment of this Agreement in violation of this Section 12.01 (*Restrictions on Assignment of Agreements*) is void.

Section 12.02 Restrictions on Changes of Control.

(a) Until the second anniversary of the Commercial Operation Date, no Change of Control shall be permitted without the City's consent, as evidenced by action of the City Commission.

(b) From and after the second anniversary of the Commercial Operation Date, a Change of Control shall be permitted; provided, that:

(i) the proposed transferee is not a Restricted Person; and

(ii) (A) the proposed transferee, together with its Affiliates, has a net worth of at least $100 million or (B) if such proposed transferee is a private equity fund or another investment vehicle, then such proposed transferee, or Affiliates of, or any investment funds advised or managed by, such proposed transferee, has drawn and/or undrawn funding commitments from its investors or assets under management of at least $100 million.

(c) Notwithstanding anything to the contrary in this Section 12.02 (*Restrictions on Changes of Control*), the equity interests in any direct holder of equity interests in the Project Company (an "**Equity Member**") may be pledged as security for any indebtedness of such Equity Member, and any transfer pursuant to the enforcement by any lender to such Equity Member of such pledge of security shall not constitute a Change of Control under this Agreement if the proposed transferee satisfied the requirements of Section 12.02(b) (*Restrictions on Changes of Control*).

(d) The Project Company shall pay the City's reasonable internal administrative and personnel costs and all out-of-pocket costs incurred by the City in connection with the City's consideration of any request for consent submitted by the Project Company pursuant to Section 12.01 (*Restrictions on Assignment of Agreements*) or Section 12.02 (*Restrictions on Changes of Control*).

ARTICLE XIII

REPRESENTATIONS AND WARRANTIES

Section 13.01 Representations and Warranties of Project Company.

(a) The Project Company is a limited partnership duly organized and validly existing under the laws of the State of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and each Key Contract to which the Project Company is a party and to perform each and all of the obligations of the Project Company provided for herein and therein. The Project Company is duly qualified to do business, and is in good standing, in the State, and shall remain in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under this Agreement.

(b) The execution, delivery and performance of this Agreement and each Key Contract to which the Project Company is a party have been duly authorized by all necessary partnership action of the Project Company; each Person executing this Agreement and each Key Contract to which the Project Company is a party on the Project Company's behalf has been duly authorized to execute and deliver this Agreement and such Key Contract on the Project Company's behalf; and this Agreement and such Key Contract have been duly executed and delivered by the Project Company.

(c) Neither the execution and delivery by the Project Company of this Agreement or any Key Contract to which the Project Company is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or has resulted or shall result in a default under or a violation of the organizational documents of the Project Company or any other agreements or instruments to which the Project Company is a party or by which the Project Company is bound.

(d) This Agreement and each Key Contract to which the Project Company is a party constitute the legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(e) There is no material action, suit, proceeding, investigation or litigation pending and served on the Project Company which challenges the Project Company's authority to execute, deliver or perform, or the validity or enforceability against the Project Company of, this Agreement or any Key Contract to which the Project Company is a party, or which challenges the authority of the Project Company's representative executing this Agreement or such Key Contract; and the Project Company has disclosed to the City any material pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Project Company is aware.

(f) The Project Company owns, or has sufficient rights in, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

Section 13.02 Representations and Warranties of City.

(a) The City is a municipal corporation, duly formed and validly existing under the laws of the State, and has full status, power, right and authority to execute, deliver and perform this Agreement, the Labor Services Agreement and any other related agreements to which the City is a party and to perform each and all of the obligations of the City provided for herein and therein.

(b) This Agreement, the Labor Services Agreement and the other related documents to which the City is a party have each been duly authorized by the City, and each constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

(c) Each Person executing this Agreement, the Labor Services Agreement and the other related documents to which the City is a party has been duly authorized to execute and deliver each such document on behalf of the City; and this Agreement, the Labor Services Agreement and the other related documents to which the City is a party have been duly executed and delivered by the City.

(d) Neither the execution and delivery by the City of this Agreement, the Labor Services Agreement and the other related documents to which the City is a party nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or shall result in a default under or violation of the City's organizational documents or any other agreements or instruments to which the City is a party or by which the City is bound.

(e) This Agreement, the Labor Services Agreement and the other related documents to which the City is a party have each been duly authorized by the City, and each constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

(f) There is no action, suit, proceeding, investigation or litigation pending and served on the City which challenges the City's authority to execute, deliver or perform, or the validity or enforceability against the City of, this Agreement, the Labor Services Agreement or the other related documents to which the City is a party, or which challenges the authority of the City official executing this Agreement, the Labor Services Agreement or the other related documents to which the City is a party; and the City has disclosed to the Project Company any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the City is aware.

(g) The City owns the Project, the Site, the City Wellfield and the associated wells and intake and outfall structures, free and clear of all Liens, except for Permitted Liens.

ARTICLE XIV

ADDITIONAL COVENANTS

Section 14.01 Maintenance of Existence.

The Project Company shall (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted under Article XII (*Assignment and Change of Control*); (b) take all reasonable action to maintain all rights, licenses, permits, privileges and franchises necessary or desirable in the ordinary conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a material and adverse effect on the Project Company's ability to perform its obligations under this Agreement, and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a material and adverse effect on the Project Company's ability to perform its obligations under this Agreement.

Section 14.02 Compliance with Laws.

The Project Company shall comply in all material respects with the requirements of Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except to the extent that the failure to do so could not reasonably be expected to have a material and adverse effect on the Project Company's ability to perform its obligations under this Agreement.

Section 14.03 Coordination and Payment of Electricity and Chemical Supply.

(a) The City shall supply all of the Project's electricity requirements starting on the date and in accordance with the quantity and other requirements as specified in Annex B (*City Infrastructure Obligations*). The City shall have the exclusive right and obligation during the Term to enter into contracts or other arrangements for the supply of electricity to the Project, to determine the electricity supplier, and to negotiate and establish electricity rates with the electricity supplier, subject to the approval of the Project Company, acting reasonably, and shall pay all electricity bills related to the Project directly to the electricity supplier during the Term in a timely manner. Notwithstanding the foregoing, the City shall meet and confer with the Project Company to determine the optimal number of meters and electricity rates to minimize the amount of electricity consumed during the Commissioning Work or operation of the Project.

(b) The City shall supply all of the Project's requirements for Chemicals. The City shall have the exclusive right and obligation during the Term to enter into contracts or other arrangements for the supply of Chemicals to the Project, and to negotiate and establish prices with each Chemical supplier, subject to the approval of the Project Company, acting reasonably, and shall pay all invoices for Chemicals related to the Project directly to the applicable Chemical supplier during the Term in a timely manner. At least 90 days prior to the date when the Project Company is expected to begin the Commissioning Work in accordance with the Project Schedule, the City shall deliver to the Project Company an amount of each Chemical equal to the Guaranteed Maximum Monthly Chemical Consumption for such Chemical (the "**Chemical Storage Amount**"). The Project Company shall notify the City in writing when the amount of any Chemical it has in storage reduces to 15 days. Within seven days after receipt of the Project Company's notification, the City shall arrange for the delivery to the Project Company of a sufficient quantity of such Chemical as necessary to replenish the Project Company's storage to the applicable Chemical Storage Amount. The Project Company may from time to time undertake a review of the supply of Chemicals to the Project and recommend to the City variations to the protocol described in this Section 14.03(b) (*Coordination and Payment of Electricity and Chemical Supply*) for the purpose of optimizing such supply and reducing the related expenditures of the City. The Parties shall document in a written instrument satisfying the requirements of Section 18.01 (*Amendments and Waivers*) any variations to the procedures

described in this Section 14.03(b) (*Coordination and Payment of Electricity and Chemical Supply*) agreed between the City and the Project Company.

(c) The City shall supply all of the Project's diesel requirements. At least 30 days prior to the date when the Commercial Operation Date is expected to occur in accordance with the Project Schedule, the City shall arrange for the delivery of diesel to the Project Company in an amount equal to five days of the Project's diesel requirements (the "**Diesel Storage Amount**"). The Project Company shall notify the City in writing within 48 hours of any use of the stored diesel, or when unutilized diesel in storage requires replacement. The City shall arrange for the removal of any unused diesel the Project Company has in storage and the delivery of replacement diesel in an amount equal to the Diesel Storage Amount within 30 days (but in any event, as soon as reasonably practical) after receipt of the Project Company's notification; provided, that any Project shutdown due to inadequate diesel fuel supplies occurring between the delivery of the Project Company's notification and the City's delivery of replacement diesel in an amount equal to the Diesel Storage Amount shall constitute a Relief Event pursuant to clause (xvi) of the definition thereof.

ARTICLE XV

EVENTS OF DEFAULT

Section 15.01 City Default. The City shall be in breach of this Agreement upon the occurrence of any one or more of the following events or conditions (each a "**City Default**"):

(a) The City fails to make any payment (including any payment pursuant to Section 11.03 (*City Funding Amount Payments*)) due to the Project Company under this Agreement when due; provided, that such payment is not subject to a dispute;

(b) The City fails to deliver the Subordinate Bond, the Supplemental Bond Resolution or the opinion of bond counsel, in each case as required under Section 7.01(b)(iv) (*O&M Payment and Separate Payment*);

(c) The City breaches any other term, covenant or undertaking to the Project Company, the consequence of which is (i) a material adverse effect on the performance of the Work or (ii) any material provision of this Agreement being unenforceable against the City to the extent that the Project Company is reasonably likely to be materially deprived of the benefit of this Agreement;

(d) The authorized filing by the City of a petition seeking relief under the Bankruptcy Law, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided, that the appointment of a financial control or oversight board by the State for the City shall not in and of itself constitute a City Default hereunder;

(e) Any representation or warranty made by the City under this Agreement is false or materially misleading or inaccurate when made in any material respect or omits material information when made;

(f) The City or any other Governmental Authority confiscates, sequesters, condemns or appropriates the Project or all right, title, interest and property of the Project Company in, to, under or derived from this Agreement, or any material part of any of the foregoing, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement; or

(g) The City fails to maintain the Required Insurance required to be maintained by it as set forth on Annex K (*Required Insurance*).

Section 15.02 Cure Periods; Project Company Remedies for City Default.

(a) The City shall have the following cure periods with respect to the following City Defaults:

(i) For a City Default under Sections 15.01(c), (e) or (g) (*City Default*), a period of 60 days after the Project Company delivers to City written notice of the City Default; provided, that if the City Default is of such a nature that the cure cannot with diligence be completed within such time period and the City has commenced meaningful steps to cure promptly after receiving the default notice, the City shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure.

(ii) For a City Default under Sections 15.01(a) or (b) (*City Default*), a period of 30 days after the Project Company delivers to the City written notice of the City Default.

(iii) For a City Default under Section 15.01(d) (*City Default*), a period of 60 days after the Project Company delivers to the City written notice of the City Default.

(b) Upon the occurrence of a City Default, and following the expiration of any applicable cure period set out in Section 15.02(a) (*Cure Periods; Project Company Remedies for City Default*), the Project Company shall have the right to terminate the Agreement as set forth in Section 16.01 (*Termination by the Project Company for City Default*) and may exercise any other rights and remedies available under this Agreement or available under Applicable Law.

Section 15.03 Project Company Default.

(a) Subject to Section 15.03(b) (*Project Company Default*), the Project Company shall be in breach of this Agreement upon the occurrence of any one or more of the following events or conditions (each a "**Project Company Default**"):

(i) The Project Company fails to satisfy all of the conditions to the Commercial Operation Date that the Project Company is responsible for satisfying by the Commercial Operation Longstop Date;

(ii) (A) The Project Company fails to make any payment due to the City under this Agreement when due or (B) any Equity Provider shall fail to make an Equity Provider Funding Contribution in accordance with Section 11.01 (*Project Company Funding*); provided, that such payment or Equity Provider Funding Contribution, as the case may be, is not subject to a dispute;

(iii) The Project Company breaches any term, covenant or undertaking to the City, the consequence of which is (i) a material risk to the health or safety of the public; (b) a risk of material liability of the City to third parties; (c) an adverse effect on the performance of the Work to the extent that the City is reasonably likely to be materially deprived of the benefit of this Agreement; or (d) any material provision of this Agreement being unenforceable against the Project Company;

(iv) A Bankruptcy-Related Event has occurred with respect to the Project Company;

(v) Any representation or warranty made by the Project Company under this Agreement is false or materially misleading or inaccurate when made in any material respect or omits material information when made;

(vi) The Project Company voluntarily abandons the Project or discontinues its performance of the Work for a period of 30 or more consecutive days;

(vii) The Project Company fails to maintain the Required Insurance required to be maintained by it, or to comply with its obligation to name the City as an insured party;

(viii) The Project Company breaches Section 12.01 (*Restrictions on Assignment of Agreements*) relating to assignments by the Project Company or a Change of Control occurs which is prohibited by Section 12.02 (*Restrictions on Changes of Control*); or

(ix) With respect to the Product Water Quality Guarantee, (A) the City is required pursuant to Applicable Law on two separate occasions, to issue a "boil water" notice with respect to Product Water, (B) the Project Company fails to meet the same parameter of the Contract Standards for a period of 360 consecutive days or (C) the Project Company fails to meet any of the "Primary Drinking Water Standards" (as specified on Annex H-1 (*Product Water Legal Standards*)) for a period of 180 consecutive days.

(b) Notwithstanding Section 15.03(a) (*Project Company Default*), no Project Company Default shall arise where a default by the Project Company under this Agreement arises as a result of:

(i) actions or omissions by the City where the Project Company is otherwise in compliance with its obligations under this Agreement in respect of which the Project Company Default has arisen;

(ii) a Relief Event; or

(iii) where such default was otherwise excused pursuant to Section 5.01(o) (*City-Directed Curtailments and Shutdowns*) or Section 6.03 (*Product Water Quantity*).

Section 15.04 Cure Periods; City Remedies for Project Company Default.

(a) The Project Company shall have the following cure periods with respect to the following Project Company Defaults:

(i) For a Project Company Default under Sections 15.03(a)(ii), (iv) or (vi) (*Project Company Default*), a period of 60 days after City delivers to the Project Company written notice of the Project Company Default.

(ii) For a Project Company Default under Sections 15.03(a)(iii), (v), (vii) or (viii) (*Project Company Default*), a period of 60 days after City delivers to the Project Company written notice of the Project Company Default; provided, that if the Project Company Default is of such a nature that the cure cannot with diligence be completed within such time period and the Project Company has commenced meaningful steps to cure promptly after receiving the default notice, the Project Company shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure.

(b) Upon the occurrence of a Project Company Default, and following the expiration of any applicable cure period set out in Section 15.04(a) (*Cure Periods; City Remedies for Project Company Default*), the City shall have the right to terminate the Agreement as set forth in Section 16.02 (*Termination by City for Project Company Default*) and may exercise any other rights and remedies available under this Agreement or available under Applicable Law.

Section 15.05 Additional Provisions on Remedies.

(a) To the extent permitted by Applicable Law, no Party shall be liable to the other Party for punitive damages or indirect, incidental or consequential damages, whether arising out of a breach

by such Party, tort (including negligence) or any other theory of liability, and each Party releases the other Party from any such liability.

(b) The foregoing limitation on each Party's liability for damages shall not apply to or limit the other Party's right of recovery respecting the following:

(i) Losses (including defense costs) to the extent covered by the proceeds of Required Insurance;

(ii) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith;

(iii) Any amounts a Party liable may owe or be obligated to reimburse to the other Party under the express provisions of this Agreement; or

(iv) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that this Agreement expressly states are due from the Party liable to the other Party.

(c) Notwithstanding anything contained herein to the contrary, the City, by execution of this Agreement, hereby fully and expressly waives to the fullest extent permitted by Applicable Law the protections of sovereign immunity, *except* that the City makes no waiver of the protections of sovereign immunity that are not already waived in Section 768.28, Florida Statutes, with respect to actions in tort or as a result of negligence. The City also expressly agrees that it shall be responsible for all payments owed to the Project Company pursuant to the specific terms of this Agreement.

(d) No failure to exercise, and no delay in exercising any right or remedy of either Party hereunder shall be deemed to be a waiver by such Party of that right or remedy. No waiver of any breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of that provision or of any similar provision. Except as set forth in Section 4.10(a) (*Scheduled Commercial Operation Date*) and Section 6.02(a) (*Failure to Meet Quality Standards*), the rights and remedies of each Party under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by either Party of any right or remedy hereunder precludes or otherwise affects the exercise of any other right or remedy to which such Party is entitled. The exercise by the City of any of its rights hereunder shall not reduce or effect in any way the Project Company's responsibility to perform the Work.

ARTICLE XVI

TERMINATION

Section 16.01 Termination by the Project Company for City Default.

In the event of a City Default under Section 15.01 (*City Default*) that remains uncured following notice and expiration of the applicable cure period under Section 15.02 (*Cure Periods; Project Company Remedies for City Default*), the Project Company shall have the right to terminate this Agreement, effective upon delivery of written notice of termination to the City.

Section 16.02 Termination by City for Project Company Default.

In the event of a Project Company Default under Section 15.03 (*Project Company Default*) that remains uncured following notice and expiration of the applicable cure period under Section 15.04 (*Cure Periods; City Remedies for Project Company Default*), City shall have the right to terminate this Agreement, effective promptly upon delivery of written notice of termination to the Project Company.

Section 16.03 Termination by City for Convenience.

The City may, in its sole discretion, terminate this Agreement solely in its entirety if the City Commission determines that a termination is in the City's best interest (a "**Termination for Convenience**"). The City Manager shall deliver to the Project Company a written notice specifying the election to terminate and the effective Termination Date thereof.

Section 16.04 Termination for Extended Relief Events.

Either Party may deliver to the other Party written notice of the notifying Party's election to terminate this Agreement based on a Relief Event (other than a Relief Event related to a City Default, which is governed by Section 16.01 (*Termination by the Project Company for City Default*) above) under the following circumstances:

(a) A Relief Event has occurred and:

(i) The Relief Event (i) during the DB Period, shall result in a delay in achieving the Commercial Operation Date for more than 180 days beyond the original Commercial Operation Longstop Date; or (ii) during the Operations Period, shall result in the inoperability of the Project for a period of 360 days or more;

(ii) The Project Company could not have mitigated or cured such result through the exercise of diligent efforts;

(iii) Such result is continuing at the time of delivery of the written notice; and

(iv) The written notice sets forth in reasonable detail the Relief Event, a description of the result and its duration, and the notifying Party's intent to terminate this Agreement.

(b) The Termination Date shall be effective on the date set forth in the written notice of termination delivered by the notifying Party.

Section 16.05 Termination by Court Ruling.

A termination by order of a court ("**Termination by Court Ruling**") shall become effective upon, (a) issuance of a final order by a court of competent jurisdiction following exhaustion of all appeals to the effect that this Agreement is void, voidable and/or unenforceable as a matter of law (other than by reason of the Project Company's representations under Section 13.01 (*Representations and Warranties of Project Company*) hereof being false or inaccurate or the Project Company otherwise failing to comply with the terms of this Agreement) or (b) issuance of a final order by a court of competent jurisdiction following exhaustion of all appeals upholding the binding effect on the Project Company of a Change in Law that causes impossibility of performance of a fundamental obligation by the Project Company or the City under this Agreement or impossibility of exercising a fundamental right of the Project Company or the City under this Agreement. The final court order shall be treated as the City's notice of termination with immediate effect.

Section 16.06 Expiration of Term; Handback Requirements.

(a) This Agreement shall terminate automatically, without any need for further action from either Party, at the end of the Term.

(b) On the Expiration Date, the Project Company shall have complied with the End of Term Performance Evaluation Requirements and the Handback Requirements in accordance with Annex S (*End of Term Handback Requirements*).

Section 16.07 Termination Payments.

(a) In the case of early termination of this Agreement (i) by the Project Company due to a City Default pursuant to Section 16.01 (*Termination by the Project Company for City Default*), (ii) by the City for convenience pursuant to Section 16.03 (*Termination by City for Convenience*), (iii) by either Party pursuant to Section 16.04 (*Termination for Extended Relief Events*) or (iv) pursuant to a Termination by Court Ruling, the City shall make a Termination Payment to the Project Company in an amount equal to the sum of:

(i) (A) if the Termination Date occurs prior to the date of issuance of the Subordinate Bond, the Pre COD Termination Amount or (B) if the Termination Date occurs after the date of issuance of the Subordinate Bond, the sum of the Accelerated O&M Payment Amount plus the Make-Whole Amount (as defined in the Subordinate Bond) due to the Project Company under the Subordinate Bond as a result of the mandatory redemption of the Subordinate Bond; in either case of (A) and (B) *plus*

(ii) any Contractor Breakage Costs (provided, that, if the City elects to assume the Project Company's rights and obligations under the O&M Agreement in accordance with the terms thereof, the Termination Payment shall not include Contractor Breakage Costs incurred by the Project Company under the O&M Contract); *plus*

(iii) any Employee Payments and other reasonable costs incurred by the Project Company as a result of termination of this Agreement, including costs incurred in terminating and winding up the Project Company's business.

(b) The Termination Payment shall be made promptly, and in any case within 90 days, following delivery of the applicable notice of termination delivered pursuant to Section 16.01 (*Termination by the Project Company for City Default*) through Section 16.04 (*Termination for Extended Relief Events*).

(c) The City acknowledges and agrees that, notwithstanding that only the Separate Payment shall be documented in the form of a bond issued by the City pursuant to Section 7.01(b)(iv) (*O&M Payment and Separate Payment*), all payment obligations of the City under this Agreement, including the City's obligation to pay the Termination Payment (including the Pre COD Termination Amount, the Accelerated O&M Payment Amount, Contractor Breakage Costs and Employee Payments) pursuant to Section 16.07 (*Termination Payments*), shall constitute Subordinated Indebtedness under and as defined in the Bond Resolution.

(d) In the case of early termination of this Agreement by the City due to a Project Company Default pursuant to Section 16.02 (*Termination by City for Project Company Default*), the Project Company shall make a payment to the City in an amount equal to the City's reasonable and documented costs and damages arising from such Project Company Default.

Section 16.08 Handover Period.

(a) Handover Plan.

(i) Within three days following receipt of a notice of early termination, the Parties shall meet and confer for the purpose of developing a handover plan (the "**Handover Plan**") for the orderly transition of Work, and transfer of control of the Project and Site to City. The City and the Project Company shall use diligent efforts to complete preparation of the Handover Plan within 30 days following the date the relevant Party receives the notice of termination.

(ii) The Handover Plan shall be in form and substance reasonably acceptable to the City and shall include and be consistent with the other provisions and procedures set forth in this Section 16.08 (*Handover Period*), all of which procedures the Project Company shall promptly follow,

regardless of any delay in preparation or acceptance of the Handover Plan. The Handover Plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the Handover Plan.

(b) Relinquishment of Possession of Project. On the Termination Date or, in the case of early termination of this Agreement, as soon thereafter as is possible as provided in the Handover Plan, the Project Company shall relinquish and surrender full control and possession of the Project and Site to City or City's Authorized Representative, and shall cause all Persons claiming under or through the Project Company to do likewise. In the case of early termination of this Agreement after the Commercial Operation Date, the Project Company shall relinquish and surrender the Project in at least the condition required by the Transfer Condition Requirements (as defined in Annex S (*End of Term Handback Requirements*)).

(c) Treatment of Key Contracts.

(i) In the case of termination of this Agreement, other than pursuant to Section 16.06 (*Expiration of Term; Handback Requirements*), and following payment by the City of any applicable Termination Payment in accordance with Section 16.07 (*Termination Payments*), the City may elect, by written notice to the Project Company, to assume the Project Company's rights and obligations under the DB Contract, the O&M Contract and/or the Interface Agreement or to require their termination. To elect such assumption, the City must deliver to the Project Company and the applicable Contractor(s) a notice of the City's election to assume such Key Contract ("**Notice of Election**") on or prior to the date of termination of the Comprehensive Agreement. On and after the date of receipt of such Notice of Election by the Project Company and the applicable Contractor(s) (the "**Notice of Election Effective Date**"), (A) the Project Company shall cease to be a party to such Key Contract and all references to the Project Company thereunder shall be deemed to be references to the City, (B) the Project Company shall be automatically released of all of the Project Company's rights and obligations under such Key Contract and (C) the City shall assume all of the Project Company's rights and obligations thereunder (including any outstanding parent company guarantee, bonds or other performance security delivered to the Project Company thereunder). Each such Key Contract shall state that (x) the Project Company is obligated to assign such Key Contract to the City upon the City's election in accordance with this Section 16.08(c) (*Treatment of Key Contracts*), and (y) the City is an express third party beneficiary of the applicable provision of such Key Contract and may enforce such provision against the Project Company and the applicable Contractor(s) directly. If the City does not deliver a Notice of Election in accordance with the requirements above, the City's right to assume the Project Company's right, title and interest in and to any Key Contract pursuant to this Section 16.08(c) (*Treatment of Key Contracts*) shall expire and the Project Company shall be permitted to terminate the applicable Key Contract in accordance with the terms thereof.

(ii) Regardless of the City's prior actual or constructive knowledge thereof, no contract or agreement to which the Project Company is a party as of the Termination Date shall bind the City, unless the City elects to assume such contract or agreement in writing. Except in the case of the City's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following the Project Company's relinquishment to the City of possession and control of the Project, or to any claim, legal or equitable, against the City.

(d) Other Effects.

(i) Within 30 days after notice of early termination is delivered or no later than 30 days prior to the natural expiration of the Term (as applicable), the Project Company shall provide the City with a true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by the Project Company or any Person on behalf of or for the account of the Project Company) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from suppliers for use in or respecting the Work or the Project,

and on or about the Termination Date shall transfer title and deliver to the City or the City's Authorized Representative, through bills of sale or other documents of title, as directed by the City all such materials, goods, machinery, equipment, parts, supplies and other property.

(ii) The Project Company shall take all action that may be necessary, or that the City may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, parts, supplies and other property between the date of the delivery of the notice of termination and the Termination Date.

ARTICLE XVII

GOVERNING LAW; DISPUTE RESOLUTION

Section 17.01 Governing Law.

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State.

Section 17.02 Disputes.

(a) Except as expressly set out in this Agreement, any dispute, difference or disagreement (each, a "**Dispute**") between or among the Parties arising under, out of or in connection with or relating to this Agreement, including, but not limited to, any question regarding its existence, validity or termination, shall be resolved in accordance with the provisions of this Article XVII (*Governing Law; Dispute Resolution*).

(b) The Parties shall not be precluded from attempting to reach an amicable settlement at the same time as a Dispute is being referred for resolution pursuant to Section 17.02(a) (*Disputes*); provided, that, other than as set out in Section 17.03 (*Designated Senior Representatives*), any such efforts to reach a settlement shall not have the effect of suspending the procedure or any time limits set out under this Article XVII (*Governing Law; Dispute Resolution*), unless agreed otherwise by the Parties during the procedure for attempting to reach an amicable settlement and prior to the settlement of the relevant Dispute under this Article XVII (*Governing Law; Dispute Resolution*).

Section 17.03 Designated Senior Representatives.

(a) Except as expressly set out in this Agreement, upon the referral by any Party of any Dispute for resolution in accordance with the Dispute Resolution Procedure, the Designated Senior Representative of each Party involved in the Dispute shall meet (in-person or virtually as agreed among the relevant Designated Senior Representatives) and use all reasonable efforts to resolve the Dispute for a period of at least 15 days. Statements made by representatives of the Parties involved in the Dispute during any such meetings and documents specifically prepared for such meetings shall be considered part of settlement negotiations and shall not be admissible as evidence in any proceeding between the Parties of any kind without the mutual written consent of the Parties involved in the Dispute.

(b) If the relevant Parties succeed in resolving a Dispute through their Designated Senior Representatives, they shall memorialize the resolution in writing, and promptly perform their respective obligations in accordance therewith.

(c) If the Designated Senior Representatives of the relevant Parties are unable to resolve the Dispute within such 15-day period, unless such Parties agree to extend the period for negotiation between the Designated Senior Representatives, any such relevant Party may refer the Dispute:

(i) if such Dispute is within the categories of Disputes which may be resolved by a Dispute Resolution Panel in accordance with Section 17.04 (*Dispute Resolution Panel*), for resolution by the appropriate Dispute Resolution Panel; or

(ii) if such Dispute is not within the categories of Disputes which may be resolved by a Dispute Resolution Panel in accordance with Section 17.04 (*Dispute Resolution Panel*), or if no Party involved in the Dispute has elected to refer such Dispute to resolution by a Dispute Resolution Panel in accordance with the preceding clause (i), for resolution by court proceedings in accordance with Section 17.05 (*Court Proceedings*).

Section 17.04 Dispute Resolution Panel.

(a) Referring a Dispute. Any Party may refer any Dispute of a technical, engineering, construction or operational nature for resolution by the Technical Panel and any Dispute of a financial nature for resolution by the Financial Panel; provided, that no Party shall refer Disputes with respect to the legal validity of this Agreement to either Panel for determination nor shall either Panel make any determination relating to the legal validity of this Agreement; provided, further, that if a Party refers a Dispute to a Dispute Resolution Panel in accordance with this Section 17.04(a) (*Referring a Dispute*), the other Parties involved in the Dispute shall comply with the provisions of this Section 17.04 (*Dispute Resolution Panel*) and cooperate fully with the referring Party in regard to all procedural actions and timelines. In the event of any Dispute where a Party has elected resolution by a Dispute Resolution Panel, such Party shall refer the matter to the applicable Dispute Resolution Panel by, and on the date of, service of a notice of reference to the applicable Dispute Resolution Panel by the referring Party upon each other Party involved in the Dispute. The referring Party shall comply with the requirements of Section 18.04 (*Notices and Communications*) in delivering such notice to each other Party involved in the Dispute.

(b) Forming the Panel. Each Panel shall consist of between three and five Persons who shall be qualified experts who are independent of the Parties and impartial. In the case of each Panel, no later than 15 days after a Party has referred a Dispute to a Panel, each Party involved in the Dispute shall appoint one Person as a member of that Panel (each, an "**Initial Panel Member**"). Such Panel shall, unless otherwise specified in an opinion of counsel to the City, be subject to the provisions of Chapter 286, Florida Statutes. The Initial Panel Members shall jointly appoint a Person (the "**Chairperson**") by mutual agreement no later than ten days after the appointment of the final Initial Panel Member. If any Party involved in the Dispute fails to timely appoint an Initial Panel Member, or if the Initial Panel Members fail to timely agree on the appointment of the Chairperson, any Party involved in the Dispute may request that the International Institute for Conflict Prevention and Resolution appoint the relevant Initial Panel Member or Chairperson.

(c) Upon the appointment of the Chairperson, the referring Party shall serve upon the Chairperson a copy of the notice of reference that the referring Party originally served on the other Party or Parties involved in the Dispute. Each Party involved in the Dispute may, within 14 days after the appointment of the Chairperson, deliver to the Panel (i) a concise summary of the nature and background of the Dispute, of the facts relevant to the Dispute and of the issues to be decided; (ii) a statement of the relief which the referring Party is seeking; and (iii) a file of copy correspondence, reports and such other documents to which the Party wishes to refer or upon which it relies. Each Party involved in the Dispute shall promptly deliver such other information as the applicable Dispute Resolution Panel may from time to time reasonably require for the purposes of resolving the Dispute.

(d) If a Dispute involves issues of a technical nature and issues of a financial nature, the Parties involved in the Dispute, acting reasonably, may refer such Dispute to the Technical Panel and the Financial Panel jointly. In such case, the two Panels shall cooperate in determining such Dispute;

provided, that each Panels shall render any decision solely with respect to technical or financial matters (that are within such Panel's purview, as applicable).

(i) The fees and expenses payable to the members of each Panel shall be agreed by the Parties. Responsibility for the fees of the Panel members shall be determined by the Panel and shall be aligned with the determination of the Dispute by the Panel.

(ii) In the event of death, resignation or inability or refusal to act by one of the members of either Panel, the new member of the Panel shall be appointed by the Person(s) who appointed the original member (including with respect to the Chairperson).

(e) Each Dispute Resolution Panel shall fix its own rules of procedure, either generally or on an ad hoc basis, and shall notify the Parties involved in the Dispute of such rules of procedure; provided, that each Dispute Resolution Panel shall have the following powers:

(i) the Chairperson shall decide whether or not to convene a hearing or otherwise to take oral evidence or whether the Panel shall determine the Dispute based solely on the submissions provided by the Parties involved in the Dispute pursuant to Section 17.04(c) (*Dispute Resolution Panel*);

(ii) the Chairperson may order the evidence of a witness to be presented in written form by way of a signed statement and may order the production of any drawing, certificate, specification, report, study, written information and data and any other document (including a record of such document in software form) (or copies thereof) in the possession of any Party involved in the Dispute; and

(iii) the Chairperson of the Technical Panel may request any samples of materials to be taken and analyzed or tests to be made on site by experts.

(f) The Chairperson shall fix the date, time and place of any hearing (which shall be in the City of Fort Lauderdale) before such Dispute Resolution Panel and the rules of procedure of the hearing, and shall require the attendance of the Parties involved in the Dispute. Each Party involved in the Dispute may appear before such Dispute Resolution Panel accompanied by or represented by legal, technical or financial consultants.

(g) In determining any Dispute referred to it, each Dispute Resolution Panel shall act fairly and impartially as between the Parties involved in the Dispute, shall afford each Party involved in the Dispute a reasonable opportunity to present its case and respond to the case of the other Party or Parties involved in the Dispute, and shall adopt procedures appropriate to the circumstances of the particular case avoiding unnecessary delay, so as to provide a fair and expeditious means for determination of the Dispute.

(h) The decision of a Dispute Resolution Panel shall be final when a simple majority of members agree. Each Dispute Resolution Panel shall render its final decision and notify the Parties in writing of its decision and the reasons for such decision within 60 days after the appointment of the applicable Chairperson or such other period of time as the Parties involved in the Dispute may agree. If a Dispute Resolution Panel fails to render a decision within the 60-day or other mutually agreed period, such Dispute Resolution Panel shall be deemed to have failed to reach a decision in the matter and any decision of such Dispute Resolution Panel notified to the Parties involved in the Dispute after such period shall be ineffective. Immediately upon expiry of such period, or otherwise upon the delivery of final decisions by all Dispute Resolution Panels that considered the Dispute, any Party involved in the Dispute may refer the Dispute to court proceedings in accordance with Section 17.05 (*Court Proceedings*). Either Party may introduce the final decision of a Dispute Resolution Panel as evidence in a court proceeding instituted in accordance with Section 17.05 (*Court Proceedings*).

(i) Each Dispute Resolution Panel shall state in its decision whether such decision is a unanimous decision of the Dispute Resolution Panel. If the decision is not unanimous, the dissenting member may provide reasons for such dissenting opinion.

(j) Following such 60-day or other mutually agreed period referred to in Section 17.04(h) (*Dispute Resolution Panel*), the Parties involved in the Dispute shall dissolve the applicable Dispute Resolution Panel by mutual agreement. The Parties may constitute new Dispute Resolution Panel(s) at any time thereafter (i) in the case of a new Dispute or (ii) with respect to the part in the event that the dissolved Dispute Resolution Panel did not timely render a decision, with reference to the existing Dispute, in each case subject to the provisions of this Section 17.04 (*Dispute Resolution Panel*) as to the constitution and functioning of such Dispute Resolution Panel.

(k) Neither Dispute Resolution Panel shall be deemed to be arbitrators, but both shall render their decisions as experts.

Section 17.05 Court Proceedings.

(a) If any Dispute is not (or may not be) settled or timely decided by a Dispute Resolution Panel in accordance with the preceding provisions of this Article XVII (*Governing Law; Dispute Resolution*), or if no Party involved in the Dispute elects to refer a Dispute to a Dispute Resolution Panel, the Parties involved in the Dispute may bring an action exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which such Parties involved in the Dispute may claim by virtue of such Party's residency or other jurisdictional device. Each Party hereto hereby irrevocably submits to the jurisdiction of such state courts with regard to any such Dispute, and irrevocably waives, to the fullest extent permitted by Applicable Law (i) any objection it may have at any time to the laying of venue of any such action or proceeding in such state courts; (ii) any claim that any such action or proceeding brought in any such state courts has been brought in an inconvenient forum; and (iii) the right to object, with respect to any such action or proceeding that such court does not have any jurisdiction over such Party.

(b) Each Party irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier. Nothing in this Agreement shall affect the right of any Party to serve process in any other manner permitted by law. Without prejudice to any other mode of service allowed under any relevant law, (i) the Project Company and each Equity Provider irrevocably and separately appoint CT Corporation System (1200 South Pine Island Road, Plantation, Florida 33324) as agent for service of process in relation to any proceedings in connection with this Agreement involving at least one of the Project Company and either Equity Provider; and each such Party agrees that failure by the process agent to notify the relevant Party of the process shall not invalidate the proceedings concerned and (ii) the City irrevocably appoints [_____][3] as agent for service of process in relation to any proceedings in connection with this Agreement involving the City; and agrees that failure by the process agent to notify the City of the process shall not invalidate the proceedings concerned. Each Party shall maintain such agent for service of process throughout the Term. If any Person appointed as process agent hereunder is unable for any reason to so act, the applicable Party or Parties must immediately (and in any event within five Business Days of such Party gaining knowledge thereof) appoint another process agent on terms acceptable to the other Parties.

(c) **BY ENTERING INTO THIS AGREEMENT, CITY AND THE PROJECT COMPANY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A**

[3] **NTD:** City to confirm.

TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT OR ANY ACTS OR OMISSIONS IN RELATION THERETO.

ARTICLE XVIII

MISCELLANEOUS

Section 18.01 Amendments and Waivers.

(a) Except as otherwise provided in Article VIII (*Changes in the Work*), this Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

(b) Either Party's waiver of any breach or to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding.

Section 18.02 Successors and Assigns.

Subject to Article XII (*Assignment and Change of Control*), this Agreement shall be binding upon and inure to the benefit of the City and the Project Company and their permitted successors, assigns and legal representatives.

Section 18.03 Limitation on Third-Party Beneficiaries.

It is not intended by any of the provisions of this Agreement to create any third-party beneficiary hereunder or to authorize anyone not a Party to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 18.03 (*Limitation on Third-Party Beneficiaries*), the duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by Applicable Law. This Agreement shall not be construed to create a contractual relationship of any kind between the City and a Contractor or any Person other than the Project Company and the Equity Providers.

Section 18.04 Notices and Communications.

(a) Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given, or delivered as follows: (x) if delivered personally or sent by overnight carrier, when received, (y) if sent by certified mail, return receipt requested, the day noted on the return receipt (or the day delivery is refused) and if (z) electronic mail, to the following addresses (or to such other address as may from time to time be specified in writing by such Person); provided, that electronic mail shall not constitute notice hereunder if the electronic mail is returned as undeliverable:

(i) If to the Project Company:

FL Prospect Lake Water, L.P.
c/o Ridgewood Infrastructure
14 Philips Parkway
Montvale, NJ 07645
Attn: Legal Department
Phone: 201-447-9000
Email: mhaggerty@ridgewood.com

With a copy to:

Prospect Lake Holdings, L.P.
c/o Ridgewood Infrastructure
14 Philips Parkway
Montvale, NJ 07645-1811
Attn: Legal Department
Phone: 201-447-9000
Email: mhaggerty@ridgewood.com

and

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
Attn: Dolly Mirchandani
Email: dolly.mirchandani@whitecase.com

and

PLCWC O&M, LLC
c/o IDE Americas Inc.
5050 Avenida Encinas, Suite 250
Carlsbad, CA 92008
Attn: Lihy Teuerstein
Phone: 6194870760
Email: Lihyt@ide-tech.com

With a copy to:

IDE Americas Inc.
5050 Avenida Encinas, Suite 250
Carlsbad, CA 92008
Attn: Lihy Teuerstein
Phone: 6194870760
Email: Lihyt@ide-tech.com

(ii) If to City:

City of Fort Lauderdale, Florida

100 N Andrews Ave

Fort Lauderdale, FL 33301-1016

Phone: 954-828-5000

Attention: City Manager and Public Works Director

With a copy to:

Same as above, but Attention: City Attorney

(iii) If to Ridgewood in its capacity as Equity Provider:

Prospect Lake Holdings, L.P.
c/o Ridgewood Infrastructure
14 Philips Parkway
Montvale, NJ 07645-1811
Attn: Legal Department
Phone: 201-447-9000
Email: mhaggerty@ridgewood.com

(iv) If to IDE in its capacity as Equity Provider:

IDE PLCWC, Inc.
c/o IDE Americas Inc.
5050 Avenida Encinas, Suite 250 Carlsbad,
CA 92008
Attn: Lihy Teuerstein
Phone: 6194870760
Email: Lihyt@ide-tech.com

Section 18.05 Severability.

If any clause, provision, section or part of this Agreement is ruled invalid by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including applicable compensation to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, and to the extent permitted by Applicable Law, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, section or part.

Section 18.06 Findings; Entire Agreement.

This Agreement supersedes the Interim Agreement and the Unsolicited Proposal, together with all prior correspondence, conversations, agreements and understandings applicable to the matters contained herein, and all discussions and negotiations related thereto following selection of the Unsolicited Proposal, which discussions and negotiations reflected the City's determination that the City requested in light of changed economic circumstances to provide for reimbursement by the City of certain constructions costs for the Project and that the remainder of the Unsolicited Proposal remains in the best interest of the City and continues to best meet the objects of the request for proposals issued by the City in respect of the Project. The Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement or, in the case of the City, the Labor Services Agreement. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

Section 18.07 Counterparts.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or scanned electronic transmission shall be effective as delivery of a manually executed

counterpart of this Agreement. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms reasonably approved by the City (and, for the avoidance of doubt, electronic signatures utilizing the DocuSign platform shall be deemed approved), or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, Florida Statutes § 668.50, or any other similar state laws based on the Uniform Electronic Transactions Act. Each of the Parties further agrees that it shall not raise receipt of an electronic signature as a defense in any proceeding or action in which the validity of such consent or document is at issue and hereby forever waives such defense.

Section 18.08 Indemnification.

(a) The Project Company shall protect, defend, indemnify and hold harmless the City, its officials, officers, employees and agents from and against any and all claims, demands, causes of action, lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees and costs through trial and the appellate level, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of the Project Company under this Agreement, to the extent caused by the breach or default by the Project Company, its agents, servants, employees or contractors of any covenant or provision of this Agreement, the grossly negligent acts or omission or willful misconduct of the Project Company or its agents, servants, employees or contractors except for (i) any occurrence arising out of or resulting from the intentional torts or negligence of City, its officers, employees, agents, servants or contractors and (ii) any contamination discovered by the Project Company or its agents, servants, employees or contractors, in the performance of its obligations hereunder on any portion of the Site; provided, that such contamination was not the fault of either the Project Company or their agents, servants, employees, contractors and subcontractors. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by the Project Company, its agents, servants, employees or contractors or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by the Project Company, its agents, servants, employees or consultants is included in the indemnity.

(b) The Project Company further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any such claims set forth in Section 18.08(a) (*Indemnification*) at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by City, the Project Company shall assume and defend not only themselves but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to the City. The Project Company, at its own expense and through counsel chosen by it (which counsel shall be reasonably acceptable to the City), shall defend any claim; provided, that if, in the City's and the Project Company's reasonable judgment at any time, either a conflict of interest arises between the City and the Project Company or if there are defenses which are different from or in addition to those available to the Project Company and/or the City and the representation of both parties by the same counsel would be inappropriate, then the City shall have the right to employ a law firm as separate counsel ("**Separate Counsel**") to represent the City, and in that event: (a) the reasonable fees and expenses of such Separate Counsel shall be paid by the Project Company; and (b) the Project Company shall have the right to conduct its own defense in respect of such claim. If the Project Company does not defend against any such claim, the City may defend, compromise and settle such claim (provided, that, with respect to any claim covered by a policy of Required Insurance, the City shall obtain the relevant Insurer's approval prior to any settlement or compromise of the claim) and shall be

entitled to indemnification hereunder. Notwithstanding the foregoing, the Project Company shall not, and without the prior written consent of the City (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any such claim or consent to the entry of any judgment in respect of such claim unless (x) there is no finding or admission of any violation of law or any violation of the rights of any Person and no effect on any other claims that may be made against the City; and (y) the sole relief provided is monetary damages that are paid in full by the Project Company. This indemnification shall survive termination, revocation or expiration of this Agreement and shall cover any acts or omissions occurring during the Term, including any period following termination, revocation or expiration of this Agreement while any curative acts hereunder are undertaken and is not limited by insurance coverage.

(c) Subject to the limitations contained in Section 18.08(d) (*Intentional, Reckless, or Willful Acts*) and Section 18.08(e) (*Indemnification*) the City expressly agrees to release, save, indemnify, hold harmless, and defend the Project Company and its Affiliates, related parties, contractors and subcontractors, and their respective officers, directors, shareholders, members, employees, agents, representatives, insurers, and consultants (the "**Project Company Indemnified Parties**"), from and against any liability, claim, charge, demand, petition, complaint, lawsuit, penalty, judgment, inquiry, order, injunction, conciliation agreement, settlement agreement, determination or cost (including, but not limited to, reasonable attorney's fees, administrative costs, and court costs), arising out of, or in connection with:

(i) any disciplinary and/or adverse employment action taken by the City with respect to a City Employee. This includes, but is not limited to, any claim that is asserted by, or arises in favor of, any City Employees against the Project Company (and/or any Project Company Indemnified Party), arising out of, or in connection with, any alleged disciplinary and/or adverse employment action. This indemnification provision is intended to be construed broadly, and expressly intended to cover any claim, demand, petition, charge, complaint, lawsuit, liability, penalty, judgment, or costs by any City Employee, whether in court, before an administrative agency, or otherwise, arising out of, or in connection with any disciplinary and/or adverse employment action taken by the City including claims by City Employees relating to: (A) the Project, the O&M Work, and any other provision of the Labor Services Agreement or this Agreement; (B) the City, its employees and/or contractors, their use, and the performance of the services contemplated in the Labor Services Agreement and this Agreement; (C) violations of local, state, and federal employment and labor laws, rules, statutes, orders, regulations or ordinances, and/or any other any other law, rule, statute, order, regulation or ordinance relating to any applicable collective bargaining agreement(s), including claims under the National Labor Relations Act, Florida's Public Employees Relations Act, and any other federal, state, or local employment law, rule, statute, order, regulation or ordinance; (D) any breach of representation, warranty or other obligation or provision arising out of, or relating to, the Labor Services Agreement or this Agreement; (E) any allegation of libel, slander, defamation, invasion of the right of privacy, or any other allegation arising out of the Labor Services Agreement or this Agreement and/or the Labor Services or Management Services (as defined in the Labor Services Agreement) furnished by the City; (F) a negligent or tortious act of the City, its employees, agents, licensees, officers and assigns; and/or (G) any taxing authority, regardless of whether relating to income, payroll, and/or employment taxes, or any services provided by the City Employees. Notwithstanding anything to the contrary in this Section 18.08(c)(i) (*Indemnification*), the Project Company may waive (in writing and subject to the notice provisions set forth in Section 18.04 (*Notices and Communications)*, its right to indemnification with respect to a particular disciplinary and/or adverse employment action, in instances where the Project Company insists that a particular disciplinary and/or adverse employment action be taken that the City does not wish to take, and the Project Company agrees to waive its right to indemnification prior to the City taking any such disciplinary and/or adverse employment action. The Parties agree that any waiver of indemnification under this Section 18.08(c)(i) (*Indemnification*) on any single instance shall not

operate as, or be deemed, a waiver of the Project Company's right to otherwise seek indemnification under this Agreement on any other occasion.

(ii) any alleged bodily injury, death, or loss of / damage to property wherein the action of a City Employee and/or the City are alleged to have been the proximate cause of such event.

(d) Intentional, Reckless, or Willful Acts. Notwithstanding any provision to the contrary in this Agreement, the City shall not be obligated to indemnify Project Company for:

(i) Any claims or losses arising solely out of the intentional, grossly negligent, reckless, or willful misconduct of a Project Company or O&M Contractor employee (that is not a City Employee). For example, the City shall not be obligated to indemnify the Project Company for claims of assault, battery, intentional infliction of emotional distress, and defamation, if the Project Company and/or its agent (and not a City Employee) is alleged to have engaged in such torts.

(ii) Any employment related claims or losses wherein it is alleged that a Project Company or O&M Contractor manager and/or supervisory personnel (that is not also a City Employee) engaged in acts giving rise to the alleged cause of actions. However, to the extent that any such employment related claims are based upon an adverse employment action taken by the City with respect to a City Employees, Section 18.08(c) (*Indemnification*) shall apply.

(e) Notwithstanding anything herein to the contrary, each of the Project Company and the City assumes responsibility for and shall save, indemnify, hold harmless and defend (with counsel selected by the indemnified Party), the other Party from and against all claims, actions, judgments or other liabilities arising out of bodily injury to, or death of, any third party, or third party's property damage or loss, when such injury, death, damage or loss is caused by the willful misconduct or negligent act or omission of the indemnitor, its employees, agents, or subcontractors. When such injury, death, damage or loss is caused by the joint or concurrent negligence of the indemnitor, the indemnitee, and/or any third party, then the indemnitor's liability hereunder shall be equal to the degree that the injury, death, damage or loss was caused by the negligence of the indemnitor, its employees, agents or subcontractors.

Section 18.09 Further Assurances.

The Parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Agreement.

Section 18.10 Agents and Representatives.

(a) The City, each Equity Provider and the Project Company shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to this Agreement ("**Authorized Representative**"). Annex O (*Authorized Representatives*) of this Agreement specifies the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 18.04 (*Notices and Communications*).

(b) In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to the City Manager, the City, any Authorized Representative or any of their respective employees or agents, no Authorized Representative, employee, officer or official of the City shall be personally liable. In all such matters such individuals shall act solely as agents and representatives of the City.

(c) In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to the Project Company, any Authorized Representative or any of the Project Company's respective employees or agents, no Authorized Representative, employee or agent of the Project Company shall be personally liable. In all such matters such individuals shall act solely as agents and representatives of the Project Company.

(d) In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to an Equity Provider, any Authorized Representative or any of an Equity Provider's respective employees or agents, no Authorized Representative, employee or agent of an Equity Provider shall be personally liable. In all such matters such individuals shall act solely as agents and representatives of such Equity Provider.

Section 18.11 Survival.

The Project Company's and the City's representations and warranties, Article XVII (*Governing Law; Dispute Resolution*), the indemnifications and releases contained in Section 18.08 (*Indemnification*), the rights to compensation contained in Article VII (*Payment for Product Water*) and any other obligations to pay amounts hereunder, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work under this Agreement, shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work under this Agreement. The City's obligation to pay compensation to the Project Company upon the early termination of this Agreement as provided in Article XVI (*Termination*) and any other payment obligations of the City arising prior to expiration or early termination of this Agreement shall survive the expiration or earlier termination of this Agreement.

Section 18.12 Public Records Law.

(a) The Project Company acknowledges and agrees that, except as provided by the Florida Statutes, all Design Submittals, records, documents, drawings, plans, specifications and other materials in the City's possession are subject to the provisions of the Public Records Law. If the Project Company believes information or materials submitted to the City constitute trade secrets, proprietary information or other information excepted from disclosure, the Project Company shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate and placing the materials in a folder or binder clearly labeled with the citation to the specific Florida Statute that exempts the material from the Public Records Law. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific Florida Statute that authorizes the confidentiality and the specific Florida Statute that exempts the material from the Public Records Law. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the City by the Public Records Law or other Applicable Law, and the provisions of the Public Records Law or other Applicable Laws shall control in the event of a conflict between the procedures described above and the Applicable Law. The Project Company is advised to contact legal counsel concerning such Applicable Law and its application to the Project Company.

(b) If the City receives a request for public disclosure of materials marked "CONFIDENTIAL," the City shall use reasonable efforts to notify the Project Company of the request and give the Project Company an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other Applicable Law within the time period specified in the notice issued by the City and allowed under the Public Records Law. Under no circumstances, however, shall the City be responsible or liable to the Project Company or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Applicable Law, or court order, or occurs through

inadvertence, mistake or negligence on the part of the City or its officers, employees, contractors or consultants.

(c) If any legal action is filed against the City to enforce the provisions of the Public Records Law in relation to confidential information, the City agrees to promptly notify the Project Company of such action, and the City's sole involvement in such proceedings or litigation shall be as the custodian retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the Project Company shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the City reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. The Project Company shall pay and reimburse the City within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, the City incurs in connection with any litigation, proceeding or request for disclosure.

Section 18.13 Non-Discrimination.

The Project Company shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

Section 18.14 Joint Preparation.

Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language in this Agreement expresses the mutual intent of each Party and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one Party than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

Section 18.15 Scrutinized Companies.

As a condition precedent to the effectiveness of this Agreement, the Project Company certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, as may be amended or revised, and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Project Company is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes, as may be amended or revised, or been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, as may be amended or revised, or is engaged in a boycott of Israel as defined in Sections 287.135 and 215.4725, Florida Statutes, as may be amended or revised.

Section 18.16 Public Entity Crimes.

In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a Person or Affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for "category two" purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Project Company shall result in termination of this Agreement and may result in the Project Company debarment.

Section 18.17 Recourse to Equity Providers. Notwithstanding anything to the contrary in this Agreement, the obligations of the Project Company under this Agreement and the Key Contracts are

obligations of the Project Company and do not constitute a debt or obligation of (and no Person shall have recourse with respect thereto to) any Equity Provider or any of the direct or indirect holders of the Capital Stock of the Equity Providers or any of their respective Affiliates. The obligations of the Equity Providers under this Agreement are several, and not joint and several.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date set forth on the first page hereof.

CITY OF FORT LAUDERDALE

By: _____
Name: [_____]
Title: [_____]

PROSPECT LAKE WATER, L.P.

By: _____
Name: [_____]
Title: [_____]

By: _____
Name: [_____]
Title: [_____]

Solely in their capacities as Equity Providers under and in respect of Section 11.01 (*Project Company Funding*):

PROSPECT LAKE HOLDINGS, L.P.

By: _____
Name: [_____]
Title: [_____]

IDE PLCWC, INC.

By: _____
Name: [_____]
Title: [_____]