

NOVATO SANITARY DISTRICT
AMENDED AND RESTATED CONTRACT SERVICE AGREEMENT
For
OPERATION, MAINTENANCE, and MANAGEMENT
OF WASTEWATER TREATMENT FACILITIES
Revised February 10, 2014



**WASTEWATER TREATMENT FACILITIES
OPERATIONS, MAINTENANCE & MANAGEMENT
SERVICE AGREEMENT**

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1.0 DEFINITIONS

As used herein, the following terms shall have the following meanings:

“Acceptance” means ~~demonstration~~ by the Company **assumes responsibility for the operation, maintenance and performance of District-provided facility modifications or new facilities** in accordance with the procedures and protocols to be developed by the District and Company as specified in Schedule 15.

“Acceptance Date” means the earlier of: the date on which the Acceptance Test to demonstrate the ability of the Capital Improvement(s) to achieve Acceptance Standards is approved. ~~with the criteria for approval of the Acceptance Test as set forth in Schedule 14 hereto;~~ or that date which is one (1) day prior to the second anniversary of the installation of the Capital Improvement(s).

“Acceptance Standards” means the standards to be developed by the District and Company as set forth in Schedule 15 hereto.

“Acceptance Test(s)” or “Acceptance Testing” means the tests, plans and procedures to be developed by the District and Company as set forth in Schedule 15 hereto.

“Additional Services” has the meaning specified in Section 8.1 herein.

“Affiliate(s)” means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

“Agreement” means the Wastewater Treatment Facility Contract Operations, Maintenance and Management Service Agreement, dated as of September 25, 2009 by and between the Novato Sanitary District, Novato, California and the Company **as revised amended and restated on _____ 2014.**

“Annual Facility Inspection” has the meaning specified in Schedule 2, Section 2.4.5 hereto.

“Annual Report” means the annual operation and maintenance report as defined in Schedule 2, Section 2.4.4.

“Applicable Law” means any law, rule, regulation, requirement, action, determination, guideline, or order of, or any Legal Entitlement issued by any governmental body having jurisdiction, applicable from time to time to the siting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation, maintenance or repair of the Facility; the delivery, treatment, discharge or storage of wastewater; the transfer, handling, transportation or disposal of Residuals; or any other transaction or matter contemplated hereby including, without limitation, any of the foregoing which pertain to wastewater.

“Auditor” has the meaning specified in Schedule 2 Section 2.4.8 hereof.

“Auditor’s Report” has the meaning specified in Schedule 2, Section 2.4.8 hereof.

“Billing Month” means each calendar month within the Fiscal Year starting July 1st and ending June 30th)

“Biologically Toxic Substances” means any substance or combination of substances in sufficient quantities contained in the plant influent in violation of the District’s Industrial Pre-treatment Ordinance No. 70, **Sanitary Code of the Novato Sanitary District as amended** Ordinance that cannot be treated at the existing treatment facility and / or that negate the ability of the existing treatment processes and their operation to meet the discharge requirements of the District’s NPDES Permit.

“Biosolids” means any liquid, semisolid or solid material resulting from the wastewater treatment process at the Facility and which requires disposal as waste material.

“BAI” means the Blended Adjustment Index computed using ~~sixty five~~twenty-four percent (2465%) of the year to year change in CPI, ~~twenty seven~~sixty-nine percent (6927%) of the year to year change of the ECI, and ~~seven~~eight percent (78%) of the year to year change of the PPI as specified in Appendix A, Schedule 8.

“BOD” means biochemical oxygen demand.

“Bond(s)” mean the debt obligations of the District.

“Capital Improvement(s)” means the Upgrade Project, as well as any Facility Modification in excess of ten thousand dollars (\$10,000.00).

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

- (i) of Applicable Law in effect on the Contract Date;
- (ii) agreed to by the District in any applications for official permits, licenses or approvals for the Facility, other than any requirements set forth in said applications to comply with future laws, ordinances, codes, rules, regulations or similar legislation, or
- (iii) in the Performance Standards and guarantees set forth in Schedule 1 hereto and operation and maintenance standards set forth in Schedule 2 hereto; or
- (iv) imposed by Prudent Industry Practices.

For purposes of part (a) of this definition, no enactment, adoption, promulgation or modification of laws, ordinances, codes, rules, regulations or similar requirement or enforcement policy with respect to any such requirement shall be considered a Change in Law if, as of the Contract Date, such law, ordinance, code, rule, regulation or other similar requirement would have affected directly the continued management, operation and maintenance of the Facility by the District after the Commencement Date in the absence of this Agreement and such law, ordinance, code, rule, regulation or other similar requirement was either (i) officially proposed by the responsible agency and published in final form in the Federal Register or equivalent federal, State or local publication and thereafter becomes effective without further action or (ii) enacted into law or promulgated by the appropriate federal, State or local body before the Contract Date, and the comment period with respect to which expired on or before the Contract Date and any required hearing concluded on or before the Contract Date in accordance with applicable administrative procedures and which thereafter becomes effective without further action. In no event shall a change in any federal, State or local tax law be considered a Change in Law.

“Chemical(s)” means those chemicals required for the performance of the Services by the Company as specified in Schedules 2 and 5 hereto.

“CMMS” means the computerized maintenance management system as specified in Schedule 2, Section 2.2.3.

“COD” means chemical oxygen demand.

“Collection System” means the pipes and related appurtenances, including pump stations, that collect and convey raw wastewater (influent wastewater) to the influent pump station headworks of the of the District’s wastewater treatment plant.

“Commencement Date” means the date upon which the Company begins Services under this Agreement and is entitled to payment of the Service Fee from the District ~~after having satisfied all conditions precedent and received a notice to proceed discussed in Section 2.0 of this Agreement.~~

“Company” means Veolia Water West Operating Services, Inc., holding California State Contractor License Number 866429, a corporation organized and existing under the laws of Delaware, and its permitted successors and assigns, with which the District has entered into the Agreement.

“Company Indemnitees” has the meaning specified in Subsection 5.2.3 hereof.

“Contract Date” means the date of the Agreement as executed by the parties.

“Contract Term” or “Term” has the meaning specified in Schedule 16.

“Contract Year” means the consecutive twelve (12) month period **commencing** on the ~~Commencement Date in 2009 and annually thereafter~~ **July 1, 2014** and annually thereafter.

“Cost Substantiation” means, with respect to any cost reasonably incurred or to be incurred by the Company for additional services provided under Section 8 which is directly or indirectly

chargeable in whole or in part to the District hereunder, delivery to the District of a certificate signed by an officer or an authorized representative of the Company, setting forth the amount of such cost and the provisions of this Agreement under which such cost is properly chargeable to the District, stating that such cost is a fair market price for the service or materials supplied or to be supplied and that such services and materials are reasonably required pursuant to this Agreement, and accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been or will be incurred. Such documentation shall include reasonably detailed information concerning (1) all Subcontracts; (2) the amount and character of materials furnished or to be furnished, the persons from whom purchased or to be purchased, the amounts payable therefore and related delivery and transportation costs and any sales or personal property Taxes, if any; (3) a statement of the equipment used or to be used and any rental payable therefore; (4) Company worker hours, duties, wages, salaries, benefits, assessments, taxes and premiums; and (5) Company expenses, including administrative expenses, bonds, insurance, overhead, and other expenses; and (6) Company profit calculated at ten percent (10%) of all other costs.

“Corrective Maintenance,” or “repair,” means maintenance conducted to get Equipment working again. This will include outside labor, overtime, and material cost.

“CPI” means the Consumer Price Index, All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics not seasonally adjusted, US City Average, All Items, Series ID: CUUR0000SA0.

“District” means the Novato Sanitary District of Novato, CA including its elected officials, **officers**, employees, and ~~consultants~~ **agents**.

“District Consultant” means either (1) a consultant employed by the District, or (2) a nationally recognized consultant or firm, having experience with respect to the design, construction, testing, operation and maintenance of wastewater treatment facilities, in either case designated for purposes relating to this Agreement, as the District Consultant from time to time in writing by the District.

“District Indemnitees” has the meaning specified in Subsection 5.2.1 hereof.

“DMR(s)” means the monthly Discharge Monitoring Report(s).

“Effluent Limits” means the requirements of Applicable Law with respect to the quality of the treated effluent discharge from the Facility as set forth in Appendix B attached hereto and as such requirements may be modified by Applicable Law.

“Encumbrance(s)” means any lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Site, other than Permitted Encumbrances.

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

“ECPI” means the Employment Cost Index as published by the United States Department of Labor, Bureau of Labor Statistics Not Seasonally Adjusted Table 4, Compensation – Civilian Workers – Service Occupations, **Series ID: CIU10100003000001**.

“Equipment” means all vehicles, machinery, structures, components, parts and materials located at the Facility that are utilized in the operation, maintenance, and management of the Facility.

~~“Facility” or “Facility” or “Facilities” means the District Wastewater Treatment Facilities as described in Schedule 4, including computer hardware and systems provided by the District for operation, maintenance, and management by the Company but excluding the Collection System, laboratory, administrative offices, and Biosolids facilities and the Reclamation Facility.~~

“Facility Modification” means any improvement, alteration, addition or other modification to the Facility following completion and acceptance of the Upgrade Project that is requested or approved by the District. Facility Modifications do not include maintenance, repair or replacement activities required to be undertaken by the Company pursuant to this Agreement as provided within the Services and Service Fee.

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

“Fiscal Year” means the fiscal year of the District which runs from July 1st through June 30th.

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

“Guarantee” means the agreement executed between the District and the Project Guarantor in the form attached as Schedule 6 hereto.

“Insurance” refers to the policies of insurance to be provided by the District and Company as specified in Schedule 7 hereto.

“Insurance Certificate” has the meaning specified in Schedule 7 hereto.

“Inventory Report” shall have the meaning specified in Schedule 12 hereto.

“Legal Entitlement” means any and all Permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the operation, maintenance and management of the Facility or the performance of any other obligation of the Company under this Agreement, including, without limitation, the Permits detailed in Schedule 9 hereto.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and any other legal or equitable proceeding having a bearing upon this Agreement.

“Loss-and-Expense” means any and all loss, liability, forfeiture, obligation, damage, delay, penalty, judgment, order, deposit, cost, expense, claim, demand, charge, tax, or expense, including violation of any Federal, State, or local law, ordinances or regulations except as explicitly excluded or limited under any provision of this Agreement.

“Manuals” shall mean the Operations Manual and related operations and maintenance manuals, including future operations manuals issued with new Equipment.

“Monthly Reports” have the meaning specified in Schedule 2 hereto.

“NPDES” means the National Pollutant Discharge Elimination System.

“NPDES Permit” has the meaning specified in Schedule 9 and Appendix B hereto.

“Operations and Maintenance Plan” or “O&M Plan” has the meaning specified in Schedule 3 hereto.

“Operation Period” means the period of time commencing with and including the Commencement Date, through and including the last day of the Contract Term.

“Operations Records” has the meaning specified in Schedule 2 hereto.

“Pass Through Cost” means that component of the monthly invoices from the Company to the District consisting of those costs of the Company listed on Schedule 13 hereto, but not included in the Service Fee.

“Performance Bond” has the meaning specified in Section 5.6 hereof.

“Performance Requirements” means the Performance Standards set forth in Schedule 1 hereto as well as any other performance requirements relating to the Facility set forth in this Agreement that are the responsibility of the Company, including the requirements in Schedules 2 and 3.

“Performance Standards” has the meaning specified in Schedule 1 hereof.

“Permits” has the meaning specified in Schedule 9 hereto.

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

- (1) encumbrances for utility charges, taxes rates and assessments payable by the Company (District) not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Company (District) and against which the Company (District) has established appropriate reserves in accordance with generally accepted accounting principles;
- (2) any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially sound insurer and which does not have a material and adverse effect on the ability of the Company to construct or operate the Facility;

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

(4) servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which will not in the aggregate materially and adversely impair the operation, maintenance and management of the Facility by the Company; and

(5) zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants which do not materially interfere with the operation, maintenance, and management of the Facility by the Company.

“PPI” means the Producer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics Not Seasonally Adjusted, Chemicals and Allied Products – Series ID: WPU06.

“Predictive Maintenance” means techniques which help determine the condition of in-service Equipment in order to predict when maintenance should be performed. This approach offers cost savings over routine or time-based preventive maintenance, because tasks are performed only when warranted. This approach also allows lower repair or rebuild maintenance prior to a more costly major failure and also avoids unplanned loss of redundancy.

Predictive, or condition-based maintenance, attempts to evaluate the condition of Equipment by performing periodic or continuous (online) Equipment condition monitoring. The ultimate goal of Predictive Maintenance is to perform maintenance at a scheduled point in time when the maintenance activity is most cost-effective and before the Equipment loses optimum performance. This is in contrast to time- and/or operation count-based maintenance, where a piece of Equipment gets maintained whether it needs it or not.

“Preventive Maintenance” or “PM” means the care and servicing by personnel for the purpose of maintaining Equipment and Facilities in satisfactory operating condition by providing for systematic inspection, detection, tasks and correction of incipient failures either before they occur or before they develop into major defects.

“Project Guarantor” or “Guarantor” means the entity financially guarantying the performance of the Company to fulfill the obligations of the Agreement by issuing the Guarantee.

“Prudent Industry Practices” means those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as reasonably prudent in the wastewater treatment industry or other industry in which services similar to the Services are provided as practiced in the United States with respect to a plant of similar type as the Facility.

“Reclamation Facility” means the facility owned by the District and operated for water reclamation and related purposes located adjacent to Highway 37 between Atherton Avenue and Novato Creek.

“Repair and Replacement Program” means the formalized program for planning, justifying, and tracking activities relating to the repair and / or replacement of Equipment parts, subsystems, and related items generally costing more than \$ 10,000 per part or subsystem. This includes parts, materials, and outside labor for each event. This program is funded separately by the District and has the meaning specified in Schedule 3 hereto.

~~“RFP Document” means the Request For Proposals issued by the District on May 5, 2009 for the Operations, Maintenance and Management Services for the District Wastewater Treatment Plant.~~

“Rolling Stock” means vehicular Equipment included in the Facility and described in Schedule 12.

“Safety and Security Plan” has the meaning specified in Schedule 3 hereto.

“SCADA” means the supervisory control and data acquisition system at the Facility.

“Schedule(s)” mean(s) the schedule(s) attached to the Agreement, which together with the Agreement and the Appendices attached thereto constitute the entire Agreement with respect to the operations, maintenance, and management of the Facility.

“Service Fee” means the annual amount payable to the Company by the District for the Services, exclusive of the Pass Through Cost reimbursements as described in Schedule 13 and 14 hereto.

“Services” means the operations, maintenance, and management of the Facility to be provided by the Company in accordance with the terms and provisions of the Agreement.

“Site” means the Facility together with the real property located in Novato, California on which the Facility is situated.

“Sludge” means the same as Biosolids.

“Staffing Plan” has the meaning specified in Schedule 3 hereto.

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

“Subcontract” means an agreement between the Company and a Subcontractor, or between two Subcontractors, as applicable.

“Subcontractor” means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly ~~in~~ employed or engaged by the Company (including every subcontractor of whatever tier) whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

“System” means the District wastewater treatment system, including any and all Capital Improvement(s) and modifications to the System during the Contract Term, but excluding the wastewater Collection System, capital planning, policy development, long range and service area planning, the setting of customer rates and charges, meter reading, billing and collection.

“Termination for Convenience” has the meaning specified in Subsection 5.13 hereof.

“Training Plan” has the meaning specified in Schedule 3 hereto.

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

Subject to the foregoing, such acts, events or conditions may include, but are not limited to, the following:

(a) Inclusions

(1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Facility as of the date hereof), landslide, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war blockade or insurrection, riot or civil disturbance;

(2) a Change in Law;

(3) the failure of any appropriate governmental agency or private utility to provide and maintain utilities; preemption, confiscation, diversion, destruction, or other interference in possession or performance of material or services by, on behalf of, or with authority of a Governmental Body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Facility;

(5) national or local strikes, work stoppages, or labor disputes other than those of the Company’s employees, agents, contractors, or subcontractors;

(6) violations of the District's Industrial Pretreatment Program discharge limits which contain Biologically Toxic Substances or which are of such a quantity and quality so as to cause substantial disruption in the operations or biological activity of the Facility provided that the Company undertakes best efforts to deal with the discharge;

(7) a court order preventing the parties from complying with the terms of the Agreement, provided that such court order is not caused by any wrongful act of either party.

PROVIDED, HOWEVER, none of the following acts, events, or conditions shall constitute Uncontrollable Circumstances:

(b) Exclusions

- (1) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;
- (2) changes in the financial condition of the District, the Company, the Project Guarantor, or any of their affiliates or subcontractors;
- (3) union work rules that increase the Company's operating cost for the Facility;
- (4) any impact of prevailing wage laws on the Company's cost;
- (5) the consequence of Company error, including any errors of Company Affiliates or Subcontractors;
- (6) failure of any Subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to;
- (7) strikes, work stoppages or labor disputes of Company's employees, agents, contractors or sub-contractors;
- (8) Equipment failure (unless caused by an Uncontrollable Circumstance); or
- (9) litigation against the Company.

“Upgrade Project” means the Wastewater Facility Upgrade – Contract B-Novato Treatment Plant Improvements, Project Number 2006-09/2006-10/72609.

“Utility Cap(s)” or “Usage Cap(s)” means the maximum amount of utility and diesel fuel usage for which the District is responsible for direct payment under this Agreement as set forth in Schedule 11. ~~The Company is responsible for the costs of usage above the specified usage amounts of the cap and the Company is responsible for costs, if any, for significant unjustified variations in the usage profiles for utilities established as part of Schedule 11. The Company shall reimburse the District for these excess costs after invoice by the District.~~

WDR – means Waste Discharge Requirements

WDR Permit means the District's WDR Permit or Order No. 92-065 as issued by the San Francisco Bay Regional Water Quality Board (RWQCB) and has the meaning specified in Schedule 9 and Appendix B hereto.

2.0 **[Reserve] CONDITIONS PRECEDENT AND NOTICE TO PROCEED**

~~The Company shall commence work on the Commencement Date. The Commencement Date shall be memorialized by the District and Company via a written notice to proceed to Company~~

(“Notice to Proceed”) following the District’s receipt of the items identified in this Section 2. Prior to commencing operations, the Company shall:

- Obtain the required insurance and bonds.
- Develop an operational transition plan for District review and comment.
- Develop a draft customer service and emergency response plan as described in Schedule 3.
- Retain the necessary staff (certified operators meeting California requirements).
- Obtain all necessary governmental, regulatory, and labor approvals required for commencement of operations.
- Sign the Agreement and deliver the Guarantee.
- Deliver to the District a certificate of good standing from the State of California concerning Veolia Water West Operating Services, Inc., holding California State Contractor License Number 866429 and Veolia Water North America Operating Services, LLC, and a letter from counsel to the Company and Project Guarantor as to corporate status, no conflict, no material litigation, and the valid, binding, and enforceable nature of the Agreement. The costs of such opinion letter will be treated as a one-time Pass Through Cost per Schedule 13.

3.0 WASTEWATER TREATMENT PLANT OPERATIONS, MAINTENANCE, AND MANAGEMENT

3.1 Overall Responsibilities

3.1.1 Company Responsibilities

The Company will be responsible for operation and maintenance of the Facility including all operations and maintenance duties required to ensure efficient and effective operation of the Facility. **The Company shall operate and maintain the Facility in accordance with all applicable federal, state, and local regulations within the design capabilities of the Facilities and subject to the terms under this Agreement.** These duties include, but are not limited to:

- 1) **Operation and maintenance of the Novato Wastewater Treatment Plant, the Novato Recycled Water Treatment Plant, the Ignacio Transfer Pump Station, the Ignacio Equalization Basins, the sludge ponds, sludge and supernatant transfer lines, and the sludge pond supernatant return/decant pumping station.** ~~operation, maintenance, and phase-out of existing wastewater treatment facilities being replaced with new facilities including the existing Novato Wastewater Treatment Plant, the Ignacio Wastewater Treatment Plant, the Ignacio Equalization Basins, the Ignacio Transfer Pump Station, the Dechlorination Facility, and the sludge pond supernatant return.~~ Company will not be responsible for decommissioned facilities following the

Acceptance Date of the Capital Improvement(s) which replace the decommissioned facilities;

- ~~2) startup, operation and maintenance of the Upgrade Project (new, 7 MGD wastewater treatment facility) to include day-to-day operations and monitoring of the Ignacio Equalization basins and transfer pump station, and the sludge pond supernatant return;~~
- ~~3) development and implementation of systems and training to accomplish startup and transition activities as detailed in Schedules 1–5;~~
- 2) Preparation of all regulatory reporting documents and supporting information for review and submittal for / by District;
- 3) Performing scheduled maintenance to ensure the long-term efficient operation of Facility infrastructure;
- 4) Performing maintenance and repairs as needed on infrastructure components;
- 5) Maintaining operations and maintenance records for all infrastructure components; and
- 6) Maintaining the inventory and inventory records for the consumable supplies needed for System operations and maintenance.

The Company shall also have the responsibility to provide the following as part of the basic Service Fee:

- Staff salaries;
- Staff training and travel;
- Staff license expenses;
- Uniform service;
- Safety expenses and supplies
- Staff certification and safety bonuses;
- Office supplies, Company-owned computers and copiers;
- Delivery, postage costs;
- Health and safety supplies;
- Landscape maintenance at of the Site process areas as shown in Schedule xx;
- SCADA communication expenses;
- Process control laboratory supplies (All permit analysis done by the District)
- Laboratory equipment for process control analysis;
- Chemical expenses;
- Safety equipment purchases;
- General repair and maintenance costs (up to \$10,000 per event); Each event includes the cost of material, parts and outside labor to perform the work.
- Instrumentation and control maintenance costs (up to \$10,000 per event); Each event includes the cost of material, parts and outside labor to perform the work

- Potable water for the Ignacio site (Novato WWTP water provided by the District);
- ~~Trash hauling;~~
- Grit and screenings disposal;
- ~~Start up and program establishment costs;~~
- Miscellaneous small Equipment purchases;
- Cellular telephone and pager expenses;
- Predictive Maintenance tools;
- Trailers as needed for Company.

The operations will be performed to comply with all Applicable Law. The Company shall also be responsible for operating, maintaining, and managing the Facility pursuant to the requirements in this Agreement and all applicable Schedules.

The Company shall, in accordance with this Agreement:

- (1) ~~M~~ maintain continuous compliance with Facility NPDES Permit and other applicable permits and regulations;
- (2) ~~A~~ allow free and unlimited access to the Facility by the District and/or its representatives;
- (3) ~~T~~ troubleshoot and shakedown any Capital Improvements and their operations;
- (4) ~~P~~ participate as the operator in the conduct of any Acceptance Tests required to include Acceptance Tests resulting from construction, repair, or process improvements; and
- (5) ~~O~~ operate, maintain, and manage the Capital Improvements and the Facility as an integrated system following completion and endorsement of the Acceptance Tests.

The District and its designated agents shall have the right to review and inspect these activities, including the ability to conduct independent verification tests and evaluation. Such activities by the District shall in no way relieve the Company of its responsibilities and obligations under this Agreement.

In addition, Company shall:

- 3.1.1a Upon the Commencement Date, provide John Bailey as the on-site project manager. If John Bailey is no longer able to be the on-site project manager, the District and the Company shall establish replacement candidate criteria in advance of any replacement or search activities. **The Company shall use its best effort commercially reasonable efforts** to maintain a stable work force with low turnover particularly in key positions such as the project manager, assistant project manager, operations supervisor, and maintenance supervisor. Management, supervisory, or staff promotions shall not negatively impact Services through vacant positions. The District shall have the right to interview candidates for the project manager and assistant project manager / operations supervisor positions and provide comments to the Company area manager. Should the District and the Company not reach agreement

on a specific replacement candidate, a mutually acceptable search firm shall be engaged to resolve the disagreement on the project manager candidate. ~~The District shall also have the right to interview candidates for the assistant project manager, operations supervisor and maintenance supervisor positions and provide comments to the Company project manager.~~

- 3.1.1b Provide 24-hour per day access to the Facility for District's personnel. Visits may be made at any time by any of District's employees so designated by District's project manager. Keys for Facility access shall be provided to the District by the Company. All visitors to the Facility (including District personnel, contractors, and consultants) shall comply with the Company's operating, security, and safety procedures.
- 3.1.1c Cooperate with District and any consultants and contractors retained by District for any planning, design, and construction related to the Facility.
- 3.1.1d Cooperate with District and any consultants retained by District for any performance audit of the Services. Provide access to on-site operations information during normal business hours.
- 3.1.1e Except for expendables and incidentals less than five hundred dollars (\$500.00) per item, expendable and incidental materials and supplies (excluding vehicles, computers, telephone, laboratory and safety equipment) purchased by the Company for the provision of Services under this Agreement shall become the property of the District. All items purchased by District purchase orders are the property of the District.

3.1.2 District Responsibilities

The District shall be responsible for: activities required to operate and maintain the Collection System, and Reclamation Facility (except the sludge ponds), manage and enforce the industrial pretreatment program, outfall repairs and maintenance ~~outside the Facility~~, provide ~~permit~~ new sewer connections, perform long term system and area-wide planning, review and authorize expenditures from the District's Repair and Replacement Budget (as described in Section 3.10 below) and review and authorize capital replacements and upgrades for the Facility.

The District shall retain responsibility for the District's Industrial Pretreatment Program ("IPP") and the establishment of rates and rate setting. The District shall provide ~~public~~ financing for Capital Improvementss, and, ~~at its discretion, may consider private sector financing.~~

In addition, District shall:

- 3.1.2a Provide for all Capital Expenditures. For purposes of this paragraph, "Capital Expenditures" means Capital Improvements, Facility Modifications, and replacement of existing capital equipment where the cost exceeds \$10,000 including permits, parts and labor.

District shall be notified before any capital equipment is purchased by the Company. District shall have the option of purchasing and owning capital equipment that Company desires to purchase. Any capital equipment provided by Company, at its sole expense, shall remain the property of Company. District shall have the option at any time prior to and at the termination of the Agreement to purchase any capital equipment acquired during the term of the Agreement at its depreciated value. A detailed depreciation schedule shall be provided to District for any and all such equipment within thirty (30) days of its purchase by Company. District and Company will mutually agree upon the life of the asset to be used in the depreciation schedule. If the Agreement is terminated before June 30, 2014/2021, District shall pay Company, on the date of termination, the depreciated value as of the termination date of all equipment purchased by Company. The District shall then own the equipment.

- 3.1.2b Maintain existing Facility permits, certifications, approvals, warranties, guarantees, easements, and licenses that have been granted to District including the NPDES Permit.
- 3.1.2c Pay all property, franchise, or other taxes associated with the Site but specifically excluding any income taxes or personal property taxes of the Company.
- 3.1.2d Make available and, if so requested by Company, transfer title and ownership of the indicated Rolling Stock specified in Schedule 12 in a manner that makes clear that the ownership transfer is not a gift of public funds. ~~Should the Company not request, in writing, the transfer of the indicated Rolling Stock of Schedule 12 within ten (10) days of Commencement Date, the District will dispose of the Rolling Stock and it will not be available for usage by the Company.~~
- 3.1.2e ~~Transfer all chemicals inventory (Schedule 12) to the Company for usage at the Facility.~~
- 3.1.2f District shall be responsible for repair and maintenance of outfalls ~~outside the Facility~~, unless wrongful act of Company necessitates such repair or maintenance.
- 3.1.2g District shall be responsible for any increased direct costs caused by construction or the impact of such construction on Company's operation. Such costs will be paid directly by District or reimbursed to Company and shall not affect either Company's obligations regarding maximum annual direct costs or maximum annual Service Fee.
- 3.1.2h The District shall provide landline telephone connections and service for usage by the Company. District shall be responsible for providing access to a high-speed internet connection.

This District responsibility and service specified in this Section 3.1.2h does not extend to or cover any Company owned hardware or software and does not include the supervisory control and data acquisition (“SCADA”) system hardware and software at the Facility, which are addressed in Sections 3.4 and Schedule 2 - Section 2.2.1 of this Agreement.

3.1.2i District shall provide SCADA software upgrades and PC replacements as defined in Schedule 2.

3.1.3 District and Company Cooperation

The District and the Company recognize and acknowledge the importance of a cooperative working relationship in moving forward with the Services and responsibilities of this Agreement. To these ends, Company and District shall work in a cooperative manner and to the extent practical shall make staff available to each other.

3.2 Equipment and Chemical Inventories

The Company’s responsibilities with respect to Equipment and chemical inventories are summarized in Schedule 12.

3.3 Preliminary Inspection of Facility by Company

The Company acknowledges it has visited, inspected, and is familiar with the relevant Site and the physical condition of relevance to the obligations of the Company pursuant to this Agreement and that the Company is familiar with all local and other conditions which may be material to the Company’s performance of its obligations under this Agreement, and has received and reviewed all information regarding the Site provided or obtained in the course of the procurement process. The Company acknowledges that, based on the foregoing, the Site constitutes an acceptable and suitable condition for the operation, maintenance and management of the Facility and in accordance with the Agreement.

The Company shall be responsible for working with the District to identify the need for and providing inputs to the District and District Consultants for the design, construction, and operation for all necessary Capital Improvements required to meet potential future effluent limits. This includes large scale repairs of capital infrastructure and the replacement of capital components, as well as all capital requirements or Facility Modifications necessary to achieve compliance with the requirements of the NPDES Permit.

3.4 Supervisory Control and Data Acquisition (SCADA) System

~~The existing treatment facility has a SCADA system based on Wonderware software that is integrated with the District’s pump stations. The District will **has** functionally segregated the pump station data and alarms from screens associated with the existing plant data. Alarm summary, history and events will also be separated but contained within the same application.~~

The District currently utilizes the Invensys Wonderware family of software for its Supervisory Control and Data Acquisition (SCADA) functions. Wonderware provides many different system components for SCADA functions. The District uses three main components. The first, InTouch Software (version 10.1-9.5) is the primary interface for engineering and operations. It collects (via redundant DA Server) and displays process data collected from the field and allows control changes. It displays and manages alarm presentation, trends and pager callouts (via redundant SCADA Alarm). The existing main InTouch nodes are licensed for 60,000 tags.

The second component is the InSQL servers. This is the repository for all archived data. Within InSQL, process data, historical alarms and events are stored and made available for trends, searches and reports. The existing InSQL server is licensed for 5000 tags. ~~There are 480 tags in use but the new plant SCADA system will be off loading our existing plant SCADA system which will allow some additional expansion capacity as the primary focus for this existing system shifts to collections (primarily pump stations).~~

The final component concerns the ability to present the InTouch screens to a user located either onsite or offsite and have increased flexibility regarding number of licensed user requirements. Utilizing Microsoft Terminal Services and InTouch for Terminal Services we provision a thin client version of the same screens and control functions available on the primary node. Eleven Wonderware Operator Interfaces are placed around the plant (two are placed at Ignacio TPS). Three Terminal Service clients provide additional offsite access.

~~The District NTP currently polls 8 IP based (Ethernet) slaves over a dual-fiber self-healing network plus 1 IP slave (Ignacio TPS) over dual radio links. There are also two large package systems, Aeration and UV Disinfection. The first uses Wonderware and similar slaves that exist elsewhere in the plant. The latter utilizes Wonderware and different PLC supplier. There are also several small package systems such as GBT, Grinder/Compactor, and septage receiving station.~~

~~The District requires that a SCADA system be utilized for the new treatment facility. The Company will be is responsible for the operation, maintenance, and management of this new SCADA system. The Company is will also be responsible for ongoing integration of the new SCADA system with Facility operations and maintenance, including the associated staff training required and integration with the CMMS and laboratory information systems.~~

The Company will be responsible for modifying and/or reconfiguring the SCADA system to meet on-going requirements throughout the term of the Agreement. Any such modifications or reconfigurations shall be submitted to the District for authorization. Proper documentation, startup and Acceptance by the Company and the District of any and all modifications or reconfigurations shall be part of this responsibility. Any Company requests for modification or upgrade to this SCADA system that will improve efficiency and/or provide cost savings are encouraged to **must** be submitted to the District for review and approval. Company is responsible for troubleshooting, repairing and replacing Facility SCADA Programmable Logic Controls (PLC) components. Company is responsible for maintaining TechConnect support for Quantum class PLCs. Company is responsible for maintaining the annual Facility Wonderware software support. Company is responsible for all maintenance of Facility SCADA hardware and Dell support agreements.

Systems for "Read Only" access to the SCADA system shall be provided **via tablet (iPad or similar) application** for four (4) District staff at their office locations: 1) District Manager-Engineer; 2) Deputy Manager-Engineer; 3) Laboratory Manager **Environmental Services Supervisor**; 4) **Senior Engineer** ~~contract administrative manager~~. **Company shall timely respond within five (5) business days to any District requests for information beyond what is provided in "Read Only" access.**

3.5 Performance Standards and Regulatory and Reporting Requirements

The Company's responsibilities for performance, regulatory compliance, and reporting requirements are set forth in Schedules 1, 2, 3, and 9.

3.6 Emergency Plans and Safety Provisions

The Company's responsibilities for emergency plans and safety provisions are set forth in Schedule 3.

3.7 Personnel

~~As determined by the Company, the Company shall follow the process and provisions of the Memorandum of Agreement (MOA) attached as Appendix C to this Agreement and signed by the Company, District, Teamsters Local 315 (the "Union") and certain specified District employees named in Appendix C and offer employment to those specified individuals provided the employee passes a routine employment physical exam for drug screening and possess a valid California driver's license. Any District employee offered employment will be offered employment by the Company consistent with the MOA Agreement of Appendix C and the transfer of accrued sick leave as detailed in Appendix C. Notwithstanding the foregoing, the District recognizes that the Union will be the exclusive bargaining representative of the individuals specified in Appendix C after these individuals become employees of the Company, with the right to negotiate terms and conditions of employment, including pay and benefits, on behalf of the specified individuals. Accordingly, and notwithstanding the MOA requirement that the Company provide "the same or better wages" and "a substantially equivalent or better package of benefits" as the specified individuals currently receive, it shall not violate any agreement between the Company and the District, including the MOA, if the Company and Union in the future execute a collective bargaining agreement, following good faith negotiations and ratification by the represented employees, that provides different pay or benefits from what the individuals specified in Appendix C currently receive.~~

~~Within thirty (30) days of contract finalization, the Company shall conduct one or more Company orientation and career planning workshops at the Company's sole cost and expense for interested District employees. The workshop(s) shall orient said employees to Company management, operation and maintenance policies and approaches, its plan for providing such Services under this Agreement, its career planning policy, its hiring program and related criteria.~~

~~Company operations shall include ongoing training and development provisions for all then existing personnel. Employees may be terminated for cause or work related performance at any time. Additional details about personnel and training requirements are set forth in Schedule 3.~~

The Company shall prepare and submit a Staffing Plan, identifying job descriptions, salary ranges and certification requirements for on-site staffing as further set forth in Schedule 3, Section 3.2. It is anticipated that this Staffing Plan will be updated and followed during the term of this Agreement unless otherwise modified through mutual agreement as an amendment and Agreement scope change.

The District encourages staff interchange between the District and Company as peaks and valleys occur in the work load of either entity as related to the scope of services of the Company and the District. If, as the result of Equipment malfunction or operator error, within the responsible Services of the Company, an emergency arises that requires the District to augment Company staff and/or Subcontractors to provide a timely and comprehensive response to the incident, the District and the Company shall mutually agree to cooperate and, the District shall invoice the Company for time and materials at the then current District billing rates. The Company has the option to hire a Subcontractor as it sees fit to remedy the emergency without District participation. All wastewater treatment plant wastewater upsets and / or overflows that must be responded to by the District will be charged back to the Company.

Both the District and the Company may use the services of the other for emergency or planned labor or material needs as staff is available. The costs for such service shall be billed to the other on a time and material basis at an agreed-upon billing rate or swap in shared labor hours.

3.8 Acceptance Test

Following completion of any Capital Improvements, the Company shall cooperate with the District in performing contract acceptance testing and thereafter conduct the functional Acceptance Test of the Capital Improvement(s) as described in Schedule 15 using the written functional Acceptance Test plan mutually developed with the District for the specific Capital Improvement(s) to be accepted. Upon successful completion of the contract acceptance by District, and written acceptance by the Company and the District of the functional Acceptance Test with respect to any Capital Improvement, the Company shall assume responsibility for the performance and maintenance of the Capital Improvement. Changes in the Service Fee and Pass Through Costs justified by the Capital Improvement shall be documented during the functional Acceptance Test and the Service Fee and Pass Through Costs shall be adjusted to reflect these costs, on a mutually agreeable basis following the protocol of Sections 4.1 and 4.2 of this Agreement.

For the initial period following any Capital Improvement involving a wastewater treatment unit being placed into service and operation, the Company shall be responsible for best efforts in achieving regulatory compliant performance of the wastewater treatment processes associated with the Capital Improvement of the new or reconstructed wastewater treatment unit. For biological treatment units processes associated with such Capital Improvement or new or reconstructed wastewater treatment unit, the initial best efforts time period shall be ninety (90) days. For non-biological wastewater treatment processes associated with such Capital Improvement or new or reconstructed wastewater treatment unit, the time period shall be thirty (30) days. At least thirty (30) days prior to the placing of any new or reconstructed wastewater treatment unit into service, the District shall provide notes to both the Regional Water Quality Control Board and the Company of the schedule for placing such treatment unit into service.

The District and the Company shall both be responsible to meet all regulatory requirements as provided for in California Water Code § 13385(j)(1)(D). The indicated thirty (30) or ninety (90) day time periods shall provide the Company with the opportunity for startup operation of the Capital Improvement(s) so as to satisfy the Company and the District with regard to functional Acceptance by the Company. In any case, at the end of the thirty (30) day or ninety (90) day time period as applicable, the Company shall be responsible to meet all regulatory requirements unless the Company can present to the District documentation and justification for an exception based on the Capital Improvement or new or reconstructed wastewater treatment unit 's inability to perform because of design and / or construction related issues.

3.9 Maintenance

The Company shall perform all maintenance as specified by the Equipment manufacturer, (or alternate procedures if the Company demonstrates to the satisfaction of the District that alternate maintenance standards are in the best interest of the District) consistent with industry standards and the standards provided in the Schedules. In the case of newly installed Equipment, the Company will cause such maintenance to conform with Equipment warranty provisions so that requirements for continued warranty coverages are maintained. The maintenance function will also be structured so as to provide for potential integration in a seamless manner with an asset management system should the Company and the District proceed forward with such a system during the term of this Agreement.

The Company shall perform all routine, Preventive, Predictive and ongoing Maintenance of the Facility consistent with industry standards such that the facilities and structures are maintained at a level adequate for the efficient, long-term reliability and preservation of the capital investment, including maintaining the applicable buildings and structures in an aesthetically attractive and clean condition.

The Company shall be responsible for providing all maintenance of the machinery, Equipment, systems, structures and improvements constituting the Facility during the Term of the Agreement in compliance with the Operations and Maintenance Plan specified in Schedule 3.3. The District shall have the right to conduct inspections of the Facility at the District's sole expense at any time in order to assure that the Facility is being properly maintained in accordance with the Agreement.

Both the Company and the District acknowledge the importance of accurate and calibrated influent and effluent metering systems. Consistent with industry standards and practices, the Company shall maintain the influent and effluent metering systems as part of the CMMS activity. Annually, the Company and the District shall mutually select an independent third party to calibrate and certify the accuracy of the meters. ~~Consistent with the requirements of Schedule 2, the Company and the District further acknowledge the need to correlate the readings from new meters located at new locations with the historic data and readings reported by the meters being replaced as part of the Facility Capital Improvement program currently underway.~~

The Company shall utilize a CMMS which documents Equipment inventory, condition, maintenance and repair activities, and critical spare parts. The Company shall also maintain records of performance of maintenance items, and maintenance backlog (items, applicable skills sets and hours) for the Facility.

The Company shall maintain the Facility and sites in good working order and repair and in a neat and orderly condition. The Company shall provide or make provisions for all labor, materials, and equipment necessary for the normal operation and maintenance of the Facility, including the required Predictive and Preventive Maintenance requirements of the Operation and Maintenance Plan.

If the Company fails to perform the required Predictive and Preventive Maintenance as specified herein and/or fails to provide the established record keeping and documentation, the District, after written notification to the Company and cure period as discussed in Section 5.4.2(c) of this Agreement, shall have the right to withhold that portion of the Service Fee for such activities. If the deficiencies are not corrected within the cure period, the dollar amount withheld from the Service Fee shall be the District's best estimate of the costs necessary for an independent, third party to correct the noted deficiencies.

Should Equipment failures and / or the need for replacement occur and the Company cannot demonstrate performance of all required maintenance activities per the CMMS, the Company shall be responsible for the costs of the repair or replacement.

3.10 Repair and Replacement Budget

The District recognizes that additional repair and replacement capital spending for the old (existing) Facility may be necessary until such time as it is replaced by the Upgrade Project. As such, the procedures and responsibilities as specified below are established: to address the time period when old Facilities remain in service (Proposal A) and then revised procedures and responsibilities for the subsequent time period (Proposal B) when the Upgrade Project is near completion and the new Facilities are on line and the old Facilities are no longer in service.

For Proposal A time period

Old facilities: All repairs and replacements required and authorized for the existing Facility will be funded by the District as specified below:

- 1) Any non routine (i.e. not PM related) repair and replacement expenses will be funded by the District as outlined below:
 - i) The District shall establish a "Repair and Replacement Budget" to be used for repair and replacement expenditures as submitted by the Company and authorized by the District.
 - ii) The Repair and Replacement Budget shall only be accessed with District approval and authorization following documented submittals by the Company to the District.
 - iii) At new plant startup, any unused funding remaining in the major Repair and Replacement Budget shall revert to the District and ratepayers for funding of "pay as you go" capital projects as determined by the District.

~~New facilities: The Service Fee shall include all maintenance, repairs, and replacements for items costing less than ten thousand dollars (\$10,000.00) for new facilities and Equipment. Any repairs that cost more than ten thousand dollars (\$10,000.00) for new Equipment will be submitted to the District and as authorized by the District funded from the Repair and Replacement Budget established by the District.)~~

a) ~~For Proposal B time period (new treatment plant)~~

~~As part of the Company's Proposal B Service Fee, the~~ **The** Company shall be responsible for provision of all maintenance, repairs, and replacements for items costing less than ten thousand dollars (\$ 10,000.00 including parts, materials, and outside labor per event.) ~~for new Equipment as it comes on line. For repairs and replacements costing more than ten thousand dollars (\$10,000.00) (i.e. not routine Preventive Maintenance related), the Company shall submit these items with written explanation and justification to the District for review and, as authorized by the District, and all costs for these items shall be funded from the District's Repair and Replacement Budget. The District's authorization shall not be unreasonably withheld. As part of the Company's monthly reporting requirements to the District, the District shall receive from the Company a summary of any and all expenditures for repair and replacement. Expenditures under ten thousand dollars (\$10,000.00) shall be the responsibility of the Company.~~

This section of the Agreement shall be understood to be in accord with the proposed O&M Plan under Schedule 3.

No funds shall be disbursed from the Repair and Replacement Budget without the prior written consent of the District. The Company, on a monthly basis, shall submit to the District a report on expenses that should be reimbursed out of the Repair and Replacement Budget and, at its option, may request the District to pay such expenses directly from the Repair and Replacement Budget.

To the extent that the Company determines that it is necessary to make repair and replacement expenditures in excess of amounts in the Repair and Replacement Budget for any Fiscal Year, the Company shall submit a written proposal to the District, which proposal shall be considered by the District and the Company prior to making such expenditure. Funding for any such expenditure shall be reviewed and considered by the District.

During the Contract Term, the Company shall recommend and perform activities to be paid for from the Repair and Replacement Budget as follows:

- 1) The Company shall determine the necessity for performing any major repair and replacement activities payable from the Repair and Replacement Budget. Maintenance activities shall continue to be paid for by the Company.
- 2) The Company shall prepare written recommendations for all major repair and replacement activities to be paid from the Repair and Replacement Budget that the Company determines may be required to keep the Facility in a state of good operating

order, which recommendations shall include the approximate cost of completing such activities.

- 3) The District, within thirty (30) days of the receipt of such written recommendations, shall either approve or deny the Company's recommendation in writing, provided that if the District fails to notify the Company, in writing, within such thirty (30) day period of its decision, such recommendation shall be deemed denied.

In the event that the District shall approve the Company's recommendation, and in the event the cost of the major repair or replacement activity, plus the total aggregate cost of all such activities previously incurred during any Fiscal Year, does not exceed the total amount in the Repair and Replacement Budget, the District shall proceed with the recommended work, and it shall be paid for from such Budget.

In the event the District shall approve the Company's recommendation, but the cost of the major repair or replacement activity, plus the total aggregate cost of all such activities previously made during the current Fiscal Year, exceeds the total amount then in the Repair and Replacement Budget, the District shall be responsible for providing the additional funding.

~~During the period of continued operation of the existing Facility, in the event that the District does not approve a major repair or replacement item recommended by the Company, the District shall indemnify and hold the Company harmless from any damages or liability suffered by the Company as a result of the District's denial. The Company shall not be responsible for providing additional funds beyond those budgeted, provided the Company has performed its contractual obligations. This indemnification provision applies only to the time period when the existing Facility remains in operation.~~

4.0 FINANCIAL REQUIREMENTS

4.1 Service Fee

Commencing with the first Billing Month, and for each Billing Month thereafter during the Term of the Agreement, the District shall pay the Company a Service Fee for the Services provided by the Company. The Service Fee shall be paid monthly in accordance with Schedule 14. The Service Fee shall be adjusted annually for **CPI-inflationary** changes using the methodology established in Schedule 8. The Service Fee includes all compensation to the Company for managing, operating, and maintaining the Facility. Except for additionally authorized work as specified in Section 8 herein, including Repair and Replacement Budget (as described in Section 3.10 above), expenditures or authorized work resulting from the impacts of complying with future changes in laws, or adjustments for operational costs of Capital Improvements other than those associated with the Upgrade Project, or any adjustment for changes in flows or loadings as set forth in Schedule 8, or any cost saving or performance excellence incentive payments, the Company shall not be entitled to any additional compensation.

4.2 Pass Through Costs

Schedule 13 lists the Pass Through Costs. Pass Through Costs for any Billing Month shall be the sum of the expenses set forth in Schedule 13 hereto which were incurred by the Company during

such Billing Month or in the case of utilities were utilized by the Company during the Billing Month. Such costs shall be actual costs for usage of the identified items paid by the Company to third parties without additional mark-up by the Company and those costs incurred and paid by the District which are the responsibility of the Company pursuant to the Agreement (electricity, natural gas, and diesel fuel). The costs for electricity, natural gas, and diesel fuel shall be paid by the District based on the quantities used by the Company, for amounts up to the maximum usage amounts set forth in Schedule 13. Usage beyond the Usage Caps (“Excess Pass Through Costs”) shall be paid by the Company, subject to the limitations set forth in Section 4.6 hereof. Schedule 13 shall be revised by the Company and the District for new capital Equipment, new regulations and long term changes in flows and loadings and the Usage Caps updated consistent with these changed conditions.

4.3 Change in Law

Changes in Law after the Contract Date that result in a change in scope of Services for the Company, will be eligible for an increased or decreased Service Fee based upon the costs (Service Fee or Pass Through) necessary to satisfy the Change in Law condition. The Company shall develop the cost justification for review and acceptance by the District. Any such adjustments shall be subject to the provisions of Section 4.6 hereof.

4.4 Range of Operations and Compensation

The Service Fee shall be based on treating all wastewater within the ranges set forth in Schedule 2 for flow and loadings, **and subject to Section 5.8.2.5 regarding treating influent wastewater within the design parameters of the facility.** If the influent wastewater quantity or characteristics increase or decrease from the established baseline of Schedule 2, on a twelve (12) month moving average basis, the Company and the District shall negotiate in good faith to adjust upward or downward the Service Fee per the adjustment methodology as summarized in Schedule 8. Any such adjustments shall be subject to the limitations on Minimum Compensation and Maximum Compensation set forth in Section 4.6.

4.5 Sharing of Cost Savings and Performance Excellence Incentives

4.5.1 Cost Savings

During the operating period, the Company may suggest to the District Capital Improvements, and/or modified operating procedures for the Facility for more cost-effective operation and maintenance of the Facilities that may reduce the Service Fee, or Pass Through Costs. Such suggestions, including the costs, benefits, and anticipated net savings shall be provided in writing to the District.

If the District approves such Capital Improvements or modifications, and such Capital Improvements or modifications result in a net savings, the Company shall be entitled to [sixty percent (60%)] of the net savings, and the District shall be entitled to [forty percent (40%)] of the net savings after recovery of the documented costs for the Capital Improvements. Such share of the net savings shall be either a one-time payment to the Company, or an annual payment, depending on the nature of the modification and the resulting net savings, as mutually agreed by

the District and Company. Any such payments shall be subject to the limitations on minimum compensation and maximum compensation set forth in Section 4.6 hereof.

4.5.2 Performance Excellence Incentives

Consistent with the District's objectives of an efficient and effective wastewater utility, incentives for performance excellence are hereby established by the District. The performance excellence incentives are detailed in Schedule 14 of this Agreement. Any such payments shall be subject to the payment limitations of IRS Revenue Procedure 97-13 provisions.

4.6 Adjustments to Comply with IRS Revenue Procedure 97-13

The District has previously obtained tax exempt financing to fund Facility construction/upgrade costs. The District has covenanted with its lenders that it will take no action that would adversely affect the tax-exempt status of interest on the financing. Therefore, this Agreement is intended to comply with IRS Revenue Procedure 97-13 and any successor amendment hereto (hereinafter 97-13). It is intended that this Agreement comply with Section 5.03(2) of 97-13 and that at least 80 percent of all compensation paid to the Company constitute a periodic fixed fee as defined in 97-13. In this regard, the District and the Company agree to limit any and all non-periodic fixed fees payable to the Company (hereinafter "Variable Fees") in any year pursuant to the Agreement to an amount not in excess of twenty percent (20%) of the Service Fee (as adjusted for the CPI Service Fee Escalator) payable for that year. For this purpose, Variable Fees include, but are not limited to, adjustments for operational costs of Capital Improvements other than those associated with the Upgrade Project and adjustments for changes in flows or loading under section 4.1 and Schedule 8, increased payments for changes in law pursuant to section 4.3, sharing of cost savings pursuant to section 4.5.1 and performance excellence incentives and other incentives pursuant to section 4.5.2 and Schedule 14. Notwithstanding the above, Company shall be entitled to receive any and all compensation otherwise due to it, to the extent the same can be accomplished within the limitations and requirements of IRS Revenue procedure 97-13.

5.0 LEGAL AND BUSINESS REQUIREMENTS

5.1 Term

Subject to the language of Section 5.1 of the agreement dated 9/24/09 between the parties, the District is hereby exercising its unilateral option to extend the term for two consecutive 3 year terms from the original expiration date of June 1, 2015. The parties mutually agree to extend the termination date to June 30, 2021 to coincide with the District's fiscal year.

Hence, the term of the Agreement shall be ~~five (5) years~~ be from July 1, 2014 to June 30, 2021, with ~~two one six (36)~~ year extension options at the District's unilateral option as specified in Schedule 16 of this Agreement and incorporated herein by reference, subject to the District's right to terminate under Section 5.5 of this Agreement. As specified in Schedule 16, the extension option shall be provided at the then-existing Service Fee price or at an alternate price as mutually determined by the District and the Company consistent with Schedule 16.

5.2 Indemnification and Liability Cap

5.2.1 Liability Indemnification to be Provided to the District

Company shall indemnify, defend at Company's expense with counsel reasonably acceptable to the District, and hold harmless the District and its officials, commissioners, officers, employees, agents, and volunteers ("District Indemnitees") from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Company or its employees, Subcontractors, or agents, provided, however, that Company shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault. The foregoing obligation of Company shall not apply when: (1) the injury, loss of life, damage to property, or violation of law arises from the active negligence or willful misconduct of the District Indemnitees and (2) the actions of Company or its employees, Subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Company to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve Company from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Company acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, **and that Company's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.**

As set forth in Section 5.2.1, the Company shall defend and indemnify the District for any and all claims related to any worker's compensation type injury, however pleaded against the District, brought by Company employees or others (excepting District employees) related to the Company's performance of this Agreement.

The Company shall reimburse District Indemnitees for all expenditures, including reasonable attorney's fees, incurred by District Indemnitees to enforce its right to indemnification pursuant to the terms hereunder.

The Company is responsible for safety related to its operation of the Facility and other responsibilities under this Agreement. The Company shall prepare and provide an annual safety plan to the District **for the District's review**. ~~The District will have the plan reviewed by a certified safety engineer and have the safety engineer conduct an annual safety audit.~~ Except for any capital expenses and / or Facility Modifications and / or additions identified by the **District** review, the Company will be responsible for all operational costs and expenses for all corrective actions to achieve a satisfactory review and audit. The District shall remain responsible for all Capital Expenditures as a required result of a safety audit. The Company shall ~~pay the costs of defend~~ defend and indemnify the District Indemnitees for any and all claims related to any worker's compensation type injury, however pleaded against the District brought by Company employees or others (excepting District employees) related to the Company's performance of this Agreement.

A District Indemnitee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Company the opportunity to defend such claim, and shall not settle the claim without the approval of the Company. These indemnification provisions are for the protection of the District Indemnitees only and shall not establish, of themselves, any liability to third parties.

5.2.2 Liability Cap

Notwithstanding anything contained in Section 5.2.1 hereof to the contrary, the liability of the Company pursuant to Section 5.2.1 hereof or under this Agreement shall not exceed ~~thirty~~ **fifteen** million dollars (~~\$30~~ **15**,000,000) (the "Liability Cap") cumulatively for the Contract Term; ~~provided, however, that the foregoing limitation shall be reduced by any amounts paid to the District by or on behalf of the Company, Guarantor or its insurers with respect to claims of the District under Section 5.2.1 hereof or under this Agreement, and provided, further, however, that~~ in no event shall any fines or penalties caused in whole or in part by Company's actions count toward the Liability Cap. The provisions of this Section shall survive termination of this Agreement.

5.2.3 Liability Indemnification to be Provided to the Company

The Novato Sanitary District agrees that, to the extent permitted by Applicable Law, it shall protect, indemnify, defend and hold harmless the Company and its Affiliates and their respective officers, directors, shareholders, agents and employees (the "Company Indemnitees") from and against all claims for Loss and Expense in any lawsuit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of (1) the active negligence, wrongful conduct or other fault of the District or any of its, officers, employees, agents, representatives, contractors or subcontractors in connection with its obligations or rights under this Agreement, or (2) the performance or nonperformance of the District's obligations under this Agreement.

The District shall not, however, be required to reimburse or indemnify any Company Indemnitee for any Loss-and-Expense due to (a) the negligence or other wrongful conduct of any Company Indemnitee or (b) due to any Uncontrollable Circumstance or any act or omission of any Company Indemnitee judicially determined to be responsible for or contributing to the Loss-and-Expense, and the Company Indemnitee whose negligence or other wrongful conduct, act or omission is adjudged to have caused such Loss-and-Expense shall be responsible therefore in the proportion that its negligence or wrongful conduct caused or contributed to the Loss-and-Expense.

5.2.4 ~~Ongoing EPA Investigation/CEQA Claim~~

~~In light of the currently ongoing EPA investigation into potential violations of the Clean Water Act at the District alleged to have occurred in 2007 (the "EPA Matter"), clarification as to the respective responsibilities of the District and its employees for any resulting costs or penalties which may arise as a result of the EPA Matter investigation are provided herein. Although the exact nature of the issues being investigated in the EPA Matter is not known, it is understood that the investigation deals with alleged activities occurring prior to the effective date of this Agreement between the District and the Company.~~

Additionally, the District and Company have been advised of the potential for a claim involving compliance with the procedures in the California Environmental Quality Act related to the District's solicitation and authorization of the Agreement (the "CEQA Matter"). It is understood that the claims potentially raised in the CEQA Matter involve the District's actions and not those of the Company.

~~There is no indication that the EPA Matter or the CEQA Matter, or investigations related thereto, deal with any conduct of the Company. The District therefore accepts responsibility and liability for additional Fees and Costs and Loss and Expense costs, if any were to occur during the Contract Term, arising directly from the EPA Matter or CEQA Matter, or the incidents which may be the subject of the aforementioned matters. The additional Fees and Costs and Loss and Expense contemplated by this paragraph may include any fines or penalties imposed on the District, costs resulting from responding to enhanced regulatory oversight, modified NPDES conditions, Capital Improvements, increased monitoring or other operational costs resulting from the EPA or CEQA Matter.~~

~~The District shall also be responsible for indemnifying, defending and holding Company harmless from all Loss and Expense and Fees and Costs reasonable legal and consulting costs incurred by Company (subject to reasonable Cost Substantiation), if any, arising directly from the EPA Matter or the investigations or claims related thereto and any regulatory or legal actions taken by a federal agency as a result of the EPA Matter investigation, unless such Fees and Costs or Loss and Expense costs are caused by any wrongful act of Company occurring after the Contract Date which directly relate to the EPA Matter.~~

5.2.5 No Consequential Damages

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any consequential damages, or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or any negligent misrepresentation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. Consequential damages are those losses that do not flow directly and immediately from an injurious act, but that result indirectly from the act, as defined in Black's Law Dictionary.

5.3 Dispute Resolution

To the extent the parties cannot, after good faith attempts, resolve any controversy or dispute that may have arisen under the Agreement, either party, to the extent its interests are adversely impacted, may refer the matter to mediation. If despite the good faith efforts of the parties to resolve the dispute, and mediation does not conclude with a resolution of the dispute, either party may refer the matter to alternative dispute resolution as provided below.

5.3.1 Negotiation

The District and the Company agree, prior to invoking any other method of dispute resolution as provided in this Agreement, first to engage in good faith negotiations regarding any dispute. Either party may invoke good faith negotiations by written notice to the other, and, upon receipt of such written notice, said negotiations shall commence forthwith. If the dispute has not been

resolved by mutual agreement within seven (7) calendar days of the commencement of negotiations, either party may refer the dispute to mediation as provided below.

5.3.2 Mediation

In the event that any dispute cannot be resolved through negotiation, either party may invoke the services of a mediator to conduct mediation of the dispute by giving written notice to the other of its intent to invoke mediation, which notice shall include a brief but detailed description of the dispute, including the relief requested. Within fifteen (15) days of such notice, the parties shall agree upon a disinterested third party mediator, who shall fix a time and place for the mediation, which date shall not be later than fourteen (14) days from the date of the receipt of such notice, and shall give the parties at least five (5) business days written notice of the initial mediation session. In the event that the parties cannot agree on a mediator within fifteen (15) days of such notice, either party may request a list of three (3) disinterested mediators from JAMS, to be provided to both parties. Each party shall then have the right to strike one mediator from the list of three (3), and the parties agree that the remaining mediator shall conduct the mediation. Such mediator's failure to conduct the mediation within the time limits provided in this Section 5.3.2 shall not relieve either party of participating in good faith in the mediation. The mediator shall meet with the parties until either (a) the dispute is resolved or (b) the mediator decides that further meetings will not likely result in a resolution by agreement. All costs and expenses related to the mediation shall be shared equally between the District and the Company. If the dispute has not been resolved by mediation within forty-five (45) days of the written notice convening such mediation, either party may refer the dispute to arbitration on technical disputes as provided below or institute formal legal proceedings on the dispute.

5.3.3 Arbitration

All disputes arising out of or relating to this Agreement, with the exception of contract termination disputes, payment of major fines on penalties and adequacy of maintenance issues upon termination which have not been resolved by negotiation or mediation as provided above, shall be decided by binding arbitration in accordance with California Code of Civil Procedure Section 1280 *et seq.* (the "Act"). Arbitration proceedings will be determined in accordance with the Act and the then-current JAMS Streamlined Arbitration Rules.

The demand for arbitration shall be filed in writing with the other party to the Agreement and with JAMS or another agreed-upon arbitration provider. A demand for arbitration shall be made within reasonable time after the dispute has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings would be barred by the applicable statute of limitations. The party filing a notice of demand for arbitration must assert in the demand all disputes then known to that party on which arbitration is permitted to be demanded.

The Parties involved in the dispute shall seek to agree on a mutually acceptable provider organization for administration of the arbitration proceeding. If the parties are unable to agree within 20 days after delivery by a Party of the demand for arbitration, the arbitration shall be administered by JAMS and conducted in Marin County, California. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the District may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

All claims shall be determined by one arbitrator. The arbitrator shall have at least five (5) years direct experience with environmental remediation at solid waste facilities and shall be independent of, and unaffiliated with, either party (and shall not ever have been an employee of any party, under contract with any party in the past five (5) years or acted as an arbitrator for any party within the past five (5) years). If the parties are unable to select an arbitrator within twenty (20) days after the provider organization for administration of the arbitration proceeding has been determined, the organization administering the arbitration shall select a qualified arbitrator from its panel.

The arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within forty-five (45) days of commencement and, the decision of the arbitrator shall be issued within forty-five (45) days of the close of the hearing. The parties shall have the right to such discovery as permitted by California Code of Civil Procedure §1283.05. The arbitrator shall provide a concise written statement of the reasons for the decision. The arbitration decision may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced.

By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury as permitted by Law in respect of any claim. **WHETHER OR NOT THE CLAIM IS DECIDED BY ARBITRATION, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS SETTLEMENT AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW WITH THE EXCEPTION OF CONTRACT TERMINATION DISPUTES, PAYMENT OF MAJOR FINES ON PENALTIES AND ADEQUACY OF MAINTENANCE ISSUES UPON TERMINATION.**

Any of the sides involved in the arbitration shall evenly split the cost of any arbitration excluding any attorneys' fees. Any monetary award resulting from the arbitration shall, as appropriate, include interest owed on amounts due, with interest as permitted by applicable law.

The parties shall continue to perform services under the Agreement, without interruption or slowdown, pending resolution of any dispute(s), unless the matter at issue precludes such continued activity until resolved. This Section shall survive termination of the Agreement.

5.3.4 Formal Legal Proceedings

For any dispute involving contract termination, payment of major fines or penalties and adequacy of maintenance issue upon termination, either party may institute formal legal proceedings for resolution of the dispute. Other matters may be excluded from formal legal proceedings by mutual agreement of the parties, but either party shall have all rights under law and equity with respect to all matters not subject to binding arbitration.

5.4 Meet and Confer, Breaches, and Defaults

5.4.1 Request to Meet and Confer

If any problem occurs that materially affects this Agreement or a Party's ability to perform under this Agreement, either Party can send notice describing the problem and requesting a meet and confer. The Parties may choose to meet in person or by teleconference. The meet and confer process is intended to be a prerequisite to sending a notice of default. If either Party does not agree to the meet and confer, does not appear at the meet and confer meeting, or if the Parties are not able to correct the performance issue or solve the problem within a reasonable time after the meet and confer, the aggrieved Party may send a notice of default.

Notwithstanding the above, there is no requirement that the meet and confer process be used for a failure to pay, or for urgent matters of public health or other matters requiring immediate resolution.

5.4.2 Breaches

5.4.2(a) Definition. A breach is a material failure to perform any of the obligations conferred by any provision of this Agreement.

5.4.2(b) Notice of Breach. Either Party shall promptly notice the other Party regarding the occurrence of a breach as soon as such breach becomes known to the noticing Party. Such notice shall be given verbally followed immediately by written notice.

5.4.2(c) Cure of Breach. District and the Company shall begin cure of any breach, if applicable, as soon as possible after it becomes aware of its breach. Upon giving or receiving verbal notice of a breach, District or the Company shall proceed to cure such breach, if applicable, as follows:

(1) Immediately, if the breach is such that in the determination of either the Company or the District, the health, welfare or safety of the public is endangered thereby, unless immediate cure is impossible in which event the Party required to cure shall notify the other Party, and the other Party may seek substitute services.

(2) Within the cure period provided below, if applicable, of giving or receiving notice of the breach; provided that if the nature of the breach is such that it will reasonably require more than the cure period, if applicable, to cure, District or the Company shall not be in default so long as District or the Company promptly commences to cure its breach, secures written agreement from the other Party to extend the cure period, if applicable, and provides the other Party, no less than weekly, written status of progress in curing such breach, and diligently proceeds to complete same. No cure right shall attach to certain breaches unless as specified in Section 5.5 below.

5.4.2(d) Remedy of Breach, Other Remedies. The Parties shall be entitled to all available monetary or equitable remedies, including specific performance and injunctive relief.

5.5 Default

5.5.1 Events of Company Default.

Each of the following breaches, if uncured after the applicable cure period, if any, or a repeated pattern of any of the following, shall constitute an event of default by the Company:

(a) Failure or refusal of the Company, following a notice and cure period of thirty (30) days, to timely perform any material obligation under the Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of the Agreement.

(b) Failure of the Company, following a notice and cure period of thirty (30) days to pay amounts owed to the District under the Agreement, as and when they become due and owing.

(c) If the Company or Project Guarantor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Company in a bankruptcy proceeding, or upon a bankruptcy, winding up, reorganization, insolvency, arrangement, or results of a similar proceeding instituted by or against the Company, or Project Guarantor. A thirty (30) day cure period shall apply to such an event.

(d) The continued default of the Project Guarantor under the provisions of the Guarantee or termination of the Guarantee following a thirty (30) day notice and cure period.

(e) Failure to operate or the abandonment of the entire Facility necessary for the proper operation thereof for one (1) or more days without prior notice and consent of the District. No cure period shall apply to such a failure.

(f) Following a thirty (30) day notice and cure period, failure to otherwise comply with Applicable Law in any Contract Year in which non-compliance for ten (10) cumulative days has occurred.

(g) Following a thirty (30) day notice and cure period, Company's failure to comply with requirements for Predictive and Preventive Maintenance under Section 3.9 of this Agreement.

(h) If Company practices, or attempts to practice, any fraud or deceit upon District. No cure period shall apply to such an event.

(i) If Company fails to provide or maintain in full force and effect the Insurance, or to provide indemnification coverage as required by this Agreement. No cure period shall apply to such an event.

(j) If Company falls out of full regulatory compliance or violates any orders, permits or filings of any Governmental Body having jurisdiction over Company, which violation or non-compliance materially affects the Company's ability to perform under this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach shall be deemed to have occurred during the pendency of the

contestation or appeal, to the extent Company is able to adequately perform the Services during such period.

(k) If there is a seizure or attachment of, or levy on, the operating equipment of Company, including without limits its equipment, maintenance or office facilities, or any part thereof which materially affects the Company's ability to perform the Services. No cure period shall apply to such an event.

(l) If Company or any of its officers, directors, employees, or others in position to supervise or influence actions under this Agreement, be "found guilty" of felonious conduct relating to its obligations under this Agreement. The term "found guilty" shall be deemed to include any judicial determination that Company or any of its officers, directors or employees, or others in position to supervise or influence actions under this Agreement, is guilty, and any admission of guilt by Company or any of Company's officers, directors or employees, including but not limited to, the pleas of "guilty," "nolo contendere," "no contest," or "guilty of a lesser felony" entered into as part of any plea bargain. Such felonious conduct includes, but is not limited to any activities related to or carried out pursuant to this Agreement for: (1) price fixing; (2) illegal transport, processing or disposal of hazardous toxic materials, (3) bribery of public officials, or (4) fraud or tampering. If District does not terminate this Agreement when any of Company's officers, directors or employees are "found guilty," and upon direction of District, Company shall dismiss or remove its officers, directors or employees who have been "found guilty" and take a necessary and appropriate to remedy any breach of its obligations. A thirty (30) day cure period shall apply to such an event.

(m) Company assigns this Agreement in violation of Section 7.6 of this Agreement. No cure period shall apply to such an event.

5.5.2 Notice of Default

The Company shall be in default from the date of receipt of a notice from the District identifying such default.

5.5.3 District Remedies in the Event of Company Default

Upon failure to cure a Company default, the District shall, in addition to its right to collect monetary damages, have the following rights:

- (a) Waive Default. To, at its sole discretion, waive the Company default.
- (b) Termination. Terminate the Agreement, provided that no termination shall be effective until the District has given written notice to the Company of its decision to terminate the Agreement.

(c) All Other Available Remedies. In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Section 5 and any other remedies at law and in equity, to which the District shall be entitled, according to proof.

(d) Damages Survive. If the Company owes any damages upon District's termination of the Agreement, the Company's liability under this Section 5 shall survive termination.

5.5.4 Events of District Default

The Company may terminate the Agreement upon the occurrence of an event of Default by the District and an appropriate cure period following written notification by the Company.

Events of Default, without limitation, include the following:

(a) Bankruptcy. The filing by the District of a petition seeking relief under the Federal Bankruptcy Code or any Federal or State statute intended to provide relief for political subdivision which is insolvent or unable to meet its obligations as they mature.

(b) Failure to Pay. Failure of the District, following a notice and cure period of thirty (30) days, to pay undisputed amounts owed to the Company under the Agreement, as and when they become due and owing

(c) Failure or Refusal to Perform. The Company has given prior written notice to the District that a specified failure or refusal to perform exists which shall, unless corrected constitute a material breach of this Agreement on the part of the District and which shall, in its opinion, give the Company a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, but not more than (60) days, and the District has neither challenged in an appropriate forum the Company's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than sixty (60) days from the date of the notice given pursuant to the preceding paragraph (but if the District shall have diligently taken steps to correct such default within a reasonable period of time, but in no even greater than sixty (60) days, the same shall not constitute an Event of Default for as long as the District is continuing diligently to take such steps to correct such Event of Default.)

5.5.5 Notice of Default

District shall be in default from the date of receipt of a Notice from the Company identifying such default.

5.5.6 Company Remedies in the Event of District Default

Upon failure to cure a District default, the Company shall, in addition to its right to collect monetary damages, have the following rights:

(a) Waive Default. To, at its sole discretion, waive the District default.

(b) Termination. Terminate the Agreement, provided that no termination shall be effective until the Company shall have given written notice to District of its decision to terminate the Agreement.

(c) All Other Available Remedies. In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Section 5 and any other remedies at law and in equity, to which the Company shall be entitled, according to proof.

(d) Damages Survive. If the District owes any damages upon the Company's termination of the Agreement, District's liability under this Section 5 shall survive termination.

5.5.7 Substitute Services

In addition to exercising any or all remedies specified in this Agreement, with regard to an event of Company breach or default, respectively (which has not been cured within the time period specified herein), or due to an Uncontrollable Circumstance which the Company has failed to mitigate or ameliorate in accordance with the requirements specified in Section 5.5.10, the District may at its sole discretion seek substitute services. If at time the Company is unable to operate the Facility or perform the Services required under this Agreement, the District shall have the right to immediately assume possession of the Facility.

5.5.8 Waiver

A waiver by one Party of one breach or default by the other Party shall not be deemed to be waiver of any other breach or default by that Party, including ones with respect to the same obligations hereunder, and including new incidents of the same breach or default. The subsequent acceptance of any damages or other money paid hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or default.

5.5.9 Determination of Remedy or Cure of Breach or Default.

Upon request of either Party, an event of breach or default shall be considered remedied or cured upon signature by both Parties of a written agreement specifying the event and stating that remedy and/or cure of such event has been completed.

5.5.10 Uncontrollable Circumstances

(a) Performance Excused. Neither Party shall be in breach of its obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such obligations due to an Uncontrollable Circumstance if such Party exerted Prudent Industry Practices to prevent such Uncontrollable Circumstance, and such Party expeditiously takes all actions within its control to end, or to ameliorate the effects of such Uncontrollable Circumstance as soon as possible.

The District, by virtue of providing the property insurance as specified in Schedule 7, shall carry and keep in force such property insurance as is needed to mitigate the financial effects of Uncontrollable Circumstances to which the Facility may be subject. All insurance proceeds available from policies covering any Uncontrollable Circumstance act or event shall be used to mitigate any damages caused by such Uncontrollable Circumstance insurable event.

(b) Notice. The Party claiming excuse from performance of its obligations based on an Uncontrollable Circumstance shall Notify the other Party as soon as is reasonably possible, but

in no event later than three (3) working days after the occurrence of the event constituting the Uncontrollable Circumstance. The Notice shall include a description of the event, the nature of the obligations for which the Party claiming Uncontrollable Circumstance seeks excuse from performance, the expected duration of the inability to perform and proposed mitigation measures.

5.5.11 Termination by Labor Unrest

If personnel employed by the Company and performing Services pursuant to the Company's obligations under the Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Company from performing its material obligations under the Agreement, the District may, in its sole discretion, by notice to the Company, terminate the Agreement forthwith.

5.5.12 Termination for Uncontrollable Circumstances

If an Uncontrollable Circumstance shall occur relative to a material obligation of the Company under the Agreement and such Uncontrollable Circumstance or the effect thereof preventing performance of such material obligation shall continue for a period of thirty (30) days, the District, upon notice to the Company, may, at its sole discretion, terminate the Agreement forthwith, notwithstanding that such Uncontrollable Circumstance may only be cured by the District's procurement or implementation of a capital improvement, repair or construction which the District determines, in its sole discretion, not to procure or implement. In the event of termination for Uncontrollable Circumstances, Company shall be entitled to reimbursement of costs from District for reasonable mobilization and related costs upon Cost Substantiation by Company. Such amount shall not in any event exceed those provided for in Section 5.5.13 for Termination for Convenience, and shall be Company's sole remedy against District in the event of a termination for Uncontrollable Circumstances.

5.5.13 Termination for Convenience

The District shall have the right to terminate the Agreement at its sole discretion, for its convenience and without cause at any time after the execution of the Agreement upon ~~ninety-one~~ **hundred and eighty (90180)** days' prior written notice to the Company. If the District exercises its right to terminate the Agreement, the District shall pay the Company a termination fee equal to an amount specified in this Section 5.5.13. The fees shall include costs for demobilization and related costs, but shall in no way include payment for future profits that could have been received by the Company had the Agreement continued for its entire term. ~~The maximum amount for termination (exclusive of demobilization costs) shall be two hundred fifty thousand dollars (\$250,000) (as proposed by Company on Proposal Form 5). This maximum amount of two hundred fifty thousand dollars (\$250,000), exclusive of demobilization costs, shall be fixed for the first two (2) years of the Agreement and shall then decline by 1/3 of the original two hundred fifty thousand dollars (\$250,000) amount for each year during the remaining term of the Agreement. The fees indicated shall be reduced by any outstanding encumbrances incurred by the Company on behalf of the District.~~

Notwithstanding any other terms of this contract to the contrary, upon any termination of this Agreement pursuant to this Section or any other section of this Agreement, the Company shall

also be paid all amounts due for goods or Services provided hereunder prior to termination, which are to be paid as part of the Service Fee or any other provision of this Agreement but not yet paid as of the date of termination.

The Company agrees that the applicable termination payments provided in this Section shall fully and adequately compensate the Company and all Subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to such termination of the Company's right to perform this Agreement.

After the date of any termination under this Section, the District may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue the Services so terminated, including, without limitation, entering into contracts with other contractors.

5.5.14 Enforcement Costs

The Company agrees to pay to the District all Fees and Costs incurred by or on behalf of the District in enforcing payment or performance of the Company's obligations hereunder, including, but not limited to, reasonable attorney's fees and court costs, provided, however, that District shall provide reasonable Cost Substantiation of all such Fees and Costs and shall reimburse Company all such Fees and Costs to the extent the Company is later adjudged not to have been in violation of its obligations as specified herein.

5.6 Project Guarantor and Performance Bond

The Company shall provide a Project Guarantor that executes the Guarantee as set forth in Schedule 6. This Guarantee must be executed concurrently with the Agreement **Amendment** on the Contract Date. At the District's sole option, the District may require the Company to provide a performance bond in an amount equal to the annual Service Fee, including Pass Through Costs. Costs for the performance bond shall be treated as a Pass Through Cost. If requested by the District, the Company shall secure and maintain the performance bond as required in the Agreement throughout the Term, or until cancelled at the request of the District.

5.7 Insurance

5.7.1 General Requirements Novato

The Company shall provide insurance for the coverage amounts set forth in Schedule 7 included within the Service Fee. ~~Costs for this insurance shall be treated as a Pass Through Cost unless so indicated by Company that insurance costs are included within the Service Fee.~~ Prior to the Company commencing Services, the ~~Company's insurance broker~~ Company shall send to the District a certificate indicating that the required insurance is in place. The Company shall secure and maintain the Insurance as required in the Agreement.

The representative signing the certificate shall furnish evidence that he is authorized to sign as well as his address and the agency or agencies through which the insurance was obtained.

In the event Company seeks to be self-insured with respect to this Agreement such shall require District approval.

5.7.2 Insurers, Deductibles and District Rights

All Insurance shall be procured and maintained from financially sound and generally recognized responsible insurance companies allowed to do business in the State of California selected by the Company. The Company shall be responsible for any deductible amounts, which shall not be Pass Through Costs. All policies evidencing such insurance shall provide for payment of the losses to the District, and to the Company as their respective interests may appear. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the District. The District, and its Director, board members, officers, employees, agents and persons under the District's control or supervision shall be named as Additional insured with respect to the Company's duties and activities under the scope of this Agreement under these policies (excluding the worker's compensation insurance policy). The types and amounts of coverage required by the District are provided in Schedule 7 of this Agreement.

~~All Insurance shall be procured and maintained from financially sound and generally recognized responsible insurance companies admitted to the State of California and approved by the California Department of Insurance selected by the Company with the consent of the District, which consent shall not be unreasonably withheld, and authorized to write such insurance in the State. Notwithstanding the foregoing, in the event the Company wishes to use a non-admitted carrier, the Company must provide notice to the District and must provide sufficient information to allow the District to evaluate the proposed non-admitted carrier. The District must provide written consent to use the proposed carrier, which consent shall be at the District's sole and reasonable discretion. The District reserves the right to require Company to obtain insurance from insurers achieving ratings from an insurance rating service acceptable to the District from an insurance rating service of the District's choosing in District's sole and reasonable discretion. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and respects to those in which the Company is engaged. The Company must provide the District with the deductible amounts for each policy, and must obtain the District's written consent to those deductible amounts, which consent shall be at the District's sole and reasonable discretion. The Company shall be responsible for any deductible amounts, which shall not be Pass Through Costs. All policies evidencing such insurance shall provide for (1) payment of the losses to the District, and to the Company as their respective interests may appear, and (2) prior written notice of the cancellation in the policy thereof to the Company and the District in accordance with the notice requirements specified in Schedule 7. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the District. The District, and its Director, board members, officers, employees, agents and persons under the District's control or supervision shall be named as Additional insured under these policies (excluding the worker's compensation insurance policy). The types and amounts of coverage required by the District are provided in Schedule 7 of this Agreement.~~

5.7.3 Certificates, Policies and Notice

The Company shall deliver to the District, as soon as practicable after the execution of this Agreement and within five (5) days of each renewal thereafter Certificates and any applicable endorsements as required in this Agreement the insurance policies which the Company is required to maintain pursuant to this Section, listing the name of the insurers issuing such insurance, certifying that the same are in full force and effect and giving the amounts and expiration dates of such insurance. . Whenever a Subcontractor is utilized, the Company shall require the Subcontractor to procure and maintain during the applicable Term comprehensive general liability, worker's compensation and motor vehicle liability insurance coverage subject to the requirements of Schedule 7, covering damage caused by actions of the Subcontractor or its employees.

~~The Company shall deliver to the District, as soon as practicable after the execution of this Agreement and within sixty (60) days prior to each Fiscal Year thereafter Certificates and any applicable endorsements thereto setting forth in reasonable detail the particulars as to all insurance policies which the Company is required to maintain pursuant to this Section, listing the risks that are covered thereby, the name of the insurers issuing such insurance, certifying that the same are in full force and effect and giving the amounts and expiration dates of such insurance; the Company, if requested by District, shall also complete the District's coverage certification forms and supply the completed form to the District. If required as a result of a claim or loss for which an indemnification is owed to the District by Company or to which the Company's insurance would otherwise be applicable, the Company shall also supply the District District's designated legal counsel with certified copies of said Insurance policies promptly following such District request. Such policies shall contain an endorsement to the effect that the insuring company shall notify the District in accordance with the notice provisions specified in Schedule 7. Whenever a Subcontractor is utilized, the Company shall either procure and maintain or require the Subcontractor to procure and maintain during the applicable Term comprehensive general liability, worker's compensation and motor vehicle liability insurance coverage subject to the requirements of Schedule 7, covering damage caused by actions of the Subcontractor or its employees.~~

5.8 Regulatory Compliance Guarantee

5.8.1 Regulatory compliance guarantee provided by the Company

a) The Company will ~~shall~~ meet **all applicable regulatory requirements** and the performance standards and guarantees specified in Schedule 1 of this Agreement **which can be met within the capabilities of the Facilities**. This section addresses treated effluent from the Facility which fails to meet the Performance Standards and Guarantees specified in Schedule 1. The Company is responsible for meeting the applicable regulatory requirements first, followed by any additional requirements specified in this Agreement.

b) The Company shall, within the design capability and capacities of the Novato WWTP, maintain compliance with the regulatory requirements of NPDES Order No. R2-2004-0093**2010-0074**, and California Order No. 92-065 as applicable to the Company scope of work.

c) The Company shall, within the design capability and capacities of the Novato WWTP maintain compliance with the Bay Area Air Quality Management Permits applicable to the Novato and Ignacio all "Facilities" and Company's scope of work. The District and Company recognize a lack of redundancy for abating biogas. The Company will stock the manufacturer recommended spare parts to minimize down time of the biogas flare and maintain the existing equipment per manufacturers recommendation. Any failure of the flare due to the lack of redundancy that results in an air quality violation will be the responsibility of the District. Any failure of the flare due to the Company's negligence to maintain the biogas flare per manufacturer's recommendation that results in an air quality violation will be the responsibility of the Company.

d) The Company shall, within the design capabilities and capacities of the Novato WWTP and Ignacio Transfer Pump Station "Facilities", maintain compliance with applicable safety and security standards and regulations within Company's scope of work.

5.8.2 Non-Compliance Assessment

The following sequence outlines the procedures if the Company fails to meet Effluent Limits for treating influent wastewater:

1. The Company shall immediately take the appropriate and all reasonable action to satisfy all regulatory requirements.
2. Within twenty-four (24) hours of noncompliance, the Company shall provide a plan to the District explaining the cause of such failure and outlining corrective actions for preventing similar or related failures in the future.
3. The District will review and approve the plan within forty-eight (48) hours upon receipt.
4. The District recognizes that the Company is responsible to the District for meeting Effluent Limits only under those conditions where the influent wastewater is within the design parameters of the facility. If a situation does occur where the influent wastewater is outside of design parameters, the District's objective-Company shall immediately implement is to assure that an industry best practices program to meet Effluent Limits is immediately implemented by the Company.

5.8.3 Failure to Meet Regulatory Requirements and Schedule 1

1. The Company shall be responsible for any fines or penalties assessed by regulatory agencies as a consequence of the non-compliance due to Company negligence.
2. Company's failure to implement any of the corrective actions in Section 5.8.2 will result in the District's ability to impose Liquidated Damages in the amount of five thousand dollars (\$5,000) per day, per violation for substantial and continuous violations that threaten public health and/or safety and/or the environment from the date of violation. The charges which may be assessed under this provision shall in no way substitute for or relieve the Company of financial and legal obligations from regulatory agencies. The District reserves the right to offset

the monthly service fee by the Liquidated Damages, if any, charged to the Company under this Section.

3. Repeated failure to responsively perform other aspects of the Services contained in the Agreement, including reporting and administrative requirements, upon written notification to correct and a reasonable time period to correct, will result in the District's ability to impose a non-compliance assessment in the amount of one thousand dollars (\$1,000) per day until such time as the noted deficiency is corrected or the District elects to terminate the Agreement. Such non-compliance assessment may be increased by the District to the amount of five thousand dollars (\$5,000) per day for any repeated failure to comply with the same particular standard previously violated within any twelve (12) month period. Such increase of the non-compliance assessment shall be actionable by the District only after a reasonable notice and cure period for the repeated violation.

45. The Company shall immediately implement any elements of the plan, which incorporates the District's comments that are not already underway by the Company. Incorporation of the District's comments shall provide the finalized plan, unless additional revision, based upon new information, is necessary. The Company shall be responsible for performing any and all operational modifications, as specified by the plan, to meet the Effluent Limits.

Failure to implement any of the above corrective actions will result in the District's ability to impose Liquidated Damages in the amount of five thousand dollars (\$5,000) per day, per violation for substantial and continuous violations that threaten public health and/or safety and/or the environment from the date of violation.

The District recognizes that the Company is responsible to the District for meeting Effluent Limits only under those conditions where the influent wastewater is within the design parameters of the facility. If a situation does occur where the influent wastewater is outside of design parameters, the District's objective Company shall immediately implement is to assure that a "best efforts" program to meet Effluent Limits is immediately implemented by the Company.

The charges which may be assessed under this provision shall in no way substitute for or relieve the Company of financial and legal obligations from regulatory agencies. The District reserves the right to offset the monthly service fee by the liquidated damages, if any, charged to the Company under this Section 5.8.

Repeated failure to responsively perform other aspects of the Services contained in the Agreement, including reporting and administrative requirements, upon written notification to correct and a reasonable time period to correct, will result in the District's ability to impose a non-compliance assessment in the amount of one thousand dollars (\$1,000) per day until such time as the noted deficiency is corrected or the District elects to terminate the Agreement. Such non-compliance assessment may be increased by the District to the amount of five thousand dollars (\$5,000) per day for any repeated failure to comply with the same particular standard previously violated within any twelve (12) month period. Such increase of the non-compliance assessment shall be actionable by the District only after a reasonable notice and cure period for the repeated violation.

5.9 Certain Obligations of the Company Upon Termination or Expiration

5.9.1 Company Obligations Upon Termination

Upon a termination of the Company's right to perform this Agreement under Sections 5.4 and 5.5, hereof or upon the expiration of this Agreement under Article 5.1 hereof, the Company shall, as applicable: (1) stop the Services, as applicable, on the date and to the extent specified by the District; (2) promptly take all action as necessary to protect and preserve all materials, Equipment, tools, facilities and other District property; (3) clean the Facility and the grounds, and leave the same in a neat and orderly condition; (4) promptly remove all employees of the Company and any Subcontractors and vacate the Site (except to the extent necessary to perform the work described in this paragraph or as may be retained or employed by the District, at District's election); (5) promptly deliver to the District copies of any and all Subcontracts, together with a statement of: (a) the items ordered and not yet delivered pursuant to each agreement; (b) the expected delivery date of all such items; (c) the total cost of each agreement and the terms of payment; and (d) the estimated cost of canceling each agreement; (6) advise the District promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract; (7) give written notice of termination, effective as of date of termination of this Agreement, promptly under each policy of insurance (with a copy of each such notice to the District), but permit the District to continue such policies thereafter at its own expense, if possible; and (8) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the District's costs, and take no action which shall increase any amount payable to the District under this Agreement.

5.9.2 Additional Obligations

Upon termination of the Company's right to perform this Agreement under Sections 5.4 and 5.5, hereof or upon the expiration of this Agreement under Article 5 hereof, the Company at its cost and expense shall provide, and shall use its best reasonable efforts to cause its Subcontractors to provide operational and maintenance systems advice and support to the District or any replacement operator designated by the District. Such advice and support shall be for a period of ~~thirty~~ **ninety (90)** (~~30~~) days and shall include providing any operating manuals, **operating procedures**, maintenance and operating records, **data and any other information that is not confidential and proprietary in nature**, or other information which is useful or necessary for the District or any replacement operation designated by the District or any such replacement operator to perform the Services. If terminated pursuant to the above sections, the Company shall exercise **industry best practices** ~~efforts~~ to maintain the performance of the Facility during the transfer to the District.

5.9.3 Company Payment of Certain Costs

If termination is pursuant to Section 5.5.1 hereof for a Company Event of Default, the Company shall be obligated to pay the costs and expenses of undertaking its post-termination responsibilities under this Section. If the Company fails to comply with any obligations under this Section, the District may perform such obligations and the Company shall pay on demand all reasonable costs thereof subject to receipt of invoices or other cost substantiation.

5.9.4 District Payment of Certain Costs

If termination is for the convenience of the District under Section 5.4 hereof or due to a District Event of Default pursuant to Section 5.4 hereof, the District shall pay to the Company within sixty (60) days of the date of the Company's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by the Company in satisfying the requirements of this Section.

5.10 Survivability of Provisions

The provisions contained in Article V Section 5.2; Section 5.7, Section 5.8 and Section 5.9 shall survive termination of this Agreement with respect to claims arising during the Term hereof.

6.0 REPRESENTATIONS AND WARRANTIES

6.1 Representations of the District

The District represents and warrants to the Company as follows:

6.1.1 Existence and Powers

The District is a body corporate and politic constituting a sanitary district, validly existing under the Constitution and the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Agreement.

6.1.2 Due Authorization and Binding Obligation

The District has the authority to enter into and perform its obligations under this Agreement. The District has taken all actions required by law or otherwise to authorize execution of this Agreement. The person(s) signing this Agreement on behalf of the District have authority to do so, and this Agreement This Agreement has been duly authorized, executed and delivered by all necessary corporate action of the District and constitutes a legal, valid and binding obligation of the District, enforceable against the District in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect.

6.1.3 No Conflict

To the best of the District's knowledge, after reasonable investigation, neither the execution nor delivery Neither the execution nor delivery by the District of this Agreement, nor the performance by the District of its obligations in connection with the transactions contemplated hereby or the fulfillment by the District of the terms or conditions hereof (1) conflicts with, violates or results in the breach of any constitution, law or governmental regulation applicable to the District, or (2) conflicts with, violates or results in the breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the District is a party or by which the District or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

6.1.4 No Approvals Required

No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the District of this Agreement or the performance by the District of its payment or other obligations hereunder.

6.2 Representations and Warranties of the Company

The Company represents and warrants to the District as follows:

6.2.1 Existence and Powers

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

6.2.2 Due Authorization and Binding Obligation

The Company has the authority to enter into and perform its obligations under this Agreement. The Company has taken all actions required by law or otherwise to authorize execution of this Agreement. The person(s) signing this Agreement on behalf of the Company have authority to do so, and this Agreement ~~This Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect.~~

6.2.3 No Conflict

To the best of the Company's knowledge, after reasonable investigation, neither the execution nor delivery by the Company of this Agreement nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Company or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

6.2.4 No Approvals Required

No approval, authorization, order or consent, or declaration, registration or filing with any Governmental Body is required for the valid execution and delivery of this Agreement by the Company or the performance of its payment or other obligations hereunder except as the same have been disclosed to the District and have been duly obtained or made.

6.2.5 No Litigation

There is no action, lawsuit or proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Company's knowledge, threatened against the Company, which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution and delivery of this Agreement or the validity, legality or enforceability of this Agreement, or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or which would materially and adversely affect the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

6.2.6 Ability to Perform and Practicability of Performance

The Company assumes and shall have exclusive responsibility for the operation, maintenance and management of the Facility, consistent with the terms and requirements of this Agreement. **The Company possesses the business, professional, and technical expertise to operate, maintain, and manage the Facility, and possesses the equipment and employee resources required to perform this Agreement.** The Company (1) assumes the risk of treating wastewater through the operation of the Facility which meets all of the requirements hereof even though such performance and supply may be different from those assumed by the Company in entering into this Agreement, and (2) agrees that sufficient consideration for the assumption of such risks and duties is included in the Service Fee. The Company's warranties in this paragraph shall apply notwithstanding the occurrence of any Uncontrollable Circumstance other than those specifically enumerated in the definition thereof.

6.2.7 Adequacy of Price and Schedule

The Company has reviewed carefully the documents of this Agreement, as existing on the Contract Date. Subject to the terms of this Agreement, the Company agrees that it can perform the operations maintenance and management of the Facility for the Service Fee set forth in Schedule 14 and Pass Through Costs and usage set forth in Schedule 13 hereto.

6.2.8 Information Supplied by the Company

The information in this Agreement supplied by the Company is correct and complete in all material respects.

6.3 Survival of Representations and Warranties

Notwithstanding any other provision of this Agreement, the representations, warranties and covenants in this Article 6 are intended to and shall survive termination of this Agreement.

7.0 MISCELLANEOUS

7.1 Limited Recourse to District.

7.1.1 Liability Limited to Revenues; Subordination to State Revolving Fund (SRF) Financing, Revenue Bonds, and Lines of Credit Obligations

The District's obligations hereunder shall be payable solely from amounts generated from the District's sewer service charges and ad valorem taxes and the revenues generated from deposits of those monies, provided that all payments to the Company shall be subordinate to the pledge and obligation to pay debt service on any issued revenue Bond obligations, including State Revolving Fund (SRF) financing or other lines of credit obligations. All amounts held in the District's running expense fund shall be held for the uses permitted thereby, and no such amounts shall constitute property of the Company. In addition to the provisions of the District's Bond indenture, the District may further pledge, hypothecate, transfer, or assign any of its funds including revenues, in any lawful manner the District determines so long as the District certifies that the remaining revenues available to make payments hereunder will be sufficient to pay all amounts expected to be payable to the Company hereunder.

7.2 Company Business Activities and Guarantor Credit Standing

7.2.1 Company Business

The Company agrees that its business regarding this Agreement will be limited to that contemplated by this Agreement and it will not engage in activities or incur liabilities in connection with this Agreement other than in connection with the Company's performance of this Agreement and the transactions contemplated hereby. The Company further represents that the Company is an independent contractor.

7.2.2 Guarantee Agreement

During the Contract Term, the Company shall cause to be provided and maintained the Guarantee Agreement.

7.3 Relationship of the Parties

7.3.1 Company shall perform the Services required by this Agreement as an independent contractor and the relationship between the parties shall be limited to the performance of this Agreement in accordance with its terms. Neither party shall have any responsibility with respects to the Services to be provided or contractual benefits assumed by the other party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party.

7.3.2 Although the District reserves the right (i) to specify the desired results; (ii) to determine (and modify) the delivery schedule for the Services to be performed; and (iii) to evaluate the quality of the completed performance, the District cannot and will not control the means or manner of the Company's performance. The Company is responsible for determining the appropriate means and manner of performing the Services.

7.3.3 The Company represents and warrants that Company (i) is not currently an employee of the federal government or the State of California, and (ii) meets the specific independent contractor standards of the State of California. Company represents and warrants that all Subcontractors shall also meet such independent contractor standards.

7.3.4 Company will be responsible for any federal or state taxes applicable to any compensation or payment paid to Company under this Agreement.

7.3.5 Company is not eligible or entitled to any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Company under this Agreement either as an employee or quasi-employee of District under any theory of Applicable Law, the same being expressly denied.

7.3.6 Company shall not subcontract any of the work required by this contract exceeding thirty thousand dollars (\$30,000.00) of value without the prior written consent of the District, whose consent shall not be unreasonably withheld.

7.3.7 Company has no legal right to place liens or encumbrances on real and personal property owned by the District and shall not assert, record or lien said property.

7.3.8 Company shall not assert any equity ownership in any property, real or personal, of the District.

7.4 Interest on Overdue Obligations

Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at a rate of the published Bank of America prime rate as existing on the date such payment obligation became overdue plus two percent (2%), on the basis of a three hundred sixty-five (365) day year, and shall be deemed added to the amount due as accrued.

7.5 Indemnity for Subcontractor Claims

No Subcontractor shall have any right against the District for labor, services, materials or equipment furnished for the Services. The Company acknowledges that its indemnity obligations under Section 5.2 hereof shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Services.

7.6 Assignment

7.6.1 By the Company

The Company shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Agreement, its right to execute the same, or its right, title or interest in all or any part of this Agreement whatsoever whether legally or equitably, by power of attorney or otherwise without the prior written consent of the District. The following shall constitute an assignment for purposes hereof: (i) the sale, lease, or other disposal of all or substantially all of the Company's assets to any other person, firm, corporation, or association, (ii) the entry by the Company into any agreement to any such effect, and (iii) the transfer of greater than fifty-one (51%) of the ownership or control of the Company (except to a Company Affiliate). Any such approval given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of the District to any further assignment. Any such assignment shall require the

assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Agreement, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty, which shall remain in full force and effect during the Contract Term. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under this Agreement prior to the date of assignment unless such approval specifically provides otherwise. Any assignment in violation of this Section shall be void.

7.6.2 By the District

The District may not assign its rights or obligations under this Agreement without the prior written consent of the Company. The District may however, assign its rights and obligations under this Agreement, without the consent of the Company, to another public or quasi-public entity if such entity is legally capable of discharging the duties and obligations of the District hereunder. Any such assignment shall require the assignee of the District to assume the performance of and observe all obligations, representations and warranties of the District under this Agreement. The approval of any assignment, transfer or conveyance shall not operate to release the District in any way from any of its obligations under this Agreement prior to the date of the assignment unless such approval specifically provides otherwise. Any assignment in violation of this Section shall be void.

7.7 Amendment and Waiver

This Agreement may not be amended except by a written agreement signed by the parties. This Agreement shall not be amended in such a way as to make any tax-exempt financing of the District taxable.

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

7.8 No Other Agreements

All negotiations, proposals and agreements prior to the date of this Agreement are merged herein and superseded hereby, there being no agreements or understandings other than those written or specified herein, unless otherwise provided. This Agreement, including all Schedules attached hereto, constitutes the entire Agreement between the District and the Company with respect to the management, operation and maintenance of the Facility.

7.9 Notices

All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by first class mail, facsimile or email, to such addresses:

(a) If to the District: Beverly James
~~General Manager-Engineer~~
Novato Sanitary District
500 Davidson Street
Novato, CA 94945
Tel: 415-892-1694
Fax: 415-898-2279
bevj@novatosan.com

with a copy of all written correspondence to:

Kenton Alm
District Counsel
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Tel: 510-808-2000
Fax: 510-256-7508
kalm@meyersnave.com

(b) If to the Company:

~~Philip G. Asheroft,~~ **Lanita McCauley Bates**, President
Veolia Water West Operating Services, Inc.
2300 Contra Costa Blvd., Suite 350
Pleasant Hill, CA 94523
Tel: 925-771-7201
Fax: 925-681-0236
lanita.mccauley-bates@veolia.com

(c) If to the Guarantor:

~~Laurent Auguste,~~ **Terry Mah**, President and CEO
Veolia Water North America Operating Services, LLC
Address: 200 Randolph Street, Suite 7900
Chicago, IL 60601
Telephone: 312-552-2805

Email: laurent.auguste@veoliawaterna.com

with a copy of all written correspondence to:

~~M. Scott Schrang~~ Eric Robbin
General Counsel
Veolia Water North America Operating Services, LLC

District and Company are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement .

7.13 Compliance With Applicable Law

In addition to any other provision of this Agreement, Company shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement , including, but not limited to those set forth in Schedule 17. Without limiting the foregoing, Company expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) all regulations and administrative rules established pursuant to those laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statues, rules and regulations. A condition or clause required by law to be in this contract shall be considered included by these references.

7.14 Severability

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held invalid.

7.15 Business License

Company must obtain a business license from the City of Novato.

7.16 Further Assurances

The District and Company each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The District and the Company, in order to carry out this Agreement, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not consistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

7.17 Counterparts

This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute one and the same document.

7.18 Governing Law

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California, without giving effect to any choice of law provision or rule that would cause the application of laws of any jurisdiction other than the State of California.

7.19 Headings

The Table of Contents and any heading preceding the text of Articles, Sections and Subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

8.0 ADDITIONAL SERVICES

8.1 Description of Additional Services

The following items shall be considered to be Additional Services under this Agreement:

(1) any change in Facility operations, personnel qualifications or staffing or other cost which is a result of an Uncontrollable Circumstance or from the treatment of wastewater that exceeds the design capacity and / or capability of the Facility as specified in Schedule 1 of this Agreement;

(2) changes in raw wastewater influent that are subject to the adjustment methodology of Schedule 8.

(3) District's request of Company to provide additional or reduced services upon terms mutually agreed to by the Parties.

8.2 Payment for Additional Services

For Additional Services described in Sections 8.1(1) and 8.1(2), the District shall compensate Company for all costs and expenses reasonably incurred by Company in dealing with such event. For Additional Services described in Sections 8.1(3), the District and Company shall negotiate a mutually acceptable fee for such Additional Services. Company shall provide the District with Cost Substantiation with respect to the Additional Services described in Section 8.1 above.

[TEXT ENDS HERE – SIGNATURES ON THE FOLLOWING PAGE]

NOVATO SANITARY DISTRICT

VEOLIA WATER WEST OPERATING SERVICES, INC.

By: _____
Michael Di Giorgio
Its: Board President
Dated: _____

By: _____
Its: _____
Dated: _____

By: _____
Its: Secretary of the District
Dated: _____

Approved as Form:

Approved as Form:

By: _____
Kenton L. Alm
District Counsel
Dated: _____

By: _____
Dated: _____

DRAFT

APPENDIX A
Schedules to the Agreement

<u>Schedule</u>		<u>Pages</u>
Schedule 1 -	Performance Standards	52-53
Schedule 2 -	Operation and Maintenance Standards	54-64
Schedule 3 -	Facility Plans and Asset Management	65-70
Schedule 4 -	Wastewater Treatment Facility	71-74
Schedule 5 -	Facility Transition Plans and Systems 14 Areas Recycled Water	75-81
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Schedule 7 -	Insurance	85-86
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Schedule 9 -	Permits	93
Schedule 10-	District Contracts	94
Schedule 11-	Usage Caps: Maximum Utilities and Diesel Fuel Utilization	95-97
Schedule 12 -	Equipment and Chemicals Inventory	98
Schedule 13 -	Pass Through Costs	99
Schedule 14 -	Service Fee and Incentives	100-103
Schedule 15 -	Acceptance Testing	104
Schedule 16 -	Contract Term and Renewal Option	105
Schedule 17 -	Compliance With Applicable Law	106

**SCHEDULE 1
PERFORMANCE STANDARDS**

1.1 TREATMENT REQUIREMENTS REGULATORY COMPLIANCE GUARANTEE

The Company shall operate and maintain the Facility in accordance with all applicable federal, State, and local regulations pertaining to wastewater treatment standards, including the effluent quality requirements described in the current NPDES and WDR Permits. In addition, the Company shall operate the Facility to be in compliance with the specific performance standards described herein. The Effluent Limits and performance requirements of the District’s NPDES and WDR Permits are referenced in Appendix B of this Agreement.

Influent wastewater within design criteria and flow and loading parameters established by the design criteria specified in Schedule 1 shall be treated to meet all regulatory requirements, including effluent discharge standards., without adjustment to the Service Fee or Utility Caps unless the ~~twelve (12)~~ **thirty six (36)** month moving averages for maximum and minimum flow and loadings are exceeded. Provided the flows and loadings do not exceed design criteria, short term excursions of flows and / or loadings above or below the maximum and minimum flow and loadings established for the Service Fee and Utility Caps, but within the design criteria, shall not constitute an Uncontrollable Circumstance and shall not be eligible for compensation adjustment to the Service Fee or adjustments to the Utility Caps.

1.2 FACILITY DESIGN CRITERIA FOR WASTEWATER FLOWS AND LOADINGS

Detailed design criteria for the ~~upgraded F~~ facility are referenced ~~below on sheet G-6 of the Novato Treatment Plant Improvements, (Contract B), Volume 5, contract drawings, (2006) designed by RMC Water Environment Inc. The Average Dry Weather Flow (ADWF) capacities per this drawing G-6 are referenced below. (Refer to drawing G-6 for more information on flows and loads).~~

ADWF(MGD)	Average BOD Loading (lbs/day)	Average TSS Loading (lbs/day)
7.0	14,600	17,600

Parameter	Value
Average dry weather Flow	7.05 MGD
Average Annual Flow (AAF)	7.8 MGD
Average Wet Weather Flow	10.3 MGD
Peak Wet Weather Flow, Max Day (PWWF)	30.7 MGD
Peak Week	17.7 MGD
Max Peak 3-hour Flow	52.0 MGD
Normal Peak 3-hour Flow	34.6MGD
Average BOD loading	14,600 lbs/day
Average TSS loading	17,600 lbs/day
Maximum dry weather month BOD	16,800 lbs/day
Maximum dry weather month TSS	20,200 lbs/day

Detailed design criteria for the existing Novato Wastewater Treatment Plant are referenced on pages I-5 through I-8 of the Operation and Maintenance Manual for the Novato Treatment Plant Project. Average dry weather capacities are summarized below:

ADWF(MGD)	Average BOD Loading (lbs/day)	Average TSS Loading (lbs/day)
4.53	9,713	12,851

Detailed design criteria for the existing Ignacio Wastewater Treatment Plant are referenced on pages I-3 through I-5 of the Operation and Maintenance Manual for the Ignacio Treatment Plant Project. Average dry weather capacities are summarized below:

ADWF(MGD)	Average BOD Loading (lbs/day)	Average TSS Loading (lbs/day)
2.02	3,995	4,775